

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Dorchester County

Honorable Robert J. Bonds, Circuit Court Judge

HERBERT LEROY HOLMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001369

AMENDED APPENDIX

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF GENERAL SESSIONS

State of South Carolina,)

PLAINTIFF,)

v.)

Herbert Leroy Holmes,)

DEFENDANT.)
_____)

TRANSCRIPT OF HEARING

2011-GS-18-0256

2011-GS-18-0257

Dorchester County Courthouse
April 22-25, 2013

BEFORE:

HONORABLE DIANE GOODSTEIN, PRESIDING JUDGE

APPEARANCES:

Assistant Solicitor Glenn Justice
Assistant Solicitor Phil Giese
Attorneys for The State of South Carolina

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TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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(These State's Exhibits entered during Trial)

State's Exhibit 1 (Victim's Blouse)
 State's Exhibit 2 (Victim's skirt)
 State's Exhibit 3 (Victim's panty hose)
 State's Exhibit 4 (victim's Bra)
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 State's Exhibit 10 (CSC Kit)
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 State's Exhibit 28 (Changing Chux)
 State's Exhibit 29 (Chux)
 State's Exhibit 30 (Blue Hospital Bag)
 State's Exhibit 31 (Evidence Envelope-2 envelopes and bag)
 State's Exhibit 32 (Specimens submitted for examination)

(These are State's Exhibits I.D. Only)

State's I.D. Only Exhibit 7 (Photograph of the victim)
 State's I.D. Only Exhibit 9 (Photo Line-up)
 State's I.D. Only Exhibit 11 (Paperback book)
 State's I.D. Only Exhibit 13 (SLED report dated 1/25/85)
 State's I.D. Only Exhibit 14 (SLED report dated 10/27/88)
 State's I.D. Only Exhibit 15 (SLED report dated 12/9/09)
 State's I.D. Only Exhibit 16 (SLED report dated 3/22/11)
 State's I.D. Only Exhibit 17 (Composite Sketch)
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(These are Defendant's Exhibits I.D. Only)

Defendant's Exhibit 1 (3 page incident report)
 Defendant's Exhibit 2 (2 page Log in form)

(These are Joint Exhibit and Court Exhibits I.D. Only)

Joint Exhibit 1 - Stipulation
 Court Exhibit 1 - Note from Jurors
 Court Exhibit 2 - Note from Jurors

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1 The Court: Good afternoon, Ladies and
2 Gentlemen.

3 Jury: Good afternoon.

4 The Court: Good afternoon, Ladies and
5 Gentlemen.

6 Jury: Good afternoon.

7 The Court: Oh you're so excited to be here.
8 Thank you for that. Let me begin by introducing myself.
9 I'm Diane Goodstein. I am from Summerville and I am one
10 of the two resident judges from the first judicial
11 circuit. And I am so happy to report to you that you
12 live in the first judicial circuit, which is Dorchester
13 and Orangeburg Counties. Ladies and gentlemen, I want to
14 thank you for reporting this afternoon for this trial of
15 general sessions or criminal court. Ladies and
16 gentlemen, in the United States, we are a citizen-based
17 judicial system and if you were not here, there would be
18 no reason for any of us to be here. So we send out
19 summons for people like you to report to jury service and
20 help fellow citizens resolve disputes. And since this is
21 a term of criminal court of general sessions, we know
22 that one side of the dispute is the State who has
23 maintained that there are fellow citizens who have
24 violated one or more of the criminal laws of the state of
25 South Carolina. Those individuals have pled not guilty

1 and we have a disputes. We need your help to be the
2 finders of fact, be the finders of fact to determine
3 whether or not the State has met its burden of proving
4 each and every allegation of whatever matter they allege
5 he has violated beyond a reasonable doubt. And we will
6 talk a lot more about that to those of you who have the
7 opportunity to serve on the jury.

8 Ladies and gentlemen, I want to begin, if you
9 will, by telling you some of the folks who are here with
10 you. I'm going to begin by introducing you to our
11 elected clerk of court and she's actually going to handle
12 the introductions for me this afternoon. But I want to
13 introduce her to you because otherwise, she wouldn't get
14 introduced. Cheryl Graham is our clerk of court and I
15 have known her a very, very, very long time. Too long
16 for either of us to talk about. But let me just tell you
17 that neither one of us was using hair dye at the time.
18 She and I have many years ago. She literally was one of
19 the babies. I think she was there in middle school in
20 the clerk's office and they used pencil and paper. Our
21 clerk's office today, ladies and gentlemen, very much
22 through the energies and efforts and the gaucheness of
23 our clerk of court has become one of the most
24 technologically advanced clerk's office in this country.
25 When our chief justice was able to obtain a grant from

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1 the federal government, several years ago now, one of the
2 places that she went when she started looking at one of
3 our more rural counties to implement the case management
4 system which was a web based system, which was
5 revolutionary at the time, now it's not so revolutionary
6 now, was one of the places that she came for a can-do
7 attitude of people that can handle it and would and were
8 up for the challenge, they came to Dorchester County.
9 And that staff stayed with Mrs. Graham for about a year
10 as they transferred data came up with fixes,
11 technologically speaking, came up with the software,
12 developed the software, and implemented the case
13 management system, when it came time for them to leave,
14 about a year later, they couldn't get them to go. The
15 chief justice had to send the person in charge of the IT,
16 said okay it's time, we've got to leave Dorchester
17 County. We think we need to do one more thing here.
18 They literally didn't want to go. As a result, if the
19 next time you are suffering from insomnia, and it
20 shouldn't, I do hope it's not now, but I want you to go
21 on www.dorchestercounty.net/clerkofcourt. I messed it
22 up. What is it?

23 Clerk: Stop at .net and then you can find the
24 clerk of court after that.

25 The Court: Right. And you'll be sleeping in

1 fifteen minutes once you go through all the amazing and
2 magical things that she does. She is now whenever our
3 chief justice, whenever she is now implementing new
4 programs, she is in the middle of doing now, and she's
5 called on Mrs. Graham to assist in that regard and she's
6 part of a planning panel or as we go paperless in our
7 clerk's office, Mrs. Graham has now become Madam geek
8 instead of Madam Clerk, she has become a part of that
9 wonderful strive to become paperless and it scares me to
10 death, Mrs. Graham tells me not to worry. Ladies and
11 gentlemen, please allow me to introduce you to truly an
12 insightful and a visual person, a visionary clerk of
13 court, Mrs. Cheryl Graham.

14 Mrs. Graham: Thank you so much Judge. I
15 introduced part of my staff downstairs but also in the
16 courtroom with me is Ms. Becky Stevens. She is my civil
17 court coordinator and courtroom employee. She had a
18 special guest with her today. Her mother is visiting
19 from out of state. This is Mr. Joe. I'm going by first
20 names and he is with the security here in the courthouse
21 and the courtroom. And Mr. Smithy there, he's
22 celebrating a birthday today. In the corner over there
23 Ms. Dorothy Salisbury, the bailiff; I think y'all met her
24 downstairs and Ms. Catherine. And then in the back is
25 Mr. Marvin, he is also part of our security team here.

STATE OF SOUTH CAROLINA V. HERBERT LEROY HOLMES

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1 The Court: Thank you so much. And I'm going to
2 ask my court reporter to introduce herself.

3 Mrs. Singletary: Hello, I'm Melissa Singletary,
4 I'm the court reporter for this week.

5 The Court: And she says that as though that's a
6 normal thing. Mrs. Singletary is our court reporter, she
7 is the keeper of our records. We could not hold court if
8 she wasn't present because she is a court of record. It
9 is an awesome responsibility to keep the record and Mrs.
10 Singletary does it in the most extraordinary fashion.
11 You will notice that she is holding up a mask. She's not
12 holding up a mask to hide herself as she giggles about
13 me, but she's actually known as a mask writer and she is
14 repeating everything that is said in the court. She's
15 also recording it digitally in a number of different
16 forms so that in the event that our jury needs to have a
17 portion of testimony replayed or if there's ever a need
18 for the information about what was said, what was done in
19 the clerk of court, she has that. During the course of
20 the trial, if there are any exhibits which are admitted
21 into evidence, they come to Mrs. Singletary and it
22 becomes her responsibility to be responsible for them,
23 marking them, keeping up with them and she does that
24 until such time as the exhibits go back to the jury for
25 the jury's deliberation at the conclusion of the case.

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1 Once the jury's deliberations are ended, it is Mrs.
2 Singletary's responsibility to again, collect and marked
3 and account for those exhibits. She then files them with
4 the clerk of court who keeps them forever. Mrs. Graham
5 has a door that she's had since 1970 something literally.
6 So they do come to the Clerk of Court where they're kept
7 really forever. Now ladies and gentlemen, you will find
8 it fascinating to watch the proficiency in which Mrs.
9 Singletary operates. It's really quite remarkable.

10 Ladies and gentlemen, to my right is Mrs. Anna
11 Welch, she is my law clerk. She is my lawyer. Ladies
12 and gentlemen, we as the judiciary members of the court
13 have the honor of having a young person spend typically
14 their first year or two out of school with us. It is the
15 most wonderful relationship and it really is give and
16 take. It's wonderful for them because it gives them an
17 opportunity to spend those first several months outside
18 of law school observing trials. They get to watch the
19 action if you will, those things they've been studying
20 for the last three years. And it's wonderful for the
21 judiciary because they just got out of law school so they
22 know everything. So you will see Ms. Welch coming and
23 going because she's obviously working on things that we
24 have, other matters that we have. She's also assisting
25 me during the course of the trial so you will see her

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11

1 come and go.

2 Ladies and gentlemen, there are other folks
3 that have matters pending before the court and I look
4 forward to introducing them to you as their cases are
5 called.

6 Let's focus on you. Let's focus on you.
7 Ladies and gentlemen, jury qualifications are done in
8 stages and that's why you have appeared this afternoon.
9 The first thing is Ms. Graham will call the roll. And as
10 your name is called, I'm going to ask you to stand and
11 give the information from the board. Please give us just
12 a word or two about how you are self-employed or if you
13 are retired, the position from which you are retired.
14 Ladies and gentlemen, with regards to respect, if your
15 spouse is self-employed or spouse is retired, also just a
16 word or two about their self-employment or position that
17 they are retired. Now, let me give you examples. I am a
18 self-employed dog groomer. I am a retired dog groomer.
19 And that will certainly be ample information. Once the
20 roll call is over, then there are some statutory mandated
21 questions that I must ask of you. Once I've asked you
22 those questions and you have responded, then we're going
23 to take a break. Then we're going to come back from a
24 short break and then I'm going to introduce you to some
25 folks, I'm going to read to you a non-argumentative

1 statement, I'm going to find out whether or not anyone
2 knows or thinks they may know anything about our first
3 matter for trial. I'm going to introduce you to some
4 folks that are associated with that first trial. And
5 then ladies and gentlemen I'm going to ask you those
6 questions and then we're going to select our jury for our
7 first trial. Those of you who are in at that point our
8 remaining jurors, I'll give you some instructions about
9 how we're going to stay in contact with each other over
10 the balance of the week. That gives you an overview
11 about what we're going to be doing this afternoon.

12 Ladies and gentlemen, as part of our qualifications
13 process because of the truth of the answers you are going
14 to give me is so important I'm going to ask you to please
15 stand, raise your right hand as I administer an oath.

16 Ladies and gentlemen, do you solemnly swear or
17 affirm that you will provide truthful and complete
18 answers and responses during this jury qualification
19 process? If you accept the oath, please indicate by
20 saying I do and by being seated at this time.

21 Jury: I do.

22 The Court: Thank you so much ladies and
23 gentlemen. If there was anyone that didn't take the
24 oath, please stand at this time. Ladies and gentlemen,
25 we receive our names for jurors from three sources, from

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1 three sources. From the voter registration in roles
2 Dorchester County, and from the South Carolina Department
3 of Public Safety, used to be known as the highway
4 department; St. George is across the street in the form
5 of driver's licenses and identification cards. Now, you
6 do not have to have it with you, but if you do not have
7 at least one of those identification, although if you
8 drove up here and don't have your driver's license, there
9 might be a problem getting home. However, ladies and
10 gentlemen if you don't have at least one of those items,
11 you do not have to have it with you, but if you have one
12 of those, I'm going to ask you to please stand because I
13 do not know how fortunate we were to have you be here,
14 just came off 78 to see what's going on at the
15 courthouse. If you don't have a driver's license or
16 identification card issued by the Department of Public
17 Safety or if you're not a registered voter of Dorchester
18 County, please stand at this time. And I find no one
19 standing. Ladies and Gentlemen, at this time I'm going
20 to call on Mrs. Graham to please call my roll.

21 **(Roll Call by Mrs. Graham)**

22 The Court: Thank you. Alright ladies and
23 gentlemen, I now have certain statutory mandated
24 questions that I must ask of you. It is absolutely
25 essential that I receive from you accurate and truthful

1 responses. And in order to facilitate that, ladies and
2 gentlemen, I want to talk about these questions in a
3 general sense and then I'm going to ask them of you.
4 Most of these questions are not particularly personal,
5 however, there are some that are a little more personal.
6 To ensure that I'm able to get accurate information from
7 you under the oath that you just took, this is going to
8 be the way I'm going to proceed. I'm going to ask the
9 question and after each of these questions, I'm going to
10 say "If anyone needs to respond, please stand." Now,
11 ladies and gentlemen, if you need to respond and you'd be
12 embarrassed standing, I'm going to issue an invitation
13 for you at the end of this part of the process and that
14 will be an opportunity for you to come forward and speak
15 a little more privately with me, the clerk, and, of
16 course, our court reporter. What would obviously not be
17 okay would be that you needed to respond and you'd be
18 embarrassed standing in the presence of your fellow
19 jurors and you just choose not to stand. That would of
20 course be a violation of your oath. So ladies and
21 gentlemen, if I ask a question and you need to respond to
22 it and you don't want to stand and expose that
23 information in the presence of your fellow jurors, just
24 make a note and come forward when I ask you to do so.

25 Now, here are the questions which determine

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1 your eligibility to serve. Is any member of our jury
2 panel not a citizen of the United States? If you are not
3 a citizen of the United States, please stand. I find no
4 one standing. Do we have any members of our jury panel
5 who is not a citizen and resident of Dorchester County?
6 If you are not now a citizen and resident of Dorchester
7 County, please stand. I find no one standing. Do we
8 have any member of our jury panel who is unable, who is
9 not able to read, write, speak, or understand the English
10 language? If you cannot read, write, speak, or
11 understand the English language, you can stand now and
12 disclose the information or come up late. Now, I know
13 that there are those of you that are going okay, that's
14 interesting. If you don't understand the English
15 language, how are you supposed to understand what you're
16 being asked? I ponder this question. That's why I
17 always tell the jury panels that these are statutorily
18 mandated. Ladies and gentlemen, if you are sitting by
19 someone and you don't think they know the English
20 language, let me know. Either come forward or let me
21 know now. Thank you. And I find no one standing.

22 Ladies and gentlemen, does any member of our
23 jury panel have less than, less than a sixth grade
24 education or its equivalent; less than a sixth grade
25 education or its equivalent? Let's talk about what in

1 the world you mean by equivalent. Well, ladies and
2 gentlemen, I think if you're working and paying your
3 bills and doing all the many things that you must do just
4 to get by every day, you have a lot more than a sixth
5 grade or equivalent. Here's the question: do you have
6 less than a sixth grade education or its equivalent?
7 You're welcome to stand if you need to respond or you
8 certainly can come up here. And I find no one standing.
9 Now, ladies and gentlemen, do we have any member of our
10 jury panel who would be unable, not able, as a result of
11 a physical or mental infirmity, a mental or physical
12 problem or challenge and because of that mental or
13 physical infirmity, you would be unable to serve on a
14 jury this week? In other words, do you have something
15 such as a medical condition that would interfere or keep
16 you from being able to serve on a jury this week. You
17 can stand now or come up at the end. Yes ma'am, do you
18 want to come up at the end or stand now?

19 Juror: Come up.

20 The Court: Very well, I'll see you soon.

21 Alright, now, do we have any member of our jury panel who
22 has been convicted, that would be either by a trial or by
23 a guilty plea, who has been convicted of a crime
24 punishable by imprisonment for more than one year and
25 your civil rights have not been restored by pardon or

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1 amnesty? Now, punishable by imprisonment for more than a
2 year means that you could've received punishment of more
3 than a year in prison, you may have received a
4 probationary sentence or perhaps a fine. But what is
5 important here is that you could've received punishment
6 of more than a year in prison and your civil rights have
7 not been restored by pardon or amnesty. Ladies and
8 gentlemen, if you respond to this question, you can stand
9 now and disclose the information or come up at the end.
10 Yes ma'am, you want to come up at the end?

11 Juror: At the end.

12 The Court: Or you can stand now, whichever is
13 your preference. Yes ma'am, you want to tell me? If you
14 want to approach, just come up at the end. Alright,
15 that'll be fine. Now, ladies and gentlemen, is there any
16 members of our jury panel a clerk or deputy clerk of
17 court, constable, sheriff, or other commission law
18 enforcement officer, county commissioner, county officer,
19 probate judge, or any person employed within the walls of
20 any courthouse? If so, please stand at this time. I
21 find no one standing. Do we have any member of our jury
22 panel who has served as a member of the jury in a court
23 of common pleas, general sessions, not magistrates court
24 or municipal court, but in a court of record, during the
25 calender year of 2013? If so, please stand at this time.

1 And I find that no one is standing. And do we have a
2 member of our jury panel who has served as a member of
3 the grand jury, and this is one of those things if you
4 had it, you know it, served as a member of the Dorchester
5 County grand jury in the last several years, have you
6 served as a member of the Dorchester County grand jury in
7 the last several years? If you have, please stand. And
8 I find no one standing.

9 Now, we move to jury exemption. An exemption
10 does not mean that you have are not qualified to serve it
11 simply means that you have the right to say thank you so
12 much, but I choose not to serve. An example of an
13 exemption is this: People who are sixty-five years old or
14 older are entitled by state law to an exemption. Now,
15 people who are sixty-five years old or older obviously
16 represent a terrific panel for jury service. I urge you
17 to serve, we want you to serve. Because of your life
18 experiences, you are a fabulous juror. However, state
19 law says that you're entitled to an exemption, probably
20 because by the time you reach sixty-five years old,
21 you've had an opportunity perhaps to serve in the
22 military in some form or fashion, certainly to use your
23 taxes, so you have served the community for a long time.
24 Our state legislators have determined that you're
25 entitled to an exemption. So I ask do we have any

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1 members of our jury panel who are sixty-five years old or
2 older and you wish to be exempted from your jury
3 services? If so, please stand at this time. No way.
4 Tell me your name and number.

5 Juror: 67.

6 The Court: Very well. My goodness. Alright,
7 we will miss you. Yes, you're free to go although we
8 will be weeping as you leave. Now, our next exemption
9 deals with those of you who have some prior jury service.
10 State law allows for exemption of jury service when you
11 combine the fact that if you've served on jury duty
12 during 2013 you are qualified and the exemption, what
13 this boils down to is that no juror is required to serve
14 more than once in a three calender year. So I ask is
15 there any member of our jury panel who served as a member
16 of the jury in a court of record, magistrates court,
17 municipal court, common pleas or general sessions during
18 the calender year 2012 or 2011 and you wish to be
19 exempted from your jury service? If so, please stand at
20 this time. And I find no one standing. Now, do we have
21 any members of our jury panel who have served as grand
22 jurors and if you didn't know, as a grand juror in the
23 last five years anywhere? If so, please stand at this
24 time. And I find no one standing. Now ladies and
25 gentlemen, our next exemption deals with those of you who

1 have small children. Please listen very carefully
2 because this particular exemption has several parts and
3 each and every part must apply to you for you to be
4 exempt on this basis. You may be exempted from your jury
5 service if you have a small child or children under seven
6 years old, meaning six years old and younger and you have
7 legal custody of that child or children under seven years
8 old, six years old and younger and you are the principal
9 care giver of your child or children under seven and you
10 are unable, you simply cannot make arrangements for the
11 adequate care of your child or children while performing
12 your jury duty. If this exemption applies to you and you
13 need to exercise it, please stand at this time. And tell
14 me your number.

15 Juror: 118.

16 The Court: Number 118. Yes ma'am. Alright,
17 and do you work outside your home?

18 Juror: No, ma'am.

19 The Court: You work inside your home?

20 Juror: Yes, ma'am.

21 The Court: Which means you work 24/7, you never
22 have a moment. I think you should stay with us to have
23 a little time off. You have a little one at home?

24 Juror: Three.

25 The Court: Three little ones under seven? You

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1 definitely want to stay with us for a break. We'll give
2 you a pillow and a blanket. Very well. Well, let me
3 tell you what's going to happen to you. You're going to
4 blink your eyes, they're going to be 29, 25 and 21.
5 Thank you for being with us today, you are free to go.
6 Thank you so much for being here today. Now, our next
7 exemption deals with those of you who may work in some
8 capacity with a school or attending school. You may be
9 exempted from your jury service if you're a full-time
10 student, school teacher, school bus driver, school
11 principals, you work in a school cafeteria, or you are an
12 employee of any other school-related function; a crossing
13 guard, if you need to seek an exemption because your jury
14 responsibilities this week will conflict with your school
15 responsibilities, we will transfer your service to
16 another term of court at which time your juror
17 responsibilities and your school responsibilities will
18 not conflict. If you need to exercise this exemption,
19 please stand at this time. And tell me your number.

20 Juror: Thirty-two.

21 The Court: Alright and you are employed?

22 Juror: I'm a student.

23 The Court: You're a student. Full time
24 student?

25 Juror: Yes, we have exams tomorrow and the next

1 day.

2 The Court: You don't want an extension. I'll
3 be happy to transfer your service. You can come pick the
4 week. And you're juror, what number are you?

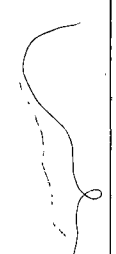
5 Juror: Thirty-two.

6 The Court: Thirty-two. Thank you so much.
7 Ladies and gentlemen, I know the answer to this is no but
8 I ask it in abundance of precaution. Do we have any
9 members of our jury panel who's employed as a guard with
10 the Department of Corrections? I know the answer to this
11 is no but I ask it in an abundance of caution. If so,
12 please stand because state law says that you are to be
13 exempted. And I find no one standing. Ladies and
14 gentlemen, do we have any members of our jury panel who
15 is the primary care giver, the primary care giver of
16 someone who is severely disabled or someone who is sixty-
17 five years old or older and that person cannot be left
18 alone and you, quite frankly, must care for that person
19 or that person will be left alone, therefore at risk? If
20 this exemption applies to you and you need to exercise
21 this exemption, please stand at this time. And I find no
22 one standing. And my favorite one: Ladies and gentlemen,
23 do we have any members of our jury panel who provide
24 services for a business, commercial or agricultural
25 enterprise and whose services are so essential to the

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1 enterprise. Here's the kicker, that the enterprise must
2 close, not should close, but must close if you're
3 required to perform your jury duty. See how close you
4 got? Ladies and gentlemen, if this exemption applies to
5 you and you need to exercise this exemption, please stand
6 at this time. And I find no one standing. Now, ladies
7 and gentlemen, that concludes the statutory list of
8 qualifications and exemptions for your jury service. It
9 may be that you're qualified and the exemption applies to
10 you but jury service this particularly would constitute
11 an extreme hardship upon you for a particular reason. I
12 cannot permanently excuse a juror from jury service but
13 under extreme and compelling circumstances, that would be
14 the catchphrase, extreme and compelling circumstances, I
15 can transfer juror from this term of court to another
16 term of court at which time the extreme and compelling
17 circumstances will not exist.

18 Now, ladies and gentlemen, let me give you some
19 examples. You may have a doctor's appointment later this
20 week; I don't want anybody missing a doctor's
21 appointment. I'm going to transfer your service if you
22 have a doctor's appointment. You may have a loved one
23 with a doctor's appointment or treatment and they, quite
24 frankly, were counting on you to be with them. We will
25 transfer your service for anyone who has a loved one who



1 is counting on you to be with them, not having you with
2 them because of your jury service. We will transfer your
3 jury service. It may be that you have inventory at your
4 place of employment, it happens once a year and you're in
5 charge and this is the week, I'm going to transfer your
6 service for that reason. It may be that the tickets to
7 the Tahiti are on the refrigerator at home and you're
8 supposed to leave Wednesday afternoon, you better have a
9 big old suitcase because we are all going with you. I
10 will transfer your service for something also joyful.
11 For those you are going to need to approach and let's
12 have a chat.

13 Ladies and gentlemen, that now concludes our
14 statutory list of qualifications and exemptions for your
15 jury service. And in just a moment, I'm going to ask
16 those of you who did not come forward and disclose that
17 information to come forward and disclose the information
18 a little more privately with me and of course our Clerk
19 and court reporter. I'm also going to invite to those of
20 you who wanted to transfer to another term of court to
21 come forward so that we can discuss whether or not you
22 need to transfer.

23 Ladies and gentlemen, very briefly. I am going
24 to go over the qualifications for your jury service. You
25 must be a citizen of the United States, you must be a

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1 citizen and resident of Dorchester County, you must be
2 able to read, write, speak, and understand the English
3 language, you must have a sixth grade education or its
4 equivalent, you must be able to physically and mentally
5 render efficient jury service, you must not have been
6 convicted of a crime punishable by imprisonment for more
7 than a year and your civil rights not restored by pardon
8 or amnesty, you must not be employed as a law enforcement
9 officer, county officer or employed within the walls of a
10 courthouse, and you must not have served on jury duty in
11 the calendar year 2013 and finally you must not have
12 served as a member of the grand jury in Dorchester County
13 in the last several years. If any of these
14 qualifications concerns you or you have a question about
15 any of these qualifications as they may apply to you and
16 your circumstance or if you have a question or a concern
17 about one of the exemptions or if you need to seek a
18 transfer to another term of court or if you need to
19 disclose the information more privately with me and our
20 clerk and our court reporter, please come forward at this
21 time.

22 Juror: Juror number 137.

23 The Court: Yes? Hi.

24 Juror 137: Family going through trial. My
25 sister is a victim of a sexual assault.

1 The Court: She's going to transfer to a civil
2 term.

3 Clerk: Yes ma'am.

4 Bailiff: Juror number 41.

5 The Court: Hi.

6 Juror 41: I have a doctor's appointment at
7 10:30 Tuesday.

8 The Court: She's going to transfer and pick a
9 week. Thank you.

10 Bailiff: Juror number 96.

11 The Court: Yes.

12 Juror 96: Crime of burglary in '98, second
13 degree burglary.

14 The Court: He's disqualified.

15 Bailiff: Juror number 124.

16 The Court: Yes?

17 Juror 124: Needs Thursday thru Sunday
18 protection and has diabetes.

19 The Court: Transfer.

20 Bailiff: Juror number 164.

21 The Court: Hi. Yes, sir.

22 Juror 164: Overacted bladder and wife doesn't
23 drive.

24 The Court: He's going to stay with us.

25 Clerk: Juror number 150.

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1 The Court: Thank you. Yes.

2 Juror number 150: Works out of town.

3 The Court: He'll stay with us.

4 Clerk: Juror number 129.

5 The Court: Yes sir, hi.

6 Juror 129: Thirty-three years ago I had a
7 breach of trust and had four years of probation.

8 The Court: He's Disqualified.

9 Bailiff: Juror number 112.

10 The Court: Yes? Thank you.

11 Juror 112: Being treated Friday, has high
12 blood pressure. I work with Glenn Justice.

13 The Court: We'll transfer you. Thank you so
14 much.

15 Clerk: Number 147.

16 The Court: 147, yes?

17 Juror 147: I watch my grandchildren.

18 The Court:# She'll stay with us.

19 Clerk: Juror number 104.

20 Juror 104: I have a doctor's appointment
21 Tuesday at 7:45, but I will be here.

22 The Court: She'll stay with us.

23 Clerk: Juror 18.

24 Juror 18: I have to take my wife to therapy two
25 days this week.

1 The Court: 18. He's going to transfer.

2 Clerk: That's it.

3 The Court: That's it. Our panel is now
4 qualified. We're going to take that break that I talked
5 about ladies and gentlemen. I'm going to ask you to
6 please be back in the courtroom. Now, we have two
7 official time-keeping pieces; I'm looking at mine but
8 you're looking at yours. Does it say that it's about
9 3:32? Yeah? I'm going to ask you all to be back in the
10 courtroom ready to proceed at ten minutes until four. I'm
11 an ex smoker, I know it takes seven minutes to smoke a
12 cigarette. That gives you two minutes to get outside,
13 two minutes to get back, and three minutes free time. So
14 ten minutes until four ladies and gentlemen, if you will
15 be back in the courtroom, we're going to at that point,
16 I'm going to qualify you for our first case for trial.
17 Thank you, enjoy your break.

18 **(There was a break 3:32)**

19 **(Jury returns to the courtroom 3:56)**

20 The Court: Alright, ladies and gentlemen, I'm
21 now going to call on the solicitor to call the first case
22 for trial.

23 Mr. Justis: Thank you. Your Honor, at this
24 time, the State calls the case of State of South Carolina
25 versus Herbert Holmes. He's charged on two true billed

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1 indictments. The first one: indictment number true 2011-
2 GS-18-0256 on the count of kidnaping. The second
3 indictment, true billed indictment 2011-GS-18-0257 one
4 count of criminal sexual conduct first degree.

5 The Court: Thank you Mr. Justis. Ladies and
6 gentlemen, let me explain to you what has just happened.
7 Mr. Justis, Glenn Justis, who is one of our assistant
8 solicitors here in Dorchester County has just called our
9 first case for trial. Ladies and gentlemen, in South
10 Carolina, unlike any other state in our country, the
11 prosecuting attorney, district attorney, the state's
12 attorney, if you watch court tv, if you watch t.v.,
13 District Attorneys. Our prosecuting attorney in South
14 Carolina are called solicitors. And Mr. Justis just
15 called our first case for trial is the prosecuting
16 attorney for the State of South Carolina, Dorchester
17 County, first judicial circuit, the assistant solicitor
18 and he's just called the first case for trial. When he
19 read out those numbers, those are numbers of indictments,
20 of indictments. I want to tell you what an indictment is
21 and what it is not. First of all, an indictment is a
22 piece of paper. It's a piece of paper. That's what it
23 is. It is a formal charging document. It is notice to a
24 citizen that the State alleges that that citizen has
25 violated one of the criminal laws in the State of South

1 Carolina. Now, let me tell you what an indictment is
2 not. It isn't evidence of anything. And it isn't
3 evidence of that any of the allegations that it contains.
4 It's simply a notice document. It is the formal
5 instrument, the formal document by which a case comes to
6 this court. Now, let me hasten to tell you that the
7 defendant in this case has denied, Mr. Holmes, has denied
8 each and every allegation of each of the two indictments
9 and that places the burden on the State to prove guilt
10 beyond a reasonable doubt. So, it will be the duty of
11 the jury to determine whether or not the State has met
12 its burden. Now, ladies and gentlemen, the way that
13 we're going to be proceeding is that in a moment, I am
14 going to be reading to you some of the allegations of the
15 indictments. The only reason that I'm going to be doing
16 that is to find out whether or not any of you know or
17 think you may know or have you heard or think you may
18 have heard anything about these allegations to include
19 today. Now, then I'm going to introduce you to some
20 folks and then I have just a couple of questions to ask
21 all of you and then we're going to get right into our
22 jury selection.

23 Ladies and gentlemen, on the other side of my giving you
24 some of the allegations, my question to you is going to
25 be this: do any of you know or think you may know or have

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1 you heard or think you may have heard to include today
2 anything about these allegations? That's going to be my
3 question. Now I would tell you ladies and gentlemen, the
4 State alleges in part that in Dorchester County on or
5 about October 25th, 1984, that the defendant, Herbert
6 Leroy Holmes entered the Bookbag Store, kidnaped and
7 sexually assaulted the victim, a female employee. Ladies
8 and gentlemen, those allegations found in indictment
9 2011-GS-18-257, 2011-GS-18-256. Ladies and gentlemen, do
10 any of you know or think you may know or have you heard
11 or think you may have heard to include today anything
12 about these allegations? If so, please stand at this
13 time. And I find no one standing.

14 Ladies and gentlemen, allow me please to
15 introduce you to Mr. Glenn Justis, who is an assistant
16 solicitor here in Dorchester County and also Mr. Phillip
17 Giese; he is also one of our assistant solicitors. Thank
18 you gentlemen. And I'll call on one of you to please
19 name the solicitors in your office, of course the elected
20 solicitor of the first judicial circuit is Mr. David
21 Pascoe. My question is going to be are you related by
22 blood or marriage or acquainted with, and I'm going to
23 define that term for you in just a moment to Mr. Justis,
24 Mr. Giese, or any of the attorney, or Mr. Pascoe,
25 Solicitor Pascoe, or any of the attorneys that Mr. Justis

1 is about to name for you. Thank you Mr. Justis.

2 Mr. Justis: Thank you Your Honor. Also in our office is
3 Russell Hilton, Mandy Kimmons, Megan Paul, Virgil Deas,
4 and Barney Giese. And those are the other attorneys in
5 our office.

6 The Court: Now, let me define the term acquainted with
7 because I can give a very general definition of that
8 term. The best way to give you a definition, I'm going
9 to give you an example. Ladies and gentlemen, you may
10 have gone to school twenty years ago with someone whose
11 name I'll mention, you hadn't seen them in twenty years.
12 Believe it or not, that relationship is old and moldy and
13 limited as it is would be encompassed within my
14 definition of acquainted with. It may be, ladies and
15 gentlemen, that you simply work at the same location with
16 someone whose name I'll mention, maybe wave at each other
17 across the parking lot. Well believe it not, that
18 relationship, as limited as it is, would be encompassed
19 within my definition of acquainted with. A good rule of
20 thumb is if you're thinking whether or not you should
21 respond, you should respond and then if I need to ask you
22 follow up questions, I'll do so at that point. So,
23 ladies and gentlemen, are you related by blood or
24 marriage or acquainted with Mr. Justis, Mr. Phillip
25 Giese, Mr. David Solicitor David Pascoe, or any of the

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1 attorneys that Mr. Justis just mentioned. If so, please
2 stand at this time. Yes, tell me your number or name.

3 Juror 8: Juror number 8.

4 The Court: Tell me who you know.

5 Juror 8: I know Mr. Justis.

6 The Court: Alright, let me ask you a few follow up
7 questions and I just want a small answer. First of all,
8 do you all visit each other's home?

9 Juror 8: No.

10 The Court: And would you describe your relationship
11 as one that is more professional or one that is more of a
12 personal nature?

13 Juror 8: He was the solicitor on charges against my
14 son.

15 The Court: Alright, are those still pending or are
16 they ended?

17 Juror 8: One charge is still pending.

18 The Court: As a result of - well, here's what I'm
19 going to do. I'm not going to do any follow up
20 questions. What I am going to do though is I'm going to
21 ask you to sit this one out for me if you'd be so kind.
22 Thank you. Stay with me. I'll give you some
23 instructions.

24 All right, now what else? Alright, now ladies
25 and gentlemen, please allow me to introduce you to Mr.

1 Herbert Leroy Holmes and this is Mr. Holmes. Thank you
2 Mr. Holmes. Very well. Ladies and gentlemen, are you
3 related by blood, or marriage, or acquainted with Mr.
4 Herbert Leroy Holmes? If so, please stand at this time.
5 And I find no one standing. Now, ladies and gentlemen,
6 Mr. Holmes is represented by Mitchell Farley and Mr.
7 Ashley Chisolm. And Mr. Farley is going to name the
8 folks in his office. Yes sir?

9 Mr. Farley: Thank you Your Honor. The chief public
10 defender for Dorchester County is Mark Liendecker, he is
11 my boss. The deputy public defender is John Lloyd, we
12 have Ash Chisolm and we also have Mary Lamattie, Michelle
13 Suggs.

14 The Court: Thank you kindly. Ladies and gentlemen,
15 are you related by blood, marriage, or acquainted with
16 Mr. Farley, Mr. Chisolm, or any of the attorneys that Mr.
17 Farley just mentioned? If so, please stand at this time.
18 Tell me your number.

19 Juror 133: 133.

20 The Court: Tell me who you know.

21 Juror 133: Mr. Liendecker.

22 The Court: Alright and would you describe that
23 relationship as one that is - is it more of a personal or
24 professional relationship?

25 Juror 133: I'd say more professional. He

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1 represented me.

2 The Court: In another life for the both of you.
3 Alright. Very well. And is the result of that
4 relationship just as you have described that, might it or
5 could it interfere with your ability to be completely
6 fair and impartial both to the State as well as to Mr.
7 Holmes and that has to be a yes or no answer.

8 Juror 133: No ma'am.

9 The Court: It would not?

10 Juror 133: It would not.

11 The Court: And can you set that relationship aside
12 and make up your mind based on what you hear in court
13 while court is in session?

14 Juror 133: Yes ma'am.

15 The Court: Thank you so much. Now, ladies and
16 gentlemen, I am going to now be reading to you a list of
17 potential witnesses, and if these folks happen to be here
18 in the courtroom, I'm going to ask you to please stand
19 for me and the reason for that is it is so much easier to
20 put a face with a name than just the name alone. My
21 question to each and every one of these folks is. Are you
22 related by blood, marriage, or acquainted with any of
23 these folks? The list is not all that long. There are
24 several names I'm going to read to you. Ladies and
25 gentlemen, if you think you heard a name and you need me

1 to read it again, let me know. Not a problem at all.

2 Ladies and gentlemen, here's the list: **P.R.** **[REDACTED]**, and

3 there is Ms. **P.R.**. Thank you so much. Derrick Sauro,

4 Rebecca Parker, Earl Asbell, Dale Nevins, there's Mr.

5 Nevins. Thank you. James Knight, Rick Campbell,

6 Michelle Vevon, Major Earnest Moultrie, Lisa Schafer,

7 Emory Rush, Buster Edwards, Stephanie Stanley, Kenneth

8 Bogan. Are you related by blood, marriage, or acquainted

9 with any of those individuals? If so, please stand at

10 this time. Alright. Yes sir, and you are juror 133?

11 Juror 133: Yes ma'am.

12 The Court: Tell me who you know.

13 Juror 133: Mr. Moultrie.

14 The Court: Very well. And as a result of your ---
15 let me ask you this. Do you visit each others home?

16 Juror 133: Not recently.

17 The Court: Alright, in the past?

18 Juror 133: Yes ma'am.

19 The Court: How long ago in the past? Years or
20 months?

21 Juror 133: Years.

22 The Court: As a result of your relationship, might
23 that, could that, in any respect, interfere with your
24 ability to be completely fair and impartial both to the
25 State as well as to Mr. Holmes? Can you set that

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1 relationship aside and make up your mind based upon what
2 you hear while court is in session?

3 Juror 133: Yes

4 The Court: Very well. Thank you. And you are juror
5 number?

6 Juror 66: 66.

7 The Court: Tell me who you know.

8 Juror 66: Rick Campbell.

9 The Court: Alright, and would you describe that
10 relationship as one that is more of a business or
11 professional relationship or more of a personal
12 acquaintance or friendship?

13 Juror 66: Both.

14 The Court: All right. Do you visit each other's
15 homes? Yes, how recently?

16 Juror 66: Probably three or four years ago.

17 The Court: As the result of that relationship just
18 as you have described it, might that or could that
19 interfere with your ability to be completely fair and
20 impartial both to the State as well as to Mr. Holmes? In
21 other words, would that relationship interfere with your
22 ability to evaluate the credibility or that testimony as
23 any other testimony?

24 Juror 66: Yes.

25 The Court: I'm going to ask you then to sit this one

1 out. Anyone else? Ladies and gentlemen, I'm going to
2 ask you two questions together. Please don't respond to
3 either until I've asked you both. The first question is
4 this: have you or any member of your immediate family to
5 your knowledge ever been charged with or ever been the
6 victim of a crime? Let me ask it again. Have your or
7 any member of your immediate family ever been charged
8 with or the victim of a crime? That's the first
9 question. The second question is this. Do you know any
10 reason why you ought not, should not, could not be a
11 juror in this case, be ready, willing, and able to listen
12 to the evidence and make up your mind based solely on
13 what you hear while court is in session, be completely
14 unaffected by matters outside the court while court is in
15 session. If you have any concern about your ability to
16 do that, if you have any particular concern about this
17 particular kind of charge, if there's something that you
18 really meant to tell me, wanted to tell me earlier but
19 you did not and now you've been with each other for a
20 while and you've warmed up a little bit and you're more
21 comfortable and now what you wanted to tell me earlier or
22 you stepped to your car during our break and low and
23 behold the tickets to Tahiti were on the visor and you
24 wonder how in the world you're supposed to tell me. Or,
25 and this is a true story, about ten months ago, we

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1 reached this point in the jury qualification, this point
2 a young man stood up and said "Your Honor, can I go be
3 with my wife down at Trident Hospital? She's in labor
4 with our first child." Now, is anyone in labor? Is
5 anyone's family member in labor? Okay, very well. If
6 you have any concerns, this is that very general ending
7 question. Ladies and gentlemen, if you have any reason
8 why you are concerned about being a juror, if you all
9 step forward or if you need to respond to the first
10 question I asked, please I'm going to have come forward
11 at this time.

12 Bailiff: Juror number 6.

13 The Court: Hi.

14 Juror 6: Good afternoon Your Honor.

15 The Court: How are you?

16 Juror 6: My step daughter was sexually assaulted six
17 years ago.

18 The Court: And as a result of that, might that,
19 could that interfere with your ability to be completely
20 fair and impartial?

21 Juror 6: Yes.

22 The Court: Very well. I'm going to ask you to sit
23 this one but stay with me so I can give you some
24 instruction about how we're going to stay in contact.
25 Thank you so much.

1 Bailiff: Juror number 42.

2 The Court: Hi.

3 Juror 42: I have a DUI, misdemeanor in Virginia.

4 The Court: Got it, got it, very well. Let me ask
5 this question: would that have any effect on your ability
6 to be completely fair and impartial.

7 Juror 42: Absolutely not.

8 The Court: Thank you.

9 Bailiff: Juror number 27.

10 The Court: Thank you.

11 Juror 27: Rick Campbell. His son works for our
12 company.

13 The Court: What is your company?

14 Juror 27: Phoenix Hydraulics.

15 The Court: And your position is?

16 Juror 27: Office Manager.

17 The Court: How many employees does ...

18 Juror 27: Twelve employees.

19 The Court: I think that's a little close. I think
20 I'm going to ask you to sit this one out. Just because
21 of that. I don't know that it would have an effect but
22 it's just doesn't put you in a position. But I'm going
23 to ask you to sit this one out. But stay with me because
24 I need to give you some instructions about how to stay in
25 contact with each other.

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1 Bailiff:: Juror number 149.

2 The Court: Hi, yes sir?

3 Juror 149: My oldest daughter was sexually assaulted
4 about three years ago.

5 The Court: As a result of that experience, do you
6 believe it might interfere with your ability to be fair
7 and impartial?

8 Juror 149: Yes ma'am.

9 The Court: Very well, I'm going to ask you to sit
10 this one out. Don't leave so I can give you some
11 instructions. Thank you.

12 Bailiff: Juror number 1.

13 The Court: Okay, hi and you're number one.

14 Juror 1: Two things. Son charged with possession
15 and a 14 year old nephew abuse, sexually.

16 The Court: I understand. Would that experience in
17 your family have an impact - might it have an impact on
18 your ability to be completely fair and impartial?

19 Juror 1: I'd say no.

20 The Court: Okay. Thank you so much. Stay with us.

21 Bailiff: Juror number 104.

22 The Court: Yes.

23 Juror 104: I was a victim of a bank robbery.

24 The Court: Would that or might that have an effect
25 on your ability to be completely fair and impartial both

1 to the State as well as to Mr. Holmes?

2 Juror 104: No, it won't.

3 The Court: You can sat that aside and make up your
4 mind while the court is in session?

5 Juror 104: Yes ma'am.

6 The Court: Thank you so much. Stay with us.

7 Bailiff: Juror number 21.

8 The Court: Hi.

9 Juror 21: Hi Your Honor. Victim of a crime. My wife
10 was molested by her stepfather.

11 The Court: Very well and as a result of that
12 experience, might that, could that impact ...

13 Juror 21: I think in this case, it might.

14 The Court: I understand. I'm going to ask you to
15 sit this one out, hang tight because I need to give you
16 some instructions on how to stay in contact.

17 Bailiff: Juror number 154.

18 The Court: Hi.

19 Juror 154: I was a victim of a crime about five
20 years ago was stalked and harassed.

21 The Court: Okay, very well and that's been about
22 five years ago. As a result of that experience, might
23 that, could that interfere in any regard with your
24 ability to be completely fair and impartial both to the
25 State as well as to Mr. Holmes?

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1 Juror 154: I don't think so.

2 The Court: Can you set that experience aside and
3 make up your mind based solely on what you hear in court
4 while court is in session?

5 Juror 154: Yes.

6 The Court: Thank you so much. Please stay with us.

7 Bailiff: Juror number 90.

8 The Court: Hi, yes?

9 Juror 90: It was my son. He was charged with
10 accessory.

11 The Court: And he was charged with accessory?
12 Alright, that's been resolved? As a result of that
13 experience, do you believe that might or could interfere
14 with your ability to be completely fair and impartial
15 both to the State as well as to Mr. Holmes?

16 Juror 90: No.

17 The Court: No? What agency was involved with your
18 son?

19 Juror 90: Charleston County.

20 The Court: It was Charleston County. Thank you.

21 I find that our panel is now qualified. Ladies and
22 gentlemen, let me tell you what happens next. Names are
23 going to be called, numbers are going to be called and if
24 your name is called, you come to the end of the aisle.
25 Come through here and just come and stand here. I'm so

1 happy to tell you at our old courthouse, I was called as
2 a juror. What I remember most about it is I did not know
3 what to do with my hands. I wish I could've left them at
4 my feet. It's okay. We're here with you and it doesn't
5 matter what you do with your hands. You can just do like
6 I do; just keep them here. Now, first of all, you're
7 going to hear from one of the attorneys for the State and
8 you're going to hear them say either present the juror or
9 excuse the juror. If you hear present the juror then you
10 be seated. And then if you hear excuse the juror, then
11 you're taken back in the audience. Now, if you hear
12 present the juror, then you're going to hear from one of
13 the attorneys for the defense and you're going to hear
14 either seat the juror in which you will turn and go take
15 your seat. Or you will hear excuse the juror, in which
16 case you would take a seat back with the audience.
17 Here's what I want you to know: there are about a million
18 considerations in jury selection. But let me tell you
19 one consideration in that does not ever go into jury
20 selection and that is the desire to embarrass you. The
21 juror is received or excused. Please understand there
22 are many different elements going into consideration. So
23 if you're excused, please take your seat. Now, counsel
24 for the State are you ready to proceed?

25 State: Ready Your Honor.

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1 The Court: Ready to proceed?

2 Mr. Farley: Ready Your Honor.

3 The Court: And two alternates. Two for the defense,
4 one for the State. Very well. I'm going to turn it over
5 to you Madam Clerk. Two alternates please.

6 Clerk: Yes ma'am.

7 The Court: And again, it's always exciting to be the
8 first name called.

9 Clerk: As I call your name, please come forward.
10 Juror number 114 Matt Provost. What says the State?

11 Mr. Justis: Please present the juror.

12 Clerk: The defense?

13 Mr. Farley: Please swear the juror.

14 Clerk: Have a seat there in the jury box on the
15 left. Juror number 133 - Timothy Spivey. What says the
16 State?

17 Mr. Justis: Please present the juror.

18 Clerk: The defense?

19 Mr. Farley: May I have a moment, Judge?

20 The Court: You may.

21 Mr. Farley: Please excuse the juror.

22 Clerk: Have a seat back in the audience. Juror
23 number 115 - Thomas Quirk. What says the State?

24 Mr. Justis: Please present the juror.

25 Clerk: The defense?

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1 Mr. Farley: Please swear the juror.

2 Clerk: Have a seat in our jury box. Juror number 90

3 - Laura Matthews. What says the State?

4 Mr. Justis: Please present the juror.

5 Clerk: The defense?

6 Mr. Farley: Please swear the juror.

7 Clerk: Have a seat in our jury box. Juror number

8 147 - Peyton Tucker. What says the State?

9 Mr. Justis: Please present the juror.

10 Clerk: The defense?

11 Mr. Farley: Please swear the juror.

12 Clerk: Have a seat in our jury box. Juror number

13 152 - Vermelle Washington. What says the State?

14 Mr. Justis: Please excuse the juror.

15 Clerk: Have a seat back in the audience. Juror

16 number 125 - Ruby Shuler. What says the State?

17 Mr. Justis: Please present the juror.

18 Clerk: The defense?

19 Mr. Farley: Please excuse the juror.

20 Clerk: Have a seat back in the audience. Juror

21 number 23 - Marion Bunting. What says the State?

22 Mr. Justis: Please present the juror.

23 Clerk: The defense?

24 Mr. Farley: Please excuse the juror.

25 Clerk: Have a seat back in the audience. Juror

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1 number 151 - Christopher Vonlang. What says the State?

2 Mr. Justis: Please present the juror.

3 Clerk: The defense?

4 Mr. Farley: Please swear the juror.

5 Clerk: Have a seat in our jury box. Juror number 79

6 - Elizabeth Kodrzycki. What says the State?

7 Mr. Justis: Please present the juror.

8 Clerk: The defense?

9 Mr. Farley: Please excuse the juror.

10 Clerk: Have a seat back in the audience. Juror

11 number 1 - Thomas Aldinger. What says the State?

12 Mr. Justis: Please present the juror.

13 Clerk: The defense?

14 Mr. Farley: Please excuse the juror.

15 Clerk: Have a seat back in the audience. Juror

16 number 81 - Judith Lynn Lang. What says the State?

17 Mr. Justis: Please present the juror.

18 Clerk: The defense?

19 Mr. Farley: Please swear the juror.

20 Clerk: Have a seat in our jury box. Juror number 43

21 - Haley Davis. What says the State?

22 Mr. Justis: State: Please excuse the juror.

23 Clerk: Have a seat back in the audience. Juror

24 number 100 - Mitchell Modansky. What says the State?

25 Mr. Justis: Please present the juror.

1 Clerk: The defense?

2 Mr. Farley: Please swear the juror.

3 Clerk: Have a seat in our jury box. Juror number
4 154 - Kim Wesley. What says the State?

5 Mr. Justis: Please present the juror.

6 Clerk: The defense?

7 Mr. Farley: Please excuse the juror.

8 Clerk: Have a seat back in the audience. Juror
9 number 150 - Kenneth Vipond. What says the State?

10 Mr. Justis: Please excuse the juror.

11 Clerk: Have a seat back in the audience. Juror
12 number 52 - Dina Ferguson. What says the State?

13 Mr. Justis: Please present the juror.

14 Clerk: The defense?

15 Mr. Farley: May I have a moment?

16 The Court: You may.

17 Mr. Farley: Please excuse the juror.

18 Clerk: Have a seat back in the audience. Juror
19 number 101 - Anna Moody. What says the State?

20 Mr. Justis: Please present the juror.

21 Clerk: The defense?

22 Mr. Farley: Please excuse the juror.

23 Clerk: Have a seat back in the audience. Juror
24 number 28 - Paul Ceglia, Jr. What says the State?

25 Mr. Justis: Please present the juror.

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1 Clerk: The defense?

2 Mr. Farley: Please excuse the juror.

3 Clerk: Thank you. Juror number 70 - Shannon Hodges.

4 What says the State?

5 Mr. Justis: Please present the juror.

6 Clerk: The defense?

7 Mr. Farley: Please swear the juror.

8 Clerk: Have a seat in our jury box. Juror number 73

9 - Willard Jenkins Jr. What says the State?

10 Mr. Justis: Please excuse the juror.

11 Clerk: Have a seat back in the audience. Juror

12 number 2 - Zora Badat. What says the State?

13 Mr. Justis: Please present the juror.

14 Clerk: The defense?

15 Mr. Farley: Please swear the juror.

16 Clerk: Have a seat in the jury box. Juror number 33

17 - Sharon Coke. What says the State?

18 Mr. Justis: Please present the juror.

19 Clerk: The defense?

20 Mr. Farley: Please swear the juror.

21 Clerk: Have a seat in our jury box. Juror number 59

22 - Larry Freeman II. What says the State?

23 Mr. Justis: Please present the juror.

24 Clerk: The defense?

25 Mr. Farley: Please swear the juror.

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1 Clerk: Have a seat in our jury box. Juror number 69
2 - Cody Hinman. What says the State?

3 Mr. Justis: Please present the juror.

4 Clerk: The defense?

5 Mr. Farley: Please swear the juror.

6 Clerk: Have a seat in our jury box. Juror number
7 104 - Kawana Murray. What says the State?

8 Mr. Justis: Please present the juror.

9 Clerk: The defense?

10 Mr. Farley: Please excuse the juror.

11 Clerk: Have a seat back in the audience. Juror 117
12 - Staci Recore. What says the State?

13 Mr. Justis: Please present the juror.

14 Clerk: The defense?

15 Mr. Farley: Please swear the juror.

16 Clerk: Have a seat in our jury box. Juror number 7
17 - Robert Barr. What says the State?

18 Mr. Justis: Please present the juror.

19 Clerk: The defense?

20 Mr. Farley: Please swear the juror.

21 Clerk: Have a seat in our jury box. Thank you,
22 Judge.

23 The Court: Thank you. Are there any matters
24 concerning qualifications from the State?

25 Mr. Justis: None from the State, Your Honor.

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1 The Court: From the defense?

2 Mr. Farley: No, Judge.

3 The Court: Very well. Alright, ladies and gentlemen
4 you are now known as our remaining jurors. We need to
5 figure out though how we're going to stay in contact with
6 each other. We haven't done that. Ladies and gentlemen,
7 in your packet of the information that was sent to you,
8 you were sent a card, the juror information card. If you
9 have it, great. If you don't, not to worry. Smitty is
10 standing in the back and he's got some outside, a basket
11 full. I want you to feel free to take a couple. Put one
12 where you know you won't lose it and then have another
13 one. If you feel like you need to take three, whatever.
14 I just want to be sure that you have your juror
15 information number. I am going to ask you to please call
16 that number after 6:00 tomorrow night. Not tonight, but
17 tomorrow night, Tuesday night after 6:00. Ladies and
18 gentlemen, that will let us know what our schedule is
19 going to be and we'll put the recording on the machine
20 for you. At this point, I don't have a clue what that
21 recording is going to say. It depends on our schedule.
22 But please follow whatever the recording has for you. If
23 it says return, return. If it says call back, please
24 call back. Be respective to what is on the machine and
25 please follow that instruction. Now, ladies and

1 gentlemen, some of you are going to probably, not today,
2 but maybe tomorrow be dashing off to work and you need to
3 have something in hand so that your employer will know
4 where you have been and what you have been up to this
5 afternoon. If you need something for your employer, I
6 want you to please stop by the clerk's office downstairs.
7 That office is directly below where we are. If you're an
8 elevator rider when you step off the elevator, take a
9 left all the way down to the clerks' office. If you take
10 the stairs, when you step foot on the bottom floor, make
11 a right and go all the way down to the clerk's office and
12 they will be excited to get for you verification
13 regarding where you've been and what you have been up to
14 this afternoon. Ladies and gentlemen, you have given us
15 an awful lot of your dear and precious time this
16 afternoon. I want to know that for every single solitary
17 tick of the clock, I am so grateful to you for it. And I
18 can't wait to see you later in the week. But at this
19 time ladies and gentlemen, you are free to go. If you
20 would do so quietly. Thank you so much.

21 Ladies and gentlemen, we are not going to start the
22 trial this afternoon. We're going to start the trial in
23 the morning. But there are a couple of things that I'm
24 going to go over with you. That's just going to take a
25 couple of minutes. First thing that I want to talk about

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1 is I want to talk about where you're sitting. Ms. Badat,
2 I am going to ask you to please serve as our presiding
3 foreperson if you'd be so kind. What I'm going to ask
4 you to do is when you return tomorrow, please take that
5 seat by the door. Also, let me get this straight, I'm
6 looking for Ms. Stacy Recor. Ms. Recor, I'm going to ask
7 you and Mr. Barr, I'm going to ask you to keep those two
8 chairs. If y'all want to switch back and forth, you can.
9 Those two seats are for the alternates. Now, ladies and
10 gentlemen, I do need to give you some additional
11 instructions. Some of them I'm going to give you every
12 single time we leave each other. And you're going to get
13 to the point probably where you're going to - But it's
14 this. Do not discuss this matter or allow anyone to
15 discuss it with you. What in the world would I be so
16 bosses and tell you that. I'm going to explain it to
17 you. Ladies and gentlemen, we know one of the things
18 that we have learned is that when we as people begin to
19 talk about something, we can't help it. We began to form
20 opinions about it. Now, your duty as jurors is going to
21 be to listen open-mindedly to all of the evidence that is
22 presented to you and not make up your mind about anything
23 until you have heard all of the evidence, the arguments
24 of counsel, and my charge on the law. The reason that I
25 give you these instructions and I will do it each and

1 every time that we leave each other and that instruction
2 is do not discuss this matter or allow anyone to discuss
3 it with you. The reason that I'm giving you that
4 instruction is to support your ability to listen open-
5 mindedly to all of the evidence. That's the reason why.
6 You might say why would I give it to you at this time.
7 You have heard any of the testimony. You have been sworn
8 in. You haven't heard anything. Well that would
9 actually not be accurate you've heard a little bit of
10 information. I've introduced to you some folks. I have
11 talked with you a little bit about some allegations so
12 you've got some information. Because you have some
13 information, it is necessary that I give you the
14 instruction do not discuss this matter or allow anyone to
15 discuss it with you. That also means don't discuss
16 anyone that has anything to do with this matter and that
17 again is the reason I give you this instruction is to
18 support your ability to listen open-mindedly to all of
19 the evidence. Who am I talking about when I say that?
20 I'm talking about your family, your friends, and your
21 fellow jurors. You must not discuss this matter with
22 anyone. And when the time comes for you to deliberate,
23 I'm going to specifically tell you now is the time to
24 deliberate and at that point, you will discuss this
25 matter in your jury room with your fellow jurors. All of

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1 them. So until that time has come, you must not discuss
2 this matter or allow anyone to discuss it with you.
3 Now, ladies and gentlemen, that really kind of extends a
4 little bit more. Don't gather any information. No
5 Columbo. Don't go to the internet. You know
6 everything's available now on the internet but do not go
7 to the internet. I had this juror that heard a term and
8 had to go to the internet and look it up. Well, I had to
9 strike the trial because that was information that was
10 injected into the jury that wasn't provided in open
11 court. Meaning in court while court was in session. So
12 we had to start over. Hence ladies and gentlemen, do not
13 go to the internet, don't look at anything, don't look up
14 anything, don't instantly try to become an investigator
15 or anything. Just trust that you will receive the
16 information and that you will make up your mind while
17 court is in session.

18 Now, I must also instruct you don't read anything,
19 don't listen to anything about this case when you go away
20 from here, when you go away from here when court is in
21 session. What does that mean? That means don't listen
22 to any news reports, don't read the newspaper about this
23 matter, don't go on the internet and read anything about
24 this matter, don't listen to the television or radio
25 should something happen to be on those media outlets

1 regarding this matter. Again, the reason is, you must
2 receive all of the information in court and make up your
3 mind while court is in session.

4 Now, Ladies and gentlemen, let's talk a little about
5 communication devices such as iPads, Kindles, iPhones,
6 smartphones, cell phones, and any other communication
7 devices and social media. Ladies and gentlemen, first of
8 all, don't use any social media sites regarding this
9 matter. Don't chat about it, don't blog about it, don't
10 go to Myspace, Facebook, any of those social media sites
11 and have any discussions about this matter. That would
12 be a violation. Also with regards to cell phone,
13 iPhones, Galaxys, Kindles, iPads, or any of those
14 communication devices, please. You must not have a cell
15 phone or communication device with you while you are
16 serving on the jury. Why? Well, there was a case that
17 was being tried in Charleston some years ago and the jury
18 had a question during the deliberations and somebody said
19 I've got a buddy that answer this. I call for a lifeline
20 and the juror called up their buddy. Well the minute
21 that was disclosed the entire week of trial was over,
22 because that was information outside the courtroom while
23 court was in session and had been injected into the jury
24 deliberations and it all had to be started over. So then
25 we got another jury. Now, having said that, we are all

1 tethered to these things, no communication devices with
2 the jurors. So, if you forget and bring your devices
3 with you to court, don't worry about that ladies and
4 gentlemen, just let one of our bailiffs know and they
5 will take good care of it and keep possession and control
6 of it until our morning break or until our lunch then you
7 can take it to your car. But do not keep a cell phone or
8 communication device with you thinking it won't pop its
9 little head up and let us know it's here. It will. Then
10 that's going to present a little bit of a snare.

11 Now, ladies and gentlemen, St. George is tiny.
12 Summerville is no thriving metropolis or Ladson no
13 thriving metropolis, so if you happen to see anyone
14 associated with this trial and they don't even say hello,
15 please know that they are not being rude to you. These
16 lawyers know that they are not to interact with you at
17 all. So if you happen to see them and they don't say
18 hello and looks like they are staying away from you, they
19 are actually following my instructions because they are
20 not to interact with you in any regard. Obviously they
21 will as they make arguments to you as they exam witness,
22 but outside of that this environment and those
23 proceedings there shall be no interaction. In fact,
24 should anyone try to talk about this case with you,
25 please get their name, a description and report that upon

1 your return.

2 Now, Ms. Badat, I want to talk a little bit about
3 your task a presiding juror. First, you will take
4 physical possession of the verdict form at the conclusion
5 of the case. It's your responsibility to write the
6 verdict of the jury on the verdict form. Secondly,
7 you'll preside in the jury room during the deliberations
8 just to be sure everyone has a chance to talk. Lastly,
9 you're the juries spoke person. What that means is that
10 in the event the jury needs to communicate with me for
11 whatever reason, take that down and write it on a piece
12 of paper and give that to Ms. Irene who will give that to
13 me. It can be anything. It's too hot, it's too cold.

14 Now, in the morning, we will start at 9:30. Those
15 of you that like to go to breakfast, Ms. Salisbury is
16 going to make something. Now, do we have anybody that
17 works at night? Not tonight. Not tonight. If your
18 employer is concerned get their name and number. Now,
19 when you go home tonight, let's talk about what you can
20 discuss with your family and friends. Perfectly fine to
21 say yes I showed up for my jury qualification. Perfectly
22 fine to say you did not need one of those chauffeur
23 rides. Perfectly fine to say you were selected to serve
24 on the jury. And it's also fine to say it's a criminal
25 matter as opposed to a civil matter but then the line

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1 must be drawn there. Let me just tell you that when you
2 have discharged from your service on this jury and again
3 there will be no question in our minds when that time has
4 come because we are going to talk about that
5 specifically, then you will be at liberty to talk about
6 this case all you want to. But until that time has come,
7 you must not discuss this matter. And if somebody's
8 upset about that you put it on the Judge.

9 Let's talk about what's going to happen in the
10 morning. What's going to happen is you're going to be
11 sworn in as jurors in this case. Ladies and Gentlemen,
12 we are going to begin at 9:30. I will see you all in the
13 morning at 9:30. If y'all will go with your bailiff,
14 please.

15 Thank you. Have a good evening and I will see you
16 in the morning at 9:30.

17 **(Jury excused for the evening 4:53 p.m.)**

18 The Court: All right. Any motions on behalf of the
19 State?

20 Mr. Justis: None, Your Honor.

21 The Court: From the defense?

22 Mr. Farley: None. Other than we would ask for the
23 sequestration we talked about.

24 The Court: Of the witnesses. Except, of course, the
25 victim and the agent who I understand is Mr. Nevins.

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1 Mr. Justis: That's correct.

2 The Court: Okay.

3 Mr. Farley: The only other thing we have is the
4 defendant not be led in while the jury is seated. In
5 other words, have him in here when they jury comes in.

6 The Court: Absolutely. We will have him in here at
7 9:30. Anything else?

8 Mr. Farley: I don't believe so.

9 The Court: I will see y'all in the morning.

10 **(Tuesday, April 23, 2013 am)**

11 The Court: Thank you so much, please be seated and
12 good morning everyone. Alright, anything from the State
13 before we bring the jury out?

14 Mr. Justis: Not from the State Your Honor.

15 The Court: From the defense?

16 Mr. Farley: Yes Judge, it's nothing too terrible.
17 There is an allegation that there was an abortion that
18 resulted from this sexual encounter. I believe that the
19 State and I have agreed that that information will not
20 come up.

21 Mr. Justis: It's the State's position we're not
22 going to ask the victim about.

23 The Court: Okay.

24 Mr. Farley: And also the defendant's DNA was in
25 CODAS so there's no need to be brought up why he's in

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1 jail, why his DNA was in the system. Obviously ...

2 Unless, we open the door.

3 The Court: I understand.

4 Mr. Justis: And our witnesses have been instructed on
5 how to testify on how it relates to that.

6 The Court: Here's what I want you to do, I want you to
7 lead when you get there okay? And I don't ... I'm going
8 to tell you not to object. If you have concerns about
9 the degree, let me know. But just over that one issue so
10 I don't have any problems. I'm a little bit sensitive
11 because I had lots of problems last week with law
12 enforcement just determined to open that door and I know
13 that that's not, I wouldn't worry if you was in that part
14 of the case, but that's going to be part of the case that
15 he was involved in. So I know that. So I'm concerned.
16 So just lead them through that. I'm really, I'm a little
17 bit hypersensitive about that issue because I had so many
18 problems with it last week. So I'm a little, tell your
19 folks I've got a little thing in my bonnet about that, so
20 be very careful.

21 Mr. Justis: Absolutely, Your Honor.

22 The Court: Okay.

23 Mr. Farley: And then, finally, Judge, Mr. Chisolm
24 has a motion regarding an in court identification of the
25 defendant by the victim.

1 The Court: Okay.

2 Mr. Farley: So, I'll turn the stage over to him.

3 Mr. Chisolm: Thank you Your Honor. Basically, I may
4 be putting the cart before the horse here. This is
5 something the solicitor may be able to answer. In the
6 event that the State would call the victim to the stand
7 to illicit an in-court identification, we would request
8 an in-camera hearing basically, just so we can flush out
9 the circumstances of the identification and determine the
10 liability.

11 The Court: If you intend to do that, Solicitor, do it in
12 camera.

13 Mr. Justis: It's not the State's intention to do
14 that, Your Honor, to ask her if she recognizes the
15 person, or is the person in the courtroom today. It's
16 not our intent to do that. It's been 29 years, people
17 age differently. It's just, I think for either side,
18 it's just a loaded question. So it's the State's intent
19 not to ask her to do any kind of identifying, other than
20 the identifying she did at the time, which was a general
21 description of what the person looked like; height,
22 weight, skin color, age. That would be the extent of any
23 identification she would do of the individual.

24 The Court: Understood. Very well. And if that
25 changes, let me know.

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1 Mr. Justis: Yes, Your Honor, I will.

2 Mr. Farley: Thank you Your Honor.

3 Mr. Justis: If I may, just one more thing. I just
4 want to make sure the witnesses are properly sequestered.
5 I see some ...

6 The Court: Sure.

7 Mr. Farley: They may be here just to observe.

8 The Court: Sure.

9 Mr. Justis: Everyone's here just for observation.
10 None of these individuals, with the exception of Mr.
11 Nevins, who is the lead investigator and my victim, Ms.
12 **P.R.** They're the only witnesses in the courtroom at
13 this time.

14 Mr. Farley: That's all I have.

15 The Court: Fantastic. Wonderful. Now, here's what
16 I want to talk about. This is - and I think ...both to
17 victims and the victim's family and to the defendant's
18 family. Obviously, these cases are very very emotional
19 and I need to, of course, maintain proper decorum over
20 our jury. So, this is my rule. If I've got other people
21 other than the victim and the victim's family and the
22 defendant's family, if you become upset or for whatever
23 reason you need to leave the courtroom, you get to leave
24 the courtroom at any time. And then you get to return at
25 any time. That is my rule. If you or someone else other

1 than somebody who needs to go get something for counsel
2 because of the trial, I want you to hold your seats until
3 a witness's testimony ends and then it will be no problem
4 at all if you have to go or come, but I've got to keep
5 the movement to a minimum and the reason for that is that
6 every time somebody moves in the courtroom, one of these
7 jurors is going to turn, it's human nature, and watch.
8 When they turn to look and see what's going on, because
9 somebody has moved, they're not listening or it makes it
10 more difficult for them to listen. So that's the reason
11 for that admonition so I'm not - the victim and victim's
12 family, if you are overwhelmed, leave. And the
13 defendant's family, likewise. If you are, for whatever
14 reason, overwhelmed if you will leave, too. I know
15 you'll do that quietly. Everybody else, unless you are
16 specifically going to get something for counsel, please
17 keep your seats and just exchange when we have the
18 conclusion of a witness. Any questions about that? Very
19 well. Now, ready?

20 Mr. Justis: The State's ready to proceed, Your
21 Honor.

22 The Court: Great. Ready?

23 Mr. Farley: Yes, Judge.

24 The Court: Who's going to swear in the jury?

25 Clerk: I will.

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1 The Court: Alright, bring them in.

2 (Jury enters Courtroom 10:10 a.m.)

3 The Court: Good morning ladies and gentlemen. Now,
4 I'm going to ask y'all to switch places for me. Ladies
5 and gentlemen, at this time, I'm going to call on our
6 clerk, if you'll stand and raise your right hand, we'll
7 go ahead and swear you in as the jury in this case.

8 Clerk: Please raise your right hand. Do you
9 solemnly swear or affirm that you shall well and truly
10 and true deliverance make between the State of South
11 Carolina and the Defendant at bar who you shall have the
12 charge in true verdict according to the law in evidence.
13 If you accept this oath, please say I do and be seated.

14 Jury: I do.

15 Clerk: Thank you.

16 The Court: Ladies and gentlemen, that is sort of
17 antiquated language, but what has now happened is you
18 have been sworn in as the jury in this case and your duty
19 now is to find the facts as you will find them to be and
20 take the law as I give it to you and apply it to those
21 facts and that is how you will render your verdict. I
22 have a few preliminary remarks that I am going to make to
23 you. The reason that I'm going to be making remarks to
24 you is to give you, if you will, a road map to this case.
25 The reason for that is it is easier to follow what is

1 going on, where you are, and where you're going. And so
2 that's the reason that I will be doing that. And then I
3 want to talk to you a little bit about our roles. I want
4 to talk to you a little bit about the roles of evidence
5 and what you can anticipate what will happen with regards
6 to my ruling on matters of the admissibility of evidence.
7 I really need to talk to you about that so you're
8 informed, so that you won't be stuck to ... The better
9 informed you are about what would happen, the more that
10 you will be able to focus on the testimony that is going
11 to be given. Now, I do want to talk about a trial, just
12 in general terms. Because most people do not have the
13 opportunity to attend an actual court session, to serve
14 on jury as you are now doing and you may think reasonably
15 from watching movies or television and books, may think
16 that trials are full of high drama or intense action,
17 circumstances and then they just pause for a commercial
18 break. Ladies and gentlemen, I will tell you based on my
19 experience of fifteen years, all of these things have a
20 certain truth. Trials do have intense action, they do
21 have high drama from time to time they do. However,
22 trials are, I will submit to you a search for the truth
23 and an effort to ensure that justice is done for the
24 parties here today. The opposite of what you may expect,
25 a trial is often slow and deliberate, and clearly the

1 opposite of what you have seen in movies or on
2 television. Ladies and gentlemen, this courtroom, my
3 courtroom, is a place honored to the dedication of all
4 citizens rights. I submit to you a place of justice. You
5 the jury, who do not know anything about this matter, who
6 have sworn to listen to these people, listen to
7 witnesses, view the evidence, and render a verdict, fair
8 and impartial.

9 Ladies and gentlemen, I want you to know that the
10 attorneys who are appearing before you, they are
11 advocates for the parties that they represent. Before
12 they were able to represent anyone, they were sworn, they
13 took an oath, and they are first and foremost officers of
14 the court. They are sworn to uphold integrity and the
15 fairness of our judicial system and their law is to help
16 you in search for the truth. You should expect them to
17 be professional, competent and ethical in representing
18 the issues of their clients. And you have taken an oath
19 to try this case and reach a fair and just verdict. I
20 want to thank you first and foremost for your services,
21 for your contribution to our judicial system.

22 Now ladies and gentlemen, the case that we are about
23 to try is the State of South Carolina versus Mr. Herbert
24 Leroy Holmes, who is the defendant in this case. If I
25 say the defendant, I mean Mr. Holmes. Ladies and

1 gentlemen, what I am now going to say to you is intended
2 to serve as an instruction to the trial in this case.
3 These remarks that I am going to be making to you are not
4 a charge on the law applicable to this case. I will
5 instruct you on the law of this case at the end of the
6 trial before you retire to consider your verdict. This
7 is merely an explanation of the procedure that we will be
8 following in the trial of this case so that you may
9 better understand what will be happening.

10 Ladies and gentlemen, the defendant in this case has
11 been accused of two crimes; criminal sexual conduct and
12 kidnaping. And I want you to know again that he has pled
13 not guilty to both and each of these charges. The State,
14 the prosecution, therefore has the burden of proving each
15 of the elements of each of these charges beyond a
16 reasonable doubt. And it will be your duty ladies and
17 gentlemen to decide whether the State has met that
18 burden. Your purpose as jurors is to find and to
19 determine the facts. You are the sole, you are the only
20 judges of the facts in this case. If at any time it
21 appears that I make a comment, I ask you in advance to
22 please disregard that comment or that gesture. Ladies
23 and gentlemen, I don't have anything in regard to the.
24 The law doesn't allow me to have anything in regard to
25 the facts. That is a matter for you to determine. So, if

1 I do anything that you believe it appears to be a comm,
2 please disregard that. You are to determine the facts
3 through the testimony that you will hear and through any
4 other evidence which will be introduced in court. It is
5 up to you to determine any inferences which you feel may
6 properly come from the evidence. Ladies and gentlemen,
7 it's especially important that you perform your duty of
8 determining the facts diligently and consciously because
9 you see under our system of justice, there is no
10 ordinarily no way to correct an erroneous determination.
11 What you determine to be the facts will be the facts for
12 all time. On the other hand, the same law that makes you
13 judges of the facts makes me the judge of the law. The
14 law as given to you is the only law that you may
15 consider. If you come up with a preconceived idea of
16 what you think the law is and what it ought to be, that
17 might be a wonderful topic with your legislature, but for
18 our system to work correctly, you must accept and you
19 must apply the law exactly as I state it to you. Ladies
20 and gentlemen you are now by your oath sworn to do
21 exactly that; to except and apply the law as I give it to
22 you.

23 Ladies and gentlemen your job is to take the law as
24 I give it to you and to apply it to the facts as you find
25 them to be of the testimony of the witnesses and other

1 evidence that is introduced and any inferences which you
2 believe may reasonably be drawn from that evidence.
3 After doing that, you will render your verdict, a true
4 and just verdict under the solemn oath that you just took
5 as jurors. Now until I advise you to begin your
6 deliberations, you must not discuss this case with anyone
7 including your fellow jurors, your friends, your family
8 members, anyone involved in this case. After this case
9 is submitted to you, you must discuss it only in the jury
10 room with your fellow jurors. The attorneys and the
11 parties in this case have been advised that they are not
12 to talk to you at all. So if you see anyone involved in
13 this case and they don't even say hello, please remember
14 they are not being unfriendly. They are just following
15 my instructions. It is important, ladies and gentlemen
16 that you keep an open mind and that you not decide any
17 issue in this case until all the evidence has been
18 presented, the parties have made their closing arguments
19 and I've instructed you on the law applicable to this
20 case? It is your solemn responsibility to determine
21 whether Mr. Holmes is guilty or not guilty of each of
22 these charges. They stand independently one and
23 together. You must make your determination for each of
24 them.

25 Ladies and gentlemen, in a moment the State will

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1 make what is called an opening statement to you. What is
2 an opening statement? It is an opportunity for the State
3 to discuss with you what they believe perhaps what the
4 evidence will show, to share with you what they believe
5 the issues are in this case. Following the opening
6 statement by the State, then Mr. Holmes will have an
7 opportunity through counsel to make an opening statement
8 to you as well. Likewise, if he wishes, he may discuss
9 with you what the issues are in this case.

10 Now, ladies and gentlemen, in determining what the
11 true facts are in this case, you must decide whether or
12 not the testimony of a witness is believable. It will be
13 my responsibility to rule as a matter of law as to
14 whether testimony or evidence is admissible at all or
15 not. But once the testimony is admitted, whether or not
16 you believe it, is solely a matter for you to determine.
17 Once the opening statements are over, then each side will
18 have an opportunity to present evidence to you. The
19 evidence in this case will be presented to you by the
20 testimony of sworn witnesses from this witness stand and
21 from any exhibits which may be admitted into evidence.

22 Now, ladies and gentlemen, as you listen to these
23 witnesses in deciding whether to believe the witness, you
24 have the right to consider the interest of any witness,
25 the bias of any witness, the prejudice of any witness,

1 the opportunity for the witness to have seen the matters
2 and the things about which the witness may testify to, of
3 course, the way the witness acts on the witness stand.

4 Ladies and gentlemen, you determine matters in this
5 case like you do every day with your common sense, do not
6 drop it at the courthouse door. Ladies and gentlemen,
7 you have a right to consider anything that is in the
8 record that would help you evaluate the testimony of the
9 witnesses. That means it is your duty to pay close
10 attention to them, to listen to them, observe them. Pay
11 close attention to the attorneys and to the Court.
12 Please do not let your thoughts wonder. Give your
13 strictest attention to this case so that at the end of
14 all the testimony and arguments of counsel and the charge
15 on the law by the Court, you will then be in a position
16 to determine the true facts are and to apply the law to
17 those facts the best way to offer justice.

18 Ladies and gentlemen, a few more things I have to
19 discuss with you. First, is taking of notes. Often
20 jurors want to know about taking of notes. There are two
21 thoughts about that, on the one hand, there is a real
22 concern that a juror could miss something as it's coming
23 from the witness stand while your taking the notes. The
24 other concern about the taking of notes is that if one
25 juror has notes written and another doesn't have notes

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1 written, the jury can be influenced with the one with the
2 notes. The argument for the taking of notes is there are
3 people who are note taker and it makes it easier to pay
4 attention if you can take a note. The other
5 justification or argument of taking notes is that if you
6 take a notes, those note can be helpful to you as you
7 refresh your recollection as you deliberate. Well, I
8 think both sides are legitimate. So this is where I have
9 finally arrived as a matter of policy. If trials are
10 expected to be a relatively short duration, I ask jurors
11 to pay attention and listen carefully and observe the
12 witnesses and not take notes. When trials are
13 anticipated to be more than a week then I provide them
14 pen and paper and an instruction that they take notes.
15 This trial is expected to be a relatively short, because
16 of that, I'm going to ask you to pay close attention and
17 listen to these witnesses and observe them, listen.
18 Finally, Ladies and gentlemen, our evidence is presented
19 through what is called the Rules of Evidence. And these
20 rules have a definite purpose. Their purpose is to
21 ensure that the information you see is the most liable
22 and trustworthy that is available.

23 Ladies and gentlemen, under those rules, these
24 attorneys are charged with the responsibility of raising
25 a possible violation of those rules to my attention.

1 They will do that by saying objection or may we approach.
2 Ladies and gentlemen when that occurs, when there is an
3 objection, oftentimes I can rule on it if they stand and
4 say objection. And they just say objection. Let me
5 demonstrate. Objection, hearsay. I'll know what they
6 mean and I'll be able to rule. If I say that the
7 objection is sustained, that means there has been a
8 violation of the rules and that piece of evidence cannot
9 be received. If I say that the objection is overruled,
10 then that means that there hasn't been a violation of the
11 rules of evidence and that that piece of evidence will be
12 received.

13 Now, Ladies and gentlemen in the event that I need
14 to ask the lawyers to approach, you will go to Bonneau
15 Beach (noise over PA system). That will be key. If you
16 work with me, that sounds like a promotion. And the
17 reason that that is there is really to obscure what is
18 happening up here. I will mute the mics and that will
19 let me just have a word or two with the attorneys. I may
20 need to ask you to step to the jury room, I will do that.
21 Trust me as limited as necessary. The reason that I will
22 ask the attorneys to approach or I'll ask you to step to
23 your jury room is to allow me to have a conversation,
24 have an interchange with the attorneys to assist in
25 ruling on the admissibility of that piece of evidence or

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1 that exhibit. It's so that I can have the space to do
2 the work that I must do. Now, ladies and gentlemen, at
3 this time, I'm going to turn to counsel because in order
4 to preserve everyone's rights, I'm going to give the
5 parties an opportunity to object to anything that I have
6 said to you up to this point? Any objections from the
7 State?

8 Mr. Justis: None from the State, Your Honor.

9 The Court: From the defense?

10 Mr. Farley: No, Your Honor.

11 The Court: Ladies and gentlemen at this time, I'm
12 going to ask that you please listen to Mr. Justis.

13 Mr. Justis: May it please The Court?

14 The Court: Yes sir.

15 Mr. Justis: Good morning. Our mystery begins or
16 excuses me, our story begins in the mystery section of a
17 local bookstore on the week before Halloween in 1984.
18 That's the day that a horrifying event took place in the
19 life of Ms. **P.R. [REDACTED]** seated here on the front row.
20 That event remained a mystery for twenty-nine years. A
21 mystery that has become a real nightmare. This week, the
22 State's going to expose that mystery. As we said
23 yesterday, my name is Phil Giese and along with Glenn
24 Justis, we represent the State of South Carolina against
25 Herbert Holmes who's seated over there.

1 Now, Mr. Holmes is charged with two crimes. The
2 first one is criminal sexual conduct in the first degree.
3 The second one is kidnaping. Now, the State is required
4 to prove each and every one of those elements beyond a
5 reasonable doubt. You might ask yourself what is
6 reasonable doubt? Well reasonable doubt is any doubt
7 that would cause a reasonable person to hesitate to act.
8 It's not any and all doubt. It's just reasonable doubt.
9 The State is asking that at the end of this trial, you're
10 firmly convinced of the defendant's guilt, then you
11 should find him guilty.

12 Now, the judge mentioned before, she's going to
13 instruct you on the law. But I'm going to give you a
14 little preview of that right now. In South Carolina, to
15 be guilty of criminal sexual conduct in the first degree,
16 there are three elements that must be met. The first
17 element is that there must be sexual battery. Second, it
18 must be against another person. And finally, there must
19 be some kind of aggravated force. In our case, that's
20 going to relate to a kidnaping and a weapon was involved.
21 Now Mr. Holmes is also charged with kidnaping. And in
22 South Carolina, that has four elements. The first
23 element is any one of these things: the defendant must
24 either seize, confine, inveigle, decoy, kidnap, abduct,
25 or carry away. Second element another person. Third, by

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1 any means. And finally, without the authority of law.
2 And as I said before, the State's required to prove each
3 and every one of those elements beyond a reasonable
4 doubt. And in this case, we gladly accept that burden.

5 Now back to our story. On October 25th of 1984, Ms.
6 **P.R.** was working by herself at a local bookstore
7 in Summerville called The Bookbag. A young black male
8 walks in. He asked her where the mystery section is.
9 She points him to it, he goes, picks out a book, heads to
10 the cash register. At which point, he walks behind the
11 register, pulls a gun on her, and tells her to empty the
12 cash register, which she does. When she's done with
13 that, he points her to a back room in the same store. At
14 which point he demands she take her clothes off and he
15 orally rapes her, he anally rapes her, and he vaginally
16 rapes her. And when all that is done, he demands that
17 she take off her wedding ring. And he takes off.

18 Paramedics are eventually called, Ms. **P.R.** is taken to
19 MUSC where evidence is taken from her clothing and from
20 her body. And for twenty-nine years, that evidence has
21 remained with law enforcement in their hands, trying to
22 solve this mystery. And as I said before, this week, the
23 State exposes that mystery. Because through science, we
24 have identified the person who raped and kidnaped Ms.

25 **P.R.** and that's Herbert Holmes, who's seated over

1 there. So I ask that after all the - when you hear all
2 the testimony from the witness stand, after you see all
3 the evidence that we put in, that if you're firmly
4 convinced like I said before of Mr. Holmes's guilt, then
5 please find him guilty of criminal sexual conduct in the
6 first degree and kidnaping.

7 The Court: Thank you, Mr. Giese. Mr. Farley, on
8 behalf of Mr. Holmes.

9 Mr. Farley: First of all, everything the State has
10 just told you is a lie. Everything they said is made up,
11 all their evidence has been planted. That's the way you
12 got to look at this, that's what the burden of proof is,
13 that's what reasonable doubt is. Unless the State can
14 prove all of these things are not lies, and all of this
15 evidence has not been planted, they have not proven their
16 case.

17 Mr. Holmes doesn't have to prove anything here
18 today. The burden is on the State to prove two things:
19 First, that this crime even happened. This was a long
20 time ago. And the second thing is that Mr. Holmes is
21 guilty of these crimes. They have to prove that beyond
22 all reasonable doubt. Reasonable doubt is something that
23 would make you hesitate. You wouldn't drive out onto
24 Highway 78 without looking both ways. You would hope
25 your surgeon would make sure he's cutting off the right

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1 leg when he amputates. So, certainly you can't convict
2 somebody unless you are firmly convinced that that person
3 is guilty of a crime.

4 I'm not going to go into detail about the facts.
5 The State's done some of that. Needless to say, this is
6 a horrible rape and this is a horrible kidnaping that's
7 been alleged. When I first read these facts, when I
8 first looked at the police reports, my stomach turned. I
9 was repulsed. That's human. That's human nature. In a
10 court of law, you've got to check that emotion at the
11 door. We're not here to do justice for the victim.
12 We're not here to convict somebody because we feel sorry
13 for the cops, because we feel sorry for the victim. We
14 are here to be rational people and decide those two
15 things if the crime actually was committed and if the
16 defendant committed the crime. After hearing all of this
17 evidence, I'm sure your decision is going to be innocent.
18 This crime is alleged to occurred in 1984. I did some
19 research. I was six years old in 1984. Some of y'all
20 were not even born. So I'm looking through the newspaper
21 and I'm reading and the number one movie at the time is
22 Indiana Jones and the Temple of Doom. The number one
23 song was I Just Called to Say I Love You by Stevie
24 Wonder. Reagan was president and we were in the height
25 of the cold War. It was a different time. Things were

1 done differently. The police collected evidence
2 differently. They stored evidence differently. They
3 don't do it that way today. And you know why they don't
4 do it that way today? It's because it was wrong. The
5 evidence gets confused. The evidence gets contaminated.
6 Evidence gets mixed up. Forensic technology has improved
7 so much. Back then, DNA was just barely on the radar of
8 some of the largest research institutes in the world.
9 Today, we like to think that DNA is the gold standard of
10 evidence. They've tested DNA on mummies and can
11 determine all kinds of things. But the DNA you test has
12 to be good. It has to --- we have to know where it came
13 from, we have to know how it got there. They are not
14 going to be able to prove that here today. Because they
15 messed it up, because they did it wrong over these past
16 near thirty years, this evidence is bad and you cannot
17 convict somebody on bad evidence. Mr. Holmes has told
18 you that he's innocent. By the end of this trial, you
19 will believe it. You will know that because the State
20 will not be able to prove their case. Now, it looks like
21 it's actually going to be a nice day today, first time in
22 a while. I don't want to keep you. As the judge said,
23 this case should be pretty short. But it is an important
24 case. Real people are involved. And I ask you to just
25 be patient, to listen carefully, to be skeptical of

Direct Examination of Ms. [P.R.]

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1 witnesses, all the witnesses, and ask you to do your best
2 and I'm sure that if you do, you will find the defendant
3 not guilty.

4 The Court: Thank you. Call your first witness
5 please.

6 Mr. Justis: May it please The Court Your Honor?

7 The Court: Yes sir.

8 Mr. Justis: The State calls [P.R.] [REDACTED].

9 The Court: Very well. Ms. [P.R.], please come on up
10 and be sworn.

11 Clerk: Spell your last name.

12 Ms. [P.R.] [REDACTED].

13 Clerk: Do you solemnly swear or affirm to the tell
14 the truth, the whole truth, and nothing but the truth so
15 help you?

16 Ms. [P.R.]: I do.

17 Clerk: Please state your full name and spell your
18 last name for the record.

19 Ms. [P.R.]: [P.R.] [REDACTED] [REDACTED].

20 The Court: Thank you so much. Let me mention to the
21 jury if at any time during the course of the trial you
22 can't see or hear the witness you let me know because you
23 must be able to see and you must be able to hear.

24 Alright Mr. Justis, you may continue.

25 Mr. Justis: Thank you Your Honor, may please The

1 Court?

2 The Court: Yes.

3 **Ms. [REDACTED] P.R. - Examination by Mr. Justis:**

4 Q: Morning Ms. [REDACTED] P.R.

5 A: Morning.

6 Q: Ms. [REDACTED] P.R., could you tell us where you currently
7 live?

8 A: Spring, Texas.

9 Q: Okay and whom do you live with?

10 A: My daughter and my three grandchildren.

11 Q: And how old are those grandchildren?

12 A: Ten, twelve, and fourteen.

13 Q: And do you currently work?

14 A: No, I'm retired.

15 Q: Okay and what job did you have when you worked?

16 A: I was a nurse.

17 Q: And let's turn your attention back to 1984. Okay?

18 And could you tell us back in 1984, what were you
19 doing, where were you working?

20 A: I was working at The Bookbag store part time in the
21 evenings.

22 Q: Okay and you said part time; did you work a full
23 time job also?

24 A: The Coastal Center.

25 Q: And what was your job there?

1 A: Nurse.

2 Q: And what was your family life like back in 1984?

3 A: My husband was in the Air Force, traveled a lot. I
4 had two children, they were home with me. My son
5 was - I'm trying to think of their ages, fourteen
6 and twelve, something like that. I can't remember.

7 Q: Okay and you mentioned that you worked at a store
8 called The Bookbag. Could you tell us a little bit
9 about that store?

10 A: It wasn't a very big store, it was in like a strip
11 mall. Where the post office is now, behind that was
12 a little strip mall and it was in there and it sold
13 mostly paperback books, magazines.

14 Q: Okay and you said it was by the post office. What
15 road was it near?

16 A: It was behind the post office so it's changed now.
17 I don't know the name of the road.

18 Q: Okay.

19 A: It was off of Dorchester Road.

20 Q: Dorchester Road?

21 A: Yes sir.

22 Q: And is that in Dorchester County?

23 A: Yes sir.

24 Q: And let me turn your attention specifically to
25 October of 1984. Could you tell us - it's more

1 specifically October 25th, 1984, were you working
2 that day?

3 A: The 25th or the 24th? It was the 24th that I was
4 working.

5 Q: Okay. And where you working that day?

6 A: At The Bookbag.

7 Q: Okay and do you remember what time of the day you
8 were working?

9 A: I usually went to work at 4 to maybe 8:30.

10 Q: Okay. And did anything unusual happen while you
11 were working that day?

12 A: Yes it did.

13 Q: Could you tell us about that?

14 A: I was in the store and a man came in and asked me
15 where the mystery section was and it was toward the
16 back of the store, to the right. And he went back
17 there to look at books and pretty soon, he just came
18 back around to where the register was ...and he had
19 a gun and he asked me he needed the money from the
20 register and would I open the register.

21 Q: Okay and you said a man came in. Could you describe
22 that man to us?

23 A: I could, yes sir. He's medium height, young, he had
24 a beige shirt on, short sleeves, and there was a rip
25 in the collar. I don't remember if he was wearing

1 jeans or not but the shirt I remember. And he had
2 like short hair and really a nondescript face, a
3 very common face.

4 Q: What was his complexion?

5 A: He was black.

6 Q: Okay and could you estimate his age? Was he young,
7 old?

8 A: Probably a little younger than me. I was 32 about
9 that time so he would've been in his late twenties,
10 early thirties I think.

11 Q: And so you said he came in and he asked where the
12 mystery section was?

13 A: Yes sir.

14 Q: And when he approached you, did you notice anything
15 about him as he approached you?

16 A: That he had a gun in his hand.

17 Q: Could you describe that gun?

18 A: Yes I can. It was all silver and it's the kind that
19 you move something in the middle - I'm not real good
20 with guns. But there's something you push and that
21 was silver too. The whole gun was silver.

22 Q: Okay. And when he approached you, did he say
23 anything to you?

24 A: Yes, he told me that he was going to rob me and I
25 said to him you've got to be kidding me, this is a

1 joke. He said no, open the cash register.

2 Q: And did you do that?

3 A: Yes.

4 Q: And after you opened the cash register, what
5 happened next?

6 A: He asked me to lift up the drawer because the big
7 bills are underneath there. There wasn't that much
8 money in there.

9 Q: Okay. And after you lifted up that drawer or the
10 tray in the drawer, what happened at that point?

11 A: He took the money out and he took the gun and he
12 says we're going to the back. I just kept saying no
13 but you know, the gun was in my face so I got to go.

14 Q: Okay and when you say in the back, could you
15 describe that room?

16 A: In the bookstore itself, it's a long hallway and the
17 back is the doorway that we kept like our purses, we
18 kept our extra books that would come in before we
19 put them on the shelves. It was an enclosure and
20 there was a door outside the back.

21 Q: Okay. So you went in the back room. What happened
22 when you got in the back room?

23 A: He told me to take my clothes off. And I just kept
24 saying you're kidding me, just try to talk him out
25 of it and he said no. And so I took my clothes off.

1 I think I still had my blouse just on, I don't
2 remember. But then he had me get down on my knees
3 and perform anal sex on him, and perform oral sex on
4 him.

5 Q: And what was he doing while that was going on?

6 A: Talking to me.

7 Q: Okay do you remember anything he said?

8 A: He asked me had I ever been with a black man before
9 I told him I had never been with them and I was just
10 getting nervous so I told him that I was pregnant, I
11 told him I had my period, and he just didn't believe
12 it. I was just trying to think of anything at that
13 time.

14 Q: Okay. After he forced you to have oral sex with
15 him, what happened then?

16 A: He told me I had to bend over and I didn't have any
17 underwear on and he performed anal sex on me. And I
18 told him I'd never done that before so that was
19 really upsetting to me, but it didn't make a
20 difference.

21 Q: And what was he saying to you while -

22 A: Just talking about you're going to like it, you're
23 going to like it. You're going to like being with a
24 black man, that kind of talk. That's about it
25 really. Not too much.

1 Q: Okay. And after that, what did he do next?

2 A: He came out of my rectum and into my vagina and had
3 sex with me there and I still leaned over, I was
4 still leaning over.

5 Q: Okay. And how long would you estimate this took?

6 A: Seemed like a long time but I'm sure it was like
7 fifteen minutes, maybe twenty minutes.

8 Q: And after he had vaginal intercourse with you, what
9 did he do next?

10 A: He stood up and told me to take off my wedding ring.
11 It was a little hard to take off. It was a real
12 thick wedding band. And I finally got it off and he
13 took it and just ran out the back door.

14 Q: Okay. Had you ever seen this man before?

15 A: No.

16 Q: Now, after he ran out the back door you said?

17 A: Yes sir.

18 Q: And where was that door located?

19 A: In the back, not in the middle in the back, but a
20 little bit over to the side.

21 Q: So was it in the room you were in?

22 A: It was in the room I was in, yes sir.

23 Q: Okay. After he ran out, what did you do next?

24 A: I got partially clothed and went out and tried to
25 dial 911 but I don't think Summerville had 911 or

1 I'm confused and I dial zero but one of them they
2 didn't have back then. And I couldn't get through.
3 So I went outside, I put the skirt on and went
4 outside and there's a lady sitting in the car out
5 there and I said you've got to help me, something
6 bad happened. And I went back in and the fellow
7 next door, I'm not sure if he works there, came in
8 to see what's going on and I think they called the
9 police and they were there and they said they would
10 wait a little while because they wanted to bring the
11 dogs but I never saw any dogs.

12 Mr. Farley: Objection, hearsay.

13 The Court: Sustained.

14 Q: Okay, so you stated the police came.

15 A: Yes sir.

16 Q: At some point, someone had called the police. And
17 after the police got there, did you go anywhere
18 after that?

19 A: Yes, I went back in The Bookbag and sat down and my
20 husband --- somebody contacted my husband at the Air
21 Force Base and he came up there and the policeman
22 took us down to MUSC.

23 Q: Okay. So you went down to MUSC. What can you tell
24 us about MUSC? What happened when you got to MUSC?

25 A: I was taken into the emergency room and the doctor

1 and nurses did what they call a rape kit on me where
2 they comb your hair and do fingernails and things
3 like that.

4 Q: Okay so they performed some kind of exam on you?

5 A: Right, yes.

6 Q: And what about the clothes you were wearing? What
7 happened to the clothes you were wearing?

8 A: They took them off because we did stop on the way
9 home to get something else for me to wear, but I
10 believe my clothes were taken off.

11 Q: Okay so you didn't receive your clothes back?

12 A: No.

13 Q: Okay. Now, after --- let me ask you this question
14 Ms. **P.R.**. After you had the exam done, I think
15 you stated your husband was with you?

16 A: Yes, he was.

17 Q: And you say you were driven there by police
18 officers?

19 A: Yes.

20 Q: Was the police officer, did he just drop you off
21 there, did he stay there, do you know?

22 A: You know, he must've stayed there ...

23 Q: And after you got out of MUSC, did you spend the
24 night there?

25 A: No.

1 Q: So you were released that night?

2 A: Yes.

3 Q: Did you have contact with law enforcement after the
4 hospital?

5 A: I don't believe I did that night. I really don't
6 remember. I couldn't wait to take a bath and I took
7 a bath when I got home. I thought sure ... My
8 husband did tell me something about the police.

9 Q: Okay at some point, subsequent to getting home, did
10 you have contact with law enforcement?

11 A: Yes, I did.

12 Q: Okay and did you have an opportunity to give a
13 statement to police?

14 A: I did.

15 Q: About what happened?

16 A: Yes sir.

17 Q: And did you have an opportunity --- do you happen to
18 remember any officers that you dealt with back then?

19 A: Sure. It was Captain Moultrie he came to the house
20 sometime and Dale Nevins, my friend, and ...I don't
21 remember their names.

22 Q: Okay. And did you have an opportunity, did you give
23 them a description of the individual?

24 A: Yes.

25 Q: Did you have an opportunity to try to identify any

1 individuals?

2 A: Someone brought over pictures and I looked at them
3 and I couldn't.

4 Q: Okay so you weren't able to pick anyone out in any
5 kind of lineup or anything?

6 A: No.

7 Q: Okay.

8 A: I did do a police sketch and put it in the
9 newspaper.

10 Q: Okay. But other than that as far as you know, was
11 there a suspect at any time that you know about?

12 A: No.

13 Q: And after this incident, you stated, I think,
14 earlier that you live in Texas?

15 A: We do.

16 Q: And when did you move to Texas?

17 A: Three years ago.

18 Q: And where did you live before that?

19 A: Summerville.

20 Q: Tell us since this incident, are you still married?

21 A: No, my husband passed away ten years ago.

22 Q: Okay. And does anybody - you mentioned you live
23 with your daughter in Texas?

24 A: Yes.

25 Q: Is your son still around?

1 A: Yes, he lives about two miles from my house.

2 Q: So they are all kind of ...

3 Mr. Farley: Objection, relevance.

4 Mr. Justis: I'll withdraw.

5 Q: What kind of impact has this incident had on your
6 life?

7 Mr. Farley: Objection.

8 Mr. Justis: I'll withdraw. Beg the Court's
9 indulgence.

10 The Court: Very well.

11 Mr. Justis: No further questions. Please
12 answer any questions Mr. Farley may have for you.

13 The Court: Cross examination.

14 Mr. Farley: Yes, ma'am.

15 **Ms. [REDACTED] P.R. - Cross Examination by Farley:**

16 Q: Hello Ms. [REDACTED] P.R., how are you?

17 A: I'm okay.

18 Q: I can see you're nervous, I'm nervous too so.

19 A: That helps.

20 Q: Just I have a couple quick questions. You stated in
21 your testimony just now that the incident occurred
22 on the 24th.

23 A: Yes.

24 Q: Are you sure it wasn't the 25th?

25 A: Yes I'm positive.

1 Q: Did you meet with an officer named Robert Quick.

2 A: I believe so.

3 Q: When police first came to the scene, did you speak
4 to an officer?

5 A: Yes sir.

6 Q: And did he make a report of what you had told them?

7 A: I believe so.

8 Q: And is it your testimony today that you told him
9 that this crime occurred on the 24th or the 25th?

10 A: That's ... because it was the 24th, I don't know
11 where the 25th came from. I mean I can remember that
12 because it was the fair and it was a lot of traffic
13 and every month after that or the 24th, I was nervous
14 so I'm not sure where the 25th came in. If it is, I
15 apologize.

16 Q: No, no, you're fine. And just one other question.
17 You said that the gun --- on the stand here today,
18 you said the gun was a silver handgun. Is that
19 correct?

20 A: Yes, sir.

21 Q: You didn't tell the officer at the scene that it was
22 a black handgun?

23 A: No.

24 Q: And was it a large handgun or was it a small
25 handgun?

1 A: I'm not ... it was silver all over.

2 Q: And you didn't tell the deputy that it was a black
3 and gray handgun?

4 A: No.

5 Mr. Farley: Judge, I don't have any other
6 questions.

7 The Court: Very well. Redirect?

8 Mr. Justis: Nothing Your Honor.

9 The Court: You may step down. Next witness,
10 please.

11 Mr. Giese: The State calls Rick Campbell.
12 Your Honor, I apologize, he's in the restroom right now.

13 The Court: Okay.

14 Mr. Giese: Take a short break or?

15 The Court: We'll just wait a few seconds.

16 Clerk: State your full name for the record.

17 Witness: Richard Michael Campbell.

18 Clerk: Do you solemnly swear or affirm to tell
19 the tell the truth, the whole truth, and nothing but the
20 truth?

21 Mr. Campbell: I do.

22 The Court: Your witness.

23 Mr. Giese: Thank you, Your Honor. May it
24 please the Court?

25 The Court: Yes.

Mr. Campbell - -Examination by Mr. Giese:

Q: Mr. Campbell, where do you work?

A: I own a State Farm Insurance agency in Summerville.

Q: Okay and did you work there in 1984?

A: Yes, but not in the same location.

Q: What location did you work at in 1984?

A: Oakbrook shopping center directly behind Wendy's,
where Wendy's and the car wash is now.

Q: Okay. Do you know **P.R.** **[REDACTED]**?

A: At that time, yes.

Q: How do you know her?

A: She worked at I think the name of the store was The
Bookbag. It was directly next door to my office.
And she worked there. And I would go in from time
to time and chat and purchase books.

Q: Okay, do you remember an incident involving Ms.

P.R. that happened in late October in 1984?

A: Yes, I do.

Q: Okay, and where did that take place?

A: At her place of employment, The Bookbag.

Q: Okay and what happened?

A: I was in the office at the time and my receptionist
screamed and I ran up front and ---twenty-nine years
so I do remember **P.R.**, she had come out of the front
door and she was holding her clothes up around her

1 and my receptionist was comforting her. And she
2 indicated that she had been robbed.

3 Mr. Farley: Objection Your Honor, hearsay.

4 Q: Just what you observed.

5 A: Okay, that's what I observed.

6 Q: What did you do at that point?

7 A: He didn't come out the front door so I assumed he
8 went out the back so I got in my pickup and took off
9 around the back. And I got in my pickup and went
10 through the woods. I never did see him. It was
11 wooded back then, since then it's been built up.

12 Q: Okay and when you saw **P.R.**, what was her demeanor?

13 A: She was hysterical.

14 Q: Okay.

15 Mr. Giese: I beg The Court's indulgence.

16 The Court: Alright.

17 Mr. Giese: Nothing further Your Honor. Please
18 answer any questions Mr. Farley has.

19 The Court: Cross-examination?

20 Mr. Farley: Thank you, Judge.

21 **Mr. Campbell-Cross Examination by Mr. Farley:**

22 Q: How long after the incident, and if you don't know
23 this, I understand it's been twenty-nine years, but
24 how long after the incident do you believe that you
25 got in your truck and looked --- started looking for

1 the victim?

2 A: As long as it would take --- I had my keys on me so
3 my trucked was parked ten feet. So however long it
4 took for me to run ten feet, get in the truck.

5 Q: And you never saw anyone?

6 A: No. Like I said, it was real wooded, it was a real
7 wooded area.

8 Mr. Farley: Thank you.

9 The Court: Redirect?

10 Mr. Giese: No, Your Honor.

11 The Court: Very well, is this witness free to
12 leave?

13 Mr. Giese: He is, Your Honor.

14 The Court: Any objection?

15 Mr. Farley: No, Judge.

16 The Court: Call your next witness please.

17 Mr. Justis: The State calls Michelle Vevon.

18 Clerk: Raise your right hand. State your full
19 name for the record.

20 Witness: Michelle Vevon.

21 Clerk: Spell your last name.

22 Ms. Vevon: V-E-V-O-N.

23 Clerk: Do you solemnly swear or affirm to tell
24 the truth, the whole truth, and nothing but the truth?

25 Ms. Vevon: Yes ma'am.

1 Deputy Clerk: Thank you and have a seat.

2 The Court: Alright, your witness.

3 Mr. Justis: Thank you, Your Honor. May it
4 please the Court?

5 The Court: Yes.

6 **Ms. Vevon - Examination by Mr. Justis:**

7 Q: Ms. Vevon, where do you currently work?

8 A: I work at Holy Spirit Regional Catholic School in
9 Huntsville, Alabama.

10 Q: Okay, and how long have you lived in Alabama?

11 A: Since 1991.

12 Q: Okay. And are you married?

13 A: Yes I am.

14 Q: And let's go back to 1984. Turn your attention to
15 1984. Where were you living back in 1984?

16 A: In Charleston, Mt. Pleasant, specifically.

17 Q: And where did you work in 1984?

18 A: The Medical University of South Carolina.

19 Q: And what was your job back then?

20 A: I worked in the one west treatment center which was
21 the trauma unit and rape crisis center and I was a
22 registered nurse there.

23 Q: Okay and how long had you been a registered nurse?

24 A: Five years.

25 Q: And that was five years in 1984?

1 A: In 1984, yes sir.

2 Q: So how long have you been in nursing since?

3 A: Thirty-four years.

4 Q: And you mentioned the One West Trauma Unit?

5 A: Yes.

6 Q: Could you tell us what were some of the type of
7 cases you dealt with in the One West Trauma Unit?

8 A: Well, basically EMS had a protocol that I believe
9 before they would transport a patient, the patient
10 had to have an injury that involved three or more
11 organ systems. So we typically saw gun shot wounds,
12 stabbings, motor vehicle accidents, auto
13 pedestrians, and then we also saw sexual assault
14 victims as well. It was a pretty big unit so it was
15 very specific.

16 Q: Okay. And you mentioned sexual assault victims.
17 What type of treatment or exams would a sexual
18 assault victim receive back in 1984 at that unit?

19 A: Well, it was a medically legal exam that the
20 physician would perform on the victim and as a
21 nurse, we would assist them in that exam, in
22 addition to collecting the evidence.

23 Q: Okay and could you explain a little bit what they
24 exam was, what kind of things that they do?

25 A: Well, when the patient came in they would take a

1 picture of the patient, a full-length picture, and
2 then any if there were bruises or marks perhaps on
3 the victim, we would take pictures of those as well.
4 And then we would collect the clothing the patient
5 would be wearing. And it was a very strict protocol
6 the way the items were collected and secured. They
7 were labeled in bags, in brown bags and/or manila
8 envelopes. The physician performed the gynecology
9 exam so there were specimen collected from that,
10 those areas as well as saliva, fingernail scrapings,
11 pubic hair, that kind of, that sort of thing.
12 Wood's lamp.

13 Q: And what's a Wood's lamp?

14 A: Wood's lamp is the physician would hold a Wood's
15 lamp and it lights up, it's like an ultraviolet
16 light; you would turn out the lights and it would
17 show sperm on areas of the body. And the physician
18 would then perhaps swabbed those areas.

19 Q: And those were the standard procedures they would
20 follow when they conducted one of these exams?

21 A: Yes.

22 Q: And talk to me a little bit about the actual
23 collection of the evidence, how that was
24 accomplished.

25 A: Well, the physician would collect the evidence and

1 what we would do is each piece of evidence would
2 have a label on it or the envelope itself would have
3 the label of the patient's name, date, you know it's
4 like a credit card type thing and you just ran it
5 through on a sticky label that would go just say
6 around a tube of blood or on the q-tips --- they
7 come in a --- housed like in a plastic container, I
8 guess. So, each piece of evidence would have that
9 patient's label on it and then the nurse would
10 document on each piece the physician's name, their
11 name, the date, and time.

12 (State's I.D. # 31)

13 Q: Okay. Now, I'm showing you what's been marked as
14 State's exhibit 31. May I approach the witness Your
15 Honor?

16 The Court: Yes.

17 Q: Take a look at that. There's some items in that
18 envelope. If you'll take those and take a look at
19 that and explain, tell us, if you know, what they
20 are, what they appear to be.

21 A: So this would be the envelope that this particular
22 evidence collection was pubic hair combings. And so
23 the purple writing here, that would be where I
24 worked, the woman's treatment room, and then the
25 patient's identification and her number. And then

1 the writing here in the corner would be the
2 physician slash nurse, the physician's last name
3 slash the nurse's last name, and then the date -
4 10/25/1984 and then the time, which was 7:30pm -
5 1930.

6 Q: And that would be the type of envelope you were
7 describing as some evidence would be put in?

8 A: Yes, that is correct.

9 Q: And ...

10 A: One specimen per envelope.

11 Q: Okay and those particular envelopes there, what
12 items would've been in those envelopes?

13 A: This says pubic hair plucking and this one says
14 pubic hair combing.

15 Q: Okay and is that written on there, stamped on there?

16 A: That is in handwriting for pubic hair combing and
17 pubic hair plucking are handwriting and then the
18 physician's name and the nurses name and date and
19 time, those are also in handwriting.

20 Q: And the handwriting where it says pubic hair
21 plucking, do you recognize that handwriting?

22 A: I sure do. That's my handwriting.

23 Q: And could you tell us - you mentioned it listed
24 doctor's and a nurse's name on that envelope.

25 A: Yes.

1 Q: What names are on that envelope?

2 A: It says Peacock/Cox and then the date and time.

3 Q: And what's the date and time?

4 A: 10/25/84, 1930 and the same on the other envelope.

5 Peacock/Cox, 10/25/84, 1930.

6 Q: And who's Peacock? Did you know a Peacock when you
7 worked ...

8 A: Peacock, I believe was the physician and Cox was the
9 nurse.

10 Q: Okay. Did you know Cox?

11 A: Yes, she was the head nurse.

12 Q: Okay. And you also say your handwriting's on there?

13 A: Yes.

14 Q: And is the patient's name on that envelope?

15 A: Yes.

16 Q: And what's the patient's name?

17 A: The patient would be **P.R.** **██████** and then it has
18 the patient number and then just white female and
19 then the date, her birth date, and then the current
20 date of that day, which was **██████** and then her
21 patient identification number.

22 Q: Okay so there's two -

23 A: That's not handwritten. That is stamped, the
24 patient's.

25 Q: That's the credit card type stamp you talked about?

1 A: Yes.

2 Q: So besides those two envelopes, was there anything
3 else in that bigger envelope?

4 A: Yes, there is a bag, a brown bag and it says SLED
5 Dorchester Sheriff, and that was refrigerated. And
6 it has this stamp as well on there, the credit card
7 type stamp, treatment room, **P.R.** **[REDACTED]**, in
8 addition to the date, her birth date, and then that
9 current date, 10/25/84 and her patient number.

10 Q: Okay I think you mentioned earlier when you were
11 talking about envelopes and you also talked about
12 bags.

13 A: Yes, sir.

14 Q: Would that be the type of bag that was used?

15 A: Yes.

16 Q: To collect evidence.

17 A: Some handwriting on here, Detective Knight it says
18 there on the bottom. That would be who picked it
19 up.

20 Q: Okay. Thank you. Now, Ms. Vevon, do you
21 specifically remember **P.R.** **[REDACTED]** coming in, in
22 October of 1984?

23 A: No. Not specifically, no sir.

24 Q: How many individuals in your time, how long did you
25 work in that unit?

1 A: 1984 to 1986.

2 Q: So, in approximately two years, was that the only
3 sexual assault exam you were involved with?

4 A: No sir. My understanding is I believe at that time
5 in Charleston, all sexual assaults that required
6 exams, medically legal exams, were brought to One
7 West. So, I believe so we saw a lot.

8 Q: Right. Looking at those items that I just showed
9 you, are you sure that's your signature on items or
10 your handwriting?

11 A: That's my handwriting, yes sir.

12 Q: And after the evidence was collected by the doctors
13 and nurses and placed in various bags and envelopes,
14 what happened to it at that point? What was the
15 standard procedure at that point?

16 A: Well, the standard procedure would be that once it
17 was labeled, all those labels whose the patient's
18 name on each particular item or bag into the brown
19 bags or into manila envelopes, it would be secured
20 and if it needed to be refrigerated, it was a secure
21 refrigerator or if it was perhaps clothing, it
22 doesn't need to be refrigerated, that would've been
23 secured in a cabinet or locked closet type thing
24 until the detective came and picked it up. However,
25 I believe on that night, I think the time frame was

1 1930 so 7:30 at night so we'd have to see what time
2 the detective picked it up.

3 Q: I'm showing you what's been marked as State's
4 exhibit number 8.

5 Mr. Justis: May I approach Your Honor?

6 The Court: You may.

7 Q: Do you recognize that document?

8 A: Yes I do.

9 Q: And what is that document?

10 A: This is the nurse's progress notes.

11 Q: And what is a nurse's progress notes?

12 A: This particular nurse's progress note is the
13 inventory of the collection of evidence from the
14 medical legal exam as well as the chain of command,
15 or the chain of evidence released to. So from my
16 handwriting I have here and then who I dispensed it
17 to. It says here evidence released to James S.
18 Knight. So that would've been checked - this is a
19 checklist basically, a check of what was collected
20 and then handed over to the detective.

21 Q: And is there a patient name on that document?

22 A: Yes there is.

23 Q: And what is that patient's name?

24 A: It's P.R. [REDACTED] and then again, the same stamp
25 where it's got her patient number, her birth date

1 and then again, that current night, which was
2 10/25/84 and her patient number.

3 Q: And according to that document, who released the
4 evidence from MUSC?

5 A: From MUSC, that would be me. I released that
6 evidence.

7 Q: Okay and what was your name back then?

8 A: It was Aimes, was my maiden name so my signature is
9 here and it says M. Aimes, RN.

10 Q: And is that how you signed your signature back then?

11 A: Yes, sir.

12 Q: And is that your signature?

13 A: That is my signature.

14 Q: Okay. And according to that document, who would you
15 have turned that evidence over to?

16 A: It says James S. Knight. And I'm not sure what the
17 initials stand for. He's got some initials after
18 his name and then I would've turned that evidence
19 over to him at 8:27pm that night, 10/25/84.

20 Q: Okay thank you. I think you mentioned on those
21 envelopes you looked at that they were apparently
22 collected at approximately 7:30?

23 A: Yes, sir.

24 Q: That night. And pardon me, let me show this to you
25 one more time, State's 8. Could you tell us the

1 date on that document?

2 A: The date on this document would be 10/25/84, the one
3 that's kind of crossed off here but I see it up here
4 too. 10/25/84.

5 Q: Okay. Thank you. And after you turned that
6 evidence over to James Knight, did you have any
7 other involvement in this case?

8 A: No, sir.

9 Mr. Justis: I beg The Court's indulgence?

10 The Court: Alright.

11 Mr. Justis: No further questions, Your Honor.

12 Please answer any questions Mr. Farley might have.

13 The Court: Cross examination?

14 Mr. Farley: Thank you, Judge.

15 **Ms. Vevon - Cross Examination by Mr. Farley:**

16 Q: Hello, how are you?

17 A: Fine thank you.

18 Q: Do you recall the date that this evidence was
19 gathered?

20 A: 10/25/84.

21 Q: 10/25, not the 24th? The 25th?

22 A: Oh, I'm sorry. Whatever I read, I'm sorry. I'd
23 have to look at the document.

24 Q: Sure.

25 Mr. Farley: May I approach the witness?

1 The Court: You may.

2 Q: I'm showing her what's been marked as State's
3 exhibit 8 for identification purposes.

4 A: 10/25/84, I'm sorry.

5 Q: Are you a nurse now?

6 A: I am.

7 Q: Are you presently a nurse that handles rape victims?

8 A: No, I'm not.

9 Q: When was the last time that you dealt with that
10 particular -

11 A: Type of nursing?

12 Q: Yeah.

13 A: 1986.

14 Q: 1986. So you haven't done this for years, twenty
15 some odd years?

16 A: Yes, in that capacity, yes.

17 Q: They don't package things in paper bags and
18 envelopes anymore do they?

19 A: Where I work?

20 Q: Right.

21 A: I work in schools so I don't -

22 Q: Okay.

23 A: I do see brown bags, yes I do see brown bags at
24 school, I sure do. Lots of lunches. And some PE
25 clothes, things of that nature. So I do see brown

1 bags.

2 Q: Brutally honest. Were you actually present in the
3 room when Doctor Peacock and Nurse Cox performed
4 these examinations?

5 A: I don't remember, I'm sorry.

6 Q: You don't remember? Typically, would you in the
7 room when they did those kinds of examinations?

8 A: Sure, I mean, I could've easily been in the room.

9 Q: But you ...

10 A: At that time frame. Well, that exam took place at
11 9, excuse me, at 7:30 and my shift would've started
12 at 7:00.

13 Q: So ...

14 A: We worked twelve hour shifts.

15 Q: But you do not recall for certain that you were in
16 the room when those specimens were taken?

17 A: That's correct.

18 Mr. Farley: And ...May I approach the witness?

19 The Court: You may.

20 Q: I want to show you what's been marked State's 31 for
21 identification purposes. I believe the Solicitor
22 just show this you. Is there other writing besides
23 your handwriting on that?

24 A: Yes sir.

25 Q: That's all I've got for that. The stuff I just

1 showed you, it says on there refrigerator and vials
2 - there weren't vials in that package were they?

3 A: I don't remember if there were vials in that package
4 --- in that specific package.

5 Q: Here today, there were no vials in that package.

6 A: Oh, no I didn't take anything. I just took out what
7 was in it.

8 Q: Okay. You described the protocol as collecting all
9 this evidence and securing it in a safe place,
10 right?

11 A: That's correct.

12 Q: But in this instance, that wasn't done to your
13 recollection, isn't that right?

14 A: Well, the exam was performed at 7:30 and the
15 detective but the evidence in his hands at 8:27,
16 which was less than an hour. So -

17 Q: So the typical protocol you're saying wasn't
18 necessary? You just skipped a step and handed the
19 evidence directly to the officer?

20 A: Well, if it was a time lapse of one hour so he
21 must've been there. If the detective is not there,
22 then it would be, you know, secured and locked up.
23 I'm not saying that that wasn't secured and locked
24 up. But that time frame sounds to me like he was
25 physically there with us in the unit.

1 Q: Okay.

2 Mr. Farley: May I have a moment Judge?

3 The Court: Yes.

4 Q: I just want to follow up with one more question.

5 A: Yes sir.

6 Q: You don't know who collected the evidence for
7 certain?

8 A: No, I would say that Mrs. Cox, Dr. Peacock and Ms.
9 Cox did the exam.

10 Q: But you're not certain that you were there?

11 A: That's correct.

12 Q: And you're not certain how that evidence was
13 collected?

14 A: I would say to the best of my recollection because
15 it's been 29 years that that was a very strict
16 protocol, it was a well-defined exam, and we follow
17 that protocol very strictly.

18 Mr. Farley: I don't have anything further.

19 The Court: Very well. Redirect?

20 Mr. Justis: Briefly, Your Honor.

21 **Ms. Vevon - Redirect Examination by Mr. Justis:**

22 Q: I think you testified Ms. Vevon that the envelope,
23 those two envelopes on State's exhibit 31 had your
24 handwriting on it.

25 A: Yes sir.

1 Q: Would it be common to have your handwriting on those
2 envelopes if you weren't present?

3 A: No, not necessarily. I mean, if I recall correctly,
4 we would have envelopes together, like a lot of
5 those pieces and parts of that exam came with glue
6 pads, saliva paper, and we had kept it very
7 regimented where we would have things kind of ready
8 to go. So not specifically with the patient's name
9 on it. Now, if a victim came in then we grab the
10 envelopes. We didn't randomly grab from the desk
11 area. I mean, we had envelopes, chuck pads,
12 everything else, I believe there was a big bag when
13 evidence was all collected like the clothing, brown
14 bags, the clothing, put that all in a big bag for
15 the detective to take away. And sometimes more
16 things, just depends on the amount of clothes and
17 what have you. So I believe that's the way we did
18 it, that we had those ready to go. Now, when a
19 patient came in, a victim came in, we were to take
20 those envelopes and stamp them with all the
21 patient's information and then collect accordingly.
22 Not every patient that came in got the same - what
23 am I trying to say. Not the same particular
24 specimens were obtained from every patient. You
25 know, there was routine things that were collected

1 as well as specific ones. So sometimes combing,
2 sometimes clippings, it depends on what the
3 physician would decide on. So what I'm saying to
4 you is I would've been there. I obviously handed
5 that evidence over, that's my handwriting. I gave
6 that over to Detective Knight so -

7 Q: Correct.

8 A: Can I say that what I remember that night, I don't
9 remember that night. But typically that's how we
10 did it, in that fashion.

11 Q: Correct ...

12 A: Everything was timed and dated and written on and
13 that kind of thing with all that information that I
14 pointed out.

15 Q: And I think you said the pubic hair plucking. That
16 was your handwriting.

17 A: That is my handwriting, yes.

18 Q: And so that would've been something that was
19 collected and placed in this envelope -

20 A: That's correct, that's correct.

21 Q: And would you have had to have been there to write
22 that on the envelope?

23 A: Not necessarily. Whoever collected that --- what
24 I'm saying to you is if I recall correctly, we had
25 those it might just say pubic hair combings, it was

1 a saliva and --- now it would determine saliva or
2 whatever.

3 Q: Correct and maybe I'm not explaining myself.

4 A: I'm sorry.

5 Q: Did you have to be there to have your handwriting on
6 this envelope or did someone else forge your
7 handwriting?

8 A: No, that's my handwriting. Absolutely. Yes.

9 Q: So you would've had to have been there -

10 A: Yes, that's my handwriting, yes. I'm sorry I
11 misunderstood.

12 Q: That's fine. And I think you mentioned something
13 about a bag with clothes in it?

14 A: Yes sir.

15 (State's I.D. #30)

16 Q: What I'm showing you is State's exhibit 30.

17 A: Yes sir.

18 Q: And I guess without opening it ...

19 Mr. Justis: May I approach the witness Your
20 Honor?

21 The Court: You may.

22 Q: State's 30. Do you recognize that?

23 A: I recognize this type of bag. This is what we used.
24 Yes, sir.

25 Q: Okay so that would've been ...

1 A: That's my handwriting right here.

2 Q: Okay and what does it say?

3 A: It says **P.R.** **██████** Dorchester County Sheriff.

4 And this would be her, again, that same patient
5 identification stamp on this tape. Her name, her
6 number, her birth date, and the date 10/25/84 and
7 her patient number.

8 Q: And what type of items would you put in this bag?

9 A: Clothing.

10 Q: Would you just put the pieces of clothing in there
11 and -

12 A: No sir. Each piece of clothing would go in a
13 separate bag and the bag would have her stamp on it;
14 again that patient stamp with all of her
15 information. And it might say bra, panties, shirt,
16 top, you know, slacks, whatever. But each one would
17 be in separate brown bags. And then all housed and
18 secured in the bigger blue plastic bag.

19 Q: Okay. Thank you.

20 Mr. Justis: No further questions.

21 The Court: Any re-cross?

22 Mr. Farley: No, Judge.

23 The Court: Is this witness free to leave?

24 Mr. Justis: She is, Your Honor

25 The Court: Any objection?

1 Mr. Farley: No, Judge.

2 The Court: You are free to go. We're going to
3 take our morning break. I'm going to ask you to step to
4 your jury room; do not discuss this matter or allow
5 anyone to discuss it with you. We'll take about fifteen.
6 Thank you. Enjoy your break.

7 (Jury Break was taken at 11:32 a.m.)

8 The Court: Counsel, do you all have any issues?

9 Mr. Justis: The only thing ...

10 The Court: Hold on a minute til he gets here.
11 He's here now. Are you concerned about scheduling?

12 Mr. Justis: No, I'm not concerned about it.
13 Our next two witnesses won't be too terribly long or
14 anything like that. Our third witness probably would be.

15 The Court: Okay.

16 Mr. Justis: So, I think we can discuss, you
17 know, get the next two witnesses and then by then it will
18 be lunch. Lieutenant Nevins would be the third witness.

19 The Court: Oh he's the long one?

20 Mr. Justis: He's a little big long-winded.
21 And that would be the only thing I have Your Honor.

22 The Court: Not a problem. Okay. Anything Mr.
23 Farley?

24 Mr. Farley: No, Judge.

25 The Court: Let's have the jury.

1 (Jury enters courtroom 12:04 p.m.)

2 The Court: Alright, ladies and gentlemen, this
3 time we're going to continue the case. Who is the next
4 witness?

5 Mr. Justis: Your Honor, may it please The
6 Court? At this time, the State will call Lisa Schafer.

7 Clerk: Please raise your right hand. State
8 your full name for the record.

9 Witness: Lisa Cox Schafer.

10 Clerk: Please spell your last name.

11 Ms. Schafer: S-C-H-A-F-E-R.

12 Clerk: Do you solemnly swear or affirm to tell
13 the truth, the whole truth, and nothing but the truth?

14 Ms. Schafer: I do.

15 The Court: Your witness.

16 Mr. Justis: Thank you, Your Honor. May it
17 please the Court?

18 The Court: Yes.

19 **Ms. Schafer - Examination by Mr. Justis:**

20 Q: Ms. Schafer, where do you currently work?

21 A: I currently work at Roper Hospital in Charleston.

22 Q: And what's your position at Roper Hospital?

23 A: I'm the vice president and senior nurse executive.

24 Q: Okay and what are some of your duties?

25 A: I oversee all of the nursing operations at the

1 hospital and patient responsibilities.

2 Q: Are you a nurse?

3 A: I am.

4 Q: And how long have you been a nurse?

5 A: I've been a nurse since 1977.

6 Q: Okay. And let's go back in time a little bit to
7 1984. Do you remember where you were working in
8 1984?

9 A: Yes, I was working at the Medical University in the
10 unit that we called One West. It was the trauma
11 unit.

12 Q: And what was your position at One West back in 1984?

13 A: I believe in '84, I was the head nurse. I worked
14 there for five years and I started as a staff nurse
15 and then to head nurse.

16 Q: Okay. And what kind of patients did you see in that
17 unit back in 1984? What type of injuries or
18 illnesses would you see?

19 A: Well, it was not a typical emergency room at all.
20 In fact, we didn't take regular emergencies, we only
21 took trauma, we took pediatric trauma, we took all
22 the sexual assaults for the tri-county area. Most
23 of the patients were either sexual assault patients,
24 pediatric sexual assaults, or trauma.

25 Q: Okay, you mentioned sexual assaults. What would you

1 do, what was the typical protocol or procedure that
2 you would follow when someone came in that allegedly
3 had been sexually assaulted?

4 A: Well, it's been a long time ago. So but we had a
5 very specific protocol that we followed. We
6 actually back then had to make up our own kits so we
7 put together kits that had envelopes already labeled
8 or all of the different types of specimens that we
9 might be collecting for in sexual assaults. So
10 usually we brought them in, they got registered, we
11 usually had them to undress, we kept all of their
12 articles of clothing, we'd call the GYN - the OB/GYN
13 resident, usually on call, with the person who came
14 to the unit to actually perform the sexual assault
15 exam. We got as much information as we could from
16 the victim and recorded that in nursing notes. We
17 assisted with the exam and usually we'd call someone
18 from People Against Rape and they came to be
19 advocates for the victim. And once the exam was
20 over, oftentimes the victim either left with an
21 officer or a friend or a family member.

22 Q: Right and you mentioned the sexual assault exam.
23 What kind of things - briefly, what kind of things
24 would you - would the doctor examine or would you
25 collect?

1 A: Depending on what kind of sexual assault it was;
2 depending whether it was oral, vaginal, or rectal.
3 We collected samples, we would do swabs in the
4 mouth. We would do pubic hair combs. We would
5 sometimes do clippings. We would sometimes - we
6 always did a vaginal exam if it was a vaginal sexual
7 assault. We collected swabs, put them all in
8 different containers. It really just depended on
9 what kind of assault it was.

10 Q: Right and how many sexual assault exams would you
11 say you were involved with when you were at that
12 unit?

13 A: I have no idea. More than I would care to think
14 about. But no, we saw anything that came in. We
15 saw them frequently so it was something that we were
16 accustomed to being around.

17 Q: Okay. I'm showing you what's been marked as State's
18 exhibit number 31.

19 Mr. Justis: May I approach the witness Your
20 Honor?

21 The Court: You may.

22 Q: If you could open that up, there's several items in
23 there, pull those out. Take a look at those items
24 in there. Do you recognize any of those items?

25 A: Yes, these are obviously some of the envelopes that

1 we prepared ahead of time; hair plucking and combing
2 that we did ahead of time. We always stamped it
3 with the patient's name that was admitted to the
4 unit. Also, on here is my signature as the person
5 who assisted Dr. Peacock was the OB/GYN at that time
6 that performed the exam and we always timed and
7 dated the time that we collected the evidence. So
8 these paper bags were part of the collection that we
9 always kept.

10 Q: Okay and those paper bags, what kind of items would
11 you put in the paper bags typically?

12 A: As I - well gosh it's been a long time, but I think
13 we usually put the evidence that we collected
14 oftentimes in those bags and then sealed them; we
15 always timed and date those as well. If they were
16 not being released to a police officer, we locked
17 them in a specific refrigerator for pick up at a
18 later time and kept that under lock and key at all
19 times.

20 Q: I think you mentioned you sealed those items. How
21 would you seal the different types of envelopes and
22 bags?

23 A: As I recall, we taped them. But it really has been
24 a long time.

25 Q: And those particular envelopes that you have in your

1 hand there, I think you mentioned you recognized
2 your signature on them?

3 A: Yes.

4 Q: And could you tell us a little bit - is the victim's
5 name on that particular, on those particular
6 envelopes?

7 A: The name on here is **P.R.** **[REDACTED]** which I assume is
8 the victim because that's what's stamped on here.
9 So, yes.

10 Q: Okay. And where's your name located?

11 A: Mine is right here. I signed, the doctor's name,
12 signed my name as collecting the evidence.

13 Q: And what was your name at that time?

14 A: My name was Lisa Jane Cox at the time, it was before
15 I got married.

16 Q: Okay. And I think you stated Peacock?

17 A: Peacock was the doctor, yes.

18 Q: Okay. Lisa I'm showing you what's been marked as
19 State's exhibit number 30. Without opening it, can
20 you take a look at the outside of that bag and tell
21 me if you recognize that?

22 A: I think it was belonging bags that we used back in
23 the time that I spent time and that was typically
24 where we put each of the articles of clothing into a
25 bag. So that we have it all in one container for

1 pickup.

2 Q: Okay and when you put the articles of clothing in
3 this bag, do you remember, would you just take the
4 clothing and place them all in the bag? Or were
5 they ...

6 A: No, we put them in brown paper bags, I think.

7 Q: I'm showing you what's been marked as State's
8 exhibit 1. Do you recognize this item?

9 A: Yes, it looks like a paper bag and we typically
10 labeled it with whatever contents we put in. So
11 this is obviously the paper bag of Ms. **P.R.**
12 blouse that we took ...

13 Q: And how do you know it's Ms. **P.R.** blouse?

14 A: Well because it has a stamp with her name on it. So
15 whatever the stamp is, is who it belongs to.

16 Q: And then you stated you put the content of what the
17 item was, you would write that?

18 A: Right. So you see blouse is written down.

19 Q: And I'm showing you State's exhibit 5. What about
20 this item? What can you tell us about that item?

21 A: This appears to be Ms. **P.R.** panties.

22 Q: Okay. And finally, I'm not going to go through all
23 these. But finally, let me show you State's exhibit
24 28 for identification purposes. Tell us what that
25 appears to be.

1 A: This is the changing chux, which was we always put a
2 blue pad underneath the victim so that if anything
3 fell out that might be important to --- that might
4 have coming from the sexual assault itself that we
5 have that available so we kept that.

6 Q: And who's changing chuck would that be?

7 A: This is Ms. P.R..

8 Q: But these are the blue pads that when you go in the
9 hospital they have on the bed?

10 A: Right.

11 Q: Now, typically after an exam was done, I think you
12 testified that you assisted in the collection of
13 evidence. What would you do with all that evidence
14 that you collected?

15 A: As I recall, we either collected it all and turned
16 it over specifically to law enforcement person. If
17 there was no law enforcement present, then we
18 collected it all, put it in a bag together, and put
19 it, again, in a locked refrigerator for pickup at a
20 later time. If they came in, we'd have them sign
21 for it for every piece of article they took with
22 them and we signed off that it was taken.

23 Q: And was that typically a job that one of the nurses
24 from that unit would do, they would handle ...

25 A: Yes.

1 Q: ... getting that evidence.

2 A: Yes.

3 Q: And what I'm showing you now is State's exhibit 8.

4 Do you recognize that document?

5 A: Yes, I do. It looks like my writing on the
6 clothing, we have photos of the other evidence that
7 was written on here. It's in standard form that we
8 use so that we always collected all of the correct
9 things for each sexual assault.

10 Q: Okay. Do you recognize any names on that form?

11 A: I recognize Michelle Aimes who worked as a nurse in
12 the One West ...

13 Q: Okay. And what's - does the form include the
14 victims or the patient's name?

15 A: Yes, all of the documents are always stamped with
16 the patient's name in the right top corner.

17 Q: And is there a date on that document?

18 A: Yes there is. It's 10/25/84.

19 Q: Okay thank you. Do you specifically remember a
20 patient by the name of **P.R. [REDACTED]**?

21 A: No, I'm sorry, I do not.

22 Q: Do you specifically remember collecting these items
23 of evidence?

24 A: No, I don't remember. All that I can tell you that
25 my name is there and I'm sure I did.

1 Q: Thank you.

2 Mr. Justis: Beg The Court's indulgence.

3 The Court: Okay.

4 Mr. Justis: No further questions. Please
5 answer any questions Mr. Farley might have for you.

6 The Court: Cross examination?

7 **Ms. Schafer-Cross-Examination by Mr. Farley:**

8 Q: How are you today?

9 A: Fine.

10 Q: I believe I heard you say that back then, you made
11 up your own kits. Is that what you testified to?

12 A: Yes.

13 Q: Does that mean that today kits are redone or
14 different in some way?

15 A: No, as I recall and as I was exiting that unit to do
16 something else, I think that there were some kits
17 that were becoming available commercially.

18 Q: Do you know today if today there is anything
19 commercially available that say your hospital uses?

20 A: No, actually my hospital is not a hospital that
21 typically does medical legal exams so I do not know.

22 Q: Okay. I believe you testified that you sealed all
23 of these items when you collected them. Is that
24 correct?

25 A: Yes.

1 Q: And you said you didn't recall how you did that, is
2 that correct?

3 A: I do not.

4 Q: May I approach ...

5 A: Stapled or taped them.

6 Q: How many other people were you treating that night
7 in your wing?

8 A: I have no idea. I don't remember that particular
9 night. You know, that unit was not a unit that
10 typically had patients all the time. There were
11 some nights we were there 12 hours.

12 Q: But you'd agree with me that it is possible that you
13 were treating a young black man for gunshots that
14 night?

15 A: Perhaps.

16 Q: Or a child that had been run over by a car.

17 A: Perhaps.

18 Q: You don't know who else could've been in that
19 emergency room or the trauma unit or One West at
20 that time this was collected.

21 A: I don't.

22 Mr. Farley: I don't have anything else.

23 The Court: Alright, redirect?

24 Mr. Justis: None, Your Honor.

25 The Court: Can she leave?

1 Mr. Justis: Yes, Your Honor.

2 The Court: Any objection?

3 Mr. Farley: No, ma'am.

4 The Court: Please call your next witness.

5 Mr. Justis: Thank you Your Honor. The State
6 calls James Knight.

7 Deputy Clerk: Please raise your right hand,
8 state your full name for the record.

9 Witness: James Steven Knight.

10 Deputy Clerk: Do you solemnly swear or affirm
11 to tell the truth, the whole truth, and nothing but the
12 truth?

13 Mr. Knight: I do.

14 Deputy Clerk: Thank you.

15 The Court: Your witness

16 Mr. Justis: Thank you Your Honor, may it
17 please The Court?

18 The Court: Yes sir.

19 **Mr. Knight - Examination by Mr. Justis:**

20 Q: Mr. Knight, where did you used to work?

21 A: Dorchester County Sheriff's Department, sir.

22 Q: And when did you work at the sheriff's department?

23 A: Approximately Sir 1978 through 1986.

24 Q: Okay and let's go back to 1984, specifically that
25 year. Do you remember what your job title was at

1 the sheriff's department back in 1984.

2 A: Sir, transferred into the detective's division,
3 working under Captain Moultrie and Lieutenant
4 Nevins.

5 Q: Okay. And did you have an opportunity to assist in
6 a case involving a **P.R.** **██████**?

7 A: Yes sir, I did.

8 Q: And could you tell us about your involvement in that
9 case, how it began?

10 A: Well sir, the initial call was in late October. It
11 involved an assault case and I was assigned
12 transport to the hospital for the victim to be
13 examined.

14 Q: Okay and where did you pick the victim up from?

15 A: I believe, sir, that the victim and her husband was
16 picked up at the site of the incident location, the
17 store.

18 Q: Okay and do you recall where that store was located?

19 A: Off of the intersection of Dorchester and Trolley
20 Road in a shopping center.

21 Q: Okay and is that in Dorchester County?

22 A: Correct, yes, sir.

23 Q: And when you picked those individuals up, the victim
24 and her husband, where did you take them?

25 A: To the One West Trauma Treatment Center located at

1 the Medical University of South Carolina in
2 Charleston.

3 Q: And why did you take them there.

4 A: Sir, that was the designated facility to do sexual
5 assault examinations.

6 Q: Is that where you took all of your sexual assault
7 victims?

8 A: Yes sir.

9 Q: And when you arrived there at MUSC, what did you do?

10 A: Sir, there was a small waiting area at the trauma
11 treatment center that was the area designated to all
12 of the emergency room. In other words, you don't
13 have people in the emergency room, in just this
14 area. And it's a small waiting room area that's
15 from here to your desk. I sat in a chair just like
16 this one right here and waited while the doctor and
17 nurses did their examination.

18 Q: And what was the purpose for you waiting?

19 A: Well, I was providing transportation to the victim,
20 also to collect evidence that was going to be passed
21 on to me from the physicians and the nurses that
22 worked in the center. That was the format of how it
23 was set up then.

24 Q: And was that the standard procedure you followed
25 when you took individuals to MUSC?

1 A: Yes, sir.

2 Q: I'm showing you what's been marked as State's
3 exhibit number 30. May I approach the witness Your
4 Honor?

5 The Court: You may.

6 Q: Do you recognize this item?

7 A: Yes, sir, I do.

8 Q: And what does that item appear to be?

9 A: Sir, I believe this was the, back in 1984, sir, we
10 were limited on our resources and our evidence
11 collection was put in brown paper bags for the
12 purpose to contain any contaminates from getting to
13 them and this is what the bags were placed in at the
14 time at the Medical University.

15 Q: Okay.

16 A: In other words, they would collect the clothing and
17 such and put it in a bag and put it inside of this.

18 Q: And do you recognize any of the markings on that
19 particular bag?

20 A: Sir, I recognize the name and the date stamp and
21 such but I'm not going to try to tell you 29 years
22 ... The name's the correct, the date and time it
23 looks like are correct to me, and I recognize that
24 this bag came from the Medical University.

25 Q: Okay and what is the name and the date and time?

1 A: P.R. [REDACTED] and 10/25/1984 and if I remember the
2 correct time stamp date, sir, it was around 8:30,
3 approximately is when I received it. I received
4 that and another item.

5 Q: And what was the other item that you received?

6 A: Sir, at the time, the local agencies along with the
7 law enforcement division, they came up with a rape -
8 pardon the expression but a rape collection kit and
9 it was brought in a white cardboard container box
10 that was approximately twelve inches long, about
11 eight or ten inches wide. And the box was sealed.
12 The inside of the box had all the envelopes,
13 plastic, whatever the doctors were using to put
14 their samples inside was inside of the box and the
15 box had been sealed and we'd take it to the doctor
16 sealed, he opens it up, he takes his collections
17 from the victims, and he puts it back in the box and
18 he would seal it, and in turn, would turn it over to
19 the law enforcement officer that was there for
20 collection.

21 Q: I'm showing you what's been marked as State's
22 exhibit number 8.

23 A: Yes, sir.

24 Q: Do you recognize that document?

25 A: Yes, sir, I do.

1 Q: And what is that document?

2 A: This is the release of evidence collection release
3 form that I signed for down at the hospital. It
4 says 8:27pm is the time date that I put on here.
5 It's got the same **P.R.** **[REDACTED]** name, same date
6 10/25/1984, and it has a list of check offs that the
7 doctor would have, the doctor and nurse would've
8 gone through at the time of examination. This is
9 what they collected. A sample of fingernail
10 clippings, scrapings, ...examination things such as
11 that.

12 Q: So that would include everything that you collected
13 that night?

14 A: Yes sir. The clothing's listed here and items in
15 the blue bag and then the rest of the ...

16 Q: Now were those items sealed when you received them?

17 A: Yes sir.

18 Q: Did you open them up?

19 A: No sir.

20 Q: Did you tamper with them in any way?

21 A: No sir, I wouldn't have a need to.

22 Q: At this time, the State would offer State's 8 into
23 evidence.

24 The Court: Any objection?

25 Mr. Farley: No, Your Honor.

1 The Court: Very well.

2 (State's Exhibit Number 8 was entered)

3 Q: So when you collected this evidence, clothing and
4 then a rape kit, what did you do with it?

5 A: I received it, yes sir. What I did with it sir is
6 after I received it down at MUSC, the victim and her
7 husband were transported back to I believe to their
8 residence. I'm sorry, 29 years is a long time.
9 They were transported back to Summerville area. And
10 after they were taken care of, then I contacted
11 Lieutenant Nevins and me and him got together and
12 the evidence was provided to the evidence locker for
13 storage until it was transported to SLED for
14 testing.

15 Q: And why would you contact Lieutenant Nevins?

16 A: Well, sir, at the time, pardon the expression, but
17 we were dinosaurs. The office has three custodians
18 and the sheriff, Captain Moultrie and Lieutenant
19 Nevins. To my knowledge, their keys were kept with
20 them at all times. I couldn't place it in the
21 evidence locker sir without one of them and he was
22 assigned to the case. He was the lead investigator
23 so that was the person who I contacted.

24 Q: And prior to actually physically handing over to
25 Lieutenant Nevins, what would you have done with the

1 evidence?

2 A: The evidence would've sat in the car in the front
3 seat with me until I found him.

4 Q: After transporting that evidence, receiving that
5 evidence, transporting and getting it to Lieutenant
6 Nevins, did you have any other involvement in the
7 case?

8 A: Well, yes, sir, on the 26th of October, myself and
9 Detective Burt Salvely went to the victim's
10 residence and was provided a written statement about
11 the incident that was not obtained the night before
12 due to the emergency circumstances of her needing to
13 go to the hospital and was a very trying experience
14 for her and such and we waited until the following
15 day to get a written statement from her, myself and
16 Detectives went to the residence and received that.
17 Mr. Justis: Okay. Beg The Court's indulgence.
18 The Court: Alright.

19 Q: Was that the extent of your involvement in the
20 investigation of this case?

21 A: Sir, I believe I was also provided a copy of where I
22 signed for a article of evidence from the SLED
23 forensic people around January of 1985 and provided
24 transportation back down to the evidence locker
25 again in this case.

1 (State's I.D. Number 11)

2 Q: I'm showing you what's been marked as State's
3 exhibit number 11. Please take a look at that item.
4 Do you recognize it?

5 A: Sir, it's been an awfully long time but this, I
6 believe, is the item I picked up from SLED with my
7 signature on the evidence chain of custody sir.

8 Q: And do you happen to know anything about this item
9 other than that?

10 A: No sir, not to my knowledge.

11 Q: Okay.

12 Mr. Justis: No further questions. Please answer
13 any questions Mr. Farley might have.

14 The Court: Cross examination?

15 Mr. Farley: May I have just a moment?

16 The Court: You may.

17 Mr. Farley: May it please The Court?

18 The Court: Yes sir.

19 **Mr. Knight-Cross Examination by Mr. Farley:**

20 Q: After you left the sheriff's office in 1986, where
21 did you go to work?

22 A: Sir, I went to work for the South Carolina
23 Department of Corrections as an investigator.

24 Q: You weren't there when the items were actually
25 collected from the victim, is that correct?

1 A: Are we talking about at MUSC?

2 Q: Yes, directly from ...

3 A: Sir, I was not, I was not looking directly at the
4 woman. I was sitting in a chair here, the door was
5 open, the room had three cots set up or three
6 examination tables I should say with what you would
7 call visual barriers. In other words, you could see
8 legs, you could see feet up under them, and you
9 might see a tall person's head over the top of them.
10 I was not in the direct room. I was in the
11 adjoining room standing and looking at them while
12 they did the examination but the screens were folded
13 and I was not standing in front of the victim, no
14 sir. I was there when I gave them the kit that we
15 brought down, sat down, watched the door, watched
16 the examination take place or watched the people do
17 their examination behind the screen I should say and
18 then it was brought to me sitting, looking at the
19 door.

20 Q: So, it's your testimony that you brought the rape
21 kit to the hospital? Is that correct?

22 A: Sir, I did. The boxes are provided. Sometimes the
23 box is provided in our vehicles. The boxes would be
24 sealed up with red evidence tape at the time. It
25 could've been one of ours, it might have been one of

1 theirs. It was a standard box that was used.

2 Q: So, it's your testimony today that you're not sure
3 if you brought the box or if there was one already
4 there.

5 A: That's correct, yes sir. Twenty-Nine years is a long
6 time, sir.

7 Q: Now, you talk about being a dinosaur; I hate to put
8 you in that light but I think what you're trying to
9 say by that is that the way you collected evidence
10 and preserved evidence and the where you kept
11 evidence is a lot different than it is today. Isn't
12 that right?

13 A: Technology has advanced; yes, sir.

14 Q: Who did you say had a key to the evidence locker?

15 A: To my knowledge, sir, the sheriff of the county and
16 the lieutenant and captain had access to the
17 evidence locker. To my knowledge that was the only
18 ones.

19 Q: So was the sheriff at that time?

20 A: Carl Knight sir.

21 Q: Is he any relation to you?

22 A: Yes sir, father.

23 Q: So the sheriff, you, Detective Nevins?

24 A: I didn't have a key to the evidence locker, sir.

25 Q: How about a guy named Burt Salvely(sp) that you were

1 talking about? Did he have a key?

2 A: Sir the captain and the lieutenant were the only two
3 people besides the sheriff who had access to the
4 locker. If you went there with them, if they called
5 you to go and assist them in whatever means, I'm
6 sure that that took place. They handled the
7 evidence in the evidence locker, sir. We had no
8 reason to be inside it.

9 Q: Now you describe the evidence locker. It really was
10 a bathroom that was converted into a storage room.
11 Isn't that right?

12 A: I would put it more of a storage room, sir.

13 Q: Okay.

14 A: It was used for that purpose. If you are talking
15 about the room at the old hospital building at the
16 time in '84. I don't ever remember a toilet being
17 in there.

18 Q: It wasn't a --- you'd agree with me though that it
19 wasn't a room specifically designed and built to be
20 an evidence locker?

21 A: Well, ...

22 Q: Can you describe what it looked like inside of the
23 evidence room?

24 A: Let's use the word pantry. Shelves were on the
25 walls that went around into a circle from the door.

1 It's a standard closet. It had every four or five
2 shelves built up from the floor around.

3 Q: And items were stored in boxes and bags and
4 envelopes and all various sorts of things. Some
5 stuff not even stored in a container, right?

6 A: Sir, I'll let the lieutenant explain to you how ---
7 I didn't spend very much time inside the evidence
8 locker. Most of the items had to be placed in a
9 some type of a container that had to be identified.
10 Objects just weren't set on a shelf or just wasn't
11 brought into. They had to be identified, you had to
12 have a case number with it, you had to have a chain
13 of custody sheet. They had to be able to keep track
14 of what was there.

15 Q: So, there always was a chain of custody sheet? Is
16 that your testimony?

17 A: Sir, I'm saying 99 percent of the time that I was
18 aware of, I can't think of any reason why something
19 would've been collected from any crime at all and
20 didn't have a chain of custody. If it was property,
21 a incident report would've been attached to it and
22 stored in there while we took it to contact someone
23 to see if they were missing anything.

24 Q: And you said it was secured, you needed a key to get
25 it; was it a padlock or was it a ...

1 A: Deadbolt type lock, sir.

2 Q: A deadbolt and it was just that one key?

3 A: To my knowledge, yes sir.

4 Mr. Farley: I don't have anything.

5 The Court: Alright, redirect?

6 Mr. Justis: Briefly, Your Honor.

7 **Mr. Knight - Redirect Examination by Mr. Justis:**

8 Q: Way back, in 1984, it was a long time ago, and I
9 think as Mr. Farley referenced dinosaurs and things
10 like that was it common practice to tamper with
11 evidence back then?

12 A: No; no sir. I'm not sure there would be a purpose
13 for that.

14 Q: And when you collected evidence or you transported
15 evidence back then did you take any precautions to
16 make sure it wasn't tampered with?

17 A: Yes sir. You kept constant possession of it, sir.
18 You made sure nobody didn't take something from it,
19 add something to it, move it. I mean, I'm not going
20 to say police, over the years, haven't had things
21 stolen out of their car and stuff. We tried our best
22 to make sure that when we received something we kept
23 it in the containers that it was in until it was
24 transported to SLED for proper testing.

25 Mr. Farley: Thank you, no further questions.

1 The Court: Alright, re-cross?

2 Mr. Farley: Yes, Judge.

3 The Court: Okay.

4 **Mr. Knight - Recross-Examination by Mr. Farley:**

5 Q: You identified State's exhibit number 8 as a
6 evidence release sheet that you signed. Correct?

7 A: Yes sir, if you could move a little closer, please?

8 Mr. Farley: May I approach?

9 The Court: You may.

10 A: Yes sir.

11 Q: Can you tell me the time on that?

12 A: Sir, as far as my receiving, it was 8:27PM.

13 Q: And how did you get a hold of Detective Nevins? You
14 used your cell phone?

15 A: Obviously, I didn't have a cell phone back then. We
16 used the radio sir. Detective Nivens was still out
17 working that night. It was a long night for us.
18 This incident didn't start until late in the
19 afternoon and it was not unusual for us to be at the
20 office or be out meeting each other late at night.

21 Mr. Justis: Thank you, Judge, I don't have any
22 more.

23 The Court: Alright, is this witness free to
24 leave?

25 Mr. Justis: He is, Your Honor.

1 The Court: Any objection?

2 Mr. Farley: No, Judge.

3 The Court: You're free to go.

4 Mr. Knight: Thank you.

5 The Court: Alright very well. Ladies and
6 gentlemen, we're going to take our lunch break now.
7 We'll ask you to be back in your jury room ready to
8 continue this matter at 2:00. Now, during your lunch,
9 please do not discuss this matter or allow anyone to
10 discuss it with you. Now we didn't talk about lunch
11 yesterday did we? Okay. Who is from below the swamp;
12 Summerville, Ladson? Just about everybody. Anybody
13 above the swamp? That is so typical. Two people. Now,
14 y'all got to listen to me now, make sure I don't mislead
15 because I don't intend to. Your dining, your culinary
16 experience or opportunities in the thriving metropolis of
17 St. George along Highway 78. Alright, now when you exit
18 the courthouse, Highway 78 is right in front of you. Go
19 out, do not take a left because you will have no dining
20 opportunities until you get to the ville. Take a right
21 and most of the dining opportunities are there. Well,
22 all the dining opportunities while on 78. However, there
23 is a very fine selection of fast food. Most of the
24 restaurants are represented and I always catch people
25 when I do this because I always leave out at least two.

1 So here we go, my best shot. You do have Georgio's of
2 Beverly Hills that is on the left and they typically have
3 a meat and three. Also, you will come to the Pizza Hut,
4 to the Subway, to the Hardee's, to McDonald's, to
5 Denny's, to Kentucky Fried Chicken it's on the left.
6 Hardee's is on the right. And I can feel everybody
7 sitting there --- Skynard's is a place along the left,
8 they have wings. And then Denny's. Now if you go under
9 the interstate, 95, you have only one culinary
10 opportunity and that would be the Taco Bell on the left.
11 If you go past the Taco Bell underneath the I95, there
12 are no more dining opportunities until you come to
13 Orangeburg. So you will want to turn around. If you go
14 past the I95 and past the Taco Bell, turn around. Now,
15 that will give you some opportunities. What did I
16 forget? Ms. Salisbury will review with you if you need
17 further review the dining opportunities. Now, please
18 remember, ladies and gentlemen, St. George is a terrific
19 community but it is such that you very well may see folks
20 who have something to do with this case. Please
21 understand if you see them at lunch they shy away from
22 you, they really aren't being rude. They just know
23 they're not supposed to talk to you. Have a very
24 pleasant lunch. Remember do not discuss this matter nor
25 allow anyone to discuss it with you. Don't do any kind of

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1 research. Do not tweet. Do not use social media, do not
2 gather any information regarding this matter. You must
3 receive all of the information to make up your mind
4 during court while court is in session and remember to
5 leave your communication devices, your cell phones in
6 your car. If you forget, please just let our bailiffs
7 know and they will take good care of the device while you
8 are on the jury. Have a good lunch.

9 (Jury exits courtroom 12:49 p.m.)

10 The Court: Alright, anything before we take our
11 lunch from the State?

12 Mr. Justis: Nothing from the State.

13 The Court: Alright, from the defense?

14 Mr. Farley: The Chinese restaurant, Judge.

15 The Court: I told you I'd forget. I'll
16 remember next time. Approximately how many witnesses do
17 we have for the State, approximately?

18 Mr. Justis: Total nine. The last two I know
19 will not be coming until tomorrow. There's a possibility
20 we could get these other seven done today. There's a
21 possibility. If not, they'll come back.

22 The Court: Alright, very well. Alright, before
23 you take your lunch break, let me see counsel just a
24 minute on the schedule.

25 (Court break)

1 **4-23-13 PM**

2 The Court: All right. Bring us the jury.

3 (Jury enters courtroom)

4 The Court: All right. Mr. Justis, call your
5 next witness, please.

6 Mr. Justis: Your Honor, the state calls Ernest
7 Moultrie.

8 Deputy Clerk: Please raise your right hand,
9 state your full name for the record.

10 Witness: Ernest Moultrie.

11 Deputy Clerk: Do you solemnly swear or affirm
12 to tell the truth, the whole truth, and nothing but the
13 truth?

14 Mr. Moultrie: I do.

15 Deputy Clerk: Thank you.

16 The Court: Your witness

17 Mr. Justis: Thank you Your Honor, may it
18 please The Court?

19 The Court: Yes sir.

20 **Mr. Ernest Moultrie - Examination by Mr. Justis:**

21 Q: Now back in '84, do you remember a case, a rape case
22 involving a **P.R. [REDACTED]**, a victim by the name of
23 **P.R. [REDACTED]**?

24 A: We had so many but I do remember this one.

25 Q: Okay and did you have any involvement in that case?

1 A: Very little. I think I assigned that case to
2 Lieutenant Nevins but I did work with him a little.

3 Q: Okay and is that because you had so few detectives
4 back then?

5 A: That's right.

6 Q: Do you remember anything you did on that case?

7 A: Yes, I made several mug shots for identification on
8 that case.

9 Q: Okay. I'm showing you what's been marked as State's
10 exhibit 9.

11 Mr. Justis: May I approach the witness Your
12 Honor?

13 The Court: You may.

14 Q: Do you recognize those? Please take your time
15 looking at them.

16 A: Yes sir.

17 Q: Do those appear to be the lineups you created?

18 A: They appear to be lineups I created.

19 Q: Okay and when you created lineups in the case, could
20 you explain to the jury what you would do with those
21 lineups after you created them?

22 A: We had about six to eight pictures of subjects that
23 had been arrested earlier and we put them on a
24 bulletin or whatever paperwork we had and they are
25 shown to the victim.

1 Q: Okay. And to the best of your knowledge, was the
2 victim able to select any of those pictures?

3 A: She was not able to select any of them.

4 Q: And to the best of your recollection during that
5 investigation, did the name Herbert Holmes ever come
6 up back in the 80s?

7 A: I don't remember that.

8 Mr. Justis: Beg The Court's indulgence.

9 The Court: Alright.

10 Q: Was that the extent of your involvement in this
11 case?

12 A: Yes sir. That is.

13 Q: Okay, thank you.

14 Mr. Justis: No further questions. Please
15 answer any questions Mr. Farley might have.

16 The Court: Cross-examination?

17 Mr. Farley: Thank you, Judge.

18 The Court: Yes sir.

19 **Mr. Moultrie-Cross Examination by Mr. Farley:**

20 Q: Hello Mr. Moultrie, how are you doing today?

21 A: Fine, how are you?

22 Q: I'm well, thank you. You, the sheriff, and Mr.
23 Nevins had the keys in 1984. Who had them in 1985?

24 A: Probably we still had them in '85.

25 Q: How about '86?

1 A: Probably in '84 we still.

2 Q: How about in all the years between the time that
3 this stuff was initially supposedly put in there and
4 today? How many different people have had the keys
5 to that locker?

6 A: Until today?

7 Q: Yes.

8 A: I've got no idea.

9 Q: Could've been hundreds, right?

10 A: I don't know about hundreds but I have no idea.

11 Q: You gave us a little bit of description of the
12 bathroom that had been turned into the evidence
13 locker. How was the stuff organized? Was it neatly
14 ...

15 A: It was shelves --- we had shelves built in that
16 bathroom. It was big shelves.

17 Q: And it was heat sealed and in bags?

18 A: It was.

19 Q: Was sealed in paper bags. Did you seal things in
20 plastic bags?

21 A: I don't remember back then whether we had plastic
22 bags or not back then.

23 Q: Was the room climate controlled?

24 A: I can't say. I don't remember.

25 Q: Was the room controlled for humidity so it wouldn't

1 get too humid or ...

2 A: It was a regular bathroom in a old hospital
3 building.

4 Q: How many rows of shelves would you say you had?

5 A: Probably five this way, this way, and this way. As
6 you walk in, the shelves on my right and left and
7 face.

8 Mr. Farley: May I have just a moment?

9 The Court: Alright.

10 Mr. Farley: I don't have anything else at this
11 time.

12 The Court: Alright, any redirect?

13 Mr. Farley: No, Your Honor.

14 The Court: And is this witness free to leave?

15 Mr. Justis: Yes ma'am.

16 The Court: Any objection?

17 Mr. Farley: No, Your Honor.

18 The Court: Thank you sir. Alright, call your
19 next witness, please.

20 Mr. Justis: The State calls Lieutenant Dale
21 Nevins.

22 Deputy Clerk: Please raise your right hand and
23 state your full name for the record.

24 Witness: Dale Nevins.

25 Deputy Clerk: Do you solemnly swear or affirm

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1 to the tell the truth, the whole truth, and nothing but
2 the truth?

3 Mr. Nevins: I do.

4 The Court: Your witness.

5 Mr. Justis: Thank you, Your Honor.

6 **Mr. Nevins-Examination by Mr. Justis:**

7 Q: Lieutenant Nevins, where do you work?

8 A: Dorchester County Sheriff's Office.

9 Q: And what's your current job title?

10 A: I am inspector of the internal affairs office.

11 Q: Okay. How long have you worked for the sheriff's
12 office?

13 A: I worked for them twice. Total, I've been a law
14 enforcement officer for 38 years.

15 Q: Okay. And where did you start your law enforcement
16 career?

17 A: Dorchester County Sheriff's Office.

18 Q: And what was your position when you first started?

19 A: Just a private I guess.

20 Q: Okay. And when did you, you mentioned you worked
21 twice for the sheriff's office. What were the dates
22 of service?

23 A: I retired in '93 and then I went to work for other
24 law enforcement departments and then came back.
25 I've been back, 2009.

1 Q: Okay. Back in the 80s, specifically 1984, what was
2 your position back then?

3 A: I was a detective lieutenant.

4 Q: Okay and who did you work for?

5 A: At that time, Captain Moultrie..

6 Q: Did you become involved in a case involving a rape
7 with **P.R. [REDACTED]**?

8 A: Yes, sir.

9 Q: Okay. How did you become involved in that case?

10 A: I was assigned that case from Captain Moultrie and I
11 was the lead investigator in that case.

12 Q: Okay. Back in 1984, how was evidence kept on
13 criminal cases at the Dorchester County Sheriff's
14 Office?

15 A: Like where we kept it?

16 Q: Correct.

17 A: We kept it at the what we call the evidence room
18 adjoining my office and Captain Moultrie's office.
19 It had been a bathroom but it was completely sealed
20 up and secured.

21 Q: Okay and who was responsible for the evidence back
22 in 1984?

23 A: Captain Moultrie and myself.

24 Q: And who had access to this evidence room?

25 A: Myself, Captain Moultrie, and Sheriff Knight.

1 Although I never saw Sheriff Knight in there but he
2 did have a key. Myself and Captain Moultrie were
3 the only two that ever entered that I know of.

4 Q: So, when evidence was brought to you in different
5 cases, what did you do with it?

6 A: We placed it in that locker.

7 Q: As the lead investigator in this case, did you have
8 all the evidence in your possession?

9 A: Yes, sir.

10 Q: And to the best of your knowledge, any of the
11 evidence that you received in this case, had it been
12 tampered with?

13 A: No, sir.

14 Q: Was it sealed?

15 A: Yes, sir, it was sealed.

16 Q: And how could you be so sure that it was sealed?

17 A: Well, because we would sign it and it just had to be
18 sealed or stapled. We had different ways of sealing
19 it.

20 Q: And what if it wasn't sealed?

21 A: I guess at that time, we'd have to check into it as
22 to why.

23 Q: Would that have been an unusual situation?

24 A: You have to be sure what was supposed to be in
25 there.

1 Q: I'm showing you what's marked as State's exhibit
2 number 30.

3 Mr. Justis: May I approach the witness Your
4 Honor?

5 The Court: You may.

6 Q: Do you recognize that?

7 A: Yes, sir, I do.

8 Q: And what does that appear to be?

9 A: This is clothing and probably mostly clothing that
10 belonged to the victim, **P.R. [REDACTED]**. I know that
11 because I stuck it in there and signed it.

12 Q: So that's your signature?

13 A: Well, I printed it, but that's my handwriting, yes,
14 sir.

15 Q: And was this some of the evidence that was taken
16 into custody by you?

17 A: Yes, it was.

18 Q: Do you happen to remember who gave you the evidence?

19 A: It came back from MUSC by Officer Knight.

20 (State's I.D. #10)

21 Q: This time I'm showing you what's marked as State's
22 exhibit number 10. Do you recognize anything
23 related to that piece of evidence?

24 A: Yes sir, I do.

25 Q: And what do you recognize?

1 A: It's evidence from the scene, the case with P.R.
2 P.R. and I signed that I received this.

3 Q: Okay. And what is that outer package that it's in?

4 A: This is the bag that was stating that the officer
5 Buster Edwards picked this up from SLED.

6 Q: Okay and where'd that clear plastic bag come from?
7 Is that something it would've been in in 1984?

8 A: No, sir, not at all.

9 Q: Do you know where that clear plastic bag comes from?

10 A: It came from SLED. It's clearly marked right there.

11 Q: So when evidence is --- why would you send evidence
12 to SLED first of all?

13 A: To be analyzed by their lab technicians.

14 Q: Okay and what is SLED for those that might not know?

15 A: South Carolina State Law Enforcement Division.

16 Q: Okay. And you mentioned that you might send
17 evidence there to be analyzed?

18 A: That's right.

19 Q: In 1984, would you have sent --- '84, '85, would you
20 have sent any evidence from this case up to SLED to
21 be analyzed?

22 A: Yes, sir, I would.

23 Q: And do you recall having an opportunity to send some
24 evidence up to SLED in January of 1985?

25 A: Yes, sir.

1 (State's I.D. 18)

2 Q: I'm showing you what's been marked as State's
3 exhibit 18. Do you recognize that document?

4 A: Yes, sir, I do.

5 Q: And what is that document?

6 A: This is a document that is used by SLED when we turn
7 our evidence over to them and whatever evidence we
8 have with the victim's name on it and their case
9 number and my signature's right here.

10 Q: Okay and do you list on that sheet what evidence you
11 turned over to them at that time?

12 A: Yes sir, it's all listed here at the bottom.

13 Q: And can you read some of that evidence?

14 A: Best I can. It's not real clear because it's a copy
15 but it says Best Evidence Kit from MUSC containing
16 five glass vials, I can't read that next word, one
17 paper envelope, vaginal wash, vaginal swab, saliva.
18 There are several on here I can't read.

19 Q: But they would be the things ...

20 A: Right.

21 Q: And is there a date on that form?

22 A: Yes, sir, I think it is. January 2nd, 1985.

23 Q: Thank you. And let me ask you one more question
24 about State's exhibit 18. Who's signature is that
25 on the form?

- 1 A: Right here? That's my signature.
- 2 Q: That's correct.
- 3 A: Yes, that's my signature.
- 4 Q: So on January 2nd, 1985, you transported that
- 5 evidence up to SLED?
- 6 A: Yes, sir.
- 7 Q: And it was turned over to SLED?
- 8 A: Turned over to SLED, yes, sir.
- 9 (State's I.D. Exhibit #19)
- 10 Q: I'm showing you what's been marked as State's
- 11 exhibit 19. Do you recognize that document?
- 12 A: Yes, sir.
- 13 Q: And what is that document?
- 14 A: This is the same type of document as the other one
- 15 is to ... turned in to SLED...
- 16 Q: And on what case was that?
- 17 A: That was on **P.R. [REDACTED]**.
- 18 Q: And what was that evidence that you took up to there
- 19 back in '85?
- 20 A: That was a blouse, changing chux, exam chux,
- 21 fingernail scrapings, pubic hair pluckings, pubic
- 22 hair combings. And that also is signed by me.
- 23 Q: Okay and what was the date on that?
- 24 A: That date was January the 31st, 1985.
- 25 Q: So, in January of 1985, you made two trips to SLED?

1 A: Yes, sir.

2 Q: And you delivered evidence to SLED at that time from
3 this particular case?

4 A: Yes, sir.

5 (State's I.D. Exhibit #20)

6 Q: I'm showing you what's been marked as State's
7 exhibit number 20. Do you recognize that document?

8 A: Yes, sir, I do.

9 Q: And what is that document?

10 A: This is the document that was signed. We had
11 Sergeant Burt Salvely up some.

12 Mr. Farley: Objection, Your Honor. May we
13 approach?

14 The Court: You may. Alright, you may proceed.

15 (Counsel approaches Bench without court reporter)

16 The Court: You may proceed.

17 Q: Lieutenant Nevins, you stated that the form was
18 signed by Burt Salvely.

19 A: Sergeant Burt Salvely, yes sir.

20 Q: And how do you know that's his signature?

21 A: Well, I've seen it about hundreds of times so I know
22 as soon as I see it.

23 Q: Okay. And what does that document purport to
24 represent?

25 Mr. Farley: Objection, Your Honor. Foundation.

1 The Court: Very well, thank you so much.

2 Overruled.

3 A: It shows where Sergeant Salvely brought some
4 evidence back from SLED and dropped it off at the
5 office.

6 Q: And the evidence was related to what case?

7 A: P.R. ██████.

8 Q: Okay. And where is Sergeant Salvely currently?

9 A: He is deceased.

10 Q: Back in 1985 when he brought this evidence back,
11 where would he have taken it? What was the standard
12 procedure back in 1985?

13 A: He'd have brought it back ...

14 Mr. Farley: Objection, Your Honor, speculation.

15 The Court: Sustained. You need to lay a foundation.

16 Q: Back in 1985, who kept all the evidence on the
17 P.R. ██████ case?

18 A: I did.

19 Q: And where did you keep that evidence?

20 A: We kept it in the evidence room right there next to
21 my office.

22 Q: So, if someone else had that evidence, let's say
23 SLED, and it was coming back to you, where would
24 that evidence have been brought back?

25 A: It would've been brought back to me and I would've

1 placed it in the evidence room.

2 Q: Do you recall receiving any evidence in the **P.R.**
3 **P.R.** case that appeared to have been tampered
4 with?

5 A: No, sir. Never.

6 Q: If some evidence was turned over to you in 1985 that
7 appeared to have been opened up, tampered with,
8 would you have put it back in the evidence room?

9 A: No, if I would have found it like that, I would have
10 got to the bottom of that. I've never had that
11 problem, ever.

12 Q: Okay.

13 A: Our evidence room. The only door that opened to
14 that room was mine and Captain Moultrie's office.
15 For anybody that got in there had to go through our
16 office also, which was not possible.

17 (State's I.D. Exhibit Number 21)

18 Q: I'm showing you what's been marked as State's
19 exhibit 21. Do you recognize these documents?

20 A: Yes, sir. I do.

21 Q: And what is that document?

22 A: This is deemed as a document where SLED turned it
23 back over to one of our officers at the time, which
24 was Joseph Rivers.

25 Q: Okay. And what date was that purportedly turned

1 over?

2 Mr. Farley: Objection, Your Honor. Foundation?

3 The Court: Very well, overruled. You may

4 proceed.

5 A: That was 4/28/88.

6 Q: And who was, did you say Mr. Rivers?

7 A: Joseph Rivers, yes, sir.

8 Q: And what did Joseph Rivers do?

9 A: He was the dispatcher who worked at the St. George
10 office.

11 Q: And did you know Mr. Rivers?

12 A: Yes, sir, I did.

13 Q: Would you recognize his signature if you saw it?

14 A: I don't know that I would recognize his signature.

15 Q: But you recognize the name Joseph Rivers?

16 A: Yes, sir, I do.

17 Q: And where did Joseph Rivers specifically work back
18 in 1988.

19 A: He worked in the St. George office.

20 Q: And do you specifically recall receiving evidence
21 back from Mr. Rivers back in 1988?

22 A: Yes sir. I'm not (can't understand).

23 Mr. Farley: I'm sorry Judge, I can't hear.

24 A: Yes, sir.

25 Q: Now, let me ask you a question Lieutenant Nevins.

1 If you were responsible for the evidence in this
2 case, why would other people pick it up from SLED?

3 A: Because we had so much going on at the time and I
4 was in the middle of an investigation, so a lot of
5 times I wouldn't have time to go and get it. I'd
6 send somebody else to get it or they'd be up there
7 on another case picking something up and they'd
8 bring mine back with them.

9 Q: I'm showing you what's been marked as State's
10 exhibit 21 again, that form I just showed you.
11 According to that form, what evidence was picked up
12 or what case was evidence picked up from?

13 A: The one, mine was **P.R.** **██████**.

14 Q: Okay are there other cases on there?

15 A: Yes, sir. Most be ten or fifteen other cases.

16 Q: Okay. Was it unusual for someone when they went to
17 SLED to pick up evidence on one case and to pick up
18 evidence on other cases?

19 A: No, sir. That was something we did. So far to go
20 and didn't always have time to go to SLED.

21 Q: I'm showing you what's been marked as State's
22 exhibit 22. Do you recognize that document?

23 A: Yes, sir, I do.

24 Q: And what is that?

25 A: This is the State requesting for evidence to be

1 turned over to SLED by me.

2 Q: Okay and what date is on that document?

3 A: July 1985.

4 Q: Okay so evidence was taken up in 1985, and then
5 between 1985 and 1988, some evidence was brought
6 back from SLED. And now in 1988, July of 1988,
7 you're taking evidence back up to SLED?

8 A: Yes, sir.

9 Q: Why were you taking evidence back up to SLED in
10 1988?

11 A: Well, this was a person of interest at that time.
12 Wouldn't be the suspect but there was some interest.

13 Q: And why was he a person of interest?

14 A: Because we had had different investigations from
15 different departments ...

16 Q: Okay and what was the name of that individual on
17 that report?

18 A: That was a Barry Daniels.

19 Q: It wasn't Herbert Holmes?

20 A: No sir.

21 Q: Okay. So according to this you took the evidence
22 back up to SLED to be analyzed?

23 A: Yes, sir.

24 (State's I.D. Exhibit #23)

25 Q: I'm showing you what's been marked as State's

1 exhibit 23. Do you recognize this document?

2 A: Yes, sir, I do.

3 Q: And what is that document?

4 A: This is the same documentation that was from SLED
5 and this was concerning the same case, which was
6 **P.R. [REDACTED]**, and it was picked up by a deputy.

7 Q: Okay so then ...

8 A: On 12/19/89.

9 Mr. Farley: Objection Your Honor, this is
10 hearsay and speculation on top of a foundational issue.

11 The Court: Alright. Very well. Sustained.

12 Q: Lieutenant Nevins, did you pick up any evidence from
13 SLED in 1989 related to **P.R. [REDACTED]** case?

14 A: Yes sir, I did.

15 Q: From SLED? Did you go up?

16 A: In '88, probably not.

17 Q: Okay. Now, you mentioned that you left the
18 sheriff's office at some point and of course now
19 you're back with the sheriff's office, but what year
20 did you leave the sheriff's department?

21 A: 1993.

22 Q: Okay, in 1993, you left the sheriff's department?

23 A: Yes sir.

24 Q: Were you still responsible for all the evidence in
25 the evidence room up til 1993?

1 A: At that point, I was completely in charge of it.

2 Q: Okay and when you left in 1993, who took over the
3 evidence that you had?

4 A: At that time it was Earl Asbell.

5 Q: Okay and how did you go about the transfer of the
6 evidence from your custody to Lieutenant Asbell's
7 custody?

8 A: I did an inventory myself and Sergeant Salvely and
9 Lieutenant Asbell and we took every item on the
10 list, checked it off, and he signed for it,
11 receiving it.

12 (State's I.D. Exhibit #32)

13 Q: Okay. Beg The Court's indulgence. At this time,
14 I'm showing you what's been marked as State's
15 exhibit 32. Do you recognize that document?

16 A: Yes sir. This is the inventory list that we made at
17 that time.

18 Q: Okay.

19 A: It consisting of five pages.

20 Q: Tell us about that inventory list. How did you
21 compile that inventory list and who did it?

22 A: Myself, Salvely and Lieutenant Asbell.

23 Q: And what did you physically do to compile it?

24 A: We took each item off of the shelves and listed each
25 one individually and all the way down to where it

1 was what case it was, and that's how we did it.

2 Q: And was the evidence related to **P.R.** **[REDACTED]** case
3 located in that inventory?

4 A: Yes sir.

5 Q: And is your signature located on that inventory?

6 A: Yes sir, right here.

7 Q: And what date did you sign that inventory?

8 A: 3/22/93.

9 Q: So on March 22nd, 1993, you turned all the evidence
10 over, not only in this case, but in other cases you
11 had to Lieutenant Earl Asbell?

12 A: Yes sir.

13 Q: Now, let me ask you a question. The evidence, when
14 it was collected in 1984, some of the evidence was
15 collected by other individuals but was put in brown
16 paper bags.

17 A: Yes sir.

18 Q: Why were brown paper bags used?

19 A: We used brown paper bags because plastic causes
20 moisture to get inside the plastic bags. So
21 everything was done in paper bags. Otherwise, it
22 would mold, and you know, moisture.

23 Q: Correct.

24 Mr. Justis: Beg The Court's indulgence.

25 The Court: Yes sir.

1 Q: Lieutenant Nevins, was that the extent of your
2 involvement in this case?

3 A: Yes sir.

4 Q: Thank you.

5 Mr. Justis: No further questions. Please
6 answer any questions Mr. Farley might have for you.

7 The Court: Cross examination?

8 Mr. Farley: Thank you, Judge.

9 **Mr. Nevins-Cross Examination by Mr. Farley:**

10 Q: Alright, we've been through a lot so bear with me,
11 we'll try to take it slowly. You said that it's
12 important to put evidence in paper bags so that it -
13 -- so it could be preserved. Is that correct?

14 A: Because moisture sets in there.

15 Q: And plastic bags would be bad, is that correct?

16 A: It would.

17 Q: How about paper bags stuck into one giant plastic
18 bag?

19 A: Well, whatever is in the paper bag still probably
20 will be good, I guess.

21 Q: Times have changed on how evidence is collected
22 hasn't it?

23 A: Oh yes.

24 Q: And how it's preserved.

25 A: Sure.

1 Q: You testified that the items, that the evidence
2 collected in this case moved around back and forth
3 to SLED quite a bit didn't you?

4 A: Well, we take it and bring it back.

5 Q: But it didn't remain in one place. It was out of
6 the locker, up to SLED, and then back down?

7 A: Sure, yes sir.

8 Q: And as a law enforcement officer, you know it's
9 important to keep a proper chain of custody so that
10 we know exactly at any given time where the stuff
11 is, correct?

12 A: Yes sir.

13 Q: Have you provided to the solicitor's office a chain
14 of custody, which checks it in, checks it out, shows
15 exactly where it was?

16 A: Other than that what you have there?

17 Q: Other than signing the bags and things, yes.

18 A: I don't know what you are talking about.

19 Q: Are you aware that today chains of custody are on
20 one sheet of paper?

21 A: Yes sir.

22 Q: And you don't have that?

23 A: We didn't have that back then.

24 Q: I want to turn your attention to the stuff that was
25 collected in '84 and initially sent to SLED in '85,

1 okay?

2 A: Alright.

3 Q: You testified that you took two batches of stuff up,
4 didn't you?

5 A: I'm not sure, I'd have to look at it. I can't
6 remember everything that far back.

7 Q: Sure, I understand. You took some stuff up on
8 January 1st, didn't you?

9 A: If that form says so, I can't recall the date.

10 Q: I'm going to see if I can find it. May I approach
11 the witness Judge? I'm going to show you what's
12 been marked State's 18 for identification purposes
13 and I'm going to look over your shoulder. Is that
14 your signature on that form?

15 A: Yes sir, it sure is.

16 Q: And what does your signature being on that form say
17 about that evidence?

18 A: It shows that I request to SLED to analyze those
19 items.

20 Q: If you look at the very bottom of this page, it says
21 signature of person receiving evidence. Do you see
22 that?

23 A: Yes.

24 Q: Who signed that?

25 A: At the very bottom is my signature.

1 Q: So the person --- did you hand it over to a person?

2 A: They had their own forms. SLED headquarters.

3 Q: Okay so you signed something at SLED?

4 A: Yes sir.

5 Q: As a law enforcement officer, you know that it's
6 important to keep a proper record. Isn't that
7 right?

8 A: Yes sir.

9 Q: And there's a lot of paperwork when you're a police
10 officer, isn't there?

11 A: A lot, yes sir.

12 Q: And part of that paperwork would be to have the
13 person you turned over the evidence to sign that
14 they received the evidence.

15 A: Not on this form.

16 Q: It wouldn't be on this form?

17 A: This is just a form that I made up. We have another
18 form that they had that when I'd go in they would
19 fill it out and then I would sign it.

20 Q: So there's a form?

21 A: They would ...

22 Q: I'm sorry, I didn't mean to cut you off.

23 A: They would sign it and check the items there.

24 Q: So the standard operating procedure at the time
25 would be for you when you went to turn it in, SLED

1 would provide you a form, correct?

2 A: Yes.

3 Q: You write your name on it?

4 A: She does it.

5 Q: And would they put the person who receives that
6 stuffs name on that form as well?

7 A: You sign that in there. Whether it was blood or a
8 firearm or whatever it was.

9 Q: You don't recall who you handed this stuff off to do
10 you?

11 A: No, I don't.

12 Q: I'm going to grab that form. As chief investigating
13 officer of this case, you've had a chance to review
14 the file, the case file prior to trial, is that
15 right?

16 A: You know, not really. I glanced through it.
17 Mostly, I just --- I never did go through the whole
18 file page by page.

19 Q: So you wouldn't know that there is no paperwork from
20 SLED saying that you turned it over to someone?

21 A: Well, probably, SLED probably has that. In fact,
22 I'm sure that they have it.

23 Mr. Farley: May I have just a moment?

24 The Court: Yes.

25 Q: So you take that first batch of stuff up to SLED;

1 why didn't you take everything up there at one time?

2 A: Well I carried it each time.

3 Mr. Farley: Judge may I have word with the
4 solicitor?

5 The Court: You certainly may.

6 Mr. Justis: Judge, may we approach?

7 (Counsel approaches bench without court reporter)

8 The Court: Sure. Let me tell you what has
9 occurred and it's being done by counsel in what is called
10 a stipulation. What is a stipulation? First of all, a
11 stipulation is an agreement of counsel and it's in
12 agreement of counsel that you should consider their
13 stipulation to be fact. What they've done, what the
14 lawyers have done, is that they have got the records that
15 this witness has placed into evidence, he didn't place in
16 evidence, the State has, but based on his testimony, and
17 the records, and I've seen them, and they're not
18 illegible but what counsel has done, really to assist
19 you, was that they have agreed that this is what it says.
20 It just keeps you from having to struggle to make out the
21 words. And so they're going to offer that for your help
22 and assistance. They've both agreed that this is what
23 the words say to save some time. And that's why they
24 approached, counsel wishes to offer up that stipulation.
25 Is that correct on behalf of the State.

1 Mr. Justis: That's correct, Your Honor.

2 The Court: Correct with defense?

3 Mr. Farley: Yes, Your Honor.

4 The Court: Very well. Go ahead and let's mark the
5 stipulation. It's a joint exhibit. And it's only as a
6 stipulation. It is not an exhibit. But for the purposes
7 that we were discussing it.

8 **(I.D. Only Joint Exhibit was marked)**

9 Mr. Justis: That's correct Your Honor. And those
10 items haven't been entered into evidence anyway. They've
11 been marked for ID purposes anyway.

12 The Court: Very well. Well we'll say then to be
13 absolutely clear, the stipulation is needed.

14 Mr. Justis: That's correct.

15 The Court: Okay, very well. Thank you. And the
16 intention is that that is an exhibit in the traditional
17 sense. It is only a document, counsel, that you have
18 come up with to assist this jury so they do not have to
19 struggle to read documents in the event the documents are
20 introduced. Again, we wanted to do that at this point so
21 you're likely to use the documents. Is that right?

22 Mr. Justis: That's correct.

23 The Court: Very well. I understand. You may
24 proceed.

25 Mr. Farley: May I read the items to the jury?

1 The Court: It's not in evidence. You can't publish
2 a document not in evidence.

3 Mr. Farley: Got it. Thank you, Judge.

4 Q: The first set of stuff that you took up there, what
5 was contained in that kit, in that group of stuff?

6 A: Are you talking about on this form here? 7/18?

7 Q: Yes; yes sir.

8 A: You want me to read that, is that what you want?

9 Q: Yes, please.

10 A: This is a specialty kit from MUSC containing five
11 glass, I think it's vials and one, I can't really
12 read that next word. One paper envelope, one
13 vaginal wash, one vaginal swab, I can't really read
14 that either. One saliva --- I'm having a hard time
15 trying to read most of this.

16 Mr. Farley: May I approach the witness?

17 The Court: You may.

18 Q: Do you see any clothing listed on that?

19 A: I don't. I don't see anything.

20 Q: That went up to SLED on January 2nd, didn't it?

21 A: Yes sir.

22 Q: Now, you took some more stuff on January 31st, didn't
23 you?

24 A: I don't recall. I can't really tell you without
25 looking.

1 Mr. Farley: May I approach the witness again?

2 The Court: You may.

3 Q: I'm going to show you State's exhibit number 19 for
4 ID purposes. Do you recognize that form?

5 A: Yes, I do.

6 Q: Can you tell me what that is?

7 A: It's the same type of form and this is where I
8 carried up the vials and changing chux, fingernail
9 scrapings and hair samples.

10 Q: Do you know why you took this stuff up separately
11 from the original batch of things?

12 A: You know what, I really don't know. I can't recall
13 why we did that.

14 Q: And on the second form, no one from SLED signed that
15 form either did they?

16 A: No, they didn't sign this form. I don't think
17 you'll find a signature on any of them.

18 Q: When the initial, I'm going to call it the first set
19 of stuff, the stuff from the rape kit, was sent up,
20 where was the stuff from the second set held?

21 A: Where we held it?

22 Q: Yes.

23 A: In the evidence locker.

24 Q: When Mr. Salvely brought that stuff back to your
25 office, you specifically remember him handing it to

1 you or did he hand it to Major Moultrie or did you
2 hand him the keys and he put it right into the box?

3 A: He would've brought it to me.

4 Q: He would've brought it to you?

5 A: That's right.

6 Q: And you don't have a record of that exchange?

7 A: I don't. That would've been right in the office.

8 Q: I'll grab those back from you if I may.

9 A: I don't know why we did that.

10 Q: You're referring to not ...

11 A: Two different times.

12 Q: Okay.

13 Mr. Farley: May I speak to co-counsel?

14 The Court: Yes.

15 Q: I want to turn your attention to the 1988 evidence
16 okay?

17 Mr. Farley: May I approach, Your Honor?

18 The Court: You may.

19 Q: I'm going to hand you the form that you identified
20 as the form you used to submit evidence in 1988,
21 which is State's 22. Could you take a look at that
22 for me?

23 A: Alright.

24 Q: Can you tell me in the bottom part what specimens
25 were submitted for examination?

1 A: The only thing was DNA and of course back in that
2 time, we didn't DNA like it is today. We had to
3 have a suspect to compare it to.

4 Q: So, and I don't mean to be contrite, but you said
5 DNA up there. Do you recall what kind of DNA?

6 A: On this form it doesn't say. I don't remember.

7 Q: Now, on the older forms back in '84, '85, you took a
8 lot to write down exactly what items were sent up
9 there. Is that correct? But on this form, the form
10 in 1988, all that's marked is DNA. Is that correct?

11 A: DNA analysis.

12 Q: Can you read what --- in the box it says evidence.
13 Can you read what that line is that precedes DNA?

14 A: Specimen submitted for --- I don't know.

15 Q: I understand. Now once again, there's no signature
16 from the receiving person at SLED is there.

17 A: You know, probably, and I'm just guessing, a lot of
18 times when we go up there and everybody's in a hurry
19 or whatever, they would just tell us to fill this
20 thing out and put DNA or whatever on the form.

21 Q: But you'd still agree with me that it's important
22 that there be a solid chain of custody, correct?

23 A: Oh yeah. None of this stuff never left our custody.

24 Q: Well, it did leave your custody when you turned it
25 over to SLED.

1 A: Only to SLED, that's right.

2 Q: But we don't know who at SLED received this.

3 A: I'm sure we have a form somewhere where they
4 received it and probably where they sent it back.
5 And if I remember right, I'm not good on memory but
6 I think they probably sent us a form saying they
7 were unable to get DNA or whatever.

8 Q: Now, in this '88 stuff, it says DNA. Do you know if
9 any of the victim's samples or things were sent?

10 A: I can't say.

11 Q: So, essentially what you're telling us is all we
12 know is something labeled DNA was sent up there? We
13 don't know if the victim's stuff was sent up there,
14 we don't know if this Barry Daniels stuff was sent
15 up there. We just know DNA was sent up there.

16 A: On this form.

17 Q: On this form.

18 A: I'm sure there's another form somewhere that would
19 verify what.

20 Q: Finally, I want to talk about the transition in 1993
21 when you left the sheriff's office. You identified
22 State's 32 for identification as the chain
23 purporting to turn things over.

24 Mr. Farley: May I approach the witness?

25 The Court: You may.

1 A: Yes, sir.

2 Q: And you testified that you basically sat down with
3 Detective Asbell and Mr. Salvely and went through
4 everything in that locker.

5 A: Everything, exactly.

6 Q: Laid it all out.

7 A: I wouldn't leave the Department without inventorying
8 it.

9 Q: And how many pages is this inventory?

10 A: Five pages.

11 Q: And it's pretty significant --- it's pretty detailed
12 accounting of what was in that room.

13 A: Yes sir.

14 Q: Right down to what was on the floor, what was on the
15 second shelf, third shelf, so on and so forth.

16 A: Yes sir.

17 Q: As a law enforcement officer, this is the kind of
18 chain that you want to keep so you know who has what
19 evidence when and where. Is that correct?

20 A: That was the only way I knew to do this.

21 Q: I want to direct your attention to the page that's
22 labeled page three of five. If you could look down
23 at number 19, could you read that for me?

24 A: Envelopes.

25 Q: And then what is that in the parentheses following

1 that?

2 A: It shows green, brown --- Terry Jenkins Smith.

3 Q: And what do those names correspond to?

4 A: Names of ... I don't recall.

5 Q: Obviously, they're victims of sexual assault aren't
6 they?

7 A: I don't know. I would think they are but I don't
8 recognize every name. I do recognize a couple
9 names.

10 Q: So basically there was a box with a bunch of
11 different envelopes in it according to your chain?

12 A: Yes, sir.

13 Q: And when you marked --- and when you pulled that
14 out, wrote it down on this chain, you put it right
15 back where you got it.

16 A: Yes.

17 Q: Where would you have put a bag full of clothing on
18 your list?

19 A: There's no clothing here on that.

20 Q: There's no clothing listed on ...

21 A: Not on that.

22 Q: And when you turned that over to Earl, you handed
23 him the key, and that's it? You haven't seen it
24 since?

25 A: I haven't seen it since.

1 Q: First time you've seen it -

2 A: I've seen other evidence since then but not on this
3 stuff.

4 Q: Right.

5 Mr. Farley: Beg The Court's indulgence.

6 The Court: Okay.

7 Q: When you got this case, were you the first officer
8 on scene?

9 A: No.

10 Q: Who was the first officer on scene to your
11 knowledge?

12 A: As I recall, it was probably Deputy ...

13 Q: He would've been a road officer, is that correct?

14 A: Yes.

15 Q: And would you be above him in the chain of command?

16 A: Yes sir.

17 Q: Would he have reported to you what was said by the
18 victim, the scene, basically given you a report of
19 what happened to his knowledge?

20 A: He would've informed me what he saw or whatever at
21 the time.

22 Q: Would you have taken one of his --- would he have
23 done a written report?

24 A: He would've done an incident report.

25 Q: And is that something that you would keep in your

1 case file?

2 A: It very well could be.

3 Q: Is that something that you would like to review when
4 investigating a case, something you could have to
5 see when investigating a case?

6 A: I wouldn't need to keep going back to it unless it
7 was complicated.

8 Q: If I was to show you an incident report, would you
9 know what I was talking about, what I was looking?

10 A: Yes sir.

11 Mr. Farley: May I approach?

12 The Court: You may.

13 Q: I'm going to show you what's been marked ...

14 Mr. Justis: Objection, Your Honor. Can I see that?

15 The Court: Sure, of course.

16 **(Defendant's Exhibit Number One for I.D.)**

17 Mr. Farley: Now, may I approach?

18 Q: I'm going to show you what's been marked as
19 Defendant's 1 for identification. Could you take a look
20 at that, please? What does that appear to be?

21 A: An incident report.

22 Q: Is that the type of incident report that would have
23 been written at that time back in '84?

24 A: Yes sir.

25 Q: It's a standard form?

1 A: He wouldn't have filled this out on the scene.

2 Q: Right, but he would've eventually written that.

3 A: Yes.

4 Q: And you wouldn't believe that he'd lie in it?

5 A: I'd hope not.

6 Q: In that report, it describes what the victim told
7 him that the subject, suspect looked like. Is that
8 right? In the upper part?

9 A: Talking about what he was wearing.

10 Q: Yeah, how tall was he? Does he say?

11 A: It says here ...

12 Mr. Justis: Objection, calls for hearsay.

13 Mr. Farley: May we approach?

14 The Court: Sure, of course.

15 **(Counsel approaches bench without court reporter)**

16 The Court: We're going to take our afternoon break.
17 There's a matter that I need to take up outside of your
18 presence. We're going to take, well, we'll take twenty
19 minutes because I need a break too so we're going to take
20 twenty minutes. We will reconvene at a quarter til the
21 hour. Please do not discuss this matter or allow anyone
22 to discuss it with you. If we have smokers, let them
23 smoke. You're welcome. Go with your bailiff.

24 **(Jury Break)**

25 The Court: Alright now, here's my concern. My

1 concern is that you are trying to get in a statement of
2 the alleged victim and it's contained within a document.
3 Now, couldn't you ask that of the alleged victim but for
4 impeachment purposes. And your question is whether or
5 not this witness is now a custodian of this record.
6 Right? So assuming for purposes of argument that this
7 witness is a custodian of this record that I don't know
8 that you can authenticate it. Then assuming that the
9 record is authenticated and then the question is whether
10 or not you can then admit the statement within the
11 document once the document is in, can you admit the
12 statement of the alleged victim. And the answer is yes.
13 I don't know if that's helpful but

14 The Court: Stomp once for yes and twice for no.

15 Mr. Justis: Unless we make some decision on what we
16 plan on doing with this potential evidence.

17 The Court: He has to tell me what he wants to do.

18 Mr. Farley: I'm going to resume my cross
19 examination.

20 The Court: There you go.

21 Mr Justis: Then nothing from the State at this
22 time.

23 The Court: Let's have the jury in.

24 **(Jury enters)**

25 The Court: Ladies and gentlemen, at this time we

1 will continue in the State's case and cross examination.

2 Yes sir.

3 Q: So as chief investigative officer, you did not
4 review this file before you came to testify today?

5 A: Well I can't say I've never seen it but I didn't go
6 over anything.

7 Q: So, in the course of preparation for a trial that
8 the solicitor's office has labeled as serious, you
9 did not review the files?

10 A: No sir, I did not review the file.

11 Mr. Farley: I have no further questions.

12 The Court: Alright, redirect?

13 Mr. Justis: Yes ma'am.

14 The Court: All right.

15 **Mr. Nivens-Redirect Examination by Mr. Justis:**

16 Q: Lieutenant Nevins, I'm showing you what's been
17 marked as State's 18 and 19. Those two documents,
18 those are the documents where you took evidence up
19 to SLED in January of 1985. At the top of these
20 each of those, are those documents similar as far as
21 the form?

22 A: Yes sir.

23 Q: And at the top of those forms, what does it state?

24 What agency does it state at the top of those forms?

25 A: South Carolina Law Enforcement Division.

1 Q: So is that a form that is generated by SLED?

2 A: Yes sir.

3 Q: Okay and in the top right corner of those forms, is
4 there a date stamped on those forms?

5 A: Yes sir, there is.

6 Q: And that stamp --- what else does that stamp say?

7 A: It shows the date when SLED received this and it
8 shows my name on there as receiving it.

9 Q: So, did you put that stamp on there?

10 A: No sir.

11 Q: Who put that stamp on there?

12 A: SLED did.

13 Mr. Justis: Okay at this time, the State would
14 offer State's 18 and 19 into evidence.

15 Mr. Farley: No objection.

16 The Court: Very well. State's 18 and 19 into
17 evidence without objection.

18 **(State's Exhibit Numbers 18 and 19 in evidence)**

19 Q: So, it's your testimony that this form is a SLED
20 form, it was filled out and signed by you?

21 A: Yes sir.

22 Q: And SLED, when the evidence was taken up, they
23 actually stamped it as being received on those
24 dates?

25 A: Yes sir, that's correct.

1 Q: So, this would be the chain of custody on that
2 evidence for these items.

3 A: Yes sir.

4 Q: Lieutenant Nevins, I'm now showing you what's been
5 marked as State's exhibit number 10. Please take a
6 look at that and tell me if you recognize that.

7 A: Yes sir, I do.

8 Q: Can you describe what that is you're holding?

9 A: This is evidence in the **P.R.** case and it
10 shows here where it was signed over to me.

11 Q: Okay and when was it signed over to you?

12 A: July 21st, 1988.

13 Q: Okay. And I think you testified earlier that you
14 took evidence up to SLED July 21st, 1988. Is that
15 correct?

16 A: Yes sir.

17 Q: And where you signed July 21st, 1988 on that evidence
18 there, what were you signing?

19 A: I was signing that I received the evidence.

20 Q: Okay but what did you sign? What was the item you
21 signed or the material you signed?

22 A: You talking about this sticker here?

23 Q: Correct.

24 A: South Carolina Law Enforcement Division, the date,
25 case number, and signed my name.

1 Q: Okay and that sticker, South Carolina Law
2 Enforcement Division, did you provide that sticker
3 to them?

4 A: No. They did.

5 Q: So that would be the evidence you took up there at
6 that time?

7 A: Yes sir.

8 Q: So let me show you State's exhibit 20. I think
9 you've seen that document before. What was that
10 document again?

11 A: That's for DNA.

12 Q: And what was the date you sent that up?

13 A: It was July 21st, 1988.

14 Q: 1988. Same date you had written and signed in this
15 evidence?

16 A: Yes sir.

17 Q: And what was the description of the evidence you put
18 on that form?

19 A: On this form says DNA.

20 Q: But this is actually what you took up.

21 A: Yes sir.

22 Q: At this time, the State would offer State's 20 into
23 evidence.

24 Mr. Farley: Just a moment.

25 The Court: Certainly.

1 Mr. Farley: We object Your Honor on the grounds of
2 foundation.

3 The Court: Very well. Overruled.

4 **(State's Exhibit Number 22 was marked in evidence)**

5 Mr. Justis: I'm sorry Your Honor, that would
6 actually be State's exhibit 22. I didn't have my
7 glasses.

8 The Court: Very well.

9 Mr. Farley: Judge, we have no objection to that.

10 Mr. Justis: 22. Beg The Court's indulgence.

11 The Court: Alright.

12 Mr. Justis: No further questions.

13 The Court: Cross examination?

14 Mr. Farley: Yes, Judge.

15 **Mr. Nevins-Recross by Mr. Farley:**

16 Q: You just identified three forms that were just moved
17 into evidence, 18, 19, and 22; on all of these forms
18 that I've shown you several times, in the lower
19 right hand corner, isn't there a place that says
20 signature of person receiving evidence?

21 A: Yes sir, there's a place for that.

22 Q: And in each and every one of these forms generated
23 by SLED, no one has signed. Is that correct?

24 A: No, I haven't signed those.

25 Q: It would be someone at SLED that would sign it

1 right?

2 A: Not that necessarily. That was just telling them
3 what we have.

4 Q: And you personally as the case officer for this case
5 preparing for this trial have not seen anything
6 produced by SLED? You personally. I'm not saying
7 speculating here. Have you personally?

8 A: I don't understand what you're saying. Can you say
9 that again?

10 Q: I believe you just told me no one at SLED would
11 ever sign this signature.

12 A: I don't think so. Not that I can recall.

13 Q: And didn't you tell me that SLED would generate
14 their own piece of paperwork?

15 A: Yes.

16 Q: Have you in the course of the investigation seen any
17 paperwork generated by SLED that is associated with
18 these documents?

19 A: I don't think so.

20 Q: You just testified that some of the evidence marked
21 DNA was the victim's DNA? Is that what you just
22 testified to?

23 A: No, that was Barry Daniel's DNA probably.

24 Q: And who's Barry Daniel?

25 A: He was just a person of interest.

1 Q: Well, you just testified that your signature was on
2 the rape kit and the rape kit went up in '88. So
3 was it **P.R.** **[REDACTED]** rape kit or was it Barry
4 Daniel's DNA?

5 A: They group up --- they both went up.

6 Q: They went at separate times?

7 A: I don't know. I'd have to look at them. I can't
8 remember that. But there's two different people
9 altogether. That would've been DNA from Barry
10 Daniels, not Ms. **P.R.** **[REDACTED]** at all. And the
11 other one would be her evidence.

12 Q: After reviewing this case file, have you found any
13 form, SLED form that you said was generated by your
14 office, have you seen a form that corresponds with
15 the victim's DNA evidence going up to SLED in '88?
16 I'll break that up. We're not talking about 1984
17 okay? We're talking about '88. There is a form
18 that you say that you signed where it says Barry
19 Daniels --- you testified that Barry Daniel's DNA
20 went to SLED in '88. Okay?

21 A: Yes sir.

22 Q: In the course of your investigation.

23 A: As far as I know.

24 Q: I'm sorry?

25 A: As far as I know, that's correct.

1 Q: In the course of your investigation in this case in
2 subsequent review, have you seen a form that
3 correlates with the victim's DNA evidence, the rape
4 kit going up there separately in 1988?

5 A: Not having to do with Barry Daniels? Is that what
6 you're saying?

7 Q: Yes.

8 A: No the only thing I recall seeing was I think it was
9 insufficient whatever evidence on Barry Daniels sent
10 up there.

11 Q: So I just want to clarify your testimony today. You
12 sent up DNA evidence on Barry Daniels and then
13 separately in 1988, you sent up the victim's DNA.

14 Mr. Justis: Objection Your Honor, I think he's
15 mischaracterizing his testimony.

16 The Court: Let him ask the question. The question
17 is?

18 Q: Thank you. The question is haven't you testified
19 that you sent Barry Daniel's DNA up to SLED in 1988?

20 A: Yes sir, that's the name on there.

21 Q: And didn't you just testify that you separately sent
22 the victim's DNA up there?

23 A: I didn't say separately. That's two different ...

24 Q: Shipments.

25 A: ... items. Yes sir, that's correct.

1 Q: Two different items but at the same time? Is that
2 what you're testifying?

3 A: I can't recall that.

4 Q: But had you sent them the same time, wouldn't you
5 have marked that on the SLED form that's just marked
6 DNA?

7 A: Well, I wouldn't put it all the same. I wouldn't
8 mix them up. I wouldn't put his DNA.

9 Q: So, on State's exhibit 22 now in evidence, you are
10 not certain what DNA was sent up there?

11 A: No, I'm not. On Barry Daniels.

12 Mr. Farley: I don't have anything further, Judge.

13 The Court: Alright, very well. Call your next
14 witness please.

15 Mr. Giese: State: At this time, the State calls
16 Emory Rush.

17 Deputy Clerk: Please raise your right hand. State
18 your full name for the record.

19 Witness: My name's Emory Rush.

20 Deputy Clerk: Do you solemnly swear or affirm to
21 tell the truth, the whole truth, and nothing but the
22 truth?

23 Mr. Rush: Yes ma'am.

24 The Court: Your witness.

25 Mr. Giese: Thank you, Your Honor. May it please the

1 Court?

2 **Mr. Rush - Examination by Mr. Giese:**

3 Q: Mr. Rush, where do you work?

4 A: I'm retired.

5 Q: Okay do you have any prior law enforcement
6 experience?

7 A: Yes sir.

8 Q: What is that?

9 A: I was in law enforcement for 34 years.

10 Q: Employed by who?

11 A: Orangeburg and Dorchester Counties.

12 Q: Who were you working for back in 1989?

13 A: Dorchester County Sheriff's Office.

14 Q: What was your job there?

15 A: I was detective sergeant.

16 Q: Okay and what kind of duties did that involve?

17 A: Well, investigating anything from minor crimes to
18 violent crimes.

19 Mr. Giese: Beg The Court's indulgence. May I
20 approach the witness?

21 The Court: You may.

22 Q: I'm showing you what's been marked as State's
23 exhibit 23. Do you recognize that?

24 A: Yes sir, I do.

25 Q: What is that?

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1 A: This is a disposition of evidence form from the
2 State Law Enforcement Division.

3 Q: Is that a normal procedure or normal form to get
4 from there?

5 A: Yes sir.

6 Q: Is that your signature on there?

7 A: It is, yes sir.

8 Q: And what's the date on that?

9 A: December the 19th, 1989.

10 Q: Where were you when you signed that?

11 A: At SLED headquarters.

12 Q: And that's normal procedure?

13 A: Yes sir.

14 Mr. Giese: Your Honor, at this time, the State
15 would like to move this item into evidence.

16 The Court: Alright. Counsel, any objection?

17 Mr. Farley: No, Judge.

18 The Court: Very well.

19 **(State's Exhibit Number 23 was marked for evidence)**

20 Mr. Giese: Sorry, Your Honor, may I approach again?

21 The Court: You may.

22 Q: Now, did you retrieve evidence from SLED that
23 day for case number 85-026?

24 A: Yes sir, I did.

25 Q: And how do you know that?

1 A: Well, it's listed on the form along with other
2 cases.

3 Q: Okay. When you retrieved that evidence, was it
4 secured when you retrieved it?

5 A: Yes sir.

6 Q: And how do you know that?

7 A: Well, I signed for it and I would not have signed
8 for it had it not been secured.

9 Q: Okay. Did you tamper with it?

10 A: Definitely not, no sir.

11 Q: Where did you take it?

12 A: I took it to Summerville.

13 Q: Okay the ...

14 A: Sheriff's office.

15 Q: Okay. Was it secure when you turned it over?

16 A: Yes, sir, it was.

17 Q: And who did you turn it over to?

18 A: Lieutenant Nevins. He was the lieutenant, my
19 supervisor.

20 Mr. Giese: Okay. Beg The Court's indulgence.

21 The Court: Yes.

22 Q: Was that the extent of your involvement?

23 A: Yes sir, that would've been the extent.

24 Mr. Giese: No further questions, Your Honor.

25 The Court: Cross examination?

1 Mr. Farley: Yes, Judge.

2 **Mr. Rush - Cross Examination by Mr. Farley:**

3 Mr. Farley: May I get the exhibit from the witness,
4 Judge?

5 The Court: You certainly may.

6 Q: Now, on this document that you were just shown, does
7 it say what exactly was in that batch of evidence?

8 A: No it does not.

9 Mr. Farley: I don't have anything else, Judge.

10 The Court: Redirect?

11 Mr. Giese: None, Your Honor.

12 The Court: Very well. Is this witness free to
13 leave?

14 Mr. Giese: He is, Your Honor.

15 The Court: Any objection?

16 Mr. Farley: None Judge.

17 The Court: You are free to go. Call your next
18 witness please.

19 Mr. Justis: The State calls Lieutenant Earl Asbell.

20 Deputy Clerk: Please raise your right hand. State
21 your full name for the record.

22 Witness: Earl Asbell.

23 Deputy Clerk: Do you solemnly swear or affirm to
24 tell the truth, the whole truth, and nothing but the
25 truth?

1 Mr. Asbell: I do.

2 The Court: Your witness.

3 Mr. Justis: Thank you, Your Honor.

4 **Mr. Asbell - Examination by Mr. Justis:**

5 Q: Lieutenant Asbell, where do you work?

6 A: I was working at Dorchester County Sheriff's Office.

7 I retired in January.

8 Q: Okay and how long did you work at the Dorchester
9 County Sheriff's Office?

10 A: Twenty-four and a half years full time officer and
11 13 years as a retired officer.

12 Q: Okay and what was your last position at the
13 sheriff's office?

14 A: I was a lieutenant over the crime scene unit I
15 handed the evidence, also.

16 Q: Okay and explain as the lieutenant of the crime
17 scene unit, what were some of your basic duties?

18 A: Well, we would respond to all major crimes scenes,
19 process for latent, collect evidence, we would also
20 have the intake from the officers on the road, they
21 would bring evidence to us. We would enter it into
22 the computer. If it needed to go to SLED or needed
23 to go to Charleston, we would transport it and
24 receive it back from those agencies.

25 Q: And when did you take over as the lieutenant over

1 crime scene?

2 A: When I took over I was a corporal at that time. It
3 was in 1993.

4 Q: And, in 1993, when you took over, did you have an
5 opportunity to work with Lieutenant Dale Nevins?

6 A: Yes, he was my lieutenant at the time. I was a
7 detective from 1989 through 1992 and in 1993, I took
8 over crime scene and evidence.

9 Q: And, in 1993, when you took over, who was
10 responsible for evidence in all criminal cases
11 within the sheriff's office?

12 A: Each individual detective --- I handled my own
13 evidence. Lieutenant Nevins handled his. My office
14 was separate from his and I had a storage room in
15 there that I locked my evidence in.

16 Q: Okay. And, in 1993, when Lieutenant Nevins left the
17 sheriff's department, what happened to the evidence
18 he was responsible for?

19 A: At that time, it was all turned over to me.

20 Q: Okay. Do you remember the circumstances surrounding
21 how that transfer took place?

22 A: They did an inventory on the evidence that they had
23 in their room at that time and I went in there and
24 took evidence out and put a check mark by each case.
25 We just went case by case. The names on there. The

1 different individuals. And at that time, it was
2 moved over to another room that the sheriff had
3 provided me as an evidence room.

4 Q: Okay and who had access to that room?

5 A: Me.

6 Q: I'm showing you what's been marked as State's
7 exhibit number 32. Do you recognize this document?

8 A: Yes sir, I do. This is the inventory sheet that I
9 believe Burt Salvely and Lieutenant Nevins filled
10 out together and the check marks is where I was
11 through checking off the evidence to verify that it
12 was there.

13 Q: And did you sign for that evidence?

14 A: Yes, I did on March the 22nd, 1993, Dale Nevins and
15 Burt Salvely signed it and I signed it.

16 Q: Was there any evidence in that inventory that you
17 did related to the **P.R.** **[REDACTED]** case?

18 A: Yes sir, it was.

19 Q: So in 1993, you took over that evidence?

20 A: That's correct.

21 Q: And did that evidence remain in your custody from
22 1993 til you retired in January of this year?

23 A: Yes it did except for a brief time that some of it
24 was sent back to SLED.

25 Q: Okay, let's talk about that. You stated some of the

1 evidence was sent back to SLED. Do you recall the
2 year that the evidence was sent back to SLED?

3 A: 2009.

4 Q: And what was the purpose for sending the evidence
5 back to SLED in 2009?

6 A: Well, DNA had advanced so much further than what it
7 was back in the 80's. I opened up an old case there
8 were several rapes in Summerville at that time and I
9 came across the case file while I was going through
10 the detective's file at one time and I started
11 working on that case. Well, going back into those
12 years, I saw this case here but it was not part of
13 that case I was working on. And we had success with
14 this other case and after that I decided to start
15 going into some of the old evidence and resubmitted
16 it back to SLED.

17 Q: So it's your testimony in 2009, you resubmitted the
18 evidence in the **P.R.** **██████** case to SLED?

19 A: Yes sir, I filled out a SLED form and had it sent to
20 SLED by another officer.

21 Q: So you didn't personally transport it?

22 A: No, I didn't. All I did was open it up, look at it,
23 fill out the paperwork, then we had to itemize the
24 items at that time.

25 Q: Okay, so let's backtrack a little bit prior to 2009

1 but after 1993; the evidence, you mentioned that in
2 1993 when you took over, the new sheriff gave you a
3 room to keep the evidence in. Is that correct?

4 A: That's correct.

5 Q: And tell us about that room. How it was secured,
6 what it looked like.

7 A: It was a room that they had at one time that was a
8 booking room, I believe, for the officers. I got a
9 little storage room and then they had moved me to a
10 larger room so we got that room and had it re-keyed
11 and that's where I started putting the evidence
12 until the time that I transported it to the new
13 sheriff's office.

14 Q: Okay and you talk about having it re-keyed; who had
15 keys to the evidence room back then?

16 A: I did.

17 Q: Okay were you the only person back then?

18 A: That's correct. We had no master, so none of the
19 master keys fit any of the locks.

20 Q: Okay and you also mentioned moving the sheriff's
21 office. When did the sheriff's office move?

22 A: I believe it was May or July of 1994, the following
23 year.

24 Q: And I think it was in the old hospital building?

25 A: That's correct.

1 Q: And where did it move to in '94?

2 A: About two miles away on Highway 78, off of
3 Deming Way.

4 Q: Is that where it's currently located?

5 A: That's where it's currently located.

6 Q: And in that move, how did all the evidence get from
7 the old sheriff's office to the new sheriff's
8 office?

9 A: We had large boxes that we would take the evidence
10 and we would package them in the boxes so that we'd
11 have few boxes to move. It took us about three
12 trips, four trips. I'm trying to remember whether
13 we used one of the county trucks or whether we got a
14 U-Haul; I'm just not sure what I used at that time.

15 Q: And this move to the new sheriff's office, was it
16 something on a whim or was this something that was
17 planned?

18 A: Oh it was planned, it had been in construction for
19 several months, probably over a year.

20 Q: Okay so when you moved the evidence, who was
21 involved in the moving of the evidence or who
22 supervised?

23 A: I was. It was all boxed up into big boxes and then
24 we just moved the big boxes off of the truck and
25 secure the truck, go back and get another box. It

1 didn't take but just a couple days.

2 Q: Now, when you handled this evidence, not only in
3 **P.R. [REDACTED]** case but the others, did you notice
4 any of the evidence that appeared to be tampered
5 with?

6 A: Not to my knowledge, no.

7 Q: Would that have been a big deal if it had been
8 tampered with or appeared to have been tampered
9 with?

10 A: If it wasn't sealed in my presence at that time, We
11 would've gone back over it.

12 Q: So it would've been something you remembered if
13 something was busted open or ...

14 A: That's correct.

15 Q: And do you recall anything being opened?

16 A: No sir. Once they were moved to our office, it
17 stays boxed up for seventeen years or something like
18 that so I never even went back into it until 2007.

19 Q: Alright so let's fast forward, it's moved to the new
20 sheriff's office on Deming Way and then you
21 mentioned in like 2009, you were going through some
22 cases and you decided to send evidence from the
23 **P.R. [REDACTED]** case to SLED to be resubmitted for
24 possible DNA testing.

25 A: Yes, a little bit prior to that, I was working on

1 other cases and I had come across her case and I
2 decided at some point in time, when I finished with
3 this one, then would have resubmitted some of the
4 evidence back to SLED.

5 Q: Okay. At this time, I'm showing you what's been
6 marked as State's exhibit 10. Do you recognize
7 this?

8 A: Yes sir, when we take evidence to SLED at the
9 current date, this is a current SLED envelope, they
10 place it in there whoever is bringing the evidence
11 up and make them sign it and initial the seal at
12 that time. Then it is sent from their agency and
13 then put it into their evidence until they process
14 it and they usually cut the bottom of it off.

15 Q: So, would it be fair to say that sometimes the
16 evidence gets repackaged and repackaged and
17 repackaged?

18 A: Yes, this package on the inside, this is the
19 original package. This is the one where they told
20 me that when I opened this up and saw that test
21 tubes had liquid in it, I called and talked to
22 somebody, I believe it was probably Ken that I
23 talked to because he worked on this case and asked
24 about resubmitting it, he told me just to log it in
25 like I normally would, itemize everything and send

1 it in. Well, with the envelope, I could see these
2 test tubes but the envelopes inside, I couldn't read
3 them. So I opened the bag up and filled out my
4 forms for SLED and resealed the bag.

5 Q: And how do you know you opened the bag and resealed
6 it?

7 A: Well, it's got my initials here. I cut it and it
8 looked like I've got maybe three or four heat seals
9 going across it and I would do that because if the
10 test tube broke, I didn't want it to leak out the
11 bag. It looks like maybe I've got one or two heat
12 seals going across there.

13 Q: And what are your initials?

14 A: E-B-A.

15 Q: And are they on that inner bag?

16 A: Yes they are. They're on the inside of it. This is
17 the bag that I would attach the SLED form to and
18 then when the officer took it up to SLED. And heat
19 sealed it and had the officer sign it.

20 Q: So each person that actually, that actually so to
21 say tampered with the evidence or did anything to
22 open up the evidence, they would heat seal it and
23 initial it?

24 A: Yes.

25 Q: So that you had a record of who actually touched the

1 actual evidence.

2 A: That's correct.

3 Q: And that was the extent of your involvement in this
4 case?

5 A: That's correct.

6 Q: Okay, thank you.

7 Mr. Justis: Please answer any questions Mr. Farley
8 might have for you.

9 The Court: Cross examination?

10 Mr. Farley: Thank you, if it pleases The Court?

11 The Court: Yes.

12 **Mr. Asbell - Cross by Mr. Farley:**

13 Q: You just testified that each detective kept their
14 own evidence at the old sheriff's department, the
15 hospital, isn't that right?

16 A: That's correct.

17 Q: And you kept your evidence in your office and
18 Detective Nevins would've kept his evidence in his
19 closet or in his area, he'd have control of that,
20 Burt Salvely would he keep his in his own area?

21 A: Well, they shared an office there and it had a large
22 room and I believe all of there's was in there. If
23 you'll notice on the left it says Nevins or Burt.

24 Q: Now, you were with them when they did this inventory
25 that the State has marked as exhibit 32. Is that

1 correct?

2 A: I don't remember if I was in the room when they were
3 actually doing the list but I checked it off as I
4 saw each piece of evidence when I went back in there
5 to verify it was there.

6 Mr. Farley: May I approach the witness?

7 The Court: You may.

8 Q: I'm going to hand you the document you just
9 identified. Would you look on page 3 of 5 for me?

10 A: That's correct.

11 Q: And look down at item number 19.

12 A: Yes sir.

13 Q: Can you describe to me what was listed as item 19?

14 A: It was a box of miscellaneous envelopes and it lists
15 several different people's names.

16 Q: How many people's names, could you read it?

17 A: There's eight different names, I guess.

18 Q: Is it typical to mix up evidence with different
19 people's names?

20 A: Well, it's all sealed separately. This was probably
21 in one box. But it was in individual envelopes.

22 Q: And the only thing indicated on there is envelopes
23 right?

24 A: Yes sir.

25 Q: There's not mention of bag with clothes or anything

1 like that?

2 A: I saw that; I don't know if that was an error on his
3 part or not. I mean, I took evidence from them.

4 Q: But have you reviewed this case in light of this
5 trial? Have you looked over the case file and
6 reports and the chain that you did in preparation
7 for your testimony today?

8 A: As far as the clothing, I've seen the blue bag with
9 the clothes in it. It's got her name on it.

10 Q: And you haven't found anywhere where you've
11 documented that have you?

12 A: No sir. Just on this right here. When I saw it, I
13 checked it off because it was verified that it was
14 there.

15 Q: Once Detective Nevins retired for the first time,
16 you took everything that had been in Major Moultrie
17 and his evidence locker, the old bathroom, and
18 brought it to what was then the old booking room.
19 Is that right?

20 A: That's correct.

21 Q: And you testified that it sat there for about a
22 year. Correct?

23 A: About a year.

24 Q: And then you moved right?

25 A: Yes sir.

1 Q: When you moved the stuff from the old bathroom to
2 the old booking room, you merged your evidence and
3 that evidence together. Is that correct.

4 A: I think, I still had my same office so my evidence
5 was probably still secured in my office.

6 Q: But prior to that stuff coming into your possession,
7 you becoming the sole evidence custodian, you had
8 stuff in your office and then brought this other
9 stuff to your office.

10 A: Not to my office to ...

11 Q: To the booking room.

12 A: Correct.

13 Q: Two sets of evidence were merged, were put in the
14 same room.

15 A: At some point in time, yeah.

16 Q: Now when you go to move, the evidence area is a lot
17 different isn't it? You have a space devoted
18 specifically towards holding evidence.

19 A: That's correct.

20 Q: And you mentioned that you moved in several trips;
21 who helped you move?

22 A: I don't even remember that time. It was probably
23 one of the detectives who was riding with me. If I
24 had anybody riding with me. It was real simple to
25 move. I put it in the big boxes, about three foot

1 deep. I would put the cases in there, package it,
2 seal it, and move it over.

3 Q: You personally take it out of that room, the old
4 booking room, the storage room, in the box and set
5 it in whatever vehicle you used?

6 A: Correct.

7 Q: And you locked the door each time between going in
8 and out.

9 A: Yes sir.

10 Q: And you carried the boxes yourself? No one assisted
11 you with it?

12 A: I don't remember anybody helping me but there
13 could've been. I mean I just don't remember. That
14 was a long time ago.

15 Q: Could it have been a trustee or ...

16 A: No.

17 Q: It would've been somebody with the sheriff's office?

18 A: It would've been, if anybody was helping me, it
19 would've been one of the detectives.

20 Q: Did you make a record of everything that you moved
21 from the hospital after you became sole evidence
22 custodian to the new sheriff's office?

23 A: I believe I stated previously that when I boxed that
24 stuff up, it was from back in the 80's, it was nine,
25 ten years old, I left those boxes sealed for I don't

1 know how many years in the new evidence room. They
2 were never reopened unless I had a case to go into
3 and look for then I would go in there and open.

4 Q: So there's no chain that actually says what each and
5 every item was that was transported from the
6 hospital to the new sheriff's office?

7 A: No, I just checked off everything on the evidence as
8 it came in. That's all I was concerned with at that
9 time was the case files.

10 Mr. Farley: May I have a moment?

11 The Court: Okay.

12 Mr. Farley: May I approach the witness?

13 The Court: You may.

14 **(Defendant's Exhibit Number 2 for ID)**

15 Q: I'm going to show you what's been marked as
16 defendant's 2 for identification. Could you take a
17 look at that please?

18 A: This is the SLED form that I filled out. This was
19 the login form for SLED that I filled out when I
20 opened that envelope.

21 Q: And that's a form that you generated?

22 A: Yes.

23 Mr. Farley: May I approach again, Your Honor?

24 The Court: You may.

25 Q: Can you tell me what is listed as item number seven

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1 on this form that you generated?

2 A: That was probably one of the test tubes and oral
3 wash.

4 Q: Oral wash was written on that particular item.

5 A: Yeah, that was probably one of the vials. That's
6 what the other items prior to that are, the vials.

7 Mr. Farley: Thank you. Judge, I don't have
8 anything else.

9 The Court: Redirect.

10 Mr. Justis: None, Your Honor.

11 The Court: Very well. Is this witness free to
12 leave?

13 Mr. Justis: He is, Your Honor.

14 The Court: Any objections?

15 Mr. Farley: No, Judge.

16 The Court: Very well. Call your next witness.

17 Mr. Justis: The State calls Rebecca Parker.

18 Deputy Clerk: Raise your right hand, state your
19 full name for the record.

20 Witness: Rebecca Parker.

21 Deputy Clerk: Do you solemnly swear or affirm to
22 tell the truth, the whole truth, and nothing but the
23 truth?

24 Ms. Parker: Yes ma'am.

25 The Court: Your witness.

1 Mr. Justis: Thank you, Your Honor.

2 **Ms. Parker - Examination by Mr. Justis:**

3 Q: Ms. Parker, where do you work?

4 A: I'm currently a stay at home mom.

5 Q: Okay and where did you work back in 2009?

6 A: I was a Detective for the Dorchester County
7 Sheriff's Office.

8 Q: And how long have you been in law enforcement?

9 A: Approximately six years.

10 Q: Okay and back in 2009, what was your position?

11 A: I was a detective.

12 Q: Okay and did you have an opportunity to become
13 involved with a rape case, an old rape case where
14 the victim was **P.R.** **██████████**?

15 A: Yes sir, I did.

16 Q: And how did you become involved in that case?

17 A: I had covered for a detective for a detective that
18 had been deployed so they asked me to take over his
19 position while he was deployed for a year.

20 Q: Okay and did you do that?

21 A: Yes sir, I did.

22 Q: And how did you come across Ms. **P.R.** **██████████** case?

23 A: The detective that had been deployed had some case
24 files that were then transferred over to me so I was
25 going through his case files at the time and came

1 upon that case.

2 Q: And did you have an opportunity to come across a
3 request from SLED?

4 A: Yes sir, I did. We were going through that
5 particular case file and did see a request from
6 SLED.

7 Q: And did SLED request some DNA samples from a Herbert
8 Leroy Holmes?

9 A: Yes sir, they did.

10 Q: And was that request dated in late 2009?

11 A: Yes sir, I believe that's the date.

12 Q: Now after seeing that request from SLED to obtain
13 some DNA samples from a Herbert Leroy Holmes, what
14 did you do next?

15 A: Next, I had to locate Mr. Holmes. Once I located
16 Mr. Holmes, I was able to make contact with Mr.
17 Holmes at the sheriff's office, a search warrant was
18 obtained for Mr. Holmes's DNA. From there, crime
19 scene came over and they contacted Mr. Holmes as
20 well and they were able to obtain the buccal swabs
21 for the request from SLED.

22 Q: Now when you made contact or you located Mr. Herbert
23 Holmes, do you see the Herbert Holmes in the
24 courtroom today that you located?

25 A: Yes sir, it's the defendant.

1 Mr. Justis: Please let the record reflect that
2 she's identified the Herbert Holmes she investigated to
3 be the Herbert Holmes that's the defendant.

4 The Court: Alright.

5 Q: Now, you stated at that point after you found Mr.
6 Holmes, made contact with him, you obtained a search
7 warrant?

8 A: Yes sir.

9 Q: And you mentioned for buccal swabs; what are buccal
10 swabs?

11 A: Actually, crime scene is the one that does the
12 search warrant on those. Basically, it's a little
13 q-tip that I observed them swab on the inside of his
14 mouth. But crime scene's the one that actually
15 executes that.

16 Q: Okay and after that, since you didn't actually
17 perform that part of the test, after that was
18 performed, did you have any other involvement with
19 the case?

20 A: Yes sir, I obtained the actual arrest warrants for
21 Mr. Holmes as well.

22 Q: Okay. And those would be the arrest warrants for
23 kidnaping and criminal sexual conduct?

24 A: Yes sir.

25 Q: Okay. Did you also have an opportunity to search

1 for Ms. **P.R.**?

2 A: Yes sir, I did make contact with her via the phone.
3 She was not living in the state at the time.

4 Q: Okay and did you inform her of the developments in
5 the case?

6 A: Yes sir, I did.

7 Mr. Justis: Beg The Court's indulgence.

8 The Court: Alright.

9 Mr. Justis: Was that the extent of your involvement
10 in this case?

11 A: Yes sir.

12 Q: Okay, thank you.

13 Mr. Justis: Please answer any questions Mr. Farley
14 might have for you.

15 The Court: Cross-examination.

16 Mr. Farley: No questions, Your Honor.

17 The Court: And is this witness free to leave.

18 Mr. Justis: She is, Your Honor.

19 The Court: Any objections?

20 Mr. Farley: No Judge.

21 The Court: You're free to go. Call your next
22 witness please.

23 Mr. Giese: The State calls Derek Sauro.

24 Deputy Clerk: Raise your right hand, state your
25 full name for the record.

1 Witness: Derek Sauro.

2 Deputy Clerk: Please spell your last name.

3 Mr. Sauro: S-A-U-R-O.

4 Deputy Clerk: Do you solemnly swear or affirm to
5 tell the truth, the whole truth, and nothing but the
6 truth?

7 Mr. Sauro: I do ma'am.

8 Deputy Clerk: Thank you.

9 The Court: Your witness.

10 Mr. Giese: Thank you, Your Honor, may it please The
11 Court?

12 The Court: Yes sir.

13 **Mr. Sauro - Examination by Mr. Giese:**

14 Q: Mr. Sauro, where do you work?

15 A: I work at the Dorchester County Sheriff's Office.

16 Q: And how long have you worked there?

17 A: Approximately five years.

18 Q: And what do you do there?

19 A: I work in Dorchester County crime scene unit.

20 Q: And what are some of your duties involved in that?

21 A: We handle evidence collection and we work and
22 process crime scenes, handle the majority of the
23 evidence that comes in and out. We do marijuana
24 testing, just miscellaneous stuff.

25 Q: Okay. Did you have the opportunity to become

1 involved in a case involving Herbert Holmes?

2 A: Yes I did, sir.

3 Q: And how did you become involved?

4 A: I was requested to collect two buccal swabs from
5 Herbert Holmes.

6 Q: What is a buccal swab?

7 A: A buccal swab is essentially a long q-tip, it's
8 almost like a cotton swab, and it has plastic tips
9 on the end as covers and basically rub it on the
10 inside cheek of the mouth and there's buccal cells
11 that are present on the inside portion of the cheek
12 of your mouth and it's a good source for DNA. So
13 when you collect that sample and then send it off
14 for analysis.

15 Q: Okay and what do you do after you collect the
16 sample?

17 A: It's sealed up and in our case it goes to SLED,
18 South Carolina Law Enforcement Division, for
19 analysis.

20 Q: Do you dry it out?

21 A: Yes sir..

22 Q: Explain what that means.

23 A: If you were to take something moist and leave it
24 moist and seal it off, essentially it's going to
25 mold or it's going to become contaminated so what we

1 do is we let it air dry inside its container, we use
2 paper, which is mostly an envelope, and we let it
3 air dry through the envelope so there's no chance of
4 contamination and then we seal it in plastic.
5 That's what we did at the time.

6 Q: Where would it dry out? Like in your office?

7 A: No sir. Inside our lab, we have a --- our crime
8 scene unit has a lab that only crime scene personnel
9 have access to.

10 Q: Okay and how do you ensure there's no tampering?

11 A: We normally initial --- are you talking about ...

12 Q: When it's drying out, just when it's drying out.

13 A: While it's drying out, it's basically --- there's
14 only four, well, at the time, five people that had
15 access to.

16 Q: Okay and you mentioned --- what do you do when
17 they're finished drying out?

18 A: You seal it off. Within, it's a envelope and you
19 take plastic and you seal it on both sides so it's
20 completely sealed altogether, you initial it so
21 there's no question as to whether or not that bag
22 had been tampered with while in transit to the South
23 Carolina Law Enforcement Division. So then once
24 it's sealed, we stick it inside what we call a SLED
25 bin and that's where our cases that are pending sit

1 until they transport it up there.

2 Mr. Giese: Okay just one moment, Your Honor.

3 The Court: Yes.

4 Mr. Giese: May I approach the witness?

5 The Court: You may.

6 Q: I'm showing you what's marked as State's exhibit 12.

7 A: Yes sir.

8 Q: Do you recognize that?

9 A: I do, sir.

10 Q: And how do you recognize it?

11 A: This is the envelope that I used in the buccal
12 swabs.

13 Q: The buccal swabs, whose buccal swabs are those?

14 A: In this case, it would be Herbert Holmes.

15 Q: How do you know that?

16 A: Because, can I see that.

17 Mr, Giese: May I approach the witness again?

18 The Court: Yes.

19 A: It would be associated with that lab case number,
20 SLED lab number. So this SLED lab number would be
21 associated with the Herbert Holmes case.

22 Q: Okay. Now you said you put them in the SLED bin and
23 then they're transported up to SLED.

24 A: Yes sir.

25 Q: Okay, now did you document this collection?

1 A: I did on a chain of custody, yes sir.

2 Q: Okay I'm going to show you what is marked as State's
3 exhibit 27. What is that?

4 A: This is a Dorchester County Sheriff's Office chain
5 of custody.

6 Q: Okay and is that a normal form that you would fill
7 out to document a collection?

8 A: Yes sir, it is what we use to document evidence.

9 Mr. Giese: Beg the Court's indulgence.

10 The Court: Yes.

11 Q: Is that what you use to document the evidence in
12 this case?

13 A: Yes sir.

14 Q: And once you put it in the SLED bin, was that the
15 extent of your involvement in this case?

16 A: Yes sir.

17 Mr. Giese: No further questions, Your Honor.

18 The Court: Very well. Cross-examination?

19 Mr. Farley: No questions, Judge.

20 The Court: Very well. Is this witness free to
21 leave?

22 Mr. Giese: Yes ma'am.

23 The Court: Any objection?

24 Mr. Farley: No, Judge.

25 The Court: Very well, you're free to go. Call your

1 next witness.

2 Mr. Giese: The State will call Buster Edwards.

3 Deputy Clerk: Please raise your right hand. State
4 your full name for the record.

5 Witness: Buster Edwards.

6 Deputy Clerk: Do you solemnly swear or affirm to
7 tell the truth, the whole truth, and nothing but the
8 truth?

9 Mr. Edwards: Yes ma'am, I do.

10 Deputy Clerk: Thank you.

11 The Court: Your witness.

12 Mr. Giese: Thank you Your Honor, may it please The
13 Court?

14 The Court: Yes.

15 **Mr. Edwards - Examination by Mr. Giese:**

16 Q: Mr. Edwards, where do you work?

17 A: Dorchester County Sheriff's Office, sir.

18 Q: In what capacity?

19 A: Evidence technician, sir.

20 Q: Do you have any prior law enforcement experience?

21 A: Yes sir, I do.

22 Q: What is that experience?

23 A: I'm 27 years retired from SLED.

24 Q: What is SLED?

25 A: South Carolina Law Enforcement Division, sir.

1 Q: Okay and as an evidence technician, what are some of
2 your duties?

3 A: Primarily my duties now sir is to collect, log in,
4 transport, and return evidence from and to labs.

5 Q: At SLED?

6 A: Correct, sir.

7 Q: Okay did you have the opportunity to handle any
8 evidence from a case with Herbert Holmes?

9 A: I'm not familiar with the name sir.

10 Q: That's okay.

11 Mr. Giese: Just one moment, Your Honor. May I
12 approach the witness?

13 The Court: You May.

14 Q: I'm showing you what's marked as State's exhibit
15 number 10.

16 A: Okay.

17 Q: What is that?

18 A: This is a piece of evidence that was transported to
19 SLED by me.

20 Q: And how do you know that?

21 A: My signature's on the evidence, sir.

22 Q: Okay and that's standard procedure?

23 A: That's correct, sir.

24 Q: When you got that evidence, did it appear to be
25 open?

1 A: Negative, sir.

2 Q: Did you open it?

3 A: Negative, sir, I did not.

4 Q: And was it sealed when you turned it over to SLED?

5 A: Yes sir, it was.

6 Q: And if it wasn't sealed, you would notice?

7 A: Yes sir, would not accept it if it wasn't sealed.

8 Q: Okay. When you get to SLED, how do they log it in?

9 A: The evidence technician at SLED logs it in to the
10 computer, they make sure that --- actually they put
11 it in a bag and they seal it, heat seal it, and my
12 signature is placed on that seal that they placed on
13 it at that time sir when they take it in.

14 Q: Is your signature on the seal on that bag?

15 A: I initialed and the date that I took it up there is
16 on the bag sir.

17 Q: Okay and at some point subsequent to taking this
18 item to SLED, did you also retrieve it?

19 A: Yes sir, I did.

20 Q: And how do you know that?

21 A: Because it --- when the evidence is complete, when
22 they complete the analysis of the evidence, it's my
23 job also to pick it up and bring it back.

24 Q: Okay and when you picked it up, did it appear to be
25 open?

1 A: Negative, sir.

2 Q: And did you open it?

3 A: Negative sir, I did not.

4 Q: And where did you deposit it once you picked it up?

5 A: It's placed in a designated location when I brought
6 it back from SLED.

7 Q: Okay and that's normal procedure.

8 A: It is sir. It's placed there until court and the
9 designated person picks it up there for court.

10 Q: Okay.

11 Mr. Giese: May I approach the witness again, Your
12 Honor?

13 The Court: You certainly may.

14 Q: Mr. Edwards I'm now showing you what's been marked
15 as State's exhibit 12. Do you recognize that?

16 A: Yes sir, I do.

17 Q: And what is that?

18 A: This is evidence that was taken to SLED by me sir.

19 Q: Okay and how can you tell you transported it up to
20 SLED?

21 A: My signature is on it, sir.

22 Q: Okay and where did you get that evidence?

23 A: It was picked up at SLED by me and returned to
24 Dorchester County Sheriff's Office.

25 Q: Okay. And when you picked it up, did it appear to

1 be open?

2 A: Negative sir.

3 Q: And did you open it?

4 A: Negative sir, I did not.

5 Q: Where did you deposit it?

6 A: It was placed in a location, give a location,
7 entered into a computer and given a location by
8 myself.

9 Mr. Giese: May I approach one more time Your Honor?

10 The Court: You may.

11 Mr. Giese: Just one moment, Your Honor.

12 The Court: Alright.

13 Q: Was that the extent of your involvement?

14 A: That's it, sir.

15 Q: Thank you.

16 Mr. Giese: No further questions. Please answer any
17 questions Mr. Farley has.

18 A: Yes sir.

19 The Court: Cross-examination Mr. Chisolm.

20 Mr. Chisolm: Thank you, Your Honor.

21 The Court: Yes.

22 Mr. Chisolm: May it please The Court?

23 The Court: Yes.

24 **Mr. Edwards - Cross-Examination by Mr. Chisolm:**

25 Q: Mr. Edwards, you said you are an evidence.

1 technician, is that right?

2 A: That's correct, sir.

3 Q: And this was after 27 years at SLED?

4 A: That's correct, sir.

5 Q: How long have you been an evidence technician?

6 A: Five years with Dorchester County sir.

7 Q: Five years? How many cases would you say you've
8 had? How many items of evidence, let's start there.

9 A: As far as evidence goes, sir?

10 Q: Yes.

11 A: Thousands.

12 Q: Thousands. So when you get a case like this, when
13 you're looking over items like this, you're looking
14 at your initials, are you going by memory or are you
15 basically going by what's written on the packaging?

16 A: I'm going by what's written on the packaging, sir.

17 Q: You handle thousands of items so it's not a
18 situation where you're going to remember everything
19 you handle. Is that correct?

20 A: That's correct, sir.

21 Q: That's why you document everything.

22 A: That's correct, sir.

23 Q: Now, you've been there --- I'm sorry you just told
24 me, seven years was it?

25 A: Five, at least five years, sir, with Dorchester

1 County.

2 Q: Five years. The five years you've been there,
3 policies change at all?

4 A: Negative, sir.

5 Q: Evidence is stored the same way, transported the
6 same way, everything's the same?

7 A: As it was for five years.

8 Q: Very good.

9 Mr. Chisolm: Beg The Court's indulgence?

10 The Court: Yes sir.

11 Mr. Chisolm: May I approach, Your Honor?

12 The Court: Yes.

13 Q: I'm going to show you what's been marked as defense
14 exhibit number 2. Do you recognize this form?

15 A: Yes sir.

16 Q: And I believe on the second page there, it's got
17 your name and possibly signature on there. Is that
18 correct?

19 A: That's correct, sir.

20 Q: Okay. And would that indicate that this is a case
21 that you handled the evidence, you transported, is
22 that correct?

23 A: Either transported or picked up, yes sir. My
24 signature is here.

25 Q: And this form, I believe, is it titled forensic

1 services request, is that correct?

2 A: That's correct sir.

3 Q: Would that indicate that this was evidence you were
4 taking to SLED?

5 A: That's correct, sir.

6 Q: The evidence that's listed there, would that ---
7 would those items --- who would collect those for
8 transportation?

9 A: Collect them --- one of the crime scene investigator
10 possibly, sir.

11 Q: Do you ever do that yourself?

12 A: No sir, I do not.

13 Q: So the items, and there's several there. How many
14 items does it indicate were taken up to -

15 A: This would be 13 items, sir.

16 Q: Thirteen items, is there anyone that would check to
17 make sure that the items are correct as listed, that
18 they're actually in existence, that kind of thing?

19 A: No sir, once it's packed, the person that collects
20 the item, they pack it in a container and it goes to
21 SLED.

22 Q: So would you basically be handed a pile of evidence,
23 a form along those lines, and you would just run
24 them up the road? Is that basically what you're
25 saying?

1 A: Negative sir. The evidence would be sealed in a
2 container.

3 Q: But that's not something you would check?

4 A: Negative, sir.

5 Q: You wouldn't cross check what's on the list?

6 A: Negative, sir.

7 Q: Okay. In your experience, has any evidence been
8 lost in the evidence room?

9 A: Negative, sir.

10 Q: The five years you've been there, you're not aware
11 of anything going missing?

12 A: Negative, sir.

13 Q: Nothing misplaced?

14 A: Negative, sir.

15 Q: Items that are sent up the road or in evidence?

16 A: Negative, sir.

17 Q: Thank you.

18 Mr. Chisolm: Beg The Court's indulgence.

19 The Court: Yes.

20 Mr. Chisolm: No further questions, Your Honor.

21 Thank you.

22 The Court: Alright, redirect?

23 Mr. Justis: Nothing from the State, Your Honor.

24 The Court: Alright. And is this witness free to
25 leave?

1 Mr. Justis: He is, Your Honor.

2 The Court: Any objection?

3 Mr. Chisolm: No objection, Your Honor.

4 The Court: Call your next witness please.

5 Mr. Justis: Your Honor, I believe that would be it
6 for today. The next two witnesses are actually coming
7 from SLED in Columbia.

8 The Court: Well it's a perfect time.

9 Mr. Justis: And we have them scheduled to come
10 tomorrow anyway.

11 The Court: Very well, very well that will work out
12 really nicely. Thank you Mr. Justice. Ladies and
13 gentlemen, let me tell you what's going to happen. When
14 you go home, remember, put it on the judge. I don't want
15 anybody upset with my jurors when they say I can't talk
16 about this case. My judge told me that. Put it on the
17 judge. The same is true for your employer. Tell them
18 you can't go to work tonight. You've to rest. All jurors
19 have to get rest. So when you go home and people want
20 you to cook and clean, just tell them you can't do it.
21 Alright, just be mindful that you cannot discuss this
22 matter or allow anyone to discuss it with you. No
23 research, no going on the internet, no linking up, no
24 face book, no face ... what is it? My-space. I don't
25 even know what they are called anymore. But just social

1 media I guess is the sophisticated way so that people
2 don't know that you don't know what in the world you are
3 talking about. No social media, no research. You must
4 receive all of the information from which you are to make
5 up your minds while court is in session. Ladies and
6 gentlemen, I do not believe that there is any press about
7 this particular matter. I don't think there is but in
8 abundance of precaution or in the event that there is,
9 please do not listen to anything about this matter on the
10 radio, television, or the internet or the newspaper. The
11 reason that I say it so many times is that it really is
12 critical. I believe that will conclude my instructions
13 for you. We're going to continue in the morning at 9:30.
14 Ladies and gentlemen ...

15 Mr. Farley: Judge, may we approach?

16 The Court: There is a matter that I need to tend
17 to. We are going to start a little bit later tomorrow.
18 We're going to start at noon, we're going to start at
19 noon so we still have snacks here for you. We're still
20 going to accomplish what we're going to accomplish and
21 that will allow me to do what I need to do in the
22 morning. So we're going to start tomorrow at 12. Please
23 arrive just a few minutes before 12 so that we can start
24 right at 12. We will have some snacks. We'll have a
25 little light lunch here for you tomorrow. Just a few

1 minutes before 12. Thank you so much.

2 (Jury excused for the evening)

3 The Court: Alright now, anything from the State
4 before we take our leave?

5 Mr. Justis: No, Your Honor.

6 The Court: From the defense?

7 Mr. Farley: No, Your Honor.

8 The Court: Here's what I just want to go over with
9 you all. Again, you all know we've got a charge, of
10 course, we are putting them together and I'm going to
11 have an opportunity to share it with you all tomorrow.
12 But if there's anything unusual that you want charge-
13 wise, please let me know and pass it up. Have a good
14 evening.

15 **(4/24 p.m.)**

16 The Court: Bring us the jury.

17 (Jury enters courtroom)

18 The Court: Good afternoon. Your witness

19 Mr. Giese: We call Stephanie Stanley.

20 Deputy Clerk: Please raise your right hand. State
21 your full name for the record.

22 Witness: Stephanie Stanley

23 Deputy Clerk: Do you solemnly swear or affirm to
24 tell the truth, the whole truth, and nothing but the
25 truth?

1 Stephanie Stanley: I do.

2 Deputy Clerk: Thank you.

3 The Court: Your witness.

4 Mr. Giese: Thank you Your Honor, may it please the
5 Court?

6 The Court: Yes sir.

7 **Ms. Stanley - Examination by Mr. Giese:**

8 Q: Ms. Stanley where do you work?

9 A: I work at the South Carolina Law Enforcement
10 Division which is commonly referred to as SLED.

11 Q: And how long have you worked there?

12 A: I've been employed with SLED since 2005.

13 Q: And what is your job there?

14 A: I'm a Forensic Scientist or a DNA Analyst assigned
15 to the DNA case work for SLED.

16 Q: And what are some of the duties involved in that
17 job?

18 A: I'm responsible for receiving evidence in the
19 criminal cases across the State of South Carolina,
20 examining those for biological stains, attempting to
21 develop a DNA profile from evidence and comparing those
22 with DNA profile standards in order to see if it match. I
23 run reports based on my findings, and testify in court,
24 if necessary.

25 Mr. Giese: May I approach the witness, Your Honor?

1 The Court: You may.

2 Q: I'm showing you what is marked as State's Exhibit
3 #10. Do you recognize that?

4 A: Yes I do.

5 Q: And how do you recognize that?

6 A: When evidence is submitted to the SLED laboratory,
7 it is given a case # and this is my case #L092913
8 that is associated with this case. I also recognize
9 this based on the seal where I have entered the
10 evidence and the date.

11 Q: Okay, so what did you do with this?

12 A: This case was assigned to me. I opened the evidence
13 and noticed another analysts signature on the
14 evidence items and I would have sealed it in
15 preparation to give to him.

16 Q: Okay and how do you ensure that has been no
17 tampering with that item?

18 A: When evidence is submitted to SLED it is in this
19 heat sealed package. What I'm looking for before I
20 ever begin a case is to make sure that the package
21 is sealed and that it is sealed in our evidence log
22 in department by the agency or the person bringing
23 in the evidence to SLED so I want to make sure it
24 doesn't appeared tampered with.

25 Q: And was this package sealed?

1 A: Yes, it was.

2 Mr. Giese: Just a moment, Your Honor

3 Q: You said that your signature is on that package.

4 Why is it on there?

5 A: Anytime you cut into sealed pouch, when you reseal

6 it you would initial the areas you have cut into.

7 Q: How come you did it twice in this case?

8 A: In this case I opened on this date when I would have

9 began the examination, I resealed it and opened it

10 again to show the other analyst that was his

11 initials on the evidence.

12 Q: Okay and was that the extent of your involvement?

13 A: Yes, it was.

14 Q: Okay. Thank you Your Honor no further questions.

15 The Court: Cross examination.

16 **Ms. Stanley - Cross Examination by Mr. Farley**

17 Q: Again welcome to St. George.

18 A: Thank you.

19 Q: I only have a few questions for you. Who actually

20 physically did you get that material from?

21 A: Can I refer to my chain of custody?

22 Q: Please

23 A: I retrieved it from what is known as DNA

24 storage drawer 4B. This is a secure location

25 within our DNA laboratory.

1 Q: And who would have placed it in that storage drawer?

2 A: Again, referring to my chain of custody. It was
3 placed there by analyst Jennifer Creighton(sp).

4 Q: And where would she have gotten that from?

5 A: She retrieved that from the DNA refrigerator. A
6 secure location in our DNA laboratory.

7 Q: And as I can tell you have a detailed chain of
8 custody is that right?

9 A: Yes sir.

10 Q: That tells every person that handled that material
11 from the time it got to SLED until the time it
12 leaves SLED, is that right?

13 Q: Yes we have an internal chain that tracks each
14 evidence item or package from when it's logged into
15 our laboratory to the time it is returned to the
16 submitting agency.

17 Q: It's pretty important that you keep track of where
18 these items are isn't it?

19 A: Yes it is.

20 Q: And why is that?

21 A: To uphold the chain of custody for report purposes
22 so that we can ensure that we have had the evidence
23 secured while it was in SLED's possession.

24 Q: What would happen if you, what would be a possible
25 ramification of a missing link in that?

1 A: I don't know legal wise. Our chain is verified
2 before it is issued so everybody would have had a
3 chance to look at their part of the chain to make
4 sure that it was correct. If a person is no longer
5 with th agency or can not come to trial I do not
6 know legally wise.

7 Q: Would you feel comfortable, would you be able to
8 testify in a court of law in front of a jury, if the
9 chain of custody before you was messed up and/or the
10 chain of custody after you was messed up?

11 A: What I'm checking is my part of the chain is to make
12 sure what I did reflected on the chain of custody
13 with the evidence. The other analyst and
14 technicians would have check their own part of the
15 chain of custody.

16 Q: So you actually recall seeing that package and the
17 things inside of that package just as they are
18 today?

19 A: I recall seeing the package based on my initials.
20 As far as the contents in the package I did not do
21 inventory.

22 Q: But they didn't come in envelopes like this manila
23 envelopes, pieces of paper, anything else, that's
24 how they were packaged?

25 A: When I received the items they were packaged in this

1 heat sealed pouch.

2 Q: So just to recap, a very important part of your job
3 is keeping track of where the stuff came from and
4 where it went and the process and what you actually
5 did with it. Is that correct?

6 A: Yes sir.

7 The Court: Redirect?

8 Mr. Giese: No, Your Honor.

9 The Court: Alright. Is this witness free to
10 leave?

11 Mr. Giese: She is, Your Honor.

12 Mr. Farley: Yes, Judge.

13 The Court: Okay you are free to leave. Call
14 your next witness.

15 Mr. Justis: At this time the State calls
16 Kenneth Bogan.

17 Deputy Clerk: Please raise your right hand.
18 State your full name for the record.

19 Witness: My name is Kenneth L. Bogan. My last
20 name is spelled B.O.G.A.N.

21 Deputy Clerk: Do you solemnly swear or affirm
22 to tell the truth, the whole truth, and nothing but the
23 truth?

24 Kenneth Bogan: I do.

25 Deputy Clerk: Thank you.

1 The Court: Your witness.

2 Mr. Giese: Thank you Your Honor, may it please

3 The Court?

4 The Court: Yes sir.

5 Mr. Bogan - Examination by Mr. Giese:

6 Q: Kenneth can you please tell us where you work?

7 A: I am employed with the South Carolina Law
8 Enforcement Division, commonly known as SLED

9 Q: And how long have you worked at SLED?

10 A: Since January of 1984. A little over 29 years.

11 Q: And what job titles have you held at the South
12 Carolina Law Enforcement Division?

13 A: Well primarily I'm considered a SLED agent. My
14 speciality is in forensic serology. I began my
15 career in Forensic Serology in 1984. Another title
16 that I've had is DNA Analyst, Forensic DNA Analyst.
17 One other title that I had and probably not
18 pertinent is I acted as team leader in the
19 laboratory

20 Q: And when you say Serology, what is Serology?

21 A: Serology is a science which deals with the
22 identification of body fluids such as blood, semen
23 and saliva. Serology also attempts to characterize
24 body fluid stains to determine such things as blood
25 type or other characteristics.

1 Q: And what were some of your job responsibilities at
2 SLED?

3 A: For my entire career?

4 Q: Well, specifically lets start in 1985 in Serology.
5 What would you actually do?

6 A: My job in the early 1980's was to work as a Forensic
7 Serologist in that capacity I received evidence from
8 law enforcement agencies throughout the State of
9 South Carolina. I examined that evidence for body
10 fluid stains if I found body fluid stains I would
11 attempt to identify that the stain was. Is the
12 stain blood? Is the stain human blood? Was there
13 semen present? Those types of things. Then I would
14 report my results.

15 Q: And when you became a DNA Analyst, what were some of
16 your job duties as a DNA Analyst?

17 A: DNA Analysts is pretty much the same as Serology
18 except you are looking for different substance in
19 those evidence stains. There are still biological
20 stains. Body fluid stains such as blood, semen and
21 saliva. My duties was to identify those stains and
22 determine what body fluid was present and then
23 extract DNA from those stains and attempt to create
24 or develop, a DNA profile from the stains and then
25 compare the DNA profile to known reference standards

1 that were submitted, and generate reports and
2 testify to my results.

3 Q: And what education do you have?

4 A: I received a Bachelors of Science Degree from the
5 University of Central Florida in 1978. My degree is
6 in Medical Technology. Medical Technology is a field
7 that deals with diagnostic medicine. I worked in a
8 hospital laboratory for approximately six years
9 before joining the staff at SLED. Medical
10 Technology is dealing with diagnostic testing and my
11 speciality there was in hematology which is the
12 study of blood. After being hired at SLED as a
13 Forensic Serologist I went through a 6 month
14 training course in Forensic Serology at SLED by
15 court qualified analyst. I also attended the Federal
16 Bureau of Investigations School of Basic Forensic
17 Serology which I received training there. At about
18 1986 I attend the Serological Research Institute in
19 California in advanced Serology techniques. In
20 1990, I attended the FBI's school for DNA Analyst
21 and I continued education and training in DNA since
22 1990.

23 Q: Have you ever testified in court before?

24 A: Yes, I have.

25 Q: And how many times have you testified in court

1 before

2 A: I've been qualified to testify in Forensic Serology
3 approximately 150 times. And as a forensic DNA
4 analysis approximately 75 times.

5 Q: And is that about how many times you have been
6 qualified as an expert in those fields?

7 A: Yes.

8 Mr. Justis: At this time, Your Honor, the
9 State would offer Mr. Kenneth Bogan as both an expert in
10 Serology and DNA Analysis.

11 The Court: Alright is there any voir dire.

12 Mr. Farley: No Your Honor. But we would object
13 on the foundation.

14 The Court: Alright. Very well. Ladies and
15 gentleman this is a matter that I must attend to so I
16 will ask you to step to your jury room and I will ask you
17 not to discuss this matter or allow anyone to discuss
18 this with you. We will be with you shortly.

19 (Jury excused from courtroom)

20 The Court: Alright. Yes sir.

21 Mr. Farley: I just wanted to be certain as to
22 what he will be qualified as an expert in and what
23 perimeters are going to be set. There's a lot of stuff
24 that I believe the state is going to try to tidy up that
25 happened earlier in the trial regarding other types of

1 police investigations. If he is being qualified as for
2 just for the things he did, the serology back in 1984 and
3 the DNA stuff in 1988, 2009, 2011 then I would think that
4 he is qualified but that's the perimeter that his
5 expertise is required to.

6 The Court: Okay.

7 Mr. Justis: And, Your Honor, as far as experts
8 are able to give opinions and the only opinions we will
9 elicit from him are his opinions on serology and DNA
10 Analyst. Any other testimony he has as far as procedures
11 they will follow or other paperwork would not be an
12 expert opinion he would be given but will be facts he
13 knows to be true based on his experience of those facts.

14 The Court: I don't know what you are telling
15 me.

16 Mr. Justis: I think what Mr Farley is alluding
17 to is some of the actual chain of paperwork and his
18 experience with that chain paperwork, the chain of
19 custody paperwork, he's going to testify to the chain of
20 custody matters because he is in the chain of custody, he
21 can testify to what he did what he knows about the chain
22 of custody. He's not giving opinions, he's giving fact
23 of what he knows. So that's not expert opinion. I think
24 that's what he's afraid, that his expert, the facts that
25 he's qualified as an expert, if he's qualified as an

1 expert that going to have some undue influence in his
2 other testimony.

3 The Court: Let me say this, the objection was
4 one as to foundation. It is my understanding that there
5 was going to be an objection with regards to the chain of
6 custody which is foundational. In other words if he
7 doesn't legitimately have what he's suppose to have with
8 his basis then his analysis can't be received. So now I
9 thought that this would be the appropriate time to send
10 the jury out so you all told there was going to be an
11 objection in regards to the chain. I don't want to get
12 there, you know what I mean, so how should we do this,
13 you do a proffer at this point in regards to the chain of
14 custody and his involvement and then cure that, get your
15 objection, cause I don't want to send the jury out again.
16 Isn't this the gentlemen, the last witness that is going
17 to testify that in regards to the link with the DNA.

18 Mr. Justis: Correct, Your Honor. And his link
19 goes back to 1985.

20 The Court: Right.

21 Mr. Justis: He was there in 1985, 1988, and
22 2009 and also in 2011.

23 The Court: Okay. Let me do this, let me ask
24 you if you would to proffer your remaining chain that
25 this witness would allow and then I'm gonna hear the

1 objection and then we'll bring the jury back in.

2 Mr. Justis: I'll probably just proffer what is
3 just related to the chain of custody at this point.

4 The Court: If you can just stick to foundation,
5 okay?

6 Mr. Justis: Sure.

7 **Proffer Testimony of Mr. Bogan by Mr. Justis:**

8 Q: Mr. Bogan, did you have any opportunity to receive
9 any evidence in the P.R. case back in 1985?

10 A: Yes I did.

11 Q: I'm showing you what's been marked as States Exhibit
12 18. Do you recognize that document

13 A: Yes I do.

14 Q: And what is that document

15 A: This is State's exhibit 18, it is a copy of a
16 evidence submission form. It is a request for
17 laboratory analysis and submitted by Dorchester
18 County, and the SLED case # is L850026.

19 Q: And who would have generated that form? Where does
20 that form originate from?

21 A: The form is a SLED document it is generated prior to
22 the evidence submission. It is filled out by the
23 submitting officer sometimes they were filled out on
24 the scene in the office at SLED at evidence take in.
25 Sometimes they were pre-filled out and submitted

1 along with the evidence.

2 Q: And if you look at that document, there's a space at
3 the bottom for a signature for the person receiving
4 the evidence?

5 A: Yes, sir.

6 Q: Is there a signature?

7 A: No there isn't.

8 Q: And why would there not be a signature

9 A: I'm trying to remember back 29 years ago as to why
10 there is no signature there. Basically there's a
11 time stamp of when the evidence was received. The
12 secretaries time stamp the evidence that was
13 delivered by, in this case Bill Nevins. The
14 secretaries would then call the analyst and ask them
15 to come up and pick up the evidence. At the time
16 there was no signature by it. I can't tell you why
17 but I can tell you that the evidence as delivered
18 was in sealed condition when I received it.

19 Q: So this is State's exhibit 18 that I have just shown
20 to you. And where would be the stamp from SLED that
21 would show where they received the evidence?

22 A: It's right here.

23 Q: And you said there was a time and date stamp?

24 A: Yes, that is correct.

25 Q: Okay. And just for clarifications, down at the

1 bottom of that document can you circle the signature
2 part that you said wasn't signed.

3 So, in 1985, I think there's already been testimony that
4 it was January 2nd of 1985 you received some items and it
5 was logged in essentially on this form on States Exhibit
6 18.

7 A: That is correct.

8 Q: And were you the analyst back then on that evidence?

9 A: Yes, I was assigned that case.

10 Q: So, based on trying to remember back, based on the
11 procedures at the time, you're assuming you don't
12 know for a fact cause you don't remember but you are
13 assuming you would have been the individual that
14 actually took custody of this evidence.

15 A: Yes based on routine procedure. The secretary would
16 have called me to come up and see the actual
17 physical evidence that I would take into custody.

18 Q: And let me show real quick again the same exhibit ,
19 State's exhibit 18. Could you tell us what type of
20 evidence was actually delivered at that time?

21 A: The evidence was delivered and labeled as a specimen
22 kit from MUSC containing 5 glass vials and one
23 plastic container and one paper envelope.

24 Subsequently when I received the evidence I did a
25 further inventory and it has my writing also on the

1 bottom.

2 Q: So let me show on the screen here this document. So
3 can you point out what you were just explaining?

4 A: Yes, I'm gonna underline here, this is the
5 description of the specimen kit from MUSC, and it
6 also says the next line containing 5 glass vials,
7 one Plastic container and one paper envelope.

8 Q: And is that your handwriting?

9 A: No, that is not.

10 Q: What about the items listed underneath that?

11 A: The items listed underneath that, I can say when I
12 received this evidence it was in a sealed condition,
13 I did an inventory of what was in those packages and
14 I wrote down the inventory which is included on the
15 right here.

16 Q: So you recognize that as your handwriting here?

17 A: Yes, I do

18 Q: So even though you don't specifically remember
19 taking that evidence that day, your handwriting is
20 on that intake form

21 A: That's correct.

22 Q: I'm showing what's been marked as State's 19. And
23 this is already in evidence so you can see. Again,
24 do you recognize this document

25 A: Yes, It's State's Exhibit 19 it is a request for

1 laboratory analysis. It's a South Caroling Law
2 Enforcement Division document and it has the time
3 stamp on it and it lists as the case #0850026
4 evidence submitted from Dorchester County Sheriffs
5 office.

6 Q: And what about the handwriting on the description at
7 the bottom?

8 A: Part of that handwriting is mine, part of it is not,
9 I can, this part here, is my writing all of the
10 writing over here, the actual items description is
11 not my writing, but the small letters, for example,
12 as you can see, each item has a letter around it,
13 I'm gonna circle around the "K", which is a changing
14 chuxs.

15 Q: So those letters there ...

16 A: Those letters are what I added to that document.
17 Under M and also off to the side the writing says
18 hair/semen.

19 Q: And can you read the date on that document?

20 A: The time stamp is January 30th , 1985.

21 Q: And I am now showing what has been marked as State's
22 22. Do you recognize that document?

23 A: Yes I do, it's a evidence submission form request
24 for analysis. It's a South Carolina Law Enforcement
25 document. It indicates evidence that was submitted

1 in Case # L850026. It was submitted form Dorchester
2 County Sheriffs office.

3 Q: Okay and is there a time date stamp on that?

4 A: Yes there is

5 Q: And can you read the date on that?

6 A: Yes, its July 21, 1988

7 Q: And do you recognize any of your handwritings on
8 there?

9 A: I don't think there is any of my writings on that
10 document.

11 Q: Do you know who KLB is?

12 A: Oh, those are my initials.

13 Q: Okay up near the top, center top?

14 A: Yes up near the center top, it's here, basically
15 when the evidence was submitted, it was submitted as
16 additional evidence, the secretaries at the time
17 knew that the case was assigned to me so they just
18 documented who the case was going to so the evidence
19 would come to me.

20 Q: Okay. And down near the bottom a little bit where it
21 says DNA. What does that mean? Does that mean DNA
22 was sent to you?

23 A: No the request was for DNA Analysis on the items
24 that were submitted. This is page 1 of the
25 document, there is a page 2 which list the items

1 that were submitted. So , the request for analysis
2 was for DNA on those other items.

3 Q: I'm showing you what's been marked as States exhibit
4 33. Do you recognize that document?

5 A: Yes I do.

6 Q: And what is that document?

7 A: State's exhibit 33 is page 2 of that evidence
8 submission request and it lists the items that were
9 submitted at that time on July 21st.

10 Q: So it's your testimony that's the actual page 2 and
11 they lists what actual evidence was submitted with
12 the page that is up on the screen?

13 A: Yes. I'll say this, this is the list of evidence as
14 delivered and said to contain in the packages.

15 Mr. Justis: At this time, Your Honor, the State
16 would like to offer states exhibits 33 into evidence.

17 Mr. Farley: There's no jury, Judge.

18 The Court: I know that, but that's when he
19 would have offered.

20 Mr. Justis: Right that when I would have
21 offered then. I agree to offer.

22 The Court: That would conclude on his
23 foundation for this particular exhibit, right?

24 Mr. Justis: Correct

25 The State: Okay.

1 Mr. Farley: For that one. For that exhibit,
2 right.

3 Mr. Justis: Correct.

4 Mr. Farley: I understand, Judge.

5 Q: Let me ask you another question Mr. Bogan about
6 these documents that I've put up on the screen.
7 There copies. Do we have the originals of these
8 documents?

9 A: What you have is a copy that was made from
10 microfilm. As the cases got older they were
11 microfilmed and so the original documents are no
12 longer in existence they were shredded, but we have
13 microfilm available and those copies were made onto
14 microfilm.

15 Q: Okay. Thank you. Mr. Bogan I am now showing you what
16 has been marked as State's exhibit #10. Do you
17 recognize that document or item?

18 A: Yes I do.

19 Q: And did you have an opportunity to examine that
20 document or that item in 2009?

21 A: Yes, I did.

22 Q: And how do you know you received it in 2009?

23 A: It has my initials where I sealed the package, after
24 putting the contents back into the package I sealed
25 it on December 21, 2009. And I can also see through

1 the package and see my initials on the items of
2 evidence inside.

3 Q: And when you received this item was it sealed or
4 unsealed?

5 A: It was sealed.

6 Q: Did you tamper with the evidence other than doing
7 your testing?

8 A: No

9 Q: And did you seal it back up when you were through
10 with it?

11 A: Yes.

12 Q: And the previous evidence in 1985 and then again in
13 1988, was it sealed when you received it?

14 A: Yes.

15 Q: And did you seal them before sending them back or
16 having them leave your possession?

17 A: Yes.

18 Mr. Justis: That would be the extend, I
19 believe, Your Honor of the Chain

20 The Court: Okay. Cross-Examination, sir.

21 **Proffer Cross of Mr. Bogan by Mr. Farley:**

22 Q: I'm gonna try to go sequentially but its kind of all
23 over the map here starting in 1984. I am gonna put
24 up what's been entered into evidence as State's 18.
25 This area we talked about the signature of the

1 person receiving the evidence. That's not, no one
2 has signed that is that correct?

3 A: That is correct.

4 Q: So you are surmising that someone took that in and
5 had to take that in, is that right?

6 A: Yes.

7 Q: But essentially that is a guess, you don't know for
8 a fact and who did it and how it was done?

9 A: As far as I recollect the process and procedures, I
10 think I testified to that on direct. The procedure
11 was that when an officers brought evidence in we
12 have a pool of secretaries that are assigned certain
13 counties, they would log the evidence in and time
14 stamp it, they would then call for the analyst that
15 was assigned to that case to the front to come and
16 actually take physical possession of that, the
17 evidence was then moved to a locker.

18 Q: Then why would there be a place on a form for
19 someone to sign saying they received it?

20 A: I honestly can't remember, I don't think it was
21 required for us to sign back in 1985. That is the
22 best of my recollection.

23 Q: And you don't, it would have been practical for
24 someone to do that, it's reasonably capable that
25 someone to accomplish writing there name there

1 saying that they received this. Isn't that right?

2 A: I can speculate on that, and that would be pure
3 speculation and I like I say I tried to remember the
4 process and procedures. It's entirely possible that
5 as the evidence came in and the paperwork was
6 stacked I actually didn't actually receive the
7 paperwork and the evidence at the same time. So I
8 wouldn't have the documents available to sign but I
9 would have the evidence to take into my custody and
10 that's the possibility for the reason the signature
11 not being there.

12 Q: Okay. My next question is going to include a double
13 negative so work with me here. It is not
14 impractical for someone to sign that spot on that
15 document, it is possible that someone could have
16 done it? Someone could have taken a pen and signed
17 that box. Is that correct?

18 A: It is possible.

19 Q: And you don't know exactly which secretary would
20 have taken in Dorchester County evidence is that
21 right?

22 A: I could make an educated guess but..

23 Q: A surmise?

24 A: Yes, I think the secretary at that time, her name
25 was Susie Wilson. And basically then there was an

1 older computer system, I can give you the name, the
2 system was called MAPPER , and when the evidence was
3 logged in and each item was given an assignment. I
4 looked at that screen about a week and a half ago
5 and I can't access MAPPER myself but I had someone
6 else pull it up and looked and there was initials SW
7 in there. We had a Susie Wilson that worked as a
8 secretary at the time and I think she is the one
9 that actually logged this in. That's a surmise.

10 Q: A guess?

11 A: Yes.

12 Q: A supposition if you will.

13 A: Yes.

14 Q: Now I want to turn your attention to something that
15 came in a little later, it is State's 19 which is a
16 similar form. Once again we have that signature
17 spot that is empty, there is no signature there.
18 And you testified that in the box at the lower right
19 where it says exam requested, that's your writing
20 saying the exam requested was hair, semen, and it
21 looks like some kind of tissue. That's your writing?

22 A: Yes.

23 Q: And that is not your writing in the items submitted?
24 Is that correct?

25 A: Only the initials that are circled with the letters

1 of the alphabet, that is my writing.

2 Q: So you actually labeled this?

3 A: Well I itemized them.

4 Q: So, just correct me if I am wrong, that row we are
5 talking about, the first part, the row labeled
6 evidence, the first box is for specimen submitted.
7 Correct?

8 A: Yes.

9 Q: And the second box is for the exam requested.

10 A: Yes.

11 Q: Now let me turn your attention to another form,
12 another submission form, State's 22, once again
13 there is no signature on the receiving line. In
14 that row we were just talking about under specimen
15 submitted for examination it says DNA doesn't it?

16 A: It does.

17 Q: So, in exam requested 325. What's that mean?

18 A: Often times examinations were coded for computer
19 systems. So there was a code for it. I can't tell
20 you what 325 code stood for but it was for the code
21 for the exam requested.

22 Q: So 325 was requested on DNA. Is that how you would
23 have read that form?

24 A: No. How I would read that form is the exam
25 requested buy Dorchester County Sheriffs office was

1 to have DNA analysis preformed on the items that are
2 listed on page 2.

3 Q: I'm going to show you page 2. We are looking at
4 State's 33 which is the 2nd page of State's exhibit
5 22. Can you read the items on that?

6 A: Yes, the items listed are 1 Wood's lamp, Saliva on
7 filter paper, vaginal wash, oral swab and 2 vaginal
8 wash.

9 Q: So your surmise, your guess is that these are the
10 items that a DNA request was made on.

11 A: Yes.

12 Q: Despite the fact that DNA is in the column labeling
13 the specimen.

14 A: Yes.

15 Q: I'm gonna put back and I'm sorry I have to keep
16 doing this, I am going to put back State's exhibit
17 22 and on State's 22 there is a suspect, a subject
18 and there's a victim. Who is listed as the victim?

19 A: First name **P.R.**, last name is **P.R.**.

20 Q: And who is listed as the subject?

21 A: Fist name is Barry, last name is Daniels.

22 Q: Would you surmise with me that Barry Daniels is a
23 male?

24 A: Yes.

25 Q: And we are pretty certain that **P.R.** **██████████** is a

1 female.

2 A: It is documented on this document, yes.

3 Q: Now the items that were submitted for DNA analysis
4 are those associated with a male or a female

5 A: Those items were evidence that was originally
6 submitted on prior date as being associated with a
7 female. Basically came from the original submission
8 back in 1985.

9 Q: So, correct me if I'm wrong, but the stuff labeled
10 on page 2 of State's 22, which you were just looking
11 at didn't actually come in with this submission form
12 it is something y'all already had back in 1984-1985?

13 A: If you would look at State's exhibit 18 item A, is
14 listed as vaginal wash. It is also listed again as
15 a re-submission on State's exhibit 33. So basically
16 they resubmitted into evidence and requested DNA
17 analysis on it at that time?

18 Q: So you're not saying you had this the whole time.
19 You're saying that it went up to you back in 1985,
20 was tested, came back to the Dorchester, you can't
21 testify to that, but it was no longer there, and
22 then it came back again with this submission form in
23 1988?

24 A: Yes.

25 Q: And there's no evidence that you can point to that

1 the vaginal wash sent up in 1984-85 is the same that
2 is here?

3 A: Based on these documents alone, no. Actually
4 physically examining the evidence I probably could.

5 Q: Now back to that 22, do you have a copy of that, the
6 1988 submission?

7 A: Yes, I do

8 Q: Barry Daniels, would you need a DNA standard for him
9 to do any kind of testing, why would his name be on
10 that form?

11 A: I can't tell you why his name is on that form, I
12 don't know, I wasn't part of the investigation in
13 developing suspects. In order to do any DNA
14 analysis or DNA comparisons, the DNA that was done
15 after this evidence was submitted, I would need a
16 standard from him for comparison purposes.

17 Q: You testified that you don't have the originals of
18 these forms that they were on microfilm?

19 A: That is correct.

20 Q: Is it possible that there was another one of these
21 state's 33 type forms specimens submitted for
22 examination with Barry Daniels samples on them.

23 A: I would have to give you an opinion on that and my
24 opinion would be no.

25 Q: Is there a reason why at this point and time you

1 didn't label pages 1 of 2, or 2 of 2?

2 A: It just wasn't part of the normal procedure.

3 Q: But you do that today?

4 A: Give an example, I honestly can't remember.

5 Q: Marked ...

6 A: Yes they are numbered page 1 of 2 and 2 of 2.

7 Mr. Farley: May I have a moment?

8 The Court: Yes.

9 Q: I'm going to show you what has been marked as
10 defendants #2. Can you tell me what that is?

11 A: This is a SLED laboratory forensics request form
12 this is from Dorchester County Sheriffs office
13 submitted on March 6, 2009.

14 Q: Do you have a copy of that?

15 A: Yes I do.

16 Q: Do you mind looking at that for me? On this form
17 there are these SLED item numbers. what are those
18 item numbers? What do they represent?

19 A: Each item as it was inventoried was given an item #
20 which equates to, for example, SLED item #1 is the
21 item vaginal wash, item 2 equates to vaginal swabs.

22 Q: And once again for the purpose of this hearing right
23 now we are just guessing that is the same vaginal
24 wash that had been up and down from SLED now 3
25 times?

1 A: Yes, We originally in 1984 we did not have a
2 computer system to number and itemize the items. We
3 used the system of letters, the alphabet, that's why
4 they are listed in items ABC and so on. When they
5 were resubmitted in 2009, under the new computer
6 system they were reassigned a different item #
7 because we no longer use the alphabet, we use
8 numeric numbers.

9 Q: I want you to look down at item #7. What is that
10 item?

11 A: Oral wash.

12 Q: And when you stick that item number to an item it
13 stays with that number. That item is associated
14 with that item throughout it's time at SLED. You
15 don't just randomly flip numbers around. You don't
16 just turn 2 into 3 just for the heck of it do you?

17 A: No.

18 Q: Once it gets that number it is stuck to that item?

19 A: Yes.

20 Q: I'll show you the second page, you are familiar with
21 those forms I just showed you?

22 A: Yes.

23 Q: Right there this is the page 2 of 2 the second page.
24 Down at the bottom here there are two signatures. Is
25 that correct?

Proffer Cross of Mr. Bogan by Mr. Farley

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1 A: Yes.

2 Q: Can you read at least the typed name of the person
3 who submitted you the evidence?

4 A: Buster Edwards

5 Q: So that would have been the person from the
6 investigating agency that brought the material to
7 SLED?

8 A: Yes.

9 Q: Now right here there is a received by line can you
10 tell me who would have received that?

11 A: Amy Stevens.

12 Q: And would you say this is a complete chain of the
13 item coming from the investigative agency to SLED.

14 A: Yes.

15 Q: And that is something that didn't happen in 1984,
16 twice in 1985 and once in 1988. There is not a
17 complete chain there?

18 A: The chain I think is complete. There is not a
19 signature of who received that evidence. There is
20 evidence of who logged it in and there is a time
21 stamp on the document of when it was received at
22 SLED. So that to me completes the chain from the
23 submitting agency Dorchester County's office to
24 SLED.

25 Q: But once again that is mere conjecture. That's a

1 surmise. You do not know that for a fact, a
2 supposition, a guess.

3 A: No. To me I have a signature of the submitting
4 officer from Dorchester County, I have a time stamp
5 on a SLED document upon when the evidence was
6 received so in my mind that is just as complete
7 chain of custody as what you just described.

8 Q: Now what I just described states, defense 2, has the
9 signature of the submitting agency and the signature
10 of the person receiving it correct?

11 A: Yes.

12 Q: That's practical to do. That is something that is
13 easy to be done. Correct.

14 A: Yes.

15 Q: It's capable of being accomplished. It is feasible
16 for someone to sign.

17 A: Yes. It's done electronically basically Amy Steven's
18 signature is applied electronically as physically
19 signing, it has a password and when she puts in that
20 password it puts in that electronic signature. SO
21 it's not exactly what you are thinking or saying.
22 That was not possible back in 1985 and 1984.

23 Q: It's possible for me to know, to take this pen, if I
24 work for SLED, to write my name as if received.

25 A: Yes.

1 Q: I want to turn you attention back to item #7 which
2 is on the submitting form. Which is the oral wash.
3 To show you what's been labeled as States #15 I
4 believe for identification purposes. On State's 15,
5 there is also a #7, is that correct?

6 A: Yes

7 Q: And that #7 is labeled oral wash just as it is on
8 the submission form is that correct?

9 A: Yes.

10 Q: There's a result of an examination on the serology
11 analysis which is State's 15 and it goes through
12 each of those and list what you did to each of those
13 items correct? Is that correct?

14 A: Well it references to C,D & A Analysis section, yes.

15 Q: Item 7. Can you read to me the result of that
16 examination?

17 A: It says item not found.

18 Q: And what does that mean?

19 A: It wasn't found in the inventory. If you would check
20 page 2 of that document, above the signature of the
21 submitting officer, it says that all sealed evidence
22 accepted by the laboratory are assumed to contain
23 what they are said to contain by the summiteer. The
24 Laboratory does not conduct a detailed inventory of
25 evidence packages, content during the evidence

1 intake process. So at the time that I inventoried I
2 did not find it even though it was submitted or
3 listed on the evidence submission form I didn't find
4 it. That is why I put it in my report.

5 Q: So basically what that line you just read to me says
6 that SLED didn't loose it, it's someone before hand
7 must have mislabeled it or forgotten to put it in
8 there or taken it out or something but as far as you
9 know when you opened it that envelope it was not in
10 there

11 A: That is correct.

12 Q: I am next going to show you State's #24. I'm going
13 to go ahead and put it up here. This is State's 24.
14 It is not in evidence. Are you familiar with this
15 document or documents of this type?

16 A: Yes.

17 Q: I want to point your attention to page 13 of 16
18 pages. And on page 13 of 16, it looks like
19 1,2,3,4,5,6,7,8,9, lines down it has 8/20/09, at
20 11:12, forensic scientist, you, made a note and it
21 says the item is listed on receipt as envelope
22 marked N, and it should have been listed as envelope
23 marked M. And description

24
25 changed. What does that mean?

Proffer Cross of Mr. Bogan by Mr. Farley

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1 A: It means that when I did the inventory it was listed
2 on the evidence intake sheet, and marked as envelope
3 N and it should have been marked as M.

4 Q Do you recall what envelope N and what envelope M
5 contained? Sled items 11 & 12?

6 A: Yes.

7 Q: What is that?

8 A: On the original inventory, Item M was an article of
9 clothing from the victim, **P.R. [REDACTED]**, it was a
10 skirt, Item N was an item of clothing which was
11 panties.

12 Q: During your analysis you were able to extract and
13 analyze DNA is that right?

14 A: Yes.

15 Q: That DNA as far as you know is the DNA linked to my
16 client. Is that right?

17 A: Yes.

18 Q: And what item was that DNA found on? The sole piece
19 of DNA that links this DNA to my client?

20 A: It was found on item M. Panties.

21 Q: And items M & N were mislabeled? As far as you can
22 recall from what you have entered?

23 A: I don't have the evidence receipt with me that
24

25 lists those items but it was discovered when I did

1 inventory. But it was mislabeled on the receipt that
2 something that the evidence processing intake person
3 types out so I think she made a typo but it does not
4 change the fact that what is labeled item M is what is
5 item M. It was just typed in on receipt.

6 Mr. Farley: I have no further questions at
7 this time.

8 The Court: Redirect?

9 Mr. Justis: Briefly, Your Honor.

10 **Proffer of Mr. Bogan redirect by Mr. Justis**

11 Q: Mr. Bogan, you testified on those older 1980's
12 documents the intake forms that we talked about
13 that there was a SLED time stamp that someone at
14 SLED would have stamped that form when the evidence
15 was brought in?

16 A: Yes, I did.

17 Q: And you also testified on cross examination with
18 Mr. Farley that on the newer 2009 evidence where we
19 have a computer chain of custody that's printed out
20 that those signatures, for example, Buster Edwards,
21 I think that was used. He didn't actually sign that
22 form?

23 A: No, he actually did. What I was referring to is
24 Amy Stevens who is the forensic technician or
25 evidence intake person. Basically what she does is

1 lists the items in the computer and then when she
2 accepts custody of it by putting her password in.

3 Q: So that's essentially an electronic stamp

4 A: Yes it basically the same thing it do with my
5 reports. When I sign my reports, I don't
6 physically sign them, it's a computer generated
7 signature.

8 Q: So in newer technology you actually don't sign the
9 reports the computer does it for you, but the older
10 technology there's physically a person that stamps
11 it?

12 A: Yes.

13 Mr. Farley: Thank you.

14 The Court: Recross?

15 **Proffer Recross of Mr. Bogan by Mr. Farley**

16 Q: And when that person physically stamps it is that
17 person's name identified on it?

18 A: No.

19 Q: When you do it today is your name identified on it?

20 A: I don't do evidence intake but anytime I transfer
21 the evidence or it's moved around it is put on the
22 document.

23 Mr. Farley: Nothing Further.

24 The Court: Very well. Motion?

25 Mr. Farley: Yes Judge, we would move to

1 exclude this evidence. The chain has not been produced.
2 The is way too much possibility that this evidence could
3 have been contaminated. Not just his testimony but
4 testimony through out this trial starting with ...

5 The Court: This is what I want you to do. I
6 want you to take each and every element for which you
7 are concerned okay?

8 Mr. Farley: I want to start with the initial
9 collection at MUSC. Let me get my notes.

10 The Court: Mr. Farley let me stop you because
11 I want you to take your time for yourself because I know
12 you have been preparing yourself by taking notes through
13 out the testimony. I have been waiting on this motion
14 and I've known it was coming through out the trial.
15 Take your time. If you need to take a moment and get
16 yourself organized that is perfectly fine. I am
17 certainly aware that this is needed.

18 Mr. Justis: Can we take a 10 minute break?

19 The Court: That is a wonderful idea.
20 Communicate with the jury that I am aware that they are
21 waiting and there is a certain matter that I must attend
22 to and it will probably be 20 to 25 more minutes.

23 **(There was a break)**

24 The Court: Ready?

25 Mr. Farley: Yes, Judge.

1 The Court: Fantastic. Listening to you.

2 Mr. Farley: Before we broke I made a motion
3 that to exclude the DNA evidence. And we are going to
4 start back from the very night, or the night of the
5 incident. The victim testified that the incident
6 happened on the 24th, and I know she was shaken on the
7 stand and I get that, but every other documentation says
8 it happened on the 25th.

9 The Court: What time on the 25th ? Do you have
10 a time?

11 Mr. Farley: Yes it was, it would have been at
12 approximately 8:00, sometime before 8:27 pm that would
13 have been reasonably after when the all edge incident
14 occurred.

15 The Court: You are telling me your
16 documentation shows the exam occurred at 8:27 or that
17 the allegations that is when the alleged assault
18 occurred?

19 Mr. Farley: According from the documentation
20 from the Dorchester Counties Sheriffs office, the police
21 report, the alleged assault happened on October 25th of
22 1984 at 4:30 and that same day at 8:27 the evidence
23 collected at MUSC was turned over to the sheriffs
24 department. The victim did testify that the incident
25 occurred.

1 The Court: Okay, got it.

2 Mr. Farley: Moving on, neither one of the
3 nurses was able to say for sure who collected the
4 evidence and or who labeled it, if they were both
5 there. There's also this Dr. Peacock that did the
6 actual physical examination presumably from what they
7 said, would have collected the wood's lamp, swabs and
8 various things like that. We have no testimony from him
9 for medical report, chart or anything that he would have
10 written up as a result of this examination We simply
11 have the chain of custody that the Medical University
12 did a great job of compiling. So back at the time this
13 happened it wasn't some off the wall or impractical
14 thing for the person who collected the evidence to sign
15 the evidence over to the person who was receiving it. So
16 back then it was not impractical for that to happen.
17 Also, Deputy Knight, at that time, Deputy Knight wasn't
18 sure if he brought the rape kit to the hospital or if it
19 was as the nurse described, from something they made up
20 from various pieces. So we don't know where that came
21 from. Moving on that evidence was brought, Knight
22 testified that he brought the evidence to the Sheriff's
23 Office, he also testified that he turned it over to Dale
24 and Dale and two other people who only had keys to the
25 locker. Then we got Dale taking it up to SLED. Taking

1 one set of things up to SLED. Listed on the report Items
2 A-G starting with basically the physical, medical type
3 evidence when up first. When that is received in, and
4 this is when we start to get into the meat of the
5 argument, when it was received in, SLED has a form,
6 State's 18, is a copy of it. SLED has a form and on
7 that form their own standard operating procedure, the
8 way that things are done, there is this signature of the
9 person receiving the evidence that has not been signed.
10 Yes, it has been time stamped but we have no idea who
11 time stamped it. We have no idea if Mr. Bogan took it in
12 himself, if a secretary took it in and then helped put
13 it in a box and he got it from the box, like the SLED
14 agent does today, not saying that he is out dated or
15 anything, but obviously it is practicable for them to
16 sign a form to follow their own protocol, it's
17 practical. Then this stuff stays at SLED, somewhere at
18 SLED and three weeks later more stuff is brought up to
19 SLED and these are the clothing items, fingernail
20 scrapings, items H-S. I think the record reflects those
21 items and we have Dale taking those items out of the
22 locker once again they are going to SLED but once again
23 no one has signed for those items, that protocol hasn't
24 been followed. And on the same argument that I just made
25 that they didn't follow their own protocols is the same.

1 Now, while it's been at SLED there is no testimony to
2 where that evidence has been held. Were the first set of
3 stuff and the second set of stuff, were they held in the
4 same place or separate locations, did a second person
5 take it from Dale and hand it to Bogan, was there
6 another person in between? We don't know. It's just we
7 are speculating. To use the words that I put into his
8 mouth it's a conjecture, it's a surmise, it's a guess.
9 That's' what he said and it is what it is.

10 The Court: Now, when you are finished I want
11 you to tell that back to the case. That's what you are
12 relying on and of course that is the case State vs
13 Hatcher. Okay?

14 Mr. Farley: Then on the returns, it is not
15 clear with the returns meaning when the stuff comes back
16 from SLED. No one has made it clear whether both sets of
17 stuff came back at the same time or if one set of stuff
18 came back once and twice. Perhaps the Solicitor can
19 address that but I don't believe that is not addressed
20 to my knowledge. Next we move onto 1988. In 1988, once
21 again we have the same problem about who received it at
22 SLED, how did it get to Kenneth Bogan, but to compound
23 that in the 1985 stuff they listed in the evidence the
24 specimens to be examine they listed exactly what
25 specimens were taken in and then they had an area where

1 they had to list what exams were requested. It says on
2 the 1985 one it says hair/semen and some kind of tissue
3 that we cant read. But when we move to the 1988 which is
4 the exact same form we have specimens to be submitted
5 for DNA and then in exam request it's 325 which is
6 supposedly refereed to a computer input code, but we
7 don't know what exam that was. We don't know what went
8 up to SLED. He says the list of wood's lamp and other
9 medical types of samples went up with that it is not
10 labeled as page 1 or page 2 or whatever. But what they
11 say is submitted is DNA. Items submitted DNA. Exam
12 requested 325. We also don't know if that is Barry
13 Daniels DNA. We don't know if there is a standard why
14 is his name on there, it is a guess. Everything that has
15 been testified to regarding Barry Daniels and the
16 testing and what not is a guess. The next set of issues
17 comes when Dale leaves the Sheriffs office and turns
18 everything over to Earl. Dale's testimony was that all
19 the evidence that was taken in from all officers,
20 deputies in the department was stored in the one back
21 storage locker. Earl's testimony is that each of the
22 detectives held their own evidence. Those are obviously
23 at odds but I think the most important thing we need to
24 look at is that when Dale relinquishes control of the
25 stuff to Earl, it lists as item 19 on page 3 of 5 of

1 what reports to be the chain of custody. A box with
2 miscellaneous envelopes which the victim is
3 1,2,3,4,5,6,7, other sets of envelopes. Nowhere in
4 there is it indicated there is a box with a bag full of
5 clothes in it. That is not listed on there. So where is
6 that at, this is an important part at this place and
7 time. We have an inventory but it does not list what is
8 probably the most damning evidence in this case. Then we
9 come back to ..

10 The Court: Are you talking about the box of
11 envelopes?

12 Mr. Farley: The box contains envelopes.

13 The Court: Right.

14 Mr. Farley: The box contains envelopes with 8
15 other peoples envelopes in it but no where on there does
16 it list what a bag full of clothes. Obviously a bag
17 full of clothes which contains the panties is not listed
18 on that chain of custody.

19 The Court: Now, the document that was generated.

20 Mr. Farley: Between when Dale leaves and Earl picks up.
21 It's a 5 page document.

22 The Court: And the date of that is?

23 Mr. Farley: The date of that is March 22, 1993 and it
24 is listed. It's listed as States' 32, So there we have
25 a document break in the chain. Clearly a documented

1 break in the chain. To add more speculation and
2 conjuncture, the stuff is then moved from the hospital
3 to the new Sheriffs office. It's boxed up and we are not
4 sure if someone else helped Earl move it, but ...

5 The Court: When you mention Hospital you mean
6 office? hospital? Your are not talking about hospital
7 ...

8 Mr. Farley: That's correct, I'm sorry.

9 The Court: That's okay I knew what you meant.

10 Mr. Farley: Okay. On the record would not be
11 clear but the Sheriff's office, use to be at the old
12 hospital. The old Dorchester Hospital.

13 The Court: Right.

14 Mr. Farley: It's moved again from there. Now,
15 in 2009 I think that exposes a lot of mistakes that
16 happened in between and possibly more mistakes. In 2009,
17 mistakes, switched to a system that tracks every single
18 person that has that item. The computer system. The
19 first analysis was able to look at it can say yes it
20 came before this person, had it before that. And in that
21 very detailed documentation we find two disturbing
22 issues. One is that the panties, which are the whole
23 reason this case exist, is mis-labeled. They were in a
24 completely different envelope than what was on SLED's
25 number and that had to be changed. And on top of that an

1 item labeled as oral wash was gone, disappeared, not
2 found in the stuff that SLED analyzed. What happened to
3 that? That's a very important.

4 The Court: Tell me when it was last
5 identified and when did it disappear?

6 Mr. Farley: It was last identified in the
7 documentation that Buster turned over to SLED and when
8 SLED turned over ...

9 The Court: That was in?

10 Mr. Farley: That was in 2009.

11 The Court: And is it been identified as having
12 being received by SLED?

13 Mr. Farley: He testifies that SLED does not
14 open the packages when they are received. Our Sheriffs
15 department said that it was sent to SLED. SLED said
16 when we opened it up it wasn't in there.

17 The Court: Okay.

18 Mr. Farley: We are saying we sent it to SLED
19 and SLED says we looked in there and it wasn't in there
20 so we are going to be honest and write it on our report.
21 Then with the mislabeling of the panties,

22 The Court: How so?

23 Mr. Farley: On State's 15 that is the
24 document that contains the result of the, the document
25 submitting the evidence, The items that Mr. Edwards

1 handed off to SLED labeled items #11 was, is described
2 as envelope marked N containing cutting from panties,
3 and envelope marked 12 containing cutting from skirt. In
4 the analysis that was performed on State's 24 on page 13
5 of 16, Kenneth Bogan has written into this computer
6 program that the item that was listed on the receipt
7 envelope marked M should have been marked as N and
8 changed the description in the computer program. So
9 there was a mislabeling there. And that goes back to the
10 point no one has testified as to who took the cutting
11 from the panties, no one, no analyst. No one along the
12 line has said that they actually took cuttings from the
13 panties. And that is what was tested. We don't know who
14 touched that, who actually performed that test. That's
15 a very important piece of analysis and not one has
16 testified to that .

17 The Court: You are talking about the test or
18 who cut the.

19 Mr. Farley: At some point, it comes from a
20 pair of panties, skirt to a clipping. No one has
21 testified as to who did that and when that happened. So
22 that throws more speculation in the summation in the
23 facts of this case, there is no chain that you can rely
24 on it's all over the board. The stuff goes up and back,
25 in the 80's and goes through so many hands signatures

1 are not where they need to be, The chain is broken. It
2 is not broken just once it was broken at least three
3 times and then in between those breaks there is a lot of
4 speculation as to what happened to the evidence, while
5 it sat for all those years. I understand that we are
6 talking about 29, nearly 3 decades ago when this
7 happened, but when, it is practical for people to sign a
8 form. MUSC had it down, but SLED didn't do it, the
9 Sheriffs office didn't do it and now things have
10 changed. The Hatcher case is the case on point and the
11 solicitor's office is going to reference it. We've done
12 extensive research and this is the one that all the
13 other case law cumulates into. Essentially there is a
14 situation, one situation similar to this, where there is
15 well defined protocol of how evidence is handled. During
16 the course of the trial, from what I can find from
17 reading the case over and over again, it was testified
18 to that we always do it like this. This is how it's
19 done. The evidence is always handled this way. Then it
20 goes step by step. We've got every signature except for
21 one but we know it had to happen this way, it had to
22 come from the evidence, the person who takes the
23 evidence in at the lab to him because there is only one
24 person that does it and he had to get it somewhere.
25 That's once. Well defined protocol. They've done it 100

1 times that way. It's the standard operating procedure.

2 In this case, no one has testified as to what the

3 standard operating procedure was at SLED, at the

4 Sheriff's office, as far as a chain of custody.

5 Basically, now that we've distinguished the facts what

6 the case boils down to, the State didn't need to

7 establish every single person that handled the items but

8 did they establish the chain of custody as far as

9 practical? The chain of custody is very important. It's

10 not just a past, because all this time has past, they

11 don't get away with not being able to link this thing up

12 just because time has passed. It is practicable to have

13 someone come in and testify to the standard operating

14 procedures or not and if they can't than that's an

15 issue, a serious issue. If they can't account fo the

16 chain of custody thru the Sheriffs department and they

17 cant' provide anybody to testify what is should have

18 been or what it was or why they weren't able to do it.

19 Why it was impractical for them to do it in the first

20 place then that's a problem. The key point that I want

21 to point out is that where the substance analyze thru

22 several hands and I'm quoting from the case now, the

23 evidence must not leave it to conjecture as to who had

24 it and what was done between the taking and the

25 analysis. Conjecture, speculation. There's a whole lot

1 of speculation. There's a whole lot of surmise. The law
2 dictionary defines conjecture as a guess, a surmise.
3 That's exactly what we are doing in multiple stages
4 throughout this entire thing. IF we say that oh well it
5 was too hard for the state to do it. It was reasonably
6 capable of being accomplished. That's what practical
7 means. What does that say, what is that doing? Are we
8 going to let evidence in where we are guessing how it
9 was handled? Not only are we guessing in one location
10 at SLED we are guessing two, three times at SLED, the
11 Sheriffs Office twice at least with moves and things and
12 then we are really guessing about the stuff that's
13 mislabeled and straight up missing. That's all evidence
14 of things that definitely make what happened to the
15 evidence through out the entire course of this thing
16 being held by the government a guess. We are guessing.
17 We are doing a lot of filling in. In Hatcher it was
18 completely different. It was a different time. There
19 were standard protocols. Law enforcement was able to
20 come in a point in what would happen to it. We've done
21 it 100 times like that we know what happened. We don't
22 have to guess. It's just how it happened. The State, it
23 was practicable for the state to do it and they were
24 able to do it but in this case the State can not provide
25 that information to the Court. I think the only just and

1 fair thing to do in this case is to suppress the
2 evidence.

3 The Court: I got it. Yes?

4 Mr. Justis: Your Honor, I'll try to keep it
5 brief. As far as the nurses, the nurses did testify
6 that was their signatures on the evidence collection
7 envelopes. Ms. Cox, Ms. Schafer, Ms. Cox testified that
8 she was there with the doctor. That is her signature
9 and she would have been there, she would have
10 participated in collecting that evidence so I think that
11 starts the chain right there. As far as the rape kit
12 being brought by Detective Knight, that was an empty
13 rape kit. That doesn't matter. What matters is after he
14 picks up the full rape kit that has items of evidence in
15 it. He did testify that it was sealed and turned it over
16 to Dale Evans. Dale Evans testified that it was sealed
17 when he got it. He put it into evidence. We heard him
18 testify about the evidence room. How it was secured.
19 Who had keys. He had a key, Major Moultrie had a key
20 and the Sheriff had a key. He then took evidence up in
21 1985. He said, who did he turn it over to, to SLED.
22 They stamped it. That's how they signed it back then.
23 Could they have signed that form? I guess they could
24 have. But that was their procedure back then. If you
25 notice every time they took it up there it wasn't

1 signed. Why? Because that was their procedure they had
2 at that time. He testified to that. And Ken Bogan
3 testified to that. He was there back then. It would
4 have went to the analyst. Low and behold, who's the
5 analyst? Every single time this evidence goes up? Ken
6 Bogan. He's the analyst., he testified he was the
7 analyst. He was the person that manipulated the
8 evidence when he opened it up to testing. Who got the
9 panty cuttings? It would have been Ken Bogan. He was
10 the only analyst to do anything. We heard from
11 Stephanie Stanley. She opened it up saw his name on it
12 and oops, stuck it back, sealed it back up and went over
13 to him and handed it to him and says here ya go. Open it
14 back up see, it's all yours. He got it. He is the only
15 person that tampered with that evidence. If you want to
16 call tampered, he was testing.

17 The Court: Would you proffer that he would be
18 testifying that he is the only one to actually do the
19 cuttings.

20 Mr. Justis: Absolutely. That will be part of
21 the testimony. We expect him to give. It is in his
22 notes and I'm sure he will testify to that. Also, the
23 panties were not in a different envelope. What was mis-
24 labeled as Ken stated was the actually whoever put it in
25 the computer as mis-labeled. The envelopes were correct.

1 So there was no mix of the evidence there. As far as
2 standard operating procedure what we have been hearing
3 about for the last 24 hours, every witness that came up
4 here other than Ms. [P.R.] talked about how they handled
5 the evidence. That's standard operating procedure as far
6 as I'm concerned. We heard from Major Moultrie 46 years
7 in law enforcement. He testified that people have a
8 key. Me, Dale Evans and the Sheriff. That was it.

9 The Court: Any comments you want to make about
10 when Mr. Far says that now retired crime scene
11 specialist with the Sheriff's Department, Earl Asbell,
12 who said that each investigator kept their own evidence?

13 Mr. Justis: That's exactly what Dale said.
14 Back then in the 80's the investigator, whoever's case
15 it was they kept it under their name but it went into
16 that evidence box.

17 The Court: Why did Mr. Farley say otherwise?
18 In other words I've got what now retired Detective
19 Nevins said and I got that from him as well that they
20 converted from the old hospital, the closet, the
21 evidence closet there were 3 keys. What you are saying
22 is that Asbell wasn't saying it was in the closet just
23 under the investigators name. Mr. Farley is basically
24 stating they opened up a drawer to the desk and threw it
25 into the desk. You are saying that is not the process?

1 Mr. Justis: Correct. That's absolutely what
2 I am saying. In 1993, this inventory that was done, Lt.
3 Nevins, he's retiring and leaving the Sheriffs office,
4 Lt. Asbell is taking over. They didn't even have to do
5 an inventory then. All they could have done is say
6 you're in charge now, chain of custody doesn't mean that
7 I have to have pieces of paper to bring in to court. We
8 have the actual live witnesses. The person that says I
9 got the evidence. I turned it over to Earl Asbell.
10 Earl Asbell comes in and says I took it. Now they did
11 an inventory. But wether they did an inventory or not
12 that doesn't go toward admissibility of the chain of
13 custody, that may go to the weight. The jury may say
14 they should have done this, they should have done that,
15 they should have signed that form at SLED, but that goes
16 to weight. That doesn't go to admissibility. So, in
17 1993, we know who took over the evidence. It's Earl
18 Asbell. We know that cause Dale Nevins testified to
19 that and Earl Asbell testified to that. And it stayed in
20 Earl's room, and then what happens, they move to a new
21 Sheriff's office and he says I moved that evidence. It
22 went into the new evidence room and I have the key. And
23 it stayed there until it made a third trip, part of it
24 made a third trip to SLED in 2009 and we know who took
25 it up there. It was Buster Edwards. He took it up there

1 and he testified. When we asked was it tampered with and
2 he said, and Buster Edwards worked at SLED for 27 years,
3 he said that SLED doesn't take anything if it's open.
4 If it is open, they are not taking it. He testified to
5 that. He gives it to SLED and then it goes into this new
6 computer system. Because 1984 and 2009, what has
7 happened? People like Steve, Computers. I mean back in
8 1984 an Apple was a piece of fruit. Now an Apple, when
9 you think of Apple, you think of computers. OK.
10 Technology. So now they have fancy little scanners and
11 everything like that. It's a lot easier. They didn't
12 have it back then. The bottom line is if there was a
13 break in the chain, then why is all the evidence still
14 here 30 years later if their procedures was so bad back
15 in the 80's?

16 As I said we have live testimony and we are
17 not even required to have that . We are not required
18 according to the case, the actual holding in the case,
19 the State need not establish the identity of every
20 individual handling items in all circumstances. Rather
21 the standard is whether at the discretion of the trial
22 Judge. That would be you, Your Honor. The State has
23 established the chain of custody as far as practical.
24 The State has established it as far as practical. He is
25 trying to put the practicable burden on police officers

1 from the 80's. No. That's my burden to prove the chain
2 as far as practical. It's not well you could have had
3 them sign it so the chain is no good. That's not the
4 standard. And finally the last thing I have ...

5 The Court: What about the oral swab be
6 missing?

7 Mr. Justis: Not the oral swab, there's
8 multiple pieces of evidence. We can open up the bag and
9 that will let us know if it is missing. What we know is
10 what he is talking about that the inventory that was
11 made, was an inventory written by an individual that
12 didn't physically open up the bag. They are looking on
13 the outside of the bags and if I may, if you look at
14 these bags, there are bags inside of bags, inside of
15 bags because it has been up and down and up and down
16 because there are multiple layers here of bags. I would
17 say that is a scrivener's error that they may have added
18 something that they thought was in that bag when Ken
19 Bogan got it to his credit, he said well this is what
20 they say is in here, this, this, this, opps this one is
21 not in the bag, no item found, on and on and on. That's
22 what he did. Why they put something on there that is not
23 physically in the bag, well obviously we know they
24 didn't open it. If they opened it their initials would
25 have been on it. As he asked Buster Edwards, did you

1 inventory everything? No I don't do that. I give a list.
2 The only way that he could have inventoried that bag is
3 take that list before he took it up and opened the bag.
4 He wasn't going to do that. It wasn't his job. He was
5 not there to tamper with the evidence. So I think that
6 proves the evidence wasn't tampered with.

7 The Court: I'm with you.

8 Mr. Justis: So that will be the argument the
9 State will make in that the State will say that we have
10 proven the chain of custody as far as it goes to
11 admissibility in this trial and any arguments Mr. Farley
12 has made as to where is the oral wash, That's a
13 perfectly good argument he could make in his closing to
14 the jury and that goes to the weight not the
15 admissibility of the evidence. We've identified all the
16 people that have handled it and the only people that
17 have not testified are the ones that are no longer with
18 us on this earth.

19 The Court: Thank you Mr. Justis so much. Mr.
20 Farley?

21 Mr. Farley: The Apple computer was founded in
22 1976 just for the record I want to add that. Your Honor,
23 I'm not exactly sure were the solicitor was going with
24 that argument. I think I did a fairly good job of
25 distinguishing the case. From the one he didn't seem to

1 point out how it was similar. The point of the matter is
2 is that there is one chain, in the case there is one
3 break in the chain, that is easy, you don't have to make
4 a wild guess, you don't have to make a wild supposition
5 as to what happened. One break with standard operating
6 procedure, but for that person, you know, that one thing
7 the chain would have been fine but in this case the
8 chain is all over the place. The case itself says
9 despite all the other stuff we have said, the mere fact
10 that the evidence is sealed upon presentation of testing
11 does not in and off itself establish a sufficient chain
12 of custody. Evidence is still required as to how the
13 item was obtained, how it was handled to ensure it was
14 in fact what it was reported to be.

15 In this case, they have not met that
16 requirement. Supreme Court has not said that, well you
17 do the best you can and it comes in. Ya know give it a
18 good fighting chance. What the Supreme Court is saying
19 is the reason that the State has to prove this chain,
20 is so that our justice system has some integrity.
21 Obviously so that the police can't tamper with it but
22 also there doesn't have to be an overaction by the
23 police just the mishandling, mistake, the time, the
24 items being confused, being merged, being taken apart,
25 not accounted for here and there and finally things come

1 up missing and mislabeled at the end. I think that
2 causes every reason for us to worry. In order to make
3 this chain work we have to speculate at least 3 or 4
4 times. Earl did testify and we can read it back on the
5 record, that every detective when he started working at
6 the sheriffs office was responsible for their own
7 evidence. Now, we can draw differences that they each
8 had their own shelf or something like that and they each
9 had their own storage locker but that's neither here nor
10 there. They have not met the burden that the court has
11 set for allowing evidence to come in. If we let this
12 piece of evidence come in then we are setting the bar
13 pretty low for our law enforcement and our job.

14 The Court: Thank you so much. I would
15 respectively deny your motion to exclude on the evidence
16 for this reason. Here is what I have heard. Here's what
17 I believe has been established. I believe that it has
18 been established that on at the time of the alleged
19 assault, and I do realize that there are some
20 discrepance in regards to the date, but I don't think
21 that goes to the admissibility, I think it goes to the
22 weight, that because it was beyond the date it was
23 uncontroverted and consistent that after the alleged
24 assault that the alleged victim went to the Medical
25 University and the testimony of Ms. Schafer I thought

1 was quite, it was very compelling, giving her memory of
2 the protocol and involvement in the protocol and her
3 ability to identify those many years later, with what I
4 observed and found to be the degree of certainty, how
5 the protocol occurred, her involvement in developing the
6 protocol even to the extent to remembering that, she
7 understood, that her team understood the importance of
8 having a rape kit and they made it. And that those
9 particular items were done. And what occurred once the
10 evidence was collected and her knowing who did that
11 collection, how it occurred, and her being able to
12 recognize her initials as well as other signatures and
13 what would have happened. There was no, I did not
14 observe any concern of any lack of certainty with
15 regards to the methodology that it was followed as had
16 been her experience for an extended period of time.
17 She's very clear that on how it was collected and when
18 it was turned over and how it was turned over. Then
19 Detective Knight, you are exactly right, he's not
20 exactly sure about it whether or not he made a rape kit,
21 whether he just returned it, but he is very clear of his
22 involvement of the chain of the evidence. Now retired
23 Nevins was very clear and Major Moultrie was extremely
24 clear with regards to their procedure, the care that
25 they gave to it. And exactly who was allowed access to

1 this evidence and where it was. We've got the chain both
2 where it was housed, with regards to it being at the
3 hospital and then being moved and then being placed with
4 Earl Asbell and being placed in the new evidence storage
5 room. And then it being transferred back and forth to
6 SLED. I thought it was the ability of the Solicitor to
7 clear with regards to the number of times it was
8 transported back and forth to SLED and it's fairly
9 remarkable that in this extended period of time that
10 there appears to be only one analyst. It is really
11 supported by the fact that the analysis individual at
12 SLED, Ms. Stanley, that once she opened it saw that it
13 had been analyzed by this witness that her response was
14 in order for it to be consistently she sealed it back
15 and put her initials on it and took it, hand carried it
16 to him so there wouldn't be a preservation of the chain
17 in terms of the analysis. What is some what unique about
18 this evidence is that it really, it arrived at the
19 beginning if you will an evidentiary scientific
20 revolution. And it really tracks it. It is fascinating
21 how this evidence tracks that revolution in terms of
22 science and how it interacts with the law. I've had the
23 opportunity to be involved in another case where that
24 exact experience and I would just say that this chain of
25 custody really, as much as anything, it shows that the

1 Sheriff's Department and Dorchester County and each
2 detective back to this case they refused to allow their
3 investigation to die. I think that is what this shows.
4 But at each juncture it is clear that it was sent to
5 SLED the same person who had done the analysis continued
6 to do the analysis. We know where it was. We know where
7 it was specifically. We know it was in the closet at
8 the old hospital and we know it was in the evidence
9 room, based on the testimony of Earl Asbell. While I
10 certainly acknowledge that the one oral swab, it's not
11 the swab it's the oral wash, while there is something
12 about that, as I look at the testimony in its entirety
13 as I have observed these witnesses, as I have watched
14 them testify with regards to their certainty about the
15 procedures, and they were the people that were
16 responsible for those procedures, I am satisfied that as
17 you look at these circumstances that this evidence ought
18 to be admissible. I acknowledge your concern. I believe
19 it goes to the weight rather than to admissibility.

20 Mr. Farley: Thank you, your Honor.

21 The Court: Do y'all need to take a very short
22 comfort break.

23 **(There was a court break)**

24 The Court: Anything from the State before we
25 bring the jury out?

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1 Mr. Justis: Nothing from the State, Your
2 Honor.

3 The Court: Mr. Farley?

4 Mr. Farley: No, your Honor.

5 The Court: Okay, lets bring the jury out.
6 (Jury enters courtroom)

7 The Court: Okay. When you are ready we are
8 ready. Ladies and Gentlemen at this time we will
9 continue The State's case. You may proceed.

10 Mr. Justis: May it please the Court?

11 The Court: Yes.

12 Mr. Justis: At this time the State will offer
13 Ken Bogan for an expert in Serology and also DNA
14 Analysis.

15 The Court: Accepting as qualified. Let me
16 tell you what has just happened. Ordinarily, under our
17 rules of evidence, individuals are not allowed to
18 testify regarding their opinion or the reasons for their
19 opinion. However, this is an exception when by virtue
20 of someone's knowledge, training or experience, they
21 have a common expert in some field usually it's art,
22 science, a profession and as a result they are allowed
23 to testify regarding their opinions and their reasons
24 for those opinions in their expertise. So, ladies and
25 gentlemen this so witness is qualified in the field of

1 Serology and DNA analysis. And will be allowed to
2 testify regarding his opinions and the reasons for his
3 opinions. Ladies and gentlemen I'm going to gi\ve you
4 some instructions about expert testimony including
5 instructions but for now let me tell you that expert
6 testimony is for the purpose for helping determine the
7 evidence it is certainly not going for the purpose of
8 controlling your judgment, but I think that will suffice
9 for now.

10 Mr. Justis: Thank you, Your Honor. May it
11 please the court?

12 The Court: Yes, sir.

13 Q: Mr. Bogan when did you fist become involved with
14 this case?

15 A: 1985

16 Q: Okay and in 1985 what involvement did you have

17 A: I received some evidence from Dorchester County's
18 Sheriff's office for purpose of serologist
19 analysis.

20 Q: I'm showing at this time what has already been
21 entered into evidence as State's 18. Do you
22 recognize that?

23 A: Yes, I do.

24 Q: And what is that?

25 A: State's exhibit 18 is a South Carolina Law

1 Enforcement Division form that is a request for
2 laboratory analysis. The document, the case number,
3 the submitting agency and the submitting officer
4 and the evidence is submitted.

5 Q: And is this a SLED form?

6 A: Yes, it is

7 Q: And what kind of information is located on that
8 form? You can annotate on the screen.

9 A: Here is the case number, the county and origin,
10 this is the time stamp here when it was received at
11 SLED, it's a little bit difficult to read but it is
12 January 2nd of 1985. It lists the victim name and
13 the submitting officer with his signature and it
14 lists the items of evidence. And it was requested
15 for analysis to be performed for evidence.

16 Q: And what were those items of evidence?

17 A: It was a specimen kit which was obtained from the
18 Medical University of S.C. which contained a
19 vaginal wash, a vaginal swab, a wood's lamp, oral
20 swab, rectal swabs, saliva, and an oral wash.

21 Q: Okay. And who's handwriting is that on the bottom
22 where it says specimen kit and all of the itemized
23 list.

24 A: From this point down that is my writing. I actually
25 opened up the kit that was collected from MUSC and

1 did an inventory because I did my inventory, I
2 wrote that down on the evidence submission form. We
3 use to use the alphabet, Item A, Item B to mark, so
4 you can see where I circled.

5 Q: When an officer or someone from law enforcement
6 brought evidence to SLED, would they fill this form
7 out there or prior to?

8 A: I think they were able to fill it out prior to
9 bringing it but it was often time done in the
10 office. They just actually brought a container and
11 filled out the form in the office.

12 Q: You talked about that time stamp in the upper right
13 hand corner, where would that time stamp be
14 applied?

15 A: At the SLED intake section.

16 Q: And do you know who would have applied that time
17 stamp?

18 A: We have a pool of technicians or secretaries and
19 their job function was to accept the evidence,
20 document it and do the time stamp on the evidence
21 forms so it would have been done in the evidence
22 intake section. It's almost like a time clock so
23 the paperwork would have been stuck in it and a
24 time stamp.

25 Q: OK. At what point would you have received it?

1 A: The secretary would call the analyst that was
2 assigned the case and they would come up and
3 collect the evidence.

4 Q: So you would have literally gone down there and
5 picked up the evidence from the law enforcement
6 officer?

7 A: To the best of my recollection, yes.

8 Q: And this form is kind of hard to read. Is this an
9 original?

10 A: No it is not. A lot of our case files have been
11 microfilmed. The original has been destroyed,
12 shredded. These documents are a reproduction,
13 basically a copy made from the microfilm.

14 Q: So old cases were microfilmed and then the
15 documents destroyed after put on the microfilm

16 A: Yes, that was the procedure for a number of years.
17 And then I then I can't remember what year that
18 stopped, and then we no longer put cases on
19 microfilm.

20 Q: Why do you no longer put cases on microfilm?

21 A: We now have computer storage and we also have files
22 storage space and store them in Columbia.

23 Q: And did you have that computer storage space back
24 in 1984?

25 A: No, we did not.

1 Q: At this time I am showing you what has been marked
2 as State's exhibit #10. Do you recognize that item?

3 A: Yes, I do. State's exhibit #10 is a heat sealed
4 pouch because the current case # across the top has
5 my initials here where I sealed it and I can also
6 see through the clear bags and see my initials on
7 the inside.

8 Q: Now that bag that you are holding, the outer bag,
9 would the evidence have been placed in that bag
10 back in 1985?

11 A: Not in the outer most container no. It was actually
12 placed in this container. The outer most container
13 in 2009.

14 Q: And what did you receive as far as the evidence in
15 1985?

16 A: The evidence was submitted on two different dates
17 in 1985. On the first submission, as I've stated,
18 it included a vaginal wash, vaginal swab, oral
19 swab, rectal swab, saliva and oral wash.

20 Q: I'm showing you what has been marked already into
21 evidence as State's exhibit #19. Do you recognize
22 that document?

23 A: Yes. This is also a South Carolina Law Enforcement
24 Division document it is also a form request for
25 laboratory analysis. Very similar form of State's

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1 exhibit 18 which lists items of evidence that are
2 submitted to SLED from Dorchester County Sheriff's
3 Office.

4 Q: Okay and is there a time date stamp on that form?

5 A: Yes there is.

6 Q: And what is that time date stamp?

7 A: It's up in this corner, it may be a little hard to
8 read, It's January 31st 1985.

9 Q: And would that date have been placed at SLED on
10 that document?

11 A: Yes.

12 Q: And let me ask you a question, on the previous
13 document and on this one I've noticed at the
14 bottom, if you look on the bottom right, can you
15 read where it says signature? What is that, right
16 there?

17 A: This area?

18 Q: Correct.

19 A; It has a blank space for signature for person
20 receiving evidence.

21 Q: Okay and why is there not a signature on that slot.

22 Mr. Farley: Objection, Speculation.

23 Q: Do you know why there is not a signature there?

24 Mr. Farley: Objection

25 The Court: I understand. Overruled. The answer

1 to that would be yes or no.

2 A: Would you repeat the question?

3 Q: Do you personally know why there is not a signature
4 on that form?

5 A: No, I don't know.

6 Q: Okay. But is there anything on that form
7 identifying that that evidence was received by the
8 State Law Enforcement Division?

9 A: Yes.

10 Q: And what would that be?

11 A: That would be the time stamp in the upper right
12 hand corner.

13 Q: Okay. And what were the items received by SLED on
14 that date with that request?

15 A: Items of clothing, and some other items, a blouse,
16 hose, bra, changing chux, exam chuxs, a skirt,
17 panties, slip, fingernail scrapings from the left
18 hand, and the right hand, pubic hair pluckings and
19 pubic hair combings.

20 Q: And is that your handwriting?

21 A: My handwriting is in this area. And I also the
22 handwriting around each item that has a circle with
23 a letter of the alphabet. Example, what would be
24 here. Where I put in the letter "K" as inventorying
25 the items.

1 Q: So in 1985, January 1985 you received 2 sets of
2 evidence, if you will?

3 A: That is correct.

4 Q: Now, please explain to the jury what the scientific
5 capabilities and processing these various forms of
6 evidence back in 1985. What could you do?

7 A: When I testified earlier to my qualification I
8 mentioned that I am qualified as a forensic
9 serologists. Serology is the identification of
10 bodily fluids and also the characterization of body
11 fluids. The capabilities in 1985 were minimal
12 compared to today. Basically, we could do bodily
13 fluid identification, and attempt to do what is
14 known as A or B blood type from the evidence and
15 that was pretty much the limitations of what we
16 could do in 1985.

17 Q: And let me ask you when you received both sets of
18 evidence n 1985 did they appear to have been
19 tampered with?

20 A: When I received evidence it was in a sealed
21 condition.

22 Q: And if it wasn't in a sealed condition what would
23 you have done?

24 A: I would have contacted the Dorchester County's
25 Sheriff's office and told them it was not in a

1 sealed condition and I would not be able to perform
2 analysis on it until they would be able to resolve
3 the reason it was not sealed.

4 Q: To the best of your knowledge, all this evidence
5 was sealed when you received it in January of 1985?

6 A: Yes, it was sealed.

7 Q: Now, when you got this evidence what specifically
8 what kind of test were you able to do on these 2
9 sets of evidence?

10 A: I did a visual examination of the clothing
11 evidence. I did some chemical analysis on the
12 stains that were suspected to be body fluid stains.
13 My primary objective was to identify any blood or
14 semen and collect any thing such as hairs off of
15 the clothing. The vaginal swabs I did a chemical
16 analysis on those and the items submitted along
17 with what is called the rape kit for the
18 determination to see if there was any semen
19 present.

20 Q: And when you performed those tests, what were your
21 results?

22 A: I prepared a report to my findings to submitted
23 that to Dorchester County's Sheriffs Office. From
24 the vaginal wash, I was able to identify gametes
25 cells, the male reproductive cell. I attempted to

1 identify semen on the vaginal swab and my analysis
2 for semen was inconclusive. And on the wood's lamp
3 swab, oral swab and rectal swabs there was no
4 substantive characteristics of semen indicated on
5 those items and the sam on the oral wash. And all
6 the saliva samples that were submitted, I did not
7 perform any analysis.

8 Q: OK. What about some of the clothing you tested?

9 A: The clothing evidence, I did visual examinations on
10 those items for any suspected body fluids. On the
11 blouse, hose, bra and chuuxs there was no blood or
12 semen or nothing of evidential value found. On the
13 skirt I did identify semen. I attempted the A, B,
14 O blood type of that semen donor and I was not able
15 to do that. On the panties, I also identified no
16 semen, and on the fingernail scrapings I looked for
17 any blood, and did not find any. The reports are
18 really old here, I found nothing of evidential
19 value on the hair pluckings and the pubic hair
20 combs.

21 Q: Ok, how do you actually test the clothing?

22 A: I take cuttings from them. In other words if it is
23 a large garment, I identify small stains and I
24 actually take a cutting from that. Put it into a
25 container and do a chemical analysis on it . So

1 during my visual examination I take cuttings and
2 put into a smaller envelope and then when I get
3 into the laboratory, I may take even smaller
4 cuttings, for example, from the panties, I cut out
5 and then take that into the laboratory and do a
6 chemical analysis from a smaller cutting.

7 Q: And you recorded these findings in a report?

8 A: Yes I did.

9 Q: And to whom do you make that report available?

10 A: It was sent to Lieutenant Nevins at the Dorchester
11 County's Sheriff's Department.

12 Q: And after you did your testing what did you do with
13 your items of evidence?

14 A: They were repackaged and resealed. Then eventually
15 returned back to Dorchester County Sheriff's
16 Office.

17 Q: So when they left your custody they were in a
18 sealed condition?

19 A: Yes.

20 Q: Did you have an opportunity to handle evidence from
21 this case the dates subsequent to 1985?

22 A: Yes I did.

23 Q: And what date was that?

24 A: There was an additional submission in 1988 which
25 included the re-submission of some items from 1985.

1 So there was an attempt to resubmit those for
2 analysis. During that period of time, DNA analysis
3 was evolved. And I'm sure I was looking at the
4 future of DNA and potential of any evidence to be
5 reexamined using DNA analysis techniques. The
6 Dorchester County's Sheriffs Department was also
7 aware of the potential of DNA analysis, they
8 resubmitted some items of evidence with the request
9 with DNA on them. At that time however, the SLED
10 laboratory was not capable of performing the
11 analysis but I did have the opportunity to receive
12 some additional request back in 1988.

13 Q: I'm showing you what has been marked and entered
14 into evidence as States #22. Do you recognize that
15 form?

16 A: Yes I do.

17 Q: And what is that?

18 A: This is a very similar form that we've already
19 seen. It's a South Carolina Law Enforcement
20 Division Form. It's a request for laboratory
21 analysis. It list a submitting agency and SLED case
22 # and this is page one of 2 and page 2 list the
23 items of evidence.

24 Q: And does it have a time date stamp on it?

25 A: Yes it does.

- 1 Q: And what is that time date stamp?
- 2 A: 11-21-1988
- 3 Q: And does the list have a victim on it?
- 4 A: Yes it does.
- 5 Q: Does it list a subject on it?
- 6 A: Yes it does.
- 7 Q: And what is that subjects name?
- 8 A: First name is Barry, last Name is Daniels.
- 9 Q: And did you fill out that form?
- 10 A: No, I did not.
- 11 Q: And in the box at the bottom, what does it state in
- 12 that little box at the bottom on the left hand box.
- 13 A: Here states DNA.
- 14 Q: And if you look to the right of that there is
- 15 another exam box, what is that notation in there?
- 16 A: The computer system at the South Carolina Law
- 17 Enforcement Division was evolved and had codes, and
- 18 our secretaries had codes they used for exam
- 19 request. And I'm assuming, but I don't really know
- 20 but I think this is the code for DNA analysis
- 21 request. So if they put down 325, for exam request,
- 22 it would be for DNA.
- 23 Q: And at the top of that document, there is the
- 24 letters KLB. Who is KLB?
- 25 A: Those are my initials.

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1 Q: At this time Mr. Bogan I am showing you what has
2 been marked as States Exhibit 33. Can you identify
3 that document?

4 A: Yes, State's exhibit 33 is page 2 of the evidence
5 submission form. It list the items of evidence
6 that were submitted on July 21, 1988.

7 Q: So that would be page 2 of State's 22?

8 A: That is correct.

9 Mr. Justis: At this time, Your Honor, the
10 State would like to offer State's #33 into evidence.

11 The Court: Any objections?

12 Mr. Farley: No objection, Your Honor.

13 The Court: Very well.

14 **(State's Exhibit Number 33 in evidence)**

15 Q: Mr. Bogan I'm showing you State's 33. Can you read
16 off what items of evidence were submitted?

17 A: It was a wood's lamp. What that stands for is
18 wood's lamp swab. Salvia on filter paper, vaginal
19 wash, oral swab and vaginal wash.

20 Q: Based on that document and page 1 where it listed
21 **P.R. [REDACTED]** as the victim and Barry Daniels as a
22 suspect, based on that document can you determine
23 who's evidence that is?

24 A: This is the same evidence that was submitted
25 originally in 1985. It's the wood's lamp swab,

1 vaginal swab, recital wash that was submitted in
2 1985. Examined in 1985 and returned to Dorchester
3 and then resubmitted in 1988.

4 Q: Let's look back at State's 10. And what was that
5 item again?

6 A: It's a heat sealed pouch that contains evidence
7 samples that were submitted in 2009.

8 Q: Okay. Was that, some of those items that were
9 submitted in 1988, are they included in that
10 exhibit?

11 A: Yes.

12 Q: And how can you tell?

13 A: As I testified before, this is the outer packaging
14 that it was placed in 2009 when it was resubmitted.
15 Inside I can see the evidence packaging which is
16 the original evidence packaging and also see my
17 note which corresponds to the report that I did in
18 1988 reflecting those samples were not suitable at
19 that time for DNA analysis.

20 Q: And your note that was on that inner package, what
21 date is on there?

22 A: 7-24-1988

23 Q: When you received that package did it appear to be
24 tampered with?

25 A: This package, when it was submitted to SLED, it was

1 sealed. It actually went to another DNA analyst at
2 that time and that DNA Analyst approached me and
3 told me that they had found my initials on the
4 evidence on the inside. It was Agent Stephanie
5 Stanley. She was assigned this case, and she had
6 realized that I had previous involvement with it
7 and she approached me and then turned the evidence
8 over to me. So the only difference in the packaging
9 is that it has her initials across the top where
10 she originally opened it and then she resealed it.

11 Q: To the best of your knowledge who was the person
12 that actually manipulated the evidence inside?

13 A: I'm the only one.

14 Q: Now, you mentioned that in 1988 you received this
15 evidence and it was insufficient at that point to
16 test. Could you explain a little bit about 1988 and
17 that era and the DNA capabilities and the type of
18 DNA testing that was done or starting to be done
19 back then?

20 A: DNA analysis began to evolve in the mid 1980's.
21 The first forensic based was in 1986 and it was in
22 England. The first time it was used in a case in
23 the United States was in 1987. There was knowledge
24 about DNA testing but we did not have the
25 capabilities at SLED to perform that analysis and

1 in approximately 1988 we began the process of
2 hiring people, training people to develop our DNA
3 capabilities in our laboratory. At the time I
4 evaluated this evidence, I had enough knowledge of
5 the technique that was used then, and the technique
6 is called, and I'll use the abbreviation, RFLP,
7 that stands for Restriction Fragment Length
8 Polymorphism. It is a technique that used a
9 considerable amount of evidence at the time so I
10 was able to evaluate this evidence and know that I
11 did not have sufficient amount of evidence using
12 the RFLP technique to get a DNA profile. So I did
13 not perform an analysis on it and recorded that to
14 the Dorchester County Sheriff's Office.

15 Q: And what did you do with the evidence when you were
16 done looking at it?

17 A: Once I evaluated it, I repackaged it, resealed it
18 and it was eventually returned to the Dorchester
19 County Sheriff's Department.

20 Q: You mentioned you issued a report stating that?

21 A: Yes.

22 Q: After 1988, did you have the opportunity to see
23 this evidence come to you a third time?

24 A: Yes.

25 Q: And when was that?

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1 A: The items were resubmitted as State's exhibit #10
2 on 3-6-2009.

3 Q: I'm showing you State's exhibit 10. And how can you
4 tell it was submitted on March 6, 2009?

5 A: The laboratory documentation, the evidence
6 submission form, has a date and time that it was
7 submitted. And that is March 6, 2009 at 10:52 am.

8 Q: And between 1988 and 2009, what had changed in the
9 intake procedures at SLED?

10 A: We were able to modernize, if you will, and we
11 purchased a laboratory information management
12 system that allowed us to track evidence through
13 the log in process and procedures to be able to use
14 the bar code scanner, very similar to what you
15 might see at a grocery store scanner. We could scan
16 the evidence and know what was in the package. So
17 we were able to follow the tracking of the evidence
18 throughout.

19 Q: And were those capabilities available in 1985?

20 A: No they weren't.

21 Q: What about 1988?

22 A: No.

23 Q: Now, in 2009, when you received that evidence back
24 was it in the sealed condition?

25 A: Yes, it was in this exterior large heat sealed

1 pouch.

2 Q: So that large pouch that you are actually touching,
3 that came about in 2009, that's when that was
4 added?

5 A: Yes.

6 Q: And, what were you requested to do when you got
7 that package?

8 A: The request on the evidence submission form was for
9 DNA analysis on those items.

10 Q: And had DNA changed or the process for obtaining
11 DNA between 1988 and 2009?

12 A: Yes. SLED used the process of Restriction Fragment
13 Length Polymorphism from about 1990 to the year
14 2000. During the late 1990's new techniques were
15 coming out to enhance DNA analysis so we could get
16 more information on smaller and smaller samples.
17 Originally with DNA analysis if I were going to
18 attempt to type a DNA profile from a blood stain I
19 would need a blood stain about the size of a dime
20 to a nickle. With the new techniques that came out
21 in 2000 and after, I would be able to get a profile
22 from a blood stain much, much smaller, its hard to
23 describe but maybe 1 millimeter square. So it's not
24 very large at all. So the techniques improved and
25 more sensitive and were able to get more

1 information from the profile.

2 Q: And, take us through what you did when you received
3 that sealed package of evidence.

4 A: The evidence was re-inventories and I went through
5 that evidence and to make sure the items that were
6 listed on the evidence submission form were
7 present. Once I had done the inventory I began my
8 analysis. I don't know if you want me to go through
9 now what my results were or not.

10 Q: Well, first tell us what, in layman's terms, what
11 is DNA? What are you looking for?

12 A: DNA, obviously is the abbreviation for
13 Deoxyribonucleic Acid. DNA is the generic material
14 that is passed on from your parents and it is in
15 every cell of the human body, except every nucleus
16 cell of the body, It's not in the blood cells
17 since they do not have a nucleus. But the same DNA
18 copy is in each and every cell of the body whether
19 the cell comes from muscle tissue, brain tissue,
20 white blood cells, seminal material, vaginal
21 fluids, saliva. So DNA is unique to an individual.
22 No two people have the same DNA, except identical
23 twins and that makes DNA a very powerful tool for
24 human identification. DNA has been used to identify
25 the war dead, people that are killed in action. It

1 has been used extensively to identify remains of
2 individuals there and associate them with their
3 families and for law enforcement to identify those
4 who left behind biological samples at a crime
5 scene.

6 Q: OK. What did you do with these exact samples?

7 A: The analysis that I performed was basically to
8 attempt to extract DNA analysis from some of the
9 items. I had to evaluate each item that was
10 resubmitted. Some of the items were not examined
11 because of the original that I had done back in
12 1985, in other words I did not identify semen on
13 some of the items, so I didn't bother to re-analyze
14 them for semen. Or to do any DNA analysis on those
15 so I sorted the items that I was going to do DNA
16 analysis on and those items were the vaginal wash,
17 vaginal swab, cutting from panties and cutting from
18 the skirt. The other items were not examined using
19 DNA analysis. Basically what I do with those items
20 is I preform chemical analysis on them to extract
21 the DNA, I then purify the DNA proteins that might
22 be present. I check the DNA to see how much I have.
23 If I didn't obtain any DNA from it there's no point
24 in going forward with the sample. If I obtained DNA
25 from it, during the process that we use now, when I

1 said it's more sensitive, we use a process called
2 polymerase chain reaction. It basically amplifies
3 DNA and makes multiple copies. Almost like putting
4 a piece of paper in a copy machine and making a 100
5 copies of it. I put DNA in the machine called
6 ThermoFisher and it makes millions and millions of
7 copies of that DNA. That gives me enough DNA to
8 analyze. With that analysis I then separate the
9 DNA from what's called electrophoresis basically
10 DNA profile from micro evidence. That's the
11 process. I quantitate the DNA, extract the DNA,
12 Purify it, amplify it run it through a machine that
13 basically gave me the DNA profile results.

14 Q: OK. And what items were you able to extract DNA
15 from?

16 A: Looking back at my report, I was able to get DNA
17 from the vaginal wash and the vaginal swabs, but
18 when I attempted to get a profile, from those
19 items, I extracted DNA from those items, I got a
20 very partial profile. In other words I didn't get a
21 complete profile. It was insufficient for me to
22 make any kind of comparison. I was able to get DNA
23 from the cuttings of the panties and I extracted
24 DNA from it. I was also able to obtain DNA from a
25 cutting from a skirt and develop a profile and

1 compare it.

2 Q: And you said you were able to develop profiles.

3 What were the results of your testing?

4 A: My results for items, the items were re-numbered.
5 Vaginal wash; item #1, Vaginal Swab; item #2, those
6 were collected at the Medical University of South
7 Carolina. I obtained partial profiles that were
8 insufficient for me to compare. On the panties I
9 developed a profile and the DNA that I obtained
10 from those panties was a mixture of at least two
11 individuals and I got a partial profile from a
12 major contributor. I will try to explain to you
13 what that is. When 2 people contribute to a stain
14 they may not be the same amounts there is a ratio
15 generally and the person that contributes the most
16 DNA we call the major contributor and the person
17 that contributes the least amount of DNA we call a
18 minor contributor. So we develop a profile. The
19 profile from the major contributor was identify
20 from a male individual. I didn't know who that
21 person was so I reported that in a report dated
22 December 12, 2009 that the major contributor
23 developed from the panties was from an unidentified
24 male individual. In item 12 I obtained a profile
25 which was a cutting from the skirt which was also

1 from 2 individuals and the major profile from that
2 cutting was consistent with the DNA profile of
3 [P.R.] [REDACTED]. The partial profile from the minor
4 contributor was insufficient for me to compare.

5 Q: Ok so you have a skirt, where you have a major
6 contributor, I think you stated [P.R.] [REDACTED].
7 Minor contributor you can't determine.

8 A: That is correct.

9 Q: On the panties you had a major contributor who you
10 identified as a male. Who was the minor contributor
11 on the panties?

12 A: The minor contributor was consistent with [P.R.]
13 [P.R.] .

14 Q: And after you go those results you documented them
15 in a report?

16 A: Yes.

17 Q: And you have this unknown male profile that you
18 have been able to develop.

19 A: Yes.

20 Q: What did you do with that information?

21 A: Well, it was listed in my report, of course, that I
22 have ...

23 Mr. Farley: Excuse me Judge, may we approach?

24 The Court: You may.

25 (Counsel approach without court reporter)

1 Q: Mr. Bogan you've issued your report and there's
2 this unidentified male, major contributor from the
3 panties. At some point in time you were able to
4 determine that major contributor to the DNA profile
5 sample that you developed, was an individual named
6 Herbert Leroy Holmes. Is that correct?

7 A: At a later date, a known reference standard, from
8 Herbert Holmes was submitted to me and I did the
9 same procedure. I extracted DNA and developed a
10 profile and I was able to compare his profile back
11 to the evidence to the major contributor and those
12 profiles matched.

13 Q: Ok and at some point SLED actually sent a request
14 to the Sheriffs department asking for that second
15 sample you mentioned, where a sample of Herbert
16 Holmes DNA. There was a request sent from SLED
17 sent to the Sheriffs office asking for them to
18 locate Herbert Holmes and get a DNA sample from
19 him. Is that correct?

20 A: Yes.

21 Q: Did the Dorchester County's Sheriffs office ever
22 provide you with a sample from Herbert Holmes to
23 compare?

24 A: Yes.

25 Q: Before we get there ...

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1 Mr. Justis: At this time, Your Honor, the
2 State would offer State's 10 into evidence.

3 Mr. Farley: We object, Your Honor.

4 The Court: Very Well. Subject to your
5 objection is based on what we discussed earlier right?

6 Mr. Farley: I do, but I also have an
7 additional argument.

8 The Court: Alright.

9 Mr. Farley: May we approach?

10 The Court: Sure, absolutely. When we take a
11 break and put on the record that but for now I'll
12 overrule your objection.

13 Mr. Farley: Very well.

14 (State's Exhibit Number 10 in evidence)

15 Q: Before we get to 2011, Mr. Bogan, let me show you
16 some other items. I'm showing you what's marked as
17 State's exhibit 30. Without taking it out, please
18 look at that bag and let me know if you recognize
19 that bag?

20 A: State's exhibit 30 obviously is a blue plastic bag.
21 It has Dorchester County Sheriff's Office initials
22 and SLEDs case # back in 1985, that's my
23 handwriting here.

24 Q: So you handled that bag at some point in time?

25 A: Yes.

1 Q: If we open up this bag there is several brown bags
2 that are all individually labeled. This one being
3 State's exhibit #1. Do you recognize that item?

4 A: Yes, I do.

5 Q: And what is that?

6 A: State's exhibit #1 has my initials designated with
7 the letter H on it. It is part of the clothing
8 items in 1985.

9 Q: I'm showing you what's been marked as State's
10 exhibit 2. Can you identify this item also?

11 A: State's exhibit #2 is a brown paper bag, it's
12 marked skirt and also here is my initials. And
13 circled with the letter M as the item #. It was
14 given in 1985.

15 Q: I'm showing you what's been marked as State's
16 exhibit #4. Do you recognize that item?

17 A: State's exhibit #4 is a brown paper bag it's marked
18 as a bra and also has my initials and the letter
19 "J" and the identifying number at SLED.

20 Q: Thank you. State's exhibit 10. Please take a look
21 at it and identify it.

22 A: State's exhibit 10 is a brown paper bag it's
23 labeled on the outside as an exam chux with my
24 initials and the item number letter "L".

25 Q: I'm sorry that's actually State's exhibit 29.

1 A: Yes, State's exhibit 29 is an exam chux.

2 Q: I'm showing what's been marked as State's exhibit
3 3. Do you recognize that?

4 A: State's exhibit 3 a brown paper bag, marked as
5 hose. I don't see my initials on there. It was
6 contained in the bag that I previously identified.

7 Q: So it would be your testimony that you did not open
8 that bag. You did not touch that bag as far as
9 opening?

10 A: My examination reports says that I did not detect
11 any blood or semen on this item so I think I
12 probably did open it. But I may have failed to put
13 my initials on it. My initials may be on the
14 inside, I just don't know.

15 Q: State's exhibit #6. Do you recognize that?

16 A: State's exhibit #6, brown paper bag identified as
17 containing a slip, has my initials and the letter
18 "O" for identification.

19 Q: Next is State's exhibit #28. Do you recognize that?

20 A: State's exhibit #28, is a brown paper bag with the
21 lettering changing chuxs on the outside. Once again
22 I don't notice my initials on the outside.

23 Q: And finally, State's exhibit #5. Can you tell us
24 what that item is?

25 A: State's exhibit #5 is a brown paper bag, contains

1 the lettering, panties. Here's my initials, and the
2 letter "N" as the item.

3 Q: Now, Mr. Bogan all these items that I just showed
4 you State's exhibit 1,2,3,4 5,6, 28 & 29 are these
5 the items that you received in this blue plastic
6 bag which is identified as State's exhibit #30?

7 A: Those are the items that are reflected on my
8 inventory when I inventoried them back in 1985.

9 Q: And what are the items report to be?

10 A: Clothing from **P.R. [REDACTED]**.

11 Mr. Justis: At this time, Your Honor, the
12 State would offer State's 1,2,3,4,5,6,28 & 29 & 30 into
13 evidence.

14 Mr. Farley: We object. As to the prior reason
15 and also the relevance as to some of those items.

16 The Court: I understand. Overruled. Note your
17 objection.

18 **(State's Exhibit Numbers 1, 2, 3, 4, 5, 6, 28, 29 and 30**
19 **in evidence)**

20 Q: As this time I'm going to show you what's been
21 marked as State's exhibit 5 that has been entered
22 into evidence. And what is that item?

23 A: State's exhibit #5 is a brown paper bag, lettering
24 panties on the outside. Letter N. So this bag
25 contains a pair of panties.

1 Q: And could you open that bag of panties?

2 A: Yes.

3 Q: Do those appear to be the panties you received back
4 in 1985 and took a cutting from?

5 A: Yes, it has my initials on the back portion with
6 the letter "N" where I documented it in 1985.

7 Q: And how can you tell you took the cutting from
8 that?

9 A: The cutting was taken from the crouch area of the
10 panties, inside crouch area, and there is a section
11 in the crouch area missing from the cutting that I
12 examined.

13 Q: Now, let's go back to 2011. In 2011 did you receive
14 any evidence in this case?

15 A: Yes, I did.

16 Q: I'm showing you what has been marked as State's
17 exhibit 12. Do you recognize that item?

18 A: Yes, I do.

19 Q: And what is that item?

20 A: State's exhibit 12 is a heat sealed pouch and it
21 has SLED's case # on it and my initials here, I can
22 see through the package and it has my initials on
23 the inside. State's exhibit 12 is SLED's item # 14
24 which is a DNA sample from Herbert Holmes.

25 Q: And when you received that package, was it sealed?

1 A: Yes it was.

2 Q: Did it appear to be tampered with.

3 A: No it didn't.

4 Q: And what date did you receive, what date was that
5 evidence brought to SLED?

6 A: March 4, 2011.

7 Q: And do you know the individual who brought it? Is
8 it located on there?

9 A: The initials on it are BE and I know that to be
10 Buster Evans.

11 Q: And when you received that package, what did you do
12 with that package?

13 A: This was submitted with a request for DNA analysis,
14 on the standard of Herbert Holmes. Develop a DNA
15 profile and compare it to the evidence sample that
16 I developed a profile on in 2009.

17 Q: And did you do that?

18 A: Yes, I did.

19 Q: And what were your results from that analysis?

20 A: I compared the DNA profile I developed from Herbert
21 Holmes to the DNA that I obtained from the cuttings
22 of the panties and if you recall the cutting of the
23 panties built a mixed profile of a major
24 contributed associated to an unidentified male. I
25 compared a known standard with that profile, I was

1 able to determine that the source of that DNA was
2 most likely or probably from Herbert Holmes. The
3 profile from major contributor matched the profile
4 of Herbert Holmes.

5 Q: And after you did your testing did you seal the
6 evidence back up?

7 A: Yes I did.

8 Q: And how do you know you did that?

9 A: It has my initials at the base where I sealed it on
10 either side.

11 Q: Could you tell us what those dates were?

12 A: March 9, 2011 one sealed date and July 22, 2011 is
13 the other date.

14 Q: And why would you have two dates on there?

15 A: When I returned the evidence, I had considerations
16 of returning the DNA extracts inside the package
17 but I chose to leave them outside.

18 Q: And after sealing the bag back up, the evidence
19 back up, what did you do with it?

20 A: It was returned to our evidence control department
21 and it was eventually returned to Dorchester
22 County.

23 Mr. Justis: At this point, Your Honor, the
24 State would like to offer State's 12 in to evidence.

25 Mr. Farley: Objection

1 The Court: Very well. Overruled for the same
2 purpose.

3 **(State's Exhibit 12 in evidence)**

4 Q: Now, let's go back in time just a little bit. One
5 more time. I promise this will be the last time we go
6 back to the 80's. I'm showing you what's been
7 marked as State's 31. Can you open that envelope
8 and remove its contents and explain what those
9 items are or what they appear to be.

10 A: State's exhibit 31 is a manila envelope which
11 contains smaller items. It has my item "s" as
12 pubic hair combs, item "R", pubic hair pluckings,
13 and this one is a brown paper bag that has my
14 initials on it and SLEDS case # L850026 and it
15 contained items at one time items A thru G.

16 Q: And do you happen to know what those items were
17 according to your notes?

18 A: A, vaginal wash, B, vaginal swab, C --- D is an
19 oral swab, E is a rectal swab, F is saliva and G is
20 oral wash.

21 Q: And why would those items not be in that bag right
22 now?

23 A: I think what happened, is I took several items out
24 to resubmit for analysis at a later date and the
25 items were separated. I don't repeat DNA on known

1 hair samples.

2 Mr. Justis: At this time the State would like
3 to offer State's 31 into evidence.

4 The Court: Objection?

5 Mr. Farley: Yes, Your Honor.

6 The Court: Same Basis?

7 Mr. Farley: Yes, Your Honor.

8 The Court: Okay. Overruled. The objection is
9 noted.

10 **(State's Exhibit 31 in evidence)**

11 Q: Okay. We are done with the 80's. Lets go back to
12 this century, 2011. You did the testing on the
13 buccal swabs from Mr. Herbert Holmes and compared
14 it to the DNA standard you have. Did you issue a
15 report?

16 A: Yes, I did.

17 Q: And as part of that report were you able to
18 calculate a statistical probability that Herbert
19 Holmes was the major contributor?

20 A: Yes.

21 Q: And can you explain to the jury how you go about a
22 statistical analysis?

23 A: A DNA profile is composed of genetic markings. Each
24 genetic marker is in population. Know as
25 polymorphic. Poly stands for mini and morphic

1 stands for form. So, those genetic markers exist
2 within all of us but they exist in all of us in
3 different forms. Basically I may have mentioned a
4 DNA profile is composed. Each of those genetic
5 markers is associated with the number of repeats.
6 In other words I may have a certain, DNA strand
7 that is 10 repeats long. Someone else may have one
8 that is 14 repeats long, and someone may have one
9 that is 18. So the frequency of those genetic
10 markers can be evaluated by testing a lot of people
11 the amount of repeats and the percentages of the
12 genetic markers, the frequency of those genetic
13 markers that are known in the population are
14 calculated and put in a data base. Then I can
15 compare the genetic markers that I obtained from
16 this DNA profile to the frequency of those genetic
17 markers of known population and that is how a
18 frequency of the to this DNA profile can be
19 obtained. Basically, I put in those numbers into
20 the computer and the computer generates the
21 statistics. I don't do it by hand, but it is more
22 efficient with our computer system.

23 Q: And did you create a statistically probability in
24 this case?

25 A: Yes I did.

1 Q: And in your expert opinion, what was that
2 statistical probability?

3 A: My report reflects that the probability, first of
4 all, DNA profile that I developed from that major
5 contributor from the panties, matched the DNA
6 profile of Herbert Holmes. The probability of
7 randomly selecting a unrelated of unrelated
8 individuals having a DNA profile matching that
9 major contributor is approximately 1 in 350
10 billion.

11 Q: Is that billion with a "B"?

12 A: Yes it is.

13 Q: How many zeros are on that? Is it 350 comma.

14 A: It would be 350 and 9 zeros following it.

15 Mr. Justis: Thank you. No further questions.
16 Please answer any questions Mr. Farley might have.

17 The Court: Cross Examination?

18 **Mr. Bogan - Cross Examination by Mr. Farley**

19 Q: Sorry, but I'm going to have to take you back to
20 the 80's one more time. I want to direct your
21 attention back to 1985 when you initially got this
22 case. When you got this case you testified that you
23 got two batches of stuff. In the first batch of
24 stuff for a lack of a better word, you got the
25 contents of the rape kit?

1 A: Yes.

2 Q: In the second batch of stuff you got some clothing.

3 Is that correct?

4 A: Yes.

5 Q: In the first batch of stuff, how was it packaged?

6 I'm going to call it first and second batch of

7 stuff, can we keep that straight you think?

8 A: Yes. I think the original packaging is still in

9 State's exhibit 10. So that's how it would have

10 been packaged.

11 Q: Do you recall taking it out of those packages?

12 A: Do I recall taking it out in 1985?

13 Q: Yes 1985.

14 A: No I don't have a direct recollection of taking it

15 out back then.

16 Q: Do you recall putting it back in?

17 A: No but I know that I did. I know I took it out of a

18 sealed package and examined it and returned it to

19 Dorchester County.

20 Q: But you don't know if you put it back in the

21 original package or in a SLED generated package,

22 isn't that right?

23 A: It would have gone back in the original package.

24 Q: So we would have to guess at some point between the

25 time it was collected and now it was taken out of

1 it's original package, at least some of the items?

2 A: Yes.

3 Q: I want to go to the actual submission form itself,
4 that's State's 18. This is a submission form. Is
5 there anywhere on that form indicated, what is this
6 form for our knowledge?

7 A: It's a South Carolina Law Enforcement Division
8 request for a laboratory analysis form.

9 Q: And who would be making the request for analysis?

10 A: In this particular case it is signed by Dale
11 Nevins.

12 Q: In this case Officer Nevins would be the one who
13 handed in the material for analysis?

14 A: That is correct.

15 Q: Is there any where on this form, anywhere, that
16 indicates who received this information, these
17 items?

18 A: The only indication is the time stamp and in the
19 upper right hand corner it was received by South
20 Carolina Law Enforcement Division on 1-2-1985. On
21 this SLED form, it says signature of person
22 receiving evidence. You will agree with me that
23 there is no signature there?

24 A: Yes.

25 Q: It's a SLED form. Why isn't that signature there?

1 A: It was not our standard operating procedure during
2 that period in time to sign these forms. I can't
3 remember the total structure where the paperwork
4 went and where the evidence went. The evidence came
5 to me. The paperwork was probably, I would say
6 probably, to my best recollection it was probably
7 stacked up and given at a later time.

8 Q: Why's that signature blank on the form at all then,
9 if it wasn't part of your protocol?

10 A: I don't know. A lot of these forms were made
11 before I began working at SLED. I was introduced to
12 them.

13 Q: The very last row of that form, it's labeled
14 evidence and you testified that what is in that
15 box, the first box that said specimen submitted for
16 examination are the specimens you actually
17 analyzed. Is that correct?

18 A: Yes. When I received the form, I think the writing
19 stopped about right here, and I added that portion
20 down.

21 Q: And included in those items among other things, is
22 oral wash. Is that correct?

23 A: Yes.

24 Q: You wouldn't have written that there was oral wash
25 when there wasn't?

1 A: No.

2 Q: Now you testified for the Solicitor that in 1985
3 and 1988 that there was no computer program at SLED
4 for the handling of evidence? Is that a true
5 statement?

6 A: The computer program changed. I suppose if I mis-
7 spoke. The computer program changed. We actually
8 logged them in on a computer in 1985. We logged
9 them in 1984. The computer system changed and the
10 laboratory information management system changed.
11 So the method they were logged in changed over the
12 years, but yes we did have computers.

13 Q: And the method that you use now for these latest
14 samples you'd have to agree with me is far superior
15 than to the stuff back in the 80's?

16 A: As far as internal tracking of the evidence, yes it
17 is far more superior. We can do it with bar codes
18 today whereas in the 1980's, early 80's we could
19 not do it with bar codes.

20 Q: Now what I'll refer to is the 2nd batch of stuff,
21 there was also an evidence submission form for that
22 wasn't there?

23 A: Yes.

24 Q: That's reflected in State's 19. This stuff, this
25 second batch came up some 30 days later. Is that

1 right?

2 A: It was submitted on January 31, approximately 28-29
3 days.

4 Q: Pretty close. On this form once again we have the
5 items submitted for examination correct?

6 A: Yes.

7 Q: And those were the items, you went and put letters
8 on them so you could keep track of which is which?

9 A: Yes.

10 Q: Then over here, what is that box for?

11 A: It is a box for the submitting officer to put exam
12 requested.

13 Q: And what exams were requested?

14 A: The box is filled out. This is my writing so I
15 entered that. This is a ABO request and this was
16 for any tissue that might be found.

17 Q: Can you tell us what an ABO request is?

18 A: Once again when I talk about capabilities of
19 serology back in the early 80's, the only thing we
20 could do to characterize blood stains left at the
21 crime scene was to determine the ABO blood type.
22 There are 4 ABO blood types, they are Type A, Type
23 B, Type O and Type AB. And they exist in the
24 population and we find percentages. And so it was
25 somewhat helpful to say the blood type we found at

1 this crime scene is the same blood type as this
2 individual. So it was a request to determine if I
3 could determine the ABO blood type. Any bodily
4 fluid stains that I found. We also have the
5 capability to determine the ABO blood type of a
6 semen donor at that time because blood types were
7 secreted in some body fluids.

8 Q: Throughout this analysis you did find semen is that
9 correct?

10 A: Yes I did.

11 Q: But you weren't able to determine the blood type?

12 A: I attempted to. There was a little bit of a
13 sequence to this and the standard operating
14 procedure back in the early 80's was if I had no
15 known samples for comparison purpose I didn't
16 perform that analysis. Not that I couldn't
17 identify semen, but there is no need or no effort
18 to identify blood type if I didn't have anybody to
19 compare it to. Eventually there was some
20 information that led me to do that analysis and so
21 I attempted to develop a blood type of some of the
22 bodily fluid. I indicated in my second report,
23 from the panties, the cuttings that I made, that I
24 was able to detect a chemical substance with a
25 characteristics of blood factor H. Blood factor H

1 is a substance that is secreted from type O
2 individuals. So that was the extent of my ability
3 to do those samples.

4 Q: So that is data that you had extracted from those
5 samples?

6 A: Yes.

7 Q: And did you compare this data, did you use that
8 data anywhere down the road, lets say 2009, 2011.

9 A: No, I did not.

10 Q: Finally on this form, we have this spot right here,
11 signature of person receiving evidence. It's not
12 signed once again is it?

13 A: No it is not.

14 Q: In your experience as a law enforcement officer and
15 a scientist, it's important to keep a record of
16 where you got materials from and where it went, and
17 what you did with it in between, isn't it?

18 A: To answer that I'd say yes, I'd like to qualify
19 that. The procedures for evidence tracking has
20 changed quite a bit over the years. It was a
21 procedure that was accepted in 1985. There was no
22 requirement for that signature. It was basically
23 accepted that the evidence was submitted to SLED,
24 it was time stamped and received in a sealed
25 condition. And that was all that was required. That

1 was the minimum process. Evolving throughout the
2 years, my opinion is this, yes it becomes more
3 important in today's standards to have that
4 tracking done. And that is why we have instituted a
5 newer computer system that aids us in doing that
6 tracking.

7 Q: So you would say the best practice would be to make
8 a detailed record of who's hand it is in at any
9 given time?

10 A: That would be my recommendation today but I can't
11 go back and make that recommendation in 1985.

12 Q: We can't change the past, but ...

13 A: I can not change the past but it would have been a
14 great practice to have in 1985, I agree with you.

15 Q: And the reason we don't do it today the same way we
16 did it 1985 is because there is a better way to do
17 it? Yes or no?

18 A: Yes.

19 Q: And do you recall what you did with this stuff
20 after you finished analyzing it?

21 A: Standard procedure would have been to repackage and
22 reseal it and return it to the submitting agency,
23 Dorchester County.

24 Q: Since both of these sets of items, the first set
25 and second set came from the same agency, were they

1 ever merged together? Were they stored in separate
2 places? Were they ever apart while they were at
3 SLED? Do you know the answer to that?

4 A: They would certainly be in separate containers. The
5 containers themselves may have been side by side,
6 but not actually merged into one container.

7 Q: But you can't testify with any certainty to that?

8 A: Basically I can. I mean, we didn't change the
9 evidence packaging as far as I know. If anything
10 happened after it was out of my control and custody
11 I don't know. It's possible that when Dorchester
12 County came to pick up the evidence that two
13 different items were put in the same container like
14 a box for easy transport, but I don't have any
15 direct knowledge of that.

16 Q: Now I want to direct your attention to 1988. You
17 testified that some of the stuff that you saw in
18 1984 was sent back to you in 1988. Isn't that
19 correct?

20 A: Yes.

21 Q: Once again you testified that there is a SLED
22 evidence submission form. Right?

23 A: Yes.

24 Q: I'm showing you what's been marked as State's 22.
25 On this on in the bottom column where it's marked

1 evidence, specimens submitted for examination. What
2 does it say in that box?

3 A: On the specimens submitted form it has the letters
4 DNA.

5 Q: Does that mean that DNA was submitted?

6 A: No.

7 Q: What does that mean?

8 A: Its basically the exams that were listed for the
9 items listed on page 2.

10 Q: So the exam requested is not 325? It's DNA? Right
11 here in the exam requested it says 325 it doesn't
12 say DNA.

13 A: I did not fill out the form. This is the form that
14 I received. It has DNA in it. My interpretation is
15 that the items listed on page 2 there was a DNA
16 analysis request form. I'm not saying the form was
17 filled out correctly, but that's my interpretation
18 of this form. Then 325, I think, is the code for
19 that DNA request.

20 Q: So, in addition to back then the standard operating
21 procedure being not to sign the intake form did
22 some point between 1985 and 1988 the policy changed
23 to write the analysis requested in the box labeled
24 specimen submitted for examination. Did that policy
25 change?

1 A: I don't have any direct knowledge of any written
2 policies on any of that, my recollection is the
3 forms were filled out and the evidence submitted.
4 We still get the forms today that are not
5 necessarily filled out correctly, I would agree
6 with you that request should not be there but my
7 interpretation is that it is a DNA request on the
8 items that were submitted and listed on the 2nd
9 page.

10 Q: On the 1988 stuff, I probably don't need to show
11 you, that you would agree with me that there is not
12 a signature of the person receiving the items.

13 A: I would agree with you.

14 Q: Let me show you what's been marked as State's 33,
15 which has been admitted as the second page to that
16 1988 submission form. It contains a list of 5
17 items, let me correct that, there are 5 listings on
18 there, 2 of them marked vaginal wash, I'll read it
19 out. 1 wood's lamp, 1 salvia on filter paper, a
20 vaginal wash, 2 vaginal wash, oral wash and 2
21 vaginal wash. So does that mean a total of 3
22 vaginal wash?

23 A: I can tell you what I received. What was listed on
24 this item. Basically there was no examination
25 done. They were evaluated and reported out as

1 insufficient or unusable for further analysis at
2 that time. But as to the number of vaginal washes,
3 I did not fill out the form, to my knowledge these
4 were items that were resubmitted from the original
5 submission in 1985.

6 Q: Do you have knowledge of where the rest of the
7 stuff from 1985 is? There's 2 batches of stuff
8 with a whole lot of more stuff in it back in 1985.
9 Do you have any indication on this form where that
10 stuff is?

11 A: No.

12 Q: But you didn't touch it at this point in time?

13 A: It came into my custody, the package came into my
14 custody. And it was obvious from my analysis in
15 1985 it was not suitable for DNA analysis at that
16 time because of the technique we were doing. I
17 really didn't have to open it. I knew from my
18 previous notes that back in 1985 that these items
19 were not suitable for DNA analysis.

20 Q: So you never even opened it up.

21 A: No.

22 Q: Well, do you recall getting a box like this, or a
23 bag like this or a small envelope like this?

24 A: Yes, I recall getting several items that looked
25 like that.

1 Q: In 1988?

2 A: Not the bag, not the box,

3 Q: And in State's exhibit #10, it contains some of
4 these items, 1988 items, but, it contains more than
5 that doesn't it?

6 Mr. Farley: May I approach the witness?

7 The Court: You may.

8 Q: I believe the items are listed on your 4 page form,
9 titled serology analysis.

10 A: They are also listed on a chain of custody form as
11 container A, "c" stands for container and the
12 number "A" is listed on my chain of custody forms
13 where I can read off the items that are contained
14 in this package if you like?

15 Q: Maybe more efficient if you tell me if there are
16 more, less or the same amount of items in there as
17 listed on the 1988 submission form.

18 A: There are more items listed here in this package
19 than were submitted in 1988.

20 Q: So at some point the items in 1988 were separated
21 from, or the stuff in that bag, or at some point
22 the stuff from 1988 were added to the stuff in that
23 bag.

24 A: I guess that would be supposition on my part.

25 Q: You've been making a lot of those today man.

1 A: The only thing listed, these 5 items were listed as
2 resubmitted in 1988. No analysis was performed and
3 they were returned to the submitting agency,
4 Dorchester County.

5 Q: I'm going to show you once again State' exhibit 22.
6 You have a subject on that line. Who is that?

7 A: Listed as first name Barry, last name Daniels.

8 Q: Now, you said in order to perform the blood
9 analysis, you had to have a set standard or subject
10 to compare it to before you would even do the
11 analysis, is that correct?

12 A: I needed reference samples from the victim and any
13 subjects, yes.

14 Q: Did you have a reference sample from Barry Daniels
15 at the time?

16 A: No.

17 Q: And you are certain about that?

18 A: That's not listed on any items of evidence that was
19 submitted to me.

20 Q: Meaning that the document that had the multiple
21 vaginal washes on it, correct?

22 A: Well, other than that one document.

23 Q All your other documents are labeled page 1 through
24 4, page 2 of 4, page 3 of 4. That's how you do it
25 today right?

1 A: Yes.

2 Q: You didn't do it like that back then?

3 A: I don't recall it being done. I know in the
4 copying of these documents that some of the
5 portions of the pages were cut off. It may have
6 been there, it may not have been there. I just
7 don't know, but obviously it doesn't say page 2 of
8 2.

9 Q: So we don't know if there were 2,3,4 more pages do
10 we?

11 A: If there were more pages I would have them. So I
12 can say that I don't think there are any more
13 pages.

14 Q: But you agree with me that parts of pages have been
15 cut off and put on microfilm, it could have gotten
16 lost right?

17 A: No. This is the entire case file in 1985.

18 Q: Ok then tell me why you no longer put things on
19 microfilm. Isn't because things get lost, when
20 things are necessary to be used in cases like this?

21 A: I can't tell you the things that went into the
22 process of deciding when to stop doing microfilm. I
23 know that in my personal experience in dealing with
24 it, microfilm machines can be a real pain to deal
25 with, the storage of the microfilm was not an easy

1 process and then locating the microfilm is not a
2 real easy process. I don't even know how that do it
3 today, if microfilm still exist. Obviously
4 secretaries created this document for me from the
5 microfilm. But as far as transition from microfilm
6 who made that decision or why.

7 Q: Alright. I'm not going to make you a promise that
8 we are never going back to the 80's, but I am going
9 to try to transition into the 2000's. That's when
10 Dorchester County sent you the items that you
11 examined listed as item numbers 1 through 13 is
12 that correct?

13 A: Yes.

14 Q: Now, by 2009, y'all had changed your protocol on
15 how evidence was received into SLED. Is that right?

16 A: I'm not sure that protocol changed but the process
17 changed. I don't know what you really mean by
18 protocol.

19 Q: That was a pretty broad question. Well, first of
20 all, you've already testified that the computer
21 system changed. There's a lot better documentation
22 of the items as they were submitted.

23 A: There is a mechanism in place to know the flow of
24 the evidence through the laboratory due to the bar
25 code that didn't exist in the 80's.

1 Q: And unlike the 80's now we know who takes the
2 evidence in from the departments who submit it,
3 right?

4 A: Yes.

5 Q: Do you have a copy of the SLED's forensic services
6 request that you received in 2009?

7 A: I do.

8 Q: Can you describe the very last page --- well, is
9 there a signature of who submitted it?

10 A: Yes.

11 Q: Is there a signature of who received it?

12 A: Yes.

13 Q: That's different than what it was in the 80's
14 correct?

15 A: Yes.

16 Q: Is this a more complete record of the chain of
17 custody?

18 A: I would agree with that, yes.

19 Q: If I can direct you to item 7 on that submission of
20 evidence, can you tell me what item 7 was
21 submitted, what that item was?

22 A: Item 7 was submitted as an oral wash.

23 Q: And the analysis requested on that was?

24 A: DNA.

25 Q: Do you recall what your findings were on that item?

1 A: Yes. When I did the inventory on the package I
2 received, I did not find item 7, the oral wash. I
3 indicated that on my report to Dorchester County
4 Sheriff's Office.

5 Q: So to paraphrase what you just said an item that
6 Dorchester County submitted to you for DNA
7 analysis, when you opened it up it wasn't in there?
8 Correct?

9 A: Well, you said that they submitted to me, but when
10 I opened it up, obviously it wasn't in the package.
11 The officers that deliver evidence to SLED, often
12 times do not know what's inside the package. Often
13 times they do a pre-log, what's called a pre-log on
14 a computer system and they list an item they may
15 think is in the package, and in this case it was
16 submitted by Buster Edwards. I don't know if
17 Buster Edwards opened that package or not, but I
18 doubt he did. He listed it on the evidence
19 submission form. Around the submission form above
20 his signature it states that all sealed evidence
21 packages accepted by the laboratory are assumed to
22 contain what they are said to contain by the
23 summiteer. The laboratory does not conduct a
24 detailed inventory of evidence during the evidence
25 intake process. That inventory is done when I open

1 the package.

2 Q: So what that says is that, you are assuming that
3 what the submitting agency says is in there is in
4 there? In other words you are saying if it's not in
5 there it is not our fault.

6 A: No, I am not assuming it is in there. They
7 submitted as saying to contain it. It's said to
8 contain it. It is said to contain. It doesn't
9 mean that it is in there. When I inventoried it, I
10 didn't find it.

11 Q: They said it was in there. You were honest when you
12 filled out your report, you say, they said it was
13 in there, but no it is not in there. You wrote that
14 down and reported it as part of the chain of
15 custody. Correct?

16 A: Yes.

17 Q: So if it was not in there it is not something that
18 SLED was responsible for, it was some error or
19 something that happened back at Dorchester County's
20 Sheriffs office. Is that right?

21 A: Yes, obviously, this form is not filled out by
22 SLED, it's filled out by a agent with Dorchester
23 County. So, in that respect I would classify that
24 as an error that is was listed as being submitted
25 and it wasn't in the package.

1 Q: Was oral wash ever resubmitted to you for
2 examination?

3 A: After 2009?

4 Q: After 2009? Did someone find in lying around on a
5 shelf somewhere and say we better send that up
6 there?

7 A: No.

8 Q: And when you did your inventory how many items
9 labeled vaginal wash did you find?

10 A: Just one.

11 Q: Now, I want to turn your attention to State's
12 exhibit #24. That is a document, a multi page
13 document, that I think is a more complete
14 reflection of your work and the chain of custody of
15 these items. It's a 16 page document, titled "Chain
16 of Custody". Is that correct?

17 A: Can I see what you're ...

18 Q: Yes.

19 A: State's Exhibit 24 seems to be a South Carolina Law
20 Enforcement Division chain of custody form which
21 is, pages 14 of 16. If I have a full document that
22 says 16 of 16 here so you are missing a couple of
23 pages.

24 Q: Now I want you to turn to page 13 of 16. You with
25 me?

1 A: Yes.

2 Q: First of all, this chain of custody, what it does
3 is it details every single person, place, location,
4 and examination done to each and every one of the
5 items at SLED is that correct? Every person that
6 touched it, every place it was, every exam
7 performed.

8 A: Yes. Well, when you put that, "when every exam
9 performed in there", it doesn't list that.

10 Q: Or every exam not performed?

11 A: This document really is just purely chain of
12 custody it doesn't reflect any examinations
13 performed.

14 Q: Just where whatever was?

15 A: Yes.

16 Q: Now you, in about the 9th line down your name is
17 there, and you are listed as a forensic scientist,
18 do you see where?

19 A: Yes, I'm following you.

20 Q: And what is that notation that you have made there?

21 Mr. Justis: Objection. Item not in evidence.

22 The Court: It's not in evidence at this time.

23 Q: When you opened up this bag of stuff in these bags,
24 was anything mislabeled, was anything mis-marked?

25 A: That bag was submitted in 1985 clothing evidence.

1 That's not something that I received in 2009. And
2 no, nothing was mislabeled.

3 Q: Now in 2009 did you receive cutting from panties?

4 A: Yes.

5 Q: Did you receive a cutting from a skirt?

6 A: Yes.

7 Q: Did you find those items listed on the receipt in
8 the proper envelope, or properly marked?

9 A: The actual items themselves are properly marked,
10 yes.

11 Q: And the envelopes they were in?

12 A: Yes.

13 Q Were properly marked?

14 A: Yes.

15 Q: So, what, so you found no need to make a notation
16 of a form from saying otherwise?

17 A: I did have to make a notation on the form ...

18 Mr. Justis: Objection Your Honor.

19 The Court: Again you can't publish. It's not
20 in evidence.

21 Q: You had to make a change in the computer system
22 that reflected more accurately the items that were
23 in your custody.

24 Mr. Justis: Objection.

25 The Court: Sustained.

1 Q: In the course of your work with SLED, you make
2 notes about what you do with the evidence, isn't
3 that correct?

4 A: Yes.

5 Q: Do you recall anything being mislabeled or mis-
6 marked in the evidence you dealt with?

7 A: The evidence was labeled correctly. The submission
8 form had an error on it.

9 Q: Can you describe that error?

10 A: There were two items listed as an envelope marked
11 "N". In other words, item 11 was marked as item
12 "N". And item 12 had an identical marking. So ,
13 there was an error on that form and I determined
14 that item 12 was indeed the cutting from the skit
15 and it should have been on my evidence submission
16 form as marked "M" and not "N" so I did make a
17 notation.

18 Q: So item "N", item 11 was the cutting from the
19 panties?

20 A: That is correct.

21 Q: and that's where you got the DNA that ties,
22 allegedly ties my client to the crime? Correct?

23 A: Yes.

24 Q: And there was a problem with the labeling that
25 confuses that, or with the item labeled 12 or "M",

1 the cutting from a skirt.

2 A: There was no problem with the evidence labeling. In
3 other words the envelope that had a cutting from
4 item "N" was marked as panties very clearly. The
5 envelope with the cutting from the skirt was marked
6 "M". What I'm trying to tell you is that on the
7 evidence submission form, there was an error in
8 typing that I think was a typo.

9 Q: And who would have made that?

10 A: I don't know who filled out the form. I know it was
11 submitted by Buster Edwards, but I don't know who
12 filled out the form.

13 Q: So just to recap. Things are a lot different from,
14 the way that SLED operates is a lot different today
15 from the 80's, correct?

16 A: In what sense do you ...

17 Q: The way that evidence is submitted, chains of
18 custody, evidence maintained and the like, things
19 have changed.

20 A: Well, evidence is still submitted by a law
21 enforcement agency, it's still documented and there
22 are still evidence forms and submission forms. The
23 only thing that has really changed is the
24 modernization of the tracking of evidence through
25 the laboratory. So pretty much the same way that we

1 were doing it back then in 1985, forms have
2 changed, we've instituted a new computer system
3 that enables us to track. That's the major change.
4 The way SLED operates I wouldn't classify that as a
5 major change.

6 Q: OK. Now we know who drops off the items from the
7 requesting agencies. Correct?

8 A: We've always known that.

9 Q: But now, in the 2000's we now know who took that
10 from that officer at SLED. Correct?

11 A: Yes.

12 Q: Now rather than using an alphabet to label things,
13 we use a number system?

14 A: Yes.

15 Q: And that number is stuck to that individual item
16 and it follows it through it's career, it's life at
17 SLED. Is that correct?

18 A: Yes. I'm trying to think of all the instances in
19 which we sub-itemized things, but yes.

20 Q: For the purposes of this trial?

21 A: Yes.

22 Q: Chains of custody are much more detailed theses
23 days at SLED, is that correct?

24 A: Yes.

25 Q: We virtually know where any item at any given time

1 is and who has that item. Correct?

2 A: Yes.

3 Q: In 1988, there was an unknown number of vaginal
4 washes submitted for examination. Is that correct?

5 A: The evidence submission form list 2 of them.

6 Q: In 2009, there was one submission of vaginal wash.
7 Is that correct?

8 A: Yes. It was listed on the submission form as the
9 item that I did not find.

10 Q: The oral wash you did not find?

11 A: Oh yes, the oral wash.

12 Q: But the vaginal wash there was only one in 2009 and
13 it appears in 1988 there were two. Is that right?

14 A: That's what's listed on the evidence form, yes.

15 Q: And now on the evidence submission form in 2009,
16 oral wash is listed. The agency that filled out
17 that form. Dorchester County put on that form as
18 item #7, oral wash. Is that correct?

19 A: That's what's listed on the form. Who filled out
20 the submission form I don't know. Whether is was
21 somebody at SLED or at Dorchester.

22 Q: When you opened up the stuff that was submitted by
23 that form there was no oral wash in there was it?

24 A: There was not.

25 Q: And finally, there was a problem with the labeling

1 of the panties, wasn't there?

2 A: The evidence when I opened it was labeled
3 correctly. It was submitted and the evidence
4 submission form was filled out there was an error
5 on the submission form. So the item of evidence
6 that you are asking about is not mislabeled, it was
7 misidentified on the evidence submission form.

8 Mr. Farley: I have nothing further at this
9 time.

10 The Court: Alright.

11 Mr. Justis: Nothing from the State.

12 The Court: Is this witness free to leave?

13 Mr. Justis: Absolutely.

14 The Court: Any Objection?

15 Mr. Farley: No, Your Honor,

16 The Court: Our next witness please?

17 Mr. Justis: At this time the State rests Your
18 Honor.

19 The Court: All right. Ladies and gentlemen,
20 you have now heard the witnesses and received the
21 evidence from the State's case in chief. That signifies
22 to me that there are matters that I must take up outside
23 your presence. So at this time I am going to ask you to
24 please step to your jury room and do not discuss this
25 matter or allow anyone to discuss this matter with you.

1 We will be with you shortly.

2 (Jury break)

3 The Court: All right. Motions?

4 Mr. Farley: Judge, we move for a direct
5 verdict at this time. If you take the evidence in the
6 light most favorable to the State, the State has not
7 prove their case and no reasonable jury could draw a
8 conclusion on each and every element.

9 The Court: Thank you so much. I would
10 respectively deny your motion. Of course, combining the
11 testimony from this last witness with regards to the DNA
12 and when you put that together with the testimony of the
13 alleged victim, I think there is evidence on each and
14 every element and therefore I would respectfully deny
15 your motion . As you know it is not for me to weigh, it
16 is for me to ascertain whether or not there is evidence
17 for each and every elements of each of the offenses for
18 which the jury could make a determination of guilt. I
19 would respectfully deny your motion noting specifically
20 your exception to those. Let me ask you this question.
21 Will the defense be presenting any witnesses?

22 Mr. Farley: No, Judge. Obviously, we want to
23 ask the Defendant ...

24 The Court: We're going to do that right now.

25 Mr. Farley: If we can, I'd like to close on

1 the record today.

2 The Court: Wonderful. Here's what we could do
3 though, I'm going to have a conversation with your
4 client and then we will go over the charge and then
5 we'll go back over in the morning. Thank you.

6 All right. If you would please ask your
7 client to be so kind as to please stand. If you would
8 swear him for me. Thank you.

9 Deputy Clerk: Please raise your right hand.
10 Do you solemnly swear or affirm to tell the whole truth
11 and nothing but the truth?

12 Mr. Holmes: Yes.

13 The Court: Thank you so much. I'll be with
14 you in just one second. Now you, of course, are Mr.
15 Herbert Lee Holmes?

16 Mr. Holmes: Yes.

17 The Court: Okay. Mr. Holmes. I am going to
18 be asking you some questions but before I begin I am
19 going to ask you in advance if I go over something and
20 you do not understand what I'm talking about I want you
21 to please let me know, okay?

22 Mr. Holmes: Okay.

23 The Court: Mr. Holmes, if I go over something
24 with you that does not make sense to you please just let
25 me know and I'm going to explain it to you in a

1 different way, okay?

2 Mr. Holmes: Yes

3 The Court: Very well, if you need to stop and
4 speak with your attorney before hand I want you to feel
5 free to do that, okay?

6 Mr. Holmes: Okay.

7 The Court: Alright. The reason that I am
8 going to be discussing the matter with you is because we
9 have now reached the point in the trial which you may
10 present your defense. And what I want to talk to you
11 about is your right to testify and your right to claim
12 the protections given to you by the 5th Amendment of the
13 Constitution of the United States. Now, the Constitution
14 of the United States, the 5th Amendment and the
15 constitution of South Carolina states in part, that no
16 person shall be compelled in any criminal case to be a
17 witness against himself. This means, Mr. Holmes, that
18 you can not be required to testify in this case.

19 Obviously, you have the right to testify on your own
20 behalf, however, no one can make you testify. This is a
21 personal right of the 5th Amendment right, a personal
22 right. And no one can waive your 5th Amendment right
23 except you. If you decide to testify, Mr. Holmes, you
24 will be subject to the same rules that govern other
25 witnesses and duly be examined and cross examined on any

1 relevant issues in this case. In addition, if you have
2 any convictions involving dishonesty or false statements
3 or for crimes punishable by imprisonment for more than
4 one year and this court determines that the probative
5 value of admitting this evidence outweighs its
6 prejudicial effect you, the solicitor will be able to
7 introduce your record for the purpose of attacking your
8 credibility but only for that reason. In other words I
9 would give the jury a curative instructions telling them
10 that they could only consider that record in the event
11 that one was to be submitted. That they could only
12 consider that record for the purpose of determining your
13 credibility, meaning what weight they want to give your
14 testimony, and do they believe it, not for any other
15 reason. Now, if you decide to testify, this decision on
16 your part must be freely voluntary and intelligently
17 made with the knowledge of the protections given to you
18 by the 5th amendment and the consequences of your
19 decision to testify. If you decide not to testify, I
20 will instruct the jurors they can not give the fact that
21 you chose not to testify in any decision what so ever.
22 In fact, I'll tell them the fact that you didn't testify
23 has absolutely nothing to do with whether you are guilty
24 or not guilty and they cannot consider that. In fact,
25 they can't even talk about that in the juror room.

1 Because exercising your 5th Amendment right is you right
2 and you don't have to prove anything. The verdict is
3 and remains on the State to prove guilt or no guilt
4 beyond a reasonable doubt the jury cannot talk about it
5 even in the jury room. It doesn't have any relevance on
6 wether you are guilty or not that burden remains on the
7 State. I will actually tell them that.

8 Now, your decision whether you choose to
9 testify or whether you choose not to testify is entirely
10 up to you. I know you've been talking to your attorney's
11 and that's important to do that. Continue to speak to
12 your lawyers and your family or friends or anyone else.
13 But you have to know, the final decision whether to
14 testify or whether not to testify, exercise your 5th
15 Amendment right, that is a matter for you to determine.
16 Do you understand what I have explained to you?

17 Mr. Holmes: Yes, Your Honor.

18 The Court: Do you have any questions about
19 what I just said?

20 Mr. Holmes: No.

21 The Court: Fine. Are you prepared to make
22 that decision? Whether you wish to testify or whether
23 you wish not to testify?

24 Mr. Holmes: Not at this time.

25 The Court: All right. Now, here is what I

1 want you to know. We are going to in just a few minutes
2 I'm going to call the jury back in and I'm going to call
3 upon your lawyers and at that point y'all will rest?

4 Mr. Farley: Yes

5 The Court: If Mr. Holmes you would like to
6 talk with your lawyers one more time, you want to speak
7 one more time because this is important. Lawyers, will
8 you talk to your client one more time.

9 **(Counsel talks with Defendant)**

10 The Court: If you want to go out and you have
11 a private conversation I want you to feel absolutely
12 free to do that.

13 Mr. Farley: Judge, that is not necessary. We
14 are ready to go forward.

15 The Court: And does he continue to wish not
16 to testify?

17 Mr. Farley: He does. Yes.

18 The Court: Alright. Very Well. Here's what
19 we are going to be doing. I'm going to invite the jury
20 to come back in and then I'm going to dismiss them for
21 the evening and they will hear the arguments and the
22 charges tomorrow and then we are going to have an
23 informal charge conference. Bring in the jury please.

24 **(Jury re-enters courtroom)**

25 The Court: Ladies and gentlemen, we will now

1 turn to the defense.

2 Mr. Farley: Your Honor, the defense rests.

3 The Court: Very well. Ladies and gentlemen
4 you have now heard the witness and received the evidence
5 in this case. What remains for us are the arguments of
6 counsel and my charge or instructions on the law. And
7 there is an old rule and it is you don't begin that
8 process after 4:00 and that reason is the jury doesn't
9 get the case until 6:00-6:30. So we will do that in the
10 morning. I want to review with you what is going to
11 happen in the morning. When you return tomorrow morning
12 you will hear the arguments of counsel and then my
13 charge and the instruction on the law. And then you are
14 going to receive this case for your deliberations.
15 Ladies and Gentlemen, remember as we leave each other,
16 do not discuss this matter or allow anyone to discuss
17 the matter with you cause you have not heard the
18 arguments of counsel. And you have not heard the
19 instruction on the law and you are not prepared at this
20 point to deliberate. So, when you go home, curiosity is
21 going to go up several notches but do remember, let's
22 not discuss this matter or allow anyone to discuss it
23 with you. You can put it on the Judge and that would be
24 me. You have to go home and rest, you have worked very
25 hard today. Now, Ladies and Gentlemen, the same

1 admonitions are still in place. Do not read anything,
2 do not listen to anything regarding this matter. That's
3 radio, television, newspaper and internet. Don't do any
4 research. Don't go to wilkipedia, don't go bloging
5 don't go to facebook about the matter, or any other
6 social media because it is critical that you receive all
7 the information that you will make your mind up in court
8 during session. Everyone please remember to leave your
9 communication devices away from the courthouse. Of
10 course if you forget that tomorrow and it follows you in
11 the courthouse and hops into your pocket, just remember
12 to turn it over and we will return it to you.

13 Again, when you return tomorrow, arguments of
14 counsel, charge and instruction on the law, and you will
15 take this case for deliberations. Ladies and Gentlemen,
16 have a good evening and we will see you at 9:30 in the
17 morning.

18 **(Jury dismissed for the day)**

19 The Court: Alright you have now received the
20 charge. I would be grateful before you all leave if we
21 could have an informal charge conference. I'll be glad
22 to hear your motions.

23 Mr. Farley: I do, your Honor. I would like
24 to renew my motion for a directed verdict, and I renew
25 all the other ones I've made throughout this trial.

1 The Court: Thank you very much. And on the
2 same basis as earlier today I would respectfully deny
3 your motions noting your objections. If you would be so
4 kind to come to chambers for an informal charge
5 conference.

6 **(4/25/13 A.M.)**

7 The Court: Good morning. Anything from the
8 State?

9 Mr. Justis: Nothing from the State.

10 The Court: From the defense?

11 Mr. Farley: No, your Honor.

12 (Mr. Herbert Holmes enters courtroom)

13 The Court: Alright. Are we ready?

14 Mr. Justis: Yes, Your Honor.

15 The Court: Okay, then we will hear our
16 closings. You will have the final closings Mr. Farley.

17 Mr. Farley: Yes, Your Honor.

18 The Court: Alright, you ready?

19 Mr. Justis: Yes ma'am

20 The Court: Okay. Bring in the jury, please.

21 **(Jury enters courtroom 9:58 a.m.)**

22 The Court: Good morning, Ladies and Gentlemen.
23 We will now hear the closing arguments. Mr. Justis.

24 Mr. Justis: Good morning ladies and
25 gentlemen. First of all I want to thank you for your

1 service here this week. You have fulfilled your civic
2 duty that as the judge instructed you as one of the most
3 important duties you have as a citizen. A 29 year
4 mystery. That's what this case has been. And I'm going
5 to talk to you briefly about the law in this case. First
6 of all, Mr. Holmes is charged with the crime of
7 kidnaping. And the elements or the definition of
8 kidnaping, is simply to unlawfully seize, confine,
9 inveigle, which means to lure, decoy, kidnap, abduct, or
10 carry away another person by any means without the
11 authority of law. That's the definition of kidnaping.
12 That's what the State is required to prove. Each one of
13 those elements beyond a reasonable doubt. Now the next
14 crime he is charged with is criminal sexual conduct
15 first degree. That requires essentially three elements.
16 The first one being, the actor, or the defendant, must
17 engage in a sexual battery with another person, and he
18 accomplishes this sexual battery by doing one of those
19 four things. It's basically an aggravating circumstance
20 we have to find. Either using aggravated force. For
21 example, threatening with a gun, a knife, a deadly
22 weapon. A forcible confinement. For example, locking
23 someone in a room, a back room maybe. Kidnaping them.
24 You saw the definition of kidnaping, moving them to a
25 different location. A robbery. Taking something from

1 them or from their presence. Or any other similar
2 offense or act. If you find any of those aggravating
3 circumstances, that satisfies that third element. Now,
4 criminal sexual conduct, I told you about a sexual
5 battery, that was element #1. A sexual battery in South
6 Carolina is defined as sexual intercourse, cunnilingus,
7 fellatio, anal intercourse or any intrusion, however
8 slight, of any part of a person's body or of any object
9 into the genital or anal openings of another person's
10 body. Except, and there is an exception, when such
11 intrusion is accomplished for medically recognized
12 treatment or diagnostic purposes. For example, you go to
13 your doctor and he was performing a consensual medical
14 procedure. Now next in South Carolina section 16-3-657
15 Code of Laws. There are laws in South Carolina. And
16 there is a law that states the testimony of the victim
17 need not be corroborated in prosecution under section
18 16-3-652 which is criminal sexual conduct. So the
19 criminal sexual conduct in this case, is 16-3-652. What
20 that means is, the testimony of the victim, if you
21 believe it, and if she has given testimony to meet all
22 the elements you need to meet for criminal sexual
23 conduct, you can, you don't have to, but you can believe
24 her testimony and convict based on that. You don't have
25 to have corroborating testimony. And that's because

1 usually these crimes take place in private. People don't
2 do these crimes out in public. Next, credibility
3 factors. The evidence you heard in this case came to you
4 in two forms. One, physical evidence like this and
5 secondly, testimony from this witness stand where
6 witnesses approach this witness stand, place their hand
7 on the Bible and took an oath to tell the truth, the
8 whole truth and nothing but the truth. Took that stand
9 and then answered questions. Questions from the state
10 and questions from the defense. That's testimony. How
11 do you judge whether or not they are telling you the
12 truth. Well, you look at various credibility factors.
13 And this is something I submit you do every single day.
14 This is something you are qualified to do because every
15 day you are making credibility judgements on every
16 person you come in contact with. Your wife, your
17 husband, your parents, your children, your friends, your
18 enemies, people you like and people you don't like. You
19 are consistently evaluating do I believe what they are
20 telling me. These are just some factors you look at.
21 There are not an exhaustive list. Their demeanor. Are
22 they forthright or hesitant when they are answering
23 questions? Are they consistent or does their story
24 change? The opportunity to know the facts they are
25 testifying to. Biased? Do they have any biased, do they

1 have any reason to lie. And finally, was they testimony
2 corroborated? Do other people match up to what they are
3 saying. So those are some of the factors you look at
4 when you are judging credibility. Now reasonable doubt.
5 You heard this. The State has to prove all those
6 elements beyond a reasonable doubt. Now, the defendant
7 has rights. But the State has rights, too. And the State
8 has a right to a guilty verdict when there is proof
9 beyond a reasonable doubt that the offense was
10 committed. The State has that right. Reasonable doubt is
11 not proof beyond any and all doubt, it's a reasonable
12 doubt. There are very few things that we are certain of
13 in this world. For example, I might doubt that the
14 earth revolves around the sun, but ask yourself, is that
15 reasonable? I mean, I've never been in space. I
16 haven't physically seen it, but is that a reasonable
17 doubt to have? Bottom line, if you are firmly convinced
18 that the defendant is guilty, you must find him guilty.
19 Now that's the law on the case and the Judge will
20 instruct you on that after we give our arguments so if
21 anything I said contradicts what the judge will tell
22 you, you follow what the Judge told you because as she
23 said, she is the judge of the law. You are the judge of
24 the facts.

25 So let's get into the facts. As I mentioned to

1 you this has been a 29 year mystery. Phil Giese in his
2 opening told you that. He gave you a little preview of
3 what to expect in the case. He told you about the story
4 of what happened in that bookstore in October of 1984.
5 What happened to **P.R. [REDACTED]**. Now, the judge told you
6 in the beginning that this is not TV. This is not the
7 movies. This is real life. These are real people and
8 this is a real trial and what lawyers say, Me, Mr.
9 Giese, Mr. Farley, what we say is not evidence. It is
10 just our view of what we think the evidence shows. The
11 evidence from this case came from that witness stand. It
12 came entered into the form of physical exhibits.

13 The defense in their opening made several,
14 what I call, assertions. Let's talk about a few of
15 those. Because I'm confident that they made assertions
16 in their opening, they made assertions as they
17 questioned witnesses, and I am confident that they are
18 going to make assertions in their closing. What did
19 they say? In their opening and Mr. Farley, I wrote this
20 stuff down as he was saying it, he said everything he
21 said was a lie. All the evidence was planted. It was a
22 different time and the way they did it was wrong.
23 Meaning the way they did it back in the 80's is wrong.
24 That's what he said in his opening. Throughout this
25 trial, what did he do? He focused on the SLED intake

1 forms. You saw these ad nauseam. They are in evidence.
2 They will be back there if you want to look at them more
3 they are back there for you. But, what did he argue
4 about? Where's the signature? Where's the Signature?
5 Well, it says on this signature, a person receiving the
6 evidence. I submit to you they did not sign it there
7 because the were not actually doing the inventory at
8 that time when they received it. As Ken Bogan told you,
9 he receives a sealed package. And when he gets ready to
10 work on it, they don't open it up right then and there,
11 they want to open these things up as few times as
12 possible. So he waits till he's ready to work on it,
13 opens it up, and then does an inventory. And he
14 testified many times, we know specifically in 2009,
15 where something was listed on a report, that was
16 generated, and when he opened it up it wasn't in there.
17 So they are not going to sign these forms verifying that
18 all that stuff is in there, when they haven't physically
19 looked at all those things. But what do they have? They
20 have a time date stamp. Anybody can sign it. This is a
21 time date stamp you can only get at SLED. It has the
22 time and date on it. I submit to you that is even
23 better than a signature. But that's what he talked
24 about. That's what he asserted. Because of this,
25 there's not a signature, there's only a time date stamp

1 from SLED in their stamp this is not good. You shouldn't
2 believe the evidence. And he also focused on the old
3 hospital room where the old sheriff's department was in
4 the 80's was a converted bathroom. Well, you heard
5 Major Moultrie, a 46 year veteran. Dale Nevins, 36
6 years, they explained what that room looked like. What
7 they did to that room and how it was secured. Okay, it
8 was a former bathroom. They didn't build that building.
9 They moved it to that building that had already been a
10 hospital . But the thing they did tell you about was it
11 was secure. He focused on errors on inventory sheets and
12 not actual physical evidence. You heard him discuss with
13 Ken Bogan, talk about M & N and the envelopes and on the
14 report they both had N. The cuttings from the skirt and
15 the panties both said "N" on the report. But as Ken
16 Bogan stated on the actual evidence, that's in there, it
17 was correct. It wasn't wrong on the evidence. Someone
18 typed it in wrong when they created these reports. So
19 these reports that he claimed were so good in 2009,
20 guess what? A typographical error is on them. So he
21 want's to make the argument that the 80's were bad
22 because they didn't have all these reports. But, it's in
23 2009 that these errors were made on the reports. The
24 bottom line is that the evidence in the 80's, 90's,
25 2000's and now 2010's, is here, is protected.

1 The defense assertions can be summed up in 3
2 main ideas. Think about theses. Think about them when
3 you hear their closings. Number 1. Methods of tracking
4 evidence on paper is so much more detailed now that when
5 it was in the 80's that they must have done it wrong
6 back then. Just because we can track more, the 80's must
7 have been bad. They did it wrong just because they did
8 not have bar codes, scanners, and computers or computers
9 that have as much memory as we have now. Second, since
10 it has been 29 years since this has happened and the
11 evidence has been handled many times, which it was, you
12 can not trust the evidence. It had to have been mixed
13 up, lost, screwed up somehow. Had to been because it has
14 been 29 years. Well, what we find out is, and y'all will
15 have these back there. See those tubes? That's what
16 they put the different things in from the hospital.
17 Those tubes. If you look at some of this stuff. Some
18 of those envelopes, you have the envelopes in this, one
19 treatment room, **P.R.** **██████**. Peacock Cox. Remember
20 Ms. Cox, Ms. Schafer, she was the nurse. 10-25-84,
21 19:30. Their procedures were so bad back in the 80's
22 that they were just able to keep all this evidence for
23 29 years and not loose it. I submit to you, that if the
24 procedures were so bad, we wouldn't have all this stuff.
25 But it will back there. You can look at it.

1 Then, finally, either the evidence was planted
2 or cross contaminated. You have to believe that. It's
3 been 29 years. All these people touched it. They must
4 have messed with it. Well, think if they planted
5 evidence back in 1984, 1985, why would they wait 29
6 years to hold the man responsible? Okay, lets' plant
7 some evidence of a person that we have not idea of who
8 it is. And then we will just wait 29 years and then
9 we'll arrest him and have a trial and do all that stuff.
10 Yea, that sounds like a good idea. That's what he want's
11 you to believe.

12 Ladies and Gentlemen, I call this the octopus
13 defense. If you are familiar with octopuses, they are
14 very intelligent species. They have a natural defense
15 system. They have ink sacks in their tentacles. And what
16 they do, when they feel threatened, they are in danger,
17 they secrete this black ink. They splash about and the
18 ink muddies up the water. Then they can make a quick
19 escape. I submit to you, that is what the defense is
20 doing. They are mudding up the water with, oh they
21 didn't write DNA in the right box. Because they don't
22 want you to look at the real facts in this case, the
23 real evidence. They don't want you to look at this. They
24 don't want you to look at all these signatures and dates
25 and notations. They want you to look at this stuff. It

1 says 2 vaginal washes and da da da, they want you to be
2 confused as to how many vaginal washes, and could have
3 been somebody else's, they don't want you to look at the
4 real evidence. The only evidence you heard in this case
5 came from that witness stand. The only evidence. And
6 the only evidence is right here. That's the only
7 evidence. Now let's talk about the evidence in the case.
8 It boils down to two questions. Number 1, Was **P.R.**
9 **P.R.** raped and kidnaped in 1984? Number 2, did
10 Herbert Holmes do it? I mean, essentially that is what
11 the case is about. Question number 1. You heard from
12 **P.R.** herself. She took the stand, she summoned
13 up every ounce of courage she had. She waited 29 years.
14 She lived with this for 29 years. She came into a
15 courtroom full of strangers and revealed the most
16 intimate details a person can reveal. She explained how
17 she was raped orally, anally and vaginally. If that
18 wasn't enough, after he was done doing all that, he made
19 her take off her wedding ring and ran out the back door.
20 Her testimony, even though it was not required to be
21 corroborated, it was. It was corroborated by Rick
22 Campbell who was there on the scene. How did he describe
23 her? Hysterical, was the term he used. And what about
24 the nurses? We heard from Michelle Aimes, Michelle
25 Vevon now, and Lisa Schafer who was Lisa Cox back then.

1 They both testified that they were the individuals who
2 assisted in the exam and the collection of the evidence.
3 They testified that they took the clothes off of her
4 that she was wearing and they placed them into this bag.
5 They rapped them up in these brown paper bags and
6 labeled them, you see the stamps, they placed it in
7 these bags. They collected that evidence. Ladies and
8 Gentlemen, I submit to you there is not proof beyond a
9 reasonable doubt. There is probability beyond any doubt
10 that she was raped and kidnaped in October 1984.

11 So that leads us to the second question. Was
12 Herbert Holmes the man responsible? In order to answer
13 that question, for lack of a better term, take you on a
14 magical mystery tour of the evidence. We had to follow
15 this evidence from 1984 all the way up to 2009 when it
16 landed in a lab in the hands of Ken Bogan, a 30 year
17 forensic scientist. Now, the evidence started with
18 Michelle Vevon, Lisa Schafer, two nurses, each with over
19 30 years experience in nursing. What did they testify
20 to? They testified in detail how the sexual assault
21 exams were done back in 1984 and how they collected the
22 evidence. How they meticulously collected the evidence.
23 Clothing, wash, swabs, samples, combing's. And Lisa
24 Schafer, she was the head nurse of that unit, she
25 personally assisted the doctor with that exam and the

1 collection of that evidence. And this is a lady who is
2 the Vice President of nursing for Roper St. Francis.
3 That means she is the top nurse in all of St. Francis
4 Hospital. Roper St. Francis. You don't get to that
5 position by losing evidence or not doing a good job.
6 James Knight. He picked up the rape kit. He was the
7 officer that drove [P.R.] down to MUSC, waited, picked
8 up the rape kit. And we know that because we have this
9 document. This document shows, first of all the
10 inventory of what they got and they testified, the
11 nurses testified, that was their handwriting Lisa Cox
12 says that's her's, Michelle testified that the pluckings
13 is hers. That's Michelle's signature, James Knight's
14 signature, the time and date of [P.R.] [REDACTED]. James
15 Knight picks it up. Does he tamper with it? No. He
16 states that. What does he do? He drives up to
17 Summerville and turns it over to Dale Nevins who was
18 assigned to be the lead investigator. Dale Nevins, what
19 does he do? He puts it in the evidence room, the former
20 bathroom. But what does Dale tell us? Well, Dale as I
21 said before 36 years experience in law enforcement, from
22 1984 to 1993 he was the person responsible for that
23 evidence, protecting it. And he did. Yes, he made three
24 trips to SLED during that time, he made those trips, he
25 took that evidence up there. Other people brought it

1 back. What did those other people do? They just
2 transported it. And he testified in that time frame it
3 had never been tampered with. The only person that even
4 manipulated that evidence, went into it, was Ken Bogan
5 during those times which is kind of amazing that Ken
6 Bogan was there in 84, 85, 88, 2009, 2011. Then we
7 heard from Major Moultrie. 46 year veteran. Started as a
8 road deputy. Worked his way up to Major. He was the
9 Captain over investigations back then. He was Dale's
10 boss. He testified that three people had a key to that
11 evidence room. Him, Dale Nevins, and Sheriff Karl
12 Knight, that's it. Period. Earl Asbell, he was the
13 bridge, what I call the bridge. From kind of the 80's to
14 the modern era . 30 year veteran. He testified that he
15 took custody of all the evidence from Dale. They did an
16 inventory. Didn't have to do an inventory. All they
17 had to do was say you are in charge of that evidence
18 now. But they went through and they did an inventory. He
19 moved the evidence into the new Sheriffs office on
20 Deming way. You heard how he did that . He made sure
21 everything was boxed up and sealed. No one tampered with
22 it. Bottom line, the evidence was secured and not
23 tampered with. But, one more thing about Earl Asbell,
24 one unique thing, he had the foresight to take this
25 evidence in 2009 and send it up to SLED. It was a cold

1 case. It was just sitting there. Dale Nevins wasn't at
2 the Sheriff's Office anymore. So your lead investigator
3 wasn't there anymore, It was just sitting there. For, at
4 that time, 20 years and hadn't been touched in 20 years.
5 Earl Asbell had the foresight to say, you know, DNA has
6 advanced so much, I'm going to see if they can do
7 something with this evidence. If it wasn't for Earl
8 Asbell for making that decision, we wouldn't be here
9 today. This evidence would still be locked up at the
10 Sheriff's Department That was a key thing that Earl
11 Asbell did. And when he did that he turned it over to
12 Buster Edwards. You heard from him. A 27 year SLED
13 veteran. Retired. Came to the Sheriffs Office. Had
14 been working there for 5 years as an evidence tech.
15 Entered stuff in the computer and run stuff back and
16 forth to SLED. That's what he does. And he took this
17 in 2009, there's his signature, there's the date.
18 That's when he takes it up to SLED. Does he tamper with
19 it? No. He was even asked, or he stated, SLED would not
20 take evidence if it was open. Ken Bogan said the same
21 thing. He takes it up there, apparently he filled out
22 the inventory sheet and we know he made a typographical
23 error, said there was something that was in here that
24 wasn't. But he also testified that he didn't actually
25 open this suff up to do an inventory. He just trying to

1 figure out what's in here when he does that sheet. He's
2 going based on old reports and what's suppose to be in
3 there, or what might have been in there at one point. So
4 remember as evidence goes up and evidence is being
5 tested, sometimes evidence is used up. Certain parts of
6 evidence.

7 Mr. Farley: Objection, Your Honor. May we
8 approach?

9 The Court: Sure.

10 (Counsel approach without court reporter)

11 Mr. Justis: As I said Ladies and Gentlemen,
12 he made that inventory, he's looking at the bag. And
13 then we came to Stephanie Stanley. She was the SLED
14 agent and her testimony was really brief. What happened
15 as she explained was she gets this, and as you heard
16 from Ken Bogan, the computer system changed. And they
17 now have longer lab numbers. So it's a new lab number so
18 they think when it first comes in, its in a newer bag,
19 so it's a new case gets assigned too Stephanie Stanley.
20 She gets it, she cuts it open, she pulls the evidence
21 out and she sees Ken Bogan's name all over the stuff.
22 KLB, KB. His initials. So what does she do? She
23 testifies, she seals it back up, dates it, brings it to
24 Ken, opens it back up, shows it to him, seals it back
25 up, and then Ken takes the case. That was her testimony.

1 And Ken, what did he testify to as far as this chain?
2 It was always sealed when he got it. He always
3 documented what he did and he always sealed it up before
4 it left him. That's it. That's the whole tour of the
5 evidence. That's the tour that this evidence took. And
6 most importantly, that's the tour that started with
7 these panties. Because ultimately the DNA that the State
8 relies on, is found from a cutting from the panties. And
9 we know from Ken Bogan that these panties, in 1985, is
10 when he took the cutting. He told you that. And that
11 cutting, was placed, it is in this kit here, that's
12 where the cutting is. So in 1985 it came back in here,
13 yes, these panties they are in here, but after 1985,
14 getting the cutting that's it. There's no more testing
15 on them. The testing was all done on the cutting that
16 is located in this bag. Now, the defense might argue
17 that forms may have been filled out differently, or a
18 signature could have been added, but the bottom line is,
19 there is no evidence, zero that the evidence was planted
20 or tampered with. For 30 years, surviving multiple
21 trips to SLED, surviving moves, hand to hand, this
22 person to that person, the evidence is still here.
23 Secured. Now the buccal swabs. These were the swabs
24 taken from Herbert Holmes. In 2011. You hear how they
25 were collected, a q-tips how they get it, dried it out

1 sealed it, Buster Edwards takes it up. It's all sealed.
2 It goes to who else? Ken Bogan. He opens it up, he
3 tests it and develops a DNA profile. It comes back, it
4 is all sealed. That's the trip that this evidence makes.
5 Much shorter trip. But everyone who testified, testified
6 that when they got the evidence, it was secured and it
7 was not tampered with. The only person that essentially
8 tampered with the evidence was Ken Bogan because that is
9 his job. To test the evidence.

10 As this trial progressed, each witness
11 represented a piece of the puzzle. You can think of a
12 trial as a jigsaw puzzle. And they each represent a
13 piece of the puzzle. And as these pieces were laid out
14 at times you don't know what to make of it. You can't
15 see what the picture is. But as they were assembled, the
16 picture starts forming. And the person that assembled
17 all those pieces was Ken Bogan, the SLED analyst. For
18 two hours on that witness stand he testified. He
19 answered questions from me and he answered question from
20 Mr. Farley. He answered all of them. And you don't need
21 me to tell you what he said, you've heard it. But above
22 all of everything he said he told us something very
23 important. He told us he was able to extract DNA from
24 these panties, a cutting from the crouch of these
25 panties and that DNA, is not just Herbert Holmes DNA, it

1 is P.R. [REDACTED] DNA. It's their DNA. And how sure was
2 he? He did a statistical analysis. And he said that it
3 was, the odds in selection another random individual
4 that matched that profile, was one in three hundred and
5 fifty billion. That's 350,000,000,000. That's 9 zeros
6 after the 350. That's the odds that someone else other
7 than him, contributed part of that DNA to those
8 panties.

9 Now, Herbert Holmes might have run out the
10 back door of the Bookbag back in October of 1984, but he
11 left behind his DNA and no matter how long he ran, he
12 could not outrun the tenacity of the Dorchester County
13 Sheriff's office, the State Law Enforcement Division and
14 above all Forensic Scientist, Ken Bogan. That DNA
15 remained in the custody of the Sheriff's office and SLED
16 for 29 years until it was extracted by Ken Bogan showing
17 that justice may sleep but it never dies.

18 As we close the final chapter in this 29 year
19 mystery, we learn that facts are stubborn things and
20 that science is constantly advancing. P.R. [REDACTED] and
21 her nightmare and this 29 year mystery ends today.
22 Thank you.

23 The Court: Thank you, Mr. Justis. Mr.
24 Farley?

25 Mr. Farley: Thank you, Judge. If it pleases

1 the Court?

2 The Court: Yes sir.

3 Mr. Farley: Mr. Justis spent the vast majority of his
4 time in a defensive position. That's my job. He was
5 telling you all the things that I was going to say, of
6 course I'm going to say them, because they are true.

7 They are common sense. Now I'm not going to go into the
8 law. That's Mr. Justis and the Judge's told you at the
9 outset of this case, she is the only person that's in
10 this entire courthouse that is qualified to give you the
11 law in this case. You have to listen to what she says.

12 And you have to apply the facts as you heard them, as
13 you understand them, to that law. So I am not going to
14 go into that, but I am going to go into the mystery the
15 Solicitor's office has painted. It's witty, it's funny
16 that we are talking about a bookstore, and a mystery
17 book, but this is not funny, this is serious. This is
18 that man's life. This is that woman's life. And this
19 has been a part of all of our lives from the recent
20 past. So this isn't a funny mystery, this is serious.

21 And I take this with the upmost seriousness. This case
22 is based solely on DNA. One piece of DNA. A tiny piece
23 of DNA. When I was taking computer classes in high
24 school we were taught that computers don't get things
25 wrong. It's garbage in, and when you put bad stuff in

1 you get bad stuff out. And that's exactly what has
2 happened in this case. The science is only as good as
3 the data you put into it. And this data was corrupted
4 from the very onset of this case.

5 Speaking of DNA, Mr. Bogan said that DNA was
6 used to identify war dead. DNA was used to identify the
7 dead at 9/11. But what he failed to mention was that DNA
8 was also used to prove that people who have been sitting
9 in prison for years are actually innocent. Perhaps you
10 have heard about the Innocence Project. So, you've got
11 to think of DNA as not just a tool for the police, but
12 it's a tool that if used properly, can vindicate people
13 who are wrongly convicted. The State went into the
14 Burden of Proof and that is probably one of the most
15 important things that ya'll need to remember. Remember I
16 told you, you had to check your passions at the door.
17 You have to take this set of facts, admittedly horrible
18 facts, if you find they truly happened. But an
19 admittedly horrible set of facts. Leave emotions aside
20 and decide if by the law of this country and in this
21 State, you have enough evidence to convict my client.
22 The burden of proof, they have to prove that my client
23 committed this crime and that the crime was actually
24 committed beyond all reasonable doubt. Straight from the
25 Solicitors mouth and you are going to hear it straight

1 from the Judge's mouth. The State has the burden to
2 prove this, not us. And we didn't put up a defense
3 because the State did not prove this. You saw that. In
4 our country, we have the right to due process. When
5 Thomas Jefferson penned the Declaration of Independence,
6 he talked about three rights. Ya'll remember this from
7 civics. Life, Liberty and the pursuit of happiness. The
8 purpose of a trial is to determine if the State can take
9 away a person's life, liberty and pursuit of happiness.
10 And your job, you are a check on the State of South
11 carolina to make sure that they can't take away my
12 rights, the Judge's rights, your rights or the
13 defendant's rights. Your job here is extremely
14 important. You are a pillar of our democracy. I'll
15 talk a little more about reasonable doubt. My wife is an
16 orthopedic physicians assistant. She goes into the
17 operating room and replaces people's knees, joints,
18 hips. There's reasonable doubt in this case because of
19 the chain of custody. The evidence from point A back in
20 1985 to today is messed up. Do you know what they do to
21 prevent any doubt whatsoever in the operating room? Any
22 person who's going to touch that patient has to take a
23 sharpie, which you probably pay about 100 dollars for
24 because medical bills are through the roof, but they
25 take a sharpie, the med tech, the surgical tech that's

1 going to cut the knee signs their name on the proper
2 knee so they know the knee. Then my wife comes in, she
3 draws out where the incision is going to be and signs
4 her initials there and then the doctor who is actually
5 going to do the cutting on the bone in replacing the new
6 knee, he signs off on that. That's the chain of custody.
7 That assures that the patient isn't going to have the
8 wrong knee operated on. Or is suppose to go in for a
9 knee surgery and gets confused and has a hip surgery.
10 That's' important. We expect out of our doctors. We
11 also expect a heck of a lot more out of our police.
12 Police have the power to come into our homes, to arrest
13 us, and they even have the right to kill us under the
14 right circumstances. They carry handguns, they carry
15 handcuffs, they are the State. I have a lot of respect
16 for law enforcement. My father was a military policeman
17 in Vietnam, my sister is on the southern boarder right
18 now on the US border patrol. My aunt and uncle were
19 both detectives with the Chatham County Sheriff's
20 Department in Savannah, so I have a lot of respect for
21 law enforcement. But, we also - I have a lot --- we
22 require a lot out of them. Just like a surgeon, they
23 have to give 100% all the time. With great power comes
24 great responsibility. They didn't live up to that
25 responsibility in this case. They have to give it 100\$

1 of the time. There is no margin for error. You can not
2 send an innocent man to prison unless you are sure
3 beyond all reasonable doubt that he committed the crime.

4 The State talked about the problems with the
5 case. Pardon me, but this is going to take awhile,
6 because the problem the case is replete with problems.
7 I'm going to try to go subsequently, and kind of pair
8 that with the witnesses as they spoke. We will start
9 with Ms. [P.R.]. I agree Ms. [P.R.] is a brave person to
10 get up on that stand. She was obviously nervous. I
11 told her I was nervous. There's a lot riding on this for
12 everybody. I understand that. That may be why she got
13 the date of the incident wrong when was sure that it was
14 the 24th, but every other shred of evidence in this case,
15 if you believe it, said the incident happened on the
16 25th. You and I know that because she was probably so
17 terribly nervous.

18 Describing the events of the event, the
19 perpetrator allegedly walked into the store, walked over
20 to the mystery section as The State reminds us every
21 time, picked up a book, brought it to the register and
22 set it on the register. Set it on the counter. Did you
23 hear of any fingerprints on that book? Did you hear of
24 any DNA evidence taken from that book? Touch DNA? You
25 didn't. She also said the perpetrator was in his late

1 20's but in fact, the defendant was 19 at the time this
2 incident allegedly to have been committed. That's a
3 pretty big discrepancy.

4 Let's move on to the hospital. The people at
5 MUSC knew how to do a chain of custody. They were
6 highly trained. They did it the right way. But after
7 them it went to , it didn't go so well. There were a
8 few problems, but that is probably a problem with
9 memory. Not sure exactly who was actually in the room
10 when the evidence was actually collected. Or who
11 actually sealed and signed. Their names were on there
12 but they don't recall who took the pluckings, who did
13 the oral wash, all of those things. And I asked them if
14 they knew if there was a 19 year old black male in that
15 same trauma unit the night of that incident and they did
16 not know. They had no recollection. I want to move on
17 to Detective Knight, the son of the sheriff at that time
18 and the brother of the now sheriff, L.C. Knight. He
19 wasn't sure if he brought the rape kit if he brought it
20 to the hospital or if it was as the nurses testified,
21 something that they assembled from things that they had.
22 It was different in that day. They didn't have, "rape
23 kits". Next Lieutenant Nevins gave his testimony he was
24 the chief investigator but he came in a courtroom two
25 days ago and came in here to convict a man, ask you to

1 convict a man, but hasn't event even looked over the
2 case file. He was unprepared and unable to answer
3 important questions about the case. He was the point
4 man on this investigation . He is what ties 1984 to
5 today. That's a very important roll that witness plays.
6 Its been a long time. I understand that but police have
7 to give 100% all of the time if they are going to take
8 away life, liberty and the pursuit of happiness. He
9 talked about the preservation of evidence how it's
10 important to put evidence in paper bags where it could
11 breath, that was an important procedure back then but
12 when you take that paper bag and stick it in a plastic
13 bag with that, that, all these things there's a couple
14 problems with that. One, there's a problem of cross
15 contamination , but then you seal it up you have
16 defeated the purpose of putting it in a paper bag
17 because you have put it in one giant plastic bag and
18 left it on a shelf to sit for 29 years.

19 Darn right that I talked about SLED didn't
20 sign their forms. We don't know who he turned it over
21 to at SLED. If that form had been signed that I
22 guarantee you that person would have sat in that chair
23 right their explaining, that yes, I received that
24 evidence from Dale Nevins. I guarantee that. You know
25 why that person is not here? Because no one signed for

1 it. This is a standard form, completed, created by the
2 State of South Carolina, the same as these people. With
3 a signature spot that was not used. Oh well, it was
4 good enough for government work. That's how we did
5 things back then. You know whey they don't do things
6 like that the same? Because it was wrong, there is too
7 much room for error. There's too much of a chance that
8 someone is gong to be deprived of their liberty because
9 of a mistake.

10 On these forms and you will see them when you
11 go back there, this at the very bottom column marked
12 evidence, it says specimen submitted for examination ,
13 and on form one, the first trip in 1985, clearly listed
14 are the items that were to be examined. Then we flip
15 over, but this exam requested box there is nothing in
16 there, and then 29 days later a second batch of stuff is
17 sent up there. The second batch involves the clothing
18 and the stuff that was submitted in that plastic bag. It
19 lists specimens to be examined and list them out.
20 Examination requested: hair, semen, the blood type, the
21 ABO blood type we talked about, and tissue samples.
22 Hold that though for 1988. Now, Captain Moultrie, Now
23 Major Moultrie, a well respected police officer. I have
24 a heck of a lot of respect for him. He was one of the
25 people that had a key. He was sure that he had a key in

1 1984. He was sure he had a key in 1985, but as time
2 progressed he wasn't as sure. Time passes, people
3 forgets things, but these things are sitting in custody
4 for 25 years. Any person in that immediate time, we
5 have no testimony, that those three people had that key
6 that entire period of time. We know in 1984-1985 they
7 had the key at that time. But in 86, 87, 88, 90's. And
8 Major Moultrie testified that the storage locker was one
9 dead bolt that had been a converted bathroom. The
10 converted bathroom as opposed to the former booking
11 room. That is why we describe it as the bathroom, to
12 make it simple. But he described a bathroom storage
13 area as rows and shelves and things. Some lost and
14 found. Some evidence of crimes, murder, rape,
15 shoplifting. Deputy Asbell retired from the Sheriff's
16 Office very recently talked about the transition from
17 when Mr. Nevins left the Sheriffs office and he picked
18 up the ball and he said at that time in 1993, it wasn't
19 every detective put their stuff in one closet, it was
20 each detective was responsible for their evidence and he
21 kept his own evidence in his own office. But very
22 wisely, they made an inventory of all the tings that
23 came to Earl Asbell when the transition happened. The
24 solicitor said, oh, well, they didn't have to do that,
25 well thank God they did because now have a milestone and

1 we know where some of this stuff was at a given point in
2 time. And listed, as he testified to, on page 3 of 5,
3 item 19, he said there was a box with miscellaneous
4 envelopes. One box with miscellaneous envelopes marked
5 Karen Jacobs, then Green, Brown, Sherman, Huggins,
6 Smith, **P.R.** and Kinard. One box with a bunch of
7 envelopes in it. No mention of a bag, a big bag
8 anywhere. What happened to that stuff in 1993. Where
9 was that? This evidence was mingled with a bunch of
10 other types of evidence. We don't know if they were
11 shootings, we don't know if these were rapes, we don't
12 know if they were automobile accidents. The evidence in
13 these envelopes we don't know. The State has not
14 provided us with that information. Could they have gone
15 and looked it up and said, oh, no, we are absolutely
16 sure there was no DNA evidence in this because it was a
17 lost and found. Something like that. They didn't provide
18 that information to you. Why? They didn't answer, never
19 answered where this stuff went during that period and
20 time.

21 Then subsequent to the transition from Nevins
22 to Asbell, the stuff is moved again. I don't recall if I
23 took it myself, just by myself or if I had somebody to
24 help me but if I did have somebody to help me, it was a
25 deputy. It moved from one location to another. Evidence

1 moved again. Stephanie Stanley, was well rehearsed in
2 her testimony to you. She was smart. She explained to
3 you that the system that they used at SLED to track now
4 we know where that item is, who has it. And when they
5 had it. We are speculating as to who and what and there
6 is a lot of pieces we have to fill in here to buy the
7 State's case. Finally, Kenneth Bogan, he is a veteran
8 there. This is one of his first cases. Certainly, one
9 of his first cases where he was requested to have DNA in
10 1988. As a young person, you want to solve a crime.
11 You're fired up, you've been trained, you want to do
12 this right. You want to catch who did it. That's your
13 job, to catch who did it. He's an agent of the State.
14 Why did the State call him? Because he's the knight and
15 shining armor who is gonna ride in and fix this chain
16 that's messed up. Fix all the lack of testimony. He's
17 gonna try to fill in the blanks. He's gonna be the one
18 that's gonna save the day. In fact, he is the weakest
19 link in their case. He just reasserts and reiterates
20 why the State messed up and why they are not going to be
21 able to prove their case at all, let alone beyond a
22 reasonable doubt.

23 We talked about 85, 88, the stuff on there,
24 there's some oral wash, looks like one set of vaginal
25 wash, things not signed, a list that goes up. Then in

1 88 we have the same problem we have the same form
2 unsigned. They hadn't changed their procedure now. Or
3 is this a problem with the Dorchester County's Sheriff's
4 office where it wasn't the protocol of the Dorchester
5 County Sheriff's Office to get a receipt for the things
6 that they dropped off. Maybe SLED had a protocol back
7 then where they were suppose to sign. Maybe this is a
8 problem with the Sheriffs office not with SLED. You know
9 what, we don't know. We didn't hear that. This time on
10 the blank for specimen submitted for analysis, they
11 submitted the specimen labeled, or DNA. What kind of
12 DNA? Was it Barry Daniels DNA, the person listed in
13 suspect? Were there standards from Barry Daniels? Were
14 they buccal swabs from Barry Daniels or, you know, what
15 were they. And the exam requested. They requested exam
16 #325, They weren't able to tell us what that was. Was it
17 a semen analysis, was it the blood factor analysis?
18 What was it? We don't know. You'll see in the modern
19 SLED stuff they labeled things page 1 of 2, 2 of 2 and
20 so forth. And then we have this page just out there, as
21 a matter of fact it's marked as two separate State's
22 exhibits. It doesn't say page 1 of 2 or 2 of 2, it's
23 just a page that is out there and what we have, it
24 doesn't even have the case # on it. But what we have on
25 there is one woods lamp, saliva on filter paper, vaginal

1 wash, oral swab and then two vaginal wash. So is that 1
2 vaginal wash, 3 vaginal wash, is there, this is the only
3 time we hear about multiple vaginal washes. That
4 concerns me. This is new evidence that has come in
5 here. Where did that vaginal wash come from. Did it
6 contain semen? Did it contain blood? Did it contain
7 anything? We don't know. This is the only point in time
8 that we have two to three vaginal washes as described.
9 One must have gotten lost or added or something along
10 the way. And he talked about, yea I know this is the
11 same stuff that was sent up in 1985. I know that these
12 1,2,3,4,5, to 8 items are the same that are in the rape
13 kit, this kit right here, State's 10. And I know that
14 every time I opened it, and resealed it, that's where it
15 has been opened and resealed, that's why that thing has
16 been dangling around all day. I know that even though
17 there is more stuff here now, this stuff was part of the
18 stuff that was submitted in 1985. I mean it makes not
19 sense. It's plain as day. How did this get separated
20 from that and mingled back together because some time in
21 there in 2009 they realized there was some stuff missing
22 from that. We'll talk about that in a little bit.

23 We come to 2009. There's an entirely new
24 process at SLED. Like we said before, we know where
25 everything is at any given point in time. It's done

1 right. It's changed and it's changed for a reason. On
2 the submission form, this time when Dorchester County
3 submitted items, it's signed. It's not only signed by
4 the person who submitted it, Buster Edwards, but it is
5 also signed by the person who also received it, Amy
6 Stevens. We know who they handed it off to. They didn't
7 just throw it off to some random person at SLED, we know
8 who had it and we know from that point on Amy Stevens
9 handed it off to person 1 who handed off to someone and
10 so forth till it makes its way back to this county, to
11 this courtroom here today. But low and behold the
12 county says they submitted item #7 oral wash for DNA
13 analysis. Kenneth Bogan, opens up the bag and there is
14 no oral wash in there. Did that oral wash contain
15 semen? Blood? Saliva? You would think but we will never
16 know because it got lost. That was not in there. The
17 county says they submitted it. Bogan says they didn't.
18 He did the right thing and he recorded it on that new
19 chain of custody form. Then most shockingly, and thank
20 God he did it. The envelope, containing the most
21 damning evidence in this case according to the state,
22 the clipping from the panties is miss marked from the
23 clipping from the skirt. Oh well, it was just a clerical
24 error. That's a pretty big clerical error if you are
25 going to come into this courtroom and try to convict

1 that man one hundred percent. They've gotta give one
2 hundred percent. They've gotta give their A game. They
3 haven't done it. The chain of custody, the DNA, they are
4 the most important thing here today. They are the only
5 physical evidence that we have in this case that
6 connects my client to that horrible incident. Without
7 that, none of you would be here today, I wouldn't be
8 here today, Ms. **P.R.** wouldn't have to be reliving this
9 painful memory. They have to bring one hundred percent
10 every single time. Mistake after mistake after mistake.
11 When you put your family on an airplane, you expect that
12 the pilot and copilot are going to give one hundred
13 percent every second of that flight. One mistake an be
14 fatal. People in the air, people on the ground. When
15 people fly, I don't know if you've flown out of
16 Charleston on these little commuter jets but you often
17 see the pilot walking around the plane. Checking off
18 things. Why do they do a check list? To make sure
19 everything is done. Every possible preparation for
20 flight, every safety measure, every item on that plane
21 is working. You know, maybe if they miss one check.
22 There's not going to be any problem. If they miss 2
23 items, it still could be fine but when you start missing
24 1,2,3,4,5,6, God knows how many in that, on and on and
25 on and on those problems start to add up and if you are

1 willing to get into that plane with all those mistakes,
2 if you are willing to convict that man on this evidence,
3 then God help our democracy. Hopefully after hearing all
4 of this evidence, you will make the right decision and I
5 think you know that the right decision is to acquit that
6 man. Thank you.

7 The Court: Thank you so much. Alright Ladies
8 and Gentlemen that first break that I talked to you
9 about, just stand up. Feels good. I'm going to need you
10 to be able to listen to me while I deliver the charge to
11 you and it's going to take me about 30 minutes to
12 deliver the entire charge to you that's why I need you
13 to be able to pay attention. So just move around a
14 little bit. Does anyone need to take a break?

15 Juror: Yes.

16 The Court: Okay. Here is what we are going to
17 do. I am going to ask you to step to your jury room and
18 I will ask you not to discuss this matter or allow
19 anyone else to discuss it with you. Take a little break.
20 Please step to your jury room.

21 **(Jury break 11:04)/(Jury re-enters courtroom 11:16)**

22 The Court: Alright ladies and gentlemen, you
23 have now heard the evidence and the arguments of both
24 sides. It is now my duty to explain to you the law
25 applicable to this case.

1 Now, Ladies and Gentlemen, the indictments in
2 this case charge the defendant Mr. Holmes, if I say the
3 defendant through out this process, I mean Mr. Holmes,
4 charged Mr. Holmes with two separate and distinct
5 criminal offenses. One is criminal sexual conduct in
6 the first degree and the other is kidnaping.

7 Ladies and Gentlemen I will remind you that the fact
8 that the defendant was arrested, charged and indicted in
9 this case is not evidence in this case and it cannot be
10 considered by you as evidence in this case nor does it
11 create any presumption or influence of guilt.

12 Ladies and Gentlemen these indictment are simply formal
13 written instruments which contain the charges made
14 against the defendant. It's just a notice document. The
15 indictments are the formal documents by which this case
16 is brought into this court. Ladies and Gentlemen, each
17 indictment charges a separate and distinct offense. You
18 must decide each indictment separately on the evidence
19 and the law applicable to it uninfluenced by your
20 decision as to the other indictment.

21 Ladies and Gentlemen, Mr. Holmes may be
22 convicted or acquitted on either or both of the offenses
23 charged. You will be asked to write a separate verdict
24 of guilty or not guilty for each indictment, meaning for
25 each charge.

1 Ladies and gentlemen, Mr. Holmes has pled not
2 guilty to these indictment and that plea places the
3 burden on the State to prove the defendant guilty. A
4 person charged with committing a criminal offense in
5 South Carolina is never required to prove himself
6 innocent or not guilty. I charge you that it is an
7 important role of the law that a defendant in a criminal
8 trial, no matter what the seriousness of the charge may
9 be, that defendant will always be presumed to be
10 innocent of the crime, or the crimes for which the
11 indictment or the indictments were issued, unless guilt
12 has been proven by evidence satisfying you of that guilt
13 beyond a reasonable doubt. The presumption does not end
14 when you begin your deliberations. But it accompanies
15 the defendant throughout the trial until you reach a
16 verdict of guilt based upon evidence satisfying you of
17 that guilt beyond a reasonable doubt. The presumption of
18 innocence is like a robe of righteousness, placed about
19 the shoulders of the defendant, which remains with him
20 until it has been stripped from him by evidence
21 satisfying you of the defendant's guilt beyond a
22 reasonable doubt. The presumption of innocence is not a
23 mere legal theory, it's not a mere legal phrase, it is a
24 substantial right to which every defendant is entitled,
25 unless you, the jury, are satisfied upon the evidence of

1 the defendant's guilt beyond a reasonable doubt. What
2 then is reasonable doubt in the law? Reasonable doubt
3 is the kind of doubt that would cause a reasonable
4 person to hesitate to act. The State has the burden of
5 proving the defendant guilty beyond a reasonable doubt.
6 Some of you may very well have served as jurors in civil
7 cases where you were told that it is only necessary to
8 prove that a fact is more likely true than not true.
9 Such as by the greater weight or preponderance of the
10 evidence.

11 Ladies and Gentlemen, in criminal cases the
12 State's burden of proof is more than half. The State's
13 proof must be more powerful than that. It must be beyond
14 a reasonable doubt. Proof beyond a reasonable doubt is
15 proof that leaves you firmly convinced of the
16 defendant's guilt. There are very few things in this
17 world that we know with absolute certainty. In criminal
18 cases the law does not require proof that overcomes
19 every possible doubt. If based on your consideration of
20 the evidence you are firmly convinced that the defense
21 is guilty of the crime charged. You must find the
22 defendant guilty. I say crime charged because you will
23 do this analysis separately and independently for each
24 of these indictments. For each of these crimes charged.

25 Ladies and Gentlemen, so if you are firmly

1 convinced that the defendant is guilty of the crime
2 charged, you must find him guilty. If, on the other
3 hand, you think there is a real possibility the
4 defendant is not guilty, you must give the defendant the
5 benefit of the doubt and find him not guilty. Ladies
6 and Gentlemen I remind you that during the course of
7 this trial, you and I have had certain duties to
8 perform. As the trial Judge it is my responsible to
9 preside over the trial of this case I also have the duty
10 to rule on the admissibility of the evidence offered
11 during the trial. You are to consider only the
12 competent evidence before you. Ladies and Gentlemen, you
13 are to consider only the testimony that has been
14 presented from this witness stand, any exhibits which
15 have been made a part of the record in this case and the
16 stipulation of counsel. I have the additional duty to
17 charge you regarding the law applicable to this case. As
18 the presiding Judge I am the sole Judge of the law in
19 this case and it is your duty as jurors to accept and
20 apply the laws as I now state it to you. If you already
21 have any idea as to what the law is or what it ought to
22 be and it does not agree with what I now tell you what
23 the law is, you must abandon your preconceived idea
24 because you are sworn to accept and to apply the law
25 exactly as I have spoken it to you.

1 Ladies and Gentlemen, in every case tried in
2 this courtroom before a jury, the jury becomes the sole
3 judge, the exclusive judge of the facts in the case. A
4 trial judge cannot comment or make any statement to a
5 trial jury about the facts of the case. Since you the
6 jury are the sole judges of the facts in this case, you
7 are not to infer to what I have said during the progress
8 of the trial on the ruling of this trial and the
9 admissibility of evidence or anything that I say now
10 during the course of this instruction to you that I have
11 any opinion regarding the facts in this case. The law
12 does not allow me to have an opinion about the facts in
13 this case. This is a matter solely for you to determine.
14 As jurors it is your duty to determine the facts, the
15 value, the weight, and the truth of the evidence
16 presented during this trial.

17 Ladies and gentlemen, generally there are
18 generally two types of evidence which are usually
19 presented during the trial. Direct evidence and
20 circumstantial evidence. Direct evidence is the
21 testimony of a person who claims to have actual
22 knowledge of a fact. Such as an eyewitness. It is
23 evidence that immediately establishes the main fact to
24 be proved. Circumstantial evidence is proof of a chain
25 of facts and circumstances indicating the existence of a

1 fact. It is evidence which immediately establishes the
2 collateral facts from which the main fact may be
3 inferred. Circumstantial evidence is based on inference
4 and not on personal knowledge or observation. I will
5 give you an example of each. Direct evidence. It's
6 February, it's cold, snow is forecast. You walk outside
7 your house and you look up in the sky and you are
8 literally hit in the eye with snow. You then can
9 testify as an eyewitness that it is snowing. You see
10 it, you feel it. You know it is snowing and you can
11 testify directly that it is snowing. Direct evidence is
12 evidence such as an eyewitness which can prove my
13 example that it was snowing. Circumstantial evidence: It
14 is February, it is cold, snow is forecast. You go to
15 bed, you look out and you see pitiful brown grass
16 outside your window. When you awake in the morning,
17 everything is covered by snow. Here's what you know. You
18 know that it is February, you know that it was cold last
19 night, you know that snow was forecast last night. You
20 know that when you went to bed all you saw was brown
21 pitiful grass and you know that when you awoke in the
22 morning snow had covered everything. Those are facts
23 that you know that you observed. You know those facts
24 directly. But through inference, you can testify, you
25 can say, that it snowed over night. Circumstantial

1 evidence that allows you to say and to know that it
2 snowed over night is circumstantial evidence. It is
3 testimony that proves by inference.

4 Ladies and Gentlemen, our law makes absolutely
5 no distinction between the weight or value given to
6 either the direct or circumstantial evidence. Nor is it
7 a grater degree of certainty required of circumstantial
8 evidence than of direct evidence. You shall weigh all
9 the evidence in the case. After weighing all the
10 evidence if you are not convinced of the guilt of the
11 defendant beyond a reasonable doubt, you must find the
12 defendant not guilty. And again you will do this
13 analysis for each or both of these two charges
14 independently one from the other.

15 Necessarily then you must determine the
16 credibility of the witnesses who have testified in this
17 case. Credibility ladies and gentlemen simply means
18 believability. It is your duty as jurors to analyze and
19 to evaluate the evidence and to determine which evidence
20 convinces you of its truth. In determining the
21 believability of the witnesses that have testified in
22 this case, you may believe one witness over several
23 witnesses or several witnesses over one witness. You may
24 believe part of a witness testimony and you may
25 disregard and reject the remaining part of the testimony

1 of that same witness. You may believe the testimony of a
2 witness in its entirety or you may reject the testimony
3 of a witness in its entirety. You may consider whether
4 any witness has exhibited to you in the interest any
5 biases, any prejudice or other motive in this case. You
6 may also consider the appearance, the manner of the
7 witness while on the witness stand.

8 Ladies and gentlemen in this trial you have heard from
9 a witness designated and deemed to be by the court to be
10 an expert witness. Ladies and gentlemen our rules of
11 evidence ordinarily do not permit witness to testify
12 regarding their opinions or their conclusions. An
13 exception to this rule exists for witnesses who are
14 called expert witnesses. An expert witness is a witness
15 who by virtue of their education or experience,
16 knowledge or training have become an expert in some art
17 or science profession or calling and those witnesses may
18 state their opinion as to relevant and material matter
19 within their opinion of their expertise and they may
20 also state the reasons for their opinions. Ladies and
21 Gentlemen you should consider expert opinion testimony
22 received in evidence in this case and like any other
23 evidence give it the weight that you believe it is
24 entitled. If you decide that the opinion of the expert
25 witness is not based on sufficient education and

1 experience or if you conclude the reasons given in
2 support of the opinion are not sound or that the opinion
3 is outweighed by other evidence you may disregard the
4 opinion or opinions in its or their entirety. An expert
5 witnesses testimony is to be given no grater weight than
6 that of other witnesses simply because the witness is an
7 expert.

8 Further, you are not required to accept an
9 expert testimony even though it is not contradicted.
10 Ladies and gentlemen, I instruct you and I emphasize
11 that the fact that the defendant did not testify in this
12 case is not, is not, a factor to be considered by you in
13 any way in your deliberation and in your consideration
14 on the question of whether the defendant is guilty or
15 not guilty. The fact that this defendant decided to
16 testify must not be considered by you in any manner what
17 so ever. A defendant, this defendant, has the
18 constitutional right to remain silent and the assertion
19 of this right must not be considered by you in your
20 deliberations. I repeat. Under your oath, you are to
21 draw no conclusion whatsoever from the fact that the
22 defendant in this case did not testify. The fact that
23 this defendant did not testify should not even be
24 mentioned in the jury room. It is not to be discussed.
25 It ought not to be brought up by anyone.

1 Ladies and gentlemen as I have explained to
2 you the burden of proof is and remains on the State of
3 guilt beyond a reasonable doubt. A defendant is not
4 required to prove anything.

5 Ladies and Gentlemen, an issue in this case,
6 is the identification of the defendant as the person who
7 committed each of the crimes charged? The State has the
8 burden of proofing identify beyond a reasonable doubt.
9 You must be satisfied beyond a reasonable doubt of the
10 accuracy of the identification of the defendant before
11 you may convict the defendant, meaning before you may
12 find the defendant guilty. Identification testimony is
13 an expression or belief when questioned by a witness you
14 must determine the accuracy of the identification of the
15 defendant. You must consider the believability of the
16 identification as you would make any determination from
17 any witness. You may consider whether the witness had
18 an adequate opportunity to make observations at the time
19 and this will be affected by things such as how long or
20 short period time was available. How far, how close the
21 witness was. Lighting conditions, whether the witness
22 had a chance to see or know the person. Once again I
23 instruct you that the burden of proof is and remains on
24 the state to prove every element of the crime charged
25 and this applies to each of the two charges and this

1 specifically includes the burden of proof beyond a
2 reasonable doubt the identity of the defendant as the
3 person who committed the crime. You will do this
4 analysis of each of these two indictments, these two
5 crimes charged independently one from the other.

6 Ladies and Gentlemen, in order to establish
7 criminal liability, criminal intent is required. For
8 example the mental state required to be proven by the
9 State for a particular crime, might be purpose, intent,
10 alleged, criminal negligence and the like these are
11 examples. Criminal intent must be proven by the State
12 beyond a reasonable doubt. Criminal intent is always a
13 matter that must be determined by a jury from the
14 circumstances surrounding the situation. There is no
15 way to prove intent to a mathematical certainty. There
16 is no way medical science can dissect a persons brain to
17 determine what the person had in mind. The law says
18 criminal intent may be inferred from the circumstance
19 shown to have existed. This is how you make a
20 determination of whether or not the element requiring
21 intent was present. It is not necessary to establish
22 intent by direct and positive evidence, but intent may
23 be established by inference in the same way as any other
24 fact. By taking into consideration the acts of the
25 parties and all the facts and circumstances in the case.

1 Criminal intent is a mental state. A conscious wrong
2 doing. It is up to you to determine what the defendant
3 intended to do based on the circumstances shown to have
4 existed. Criminal intent can arise from action, failure
5 to act, arise from consequences of the law to consider.

6 Now I will charge you with regard to the
7 elements of these two offenses. First one I charge you
8 with the elements of criminal sexual conduct in the first
9 degree. And then I'm going to charge you with regard to
10 the element of kidnaping. Ladies and gentlemen the
11 defendant is charged with criminal sexual conduct in the
12 first degree.

13 Ladies and Gentlemen, the indictment regarding
14 criminal sexual conduct in the first degree states as
15 follows, or alleges as follows: That in Dorchester
16 County South Carolina, on or about October 24, 2004 the
17 defendant, Herbert Holmes did commit a sexual battery
18 upon the victim, P.R. [REDACTED] and the victim did submit to
19 sexual battery under aggravated force. And or the victim
20 was subjected to forcible confinement/kidnaping,
21 robbery, extortion, burglary and any other similar
22 offense or act in that the defendant did perform oral,
23 anal, and vaginal sex while committing an offense.

24 Now, ladies and gentlemen, The first element
25 which the state must prove beyond a reasonable doubt is

1 that the defendant engaged in a sexual battery with the
2 victim. A sexual battery is sexual intercourse,
3 cunnilingus, fellatio, anal intercourse, or any
4 intrusion however slight, of any part of a person's body
5 or of any object into the genital or anal opening of
6 another persons body except when the intrusion is
7 accomplished for medically recognized treatment or
8 diagnostic purposes. If you find that the state has not
9 shown beyond a reasonable doubt that a sexual battery
10 occurred, your verdict would have to be not guilty.

11 Ladies and gentlemen, if you find that a sexual battery
12 did occur you must then decide whether the State has
13 proven beyond a reasonable doubt that the defendant used
14 aggravated force to accomplish the sexual battery.

15 Aggravated force means the use of physical force,
16 physical violence of a high an aggravated nature to over
17 come the victim. This includes the threat with using a
18 deadly weapon. Two, this is the additional intentional
19 circumstances based upon what you find to be the facts
20 in this case. The victim submission to sexual battery
21 while the victim was also the victim of forcible
22 confinement, kidnaping, robbery, extortion burglary,
23 house breaking or any other similar act or force. That
24 concludes the elements of criminal sexual conduct in the
25 1st degree.

1 Ladies and Gentlemen, I am now going to charge
2 you regarding the law applicable to kidnaping. The
3 indictment regarding kidnaping, states that in
4 Dorchester County, South Carolina, on or about October
5 24, 1984, the defendant, Herbert Holmes, unlawfully
6 seized, confined, inveigled, decoyed, abducted,
7 kidnaped, carried away the victim, P.R. [REDACTED], without
8 the authority of law, it goes on to say it's a violation
9 ...

10 Ladies and Gentlemen the State must prove
11 beyond a reasonable doubt that the defendant knowingly
12 and lawfully seized, confined, inveigled, coyed or
13 decoyed, kidnaped, abducted or carried away another
14 person without the authority of law. To do a thing
15 unlawfully is to do it willfully against the law.
16 Knowingly means with knowledge, consciously, not
17 accidentally. Seized means to take hold of or suddenly, or
18 forcibly. Confined means to limit, to restrict or
19 enclose within bounds, imprison or shut or keep in.
20 Inveigled means to lure, entice, to lead astray by false
21 representation or promises or deceitful means. Decoyed
22 means to lure as if by decoy. A decoy is something to
23 entice a person into a trap. Kidnap is to remove a
24 person against his or her will by unlawful force or by
25 fraud. Abduct is to carry off secretly or by force for

1 an illegal cause. Carry away means to remove. The State
2 does not have to prove that the defendant did all of
3 these things instead if you find beyond a reasonable
4 doubt that the defendant did any of these things, you
5 may find the defendant guilty of kidnaping. Something
6 done without the authority of law. Something done for
7 which the law does not sanction, permit, allow, condone
8 or provide justification for. Kidnaping does not have to
9 be for any personal or monetary gain or for any illegal
10 purpose but may be for any reason whatsoever.

11 And Ladies and Gentlemen, I finally charge you
12 that the testimony of the victim need not be
13 corroborated in prosecutions under 16-3-658 and that is
14 the law of criminal sexual conduct. Ladies and Gentlemen
15 before I go over the verdict form with you there are two
16 things that I want you to know. First of all, your
17 verdict must be unanimous. This must be the verdict of
18 each and every one of you, to my alternates, stay with
19 me when my jury leaves me, please. This is not the
20 verdict of any one of you, this is not the verdict of
21 the majority of you, but this must be the verdict of
22 each and every one of you. This would be your verdict.
23 Secondly, ladies and gentlemen, There are two possible
24 verdicts of each of these two offenses. One is not
25 guilty and one is guilty. Ladies and gentlemen I have

1 placed on this paper two possible verdicts for each of
2 these 2 offenses. There is no hidden meaning in the
3 order of which these possible verdicts have been put on
4 this paper and please don't think there's any hidden
5 meaning. It's just reality. If you are going to put two
6 things on the paper, one has got to be first and one has
7 got to be second. Please know there is no hidden
8 meaning. Ladies and gentlemen, here's the verdict form.
9 First of all, this is the caption. It is just the title
10 of the case if you will and these are the indictment
11 numbers. This is how we keep up with individual charges
12 in our system. This is the verdict form. Now once the
13 jury has reached its verdict on this matter it will be
14 your duty madam juror to simply indicate the verdict of
15 the jury on the verdict form. The first charge that is
16 on this piece of paper, says this, "As to the charge of
17 criminal sexual conduct 1st degree, we the jury,
18 unanimously find the defendant and there are two
19 possible verdicts, whichever of these two verdicts is
20 your unanimous verdict, once the verdict is reached, I
21 want you to circle it. I don't want there to be any
22 question which is the unanimous verdict. With regards to
23 number two, it says, "As to the charge of kidnaping, we
24 the jury, unanimously find the defendant, likewise,
25 there are 2 possible verdicts. Whichever is the

1 unanimous verdict of the jury I want you to circle it. I
2 don't want there to be any question as to what it could
3 be. And then it says stop and end your deliberations and
4 sign and date the form. Then, please sign and date the
5 form. And you know who you are. And today, is April 25,
6 2013 for your information. Now, when you have completed
7 your deliberations, and you have filled out your verdict
8 form, then you will return to the courtroom. And you
9 will pass the verdict onto probably Ms. Salisbury who
10 will in turn pass that on to me. Do not publish the
11 verdict just pass it to me.

12 Now ladies and gentlemen, in a moment I'm
13 going to be asking you to step to your jury room with
14 this instruction. Do not discuss this matter or allow
15 anyone to discuss this matter with you. You are
16 probably saying, you've been telling us or days this is
17 where we were going to deliberate. What is going on? So
18 I am going to hasten to tell you. When you all step to
19 your jury room on this next occasion, excluding the
20 alternates, I'm going to turn to these lawyers, I'm
21 going to ask then two questions. Have I given the jury
22 all of the law that they may need for their
23 deliberations and have I stated it for them correctly.
24 Now, Ladies and Gentlemen, sometimes I fail to give a
25 jury an instruction that they may need for their

1 deliberations and the lawyers help me know that. In the
2 event that I need to bring you back out, for that
3 reason, please don't consider that instruction with any
4 emphasis. Just know that I want to get it right. I
5 want to give you all the law that you may need for your
6 deliberations. Ladies and Gentlemen, sometimes something
7 will just fall out wrong. These lawyers help me know
8 that. In the event that I need to bring you back out,
9 because I need to correct an error that I made I ask you
10 in advance to please allow me to correct my error in
11 your minds. This is my one chance to get this right. I
12 give you all the law that you may need for your
13 deliberations and to state if for you correctly. Now, in
14 the event that I do not need to bring you back out, you
15 will be brought the verdict form, you will be brought
16 these exhibits, and you will be brought an instruction
17 to begin your deliberations. Mr. Salisbury and I have
18 been doing this for 15 years and I'm quite confident
19 that she will tell you specifically to begin your
20 deliberations. But ya'll might be the very first jury
21 in 15 years that Ms. Salisbury doesn't specifically say
22 to begin your deliberations. You will not have the
23 verdict form and the exhibits unless you are ready to
24 begin your deliberations. When you have this verdict
25 form and the exhibits you will begin your deliberations.

1 Now, I need to go over a couple of additional
2 matters with you because all 12 of you must be present
3 for you to deliberate. So, if you need to take a comfort
4 or somebody needs to take a smoke break, stop your
5 deliberations, take your break and just reconvene your
6 deliberations when you all come back together. Be
7 mindful that all 12 of you have to be present for you to
8 deliberate. Now, ladies and gentlemen, I'm going to
9 conclude with this thought. The word verdict comes from
10 the Latin phrase veredicto, which means, to speak the
11 truth, to speak the truth. Please step to your jury
12 room. Do not discuss this matter or allow anyone to
13 discuss it with you.

14 (Jury exits courtroom)

15 The Court: Ms. Recore.

16 Ms. Recore: Yes ma'am.

17 The Court: Mr. Barr.

18 Mr. Barr: Yes ma'am.

19 The Court: Our alternates. Let me tell you
20 what I am going to ask you to do for me if you will be
21 so kind. I'm going to ask you for 15 minutes after the
22 jury begins it's deliberations for this reason that
23 sometimes, believe it or not, something will happen to
24 one of the jurors for whatever reason as the
25 deliberations get under way. And if that was to happen

1 within first 15 minutes, I believe I would stop the
2 deliberations, seek one of you and they could continue
3 deliberations, I think I could save the trial. Because
4 of that you have given so much of your time, I'm going
5 to burden you with asking you for a little bit more.
6 Ms. Sailsbury is going to place you in another room away
7 from the jury. You are welcome to watch your clock and
8 give us 15 minutes if you will be so kind? Thank you.
9 Ms. Salisbury will you please take these folks?

10 (Alternates exit courtroom)

11 The Court: All right. Exceptions, additions?

12 Mr. Justis: The only thing Your Honor, when you read
13 the indictment for criminal sexual conduct, I think you
14 said 2004 instead of 1984 as the year.

15 The Court: Okay, my goodness I read 1984 in
16 my head, I'll bring them back out and correct that.

17 Mr. Justis: And that's the only thing.

18 Mr. Farley: I don't recall that but I
19 continue to object about the last part of the victims
20 testimony.

21 The Court: I understand. Thank you so much.
22 Let me have the jury back, please.

23 **(Jury Re-enters courtroom 12:01)**

24 The Court: Alright, I gave you the wrong
25 date. Somebody probably noticed it. I thought I read in

1 my head it was 1984 but apparently but I said 2004. I
2 apologize. The date I meant to say was 1984. Ladies and
3 Gentlemen when you retire on this next occasion in just
4 a moment you are going to be brought your verdict form.
5 You are going to be brought the exhibits and that will
6 be your signal, Ms. Salisbury will tell you then to
7 begin your deliberations. We will bring you lunch by the
8 way, we won't let you starve. Thank you, you may retire.
9 The jury you will go first to your jury room and
10 alternates you just wait a second.

11 **(Jury exits courtroom 12:02)**

12 The Court: Counsel, I'm going to ask you to
13 please come and look at the exhibits and the verdict
14 form before they are turned over to the jury.

15 (Jury Deliberations begin 12:05)

16 The Court: This is Court's Exhibit #2.

17 (Court's Exhibit Number 2 was marked)

18 The Court: I guess it's a question, here is
19 what it says, a note from the jury says clarification on
20 the blood typing that was done what I'm going to say
21 with approval from counsel is, Ladies and Gentlemen you
22 have all the information from which you will make your
23 decisions and I have signed it. Is that correct? On
24 behalf of the State?

25 Mr. Justis: That is correct.

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1 The Court: On behalf of the defense?

2 Mr. Farley: Yes, Your Honor.

3 The Court: I think what we will do is mark
4 this as exhibit #3, that way hopefully they won't throw
5 it away. We will deliver that to the jury.

6 (Court's Exhibit Number 3 was marked)

7 (Deliberations continue)

8 The Court: I understand that the jury has
9 reached a verdict. All right. Anything from the State
10 before we bring the jury out?

11 Mr. Justis: No, Your Honor.

12 The Court: From the defense?

13 Mr. Farley: No, Your Honor.

14 The Court: Very well, let's have our jury.

15 **(Jury enters courtroom 1:43)**

16 The Court: It's my understand that the jury
17 has reached it's decision, is that correct, Madam Juror?

18 Madam Juror: Yes.

19 The Court: Will you please pass that to Ms.
20 Salisburg.

21 Deputy Clerk: The State of South Carolina,
22 county of Dorchester, State of South Carolina vs Herbert
23 Holmes, in the court of General Sessions First Judicial
24 Circuit Indictment numbers 2011-GS-18-0256 and 2011-GS-
25 18-0257. As to the charge of criminal sexual conduct 1st

1 degree, we the jury unanimously find the defendant,
2 guilty. As to the charge of kidnaping, we the jury
3 unanimously find the defendant guilty. Signed by the
4 presiding juror April 25, 2013.

5 The Court: Ladies and Gentlemen if this was
6 your verdict in your jury room and it continues to be
7 your verdict here in the courtroom please indicate by
8 raising your right hand. All of our jurors have their
9 right hands raised. Thank you. Anything from the State
10 before we dismiss our jury?

11 Mr. Justis: Nothing from the State, Your
12 Honor.

13 The Court: From the defense?

14 Mr. Farley: We would ask the clerk to poll the
15 jury.

16 The Court: Very well.

17 Deputy Clerk: Juror #114, Please raise your
18 right hand. Was this your verdict in the jury room?

19 Juror #114: Yes, it was.

20 Deputy Clerk: It is still your verdict?

21 Juror #114: Yes, it is.

22 Deputy Clerk: Thank you, you may have a seat.

23 Juror # 115, was this your verdict in the jury room?

24 Juror #115: Yes, ma'am.

25 Deputy Clerk: Is it still your verdict?

1 Juror #115: Yes, ma'am.

2 Deputy Clerk: Juror #90, was this your
3 verdict in the verdict, jury room?

4 Juror #90: Yes, ma'am.

5 Deputy Clerk: It is still your verdict?

6 Juror #90: Yes, ma'am.

7 Deputy Clerk: Juror #147, was this your
8 verdict in the jury room?

9 Juror #147: Yes.

10 Deputy Clerk: Is this still your verdict?

11 Juror #147: Yes.

12 Deputy Clerk: Juror #151, was this your
13 verdict in the jury room?

14 Juror #151: Yes, it was.

15 Deputy Clerk: Is this still your verdict?

16 Juror #151: Yes, it is.

17 Deputy Clerk: Juror #81, was this your
18 verdict in the jury room?

19 Juror #81: Yes.

20 Deputy Clerk: Is this still your verdict?

21 Juror #81: Yes.

22 Deputy Clerk: Juror #100, was this your
23 verdict I the jury room?

24 Juror #100: Yes, it was.

25 Deputy Clerk: Is this still your verdict?

1 Juror #100: Yes, it is.

2 Deputy Clerk: Juror #70, was this your
3 verdict in the jury room?

4 Juror #70: Yes, ma'am.

5 Deputy Clerk: Is this still your verdict?

6 Juror #70: Yes, ma'am.

7 Deputy Clerk: Juror #2, was this your verdict
8 in the jury room?

9 Juror #2: Yes ma'am.

10 Deputy Clerk: Is this still your verdict?

11 Juror #2: Yes ma'am.

12 Deputy Clerk: Juror #33, was this your verdict
13 in the jury room?

14 Juror #33: Yes.

15 Deputy Clerk: Is this still your verdict?

16 Juror #33: Yes.

17 Deputy Clerk: Juror #59, was this your
18 verdict in the jury room?

19 Juror #59: Yes ma'am.

20 Deputy Clerk: Is this still your verdict?

21 Juror #59: Yes ma'am.

22 Deputy Clerk: Juror #69, was this your
23 verdict in the jury room?

24 Juror #69: Yes ma'am.

25 Deputy Clerk: Is this still your verdict?

1 Juror #69: Yes ma'am.

2 The Court: Alright anything further from the
3 State at this time?

4 Mr. Justis: Not at this time, Your Honor.

5 The Court: Before we dismiss the jury, from
6 the defense?

7 Mr. Farley: No, Judge.

8 The Court: All right. Ladies and Gentlemen,
9 I want to thank you for your service on this jury and on
10 this jury panel this week. As I told you when we began
11 you are now at liberty to talk about this case if you
12 wish. I give jurors this instruction because at this
13 point if I don't I would have needed to. I always tell
14 jurors that should someone persist in talking to you
15 about this case, and you have said, I don't want to talk
16 about it, what you do is you call the clerk's office and
17 they will contact me and I will intercede on your
18 behalf. Now I know when I say that people are like whoa,
19 you know, I do that in an abundance of precaution.
20 Maybe eight years ago there might have been a
21 circumstance, it really wasn't a problem and I didn't
22 need to get involved. But I always tell jurors that. If
23 someone should persist and I think what I am talking
24 about is that we have several universities in South
25 Carolina and sometimes people do research and sometimes

1 they may want to talk to a juror about a case. Theat's
2 the only example that they could be aggressive. These
3 lawyers aren't going to be aggressive about that. They
4 may call you because the practice of law is an art and
5 it is not a science and we have a very young lawyer
6 involved in this case as a matter of fact this was his
7 first trial as I understand it so he may call you and
8 say, what works and what doesn't work? Do you mind
9 giving me some feedback because he is embarking on his
10 career as a trial lawyer. These other lawyers are still
11 young and they may want to have a conversation with you
12 about that. If you are comfortable, it's fine. If you
13 are not then just tell them you don't want to talk about
14 it. When you go home, whoever is curious about where you
15 have been and what you have been up to do not blame it
16 on the judge if you don't want to talk about it, you can
17 talk about it. You are at liberty to talk about this
18 case now if you wish. Now, for those of you who are
19 dashing off to work, and you need something for your
20 employer if you will go back into the jury room and Ms.
21 Salisbury will assist you in that. Now, let me share
22 with you that you now have an exemption for your jury
23 service for 2014 and 2015 in the court of record. You
24 are now not eligible to serve in a court of record for
25 the balance of 2013. Sometimes jurors like to know where

1 is the check for my jury service, I use to tell folks
2 early on that the check was in the mail and then our
3 Clerk said no it's not you can't be telling them that.
4 Well, it's not. Your check is not in the mail for your
5 jury service but it will be fairly soon. Our trip to
6 Tahiti, it will get you to Jedburg. For those of you
7 that are in the upper part of the county, it will et you
8 to maybe to Ridgeville. It is a very small token of all
9 that you have given to our system of justice and that of
10 course is your dear and precious time. Ladies and
11 Gentlemen, I don't mind sharing with you what will occur
12 next. What will occur next is if the victim wishes to
13 speak or anyone on her behalf I will be happy to hear
14 from her. And likewise I'm going to be hearing from the
15 defendant or anyone who wishes to speak on behalf of the
16 defendant and then I'm going to sentence the defendant.
17 Sometimes the jury wants to know can they stay because
18 they have given so much of your time, if you wish to
19 stay you are more than welcome to remain. You are also
20 more than welcome to leave. It is now up to you. I am
21 now returning you to your status as a fine member of the
22 community. Thank you so much. Those of you who have
23 questions or comments that you want to share with me as
24 you have given so much of your time I am happy to do the
25 same. And if you will either remain here or remain in

1 the jury room just let Ms. Salisbury know that you want
2 to speak with me and I will be happy to do that. Ladies
3 and Gentlemen, thank you so much for your services and
4 at this time you are free to go or remain which ever you
5 prefer. Are y'all ready to go forward?

6 Mr. Justis: The State's ready, Your Honor.
7 May I approach, Your Honor?

8 The Court: You may. Let me hear his record.

9 Mr. Justis: Back in 1984, approximately six
10 months or so after this incident, Mr. Holmes was
11 convicted of malicious injury to real property and
12 received a probationary sentence which was shortly there
13 after revoked. He served 9 months in prison based on
14 that charge. When he got out in 1987, he was convicted
15 of assault and battery of a high and aggravated nature,
16 received a four year sentence that was related to a
17 shooting where he took a shotgun and shot through the
18 windshield of a car striking a lady that was sitting in
19 the car. Then after getting out of prison on that
20 charge in December of 1989 he was convicted of a
21 burglary and two counts of criminal sexual conduct 1st
22 degree. Related to an incident where he pried open the
23 livingroom window of a house at approximately 3:30 in
24 the morning and went inside and sexually assaulted a 71
25 year old grandmother and her 18 year old granddaughter.

State of South Carolina vs. Herbert Leroy Holmes

435

1 He is currently incarcerated in the Department of
2 Corrections for that particular burglary and those two
3 rapes. And that is the extent of his record. As far as
4 Ms. **P.R. [REDACTED]**, the victim in this case, I have
5 spoken to her and she does not wish to address the
6 court. I believe she addressed the Court and the jury
7 when she testified and I don't think we need to go into
8 the facts of this case. I think that everyone heard the
9 facts of this case and the State would ask for the
10 maximum sentence on each charge and we would also
11 request that those charges be run consecutive. Not only
12 to each other but to the existing convictions that he
13 has. And that he be given credit back to the time he was
14 served with the warrants which I believe was back
15 February 2011. And that would be the request of the
16 State.

17 The Court: Alright, let me ask you this
18 question. When were the warrants issued?

19 Mr. Justis: The warrants they were both issued
20 by the Magistrate on February 1, 2011 and they were
21 served February 10, 2011. So it would be February 1st.

22 The Court: Thank you. All right, Mr. Farley.

23 Mr. Farley: Thank you. If it pleases the
24 Court.

25 The Court: Yes.

1 Mr. Farley: You know the State's role in this
2 is to uphold the statutes of this and my role and Mr.
3 Chisholm's role is to defend the constitution and
4 people's civil rights. It is still our position that Mr.
5 Holmes civil rights were violated. The evidence was so
6 weak that it should not have been admitted. But that's
7 water under the bridge. That's something that is going
8 to happen later down the road. Mr. Holmes as you know is
9 currently serving a life sentence. You can't get blood
10 from a stone. The State is asking for life sentences on
11 top of life sentences. So essentially our position is
12 that he served a lot of time and that we just ask that
13 he get credit from 1989 when he was incarcerated on this
14 sentence and he get credit for that, whether it be SCDC
15 credit or credit with the court understanding that had
16 he been convicted of this crime back then, more than
17 likely he's spent a heck of a lot of time in prison. We
18 just want the court to take that into consideration.

19 The Court: Thank you so much. Alright Mr.
20 Farley, does anyone else wish to speak on Mr. Holmes.
21 I'm happy to hear from them. For post trial motions,
22 you will have ten days.

23 Mr. Farley: Yes.

24 Mr. Justis: Your Honor, if I might clarify
25 one thing. The life sentence he received back in 1989

1 is not a true life sentence. He was actually coming up
2 for parole when these warrants were served on him.

3 The Court: All right. Does anyone know any
4 reason why at this time I should not pass sentence to
5 Mr. Holmes from the State?

6 Mr. Justis: Nothing from the State.

7 Mr. Farley: No, Judge.

8 The Court: Very well. With regards to, well
9 I've entered the sentence. I've written it, and about
10 to publish it and before everyone leaves, I know you
11 didn't want to have someone speak and I understand that,
12 but I wanted you to know I think you are wonderfully
13 brave. This has been your life for a very long time,
14 I'm very moved by the fact that you saw it through and
15 that you came here and that you vindicated your purpose.
16 You vindicated yourself. I have watched you this week
17 and I watched you go through a number of different
18 places this week. You were sitting in way in the back.
19 You were going out from time to time as you needed to
20 keep your composure and I've watched you move closer and
21 closer until today. You have taught me a lesson as I
22 have had the opportunity to watch. You have taught us
23 all a lesson. It is my heartfelt hope, that this will be
24 your closure for you, your children and your
25 grandchildren. For your children, I hope they will

1 always understand that it is important to stand up for
2 yourself. Thank you.

3 All right, Mr. Holmes, as I have said, I have
4 already entered my sentence. With regards to 2011-GS-
5 18-251 Criminal Sexual Conduct in the 1st Degree, Mr.
6 Holmes I'm going to commend you to the State Department
7 of Corrections for a period of 30 years. Obviously from
8 the statute you will registered as a sex offender and
9 there are consequences in regards to GPS monitoring I've
10 indicated that I don't think that will be applicable to
11 you but I am indicating that along with the sentencing
12 sheet. With regards to 2011-GS-18-256, which is the
13 indictment of Kidnaping, I commend you to the State
14 Department of Corrections for the balance of your life.
15 With regards to both of these sentences, they will run
16 concurrent, one with the other, but they will run
17 consecutive. They will run consecutive to the sentence
18 that you are now serving. I am giving you credit for the
19 time that you have served since February 1, 2011 with
20 regard to the sentences and that is because that is the
21 date that the warrants were taken out and on the date
22 the warrants were signed you were serving time at that
23 point. You were incarcerated at that point is my
24 understanding. So you will receive credit from February
25 1, 2011. Finally, in regards to the kidnaping this

1 kidnaping is a kidnaping that has a sexual assault and
2 therefore it is appropriate likewise that you register
3 as a sex offender.

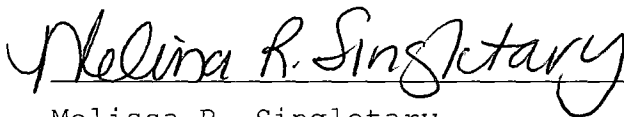
4 Mr. Justis: Thank you, Your Honor.

CERTIFICATE

This is to certify that the transcript in the matter of The State of South Carolina vs. Herbert Leroy Holmes, consisting of Four Hundred Thirty-Nine (439) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 1st day of May, 2018.



Melissa R. Singletary
Certified Verbatim Court
Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF DorchesterFILED, RECORDED
2017 NOV 21 PM 12:01

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant.

Herbert Leroy Holmes
v. #139850CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY2017-CP-18- 1925

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

CERTIFIED
2017 NOV 21 PM 12:02
CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTYINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Attendale Corr. Facility, Fairfax, S.C.
2. Name and location of Court which imposed sentence Dorchester County
General Sessions Court
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-18-00256 - Kidnapping
 - (b) 2011-GS-18-00257 - CSC First Degree
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 25, 2013 Life
 - (b) April 25, 2013 30 years concurrent

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____ Case # 2013-000907
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The Court of Appeals and Office of Appellant
- ii. Defense incorrectly processed my Appeal as a
- iii. guilty plea & dismissed my Appeal.
- (c) the date of each such result:
- i. June 10th, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unknown
- ii. Rule 203(b)(1)(B)(iv) SCAP. Ct. Rules
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____ N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 (b) Denial of Direct Appeal
 (c) Violation of my 14th Amendment Due Process Right

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to call critical witnesses
 (b) Appellant Counsel improperly processed Appeal
 (c) Trial Counsel failed to adequately investigate

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? X
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Direct Appeal
 ii. _____ Case # 2013-000907
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. S.C. Court of Appeals
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. Dismissed
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. June 10th, 2013

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Rule 203 (d)(1)(B)(iv) SC App. Ct. Rules

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____ N/A

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____ N/A

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Denial of Appropriate Direct Appeal(b) PCR issues(c) (a)(b) above applies to all issues in (10)

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ~~YES~~ no
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Trial: Mitchell E. Farley; Public Defender;
 - ii. Dorchester County.
 - iii. Appeal: Robert M. Dudek, Office of
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Appeals Defense.
 - iii. Direct Appeal (He defaulted my Appeal, and/or processed improperly.)

19. State clearly the relief you seek in filing this application:

New Trial - Sentence Overturned

20. Are you now under sentence from any other court that you have not challenged?

NO.

STATE OF SOUTH CAROLINA)

County of Allendale)

VERIFICATION

2017-CP-18- 1935

I, Herbert L. Holmes, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Herbert L. Holmes
Herbert L. Holmes #139250

SWORN to and subscribed before me this 1
 day of November, 2017.

Michael J. Hearn

William Snell (L.S.)
 Notary Public

My Commission Expires: 12/12/22

CERTIFIED
 2017 NOV 21 PM 12:02
 Clerk of Court
 Allendale County

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2017-CP-18- 1925

Herbert L. Holmes

I, Herbert L. Holmes, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Herbert L. Holmes
Applicant

SWORN or affirmed to and subscribed before me this
17 day of NOV, 2017.

Virginia Shuck
Notary Public

My Commission Expires: 12/12/22

CERTIFIED COPY
2017 NOV 21 PM 12:02
CLERK OF COURT
BONHOMME COUNTY

FILED-RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT

Herbert Leroy Holmes, #139850,) Case No.: 2017-CP-18-01925

Applicant,

v.

State of South Carolina,

Respondent.

RETURN TO APPLICATION FOR
POST-CONVICTION RELIEF AND
PARTIAL MOTION TO DISMISS
(Counsel Already Appointed)

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Applicant Herbert Holmes¹ on November 21, 2017², would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its May 2011 term, the Dorchester County Grand Jury indicted Applicant for criminal sexual conduct – first degree (2011-GS-18-0257) and kidnapping (2011-GS-18-0256). On April 22-25, 2013, Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. Mitchell Farley and Ash Chisholm, Esquires, represented Applicant. Glenn Justis and Phil Giese of the First Circuit Solicitor's Office prosecuted the case. At the conclusion of trial, the jury found Applicant guilty

¹ Applicant filed this post-conviction relief application *pro se*. Counsel, Christopher R. Geel, Esquire, was appointed on December 9, 2019.

² The State's return was originally due within ninety days of receipt. *See* Rule 12(a), SCRCPP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

as indicted. Following the verdict, Judge Goodstein sentenced Applicant to concurrent terms of life imprisonment for the kidnapping charge and thirty years for the criminal sexual conduct charge³.

Applicant filed a timely notice of appeal. On June 10, 2013, the Court of Appeals improperly dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient showing. *State v. Holmes*, (S.C. Ct. App. filed June 10, 2013). The case was remitted back to the circuit court on June 27, 2013.

Following the filing of the remittitur, Applicant wrote a letter to the Court of Appeals, received by the Court on October 16, 2017. In this letter, Applicant states his appeal did not arise from a guilty plea - rather, from a trial. Applicant contends the Court of Appeals improperly processed his direct appeal. By letter dated January 10, 2018, the Court of Appeals Clerk of Court replied informing Applicant the sending of the remittitur ended the Court's jurisdiction over the appeal and therefore, the Court could take no further action. Applicant commenced this PCR action on November 21, 2017.

II. Summary of the Facts

On October 25, 1984, Ms. [P.R.] was working by herself at a local bookstore in Summerville called The Bookbag when a young black male walked in and asked her where the mystery section was. (Tr. pp. 83-85). She pointed him to it, he went and looked around, and then headed to the cash register. (Tr. pp. 84-85). He walked behind the register, pulled a gun on Ms. [P.R.], and told her to empty the cash register, which she did. Tr. pp. (85-86). When she was done with that, he pointed her to a back room in the same store. (Tr. p. 86). He then demanded she take her clothes off and he forced her to perform oral sex on him, then anally and vaginally raped her.

³ These sentences were to run consecutively to the life sentence Applicant was already serving on unrelated charges.

Tr. pp. 87-88. He asked her to take her wedding ring off, he took it then fled the scene. (Tr. p. 88). Paramedics were eventually called, and Ms. P.R. was taken to the hospital where evidence was taken from her clothing and from her body. (Tr. pp. 89-90). Detectives Burt Salvely and James Knight went to the hospital and took the victim's statement. (Tr. p. 137). Ms. P.R. was able to describe the assailant, but she was not able to identify anyone in a photo lineup. (Tr. pp. 84-85, 92, 150).

Evidence was submitted to SLED in 1985, and Kenneth Bogan performed a visual examination of the clothing evidence and chemical analysis of the body fluid stains. (Tr. p. 308). Bogan prepared a report of his findings for the Dorchester's Sheriff's Office which stated he was able to identify male reproductive cells from the vaginal wash evidence. (Tr. p. 308). Bogan also identified semen on the skirt of the victim, but the vaginal swab analysis was inconclusive. (Tr. p. 309). Bogan testified at trial that he was unsuccessful in finding any blood or semen on the rest of the clothing. (Tr. p. 309). Bogan then repackaged and resealed the evidence and sent it back to the Sheriff's Office. (Tr. p. 310). In 1988, the Sheriff's Office resubmitted the evidence because he identified a person of interest, Barry Daniels, but SLED was not capable of performing a DNA analysis at that time. (Tr. pp. 165, 310-316). It was then resealed and returned back to the Sheriff's Office. (Tr. p. 314, 316).

After years of an unsuccessful investigation, Lieutenant Asbell went back to this case and decided to send the evidence back to SLED for DNA analysis in 2009. (Tr. p. 203, 317). Bogan extracted DNA from the vaginal wash and swabs but was only able to get a partial profile. (Tr. p. 321). However, this time he was also able to get DNA from the victim's underwear and skirt. (Tr. p. 321). From those items, Bogan obtained a DNA mixture of at least two individuals and a partial profile from a major contributor. (Tr. p. 322). The profile from the major contributor on the

underwear was from a male individual, and the profile from the major contributor on the skirt came from the victim. (Tr. p. 322). The minor contributor on the underwear came from the victim. (Tr. p. 322). Bogan received a reference sample of Applicant's DNA, developed a profile, and compared it to the DNA extracted from the victim's clothing and body. (Tr. p. 324).

SLED then requested secondary DNA samples from Applicant. (Tr. pp. 216-17). Following that request, Detective Parker became involved in the case, contacted Applicant, and obtained a search warrant for his DNA. (Tr. p. 217). Bogan testified at trial that Applicant's DNA was found on the victim's underwear. (Tr. pp. 271, 330-331).

III. Allegations Raised and Relief Sought in Post-Conviction Relief Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Counsel failed to call critical witnesses";
 - b. "Trial counsel failed to adequately investigate";
2. Ineffective assistance of appellate counsel
 - a. "Appellant counsel improperly processed appeal";
3. "Denial of direct appeal"; and
4. "Violation of my 14th amendment due process rights".

Applicant requests relief as follows:

"new trial – sentence over turned".

Attached to this Return and incorporated by reference are the records of the Dorchester County Clerk of Court regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript; Applicant's appellate records; and the records of the current post-conviction relief action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Allegations of Ineffective Assistance of Counsel Should be Barred by the Statute of Limitations

Respondent submits any allegations of ineffective assistance of counsel beyond whether counsel failed to file an appeal on Applicant's behalf should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act requires as follows:

(A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45 (A-C).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, Section 17-27-70(c) authorizes this Court to "grant a motion by either party for

summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant was convicted on April 25, 2013, and the remittitur from the subsequent direct appeal was issued July 27, 2013. Pursuant to Section 17-27-45(A), Applicant had until July 27, 2014, to timely file his application for post-conviction relief challenging his convictions. Applicant did not file his present application until November 21, 2017, more than three years beyond the statute of limitations. Therefore, Applicant has failed to comply with the filing requirements under Section 17-27-45(A).

Moreover, Applicant has not alleged any claims based on a change of law or statute or alleged any newly discovered evidence. Therefore, Applicant has also failed to comply with the filing requirements under Section 17-27-45(B-C). Accordingly, this application is untimely pursuant to Section 17-27-45 and all claims, except the denial of a direct appeal, should be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

V. Allegation that Application is Entitled to Belated Appellate Review Pursuant to *White v. State*⁴

The one-year limitations period in which to file a petition for post-conviction relief does not apply where the defendant alleges he was denied a direct appeal due to ineffective assistance of counsel. *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

⁴ In *White*, the PCR judge found the applicant did not knowingly and intelligently waive his right to direct appeal due to ineffective assistance of counsel. 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974). As a result, the PCR court directed PCR counsel to attempt to secure a belated appeal to the Supreme Court from his original conviction and sentence. *Id.* On appeal, our Supreme Court explained that it did not have jurisdiction to entertain a belated direct appeal absent the timely filing of notice of appeal. *Id.* at 119, 208 S.E.2d at 39. However, because the *post-conviction relief appeal* was properly before it, the Court reviewed the trial record and all issues properly raised as if the direct appeal had been perfected. *Id.* at 119, 208 S.E.2d at 39-40. The Court ultimately held that “that there was no reversible error in the trial and that there was not an arguably meritorious ground of appeal, even if notice of intention to appeal had been timely served.” *Id.* at 119, 208 S.E.2d at 40.

Applicant claims he was denied effective assistance of counsel because his counsel “improperly processed his appeal”. The decision of the South Carolina Supreme Court, in *White*, holds even though the post-conviction relief court finds the applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. *Id.* at 119, 108 S.E.2d at 39-40.

Respondent submits Applicant cannot meet his burden showing he is entitled to a belated appeal pursuant to *White*. However, because this allegation probably raises questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing solely on this issue. Should Applicant prevail on his allegation counsel was ineffective for failing to file an appeal and establish he did not timely file this current application due to the ineffective assistance of counsel, Respondent requests an evidentiary hearing to address the remaining issues raised in the application for post-conviction relief. *See Toney v. State*, Op. No. 2019-MO-006 (S.C. filed February 6, 2019) (where an applicant for post-conviction relief has established he did not knowingly and voluntarily waive his right to a direct appeal, the applicant is entitled to a full evidentiary hearing on the merits of his application).

Should this Court find Applicant was denied his right to a direct appeal, Respondent submits Applicant’s remaining allegations of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466

U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are

alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’” *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." *Dunn*, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*'s deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding.

Id. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

Respondent submits that Applicant cannot satisfy either requirement of the *Strickland* test, as the record establishes he was represented by competent counsel who diligently represented him. However, Applicant’s claims raised questions of fact that require an evidentiary hearing to resolve. Accordingly, Respondent requests an evidentiary hearing on these claims.

VI. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all

potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. Response to All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests an evidentiary hearing be held solely on allegation of ineffective assistance of counsel for improperly filing an appeal on Applicant's behalf.

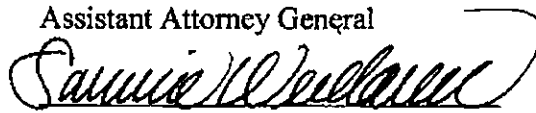
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General



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January 4, 2022

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Herbert Leroy Holmes, #139850

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2017-CP-18-01925

Affidavit of Service by Mail

2022 JAN -6 PM 2:16

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to the Application for Post-Conviction Relief and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher R. Geel, Esquire
Geel Law Firm, LLC
Post Office Box 21771
Charleston, SC 29413

DATED this 4th day of January, 2022.



Katie Wade, Legal Assistant
For Respondent

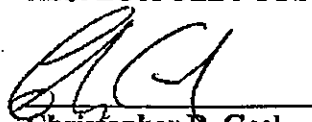
FILED-RECORDED

State of South Carolina Dorchester County 2022 MAY 24 PM 4: 50 CHESTER GRAMM J. K. RIVERO JAIL DETENTION Herbert Holmes (#139850) v. State of South Carolina	In the Court of Common Pleas For the First Judicial Circuit Case No(s): 2017CP1801925 (PCR Application) AMENDMENT TO PCR APPLICATION

COMES NOW the Applicant Herbert Holmes, by and through undersigned Counsel, and amends his PCR Application in the above-stated matter. The Applicant hereby amends his application to include the following grounds for relief:

1. The Applicant is entitled to a belated direct appeal, pursuant to White v. State, 263 S.C. 110 (1974). Applicant never received a direct appeal, and Applicant never knowingly and intelligently waived this right.
2. Trial counsel was constitutionally ineffective in failing to call critical witnesses on behalf of the defense at trial.
3. Trial counsel was constitutionally ineffective in failing to adequately investigate the case and failing to challenge the chain of custody adequately.
4. Trial counsel was constitutionally ineffective in failing to adequately cross examine the victim regarding her version of events.
5. Trial counsel (and the public defender office) had a material conflict of interest in this case.

On this day, May 19, 2022 it is
 RESPECTFULLY SUBMITTED,


 Christopher R. Geel
 Geel Law Firm, LLC
 P.O. Box 21771
 Charleston, SC 29413
 843-277-5080

CERTIFICATE OF SERVICE: I hereby certify that I have served a copy of this document upon the Attorney General via hand-delivery on this day, May 18, 2022.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

} IN THE COURT OF COMMON PLEAS
} FIRST JUDICIAL CIRCUIT

HERBERT L. HOLMES

} NO. 2017-CP-18-01925

VS.

} TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA

} Post Conviction Relief Hearing

B E F O R E:

The Honorable Robert J. Bonds, Judge
Orangeburg, South Carolina

DATE: Thursday, May 19, 2022
10:34 a.m.

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

Christopher Reginald Geel, Esquire

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Reported by: Cathy J. Provost, RMR, Official Court Reporter

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MITCHELL E. FARLEY

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

THE COURT: All right. Attorney General, are we ready to proceed?

ATTORNEY WEIDAUER: To proceed? Yes, Your Honor.

THE COURT: All right. Can you call your case, please.

ATTORNEY WEIDAUER: Yes. This is the case of Herbert Holmes v. State of South Carolina. Mr. Holmes filed an application for post conviction relief on November 21st of 2017.

Applicant was originally indicted for criminal sexual conduct, first degree, and kidnapping. On April 22nd through the 25th applicant proceeded to a jury trial before the Honorable Judge Diane Goodstein. Mitch Farley and Ash Chisholm represented applicant. Mr. Farley is present in the courtroom today. Glenn Justis and Phil Giese of the First Circuit Solicitor's Office prosecuted the case.

At the conclusion of the case, the jury found applicant guilty as indicted, and Judge Goodstein sentenced applicant to concurrent terms of life imprisonment for the kidnapping charge and 30 years for the criminal sexual conduct charge.

Applicant subsequently filed a timely notice of appeal on June 10th, 2013. On -- or, excuse me. On June 10th, 2013, the Court of Appeals dismissed applicant's appeal pursuant to Rule 203(d)(1)(B)(iv) for failure to provide a sufficient showing, and the case was remitted back to the Circuit Court.

Following that remittitur, applicant wrote a letter in 2017

1 to the Court of Appeals indicating that his appeal did not arise
2 from a guilty plea but rather from a trial, so, therefore,
3 applicant contends the Court of Appeals improperly dismissed his
4 direct appeal.

5 And as we spoke a minute ago, Mr. Geel has provided us
6 further amendments in which the State would just ask that he
7 place on the record now.

8 THE COURT: All right. Mr. Geel, I'm happy to hear from
9 you, sir.

10 ATTORNEY GEEL: Thank you, Your Honor. Good morning. Yes,
11 we have submitted an amendment to our application. I submitted a
12 copy to Your Honor. The Court has one.

13 We have five issues that we would like to proceed on this
14 morning; the first being that the applicant was entitled to a
15 belated direct appeal pursuant to *White v. State*; the second
16 being that trial counsel was constitutionally ineffective in
17 failing to call critical witnesses on behalf of the defense; the
18 third being that trial counsel was constitutionally ineffective
19 in failing to adequately investigate the case and failing to
20 challenge the chain of custody in this case; the fourth, being
21 that trial counsel was constitutionally ineffective in failing to
22 cross-examine the victim regarding her version of events; and the
23 fifth being that trial counsel, and that is to say the public
24 defender office, had a material conflict of interest in this
25 case.

1 As the State has already suggested, Your Honor, just to sort
2 of set a backdrop here, this was a CSC and kidnapping case. The
3 incident took place in 1984, and there was forensic evidence
4 collected at that time, and there was no suspect identified at
5 that time. And it was only years and years and years later when
6 a DNA had came back from SCOTUS that my client, Mr. Holmes, was
7 identified as the possible suspect in this case. So the issues
8 at trial revolved almost exclusively around this sort of
9 collection of this evidence in 1984, around the time of the
10 incident, and then the handling of the evidence, the chain of
11 custody as it sort of went through the years.

12 There were a number of pieces of evidence that changed
13 hands, as I'm sure Your Honor can imagine, several times; moved
14 locations, was repackaged; opened; and repackaged numerous times;
15 sent to SLED; came back to Orangeburg; went up to SLED again, so
16 there was a lot of litigation and discussion and argument
17 regarding that chain and whether the chain was adequate.

18 And so our issues essentially center around that, setting
19 aside the direct appeal issue, which is kind of separate. The
20 actual trial level issues center around the challenging of that
21 chain of custody, the failure to challenge the alleged victim's
22 story from 1984, and related matters.

23 So if there's no questions from the Court, we are ready to
24 proceed with our evidence at the appropriate time.

25 THE COURT: All right. I'm happy to have you call your

1 first witness, sir.

2 ATTORNEY GEEL: Thank you, Your Honor. The applicant calls
3 Mr. Herbert Holmes.

4 THE COURT: Mr. Holmes, come on around. Mr. Holmes, put
5 your left hand on the Bible and raise your right hand for me,
6 sir.

7 HERBERT L. HOLMES,
8 having first been duly sworn, was examined and testified as
9 follows:

10 THE COURT: Thank you, Mr. Holmes. Come on around and sit
11 down. And, Mr. Holmes, if you would, for purposes of your
12 testimony, would you please pull your mask down so I can be sure
13 to hear you and the court reporter can be sure to hear you.
14 Okay, sir?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Mr. Geel, your witness, Your Honor.

17 ATTORNEY GEEL: Thank you, Your Honor. Before I begin, I do
18 have an exhibit that the State has stipulated to its
19 admissibility. These are documents associated with Mr. Holmes's
20 direct appeal.

21 We would tender these at this time as Applicant's 1.

22 ATTORNEY WEIDAUER: No objection.

23 THE COURT: All right. Any objection?

24 ATTORNEY WEIDAUER: No, Your Honor.

25 THE COURT: All right. Admitted without objection,

1 Applicant's 1.

2 (Applicant's Exhibit 1 is received in the record.)

3 ATTORNEY GEEL: May I hand it up to be marked?

4 THE COURT: Sure.

5 (Applicant's Exhibit 1 is marked for identification.)

6 **DIRECT EXAMINATION**

7 BY ATTORNEY GEEL:

8 Q Good morning, Mr. Holmes.

9 A Good morning.

10 Q Speak into the microphone, if you wouldn't mind.

11 A Good morning.

12 Q And make sure -- if you can't hear me, just let me know.

13 All right?

14 A Yes, sir.

15 Q So let's start from the beginning Mr. Holmes. Could you
16 tell the Court how it was that you actually found out that you
17 had been accused in this case? Roughly what year was it that you
18 were ultimately charged?

19 A It was in '09. When I went up for parole, they had a hold,
20 they said they had a hold on me, because I had pending charges.
21 I didn't know nothing about it until they took me back to the
22 Saint George detention center and give me -- read me the
23 warrants, and said I was charged with kidnapping and sexual
24 conduct.

25 Q And after you were ultimately charged in this case did you

1 remain in custody while you were awaiting trial?

2 A Yes, sir.

3 Q So you were never released from the Department of
4 Corrections? You came straight to custody in the county?

5 A Yes, sir.

6 Q And you were represented in this case by Mr. Mitch Farley?

7 A Yes, sir.

8 Q Approximately how long after you were charged was the first
9 time you met with Mr. Farley?

10 A In 2013.

11 Q Okay. So it was a few years after you learned about the
12 charges?

13 A Yes, sir.

14 Q Can you describe your relationship with Mr. Farley in terms
15 of his representation? I mean, did y'all talk a lot about the
16 case? Or, tell the Court how that representation went.

17 A I was no tooke (sic) from another institution to Saint
18 George detention center, and that was the only -- when we were
19 preparing for the trial. Mr. Farley talked to me about Mr. Floyd
20 (sic), Mr. Floyd, who is the prosecutor who prosecuted my first
21 case, his boss, who's an attorney, and he said that he wanted to
22 sit in on the case, but I never seen him in the courtroom. And
23 he was telling me about ...

24 Q Keep going. I'm sorry to interrupt you, Mr. Holmes. When
25 you said Mr. Floyd, were you talking about Mr. Loy, John Loy?

1 A Loy.

2 THE COURT: Mr. Holmes, can you speak up a little bit more,
3 sir, because I want to make sure I'm hearing you. Okay?

4 THE WITNESS: Okay.

5 THE COURT: Go ahead.

6 THE WITNESS: So we went and started preparing the case, and
7 Mr. Floyd (sic) --

8 Q Mr. Loy?

9 A Mr. Farley.

10 Q Okay.

11 A Mr. Farley, he asked me where my -- who my family was, my
12 brothers and all that, and he told me he read my transcript. He
13 told me to go through everything in the transcript because I
14 might find something he overlooked. And that's when I found that
15 SLED had -- SLED had mislabeled, mislabeled evidence.

16 Q We'll get to the substance in a moment. Just to summarize,
17 you got a chance to review your discovery materials?

18 A Yes, sir.

19 Q Okay. And as you proceeded to trial, you had reviewed all
20 those materials? Is that fair to say?

21 A Yes.

22 Q Let's take things a little bit out of order, if I could.
23 I'd like to start by talking about your appeal, which, of course,
24 is after the trial.

25 ATTORNEY GEEL: Your Honor, may I approach the witness?

1 THE COURT: Yes, sir.

2 ATTORNEY GEEL: Thank you. I'm handing the witness
3 Applicant's 1.

4 BY ATTORNEY GEEL:

5 Q Are you able to hold those?

6 A Yes.

7 Q Do you recognize this document? Have you seen it before?

8 A (Indiscernible.)

9 THE REPORTER: Sir?

10 ATTORNEY GEEL: Have you seen it before? Yes?

11 THE COURT: Sir, Mr. Holmes, you may have been just kind of
12 talking to yourself just then as you were looking at that, and so
13 what happens is she was not able to hear you. Please be sure to
14 speak up, because what we want to do, sir, what's extremely
15 important here, is making sure that we have an accurate record of
16 transcript. You know that. You reviewed transcripts, and you
17 understand how important it is that we get that language, and
18 that she gets that language right. She knows what she's doing,
19 but she and me, to a lesser extent, we've got to hear it. Okay,
20 sir?

21 THE WITNESS: Yes.

22 THE COURT: All right. Thank you.

23 ATTORNEY GEEL: Thank you, Judge.

24 BY ATTORNEY GEEL:

25 Q If you wouldn't mind just looking through each page, and

1 just indicate whether this is a document you've seen before, or
2 you're familiar with. As to page 2 of Applicant's 1?

3 A Notice of appeal. Yes, sir.

4 Q And could you go to the next page. Page 3 of Applicant's 1,
5 are you familiar with this document?

6 A Proof of service. Yes, sir.

7 Q Okay. And can you go to page 4, please?

8 A Office of Public Defender. Yes, sir.

9 Q And that appears to be an envelope; is that true?

10 A It's an envelope. Yes, sir.

11 Q Can you go to the next page, please. Are you familiar with
12 that document?

13 A State of South Carolina versus Herbert Holmes.

14 Q You have to speak up a little.

15 A State of South Carolina versus Herbert Holmes. Yes, I have
16 seen this.

17 Q And the last page?

18 A State of South Carolina versus Herbert Holmes. Yes, I have
19 seen this.

20 Q Thank you, sir. Would you agree that these are documents
21 that ended up getting sent to the Court of Appeals after your
22 trial?

23 A Yes, sir.

24 Q Just to put this plainly, did you instruct your attorney to
25 appeal after your trial was complete?

1 A Yes, sir.

2 Q And to your knowledge, did your attorney file these
3 documents and attempt to appeal your case?

4 A Yes, sir.

5 Q At any point after your trial did you indicate to your
6 lawyer that you did not want to appeal your case?

7 A No, sir.

8 Q At any point did you tell the Court of Appeals that you did
9 not want to appeal your case?

10 A No, sir.

11 Q At any point from your trial until today have you ever --

12 A No.

13 Q -- decided you did not want to appeal your case?

14 A No, sir.

15 Q Has it always been your intention to appeal your case?

16 A Yes, sir.

17 Q And did you think that your lawyer was appealing your case?

18 A Yes, sir.

19 Q Okay. Okay. Now let's back up, and let's go to the
20 beginning of the trial. Okay. One of the enumerations we have
21 here is that trial counsel was ineffective for failing to call a
22 critical witness on behalf of the defense at trial. Would you
23 mind talking a little bit about that allegation? And remember to
24 speak slowly, if you could.

25 A At the crime scene there was a 911 operator. My lawyer

1 failed to call that individual to testify and what her
2 involvement was in dealing with the victim. How does she comes
3 out? She was supposed to be kidnapped, but how did she come out?
4 How did this woman, how did she came? You know, was she fully
5 dressed? Was she, you know.

6 Q Okay. So if I'm understanding you, you're saying that there
7 was a witness who called 911?

8 A Yes.

9 Q And you asked your lawyer to call this witness? Is that
10 what you're saying?

11 A Right.

12 Q And you thought that that witness would be important to
13 demonstrate what exactly?

14 A Yes, sir.

15 Q What did you want your lawyer to demonstrate using that
16 witness?

17 A The evidence.

18 Q In what sense?

19 A The evidence of the cutting from the skirt and the cutting
20 from the garment, the panties. She stated that she didn't have
21 none on, so how did my DNA get into her garment if she didn't
22 have none on?

23 Q Okay. And so this particular witness, the 911 caller, did
24 you discuss that witness and that evidence with your lawyer prior
25 to trial?

1 A No, sir.

2 Q You didn't have a discussion with him about that?

3 A (Inaudible gesture.)

4 Q Did you tell him to call that witness?

5 A I told him to call him.

6 Q Okay. But ultimately, of course, that witness was not
7 called?

8 A No, sir.

9 Q And do you recall having any discussions with your attorney
10 about that witness not being called, like during trial or after
11 the fact?

12 A (Inaudible gesture.)

13 Q You're shaking your head. Is that a no?

14 A No. No.

15 Q You have to answer verbally, if you could.

16 A No. No.

17 Q Okay, thank you. Okay. And turning to our third
18 enumeration of error here, or grounds for relief, rather, trial
19 counsel was constitutionally ineffective in failing to adequately
20 investigate the case and failing to challenge the chain of
21 custody adequately.

22 Would you mind telling the Judge a little bit about your
23 view on that issue.

24 A Would you repeat that again?

25 Q Sure. We're alleging here that your lawyer failed to

1 challenge the chain of custody at trial, of the evidence.

2 A Right.

3 Q Can you tell the Judge what you thought the problem was with
4 the chain of evidence in your case?

5 A The chain of evidence in my case is that he never questioned
6 her about back to the garment. He never brought it up or
7 questioned her about it. You know, if she said she didn't have
8 none on, then evidence was mislabeled; it was misplaced. And the
9 detectives that dealt with it no longer is with us, and he never
10 called them.

11 Q Let's just clarify. You said there's detectives who are no
12 longer with us. What do you mean when you say they're no longer
13 with us?

14 A They're deceased.

15 Q At the time of trial they were deceased?

16 A Yeah.

17 Q Did you talk to your lawyer about trying to call all of the
18 witnesses in the chain of custody? Did you have discussions --

19 A I brought it to his attention, but there was nothing.
20 That's as far as it went.

21 Q So there were no discussions during trial about calling
22 witnesses?

23 A No, sir.

24 Q Let me ask you a broader question. Did you and your
25 attorney have discussions during trial about how is it the

1 evidence was being presented? Were you actually discussing the
2 case itself during trial?

3 A No, sir.

4 Q So just to clarify, you discussed prior to trial with your
5 lawyer him calling the chain of custody --

6 A Yes, sir.

7 Q -- witnesses, and then you feel now that some of them were
8 not called?

9 A Yes, sir.

10 Q And then you also made reference to the fact that some of
11 the items were mislabeled, in your view?

12 A Yes, sir.

13 Q And you feel that your lawyer failed to sufficiently
14 challenge that fact?

15 A Yes, sir.

16 ATTORNEY WEIDAUER: Objection. Leading.

17 THE COURT: Well, you know, I'm going overrule your
18 objection. I think in certain cases -- and this is going to be
19 one of them -- that his leading -- his leading him at this point
20 is in the interest of justice because I think that's the only
21 way, that's the best way that we're going to be able to
22 understand, at least I'm going to be able to understand, what's
23 going on here.

24 If there's a critical issue that you need to object to for
25 the record, I understand that. Don't hesitate to do that. But I

1 just think that at this point, sir, I'm going to overrule that
2 objection. And if you need to lead this witness so we can get
3 through this, I just think it needs to be led some to get through
4 this matter.

5 Again, if you need to object, please feel free. Okay?

6 ATTORNEY WEIDAUER: Yes, Your Honor.

7 THE COURT: I mean, if there's something critical you think
8 needs to be. And I'll note an ongoing objection to leading. But
9 if there's anything else you need to bring to my attention, let
10 me know. Please proceed.

11 ATTORNEY GEEL: Thank you, Your Honor.

12 BY ATTORNEY GEEL:

13 Q Mr Holmes, turning to our fourth ground for relief here,
14 we're alleging that trial counsel was constitutionally
15 ineffective in failing to adequately cross-examine the victim
16 regarding her version of events. Please tell the Judge what your
17 view on that issue is.

18 A He didn't call her. He didn't question her. He didn't
19 question her about the identity of the assailant. He didn't even
20 question her about was it African American or was it a Caucasian.
21 I didn't find out this until I got my discovery. When I got my
22 discovery, there's two suspects: One African American, which is
23 me; and one Caucasian, which is Darryl (ph) -- Barry Bone --
24 Barry Darris (ph), which is a white suspect. And he's inside of
25 my paperwork; he's inside the evidence, you know. Things sent to

1 SLED on him, and things sent to SLED on me. So it's like the
2 evidence, the chain of custody, the evidence was broken where he
3 didn't ask her whether he's African American or was he Caucasian.
4 And that's what I talked to him about.

5 Q So he didn't cross-examine her sufficiently on that point
6 that you just described?

7 A Right.

8 Q There was also an issue with a piece of evidence in your
9 case of a pair of underwear, or panties.

10 A Right.

11 Q Tell the Judge a little bit about that. How is that
12 involved with this particular witness? What was the concern you
13 had with your lawyer?

14 A The concern I had with my lawyer with that evidence is that
15 she -- he don't -- he didn't never -- he didn't -- let me slow
16 down. He didn't question her about the evidence that was the
17 same for 29 years.

18 THE COURT: Hold on a second. Sir, I want you to relax.
19 We'll be here as long as it takes. Okay.

20 THE WITNESS: Yes, sir.

21 THE COURT: And so when you say he didn't question her, who
22 is her?

23 THE WITNESS: Ms. P.R. .

24 THE COURT: Okay. All right. Go ahead.

25 ATTORNEY GEEL: And for the record, Your Honor, that's the

1 alleged victim, or the victim, in this case.

2 THE COURT: I just wanted to make sure.

3 ATTORNEY GEEL: Understood.

4 THE COURT: Thank you.

5 ATTORNEY GEEL: May I approach the witness again, Your
6 Honor?

7 THE COURT: Of course you can.

8 ATTORNEY GEEL: Thank you.

9 BY ATTORNEY GEEL:

10 Q Mr. Holmes, I'm going to direct you to a portion of the
11 trial transcript here. You've seen this document a number of
12 times; correct? So for the purposes of record, I'm going to read
13 a portion from transcript page 87, and this is lines 14 through
14 18. The question says -- and this is during the testimony of the
15 alleged victim here -- question: Okay. After he, meaning the
16 perpetrator, forced you to have oral sex with him, what happened
17 then? And then her answer is: He told me that I had to bend
18 over, and I didn't have any underwear on, and he performed anal
19 sex on me. Do you recall that portion of the trial taking place?

20 A Yes.

21 Q In your view, what's the significance of that portion of her
22 testimony, the fact that she wasn't wearing underwear? In your
23 view, how did that fit in with the rest of the case?

24 A My semen, by being there, wound up in her panties, so if she
25 didn't have no underwear on, how did my semen wind up in her

1 panties?

2 Q Did you have a discussion with your lawyer during the trial
3 about asking about that particular fact? Do you recall any
4 discussions?

5 A No. He end his cross-examine of her, Ms. P.R..

6 THE COURT: He what?

7 THE WITNESS: He end his cross-examine.

8 BY ATTORNEY GEEL:

9 Q Start your answer again, if you would. I don't think we're
10 understanding you.

11 A When she said that, he had nothing further to say. He had
12 nothing further to ask her on the stand. So she was -- she was,
13 you know -- she was ...

14 THE COURT: He ended his cross-examination?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. I gotcha.

17 BY ATTORNEY GEEL:

18 Q And without asking her about this particular detail?

19 A Yes, sir.

20 Q And just to clarify, I mean, you knew at that point when she
21 was testifying -- I mean you, Mr. Holmes -- you knew that the
22 main piece of evidence in this case was DNA on her panties?

23 A Yes, sir.

24 Q And so when you heard her say this, do you remember your
25 reaction when you heard her say that she wasn't wearing panties

1 at the time that the assault took place?

2 A I told my attorney, Mr. Farley, she just stated that she
3 wasn't wearing no underwear, so how did my semen gets on her
4 panties?

5 Q Were you surprised? Do you recall, were you surprised that
6 he didn't ask her about that?

7 A Yes, sir.

8 Q Do you recall saying something after her testimony to your
9 lawyer about that? Do you remember?

10 A No, sir. Nothing further was said about that issue.

11 Q Let's turn to the fifth and final ground for relief here.
12 We're alleging that trial counsel and the public defender office
13 had a material conflict of interest in this case. Can you tell
14 the Judge what the nature of that conflict was, in your view.

15 A His boss was Johnny Floyd (sic).

16 Q Stop for a moment. Don't use the word like "his". Whose
17 boss?

18 A Mr. Farley.

19 Q Your trial lawyer, Mr. Farley?

20 A My trial lawyer, Mr. Farley's, boss is Johnny Floyd (sic).
21 That's just what Mr. Farley told me. And he said he wanted to
22 sit in on the case. I never seen him in the courtroom.

23 Q Now, you said John Floyd a few times. Are we talking about
24 John Loy?

25 A John Loy.

1 Q John Loy was Mitch Farley's boss?

2 A Yes, sir.

3 Q Why would that have been a conflict? Can you tell the Court
4 why John Loy would be conflicted out of your case?

5 A John Loy was the prosecutor who prosecuted me on my first
6 case.

7 Q Go into a little more detail. Prosecuted you on your first
8 case, what do you mean exactly by that?

9 A He was the DA on my first conviction.

10 Q He prosecuted you on a prior case?

11 A Yes, sir.

12 Q In what jurisdiction, sir?

13 A In Berkeley County.

14 Q Okay. And earlier in your testimony you mentioned that you
15 were in the Department of Corrections when you learned of these
16 charges. Was that the same case?

17 A Yes, sir.

18 Q So it was Mr. Loy then who prosecuted you, and you ended up
19 serving a prison sentence --

20 A Right, sir.

21 Q -- based on that? Okay. And so moving forward to this
22 case, you learned that he was the boss of Mr. Farley?

23 A Yes, sir.

24 Q When did you learn about that?

25 A On our second meeting after they took me -- after I was

1 taken (sic) to Saint George detention center preparing for
2 trial.

3 Q So it was prior to trial that you learned about this?

4 A Yes, sir.

5 Q At that point did you recognize Mr. Loy's name, or was it
6 later? When did you realize this was the same person?

7 A When Mr. Farley told me when we was preparing for the trial.

8 Q Did you say anything to Mr. Farley or to anyone else about
9 the issues that you have with Mr. Loy?

10 A I told Mr. Farley that Mr. Loy was the prosecutor who
11 prosecuted my first case.

12 Q Just because you informed Mr. Farley prior to trial that
13 Mr. Loy had previously prosecuted you?

14 A Yes, sir.

15 Q And did you say anything else? Did you express an opinion
16 about that or anything like that, or did you simply tell him that
17 that had happened?

18 A I told him that it happened. I told Mr. Farley.

19 Q And did he say anything about it to you; --

20 A No, sir.

21 Q -- do you recall? And were there any other discussion
22 beyond that simple exchange of information?

23 A No, sir. It's just that he wanted to sit in on my trial.

24 Q Did you end up seeing him during your trial at any point?

25 A No, sir.

1 Q And when I say "him," I mean Mr. Loy. Did you see him in
2 the courtroom or in the courthouse at any point during your
3 trial?

4 A No, sir.

5 Q Did you talk to him at all about your case?

6 A No, sir.

7 Q Okay.

8 ATTORNEY GEEL: Just a moment, Your Honor. The Court's
9 indulgence.

10 THE COURT: Yes, sir.

11 ATTORNEY GEEL: Okay. Nothing further from this witness.
12 Thank you, Your Honor.

13 THE COURT: Hold on one second. Mr. Geel, I just want to
14 follow up on one thing --

15 ATTORNEY GEEL: Sure.

16 THE COURT: -- to make sure I understand. On no. 2 of your
17 amendment, it says: Failing to call critical witnesses. Is
18 there one witness, and that is the 911 caller, or are there other
19 witnesses? And I'm not sure, and he may have answered, but I
20 want clarification on that, sir.

21 ATTORNEY GEEL: Yes, sir. I'll ask Mr. Holmes that
22 question. I believe that that's inartfully worded. I believe
23 what we're talking is the 911 caller witness

24 THE COURT: That's fine.

25

1 BY ATTORNEY WEIDAUER:

2 Q Mr. Holmes, are there any other witnesses that you feel as
3 though your lawyer should have called other than this 911 caller
4 that we're talking about?

5 A Just the 911 caller.

6 ATTORNEY GEEL: Okay.

7 THE COURT: All right.

8 ATTORNEY GEEL: Did that clarify?

9 THE COURT: Yes, sir.

10 ATTORNEY GEEL: Thank you, Judge.

11 THE COURT: Cross-examination.

12 ATTORNEY WEIDAUER: Yes, Your Honor.

13 **CROSS-EXAMINATION**

14 BY ATTORNEY WEIDAUER:

15 Q Good morning, Mr. Holmes.

16 A Good morning.

17 Q Can you clarify, how many times did you say you met with
18 your attorney prior to trial?

19 A I didn't say how many time I met with him.

20 Q Can you think back now and try to remember how many times
21 you believe you met with him?

22 A Once when we went to -- when I was taken (sic) to Saint
23 George detention center, and that's where when I met Mr. Farley.
24 And there was a female with him, and she was supposed to be his
25 assistant, but then when I went to trial, it was just him. It

1 was Mr. Farley and another assistant, which was a male. I don't
2 remember his name.

3 Q And between the first time you met with him at the detention
4 center and the time you met with him at trial, how many times do
5 you think you met with him in between?

6 A About six times.

7 Q Six times. Okay. And you testified that you recall
8 reviewing discovery with your attorney and going through what the
9 State's case was?

10 A Yes, ma'am.

11 Q Do you recall your attorney going over the elements of the
12 offenses with you?

13 A Yes, ma'am.

14 Q Okay. And at that time do you recall discussing the
15 possible defenses for your case with your attorney?

16 A Yes, ma'am.

17 Q What were the defenses that were discussed prior to trial
18 with Mr. Farley?

19 A It was on -- that Mr. Farley -- Mr. Farley stated that he
20 would try to get the evidence squashed (sic), dismissed,
21 because of chain of custody evidence. That's all we discussed.

22 Q So that was your main defense, was working on that chain of
23 custody argument.

24 A Yes, ma'am.

25 Q Do you remember Mr. Farley making a motion to exclude that

1 evidence, that DNA evidence, based on the chain of custody at
2 trial?

3 A I don't recall.

4 Q Okay. Let's go back to your first issue, which is your
5 appeal issue. Okay. You received the dismissal from the Court
6 of Appeals in 2013; is that correct?

7 A Yes, ma'am.

8 Q And you remember reviewing that?

9 A Yes, ma'am.

10 Q So between 2013 and 2017 can you explain to the Court where
11 in that time you realized there was an error.

12 A When I didn't get a respond back from the appellate attorney
13 on my appeal, and I got shipped from another institution to the
14 institution that I'm at now. I was waiting and waiting. It had
15 been over four years. And I got the paperwork to file to find
16 out what was going on. That's when I found out that my appeal
17 was dismissed because of a guilty plea when I didn't took it for
18 a guilty plea. I went for a trial.

19 Q So do you remember, in 2013, receiving the order of
20 dismissal from the Court?

21 A Yes. I never received one.

22 Q You don't remember that, okay. So regarding this 911 caller
23 that you allege counsel failed to call on your behalf, how do you
24 think that would have helped your case?

25 A Would have helped my case by inconclusion of the evidence.

1 Q Can you say that one more time.

2 A It would help my case by inconclusion of evidence.

3 Q And what do you think that 911 caller would have been able
4 to testify to?

5 A Testify to how, you know, what she seen at the scene, what
6 she observed at the scene. Was she fully clothed? Was she not
7 clothed? Things like that.

8 Q In fact, there was a witness at your trial who did testify
9 to the victim's appearance after this incident. Is that right?

10 A I don't recall.

11 Q Do you recall a Mr. Campbell -- he was a State Farm
12 insurance agent in Summerville -- testifying?

13 A I don't. I don't recall him.

14 Q Would it surprise you that there is testimony in this
15 transcript that indicates that he worked next to the victim's
16 store that she was working at at the time of the incident?

17 A No, ma'am.

18 Q Can you say it out loud for the court reporter.

19 A No, ma'am. I don't recall.

20 Q You don't recall that, okay. And my question was, Would it
21 surprise you if there was that testimony in here?

22 A Yes.

23 Q So you just don't remember that being part of the trial?

24 A No, ma'am.

25 Q Okay. So you wouldn't remember, either, that he

1 testified --

2 ATTORNEY WEIDAUER: This is on page 96, Your Honor.

3 BY ATTORNEY GEEL:

4 Q -- that he was in his office when his receptionist screamed
5 and ran up front where the victim was? You don't remember that
6 testimony?

7 A No.

8 Q And you don't remember the testimony that he gave stating
9 that she was holding her clothes up around her, and his
10 receptionist was comforting her? You don't remember that
11 testimony from him?

12 A (Inaudible gesture.)

13 ATTORNEY GEEL: You've got to speak your answer, sir.

14 THE WITNESS: No, ma'am.

15 BY ATTORNEY WEIDAUER:

16 Q In light of that, what do you think the 911 caller could
17 have added to that testimony?

18 A Just what he or she seen, what they observed.

19 Q And your allegation is that that would have differed from
20 the testimony already in the transcript?

21 A Yes, ma'am.

22 Q Okay. I apologize, but regarding allegation no. 3, you
23 state that counsel was ineffective for -- or, excuse me --
24 ineffective in failing to adequately investigate the case. Can
25 you expound on that a little bit? What did you want him to

1 investigate further?

2 A Investigate everyone that was involved with it, from the
3 detectives to how the evidence was collected. And that's about
4 it.

5 Q Even though, as you've stated, that was your main defense
6 and that was the subject of most of your conversations with
7 counsel, you think he should have investigated further than what
8 he did?

9 A Yes, ma'am.

10 Q Okay. Can you give any specifics into what further
11 investigation he should have done or you believe he should have
12 done?

13 A Concerning the evidence, concerning the DNA testing, how the
14 evidence was collected.

15 Q Okay.

16 A Who all was involved.

17 Q And throughout your trial there were multiple witnesses that
18 testified to how the evidence was collected; who they passed the
19 evidence on to; who, in part and further down the road, tested
20 the evidence. Where do you feel like he didn't investigate
21 properly, what part of that chain?

22 A You have the suspect that was brought in. It goes back to
23 my other question. You got two suspects: You got a African
24 American and you got a Caucasian. So how did the Caucasian get
25 involved in the case? What was his thing in the case? What was

1 his involvement in the case, Mr. Bonns (ph)? Who's supposed to
2 have been the suspect?

3 Q Okay. There was, as you've testified, an African American,
4 who you believe was a suspect, and a Caucasian man, who you
5 believe was a suspect?

6 A Right.

7 Q Okay. Do you remember the victim testifying that the
8 assailant was a black man?

9 A I don't. I don't remember that. No, ma'am.

10 Q Okay. Do you remember the victim testifying regarding the
11 assailant that, He asked me had I ever been with a black man
12 before. I told him I had never been with them, and just was
13 getting nervous, so I told him I was pregnant. And this is on
14 page 87. And she goes on a little further. You don't remember
15 that testimony?

16 A No.

17 Q Okay. And you, I would assume, not remember the testimony
18 that she gave further down on page 87 where -- and this is on
19 direct examination by the solicitor's office. The solicitor
20 questions: So you went in the back room. What happened when you
21 got in the back room? The victim testified: He told me to take
22 my clothes off, and I just kept saying, You're kidding me -- just
23 tried to talk him out of it -- and he said no, so I took my
24 clothes off. I think I still had my blouse just on. I don't
25 remember. But then he had me get on my knees and perform anal

1 sex on him and perform oral sex on him. You don't remember that
2 testimony?

3 A I don't remember, ma'am.

4 Q And that was just a little bit prior, as counsel questioned
5 you earlier about the testimony about her not wearing underwear.

6 A Right.

7 Q So do you remember that testimony?

8 A Yeah. She said she wasn't wearing underwear.

9 Q So you remember the testimony about her not wearing
10 underwear?

11 A Yes, ma'am.

12 Q But you don't remember the other testimony that I have asked
13 you about today?

14 A No, ma'am.

15 Q Okay. Did John Loy ever have any discussions with you, and
16 that was, you testified to was, a solicitor in a prior case of
17 yours; correct?

18 A Yes, ma'am.

19 Q Did he have any discussions with you, personal discussions
20 with you, about this case? John Loy.

21 A John Loy? No, ma'am.

22 Q Did Mr. Farley ever indicate that Mr. Loy was, in any way,
23 involved in your representation of this case?

24 A Only that he was his boss.

25 Q That he was his boss?

1 A Yes, ma'am.

2 Q And Mr. Farley told you that he was the attorney on your
3 case and that he would be trying this case for you?

4 A Yes, ma'am.

5 Q Okay. Did he ever tell you Mr. Loy had told him to do
6 something in this case?

7 A That he wanted to sit in on the case; that Mr. Loy wanted to
8 sit in on my case.

9 Q So he informed you that there was a prior solicitor in his
10 office, and that he had requested to sit in our case; correct?

11 A Yes, ma'am.

12 Q But he did not tell you that Mr. Loy made any decisions in
13 this case or represent to you that Mr. Loy was, in any way,
14 involved in your representation?

15 A No, ma'am.

16 Q Okay.

17 ATTORNEY WEIDAUER: Beg the Court's indulgence for one
18 moment, Your Honor.

19 THE COURT: Yes, ma'am.

20 ATTORNEY WEIDAUER: Thank you, Your Honor. Nothing further.

21 THE COURT: Any direct?

22 ATTORNEY GEEL: Just one point, Your Honor, if I may.

23 **REDIRECT EXAMINATION**

24 BY ATTORNEY GEEL:

25 Q Mr. Holmes, as to your direct appeal, during the time period

1 2013 when the appeal was dismissed -- the record will speak for
2 itself, but I believe it was 2013 -- during the time period after
3 the dismissal, Yes, in 2013 and 2017 when you filed this action,
4 at any point during that time period did you decide you did not
5 want to appeal your case?

6 A No, sir.

7 Q Okay.

8 ATTORNEY GEEL: Thank you, Judge.

9 THE COURT: All right. Sir -- Oh, anything else?

10 **STIPULATION**

11 ATTORNEY WEIDAUER: I should have stipulated this earlier,
12 Your Honor. This is an affidavit which we've agreed to enter in
13 as a joint exhibit from Robert Dudek, the Appellate Defense
14 Commission on Indigent Defense. And would you like me to pass it
15 up? He has just summarized his involvement in this case.

16 THE COURT: All right. And this is stipulated to?

17 ATTORNEY GEEL: Yes, Your Honor. I looked at that.

18 THE COURT: So make this State's 1.

19 ATTORNEY WEIDAUER: That's fine.

20 (State's Exhibit 1 is marked and received in the record.)

21 **EXAMINATION BY THE COURT**

22 BY THE COURT:

23 Q Sir, let me ask you a couple questions. How old are you?

24 A Just turned 57.

25 Q All right. And tell me about your educational background.

1 How far did you go in school, sir?

2 A To the tenth grade.

3 Q All right. Did you complete the tenth grade, or did you
4 drop out during -- or, did you leave school during the
5 tenth-grade year?

6 A I leaved (sic) school during the tenth-grade year.

7 Q So the last grade that you would have completed would have
8 been ninth grade?

9 A Yes, sir.

10 Q Sir, why did you leave school?

11 A I had family issues.

12 Q Tell me about your employment history, sir.

13 A My employment, that I worked as an electrician.

14 Q Was that on-the-job training to become an electrician, or
15 did you go to any technical school, or --

16 A On-the-job training.

17 Q How long did you work? You're not a licensed electrician;
18 are you?

19 A No, sir.

20 Q Did you work for a licensed electrician, or is this some
21 work you sort of just did on the side? Tell me about it, sir.

22 A A licensed electrician.

23 Q How long did you do that?

24 A About a year.

25 Q All right. What about before that, sir? What did you do?

1 Tell me about your employment. I want to know where you've
2 worked, sir.

3 A I was a carpet installer.

4 Q Okay.

5 A I was a flag pole and a sign installer.

6 Q All right.

7 A Brick masonry.

8 Q Okay.

9 A Janitor work.

10 Q All right. Thank you very much.

11 THE COURT: Do you have any other questions based on what I
12 just asked this gentleman?

13 ATTORNEY GEEL: No, sir.

14 THE COURT: Attorney General, do you have any additional
15 questions based on what the Court's just asked this gentleman?

16 ATTORNEY WEIDAUER: No, Your Honor.

17 THE COURT: Okay, great. Thank you. All right, sir. Thank
18 you very much. You can step down.

19 Mr. Geel, you can call your next witness.

20 ATTORNEY GEEL: Your Honor, that's all we have, provided
21 that the State intends to call Mr. Farley.

22 THE COURT: All right. That sounds great.

23 Are you ready to call your first witness?

24 ATTORNEY WEIDAUER: Yes, Your Honor. We'd like to call
25 Attorney Mr. Farley.

1 THE COURT: Hey, Mr. Farley. Come on around, sir. Put your
2 left hand on the Bible. Raise your right hand, sir.

3 MITCHELL E. FARLEY,
4 having first been duly sworn, was examined and testified as
5 follows:

6 THE COURT: Yes, ma'am.

7 **DIRECT EXAMINATION**

8 BY ATTORNEY WEIDAUER:

9 Q Good morning, Mr. Farley.

10 A Hello.

11 Q So I'm going to try to make this easy and go down the line
12 with these allegations. So let's start with the appeal. I know
13 that seems a little backwards. Can you go ahead and give us your
14 recollection surrounding the circumstances of Mr. Holmes's appeal
15 and how we got here today.

16 A Mr. Holmes asked me to file the appeal. If I lose at trial,
17 I automatically file an appeal, even if they say they don't want
18 me to. And basically what I think happened is, most of the
19 appeals we file are from guilty pleas because obviously we didn't
20 want a guilty plea. And my parallel, you know, we have the forms
21 saved in a, you know, format, like a blank form that you just
22 fill in the details, and we have the ones for guilty pleas and we
23 have the ones for trial. I think that I asked her to do it. I
24 think that she just did the form one. I know that obviously I
25 didn't check it, and I'm quite certain that I filed the wrong

1 type of appeal. I filed the appeal of a guilty plea and not of a
2 trial.

3 Q So between the filing of your notice of appeal and receiving
4 the Court's order dismissing the matter, you didn't have any
5 reason to believe that you had improperly filed?

6 A That's correct.

7 Q And after receiving that order dismissing the case, that
8 didn't flag your brain, either, that you had improperly filed and
9 that the Court had had assessed the case, possibly, improperly?

10 A Yes.

11 Q But at no time -- and I'm sure, as Mr. Geel asked, at no
12 time did Mr. Holmes indicate that he did not want an appeal?

13 A He made it clear that he did want an appeal.

14 Q That he did, okay. And so now we're here in 2022.
15 Mr. Holmes -- your understanding is that Mr. Holmes indicated to
16 the Court that he still wants an appeal and that he believes it
17 was processed improperly?

18 A Yes.

19 Q And per our past conversations and your conversations
20 leading up to this hearing, have you had the chance to gain a
21 broader understanding of indigent defense's role in this?

22 A Yes.

23 Q And can you tell the Court what that would be.

24 A From the way that I think that it works, is that trial
25 counsel files the appeal, and then the Supreme Court decides what