

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Oct 18 2023

Certiorari to Darlington County
Honorable J. Derham Cole, Circuit Court Judge

S.C. SUPREME COURT

DAMYON M. COTTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000782

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD

13-GS-16-1438

13-GS-16-1439

DAMYON M. COTTON,)

DEFENDANT.)

February 24, 2014
Darlington, South Carolina

B E F O R E :

THE HONORABLE J. MICHAEL BAXLEY, JUDGE;
AND JURY

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

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11 DEFENSE:

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13	1	Facebook photos, Minor	72
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18 COURT'S:

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1 THE COURT: Now, Mr. or Madam Solicitor,
2 please call your first case for trial.

3 MR. HOLT: Thank you very much, Your
4 Honor. If it please the Court, the State will call
5 the following indictments, 2013-GS-16-1438, the
6 State of South Carolina versus Damyon Cotton, and
7 that indictment is for kidnapping; 2013-GS-16-1439,
8 State of South Carolina versus Damyon Cotton,
9 criminal sexual conduct in the first degree.

10 THE COURT: All right, thank you. And now
11 Ms. Wise, do you represent Mr. Cotton with regard to
12 these two criminal charges?

13 MS. WISE: I do, Your Honor.

14 THE COURT: And how does the defendant
15 plead?

16 MS. WISE: Not guilty.

17 THE COURT: Very good. Thank you.

18 Ladies and gentlemen, you heard the call
19 of the case which is the State versus Damyon M.
20 Cotton, two charges which are kidnapping and
21 criminal sexual conduct in the first degree. You've
22 heard the defendant enter a plea of not guilty,
23 thus, the issues are joined for trial, and we will
24 now proceed to pick a jury. Now in just a few
25 moments ago when we were together in the courtroom

1 we went through a general qualification process.
2 We're finished with that now. Now we're going to
3 talk about specifics of these cases and allegations
4 that are in these cases. And I just know from
5 working in the courtroom for a few years, many times
6 jurors who are sitting as you are now in a group,
7 and you hear a question you think, well, gosh, I
8 don't want to embarrass myself, I don't want to call
9 attention to myself, I don't think that question
10 applies to me, I'm just going to sit here and be
11 quiet. I'm gonna ask you to do just the opposite.
12 If you have some inkling that you should respond to
13 a question that you hear asked, please stand up and
14 give us the benefit of whatever information you
15 have. I will tell you, there are no wrong answers
16 in jury qualifications. The purpose of this process
17 is to make sure that whatever jury we choose here is
18 disinterested. And when I say disinterested, I
19 don't mean that you don't care. What I mean is that
20 you don't have some connection to a case or an issue
21 in a case that for some reason would make you an
22 inappropriate juror. Now we're gonna begin by
23 having the lawyers introduce themselves to you and
24 the principals in the case; that's the lawyers and
25 the parties. And then we'll have some further

1 information as well.

2 So Mr. Solicitor or Madam Solicitor, if
3 you would please introduce yourselves to the jury
4 panel again and then please introduce the
5 complaining witness in the case as well. Go ahead.

6 MR. HOLT: Thank you very much, Your
7 Honor. As I told you earlier, my name is John Holt.
8 I work with the Solicitor's Office here in the
9 Fourth Circuit. My direct supervisor is Patty
10 Parker. She's going to be trying this case with me.
11 Members of the Sheriff's Office are going to be
12 called and Yasmin Cusack, and Yasmin Cusack, who the
13 judge called the complaining witness in this case.
14 Thank you.

15 THE COURT: Thank you. Now let's switch
16 to the defense side of the case. Counsel, please
17 introduce yourself and introduce your client to the
18 jury panel.

19 MS. WISE: Thank you, Your Honor. I'm
20 Christie Wise, again, for the Public Defender's
21 Office. This is Damyon Cotton; he's here today.
22 And again, Mr. Rick Jones from the Public Defender's
23 Office.

24 THE COURT: Thank you. Please be seated,
25 ladies and gentlemen.

1 And so Office Peavy is your case officer,
2 Mr. Holt, will be with you during trial?

3 MR. HOLT: Yes, sir, Your Honor.

4 THE COURT: Very good. Now ladies and
5 gentlemen, let's first talk about the lawyers. You
6 were introduced to counsel in the case and the
7 lawyers for the prosecution work for the Solicitor's
8 Office and lawyers for the Defense who work with the
9 Darlington County Public Defender's Office. Now
10 first we want to ask about the attorneys. I'm
11 asking only about the lawyers at this point.

12 Is there any member of this jury panel
13 related by blood or marriage to any of these lawyers
14 who just introduced themselves or been represented
15 by them in some other case not connected to this
16 case for some reason, whatever that case may be? If
17 any of that applies to you with regard to the
18 lawyers please stand.

19 (There was no response.)

20 THE COURT: Let's let the record reflect
21 no one has stood.

22 Now let's ask further -- again, still
23 talking about the lawyers. The lawyers work for the
24 Solicitor's Office. The Solicitor's Office is the
25 prosecuting agency in the counties of Darlington,

1 Dillon, Marlboro, and Chesterfield. The Solicitor's
2 Office is obviously, as I say, it has offices in
3 those four counties so as an office, what I'm
4 looking to determine now, is any member of this jury
5 panel who has some relationship to the Solicitor's
6 Office in any of these four counties? It could be
7 possibly as a vendor, or it could be you have an
8 immediate family member who works for the solicitor.
9 Or it could be that you've been represented by some
10 other lawyer in the Solicitor's Office in some other
11 case not related to this as a victim of crime or in
12 some other capacity. If you have some connection
13 with the Solicitor's Office, whatever it may be,
14 please stand.

15 (There was no response.)

16 THE COURT: And let's the record reflect
17 no one has stood.

18 Now let's ask the same question on the
19 Public Defender's side. The Public Offender Office
20 works in all four counties so I'm asking if there's
21 any member of this jury panel who has a business
22 relationship, whatever it may be, to the Public
23 Defender's office as a vendor, independent
24 contractor, been represented as an accused or had an
25 immediate family member who's been represented as an

1 accused in some other crime, in some other
2 prosecution perhaps in some other county? If you
3 have some connection to the Public Defender's
4 Office, whatever that may be, or if you've ever been
5 represented by any of the lawyers in the Public
6 Defender's Office, please stand.

7 (There was no response.)

8 THE COURT: And again, let's let the
9 record reflect no one has stood in response to any
10 of the attorneys questions. Now let's talk about
11 the principals, talking about the parties here. Let
12 me just say one thing too. Whenever I use the term
13 complaining witness and you were introduced to
14 Ms. Cusack, some people would use the term victim
15 and I say this about the terms we use. Whether or
16 not, ladies and gentlemen, there's been a crime
17 committed and whether or not the defendant is
18 involved with that crime, or not, is a jury
19 decision. It's a factual decision that the jury
20 ultimately makes. The State has made that charge;
21 the defendant has denied the charge. Please
22 understand when we use a term that identifies
23 someone we're not trying to send a message or
24 somehow labeling a person as if a crime has
25 committed and that decision has already been made,

1 or if a particular person was involved. So please
2 understand when we use a term it's only to identify
3 principals in a case. It's not to send some
4 inference of some position that the Court takes on a
5 case because the Court is not involved with either
6 side of the case, neither the prosecution, nor the
7 defense. That's one of the hallmarks of our justice
8 system is that the court is an independent and the
9 jury an independent determiner of the criminal
10 charges.

11 So there are two individuals who are gonna
12 be with the State as principals in this party. The
13 first is what I would call the case officer; that
14 is, the main prosecuting officer, and you were
15 introduced to Brian Peavy. And then second is the
16 person who is the complaining witness and that's
17 Yasmin Cusack. Now what I'm asking about the
18 parties is this, is there any member of this jury
19 panel related by blood or marriage to either of
20 those two individuals or have some business,
21 professional, or social relationship with either one
22 of them or think you even know either one of those,
23 either one of them, if that to you please stand.

24 (There was no response.)

25 THE COURT: Let's let the record reflect

1 no one has stood in response to the Court's
2 question. Now we switch to Defense side. And
3 again, the same thing goes with the term defendant
4 because when you hear the term defendant, that's not
5 intended to be a label. It just identifies an
6 individual who is in this case Mr. Cotton.

7 And I ask you, ladies and gentlemen, if
8 there's any member of this jury panel related to him
9 by blood or marriage because you were just
10 introduced to him, have some connection to him,
11 whatever it may be, business, professional, social,
12 just in the community or think you even know Mr
13 Cotton, if that applies to you please stand. All
14 right now, let's go to the back.

15 Ma'am, you stood first. Please give me
16 your name and your juror number.

17 THE POTENTIAL JUROR: My name is Denise
18 Johnson, juror number 64.

19 THE COURT: Okay. And do you — tell me,
20 I asked a multipart question. Tell me why you're
21 standing please.

22 THE POTENTIAL JUROR: Well, I'm standing
23 'cause his last name is Cotton, and my grandmother
24 is Cotton. I notice that my mom's cousin is sitting
25 over there.

1 THE COURT: I see. All right, so is what
2 you're saying is that you believe that you may be
3 distantly related to Mr. Cotton?

4 THE POTENTIAL JUROR: Yes.

5 THE COURT: Do you even -- do you know Mr.
6 Cotton?

7 THE POTENTIAL JUROR: No.

8 THE COURT: All right, ma'am. Let's do
9 this. Because there is just that possibility that
10 you may be related as opposed to just knowing
11 someone, which is a different issue, I'm gonna
12 remove your name from this case. It's not that
13 you're not capable, but I don't want someone who may
14 be reviewing our work here to feel that there was
15 someone who had a connection or position in this
16 case who was sitting as a juror. So you don't need
17 to answer any further questions about this case.
18 Please remain us 'cause we're gonna pull another
19 jury, totally separate matter, in just a few
20 minutes. But thank you for your candor and your
21 response, all right?

22 Ma'am, please tell me your name and juror
23 number.

24 THE POTENTIAL JUROR: Demetria Bacote.

25 THE COURT: All right, Ms. Bacote, and

1 tell me, ma'am, why are you standing please?

2 THE POTENTIAL JUROR: I think I know him
3 from my community.

4 THE COURT: You think you know Mr. Cotton?

5 THE POTENTIAL JUROR: Uh-huh.

6 THE COURT: Now let me say to you that
7 living here in Darlington County and working in
8 three other fairly rural small counties, it's not
9 uncommon for someone on the jury to either know a
10 lawyer or know a party to a case. The question is,
11 would that prevent you from being fair and impartial
12 if you're called as a juror in this case. So I ask
13 you, would it, ma'am?

14 THE POTENTIAL JUROR: No.

15 THE COURT: Then I find that you're
16 qualified by your response. Thank you, Ms. Bacote.
17 You may be seated.

18 Anyone else now who would stand to respond
19 to the questions about the principals in this case?
20 I ask, of course, about Ms. Cusack and Mr. Peavy,
21 but I now ask the same question about the defendant.
22 Anyone else who would stand for any of those
23 parties?

24 (There was no response.)

25 THE COURT: Then seeing none let's move

1 forward.

2 And Mr. Solicitor or Madam Solicitor,
3 would you please call out the names of potential
4 witnesses who may be called in the prosecution of
5 this case. Ladies and gentlemen, if you're in the
6 courtroom please stand when your name is called so
7 the jury panel can see you.

8 And you may proceed.

9 MR. HOLT: Yasmin Cusack, **Minor**
10 Scott Gauger, he's with the Darlington County
11 Sheriff's Office. Denetra Quick, she's a nurse at
12 McLeod. Brandon Peavy, he's with the Sheriff's
13 Office. Russ Harrell with the Sheriff's Office;
14 he's not here today. And Amanda Webb is with the
15 South Carolina Law Enforcement Division with SLED;
16 she's a technician.

17 THE COURT: All right, ladies and
18 gentlemen, you heard the names of potential
19 witnesses, one of -- two of which have already been
20 introduced to you and which I've questioned you
21 about. But for the other witnesses my questions are
22 not so close. When I asked you about the principals
23 I asked if you knew them. For the witnesses what
24 I'm looking for is whether you have some close
25 business, professional, or social relationship or

1 related to any of these potential witnesses by blood
2 or marriage. If that applies to any of you with
3 regard to these witnesses whose names were called
4 please stand.

5 (There was no response.)

6 THE COURT: Let's let the record reflect
7 no one has stood. Now let's switch to the Defense.
8 But before we do, let's talk among ourselves for a
9 moment. First of all, I will tell you that one of
10 the principals of our justice system, and we're
11 talking about a bedrock foundational principal, is
12 that the defendant has no burden of proof in this
13 courtroom. The State bears the burden of proof.
14 And put another way, it's never incumbent upon the
15 defendant to come in and prove himself or herself
16 innocent. The burden is on the State to prove the
17 defendant guilty beyond a reasonable doubt, and t
18 hat's a big difference and that's a high standard.
19 Now one of the reasons that the defendant is not
20 required to defend himself or not required to have a
21 burden of proof is because when the State marshals
22 its authority and power against an individual for a
23 prosecution, then in order to tip and make the
24 balances fair, the defendant is given no burden of
25 proof and the State is given a high burden of proof.

1 Now one of the results of the defendant having
2 nothing to prove in this courtroom is the defendant
3 doesn't have to call any witnesses. The defendant
4 doesn't have to respond to these charges, does not
5 have to put up a case, and does not have to testify
6 because, again, the defendant has nothing to prove
7 in this courtroom.

8 But I ask you at this point whether there
9 may be individuals who were not called in the
10 State's list that may appear as witnesses, and if
11 so, let's query the jury about them now. Please
12 publish their names if there are witnesses.

13 MS. WISE: Thank you, Your Honor. Calvin
14 Harrison I believe will be here tomorrow, Ricky
15 Cotton, and Ms. Connie Cotton.

16 THE COURT: All right, thank you. You
17 heard the names of three witnesses, ladies and
18 gentlemen. Again, my questions for the witnesses,
19 not so close. What I'm looking for is whether
20 you're related by blood or marriage or you have some
21 close business, professional, or social connection
22 to a witness whose name was called. If that applies
23 to you please stand. And let's let the record
24 reflect -- all right, sir, please tell me your name
25 and juror number.

1 THE POTENTIAL JUROR: My juror number is
2 juror number 21. My name is James Anthony Byrd and
3 I worked with Ms. Connie Cotton at Carolina Pines
4 Hospital.

5 THE COURT: Okay. And when is the last
6 time you saw Ms. Cotton before today?

7 THE POTENTIAL JUROR: Probably about three
8 or four years ago.

9 THE COURT: And so -- you said three or
10 four years or weeks?

11 THE POTENTIAL JUROR: Years.

12 THE COURT: Years, okay. So again, would
13 that prevent you from being fair and impartial if
14 you're a juror and she's called as a witness in this
15 case?

16 THE POTENTIAL JUROR: No.

17 THE COURT: All right, then I find that
18 you're qualified, Mr. Byrd, by your response. Thank
19 you, sir.

20 Now ladies and gentlemen, I have in my
21 hand the two indictments which were published by the
22 Solicitor when he called the case. And I want to
23 say to you that indictments, they're simply pieces
24 of paper, that these are the papers by which the
25 Solicitor commences a prosecution against any

1 individual. These are two charges that arise out of
2 the same incident that are called for trial at the
3 same time. But I want you to understand that what's
4 on these documents are simply a set of allegations.
5 These are charges. They're not to be accepted as
6 the truth because ultimately whatever the truth is
7 is going to be determined by the jury from the
8 evidence in the case which is going to come from
9 this witness stand, not because it says something on
10 a piece of paper. But I will tell you that the
11 allegations are, because I then want to ask you
12 whether you know something about these cases and
13 these prosecutions -- the allegation with regard to
14 kidnapping alleges that in Darlington County on
15 February 1st, 2013, that Damyon M. Cotton did in
16 Darlington County on that date unlawfully seize or
17 confine, decoy, or kidnap or abduct one Yasmin
18 Cusack without authority of law. These are the
19 allegations with regard to the kidnapping. Again,
20 please remember the defendant has pled not guilty
21 and, thus, denies the charges; but even if the
22 defendant didn't enter a plea, the defendant is
23 presumed innocent at this juncture.

24 Regarding the criminal sexual conduct
25 charge first degree, the indictment alleges that

1 Mr. Cotton did in Darlington County on the same
2 date, February 1st, 2013, engage in a sexual battery
3 with Miss Cusack while the victim was also the
4 victim of forceable confinement or kidnapping in
5 violation of South Carolina law. These are the
6 allegations. Again, this is denied by the
7 defendant; this is alleged by the State.. The
8 operative date, February 1st, 2013, here in
9 Darlington County. I ask you now, ladies and
10 gentlemen, is any member of this jury panel who
11 knows anything about these allegations or this case
12 or this prosecution from whatever source it may be,
13 if you know something about this case please stand.

14 (There was no response.)

15 THE COURT: Let's let the record reflect
16 no one has stood in response to the Court's
17 question.

18 All right, ladies and gentlemen, now I
19 want to ask a little bit about your previous
20 involvement -- well, in the community and perhaps
21 with the law enforcement. First thing I want to
22 ask, is there any member of this jury panel whose
23 ever, you yourself, the juror, been employed in law
24 enforcement either in a part or full-time paid
25 capacity or in voluntary capacity? There's nothing

1 wrong with such a job or a voluntary position. I
2 just simply am asking if you have been. If that
3 applies to you, if you have worked for law
4 enforcement in the past, please stand.

5 All right, sir, in the back. Please tell
6 me your name and your juror number.

7 THE POTENTIAL JUROR: Joseph Lynch, juror
8 number 81.

9 THE COURT: Mr. Lynch, where did you work
10 in law enforcement?

11 THE POTENTIAL JUROR: Military police
12 officer for the United States Army, also a military
13 police investigator.

14 THE COURT: How long ago has that been?

15 THE POTENTIAL JUROR: That was
16 approximately 13 years ago.

17 THE COURT: Would the fact that you have
18 that history of being employed in law enforcement
19 prevent you somehow in this case from being fair and
20 impartial if you're summoned as a juror here?

21 THE POTENTIAL JUROR: No, sir.

22 THE COURT: I find you're qualified by
23 that, Mr. Lynch, thank you, sir.

24 Anyone else now who would stand to say
25 that they have previously been employed or a

1 volunteer in law enforcement?

2 (There was no response.)

3 THE COURT: All right, now I want to ask
4 about your immediate family, and I'm gonna have more
5 questions than just this so let's define immediate
6 family for purposes of these cases. Your immediate
7 family or your spouse and your children, regardless
8 of where they might live, and anyone else who lives
9 with you in your household. So, immediate family,
10 spouse, children regardless of their residence, and
11 those living in your household. I'm gonna ask you
12 now, if there's any member on this jury panel who
13 has an immediate family member as I've just defined
14 it, currently working, that's presently worked in
15 law enforcement. If so, please stand.

16 All right, sir, on the front, tell me your
17 name and juror number please.

18 THE POTENTIAL JUROR: Shaquille Mack.

19 THE COURT: And Mr. Mack, tell me what
20 family member do you have working?

21 THE POTENTIAL JUROR: My father works for
22 the Effingham police.

23 THE COURT: Effingham police?

24 THE POTENTIAL JUROR: Yes, sir.

25 THE COURT: All right, sir. Would the

1 fact that you have a father working in law
2 enforcement, would that prevent you from being fair
3 and impartial here?

4 THE POTENTIAL JUROR: No, sir.

5 THE COURT: Then I find that you're
6 qualified by that, Mr. Mack. Thank you for your
7 response.

8 And then Mr. Byrd, tell us your juror
9 number again, please, sir.

10 THE POTENTIAL JUROR: 21.

11 THE COURT: And what family member do you
12 have in law enforcement?

13 THE POTENTIAL JUROR: James Hudson, chief
14 of police.

15 THE COURT: All right, sir, that's in
16 Hartsville. All right, would the fact that you have
17 that connection to Mr. Hudson prevent you from being
18 fair and impartial in this case somehow in your
19 opinion?

20 THE POTENTIAL JUROR: No, sir.

21 THE COURT: Then I find that you're
22 qualified by that response. Thank you, sir.

23 Anyone else now who would stand and say
24 they have a family member who is in law enforcement?

25 (There was no response.)

1 THE COURT: All right, ladies and
2 gentlemen, now I ask if you, if any of you are
3 members of an organization -- and let me immediately
4 stop and say there's absolutely nothing wrong with
5 being a member of an organization which I'm getting
6 ready to describe and I'm simply asking if you are,
7 which has as its purpose the advocacy for or the
8 protection of the rights of law enforcement officers
9 or perhaps the victims of a crime? And I'm thinking
10 of the South Carolina Sheriff's Association, the
11 South Carolina Law Enforcement Officer's
12 Association, perhaps an auxiliary member of that, or
13 with regard to victims of crime organizations such
14 as MADD, which is Mother's Against Drunk Drinking,
15 CAVE, which is Citizens against Violent Crime, CASA,
16 which is Citizens Against Spousal Abuse, and things
17 of that nature. I'm simply asking if there is a
18 member of our jury panel that is a member of an
19 organization which has that purpose. If that
20 applies to you please stand.

21 (There was no response.)

22 THE COURT: Let's let the record reflect
23 no one has stood in response to the Court's
24 question. All right, ladies and gentlemen, at the
25 end of my questions I'm gonna give you an

1 opportunity if you want to come up and discuss with
2 me any issue that you did not feel comfortable
3 standing up and discussing in the course of the
4 questions I've asked. So it's similar to a
5 catch-all question and I'm gonna give you that
6 opportunity.

7 All right, Counsel, step up just one
8 moment, if you will please, before I phrase my next
9 question.

10 (WHEREUPON, counsel approached the Bench
11 for an off-the-record discussion.)

12 THE COURT: Ladies and gentlemen, thank
13 you for your patience while I spoke with counsel.
14 Again, I say to you we're gonna give you an
15 opportunity to come forward and speak to the Court
16 if you wish. As you heard, these allegations
17 involve the charge of kidnapping. I will tell you
18 that typically a lot of times when you think of
19 kidnapping someone is abducted and taken away and
20 held for ransom. These are not the allegations
21 here. The allegations apparently -- and you'll hear
22 more from the evidence -- is that a person was
23 simply confined or required to be in a place where
24 they did not wish to be. And the allegation, of
25 course, are criminal sexual conduct which is as I

1 defined, or as I read, requires a sexual battery
2 occur between the parties. We used to use the term
3 years ago which is no longer used in the criminal
4 code, which is an allegation of rape. Now I tell
5 you that simply to ask you this: I ask you whether
6 there's any member of this jury panel who has a
7 belief or an opinion or a feeling that given what
8 the allegations are here, that you could not be a
9 fair and impartial juror? And when I ask that
10 question what I'm really looking for is a juror who
11 can set aside any preconceived notions or thoughts
12 who can follow the law, who can fairly weigh the
13 evidence and find the truth and find the facts of
14 the case, apply that to the law that I give you and
15 put out of your mind any impressions you may have
16 for or against any particular allegation or any
17 particular party. I ask you, ladies and gentlemen,
18 just honestly, is there any member of this jury
19 panel -- and I'm not going to challenge you or
20 confront you about this, but I just ask you, is
21 there any member of this jury panel who believes
22 they could not be fair and they could not be
23 impartial based on the allegations in this case and
24 the questions we've asked you already today? If
25 that applies to you or you believe that it may,

1 please stand.

2 (There was no response.)

3 THE COURT: Ladies and gentlemen, I
4 finally ask you, if there's any member of this jury
5 panel who wishes to come up and make a private
6 comment or response to any of the questions I've
7 asked here at the court reporter stand in the
8 presence of the Court and the lawyers instead of in
9 open court, if that applies to you please stand.

10 (There was no response.)

11 THE COURT: Are there further questions
12 from the State with regard to jury qualifications?

13 MR. HOLT: There are none, Your Honor.

14 THE COURT: And from Defense?

15 MS. WISE: None, Your Honor.

16 THE COURT: How much strikes are claimed
17 by the State?

18 MR. HOLT: Five, Judge.

19 THE COURT: And how many are claimed by
20 Defense?

21 MS. WISE: Ten.

22 THE COURT: All right, the statute -- that
23 is correct. The statute provides five to the State
24 and ten to the Defense. Mr. Clerk, are you ready?

25 THE CLERK OF COURT: Yes, sir.

1 THE COURT: Now ladies and gentlemen,
2 let's talk about this process of what we're gonna go
3 through and what we call, quote, striking the jury.
4 Now first of all, we're gonna -- we have used a
5 computer program. In fact, you may have heard the
6 computer printing a moment ago, and it has
7 randomized a, your membership, and chosen a certain
8 number of jurors and we're just gonna go down that
9 list and call them in random fashion. They're not
10 alphabetical. They're not in number or numerical in
11 number of juror sequence. And what we're gonna ask
12 you to do when your name is called, we're gonna ask
13 you just to stand right there where you are. I will
14 tell you that in some courts you have to get up out
15 of your seat and come up here, stand out in front of
16 everybody. That's a little bit invasive so we're
17 just gonna let me you stand up where you are when
18 your name is called.

19 And counsel, if you want to turn your back
20 to the Court and face the jury panel on either side
21 of the table, please feel free to do so.

22 Now here's what happens when your name
23 gets called. Either side is gonna have an
24 opportunity to present you or to excuse you. And if
25 you're excused by either side I'm gonna let you sit

1 right back down where you are. We may have to
2 revisit the issue. But if you're chosen, then just
3 bring your personal belongings, not because you're
4 getting ready to get sequestered somewhere, but
5 you're just gonna change seats and come up here and
6 sit in the jury box. Now that was sort of an
7 explanation of the process.

8 Now let me tell you what's really gonna
9 happen. You're gonna get your name called. You're
10 gonna stand up. The people at the table are gonna
11 be talking. You know they're talking about you. We
12 know they're talking about you. It's a little bit
13 psychologically uncomfortable, but if you will just
14 bear with us. This process has stood our country
15 well now for 230 plus years. And then the lawyers
16 will make a decision. Now if you're not chosen, if
17 you're excused or struck, as you may hear the term
18 — well, first of all, that may be what you wish so
19 I would say to you if it's not what you wish don't
20 be offended by it because I will tell you that you
21 may be excused for some response made today in the
22 courtroom, some issue in the case, some strategy or
23 tactic that's known by the lawyer only. But I'll
24 tell what it's not: It is not because of your sex
25 and it is not because of your race. It is against

1 the law to strike for those two reasons. Both sides
2 have the opportunity to challenge the other side's
3 strikes which is why I need you to remain with us if
4 you're not chosen, and so it will not be for those
5 two reasons if you're not chosen.

6 Now Mr. Clerk, you ready?

7 THE CLERK OF COURT: Yes, sir.

8 THE COURT: Then ladies and gentlemen,
9 please follow our clerk's instructions and you may
10 proceed.

11 THE CLERK OF COURT: Thank you, Your
12 Honor.

13 Juror number 34, Cameron Felkel (white
14 male). Stand please.

15 What saith the State?

16 MR. HOLT: Please present Mr. Felkel.

17 THE CLERK OF COURT: What saith Defense?

18 MS. WISE: Please seat this juror.

19 THE CLERK OF COURT: If you'll come
20 forward, have a seat in the jury box please, Mr.
21 Felkel.

22 Juror number 37, Donald Gainey (white
23 male). What saith the State?

24 MR. HOLT: Please present Mr. Gainey.

25 THE CLERK OF COURT: What saith the

1 Defense?

2 MS. WISE: Please seat this juror.

3 THE CLERK OF COURT: If you will come
4 forward and have a seat in the jury box for me, Mr.
5 Gainey.

6 Juror number 69, Bonnie Jordan (white
7 female). What saith the State?

8 MR. HOLT: Please present Ms. Jordan.

9 THE CLERK OF COURT: What saith the
10 Defense?

11 MS. WISE: Please seat this juror.

12 THE CLERK OF COURT: Come forward and have
13 a seat in the jury box for me, Ms. Jordan.

14 Juror number 138, Earnestine Wilson (black
15 female). What saith the State?

16 MR. HOLT: Please present Ms. Wilson.

17 THE CLERK OF COURT: What saith the
18 Defense?

19 MS. WISE: Please seat this juror.

20 THE CLERK OF COURT: Please come forward
21 and have a seat in the jury box, Ms. Wilson.

22 Juror number 85, Carolyn McCall (black
23 female). What saith the State?

24 MR. HOLT: Please present Ms. McCall.

25 THE CLERK OF COURT: What saith the

1 Defense?

2 MS. WISE: Please seat this juror.

3 THE CLERK OF COURT: Please come forward
4 and have seat in the jury box for me, Ms. McCall.

5 Juror number 7, Demetria Bacote (black
6 female). What saith the State?

7 MR. HOLT: Please excuse Ms. Bacote from
8 this trial.

9 THE CLERK OF COURT: You've been excused
10 from this particular case, Ms. Bacote. Thank you.

11 Juror number 88, Gary McFarland (black
12 male). What saith the State?

13 MR. HOLT: Please present Mr. McFarland.

14 THE CLERK OF COURT: What saith the
15 Defense?

16 MS. WISE: Please seat this juror.

17 THE CLERK OF COURT: Please come forward
18 and have a seat in the jury box for me, Mr.
19 McFarland.

20 Juror number 87, Kenneth McFadden (black
21 male). What saith the State?

22 MR. HOLT: Please present Mr. McFadden.

23 THE CLERK OF COURT: What saith Defense?

24 MS. WISE: Please seat this juror.

25 THE CLERK OF COURT: Please come forward

1 and have a seat in the jury box for me,
2 Mr. McFadden.

3 Juror number 97, Octavia Peterson (black
4 female). What saith the State?

5 MR. HOLT: Please excuse Ms. Peterson.

6 THE CLERK OF COURT: You've been excused
7 from this particular case, Ms. Peterson.

8 Juror number 95, Tracy Parkinson (white
9 male). What saith the State?

10 MR. HOLT: Please excuse Mr. Parkinson.

11 THE CLERK OF COURT: You've been excused
12 for this particular case, Mr. Parkinson.

13 Juror number 66, James Jones (white male).
14 What saith the State?

15 MR. HOLT: Please present Mr. Jones.

16 THE CLERK OF COURT: What saith Defense?

17 MS. WISE: Please seat this juror.

18 THE CLERK OF COURT: Please come forward
19 and have a seat in the jury box for me, Mr. Jones.

20 Juror number 71, Gary Lane (white male).
21 What saith the State?

22 MR. HOLT: Please present Mr. Lane.

23 THE CLERK OF COURT: What saith Defense?

24 MS. WISE: Please seat this juror.

25 THE CLERK OF COURT: Please come forward

1 and have a seat in the jury box, Mr. Lane.

2 Juror number 111, Holly Schultz-Morrison
3 (white female). What saith the State?

4 MR. HOLT: Please present
5 Ms. Schultz-Morrison.

6 THE CLERK OF COURT: What saith the
7 Defense?

8 MS. WISE: Please excuse this juror.

9 THE CLERK OF COURT: You've been excused
10 from this particular case, Ms. Schultz-Morrison.
11 Thank you.

12 Juror number 135, Kristie Wiggins (white
13 female). What saith the State?

14 MR. HOLT: Please present, Ms. Wiggins.

15 THE CLERK OF COURT: What saith the
16 Defense?

17 MS. WISE: Please excuse this juror.

18 THE CLERK OF COURT: You've been excused
19 from this particular case, Ms. Wiggins.

20 Juror number 16, Akeem Brown (black male).
21 What saith the State?

22 MR. HOLT: Please present Mr. Brown.

23 THE CLERK OF COURT: What saith the
24 Defense?

25 MS. WISE: Please seat this juror.

1 THE CLERK OF COURT: Please come forward
2 and have a seat in the jury box for me, Mr. Brown.

3 Juror number 98, Martha Phillips Kind.
4 (black female). What saith the State?

5 MR. HOLT: Please present Ms. Kind.

6 THE CLERK OF COURT: What saith Defense?

7 MS. WISE: Please seat this juror.

8 THE CLERK OF COURT: If you will come
9 forward and have a seat in the jury box for me,
10 Ms. Kind.

11 Juror number 36, William Freeman (white
12 male). What saith the State?

13 MR. HOLT: Please present Mr. Freeman.

14 THE CLERK OF COURT: What saith the
15 Defense?

16 MS. WISE: Please seat this juror.

17 THE CLERK OF COURT: Please come forward
18 and have a seat in the jury box for me, Mr. Freeman.

19 THE COURT: Mr. Suggs, let's choose two
20 alternate jurors, and the strikes will be two for
21 Defense and one for the State as to each alternate.

22 THE CLERK OF COURT: Yes, sir.

23 THE COURT: Thank you.

24 THE CLERK OF COURT: Juror number 77, Ray
25 Louis (black male). What saith the State?

1 MR. HOLT: Please present Mr. Louis.

2 THE CLERK OF COURT: What saith the
3 Defense?

4 MS. WISE: Please seat this juror.

5 THE CLERK OF COURT: Please come forward,
6 and have a seat in the jury box for me, Mr. Louis.

7 Juror number 61, Lesley Jeffords (white
8 female). What saith the State?

9 MR. HOLT: Please present Ms. Jeffords.

10 THE CLERK OF COURT: What saith the
11 Defense?

12 MS. WISE: Please excuse this juror.

13 THE CLERK OF COURT: You've been excused
14 from this particular case, Ms. Jeffords.

15 Juror number 51, Phyllis Honeycutt (white
16 female). What saith the State?

17 MR. HOLT: Please present Ms. Honeycutt.

18 THE CLERK OF COURT: What saith the
19 Defense?

20 MS. WISE: Please seat this juror.

21 THE CLERK OF COURT: If you will please
22 come forward and have a seat. Take the chair
23 outside the jury box for me, Ms. Honeycutt.

24 THE COURT: All right, ladies and
25 gentlemen. I know we started this morning you had

1 safety in numbers, and now we have our first jury
2 draw and there you sit in the jury box. But let me
3 ask you, how many of you have served before on a
4 jury, whether it's civil or criminal? Raise your
5 right hand please if you've been on a jury before.
6 Well good, we've got some experience in the jury
7 box. But let me say to those of you who find
8 yourself there for the first time, don't be
9 uncomfortable about where you are. Jurors need two
10 tools to serve capably and well and you've got them
11 both. The first is your ability to listen and the
12 second is your collective common sense. Along with
13 those two things you're gonna find yourself in good
14 shape. Now we're not going to begin the trial of
15 this case today.

16 Before we go any further let me ask, are
17 there objections from the parties to the procedure
18 we used to draw this jury or the strikes employed by
19 the other side? What says the State?

20 MR. HOLT: There are none from the State.

21 THE COURT: And now Defense?

22 MS. WISE: No objections, Your Honor.

23 THE COURT: Very good. Then ladies and
24 gentlemen, you will be our jury for this first case
25 for trial. We're actually going to exclude you from

1 the second case for trial. That way we can move
2 immediately after we finish testimony in one trial
3 and you're out deliberating we can move into the
4 next trial. We won't have what we call interlocking
5 jurors that will have to wait before we begin the
6 second trial. So we're gonna let you go now because
7 you're not going to be involved in the next jury
8 draw. What I would ask you to do is to come back
9 tomorrow morning. We're not gonna begin the trial
10 this afternoon. We have some administrative
11 business and other things that we need to do, some
12 of which is to prepare the evidence and be ready for
13 this trial in the morning. We ask you to be back at
14 9:30 tomorrow morning in the jury room. And when
15 you walk out, Mr. Medlin, our juror — our jury
16 bailiff, will take you out and show you where the
17 jury room is and how to get back tomorrow morning.
18 Please be here at 9:30 and we'll begin at that time.

19 Now just a couple of things about this
20 process. Please, number one is, don't go out this
21 afternoon and undertake some investigation into this
22 matter, whatever it may be, whether it's on the
23 street, on the computer, or whatever it may be, just
24 simply have a nice afternoon, come back tomorrow
25 morning well rested, and we'll be ready to begin.

1 Secondly, when you get home your loved ones who are
2 going to be curious are gonna say, well now what is
3 this case about. Well, we don't even really know
4 enough to have a discussion, but I'm gonna direct
5 you and ask you, please don't discuss the case with
6 your loved ones. And the reason for that is this, I
7 don't want them to say something that may somehow
8 change or alter how you see this case because
9 whatever decision you make should be based on the
10 evidence put forth in this courtroom under oath and
11 as part of our process and our rules of court
12 procedure, not based on something somebody outside
13 this courtroom that nobody knows anything about
14 happens to say who is of influence in your life. So
15 tell your loved ones that you can discuss it with
16 them completely but not until it's over; and when
17 you can do that, then you're free to do that if you
18 wish. All right.

19 Now I'll ask you in the morning whether
20 you've had discussion about this case before we
21 begin, but we'll see you at 9:30 tomorrow morning.
22 Now any questions from this jury about our schedule?

23 (There was no response.)

24 THE COURT: Okay. You don't need to call
25 the jury number tonight. You don't need to do

1 anything other than be back at 9:30 tomorrow.
2 You're done for the day. And so we'll, out of
3 respect for you, will remain where we are while you
4 depart the courtroom. Have a good day, ladies and
5 gentlemen.

6 (WHEREUPON, the jury was removed from the
7 courtroom at 11:32 a.m., and the following
8 proceedings commenced in open court.)

9 THE COURT: All right, counsel, we're
10 going to stand this matter down. Is there anything
11 for the record before we stand down to pick our next
12 jury from either side? State?

13 MR. HOLT: No, sir, Your Honor.

14 THE COURT: Or Defense?

15 MS. WISE: Nothing, Your Honor.

16 THE COURT: All right. We'll be in recess
17 then until 2:00 in this matter, and we'll come back
18 to begin the process of whatever issues we need to
19 resolve evidentiary, whatever they may be, all
20 right. So this case stand down until 2:00. Court's
21 in recess for this case.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: Now we're here back in the
24 trial of State versus Cotton. We have certain
25 pretrial issues which I'll be glad to take up at

1 this time. There's more than one motion pending.

2 Tell me, counsel, how do you wish to proceed?

3 What's the preference of counsel?

4 MR. HOLT: Judge, I think there's a Lyle
5 motion, we can do that one first, and then just
6 briefly after that there will be a rape shield
7 motion. I guess that's what you call that. I don't
8 know any other name for it.

9 And what other motions do we have?

10 MS. WISE: I think we stipulated to
11 sequestering witnesses.

12 MR. HOLT: Yes, sir, I saw that coming.
13 There wasn't any reason fighting over it.

14 THE COURT: All right now, just so we'll
15 understand and the record will be clear, how many
16 Lyle witnesses do you intend to call, if permitted,
17 and what is the substance of their testimony please?

18 MR. HOLT: One, Judge. I'll have an
19 argument on under common scheme of plan which is
20 traditional. I'll also have an argument under
21 absence of the State intent and identity. Pretty
22 much I plan on calling my main witness so that you
23 can gauge the witness of the case at hand, and then
24 one Lyle witness today directly after her. And then
25 I'll make my motion to you based on common scheme or

1 plan and then just briefly the other three. And I
2 don't think it will take longer than 25 or 30
3 minutes.

4 THE COURT: All right. And then again,
5 just in case there's some collateral review of these
6 proceedings down the road, my understanding from the
7 memoranda presented that the State had as many as
8 three Lyle witnesses that you intend to call. Tell
9 me what is the status of your other potential
10 witnesses?

11 MR. HOLT: My other potential witnesses do
12 not want to be involved in the case. I have from
13 the original three Lyle witnesses I wanted Your
14 Honor, I now have one available who continued. The
15 other two are somehow related to the defendant, and
16 I believe they played a part although they did not
17 answer their subpoena today. I see in the audience
18 Ms. Tate. I took her a subpoena for her grandchild
19 or her daughter. I do not see her daughter here. I
20 do not see Ms. Nyquira Graham here that I also
21 subpoenaed.

22 THE COURT: All right, and do you -- is it
23 your -- is it the State's position that there's been
24 some obstruction of the State's efforts to present
25 this evidence or that's not their position?

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1 MR. HOLT: That's not my position, Judge.

2 THE COURT: Very good. I ask the State
3 for that interrogatory information. Do you have
4 anything you wish to say in introduction as well,
5 Ms. Wise?

6 MS. WISE: No, Your Honor.

7 THE COURT: You ready to call your first
8 witness?

9 MR. HOLT: I am, Judge.

10 THE COURT: Please do.

11 MR. HOLT: Mr. James, can we get Yasmin
12 Cusack from the jury room please.

13 THE COURT: Are the witnesses sequestered?

14 MR. HOLT: I have placed them all back
15 there.

16 THE CLERK OF COURT: If you will come down
17 to be sworn. Place your left hand on the Bible and
18 raise your right.

19 WHEREUPON,

20 **YASMIN CUSACK,**

21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 THE CLERK OF COURT: If you'll have a seat
24 in this chair.

25 THE COURT: Ma'am, state your full name

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1 for the record please.

2 THE WITNESS: Yasmin Ruth Cusack.

3 THE COURT: Would you please spell your
4 first and last name.

5 THE WITNESS: Y-A-S-M-I-N C-U-S-A-C-K.

6 MR. HOLT: Thank you very much, Your
7 Honor.

8 **DIRECT EXAMINATION**

9 BY MR. HOLT:

10 Q Yasmin, who do you live with?

11 A My mother.

12 Q And what city do you live in?

13 A Florence.

14 Q And how old are you?

15 A Nineteen.

16 Q And can you tell the Court how you met the
17 defendant in this case, Danyon Cotton?

18 A Yes.

19 Q All right. How did you?

20 A Through a friend.

21 Q Okay. And what were y'all doing that day when
22 you met him? How did you talk to him for the first
23 time?

24 A On the phone.

25 Q Okay. And did you just call him up or was it a

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1 specific service you were using?

2 A Specific service.

3 Q And can you tell me what that was?

4 A It was like a chat line on the phone.

5 Q And can you tell the Court and everybody else how
6 chat lines work?

7 A Chat line work where you just call the number and
8 it asks you to press a certain number if you want to
9 talk to the fellas or guys, say press one or two,
10 and you exchange numbers if you want to talk to that
11 person.

12 Q All right. And how about after you hung up on
13 the chat line did you ever talk to Darnyon Cotton on
14 the phone again?

15 A Yes.

16 Q Okay. Can you tell me what happened.

17 A I talked to him on the phone and he asked me can
18 he see me, and I was like, yeah. And so I was like,
19 but I want to go to a movie and he was like, okay,
20 we can do that.

21 Q Okay.

22 THE COURT: I'm sorry, I didn't understand
23 the last. Ma'am, if I can get you to come just a
24 little bit closer to that microphone if you will.
25 And say that last sentence again.

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1 THE WITNESS: Damyon called, he asked me
2 do I want to -- that he want to see me and I was
3 like, yeah, that's fine but I want to go to the
4 movies.

5 BY MR. HOLT:

6 Q All right. And did you plan a trip to the
7 movies?

8 A Yes.

9 Q And on February 1st, 2013 did y'all go to the
10 movies?

11 A Yes.

12 Q All right. And can you tell the Court and
13 everybody else here what happened that day?

14 A We got to the movies and we sat in the car. He
15 was, like, he didn't want to go in so we stayed in
16 the car and he forced me -- well, he forced me to
17 suck his penis.

18 Q Okay. And how did he do that?

19 A Like, he just forced my head on to his penis but
20 I told him no.

21 Q All right. Why didn't he want to go in the
22 movies once y'all got there?

23 A He was like, he just didn't feel like it.

24 Q Okay. Now let me ask you this, did he pick you
25 up in your car or did y'all meet in there?

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- 1 A He picked me up in his car.
- 2 Q Okay. And then after you were in the parking lot
- 3 in the movies what happened next?
- 4 A After we what?
- 5 Q After you were at the movies and you decided not
- 6 to go in, what happened next?
- 7 A Then that when, like I told you, like, he forced
- 8 me to suck his penis.
- 9 Q Okay, all right. Well, what happened after that?
- 10 A Well, after we left the movies we went to K-mart.
- 11 Q And what was the point of going to K-mart.
- 12 A 'Cause earlier me and my aunt went to the movies
- 13 and I assume for Valentine stuff so I called Damyon
- 14 and asked him what he want for Valentine. He was
- 15 like, nothing. So later on that day after we got up
- 16 and left after the movies and everything we went to
- 17 K-mart and he was like, I don't want to go in, and
- 18 so, like, he did the same things, for me to suck his
- 19 penis. And he was like he didn't want go in so he
- 20 hand me 15 dollars and so I was like, so you going
- 21 in, and he was like, no. So I just throw the money
- 22 back at him.
- 23 Q So why didn't he want to go in K-mart?
- 24 A I guess 'cause he didn't want to.
- 25 Q All right. And after that happened at K-mart

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- 1 where did y'all go then?
- 2 A I asked him to take me home. He wouldn't take me
- 3 home and then we end up on Turnpike Road.
- 4 Q Okay. Had you ever been to Turnpike Road before?
- 5 A No, sir.
- 6 Q How did y'all get there?
- 7 A In the car.
- 8 Q Did you want to go to Turnpike Road?
- 9 A No.
- 10 Q Why didn't you call somebody?
- 11 A 'Cause when we arrived on Turnpike Road Damyon
- 12 Cotton had took my phone.
- 13 Q Okay. What did Damyon Cotton tell you he was
- 14 going to do? Or did he say anything? What did he
- 15 say?
- 16 A He just took my phone and said that I been
- 17 telling him a long time that I was gonna give him
- 18 some and so now is the time.
- 19 Q All right. Do you know where you were at on
- 20 Turnpike Road?
- 21 A In the woods.
- 22 Q Okay. And whose car were you in?
- 23 A Damyon Cotton.
- 24 Q And was anybody else in the car with y'all?
- 25 A No.

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1 Q All right. Yasmin, how far did you get in
2 school?

3 A Twelfth.

4 Q Did you graduate?

5 A No, I dropped out.

6 Q Okay. And did you have any kind of disabilities
7 or anything that held you back a little bit?

8 A Yes.

9 Q Okay. Now Yasmin, when you got in the car on
10 Turnpike Road can you tell the judge and everybody
11 else in here what happened?

12 A Turnpike Road we sat in the car and so Damyon
13 Cotton was like, we're here and everything and it's
14 the time so. That time during that time, like, I
15 took my -- pull my phone out my pocket. He took it
16 and put in his pocket.

17 Q What were you going to do with your phone?

18 A I was going to make me a phone call.

19 Q But Yasmin, who were you going to call?

20 A Who was?

21 Q That's okay. After Damyon took your phone what
22 happened next?

23 A After Damyon Cotton took my phone that when he
24 forced me to suck his penis, take off my pants. He
25 kneel down in the seat and tried to take off my

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- 1 pants.
- 2 Q Let me stop you right there. Where were y'all
- 3 when he was trying to take off your pants?
- 4 A On Turnpike Road in the woods.
- 5 Q No, I mean, were you in his car?
- 6 A In the car.
- 7 Q Okay. And was he in the driver's seat?
- 8 A Yeah.
- 9 Q And were you in the passenger seat?
- 10 A Yeah.
- 11 Q Okay. And how can you show us how he was trying
- 12 to take your pants off?
- 13 A Like, he kneeled down in the seat.
- 14 Q Okay. And what was he saying?
- 15 A He was like, I was going to give him some.
- 16 Q What were you saying?
- 17 A I told him to stop.
- 18 Q Okay. Did you want to have sex with Danyon
- 19 Cotton?
- 20 A No, I didn't.
- 21 Q All right. What happened next?
- 22 A After that he couldn't, like, get the pants off
- 23 and so he went around the car and he did it hisself.
- 24 Q All right. What do you mean he went around the
- 25 car?

SW - Y. CUSACK - DIRECT

1 A Like, he got to the driver's side and went to my
2 side.
3 Q He got outside the car?
4 A Yes.
5 Q Okay. Then he opened your car door?
6 A Yeah.
7 Q And then what did he do?
8 A Then that when he dressing me out the car.
9 Q All right. And when he dragged you out the car
10 what did you tell him?
11 A I didn't want to do it, like, didn't want to have
12 sex.
13 Q And what did he say?
14 A That -- that I had to do it or whatever.
15 Q That what?
16 A That it was the time that I had to, like, give
17 him some 'cause like we were talking on the phone
18 about it.
19 Q Before that night had you ever seen him in real
20 life before?
21 A No, I haven't.
22 Q So all this took place over the phone?
23 A Yes.
24 Q All right. Now once he dragged you out of the
25 car on Turnpike Road, okay, did you try to tell him

SW - Y. CUSACK - DIRECT

1 anything or try to fight him off or try to run?
2 A I told him that I was pregnant.
3 Q And what else did you tell him?
4 A That I had herpes.
5 Q Okay. And what did he say about that?
6 A He was like, okay, we'll fix that. Then he put
7 on a condom and that when we had vaginal sex.
8 Q All right. And did you want to have vaginal sex
9 with Damyon Cotton?
10 A No, I didn't.
11 Q Well, why didn't you run away?
12 A 'Cause I didn't know where to go and we was in
13 the woods.
14 Q All right. And after he finished having sex with
15 you what happened next?
16 A He throw the condom in the woods and then that
17 when he hand me my pants and clothes.
18 Q He handed them back to you?
19 A Yes.
20 Q And what did y'all do then?
21 A We got in the car and then on the way to the
22 house he was telling me don't call the police, and
23 that he was sorry and he loved me, and he told me to
24 call him when I get home when I get in the house or
25 the night or whatever.

SW - Y. CUSACK - DIRECT

- 1 Q And what were you thinking?
- 2 A Nothing, I just was sitting down crying.
- 3 Q All right. And then did he take you home, or
- 4 where did he take you?
- 5 A He take me home, dropped me off.
- 6 Q And what did you do when he dropped you off?
- 7 A I got out the car. By him pulling my hair I had
- 8 like a bow in my hair, it broke, so the other piece
- 9 I dropped on the ground, and I bent down and picked
- 10 it up. Then I walked around the car and got the
- 11 license plate number.
- 12 Q Okay. And when you walked in your door that
- 13 night what did you do?
- 14 A I ran to my mom and told her that I been raped.
- 15 Q And what happened next?
- 16 A Then that when my mother called the police and
- 17 the ambulance, gave them license plate numbers and
- 18 everything.
- 19 Q All right. Now at any time that night did you
- 20 want to have sex with Damyon Cotton?
- 21 A No, I didn't.
- 22 Q All right. And what type of sex did he ask you
- 23 for first?
- 24 A Oral sex.
- 25 Q And then what type of sex did y'all have?

SW - Y. CUSACK - CROSS

- 1 A Vaginal sex.
- 2 Q Okay. And was it nighttime or daytime outside?
- 3 A Nighttime.
- 4 Q And had you ever been down Turnpike Road before?
- 5 A No, I haven't.
- 6 Q Can you drive a car?
- 7 A No.
- 8 Q Have you ever driven a car before?
- 9 A No.
- 10 Q All right. Yasmin, how old were you when that
- 11 happened?
- 12 A I was 18.
- 13 Q All right. And before the sex were there any
- 14 type of threats, or Damyon Cotton say anything to
- 15 you before the oral sex?
- 16 A Like he threatened me with a gun.
- 17 Q What -- how do you mean he did that?
- 18 A Like, he was like, he was gonna take a gun out
- 19 whatever if I didn't cooperate.
- 20 Q Did you ever see a gun though?
- 21 A No.
- 22 Q He just told you he had one?
- 23 A Yeah.
- 24 Q All right.
- 25 MR. HOLT: Judge, I think that will be

SW - Y. CUSACK - CROSS

1 enough for this for purposes of this motion.

2 THE COURT: All right, ma'am, now the
3 lawyer for the other side is going to ask you some
4 questions, okay?

5 THE WITNESS: Okay.

6 THE COURT: Cross-examination?

7 MS. WISE: One moment, Your Honor please.

8 THE COURT: Okay.

9 **CROSS-EXAMINATION**

10 BY MS. WISE:

11 Q Ms. Cusack, you testified that you met Damyon
12 Cotton on a chat line?

13 A Yes.

14 Q Can you explain to the Court a little bit more
15 about how you ended up on this chat line.

16 A A chat line is like you make a phone call.

17 Q Okay.

18 A And you press numbers like if you want to, like,
19 talk to the guys or girls it tell you to press one
20 or two. After you press one or two it asks you for
21 a greeting and you describe yourself or whatever.

22 Q Okay. And who did you say you met Damyon through
23 on this chat line, one of your friends?

24 A First we met on the chat line, then we end up
25 meeting through my friend of mine's, Tanzy (ph).

SW - Y. CUSACK - REDIRECT

- 1 Q Okay.
- 2 A Tanzy.
- 3 Q And you testified that the night of February 1st,
- 4 2013 Damyon picked you up at your house, correct?
- 5 A Yes.
- 6 Q And y'all drove to the movie theater?
- 7 A Yes.
- 8 Q And you testified that he made you suck his penis
- 9 in the movie theater parking lot?
- 10 A He forced.
- 11 Q He forced you? Okay. And then you testified
- 12 that y'all drove to K-mart and he paid you to suck
- 13 his penis in K-mart's parking lot?
- 14 A He forced me.
- 15 Q Okay, he forced you?
- 16 A Yes.
- 17 Q Okay. And you said you've never driven before,
- 18 correct?
- 19 A No, I haven't.
- 20 Q How did you know you were on Turnpike Road?
- 21 A 'Cause when I went to the hospital, whatever, the
- 22 police and them speak the name of the road.
- 23 Q Okay. And you testified that you had never seen
- 24 Damyon Cotton in person before, correct?
- 25 A Correct.

SW - Minor - DIRECT

1 Q Okay.

2 MS. WISE: One moment please, Your Honor.

3 No further questions for this witness.

4 Thank you, Ms. Cusack.

5 THE COURT: Redirect?

6 MR. HOLT: Just briefly, Judge.

7 **REDIRECT EXAMINATION**

8 BY MR. HOLT:

9 Q Yasmin, how did you describe to the police the
10 roads that you were on?

11 A I was — we was on Hoffmeyer Road, made a right.
12 After that right you pass by the red and white
13 church. After you pass the red and white church we
14 made like a left.

15 Q What was there when you made the left?

16 A The store.

17 Q Okay, thank you. Yasmin, that's it.

18 THE COURT: All right, ma'am, you may step
19 down. Please watch your step as you're leaving the
20 chair there. And ---

21 MR. HOLT: She has to go back, I believe,
22 would be the procedure I believe.

23 THE COURT: We'll let you go back to the
24 jury room, okay?

25 MR. HOLT: And then, but can you get Ms.

SW - Minor - DIRECT

1 Minor please. She's back there as well.

2 THE CLERK OF COURT: If you will come
3 stand right here, put your left hand on the Bible,
4 raise your right hand.

5 WHEREUPON,

6 Minor
7 having been duly sworn by the Clerk of Court,
8 testified as follows:

9 THE CLERK OF COURT: If you'll have a seat
10 right here.

11 **DIRECT EXAMINATION**

12 BY MR. HOLT:

13 Q Minor if you'd please give your whole name for
14 the jury and the Court.

15 A Minor

16 Q And where do you live?

17 A Florence, South Carolina.

18 Q And who do you live with?

19 A My grandmother.

20 Q And how old are you?

21 A Sixteen.

22 Q And how old were you in June of 2012?

23 A Fifteen.

24 Q All right. Now how did you know the defendant in
25 this case?

SW - Minor - DIRECT

1 A From Facebook.

2 Q Okay. Now has the defendant in this case ever
3 hurt you or harmed you in any way?

4 A Yes, sir.

5 Q Okay. And can you describe to us how that
6 happened?

7 A In June 2012 I made a status on Facebook saying
8 does anyone want to chill. And he liked my status
9 and we started messaging back and forth and he ---

10 Q Now let me stop you right there. Had you ever
11 seen him before?

12 A No, sir.

13 Q Okay, go ahead.

14 A And he came and picked me up from my friend's
15 house to take me home and his brother was in the
16 car, and he was like, would you ride with me to
17 Hartsville to take my brother home.

18 Q And who was saying this to you?

19 A Damyon.

20 Q Okay.

21 A And I said, yeah. And we rode to Hartsville to
22 take his brother home and I was in the back seat the
23 whole time until his brother got out and he started
24 like touching on me or whatever.

25 Q How was he touching on you if he was in the front

SW - Minor - DIRECT

1 seat and you were still in the back seat?

2 A I was sitting sort of diagonally toward him
3 behind his brother but where he could like reach
4 right there.

5 Q Okay.

6 A And then his brother got out the car and my phone
7 was dead so I asked him if he had a car charger and
8 he said no, but his homeboys did. So we went to his
9 homeboy's house and got out the car and went in.
10 Then when he came out he didn't have nothing. He
11 was like, it's down the street so ---

12 Q Slow down. We're not in any hurry to finish.
13 You don't have to talk so fast. The court reporter
14 has got to write it down with her fingers as you say
15 it. So he didn't have a car charger and then what
16 happened?

17 A He pulled into the driveway where a trailer and
18 there was a shed in the back; and he was like, I
19 could come in there and charge my phone, but I
20 didn't want to so I said no. So that's when he
21 was --- he asked me if I would give him some head.

22 Q Hold on a second. He wanted you to go into the
23 shed with him?

24 A Yes, sir.

25 Q Not the trailer?

SW - Minor - DIRECT

1 A Not the trailer.

2 Q Okay. What did you think about that?

3 A It was kind of sketchy.

4 Q Okay. And then what happened?

5 A He asked me if I want to give him some head and I
6 was like, no, like I told you before, I didn't want
7 to do nothing like that. So he was like, I drove
8 all the way to Florence to pick you up and you're
9 not going to give me no head. I was like, no. Then
10 he started like push my head down or whatever like
11 towards his lap and I started pulling away. He got
12 rougher and then that's when he, like, I started
13 screaming.

14 Q Hold on a second. Whose car were y'all in?

15 A Damyon's.

16 Q Okay. He was the one driving. You don't — do
17 you know who owned the car, the title, and all that?

18 A No, sir.

19 Q Just he was driving and you were in the back
20 seat?

21 A Well, I was in the front seat.

22 Q So when you stopped to get a charger at the shady
23 shed you got into the front seat?

24 A Yes, sir.

25 Q Okay, all right. Now where did y'all drive the

SW - Minor - DIRECT

1 car after that?

2 A To the shed.

3 Q After that?

4 A Oh, well he wasn't moving yet.

5 Q Okay. And then what happened?

6 A Like when he started getting rough with me I got
7 kind of scared so I started screaming or whatever
8 and then he got out the car and come over to the
9 passenger side; but it happened fast so I don't
10 really remember how he got there so fast but he
11 started hitting me in my ---

12 Q And what was he using to hit you?

13 A Just his fist.

14 Q Okay.

15 A And so I was scared so I was just like, I'll do
16 it, and he got back in the car and I gave him oral
17 sex. He started driving and I thought he was going
18 to take me home, but he pulled into this place that
19 was like a driveway but it wasn't a whole driveway.
20 It was surrounded by trees or whatever, and he was
21 like, take off your pants.

22 Q Did you know where you were?

23 A I know when him and his brother, who we dropped,
24 they said they was at Whitehall.

25 Q Okay.

SW - Minor - DIRECT

- 1 A I remember that. And then I took off my pants
2 and I got out the car, and he did it vaginally and
3 like in the anal area.
- 4 Q Was it daytime or nighttime?
- 5 A It was like 9:00 at night.
- 6 Q Okay. So was it dark outside?
- 7 A Yes, sir.
- 8 Q And did you know where you were?
- 9 A No, sir.
- 10 Q Could you see any homes or anything out in the
11 distance?
- 12 A No, sir.
- 13 Q Was there woods or fields near you?
- 14 A There was a corn field on the other side of the
15 street.
- 16 Q And what was on the other side?
- 17 A Where we were there was, just like it was like
18 trees like woods and like a half driveway.
- 19 Q Okay. Did he use a condom?
- 20 A Yes, sir.
- 21 Q And did you tell him anything to get him to stop?
- 22 A Well, I tried to tell him that I was on my period
23 at the time.
- 24 Q And what did he say about that?
- 25 A He didn't care.

SW - Minor - DIRECT

1 Q And after you told him he was -- you were on your
2 period, what did he do then?

3 A He just proceeded to tell me to take my pants off
4 and get out the car.

5 Q All right. And why did you take your pants off
6 and get out the car? Why didn't you go run away?

7 A 'Cause I was scared. I didn't know if he like
8 had a gun or something, like, I didn't know.

9 Q All right. And when you got outside in the rural
10 area that you didn't know, what happened then?

11 A He just started doing it. Like, he lifted me up
12 and put me on the hood and then just started.

13 Q And what did he say while that was going on?

14 A He asked me if it was rape. He asked me, like,
15 to call him names like daddy and stuff like that,
16 and he asked me if I wanted to have his kids.

17 Q All right.

18 A In my mind I was like, yeah, this is rape and
19 stuff like that; but like, I just told him what he
20 wanted to hear so he would just stop.

21 Q All right. And what happened after that?

22 A He finished and we got back in the car and he
23 started being nice like telling me he was sorry and
24 everything, he didn't mean to. I kind of felt like
25 he didn't mean to, and he took me to McIver and

SW - Minor - DIRECT

1 dropped me off 'cause I just didn't want to tell him
2 where I lived. I told him to drive to McIver, and I
3 walked home.

4 Q Why didn't you want him to know where you lived?

5 A 'Cause it just that night. So then he dropped me
6 off at McIver. When I walked home he -- I messaged
7 one of my friends and I told him what happened, and
8 he wanted me to tell my grandma so I messaged my
9 grandma and told her and we went to the hospital.

10 Q All right. So where did you say you met Damyon
11 Cotton again?

12 A Facebook.

13 Q At any time that night in June did you want to
14 have sex with Damyon Cotton?

15 A No, sir.

16 Q What was the first type of sex he asked you for?

17 A Oral.

18 Q And what was the second time of sex that he asked
19 you for?

20 A Vaginal.

21 Q All right. Did he threaten you in any way to get
22 the sex?

23 A He just like hit me and I guess scared me so I
24 felt like I had to.

25 Q Okay. And you claimed to be on your period. Is

SW - Minor - CROSS

1 that what you said earlier?

2 A Yes, sir.

3 Q And did that slow him down?

4 A No, sir.

5 Q And how fast did you say he got from the driver's
6 side outside the car to the outside of the passenger
7 side?

8 A Fast enough where I don't remember 'cause I just,
9 I don't know.

10 Q Was it nighttime or daytime when this happened?
11 Do you know about what time it was?

12 A It was about 9. He picked me up from my friend's
13 house about 8:30. About 9, 10.

14 Q Before that night had you ever seen him before?

15 A No, sir.

16 Q And when the police were investigating this did
17 they do a photo lineup?

18 A Yes, sir.

19 Q And who did you pick out at the photo lineup?

20 A Danyon Cotton.

21 Q And just let the record show that she did point
22 at the defendant when she said that. Minor answer
23 any questions that defense counsel may have, okay?

24 THE COURT: Cross-examination.

25 MS. WISE: Yes, sir.

SW - Minor - CROSS

CROSS-EXAMINATION

1

2 BY MS. WISE:

2

3 Q Minor you testified that Damyon and you
4 communicated over Facebook, correct?

3

5 A Yes, ma'am.

5

6 Q Is it true you contacted him?

6

7 A No, ma'am.

7

8 Q You did not contact him initially?

8

9 A No, ma'am.

9

10 Q Did you report that to the police you didn't
11 contact him initially?

10

12 A I just told them what happened.

12

13 Q Okay, 'cause the police reports said you
14 contacted him.

13

15 A Well, I made a status on Facebook where all my
16 friends see it who wanted to chill. He messaged me
17 and said that he wanted to chill.

15

18 Q Okay. Do you have a criminal record?

18

19 A Yes, ma'am.

19

20 Q What's your record?

20

21 A I'd rather not talk about my record.

21

22 Q Okay.

22

23 MR. HOLT: I'd just like to make an
24 objection, Judge. It's a juvenile record. It's
25 mostly just status offenses. I don't believe you

23

24

25

SW - Minor - CROSS

1 can get into it.

2 THE COURT: What do you say to that?

3 MS. WISE: Your Honor, I still believe
4 that it's relevant to the case at hand if she is a
5 juvenile. I think there could be issues with her
6 ---

7 THE WITNESS: I mean, we can talk about
8 it; but I don't think it has anything to do with
9 this, but sure, ask away.

10 THE COURT: Just a moment, ma'am. I'm
11 gonna sustain the objection, counsel, so please move
12 to another area.

13 MS. WISE: Thank you, Your Honor.

14 BY MS. WISE:

15 Q Can we walk through this one more time. You were
16 contacted on Facebook by Damyon, correct?

17 A Yes, ma'am.

18 Q Tell us again what happened.

19 A He messaged me on Facebook and was like, you want
20 to chill, and I said yeah. And I told him before he
21 got there I didn't want to do nothing like that
22 'cause, I mean, I just wanted to go ahead and make
23 that clear. I just really needed a ride. So he
24 came and picked me up and everything from my
25 friend's house. And then when we was in the car his

SW - Minor - CROSS

1 phone kept ringing. He was like, he needed to take
2 his brother home. He was like, you want to ride
3 with me to Hartsville to take my brother home and I
4 said yeah.

5 Q Okay. When did you tell someone that you had
6 been raped?

7 A When I got home.

8 Q And who did you tell, your grandmother?

9 A First I told my best friend Michael, and then
10 right after I told him he told me to tell my grandma
11 as soon as possible and I told my grandma.

12 Q And what happened after you told your grandma?

13 A She said we need to go to the hospital.

14 Q And what hospital did you go to?

15 A McLeod.

16 Q Did they inspect you and give you a physical
17 examination from top to bottom?

18 A Yes, sir.

19 Q Did they do a sexual assault kit?

20 A Yes, ma'am.

21 Q Did they do any other tests?

22 A I think they did like an STD test and stuff like
23 that.

24 Q Did they recommend you go to any counseling or
25 therapy?

SW - Minor - CROSS

- 1 A Yes, ma'am.
- 2 Q Did you go through that therapy immediately
- 3 afterwards?
- 4 A Yeah, I went to some kind of counseling.
- 5 Q When did you start?
- 6 A I don't remember. I know I only went like one
- 7 time and they videotaped it.
- 8 Q Do you remember getting the results of your
- 9 examination back saying all normal?
- 10 A No, I had an STD when I gave it back.
- 11 Q What was the STD?
- 12 A Chlamydia.
- 13 Q Okay. Were photographs taken of you?
- 14 A Yes, ma'am.
- 15 Q Okay. And you explained that you were punched.
- 16 Where were you punched at?
- 17 A Right here (indicating).
- 18 Q Which side of your face is that?
- 19 A I think it was on my right side. I had a black
- 20 eye and a busted lip.
- 21 Q Okay. You didn't tell law enforcement it was on
- 22 the left side of your face?
- 23 A They took a picture of it so I don't think I told
- 24 them what side. I think they just took the picture,
- 25 but I don't really remember.

SW - Minor - CROSS

1 Q Okay.

2 A I just know I had a black eye and busted lip.

3 Q And are you on Facebook a lot?

4 A Yes, ma'am.

5 Q You post a lot of pictures of yourself?

6 A Yes, ma'am.

7 MS. WISE: Your Honor, if I might approach
8 the witness and can I show Mr. Holt first what I
9 wanted to show her.

10 THE COURT: You may.

11 MS. WISE: Just some pictures from her
12 Facebook accounts.

13 MR. HOLT: Judge, I'm going to object to
14 all these pictures, and I think I'm just going to go
15 into rape shield law. The first picture is her
16 ankle monitor when like we talked about earlier,
17 status offenses of runaway, she was put on a monitor
18 in juvenile court. I'd object to that. There's a
19 picture on here that says if you love your sister, I
20 would object to that. There's a picture on here and
21 her in daisy dukes; I would object to that. There's
22 also a picture on here of her sticking the middle
23 finger and using the F word. And you know, I object
24 Judge, mainly because they are -- they prejudice her
25 on something that's completely off topic. But I'd

SW - Minor - CROSS

1 also like to make Your Honor aware that every 15, 16
2 year old girl has these same photos on Facebook.

3 THE COURT: All right, I will overrule
4 your objection. Again, this is an in-camera hearing
5 that's not -- this doesn't have a jury impact to it.
6 Counsel is allowed to question credibility or
7 believability of a witness, and the Court will
8 permit this for you to proceed in this fashion. You
9 want to mark these, counsel?

10 MS. WISE: I can, Your Honor. I was
11 actually just gonna use them as exhibits, not
12 necessarily in as evidence.

13 THE COURT: That's fine. If I'm gonna see
14 them you need to mark them as evidence. If you
15 don't intend me to see them, then you would not mark
16 them.

17 MS. WISE: I can mark them then, Judge.

18 (WHEREUPON, Defendant Exhibit No. 1 was
19 marked for identification only.)

20 BY MS. WISE:

21 Q Minor how often would you say you're on
22 Facebook?

23 A Every day.

24 Q Get on there a good amount of time?

25 A Yes, ma'am.

SW - Minor - CROSS

- 1 Q You post stuff on there every day?
- 2 A Yes, ma'am.
- 3 Q In fact, we can probably get on there right now
- 4 and see your posts?
- 5 A Yes, ma'am.
- 6 Q Did you post a picture of you holding what looks
- 7 to be a marijuana plant in the camera?
- 8 A Yes, ma'am.
- 9 Q Okay. Let's just walk through these pictures.
- 10 This first one, is that you in your ankle bracelet?
- 11 A Yes, ma'am.
- 12 Q Is this you posing for the camera?
- 13 A Yes, ma'am.
- 14 Q Is this you sticking up your middle finger?
- 15 A Yes, ma'am. That's 2011 by the way.
- 16 Q So 2011. And this is you in 2012 saying, fuck
- 17 you and love you, sticking up the middle finger?
- 18 A Yes, ma'am, but that's not me.
- 19 Q And who is that?
- 20 A That's some boy from Facebook that made that
- 21 picture.
- 22 Q Okay. And Minor the night that you claim
- 23 this happened did you tell law enforcement
- 24 everything that you allege happened to you?
- 25 A Yes, ma'am.

1 Q And you didn't tell them anything that was
2 inaccurate or false?

3 A Yes, ma'am.

4 Q So there would be no reason for anything to be
5 included in law enforcement's record that is untrue?

6 A Yes, ma'am.

7 MR. HOLT: Objection, Judge, just that --
8 and I realize it's in-camera; but regardless of what
9 she told law enforcement, if they put something in
10 there that was wrong, how would she have, number
11 one, any idea in the world what law enforcement puts
12 in their case packet.

13 THE COURT: All right, Court's aware of
14 that. I'm gonna overrule it from an objection
15 standpoint and just as a finder of fact here will be
16 able to use that discernment in the Court's
17 analysis. Anything further now with regard to
18 cross-examination?

19 MS. WISE: I believe that's it, Your
20 Honor. Thank you.

21 THE COURT: Is there redirect?

22 MR. HOLT: There is none, Your Honor.

23 THE COURT: All right. Ms. Wise, you
24 marked an exhibit. You wish for the Court to see
25 that?

1 MS. WISE: I apologize, thank you.

2 THE COURT: Ma'am, you may step down.

3 Your questioning is finished. Well, let me ask you
4 this, are you in school now?

5 THE WITNESS: Yes, sir.

6 THE COURT: Where do you go to school now?

7 THE WITNESS: Darlington High School.

8 THE COURT: You do? You're out of school
9 today?

10 THE WITNESS: Yes, sir.

11 THE COURT: You still live with your
12 grandmother?

13 THE WITNESS: Yes, sir.

14 THE COURT: Is she here today?

15 THE WITNESS: Yes, sir.

16 THE COURT: She is? Where is she in the
17 courtroom?

18 THE WITNESS: Back there.

19 THE COURT: Back there, okay, very good.
20 Thank you. I'm gonna let you step down.

21 Any objection to release of this witness?

22 MR. HOLT: No, sir, Your Honor.

23 THE COURT: Ma'am, you're actually free to
24 go. You and your grandmother are free to leave.

25 MR. HOLT: I just need to talk to her when

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1 this is over about her scheduling, if she can come
2 tomorrow. I don't have a reliable phone number to
3 get her grandmother. If she can —

4 THE COURT: Why don't you go back there
5 and talk to them about this please. If you wish to
6 hold them here, that's fine.

7 (Pause.)

8 THE COURT: All right. Are there
9 additional witnesses for the State?

10 MR. HOLT: There are none, Your Honor,
11 just my argument.

12 THE COURT: Will there be witnesses from
13 the Defense?

14 MS. WISE: There are, Your Honor. I'd
15 like to call Damyon Cotton.

16 THE COURT: All right. Mr. Cotton, please
17 come to the stand. Please take the oath of a
18 witness.

19 THE CLERK OF COURT: If you will place
20 your left hand on the Bible, raise your right hand.
21 WHEREUPON,

22 **DAMYON M. COTTON,**
23 having been duly sworn by the Clerk of Court,
24 testified as follows:

25 THE CLERK OF COURT: If you'll have a seat

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1 in that chair. Slide up to the mic

2 THE COURT: Counsel, before you begin let
3 me speak to Mr. Cotton a moment.

4 Mr. Cotton, I want to make sure that you
5 understand that this hearing is not for purposes of
6 the jury tomorrow. In other words, what we're
7 discussing here is not gonna be provided to the
8 jury. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right, of course, the
11 reason for that is so you can answer freely and not
12 worry that something you said in here may be used
13 against you. And do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. So also you have
16 the right to remain silent in this proceeding. You
17 do not have to testify in the trial or in this
18 proceeding. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And have you talked with your
21 lawyer about the right to remain silent?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And tell me who is it that
24 made the decision for you to testify in here today?

25 THE DEFENDANT: I did.

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1 THE COURT: Has anybody tried to force you
2 one way or the other to do that?

3 THE DEFENDANT: No, sir.

4 THE COURT: So you're telling me this is
5 your voluntary decision you have made to testify in
6 this hearing?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right then, please answer
9 any questions that counsel may have for you.

10 MS. WISE: Thank you, Your Honor.

11 **DIRECT EXAMINATION**

12 BY MS. WISE:

13 Q Mr. Cotton, please state your full name for the
14 record?

15 A Danyon Marquis Cotton.

16 Q How old are you?

17 A 21.

18 Q Where do you live at?

19 A Hartsville, South Carolina.

20 Q Okay. You've been out at the detention center on
21 this charge over a year now, correct?

22 A Yes, ma'am.

23 Q Ready for this trial; aren't you?

24 A Yes, ma'am.

25 Q Okay. Were you present in the courtroom for

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1 Ms. Yasmin Cusack's testimony?

2 A Yes, ma'am.

3 Q You heard everything that she had to say against
4 you?

5 A Yes, ma'am.

6 Q Is what she said true?

7 A No, ma'am.

8 Q Would you begin briefly explaining for the Court
9 where your and Yasmin's relationship began?

10 A It was around October in 2012. I met her through
11 a friend of mine named Marvin, and we started
12 communicating through the phone.

13 Q Okay.

14 A So we started a relationship and then it only
15 lasted like two or three months. So during this
16 time we was like certain confrontation but over the
17 phone made, so it never got any further till up till
18 when I was arrested for these so-called allegations
19 that I'm before you today on.

20 Q And you said -- would you say that you and
21 Ms. Cusack were in a relationship?

22 A Yes, ma'am.

23 Q Okay. And you said that you met her through a
24 friend, Marvin?

25 A Yes, ma'am.

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- 1 Q Who did you — did you believe Ms. Cusack to
2 actually be Yasmin Cusack?
- 3 A No, ma'am.
- 4 Q Who did she tell you she was?
- 5 A She told her name was Crystal Johnson.
- 6 Q Okay. And where did she tell you she was from?
- 7 A She told me she was from Florence.
- 8 Q Okay. And you mentioned that you started having
9 some confrontations over the phone. Explain to the
10 Court what you mean by that.
- 11 A Well, I was with my cousin one day and he was
12 showing me his web site with different women on it
13 so I asked him what was it. He told me the name was
14 Backpages.
- 15 Q Okay.
- 16 A So I told him I need to go home and I went on by
17 myself to check this out and see. I thought it was
18 like Facebook but it wasn't.
- 19 Q What is it?
- 20 A It's escort service.
- 21 Q Okay.
- 22 A So I get home and I'm checking it out and I see a
23 picture of what appeared to be Crystal at the time.
- 24 Q Okay.
- 25 A So I look through my phone and I see a picture of

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1 her and I'm enlarging the picture online, and I'm
2 like, it's the same person. So I confronted her
3 about it and she gets like upset with me 'cause I'm
4 asking her questions like, why you asking me stuff
5 like that, that ain't, that ain't got nothing to do
6 with you. I'm like, it is what it is, you're wrong,
7 so I ended the conversation on that note.

8 Q Okay. What happened next?

9 A Well, I was just getting off work early one day
10 and I went to my cousin Calvin's house.

11 Q Do you remember what day this was?

12 A This was a Friday now.

13 Q Okay.

14 A So I got off work at 12:30 and my car was not
15 working during this time so I rode with my cousin.
16 He dropped me off home. From home I went to
17 Calvin's house and we sat around playing video games
18 for a while, played cards. And I have a dog at
19 Calvin's house and I told him I'll be back. So I
20 got the dog and I walked to my house with the dog.
21 So I went home, did what I had to do, decided to go
22 back. So when I went back to Calvin's house there
23 was a text on my phone that said call me.

24 Q And who was the text from?

25 A It was from Crystal. So I said, okay, I called

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1 the number back and after three or four rings the
2 phone answers, and I hear what like apparent to be
3 moaning in the background so I hang up. I thought I
4 dialed the wrong number, called one of my friends.
5 So I go through my contacts and I look at the number
6 again, and my phone says recently dialed. So then
7 my phone rings and it's her; and I'm like, hello.
8 And she was like, um, I was busy doing something;
9 then out of nowhere this guy was in the background
10 like, how you gonna be on the phone with somebody
11 else and I'm paying for my time. So I was like,
12 what? And he was like, who is it, who is it. So
13 I'm like, you know what, don't text me, don't call
14 me, we finished. So I hung up the phone.

15 And I looked at Calvin and told him what
16 happened, and like five minutes later this guy
17 started texting my phone talking about don't be
18 calling my girl when she with me. If you're gonna
19 try to get your time, pay for your time like I pay
20 for mine. Like, I text him back after he was
21 threatening me. I told him it is what it is;
22 however, it's not that serious. So after that
23 conversation I never got anymore texts or phone
24 calls until going into February 1st that night when
25 I was home I got a text from a number that said if

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1 you want to play games I can play games just as
2 well.

3 Q And whose number was it?

4 A This was Crystal's number at the time.

5 Q Okay.

6 A And I simply text back, it is what it is, do what
7 you have to do. And from there the allegations were
8 brought to me one day when I got off work.

9 Q Okay. Now going back to what you said about
10 being on backpages.com, you claim that you saw who
11 you thought was Crystal Johnson on backpages,
12 correct?

13 A Yes, ma'am.

14 Q And what was the name on her profile?

15 A Crystal lollipop.

16 Q Okay. And then going to this February the 1st
17 date, were you with who you thought was Crystal that
18 night at any point?

19 A No, ma'am.

20 Q Never once?

21 A No, ma'am.

22 Q When did you learn what Crystal's real name is?

23 A When I was arrested and brought to the detention
24 center and when they served me my warrants it said
25 Yasmin Cusack and I'm like, I don't know who this

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1 is. And that's when apparently this is who turned
2 out to be Crystal Johnson.

3 Q Okay. And the young lady we saw testifying here
4 first is who you thought was Crystal Johnson?

5 A Yes, ma'am.

6 Q Okay. Did you ever touch Yasmin Cusack in any
7 way, shape, or form on February 1st, 2013?

8 A No, ma'am.

9 Q Sexually?

10 A No, ma'am.

11 Q Physically?

12 A No, ma'am.

13 Q Did you threaten her any way, shape, or form?

14 A No, ma'am.

15 Q Did you use any force against her?

16 A No, ma'am.

17 Q Was your car in working order on February 1st?

18 A No, ma'am.

19 Q Okay. Now going to the testimony we heard from
20 Ms. **Minor** you were in the courtroom for that,
21 correct?

22 A Yes, ma'am.

23 Q You heard all the allegations she made against
24 you, correct?

25 A Yes, ma'am.

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1 Q Was what she said true?

2 A No, ma'am.

3 Q Explain to the Court please how you came to know

4 **Minor**

5 A I was on Facebook one day and I was doing what is
6 called a Q and A, just question and answer. So I
7 had got a rate from a buddy of mine.

8 Q I'm sorry, you said a rate?

9 A Yes, ma'am.

10 Q Explain to the Court what that is.

11 A Where people rate you on a scale of one to ten of
12 being cool and if they know you.

13 Q So it's like a game on Facebook?

14 A Yes, ma'am.

15 Q Okay.

16 A So a buddy of mine rated me ten and was like, I
17 was a cool person. So I commented back and I told
18 him, yeah, he's a cool person, I know him from
19 school. So **Minor** commented on my page and was like,
20 could you help me. So I looked at the comment and I
21 just hit yeah. So I got off Facebook this day. A
22 day or two later I got back on my Facebook and had a
23 message in my in-box, and she was like, can I help
24 her with something. So I was like, I don't mind.
25 Around this time my friend DJ, his brother had died

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1 and he asked me, you know, what was I doing. I told
2 him I'd come to the setting up and sit with him for
3 a while. So during this time I called my brother
4 and asked him would he go with me so he was like,
5 yeah, he all for it. But before we left ---
6 Q And what's your brother's name?
7 A His name is Laquan (ph).
8 Q Okay.
9 A But his step-mom -- well, my step-mom was like I
10 had to have him home before 10:00 and I told her I
11 would. So when we left and I was like, hold up
12 before we go to the setting up, let me go handle
13 this right quick. So we went to this store, it's
14 called a Sav-way, and I met **Minor** there. And I was
15 like, okay, what's up. She was like, I want you to
16 take me somewhere. I told her, okay, I don't mind.
17 So before we left she told me to go to this house
18 and it was around a curve. It was a big house. So
19 she got out, said wait right here. So she went and
20 got this bag full of clothes. And when she opened
21 the door try to get in the car with the clothes in
22 her hand and hit her eye on the corner of the door.
23 And my brother was like, sound like that hurt. I
24 looked back and I said are you okay. She said,
25 yeah, I'm fine. So I cut the interior light on and

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1 I was like, are you sure, it's getting puffy, it
2 might get swollen, it might leave a mark. She was
3 like, she was okay.

4 So during this time I'm on the way to take
5 my brother back home now. So I'm like, okay, I'm
6 about to take my brother home, where you need to go.
7 She said I'd rather you take your brother home, then
8 drop me off. So as we were going to Hartsville I
9 got my brother home at ten. I asked her where she
10 needed to go. She said she need to go to a friend's
11 house because she was having trouble at home, and
12 she was, like, one of her friend's house. I said,
13 well, I understand that.

14 So we get to the Verizon at the crossroad
15 by the Verizon and McDonalds and she tells me can I
16 use your phone, and I told her yeah. So she got on
17 what is called MocoSpace; it's like Facebook. And
18 she was messaging her friend I guess. So we drove
19 to this person's house and she said this person said
20 they'll be here in 10, 15 minutes, could you wait
21 for me for a minute. I told her, yeah, I don't have
22 a problem. So during this time I smoked a cigarette
23 and just looking out the window and stuff. So I
24 guess the person said they were right down the road
25 so she told me I can go ahead and leave. So I said

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1 okay. I asked her, was she cool; she said, yeah.
2 So I left. While I was leaving there was a car
3 coming in so I expected it was her friend. I went
4 to McDonalds and I grabbed something to eat, saw a
5 friend in there I spoke some for a minute, and I
6 came home. And that was the last I heard of
7 anything until I was leaving from Calvin's house one
8 day from walking the dog and I seen my little
9 cousin; and he said, did you -- when is the last
10 time you been on Facebook? I said well, like maybe
11 two or three days ago. He said, well this girl name
12 Minor from Florence got a picture of you on Facebook
13 saying you beat her up and raped her and all this.
14 I'm like, really? So when I get home I get on
15 Facebook and there it is, a mug shot of me from 2011
16 with comments and like posts up under it saying I
17 did this; and people were like commenting on my page
18 threatening me. I'm like, okay, I don't even know
19 what y'all talking about but I guess I'm gonna sit
20 here and find out. So when I was arrested for the
21 Miss Cusack case, they brought me warrants for Miss
22 Minor too.

23 Q At the same time?

24 A Yes, ma'am.

25 Q Okay, and let's go back again. You said that

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1 Minor contacted you on Facebook.

2 A Yes, ma'am.

3 Q How was she able to get your cell phone number?

4 A 'Cause when you have a Facebook and get on your
5 Facebook for your own, your number, email address,
6 fax, g-mail, all that will be in your ---

7 Q Okay, did you know how old Minor was?

8 A She told me she was 18.

9 Q Okay. Did you have any reason not to believe
10 her?

11 A No, ma'am.

12 Q Okay.

13 MS. WISE: One moment please, Your Honor.

14 THE COURT: Thank you.

15 BY MS. WISE:

16 Q Did you ever touch Minor inappropriately on the
17 night of June 23rd, 2012?

18 A No, ma'am.

19 Q Sexually?

20 A No, ma'am.

21 Q Physically?

22 A No, ma'am.

23 Q Did you use any force on her?

24 A No, ma'am.

25 Q Did you threaten her in any way, shape, or form?

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1 A No, ma'am.

2 Q When did you first find out that she had made
3 these allegations against you?

4 A When I was on Facebook.

5 Q Okay. Did you receive or were you on the phone
6 with anybody who knew **Minor** that had any knowledge of
7 what **Minor** was saying?

8 A Yes, ma'am.

9 Q Explain to the Court that.

10 A Well, after this, after I got home from this
11 apparent night I was on the phone with a friend of
12 mine.

13 Q What was your friend's name?

14 A Her name is Casey.

15 Q Okay.

16 A So she was like on Facebook and then she was
17 like, oh my god, **Minor** just got beat up by some guy.
18 And she was, like, let me call you back. So I said
19 okay. I hung up and started watching television.
20 She called me back like 15 minutes later. She said
21 she called Tory's phone but she didn't get an
22 answer. She was like, and she probably lying thing
23 because she's known to lie.

24 Q Okay. And did anything strike you out of the
25 ordinary by **Minor** contacting you on Facebook and

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1 asking you for a ride?

2 A Me, no, ma'am.

3 Q It wasn't odd to you or anything?

4 A I mean, it was kind of like awkward at first
5 because we like, she add me as a friend like when
6 people add I just accept them as friend. I don't
7 really conversate with them or like that.

8 Q Okay. No further questions at this time, Your
9 Honor. If you will answer any questions Mr. Holt
10 has for you.

11 A Yes, ma'am.

12 THE COURT: Cross-examination.

13 MR. HOLT: Thank you, Judge.

14 **CROSS-EXAMINATION**

15 BY MR. HOLT:

16 Q You said she had a 2011 mug shot they were
17 commenting on. Where is that mug shot? Where did
18 it come from?

19 A It came from similar allegations that were made.

20 Q Okay. So you -- this isn't the first time
21 somebody accused you of rape?

22 A No, sir.

23 Q All right. Who were the other two before this?

24 A Nyquira Graham and Caprena Pate.

25 Q Are you related to either one of them?

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- 1 A Yes, sir.
- 2 Q One or two or both?
- 3 A Both.
- 4 Q Okay. And did they press those charges against
- 5 you?
- 6 A Yes, sir.
- 7 Q All right. Whatever happened on them charges?
- 8 A After I was served warrants at the same time for
- 9 both charges I never heard anything about the case.
- 10 Q All right. Now you said you were dating Yasmin
- 11 or who you call Crystal Lollipop for about three
- 12 months?
- 13 A Yes, sir.
- 14 Q All right, can you tell us her birthday?
- 15 A No, sir.
- 16 Q How about the birthday she gave you under this
- 17 nickname?
- 18 A She was -- she told me she was born on September
- 19 1st.
- 20 Q Okay. How about her phone number, did you
- 21 remember what that was?
- 22 A No, sir.
- 23 Q How about her address?
- 24 A No, sir.
- 25 Q How about her age?

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1 A She told me during this time she was 18.

2 Q Okay. How about her mother's name?

3 A No, sir.

4 Q Okay. How long did y'all date?

5 A Three months.

6 Q Okay. Don't you think it's odd that if you say
7 you were dating three months you don't know any of
8 those things about her?

9 A No, sir.

10 Q Okay. You say you never touched Yasmin?

11 A No, sir.

12 Q How can you explain your touch DNA on her
13 clothes?

14 A Explain...

15 Q No, if I tell you during this trial that's coming'
16 up and I put scientists on that witness stand that
17 say, I have Damyon Cotton's DNA and they're on pants
18 that belong to Yasmin, how do you explain that?

19 A Well, first of all, it was never -- I heard she
20 said she never saw me before any of this. That was
21 a lie. I was going to the store for my mom one day
22 and she contact me, told me she was in Hartsville.
23 She said she was at her aunt's house so she asked me
24 could she see me to see if I really looked like what
25 my picture look like. I told her I didn't have a

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1 problem with that. So I go on the south side of
2 town and she's at this house and she's like, get
3 out, and I told her no because it was like three or
4 four guys there, plus like two fem-- two women
5 outside. I told her I'm not getting out. She came
6 to the car and we talked for maybe five, ten
7 minutes. And I gave her a hug through the window
8 and that was the last I ever heard.

9 Q About what date was this?

10 A This was around maybe going into January.

11 Q All right. Do you think touch DNA will last on
12 clothes for a month?

13 A If you don't wash it, yeah.

14 Q May be, I don't know. Now what did **Minor** say she
15 needed help with?

16 A She never said. It -- the conversation actually
17 didn't hit till I asked her where she needed to go
18 and she said she was having problems with her mom
19 and she needed to go to a friend's house for a while
20 so --

21 Q She wanted a ride?

22 A Yes, sir.

23 Q So when she was testifying about that on the
24 stand she wasn't lying?

25 A No, sir.

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1 Q All right. Now how many times did you and Yasmin
2 see each other?

3 A Only once.

4 Q Okay. And you claim that you saw her on
5 Backpages?

6 A Yes, sir.

7 Q How long were you charged with these allegations?

8 A February 1st, 2012. Well, '13 actually.

9 Q Do you have any pictures from Backpages?

10 A No, sir, I don't have my phone.

11 Q All right. So when you go through a year getting
12 ready for trial, it never occurred to you that maybe
13 you could get those pictures off that internet that
14 prove your entire story. Everything could be proven
15 if you had just taken pictures. Did your phone take
16 screen shots?

17 A No, sir.

18 Q Okay. Did your computer take screen shots?

19 A I never used a computer for it.

20 Q All right, did you ever see the pictures on
21 Backpages?

22 A Yes, sir.

23 Q Why didn't you call Backpages and get them to
24 send you some printed out copies?

25 A Because you can't do that.

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1 Q Okay. You can't notify web sites and get any
2 information off of them?

3 A Not that I know of.

4 Q Okay. Did you ever talk with your lawyer about
5 possibly subpoenaing those records?

6 A No, sir.

7 Q Okay. Did you ever notice that Yasmin was a
8 little bit slower than normal girls?

9 A No, sir.

10 Q Okay. So what your testimony is here today is
11 that the young woman that got up here -- it was
12 probably obvious to everybody in the courtroom that
13 she wasn't quite right -- she's a professional
14 prostitute that put herself on the website that
15 ensnarled you in no less than your fourth rape case,
16 then she procured your DNA from a month previously
17 at a chance encounter, you know, she's smart enough
18 to do all that. That's your testimony here today?

19 A Yes, sir.

20 Q Seriously?

21 A Yes, sir.

22 MS. WISE: Your Honor, I'm gonna object to
23 badgering the witness. Two of these witnesses in
24 these alleged rape cases are not present. We have
25 no evidence of any rape whatsoever, and I don't

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1 think this is appropriate.

2 THE COURT: All right. I'm gonna overrule
3 your objection. Again, the Court is sitting as the
4 fact finder and has some understanding of the
5 allegations, and I'm gonna overrule your objection.

6 MS. WISE: Okay.

7 BY MR. HOLT:

8 Q Let me ask you something, do you remember sending
9 my office a letter in March?

10 A Yes, sir.

11 Q And what would have been the gist of that letter?

12 A Because during the day of February 13th when I
13 was being supposedly questioned, they asked me do I
14 mind going to be questioned; I told them no. They
15 did not mirandize me from the beginning.

16 Q All right. Is it fair to say that in small
17 handwriting over an entire page of paper you talked
18 about how you were not mirandized?

19 A Yes, sir.

20 Q Did you ever once bring up Backpages?

21 A No, sir.

22 Q Did you ever once bring up your alibi defense?

23 A No, sir.

24 Q Don't you think that a normal person who had
25 spent six months in jail would have been screaming

1 at the top of their lungs I have an alibi, I have
2 Backpages, can you please get me pictures off
3 Backpages that prove my story?

4 A No, sir.

5 Q Don't you think that the average person would
6 think it's far more credible that what you did is in
7 between that six months when you realize mirandizing
8 wasn't going to get you out, you fabricated a
9 completely other line of thought?

10 A No, sir.

11 Q But just answer me this, why would you not write
12 in that one page letter anything about your alibi or
13 the Back Pages story?

14 A Because actually, I didn't think this would make
15 it in far.

16 Q Okay. Is it fair to say that you didn't think it
17 would make it this far because when it was in your
18 family you could quash it?

19 A No, sir.

20 Q Okay. That's how it looks. Now — I think
21 that's about all the questions I got, Judge.

22 THE COURT: Redirect?

23 MS. WISE: Nothing further, Your Honor.

24 THE COURT: All right, sir, I'm gonna let
25 you step down and return to your table please.

1 Watch your step as you exit that chair.

2 Are there further witnesses for Defense?

3 MS. WISE: No other witnesses.

4 THE COURT: All right. Then I'll be glad
5 to hear from you both in closing analysis of what
6 we've heard today.

7 Mr. Holt, you wish to go first?

8 MR. HOLT: Yes, sir, Your Honor. Judge,
9 just briefly, you probably noticed a whole lot
10 better than I, you and Ms. Wise both, 404(b),
11 evidence of other crimes, wrongs, or acts is not
12 admissible to prove the character of a person in
13 order to show action and conformity therewith. It
14 may, however, be admissible to show, motive,
15 identity, the existence of a common scheme or plan,
16 the absence of mistake or accident, and intent.
17 Judge, I'm not gonna go through the 150 cases that
18 me and Ms. Wise have probably printed out and
19 exchanged over the last couple of weeks. What I am
20 gonna do, and I would appreciate it if you would
21 look at the State versus Atieh. I printed you and
22 Ms. Wise both a copy off. And Judge, essentially I
23 think two mat-- the two cases that matter the most
24 to the issue at hand here are probably Wallace and
25 Tutton. I think Atieh does a really good job of

1 describing both of them. And I think what Atieh
2 does, the best job in actually giving us a rule to
3 go by as opposed to you kind of see a flip flop a
4 lot in a lot of older cases. Atieh owned two
5 Subways in the upper part of the state, four women,
6 some current, some not current employees who were no
7 relation to each other, age 15, 16, 17, and 18 sued
8 him. They wanted -- not sued, they went to trial
9 under assault charges. The evidence was allowed and
10 the supreme court upheld it. All those women had
11 several things in common. And I guess what I'll do
12 now is just go through my common scheme of plan
13 exception, Judge, that I'm asking the Court for.

14 Using Atieh as an example, and what Atieh
15 will articulate is five guidelines that the court
16 can use which is the age of the victims, the
17 relationships between the victims and the
18 perpetrator, the location of abuse, the use of
19 coercion or threats, and the manner of occurrence.
20 Now these are just guidelines, Judge. There's, you
21 know, the case law now that you see in Atieh is that
22 you don't have to consider everything to be an exact
23 copy of each other. These are just things you got.
24 Here in the case at hand, all the victims shared a
25 similar relationship with the defendant Damyon

1 Cotton. In fact, they were both female
2 acquaintances that he met for the first time. They
3 were all picked out by the use of social media. A
4 chat line was used for Yasmin. Facebook was used
5 for **Minor** All victims were similar in age. I think
6 Yasmin would have been 18. **Minor** would have been 15.
7 They're both young teenage girls, Judge. I think
8 that's the same demographic. All assaults were
9 committed after the defendant had driven off with
10 the victims and then stopped his car in a secluded
11 area unknown to the female victim whereupon he used
12 threats, actual violence to compel them first for
13 oral sex, then for vaginal intercourse.

14 Also as a part of the common scheme or
15 plan he guaranteed that they could not call. He
16 knew **Minor's** phone was not charged through the
17 conversation they had, and then he actually
18 physically took Yasmin's phone, Judge. I think you
19 see differences in how he got the phone away from
20 them. **Minor** didn't have hers to begin with, but at
21 the end of the day the actual similarity is that
22 they were still without phones when the rape
23 occurred.

24 Here, talking about the location is our
25 main difference from the Atieh case, Judge. In

1 Atieh they were all at Subway. They all happened at
2 one location in the store. My argument is that the
3 type crime that Mr. Cotton was committing could not
4 happen in a singular location; but instead, I am
5 using as a location in an unknown rural environment.
6 I think that carries over. When you were in Atieh,
7 Judge, what you had was a man was putting his hands
8 down women's pants that worked for him with the
9 implied threat that if you didn't let him you were
10 going to lose your job at Subway. That type of
11 harassment can be carried out in a singular
12 location. But when your harassment is physical
13 abuse and then full on vaginal intercourse, you
14 can't do that in a building because those girls are
15 never gonna come back. And again, I think you see
16 it here. Yasmin and **Minor** never went back around him
17 after meeting him for the first time.

18 In Atieh the women were under the implied
19 threat that they would lose their job. Here they
20 were under the actual threat that he was gonna get a
21 gun and beat them. You know, I think we score much
22 higher in that department than in Atieh. Both
23 victims claim to have had problems in the hopes he
24 would leave them alone. Yasmin said she had herpes.
25 **Minor** said she was pregnant. And in both cases just,

1 he just put a condom on and continued anyway.

2 The manner of attack -- and this is what I
3 think is our most important thing, Judge, is that
4 when he's got you alone in that rural area that you
5 don't know where you're at, he gets out of the car
6 and comes at you from a position of strength on the
7 outside. These rapes occur right outside the car.
8 He is -- and both victims have never met each other.
9 I guess I didn't get out that on testimony today.
10 But claimed that he gets out the car, runs around,
11 and before you know what's happening he's there.
12 Judge, both the attacks happened at night and both
13 the attacks happened with him asking for oral sex
14 for the ride. Then after he gets the oral sex he
15 goes for the vaginal sex.

16 Judge, I think there's a wide variety of
17 cases that say this kind of stuff is available for
18 different victims now. I think you see it in the
19 Atieh case. Just briefly, Your Honor, and this
20 should not come out today at the hearing but there
21 is an alibi defense to this case and there is also
22 touch DNA found on Yasmin Cusack. I want to get
23 this in under 404(b) also for intent purposes,
24 Judge, and that will tie into the touch DNA. He
25 can't claim it was a consensual touching from a

1 month previously when we have the common scheme or
2 plan come in under 404(b) so it also goes toward
3 intent, not just common sense scheme or plan. It
4 also goes toward identity, Judge. Both girls did a
5 photo lineup. Both girls had the same common scheme
6 or plan that shows in there. They were both merely
7 acquaintances who only saw him for the first time,
8 so much so that the police actually gave them photo
9 lineups even though they were telling the police his
10 name was. They still did a photo lineup.

11 So certainly I believe, even if you can go
12 back as far as to the Lyle case itself, some of the
13 charges were kept and allowed to be tried at the
14 same time because of the alibi defense, because of
15 the identity issue. I think if that's the decor of
16 my argument, that's my best argument, is the
17 identity issue by the alibi defense and also mistake
18 or accident. I think, you know, I wasn't really
19 planning on this before but he's, you know, through
20 the defendant's own words up there says, maybe I
21 touched it accidentally a month previously. You got
22 touch DNA. But the Lyle evidence will actually give
23 us the real reason it was there, and it was not a
24 mistake, and I think Lyle evidence goes to that as
25 well.

1 I'll also be happy to answer any questions
2 or counterarguments that anybody has, Judge.

3 THE COURT: All right. So again on 404(b)
4 you say common scheme, identity, absence of mistake,
5 and was there another factor you believe that it
6 fits?

7 MR. HOLT: Intent.

8 THE COURT: Thank you. And now in
9 response for Defense, Ms. Wise?

10 MS. WISE: Thank you, Your Honor. And I
11 apologize ahead of time, as Mr. Holt said, there is
12 an abundance of cases dealing with this issue so I'm
13 gonna try to be as quick as possible, but I did want
14 to just let you know I have a lot of information to
15 cover. I believe that the Solicitor's only motive
16 in trying to admit the testimony of [REDACTED] Minor
17 [REDACTED] is to merely enhance the likelihood that
18 this defendant committed the crime at issue. I
19 believe that's all Mr. Holt's trying to do. The
20 only issue in dispute here in this case today is
21 whether Yasmin Cusack's allegations against Danyon
22 Cotton are true. Everything the jury needs to make
23 that determination can be found in the evidence and
24 testimony, excuse me, surrounding only Yasmin
25 Cusack's allegations and I can cite you to two

1 different cases in regards to that. State versus
2 Jillian (ph) where the court held similar burglaries
3 do not furnish part of the context of the crime, nor
4 is it necessary for a full presentation of the case.
5 I have a copy of all these cases if you'd just like
6 for me to bring them to you at the end. As well as
7 State versus Johnson saying that evidence of other
8 bad acts is never admissible unless necessary to
9 establish a material fact or element of the crime
10 charged. It is inadmissible to show criminal
11 propensity. That is all the State seems to be doing
12 here today in whatever vail guided misguided
13 attempts to try to get Minor [REDACTED] testimony in
14 to show the criminal propensity of this young man of
15 what the State believes to be the criminal
16 propensity of this young man. I think the State is
17 trying to muddy the waters. The only motive
18 admitting any other witness testimony is to enhance
19 the likelihood that Mr. Cotton sexually assaulted
20 Yasmin Cusack. This is in clear violation of South
21 Carolina law.

22 There's three different prongs we need to
23 look at when addressing whether Minor's [REDACTED]
24 testimony should be admitted as prior bad acts
25 testimony. The first is whether her allegations can

1 be established by clear and convincing evidence
2 which we'll first discuss that. Your Honor, I think
3 there are major credibility issues with the witness
4 that we saw today. We heard from her how a sexual,
5 how a SLED sexual assault kit, protocol kit was
6 taken. We should see the results of that. This
7 young lady's mere word is not enough to sustain an
8 allegation of criminal sexual conduct against this
9 man considering the Facebook information that we
10 received, the fact that she does have a juvenile
11 record -- I think there needs to be more evidence.

12 We heard that photographs were taken. We
13 haven't seen any photographs whatever. We, from my
14 client, heard that she hit her eye when she was
15 getting into his car. That right there can account
16 for the bruising that was on her. I just have some
17 major issues with admitting her mere words as
18 testimony when law enforcement took additional
19 evidence that has never been turned over to Defense,
20 but has never been produced to the Defense that I
21 think could make or break the allegations that she
22 is making. In addition to the only evidence that we
23 received in her discovery packet was the — excuse
24 me one second, Your Honor — was the report that
25 the — was the report taken at the hospital. It was

1 the SLED sexual assault protocol kit. What was very
2 striking to me was that whoever filled out this
3 report said that patient appeared in no distress,
4 was texting, bruising around the eye. That's the
5 only discovery material we have in regards to these
6 allegations.

7 With that being said, even if this court
8 does find that her testimony can be established by
9 clear and convincing element, excuse me, by clear
10 and convincing evidence we next have to move to the
11 second prong of this analysis, the common scheme or
12 plan argument as well as identity. And I was just
13 going off the motion that Mr. Holt produced to us on
14 Friday where he was trying to have other witnesses'
15 testimony admitted under the common scheme or plan
16 and identity. I'll first discuss identity.

17 Mr. Cotton denies that any sexual conduct
18 ever occurred; therefore, intent is not even
19 material issue in this case and the alleged bad act
20 is not admissible on that basis. I have a case,
21 State versus Nelson, that says in the trial of
22 sexual offense cases extrinsic evidence of intent is
23 admissible only in those cases where there is no
24 challenge to the occurrence of the physical contact
25 itself; but the intent of the actor is at issue

1 because the nature of the conduct is subject to
2 varying interpretations. Mr. Cotton denies that any
3 touch ever occurred in any way, shape, or form;
4 that's not an issue in this case. Any testimony
5 surrounding these allegations can't be admitted
6 based off of that ground.

7 As far as the common scheme or plan
8 exception, that's where it gets very convoluted, and
9 please just bear with me a moment. From what I
10 garnered from today's testimony from the motion
11 that's been provided to us, Mr. Holt seems to try to
12 rely on a vague contention of proof of a common
13 scheme or plan on the part of Mr. Cotton to obtain
14 sexual gratification by engaging in sexual acts with
15 a young woman he gets alone, as Mr. Holt said by
16 offering rides, where he cites an array of cases
17 that you can see in his motion which when to
18 apply -- which when applied to the case at hand,
19 excuse me, the facts are drastically different. And
20 if you want to pull Mr. Holt's motion we can go by
21 it case by case.

22 In State versus Wallace where prior bad
23 acts testimony was admitted, the defendant
24 repeatedly abused the victim at least 24 times while
25 the witness whose testimony was admitted into

1 evidence underwent habitual abuse that started at
2 age 12 and continued into college. This is habitual
3 abuse here. Accordingly the court said the witness'
4 testimony could not be admitted, which I think is
5 equally interesting. The court specifically said
6 that the acts must be connected as parts of a
7 general composite plan or scheme or must be so
8 related to show a common motive or intent
9 throughout. We have the next case that Mr. Holt
10 relied on in his motion.

11 THE COURT: Well now, let's go back. Were
12 you look-- when you're quoting Carl, State versus
13 Wallace, are you quoting from the Court of Appeals
14 decision or the Supreme Court's decision?

15 MS. WISE: The Supreme Court's decision I
16 believe.

17 THE COURT: Okay.

18 MS. WISE: I might be wrong and I -- I
19 believe it's Supreme Court decision.

20 MR. HOLT: She's wrong, Judge. She's
21 quoting the appellate decision that was overruled
22 precisely on those grounds that I don't need an
23 additional connection.

24 MS. WISE: I apologize, my mistake. With
25 that being said, though, here habitual abuse for a

1 period of at least six years by the witness.

2 THE COURT: Okay, very good.

3 MS. WISE: ---State versus Clasby, the
4 acts were admitted when the acts were having to do
5 with the same victim. These acts solely involve the
6 victim where the victim testified that she would
7 always visit the defendant's trailer that was owned
8 by the defendant's relative. Again, continuous
9 habitual acts, same fact identical location. We
10 have State versus Kirton the solicitor relied on.
11 All again, these acts involved the same victim. The
12 Abuse began at age 6 and lasted on the same victim
13 until age 11 and happened at least a couple of times
14 a month. And they all happened in the same manner.
15 The young victim was on the bed while watching TV
16 with the defendant who was always in his boxers.

17 We have the Solicitor's case that he cited
18 State versus Adam. This case involved admission of
19 prior bad acts from a different individual other
20 than the victim so similar scenario for the case at
21 hand today; however, the victim in this case was
22 molested over the course of eight years from age 10
23 to 18. The witness whose testimony was offered was
24 molested by the same defendant in the same manner
25 over the course of 8 years from age 9 to 17. We

1 have State versus Blanton that the Solicitor cited.
2 Again, all multiple victims, all three victims,
3 excuse me, all the same age, 8 years old. Defendant
4 had a special relationship with the victims either a
5 figure of authority or the victim's grandfather.
6 Multiple reports of abuse occurred, explicit
7 requests each and every time for oral sex and it
8 always occurred in the grandfather's home or car.

9 We have State versus Henry wherein the
10 defendant was charged with sex crimes against his
11 stepdaughter. The other two witnesses whose
12 testimony was admitted were also his stepdaughters,
13 the same relationship, and the abuse occurred over a
14 period of years in identical manner. They would
15 watch porn. The defendant would then pay the
16 daughters money to perform sexual acts on him. He
17 would start by first touching inappropriately and
18 then he would make specific threats to revoke their
19 privileges as his father -- as their father. We
20 have another case that the Solicitor cited, State
21 versus McClellan, I apologize if I mispronounce
22 that. In this case the defendant repeatedly engaged
23 in repeated sexual misconduct with each of his three
24 daughters. It began at age 12. The defendant would
25 always quote bible verses and he always gave the

1 same excuses for the abuse. We have State versus
2 Hallman, again, another case that the solicitor
3 relied on. All of the victims in this case were
4 children in a foster home that were placed in the
5 defendant's care. They were all 6 to 7 years old.
6 The abuse began immediately or soon after placement,
7 and it started as touching that escalated to digital
8 penetration, excuse me, and all the abuse
9 specifically occurred on the defendant's property
10 and on a tractor.

11 We have State versus Wingo which the
12 solicitor also quoted. Two victims in this case who
13 are sisters, they were assaulted in identical sexual
14 manners so much that the court ruled experiences of
15 each sister paralleled that of the other sister. I
16 do not see that parallel here in the allegations
17 that have been presented to us today. The defendant
18 would take the girls to his trailer and help clean
19 it. He would play porn for the victims on his VCR.
20 He would give the young girls alcohol and drugs. He
21 would bathe them nude in his hot tub. He would
22 perform oral sex or have oral sex performed on him,
23 and then he would always threaten to kill their
24 parents if they told anyone.

25 And the final case that the Solicitor

1 cites is State versus Bell. This has to do with a
2 murder case. The murders were similar in that in
3 this Lyle evidence was admitted. The victims were
4 suffocated, plan to kidnap and murder both and the
5 defendant was found to have planned to kidnap and
6 murder young blond girls and then make calls to
7 another family about the killings. Both calls
8 always started with the explicit instruction to
9 listen carefully. The calls were ended by
10 referencing God. In each call the defendant said
11 that the little girls were waiting.

12 And I think it's important to point out
13 that these cases are extremely detailed driven,
14 extremely habit driven. We don't see that level of
15 detail. We don't see that level of habit in the
16 allegations that have been made against my client
17 today. I believe these allegations today have been
18 vague, entirely too general. I think that the
19 Solicitor's approach is just a disguised way of
20 asserting that Mr. Cotton committed the crime
21 because he has a propensity to commit sexual
22 offenses. This does not follow South Carolina law.
23 I would ask that you take a look at State versus
24 Scott. In order for bad act evidence to be
25 admissible the evidence as I told you must be clear

1 and convincing. It must be a close degree of
2 similarity to the crimes charged. From all of the
3 cases that I just cited and explained to you, I do
4 not think that the degree of similarity that we see
5 in those cases is present in the case at hand today.

6 State versus Scott also mentions, as
7 Mr. Holt briefly touched upon, allegations of two
8 other girl whose testimony we have not heard in
9 courtroom today that in making a similarity
10 determination the focus is on whether each bad act
11 is similar to the crime charged, not to each other.
12 So we're merely looking at today, Minor [REDACTED]
13 allegations and the degree of similarity present, to
14 the allegations that Yasmin Cusack has made. I
15 think Mr. Holt is trying to compare all three
16 together in some way to slide allegations that
17 Ms. Cu— excuse me, that [REDACTED] Minor [REDACTED] has made and to
18 testimony before the jury.

19 As we heard, Minor [REDACTED] testified she was 15
20 years old at the time. She told my client she was
21 an adult. I never received any discovery material
22 from the Solicitor's Office that said that this
23 young man contacted her. All of our discovery
24 material explicitly says that she contacted him in
25 regards to Yasmin Cusack. This was the first time I

1 heard today that she contacted him or he contacted
2 her over a chat room. All of our discovery material
3 says that she met him, they met each other through a
4 mutual friend Tanza and gives a phone number. Those
5 were the first times I ever heard any allegations
6 centering around Ms. Cusack, any sort of contact in
7 the cyber world, so I have an issue with those
8 allegations.

9 And again, I would just point to the
10 evidentiary proof that is missing from [REDACTED] Minor
11 [REDACTED]'s case. I think at the very least the
12 Solicitor could have presented evidence that semen
13 was found on her, DNA was found on her, something
14 was found on her, that something happened. The only
15 records that we have are the SLED log, excuse me,
16 the SLED sexual assault examination protocol that
17 someone wrote patient appears in no distress, she's
18 texting on her phone. As State versus Tutton points
19 out that Mr. Holt briefly mentioned, a common scheme
20 or plan involves more than the commission of two
21 similar crimes. Some connection between the two is
22 necessary, unique, continuous elicited conduct. We do
23 not have that here. And even if you do find that
24 this is a common scheme or plan it does fit into the
25 exception of common scheme or plan and Miss

1 [REDACTED]'s allegations have been proven by clear and
2 convincing evidence. I would finally argue that the
3 prejudicial value far outweighs any probative value
4 this would have.

5 As I said before, I think everything from
6 Miss Yasmin Cusack's case can be proven on the face
7 of that case itself. You don't need testimony from
8 Minor [REDACTED] to come in. I think that's extremely
9 prejudicial to Mr. Cotton, and we will respectfully
10 request that her testimony be omitted.

11 THE COURT: All right. You want to reply
12 to that?

13 MR. HOLT: Just briefly, Judge. I think
14 she's wrong on her reading of the arguments. I
15 think she's wrong on her reading of the facts. You
16 know, I think the first thing she said was that her
17 defendant never touched Yasmin, and I think that
18 goes against what he said on the stand. He said
19 that he touched her one month previous to that. And
20 I want to read from Nelson where she quoted from
21 South Carolina applies Lyle exceptions differently
22 to sex crimes. Motive is not a material issue in
23 sex offense prosecutions, nor is intent unless
24 defendant admits touching victim but denies it was
25 sexual. So he'd have to be crazy to ever say he

1 never touched her, Judge, because I've got the DNA
2 to prove it. I think that brings intent in bigger
3 than I've seen in any case that I've studied for
4 this. I think my common scheme or plan is strong,
5 Judge. I think I have a much tighter case than
6 Atieh. I think Atieh is the new rule, but I think
7 even in my case you got overt threats. You've got
8 digital, I mean, penis to vagina penetration. You
9 got real deal crimes and real deal threats. And
10 Atieh was basically just sexual harassment in
11 respect, you know, not to bring those women down
12 what they did. I think how she read Wallace was
13 wrong. Wallace goes straight to the point but I
14 don't need to prove anything else beyond the
15 similarities for you to decide on common scheme or
16 plan, you know.

17 But I think — I also like to address
18 something she didn't address, Judge, and that's the
19 analysis you have to make next if you decide which
20 is the 403. I think it's definitely prejudicial.
21 I'm not gonna get up here and tell you it's not.
22 It's extremely prejudicial. What I am gonna get up
23 here and tell you is it's not about credibility,
24 okay. What it is about is an alibi defense and the
25 DNA, and those things muddy these waters where I've

1 got to get out from underneath them in my trial,
2 Judge. And I think that's the same exact thing in
3 Lyle that started this whole thing where we didn't
4 let in the stuff from Georgia. We didn't let in the
5 bad checks from the upper part of the state. It was
6 just the stuff around Aiken, and they did that
7 because he said that he didn't do it. So they
8 proved he was there for one by proving he was there
9 for the other. I think that's the evidence I've got
10 here today. That's the evidence I need to get in on
11 his identity that it was not a mistake, Judge. It
12 was not an accidental one month ago I brushed up
13 against the button hole of your pants, okay, I just
14 happened to touch that with my fingers when I was
15 giving you a hug. So off the top of my head I'm
16 thinking about all the times I hugged women while I
17 grabbed on the button hole of their pants where they
18 found his touch DNA.

19 THE COURT: All right, counsel, let's do
20 this. Anything just briefly in reply?

21 MS. WISE: Just, I will be very brief. As
22 far as the DNA issue, the Solicitor failed to tell
23 you that there was another individual's DNA as well
24 on that button hole that has been undetermined about
25 who that belongs to. And as far as this is my fault

1 completely saying that he never touched her, I
2 believe I might have confused the Court when I asked
3 if you ever touched her, I'm gonna rely on February
4 1st, 2013. And as far as the most recent case law I
5 have a 2013 case, State versus Scott, which I
6 provided to Mr. Holt I believe is the law as well,
7 that you have as well.

8 THE COURT: All right. Then let's stand
9 down here for a few minutes. We'll take
10 approximately a 15 minute break and come back and be
11 prepared to make a ruling. So court's in recess.

12 (WHEREUPON, a recess was taken from the
13 proceedings.)

14 THE COURT: All right, the Court is
15 prepared to rule at this time on the Lyle issue,
16 that is, Rule 404(b). The State attempts to put
17 this evidence in of a -- just one moment please --
18 of an additional criminal sexual conduct act
19 involving a Miss Minor [REDACTED] This is, of course,
20 an act that is separate and distinct from the act
21 for which he is on trial in which the victim,
22 alleged victim is Miss Yasmin Cusack. After taking
23 a look at Rule 404(b) and having opportunity, and
24 thank you, counsel, for the way it's been put
25 forward to look at this more closely, the Court

1 makes the following ruling. With regard to 404(b)
2 there are certain bases upon which evidence of a
3 prior bad act may be placed in evidence, and let's
4 talk specifically about those in this case. But the
5 first thing we want to look at before even begin to
6 look at the components of Rule 404(b) is to
7 determine whether or not this is relevant evidence.
8 Relevant evidence has been defined by our court, and
9 that is our supreme court, as meaning that evidence
10 that has a tendency to make the existence of any
11 fact that is of consequence to the determination of
12 this action more probable or less probable than it
13 would be without the evidence. And I would quote
14 Rule 401 for, that is, rule of evidence 401 for that
15 precept.

16 Here in this case we have the parties
17 basically at opposite ends of the spectrum. The
18 defendant, of course, saying that this did not
19 occur, that is, the primary charge for which he is
20 facing, that is Miss Cusack, the victim, that not
21 only did that it did not occur, but that there was a
22 basis or reason for the victim to be motivated to
23 bring this evidence in. Of course Miss Cusack, the
24 victim, testified of course that it did occur and
25 gave some detailed description of actually how the

1 event occurred. Here the Court finds that the
2 evidence of what may have happened with **Minor**
3 is clearly relevant based upon the fact, again, we
4 have both parties on the -- in the main allegation
5 at opposite ends of the spectrum. This additional
6 evidence and the way in which this occurred, I find
7 that it does have a tendency to make the existence
8 of facts within the -- in the occurrence of the
9 underlying charge more or less probable; thus, I
10 find it clearly is relevant.

11 Now we move to the issue of looking at
12 Rule 404(b) and determining whether or not it fits
13 with the requirements of 404(b) to admit other
14 so-called bad act evidence. On the issue of motive
15 the Court finds that typically motive has to do with
16 the reason that someone would commit a particular
17 crime, and motive is not really an issue here in
18 this case. If the State has offered it for identity
19 as well, the Court finds this case is not really
20 about the identity of the perpetrator because
21 typically when you have an identity issue it's when
22 someone has worn a mask or has some, attempted to
23 hide their identity in such a way that they cannot
24 be identified and thus you look to prior incidents
25 to see whether there may be some assistance with

1 identity. That is not the case here; thus, this
2 evidence cannot come in for identity purposes.

3 Absence of mistake or effect. This case
4 really doesn't have some underlying factual issue
5 about which there may be some mistake in the
6 evidence. The defendant says he was not there, he
7 did not commit it. The victim says that he was
8 there. Thus, if there's some similar m.o. in
9 another incident the Court doesn't find that that's
10 sufficiently responsive to overcome what really are
11 polar opposite versions of what may or may not have
12 happened in this case. So this evidence is really
13 not applicable to the absence of some mistake.
14 Finally, intent, typically when you have an intent
15 question some event has occurred and the question
16 is, you know, what was the reason for it occurring,
17 what was the defendant's purpose in doing it.
18 That's not the case here. The question is did the
19 event happen in the first place, so it would not
20 come under intent.

21 However, going to the final area in which
22 this bad, prior bad act may be admitted, we go to
23 the common scheme or plan. And let me also comment
24 that this is a disjunctive — Rule 404(b) is
25 disjunctive. The State doesn't have to prove all of

1 the various criteria; it only needs to prove one of
2 them. And the Court finds that this evidence, that
3 it does fit the common scheme or plan exception
4 under Lyle for the following reasons. First of all,
5 the age of the victims here is close. They are both
6 teenage girls when the abuse occurred. The
7 relationship between the victims and the
8 perpetrator, they both -- these incidents occurred
9 when the defendant met them allegedly on social
10 media. The location where the alleged abuse
11 occurred is in a vehicle, but also having been taken
12 to a, what I would call, an unfamiliar area or
13 unpopulated area under the pretext of giving the
14 victim a ride somewhere.

15 The use of coercion or threats, while not
16 completely similar with the manner of threat the
17 Court notes that they are similar in that there was
18 coercion or threats. One is with a weapon. Also
19 the other is with threats of -- let me go back and
20 look at that to be sure. I want to make sure that I
21 state on the record correctly the evidence about
22 that. Both involve the physical altercation or what
23 you might call interpersonal violation. Miss Cusack
24 testified that defendant dragged her out of the car
25 and also **Minor** testified the defendant got

1 out of the driver's seat of the car and came around,
2 just as the same thing happened with Miss Cusack.
3 So the way the violence began to occur with the
4 defendant allegedly exiting the driver's side moving
5 over to the, coming around the car to the passenger
6 side, taking the victim out of the vehicle and/or
7 striking the ve-- the, excuse me, taking the victim
8 out of the vehicle and/or striking the vehicle [sic]
9 with the use or threat of further violence and/or
10 weapon. The Court finds all of that is similar in
11 the nature between the two cases.

12 And then finally, the manner of the
13 occurrence which would be the type of sexual battery
14 is very similar in these cases which began with oral
15 sex and then moved to vaginal and other sex. And
16 for that reason, while the Court notes there are
17 some minor dissimilarities between these incidents,
18 in the overall scheme of things the Court finds
19 these incidents are very similar and are the type of
20 incidents that are anticipated in the common scheme
21 or plan exception that would admit this evidence.

22 Now finally, let's take a look at the
23 analysis under Rule 403 which is prejudice versus
24 probative nature. One thing I want to say too is
25 that the State must find that by clear and

1 convincing evidence that this incident occurred,
2 that is, the Lyle incident. And here in this case
3 there's one fact, one facet of this that the Court
4 finds highly probative and relevant and highly
5 convincing; and that is, that the defendant admits
6 that **Minor** had a injury to her face which he
7 claims occurred because she hit her eye on the door
8 which is a highly unlikely sequence of events the
9 Court finds. She claims it was because she was
10 struck in the face. And the Court just finds that
11 to be credible on the part of **Minor** and
12 strongly indicative that there is a high probability
13 that this event occurred in the way that Miss
14 **Minor** described it occurred.

15 And finally, the Rule 403 prejudicial
16 analysis here again versus probative. We have these
17 parties at opposite ends of the factual spectrum.
18 The defendant saying it didn't happen. The
19 defendant is saying his car was broken at the
20 time, it could not possibly have happened; thus, if
21 you wish to call that an alibi, the defendant
22 telling us that, there is a reason that this
23 happened which is a vengeful act on the part of the
24 victim while of course the victim is saying that she
25 was attacked and sexually assaulted in the vehicle.

1 The defendant, excuse me, the victim here admittedly
2 -- and is Miss Cusack still seated with us in the
3 courtroom? I don't see her seated at the table.

4 MR. HOLT: She is, Your Honor.

5 THE COURT: Oh, there you are. Thank you.
6 Admittedly had to leave school without graduating
7 somewhat developmentally, she say having developed
8 mental difficulties. The Court finds that all of
9 these factors make the probative nature of this
10 evidence much greater than its prejudicial value.
11 While the Court recognizes that it is of some
12 prejudice, as any evidence of this nature that's
13 offered typically is, again, given those factors
14 just mentioned the probative nature of it far
15 outweighs the prejudicial. For all these reasons
16 the Court will permit Minor's evidence in
17 under the common scheme of plan exception. Anything
18 further with regard to this issue from the State?

19 MR. HOLT: No, sir, Your Honor.

20 THE COURT: And now from Defense?

21 MS. WISE: Nothing further, Your Honor.

22 THE COURT: All right now, the issue of
23 what Mr. Holt called the rape shield which was, I
24 believe, the defendant's testimony about a telephone
25 conversation in which he had with the victim where

1 there was some noise or pandemonium in the
2 background, and he came to the conclusion that she
3 was engaged at that moment with another gentleman
4 and then finally confirmed that when she -- when he
5 looked on, if I understood correctly, Backpages to
6 confirm in his own mind that information. Now is
7 that basically what you believe his testimony would
8 be?

9 MS. WISE: I think, yes, except I believe
10 he saw her on Backpages first and confronted her
11 about it in another, I don't want to say argument
12 but an argument that escalated, and he heard what
13 you just referenced from the phone.

14 THE COURT: And is it the defendant's
15 position that the Backpages is actually a market for
16 prostitution?

17 MS. WISE: It is, Your Honor.

18 THE COURT: Mr. Holt, what do you say to
19 that? What's your response?

20 MR. HOLT: Judge, I think on the face of
21 the rape shield law, and you know, just following
22 that out -- I have the page right here. There's two
23 things you can do to get in previous sexual actions
24 of the prosecuting witness. You can show prior
25 consensual sex with the defendant which I believe is

1 probably moot now because he says they never had
2 sex; or, you can use it to show the source of semen,
3 pregnancy, or disease. And I think every case that
4 comes out that says that never veers away from that
5 rule.

6 Here in this case we're not trying to show
7 any pregnancy. We're not trying to show any
8 disease. We're not trying to show any semen. I
9 think the DNA is going to come back as touch DNA. I
10 think that's what Miss Amanda Webb is going to try,
11 is going to testify about sometime on Wednesday. I
12 don't think, I don't think you have any standing to
13 ask to get any of that in. Just ---

14 THE COURT: Very good.

15 MR. HOLT: ---per se the rule.

16 THE COURT: All right. Let's go back to,
17 Ms. Wise, you -- the defendant testified 'cause I
18 want to make sure I understand exactly what evidence
19 you're going to offer, that he had a discussion with
20 the victim where there was some noise in the
21 background and the phone hung up. Then he went to
22 Backpages himself and saw certain information, so he
23 says. And then he had a phone discussion with the
24 male apparently who was involved allegedly in that
25 conversation that was somewhat hurried and noise in

1 the background who which confirmed his beliefs when
2 the male told him something about -- the
3 unidentified male -- well, you got to pay for your
4 time, I paid for mine. So let's go first on an
5 evidentiary analysis, how do you get that in on
6 hearsay? How do you get the conversation in with
7 this other gentleman who claimed he paid for his
8 time and she would have to do that. Even assuming
9 -- and ladies and gentlemen who are in the courtroom
10 and interested in this case, I'm not assuming it's
11 true or false. I'm just asking evidentiary how do
12 you get it in?

13 MS. WISE: I believe, and correct me if
14 I'm wrong Mr. Cotton, but I believe these were text
15 messages that my client saw on his cell phone that
16 he received from Ms. Cusack's cell phone that from
17 his interpretation of the message was not Miss
18 Cusack texting him but another gentleman from him
19 and able to interpret it. And I don't believe
20 that's hearsay because he read it and he saw it.
21 That was his first-hand impression of what he saw.

22 THE COURT: Well, is it preserved?

23 MS. WISE: It is not preserved, Your
24 Honor.

25 THE COURT: So we don't have that evidence

1 other than his statement that he read it and saw it
2 or heard it, however way you want to interpret that
3 evidence, am I correct?

4 MS. WISE: Correct.

5 THE COURT: All right, I will tell you
6 that without even hearing from the other side I'm
7 almost certain that the evidentiary rules would not
8 permit that component of this evidence to come in
9 because, again, there's no certainty of that best
10 evidence that is bring this other person in who
11 either texted or said that and let them say what
12 they said as opposed to what he heard someone else
13 said. So the Court would not permit that component.
14 So now let's talk about the Backpages and let's say
15 he went himself to Backpages and he saw something
16 there. So the next question, is that preserved?

17 MS. WISE: It's not preserved, Your Honor.
18 He has indicated to me that he got on Backpages and
19 he saw it. He tried to access the profile later on
20 and it had been taken down.

21 THE COURT: And is there -- so you're
22 saying then not only was it not contemporaneously
23 preserved, but it's no longer available?

24 MS. WISE: Correct.

25 THE COURT: So any evidence of the fact

1 that the victim was on Backpages other than his
2 statement today which —

3 MS. WISE: I do not, Your Honor, but I do
4 have screen shots from the victim's Facebook page
5 that do not solicit prostitution I think you might
6 want to look at.

7 THE COURT: Okay. And you said that it's
8 your position that Backpages is basically a, for
9 lack of a better term, a prostitution device; so if
10 that's true, then how is that permitted in our
11 society? And I mean, surely it must have some other
12 purpose other than just simply being a want ad for
13 prostitution?

14 MS. WISE: Your Honor, I can't answer to
15 that. From my knowledge of Backpages and I'm by far
16 no expert, it seems to me, I don't know if you're
17 familiar with Craigs List, but it seems to me that
18 sort of follows more the arena to Craig's list. In
19 the searches on Backpages, if you continue a search
20 you find explicit content. How that works I do not
21 know. I think maybe it was last year Florence
22 police served warrants on various individuals for
23 appearing on Backpages. That's my limited
24 knowledge. I honestly don't know.

25 THE COURT: All right, just one moment

1 please.

2 All right, then again, for the same
3 reasons, first of all, if Backpages is a
4 prostitution device then it violates the rape shield
5 law. The Court also finds this is, it's a
6 self-serving statement for the defendant to make
7 that claim. It serves him in that it verifies what
8 he claims to be the reason that this incident began
9 which was his breakup with the victim and but
10 there's no certainty of it. There's no evidence to
11 support it, other than his allegation, and the Court
12 finds that is insufficient for it to be admitted to
13 the jury because it's highly, grievously prejudicial
14 to the victim and without sufficient evidence to
15 support it the Court would end the analysis there so
16 that component will not come in.

17 So then the last thing is apparently his
18 belief, however he may have it, that she was having
19 a relationship with a third person so what evidence
20 do you, device do you use to get that into evidence?

21 MS. WISE: Again, my client's firsthand
22 knowledge in speaking with her over the telephone
23 and hearing background information, excuse me,
24 hearing muffled moans in the background and from
25 those personal experiences and his life experiences

1 interpreting that to be whatever he thought that
2 would be. He thought, he interpreted that to be she
3 was having intercourse or relations with someone
4 other than himself; and I think that should be
5 admitted because the State's, excuse me, the
6 Defendant's position is not to attack this young
7 lady's morality or sexuality in any way, shape, or
8 form, but to show that based off of what my client
9 is saying to present his defense and to confront his
10 witnesses under the constitution. She had a motive
11 based on him learning of her knowledge based off of
12 his knowledge of her having sexual interactions with
13 a third party, she had a motive bringing these false
14 accusations against him, therefore, we would ----

15 THE COURT: And he is saying, and I may
16 not have taken it down exactly; but as he was
17 testifying, the noise in the background, the moans
18 and the groans -- if you wish to call it that --
19 were they hers, the victim's, or were they the third
20 party gentleman?

21 MS. WISE: I believe they were the third
22 party gentleman.

23 THE COURT: Just a moment.

24 MS. WISE: And Your Honor, if I might, I
25 apologize, our witness tomorrow also saw this text

1 as well.

2 THE COURT: But the witness tomorrow
3 didn't produce the text, he just simply saw them on
4 the telephone. Is that what I'm hearing?

5 MS. WISE: He saw them on his telephone
6 from the recipient of Yasmin Cusack who he at the
7 time thought was Crystal Johnson.

8 THE COURT: All right. Ms. Wise, again,
9 even if a third person says, I saw the text on the
10 telephone and it was coming from someone that I
11 believe to be the victim either under her actual
12 name or a false name, that's still hearsay and the
13 Court would not permit that in. Now I'm gonna go
14 back on this issue of these so-called groans or
15 moans or noises in the background, that's different
16 than words and I'm gonna reserve judgment on that.
17 It's still, I think, highly questionable as to
18 whether it's admissible; but I'm gonna reserve
19 judgment on that point until we either get a
20 foundation that's better than what we heard today,
21 or other evidence developed in that area. But
22 again, I cannot tell you today that that evidence
23 you seek to put in will be coming in. We just
24 simply have to see tomorrow what basis or foundation
25 is laid for its admission. All right?

1 MS. WISE: Thank you, Your Honor. May I
2 give you the cases that I ---

3 THE COURT: Yeah, please do. I'll be glad
4 to review that this evening. Is there anything else
5 now with regard to this case before we stand this
6 matter down to pick up tomorrow morning?

7 MR. HOLT: No, sir, Your Honor.

8 MS. WISE: Nothing from the Defense.

9 THE COURT: All right, very good. Then
10 Mr. Cotton, we will see you in the morning. We'll
11 begin this trial at 9:30 with the jury and good luck
12 to you, sir.

13 And then also to Miss Cusack and the
14 family, good luck, we'll see you tomorrow.

15 (WHEREUPON, the proceedings were concluded
16 at 4:35 p.m. to be reconvened on February
17 25, 2014.)

18 THE COURT: Our jury is all present so
19 please bring in the jury.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 9:45 a.m., and
22 the following proceedings commenced in
23 open court.)

24 THE COURT: All right, ladies and
25 gentlemen, welcome back to the courtroom and we're

1 actually gonna begin this trial this morning with
2 you accepting the oath as jurors in this specific
3 case. Please follow our Clerk's instructions.

4 THE CLERK OF COURT: If you would stand
5 and raise your right hand for me please.

6 (WHEREUPON, the jury was sworn.)

7 THE CLERK OF COURT: If you accept the
8 oath please indicate by saying I will.

9 (Jurors responded.)

10 THE CLERK OF COURT: Everyone who took the
11 oath may have a seat.

12 (All jurors complied.)

13 THE COURT: Let the record reflect all of
14 our jurors have taken the oath and now seated in the
15 courtroom. Welcome back, ladies and gentlemen.
16 Thank you for your patience with us. I realize that
17 we said we'd start at 9:30 and now it's 9:45. I'm
18 well aware that your time is valuable. I don't want
19 you to think we were sitting out here lolly gagging
20 and having coffee and joking around. While you sat
21 back there and waited on us we had several things we
22 needed to resolve this morning before we began. It
23 took a little bit longer than anticipated but thank
24 you for your patience. We also have the privilege
25 to have a class from the Darlington Institute of

1 Technology with us this morning. Welcome, ladies
2 and gentlemen. What we're gonna do is we're gonna
3 have -- I'm going to give you the, what I call, the
4 opening charge on the law in this case, and we're
5 gonna have opening statements. Then we're gonna
6 take a break for just a moment because the class is
7 gonna transition to another place in the courthouse
8 and then they'll come back and join us at a later
9 time. So I just want to let you know a little bit
10 about that scheduling.

11 Now what I want to talk with you about now
12 is what I call the introduction of a trial of a
13 criminal case which is not intended to take the
14 place of a more detailed charge that I'll give you
15 at the end of the case. These are just a few things
16 I think you need to know going in, that is, at the
17 start of the case. First of all, I want you to
18 know, as you are aware, this is a criminal case.
19 The State has charged the defendant with two
20 criminal charges. And I will tell you that one of
21 the traditions in our courtroom is that the party
22 with the burden of proof sits closest to the jury;
23 and if you'll look out into the courtroom arena you
24 will see that the State, the prosecution, is seated
25 at the table closest to you and the defendant seated

1 at the table furthest from you. So please
2 understand the State bears the burden of proof in
3 this case at all times. It never shifts. You'll
4 never see the parties change places in the courtroom
5 because the State maintains the burden of proof
6 throughout this case.

7 Now please understand that the indictments
8 that we discussed yesterday, which I mentioned to
9 you, are for two charges: Criminal sexual conduct
10 in the first degree and kidnapping are allegations.
11 These indictments are simply a set of allegations.
12 You heard the defendant plead not guilty to these
13 charges, and thus, has denied the allegations. But
14 it's not incumbent upon the defendant to enter a
15 plea at all. Even if the defendant didn't enter a
16 plea the defendant is presumed innocent, and the
17 defendant's plea of not guilty and his presumption
18 of innocence places the burden of proof on the State
19 to prove each of the essential elements of both
20 indictments beyond a reasonable doubt. The purpose
21 of this trial is to determine whether or not the
22 State can meet that burden.

23 Please remember, throughout these
24 proceedings the defendant is presumed innocent and
25 entitled to a verdict of not guilty unless and until

1 the State proves the charges and each and every
2 element of these charges beyond a reasonable doubt
3 to your satisfaction.

4 Now that we talked about that very basic
5 point let's talk a little bit about our roles in the
6 courtroom, and if I may speak about mine first. But
7 mine, I believe, is less important than yours but if
8 you'll permit me to speak about mine first I'll be
9 glad to. I will be the presiding officer which
10 means that I'll be the judge of the law here in the
11 courtroom. And if there's some dispute about the --
12 in these proceedings, whether it be evidentiary
13 dispute or some other issue that's legal in nature,
14 well then I'll resolve that during the course of the
15 proceedings at the end of the case. I'll give you
16 the charge on the law. That's my job as judge of
17 the law, but you are the judges of the facts. What
18 that basically means is that you will listen to the
19 testimony. This is why you sit where you do and the
20 witnesses are going to come sit right there where
21 they will. You will hear the testimony. You will
22 review the exhibits and you will decide what the
23 facts are. In other words, you are the judge of the
24 facts. And what you do is, once you decide what the
25 facts are you apply them to the law that I give you

1 and that's how working together we'll reach a
2 verdict in this case.

3 Now I will tell you in advance that one of
4 the things that you have to do if you're the judge
5 of the facts is determine the credibility and
6 believability of the witnesses. Now just like you,
7 I've not heard the evidence in this case; but I know
8 from some years of experience in the courtroom and I
9 also know from human experience, that many times an
10 event will occur or perhaps not occur, and there'll
11 be descriptions of it that seem so varied that you
12 wonder, is this the same thing that everyone is
13 talking about. So if we have witnesses to come in
14 and testify to things that seem to be inconsistent
15 or absolutely mutually exclusive, cannot be
16 reconciled, then you must decide which of the
17 witnesses are more credible and believable so you
18 can decide what the facts are. While that sounds
19 complicated it's really not. If you think about, we
20 gauge people for credibility and believability every
21 day, all day. Every time we have a discussion with
22 someone whether it's a child or an adult, a stranger
23 of a friend, we gauge and filter what they're
24 telling us for credibility and believability. You
25 should use those same common sense factors you use

1 in every day life here in the courtroom. But some
2 other things you may want to look to while the
3 witnesses are testifying is, what is the demeanor of
4 that witness when they're in here testifying. Is it
5 hesitant, straight-forward? What is the ability of
6 this witness to know what they're here testifying
7 about and is that testimony weakened? Well, first
8 is it consistent with itself, is it weakened or
9 strengthened by the other evidence in the case. And
10 then further, in light of the global evidence as you
11 decide it in this case to be, how reasonable is what
12 the witness is saying. And finally, might there be
13 a reason a witness would want to help or hurt one
14 side or the other in the case, might the witness
15 have a bias or prejudice in the case. These are
16 some things you should consider as you're listening
17 to the testimony.

18 Now let's talk a little bit about our
19 process in this case. In just a moment when I
20 conclude these comments to you both sides will come
21 in front of you through their lawyers in what we
22 call opening statement. Opening statement is not
23 some big persuasive argument event that you might
24 imagine from television. It's just an opportunity
25 for the lawyers to tell you what you believe the

1 evidence will or will not show and perhaps what the
2 law is in this case. After both sides have given
3 you opening statement, that's from the State and the
4 defense, then the prosecution, who has the burden of
5 proof will call their witnesses one after another;
6 they go first. And so every time they call a
7 witness their witnesses are subjected to direct
8 examination by the prosecution attorney and
9 cross-examination by the defense counsel. I tell
10 you that because the rules are a little different
11 for direct examination and cross-examination and you
12 may see that during the course of the trial. But
13 they call their witnesses, the State does, one after
14 another. And then they conclude their witnesses and
15 the State rests. When the State rests we turn to
16 the defendant -- again, who has no burden of proof,
17 nothing to prove in here, not required to testify --
18 not required to put up a case; but if they wish to,
19 then they may call their witnesses and we follow the
20 same procedure, the direct examination by defense
21 counsel who call the witnesses and cross-examination
22 by the State. Then all the testimony closes, the
23 lawyers come before you in closing argument which is
24 a time when they may persuasively say to you what
25 they believe the evidence has or has not shown what

1 the law is on the case. I give you the charge on
2 the law and you retire to deliberate. In a
3 nutshell, that's how this process is going to work.

4 Now I usually go roughly about an hour and
5 a half before we take a break. Of course, we just
6 talked a ago. We'll take a break after openings in
7 this case. But I don't want you worried about exact
8 timing in here and watching the clock which I will
9 tell you it's hard for you to do because the clock
10 is behind you on the wall here in this courtroom.

11 But if you need to take a break before we reach a
12 break time, please raise your hand and stop
13 immediately, no questions asked, we'll take a break.

14 I do that for two reasons. Number one, you are
15 giving your time, or just about giving it, for a
16 very high civic duty and important public purpose.

17 I want you to be comfortable in what you're doing,
18 and thus, take a break if we need to. But secondly,
19 I don't want you worried about something else. I
20 want you to be able to listen to the witnesses and
21 the evidence and decide what the facts are so when
22 you retire to deliberate you can accomplish your job
23 so don't hesitate to stop us if you need to. When
24 we do take a break, please don't go back to the jury
25 room and discuss the case among yourselves and I'll

1 tell you why. You should not discuss the case among
2 yourselves until it's given to you at the end for
3 deliberation because if we took one witness for
4 example or even half a witness, just direct
5 examination, took a break, the jury went back, made
6 some preliminary decision that drove the rest of the
7 case that'd be very unfair because we have more
8 witnesses to come perhaps on both sides of the case
9 so please don't discuss it until you are all
10 together for deliberations at the end of the case.

11 Now we operate this courtroom on a system
12 of rules we call the rules of evidence and the rules
13 of criminal procedure. And if one side or the other
14 believes that the other side is breaking those
15 rules, well, they call that to my attention by an
16 objection. Just like you're sitting over there
17 minding your own business, I'm doing the same up
18 here. I don't know what the objections are or when
19 they're going to come; but when they do come I rule
20 on them based on my training and South Carolina law,
21 both the substantive and procedural law as a judge,
22 my understanding of legal procedures through many
23 years in a courtroom as a judge and as a lawyer
24 beforehand. But never do I rule on something in
25 front of me somehow to send you a message about how

1 I feel about a particular issue because I want to
2 make sure we understand our roles. I don't have a
3 position on the facts; if I did, I'd be invading
4 your province. You're the judge of the facts, not
5 me, so please take no inference from any rulings
6 that I may make here in the course of the trial
7 right here in the courtroom other than the fact that
8 there was an issue that needed to be resolved at
9 that moment in the court.

10 All right, just one moment, ladies and
11 gentlemen. Ladies and gentlemen, those of you who
12 are in the courtroom and may have a cell phone or a
13 beeper, please make sure it's turned off. Those are
14 very disruptive and they typically go off at the
15 most disruptive time possible so please make sure
16 that everyone has those turned off. Let me tell you
17 one other thing about today's schedule and then
18 we'll turn this matter over to the attorneys. In
19 scheduling the court it's very multiple of things
20 going on at many times that we do. We typically
21 have just finished a term of court somewhere. We're
22 working on one right here today and then we'll have
23 another one next week. And there are many
24 requirements and communication and things that go
25 on, and sometimes things are scheduled that require

1 me to stop where we are because they're scheduled
2 sometime in advance, and we don't always know what's
3 gonna be going on at that moment. And
4 unfortunately, because of a commitment that's
5 connected to my work I am unable to be here this
6 afternoon and must leave and be out of town. And so
7 we will stop today at the lunch hour, and we will
8 pick this trial up back tomorrow morning and just
9 wanted you to know for your own scheduling purposes.
10 Thank you for your understanding for what is an
11 unavoidable scheduling conflict. That's just for
12 your information. We'll probably stop sometime
13 around 1:00 today and be done for the day and come
14 back tomorrow afternoon.

15 Now the very last thing I want to say to
16 you, I told you yesterday that I would ask that you
17 not speak to family members or loved ones and not
18 talk to anyone about the case so I want to ask for
19 protection of our record here. Is there any juror
20 who had a discussion about the facts of the case
21 which we really do not even know the facts about
22 this case, with anyone since we were last together,
23 if you have, please raise your right hand.

24 (There was no response.)

25 THE COURT: Let's let the record reflect

1 no one has raised their hand. Thank you for
2 complying with the Court's request for the
3 protection of the sanctity of these proceedings.
4 And now at this time the Court would recognize its
5 prosecution for opening statements.

6 MR. HOLT: Thank you very much, Judge.
7 May it please the Court.

8 THE COURT: Yes, sir, Mr. Holt.

9 MR. HOLT: Ms. Wise, Mr. Jones. In just a
10 little bit you're gonna meet Yasmin Cusack. She's
11 18 years old. Around this time last year, February
12 1st, 2013, it's getting close to Valentine's day and
13 she's been talking on the phone with a young man
14 who's a few years older than her, his early 20s, and
15 they set up a date for that night. He gets there
16 and he takes her to the movies. And they pull up in
17 the parking lot, she gets ready to go out and watch
18 the movie. He doesn't want to go to a movie. He
19 decides that he wants to receive oral sex from her
20 in the parking lot. She fights him off. There's a
21 little bit of a give and take, and they decide
22 they're gonna go to K-Mart. At this time he decides
23 he's gonna buy her a gift. But instead of buying
24 her a gift he throws fifteen dollars at her and
25 tells her to get her own gift with the implication

1 that he's gonna receive the oral sex when she gets
2 back. Anybody who's ever been in a relationship
3 with anybody knows that when you give them the money
4 to buy their own gift, it's really not what they
5 want. Yasmin doesn't want to do that; she wants to
6 go home.

7 Damyon Cotton, the defendant in this case
8 seated at the table in between his two attorneys,
9 decides to force the issue one more time. She
10 fights him off again. He gets in the car. They're
11 both in the car. They're gonna — he's gonna take
12 her home. They get to the turn to go to her house
13 and he doesn't take it, and it's there that Yasmin
14 realizes something is not quite right. He keeps on
15 going out past Ebenezer, out past Turnpike, and he
16 stops his car in a field by the woods. And it's
17 there that she realizes something has gone very
18 wrong. She pulls her cell phone out; she's gonna
19 call for help. He takes the cell phone from her.
20 And almost instantaneously without her realizing
21 what's going on, he's outside the car. He's at the
22 passenger side by her and he's got her by the
23 throat. He pulls her out of the car. Yasmin gets
24 upset. She starts thinking about things she can do
25 to stop this. She can't make a phone call. What

1 can she do? She tells him she has herpes. He pulls
2 out a condom, puts the condom on, and he takes what
3 he was going to take the entire night right there in
4 the woods off by Turnpike Road.

5 Now ladies and gentlemen, this case is
6 gonna get fleshed out by nurses, investigators, SLED
7 evidence people. You're gonna hear from the entire
8 organization that brought the investigation, and
9 it's gonna be brought to you and you're gonna hear
10 about it today in this courtroom and tomorrow. And
11 you might be thinking, what's my job, what am I
12 supposed to do, these people are trained for this
13 kind of stuff, these people hear it all the time.
14 And the judge is gonna explain to you what's gonna
15 happen. You're gonna be the finders of the fact,
16 and the most important thing you can do throughout
17 this trial is listen to the evidence because you're
18 not gonna be making a decision in a vacuum. You're
19 not gonna be deciding what's wrong or right
20 according to your individual thoughts, okay. First
21 and foremost the twelve of y'all are gonna have to
22 agree. You're gonna have to use your collective
23 common sense. You're gonna have to use everything
24 that you've learned about when somebody lies to you,
25 when somebody might be concealing the truth, and

1 you're gonna have to think about it and process this
2 information through that. And secondly, you're
3 gonna have to think about how that relates to
4 reasonable doubt.

5 Now I tell you right now it's a burden.
6 It's a burden on the State. You're not just gonna
7 decide which one might be telling the truth and
8 which one not. I'm gonna have to climb higher than
9 defense. They don't have to climb at all, okay.
10 But what I will tell you is that reasonable doubt is
11 something that I don't think I'm gonna have a single
12 problem in the world overcoming in this trial.
13 Reasonable doubt is not some crazy unreachable
14 burden, okay. Reasonable doubt is gonna be reached
15 by the fact witnesses and the science witnesses in
16 this case. I can tell you that criminal trials are
17 not what you think about on TV. It's certainly not
18 gonna be as light-hearted as Matlock, and it's
19 certainly not gonna be as information rich as
20 something like CSI. That kind of stuff might happen
21 somewhere else, okay, but it doesn't happen in real
22 life. It doesn't happen in Darlington. You're
23 gonna be bored a good bit of the time. You're gonna
24 hear some repeat testimony, and you're gonna hear
25 some testimony that you might be wondering why

1 you're listening to. But what I want you to do is
2 hold off all opinions to the end. Then when you've
3 got all the evidence in front of you, ladies and
4 gentlemen of the jury, I don't think that you're
5 gonna have a hard time reaching reasonable doubt at
6 all. I think that the evidence in this case is
7 gonna cross over that. You're specifically gonna
8 hear some selective information on the plan, okay,
9 and how it's carried out, and I think everything
10 will become very obvious. Thank you for your time.

11 THE COURT: And now opening statement for
12 Defense.

13 MS. WISE: Thank you, Your Honor.

14 THE COURT: Ms. Wise.

15 MS. WISE: Your Honor, counsel, ladies and
16 gentlemen of the jury, good morning. And first off,
17 thank you for being here. My name is Christie Wise
18 and I'm an attorney with the Fourth Circuit Public
19 Defender's Office here in Darlington. I'm here
20 today on behalf of my client Mr. Damyon Cotton. You
21 will also see at the table next to him Mr. Richard
22 Jones, deputy circuit defender of the Fourth
23 Judicial Circuit. Also present in the courtroom are
24 members of Mr. Cotton's family. We sincerely
25 appreciate each and every one of you all being here

1 today and providing us with your invaluable time and
2 service. Thank you.

3 When I was in law school one of my
4 favorite professors shared with me a quote that
5 still sticks with me today. It was by the famed
6 fabulist Aesop and it says: Every truth has two
7 sides. It is as well to look at both before we
8 commit ourselves to either. Ladies and gentlemen,
9 today this is what I ask each and everyone of you
10 all to do. Please, listen to the other side of this
11 story, listen to the truth. We are here only
12 because the alleged victim in this case, Ms. Yasmin
13 Cusack, has accused my client of kidnapping and
14 sexually assaulting her. I believe that through the
15 course of this trial you will see that the evidence
16 just is not there to sustain a conviction against
17 Mr. Cotton because Mr. Cotton was not even with
18 Ms. Cusack the night she claimed that this happened.
19 Mr. Cotton can't be guilty of what he's accused.
20 I'm not trying to attack Ms. Cusack. I'm not trying
21 to discredit law enforcement or the prosecution.
22 These men and women do a fine and commendable job of
23 protecting and serving this community. Ladies and
24 gentlemen, I'm just trying to show the truth and
25 that truth centers around what Ms. Yasmin Cusack

1 claims happened to her on February 1st, 2013.

2 That's the only issue in this case.

3 Did Damyon Cotton kidnap, then sexually
4 assault her? This is a criminal case which means
5 that your role as the jury centers upon two crucial
6 principles: Presumption and beyond a reasonable
7 doubt. The defendant, the individual accused of the
8 crime today, Mr. Cotton, is presumed innocent. The
9 prosecution, the State, has the burden of proof.
10 This burden never shifts that the -- excuse me, this
11 burden never shifts to the defendant and requires
12 that the prosecution establish each and every
13 element of each crime Mr. Cotton is charged with
14 beyond a reasonable doubt. As the judge told you,
15 we, as the defendant, don't have to prove one thing.
16 You, as the jury, cannot convict Mr. Cotton unless
17 you are satisfied beyond a reasonable doubt that he
18 is guilty.

19 And what is reasonable doubt? Simply put,
20 reasonable doubt is the kind of doubt that after
21 considering everything, looking at everything, using
22 your common sense and applying it to everything, you
23 simply are not sure, you have your doubts, you have
24 your questions, you have your uncertainties. I ask
25 you, ladies and gentlemen, at this time to withhold

1 your judgment till you have heard all of the
2 evidence from all of the witnesses. Pay attention
3 to the evidence and the details that are obviously
4 missing as well. Let me repeat that. Pay attention
5 to the evidence and the details that are obviously
6 missing as well. Try to look past these gruesome
7 allegations and listen to what your common sense
8 tells you. I'm confident that upon considering
9 everything and listening to the evidence and the
10 missing evidence, you are going to render a verdict
11 in this case that will be fair. I believe that the
12 prosecution will not be able to prove beyond a
13 reasonable doubt that Damyon Cotton sexually
14 assaulted and kidnapped Miss Yasmin Cusack on
15 February the 1st, 2013. Thank you.

16 THE COURT: All right, ladies and
17 gentlemen, let me make one comment, if I may, I
18 intended to make before we started. But both
19 lawyers in their opening statement made some
20 comments about the facts, but I want to make sure
21 that we all understand going in that what the
22 lawyers tell you, and they're advocates. And I'm
23 not saying the lawyers are being dishonest with you,
24 either one. Please understand that what the lawyers
25 are saying in their argument is not evidence. The

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1 lawyers are not under oath. They're not under
2 direct and cross-examination. The evidence in the
3 case is what the witnesses say because they are
4 under oath and under direct and cross-examination
5 and what the exhibits reveal. And any exhibits
6 placed in the record will be with you in the jury
7 room when you retire for your deliberations. So I
8 just want you to appreciate the distinction between
9 a lawyer's argument in both opening and closing and
10 the evidence in the case.

11 Now with that understanding we're gonna
12 take just a moment while our class transitions and
13 take a break. We'll let you return to the jury room
14 and we will bring you back in and begin the first
15 witness momentarily so please return to the jury
16 room.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 10:09 a.m. and a break was
19 taken.)

20 THE COURT: Please bring in the jury.

21 (WHEREUPON, the jury was returned to the
22 courtroom at approximately 10:15 a.m., and
23 the following proceedings commenced in open court.)

24 THE COURT: Welcome back, ladies and
25 gentlemen.

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1 And Mr. Solicitor, please call your first
2 witness.

3 MR. HOLT: Thank you very much, Judge. At
4 this time the State would call Yasmin Cusack to the
5 stand.

6 THE COURT: Please come around and take
7 the oath of a witness.

8 THE CLERK OF COURT: If you would place
9 your left hand on the Bible, raise your right for me
10 please.

11 WHEREUPON,

12 **YASMIN CUSAAC,**

13 having been duly sworn by the Clerk of Court,
14 testified as follows:

15 THE CLERK OF COURT: Have a seat up there
16 for me please.

17 **DIRECT EXAMINATION**

18 BY MR. HOLT:

19 Q Yasmin, could you please give your whole name to
20 the jury?

21 A Yasmin Ruth Cusack.

22 Q How old are you?

23 A 19.

24 Q Okay. Where do you live?

25 A In Florence.

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- 1 Q Who do you live with?
- 2 A My mother.
- 3 Q And how high did you go in school?
- 4 A Twelve.
- 5 Q Did you graduate?
- 6 A No.
- 7 Q Okay. Who else lives in the house with you,
- 8 anybody else?
- 9 A My sister and nephews.
- 10 Q Okay. Now let me ask you something, do you
- 11 remember February the 1st, 2013, last year?
- 12 A Yes.
- 13 Q Okay. Can you tell me to start with how you met
- 14 the defendant in this case, Damyon Cotton?
- 15 A Through a friend.
- 16 Q All right. Can you explain how?
- 17 A With social media.
- 18 Q But what I mean is, specifically what were you
- 19 doing when you met him?
- 20 A It was on the phone.
- 21 Q All right. And was it a regular phone call or
- 22 was it something else?
- 23 A Something else.
- 24 Q All right. Tell the jury what it was.
- 25 A It was a chat line.

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1 Q All right. And explain to probably at least half
2 the jury how a chat line works.

3 A A chat line is like you press -- it asks you do
4 you want to speak with the ladies or fellas and you
5 press one or two. And then if you want to talk to a
6 person you press a certain number and then you
7 exchange numbers.

8 Q All right. So you and Damyon exchanged numbers
9 on the chat line?

10 A Yes.

11 Q And did you call each other after that?

12 A Yeah.

13 Q All right. And what was your plan? What did you
14 want to do on February 1st, 2013, about a year ago?
15 What did you want to do that night?

16 A I had want to go to the movies.

17 Q All right. And did Damyon say he'd take you?

18 A Yeah.

19 Q And did he come to the house and get you?

20 A Yes.

21 Q And what did y'all do then?

22 A After he came and got me that when we went to the
23 movies.

24 Q All right, did you go out and look at the movies?

25 A No.

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1 Q What happened? Can you explain to the jury what
2 happened?

3 A We sitting in the parking lot and Damyon forced
4 me, asked me if I was going to suck his dick.

5 Q Why did he think you were going to do that?

6 A I don't know.

7 Q And did you do that?

8 A No.

9 Q All right. What happened next?

10 A After I wouldn't do it he asked me again; I told
11 him no. And then that's it.

12 Q All right. What happened after that?

13 A After that we went to K-Mart.

14 Q What were y'all going to do at K-Mart?

15 A Valentine shopping.

16 Q All right. Were y'all boyfriend/girlfriend you
17 think?

18 A No.

19 Q Did you think you were going to get a gift
20 though?

21 A At first, yeah.

22 Q Well, did y'all go inside K-Mart?

23 A No, we sat in the car.

24 Q What happened in the car while y'all were in the
25 K-mart parking lot?

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1 A He asked me the same question.

2 Q And what did you do?

3 A I told him no. I told him to take me home.

4 Q That's all y'all talked about while y'all were in
5 there?

6 A Well, while I was in the car he hand me the money
7 and he was like, he wasn't going to go in. And so I
8 asked him again can he go in with me; he was like
9 no. So I just gave the money back at him.

10 Q And then what happened?

11 A Then after we left K-mart we went -- I told him
12 to take me home and then we passed Hoffmeyer.

13 Q Did he take you home?

14 A No.

15 Q Well, what did y'all pass? Where did y'all go?

16 A We went to the woods.

17 Q All right. Do you remember what you passed on
18 the way to the woods?

19 A A red and white church. After the red and white
20 church we made like a left past the store and made a
21 right.

22 Q All right. Was there a lot of people around?

23 A No.

24 Q Well, what happened when y'all got to the woods?

25 A We stay in the car and he was like, I been

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1 telling him for a long time that I was going to give
2 him some, now is the time.

3 Q All right. Well, did you have your cell phone on
4 you?

5 A Yes.

6 Q Why didn't you call somebody for help?

7 A Darnyon Cotton took my phone.

8 Q What did he say when he took your phone?

9 A I don't remember.

10 Q All right. Were y'all still in the car when he
11 took your phone?

12 A Yes.

13 Q All right. What happened next?

14 A After that he tried to take off my pants. He
15 kneeled down in the seat but he couldn't take my
16 pants off in the car so he went around the car and
17 then drag me out the car.

18 Q How did he drag you out the car?

19 A By my feet. He just drag me out the car, turn me
20 around and drag me out the car.

21 Q Was he telling you anything at that time?

22 A Yes.

23 Q What was he telling you?

24 A He was like just saying the same thing.

25 Q What was that?

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1 A Like, I been telling him all the time that I was
2 gonna give him some and now is the time, and stuff
3 like that.

4 Q Okay. What happened next?

5 A After that, after he drag me out the car he
6 forced my head on his penis. I wouldn't do it. And
7 then that when he put the condom on and that when he
8 choked me and had my hand -- his hands on my arms.

9 Q All right, did you tell him anything to make him
10 stop?

11 A Yes.

12 Q What was that?

13 A I told him I was pregnant and I had herpes.

14 Q And what'd he say about that?

15 A He was like, we'll fix it, and then that when he
16 put the condom on.

17 Q All right. And what happened next?

18 A After we was finished and everything we got
19 ready -- well, he hand me my pants and throw the
20 condom in the woods and we got back in the car.

21 Q Well, why didn't you run away when he parked the
22 car?

23 A 'Cause I didn't know where I was.

24 Q All right. Did you try to fight him?

25 A No, he was holding my arms.

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- 1 Q All right. What happened after he finished and
2 when he -- you said he through the condom to the
3 woods, what happened next?
- 4 A Then that when I put on my clothes and I got in
5 the car.
- 6 Q How did you get your clothes back?
- 7 A He hand them to me.
- 8 Q Okay. What did you do when you got back in the
9 car?
- 10 A I just cried.
- 11 Q All right. What did Damyon Cotton do?
- 12 A Just telling me he sorry.
- 13 Q What else was he telling you?
- 14 A He loved me and don't tell nobody.
- 15 Q He didn't want you to tell anybody? Did he ever
16 threaten you throughout the entire course of this?
- 17 A Yes, he said he had a gun.
- 18 Q Okay. Did you want to go to the woods with him?
- 19 A No.
- 20 Q Would you have rather he just took you home?
- 21 A Yes, sir.
- 22 Q Okay. What happened when you got home?
- 23 A After I got home I got out the car and by him
24 pulling my hair, I had like a bow and it popped so
25 the other piece I found on the ground so I picked it

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1 up.

2 Q Hold on. You were wearing a bow in your hair?

3 A Yeah.

4 Q Okay.

5 A And so after I picked it up I walked behind the
6 car. After he like drove off then that when I took
7 his license plate number.

8 Q So you had never ridden in that car before?

9 A No.

10 Q All right. What did you do when you walked in
11 your house?

12 A I ran to my mother and told her that I been
13 raped.

14 Q And what did she do?

15 A She called the police.

16 Q Where did y'all go next?

17 A We went to McLeod.

18 Q All right. And what happened after that?

19 A After McLeod I had to talk to Florence and
20 Darlington police.

21 Q All right. Yasmin, I'm gonna put this glove on
22 to make my evidence man happy.

23 (WHEREUPON, State Exhibit No. 1 was marked
24 for identification only.)

25 MR. HOLT: Permission to approach, Judge?

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1 THE COURT: You may approach the witness.

2 BY MR. HOLT:

3 Q And I want to ask you, I'm gonna try and touch
4 this. I'm gonna show you what's been marked as
5 State's Exhibit 1, okay, and I want to ask you have
6 you seen this before?

7 A Yes.

8 Q And where have you seen it?

9 A That what I wear on the day.

10 Q All right. So these pants belong to you?

11 A Yes.

12 Q And you said these were the pants you wore the
13 day Damyon Cotton raped you?

14 A Yes.

15 Q Okay.

16 MR. HOLT: Your Honor, at this time the
17 State would move State's Exhibit 1 into evidence.

18 THE COURT: Is there objection?

19 MS. WISE: No objection, Your Honor.

20 THE COURT: State's 1 in evidence now
21 without objection.

22 (WHEREUPON, State Exhibit No. 1
23 was admitted into evidence.)

24 BY MR. HOLT:

25 Q Yasmin, before that day had you ever seen Damyon

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- 1 Cotton before?
- 2 A At Tanzy house.
- 3 Q Tanzy's house?
- 4 A Yes.
- 5 Q Okay. Was that one time you saw him before then?
- 6 A That was only one time.
- 7 Q Okay. During their investigation did the police
- 8 show you a lineup?
- 9 A Yes.
- 10 Q And were you able to pick him out?
- 11 A Yes.
- 12 Q All right. Now did you know his real last name
- 13 before you went out on a date with him?
- 14 A No, I didn't know his last name.
- 15 Q What did you think his name was at that time?
- 16 A I never knew his last name.
- 17 Q Did you know his first name?
- 18 A Yes.
- 19 Q What did he tell you his first name was?
- 20 A Damyon.
- 21 Q Okay. Before I sit down did you want to have sex
- 22 with Damyon that night?
- 23 A No.
- 24 Q And did he force you to do it?
- 25 A Yes.

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1 Q Okay.

2 MR. HOLT: Beg the Court's indulgence one
3 second, Your Honor.

4 BY MR. HOLT:

5 Q That day that you say you met Damyon Cotton at
6 Tanzy's house, how long was that before the date, do
7 you know?

8 A I'd say like two weeks like before.

9 Q Okay. Do you think you washed those pants in
10 between those two weeks?

11 A I don't remember.

12 Q Okay. Were you wearing those pants the night you
13 met him at Tanzy's house?

14 A No.

15 Q Okay. So he had never seen you in those pants
16 before?

17 A No.

18 Q All right. And do you remember what color the
19 car was when you got the license plate?

20 A Yeah, burgundy.

21 Q Okay, all right. Yasmin, do me a favor and
22 please answer any questions that defense counsel
23 asks you, truthfully, okay?

24 A Yeah.

25 THE COURT: Cross-examination.

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1 MS. WISE: One moment please, Your Honor.

2 **CROSS-EXAMINATION**

3 BY MS. WISE:

4 Q Hey, Miss Cusack, how are you doing?

5 A Fine.

6 Q And I apologize if I re-hash and re-ask some of
7 the questions Mr. Holt already asked you. You
8 testified that you didn't graduate from high school.

9 A Yes.

10 Q Why didn't you graduate?

11 A 'Cause I drop out.

12 THE COURT: Ma'am, would you move just a
13 little closer or speak a little bit louder so we can
14 be sure our jurors can hear you on the back.

15 Ladies and gentlemen, if you can't hear at
16 some point please let us know that so we can react
17 to it.

18 BY MS. WISE:

19 Q And I'm sorry, you said you dropped out?

20 A Yes, ma'am.

21 Q How are your grades in school?

22 A I guess okay.

23 Q Were you in any sort of individualized education
24 program classes? You know what those are, IEP?

25 A Yes.

1 Q Were you in those?

2 A Yes.

3 Q Okay, for what?

4 A Learning disability.

5 Q Okay. Going to why we are here today, Mr. Damyon
6 Cotton sitting over there, correct?

7 A Yes.

8 Q How would you say you knew Damyon Cotton?

9 A Basically like through a friend.

10 Q Okay. You testified that you met him off social
11 media, correct?

12 A Yeah.

13 Q Okay. Ms. Cusack, I'm gonna show you a couple of
14 different pictures off of what I believe to be your
15 Facebook account. Do you have a Facebook profile
16 ---

17 MS. WISE: Your Honor, if I might approach
18 the witness.

19 THE COURT: You may.

20 BY MS. WISE:

21 Q ---titled, Yassie Still Standing Strong Cusack?

22 A Yes.

23 Q And is that you?

24 A Yes.

25 Q Okay.

1 MR. HOLT: Your Honor, at this time I'd
2 like to object. I haven't seen these photographs.

3 MS. WISE: And Your Honor, these are just
4 exhibits that I was just showing the witness. I'm
5 more than happy to let Mr. Holt see this. I wasn't
6 going to enter them into evidence.

7 THE COURT: Show them to Mr. Holt before
8 we proceed.

9 (Pause.)

10 MR. HOLT: Judge, I'm certainly going to
11 object to any of these coming into evidence. I want
12 to renew my, basically my rape shield motion. I
13 don't think they're coming in for anything other
14 than ---

15 THE COURT: All right, Counsel, you intend
16 to offer them through the witness and offer them
17 into evidence?

18 MS. WISE: Not necessarily, Your Honor.
19 She -- I believe the State opened the door to any
20 social media aspects when she explicitly said she
21 met Mr. Cotton over social media. I believe this is
22 relevant to the witness' state of mind surrounding
23 this alleged incident.

24 THE COURT: All right. Ladies and
25 gentlemen, I don't like to ask the jury to leave the

1 courtroom; but I, sometimes there are issues I need
2 to resolve. There are matters of law outside of
3 your presence. Just like when you're deciding what
4 the facts are we won't be back in the jury room with
5 you so please appreciate the distinction between
6 what we do. I'm going to ask you to return to the
7 jury room. Let me review this matter and we'll make
8 a ruling.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 10:32 a.m., and the following
11 proceedings commenced in open court.)

12 THE COURT: May I see them.

13 (Pictures tendered to the Court.)

14 MS. WISE: If we might approach I can tell
15 you.

16 THE COURT: Yeah, come on.

17 (WHEREUPON, counsel approached the Bench
18 for an off-the-record discussion.)

19 THE COURT: Let the record reflect that
20 that the Defense intends to offer what appears to be
21 a series of photographs from the witness' Facebook
22 page and then a separate series of dialogue both
23 from the witness and other individuals taken also
24 from the Facebook page. Now tell me first, let's
25 just talk about the photographs. Ms. Wise, these

1 are photographs that depict the witness that would
2 be posted by the witness. Tell me why you believe
3 they're number one, relevant and probative, and
4 secondly, why you believe they're admissible.

5 MS. WISE: Absolutely, Your Honor. First,
6 if you don't mind me saying, I think they're
7 admissible. I believe the State opened the door to
8 things the victim might access through social media
9 as she explicitly said in her direct examination
10 that she met my client through social media. I
11 think her online profiles that are readily available
12 and easily accessible by anyone in the public,
13 general public domain, should be admitted into
14 testimony as part of it was already opened the door,
15 the door was already opened on that. Secondly, I
16 believe that the prosecution's case centers around
17 an image of this young girl that I don't think
18 necessarily might be true, and I think her social
19 media accounts attest to that in what she posed
20 herself picture-wise and dialogue-wise on social
21 media for general population to see.

22 THE COURT: All right, just one moment.
23 And what response do you have to that, Mr. Holt?
24 Again, we're talking about pictures here first.

25 MR. HOLT: Judge, I think the pictures are

1 basically -- certainly juvenile behavior, the State
2 will admit that. But I don't think they have any
3 place in this trial. She said she met him over the
4 phone. That may be one social media but that's
5 where they met. They did not meet on Facebook. I
6 think the argument might be different with [REDACTED] Minor
7 [REDACTED] where they did meet on Facebook and that
8 could have been a basis by which he understood her
9 by looking at the pictures. Where there's been no
10 testimony so far that they were ever Facebook
11 friends, that they ever communicated on Facebook,
12 this is not a communication between them. It's not
13 her and Damyon Cotton on the picture. How do we
14 know Damyon Cotton saw these? We don't. You know,
15 Ms. Wise is essentially just going out into the
16 environment and picking stuff and saying that it's
17 relevant and it's not relevant. What does it tend
18 to prove? The only thing it could possibly intend
19 to prove is to defame the credibility of the victim
20 in this case. And for those reasons I don't think
21 it should come in. I'll be the first to tell you,
22 Judge, if he was on the receiving end of those
23 photographs I certainly wouldn't argue for it but
24 deep down I will admit, you know, probably the law
25 would allow those in.

1 THE COURT: Now let's go to the words, the
2 dialogue series that you have. What's your position
3 on those?

4 MS. WISE: Absolutely, Your Honor. I
5 believe from the testimony that the State presented
6 yesterday in our in-camera hearing regarding
7 evidentiary issues, Mr. Holt alluded to the fact
8 that this is a young girl that might not necessarily
9 fully comprehend everything that's going on around
10 her. I think it is clear from what she posts online
11 for everyone in this world to see that's not
12 necessarily the truth because what you see in these
13 online posts is something very mature, something
14 very graphic in my opinion and something that
15 someone who has these disabilities and whatever else
16 you might say in regards to this girl does not
17 exhibit, and I think it's too contradicting,
18 perceptions that I think the jury is entitled to
19 see.

20 THE COURT: All right. And you want to
21 reply to that about the words as well?

22 MR. HOLT: Judge, first and foremost I'd
23 like to say that no matter what we think about
24 what's come into court, there's still a hearsay
25 issue. Even if Ms. Wise believes that that

1 information is relevant how does she get some
2 somebody else's statements in through a third party;
3 I don't understand that. Also Judge, Ms. Wise was
4 the one who brought up her issues I think with the
5 EIPs. I think all I did was ask if she made it
6 through high school and she did not. So Ms. Wise --
7 I certainly don't think the words should come in
8 either. If the words were between that victim on
9 that stand and this defendant on this table I think
10 they could come in, but certainly how -- you've
11 got -- you've got conversations that this young
12 woman had previous to this encounter, okay, that
13 this man had nothing to do with, then he rapes her,
14 then these other conversations from other people
15 come in as evidence? I don't see how. I mean, I
16 feel like that's the entire thing that evidence
17 rules try to keep out. I also feel like it's not
18 relevant.

19 THE COURT: One moment please.

20 MS. WISE: Your Honor, if I might just
21 add, these aren't anyone else's conversation but her
22 own personal status that she herself has posted,
23 just said, this is my online profile for anybody in
24 the general public to see.

25 THE COURT: All right, thank you.

1 (Pause.)

2 THE COURT: May I see those pictures again
3 please, as well as the dialogue.

4 (Documents tendered to the Court.)

5 MR. HOLT: Judge, I apologize for the
6 interruption.

7 THE COURT: Go ahead.

8 MR. HOLT: I just was not sure if during
9 the course of my argument I brought up the rape
10 shield act. I knew I, that I brought it up to you
11 up there at the Bench, but I felt like probably I
12 need to say it on the record. And I think that, you
13 know, also that this type information, any of her
14 previous contact with anybody who was not the
15 defendant or if it doesn't relate to semen,
16 pregnancy, or disease should not come in.

17 THE COURT: All right, thank you.

18 All right, Ms. Cusack. Ma'am, I'm gonna
19 ask you to step into the room with Mr. Medlin. If
20 he will take you to the back for just a moment.
21 Then we'll be prepared to make a ruling and we'll
22 bring you back in. Thank you, ma'am.

23 (Witness is removed from the courtroom.)

24 THE COURT: All right. Let's let the
25 record reflect this is a difficult issue for the

1 Court. I've asked the witness who is the victim who
2 has a right to be in the courtroom to step out of
3 the courtroom because I didn't want to offend her or
4 hurt her feelings in the ruling that the Court is
5 going to make. First of all, I'm going to exclude
6 these dialogues and posts that involve words because
7 there are highly inflammatory filled with expletives
8 and simply almost indecipherable for an adult who's
9 not used to this dialogue to read. The Court finds
10 that whatever is in there is clearly so prejudicial
11 as to fail to pass rule 403 analysis; and also,
12 there are posts from other individuals which clearly
13 is hearsay and even if it is a post from Ms. Cusack
14 who's responding to someone it's taken out of the
15 context, I just feel like it's unfair. And thus,
16 you may mark these as a court exhibit, that is the
17 dialogue, running dialogue, but I am going to
18 exclude them from the evidence in this case.

19 Now to the photographs. This is the
20 dilemma that the Court finds before it. We have a
21 witness who clearly is developmentally delayed. Her
22 responses are slow. Her cognition appears to be
23 slow. It's in evidence that she was taking some IEP
24 classes; she was unable to finish school. And the
25 jury would have the impression if left, that was

1 completely left alone, that the defendant is alleged
2 to have taken advantage of someone who is not
3 worldly, who does not understand the dynamics of
4 relationship between men and women and that he took
5 advantage of someone who was a delayed individual.
6 These pictures show to the contrary that the witness
7 has an understanding of relations between men and
8 women, that she has a more worldly understanding of
9 perhaps even through Facebook, that she's not just
10 simply a completely developmentally delayed
11 individual who was overwhelming taken advantage of
12 by the defendant.

13 Now again, this is not the Court's
14 perception because this is for the jury to decide.
15 But to exclude this evidence is unfair to the
16 defendant in that it does not allow the portrayal of
17 what appears to be the other side of Ms. Cusack that
18 is so clearly posted in these pictures. And of
19 course, these are photographs that she would have
20 posted herself, not done by some other individual;
21 thus, the Court finds it relevant, they're
22 probative. And although they are potentially
23 prejudicial to the State, the Court finds that their
24 probative nature outweighs that prejudicial value.
25 And further, on the analysis of rape shield statute

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1 which is 16-3-659.1, that rape shield statute reads
2 as follows: Evidence of specific instances of the
3 victim's sexual conduct, opinion evidence of the
4 victim's sexual conduct, and reputation evidence of
5 the victim's sexual conduct is not admissible in
6 prosecutions. And the Court does not find that
7 these photographs run afoul of any of those three
8 prohibitions; and thus, we will permit this group of
9 photographs into evidence over objection from the
10 State.

11 MS. WISE: Thank you, Your Honor.

12 THE COURT: Let's take a moment while they
13 are marked. Why don't we stand down ourselves about
14 five minutes and come back and pick up where we
15 were.

16 (WHEREUPON, a recess was taken from the
17 proceedings.).

18 (Court's Exhibit Number 1 was marked
19 and made a part of the record, State
20 Exhibit Nos. 3 through 17 were marked for
21 identification only, Defense Exhibit No. 2 was
22 marked and admitted in evidence.)

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 10:56 a.m., and
25 the following proceedings commenced in

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1 open court.)

2 THE COURT: Welcome back to the courtroom.

3 And again, we appreciate your understanding of our
4 process and stepping from the courtroom. The Court
5 has resolved the matter that was before it. We have
6 permitted the photographs that were offered by
7 counsel into evidence over objection. They've been
8 marked as Defendant's Number 2. The Court finds
9 that they're admissible over objection from the
10 State.

11 And you may proceed.

12 MS. WISE: Thank you, Your Honor.

13 BY MS. WISE:

14 Q Ms. Cusack, going back to what we were discussing
15 earlier, I showed you this packet of pictures which
16 has been marked as Defense Exhibit 2. Is this your
17 Facebook profile?

18 A Yes.

19 Q Okay. And is that a picture of you?

20 A Yes.

21 Q Okay. This next picture, what are you doing in
22 this picture?

23 A Just posing.

24 Q Okay. Is this a different Facebook profile that
25 you have?

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1 A Yes.

2 Q Okay. And what are you doing in this picture?

3 A Just posing.

4 Q Okay.

5 MS. WISE: And Your Honor, if I might,
6 could we publish this to the jury at the end if
7 that's ---

8 THE COURT: You may hand it to the jury
9 when you desire since it's in evidence. You may.

10 MS. WISE: Absolutely.

11 BY MS. WISE:

12 Q Is this your Facebook profile picture?

13 A Yes, ma'am.

14 Q And what are you doing there?

15 A Just posing.

16 Q And what does it say?

17 A YaYa bitch.

18 Q Okay. Is this another Facebook picture of your
19 profile?

20 A Yes.

21 Q Of you?

22 A Yeah.

23 Q And you're posing for the camera? Okay. This is
24 another Facebook profile.

25 THE COURT: Can you hear, ma'am?

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1 THE POTENTIAL JUROR: She needs to speak
2 louder.

3 MS. WISE: I'm sorry.

4 THE COURT: If both of you would speak
5 louder so our jury can hear.

6 BY MS. WISE:

7 Q Is this another profile picture of you on
8 Facebook?

9 A Yes, ma'am.

10 Q That you put up of yourself? And what are you
11 doing?

12 A Posing.

13 Q Okay. Is this another Facebook profile picture
14 that you put up?

15 A Yes.

16 Q And what are you doing?

17 A Posing.

18 Q Okay. Is it fair to say that all of these
19 pictures you're posing for? Is it okay to say that
20 you're posing for all these pictures?

21 A Yes.

22 Q What are you doing in that picture?

23 A Just posing.

24 Q Is that a gang sign?

25 A No, that's not a gang sign.

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1 Q What is it?

2 A It's nothing.

3 Q Okay. What are you doing in this picture?

4 A Posing for the camera.

5 Q Okay.

6 A It's just different poses like what my pictures
7 and stuff. I ain't trying to be rude or nothing.

8 The thing is, I'm a victim here; I've been raped.

9 My Facebook and everything don't have to do nothing
10 with it so I feel like my pictures and stuff -- a
11 girl gonna pose for cameras and stuff. Everybody
12 pose for a camera. They're gonna pose for the
13 camera. Them pictures right there are just
14 pictures.

15 Q Okay, Ms. Cusack. We can go ahead. You want to
16 stop looking at these?

17 A Yes, ma'am.

18 MS. WISE: Your Honor, may I publish these
19 to the jury please.

20 THE COURT: You may hand them to the jury.

21 MS. WISE: Thank you. And I would like
22 the record to reflect one more time that those are
23 two different profiles of Ms. Yasmin Cusack, screen
24 shots of various pictures she's posted on herself.
25 It's for public knowledge to see. It's been

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1 published to the jury.

2 THE COURT: Anymore questions for the
3 witness?

4 MS. WISE: A few more, Your Honor.

5 THE COURT: Go ahead.

6 BY MS. WISE:

7 Q Ms. Cusack, we heard you testify earlier about
8 what you claim happened on February 1st, correct?

9 A Yes.

10 Q Okay, let's go through it again. You said Mr.
11 Cotton picked you up at your house.

12 A Yea.

13 Q About what time?

14 A 6:38.

15 Q Okay. Where did y'all go?

16 A Went to the movies.

17 Q What movie theater?

18 A Julia.

19 Q In Florence?

20 A Yes.

21 Q And you live at [REDACTED] Sanborn, correct?

22 A Yes.

23 Q How long does it take you to get to Julia from
24 [REDACTED] Sanborn?

25 A Not long.

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- 1 Q About ten minutes?
- 2 A Maybe.
- 3 Q Okay. You got into his car?
- 4 A Yes.
- 5 Q What movie was playing at the Julia that night?
- 6 A I don't remember what was playing.
- 7 Q What movie were y'all going to see?
- 8 A I don't remember.
- 9 Q Okay. You testified that while at the Julia
- 10 parking lot it was a Friday night, correct?
- 11 A Yes.
- 12 Q Where did you park at in the parking lot?
- 13 A In the parking lot.
- 14 Q Where? The Julia from what I understand has a
- 15 big giant parking lot. There's a front and two
- 16 sides. Were you right there in the front?
- 17 A No.
- 18 Q Where were you?
- 19 A Like in between the middle and the back.
- 20 Q Were there other cars around?
- 21 A Yes.
- 22 Q Okay. Was it busy?
- 23 A Yes.
- 24 Q Lots of people?
- 25 A Yes.

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- 1 Q Okay. Did you try to get out of the car?
- 2 A No.
- 3 Q Did you scream?
- 4 A No.
- 5 Q Okay. After the Julia you said y'all drove to
- 6 K-Mart, correct?
- 7 A Yes.
- 8 Q Is that the K-mart we're still talking about, the
- 9 Florence K-mart on Hoffmeyer Road, right?
- 10 A Yeah.
- 11 Q That's what you told law enforcement?
- 12 A The K-Mart is not on Hoffmeyer Road.
- 13 Q Where is it at then? And it's okay if you're
- 14 con-- it's okay. I think the only K-Mart in
- 15 Florence is on Hoffmeyer but how long did it take
- 16 you to get there?
- 17 A Not long.
- 18 Q Maybe about seven minutes?
- 19 A Not long.
- 20 Q Okay. And I'm sorry, let me go back a second.
- 21 How long were y'all in the Julia parking lot for?
- 22 A I don't remember.
- 23 Q You don't remember, okay. But you then drove to
- 24 the K-Mart. About how long were you in the K-mart
- 25 parking lot for?

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- 1 A I don't know.
- 2 Q Was it dark out?
- 3 A Yeah, like close.
- 4 Q Okay. Were there other cars out?
- 5 A Where to?
- 6 Q In K-mart's parking lot?
- 7 A Yes.
- 8 Q People going in and out of the store?
- 9 A Yes.
- 10 Q And you parked right there in that big parking
- 11 lot?
- 12 A I didn't park, he parked.
- 13 Q Well, y'all parked in that big parking lot?
- 14 A Yes.
- 15 Q Were you parked under a light?
- 16 A No.
- 17 Q Okay. How close would you say you were to the
- 18 store?
- 19 A Not far.
- 20 Q Okay. Talk to me a little bit more about this
- 21 Valentines gift. Did you think he was going to give
- 22 you a Valentines gift? And when I say "he" I mean
- 23 Damyon Cotton.
- 24 A Yes.
- 25 Q Why?

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- 1 A (There was no response.)
- 2 Q Were you going to give him a Valentines gift?
- 3 A Yeah, at first I was, but no.
- 4 Q Okay. Did you try to get out of the car in the
- 5 K-Mart parking lot?
- 6 A No.
- 7 Q Y'all talked about going in the store though,
- 8 right?
- 9 A Yes.
- 10 Q Why didn't he want to go in the store?
- 11 A 'Cause he was like he ain't felt like it.
- 12 Q Okay. Did you ever try to ask anyone for help?
- 13 A No.
- 14 Q Okay. We then heard you testified that from
- 15 K-Mart you went to where?
- 16 A Turnpike.
- 17 Q And where is Turnpike at?
- 18 A Like off Hoffmeyer Road I guess.
- 19 Q Okay. How do you get to Turnpike?
- 20 A Drove straight down Hoffmeyer, make a right, and
- 21 after you make that right you make a left passing
- 22 the store.
- 23 Q Okay. How long did it take you to get to
- 24 Turnpike?
- 25 A I don't know.

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- 1 Q Would you say about 15 minutes?
- 2 A Maybe.
- 3 Q Okay. Had you been to Turnpike Road before?
- 4 A No.
- 5 Q How do you know it was Turnpike Road you were at
- 6 then?
- 7 A 'Cause when I went to McLeod and everything the
- 8 deputies had know the road, the name of the road and
- 9 they told me.
- 10 Q So they told you it was Turnpike Road that you
- 11 were at?
- 12 A Yes.
- 13 Q Okay. You testified that you turned on to
- 14 Turnpike past a store and then turned right,
- 15 correct?
- 16 A Yeah.
- 17 Q Was it a dirt road?
- 18 A No, it was like the woods.
- 19 Q You didn't turn on to a dirt road?
- 20 A (There was no verbal response.)
- 21 Q All right. How long would you say you were on
- 22 Turnpike Road before you turned off into the woods?
- 23 A Not long I guess.
- 24 Q Not long. Did you pass some houses?
- 25 A Across from the woods it was like trailers.

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1 Q Because there's some houses near where you were
2 at, right?

3 A Yes.

4 Q Yeah, okay. And how long did you say y'all were
5 at the woods and Turnpike Road?

6 A About a minute.

7 Q Okay. Did you see a gun on Mr. Damyon Cotton?

8 A No.

9 Q Did he show you a gun?

10 A No.

11 Q Okay. How did he reach over in the car to get to
12 you as you explained?

13 A He just reached.

14 Q You were in the passenger seat?

15 A Yes.

16 Q And he was in the drivers seat?

17 A Yes.

18 Q What did he grab?

19 A I don't know. What you mean what he grab?

20 Q Did he touch you anywhere on your body?

21 A Yes.

22 Q Where did he touch?

23 A He tried to take off my pants.

24 Q Okay. And these are the pants that we just saw
25 earlier?

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1 A Yes.

2 MS. WISE: Your Honor, if I might.

3 THE COURT: You may.

4 BY MS. WISE:

5 Q Mr. Holt just showed you, these were the pants
6 that you were wearing that night?

7 A Yeah.

8 Q Thank you, Ms. Cusack. Yasmin, I'm gonna show
9 you a few more items of clothing that the State
10 didn't show you earlier.

11 (WHEREUPON, Defendant Exhibit No. 5 was
12 marked for identification only.)

13 BY MS. WISE:

14 Q I'm gonna show you, is this the tank top you were
15 wearing that night?

16 A Yes.

17 MS. WISE: Your Honor, we move to enter
18 this as Defendant's Exhibit Number 5.

19 THE COURT: Is there an objection?

20 MR. HOLT: There is none, Your Honor.

21 (WHEREUPON, Defendant Exhibit No. 5
22 was admitted into evidence.)

23 BY MS. WISE:

24 Q And Yasmin, is this bra that you wore that night?

25 A Yes.

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1 MS. WISE: Any objections?

2 MR. HOLT: No, sir, Judge.

3 THE COURT: Any objection to any of these
4 clothing materials?

5 MR. HOLT: No, sir.

6 MS. WISE: And I'm gonna also do the shirt
7 as well.

8 THE COURT: Go ahead, what number?

9 MS. WISE: This is Defendant's Exhibit
10 Number 4.

11 THE COURT: In evidence without objection.

12 (WHEREUPON, Defendant Exhibit No. 4 was
13 marked and admitted into evidence.)

14 BY MS. WISE:

15 Q And then is this the shirt you wore that night,
16 Yasmin?

17 A Yes.

18 MS. WISE: Okay, Defendant Exhibit 3.

19 THE COURT: Without objection in evidence.

20 MS. WISE: Thank you.

21 (WHEREUPON, Defendant Exhibit No. 3
22 was marked and admitted into evidence.)

23 BY MS. WISE:

24 Q These are the clothes you were wearing that
25 night, correct?

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1 A Yes.

2 Q And these are the jeans?

3 A Yes.

4 Q Do you remember when the last time was you wore
5 these jeans prior to that night?

6 A No, Ma'am.

7 Q What about when you last washed them?

8 A I don't remember.

9 Q You don't remember, okay. What about the rest of
10 these clothes, do you remember when you last wore
11 this bra before?

12 A No.

13 Q Okay. Do you remember any of when you last wore
14 ---

15 A No.

16 Q ---or washed these clothes? That's okay. Your
17 friend Tanzy, who is she?

18 A She's a friend that I met when I was going to
19 Hartsville Poynor (ph).

20 Q What's her last name?

21 A I don't remember.

22 Q Okay. You claimed, or you said earlier that you
23 were over at her house when you saw Mr. Cotton,
24 correct?

25 A Yes.

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- 1 Q What were you wearing that day?
- 2 A I don't remember what I was wearing.
- 3 Q Okay. And now let's go back, I apologize, I'm
- 4 jumping around. I just showed you those clothes.
- 5 You claimed Mr. Cotton, after he sexually assaulted
- 6 you threw those pants in the woods, correct?
- 7 A Yes.
- 8 Q About how far away were the woods?
- 9 A Not far.
- 10 Q Were there houses nearby?
- 11 A In the woods or right across?
- 12 Q Anywhere nearby?
- 13 A It was ---
- 14 Q Whatever you think is close.
- 15 A It was like across.
- 16 Q Okay. Did you think about going over to those
- 17 houses?
- 18 A No, I had panicked at the time. I wasn't
- 19 thinking.
- 20 Q Okay. Did you notice any barns anywhere?
- 21 A No.
- 22 Q Any signs?
- 23 A No, we was in the woods.
- 24 Q Okay. Any lights?
- 25 A No.

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- 1 Q Okay. You claimed he put on a condom. Where did
2 he throw the condom?
- 3 A On the ground.
- 4 Q Okay. Did you show law enforcement where you
5 said this happened at?
- 6 A I had told them.
- 7 Q Okay. You said that Mr. Cotton took your phone.
8 When did you get your phone back?
- 9 A When we got on 52 I think.
- 10 Q So he gave you your phone back?
- 11 A Yeah.
- 12 Q When did you get on 52 from Turnpike Road?
- 13 A (Inaudible.)
- 14 Q Okay. Do you know Tanza's telephone number?
- 15 A No, I don't.
- 16 Q Okay. Damyon's number was in your phone,
17 correct?
- 18 A Yes.
- 19 Q Okay. But you didn't know his last name?
- 20 A No.
- 21 Q Okay. After Turnpike Road he then drove you back
22 to your house at ■ Sanborn in Florence, correct?
- 23 A Right.
- 24 Q What time did you get home?
- 25 A Around like 8 something.

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- 1 Q Okay. When did you tell your mother?
- 2 A As soon as I got in the house.
- 3 Q Okay. And y'all immediately went to the
- 4 hospital?
- 5 A Yes.
- 6 Q And it was dark out?
- 7 A Yes.
- 8 Q Okay. Law enforcement came, correct?
- 9 A Correct.
- 10 Q You said Darlington and Florence law enforcement
- 11 came, correct?
- 12 A Yes.
- 13 Q Were any charges filed in Florence?
- 14 A I don't know.
- 15 Q Okay. You told officers everything that happened
- 16 to you that night?
- 17 A Yes.
- 18 Q You didn't change anything?
- 19 A No.
- 20 Q You didn't leave anything out?
- 21 A No.
- 22 Q You told them everything that happened?
- 23 A I told them everything.
- 24 Q Okay. Step by step?
- 25 A Yes.

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1 Q Okay. Miss Cusack, do you remember writing a
2 statement for law enforcement about what happened to
3 you this night?

4 A Yes.

5 Q Is this the statement -- Your Honor, if I might
6 approach the witness.

7 THE COURT: You may.

8 BY MS. WISE:

9 Q Is this the statement that you wrote?

10 A Yes.

11 MS. WISE: Your Honor, I move to enter
12 this into evidence, Defendant's exhibit evidence, or
13 into evidence as Defense evidence Number 1.

14 THE COURT: Is there a objection?

15 MR. HOLT: Judge, here's the problem the
16 State has with it, okay. She's up there testifying
17 so really, the only reason that that would come in
18 is if it's a prior inconsistent statement. I think
19 if she confronts Miss Cusack with it and Miss Cusack
20 veers off from the statement anywhere, I think then
21 it becomes eligible for the Defense to move it into
22 evidence.

23 THE COURT: Your reply to that?

24 MS. WISE: Your Honor, if she reads the
25 statement I think I'll answer the prosecution's

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1 argument. I think there are inconsistencies in what
2 she wrote and what she just testified to.

3 THE COURT: I'm gonna overrule the
4 objection, permit the statement -- may I see it,
5 counsel. Let me see it.

6 MS. WISE: Yes, Your Honor.

7 THE COURT: Just one moment, ladies and
8 gentlemen.

9 (Document tendered to the Court.)

10 THE COURT: I'm going to overrule the
11 objection, permit the statement into evidence and
12 this will be Defense 1 over objection.

13 THE COURT REPORTER: It's number 6, Judge,
14 Defense 6.

15 THE COURT: 6, Defense 6, all right. In
16 evidence.

17 (WHEREUPON, Defendant Exhibit No. 6 was
18 marked for identification and received
19 into evidence.)

20 BY MS. WISE:

21 Q Miss Cusack, you remember writing this statement
22 out?

23 A Yes.

24 Q When did you write this?

25 A February 1st.

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- 1 Q Okay. Were you with anybody when you wrote it?
- 2 A Yes.
- 3 Q Who were you with?
- 4 A The deputies.
- 5 Q Okay. So you were with law enforcement?
- 6 A I was at McLeod at the time when I wrote it.
- 7 Q Okay. So let's take a look at this statement.
- 8 If you don't mind, can we just walk through it
- 9 sentence by sentence. Is that okay?
- 10 A I just -- yeah, that's fine.
- 11 Q Okay. Let's say first, it says: My name is
- 12 Yasmin Ruth Cusack, correct?
- 13 A Correct.
- 14 Q And my address is [REDACTED] Sanborn Street, correct?
- 15 A Correct.
- 16 Q Date of birth [REDACTED] 94, correct?
- 17 A Yes.
- 18 Q And you just want to skip down and we can start
- 19 where you started writing?
- 20 A Yes.
- 21 Q Do you mind reading to the jury that first
- 22 sentence?
- 23 A At around 6:34 Damyon picked me up in my yard.
- 24 At around 6:34 Damyon pulled up in my yard, picked
- 25 me up at my mother house. He asked me where do I

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1 want to go and I said to the movies. He pull up to
2 the movies and he forced me to have sex with him in
3 the parking lot, I told him no. He said if I suck
4 his dick he'll take me Valentine shopping. We went
5 to K-mart and he hand me 15 dollars. I asked him
6 was he going in the store with me; he said no, he
7 didn't felt like it. So then we left K-Mart. We
8 went to an open wood at Turnpike Road. While we was
9 there he forced me to have sex with him and all.

10 Q And what else does it say?

11 A He snatched my pants off and broke my zipper. He
12 choked me and threatened me and drag me out the car
13 and forced my head on to his dick and then he put
14 his condom on and put it inside. Then he rush me to
15 put my clothes on.

16 Q Okay, going on to the next page.

17 A Then he kept asking me if I'm still gonna call
18 the police. I told him to leave me alone. Then he
19 say he love me and you do have the money back that I
20 had throw at him during the time. Okay, can I ask
21 you a question?

22 Q I don't think you can ask me a question, Yasmin.

23 MR. HOLT: Your Honor.

24 THE COURT: Go ahead, counsel, to your
25 next witness.

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1 Ma'am, we'll let the lawyer ask questions,
2 okay?

3 THE WITNESS: Okay.

4 THE COURT: All right, thank you.
5 Anything further?

6 MS. WISE: I'll be brief, Your Honor, I
7 apologize.

8 BY MS. WISE:

9 Q Yasmin, how did you meet Damyon?

10 A Through chat line.

11 Q And explain to the jury please how this chat line
12 works again.

13 A The chat line work, it asks you do you want to
14 talk to the fellas or ladies and first press one or
15 two. Then after that you press a number if you want
16 to talk to a person. If you want to talk to that
17 person and then the person be on live connect or
18 y'all send messages, and if y'all decide to exchange
19 numbers y'all exchange numbers.

20 Q You talked to a lot of different folks on this
21 chat line?

22 MR. HOLT: Objection, Judge.

23 THE COURT: Sustained. Please move to
24 your next question.

25 BY MS. WISE:

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- 1 Q Were you and Mr. Cotton involved romantically?
- 2 A No.
- 3 Q He wasn't your boyfriend?
- 4 A No.
- 5 Q He didn't break up with you?
- 6 A No.
- 7 Q You weren't hurt by him?
- 8 A When he raped me, yeah.
- 9 Q Okay. You said you got his license plate number.
- 10 How did you get his license plate number?
- 11 A I -- when I got out the car I walk around his car
- 12 and then when I got the license plate number.
- 13 Q Did you write it down?
- 14 A No, I just kept repeating it till I got in the
- 15 house.
- 16 Q And you had his telephone number?
- 17 A Yes.
- 18 Q Okay. And you knew he lived on Whitehall Lane,
- 19 correct?
- 20 A No, I didn't.
- 21 Q Okay. Did you ever tell Danyon your name was
- 22 Crystal Johnson?
- 23 A No.
- 24 Q Did you ever tell him you go by Crystal lollipop?
- 25 A No.

SW - Y. CUSACK - REDIRECT

1 Q Do you have herpes?

2 A I was, like...

3 MR. HOLT: Objection, Judge.

4 THE COURT: Sustained. Please proceed to
5 your next question.

6 BY MS. WISE:

7 Q You never saw a gun?

8 A I never did saw the gun.

9 Q Okay.

10 MS. WISE: One moment please, Your Honor.
11 No further questions for this witness. Thank you.

12 THE COURT: When you have a witness
13 presented you have direct, then you have cross. If
14 new issues are brought up on cross, the proponent or
15 witness on what we call redirect may question on
16 those new issues. Is there redirect for your
17 witness?

18 MR. HOLT: Yes, sir, Judge.

19 THE COURT: Please proceed.

20 MR. HOLT: Thank you very much.

21 **REDIRECT EXAMINATION**

22 BY MR. HOLT:

23 Q Where are those pictures at, does anybody know?

24 MR. HOLT: Permission to approach, Your
25 Honor.

SW - Y. CUSACK - REDIRECT

1 THE COURT: Yes, you may.

2 BY MR. HOLT:

3 Q Yasmin, these pictures right here, do other girls
4 your age make pictures like this and put them on
5 Facebook?

6 A Yes.

7 Q Did you invent this yourself and come up with
8 this and start a whole new thing putting pictures on
9 Facebook, or did you see it before?

10 A I seen it before.

11 Q Have you seen other girls make pictures like this
12 on Facebook?

13 A Yes, I have.

14 MS. WISE: Objection, Your Honor. I don't
15 believe this is relevant to the case at hand.

16 MR. HOLT: It's completely relevant,
17 Judge. She brought these pictures in.

18 THE COURT: All right, I'm gonna sustain
19 it on a different basis. That's on leading. Let me
20 talk to the jury about that. When you have your own
21 witness on the stand you cannot ask a leading
22 question. An example of a leading question is if
23 there was a car wreck case and you said you had your
24 own witness on the stand and you said what color was
25 the car, that's appropriate. If you said was the

SW - Y. CUSACK - REDIRECT

1 car blue, you've led the witness because the answer
2 is contained within the question. You cannot lead
3 your own witness. You can't testify for your own
4 witness. Now on cross-examination you can lead the
5 witness to see if they hold to what they testified
6 to on direct.

7 Counsel, do not lead your witness.

8 MR. HOLT: I apologize, Judge.

9 THE COURT: Go ahead.

10 BY MR. HOLT:

11 Q Did you send these pictures to Damyon Cotton?

12 A No, I haven't.

13 Q Okay. But have other men seen these pictures?

14 A They're on my Facebook page. My friends on
15 Facebook have.

16 Q Have other men who saw the pictures picked you up
17 from your house, driven you to the woods, choked
18 you, pulled you out of your car, and raped you?

19 A No.

20 MS. WISE: Objection, Your Honor, this is
21 a multifaceted question.

22 THE COURT: Overruled as to form. The
23 question is appropriate.

24 BY MR. HOLT:

25 Q Jasmine, do you believe that because a woman

SW - Minor - DIRECT

1 wears a certain dress or a woman acts a certain way
2 she deserves to be raped?

3 A No.

4 Q Okay. Nobody does, Yasmin.

5 THE COURT: Counsel, now I'm going to
6 without objection ask that the jury disregard the
7 other comment that counsel just made because that's
8 testimonial in nature, and counsel is obviously not
9 in here to testify so please disregard that.

10 Counsel, no editorial comments. Please
11 move to your next question.

12 MR. HOLT: Thank you very much, Judge.

13 BY MR. HOLT:

14 Q Yasmin, are all your pictures on Facebook poses
15 like that?

16 A Not really I wouldn't say.

17 Q Do you have other regular type photos on your
18 Facebook?

19 A Yes.

20 Q Okay. Thank you very much, Yasmin. No further
21 questions.

22 THE COURT: All right, ma'am, you may step
23 down. Please watch your step as you're leaving the
24 witness chair. Please call your next witness.

25 MR. HOLT: Thank you very much, Judge. At

SW - Minor - DIRECT

1 this time the State will call Minor to the
2 stand.

3 THE CLERK OF COURT: Minor can you come
4 down here and let me swear you in please.

5 THE WITNESS: Yes, ma'am.

6 THE CLERK OF COURT: Put your left hand on
7 the Bible, raise your right.

8 WHEREUPON,

9 **TORI JOHNSON,**

10 having been duly sworn by the Clerk of Court,
11 testified as follows:

12 THE CLERK OF COURT: If you'll have a seat
13 in the witness chair, pull up close to the mic.

14 MS. WISE: Your Honor.

15 THE COURT: Yes.

16 MS. WISE: We would renew our previous
17 objections to this witness.

18 THE COURT: Very good, objection is
19 overruled as previously decided.

20 You may be seated.

21 MR. HOLT: Thank you very much, Your
22 Honor.

23 **DIRECT EXAMINATION**

24 BY MR. HOLT:

25 Q Minor can you state your name for the record

SW - Minor - DIRECT

1 please.

2 A Minor

3 Q All right. How old are you?

4 A 16.

5 Q And on June 23rd, 2012, a little over a year ago
6 how old were you then?

7 A 15.

8 Q And where do you go to school?

9 A Darlington High School.

10 Q You still in it?

11 A Yes, sir.

12 Q All right. Minor I want to ask you a question.

13 Do you recognize the defendant in this case?

14 A Yes, sir.

15 Q Okay. Has he ever hurt or harmed you in any way?

16 A Yes, sir.

17 Q And can you tell the jury exactly how he went
18 about doing that?

19 A Over a year ago on, in June, I was staying the
20 night over at my friend Katherine's house and I
21 needed a ride home so I made a status on Facebook.
22 It was like, who want to chill. And the defendant
23 messaged me and said he wanted to chill so he came
24 and got me from my friend's house. He asked me --
25 his brother was in the car. He asked me if I would

SW - Minor - DIRECT

1 ride with him to take his brother home in Hartsville
2 and I said yeah. So we rode to take his brother
3 home; and after his brother got out the car he
4 started like touching me in a weird way, like
5 reaching back there and everything.

6 Q Okay. Where were you in the car?

7 A In the back seat behind his brother like
8 diagonally towards him.

9 Q Okay.

10 THE COURT: Counsel, let me just stop you
11 right here. Let me speak to the jury a moment, all
12 right.

13 Ladies and gentlemen, let me give you a
14 charge, if I may, about this testimony, this
15 evidence. You're hearing evidence that the
16 defendant allegedly committed a previous sexual
17 offense which is not the subject of a conviction
18 other than the one for which he's on trial here
19 today. This testimony if you conclude it is true,
20 may only be considered by you on the question of
21 whether there exists some common scheme or plan with
22 regard to these alleged acts and for no other reason
23 and no other purpose. You may give this evidence
24 the weight and value, if any, that you find it
25 should have on the sole issue of whether there may

SW - Minor - DIRECT

1 be some common scheme or plan existing here. You
2 must not consider as evidence of the commission of
3 another alleged sexual offense as proof of the
4 defendant's guilt of the charge that we're trying
5 here today; nor as proof of a trait of his
6 character, nor to actions in conformity with that
7 trait of character.

8 With that understanding now you may
9 proceed.

10 MR. HOLT: Thank you, Judge.

11 BY MR. HOLT:

12 Q How was he able to reach into the back seat and
13 touch you?

14 A He was kind of leaned back a little bit like, you
15 know, like the way dudes drive just kind of.

16 Q And where did y'all go then?

17 A So after we dropped his brother off my phone was
18 dead; and I was like, my phone is dead, do you have
19 a car charger. And he said no, but my home boy do,
20 he right here like down the road. So he pulled up
21 in this yard and he gets out and walks into the
22 house, but when he come back he didn't have nothing.
23 He was like, it's at another house down the road.
24 So we pulled into this other house there was a shed
25 in the back, and he was like, you can come in here

SW - Minor - DIRECT

1 and charge your phone. And I said, no, I'm good,
2 just take me home.

3 Q Why didn't you go into the shed?

4 A 'Cause it was kind of sketchy. I ain't felt
5 comfortable. So then when he got back in the car
6 and he sit down, and he was like, so you gonna give
7 me some head now?

8 Q And what did you take it to mean when he said
9 head?

10 A I would give him oral sex.

11 Q Okay.

12 A And I said no, I told you before we even met up
13 that I didn't want to do that. And then he was
14 like, so you mean to tell me I drove all the way to
15 Florence to get you and you're not gonna give me no
16 head, and I was like no. So then he started like
17 trying to push my head towards his lap and I started
18 pulling away; but then he kept getting rougher so I
19 got kind of scared and started panicking I guess.
20 And I reached for a car door and, like, he pulled me
21 back and then he got out and went to the other side
22 of the car but he moved fast so I don't really
23 remember why I didn't run or nothing. So he was
24 over me. He started punching me in the face and I
25 think he hit me like two or three times, and then I

SW - Minor - DIRECT

1 was scared so I just told him that I would do what
2 he told me to. So he got back in the car and he
3 unzipped his pants and everything and I did like
4 oral sex on him and he started driving. And he
5 pulled into this little place where it's like, there
6 wasn't a driveway but it wasn't like — it was like
7 trees around it or whatever so I really didn't know
8 where I was. I know there was like a double wide.
9 We passed a double wide and then there was like corn
10 fields on this side.

11 Q When is the last place you remember knowing where
12 you were?

13 A I only know what they told me. They told me it
14 was on Whitehall.

15 Q And you heard Whitehall?

16 A Yes, sir.

17 Q Okay, go ahead.

18 A So then he pulled in there and like, I tried to
19 tell him that I was on my period but he didn't
20 really care about that too much. So then he made
21 me, he told me to take my pants off so I did. And
22 he told me get out the car and I did. We got out
23 the car. He picked me up and he put me on the hood
24 of the car and he started like doing it and —

25 Q And what do you mean by doing it, what type of

SW - Minor - DIRECT

1 sex?

2 A It was, first it was like in vaginally and then
3 like he made me turn around and he did it the other
4 way, like anally.

5 Q Uh-huh.

6 A And like the whole time he was doing it he was
7 like telling me, first he asked me like is this rape
8 and like in my mind I was like duh, but I said ye--
9 I mean I said no 'cause I didn't want him to get
10 mad.

11 Q What happened the last time he got mad?

12 A He started hitting me.

13 Q Okay.

14 A So then he was like, he told me, he asked me if I
15 want to have his kids; and I was like, yeah. And he
16 was like trying to tell me to call him daddy and
17 stuff like that. And I just did what he told me to
18 do so it would be over.

19 Q And when it was over what happened?

20 A We got back in the car and he acted like he was
21 sorry about it. He took me to McIver 'cause I
22 didn't want to tell him where I live so I just told
23 him to drop me off on McIver. And he was like, he
24 was sorry and he didn't mean to, and he don't know
25 what come over him and everything like that.

SW - Minor - DIRECT

1 Q Well, when he threatened you previously, beating
2 you when you didn't do what he wanted you to do,
3 what kind of threats did he use?

4 A He didn't really threaten me. He just like hurt
5 me, so I was scared so I would do what he told me.

6 Q All right. Did he use a condom?

7 A Yes, sir.

8 Q Did you ever tell him that you wanted to have sex
9 with him?

10 A No, sir.

11 Q Did you ever message him on Facebook and say I
12 wanted to have sex?

13 A No, sir.

14 Q Okay. Did you ever send him any racy pictures on
15 Facebook?

16 A No, sir, but I did post pictures on Facebook that
17 I guess were inappropriate at the time but not for
18 him.

19 Q Well, Minor let's just be honest about a couple
20 of things. You think you are what people would call
21 a perfect child?

22 A No, sir.

23 Q You think you're a little angel?

24 A No, sir.

25 Q You been in trouble before?

SW - Minor - DIRECT

- 1 A Yes, sir.
- 2 Q Okay. Why don't you tell them where you know me
- 3 from?
- 4 A DJJ in Florence. I had gotten into some trouble
- 5 and —
- 6 Q Okay. And who do you live with?
- 7 A My grandmother.
- 8 Q Okay. And how long have you lived with her?
- 9 A For 11 years.
- 10 Q And on the date in question why weren't you at
- 11 your grandmother's house?
- 12 A 'Cause I was just like really doing my own thing.
- 13 I was at my friend Katherine's house.
- 14 Q Did your grandmother want you at her house?
- 15 A No, sir.
- 16 Q Why not?
- 17 A 'Cause she's like a bad influence I guess you
- 18 could say.
- 19 Q She had gotten fed up with you is what you're
- 20 saying?
- 21 A Uh-huh.
- 22 Q Minor on the day in question did you want to have
- 23 sex with the defendant?
- 24 A No, sir.
- 25 Q Did you plan on going out to a rural area with

SW - Minor - DIRECT

1 him in his car?

2 A No, sir.

3 Q Okay. Did you ask him for help in charging your
4 phone?

5 A Yes, sir.

6 Q Why didn't you run away, Minor right before it
7 happened?

8 A 'Cause I was scared and I didn't know exactly
9 where I was. And plus, he had already made me take
10 my pants off so I didn't really want to run no
11 where, you know, without pants on 'cause that's kind
12 of embarrassing.

13 Q So he took your pants off when you were still in
14 the car?

15 A Well, he didn't take them off. He told me to and
16 I did.

17 Q Okay. Did he try to take your pants off before?

18 A Huh-uh. He just told me to and right when he
19 told me to I did it. Like, that was after
20 everything.

21 Q So it was his plan to have you with your pants
22 off in the car?

23 A Yes, sir.

24 Q Okay. What did you do immediately following him
25 dropping you off on McIver Road?

SW - Minor - CROSS

1 A I walked home. When I walked home I was afraid
2 to tell my grandma 'cause she's already wondering
3 why I'm coming home so late 'cause it was like 10 or
4 11 and she's not used to that. So I texted my best
5 friend, I told him what happened. And he told me to
6 tell my grandma as soon as possible, but I didn't
7 want to tell her so I just texted it to her. And I
8 was like, something bad happened, and she said what,
9 and I texted her I got raped. So she was like, we
10 have to go to hospital. Then she took me to
11 hospital and then they did a rape kit, and the
12 investigators came and I told him everything that
13 happened.

14 Q They show you a photo lineup?

15 A Yeah, but it was a little bit after. Like, it
16 wasn't in the hospital when they showed me the photo
17 lineup.

18 Q Okay. Did you pick Damyon Cotton out the photo
19 lineup?

20 A Yes, sir.

21 Q All right. Did you know Yasmin Cusack before any
22 of this?

23 A No, sir.

24 Q Before the start of this trial yesterday had you
25 ever spent any time with her?

SW - Minor - CROSS

1 A No, sir.

2 Q Okay. Yasmin [sic], give me two seconds. Beg
3 the Court's indulgence.

4 THE COURT: Just go ahead, sir.

5 MR. HOLT: Minor thank you.

6 THE COURT: Now cross-examination from the
7 other attorney, all right.

8 MS. WISE: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 BY MS. WISE:

11 Q Minor how are you doing?

12 A I'm good, how are you?

13 Q You testified that you got in some trouble.
14 Would you explain to the jury what sort of trouble
15 you've been in.

16 A When I was 12 I got an assault charge. Me and my
17 girlfriend had been fighting and I got a charge
18 there. Then I stayed out of trouble for a little
19 bit, but when I was 15 I started stealing from
20 stores and everything and I got shoplifting charges
21 and I got quite a few. But after this time, after
22 last time I stole something, after I got caught I
23 promised that I wouldn't never steal again, and I
24 haven't stole anymore and I've completed probation
25 and I'm doing good. I just got back from Lancaster

SW - Minor - CROSS

1 Children's Home and everything.

2 Q You said your grandma was a bad influence. How

3 ---

4 A No, no, no, not my grandma. I said Katherine was
5 a bad influence on me, my friend whose house I was
6 at.

7 Q Oh, okay.

8 A My grandma is not a bad influence on me.

9 Q I apologize, I misheard you then. The night you
10 said this happened what date was it? June 23rd,
11 2012?

12 A Yes, ma'am.

13 Q Okay. When did you alert the police about this?

14 A The same night.

15 Q So you told them the same exact night?

16 A Yes, ma'am.

17 Q Did they interview you?

18 A Yeah.

19 Q Okay.

20 A Yes, ma'am.

21 Q Did they take pictures of you?

22 A Yes, ma'am.

23 Q Did you have to undergo what they call a rape kit
24 test where they just check your body out top to
25 bottom?

SW - Minor - CROSS

1 A Yes, ma'am.

2 Q Okay. Do you remember undergoing a sexual
3 assault examination? It's probably the same thing
4 as the rape kit test that they were doing.

5 A Yes, ma'am.

6 Q Do you remember the nurse who was looking at you?

7 A I don't remember her name but I remember she was
8 like real happy and like, stuff like that.

9 Q Were you really upset that night?

10 A Like, it's hard to explain 'cause I wasn't like
11 hysterical but I wasn't myself.

12 Q Okay.

13 A But I kind of wanted to keep my composure because
14 I didn't want my grandma to be freaking out.

15 Q Okay. And you testified you communicated with
16 Mr. Cotton over Facebook, correct?

17 A Yes, ma'am.

18 MS. WISE: Your Honor, if I might approach
19 the witness.

20 THE COURT: You may.

21 MS. WISE: I believe we admitted it in as
22 Court Exhibit yesterday number 1, the Facebook
23 photos with Minor

24 THE COURT: You wish to admit that in the
25 trial here today?

1 MS. WISE: I do if that's okay.

2 THE COURT: What says the State?

3 MR. HOLT: A couple of reasons, Judge.

4 I'm gonna —

5 THE COURT: Well, do you object?

6 MR. HOLT: I object for sure.

7 THE COURT: Very good. I'm gonna sustain
8 the objection. The issue is different here because
9 the witness has admitted the photographs, has
10 admitted that they may not be appropriate; thus, we
11 have a difference from our first witness and I'm
12 gonna sustain the objection.

13 You may proceed to your next question.

14 BY MS. WISE:

15 Q Did you tell Mr. Cotton that you had any STDs?

16 A No, ma'am.

17 Q Do you have any STDs?

18 A No, ma'am.

19 MS. WISE: One moment please, Your Honor.

20 Your Honor, may we approach the Bench one moment
21 please.

22 THE COURT: Please briefly come up if you
23 would.

24 (WHEREUPON, counsel approached the Bench
25 for an off-the-record discussion.)

1 THE COURT: Are there further questions?

2 MR. HOLT: Not from the State, Judge.

3 THE COURT: Are you telling me there's no
4 redirect for the witness? Is that correct?

5 MR. HOLT: No, sir, there's no redirect.

6 MS. WISE: No further questions for this
7 witness, Your Honor.

8 THE COURT: All right, ma'am, you may step
9 down.

10 THE WITNESS: Okay.

11 THE COURT: All right, ladies and
12 gentlemen, we're gonna take our morning break at
13 this time. If you want to take a few minutes to
14 step outside our bailiff will let you do that. This
15 inside is a smoke free facility. If someone wants
16 to step outside we'll take about a 20 minute break.
17 We'll bring our class back in, and then we'll finish
18 our morning hour and then adjourn for the day.
19 Please enjoy your break. Don't discuss the case.
20 We'll let you return to the jury room.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 11:39 a.m and a recess was
23 taken from the proceedings.)

24 THE COURT: Please bring in the jury.

25 (WHEREUPON, the jury was returned to the

1 courtroom at approximately 11:56 a.m., and
2 the following proceedings commenced in
3 open court.)

4 THE COURT: All right. Welcome back,
5 ladies and gentlemen. And you will recall at the
6 end of our morning session we remained in the
7 State's case; we're still there. Please call your
8 next witness.

9 MR. HOLT: Thank you very much, Judge. At
10 this time the State would call Grace Cusack to the
11 stand.

12 MS. WISE: Your Honor, I will object. She
13 wasn't on the witness list.

14 MR. HOLT: Judge, when I was putting that
15 list together I was dealing with the four people who
16 weren't here. I might have left her off the list.
17 You asked me to call my people and I called them off
18 the top of my head, and I do believe that I talked
19 about her. And I also believe that, you know,
20 speaking with Ms. Wise in the weeks leading up to
21 this, there's no surprise here.

22 THE COURT: Let me let y'all discuss that
23 between yourselves, see if you can reach a
24 resolution what the witness would intend testify to;
25 and if you can't, then I will resolve it. And while

SW - G. CUSACK - DIRECT

1 you're doing that let me just explain to the jury,
2 unlike the perception you may have from television
3 where you ambush one side or the other at trial with
4 surprise evidence or surprise witnesses in our -- in
5 the court system the way it really works is, we have
6 a discovery process where you provide the names of
7 witnesses to the other side and if there are
8 exhibits or documents that may bear on the case you
9 exchange those prior to the trial so that there is
10 no shock or surprise when you call a witness. This
11 was the basis of the objection. I'm gonna leave
12 counsel to see if they can resolve it. If they
13 can't, then the Court will resolve it.

14 MR. HOLT: Judge, I think the only issue
15 from Ms. Wise is if anybody from the jury knows her.

16 THE COURT: All right.

17 MR. HOLT: She wants to be sure of that.

18 THE COURT: Well, let me hear from
19 Ms. Wise. Is that right?

20 MS. WISE: That is right, Your Honor.

21 THE COURT: Let's bring Ms. Cusack around
22 please.

23 THE CLERK OF COURT: Ms. Cusack, if you'll
24 just come stand down here for me. If you will just
25 turn around and face the jury.

SW - G. CUSACK - DIRECT

1 THE COURT: Go ahead and place her under
2 oath.

3 THE CLERK OF COURT: Put your left hand on
4 the Bible raise your right.

5 WHEREUPON,

6 **GRACE ANNA BAKER CUSACK,**

7 having been duly sworn by the Clerk of Court,
8 testified as follows:

9 THE COURT: Ms. Cusack, come on back,
10 ma'am, and we'll let you be seated. Ma'am, tell us
11 if you would, what's your full name please.

12 THE WITNESS: Grace Anna Baker Cusack.

13 THE COURT: Where do you live, Ms. Cusack?

14 THE WITNESS: Florence, South Carolina.

15 THE COURT: All right now, let me take a
16 moment and speak to the jury. The question raised
17 was, you may remember when we qualified the jury we
18 asked whether you were related to or knew any of the
19 witnesses. Counsel for the defense thinks that we
20 may not have qualified Ms. Cusack and asked you
21 about her so now I ask you, ladies and gentlemen of
22 the jury, are any of you related by blood or
23 marriage or think that you have some close,
24 personal, social, work relationship with her? If
25 you believe you know her, have some connection with

SW - G. CUSACK - DIRECT

1 her, please raise your right hand.

2 (There was no response.)

3 THE COURT: All right. Let's let the
4 record reflect no one has raised their hand. Now
5 there are further questions from Defense with regard
6 to this witness?

7 MS. WISE: Nothing further, Your Honor.

8 THE COURT: All right then, counsel, you
9 may proceed.

10 MR. HOLT: Thank you, Your Honor.

11 **DIRECT EXAMINATION**

12 BY MR. HOLT:

13 Q Grace, did you give your full name for the jury?
14 Did you do that already?

15 A Yes.

16 Q Okay. How old are you?

17 A 60.

18 Q 60. I feel like it. And where do you live?

19 A I live in Florence, South Carolina.

20 Q And how are you related to the victim in this
21 case Yasmin?

22 A She's my daughter.

23 Q Now is she your biological daughter?

24 A No.

25 Q How did you come to be her mother?

SW - G. CUSACK - DIRECT

1 A I was a foster parent for Florence County DSS.
2 They called me one July 13th, asked me would I take
3 on a baby girl; I said yes. And I became her mother
4 she was three days old.

5 Q All right. And since Yasmin has grown up does
6 she have any mental difficulties that you're aware
7 of?

8 A Yes.

9 Q Okay. Now the night of February 1st, 2013, you
10 remember that night?

11 A Yes.

12 Q Okay. And can you tell the jury what you were
13 doing? You don't have to start off with breakfast,
14 but somewhere in the middle of the day start off
15 with what you were doing and what you witnessed that
16 night.

17 A As you're doing during the day, doing this, doing
18 that, cleaning up, whatever, watching TV and I was
19 watching TV that night when she came in.

20 Q What was on?

21 A Undercover Boss.

22 Q Okay.

23 A If I'm not mistaken.

24 Q About what time does that come on?

25 A About 8:00, right after Jeopardy.

SW - G. CUSACK - DIRECT

1 Q Was it over when she came in?

2 A No.

3 Q Now on that night when she walked in the door can
4 you take us from there, what happened?

5 A She came in -- when she opened the door she came
6 in and her steps rushed, standing in front of me
7 which is to block my TV like they like to do. And
8 she said, momma, I been raped.

9 Q Okay. What did you notice about her?

10 A Her clothes was ruffled, her hair was ruffled
11 sticking up in the back, and her jeans were not
12 fastened.

13 Q Okay.

14 MR. HOLT: Now permission to approach,
15 Your Honor.

16 THE COURT: You may.

17 BY MR. HOLT:

18 Q I'm gonna -- do these look like the jeans she was
19 wearing that night?

20 A Yeah, that's them. Uh-huh.

21 Q And you can see, I guess, does it look broken to
22 you?

23 A Yeah.

24 Q Okay. Were they broken when she left?

25 A No.

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1 Q Okay. Now when she came home and told you she'd
2 been raped what did you do?

3 A What did I do?

4 Q Yes, ma'am.

5 A I told her come on.

6 Q And where?

7 A I got my cell phone and pocketbook.

8 Q Where did y'all go?

9 A McLeod.

10 Q Okay. Is it far away from your house?

11 A No, two minutes.

12 Q All right. What happened then?

13 A We got to McLeod and I explained to them that my
14 daughter came home and told me she had been raped.

15 And they told me just a minute, and they made a
16 phone call. Then they came back in the waiting room
17 where we were and told us to come in the back. And
18 they had gotten the rape, what called the rape
19 nurse, the nurse that take care, that do the rape
20 kits.

21 Q Yes, ma'am.

22 A And she called us and we went in the room and
23 they began to do the rape stuff.

24 Q All right. What happened next?

25 A And what happened, Darlington County came over.

SW - G. CUSACK - DIRECT

1 Q Okay. And what did you tell Darlington County?

2 A I told Darlington County that Yasmin had been
3 raped and that she told me who it was and that it
4 had happened over there off of Ebenezer Road.

5 Q Okay. And did Yasmin describe to you the way
6 they took to get there?

7 A Uh-huh.

8 Q Okay. Did she know the names of the streets to
9 tell you at that time?

10 A No, she just told me how they went, and I know
11 the names of the streets and I knew exactly where
12 she went.

13 Q Okay. Approximately about how many police showed
14 up, do you remember?

15 A First it was one and we talked to him. Well,
16 first Florence was there.

17 Q Yes, ma'am.

18 A And then when they realized that it was Turnpike
19 Road then they had to call Darlington. And so then
20 a young gentleman came and -- I can't say young
21 gentlemen, he's young, he's a young man. Came from
22 Florence, I mean, from Darlington, said he was from
23 Darlington. And I talked to him and he said, oh, I
24 know exactly where that is. And then we talked, I
25 don't know, it probably wasn't 20 minutes and then

SW - G. CUSACK - DIRECT

- 1 Officer Brandon came.
- 2 Q Yes, ma'am.
- 3 A And then I started back over with the
- 4 conversation, and we just talked about it while they
- 5 waited on Yasmin.
- 6 Q Now Yasmin, she probably goes out on a lot of
- 7 dates?
- 8 A Yeah.
- 9 Q Okay. Do you meet all the boys?
- 10 A Uh-huh.
- 11 Q Okay. So if Yasmin had a boy friend —
- 12 A Uh-huh.
- 13 Q ---that was somebody she was in a serious
- 14 relationship with, would you have known him?
- 15 A I'd have known.
- 16 Q Okay. Had you ever seen Damyon Cotton before?
- 17 A No.
- 18 Q Do you know who he is?
- 19 A No.
- 20 Q Have you ever seen him before this hearing before
- 21 ---
- 22 A No.
- 23 Q ---before court started?
- 24 A Not to my knowledge.
- 25 Q Okay. Ms. Grace, give me two seconds.

SW - S. GAUGER - DIRECT

1 A Okay.

2 Q Ms. Cusack, please answer any questions defense
3 counsel has, okay?

4 A Okay.

5 THE COURT: Is there cross-examination?

6 MS. WISE: No further questions for this
7 witness, Your Honor.

8 THE COURT: Very good. Then ma'am, you
9 may -- you're done with your testimony. You may
10 return to the back. You may stay in the front,
11 whatever your preference is.

12 Let's call your next witness.

13 MR. HOLT: Judge, can she bring all the
14 family who have testified out?

15 THE COURT: Sure, if she wishes to do so.
16 We're not sequestering witnesses. She's welcome to
17 bring witnesses, and those who are in the back.

18 MR. HOLT: Judge, we're gonna call Scottie
19 Gauger to the stand who is the responding officer.
20 Deputy Peavy will go get him right now.

21 THE CLERK OF COURT: Sir, if you will come
22 down and get sworn please. If you will place your
23 left hand on the Bible and raise your right.

24 WHEREUPON,

25 **SCOTT A. GAUGER,**

SW - S. GAUGER - DIRECT

1 having been duly sworn by the Clerk of Court,
2 testified as follows:

3 THE CLERK OF COURT: If you'll have a
4 seat.

5 **DIRECT EXAMINATION**

6 BY MR. HOLT:

7 Q Deputy, could you give your whole name for the
8 jury.

9 A Scott Allen Gauger.

10 THE COURT REPORTER: Spell your last name
11 please.

12 THE WITNESS: G-A-U-G-E-R.

13 BY MR. HOLT:

14 Q Who do you go by?

15 A Scott.

16 Q Scott, how old are you?

17 A 28.

18 Q Okay. Where are you from?

19 A I was born and raised in Michigan.

20 Q When did you move down here?

21 A I've been down here just over five years.

22 Q Okay. Why did you move down here?

23 A Graduated from college, looking for a job in law
24 enforcement, and I moved down here to work in the
25 jail.

SW - S. GAUGER - DIRECT

1 Q Okay. And where do you work now?

2 A I work for Darlington County Sheriff's Office.

3 Q How many years you got in law enforcement?

4 A Four years.

5 Q Are they all with the Sheriff's Office?

6 A Two years -- or three years with the Darlington
7 City Police Department.

8 Q That's DPD?

9 A That is correct.

10 Q All right. Now what's your position at the
11 Sheriff's Office?

12 A I'm a patrol deputy.

13 Q And can you describe to the jury the duties of a
14 patrol deputy.

15 A Patrol deputy, our main goal and objective is
16 calls for service. Anybody who calls 9-1-1, we'll
17 respond no matter what the issue is and go from
18 there.

19 Q All right. And what's the difference between a
20 patrol deputy and say an investigator?

21 A We're first responders. If you call 9-1-1 we're
22 the first to show up. We're the first one to
23 investigate and interview suspects or victims.
24 Investigators are called out based on the severity
25 of the incident that took place.

SW - S. GAUGER - DIRECT

1 Q All right. And on the night -- first off, let me
2 ask you to clarify that. So what you mean is, if
3 it's more severe do you call the investigator?

4 A That's correct.

5 Q Okay. And on the night in question, February
6 1st, 2013, where were you working?

7 A I was working Darlington County zone three.

8 Q Explain to the jury what zone three is?

9 A Zone three runs from Dovesville all the way down
10 52 to the Florence County line and then from 52 west
11 towards South Center Road.

12 Q All right. And were you called to McLeod
13 Hospital?

14 A That is correct.

15 Q Why?

16 A I was called out there reference to an assault.

17 Q Okay. Do you get called out to McLeod often?

18 A Yes, sir.

19 Q And when you got there what did you discover?

20 A When I got there I'd spoken with the victim's
21 mother who stated that her daughter had been
22 sexually assaulted.

23 Q All right. What steps did you take?

24 A I then spoke with the victim herself and asked
25 the victim exactly what happened and when and where

SW - S. GAUGER - DIRECT

1 it occurred at.

2 Q What answer did you receive? Well, let me ask
3 you this, based on what you were told, okay, where
4 did you determine that the assault took place?

5 A Based off the information I was given off of
6 Turnpike Road in a wooded area.

7 Q Now let me ask you something about Turnpike Road.
8 Is there a lot of houses down there?

9 A There is -- it is a lot of houses on the south
10 side of the road.

11 Q How about on the north side of the road?

12 A It's a lot of open fields.

13 Q All right. Would you -- would the north side of
14 the road be what you would consider a populous
15 place?

16 A No.

17 Q What time of the day was it that you were called
18 to McLeod?

19 A In the evening around 9:45 I believe.

20 Q It was February, was it light or dark then?

21 A It was dark.

22 Q Okay. And at dark on Turnpike Road, would you
23 consider that a safe environment?

24 A It's not very populated. There's not a lot of
25 traffic.

SW - S. GAUGER - CROSS

1 Q All right. Now when you got there and you spoke
2 with them what steps did you take after that?

3 A After speaking with her I contacted Sergeant
4 Brandon Peavy with investigations.

5 Q And why did you get an investigator involved in
6 this case?

7 A Based on after speaking with the victim it was
8 concurred that a sexual assault had occurred in
9 Darlington County off Turnpike Road. Based on the
10 severity of what the charges were I contacted the
11 investigator to come out and speak with the victim.

12 Q And after leaving McLeod where did you go then?

13 A I went to Turnpike Road attempting to locate the
14 incident location.

15 Q All right. And were you able to find it?

16 A Unable to locate it at the time being dark out
17 and there's a lot of wooded areas off of Turnpike.

18 Q So it could have been anywhere and you wouldn't
19 have known?

20 A That's correct.

21 Q All right, beg the Court's indulgence. Deputy,
22 please answer any questions Defense counsel might
23 have.

24 A Yes, sir.

25 THE COURT: Now cross-examination.

SW - S. GAUGER - CROSS

CROSS-EXAMINATION

1

2 BY MS. WISE:

3 Q I'm sorry, tell me how to pronounce your name
4 again.

5 A Scott Gauger.

6 Q Gauger. Okay, thank you, Officer Gauger, I
7 apologize. You got a copy of the incident report
8 you filled out the night this happened?

9 A I filled it out the next morning.

10 Q Do you mind just walking through the jury step by
11 step what the incident report says?12 A The incident report says that I was called to
13 McLeod Hospital by the defendant, or the victim's
14 mother, in reference to a rape victim.

15 Q Okay. What did you report that Ms. Cusack said?

16 A Ms. Cusack stated that she had spoken with a
17 friend Damyon around 6:30 p.m. She stated that he
18 asked her if she wanted to go out. She said she
19 said yes, I want to go to the movies. She stated
20 upon hanging up with him he pulled into the
21 driveway.22 Q Okay. And they went to the Julia 4 movie theater
23 in Florence, correct?

24 A That's correct.

25 Q And you reported they parked in the parking lot,

SW - S. GAUGER - CROSS

1 correct?

2 A That's correct.

3 Q And you reported that -- and this is what
4 Ms. Cusack said to you, that they did not go into
5 the theater, correct, but sat inside the vehicle?

6 A That's correct.

7 Q And that she stated that the suspect then asked
8 her are you gonna suck my dick, correct?

9 A Correct.

10 Q And this victim then stated that she told the
11 suspect no, and that she wanted to go home, correct?

12 A Correct.

13 Q After that you reported that she stated that the
14 suspect took her to K-Mart, correct?

15 A That's correct.

16 Q Did she ever tell you that he forcefully raped
17 her in the parking lot of the Julia theater?

18 A No.

19 Q Okay. At K-Mart you reported that she stated
20 that the suspect gave her 15-dollars and asked to
21 again for oral sex, correct?

22 A That's correct.

23 Q Okay. You then reported that the victim stated
24 that the suspect then asked her if she would have
25 sex with him, correct?

SW - S. GAUGER - CROSS

1 A Correct.

2 Q Did she ever report to you that he sexually
3 assaulted her in parking lot of K-Mart?

4 A No.

5 Q Okay. Then the incident Turnpike Road, correct?

6 A Correct.

7 Q Okay. Did she ever mention anything about a gun
8 to you?

9 A No.

10 MR. HOLT: Judge, I think at this time I
11 think I'm gonna have to object to hearsay. These
12 questions would have been appropriate for Yasmin.

13 MS. WISE: Can I rephrase the question?

14 THE COURT: Please do.

15 BY MS. WISE:

16 Q Did you report that the victim discussed a gun or
17 mentioned a gun being flashed?

18 A No.

19 Q Okay. And you recorded that you asked the victim
20 what type of vehicle the subject was driving,
21 correct? And that's on that page 3 of 5, I believe,
22 the second paragraph?

23 A Correct.

24 Q And she stated what?

25 A It was an older model four door burgundy vehicle.

SW - S. GAUGER - REDIRECT

1 Q And what was the license plate number that she
2 gave you?

3 A EIE181.

4 Q Do you remember how she give you this license
5 plate number? Was she reading it off of something?

6 A That I do not remember.

7 Q Okay, it's okay. And you reported that you had
8 dispatch run that plate, correct?

9 A Correct.

10 Q And what did the VIN number come back as?

11 A Come back as Juliette, JN1EB31P5P3233472.

12 Q Okay. And who did that vehicle come back as
13 belonging to?

14 A A Connie Gattison.

15 Q Okay. And how did the suspect state she knew the
16 subject -- excuse me, how did the victim knew she
17 knew the subject?

18 A She stated that she had met him through a friend
19 in Hartsville.

20 Q And did she ever discuss chat lines? Did you put
21 in your report anything about her meeting this
22 individual over a chat line?

23 A No.

24 Q And you testified that you -- or you did ride
25 out to Turnpike Road after this, correct?

SW - S. GAUGER - REDIRECT

1 A That is correct.

2 Q And you were unable to locate the incident, the
3 location where she claimed this incident did happen,
4 correct?

5 A Correct.

6 Q You didn't see any indication of any sort of
7 struggle anywhere?

8 A I could not locate any kind of incident location.

9 Q Okay. Couldn't locate any dirt roads. Were you
10 under the impression this was off of a dirt road?

11 A I was under the impression it was in a wooded
12 lot.

13 Q Okay. I think that's it, Your Honor. Thank you,
14 sir. I appreciate it.

15 THE COURT: Is there redirect?

16 MR. HOLT: Briefly, Judge.

17 THE COURT: Go ahead.

18 **REDIRECT EXAMINATION**

19 BY MR. HOLT:

20 Q Deputy, what's the difference between the
21 information gathering practice of somebody like you
22 who responds initially than somebody like Brandon
23 who actually investigates a crime?

24 A My initial response is to find out what the
25 victim can tell me. I find out what took place

SW - B. PEAVY - DIRECT

1 based on what the victim told me. The investigator
2 goes in further beyond that into where it took
3 place, how it took place, when it took place, and
4 even including who the suspect is.

5 Q You know, is it part of your routine regular job
6 as a patrol deputy to gather a hundred percent of
7 the evidence?

8 A No, sir.

9 Q Okay. So is it weird that you didn't get
10 everything the investigator got in this case?

11 A No, sir.

12 Q Is it normal?

13 A Yes, sir.

14 Q Thank you very much, Deputy.

15 THE COURT: Sir, you may step down.
16 You're free to leave if you wish or free to remain.

17 THE WITNESS: All right, thank you.

18 THE COURT: Thank you. Please call your
19 next witness.

20 MR. HOLT: Judge, at this time the State
21 would like to call Deputy Brandon Peavy please.

22 THE COURT: Please come forward and take
23 the oath of a witness.

24 THE CLERK OF COURT: If you will put your
25 left hand on the Bible, raise your right.

SW - B. PEAVY - DIRECT

1 WHEREUPON,

2 **K. BRANDON PEAVY,**

3 having been duly sworn by the Clerk of Court,
4 testified as follows:

5 **DIRECT EXAMINATION**

6 BY MR. HOLT:

7 Q Deputy, could you please give us your whole name
8 for the jury?

9 A Sergeant Kenneth Brandon Peavy.

10 Q And where do you work?

11 A Darlington County Sheriff's Office.

12 Q What is your job there?

13 A I'm a criminal investigator.

14 Q How long you been in law enforcement?

15 A Right at seven years.

16 Q They have been all with the Sheriff's Office?

17 A Yes, sir.

18 Q Okay. What's the difference between a road
19 deputy and an investigator?

20 A Road deputy is the one that takes the initial
21 call, responds to whatever crime has been committed
22 or alleged. From that point when he does the
23 initial report, the case would be assigned to an
24 investigator for something that a road deputy can't,
25 couldn't talk on the phone. If it took further

SW - B. PEAVY - DIRECT

1 investigating to do, it would be turned over to us
2 and we take the case, try to find out why something
3 happened, what happened, and how it happened and who
4 did it.

5 Q Okay. Now did you used to be a road deputy?

6 A Yes, sir.

7 Q All right. Now when Ms. Wise was tripping Deputy
8 Gauger up about who said what, when, and where, did
9 you witness that testimony?

10 A Yes, sir.

11 Q All right. And can you tell us why Deputy Gauger
12 would not have gotten a hundred percent of the facts
13 that night?

14 A As a part of a first responder when you go to
15 initial call, when a complaint has been made you try
16 to get as much information as you can initially to
17 turn over into your report. You try ask the
18 questions of, you know, what happened, do you know
19 who did it, the basic questions. You, as a road
20 deputy, you would not have the time to conduct a
21 full investigation which could take hours, days,
22 weeks, sometimes months and years. You get all the
23 initial information to assist an investigator that's
24 gonna be turned over to the case to investigate all
25 that.

SW - B. PEAVY - DIRECT

1 Q And in your opinion is the investigator's
2 investigation more or less thorough than the road
3 deputy's?

4 A It's a lot more thorough.

5 Q Okay. Now February 1st, 2013 where were you
6 working and what were your responsibilities?

7 A I was investigator on-call. That evening I
8 received a call from Deputy Gauger saying that he
9 had a report of a sexual assault that occurred in
10 our county and the victim was at McLeod Hospital.

11 Q And did you go to McLeod?

12 A Yes, I did.

13 Q And when you got there what did you see, what did
14 you find out?

15 A I spoke with Deputy Gauger when I got to McLeod.
16 At that time Yasmin was already back with the nurse
17 having the rape kit performed on her.

18 Q Okay.

19 A Deputy Gauger basically gave me a overview of
20 what was reported him. As soon as the nurse
21 finished up with the rape kit I went into the room
22 where I met with Yasmin and her mother. I asked her
23 what had happened. She had told me that she had met
24 this boy, only knew his name as Damyon, through a
25 friend, and that he had come and picked her up and

SW - B. PEAVY - DIRECT

1 asked her what she wanted to do. They wanted to go
2 to the movies so she went to the Julia movies. When
3 they got to the movie theater he, he stated he
4 didn't want to go in. I believe he asked her to
5 perform oral sex on him. She told him that she
6 didn't want to. So at that time she said that they
7 had went to K-Mart where he offered -- I think he
8 had tried to give her money to buy Valentine's day
9 present. Again, requested that she give him oral
10 sex. She told me that she told him that she wasn't
11 gonna do it and asked to be taken home.

12 At that time she stated that they had left
13 K-Mart, went driving to a wooded area. And at this
14 time I kind of wanted to dig a little bit deeper
15 because I wasn't one hundred percent sure where this
16 incident had taken place at. She said she
17 remembered she turned right off of Hoffmeyer Road at
18 the traffic light and passed a red and white church.
19 I knew which church she was talking about which is
20 in Florence County. So as I started asking more
21 questions I said, well, do you, do you remember
22 passing a store? She said, yes, we took a left at a
23 store. And the only store I know of other than the
24 Fast Track at 52 and Ebenezer was the store right
25 there at Palmetto Grocery at Turnpike.

SW - B. PEAVY - DIRECT

1 Q Where does Turnpike turn out at?

2 A Turnpike turns off left off of Ebenezer and runs
3 all the way back out to Timmonsville Highway right
4 before you get -- if you're heading away from
5 Darlington, right before you get to High Hill.

6 Q Okay.

7 A At this time I kind of asked some more questions.
8 I said, well, was the store on your left, was it on
9 your right? And she stated that the store was on
10 the left. And I said, after you turn off the road
11 was the store on your right or your left? She said
12 the store was on the right after you turn off of
13 Ebenezer. So I knew at that time it couldn't have
14 been the Fast Track she was talking about. It had
15 to be Palmetto Grocery. She said they went down the
16 road and had turned off in a field, went through a
17 field and into a wooded area. So I knew that what
18 she was telling me was Turnpike Road. I just didn't
19 know where at on Turnpike Road, but I knew it was
20 Darlington County. She said that after they got to
21 the car he kind of asked her again to give him oral
22 sex, and she declined, asked to be taken home. And
23 then she stated he had got out the car, pulled her
24 out the car, pulled her pants off. She told me she
25 had told him that she was pregnant, had herpes,

SW - B. PEAVY - DIRECT

1 tried to get him to stop. I believe her response to
2 me was that he said, I can fix that, and that's when
3 he took out the condom, put it on. She said they
4 proceeded to have sex. When he was finished he took
5 the condom off and threw it and gave her her pants
6 back.

7 Q Were you able to find the condom?

8 A No. After I left the hospital that morning,
9 'cause I stayed at the hospital to get statements
10 and the -- or the rape kit and her clothes, I left
11 and rode out there but as dark as it was you really
12 couldn't see much at that time. Then the following
13 day when I come back out I rode down Turnpike Road,
14 checked several areas but never was able to locate a
15 spot that looked like an assault had taken place.

16 Q If I can stop you right there.

17 MR. HOLT: Permission to approach, Your
18 Honor.

19 THE COURT: You may.

20 MR. HOLT: Thank you, Judge.

21 BY MR. HOLT:

22 Q I want to show you what's been marked as State's
23 Exhibits 3 through 17. I don't want you to tell the
24 jury what they are. I just simply want you to tell
25 the jury do you recognize them.

SW - B. PEAVY - DIRECT

1 A Yes.

2 Q And did you take those?

3 A Yes.

4 Q And since you took them have there been any
5 changes, alterations, or deletions made to those
6 copies?

7 A No.

8 Q Okay. And could you tell us what those are?

9 A They're pictures of Ebenezer Road, Turnpike Road,
10 the red and white church that she stated that she
11 passed and then Palmetto Grocery right there on
12 Turnpike Road. Going on down Turnpike there's a
13 section of a field with a wooded area ---

14 MS. WISE: Your Honor, may I see these
15 pictures first.

16 THE COURT: Sure you may. You intend to
17 introduce them, counsel?

18 MR. HOLT: I do, Judge.

19 THE COURT: Let's take them up, Mr. Peavy,
20 and let Ms. Wise take a look at those. Thank you.

21 (Pause.)

22 THE COURT: So then to shorten this
23 process, if I may, will there be objection to these
24 photographs?

25 MS. WISE: No objection to any of those,

SW - B. PEAVY - DIRECT

1 Your Honor.

2 THE COURT: There is no objection,
3 counsel, so you may proceed.

4 BY MR. HOLT:

5 Q Brandon, Deputy, can you just walk us through
6 picture — can he come down in front of the jury,
7 Judge?

8 THE COURT: Certainly he may.

9 BY MR. HOLT:

10 Q Can you just walk us through picture by picture
11 how you took the pictures, how you found out what
12 the scene was, and why you did not find the actual
13 scene?

14 THE COURT: And Mr. Holt, just so our
15 record will be clear, tell me what inclusive numbers
16 do you have there?

17 MR. HOLT: 3 through 17, Judge.

18 THE COURT: All right, then. State's 3
19 through 17 in evidence without objection. Please
20 proceed.

21 (WHEREUPON, State Exhibits Nos. 3 through
22 17 were admitted into evidence.)

23 THE WITNESS: This is the — when she said
24 she turned off Hoffmeyer Road on to Ebenezer and the
25 right and white church. This is the church which is

SW - B. PEAVY - DIRECT

1 a picture of the sign. And that's a picture of the
2 sign at the church. You can see it's the red and
3 white church. Going on down the road, the way she
4 described it, the store Palmetto Grocery, right
5 there Turnpike Road on your left if you're coming
6 from Florence. Everybody can see that. That's a,
7 just a picture of a road sign, Turnpike and Ebenezer
8 road and general location where you're at. Again,
9 the road sign with the store in the background which
10 would be on the left-hand side if you're going down
11 Ebenezer away from Florence towards Darlington.

12 This field right here if you're on
13 Turnpike Road, okay, this was based off of what she
14 kind of described to me as going through a field to
15 a wooded area, this would be as Deputy Gauger said
16 north end of Turnpike Road. This was the location I
17 searched, I guess, the heaviest because it was to me
18 it fit the description of what she was trying to
19 tell me as the location it took place. This is a
20 view from the road back to the wooded area. This
21 picture right here, if you look in this picture
22 where this clump of trees is right here in the
23 center, this is if you're standing right here at
24 that clump of trees looking back to your left, how
25 it kind of curves around. This right here is a

SW -- B. PEAVY -- DIRECT

1 little bit further off from that, kind of give you
2 an idea how the road curves back around from that
3 field. Can you see it down here? This is a
4 picture to the right, what you would view from the
5 right of that clump of trees. If you're looking at
6 this right here, this is from the clump of trees
7 back to the road so you can actually -- this wide
8 trailer right here is actually on the opposite side
9 of the road on Turnpike Road, just to give you an
10 idea how far away from the road you are. This is a
11 shot of from Turnpike Road that runs back along to
12 here, the left-hand side. There's nothing in the
13 field. There's no houses, anything.

14 This right here is a shot of the
15 right-hand side of the field. There's a house back
16 up here, but it's covered. It's got trees
17 completely around it. This is an old barn, sits way
18 off in the field; it's not a house. This right
19 here, if you remember in the previous picture when
20 you're standing at the clump of trees back to the
21 left how the road curved around, it goes on around
22 to this group of trees back to another part of the
23 field. This is that immediate curve looking this
24 picture back in here, this is the curve back in here
25 and that's a little spot that's open right there, I,

SW - B. PEAVY - DIRECT

1 guess, where you can walk or you can actually drive
2 back up in there. And this is from that curve
3 looking back just to show you how if you were back
4 there you can't see anything. We searched that
5 whole area, walked around, and I never could find
6 anything.

7 Q Okay. Deputy, is there any kind of specialized
8 equipment or trained dogs that can look for used
9 condoms in the woods that you know of?

10 A If there are we don't have access to them.

11 Q All right. Did you hold out any hope for finding
12 the condom?

13 A Not really because at the time, I was searching
14 the area but I wasn't positive that that's where the
15 assault took place.

16 Q Okay. Are there multiple secluded locations like
17 that on Turnpike Road?

18 A Yes.

19 Q Okay.

20 MR. HOLT: Now, Your Honor, if I may
21 approach again.

22 THE COURT: Yes, sir, you may. You don't
23 need to ask. You can go ahead.

24 BY MR. HOLT:

25 Q Deputy, I'm gonna show you what's been previously

SW - B. PEAVY - DIRECT

1 marked as State's Exhibit 2. I'm gonna ask you
2 first not to say anything about it to the jury; ask
3 you, second, if you recognize that.

4 A Yes.

5 Q And did you produce that?

6 A Yes, sir.

7 Q Okay. And did you use that?

8 A Yes, sir.

9 Q And have there been any material changes or
10 alterations made to it since the last time you've
11 seen it?

12 A No.

13 Q And can you tell the jury what that is.

14 THE WITNESS: That's a part of my ---

15 MS. WISE: Your Honor, I'm sorry, if I
16 might, can I see that please?

17 THE COURT: Counsel, did you all not sit
18 down and review the evidence beforehand?

19 MR. HOLT: She's seen all these, Judge.

20 MS. WISE: I don't -- I apologize.

21 MR. HOLT: This was in discovery. The
22 pictures I showed to her yesterday.

23 THE COURT: Counsel, come take a look at
24 them.

25 MS. WISE: I apologize.

SW - B. PEAVY - DIRECT

1 (Pause.)

2 THE COURT: Go ahead, Mr. Holt.

3 BY MR. HOLT:

4 Q Did you tell the jury what that was yet?

5 A It's a photo lineup.

6 Q Okay.

7 MR. HOLT: Your Honor, at this time I'd
8 like to put the photo lineup into evidence.

9 THE COURT: Is there any objection?

10 MS. WISE: No objections, Your Honor.

11 THE COURT: All right, it's -- what is the
12 number please?

13 THE WITNESS: 2.

14 THE COURT: State's 2 in evidence without
15 objection. You may publish to the jury.

16 (WHEREUPON, State Exhibit No. 2 was marked
17 for identification and admitted into
18 evidence.)

19 BY MR. HOLT:

20 Q Deputy, can you tell the jury why you made the
21 photo lineup, how you got to the point of getting
22 the photo lineup, and what evidence you gathered
23 because of it?

24 A Okay. When I first met with Yasmin at the
25 hospital she had told me that she knew Damyon's

SW - B. PEAVY - DIRECT

1 first name but didn't know his last name. That
2 following Monday when we got back to the office I
3 was in there talking about the case that I had, and
4 I mentioned the name and a couple of other
5 investigators who had cases with Mr. Cotton had
6 said -- oh, I'm sorry. Basically I got his name
7 from other cases in our data base.

8 Q Did you check, did you have access to the -- did
9 you have access to the license plates?

10 A Yes.

11 Q Okay. And how did -- what did you do once you
12 had access to the license plate?

13 A I have a DMV account through the Sheriff's
14 Office. I entered the information in through DMV
15 and it came back to Ms. Gattison off of Whitehall
16 Lane.

17 Q Did you say Whitehall?

18 A Whitehall.

19 Q Okay, what did you do next?

20 A I'm familiar with that area being from
21 Hartsville. I knew exactly where it was so I did a
22 search in our system for that address, come back to
23 the address and also did a search through DMV for
24 other residents at that address and it had come back
25 to Whitehall Lane. I found out that Danyon Cotton's

SW - B. PEAVY - DIRECT

1 name was also in there and his name come up through
2 our system with that address. Based off of that I
3 felt pretty confident that's who it was based off
4 the description of the vehicle, the tag number, and
5 it come back to him being a resident at that house.
6 I then put a photo lineup together with his picture
7 in it, marked it, and took it to Florence to show
8 Miss Cusack. I asked her to see if she knew or was
9 familiar with anybody in the photo lineup. If she
10 wasn't hundred percent familiar with it I didn't
11 want to -- her to mark it. When I showed her the
12 photo lineup she picked Mr. Cotton out of the
13 lineup.

14 Q All right. Now let me ask you another question,
15 do you recognize State's Exhibit 1? It's already in
16 evidence.

17 A Yes.

18 Q Okay. What can you tell me about these pants?

19 A Those were the pants I collected from the nurse
20 at McLeod Hospital immediately after the rape kit
21 was done on Ms. Cusack.

22 Q What did you do with those pants?

23 A Those pants right there, as soon as I left the
24 hospital I collected those. I took them straight to
25 Sheriff's Office and dropped them into evidence.

SW - B. PEAVY - DIRECT

1 Q All right. Who was in charge of evidence at that
2 time?

3 A I believe Russ Harrell.

4 Q Now as lead investigator of the case are you
5 familiar with all the evidence and receive all the
6 evidence?

7 A Pretty much most of the time I am.

8 Q Okay. The rape kit that you talked about
9 happening at the hospital, did anything useful come
10 back from that?

11 A Not to my knowledge, no. If it had I would have
12 been notified.

13 Q Okay. How about, what information were you able
14 to glean through the pants?

15 A I believe we did get some DNA off the pants after
16 it was sent to SLED.

17 Q Okay. And who'd SLED tell you it belonged to?

18 A Damyon Cotton.

19 Q Was there anything else about this case you
20 thought was important, Deputy?

21 A I'm not sure I understand the ---

22 Q That's all right. Please answer any questions
23 Defense counsel might have, okay.

24 THE COURT: Now cross-examination.

25 MS. WISE: Thank you, Your Honor.

SW - B. PEAVY - CROSS

CROSS-EXAMINATION

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BY MS. WISE:

Q Hey, Deputy, how are you?

A Doing fine. How are you?

Q Good. Do you have a copy of your incident report that you filled out in regards to this?

A Yes, ma'am.

Q Can you get that out for us please.

A Yes, ma'am.

Q You filled out an incident report you responded to hospital, correct?

A Yes.

Q When did you fill out this incident report?

A I believe this was done — I did my supplement on the 18th of February.

Q Okay. And the event was on the 1st of February,

—

A Yes, ma'am.

Q —correct? And did you write down everything Miss Yasmin Cusack reported to you?

A Yes. When I go to the hospital of any time I speak with them I take a note pad and write down what's being told to me.

Q Okay. And did she report to you that she was raped in the parking lot of the Julia theater in

SW - B. PEAVY - CROSS

1 Florence?

2 A She had told me that he had demanded or asked her
3 to give him oral sex in the parking lot.

4 Q Did she say any physical contact occurred?

5 A No.

6 Q What about in the parking lot of K-Mart in
7 Florence, did any physical contact occur at that
8 point sexually?

9 A Not to my knowledge.

10 Q Going to Turnpike Road where she claimed that
11 this happened, about how long is Turnpike Road?

12 A Turnpike Road is probably from Ebenezer to
13 Timmons ville Highway, I would say, maybe four miles
14 long.

15 Q Okay, a short drive, you could probably drive it
16 in ten minutes, correct?

17 A Oh, yeah.

18 Q When you first got on to Turnpike Road you
19 explained that it was more rural. There's still
20 some houses though there, correct?

21 A A couple of houses.

22 Q And there's some barns and some sheds, correct?

23 A Yes, ma'am.

24 Q You got to answer so ---

25 A Yes, ma'am.

SW - B. PEAVY - CROSS

1 Q Thank you. Okay. Within two minutes of being on
2 Turnpike Road wouldn't you say it's very
3 residential?

4 A No.

5 Q You would not?

6 A No.

7 Q When does it become residential?

8 A When you start to get closer to the Timmons ville
9 highway to the end of Turnpike.

10 Q Okay.

11 A Whenever you turn off of Ebenezer Road there's a
12 couple of houses right there after you turn off; but
13 then you're pretty much in open fields until you
14 start to get, I would say, probably a
15 mile-and-a-half to Timmons ville road then you start
16 hitting trailer parks and more residential houses.

17 Q Okay. When did you return to Turnpike Road to
18 investigate where this was said to have happened?

19 A When I left the hospital it would have been the
20 morning of the second when I left the hospital. I
21 came back out I think it was about 1:00, the 2nd, I
22 come back out and searched the area.

23 Q Okay. Which areas did you search?

24 A The field where the pictures were taken, searched
25 that area, and I think there's two more areas where

SW - B. PEAVY - CROSS

1 wooded areas. When I -- I tried to look for areas
2 she kind of described to me as in between a field
3 toward wooded area. There were several locations
4 that were kind of gated off, you couldn't even get
5 back to. But everyone that kind of, I felt, matched
6 the description I searched.

7 Q In any of those areas were you able to notice any
8 tire marks, or anything out of the ordinary?

9 A No.

10 Q Any signs of force?

11 A No.

12 Q Never recovered the condom?

13 A No.

14 Q Did you speak to any of the residents that live
15 in the area?

16 A All the places I checked there was no houses
17 anywhere around it.

18 Q Okay. Didn't talk to anybody at Palmetto
19 Grocery?

20 A The store was closed at that time.

21 Q Okay. Miss Cusack -- you reported that
22 Miss Cusack stated she knew Mr. Cotton through a
23 friend, correct?

24 A Yes, ma'am.

25 Q And what was that friend's name that you

SW - B. PEAVY - CROSS

1 reported?

2 A I believe she said it was Tanzia of Tanzy is the
3 name.

4 Q Okay. Did she give you anymore information about
5 that individual?

6 A No, I don't think she gave me last name or
7 anything.

8 Q Did you ever contact that individual?

9 A No.

10 Q Okay. Did she ever mention to you or did you put
11 in your report anything about any chat rooms?

12 A No.

13 Q Okay. Mr. Holt asked you about DNA that was on
14 those pants, correct?

15 A Yes, ma'am.

16 Q And you said that SLED informed you that Damyon
17 Cotton's DNA was on those pants, correct?

18 A Yes, ma'am.

19 Q SLED also informed you another individual's DNA
20 was on same exact spot as Damyon Cotton's?

21 A I believe it was unidentified.

22 Q And we didn't tell the jury that?

23 A No.

24 Q Okay.

25 MS. WISE: One moment please, Your Honor.

SW - B. PEAVY - REDIRECT

1 I think that's it for this witness. Thank you,
2 Deputy Peavy.

3 THE WITNESS: Is there redirect?

4 MR. HOLT: Just briefly, Judge.

5 **REDIRECT EXAMINATION**

6 BY MR. HOLT:

7 Q Deputy Peavy, in your experience when you're
8 putting together an investigation, does the
9 investigating officer always get a hundred percent
10 of all the information available to him?

11 A No.

12 Q Okay.

13 A Usually as the case goes on we pick up more and
14 more information.

15 Q All right. Is it common or uncommon the more
16 times you ask a question the more details you get?

17 A Very common.

18 Q Okay. So does it not surprise you that you, that
19 you might have heard more detail on the stand than
20 you received the first night at McLeod ---

21 A No.

22 Q ---immediately following the rape?

23 A No, it doesn't.

24 Q Is it common or uncommon?

25 A It's common to find out more as time goes on.

1 Q Okay. Thank you very much.

2 THE COURT: Any followup on those points?

3 MS. WISE: No followup, Your Honor.

4 THE COURT: Sir, you may step down and
5 return to your seat.

6 Are you prepared to call additional
7 witness, counsel?

8 MR. HOLT: Not today, Judge.

9 THE COURT: Very good. Ready to end the
10 proceedings for today then?

11 MR. HOLT: Please.

12 THE COURT: All right, counsel, come up,
13 let's talk about scheduling before we give some
14 further information to the jury.

15 (WHEREUPON, counsel approached the Bench
16 for an off-the-record discussion.)

17 THE COURT: All right, ladies and
18 gentlemen, I'm just talking about scheduling and the
19 additional witnesses to come. It would be expected
20 that we would conclude this case tomorrow; but so
21 that we can do that, let's start at 9:00 tomorrow
22 morning as opposed to 9:30 like we started today.
23 So what I ask you to do is to be back in the jury
24 room tomorrow morning at 9. And then let's also do
25 this, I want to speak with our alternate jurors for

1 just a moment, if I may, if you don't mind me
2 calling you by name, which is Mr. Lewis and
3 Ms. Honeycutt. Tomorrow morning, what I'd ask you
4 to do, when all the jury is in, so let's wait until
5 everyone arrives, I'd like for you to preside over
6 the jury and let the jury, and you can have a vote
7 in this choice but it should not with you to be
8 chosen choose a foreperson among themselves. You
9 all know one another now a little bit better. Some
10 of you knew one another before you even got here on
11 Monday. But I would suggest to you that the best
12 foreperson whether that be a forewoman or foreman --
13 that's your choice -- is a person who is a
14 facilitator of discussion and a moderator of
15 discussion because ultimately your verdict in this
16 case must be unanimous; and so, please choose among
17 yourselves whom you believe would be the best
18 foreperson. When you finish that process, if one of
19 you please would just write the name of the elected
20 individual on a piece of paper, knock on the door,
21 give it to the bailiff, we'll be ready to go when
22 you all are ready. We'll start at 9:00 tomorrow
23 morning. Same instructions we had yesterday, please
24 don't discuss the case with anyone. We don't know
25 all the facts or issues. I just ask you not to

1 discuss this with any of your loved ones at home or
2 among yourselves in any way. Don't conduct any
3 research of any type. Just get a good night's rest.
4 Have a pleasant afternoon and come back tomorrow at
5 9. We will see you then. You don't need to call
6 the jury information line, just be here at 9 in the
7 morning. And out of respect for you we will remain
8 where we are while you depart the courtroom for the
9 day. Have a good day, ladies and gentlemen.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 12:46 p.m., and the following
12 proceedings commenced in open court.)

13 THE COURT: Now while we're outside the
14 presence of the jury, anything for our record
15 further before we conclude for the day from the
16 State?

17 MR. HOLT: Not from the State, Your Honor.

18 THE COURT: From Defense?

19 MS. WISE: Nothing from Defense.

20 THE COURT: Very good. Then ladies and
21 gentlemen, we will end this proceeding until 9:00
22 tomorrow morning. Court is adjourned.

23 (WHEREUPON, the proceedings were concluded
24 for the day to be reconvened on February
25 26, 2012.)

1 (WHEREUPON, State Exhibits Nos. 18 through
2 33 were marked for identification only.)

3 THE COURT: We're told the jury is here
4 and has chosen their foreperson, and they made the
5 choice of juror Bonnie H. Jordan which is juror
6 number 69. We'll seat her in the foreperson's seat.

7 If there's nothing further from either side for our
8 record we'll go ahead and bring the jury in.

9 MR. JONES: Judge, there is one thing.

10 THE COURT: All right, go ahead.

11 (WHEREUPON, counsel approached the Bench
12 for an off-the-record discussion.)

13 THE COURT: We're ready to proceed so
14 let's bring in the jury and please seat Ms. Jordan
15 in the foreperson's seat.

16 (WHEREUPON, the jury was returned to the
17 courtroom at approximately 9:08 a.m., and
18 the following proceedings commenced in
19 open court.)

20 THE COURT: Good morning, ladies and
21 gentlemen, welcome back to the courtroom. Let me
22 first of all say, Ms. Jordan, I see your colleagues
23 have chosen you as foreperson so first of all,
24 congratulations for the confidence that they've
25 shown in you. I want to thank our alternate jurors

1 for presiding this morning while that was done.
2 Thank you for your leadership and that choice being
3 made. And I'll talk with you a little bit further
4 in the charge on the law about your role and in
5 front of, for you and the entire jury in your role
6 as foreperson; but in advance, I wish to say thank
7 you for being willing to serve in that position.

8 Now you will recall, ladies and gentlemen,
9 yesterday we ended at the State's case. We remain
10 there. This morning before we begin let me ask is
11 there any member of many jury panel who has had a
12 discussion about the facts of this case with anyone.

13 If you have, please raise your right hand.

14 (There was no response.)

15 THE COURT: And again, let's let the
16 record no one has raised their hand. And we will
17 now proceed into the next witness for the State.

18 Mr. Solicitor, please call your witness.

19 MR. HOLT: Thank you very much, Judge. At
20 this time the State will call nurse Denetra Quick to
21 the stand.

22 THE COURT: Very good.

23 THE CLERK OF COURT: Place your left hand
24 on the Bible, raise your right hand.

25 WHEREUPON,

SW - D. QUICK - DIRECT

1 **DENETRA A. QUICK,**
2 having been duly sworn by the Clerk of Court,
3 testified as follows:
4 THE CLERK OF COURT: Have a seat up there
5 for me please.

6 **DIRECT EXAMINATION**

7 BY MR. HOLT:
8 Q Hey.
9 A Hey.
10 Q Could you please give your whole name for the
11 record.
12 A Yes, Denetra Ashlyn Quick.
13 Q And what do you go by, Ms. Quick?
14 A Dee.
15 Q Okay. Is it okay if I call you Dee?
16 A That's fine.
17 Q Where are you currently employed?
18 A At McLeod.
19 Q And what's your position there?
20 A I'm a staff ER nurse.
21 Q How about how long you had that position?
22 A For about four years.
23 Q Okay. Is that the entire thing you've done in
24 the medical field, did you do anything before?
25 A Prior to that I was a medic in the military.

SW - D. QUICK - DIRECT

1 Q And are you still associated with military?

2 A Yes, I'm a nurse in the military.

3 Q All right. And do you perform during your, I
4 guess, your job as an ER nurse, do you do what the
5 public calls a rape kit?

6 A Yes.

7 Q What do y'all call it? Does it have another
8 name?

9 A Just a rape kit, sexual assault kit.

10 Q Okay. And during the course of your employment
11 with McLeod were you working there on February 1st,
12 2013?

13 A I was.

14 Q Okay. Did you happen to do a rape kit on Yasmin
15 Cusack?

16 A Yes, I did.

17 MR. HOLT: Permission to approach, Judge.

18 THE COURT: Yes, you may.

19 BY MR. HOLT:

20 Q I see, Dee, that you have a copy in your hand of
21 something, but I'm gonna show you what's been marked
22 as State's Exhibit 18, okay? And I'm gonna ask you,
23 without telling the jury what it is do you recognize
24 that?

25 A Yes, I do.

SW - D. QUICK - DIRECT

1 Q And did you create that?

2 A I did.

3 Q And since the last time you've seen it up until
4 today have there been any changes, alterations,
5 deletions made to that?

6 A No.

7 Q All right. I tell you what, give me your copy.
8 I'll let you keep 18. And could you tell the jury
9 what State's Exhibit 18 is.

10 A This is the South Carolina State Office Victim's
11 Assistance medical examination release form along
12 with the Law Enforcement Division sexual assault
13 examination protocol.

14 Q All right. If you can turn just off the top of
15 my head to page 2 of 6.

16 A Okay.

17 Q And if you look down at the bottom section could
18 you describe what that is?

19 A Yes, well, the history it states, you know, it
20 tells what the patient told the nurse, myself, what
21 happened during the assault. And then ----

22 Q And if you see this right here, yes, describe --
23 you see that little part right there?

24 A Uh-huh.

25 Q Can you tell us what the first two questions and

SW - D. QUICK - DIRECT

1 answers were.

2 A So it says method employed by assailant's weapons
3 and then it asks yes or no, and it says yes and she
4 said a gun. And then the second line says were you
5 threat -- or it says threatened and then no or yes.
6 Yes. And she answered threatened to pull out the
7 gun.

8 Q Okay, so she told you that on the night in
9 question?

10 A Yes.

11 Q All right. Now can you tell us, if you go to
12 page 1 of 6, pertinent medical history?

13 A Uh-huh.

14 Q And did she make known to you that she had any
15 kind of condition?

16 A It says yes. She answered genital herpes known
17 condition.

18 Q Now these specific questions in here, did you ask
19 her each and every one, go down the list with her?

20 A Yes.

21 Q And did she answer each one?

22 A She did.

23 Q And how did she appear to you?

24 A As stated in here she appeared quiet, somewhat
25 reserved but she answered all the questions.

SW - D. QUICK - DIRECT

1 Q Okay. Do you think she might be somebody that
2 needs IEP in school? Are you familiar with IEP?

3 A Can you like ---

4 Q Individualized educational programs, somebody
5 that might need a little more help than normal
6 people.

7 A Yes, she did. She needed the assistance of her
8 mom. Her mom came with her, and I think I have that
9 also here, Gracey or Grace Cusack. Her mom was a
10 lot of help to, you know, if I needed to ask a
11 question in a specific type of way for her she
12 could, you know, ask the question again or...

13 Q And then right here under general physical
14 examination page 4 of 6, non-general injury pain
15 and/or bleeding, do you see that?

16 A Yes.

17 Q And what did you note on your form?

18 A That Ms. Cusack said yes, and when asked to
19 describe it says stated -- or scratches noted to
20 left buttocks and left thigh.

21 Q Okay. Now can you tell the jury exactly what you
22 collected from her that went in the rape kit; or you
23 know, if you feel better about it just what goes in
24 a standard rape kit, what do you do, what's the
25 process?

SW - D. QUICK - DIRECT

1 A Okay. For a general process of the rape kit you
2 would collect, remove off clothing of the victim
3 that she or he has on, and you would list it here.
4 And in this one evidence collected for her from
5 Ms. Cusack, I collected a pink shirt and black
6 shirt, blue jeans, blue and green underwear and a
7 yellow bra specifically.

8 Q Okay. And what else -- well, first off, do you
9 remember who you gave those clothes to?

10 A Yes, Officer Peavy.

11 Q All right. Now what kind of medical stuff did
12 you collect?

13 A For her we would have to -- you collect all
14 finger scrapings. You also do a vaginal swab, a
15 rectal swab or oral swab, any fingernail scrapings,
16 cuttings. You also get up underneath the
17 fingernails, any debris.

18 Q I want to show you what's been marked as State's
19 Exhibit 32; and without telling the jury what it is,
20 can you just tell us if you've seen it before?

21 A Yes, this is a sexual assault evidence collection
22 kit that we have to use any time a sexual assault
23 comes in. And we have to make sure that we maintain
24 this, keep this, the nurse; I would keep this at all
25 times. And the only person I'm allowed to give it

SW - D. QUICK - CROSS

1 to is the officer that picks it up which was Brandon
2 Peavy, and we have to signature that we gave it to
3 him.

4 Q All right. Dee, thank you so much for being here
5 today. Just please answer any questions that
6 Defense counsel might have, okay?

7 A Thank you.

8 THE COURT: Now we have cross-examination.

9 MS. WISE: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 BY MS. WISE:

12 Q Ms. Quick, going back to the SLED sexual assault
13 examination protocol that you were just talking to
14 the jury about, do you have that in front of you?

15 A Yes, I do.

16 Q Going on the first page I believe, page 1 of 6,
17 were you the nurse that responded initially to
18 Ms. Cusack? Is that ---

19 A She would still have to go through what's called
20 a triage process so I wouldn't be the initial, the
21 first nurse. I would be her nurse only that
22 collected this evidence.

23 Q Okay, so you just collected the evidence?

24 A Right.

25 Q And you noted that she had the genital herpes,

SW - D. QUICK - CROSS

1 correct?

2 A Correct.

3 Q You noted on the second page what she stated
4 happened to her, correct?

5 A Correct.

6 Q Did you note anywhere in there that she claimed
7 she had been raped in the parking lot of the theater
8 in Florence?

9 A No, but I said was patient stated assailant
10 picked her up at her home to take her to the movies.
11 Patient was taken to the Julia movie theater in
12 Florence, South Carolina, then taken to K-Mart in
13 Florence, and then taken to the woods in Darlington,
14 South Carolina off Turnpike Roads. Patient states
15 the assailant dragged her out of the car. Should I
16 continue?

17 Q Yes, ma'am. You can just go ahead and finish.
18 Thank you.

19 A Snatched her pants off breaking her pants zipper
20 and forced her head on to the head of his penis.
21 Patient states the assailant put her — put on a
22 condom and put his penis inside of her vagina.
23 Patient states assailant told her to put on her
24 clothes after they had sex. Patient states
25 assailant gave the patient back her phone and drove

SW - D. QUICK - CROSS

1 her home.

2 Q And on that same page you noted that the patient
3 was held down by assailant and patient stated she
4 was choked, correct?

5 A Yes.

6 Q Okay. And then going, I believe it's to page 5
7 of 6. You noted the marks that were found on the
8 patient's body, correct?

9 A That's correct.

10 Q Okay. We have a scratch mark, two scratch marks,
11 one on I believe the left buttock and then left
12 thigh, correct?

13 A Correct.

14 Q Any notes of strangulation or any physical signs
15 of strangulation?

16 A No.

17 Q Thank you, ma'am.

18 MS. WISE: No further questions for this
19 witness, Your Honor.

20 THE COURT: All right, thank you. Is
21 there redirect?

22 MR. HOLT: There is none, Judge.

23 THE COURT: Objection to the release of
24 the witness from either side?

25 MR. HOLT: None from the State, Your

SW - R. HARRELL - DIRECT

1 Honor.

2 MS. WISE: No objection.

3 THE COURT: Hearing none, ma'am, you are
4 free to go. Have a good day.

5 THE WITNESS: You too.

6 MR. HOLT: The State would like to call
7 Russ Harrell please, Judge.

8 THE CLERK OF COURT: Place your left hand
9 on the Bible raise your right.

10 WHEREUPON,

11 **RUSS HARRELL,**

12 having been duly sworn by the Clerk of Court,
13 testified as follows:

14 THE CLERK OF COURT: Have a seat up there
15 please.

16 **DIRECT EXAMINATION**

17 BY MR. HOLT:

18 Q Deputy, could you please give your whole name for
19 the jury.

20 A Russ Harrell, that's H-A-R-R-E-L-L.

21 Q Where are you currently employed?

22 A Darlington County Sheriff's Office.

23 Q And in what position are you employed there?

24 A Currently I'm on patrol.

25 Q Okay. And how long have you been in law

SW - R. HARRELL - DIRECT

1 enforcement?

2 A Approximately 13-and-a-half years.

3 Q And all those years with the Sheriff's Office?

4 A Yes.

5 Q Okay. And on the date in question, February 1st,
6 2013, what was your position at the Sheriff's
7 Office?

8 A I was crime scene forensics and evidence.

9 Q Okay. Now about how long did you have those
10 positions?

11 A I was in evidence roughly for nine years.

12 Q Okay. So for nine years you were in evidence.
13 Tell us what kind of duties that entailed.

14 A It involved maintaining evidence that's brought
15 in from various places throughout the county and
16 other places, wherever it may come from. It
17 involves taking it to the lab for analysis, taking
18 it to court, and the other duties would be to
19 process crime scenes for evidence in which you'll
20 bring back and store as well.

21 Q Okay. Did you like that job?

22 A I do.

23 Q All right.

24 MR. HOLT: Now if I could approach, Judge.

25 THE COURT: Yes, sir.

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1 BY MR. HOLT:

2 Q Officer Harrell, what I'm gonna do is I'm gonna
3 show you items that are in evidence, well, that are
4 marked as exhibits, ask you how you know them. Then
5 I think the quickest way for this to go is I just
6 ask you how this item relates to this case, also
7 what you do with it, okay? I'm gonna show you
8 State's Exhibit 20 without telling the jury what it
9 is -- don't do that -- just tell me do you recognize
10 it?

11 A Yes, I do.

12 Q And since the last time you've seen it what are
13 the changes made to it?

14 A It is currently in a sealed SLED package.

15 Q Our. And do you know what it is?

16 A I do.

17 Q Did you collect that evidence?

18 A I did.

19 Q Okay. Can you tell what it is?

20 A It is a buccal swab from the defendant Damyon
21 Cotton. A buccal swap is a swab from the mouth.

22 MR. HOLT: Judge, at this time the State
23 would like to put State's Exhibit 20 into evidence.

24 THE COURT: Is there an objection?

25 MS. WISE: No objection, Your Honor.

SW - R. HARRELL - DIRECT

1 THE COURT: Then without objection 20 in
2 evidence for the State.

3 (WHEREUPON, State Exhibit No. 20
4 was admitted into evidence.)

5 BY MR. HOLT:

6 Q All right, you said a buccal swab?

7 A It's spelled B-U-C-C-A-L.

8 Q All right now, can you tell what that is, why,
9 and when you got it?

10 A It is a standard procedure for taking DNA from a
11 person. It's like you take fingerprints from a
12 finger. It is, you take a cotton swab and you rub
13 cheeks, just do one or two. I will do two in case
14 it didn't take the first time so you have plenty of
15 sample. And in this case it was -- I was called on
16 the 18th of September, 2013, by solicitor and
17 informed that Mr. Cotton had requested a DNA swab be
18 collected.

19 Q Okay, we don't have to get into all that but
20 just, you took it, right?

21 A Yes, I did.

22 Q And then what did you do with that evidence after
23 you took it?

24 A I took it back from the jail and logged it into
25 our data base. And then on the ---

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1 Q Deputy, can you tell us what you did.

2 A Oh, yes, it'd be right here. On the 19th which
3 would be the day after I took it to SLED for
4 analysis to the log-in center.

5 Q All right. I want to hand you State's Exhibit
6 19. I want to ask you what that is and if you've
7 ever seen it before,

8 A State's Exhibit 19 ---

9 Q Just have you ever seen it before?

10 A Yes.

11 Q And did you create that?

12 A I did.

13 Q All right. And since the last time you've seen
14 it have there been any changes, alterations, or
15 deletions?

16 A There are not.

17 Q Okay. And what is that?

18 A This is a evidence storage property record from
19 the sheriff's office in which I entered into our
20 computer that shows the buccal swabs from Damyon
21 Cotton.

22 Q Okay.

23 MR. HOLT: And Judge, at this time the
24 State would ask to enter State's Exhibit 19 into
25 evidence.

SW - R. HARRELL - DIRECT

1 MS. WISE: No objection.

2 THE COURT: Without objection 19 in
3 evidence by the State.

4 (WHEREUPON, State Exhibit No. 19
5 was admitted into evidence.)

6 BY MR. HOLT:

7 Q Russ, tell us what that means and what you did
8 with it?

9 A It says that on -- it incurred package on the
10 19th of September 13th. That went to SLED with the
11 same lab number of L13-01843 and then number sign 7.
12 And it was stored on the 18th immediately after I
13 got through coming back from the jail.

14 Q All right. Now I'd like to show you what's been
15 marked as State's Exhibit 21, and have you ever seen
16 this before?

17 A Yes, I have.

18 Q Okay. And since the last time you saw it have
19 there been any changes made to it?

20 A There have not.

21 Q Okay. And can you tell the jury what it is.

22 A This is an original copy of a evidence property
23 report submitted to evidence by Investigator Brandon
24 Peavy.

25 Q Okay.

SW - R. HARRELL - DIRECT

1 MR. HOLT: Judge, at this time the State
2 would move State's Exhibit 19 into evidence.

3 MS. WISE: No objections.

4 THE COURT: Without objection so ordered.

5 (WHEREUPON, State Exhibit No. 19 [sic]

6 Was admitted into evidence.)

7 BY MR. HOLT:

8 Q Now Russ, explain to us what that is, but also
9 give the jury who's never been in your evidence room
10 just a brief idea of how when police collect
11 evidence they give it to you and what you do with
12 it?

13 A State's Exhibit 21 is the evidence form that's
14 written filled out by the investigator, person on
15 patrol, anybody in our office that's going to turn
16 something in to be stored and ultimately go to court
17 or whatever we have to do with it. And this was a
18 copy of the sexual assault kit and the clothing that
19 was collected from McLeod Hospital at, on the 2nd of
20 February, 2013. It has our identifying case number
21 of 201302-0022, and it was recovered from Denetra
22 Quick from McLeod Hospital by KB Peavy which is
23 Brandon Peavy.

24 Q All right. So what you're saying Brandon Peavy
25 gave you that?

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1 A Correct.

2 Q And then Brandon Peavy put it in evidence that's
3 monitored there into your office?

4 A Right. He transported it from the hospital to
5 the office.

6 Q Does anybody walk in your office?

7 A No.

8 Q Okay. Explain to us the security of the evidence
9 room even from other officers.

10 A Our evidence room is basically an old jail cell,
11 and the walls are windows are blocked off with the
12 steel bars that are there. They're covered with
13 wood so there's no access from outside. Now on the
14 inside there's about a two foot wall and a steel
15 jail door with a key pad that's, has access that's
16 given by administrators. And that door also has a
17 lock as well, and on the interior there's another
18 door with two additional locks. And as far as
19 dropping an item, there's a window and a wood box
20 and some bars. They're about 6-inches apart and
21 then you drop it in the hole and you cannot get it
22 back out 'cause it's got a like a lip on it.

23 Q If an officer wants to see something that's in
24 evidence from a case they're working on, can they
25 just walk in there and get it? Or what's the

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1 procedure for them to look at it?

2 A They have to fill out a request to have it pulled
3 and set up a time for them to come look at it.

4 Q And who would be with them?

5 A One of the evidence officers will be with them.

6 Q Okay. Now Deputy Harrell, I'm looking at State's
7 exhibit marked for identification purposes only as
8 22, 23, and 24. And without telling the jury what
9 they are, can you just tell me if you've ever seen
10 them before.

11 A I have.

12 Q And since the last time you reviewed them have
13 there been changes or deletions, or alterations
14 made?

15 A There are not.

16 Q Okay. Can you tell the jury what they are?

17 A State's Exhibit 22 is a SLED laboratory forensic
18 services request for lab number L13-01843. And the
19 first one is from the CSC, or sexual assault kit,
20 from Yasmin Cusack and also contained the underwear
21 in the box as well, and that was submitted on the
22 February 2nd, 2013. And State's Exhibit 23 is the
23 same lab number, a second submission on August 22nd,
24 2013, for the clothing which was a pair of blue
25 jeans with a broken zipper, black tank top, a neon

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1 green yellow bra, and pink tie-dyed shirt. State's
2 Exhibit 24 is a third submission which was taken on
3 September 19th, 2013, and it is the buccal swabs
4 from Danyon Cotton.

5 Q Are those the same buccal swabs that you took?

6 A That is.

7 Q Now Deputy Harrell, I want to show you what was
8 previously marked and entered in evidence as State's
9 Exhibit 1, make sure I'm right. Do you recognize
10 these?

11 A I do.

12 Q And where do you recognize them from?

13 A They're from clothing that was submitted to SLED.

14 Q Now does SLED just take anything you give them or
15 do they have procedures?

16 A They have procedures.

17 Q And what are those procedures?

18 A Typical procedure on a sexual assault is that the
19 first item that they'll accept is the sexual assault
20 kit. Any additional items after this has been
21 tested and results that come back and then they
22 submit it later depending on the results of the kit
23 itself.

24 Q How long does that take?

25 A It can take many months at times.

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1 Q All right. Did you think to send anything else
2 after you sent the kit?

3 A I did.

4 Q And what did you think to send?

5 A The pants and clothing.

6 Q Now did SLED want to take the pants?

7 A Not initially because the rape kit was submitted.

8 Q Uh-huh.

9 A And they had to be tested out and results back
10 before they could do anything with any clothing.

11 Q So about how long did that take? Just ballpark
12 it, Deputy Harrell.

13 A It was about four months, four or five months,
14 sir.

15 Q Does SLED like to take actual clothing or what do
16 they like to take? Do they have a limit on what you
17 can send them?

18 A They have limits for certain types of cases per
19 submission unless you get approval from the person
20 that is going to be testing it.

21 Q Now why don't -- I think a better way to ask this
22 question will be for you to walk the jury through
23 what you thought about when you read the case and
24 the struggle that you had in actually obtaining DNA
25 evidence that you eventually got.

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1 A Okay. Whenever a item is submitted to the
2 evidence room typically a lot of times you have to
3 go back and read the report to make sure all the
4 things are correct that you're putting in to verify
5 the information. So essentially most reports
6 everyday I pretty much would have read. And it also
7 assists with finding out what kind of analysis needs
8 to be done whenever it goes to the lab. And in this
9 particular case I did take the sexual assault kit
10 box and the clothing. I made — to make an attempt
11 to try to get them to accept both of them that
12 particular day. And I was informed on that day that
13 they were only gonna take the sexual assault kit,
14 that I needed to come back later once the results
15 are given. And later on we made, a phone call was
16 made, and I had read the report and in the report it
17 noted that a condom was used and the zipper on the
18 pants was broken. And based on my work in the past,
19 definitely not going to get fingerprints off
20 something that small; you don't print clothing. So
21 DNA is the best solution is try a very small
22 surface. And due to the damage of the clothing and
23 having the clearance from the analyst after the
24 sexual assault kit was done, I found it to be the
25 best thing for them to make an attempt at the torn

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1 zipper on the pants for DNA analysis.

2 Q Did they want to do it?

3 A They were hesitant I believe.

4 Q Well, what kind of DNA did you think you were
5 going to get off the zipper and why?

6 A Well off — it would possibly be the person that
7 may have torn it.

8 Q Uh-huh.

9 A I mean, you don't know, you do not -- you don't
10 know the analysis answer until it gets analyzed, you
11 know. You have to try to best piece together the
12 puzzle and then make a request to whoever is testing
13 it and explain it to them and wait for the results.

14 Q All right. What kind of, what kind of answer did
15 you get back on the DNA from the rape kit? Deputy
16 Harrell, I'm gonna hand you what's been marked as
17 State's Exhibit 33, and without telling the jury
18 what it is do you recognize it.

19 A I do.

20 Q And since the last time you've seen it have there
21 been any changes or alterations or deletions?

22 A There have not.

23 Q Okay.

24 MR. HOLT: And Judge, at this time the
25 State would move State's Exhibit 33 into evidence.

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1 MS. WISE: I'm sorry, just to clarify,
2 what's the title of that exhibit?

3 THE WITNESS: It's a South Carolina law
4 enforcement division forensic services laboratory
5 report.

6 MS. WISE: No objection.

7 THE COURT: Without objection that's 33 I
8 believe you said?

9 MR. HOLT: Yes, sir.

10 THE COURT: In evidence without objection.

11 (WHEREUPON, State Exhibit No. 33
12 was admitted into evidence.)

13 BY MR. HOLT:

14 Q All right. What does 33 tell us they found,
15 Deputy Harrell?

16 A 33, State Exhibit 33 highlights the buccal swabs
17 of Ms. Cusack and Damyon Cotton and some fingernail
18 scrapings and the swabs from the zipper that was
19 collected by the analyst at SLED and a swab around
20 the button hole of the jeans from the victim Cusack.

21 Q All right. And somebody's coming to testify to
22 that later, but if you can just tell us what they
23 found quickly.

24 A DNA was found. Profile was matched to the
25 defendant Damyon Cotton.

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1 Q All right. Now if I can show you what's been
2 marked as State's Exhibit 28, and if you can just
3 tell the jury if you know what that is.

4 A I do.

5 Q And have you ever seen it before?

6 A I have.

7 Q And since the last time you've seen it have there
8 been any changes, alterations, or deletions made?

9 A There have not.

10 Q And if you can just tell the jury quickly what
11 that is.

12 A It's an additional Darlington County evidence
13 property record. And this is the documentation of
14 the swabs from the blue jeans, debris, and hair
15 which are the items that were collected by SLED
16 themselves and brought back to our office and
17 stored.

18 Q Okay.

19 MR. HOLT: Your Honor, at this time the
20 State would move State's Exhibit 28 into evidence.

21 MS. WISE: May I see that one as well,
22 Your Honor.

23 THE COURT: You may.

24 MS. WISE: No objection.

25 THE COURT: Without objection then 28 in

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1 evidence for the State.

2 (WHEREUPON, State Exhibit No. 28 was
3 admitted into evidence.)

4 BY MR. HOLT:

5 Q And what's 28 tell us, Deputy Harrell?

6 A 28 highlights the date that it was -- the lab
7 number which is the same as L13-01843, and the date
8 it was returned from SLED which was December 19th,
9 2013 and the area in which in our room was stored.

10 Q All right. Let me see that and if I can see this
11 right here, Deputy Harrell. This is State's Exhibit
12 32. Can you tell the jury what that. I mean, can
13 you tell -- can you tell me if you recognize it.

14 A I do.

15 Q And since the last time you've seen it what is
16 different about it?

17 A The difference is that it's, whenever I received
18 it it's sealed, but now it's empty. The box
19 contents have been removed and the seal has been
20 broken.

21 Q Okay. And what is it?

22 A It's a SLED sexual assault evidence collection
23 it.

24 Q Who does it say created it?

25 A Denetra Quick.

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1 Q And whose it say she gave it to?

2 A Brandon Peavy.

3 Q And who gave it to you?

4 A Brandon Peavy.

5 MR. HOLT: Judge, at this time we'd like
6 to move State's Exhibits 32 into evidence.

7 MS. WISE: No objections.

8 THE COURT: Without objection then 32 also
9 in evidence for the State.

10 (WHEREUPON, State Exhibit No. 32
11 was admitted into evidence.)

12 BY MR. HOLT:

13 Q Deputy Harrell, I think what I'm gonna ask you to
14 do with these next couple is just to identify them
15 for the jury. I'm gonna show you number 29 and ask
16 if you recognize it.

17 A I do.

18 Q Okay. And what is it?

19 A This would be the contents from inside the sexual
20 assault kits.

21 Q Okay, if I can see that. Deputy Harrell, what's
22 different about this sense the last time you saw it?

23 A It's in a sealed SLED package.

24 Q Where was this information the last time you saw
25 it?

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1 A In the sealed SLED package.

2 Q All right. I'm gonna show you what's been marked
3 as State's Exhibit 31?

4 A Also in evidence.

5 Q State's Exhibit 31, if you can tell me what that
6 is.

7 A State's Exhibit 31 is the collected swabs
8 collected by SLED from the blue jeans and zipper
9 area.

10 MR. HOLT: Your Honor, at this time the
11 State would move State's Exhibit 31 into evidence.

12 MS. WISE: No objections.

13 THE COURT: Without objection. 31.

14 (WHEREUPON, State Exhibit No. 31
15 was admitted into evidence.).

16 BY MR. HOLT:

17 Q Russ, if you can just clarify for the jury what
18 31 signifies and what it means, where the DNA was,
19 and how you know that.

20 A That's 31?

21 Q Yes, sir.

22 A State's Exhibit 31 is basically the work that the
23 SLED analyst has completed. It's a similar
24 procedure to me taking a swab from the mouth. It
25 just comes from the clothing, and they have all the

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1 things that they have collected from the various
2 areas which is on the report, and it's sealed and
3 sent back to us for storage so they don't keep
4 anything.

5 Q Okay. And Deputy Harrell, if you can just look
6 at State's Exhibit 30 and tell me if you recognize
7 that.

8 A I do.

9 Q And can you tell the jury what it is.

10 A State's Exhibit 30 is what we describe as sealed
11 underwear from CSC kit of Yasmin Cusack.

12 Q Okay. Deputy Harrell, essentially what you're
13 saying DNA was found on the pants?

14 A Yes, according to the report.

15 Q Okay. Please answer any questions the Defense
16 counsel might have.

17 THE COURT: Any cross-examination?

18 MS. WISE: Yes, Your Honor. Thank you.

19 **CROSS-EXAMINATION**

20 BY MS. WISE:

21 Q Mr. Harrell, you just told Mr. Holt that DNA was
22 found on the report on Mr. Damyon Cotton?

23 A Correct.

24 Q What you didn't tell him was DNA was also found
25 belonging to another individual, correct?

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1 A Correct.

2 Q What you also didn't tell him or what we didn't
3 let the jury know is that how many different samples
4 were taken of DNA off of that clothing.

5 MR. HOLT: I'm going to object, Judge. I
6 think these are questions more appropriate for the
7 SLED analysis.

8 MS. WISE: Your Honor---

9 THE COURT: Overruled, you may ask it.

10 MS. WISE: ---he's already brought it up.
11 Thank you.

12 BY MS. WISE:

13 Q And it's -- I'm looking at the South Carolina Law
14 Enforcement Division Forensic Service laboratory
15 report DNA analysis. Do you want to get that in
16 front of you?

17 A Which exhibit?

18 Q It's -- I'll show you. I don't have it marked on
19 that, I apologize. It's that one.

20 A Okay.

21 Q DNA analysis. How many different samples were
22 taken?

23 A There are eight items.

24 Q Eight items taken, and of those eight there's DNA
25 found on one of those items, correct?

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1 A That's correct.

2 Q And where was the DNA found off those items, on
3 the button hole, correct?

4 A That's correct.

5 Q And that DNA, two different identifications came
6 back. One for Damyon Cotton, correct?

7 A Correct.

8 Q And one for another unnamed individual, correct?
9 Not Yasmin Cusack or Damyon Cotton?

10 A According to the report the swab from around the
11 buttonhole of Cusaac's jeans, Yasmin Cusack, it
12 reads the DNA profile developed from 3.2, which is
13 that item, it is a mixture of at least two different
14 individuals. DNA attributable to Yasmin Cusack is
15 present in this mixture. A DNA profile foreign to
16 Yasmin Cusack matches DNA profile Damyon Cotton has
17 been entered into CODIS.

18 Q And that's what we just said?

19 A Correct.

20 Q 3.2 is what, the buttonhole?

21 A That's correct.

22 Q And what does that very last sentence of what you
23 just read said? A DNA type not attributable to
24 Yasmin Cusack or Damyon Cotton is also present.

25 Very last sentence.

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1 A It says DNA attributable to Yasmin Cusack is
2 present.

3 Q A DNA not attributable. The very last sentence
4 of that paragraph.

5 A That's what it says but I'm not an analyst. I can
6 only try to explain what it says ---

7 Q That's okay. I was just ---

8 A ---and read it.

9 THE COURT: One at a time please.

10 BY MS. WISE:

11 Q That somebody else's DNA was found as well?

12 A That's what I'm reading at the bottom, yes,
13 ma'am.

14 Q And did I hear you tell Mr. Holt earlier that in
15 September of last year it was the Defense that
16 requested the DNA sample?

17 A It was through the Defense through the Solicitor
18 requested by the defendant.

19 Q Okay.

20 MS. WISE: No further questions with this
21 witness. Thank you, Mr. Harrell.

22 THE COURT: Any redirect?

23 MR. HOLT: There is none, Judge.

24 THE COURT: Any objection to release of
25 the witness from anyone?

1 MS. WISE: No, sir.

2 MR. HOLT: No, sir, I'd ask for it.

3 THE COURT: All right, hearing none you're
4 free to leave, not required to leave but free to go
5 if you wish.

6 THE WITNESS: Yes, sir.

7 MR. HOLT: Judge, I've got to go back and
8 see if my last witness is here yet from Columbia.

9 THE COURT: Well, let's step back and do
10 that, then we'll will decide whether we need to take
11 a break at this point.

12 MR. HOLT: Thank you very much.

13 (Pause.)

14 THE COURT: Let's just — we'll be in
15 recess and please return to the jury room. Ladies
16 and gentlemen, enjoy your break. We'll stand down
17 approximately 15 minutes. Court's in recess.

18 (WHEREUPON, a recess was taken from the
19 proceedings.)

20 THE COURT: It appears we are in place.
21 The jury is back so please bring in the jury.

22 (WHEREUPON, the jury was returned to the
23 courtroom at approximately 10:10 a.m., and
24 the following proceedings commenced in
25 open court.)

1 THE COURT: Welcome back, ladies and
2 gentlemen. You will recall we were just discussing
3 the next State's witness so please call that
4 witness, Mr. Holt.

5 MR. HOLT: Judge, at this time the State
6 would like to call Amanda Webb please.

7 THE COURT: Please come forward and take
8 the oath of a witness.

9 THE CLERK OF COURT: Place your left hand
10 on the Bible, raise your right.

11 WHEREUPON,

12 **AMANDA WEBB,**

13 having been duly sworn by the Clerk of Court,
14 testified as follows:

15 THE CLERK OF COURT: If you'll have a
16 seat.

17 **DIRECT EXAMINATION**

18 BY MR. HOLT:

19 Q Ms. Webb, would you please give your whole name
20 for the jury?

21 A Amanda Webb.

22 Q Where are you employed?

23 A I'm employed with the South Carolina Law
24 Enforcement Division in the forensics DNA
25 department.

1 Q Can you tell us what the forensics DNA department
2 does?

3 A The forensics DNA department analyzes criminal
4 cases throughout the State of South Carolina that
5 has DNA evidence; and what we do is we compare any
6 DNA that is developed from an evidence item to DNA
7 of a known suspect or victim, a known individual
8 basically, and that will let us know if perhaps
9 someone has left their DNA behind at a crime scene.

10 Q If you find DNA that helps the police do you tell
11 them?

12 A Yes.

13 Q And if you find DNA that does not help the police
14 do you tell them?

15 A Yes, I do.

16 Q Okay. So do you really have a dog in the fight
17 when it comes to what evidence you show?

18 A No, I don't. I just report out all of my
19 scientific findings.

20 Q Okay. Now how long do you have to go to school
21 in order to get this job?

22 A Well, I went to school for six years. I have a
23 bachelor's in chemistry and also a master's in
24 forensic science. And after six years and obtaining
25 my degrees, then I was hired on at SLED and I was in

1 training at SLED for approximately a year-and-a-half
2 before I took on independent work.

3 Q Probably about how many DNA cases have you looked
4 at you think?

5 A I think it's a little over six hundred right now.

6 Q All right. How many times you think you
7 testified?

8 A About 20.

9 Q Okay.

10 THE COURT: Judge, at this time the State
11 would move Amanda Webb have her declared an expert.

12 MS. WISE: No objections, Your Honor.

13 THE COURT: All right, ma'am, and let me
14 ask, those twenty or so times you testified, have
15 you been previously declared an expert in this
16 court?

17 THE WITNESS: Yes, I have, Your Honor.

18 THE COURT: All right, well let me speak
19 to our jury about that for a moment. Our previous
20 witnesses who testified have been lay witnesses.
21 Lay witnesses can come in and testify about what
22 they saw or heard or did. An expert witness is a
23 little bit different because of some scientific
24 knowledge or study or experience or education in a
25 particular field. A witness who's deemed to be on

1 expert can come in and testify not only about what
2 they saw or heard or did, which a lay witness can
3 do, but also what opinion they derive from what they
4 saw or heard or did; and that's the difference
5 between a lay and an expert witness. So when we
6 have an expert witness offered, we stop, we give the
7 other side an opportunity to question about
8 expertise. You heard the Defense said they have no
9 objection so the witness is qualified then as an
10 expert in the area of DNA analysis meaning that she
11 may have give an opinion on these issues.

12 Now this testimony is not given for the
13 purpose of controlling your judgment. It's given to
14 assist you, if you deem it helpful, in finding
15 matters of fact that are before you that are within
16 the purview of the expert. So you give it the
17 weight you deem it to be entitled to.

18 And with that, please proceed.

19 MR. HOLT: Thank you very much, Your
20 Honor. If I could approach.

21 THE COURT: You may.

22 BY MR. HOLT:

23 Q Amanda, I'm gonna show you what's been marked as
24 31, and Deputy Harrell told us was the swabs. 20,
25 Deputy Harrell told us was the swabs. And number 1.

1 I'll leave these things up here with you.

2 A Okay.

3 Q Now I'm holding in my hand what's been marked as
4 33, but I believe you have a copy of this same
5 report.

6 A Yes, I do.

7 Q Everything is in evidence so feel free to talk
8 about any of it.

9 A Okay.

10 Q Now could you tell us what those items are, how
11 they relate to each other, and what you did to form
12 that relation?

13 A Yes. State's Exhibit 20 is a buccal swab from
14 Danyon Cotton. And what a buccal swab is, is a
15 cotton swab. It was basically just rubbed on the
16 inside of the cheek. The inside of the cheek have
17 cells that are called buccal cells. That's why it's
18 a buccal swab. And that's what's used for my
19 analysis. Now I know that the DNA on this swab came
20 from Danyon Cotton so if I develop any DNA profiles
21 from evidence I can compare that to Danyon Cotton's
22 DNA profile. And State's Exhibit 31 contains item
23 3.1 which is a swab from the zipper and button of
24 blue jeans, and it also contains item 3.2 which is a
25 swab from the button hole of blue jeans. And it

1 also contains SLED item 6.1.1, which is a hair that
2 was found from victim's clothing, and also 6.1.2
3 which is another hair that was found from victim's
4 clothing. And State's Exhibit 1 -- I think I left a
5 copy of my report on the bench; it's not a state
6 exhibit but. Yes, State's Exhibit 1 is also SLED
7 item 3 which is a pair of blue jeans from the
8 victim.

9 Q All right. Where did you get the swabs off the
10 jeans from?

11 A The swab off the jeans, they were two swabs from
12 the jeans. One swab was from the zipper and button,
13 and the second swab was from the button hole of the
14 jeans.

15 Q And what, what DNA did you find on those swabs?

16 A From the button itself and the zipper I developed
17 a partial DNA profile. And what that means exactly
18 is, in forensics we look at 16 different locations
19 of DNA and that's DNA on chromosomes but it's just
20 16 different areas. We look at and we pick those
21 locations in forensics because those are unique to
22 individuals, and so we look at those different
23 locations. And if you get information at all of
24 those 16 locations is what we call a full proof
25 profile. If there's any information missing in any

1 of those 16 locations it's a partial profile, and
2 that's what was developed here. It was a partial
3 profile from the button and the zipper, and it was
4 so partial that there wasn't enough information for
5 me to be able to compare it to anything so it's
6 insufficient for comparison purposes.

7 And the best way to complain that, I
8 think, is kind of like a postal address. If you
9 have a just a street number, there's lots of streets
10 in the nation, you know. You might not be able to
11 find that house; you're probably not going to be
12 able to with just a street number. All the streets
13 have numbers. You know, if you have a street number
14 and a street name you might get a little bit closer;
15 but as we all know, I mean, even just counties have
16 some streets that are named the same and so you
17 might not be able to find the house. Also, if you
18 have the street number, street name, and a city,
19 you're probably getting close; but we've also seen
20 many places and different states have the same city
21 names so you're still not right able to find the
22 house. But if you have, you know, the city, the
23 state, and ZIP code, you're gonna be able to find
24 that house. This partial profile here is more kind
25 of like maybe just a street number. I can't find

1 the house, you know, there's not enough information
2 for me to really be able to do anything with it.

3 Q Can you tell if it came from a man or woman?

4 A No, I cannot.

5 Q Okay. Would you be able to tell if it came from
6 somebody who maybe tried to help you fix your
7 zipper?

8 A I can't tell where it came from. I mean, that's
9 a possibility but I can't be certain.

10 Q All right. How about DNA profile that you were
11 able to show for a hundred percent was on those
12 jeans?

13 A Okay. There was a DNA profile developed from the
14 second swab and that was from the button hole of the
15 jeans just what goes around the button. And that
16 DNA profile was a mixture of at least two
17 individuals, and what that means is that, a mixture
18 means that more than one person DNA was on this
19 item. And so there was DNA attributable to the
20 victim Yasmin Cusack is in this mixture, and I
21 expect that. It's her jeans so I would expect an
22 individual's DNA to be on their own jeans. And
23 there was a DNA profile foreign to Yasmin Cusack and
24 that matches the DNA profile of Damyon Cotton. And
25 any time I say a DNA profile evidence matches

1 someone, we have to put a statistical calculation to
2 it. And what that does is enable you, the jurors,
3 to put weight to the match and so let me read my
4 stat statement. It is the probability of randomly
5 selecting an unrelated individual having a DNA
6 profile matching the DNA profile foreign to Yasmin
7 Cusack is approximately one in 220 million. Also
8 found was a DNA type not attributable to Yasmin
9 Cusack or Damyon Cotton also present on this DNA
10 swab.

11 Q Let me ask you something. In all the times you
12 looked at DNA on clothes, is it uncommon to find DNA
13 you can't match up?

14 A No, it's not. Clothing, especially outer
15 clothing, sometimes, oftentimes, commonly, I find
16 DNA that might be from somebody else other than the
17 person who's worn it. It's usually not a very high
18 amount. Usually it's like that partial like a
19 street number unless there's just been a lot of
20 contact. The more contact you have with someone or
21 something that contains their DNA, the higher
22 probability to transfer the DNA, less contact,
23 you're not gonna transfer as much DNA. So, but it's
24 common when analyzing clothing that you can find
25 some partial DNA from somebody else.

SW - A. WEBB - CROSS

1 Q Did you try to hide the partial DNA, bury it in a
2 report, or try to keep it from anybody?

3 A No, I didn't, I put that in my report.

4 Q And you said you couldn't tell if it was male or
5 female, right?

6 A The partial ---

7 Q The partial?

8 A No, I can't.

9 Q But you're a hundred percent positive that the
10 defendant's DNA is on there?

11 A Yes, it matches Damyon Cotton.

12 Q All right, thank you very much. Please answer
13 any questions Defense counsel might have.

14 THE COURT: Cross-examination.

15 MS. WISE: Thank you very much, Your
16 Honor.

17 **CROSS-EXAMINATION**

18 BY MS. WISE:

19 Q Hey, Ms. Webb, how are you doing?

20 A Hi, fine, thank you.

21 Q Good. Going back and looking at this same report
22 still, can you read to the jury, it's titled DNA
23 analysis, correct?

24 A Yes, that is correct.

25 Q Okay. And you filled out this report and

SW - A. WEBB - CROSS

- 1 completed the report, correct?
- 2 A Yes, that is correct.
- 3 Q Okay. And it's correct that you examined
- 4 fingernails scrapings from the right hand, correct?
- 5 A Yes, I did.
- 6 Q No DNA of Damyon Cotton, correct?
- 7 A No.
- 8 Q You examined fingernail scrapings on the left
- 9 hand, correct?
- 10 A Yes, I did.
- 11 Q No DNA of Damyon Cotton?
- 12 A His DNA was not there.
- 13 Q You examined DNA swabs from the zipper and the
- 14 button of Miss Cusaac's jeans, correct?
- 15 A Yes.
- 16 Q And none of Damyon Cotton's DNA was found on
- 17 there, correct?
- 18 A That's correct.
- 19 Q You then examined, as you told Mr. Holt, the DNA
- 20 swabs from the button hole of the jeans, correct?
- 21 A Yes, I did.
- 22 Q And Damyon Cotton's DNA was found on there,
- 23 correct?
- 24 A Yes, it was.
- 25 Q As well as another individual, correct?

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- 1 A Yes.
- 2 Q That you cannot one hundred percent identify?
- 3 A That is correct.
- 4 Q But you are one hundred percent sure it's not
- 5 Yasmin Cusack?
- 6 A Yes.
- 7 Q You also examined two samples of hair from Miss
- 8 Cusaac's clothes, correct?
- 9 A Yes, I did.
- 10 Q No DNA on that hair, the first sample, correct,
- 11 of Danyon Cotton?
- 12 A I didn't find any DNA, yes.
- 13 Q And then again, no DNA on the hair for Danyon
- 14 Cotton on the second sample, correct?
- 15 A That's correct.
- 16 MS. WISE: One moment please, Your Honor.
- 17 BY MS. WISE:
- 18 Q I'm gonna show you what's been marked as State's
- 19 Exhibit 27, and it's actually filled out by
- 20 Ms. Ashley Bell, a forensic serologist. Are you
- 21 familiar with Ms. Bell?
- 22 A Yes, I am.
- 23 Q And she's unable to be here today, correct?
- 24 A That's correct.
- 25 Q Do you — would you take a look at that and tell

SW - A. WEBB - CROSS

1 me what that is please?

2 A State's Exhibit 27 is an evidence processing
3 report from SLED, and what that means is evidence
4 processing is a place where items for DNA get
5 screened first, especially larger items like
6 clothing items. The evidence processing department
7 just has a larger space and they can really lay the
8 clothing out, look over the clothing, and determine
9 what areas might need to be collected and sent for
10 DNA analysis. And this report has our SLED item 2
11 which is a pair of underwear from the victim. And
12 what the evidence processing department did was look
13 for any debris or hairs, and there were no hairs
14 found on the underwear. And also they performed a
15 chemical test which is used to find semen, and they
16 performed chemical test for semen on these underwear
17 and there was no semen indicated so what that means
18 is there was no semen found on the underwear.

19 Q Thank you, ma'am. I think that's it with this
20 witness. I appreciate your assistance.

21 THE COURT: Thank you. Is there redirect?

22 MR. HOLT: There are none from the State,
23 Judge.

24 THE COURT: All right. Ma'am, you may
25 step down. You're free to leave if you wish.

1 THE WITNESS: Thank you.

2 THE COURT: Thank you.

3 Please call your next witness.

4 MR. HOLT: Your Honor, at this time the
5 State would rest.

6 THE COURT: All right, ladies and
7 gentlemen, the State rests which means that the
8 State concludes its presentation of evidence. In
9 every case at this point the Court has certain
10 matters I need to discuss with counsel before we
11 proceed further so although we just had a break
12 we're gonna let you return to the jury room for a
13 few minutes while we resolve issues and move,
14 prepare to move forward. And so please enjoy your
15 break. We'll remain where we are while you return
16 to the jury room.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 10:30 a.m., and the following
19 proceedings commenced in open court.)

20 THE COURT: The jury is clear. Before we
21 go into any motions or issues let's take up one item
22 of evidence. And Madam Court Reporter, do you show
23 State's 21 as being in evidence.

24 THE COURT REPORTER: No, sir.

25 THE COURT: Mr. Holt, you had a witness on

1 the stand refer to an item we believe is item 19,
2 but it was actually 21. You may want to look at it
3 to see and make sure before you conclude your case
4 that you have in evidence what you believe you have
5 in evidence.

6 MR. HOLT: Your Honor, I remember calling
7 this 19 out. This is State's Exhibit Number 21.
8 It's the evidence property report that shows Brandon
9 Peavy turned over the rape kit and the bag
10 containing the shirt and pants. I did, in fact,
11 mean to move this into evidence.

12 THE COURT: All right, is there objection?

13 MS. WISE: No objection, Your Honor.

14 THE COURT: All right then, so let's let
15 the record reflect then 21 as well as 19 are in
16 evidence now for the State.

17 MR. HOLT: Judge, I might pre-empt
18 Ms. Wise on this, I tried to tell her that I had
19 these things marked. And I never had anything
20 happen like this where she wanted to get evidence,
21 where the Defense needs to get evidence in through
22 my witnesses. I'm not fighting any of the evidence
23 that came in from SLED. In fact, I had it all
24 marked in case I felt like putting it in. If she
25 wants to move any of this evidence in -- and let me

1 just say this on the record so there's absolutely no
2 confusion. I'm looking at State's Exhibit 29, 30,
3 26, 25, 28 and 32, and if she wants to place any of
4 this evidence in I'll stipulate to it.

5 MS. WISE: Thank you.

6 THE COURT: Do you wish to?

7 MS. WISE: And I apologize, I didn't
8 properly — State's Exhibit 27 admitted evidence
9 please.

10 THE COURT: Is that the only one of that
11 group, or do you wish for all of them to come?

12 MS. WISE: There's one more.

13 THE COURT: All right, take a moment to
14 review them, that's fine.

15 MS. WISE: State's Exhibit 25 as well.

16 THE COURT: Okay, 25 and 27 are the two
17 she seeks, Mr. Holt.

18 MR. HOLT: That's fine, Judge.

19 THE COURT: Very good. 25 and 27 in
20 evidence as State's exhibits, marked previously as
21 State's exhibits and remain as State's exhibits.

22 (WHEREUPON, State Exhibits No. 25 and 27
23 was admitted into evidence.)

24 THE COURT: Anything further with regard
25 to this evidence, Ms. Wise?

1 MS. WISE: No, Your Honor, I apologize for
2 that confusion.

3 THE COURT: Now then, are there motions
4 here at the end of the State's case?

5 MR. HOLT: There are no motions from the
6 State, Your Honor.

7 THE COURT: Well, of course, from the
8 Defense was what I was really looking for.

9 MS. WISE: Your Honor, we would renew all
10 of our previous motions and objections as well as I
11 would move for motion for directed verdict on the
12 criminal sexual conduct charge. I do not believe
13 that there's been evidence presented to show that
14 Mr. Damyon Cotton used sexual battery, used battery,
15 sexually assaulted Yasmin Cusack. I also move for a
16 directed verdict motion on the kidnapping charge. I
17 do not believe that the elements of kidnapping
18 charge, any evidence whatsoever has been presented
19 here in testimony that Miss Cusack got in the car
20 with Mr. Cotton at her house at [REDACTED] Sanborn. She
21 rode voluntarily with him to the Julia movie theater
22 in Florence. She proceeded to ride voluntarily with
23 him to the K-Mart in Florence so much so that I
24 don't believe there was any threat of her being that
25 she could not leave because she asked the client —

1 she asked Mr. Mr. Cotton specifically was he going
2 to go into the store with her. Moved into
3 Darlington County, again, the allegations
4 surrounding Turnpike Road, I do not believe that
5 there's enough evidence to sustain this. I don't
6 believe the evidence was presented, excuse me, as to
7 sustain this charge. He gave her a ride back
8 afterwards as she said. I don't believe there's any
9 testimony present that she felt that she could not
10 leave that car.

11 THE COURT: All right. First of all,
12 let's talk about the various motions and issues that
13 have been decided during the course of the State's
14 case. You made a general motion to renew all of
15 those and I'm going to deny that general motion and
16 confirm the various evidentiary rulings of which
17 there were several and some hotly contested dug the
18 course of the State's case and the reasons for those
19 rulings were placed on the record. And
20 contemporaneously therewith so we'll leave those
21 matters as they are and I respectfully decline to
22 alter any at this point.

23 Now as to your motion here at the end of
24 the State's case for directed verdict, I'll
25 respectfully deny your motion on both counts; that

1 is, the sexual assault as well as the kidnapping.
2 It's not for the Court at this point, Mr. Cotton, to
3 weigh the evidence and make a factual decision. The
4 issue for the Court at this point is whether or not
5 the evidence which is properly admitted into the
6 case, raises a question of guilt for you sufficient
7 for the matter to go to the jury so that it's a
8 disputed fact that they must decide. Counsel, as
9 the motion says, it's not. The Court finds there is
10 sufficient appropriately admitted evidence that
11 raises a question of guilt with regard to you on
12 both these charges. Specifically on the point of
13 the sexual assault testimony of Miss Cusack is
14 sufficient to take that matter to the jury, not to
15 mention the other evidence which was put into the
16 report by the State.

17 On the issue of kidnapping, as you know
18 Ms. Wise, while Miss Cusack may have voluntarily
19 gotten in the vehicle at some point, it was clear
20 from her testimony that her voluntariness and her
21 desire to remain in the car and be taken where she
22 intended to go was violated by the defendant. This
23 is her position, her testimony to the jury. As you
24 are aware someone can be kidnapped in their own home
25 for that matter and in their own place of business

1 if they happen to be confined or taken where
2 somewhere within the premises that's not where they
3 intended to be and required to go, be placed there
4 by some other party. So for these reasons the Court
5 finds there is sufficient evidence on the kidnapping
6 charge as well, and your motion is respectfully
7 denied. Are there other motions?

8 MS. WISE: No further motions from the
9 defendant. Thank you.

10 THE COURT: Let me speak to Mr. Cotton.
11 Mr. Cotton, I'm gonna get you just to stand if you
12 would please, and we're gonna place you under oath
13 just where you are. Please follow our clerk's
14 instructions.

15 WHEREUPON,

16 **DAMYON COTTON,**
17 was duly sworn by the Clerk of Court.

18 THE COURT: Mr. Cotton, as you are aware
19 the State has rested which means that it's now time
20 for the defense to enter a case, put up a case, and
21 for you to testify if you wish to do so, and do you
22 understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And have you had ample time to
25 talk with your lawyers, Ms. Wise and Mr. Jones,

1 concerning your right to remain silent in this trial
2 as well as your right to testify? Have you had that
3 discussion with them?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. And have you
6 understood those things they've told you about those
7 rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right, I'd like to talk
10 with you about those rights as well. First of all,
11 let's talk about your right to remain silent. In
12 this courtroom you are not required to speak. Of
13 course, you took the stand voluntarily during the
14 pretrial motions to determine whether or not certain
15 evidence should come into the record. That decision
16 was made, but the fact that you took the stand then
17 doesn't mean you have to take the stand again now.
18 The jury is unaware of that previous hearing that we
19 had, and you have the right to remain silent and to
20 assert that right. And if you decide not to
21 testify, I will tell the jury that they cannot hold
22 that against you because you have no burden of proof
23 and you cannot be compelled to testify. They
24 shouldn't even mention that in the jury room as they
25 deliberate these cases. And so, do you understand

1 your right to remain silent here in this courtroom?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now is what I just told you
4 about your right to remain silent the same thing
5 Ms. Wise told you about your right to remain silent?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you have any questions
8 about your right to remain silent?

9 THE DEFENDANT: No, sir.

10 THE COURT: At the same time you have the
11 right to testify which means you can take the stand
12 under oath in the presence of the jury, and you can
13 be questioned by your attorney as to the events that
14 are in question here. But also, if you do that you
15 will be subject to cross-examination by State's
16 counsel. If you have some prior charges in your
17 record which may bear on your credibility or
18 believability, those may come into evidence on the
19 issue of credibility and believability. And the
20 jury may use the testimony they hear from you either
21 in your favor or against you as they decide it to be
22 because they're the judges of the facts. So do you
23 realize that you have the right to testify in this
24 courtroom?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now is what I just told you
2 about your right to testify the same thing Ms. Wise
3 told you about your right to testify?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand your right
6 to testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions
9 about your right to testify?

10 THE DEFENDANT: No, sir.

11 THE COURT: Now have you made a decision
12 after discussion with your counsel about whether
13 you're going to testify or whether you're going to
14 remain silent?

15 THE DEFENDANT: No, sir, not right off
16 hand.

17 THE COURT: You've not made that decision?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right, sir. Do you
20 understand that when you make the decision, sir,
21 though, it is your decision and not someone else's?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you need a few moments to
24 discuss this with your attorney?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right now, then we'll give
2 you that in just a moment. We'll let you be seated
3 now. You can sit down.

4 But let me ask of the State, is there
5 anything further you would have me discuss with Mr.
6 Cotton about his right to remain silent or his right
7 to testify?

8 MR. HOLT: I'd like clarification on
9 whether his testimony from Monday can be used to
10 impeach him if he veers off topic. That will be
11 all.

12 THE COURT: All right, we'll come back to
13 that in just a moment. And Ms. Wise, do you have
14 any further questions that you wish for me, or
15 matters you we wish me to discuss with Mr. Cotton on
16 his right to remain silent or his right to testify?

17 MS. WISE: Not on this issue, no, Your
18 Honor.

19 THE COURT: All right, thank you. Let me
20 respond, Mr. Holt, to you. I advise — my
21 recollection is, and my standard practice is, that I
22 advise a, someone who is a defendant in a criminal
23 trial when they take the stand that they're doing so
24 for a limited purpose. What they say will not be
25 used against them so it would not be the Court's

1 intention that you can use what was testified to in
2 the preliminary hearing for some purpose in this
3 trial.

4 MR. HOLT: And Your Honor, the only thing
5 I would say is that what's good for Defense is good
6 for me as well, that we can just keep the issue of
7 the chlamydia out under that same logic is what I
8 wanted to say. It's as relates to something we
9 talked about previously and not what we were just
10 currently discussing.

11 THE COURT: Well, I understand. I realize
12 now your question was very artful in that it had a
13 intended purpose to deal with the issue of sexual a
14 transmitted disease, and with regard to a witness,
15 not with regard to the defendant. But let's do
16 this, we'll come back to that issue in just a moment
17 and we'll go on the record about that and conclude
18 it.

19 But before I come to that, did you have
20 another issue you wish me to take up with regard to
21 this trial, Ms. Wise, other than that one that
22 Mr. Holt just raised?

23 MS. WISE: My only other issue and I guess
24 it does relate to his testimony whether he testifies
25 or not, is the rape shield statute that we argued on

1 Monday and a definitive instruction on what Mr.
2 Cotton, what is permissible for him to say and not
3 say if he does intend to take the stand.

4 THE COURT: All right. Let's go back then
5 before we pick up and resolve that to the issue of
6 chlamydia which has been injected into the trial.
7 It's -- Ms. Wise, is it your position that this is
8 evidence that should come before the jury?

9 MS. WISE: It is, Your Honor.

10 THE COURT: And for what purpose and what
11 relevance?

12 MS. WISE: If my client takes the stand I
13 believe he will testify that he does not have any
14 sexually transmitted diseases, and I believe that is
15 relevant is one of the alleged victims or one of the
16 witnesses allegation against him does have a
17 sexually transmitted disease.

18 THE COURT: Well, first of all, wasn't it
19 brought out in evidence before this jury I believe
20 by a question from you, that the records indicated
21 that the victim in this case has genital herpes, and
22 thus, that evidence is already before this jury?

23 MS. WISE: That's correct.

24 THE COURT: But you wish to bring out the
25 issue of chlamydia with regard to the witness, live

1 witness Minor

2 MS. WISE: I do.

3 THE COURT: You want to be heard on that,
4 Mr. Holt?

5 MR. HOLT: I do, Judge. Just briefly,
6 chlamydia is a very readily curable sexually
7 transmitted disease. I was under the understanding
8 'cause I remember specifically the instructions you
9 gave Damyon Cotton on what you say here would be for
10 limited purpose and not be used against you, I
11 assumed it meant the same for my people as well.
12 What I could have done on the stand if I had known
13 this was gonna be an issue was specifically ask Minor
14 have you been cured of it and that's what you mean.
15 I could have clarified it at that point if I had
16 known to ask that question. When Ms. Wise asked her
17 do you have any sexually transmitted diseases, if
18 she had previously had chlamydia and it's cured,
19 then I think it falls under the rape shield statute
20 because the only thing that's gonna result from that
21 is my jury is gonna get an idea of reputation of
22 Miss Minor is a loose woman. And I think
23 that 'cause under a basic 403 analysis now it
24 doesn't need to come in, now we don't need to say
25 anything else about it. If it had been an issue it

1 could have been clarified on the stand, you know, as
2 she said it.

3 THE COURT: Well, and let me first ask
4 you, as a Lyle witness and not as the victim in this
5 case, is she entitled to rape shield protection?

6 MR. HOLT: Well, if you say it like that
7 if she's a Lyle witness, then it's certainly not
8 related if she previously had a sexually transmitted
9 disease 'cause the only thing she was here to talk
10 about was a common scheme or plan. And once you
11 reach outside of that it becomes irrelevant and then
12 certainly becomes less probative and then in the 403
13 analysis, you know, the probative value is so low
14 that the prejudicial value is above.

15 THE COURT: Very good. Just a moment
16 please.

17 (Pause.)

18 THE COURT: All right, this is the Court's
19 ruling with regard to the issue about chlamydia, and
20 I am going to include that area of questioning for
21 multiple reasons. First of all, whether or not the
22 witness may at one time have had a sexually
23 transmitted disease and whether or not the defendant
24 at current date may or may not have a sexually
25 transmitted disease or as a witness apparently going

1 to say does not have one, is not dispositive in any
2 way of whether there was a transmission of a
3 sexually transmitted disease as to whether a condom
4 was used to prevent that, whether or not there might
5 have been some treatment for it. There's so much
6 evidence that is just not part of this record, that
7 to go into that the Court finds is speculative and
8 really not probative on the issue of credibility or
9 on the issue really of any matter related to this
10 case.

11 Secondly, the Court finds that to be
12 highly prejudicial and really, you know, a witness
13 who comes in and whether she's here under subpoena
14 as a willing witness or not, to come in and testify
15 to be, have her reputation sullied in a way that's
16 really not necessary to the facts of the case the
17 Court just feels is unnecessary to these proceedings
18 and overreaching as applied to that witness. And
19 thus, for at least those two reasons the Court is
20 going to exclude that. Your position is protected
21 on the record; but again, the Court finds it has
22 rarely -- relatively low probative value or
23 relevance and high prejudicial.

24 Now let's move to the next issue about the
25 rape shield statute and how far would your witness be

1 able to testify concerning his belief that the
2 victim in this case was sexually active with another
3 individual. Tell me what evidence -- we've had some
4 discussion about this but tell me what evidence
5 would you propose to put in if you were allowed to
6 do so, Ms. Wise?

7 MS. WISE: I would propose to put in that
8 Mr. Cotton saw her profile on Backpages.com.
9 Mr. Cotton will testify he saw the profile on
10 Backpages.com, that he confronted her about this,
11 that eventually an argument escalated. He spoke
12 with her over the telephone from his perceptions of
13 what he heard on the other end of the line. He
14 heard what sounded to be muffled noises which in his
15 interpretations he believed that she was having some
16 sort of physical interaction in a sexual manner with
17 a third party; that that is not reason for admission
18 based off of the victim's sexual propensity or
19 morality, simply to show that she had a motive and
20 making these accusations because his position is
21 that he then said we're completely done and she
22 contacted him and said I can play games too and then
23 he notices he's accused of rape.

24 THE COURT: I'll get you to speak up just
25 a little bit.

1 MS. WISE: I apologize.

2 THE COURT: Thank you. You want to reply,
3 Mr. Holt?

4 MR. HOLT: Judge, I still have a very
5 mixed heart about all this. I just think that the
6 rape shield keeps out any of her past sexual deeds;
7 and if he's saying that she's a prostitute,
8 certainly none of that is relevant to the case at
9 hand. I think what he just needs to say is that he
10 suspected her of sleeping with someone else so he
11 broke up with her. If you're gonna talk about
12 Backpages you got absolutely no evidence that she
13 was a prostitute, and I don't think it passes 403 as
14 well as, I mean, you know, if you're thinking about
15 breaking the rape shield on that, just the basic
16 analysis of how prejudicial is a blanket probably
17 very untrue statement, you're a prostitute, it's
18 outrageous. I don't really know how to respond to
19 something as outrageous as all this.

20 THE COURT: All right, just a moment
21 please. Let me say to Miss Cusack who is sitting
22 here in this courtroom, as well as to **Minor**
23 who is in the courtroom as well, the defendant here
24 of course, has a tremendous stake in these
25 proceedings and has every right to contest these

1 charges in every way he wishes to do so. The fact
2 that you're sitting right here in this courtroom
3 while the attorneys use terms such as, quote,
4 prostitute or something, other word like that that
5 casts off on your character, please don't think that
6 those of us sitting here made the decision that
7 that's true or applicable to you. It's just that
8 we're simply making a record here and discussion
9 full and free about these issues so I don't want you
10 to be embarrassed or offended by the positions taken
11 by someone who is in here basically fighting for his
12 freedom. So thank you for your understanding of our
13 process. All right, just one moment.

14 (Pause.)

15 THE COURT: All right, this is what --
16 this is the response the Court is going to make to,
17 these are decisions we've made. First of all, we
18 basically decided this is an issue against the
19 defendant on Monday; and because of it's volitive of
20 the hearsay rule, volitive of the rape shield
21 statute, and highly prejudicial and we were down to
22 one issue which is whether or not a phone call that
23 would have moans and groans as opposed to words
24 being spoken and that, thus, hearsay will permit the
25 defendant to testify to that and what impression he

1 took therefrom. The Court believes that's hearsay
2 as well. And first of all, there's no witness if
3 Mr. Cotton believes that there was some relationship
4 going with a third person here, that third person
5 needs to be here to testify to it, not something --
6 Mr. Cotton, I think you should listen to what I'm
7 saying rather than just be talking among yourselves
8 there; but simply say this, you need to produce
9 evidence of that third person. That's not hearsay
10 what that third person did; but what you say he said
11 he did is just grievous hearsay, clear hearsay.
12 Also to say that you saw the profile of the victim
13 on Backpages and Backpages is a bad place for which
14 there is prostitution commerce going on, well,
15 there's no proof of that other than your
16 self-serving statements that you make and the Court
17 will not permit that in evidence. The Court will
18 permit you to say that you saw her posting on social
19 media which is here in the record; and it's not,
20 therefore, an inappropriate point to make. That you
21 made the decision as a result of that to break up
22 with her. This is what your testimony is. If this
23 is what you say it is then you may testify to that.
24 But to say that you're aware that she had relations
25 with a third person or you were involved in a phone

1 conversation which is highly unbelievable it would
2 be occurring while someone was having relations with
3 a third person, it just violates rape shield,
4 violates hearsay rule, violates rule against
5 self-serving statements, the Court will not permit
6 it. Now with that understanding, do you need a few
7 moments to talk to your client about whether he
8 intends to testify?

9 MS. WISE: A few moments please, yes.

10 THE COURT: Then we're going to stand down
11 for probably five minutes. We'll come back at 11
12 and take up the defense case. Court's in recess.

13 (WHEREUPON, a recess was taken from the
14 proceedings.)

15 THE COURT: All right, let's go back on
16 the record now and let me go back in my discussion
17 with Mr. Cotton. Mr. Cotton, please remember you
18 remain under oath from our discussion a few moments
19 ago. I ask you now, sir, have you made the decision
20 of whether or not you wish to testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Tell me, sir, what is that
23 decision?

24 THE DEFENDANT: I am.

25 THE COURT: You will testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And let me ask then and make
3 sure, are you telling me that this is your decision
4 that you have made to testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anyone tried to force you
7 to do this?

8 THE DEFENDANT: No, sir.

9 THE COURT: So you're telling me this is a
10 voluntary decision that you yourself made about you
11 testifying?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right, very good. Then
14 I'll let you be seated.

15 And will Mr. Cotton be your first witness?

16 MS. WISE: He will not, Your Honor.

17 THE COURT: Your ready with your first
18 witness?

19 MS. WISE: I am.

20 THE COURT: Then let's bring in the jury
21 please.

22 MR. HOLT: Judge, just briefly, there's
23 the issue of -- Ricky Cotton is the first witness.
24 There was never any -- is that his record? Okay,
25 then there's no issue. Evidently we got it while I

DW - C. GATTISON - DIRECT

1 wasn't looking.

2 THE COURT: Thank you. Please bring in
3 the jury.

4 (WHEREUPON, the jury was returned to the
5 courtroom at approximately 11:04 a.m., and
6 the following proceedings commenced in
7 open court.)

8 THE COURT: Welcome back, ladies and
9 gentlemen. We concluded our proceedings at the end
10 of the State's case. The State has rested and we'll
11 now move to the Defense and defense is ready to
12 proceed. Please call your first witness.

13 MS. WISE: Thank you, Your Honor. We call
14 Ms. Connie Cotton.

15 THE COURT: Please come forward, ma'am,
16 take the oath of a witness.

17 THE CLERK OF COURT: If you will put your
18 left hand on the Bible and raise your right.

19 WHEREUPON,

20 **CONNIE M. GATTISON,**
21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 THE CLERK OF COURT: If you'll have a seat
24 in this brown chair right here. Watch your step.

25 **DIRECT EXAMINATION**

DW - C. GATTISON - DIRECT

1 BY MR. HOLT:

2 Q How are you doing?

3 A I'm fine. How are you today?

4 Q I'm doing well. Can you please state your full
5 name for the record.

6 A Okay. My name is Connie Mae Gattison (ph). It
7 was Connie Mae Cotton but I got married in 2012 so
8 it's Connie Mae Gattison.

9 Q Okay. Thank you, Ms. Gattison. And where do you
10 live at?

11 A I live at 2723 Whitehall Lane in Hartsville,
12 South Carolina.

13 Q Have you lived in Hartsville your whole life?

14 A Yes, ma'am.

15 Q And what do you do?

16 A Well, I used to work at Carolina Pines Regional
17 Medical Center. I worked there for 27 years, and I
18 left there May of last year and when to Hartsville
19 Middle School. I worked from there from May to
20 December the 20th and the doctor took me out of work
21 on disability. I have an eye problem, eye disease.

22 Q Okay. And Damyon Cotton, what is your
23 relationship to him?

24 A Well, I'm his grandmother but I raised him. I
25 had him ever since he was four months old.

DW - C. GATTISON - DIRECT

1 Q Okay. So would you consider him your son?
2 A He's my son.
3 Q Okay. And where does your son live at?
4 A He live at 2723 Whitehall Lane. He lives with
5 me.
6 Q Okay. And going to why we are here today does
7 your son have a car?
8 A Well, he -- the car is not registered in his
9 name. It's my car but ---
10 Q Okay, and let me interrupt you. What kind of car
11 is it?
12 A It's a '93 Nissan Sentra.
13 Q I'm sorry, go on. Is the car registered in your
14 name?
15 A Yeah, it's registered in my name, it was
16 registered in my name, but, well I, it's really not
17 his car but I told him I would give him that car if
18 he get him a job. So he got a job to voc- what you
19 call -- it's a rehabilitation place.
20 Q Vocation.
21 A He went and got him a job. So after he got a job
22 I let him, you know, drive the car. And I told him
23 if you get a job and keep a permanent job I would
24 give you that car and have it registered in your
25 name.

DW - C. GATTISON - DIRECT

1 Q Okay. And does the car stay parked at y'all's
2 house ---

3 A Yes, ma'am, at all times.

4 Q ---when he's not using it?

5 A Uh-huh, when he's not using it.

6 Q Has he ever had --- have you ever had issues with
7 the car?

8 A Yes, I have.

9 Q Would you explain to the jury what sort of issues
10 y'all had?

11 A Okay. At first -- when I used to drive the car
12 the car was kind of acting up a little bit, and I
13 took it to be the transmission because when I used
14 -- I used to drive it to work myself. I used to go
15 out there and crank it up and sometime, you know, it
16 warm up. Then when I get ready to put it in back it
17 wouldn't pull off. So I let it sit there for a
18 while, let it warm up. Then after as soon as it
19 warm up it pull off. So I drove it like that. Then
20 after Damyon started to drive he was doing the same
21 thing. Damyon was driving it. So when Damyon got
22 to work -- no, there one morning I went, I got up
23 and went to work. I drive, I was driving a 1997
24 Chevy Blazer. So I got up that morning. I had to
25 be to work at 7:00. I working at the hospital. So

DW - C. GATTISON - DIRECT

1 Damyon had to be to work at 7:30. So Damyon called
2 me after I got to work. He was crying. He said,
3 ma, he said the car won't crank, the car won't move.
4 I said, well Damyon, I said, well call your daddy.
5 I said your daddy live right down the road. I said
6 he will come take you, you know, to work.
7 Q Let me interrupt one second. You're actually his
8 grandmother but you call yourself his momma,
9 correct?
10 A Yeah, he call me momma.
11 Q And you say his daddy. Is this his actual
12 biological daddy?
13 A Yeah.
14 Q Your son?
15 A Yeah, my son.
16 Q And what's your son's name?
17 A Ricky D. Cotton.
18 Q Okay, and I'm sorry. Go on back to what you were
19 saying.
20 A Uh-huh. So then I told him -- 'cause see, I was
21 already at work and he called, and then he really.
22 He had love his job so, you know, so good, so he
23 start crying. And I told him, I said, well Damyon,
24 call your daddy. I told him -- his daddy had got
25 laid off. I told him, I said, well, call your

DW - C. GATTISON - DIRECT

1 daddy. I said your daddy will come take you to work
2 so he did. He called his daddy and his daddy came
3 to take him to work. So when we got -- I got home
4 and I was telling my son Ricky, I was telling him, I
5 said we need to have that car checked 'cause I took
6 it to be the transmission was gone in it.

7 Q Yes, ma'am.

8 A But Ricky, he mess with it for a while in the
9 yard so come to find out, it was not the
10 transmission, it was the gear shift, gear shift.
11 That's what had went bad.

12 Q Okay.

13 A So ---

14 Q Go on.

15 A So at that time Ricky worked with it for a little
16 while in my yard and he could never get it, you
17 know, to go like it supposed to so he rigged it up
18 some kind of way but I was scared, I was still
19 scared for Damyon to drive the car. So what I did,
20 my husband uncle live next door, you know, to me,
21 and he's a mechanic. So I went over there and I
22 asked him with about, you know, coming over there
23 checking out the car, find out what's going on with
24 it. So he did. He didn't come right then but he
25 came about a day or two later and he checked the

DW - C. GATTISON - DIRECT

1 car and he told me it was the gear shift, a piece in
2 there, you know, had done worn out. And so I asked
3 him, I said, well, how would I get the piece and he
4 said that we could go to a junk car. He said he'll
5 go to the junk car, we didn't have to go. He said I
6 will go to the junk yard and see could I find a part
7 for it. He said I'm pretty sure, you know, you can
8 find a part, you know, from in the junk yard that
9 will fix it. So I told him, okay, I said, well, if
10 you can do it, I say if you do it I will pay you to
11 do it because I say, Damyon got this job, he done
12 fell in love with the job. And I say, you know, he
13 really want to work, you know, and that the first
14 time I ever seen him with so happy to go to work.
15 After I told him that I would give him that car but
16 I said you got to get a job and keep the job in
17 order, you know, for me to let you have the car.
18 Q Okay. Now Ms. Cotton, let me ask you, about how
19 long was the car inoperable for?
20 A Okay. The car, the car was broke down at least
21 two weeks.
22 Q Okay.
23 A Okay.
24 Q Now go on.
25 A Okay. The car was broke down at least two weeks

DW - C. GATTISON - DIRECT

1 because when Damyon call me and was telling me about
2 the car, okay, they came out there and picked Damyon
3 -- okay, the man fixed the car, okay. Okay,
4 Valentine was the day that they came out and picked
5 Damyon up. Not Valentine's day, excuse me, I'm
6 sorry. They came picked Damyon up February 13th,
7 they came and picked him up. So my son called me at
8 work then and he told me, he said, mom, he said they
9 here to pick Dam -- they came down to Ricky house
10 but not my house. And he said, he said they came to
11 pick Damyon up and I start crying. I did. I start
12 crying. I said, Ricky, I said what's going on now.
13 He said mom, he said they wouldn't tell me. He said
14 the only thing they said that they need to take him
15 doing there question him about, you know, about, you
16 know, whatever is going on. And like I told, like,
17 okay, back to the car, the car, okay. They pick him
18 up February 13th. Damyon drove that car like two
19 days before they came and picked him up.

20 Q So what days would those be, about February 11th
21 and February 12th?

22 A Uh-huh.

23 Q And how long was the car broken down before then?

24 A Two weeks. About two weeks.

25 Q About --

DW - C. GATTISON - DIRECT

1 A About two weeks and I had ---

2 Q Two weeks inoperable ---

3 THE COURT: Counsel, please don't over
4 talk your witness.

5 MS. WISE: I apologize.

6 THE COURT: Court reporter can't take it.
7 Thank you.

8 THE WITNESS: Yeah, it was broke down
9 about two weeks before we got it fixed.

10 BY MS. WISE:

11 Q And it couldn't be driven?

12 A It couldn't be driven.

13 Q All right.

14 A Then -- could I say something?

15 Q Yes, ma'am.

16 A Okay, then, we got it fixed. It fixed now
17 drivable; but the man what fix it, he put the gear
18 shift upside down but it's still drivable because,
19 you know, where drive supposed to be drive, it's R
20 but we know, we know how to do it until we get it
21 fixed like it supposed to.

22 Q All right. Ms. Gattison, I believe that's it.
23 Please answer any questions Mr. Holt has.

24 THE COURT: Is there cross-examination?

25 MR. HOLT: Please.

DW - C. GATTISON - CROSS

1 THE COURT: Go ahead.

2 **CROSS-EXAMINATION**

3 BY MR. HOLT:

4 Q Ms. Gattison, how old are you?

5 A I'm 55.

6 Q And how long did you say Damyon has lived with
7 you?

8 A I got Damyon when ever since he was four months
9 old. When they release him from the hospital they
10 turned him over to DSS, and I got him through by DSS
11 so he was four months old when I got him.

12 Q What happened to his mother?

13 A Well, his mother was -- she was like 12 years old
14 when she had him, and my son was like 14 and his --
15 well, his mother put him up for adoption. And being
16 my son was 14 and I, I didn't want to have no more
17 kids of my own but I want to raise another one, so
18 that gave me the opportunity to, you know, get
19 Damyon and I got him and raised him.

20 Q He's talked with you before about maybe resenting
21 the fact that his mother left him?

22 A No, but no, he hadn't talked to me about that,
23 you know, but his mother left him a book, two books
24 explaining to him the reason why she gave him up.

25 Q All right. Now are y'all a close family?

DW - C. GATTISON - CROSS

- 1 A Yes, we are.
- 2 Q So you love Damyon; don't you?
- 3 A I surely do.
- 4 Q All right. Now are you a mechanic?
- 5 A Who me?
- 6 Q Yes, ma'am.
- 7 A No, I'm not.
- 8 Q Okay. Are you aware that sometimes you can just
- 9 put a wrench into a gear shift and drive the car?
- 10 A No, I don't.
- 11 Q You were not aware of that?
- 12 A Huh-uh.
- 13 Q Now you say that they picked him up on the 13th?
- 14 A Uh-huh, well, the day before, before Valentine.
- 15 Q Yes, ma'am. And then the day that they allege
- 16 was on the first, correct?
- 17 A Yes, that what Damyon told me that it happened
- 18 around the 1st.
- 19 Q Okay, so we're talking about 12 days here,
- 20 correct? 12 days?
- 21 A Well, that's what they said around the 1st. But
- 22 when I went back to the calender the car had been
- 23 broke down between the 29th, or 29th, from the 29th
- 24 to the 30th, 31st.
- 25 Q Okay. Well, not broke down, just with a broke

DW - C. GATTISON - CROSS

1 gear shift, right?

2 A Yeah, broke gear shift. It just wouldn't pull
3 off.

4 Q So it wasn't the transmission?

5 A No, that what we thought. That's what I thought
6 it was, the transmission.

7 Q But you're admitting that there is ways you can
8 make a gear shift work without putting a new gear
9 shifter in?

10 A But no, at that time it hadn't got so bad till it
11 just the piece what we -- it broke. It just broke.
12 So it wouldn't move at all.

13 Q But you admit that you're not a mechanic?

14 A No, I'm not a mechanic but I ---

15 Q Okay. So there's definitely a way that a
16 mechanic could do it probably?

17 A Yes.

18 Q And mechanics can show other non-mechanics stuff
19 that they've learned probably, right?

20 A I guess they could 'cause I'm not a mechanic; I
21 don't know.

22 Q All right, that's good.

23 A Uh-huh.

24 Q Now let me ask you this, what time do you go to
25 bed?

DW - C. GATTISON - CROSS

1 A Well, different times. I don't have no special
2 time to go to bed. Most of the time when I go to
3 bed a lot of time I lay up 11, 12:00 at night. Then
4 I got a deadbolt on my screen door. Any time Damyon
5 used to go out and come back in my house I had to
6 get up and open the door for him.

7 Q About what time does he normally come home?

8 A Well, during work when he was working Damyon used
9 to be home at least by 8:30 or 9:00. But one day I
10 came home and the car was parked in the yard, and I
11 took Damyon to be home but he wasn't home. So
12 Damyon had a cell phone; and when I don't know where
13 he at I call him on his cell phone. When I called
14 him on his cell phone he told me, he said mom, I'm
15 down at Calvin house. It's walking distance and I
16 kind of laughed to myself because I said he must
17 have been have no gas in his car. That's what I
18 said.

19 Q So just because the car is — just because Damyon
20 is there doesn't mean the opposite. You know, it
21 could also mean that Damyon might have left the car
22 there. You see what I'm saying?

23 A Uh-huh.

24 Q One is not dispositive or proof that the other
25 was there. I think I said that bad. Let me just

DW - C. GATTISON - CROSS

1 ask you, if you see the car there do you know Damyon
2 is there?
3 A No. No.
4 Q Okay.
5 A No.
6 Q All right. Something else I wrote down to ask
7 you. Does he spend every night at your house?
8 A Yes, he do. Well no, well not every night 'cause
9 he have spend the night with Calvin. He have, he
10 have spend the night with Calvin.
11 Q And Calvin, what's his last name?
12 A Now I don't know 'cause be hon-- I know his daddy
13 was a Vinson, and I don't know was his name a Vinson
14 or not but only thing I know is Calvin.
15 Q All right. But when he doesn't spend the night
16 with you and you're not with him there's no way you
17 can know where he actually is?
18 A Most majority of the time, like I said, Damyon
19 have a cell phone and I call Damyon on his cell
20 phone and I ask him where he at. And ---
21 Q But if my momma called me right now and asked me
22 where I was and I said Wal-Mart, how is she gonna
23 know I ain't at Wal-Mart?
24 A But see, I don't -- well you know, I couldn't
25 say. I just believe what he say. He say that he

DW - C. GATTISON - CROSS

1 was at Calvin house and he said -- and then he told
2 me too, he said they be Calvin why you be at Calvin
3 house 'cause he just say we be up there shooting the
4 brew. And at one time, at one time they was trying
5 to make a little rap, you know, a little rap song up
6 there to Calvin house. And then the majority of
7 time where he spend his time at because my sister
8 knows that Damyon had to come right by her house
9 even though walking distance -- Damyon used to walk
10 up to Calvin house a lot too to keep from burning
11 his gas from going to work so I used to be so scared
12 for him, you know, walking at night 'cause like I
13 told Damyon ---

14 Q Let met interrupt you. This is before or after
15 you gave him the car?

16 A Well, this before I gave him the car.

17 Q Okay.

18 A This is before I gave him the car. He ---

19 Q So really what you're saying you believe
20 everything Damyon tells you?

21 A Well, you know, being a mother you don't -- your
22 children, you -- you want to believe them but you
23 can't believe everything they tell you, you can't.

24 Q All right, that's good. So if Damyon leaves the
25 house, he's not with you, you really can't tell this

DW - C. GATTISON - CROSS

1 jury where he was at on any particular night, can
2 you? Can you tell the jury where he was at for
3 certainty on February 1st, 2012?

4 A But no, I can't exactly tell him, then where he
5 was, but I can tell them that the car was broke
6 down. I can tell them that.

7 Q Now did you keep an eye on the car parked in
8 front of your house the entire time between 5:00 and
9 11:00?

10 A The car always be in the back of my house 'cause
11 I got a car porch back there with -- I got a 2000
12 Dodge ---

13 Q Let me just say ---

14 A ---Journey (ph).

15 Q I just don't want to get off the topic. I'm not
16 trying to be rude, I promise you. Between the hours
17 of 5 and 11 on February 1st, don't tell me what
18 usually, what always -- don't tell me that. Tell me
19 that you know for a fact for certainty, hundred
20 percent, on February 1st, 2013 from 5:00 in the
21 afternoon to 11:00 at night that you knew where that
22 car was.

23 A Yes, I surely did. It was right back there in
24 the back of my yard.

25 Q And you saw it?

DW - C. GATTISON - CROSS

- 1 A I saw it parked up under the car shed 'cause it
2 would not crank; it would not pull off.
- 3 Q All right. Well, you said it would crank. You
4 said the problem was with the gear shift?
- 5 A Uh-huh.
- 6 Q So it would crank? We're not saying it won't
7 crank, right?
- 8 A Uh-huh. It would crank, but it just wouldn't
9 pull off. Then sometimes ---
- 10 Q But you just said it wouldn't crank, right?
- 11 A Uh-huh.
- 12 Q But you meant you couldn't operate it?
- 13 A No, I couldn't operate it; Damyon couldn't
14 operate it.
- 15 Q But everybody knows you're not a mechanic?
- 16 A No, I'm not a mechanic. I never was a mechanic.
- 17 Q And you've also had heard of some people using a
18 wrench as a gear shift and screwdrivers to work a
19 gear box so they can drive a car where the shifter
20 is out instead of the transmission?
- 21 A Yeah, 'cause my son tried that.
- 22 Q So your son put -- could have showed Damyon how
23 to do it; couldn't he?
- 24 A But -- well, he tried it but the piece had done
25 broke all the way off so it wasn't no, it wasn't no

DW - C. GATTISON - CROSS

1 trying to fix it. We had to get the piece for it
2 because if you go to my house right now you'll see
3 where the -- we still don't have all the parts for
4 it.

5 Q But my point is simply that they told you that
6 they needed to fix. They told you it would not
7 work, but you are not a mechanic so you could not go
8 to the car and decide for yourself. Do you see what
9 I'm saying?

10 A Uh-huh, I see what you're saying.

11 Q You're just basically getting up here off of
12 hearsay, correct?

13 A No, I'm not getting ---

14 Q I heard that the car was broken ---

15 A Uh-huh. I'm not getting off of hearsay.

16 MS. WISE: Your Honor, I'm gonna ask --
17 he's speaking to the witness extremely
18 inappropriately.

19 THE WITNESS: 'Cause I got up I tried to
20 drive the car myself, pull it off myself and it
21 wouldn't move and I know right then -- because see,
22 I used to work with the gear shift myself and
23 certain time it would, but it got to the point it
24 wouldn't do nothing.

25 BY MR. HOLT:

DW - C. GATTISON - CROSS

1 Q But ---

2 A It wouldn't do nothing.

3 THE COURT: Anything further on the car?

4 MR. HOLT: No, sir, Judge. Nothing
5 further at all.

6 THE COURT: Is there redirect?

7 MS. WISE: None at all, Your Honor. I
8 would -- can we get her help to get down the witness
9 stand.

10 THE COURT: Let's do that. Thank you.

11 If you would just watch your step there,
12 ma'am, because you got to step down a couple of
13 times, okay.

14 Please call your next witness.

15 MS. WISE: Thank you, Your Honor. The
16 Defense would like to call Mr. Ricky Cotton.

17 THE COURT: Please come forward and take
18 the oath of a witness.

19 MS. WISE: Is it all right if she can stay
20 in here now?

21 THE COURT: Certainly she may.

22 Sir, please come forward to take the oath
23 of a witness.

24 THE CLERK OF COURT: Mr. Cotton, if you
25 will put your left hand on the Bible, raise your.

DW - R. COTTON - DIRECT

1 right.

2 WHEREUPON,

3 **RICKY COTTON,**

4 having been duly sworn by the Clerk of Court,

5 testified as follows:

6 THE CLERK OF COURT: If you'll sit in this
7 brown chair right here. Scoot up close to the mic.

8 **DIRECT EXAMINATION**

9 BY MS. WISE:

10 Q Mr. Cotton, please state your name for the record
11 and speak up so everybody can hear you.

12 A Ricky Dwayne Cotton.

13 Q How old are you?

14 A I'm 35.

15 Q And where do you live at?

16 A 2759 Whitehall Lane, Hartsville, South Carolina.

17 Q And you lived in Hartsville your whole life?

18 A Correct.

19 Q And what do you do?

20 A I'm a school bus driver for Darlington County
21 school district.

22 Q Okay. And Damyon Cotton, what is your
23 relationship to him?

24 A That's my son. I'm his father.

25 Q And Connie Cotton, is she your mother?

DW - R. COTTON - DIRECT

1 A She's my mother.

2 Q Okay. Going to why we're here today does your
3 son have a car?

4 A He -- the car, that's my mother had gave to him.

5 Q And what car was that?

6 A It's a Nissan Centra.

7 Q Do you know if he had issues with the car ever?

8 A Yes.

9 Q How do you know he's had issues with the car?

10 A 'Cause I had worked on the car.

11 Q You've done some work in mechanics?

12 A Yes.

13 Q Okay. Tell me about the sort of issues he's had?

14 A Well, the car, the issue that he had with the car
15 is the, I think the shift had popped on the car and
16 the car wouldn't move. And basically I had to ride,
17 take him back and forth to work.

18 Q And when was that?

19 A Early part of February 1st of 2013.

20 Q Okay. About how long would you say the car was
21 inop-- or excuse me. About how long would you say
22 the car was having difficulties around that time?

23 A The car been out about two weeks.

24 Q Okay. And why do you remember February the 1st
25 so well?

DW - R. COTTON - DIRECT

1 A One day he had called me and like, dad, I need a
2 ride to work 'cause I was laid off. I was
3 unemployed. I like, what's wrong. He said, dad,
4 the car won't work, it won't move. So I had to take
5 him to work.

6 Q Okay. Do you remember when you got the car
7 working again?

8 A I worked on the car, I worked on the car for
9 about a week, and I couldn't get the car so the next
10 door, across the street from my mom's, the guy -- he
11 had to fix the car. He had to go to the junk yard,
12 get some parts for the car and he got the car. It
13 was like after two weeks probably like a couple of
14 days after that so.

15 Q Do you remember the day Damyon got arrested?

16 A Yes, I do.

17 Q What day was that?

18 A I can't remember exactly what day. I think it
19 was February the 13th right before Valentine day.

20 Q The day before Valentine's day. Was the car
21 working at that point?

22 A No, the car wasn't working then.

23 Q It wasn't?

24 A When he got arrested?

25 Q Yes.

DW - R. COTTON - DIRECT

1 A Oh, the day he got arrested the car was working
2 'cause he was at work.

3 Q Okay. About how long had it been working from
4 then?

5 A I'd say about probably about two or three days.

6 Q Okay. And about how long had it been broken down
7 before then?

8 A The car been down for about, the car been down
9 for about two week.

10 Q Let me ask you, I said broken down, let me
11 rephrase. Were you able to drive that car at all?

12 A Was I able to drive it ---

13 Q Was anybody, could I get in that car and turn it
14 on?

15 A No, ma'am.

16 Q Couldn't drive it down the road?

17 A No, ma'am.

18 Q What would happened?

19 A You couldn't drive it.

20 Q Okay. No further questions for this witness.

21 Mr. Cotton, please answer any questions Mr. Holt may
22 have for you, okay?

23 A Okay.

24 THE COURT: Cross-examination.

25 MR. HOLT: Thank you very much, Judge.

DW - R. COTTON - CROSS

CROSS-EXAMINATION

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BY MR. HOLT:

Q You love your son; don't you?

A Of course I do.

Q Why doesn't he live with you?

A 'Cause he stay with my mother.

Q But I understand you had him when you were 14,
correct?

A Yeah, I had him when he was 14?

Q No, when you were 14?

A Correct.

Q Okay. Since you became an adult how come you
don't have him? Like why didn't he come live with
you?

A Because my momma, she raise him.

Q All right. And have you ever worked on a car
with him before the car in question?

A Yes, we have worked on cars.

Q So you've taught Damyon how to work on cars?

A He don't really know how to work on cars that
good, but he like help me work on cars.

Q Okay. Now you said the car broke down February
1st?

A Correct.

Q That was your testimony?

DW - R. COTTON - CROSS

1 A Correct.

2 Q So would it surprise you or would it make you
3 feel weird if your mother said it broke down on the
4 20th, 29th, the 30th, sometime in March. That's
5 what your momma said.

6 A In March?

7 MS. WISE: Your Honor, I don't believe she
8 said that.

9 THE COURT: Excuse me, whoa, everybody,
10 just a moment. The objection is to the question.
11 But the jury is sitting here listening; and if
12 that's not what the question was or what the witness
13 responded to, the jury is aware of this so I will
14 overrule the objection. You may proceed. He's on
15 cross-examination. You may proceed.

16 BY MR. HOLT:

17 Q What do you think if your mother said it broke
18 down before the 1st?

19 A I don't think she'll say that.

20 Q Okay, let me ask you something. You love your
21 son?

22 A Yes.

23 Q Your momma loves your son?

24 A Yes.

25 Q Is there anybody outside of your family who can

DW - R. COTTON - CROSS

1 testify that that car was broken down during this
2 time frame?

3 A Is anybody outside the family that can
4 testify ---

5 Q Anybody who doesn't love your son, anybody who is
6 not biased, is there anybody like that who can
7 testify to that car not working a hundred percent?

8 A Yes.

9 Q Where are they?

10 A They not here right now.

11 Q Okay. How long have y'all been preparing for the
12 trial?

13 A How long I been --- I have not prepared for no
14 trial.

15 Q Okay. How long have you known it was coming up?

16 A I mean, my son been locked up for a year.

17 Q And any time during that time you could have
18 gotten these witnesses who were not your family who
19 do not love your son and who do not have a dog in
20 the fight, you could have gotten them up here to say
21 that this car was broken, is that correct or
22 incorrect?

23 A Incorrect.

24 Q Okay. Well, I don't know how that's incorrect,
25 but let me ask you one more thing. On the night of

DW - R. COTTON - CROSS

1 February 1st, 2013 from 5:00 to 11:00 where were
2 you?

3 A What time?

4 Q 5:00 to 11:00, February 1st, 2013?

5 A I was home.

6 Q Okay. Do you live with your momma?

7 A No, I stay with my wife.

8 Q Okay. So can you testify that you saw that car,
9 the car in question, the car from this case, the car
10 he raped the girl in, did you see that car ---

11 MS. WISE: Objection, Your Honor.

12 MR. HOLT: From 5:00 to 11?

13 MS. WISE: Prosecutor's own testimony.

14 THE COURT: Overruled. Again, the jury is
15 listening and will make whatever appropriate
16 response they wish to make on a factual basis so go
17 ahead, but you may rephrase your question. But
18 let's leave that phrase out, counsel, it's not
19 necessary to the question.

20 MR. HOLT: Thank you, Judge.

21 BY MR. HOLT:

22 Q The car in question, did you see it parked in
23 your momma's parking lot or driveway between 5 and
24 11:00 on February 1st, 2013?

25 A The car was at my mother house 'cause I had to

DW - R. COTTON - CROSS

1 take my son to work.

2 Q That doesn't answer my question. All I want you
3 to say is did you see the car broken down there?

4 A The car was broken down at my mother house.

5 Q Did you see it with your eyeballs?

6 A Of course. I stay by my mother.

7 Q Okay, that's all I'm asking.

8 MR. HOLT: No further questions, Your
9 Honor.

10 THE COURT: Is there redirect?

11 MS. WISE: No redirect, Your Honor.

12 THE COURT: All right. Sir, you may step
13 down. You may remain in the courtroom if you wish
14 or you may leave.

15 Please call your next witness.

16 MS. WISE: The Defense calls Mr. Calvin
17 Harrison.

18 THE COURT: All right, sir, please come
19 forward to take the oath of a witness.

20 THE CLERK OF COURT: If you'll come
21 forward. Put your left hand on the Bible, raise
22 your right.

23 WHEREUPON,

24 **CALVIN L. HARRISON,**

25 having been duly sworn by the Clerk of Court,

DW - R. COTTON - CROSS

1 testified as follows:

2 THE CLERK OF COURT: If you'll have a seat
3 in this brown hair and speak in the mic.

4 **DIRECT EXAMINATION**

5 BY MS. WISE:

6 Q Hey, Mr. Harrison, how are you doing?

7 A Fine, and you?

8 Q Doing well, thank you. Please state your name
9 for the record.

10 A Calvin Lamont Harrison.

11 Q How old are you?

12 A 26.

13 Q And where do you live at?

14 A 1203 Reader Drive in Hartsville, South Carolina.

15 Q Have you lived in Hartsville your whole life?

16 A I've been living there for about 15 years now.

17 Q Okay. Were are you from originally?

18 A Richmond, Virginia.

19 Q Okay. Before we go any further you've been in
20 trouble with the law before?

21 A Yes, ma'am.

22 Q What convictions you got on your record?

23 A Grand larceny, unlawful possession of carrying a
24 firearm, and that's all I can remember at the time.

25 Q And when were those?

DW - R. COTTON - CROSS

- 1 A About six, seven years ago.
- 2 Q Okay. Do you know Damyon Cotton?
- 3 A Yes, ma'am.
- 4 Q How do you know him?
- 5 A Well, he's my friend.
- 6 Q Okay. How long have you known him for?
- 7 A About probably like four or five years.
- 8 Q Okay. We're here today for this trial, correct?
- 9 A Yes, ma'am.
- 10 Q About this time -- excuse me. He's been locked
- 11 up for some time and you know that, correct?
- 12 A Yes, ma'am.
- 13 Q Prior to him getting locked up on this charge
- 14 what was y'all's relationship like?
- 15 A He used to come to the house just about every
- 16 day. Usually jump on the video games, go down the
- 17 street play basketball, stuff like that.
- 18 Q Okay. Do you remember Friday, February 1st,
- 19 2013? And if you don't, say I don't remember.
- 20 A I remember a little bit but I can't remember
- 21 exactly all the activities and everything that went
- 22 on, but yeah, I remember.
- 23 Q What do you remember?
- 24 A That day right there, when he usually get off
- 25 about 2 or 3.

DW - R. COTTON - CROSS

1 Q Wait a minute, who are you saying usually gets
2 off?

3 A Damyon, Damyon Cotton.

4 Q From where?

5 A From work.

6 Q Do you know where he works at?

7 A Vocational Rehab in Hartsville.

8 Q Okay, and I'm sorry, go on with what you were
9 saying that day.

10 A He usually get off about 2 or 3 and that day his
11 car was broke down so my cousin, my cousin Shane Fox
12 had dropped him off at home 'cause they was working
13 out there together. And he stayed for a couple of
14 hours. I can't remember exactly what time he left.
15 I know it was dark time when he left though.

16 Q Okay. Did Mr. Cotton come over to your house
17 every Friday after work?

18 A Yes, ma'am.

19 Q Do you remember a Friday he never was over at
20 your house?

21 A No, ma'am.

22 Q And what would y'all do while over at your house?

23 A Like I said, one time before like play
24 basketball, like go down the street play basketball,
25 come back in and play video games, just sit around,

DW - R. COTTON - CROSS

- 1 be on the computer trying to make music or whatever.
- 2 Q And you said he left at dark?
- 3 A Uh-huh.
- 4 Q Are we talking dark at 6:00 in the afternoon or
- 5 6:00 in the evening?
- 6 A Naw, this dark right here probably like 9 or 10.
- 7 Q 9 or 10?
- 8 A In the afternoon.
- 9 Q In the afternoon or evening?
- 10 A It's -- both of them the same thing, right?
- 11 Q So he was at your house for considerable hours?
- 12 A Yes, ma'am.
- 13 Q Can you recall if he ever missed being over at
- 14 your house a Friday?
- 15 A No, ma'am.
- 16 Q Same routine every Friday he'd get off work?
- 17 A Every Friday.
- 18 Q And y'all would hang out?
- 19 A Yes, ma'am.
- 20 Q Till about how long every Friday?
- 21 A Just that night particularly he had left about 9
- 22 or 10, but he usually don't leave until like 1 or 2
- 23 in the morning.
- 24 Q Okay. Mr. Harrison, I certainly appreciate it.
- 25 Please answer any questions Mr. Holt might have for

DW - R. COTTON - CROSS

1 you.

2 A Yes, ma'am.

3 THE COURT: Cross-examination.

4 MR. HOLT: Yes, sir.

5 **CROSS-EXAMINATION**

6 BY MR. HOLT:

7 Q Mr. Harrison?

8 A Yes, sir.

9 Q Okay. And you say you got -- you said you had a
10 carrying a weapon and a grand larceny?

11 A Uh-huh.

12 Q Okay. Don't you have a burglary as well?

13 A I think so, yeah.

14 Q Okay. Don't you think it's odd that you can't
15 remember what you've been arrested for, something
16 you've been sentenced for, but you're here today to
17 testify about a night in question over a year ago
18 that has no redeeming factors? There was nothing
19 special about February the 1st, 2013. You're here
20 to testify about that night, but you can't even
21 remember what you yourself were arrested for. Don't
22 you think that's odd?

23 A No, sir, because for one, I didn't get arrested
24 by myself. It was a group of us and I guess, like,
25 I had pled guilty so I don't really know what I was

DW - R. COTTON - CROSS

1 charged with.

2 Q Well, you have to remember what you pled to in
3 court, correct?

4 A Yes, sir.

5 Q Okay.

6 A But like I said, I only know for a fact that it
7 was grand larceny and pistol charge on my record.

8 Q All right. And your testimony here today is that
9 you were at the house on February 1st, 2013 at your
10 house hanging out with Damyon Cotton till late at
11 night?

12 A No, I didn't say late at night. I say 9 to 10.
13 He usually stay there till late.

14 Q All right. What stands out in your mind that
15 makes you remember February 1st, 2013.

16 A Because like I said, my cousin was the one that
17 dropped him off at my house 'cause his car had did
18 break down.

19 Q How many times did your cousin drop him off?

20 A Like twice.

21 Q Okay. Was there anybody else at the house with
22 y'all?

23 A Yeah.

24 Q Okay. Anybody who doesn't have a criminal record
25 that could have testified to this?

DW - R. COTTON - CROSS

1 A Yeah, my parents.

2 Q Okay. Where are they at today?

3 A They at home.

4 Q All right. How come they're not here?

5 A Because I was the only one that got subpoenaed.

6 Q Okay. What you're telling me is that they could
7 have also testified to this?

8 A Yeah, they sure could.

9 Q How would your parents s know which friend of
10 yours was hanging out at your house on a random
11 night a year ago?

12 A I don't know what you mean. I mean, how would
13 they not know if they live there.

14 Q Okay. Here you go, February 17th, what were you
15 doing on February 17th of 2013?

16 A February 17th, 2013. What did I do, last year.
17 I had some items for one, for my baby mother for
18 Valentine's day. I do remember that. And I spent
19 Valentine's day with her.

20 Q Well, Valentine's Day is the 14th I think.

21 A Uh-huh. And I told you -- well, it was on the
22 13th.

23 Q But I'm asking you what happened February 17th of
24 2013?

25 A 17th?

DW - D. COTTON - DIRECT

1 Q Let me ask you something one better. What was
2 Damyon Cotton doing on February 3rd of 2013?

3 A I don't know 'cause I don't know exactly what
4 date that is, I mean, like what day it is.

5 Q All right. He's your friend; isn't he?

6 A Uh-huh.

7 Q All right.

8 MR. HOLT: No further questions.

9 THE COURT: Is there redirect?

10 MS. WISE: No redirect, Your Honor. We
11 would ask Mr. Harrison be excused.

12 THE COURT: Sir, you're free to leave.
13 You may remain if you wish but you're free to go.

14 THE WITNESS: All right, thank you.

15 THE COURT: Please call your next witness.

16 MS. WISE: Thank you, Mr. Harrison.

17 The State calls Damyon Cotton — excuse
18 me, the Defense calls Damyon Cotton.

19 THE COURT: All right. Please come
20 around, sir, and take the oath of a witness.

21 THE CLERK OF COURT: If you'll come place
22 your left hand on the Bible, raise your right.

23 WHEREUPON,

24 **DAMYON COTTON,**

25 having been duly sworn by the Clerk of Court,

DW - D. COTTON - DIRECT

1 testified as follows:

2 THE CLERK OF COURT: If you'll have a seat
3 in this brown chair and scoot up to the mic.

4 **DIRECT EXAMINATION**

5 BY MS. WISE:

6 Q Mr. Cotton, please state your full name for the
7 record.

8 A Damyon Marquise Cotton.

9 Q And how old are you?

10 A 21.

11 Q Where are you from?

12 A Hartsville, South Carolina.

13 Q How long have you lived there?

14 A My whole life.

15 Q Who do you live with?

16 A My grandmother.

17 Q Okay. We've heard a whole bunch of allegations
18 against you this week; haven't we?

19 A Yes, ma'am.

20 Q We heard that you worked at vocational rehab,
21 correct?

22 A Yes, ma'am.

23 Q What did you do there?

24 A I did like different varieties of work for
25 Auspack, Sunoco, Roller Bearing, and things like

DW - D. COTTON - DIRECT

1 that.

2 Q Okay. Most of your family in the area?

3 A Yes, ma'am.

4 Q Have a good relationship with them?

5 A Yes, ma'am.

6 Q All right. Were you present in the courtroom for

7 Minor's Minor testimony?

8 A Yes, ma'am.

9 Q You heard the allegations that were made against

10 you?

11 A Yes, ma'am.

12 Q Is what she said true against you?

13 A No, ma'am.

14 Q Did you touch her inappropriately?

15 A No, ma'am.

16 Q Did you touch her against her will?

17 A No, ma'am.

18 Q Did you touch her sexually?

19 A No, ma'am.

20 Q What happened that night?

21 A Well, it was a regular day. I was at home on

22 Facebook and I was doing what they call Q and A,

23 question and answer. So I had a friend of mine, he

24 asked a question he rate me. And by rate is the

25 rate on a scale of one to ten and what it means. So

DW - D. COTTON - DIRECT

1 he rated me. And I commented on what he said. And
2 after that I was like, okay, yeah that's cool,
3 right, I like that rate. So Minor put a
4 comment under the rate and asked me could I help her
5 so I ---

6 Q Let me interrupt one second. What's a rate?
7 Explain to the jury. Is this a game?

8 A It's like a rating game like, you my friend, I
9 just happen to rate you on Facebook.

10 Q And let me ask you again, what's Facebook? It's
11 just sort of a social ---

12 A It's social media.

13 Q Okay, I'm sorry, go on back to what you were
14 saying.

15 A In a comment on my page it say could you help me.
16 So I didn't really think about what to do at the
17 time so I got off Facebook. And days later I got
18 back on. So reading my status and I had a message
19 in my box from Miss Minor and she asked could
20 I help her do something so I said sure. Right
21 around this time I had got a phone call from my
22 friend DJ who told me his brother died. He asked me
23 if I'd come to the setting up so I told him I would
24 come. So I called my little brother whose name is
25 Raquan; and I asked him could he ride with me, he

DW - D. COTTON - DIRECT

1 said yea. So before we left my stepmother told me
2 have him home by 10:00; I told her I would. So we
3 went to the Florence area where we met Minor at the
4 Sav-way gas station. She told me to go around this
5 corner to this house so I did. My brother is in the
6 front seat. So she came back with a bag full of
7 clothes, and she opened the door and she hit her eye
8 on the corner of the door. So my brother said it
9 sound like that hurt. I was like, yeah, so I caught
10 on the interior lighting and I saw that she start
11 bruising right up in this area so I told her it was
12 gonna leave a mark. So we leave the house. I
13 didn't really know where the house was. So we left
14 the house and I looked at my phone and I was like,
15 okay, it's time to take my brother back. So she
16 told me she would ride with me to take my brother
17 home. So okay, I took my brother home, got him home
18 right at 10:00 and we left. So I asked her where
19 she need to go. She said I need to go to my
20 friend's house in Darlington 'cause me and my momma
21 got into it. So I told, her, okay, I can get you
22 there. So I took her. I got to the intersection by
23 the Verizon and McDonalds, I don't really know that
24 highway area too good. So I went across the street
25 and I noticed the road going back way like to the

DW - D. COTTON - DIRECT

1 beach, so she told me to make a left on this highway
2 so I made the left. I did exactly what she said.
3 But before that she asked me could she use my phone;
4 I told her, yeah. She got on another social media
5 which is called MocoSpace and was in-boxing her
6 friend whose house she was going to; that's what
7 probably it was. So I didn't say anything about it.
8 We got to the house she said her friend responded,
9 say that a person will be there like 10, 15 minutes.
10 She asked me could way it I say, yeah, sure. So she
11 got another response that said they're right down
12 the road. So she told me I can go ahead and leave.
13 So I left, went home, and I was on the phone with a
14 friend of mine so. She was on Facebook. She was
15 like, oh my God, my friend **Minor** just got beat up and
16 raped by some guy. So she was like, let me call you
17 back. I told her okay. She called me back 10, 15
18 minutes later and was like, I don't know how true it
19 is, I called her phone but she didn't answer. She
20 was like, she could be lying anyway.

21 So maybe a week go by I'm coming from
22 Calvin's house from walking my dog, and I see my
23 little cousin and he was like, well ---

24 MR. HOLT: Objection, hearsay.

25 THE COURT: Please don't tell us what

DW - D. COTTON - DIRECT

1 someone else said. You can tell us what you did or
2 what you were doing, but not someone, what some
3 third person said because that, we call that hearsay
4 and it's not admissible. So let's go back with the
5 question and then take it from there.

6 THE WITNESS: Yes, sir.

7 THE COURT: Let's move on.

8 THE BAILIFF: Judge.

9 THE COURT: Yes, sir? You need to take a
10 break?

11 THE FOREPERSON: Can he speak up please?

12 THE COURT: Certainly. Excuse me, ma'am,
13 I did not see you raise your hand. Just move a
14 littler closer to the microphone, be careful not to
15 hit it 'cause that'll feedback on you.

16 THE WITNESS: Yes, sir.

17 THE COURT: But just speak up some so we
18 can all hear you.

19 Now ask your next question.

20 BY MS. WISE:

21 Q When did you hear that **Minor** was accusing
22 you of sexually assaulting you -- excuse me,
23 sexually assaulting her? Did you about a week
24 later?

25 A About a week later.

DW - D. COTTON - DIRECT

1 Q Okay. And how did you hear about that?

2 A It was informed to me that there was a picture of
3 my former mug shot online so I went and looked on it
4 myself and...

5 Q Okay. Your former mug shot, have you been
6 arrested for public disorderly conduct?

7 A Yes, ma'am.

8 Q Okay. This accident with Miss **Minor** did
9 law enforcement ever try to speak with you about
10 what she alleged?

11 A No, ma'am.

12 Q Did they ever try to interview you?

13 A No, ma'am.

14 Q Did you ever talk with anybody from Darlington
15 County Sheriff's Office about this charge prior to
16 you getting arrested?

17 A No, ma'am.

18 Q When were you charged with this?

19 A When I was arrested for this case I'm here for
20 now.

21 Q And let's talk about this case you're here under
22 now. Miss Yasmin Cusack has accused you of sexually
23 assaulting her and kidnapping her. You heard those
24 allegations, correct?

25 A Yes, ma'am.

DW - D. COTTON - DIRECT

- 1 Q You heard everything that she said in the
2 courtroom about you, correct?
- 3 A Yes, ma'am.
- 4 Q Was what she said true?
- 5 A No, ma'am.
- 6 Q Damyon, how do you know Miss Yasmin Cusack?
- 7 A I met her through a friend of mine named Marvin
8 Laboyd (ph).
- 9 Q Okay. And when was this?
- 10 A This was around October 2012.
- 11 Q And did she tell you what her name was?
- 12 A Yes, ma'am.
- 13 Q What did she tell you?
- 14 A She told me her under name was Crystal Johnson.
- 15 Q Okay. Did you begin a relationship with her?
- 16 A Yes, ma'am.
- 17 Q In your mind was it a relationship?
- 18 A Yes, at first it was.
- 19 Q Okay. Tell me ma sort of things made you think
20 this was a relationship?
- 21 A Just typical conversation like some of the things
22 conversation were about, but other than that it was
23 like a regular relationship.
- 24 Q Okay. You said that your interaction,
25 relationship with her, began back in October of

DW - D. COTTON - DIRECT

- 1 2012, correct?
- 2 A Yes, ma'am.
- 3 Q Did the relationship end?
- 4 A Yes, ma'am.
- 5 Q How did it end?
- 6 A Well, we had a confrontation.
- 7 Q Okay.
- 8 A And once again it was something I saw.
- 9 Q Okay.
- 10 A And I confronted her about it. And we had a big
- 11 glow over. She blew up really. I mean, I never
- 12 really paid any attention after that.
- 13 Q Did you end things with her?
- 14 A Yes, ma'am.
- 15 Q Did she seem upset that you ended things with
- 16 her?
- 17 A Yes, ma'am.
- 18 Q Why did you end things with her?
- 19 A Because it was one time that I was on this social
- 20 media site.
- 21 Q Okay.
- 22 A And I saw something that didn't look right to me
- 23 like out of the ordinary.
- 24 Q Okay.
- 25 A So I confronted her about it.

DW - D. COTTON - DIRECT

1 Q Okay.

2 A And of course, she denied it so the confrontation
3 escalated to a argument which I didn't want to have.

4 Q Okay.

5 A So I think one day I was -- I got a text. I got
6 off work and went to Calvin's house one day.

7 Q Okay, and let's not talk about any texts that you
8 got, but just tell exactly when you were at Calvin's
9 house one day.

10 A Okay. I was at Calvin's house, and I just got
11 off work.

12 Q Okay.

13 A So I told Calvin I'll be back. So he unlocked
14 the lock for me and I got my dog and I walked home.
15 But I came back.

16 Q Okay.

17 A So by the time I got back to his house -- I don't
18 have good service on my phone at my house so when I
19 got to his house I had a text on my phone that says
20 call me.

21 Q Okay.

22 A So...

23 Q Let's not talk about any text again, okay. Did
24 you ever have any suspicions at any time that maybe
25 Miss Yasmin Cusack was not being faithful to you?

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1 A Yes, ma'am.

2 Q Okay. And I'm using the name Yasmin Cusack. You
3 always believed her to be the name what?

4 A Crystal Johnson.

5 Q When did you learn who Miss Yasmin Cusack was?

6 A When I was served the warrants.

7 Q Okay. Did you have anymore contact with Crystal
8 Johnson after you broke up with her?

9 A No, ma'am.

10 Q Okay. Did she ever make any threats to you?

11 A Yes, ma'am.

12 Q What did she say?

13 A Well, she text my phone and said since you want
14 to play games I can play even better ones.

15 Q Okay.

16 A That what led me to be here.

17 Q Okay. Now going to February the 1st, 2013, do
18 you remember this day?

19 A Yes, ma'am.

20 Q Okay, tell me about it.

21 A It was a typical Friday. I had to go to work but
22 on Friday let us get off at 12:30 if we finish
23 early. So I got of work. I went and cashed my
24 check and I got a ride with my cousin Shane to
25 Calvin's house. After he dropped me off at Calvin's

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- 1 house we just played games for a while. That's when
2 I decided I got to go home so I got my dog and I
3 went home so I did tell Calvin I'm coming back.
- 4 Q About how long were you gone?
- 5 A Probably 30 minutes at the most.
- 6 Q Okay.
- 7 A So when I came back to Calvin's house we just sat
8 around and tried to get the laptop to work because
9 the screen was crashed so we tried to connect it to
10 the desktop monitor to record songs.
- 11 Q Okay. How long were you at Calvin's house that
12 day?
- 13 A Probably it was about 9:30 or 10:00.
- 14 Q Did you go to Calvin's house every Friday?
- 15 A Yes, ma'am.
- 16 Q Do you remember any Fridays when you were not at
17 Calvin's house?
- 18 A No, ma'am.
- 19 Q Did you ever see Yasmin Cusack on February the
20 1st, 2013?
- 21 A No, ma'am.
- 22 Q Did you drive to Florence on February the 1st,
23 2013?
- 24 A No, ma'am.
- 25 Q Were you able to drive to Florence in your car

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1 On February the 1st, 2013?

2 A No, ma'am.

3 Q Why not?

4 A Because my car was broke.

5 Q Okay. Mr. Cotton, no further questions. Please
6 answer any questions Solicitor Holt might have,
7 okay?

8 A Yes, ma'am.

9 THE COURT: Cross-examination.

10 MR. HOLT: Thank you, Judge.

11 **CROSS-EXAMINATION**

12 BY MR. HOLT:

13 Q Damyon, you've been sitting here this whole
14 trial?

15 A Yes, sir.

16 Q So you know that this case is not just words
17 against words, correct?

18 A Explain.

19 Q This case has also got some physical scientific
20 evidence in it?

21 A Yes, sir.

22 Q All right. You said you were dating Yasmin for
23 how many weeks or months? Just give us a ballpark
24 figure.

25 A Three, four.

DW - D. COTTON - CROSS

- 1 Q Okay. So three or four months?
- 2 A Yes?
- 3 Q What's her nickname at the house?
- 4 A I have no idea.
- 5 Q Okay. What's her momma's name? She testified
- 6 the other day.
- 7 A Well, now I know. It's Ms. Grace Cusack.
- 8 Q How old is Yasmin?
- 9 A Nineteen.
- 10 Q Okay. Where did she grow up, where is she from?
- 11 A She said she was from Florence.
- 12 Q Okay. Did you know that before the trial or you
- 13 just repeating stuff back to me you learned during
- 14 the trial?
- 15 A No, I know it before.
- 16 Q All right. Now how many times did y'all
- 17 physically get together?
- 18 A Well, we never physically got together but I saw
- 19 her once.
- 20 Q You saw her once. What was she doing, describe
- 21 it to me?
- 22 A She called me one day when I was going to the
- 23 store for my mother and told me she was in the
- 24 Hartsville area south side of town at her aunt's
- 25 house. She said it was her aunt's house so I took

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1 her believe that. So I went over there. I never
2 got out the car because there were a group of guys
3 out there doing something, and I don't go on that
4 side of town, period. So we talked and she said she
5 wanted to see if I really look like what my picture
6 look like. I told her I didn't have a problem with
7 that. So I sat in the car and I told her I couldn't
8 stay long so we talked maybe five, ten minutes.

9 Q Did she get in the car with you?

10 A No, sir.

11 Q Okay.

12 A So before I left I gave her a hug. I never got
13 out the car. So she kind of like sideways up get in
14 my car. I left and that was the last and first time
15 I seen of her.

16 Q When you gave her a hug did you shake her belt
17 buckle?

18 A No, sir, but ---

19 Q Did you try to pull her zipper down when you gave
20 her a hug?

21 A No, sir.

22 Q Then how does your DNA from your body that can
23 only belong to you, out of one -- out of 220 million
24 people, how did that DNA get on her zipper in her
25 button? How did it get there? On the night in

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1 question when it was collected by a nurse, how did
2 it get there?

3 A As I was saying, I never got out the car and I do
4 have long arms when she sideways hugged me my finger
5 or hand could have touched it.

6 Q And how long was this supposed hug before the
7 rape? How long before February 1st and this hug,
8 how long was that?

9 A Probably about like two weeks to a month.

10 Q Two weeks to a month. You think maybe she washed
11 her pants in between that time?

12 A I have no idea.

13 Q What was she wearing the night you hugged her?

14 A Blue jeans but there was never a night. It was
15 daytime.

16 Q It was daytime. What was her shirt?

17 A She had on a white shirt.

18 Q Okay, all right. And you remember specifically
19 it was the bluejeans I've been showing everybody
20 this whole term of court?

21 A No, sir, I know it was bluejeans period.

22 Q Okay. And you never touched her besides that?

23 A No, sir.

24 Q All right. Let's get into some of your
25 testimony. You said you saw your former mug shot up

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- 1 on Facebook?
- 2 A Yes, sir.
- 3 Q Okay. Now was it your public disorderly arrest
- 4 mug shot?
- 5 A Yes, sir.
- 6 Q Okay. You sure?
- 7 A I'm positive.
- 8 Q All right. Damyon, let me ask you something, who
- 9 besides you mama, your grandmama, and your father
- 10 knew that that car was broken down in your garage?
- 11 A Well, the mechanic who fixed it.
- 12 Q Okay.
- 13 A Everybody who knew me knew I always drive it when
- 14 I had it.
- 15 Q Well, they'd know you won't be driving it but
- 16 they wouldn't know it was broke, right?
- 17 A Well, actually they will. They would ask me why
- 18 I'm walking.
- 19 Q All right. Now are these people related to you?
- 20 A No, sir.
- 21 Q Okay now, where are they at today?
- 22 A I have no idea.
- 23 Q All right. Is it fair to say that really and
- 24 truly only the people who love and care about you
- 25 are the ones who came to testify about that car

DW - D. COTTON - CROSS

1 being broke?

2 A No, that's not true.

3 Q Who else was there?

4 A There was no one else, but I guess given the time
5 I was just notified I was going to trial, nobody
6 could possibly have explanation can they make it by.

7 Q Let's tell the truth now. How -- when did you
8 find out you were going to trial for this?

9 A Just like last week.

10 Q All right. So you never got with your lawyer and
11 discussed about another possible trial date months
12 past?

13 A That was last year that you did not want to go to
14 trial on.

15 MR. HOLT: Judge, I'm going to have to ask
16 that this be identified or marked for identification
17 purposes.

18

19 THE COURT: Solicitor, let opposing
20 counsel see it please before we --

21 MR. HOLT: Oh, she's -- numerous copies
22 and it was a part of discovery.

23 MS. WISE: No objections, Your Honor.

24 THE COURT: Without objection. Very good,
25 let's mark it.

DW - D. COTTON - CROSS

1 (WHEREUPON, State Exhibit No. 34 was
2 marked for identification only.)

3 BY MR. HOLT:

4 Q I'm gonna show you what's been marked State's
5 Exhibit 34. Have you seen that before?

6 A Yes, sir, I have.

7 Q And since the last time you've seen it have there
8 been any changes, alterations, or deletions made to
9 it?

10 A No, sir.

11 Q Okay. And can you tell the jury what it is?

12 A It's a copy of when I was arrested. I found out
13 that ---

14 Q Just tell us what it is.

15 A Oh, it's a letter I wrote to Solicitor Holt about
16 not been mirandized in the case.

17 Q Okay. You don't have to explain all that. I'll
18 do you one better. Why don't you read it to the
19 jury, the entirety of the letter.

20 A I will. "My name is Damyon Cotton, and I was
21 arrested on February 13th between the hours of 1 and
22 2 p.m. I had just got off work at 12 when I got a
23 call from my mother saying that the police went, as
24 I stated ---

25 THE COURT REPORTER: Slow down. Slow down

DW - D. COTTON - CROSS

1 a little bit.

2 THE WITNESS: Sorry. "I rushed home and I
3 let the dog out to use the restroom and I came back
4 in. And when I walk back to my dad's house to see
5 what they want to ask me about they were in my yard.
6 So I asked him what he need to speak to me with or
7 what about. They said there were matters they
8 couldn't speak on. So they asked me was there
9 anything I need to give to my father before they
10 arrested me. I told them yes, so I gave my dad my
11 cigarettes, my lighter, and my phone. And that's
12 when they place me in handcuffs and drove me to the
13 detention center, but the officer never mentioned
14 mirandization either during the time so we just
15 talked about him being in the army and what I wanted
16 to do and how I wanted to do things the correct
17 way."

18 Q Just keep reading it.

19 A And so then I said, "Getting in trouble is
20 messing up my future because I wanted to go into the
21 army and play sports after. He told me he was a
22 marine 22 years then he made a phone call. But I
23 was never mirandized at my home, in the car, or at
24 my bond hearing. I had been incarcerated 14 days.
25 Thank you, sir, for reviewing my case. I really

DW - D. COTTON - CROSS

1 appreciate the time. Sincerely, Damyon Cotton."

2 And the officer who I didn't know at the time, his
3 name is on the warrants.

4 MR. HOLT: Okay. Now Judge, I'd like to
5 move State's Exhibit 34 into evidence.

6 THE COURT: Without objection?

7 MS. WISE: No objection.

8 THE COURT: In evidence, 34.

9 (WHEREUPON, State Exhibit No. 34
10 was admitted into evidence.)

11 BY MR. HOLT:

12 Q How many months after you were arrested till you
13 wrote me that letter?

14 A It was never months. It was a couple of days.

15 Q Okay. What's the date on that letter?

16 A The date of the letter is 26th of February.

17 Q Okay, 26th. What date is stamped on that says my
18 office got it?

19 A March 7th.

20 Q Okay. All right, now, so arrested on the 13th?

21 A Yes.

22 Q So let's say it's 13 days. Let's say two weeks,
23 okay?

24 A Yes.

25 Q Two weeks you write me that letter. Where in

DW - D. COTTON - CROSS

1 that letter does it say your car was broke?

2 A It doesn't say.

3 Q Okay. Where in that letter does it say that you
4 never saw Yasmin, that you didn't really have a
5 relationship? Where does it say that in that
6 letter?

7 A It doesn't say that.

8 Q Where in that letter does it say talk to Calvin
9 Harrison, he'll know where I was that day, where
10 does it say that?

11 A It doesn't say.

12 Q Okay. Now don't you think, don't you think it's
13 reasonable that if somebody has a perfectly good
14 reason for why they've been falsely accused, that
15 the first thing they're gonna holler about in a
16 letter is gonna be the things that get them off?
17 Don't you think that's reasonable?

18 A No, sir.

19 Q Okay. So you can't admit that it's reasonable?

20 A Now if I anticipated trial from the beginning,
21 no.

22 Q Okay. Why did you go on and on about the
23 Miranda? Did you ever get give a statement?

24 A No, sir.

25 Q Then Miranda is not important, correct?

DW - D. COTTON - CROSS

1 A You were violating my constitutional right by not
2 reading my Miranda rights, sir.

3 Q As a lawyer I think you're wrong on that, but you
4 can sue me over it. What part is unreasonable for a
5 person who's been charged, in your opinion falsely,
6 for some of the most major crimes they are.
7 kidnapping and rape -- you been charged with
8 those -- but all you can talk about in your letter
9 is not your alibi defense, not the fact that your
10 car was broke, not the fact that your family can
11 testify for you, all you talk about is being
12 mirandized wrong or failure to be mirandized. Is
13 that true or untrue?

14 A That's not true. I didn't have a lawyer at this
15 time.

16 Q Well, you've just read the letter.

17 A Yeah, that's a letter.

18 Q So you know you didn't talk about those things,
19 correct?

20 A I didn't feel the need to speak on those right
21 offhand and I'm waiting on my lawyer which I didn't
22 even know who was going to represent me.

23 Q Uh-huh. All right, let's talk about Calvin
24 Harrison. Did you have a phone call with him a few
25 days ago?

DW - D. COTTON - CROSS

1 A Yes, I did.

2 Q Okay. Bearing in mind that they're recorded.

3 A Yes.

4 Q What did y'all talk about that day on your
5 recorded phone call between yourself and the
6 convicted convict that testified for you was the
7 only one not in your family that testified for you
8 today, what did y'all talk about?

9 A Well, when I called him -- normally I try to call
10 him to check on my dog and see what's going on in
11 the neighborhood. So he had no idea I was even
12 going to trial until I told Christie he will be my
13 alibi witness. So when Christie told me she spoke
14 to Calvin but he didn't even know I was going to
15 trial. I called Calvin myself and I told him why I
16 was going to trial. That's what happened. And we
17 had a conversation about the neighborhood and the
18 dog, but that was it.

19 Q And is it true or untrue that Calvin never knew
20 that he might be testifying for you before the call
21 three days ago in which y'all discussed the facts?

22 A Oh, he knew.

23 Q Okay. Why had Calvin never come forward until
24 now about the fact that he could provide a perfect
25 alibi witness for you supported only by the two of

DW - D. COTTON - CROSS

1 you? How come Calvin has never brought that out
2 before? Why didn't you send him to the police in
3 the whole year since your arrest?

4 A Because I know, for one, Calvin had run-in with
5 the law hisself so for someone who probably has had
6 major -- well, certain run-ins, it wouldn't be a
7 good look to have someone who been convicted going
8 to the police saying that they can be credible
9 towards where you been.

10 Q All right?

11 A Just like you're discrediting him right now.

12 Q Yeah, easily.

13 A I know.

14 Q Why didn't you get his parents who were also
15 there who were not convicts and not your friends,
16 why don't you get them to come up here and talk
17 about it?

18 A Because sometimes his parents leave and it's just
19 me and him all day.

20 Q Doing what?

21 A Playing video games, in the studio, down the
22 street playing ball, walking the dog around the
23 neighborhood, shooting pool, stuff like that.

24 Q You said that you didn't want to give any
25 information up before you got a lawyer. Is that

DW - D. COTTON - CROSS

1 true or untrue?

2 A That's true.

3 Q Okay. How long you had your lawyer? How long
4 you and Christie been working together?

5 A About a year now.

6 Q So you been working together a year?

7 A Well, not really a year. She ---

8 Q Would it shock you that I, up and until we
9 getting ready for this trial last week had never
10 heard about any of these things?

11 MS. WISE: Objection, Your Honor.

12 MR. HOLT: The alibi or the broken car
13 issue.

14 MS. WISE: It's not true at all. We were
15 noticed for trial ---

16 THE COURT: Just, counsel -- whoa,
17 counsel, no testifying.

18 MS. WISE: I apologize.

19 THE COURT: And because the question was
20 testimony as well. Ladies and gentlemen, I'm gonna
21 sustain the objection. What discovery passes
22 between counsel really should not be charged against
23 this defendant. This is something the lawyers do in
24 trading information. I'm not aware of the extent of
25 the discovery in this case, but I'm gonna ask you to

DW - D. COTTON - CROSS

1 disregard that question.

2 And please move to your next issue,

3 Mr. Holt.

4 BY MR. HOLT:

5 Q All right. You remember when Calvin was
6 testifying? Were you here for that?

7 A Yes, sir.

8 Q Were you here when Calvin said his parents were
9 there all day?

10 A Yes, sir.

11 Q Okay. So once again, why didn't you get them?

12 A I didn't think it -- well, I actually spoke to my
13 aunt, but knowing how they probably would have come
14 if I would have actually told them I was going to
15 trial. But being that Calvin was the only person
16 that I normally be with on everyday basis, I decided
17 well, I'm with this man 24/7, I know, so he would
18 know exactly where I was during this day.

19 Q All right.

20 A And his parents could have went right along with
21 that, yes, he was here because we know he was here
22 'cause I'm always there.

23 Q Let's just talk about some more of the things you
24 said. **Minor** testified, I think, she got a
25 black eye. You testified that the reason for that

DW - D. COTTON - CROSS

1 is because she hit her face on the door getting in
2 your car.

3 A On the corner of the door. You said the door.

4 Q Exactly. How many times have you given your
5 yourself a black eye?

6 A Never.

7 Q Okay. Do you think it's reasonable to suspect
8 that people are out there stumbling into car doors
9 and just coincidentally that's the day they claim
10 you hurt them?

11 A I didn't say stumbling.

12 Q Okay, what did you say?

13 A I said she had a bag full of clothes in her hand
14 when she opened the door the corner of the door hit
15 her on the eye.

16 Q Okay?

17 A From the looks of what I saw her eye was not
18 swollen, sir.

19 Q Yet you felt the need to comment on them, why?

20 A Because right now, the way you try to explain it
21 you trying to make it seem like I did something
22 wrong, yet I did nothing at all.

23 Q Did you notice any of the similarities between
24 the two?

25 A I mean, yes, I did.

DW - D. COTTON - REDIRECT

1 Q Okay. Did you notice how they were both picked
2 up using social media?

3 A Yes, I did.

4 Q Did you notice how you were just merely
5 acquaintances of both of them?

6 A Yes, I did.

7 Q All right.

8 MR. HOLT: Beg the Court's indulgence. No
9 further questions, Your Honor.

10 THE COURT: Is there any redirect?

11 MS. WISE: Very brief, Your Honor.

12 **REDIRECT EXAMINATION**

13 BY MS. WISE:

14 Q Mr. Cotton, you heard Mr. Holt bring up this
15 stuff about him having no knowledge about these
16 witnesses, correct?

17 A Yes, ma'am.

18 Q When were we first told we had to be ready to go
19 for trial for your case?

20 A Around August of last year.

21 Q And we were fully ready; weren't we?

22 A Yes, ma'am.

23 Q And we gave him on August 14th a list of our
24 alibi notice, correct?

25 A Yes, ma'am.

DW - D. COTTON - REDIRECT

1 Q Stating explicitly you were with Calvin Harrison
2 that night, correct?

3 A Yes, ma'am.

4 Q And on August 14th we also provided him with a
5 witness list, correct?

6 A Yes, ma'am.

7 MR. HOLT: Judge, I'm gonna have to object
8 first of all that she's leading.

9 THE COURT: All right.

10 MR. HOLT: Secondly, I'd like to take up a
11 matter of law with Your Honor and I'll be happy to
12 stipulate to anything I might have said wrongly.

13 THE COURT: First of all, this is a side
14 issue which is really off point for what this case
15 is about so I'm gonna sustain the objection.

16 And counsel, you are leading, and any time
17 you're on -- you're asking your own witness and
18 asking the question ends with correct, you clearly
19 have provided the answer; and thus, we're just gonna
20 end this line of questioning. Please move to
21 whatever other issues you wish to cover in redirect.

22 MS. WISE: Absolutely, I apologize, Your
23 Honor.

24 THE COURT: Okay, thank you.

25 BY MS. WISE:

DW - D. COTTON - REDIRECT

1 Q You expressed to me from day one you wanted a
2 trial, correct?

3 A Yes, ma'am.

4 Q And you were ready to go?

5 A Yes, ma'am.

6 Q And we were prepared when?

7 A Since August of last year.

8 MS. WISE: No further questions for this
9 witness.

10 THE COURT: All right. Then sir, please
11 watch your step as well as you exit and the box
12 there and please return to your seat. Thank you.

13 Are there further witnesses for Defense?

14 MS. WISE: Your Honor, I believe we have a
15 scheduling issue. Maybe Solicitor Holt and I can
16 approach the Bench.

17 THE COURT: You may.

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record discussion.)

20 THE COURT: All right, ladies and
21 gentlemen, thank you for your patience while we
22 really discuss scheduling. Defense tells me they
23 have one more witness coming from Columbia I believe
24 but not present here in Darlington and not going to
25 be here until about 1:30. And so this is a good

1 time for us to take our lunch break and come back at
2 1:30 which is an hour and fifteen minutes from now
3 so we'll take an hour and fifteen minute lunch
4 break. And lunch is on your own. Again, with
5 whomever you have lunch, please don't discuss the
6 case. Just keep an open mind until you hear the
7 final witness, then the arguments and charge on the
8 law; but we will give you the case this afternoon
9 for deliberations and most likely by the end of the
10 day today. Of course, that will be your discussion
11 how long you deliberate. This case will come to a
12 conclusion. So for your loved ones who maybe want
13 to know about your schedule you can tell them that.
14 And enjoy your lunch. We'll remain where we are and
15 we'll see you back in an hour and fifteen minutes
16 which is 1:30. All right, you may leave. Have a
17 good lunch, ladies and gentlemen.

18 (WHEREUPON, the jury was removed
19 from the courtroom at 12:16 p.m., and the
20 following proceedings commenced in open court.)

21 THE COURT: We'll be in recess. Counsel,
22 if you would remain with me we'll have a brief
23 charge conference or discuss the charge conference.
24 Actually let's do this, we'll take an hour and we'll
25 be back in chambers at 1:15. That will let you

DW - A. SIMMONS - DIRECT

1 review the charge and so we're in recess here in the
2 courtroom until 1:30. Counsel, please be back at
3 1:15 in chambers.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: Please bring the jury in.

6 (WHEREUPON, the jury was returned to the
7 courtroom at approximately 1:30 p.m., and
8 the following proceedings commenced in
9 open court.)

10 THE COURT: Defense has one further
11 witness to call so, Ms. Wise, please call your next
12 witness.

13 MS. WISE: Thank you, Your Honor. One
14 moment please. Your Honor, the Defense calls
15 Ms. Andrea Simmons.

16 THE COURT: Please come around and take
17 the oath of a witness.

18 THE CLERK OF COURT: If you'll put your
19 left hand on the Bible, raise your right.

20 WHEREUPON,

21 **ANDREA SIMMONS,**

22 having been duly sworn by the Clerk of Court,
23 testified as follows:

24 THE CLERK OF COURT: If you'll have a seat
25 right here and pull up to the mike please.

DW - A. SIMMONS - DIRECT

DIRECT EXAMINATION

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BY MS. WISE:

Q Please state your full name for the record.

A Andrea Simmons.

Q And what's your address?

A My address is Columbia, South Carolina.

Q Okay. And what is your occupation?

A I'm currently assigned to the DNA data base department as a forensic scientist.

Q And who is your employer?

A South Carolina Law Enforcement Division, more commonly referred to as SLED.

Q And how long have you been employed by SLED?

A I've been employed at SLED approximately a year and six months.

Q And what services does SLED provide?

A We provide law enforcement for the State of South Carolina and more particularly, the forensics building where I work.

Q And what are your duties and responsibilities?

A I'm currently a DNA analyst; however, at the time of this case I was a forensic serologist assigned to the DNA casework department. As a forensic serologist I analyze items of evidence to find body fluids such as blood, semen, and saliva.

DW - A. SIMMONS - DIRECT

1 Q And what's your educational background?

2 A I received a bachelor's degree from Clemson
3 University in biological science and a minor in
4 psychology.

5 Q And what are your degrees again, I'm sorry?

6 A Biological science.

7 Q Okay. Can you explain to us a little bit more
8 about the formal studies that you've done, the
9 formal training that you had?

10 A Yes. At SLED I completed their in-house training
11 program under the supervision of a court qualified
12 analyst where I learned evidence handling, chain of
13 custody, serology testing, as well as report
14 writing. I've also completed graduate level course
15 work from the University of Florida in biological
16 evidence and serology as well as a hair analysis
17 course from West Virginia University.

18 Q And about how many samples would you estimate
19 you've handled?

20 A I've worked since being signed off at SLED
21 approximately one hundred cases. During supervised
22 case work I worked approximately fifty cases.

23 Q Is this your first time testifying in court?

24 A It is.

25 MS. WISE: Your Honor, at this time I

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1 would move to admit Ms. Simmons as an expert in the
2 field of forensic serology.

3 THE COURT: All right. Are there
4 questions with regard to the expertise of the
5 witness?

6 MR. HOLT: There are not any doubt from
7 the State, Judge.

8 THE COURT: Is there objection?

9 MR. HOLT: There's also no objection to
10 Ms. Simmons' testimony.

11 THE COURT: Then so ordered. You may
12 proceed.

13 MS. WISE: Thank you, Your Honor.

14 BY MS. WISE:

15 Q Ms. Simmons, do you recognize this document? And
16 it's a copy actually.

17 A Yes, this appears to be a copy of my report.

18 Q And has it been changed in any way from the last
19 you handled it?

20 A Do you mind if I compare it to mine?

21 Q Absolutely.

22 A No, it has not.

23 Q Okay. I'm also gonna hand you this exhibit
24 that's previously been marked as State's Exhibit 25.
25 Is that another copy and version of what I've just

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1 shown you?

2 A Yes, it is.

3 MS. WISE: Your Honor, at this point I
4 would ask to admit into evidence State's Exhibit 25.

5 THE COURT: Without objection.

6 MR. HOLT: No objection from the State,
7 Judge.

8 THE COURT: So ordered. 25 is in evidence
9 for the State.

10 BY MS. WISE:

11 Q Ms. Simmons, can you please explain to the jury
12 what this reports in your hand?

13 A This is a copy of my results from the testing
14 they did in this case.

15 Q Okay. And earlier this morning I believe this
16 was already touched upon some, but how did you get
17 the results of this test?

18 A I received into my custody a sexual assault
19 evidence collection kit from Yasmin Cusack, and I
20 would have been inventoried that kit and tested each
21 item in the kit as necessary.

22 Q And what's a sexual assault evidence kit?

23 A It is a standardized kit that is made by SLED and
24 submitted to hospitals across the State. It
25 includes the collection materials necessary to

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1 perform a sexual assault, a sexual assault exam.

2 Q And what items did you receive with this kit?

3 A In this kit I received vaginal, oral, and rectal
4 swabs, vaginal, oral, and rectal smears, fingernail
5 scrapings, pubic hair combings, and victim buccal
6 swabs.

7 Q And what were the results of each of those swabs?

8 A For the vaginal, oral, and rectal swabs no semen
9 was identified.

10 Q Okay. What about the smears?

11 A No spermatozoid were identified.

12 Q And explain to the jury please what spermatozoid
13 is.

14 A Spermatozoid are sperm cells or the male
15 reproductive cells.

16 Q And would you explain to the jury what semen is.

17 A Semen is the male reproductive fluid and it's
18 composed of both a chemical as well as a cellular
19 component. The cellular component are the sperm
20 cells.

21 Q Did you also receive pubic hair combings?

22 A I did.

23 Q Can you explain to the jury what those are?

24 A Pubic hair combings in this case would have been
25 a comb within an envelope; and the nurse would have

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1 combed the victim's pubic hair area, and we would be
2 looking for any hair foreign to the victim.

3 Q And what were the results of that?

4 A No hair was found.

5 Q And so just to make sure the jury understands, no
6 sperm was found from the smears?

7 A Correct.

8 Q And from the swabs no semen was identified?

9 A That's correct.

10 Q Ms. Simmons, please answer any questions Mr. Holt
11 might have for you.

12 THE COURT: And cross-examination.

13 MR. HOLT: Thank you, Judge.

14 **CROSS-EXAMINATION**

15 BY MR. HOLT:

16 Q Ms. Simmons, if somebody rapes a young girl and
17 they use -- this is purely a hypothetical -- and
18 they use some kind of foreign object like a sex toy
19 or broom handle, those kind of things happen a lot,
20 would you expect to find spermatozoid?

21 A No, you would not.

22 Q Okay. How about if somebody that raped that
23 young girl didn't spit on her would you expect to
24 find saliva?

25 A No, you would not.

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1 Q All right. And how about if the victim didn't
2 cut his hand and bleed all over her, would you
3 expect to find blood?

4 A No.

5 Q Okay. Now let me ask you this, if somebody used
6 a condom, okay, are you guaranteed to find sperm on
7 the victim?

8 A You're not.

9 Q Okay. Now what if somebody shaves their pubic
10 hair and rapes somebody, do you find pubic hair when
11 you comb out the rape kit?

12 A Not necessarily.

13 Q Okay. How many rape kits do you think you did
14 where you didn't find anything similar to this case?

15 A It does happen.

16 Q Okay, all right. Thank you so much, Ms.
17 Simmons.

18 MR. HOLT: That's all, Judge.

19 THE COURT: Is there redirect?

20 MS. WISE: No redirect, Your Honor. This
21 witness is free to go.

22 THE COURT: All right. Ma'am, you're not
23 required to leave but you're free to go. Have a
24 good day.

25 Now Defense, please call your -- any

1 further witnesses?

2 MS. WISE: Your Honor, no further
3 witnesses. The Defense rests.

4 THE COURT: Is there reply testimony from
5 the State?

6 MR. HOLT: There is none, Judge.

7 THE COURT: Then ladies and gentlemen,
8 that means we've concluded the testimony phase of
9 this case, and it will take a few moments for the
10 lawyers to prepare for closing arguments so we're
11 gonna give you a break just a few minutes duration.
12 And then we'll be ready to proceed in the closing
13 arguments and the charge on the law so if you will
14 return to the jury room. Please don't discuss the
15 case, just enjoy a brief break, and we'll be with
16 you shortly.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 1:42 p.m., and the following
19 proceedings commenced in open court.)

20 THE COURT: The jury is out of the
21 courtroom now. Are there motions at the end of all
22 the evidence from either party? First, the State?

23 MR. HOLT: There are none, Your Honor.

24 THE COURT: And now Defense?

25 MS. WISE: We renew all of our motions,

1 all of our previous motions and objections.

2 THE COURT: Very good. And for the
3 reasons previously given, those same motions are
4 denied. And how much time do we need to stand down
5 while you all prepare for closing whether it be
6 technology or your argument itself?

7 MR. HOLT: Judge, I think I need five
8 minutes.

9 MS. WISE: I'm the same.

10 THE COURT: Ladies and gentlemen, we'll be
11 in recess five minutes and then we'll reconvene.
12 Court's in recess.

13 (WHEREUPON, a recess was taken from the
14 proceedings.)

15 THE COURT: Let's go ahead and confirm,
16 because the defendant put up evidence it will be
17 defense counsel, then State, and then the Court. So
18 please bring in the jury.

19 MR. HOLT: Judge, just briefly. 18, 22,
20 23 and 24 it appears that — the only question I ask
21 if I can move these into evidence, and I ask if I --
22 can move them in at this time. These are all during
23 Russ and I think the nurse, and I don't think
24 there's really argument against.

25 THE COURT: Well, let's — give us those

1 numbers again please.

2 MR. HOLT: 18, 22, 23, and 24.

3 THE COURT: All right. Then there's no
4 objection those are in evidence.

5 (WHEREUPON, State Exhibits Nos. 18, 22, 23
6 and 24 were admitted into evidence.)

7 THE COURT: Now please bring the jury.
8 Thank you.

9 (WHEREUPON, the jury was returned to the
10 courtroom and the following
11 proceedings commenced in open court.)

12 THE COURT: Welcome back, ladies and
13 gentlemen. We're now at the end of the case where
14 the lawyers come before you in closing argument and
15 the Court gives you the charge on the law. The way
16 we structure the closing is because the State has
17 the burden of proof they're allowed to argue last.
18 We'll hear from defense counsel, then prosecution
19 counsel, then the charge on the law, and you retire
20 to deliberate. Again, please remember, the
21 difference between a lawyer's argument and the
22 evidence in the case, you now heard the evidence.
23 You'll have the exhibits with you in the jury room
24 when you retire to deliberate. And again, with that
25 understanding now the Court recognizes Defense

1 counsel for closing argument.

2 MS. WISE: Thank you, Your Honor. Your
3 Honor, counsel, counsel, ladies and gentlemen of the
4 jury, good afternoon. The prosecutor brought you
5 lots of information, but did he bring you the truth.
6 As I told you at the beginning of this trial, this
7 is a case about the truth; and the unfortunate truth
8 is that this is also a case about assumptions, about
9 assuming the worst about someone, Mr. Damyon Cotton,
10 simply because of the mere words said against him.
11 Assuming the truth without looking at and
12 considering the other side of this story. I believe
13 that the State has failed to prove Damyon Cotton
14 guilty beyond a reasonable doubt because the State
15 has not proven that on February the 1st, 2013,
16 Damyon Cotton was with Yasmin Cusack when he
17 kidnapped and sexually assaulted her. Now why do I
18 say this?

19 Ladies and gentlemen, it basically comes
20 down to what your common sense tells you. You heard
21 the testimony. You saw the evidence and the lack of
22 evidence. Nothing in this trial has indicated that
23 Mr. Cotton assaulted Yasmin Cusack other than the
24 mere words of two young women. And let me remind
25 you, ladies and gentlemen, that these words

1 themselves are laced with doubt and uncertainties.
2 Nonetheless, from these words the prosecution wants
3 you to assume the very worst about Mr. Cotton, that
4 these words are true. Ladies and gentlemen, does
5 your common sense tell you that mere words enough
6 are not enough to convict this man? Remember
7 presumption of innocence and beyond a reasonable
8 doubt? Look at their importance. Look at how they
9 dismantle the State's entire argument.

10 Mr. Cotton is innocent until proven
11 guilty, and the State has not proven Mr. Cotton
12 guilty because the State did not prove that
13 Mr. Cotton picked Miss Cusack up from her home on
14 February the 1st, 2013, and proceeded to kidnap and
15 sexually assault her. If anything, the only thing
16 that has been proven is that we do not know what, if
17 anything, actually happened. There's simply too
18 much doubt to sustain these charges. You've seen
19 the gaps in today's testimony. You've seen the
20 uncertainties. You continue to ask the unanswered
21 questions. In a case such as this with Mr. Cotton's
22 very life and wellbeing at stake, these questions
23 and ambiguities and uncertainties cannot exist; they
24 simply can't. The State wants you to believe that
25 Mr. Cotton kidnap and assaulted an innocent young

1 woman, Yasmin Cusack through her testimony as well
2 as through the testimony of her peer [REDACTED] Minor
3 [REDACTED] and Officer Scott Gauger and Brandon Peavy,
4 who I am not saying are not good people or are not
5 good law enforcement, I know these officers are
6 wonderful folks, excellent cops, but who simply did
7 not fully evaluate and judge this entire situation.
8 We heard Office Gauger testify as to what Yasmin
9 Cusack initially reported to him that she and Damyon
10 went to the movies. He asked her for oral sex and
11 she said no. They then went to K-Mart where she
12 requested — where he requested the same thing.
13 They then drove to Turnpike Road in Darlington where
14 he brutally raped her according to Miss Cusack. She
15 memorized his license number and reported it to the
16 police. She memorized the turns that they took that
17 night in to Darlington, reported it to the police.
18 We heard Officer Peavy testify as to the same thing.
19 Damyon picked her up from her home in Florence,
20 drove her to the movies, requested that oral sex be
21 performed in the parking lot, no physical contact
22 occurred. He then drove her to Turnpike Road to
23 Darlington, sexually assaulted her, then drove her
24 back to her home in Florence. She memorized his
25 license plate number, reported it to the police.

1 She memorized the turns they took that night into
2 Darlington, reported it to the police. Both
3 officers also testified that Ms. Cusack reported to
4 them that she had met Damyon through a friend,
5 Tanzy, in October. She even gave them Tanza's
6 telephone number. Officer Gauger, who conducted the
7 initial investigation of the case, testified that he
8 was unable to determine the exact location of where
9 this incident was said to have occurred. He found
10 no indication of struggle, no tire marks, nothing
11 off of Turnpike Road. Officer Peavy said the same.

12 We hear Grace Cusack who I have no doubt
13 is a good, honest woman who clearly loves her
14 daughter and has undoubtedly made unimaginable
15 sacrifices for this young woman, testified that she
16 knew every one of the men that Yasmin dated. She
17 met all the boys I think were her exact words in
18 court and that Damyon Cotton was not one of them.
19 Ladies and gentlemen, according to Yasmin's
20 testimony herself, Damyon picked her up from her
21 house to go to the movies, and they discussed
22 Valentine shopping. Based off of Yasmin's words,
23 this was clearly a young man that she was dating.
24 How did Ms. Grace Cusack not know him? We then
25 heard from **Minor** whose allegations against

1 Damyon were eerily similar, harrowing, heart
2 wrenching. She alleged he raped her like Yasmin.
3 At first glance it make your stomach turn; but
4 ladies and gentlemen, please, think about her
5 testimony a little further. Where is the evidence?
6 Like Ms. Cusack the only evidence are mere words.
7 **Minor** told us how immediately after Damyon assaulted
8 her that same evening she alerted police. This was
9 June the 23rd of 2012. An investigation ensued.
10 She was examined by the hospital, given a rape kit
11 test. Photographs were taken of her alleged
12 injuries. Why have we not seen the mention of the
13 results of any of these tests? Where's the rape kit
14 results? We have not seen anything. We couldn't
15 even see the photographs of her alleged injuries.
16 Mr. Cotton told us how law enforcement waited
17 months, nearly a year before they served him with
18 his warrants. Law enforcement themselves have
19 doubts about **Minor's** case.

20 And now ladies and gentlemen, I want to
21 talk with you about Yasmin Cusack. This entire
22 trial centers around this one woman's words and how
23 believable are her words. The fate of that man
24 right there rests entirely in the words said against
25 him. Do you believe what you heard Ms. Cusack say

1 firmly enough so to convict Damyon Cotton? Her
2 narratives were disjointed, rehearsed, practiced.
3 They didn't add up. She got defensive at times when
4 I questioned her. I was merely doing my job. And
5 let me stop a second, ladies and gentlemen, and say
6 that I am extremely sympathetic to victim's rights,
7 especially to women victims of sexual assault. With
8 that being said, I'm equally sympathetic to ensuring
9 that the liberties and protections are still in this
10 fine state and country's constitutions remain
11 upheld. As I said at the beginning of this trial,
12 this is a case about the truth and every truth has
13 two sides. And I would like to talk with you a bit
14 more about the other side of this truth.

15 Who is Yasmin Cusack? On the stand and
16 the courtroom she came off as mild, meek, innocent,
17 naive, and with no disrespect whatsoever, sometimes
18 even slow. That's who the solicitor wanted you to
19 see. They didn't want you to see this girl. Ladies
20 and gentlemen, please pay close attention to the
21 other side's glimpse of this young woman as well.
22 This isn't what you saw in the courtroom. And let
23 me say first, as the solicitor wrongly honed in, I
24 have nothing wrong with the way this woman is
25 dressed for these pictures; I'll be the first to say

1 that. What I have a problem with is that when
2 Miss Cusack retrieves herself one way in this
3 courtroom to you and to the judge and another way to
4 the general public, there's an issue with that and
5 that's where my problem lies, especially when my
6 client's livelihood and wellbeing is at stake. She
7 is not the person the prosecution would lead you to
8 believe. We got a glimpse of at least three
9 different Yasmin Cusacks. The prosecution's Yasmin
10 Cusack who we saw in the courtroom nicely dressed,
11 naive, easily taken advantage of, confused,
12 innocent. Then we heard about the woman that
13 Mr. Damyon Cotton claimed he had some sort of
14 intimate relationship with. Crystal Johnson she
15 told him her name was. He believed her. Damyon
16 considered themselves romantically involved. He
17 ended the relationship. Upset, she got him back.

18 And then we have this other Jasmine Cusack
19 who got defensive, upset with me when I questioned
20 her about these photos, her questioning her off of
21 something off the beaten path that she had not
22 rehearsed and practiced. The spin the prosecution
23 tried putting on Yasmin, a naive, easily
24 impressionable, easily taken advantage of young
25 girl, is different from the woman we heard

1 Mr. Cotton testify of. She is different from the
2 woman we see depicted in those pictures. As I said
3 earlier, we heard officers Gouger and Peavy testify
4 as to what Ms. Cusack reported to them. Both
5 officers explicitly stated that their report was
6 reflective of what Ms. Cusack said happened to her
7 on the night of February the 1st, 2013.
8 Interestingly, her testimony in court differed
9 substantially from what she reported to officers.
10 She explicitly reported that Damyon Cotton forced
11 her to have sex with me in the parking lot. Ladies
12 and gentlemen, take the written statement back that
13 she wrote where it says word for word he forced me
14 to have sex with him in the parking lot. That's at
15 the Julia movie theater in Florence. Why was this
16 never reported to law enforcement? Why are there
17 all these such ginormous big discrepancies in her
18 case? This isn't what she told officers. As they
19 testified she told them that Damyon Cotton had
20 requested oral sex from her, that they didn't have
21 sexual intercourse in the parking lot of the Julia
22 movie theater and that she met Damyon through a
23 mutual friend Tanzy. She never once said anything
24 to officers about allegedly being raped at the movie
25 theater or communicating with Damyon through some

1 sort of phone chat program. Further, officers
2 testified that she reported Damyon made the same
3 requests for oral sex in the parking lot of K-mart.
4 And in court she testified Damyon forced himself on
5 her sexually then too.

6 Ladies and gentlemen, these major
7 discrepancies in the only witness's testimony to
8 this alleged incident cannot exist. The Solicitor
9 may try to shrug these off as trivial, excuse them.
10 As Officer Peavy spoke to you about victims of
11 sexual assault cases remember more as time goes on
12 and that Yasmin Cusack is confused. Pay attention
13 though to what Officer Peavy said. He got on the
14 stand and testified his report is dated
15 February 18th, 2013. Why wasn't that included then?
16 And interestingly, ladies and gentlemen, Miss Cusack
17 might not be as confused as she seems. After
18 claiming to have been brutally raped she was able to
19 memorize the license plate number of this young
20 man's car. The written statement, and again, I ask
21 that y'all take that back and really read it and
22 analyze it, clear sentences, concise, complete. She
23 read it to you word for word on the stand with no
24 glitches.

25 Most importantly Miss Cusack was able to

1 relay to officers step by step everything she
2 claimed happened to her that night right down to
3 Danyon Cotton picking her up from her home at [REDACTED]
4 Sanborn Street in Florence, South Carolina, between
5 6:34 p.m. and 6:38 p.m., driving to the Julia movie
6 theater in Florence, driving to K-Mart in Florence,
7 and then giving the explicit directions to where she
8 claimed the defendant took down the exact number of
9 turns on to Turnpike Road. How many alleged
10 incidents of this various -- excuse me, how many
11 variations of this alleged incident did we hear?

12 Let me make myself perfectly clear, I
13 understand we are all human. None of us are
14 perfect. There are always going to be issues and
15 reporting and detailing and relaying what has
16 happened, especially when dealing with victims of
17 sexual trauma; but major variations in what's
18 reported being forcefully raped or not, coupled with
19 credibility issues and a whole lot of little
20 discrepancies, when looking at the bare picture
21 really add, do you firmly believe that this woman
22 was raped in the parking lot of a movie theater in
23 Florence on a Friday night around 7 p.m., people all
24 around parked close to the entrance as she herself
25 told us, near lighting, then drove to K-mart's

1 parking lot, was sexually assaulted again there,
2 again people around, cars around, lighting, never
3 tried to run. But read her statement, she did ask
4 her alleged rapist according to her, was he going to
5 go into the store with her to buy a Valentine's
6 gift. She never fled; she never screamed. She
7 never even tried; people all around. But yet he
8 drove her to Turnpike Road and he did the same thing
9 again. Ladies and gentlemen, this is ludicrous. No
10 one other than this woman reported anything. No one
11 saw anything, not the patrons of the store, not the
12 patrons of the movie theater, not workers anywhere.
13 No security surveillance from these major commercial
14 locations were even mentioned. No other witnesses.
15 Someone, anyone, should have seen something. Where
16 is the evidence?

17 We heard a lot of talk about DNA.
18 Interestingly, a lot of DNA talk but no DNA. You
19 heard the State's forensic analysis — excuse me,
20 State's SLED analysis talk about how DNA was not
21 found on Miss Cusaac's zipper or on either of the
22 fingernail scrapings that were taken. No DNA was
23 found on the button or the hairs that were
24 recovered. The only DNA found was on the buttonhole
25 of those pants. Ladies and gentlemen, these — take

1 those pants back with you and look at them. It
2 belonged to Damyon Cotton. But the prosecution
3 tried to gloss over though is that it also belonged
4 to someone else; we don't know who that is. But
5 someone other than my client and that victim was on
6 the buttonhole of those pants at some point in time.
7 Where is that person today? Who is that person?
8 And isn't it odd that the only DNA that was found
9 that was foreign to neither Damyon or Miss Cusack
10 was on that buttonhole. Ladies and gentlemen, that
11 makes no sense at all. Even the testimony that we
12 heard, DNA should have been somewhere else if it
13 belonged to my client, on the pants, on the shirt,
14 somewhere.

15 We heard Nurse Quick testify that she
16 reviewed the sexual assault kit, and she conducted
17 the initial examination on Miss Cusack. Ladies and
18 gentlemen, Miss Cusack explicitly stated to Nurse
19 Quick that she was strangled; yet the only signs of
20 trauma that Nurse Quick noted in her report were
21 scratches on the young woman. No signs of
22 strangulation. What Miss Cusack was saying did not
23 add up to the reports. We then heard from the
24 Cottons today. We heard from Ms. Connie Cotton and
25 actually Connie Gattison now. She explained to us

1 how Damyon's car was parked at her house. It was
2 inoperable. We heard from Calvin Harrison, his
3 friend, who said that every Friday night in 2012
4 Damyon would be over at his house. He'd get there
5 after he got off work and would be there until the
6 evening, sometimes early hours of the next morning.
7 They played video games, they'd hang out, played
8 basketball, do what young men do. He could not tell
9 us one Friday where Damyon was not there, including
10 Friday of February the 1st, 2013.

11 We also heard from Ricky Cotton. He too
12 said how the car was a inoperable. The car that
13 Miss Yasmin Cusack claimed Damyon raped her. He
14 explained how he'd done work on it. Ladies and
15 gentlemen, these two individuals I sincerely do not
16 believe would get on the stand and lie about that.
17 There's too much at stake. We heard from another
18 lady from South Carolina Law Enforcement Division,
19 my witness actually. Testified that there was no
20 semen found, no sperm found on Yasmin Cusack. Ask
21 the prosecution why they didn't want you to hear
22 that.

23 And let's talk about Mr. Cotton. Do you
24 believe what he said or do you believe what she
25 said? Mere words are all that this case comes down

1 to. Unfortunately, ladies and gentlemen, with an
2 allegation of rape society, you and me, law
3 enforcement, hear that and they want to run with it.
4 You need more than words though to convict someone
5 of rape. If we follow the line of prosecution that
6 the -- excuse me, if we follow the line of thinking
7 that the prosecution has presented to us today, we
8 must assume the worst about Damyon Cotton to peg
9 him, and that is not right. It is not right for him
10 and it's not right for you or me. If this accusal
11 can happen to Damyon Cotton it can happen to any one
12 of us in this courtroom today. Who among you can't
13 say that you have reasonable doubt that Mr. Cotton
14 was not only with Miss Cusack the night of February
15 the 1st, but that Mr. Cotton also kidnapped and
16 sexually assaulted her. Of course you have your
17 doubts. You've got to have your doubts about this.
18 If nothing else, the evidence you just heard is
19 laced with doubts and only gives you one side of the
20 story.

21 Ladies and gentlemen, this is not right.
22 Remember what I told you about reasonable doubt at
23 the beginning of this trial? That reasonable doubt
24 simply put is a kind of doubt that after considering
25 everything you simply are not sure. But instead you

1 have to be firmly convinced that he is guilty. This
2 trial leaves a whole lot of room for doubt, and a
3 whole lot of room for being unsure. Have the
4 prosecutor tried to fill in one of these doubts when
5 he gets up to speak with you in a moment, have him
6 explain, why was there no conviction in [REDACTED] Minor
7 [REDACTED]'s case. Where is the evidence other than
8 this young woman's words? Where's the photographs?
9 As I'm sure Mr. Holt will point out to you, can we
10 believe her based off of his line of thinking when
11 he attacks Mr. Calvin Harrison for having a criminal
12 record; Minor does too. Ask the prosecutor where
13 is the evidence in this case? Why didn't law
14 enforcement take her to Turnpike Road with them to
15 show them exactly where this happened. We don't
16 even have an incident location; law enforcement
17 didn't even take her with them to find it. Why
18 didn't we interview folks from K-Mart? Why didn't
19 we talk to people at the Julia to see if anyone
20 might have seen anything or anyone that night. Ask
21 the prosecutor, was there video surveillance at
22 these stores? We have no semen; we have no sperm.
23 And we have two individuals' DNA, Damyon Cotton and
24 someone else. Ask the prosecutor whose DNA is that,
25 and why is he or she not there. Why haven't we

1 heard testimony about this. For all we know, this
2 other person's DNA could have been the individual
3 that hurt her in some way, shape, or form, if she
4 was in fact hurt. Over the course of this alleged
5 assault that span two counties and at least two
6 hours, shouldn't someone have seen something,
7 shouldn't something have shown up, a hair, body
8 fluids, something. Have the solicitor explain to
9 you where this alleged gun was that he told you
10 Damyon threatened Miss Cusack with at the very
11 beginning of this trial. He told you there was a
12 gun in his opening statement. Yasmin herself said
13 she never saw a gun. Ladies and gentlemen, this
14 makes no sense. Was something else going on here?

15 This case and Mr. Cotton's fate now rests
16 in your hands. When this case is over, you, myself
17 and probably others, will from time to time think
18 back and reflect on this trial. It may be in the
19 morning during a spare moment. It may be at night
20 when you're trying to fall asleep. Whenever you
21 think of this case you are probably going to ask
22 yourself one thing, did I do Damyon Cotton justice.
23 If you have any doubts about this case, any doubts
24 whatsoever, have them now because for Mr. Cotton
25 there will be no tomorrow, no second chance. Ask

1 yourself those hard questions now because for him
2 tomorrow will be too late. If during your
3 deliberations you keep that in mind, I am certain
4 that you will return the only verdict in this case,
5 a verdict of not guilty. Again, I say to you that
6 this is a case about the truth. The prosecution has
7 not proved beyond a reasonable doubt that Mr. Cotton
8 sexually assaulted and kidnapped Miss Yasmin Cusack
9 on February the 1st, 2013. Because the prosecution
10 has not proven this, we ask that you return the only
11 possible verdict in this case, a verdict of not
12 guilty, let him return home to his family. Thank
13 you.

14 THE COURT: Now for the Prosecution
15 closing.

16 MR. HOLT: Thank you very much, Judge.
17 May it please the Court.

18 THE COURT: Yes, sir.

19 MR. HOLT: Ms. Wise, Mr. Jones. Ladies
20 and gentlemen, I won't be able to answer everything
21 they said. I won't remember every piece of evidence
22 that we heard the last couple of days. It never
23 fails that when you finish one of those things, the
24 minute you sit down you remember three things you
25 should have said, but I'm gonna try to answer a

1 couple of questions. And just off the top of my
2 head, a couple of things she said toward the end I
3 remember very well. Ask the prosecution why they
4 didn't want you to hear what their last witness had
5 to say, that there was no sperm. I don't think I
6 ever fault that. I think if you remember I asked
7 Brandon Peavy, did you get anything back on the rape
8 kit; he said no. I think you might remember I asked
9 Russ Harrell, did you get anything back on the rape
10 kit, was there any sperm, and he said no. I never
11 hid from the fact that there was not any sperm. And
12 I'll tell you another thing, if we did find sperm
13 I'd have called everything that my witness told me
14 into question. Because what did she say? Did she
15 say he ejaculated on her? Did she say that he put
16 any sperm all over her? No. She said he used a
17 condom and he threw it away when she was — when he
18 was done with her, and then he threw her her clothes
19 after that. Okay? I never once tried to hide from
20 the fact that there wasn't any sperm. And the
21 biggest problem I have with it off the top of my
22 head is, is my case was nothing but words. Well,
23 there's a little bit of science in there that proves
24 his hand was around her button -- not on her button,
25 but around her button of her jeans. There's DNA.

1 It's also the most non-biased witness you're gonna
2 get that you're gonna see, and it's science. And
3 none of these facts are pleasant, okay. Nobody
4 wants to hear or talk about the things we heard or
5 talked about this week; but I'm going go through
6 some of it with you briefly. And I want to remind
7 you just our evidence in general just a few things.
8 You got the statement of Yasmin Cusack. You got the
9 statement of **Minor** that mirrors it almost
10 impeccably. You got the DNA evidence provided by
11 SLED, and you got the various other circumstantial
12 evidence that I might hit on that back up my story,
13 the direct evidence from the victim. And I want to
14 let everybody know that Yasmin did not tell the
15 exact same story each and every single time she was
16 asked. You know why? Because nobody does. It
17 depends on how you ask the question. If you ask a
18 certain question and expect a story, the story is
19 tailored to that. If you tell somebody you went
20 fishing and you say I caught a fish, but the next
21 time you go fishing -- I mean, the next time you
22 tell that same person the story, you say I caught a
23 fish with my new pole, well, you can't say you're
24 lying 'cause you never told that you used that pole
25 the first time. Who asked you a question depends on

1 how you get an answer.

2 Now what was a big thing when I was
3 interviewing Yasmin with the defense, does anybody
4 remember? You never said anything about a gun, that
5 never came out, now your whole story is different,
6 you're a liar. I was quiet, didn't say anything
7 about it 'cause I've looked over the evidence. I
8 knew what we were going to see when the nurse came
9 today. When I could get it in number 18 and you can
10 say it right here on the bottom page 2 of 6, the
11 nurse asked her specifically were you threatened and
12 she said threatened to pull out a gun. She never
13 said she saw a gun. But the story that Yasmin would
14 have told Officer Peavy is gonna be a little bit
15 different because you don't ask the exact same
16 questions as the nurse. Started to choke her, held
17 down by the assailant.

18 You know, the other thing I want to put on
19 here, condom was used, scratches noted to the
20 buttocks. This is what the victim's telling her,
21 but then when she does her own examination she finds
22 the scratches to the buttocks where Yasmin said she
23 was put, thrown on the ground before she was raped.
24 She finds those scratches. She noticed them here.
25 Miscellaneous materials not available, no evidence

1 of bodily fluid. So from the very beginning Yasmin
2 wasn't hiding anything. From what happened that
3 night the story she told that night, she wasn't
4 hiding anything. And you'll have this evidence;
5 you'll be able to look at that. And I just want
6 everybody to know to use your common sense about how
7 you hear stories and how people tell you stories and
8 that Yasmin's story never changed. Minor
9 she's in here only to show the common scheme or plan
10 that was employed to rape the defendant [sic] in
11 this case, Yasmin Cusack. And I want everybody to
12 think about Minor's story and what the implications
13 are to the case. These are just some of the things
14 and ways in which their stories agree. Social
15 media, met Yasmin on a chat line, met Minor on the
16 internet. You know why you don't have somebody
17 saying been my friend since childhood, because the
18 type rape he commits, nobody is ever gonna get in
19 your car again. Nobody is sever gonna hang out with
20 you again. You have to commit these crimes against
21 people you hardly know, against people which are
22 acquaintances. You get the defendant alone in the
23 car. He picks Yasmin up alone. When he gets Minor
24 he gets rid of his brother real quick. And you
25 start by requesting oral sex, okay. You know what,

1 you might not have to rape somebody today. They
2 might just give it to you. It never hurts to ask
3 for it first, to get everybody talking about sex.
4 Then he insures that no phone is available. With
5 **Minor** he didn't have to worry about it; he just
6 never found her charger. With Yasmin, he physically
7 took her phone. Drives to a rural and unpopulated
8 area. On the way there he forces them to take off
9 their pants. Now one of the most important parts of
10 our story is this, Yasmin explains to us way before
11 DNA came back that he spent time fondling my pants
12 trying to get them off. And what is Tory's same
13 statement time problem in her statement when they're
14 in the car by themselves? He takes my pants off.
15 Well, you know, correct me if I'm wrong, he
16 threatens her, fights her a little bit; then when he
17 tells her to do it, she knows by then that she
18 better do it, okay. Because when you're in a rural
19 area and you take their pants, they got nowhere to
20 run. It moves from asking for sex to violence
21 quickly. Gets to the outside of the car and
22 snatches them out from the other side. He doesn't
23 drag them out his side where it will be complicated.
24 He rushed to the other side of the car. Uses a
25 condom, you're not gonna get any semen. You heard

1 the lady from SLED. If you use a condom are you
2 gonna get semen, no. Engages in vaginal
3 penetration, uses threats or violence, told **Minor**
4 that -- well, he had popped her in the face, then
5 he, then he said just coincidentally that she hit
6 her eye that day in his car and only he witnessed it
7 and then he drives the victim home. And in Yasmin's
8 case he actually told her he had a gun.

9 Now what's Grace tell us, that Yasmin has
10 some minor difficulties, okay. I think it would
11 have been apparent from what you saw on the stand
12 Yasmin is a beautiful young woman. There's some
13 difficulties there that I think become apparent.
14 Grace provides us information on what happened after
15 the rape. Yasmin walks in, immediately they go to
16 the hospital. She witnessed how her daughter's hair
17 was messed up and how distraught her daughter was.
18 She noticed that the pants were working earlier and
19 when she returned they were broke. And she let you
20 know that she'd never seen Damyon before. You might
21 have been wondering why I got that out, and it's
22 because I wanted to show you later on in the trial
23 Damyon claims to have had a relationship and been
24 around her enough that his DNA could have gotten on
25 her at another time, that that's probably untrue,

1 okay. When Grace had never met her and Grace lives
2 with Yasmin.

3 Deputy Gauger, Defense loved to attack him
4 because of the things he didn't do, you didn't look
5 up this, you didn't look up that, you didn't do
6 that. It's just a trick they employ to make it look
7 like somebody is lazy. And so me being accustomed
8 to it, went into detail about what his job is versus
9 what an investigator's job is. Gauger is the
10 responding officer, okay. He's the one that called
11 the investigator and got the ball rolling. He also
12 took the time to look for the scene of the crime,
13 was unable to do so, narrowed it down to Turnpike
14 Road. He tells you it was a dark, underpopulated
15 area and the rape was still very recent when he
16 related to the statement.

17 Now, and I bring up, he lets you know it
18 was a dark, unpopulated area because if you
19 remember, Defense's questions at that time talked
20 about how many houses were on that road. And so I
21 used Gauger's actual testimony of what he saw that
22 night as a counterpoint. Peavy was the head
23 investigator. He collected the pants. He collected
24 the rape kits. The most important thing he did was
25 use that license plate to track down Grace -- not

1 Grace, I'm sorry, Connie, Connie Cotton. Uses her
2 license to find out where she lives, then finds out
3 that Damyon lives with her. And he knows he's
4 looking for a Damyon at this time because Yasmin
5 admits fully that she did not know Damyon's last
6 name at that time. Gets it, puts it in a photo
7 lineup, shows it to her, she picks him out without a
8 problem, the same way that **Minor** picked him out.

9 Nurse Quick took the rape kit and I just
10 think everything in here is wonderful. I think this
11 really backs up everything they said that the
12 Defense tried to tear down about her story changing,
13 and you can see that the first night in question
14 that the story never changed. She also testified
15 that you don't get semen, okay. Sometimes when
16 people use a condom when they're raped with a
17 foreign object you're not gonna get. She took the
18 victim's pants and she was the first person in the
19 chain to get those pants. She noticed the victim's
20 appearance. She gave the clothes to Peavy and she
21 noticed that the victim was a little bit off.
22 Deputy Harrell did a good job. Deputy Harrell was
23 somebody at the Sheriff's Office involved in this
24 investigation that actually used their common sense.
25 Early on in the investigation he tried to get the

1 pants up there. SLED didn't want to take them due
2 to various protocols. They wanted to look at other
3 things first. Deputy Harrell used a common sense
4 approach. He said, I read in the report he used a
5 condom, I said you're not gonna get anything, don't
6 mess with it first, check these pants. Months go
7 by, he's vindicated, they get nothing back. Just
8 like Deputy Harrell said, they do the entire time.
9 Sends the pants and Deputy Harrell gets the evidence
10 back. He's also in that chain. He sent all that
11 evidence to be tested at SLED.

12 Amanda Webb, she was the DNA person I
13 used, and I used her because it's my job to get
14 stuff into evidence that help to prove the case.
15 And what she did was she tested these pants and
16 found in the buttonhole Damyon Cotton's DNA. She
17 also testified and did not try to hide the fact,
18 it's in the report, it's in the evidence that you
19 heard from me and the testimony I elicited from her
20 to begin be, that there was somebody else's DNA
21 there; that there was another piece of DNA, that
22 because of locations it was very, very small,
23 possibly older, that was stuck on the pants. Well,
24 what I'm here to tell you is, you can think about
25 this one or two ways. You can say to yourself,

1 self, that's probably from when somebody washed and
2 folded her clothes, okay. That's probably from when
3 somebody collected her clothes at the hospital.

4 It's possibly from someone else that hugged her out
5 of a car in which case I'd say that doesn't prove
6 anything because the only thing I'm interested is
7 why would Damyon Cotton's DNA be behind the belt
8 hole when he said he only every hugged her a month
9 before this date. Why would his be back there?

10 Now there's another that somebody or one
11 of y'all can say. You can go back there and say,
12 you know what, there's another man. She had sex
13 with somebody else, she's trashy, okay, in which
14 case I'm gonna say to y'all, she can have sex with
15 anybody in the world she wants to, okay. We're not
16 talking about any kind of consensual sex or any kind
17 of pictures that an 18 year old girl; that's her
18 business. That's her body to do with how she wants
19 to. If she wanted somebody else to touch her, so be
20 it. We're not here to talk about her or to judge
21 her. You're not in the business of judging
22 individuals. You're here to judge the facts as they
23 accord with the law. And what I'm telling you is
24 that there's no facts and no law that that last bit
25 of DNA has anything to say about, nothing relevant.

1 Let's think about who else testified after
2 that. I got -- it's my job to tell y'all a little
3 bit about the law and I'm gonna do it right now.
4 You got kidnapping. Who shall ever unlawfully
5 seize, confine, inveigle, abduct, carry away. And
6 the judge is gonna charge you on the law, and if
7 anything I say disagrees listen to him. But what
8 you're thinking right now is like me before I took
9 this job. Everything I knew about anything came
10 from television. When you kidnap somebody you tie
11 them up with rope, put, you put tape over their
12 mouth, you throw them in the trunk of your car,
13 okay. That's not what the law says kidnapping is,
14 okay. You don't need rope when you take their pants
15 off and take them to the end of a dirt road and
16 there's nowhere to go 'cause they ain't running
17 nowhere. And you don't need tape when you're
18 driving so far out in the country that they can
19 scream all they want to and nobody is gonna hear
20 you. You don't need those things.

21 She consented to the movie; she consented
22 to K-mart. And she told you that on the stand with
23 all the strength an 18 year old girl can muster,
24 okay. But she did not consent to making a trip to
25 Darlington County that night. She did not want to

1 be out on that dirt road.

2 Secondly, criminal sexual conduct in the
3 first degree. Now you have to get one -- you have
4 to have this, then you have one of these three,
5 don't really need C. When a person is guilty of
6 criminal sexual conduct in the first degree, if the
7 actor engages in sexual battery with a victim and if
8 any one or more of the following circumstances are
9 proven. The actor uses aggravated force to
10 accomplish sexual battery. The victim submits to
11 the sexual battery under the circumstances where
12 she's also the victim of a kidnapping, okay. Now
13 sexual battery, y'all might be wondering what that
14 is; I've explained that as well. Sexual
15 intercourse, when he used the condom; that's all you
16 need. We got that; we got a battery. Cunnilingus,
17 there was none. Fellatio, he tried. Anal
18 intercourse, there was some with **Minor** but not with
19 Yasmin. Or any intrusion, however slight, of any
20 part of a person's body or any object into the
21 genital or anal opening of another person's body.

22 Ladies and gentlemen, I don't think either
23 one of those crimes is very hard to prove in this
24 case if you believe the science that behind in
25 buttonhole is where they found the DNA that matches

1 perfectly with her story that never changed from the
2 first day. Her story that's backed up by completely
3 unbiased other woman from months previously who
4 tells the same heart wrenching story, follows the
5 same modus operandi, follows the same common scheme
6 or plan scheme or plan. But I want to talk just a
7 little bit about Defense's case and then I'm gonna
8 sit down 'cause I've already talked to you about my
9 case. I've already talked the you about the law and
10 it was sad, okay. I did not like cross-examining
11 Ms. Cotton. I did not like cross-examining Damyon's
12 father, okay. I was uncomfortable with that. But I
13 think it's clear that no matter what Damyon Cotton's
14 father could not have known whether the car was
15 there that night no matter what, he was not there.
16 I think it's clear that the only people that
17 testified for him were the ones who loved him the
18 most in the world and would probably do anything for
19 him. And I don't want y'all to think that I hate
20 people with a criminal record or that I'm two faced
21 because **Minor** has problems with the law, and I
22 brought up Calvin's stuff; but I don't want y'all to
23 think I'm an idiot walking around in society and I
24 think that a 15 year old girl accused of runaway is
25 the same thing as a man who broke into somebody

1 else's house. And then when he gets up here to
2 testify on his memory and he swears to tell the
3 truth on the Bible, he tells y'all I don't remember
4 everything I've been arrested for or convicted of;
5 but then the one thing that he left off was the
6 worst thing. He goes into people's houses when
7 they're not looking. So he wants y'all to know that
8 he remembers everything that happened on February
9 the 1st, 2012 when he don't remember nothing — I
10 asked him about February 17th. He started talking
11 about Valentine's day. Did you notice how he just
12 skipped my question entirely? I asked him about
13 February 3rd and he couldn't remember that, okay.
14 And every single person talked about other people
15 who would know this evidence but they're just not
16 here, okay. Other people, non-biased people know
17 this. Why are they not here? Why would the only
18 people you would get be a criminal and your parents?
19 Why are those the only people? And even if your
20 parents are telling the truth, none of them were
21 looking at the car that day. You could have fixed
22 it and moved on. There was absolutely no evidence
23 that came from those three witnesses that helps you,
24 helps their case in any way whatsoever when you've
25 looked at it.

1 Finally, Damyon's testimony. Damyon wants
2 you to believe -- and I guess this is what he wants
3 you to believe. He wants you to believe that Yasmin
4 Cusack is a criminal master mind who somehow
5 absconded with his DNA, the one time he met with
6 her, he hugged her, and she used that to steal his
7 DNA. And then she held on to that DNA somehow for a
8 month and then she went outside, took her pants off,
9 drug her butt across the ground, put scratches
10 there, put her face in the ground, did her hair
11 wrong, then drove to the hospital concocted this
12 story and has plotted for over a year to take him
13 down. You can believe that or you also could
14 believe she's just kind of a slow 18 year old, all
15 right. Damyon Cotton's story is so outrageous it
16 cannot be reasonable in any respect. People have
17 been going and being found guilty in this courtroom
18 a long time before video came out and a long time
19 before anything else. And a reasonable doubt -- and
20 the judge is gonna tell you this -- is not an
21 imaginary or a fanciful doubt or a weak doubt; it is
22 a substantial doubt. It is a doubt with which the
23 words imply, a doubt for which you can give or
24 assign a reason -- now this is very important --
25 based on testimony and evidence in this case.

1 There's no -- somebody back there coming up with
2 outrageous scenarios. If they can't lead you to the
3 evidence we move on to the next thing. A reasonable
4 doubt is not any sort of doubt. Do not go back
5 there and just because one person goes, I still got
6 my doubts. It's not a reasonable doubt; it's not an
7 explainable doubt. It's not a doubt with which the
8 words imply.

9 You and I know that everyday life
10 experiences that you may have a doubt about any
11 matter that arises no matter how trivial or serious
12 it may be. Those trivial doubts, they don't matter.
13 And if it's serious and you can't connect it to the
14 evidence, it doesn't matter, okay. I want each and
15 every one of y'all when you're back there to just be
16 thinking, what did the Defense's testimony say about
17 the DNA. You got a cute little sign here -- I don't
18 know where it went -- but you can see, you know, no
19 DNA. I don't see anything about the DNA that showed
20 up in the pants, okay, but maybe I'm being
21 untruthful. The thing about how defense explained
22 the DNA on these pants, that's all I want y'all to
23 think about. Months after seeing somebody how does
24 their DNA get on their pants. Skin to cloth
25 contact, you heard. Skin to cloth. That's Amanda

1 Webb.

2 Finally, ladies and gentlemen, I want to
3 remind you the most important thing in the world
4 and that's that you're not here to judge somebody
5 else, okay. You're here to judges the facts, the
6 evidence, as it relates to the law. You're not here
7 to pass judgment on what an 18 year old puts up in
8 the safety of her own home, how a woman wants to
9 act. When she's at her house and she's safe she can
10 act any way she wants to, okay. And that doesn't
11 give a man the right to take her to the woods and
12 take what's the most important thing from her, then
13 leave his DNA on her and tell you there's no way it
14 could have happened with a straight face. Nobody's
15 got that right. Thank you very much.

16 THE COURT: All right, ladies and
17 gentlemen, we now reach the point in the case where
18 the Court will give you the charge on the law; and
19 as I begin these comments to you, I want to thank
20 you for your service in this case. You may recall
21 we talked about the fact when we were first together
22 that we all were aware that you had busy lives
23 before you arrived at the courthouse and before you
24 were received the jury summons. And I will tell you
25 that throughout this case, I don't know whether you

1 noticed this or not, I tried to observe the jury. I
2 don't want to stare at you or make you feel
3 uncomfortable, but as we're operating here in the
4 courtroom I like to see make sure you're
5 comfortable. And every time I've done that in this
6 case, just as you are looking now, I found you
7 sitting there with close focus, what I call wrapped
8 attention. And I'm thankful, ladies and gentlemen,
9 that you're willing to set aside those busy lives
10 and the other concerns of the world impressed upon
11 you focus fully on this case 'cause I know that when
12 you retire to deliberate and decide the facts you're
13 gonna be in a position to do that simply because of
14 the close attention you've given. Thank you again,
15 ladies and gentlemen, for the level of commitment
16 not only to this case but to our justice system to
17 be here to participate in the pivotal role which you
18 are serving.

19 Now as you aware, the State, the
20 Prosecution, they're seated at the table closest to
21 you, has charged the defendant Mr. Cotton with one
22 count of criminal sexual conduct in the first degree
23 and one count of kidnapping, both that arise from
24 the same incident. And you will remember, the
25 defendant entered a plea of not guilty here in the

1 courtroom, denied the allegations, denied these
2 charges again him; but it's not incumbent upon him
3 to enter a plea because he's presumed innocent. The
4 indictments that I explained to you at the beginning
5 of the trial which as you will remember, again,
6 they're just simply pieces of paper that contain
7 allegations. They're not evidence. They're not to
8 be accepted automatically as the truth. The
9 evidence that you should consider is the testimony
10 that's come from the witnesses right here on the
11 witness stand and the various exhibits which have
12 been placed in the record during the course of this
13 trial, and you will have those exhibits with you in
14 the jury room when you retire to deliberate.

15 Please remember, the defendant comes into
16 this courtroom clothed with a presumption, and this
17 presumption of innocence continues with the
18 defendant throughout this trial, and it entitles the
19 defendant to a verdict of not guilty unless and
20 until evidence that dispels that presumption of
21 innocence is presented to you in this courtroom and
22 you find beyond a reasonable doubt that the
23 defendant is guilty of the charges that have been
24 brought against him. And the State must prove each
25 and every element of these alleged crimes beyond a

1 reasonable doubt to reach that point of finding the
2 defendant guilty.

3 Now as I told you at the beginning of the
4 trial you are the judge of the facts. And you will
5 remember we discussed the point that in order to do
6 that you must gauge the credibility and
7 believability of the witnesses who appear in this
8 case. And I mention to you in advance that if
9 witnesses say things that are inconsistent or may be
10 mutually exclusive, then you must determine
11 credibility and believability in order to determine
12 the facts. And if you find that that's what
13 happened in this courtroom, well then you must
14 decide which of the witnesses are more believable
15 and credible. There's no reason for me to go over
16 again some of the various issues or criteria we
17 discussed simply to say this: Remember, gauging
18 credibility and believability is something we do
19 every day. You don't check your common sense at the
20 courtroom door when you come in here to be a juror.
21 So you just apply those factors you use in everyday
22 common sense to determine credibility and
23 believability here in the courtroom.

24 I will tell you that when you go decide
25 what the facts of this case are you, the jury, can

1 believe as much or as little of any one witness'
2 testimony you believe proper. You can believe one
3 witness against a whole group of witnesses, or you
4 can do just the opposite. You can believe part of
5 what a witness says and completely disbelieve the
6 rest. The fact that certain testimony is not
7 directly controverted doesn't mean you have to
8 accept it as true because you must first gauge the
9 credibility and believability of the witness through
10 which it comes. Keep in mind throughout this
11 process you have one objective; that is, to search
12 for and find the truth regardless of from which
13 witness or which side of the case that truth may
14 come.

15 Now there are two types of evidence in a
16 case such as was presented during the trial.
17 There's direct evidence and there's circumstantial
18 evidence. Direct evidence is testimony of a
19 testimony or a person who asserts or claims to have
20 actual knowledge of a fact such as an eyewitness who
21 will come in and testify about what they saw or
22 heard or did; that's direct evidence.
23 Circumstantial evidence is indirect evidence.
24 Circumstantial evidence is proof of a set or chain
25 of facts that then indicate the existence of yet

1 another fact. I will tell you, the law makes
2 absolutely no distinction between the weight to be
3 given to direct or circumstantial evidence; nor, is
4 a greater degree of one required over the other.
5 You should weigh all the evidence in the case. It's
6 up to you to determine what weight you give to any
7 evidence in the case, both direct and
8 circumstantial, but you should weigh all the
9 evidence. And after you weigh all the evidence, if
10 you're not convinced of the guilt of the defendant
11 beyond a reasonable doubt, you must find the
12 defendant not guilty.

13 Now I've been back in your jury room
14 before -- not while you've been back there -- but I
15 know you probably noticed there's not some set of
16 scales to go in there and weigh the evidence on, and
17 that's obvious because it's entirely a mental
18 process. But I would say to you, that evidence that
19 weighs with you is evidence that convinces you of
20 its truth, again, regardless of from which witness
21 or what side of the case that evidences may come.

22 Now as you will recall we discussed
23 briefly during the trial that usually the rules of
24 evidence don't permit a witness to come in and
25 testify about some conclusion that the witness may

1 have reached; but there's an exception for this in
2 what we call the expert witness rule. And this is a
3 witness who by education or training or knowledge or
4 experience has become an expert in some art or
5 science or profession and may come in and state an
6 opinion on some material matter in which the witness
7 claims to be an expert and can give you the reasons
8 or the basis or bases for that opinion. Now I will
9 tell you that in this evidence you should consider
10 any expert opinion received in evidence like you
11 would any other evidence. You give it the weight
12 that you believe it's entitled to. If you decide
13 that the opinion of the expert is not based on
14 sufficient education or experience or if you
15 conclude that the reasons given in support of the
16 opinion are not sound, then you should disregard the
17 opinion or give it no weight. And if you believe
18 that the opinion is outweighed by other evidence,
19 then you may disregard it entirely. Please remember
20 that an expert witness testimony is to be given no
21 greater weight than that of any other witness simply
22 because a witness is deemed to be an expert.
23 Further, you're not required to accept the expert's
24 opinion even though it's not contradicted. Again,
25 it's not given for the purpose of controlling your

1 judgments but for assisting you in finding matters
2 of fact if you find it to be helpful.

3 Now the same constitution that makes you
4 the judge of the facts makes me the judge of the law
5 here in the courtroom. And I will tell you from
6 living in a small town all of my life just as you,
7 many of you have, that I know there's a lot of bad
8 information on what the law is on any particular
9 subject out there on the street, and so I'm gonna
10 ask you, please, to set aside any understanding or
11 belief you may have about the law that you came in
12 the door with on Monday and accept the law as I give
13 it to you. And you and I should not be concerned
14 with what we think might be a better idea. Just
15 apply the law as I give it to you, find the facts in
16 a fair and impartial way, apply those facts to the
17 law as I've given them to you; and if you do that
18 then, you're gonna reach a verdict which is just and
19 fair in this case.

20 Now I will tell you that in a criminal
21 prosecution of this type, as we've already said, the
22 State, Prosecution, seated at the table closest to
23 you, has the burden of proof. The defendant has no
24 burden of proof, has nothing to prove in here and is
25 presumed innocent. In this State, according to our

1 constitution, the prosecution must prove its case to
2 the standard of proof we call beyond a reasonable
3 doubt, beyond a reasonable doubt before a finding of
4 guilt may occur. If the State feels to meet this
5 high burden, and it is a high burden, then the
6 defendant is entitled to a acquittal. So you say,
7 well, okay then, what is reasonable doubt. Well,
8 I'm gonna start by first telling you what it's not.
9 It's not an imaginary or a fanciful doubt or a weak
10 doubt. It's a substantial doubt. It's a doubt that
11 the words imply, a doubt from which you can give or
12 assign a reason based on the evidence and the
13 testimony in the case. A reasonable doubt is not
14 any sort of a doubt. You and I know that we may
15 have any kind of doubt about any matter that
16 involves life experiences no matter how trivial it
17 may be such as what tie to wear today or what pair
18 of shoes to wear today. That's not a reasonable
19 doubt.

20 A reasonable doubt is a doubt that makes
21 an honest, sincere, conscientious juror in search of
22 the truth hesitate to act. Proof beyond a
23 reasonable doubt is proof that leaves you firmly
24 convinced of the defendant's guilt. So if you have
25 a doubt for which you can give or assign a reason as

1 to the guilt of the defendant based on the evidence
2 in this case, then he's entitled to a verdict of not
3 guilty. Reasonable doubt may arise from the
4 evidence in the case or from the lack or absence of
5 evidence in the case. You, the jury, must make the
6 determination of whether or not reasonable doubt
7 exists as to the guilt of the defendant in this
8 case. That is the alleged guilt, the State has
9 alleged that the defendant is guilty, and you make
10 the determination of whether or not there is
11 reasonable doubt. The very fact, I will say to you
12 though, that the jury goes back in the jury room and
13 engages in a full and free discussion of guilt or
14 not guilty in these cases with a conversational ebb
15 and flow on that issue, doesn't automatically mean
16 that reasonable doubt exists in this case or any
17 other case for that matter.

18 Now I further charge you that criminal
19 intent is a necessary element of each crime that
20 must be proved by the State beyond a reasonable
21 doubt. Criminal intent is always a matter that must
22 be determined by the jury from the circumstances
23 that surround a situation. There's no way to prove
24 intent with some mathematical certainty. You and I
25 know science will not permit us to open someone's

1 brain and look in and determine what a person had in
2 mind at a particular time. So the law says that
3 criminal intent may be inferred from the
4 circumstances shown to have existed both before and
5 after an event. This is how you, the jury, make a
6 determination of whether or not the element
7 requiring criminal intent is present. Criminal
8 intent is a state of mind that operates jointly with
9 an act or omission in the commission of a crime.
10 Criminal intent is a mental state of conscious wrong
11 doing. So it's up to you, the jury, to determine
12 whether or not the State has proved the element of
13 criminal intent based on the circumstances shown to
14 have existed. I tell you the State must prove
15 criminal intent against the defendant beyond a
16 reasonable doubt just as the State must prove every
17 element beyond a reasonable doubt as I previously
18 explained.

19 Now you will recall that during the trial
20 of the case you heard evidence that the defendant
21 allegedly committed a previous sexual offense which
22 was not the subject of a criminal conviction other
23 than the one for which the defendant is now
24 currently on trial. Now this testimony, if you
25 conclude it's true may only be considered by you on

1 the question of whether there existed some common
2 scheme or plan with regard to these alleged events
3 and for no other reason and for no other purpose.
4 You may give this evidence the weight and value, if
5 any, that you find it should have on the sole issue
6 of whether there exists some common scheme or plan.
7 You must not consider evidence of the commission of
8 some other sexual offense as proof of the
9 defendant's guilty of this charge which we're on
10 trial here for today, nor to some trait of his
11 character, nor to acting in conformity with that
12 trait or character.

13 Now furthermore, during the course of the
14 trial the defendant testified. You saw here in the
15 courtroom he took the stand, took the oath, and made
16 certain explanations; but I charge you it's not
17 incumbent upon the defendant to prove his
18 explanations or to prove anything else for that
19 matter. The defendant's plea of not guilty place
20 the burden on the State to prove his guilty beyond a
21 reasonable doubt before a defendant can be found
22 guilty. You must gauge credibility and
23 believability of the defendant as you would any
24 other witness.

25 Now let's talk about specifically the

1 criminal charges that are at bar here. First,
2 criminal sexual conduct in the first degree. The
3 defendant is charged as you are aware with criminal
4 sexual conduct in the first degree. To prove this
5 charge the first element that the State must prove
6 beyond a reasonable doubt is that the defendant
7 engaged in a sexual battery with the victim. Sexual
8 battery is either sexual intercourse or cunnilingus,
9 fellatio, anal intercourse, or any intrusion,
10 however slight, of any part of a person's body or of
11 any object into the genital or anal openings of
12 another person's body except when that is done for
13 medically recognized treatment or diagnostic
14 purposes. If you find that the State has not shown
15 beyond a reasonable doubt that an actual sexual
16 battery occurred, you would stop deliberating and
17 your verdict would have to be not guilty at that
18 point. If you find that a sexual battery did occur,
19 then you must decide whether the State has proven
20 beyond a reasonable doubt also that, number one, the
21 defendant used aggravated force to accomplish that
22 battery, and aggravated force means the use of
23 physical force or physical violence of a high and
24 aggravated nature to overcome the victim. This
25 includes the threat of using a deadly weapon. Or,

1 you must either prove the use of aggravated force as
2 I just described; or, that the victim submitted to
3 sexual battery while the victim was also the victim
4 of a forcing confinement, kidnapping, robbery
5 extortion, or some other similar act or offense.

6 I want to define the charge of kidnapping
7 for you. The defendant is also charged with
8 kidnapping as you're aware. In order for the State
9 to obtain a conviction the State must prove beyond a
10 reasonable doubt the defendant knowingly and
11 unlawfully seized or confined or inveigled or
12 decoyed or abducted or carried away another person
13 without authority of law. To do a thing unlawfully
14 is to do it willfully against the law. Knowingly
15 means with knowledge, consciously, and not by
16 sentence. Seized means to take hold of suddenly or
17 forcibly. Confined means to limit, restrict, or
18 enclose within bounds to imprison or to shut or keep
19 in. Inveigle means to lure, entice, or lead astray
20 by false representations, promises, or other
21 deceitful means. Decoy means to lure by, or as if
22 by, a decoy. A decoy is something to entice a
23 person into a trap. Kidnap is to remove a person
24 against his or her will by unlawful force or by
25 fraud. And to abduct means to carry off secretly or

1 by force for an illegal purpose. And to carry away
2 means to remove. The State does not have to prove
3 the defendant did all of these things. Instead, if
4 you find that beyond a reasonable doubt that the
5 defendant did any of these things, then you must
6 find the defendant guilty of kidnapping. Something
7 done without authority of law is something which the
8 law does not sanction, permits, allow, condone, or
9 provide justification for. A kidnapping does not
10 have to be for any personal or monetary gain or
11 ransom or for any illegal purpose. It may be for
12 any reason whatsoever.

13 Now let's talk a little bit about alibi.
14 The defendant raised the defense of what I call
15 alibi. In order to establish an alibi it must be
16 shown the defendant was at another place in time or
17 at another place at the same time the crime was
18 committed and that it was, therefore, impossible for
19 the defendant to have been at the scene of the
20 crime. Mere denial of the presence at the scene of
21 a crime doesn't constitute an alibi. There's no
22 burden on the defendant, however, to prove his
23 alibi. The burden is on the State to prove beyond a
24 reasonable doubt that the defendant was actually
25 present at the crime scene, actually participated in

1 it, and was not somewhere else. In other words, the
2 State has the burden of disproving the defendant's
3 alibi defense.

4 And then the last point I make to the
5 formal charge is that defendant has two charges
6 against him -- you heard that -- criminal sexual
7 conduct first degree and kidnapping. I charge you,
8 these indictments are separate and distinct. You
9 should consider them individually. Your verdict on
10 one does not necessarily control your verdict on the
11 other. Now in conclusion, Madam Foreman, members of
12 the jury, as you begin to retire and start your
13 deliberations I wish to express the hope to you that
14 each of you will be mindful of the importance of
15 your responsibility, and I know you are. You're not
16 called upon to serve as jurors very often and for
17 that I'm sure you say, well thank goodness. And I
18 will tell you, the reason for that is you may recall
19 we talked about Monday. You cannot be required to
20 serve more than one time in three calendar years in
21 the same court, and the reason for that is it's a
22 difficult task. It requires you and I to free our
23 minds of all outside and improper influence because
24 you and I are acting for the community to see to it
25 that every trial here is fair and every verdict is

1 just. Now you probably noticed that the presiding
2 officer, which is me, for this trial is referred to
3 as Your Honor. And I know you know that's not some
4 title given to me individually. It's a title that's
5 assigned to the position that I'm privileged to hold
6 because this Court is entrusted with protecting the
7 honor of this community, the county, state, and
8 nation to see to it that every trial here is fair
9 and every verdict is just.

10 And in a few moments you'll take the care
11 and preservation of the honor of this community,
12 county, state, and nation with you into the jury
13 room to decide this case. Now please, when I say
14 that to you, understand, I'm not trying to telling
15 you how you should decide this case; that's not my
16 point at all. My point is this, that whatever your
17 verdict is, that it will be the result of your going
18 back into the jury room, confining your
19 consideration to the evidence put forth in this
20 courtroom, weighing that evidence fairly and
21 impartially, applying that evidence to the law that
22 I've just given you in this charge; and if you do
23 that, then you reach a verdict which is just and
24 true. I will tell you that everyone in this
25 courtroom is entitled to justice, nothing more and

1 nothing less. We own no sympathy to any party. We
2 owe no support to any party. And again, I am of the
3 confirmed opinion that whatever verdict you reach
4 will represent justice for all the parties involved.

5 Madam Forelady, please remember, the
6 verdict of this case must be unanimous. And so your
7 jury room is rather large. There may be some folks
8 standing by the window, some seated at the table,
9 some focus on particular issue, others on another
10 issue. But if someone wishes to be heard on a
11 particular issue, please give them that opportunity
12 so that not only will your verdict be a consensus
13 verdict but indeed, in the end, it will be a
14 unanimous verdict.

15 Now this is the verdict form. You can't
16 see it; it's a little bit further. You can't read
17 it from where you're seating; it's a little bit far
18 for you. But I will tell you it has two questions
19 because there are two charges, and for each of the
20 charge we simply ask this question. I'm gonna read
21 the question to you. As to the charge criminal
22 sexual conduct first degree we, the jury,
23 unanimously find the defendant Damyon Cotton beyond
24 a reasonable doubt and then there are two choices.
25 Now please understand, ladies and gentlemen, when I

1 have two choices I can't give them to you at the
2 same place on the piece of paper, but there's no
3 priority of one over the other. There's no
4 preference of one over the other. It's just simply
5 — the first choice is simply stated on the paper
6 not guilty; second choice, guilty. If the jury's
7 unanimous decision, whichever of those it is, please
8 mark that and move to the next question which has to
9 do with the kidnapping charge and asks the same
10 question. And at the bottom of the page right
11 before you see you sign, it says, I certify this
12 verdict is unanimous decision of the jury. So when
13 you sign there, Madam Forelady, you're telling us
14 that this is a unanimous verdict.

15 Now if you need to take a break during
16 deliberations, sometimes the jurors just need to
17 separate a little bit, have a little bit of space,
18 time to think, go outside and take a break, knock on
19 the door, we'll make that available to you. But if
20 you do take a break and groups go in different
21 directions, please cease all deliberations until
22 you're back together because it's conceivable that
23 different groups at different places could reach a
24 different result at the same time. So just to avoid
25 that, just wait until you're all back together. If

1 you have a question please make sure that question
2 is in writing so it will be preserved for our
3 record, and we will respond to you in writing if a
4 response is necessary.

5 Now, let me just simply say this to you
6 also before we step away, and I want to speak to
7 Mr. Louis and to Ms. Honeycutt. I want to thank you
8 for your service as alternate jurors because many
9 times we get to this point and the alternates
10 discover that they're not going to deliberate with
11 the 12 and they say, my goodness, I have wasted my
12 time here these last two or three days. I just want
13 to say to you the opposite of that. We must have 12
14 jurors in this court. And if we had 12 only and we
15 lost one during the course of the trial even now at
16 the end of the trial, then I'd have to declare a
17 mistrial and this case would be tried again at some
18 later point. Well, your presence here has avoided
19 that, which it hasn't happened, I'm glad to say, and
20 I believe these jurors are going to hold their
21 health here for the next couple of minutes before
22 they begin deliberations and so it appears you will
23 not sit with the jury. But I want to thank you in
24 the presence of your colleagues for your service.
25 What I'm gonna let you do, ladies and gentlemen, is

1 go back to the jury room, all of you together.
2 Don't begin deliberations, just take a little
3 personal break. Let me go over the evidence to make
4 sure we have it in order, talk with counsel make
5 sure everything is in order, and then bring in the
6 evidence. And when we do we'll ask the alternates
7 to come back out and speak to us again and then the
8 jury may begin its deliberations so just give us a
9 moment for that and you may return to the jury room.
10 Please don't begin your deliberations.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 3:18 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: The jury is now outside of the
15 courtroom. Are there objections or exceptions to
16 the charge given by the Court from the State?

17 MR. HOLT: There are none, your Honor.

18 THE COURT: And from Defense?

19 MS. WISE: None from Defense.

20 THE COURT: All right, counsel, please
21 come up and look at the verdict form, go over the
22 evidence with our clerk and court reporter and we
23 will send it in. Ladies and gentlemen, let's remain
24 in session 'cause we're gonna bring our alternated
25 back out in just a moment.

1 (Attorneys review exhibits.)

2 THE COURT: Ladies and gentlemen, please
3 remain in session. We're gonna take the evidence in
4 and we're going to bring the alternates back out.

5 (At 3:13 p.m. jury began its deliberations and the
6 alternates were excused.)

7 THE COURT: Ladies and gentlemen, we're
8 going to stand down now subject to the call of the
9 jury. We also have some other administrative
10 matters. We're going to take a plea or two and so
11 we will — please don't go far and we will respond
12 when the jury knocks. Please be close by so we can
13 take this case back up. Court in this case is in
14 recess until we have call of the jury.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: I'm advised that the jury has
18 reached a verdict, and anything for the record
19 before we bring in the jury?

20 MR. HOLT: Nothing from the State, Your
21 Honor.

22 MS. WISE: Nothing from the Defense.

23 THE COURT: Ladies and gentlemen, out of
24 respect for this jury, whatever the verdict is,
25 please maintain decorum in the courtroom when it's

1 read. Please bring in the jury.

2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 4:35 p.m., and
4 the following proceedings commenced in
5 open court.)

6 THE COURT: Ms. Jordan, ladies and
7 gentlemen of the jury, I'm advised that you've
8 reached a verdict; is that correct?

9 THE FOREMAN: Yes, Your Honor.

10 THE COURT: All right, would you please
11 give your verdict form to our clerk.

12 (Verdict form tendered to the Court.)

13 THE COURT: Let's let the record reflect
14 that the verdict form is appropriately filled out
15 and signed, and the clerk will publish the verdict.
16 Defendant, please rise.

17 Go ahead, Mr. Clerk.

18 THE CLERK OF COURT: Your Honor, this is
19 State of South Carolina versus Damyon Cotton,
20 defendant, indictments 2013-GS-16-1438 and 1439.
21 Verdict: Number one, as to the charge of criminal
22 sexual conduct in the first degree, we the jury,
23 unanimously find the defendant Damyon M. Cotton
24 beyond a reasonable doubt guilty. If this is your
25 verdict would you so signify by raising your right

1 hand for me please.

2 (All jurors complied.)

3 THE CLERK OF COURT: All twelve jurors
4 raised their right hand. Question two, as to the
5 charge of kidnapping, we the jury, unanimously find
6 the defendant Danyon M. Cotton beyond a reasonable
7 doubt guilty. If this is your verdict would you so
8 signify by raising your right hand for me please.

9 (All jurors complied.)

10 THE CLERK OF COURT: All 12 jurors have
11 and certified that this verdict is a unanimous
12 decision of the jury. It's signed by the foreperson
13 Bonnie Jordan, February 26th, 2014.

14 THE COURT: Thank you. All right, the
15 defendant may be seated. And now while we are in
16 the presence of the jury are there any motions or
17 issues for which a jury response would be necessary,
18 first from the State?

19 MR. HOLT: None, Your Honor.

20 THE COURT: Now from the Defense?

21 MS. WISE: We request to poll the jury.

22 THE COURT: All right. Ladies and
23 gentlemen, the parties -- Defense has requested the
24 jury be polled, and what that means is we're gonna
25 ask you individually about whether this is your

1 verdict. And the way this process will occur is Mr.
2 Suggs will call your name and just one at a time
3 will go through all 12. We ask you to stand at that
4 point. And he's gonna ask you two questions and the
5 question is gonna be something like this: Was this
6 your verdict, and we'll stop and receive an answer;
7 and then, is it still your verdict. And we'll
8 receive an answer, then we'll move to the next
9 person so please follow our clerk's instructions.

10 THE CLERK OF COURT: We'll begin with the
11 foreperson, Ms. Bonnie Jordan. The verdict I just
12 published was the verdict you reached in the jury
13 room. I ask you now, was it your verdict then?

14 THE FOREPERSON: Yes, sir.

15 THE CLERK OF COURT: And is it your
16 verdict now?

17 THE FOREPERSON: Yes.

18 THE CLERK OF COURT: Okay, thank you.
19 Akeem Brown, was it your verdict then?

20 JUROR BROWN: Yes.

21 THE CLERK OF COURT: And is it your
22 verdict now?

23 JUROR BROWN: Yes.

24 THE CLERK OF COURT: Cameron Felkel, was
25 it your verdict then?

1 JUROR FELKEL: Yes.

2 THE CLERK OF COURT: And is it your
3 verdict now?

4 JUROR FELKEL: Yes.

5 THE CLERK OF COURT: Thank you.

6 William Freeman, was it your verdict then?

7 JUROR FREEMAN: Yes.

8 THE CLERK OF COURT: Is it verdict now?

9 JUROR FREEMAN: Yes.

10 THE CLERK OF COURT: Donald Gainey, was it
11 your verdict then?

12 JUROR GAINNEY: Yes.

13 THE CLERK OF COURT: Is it your verdict
14 now?

15 JUROR GAINNEY: Yes.

16 THE CLERK OF COURT: James Jones, was it
17 your verdict then?

18 JUROR JONES: Yes.

19 THE CLERK OF COURT: And is it your
20 verdict now?

21 JUROR JONES: Yes.

22 THE CLERK OF COURT: Thank you.

23 Gary Lane, was it your verdict then?

24 JUROR LANE: Yes.

25 THE CLERK OF COURT: And is it your

1 verdict now?

2 JUROR LANE: Yes.

3 THE CLERK OF COURT: Thank you.

4 Carolyn McCall, was it your verdict then?

5 JUROR MCCALL: No, but it is now.

6 THE COURT: All right. I'm sorry, answer
7 the first question for us again please.

8 THE CLERK OF COURT: The verdict I just
9 published was the verdict that you reached in the
10 jury room. My question to you is, was it your
11 verdict in the jury room?

12 JUROR MCCALL: Oh, yeah.

13 THE CLERK OF COURT: And is it your
14 verdict now?

15 JUROR MCCALL: Uh-huh.

16 THE CLERK OF COURT: Okay.

17 THE COURT: All right, let's let the
18 record reflect both those answers are affirmative.

19 THE CLERK OF COURT: Kenneth McFadden, was
20 it your verdict then?

21 JUROR MCFADDEN: Yes.

22 THE CLERK OF COURT: Is it your verdict
23 now?

24 JUROR MCFADDEN: Yes.

25 THE CLERK OF COURT: Okay, thank you.

1 Gary McFarland, was it your verdict then?

2 JUROR MCFARLAND: Yes, sir.

3 THE CLERK OF COURT: Is it your verdict
4 now?

5 JUROR MCFARLAND: Yes, sir.

6 THE CLERK OF COURT: Martha Phillips Kind,
7 was it your verdict then?

8 JUROR KIND: Yes.

9 THE CLERK OF COURT: Is it your verdict
10 now?

11 JUROR KIND: Yes.

12 THE CLERK OF COURT: Earnestine Wilson,
13 was it your verdict then?

14 JUROR WILSON: Yes.

15 THE CLERK OF COURT: Is it your verdict
16 now?

17 JUROR WILSON: Yes.

18 THE CLERK OF COURT: My record reflects
19 that was all 12 jurors. If a juror's name was not
20 called would you stand for me please.

21 (There was no response.)

22 THE COURT: Okay, very good. Now all of
23 our jurors have responded in the affirmative to both
24 questions. Are there further issues now for which a
25 jury response is necessary, from Defense?

1 MS. WISE: Nothing from the Defense.

2 THE COURT: All right then, ladies and
3 gentlemen, what we intend to do at this time is we
4 will have a sentencing proceeding, but I don't
5 require the jurors to stay for the sentencing
6 proceeding because in our system there is a division
7 of labor you might say and the jurors who are the
8 judge of the facts make the decision of whether or
9 not the state met the burden of proof and factually
10 proved the charges against the defendant. You
11 decided that in the affirmative; and thus, now we'll
12 have a sentencing proceeding. But what I'd like to
13 do is allow you the opportunity to either stay or
14 go. The way we'll do that is this. You are
15 actually done for the week. I'm pleased to say
16 there won't be any further jury draws for you this
17 week and so we're gonna release you for the week.
18 And in a few days you're gonna receive a check from
19 the county, maybe tomorrow. Mr. Suggs is very
20 organized. So today we're gonna let you go back in
21 the jury room. You're gonna receive a small check
22 from the county, not enough to retire on. And
23 that's gonna be the county's expression of
24 gratitude, but I'm gonna come over and shake your
25 hand as you exit the jury box for a verdict that was

1 fair and just based on the evidence in the case and
2 represents justice in this case and shake your hands
3 as a personal expression of gratitude.

4 After you go back in the jury room and
5 receive your check and gather your personal things,
6 we're just gonna wait a moment. And those of you
7 who wish to come back in the courtroom we'll let you
8 come around and come in through the back door. Come
9 up toward the front if you wish or sit toward the
10 back if you wish; that way you can leave at any
11 time. It probably should take no more than 15
12 minutes, but we'll give you that option. So if you
13 give me just one moment.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 4:41 p.m., and a recess
16 proceedings commenced in open court.)

17 THE COURT: All right, several of our
18 jurors have joined. We're now ready to proceed.
19 What I'd like first to do is hear from the State as
20 to what your position is on sentencing, what prior
21 record the defendant may have, if any, as well as
22 any other factors that you believe influence the
23 sentencing decision. We also, of course, will give
24 Ms. Cusack an opportunity to speak if she wishes.
25 Counsel, let's come to the microphone so that

1 everyone in the courtroom will be able to hear you
2 as you speak.

3 MR. HOLT: Judge, I've sat before this
4 court enough time to know, enough times to know -- I
5 think you heard all the evidence in this case. And
6 I think you heard what the jury had to say and
7 certainly you can't consider other crimes; but you
8 know, but I will tell Your Honor that he does not
9 have any record before this, major. There have been
10 some other arrests, some other allegations, and I
11 feel comfortable saying that in knowing it won't
12 bias you because Miss Minor is one, Minor is
13 one, that you heard about during this trial that
14 there is no, there has been no verdict for.

15 THE COURT: Tell me, what is the State's
16 intention with regard to Minor's charges? Do
17 you intend to try this defendant on those charges?

18 MR. HOLT: Judge, that will be a decision
19 for my bosses. I'm sure based on the outcome of the
20 sentence will have something do with it; there will
21 be no denying that.

22 THE COURT: Let me ask you, ladies and
23 gentlemen, can you hear our discussion? All right,
24 very good. The answer was that it depends on the
25 outcome of this sentencing proceeding as to whether

1 the State will proceed to try the other charges.

2 Is there anything further that you wish to
3 point out from counsel's perspective?

4 MR. HOLT: Just that very rarely am I in
5 this courtroom for such an act as to drive somebody
6 to a remote location and to take from them what is
7 probably the most important thing they own, which is
8 to lay them down and to make them do something they
9 don't want to do. So much of my time is spent on
10 what I would consider trivial matters and narcotics
11 and things of that nature, and before you today is
12 probably one of the worst set of facts I've ever
13 been to trial with.

14 THE COURT: Mr. Holt, you advised the
15 Court before this case began that there were
16 potentially other common scheme or plan witnesses
17 who may appear. And so our record will be clear on
18 this point, what is the status of those, if they're
19 cases, or those individuals?

20 MR. HOLT: Judge, those were two other
21 younger females. I gave them both subpoenas. They
22 did not choose to be here on Monday. As Your Honor
23 is aware it is almost impossible to try these crimes
24 when the victim does not want to take part. Your
25 main source of evidence, as it was in this case or

1 any case of this nature, is going to be the victim
2 and without Yasmin Cusack's testimony we would not
3 have been here. You know, I think it's important
4 for me to mention also, Judge, that where -- you
5 speak a lot better than me, and the age difference
6 in that, involved in that, it just how somebody 18
7 years old that didn't finish high school can get in
8 front of everyone and speak and let them know about
9 the worst moment in her life. I'd just like to make
10 it a matter of record how courageous I think that is
11 and that I do not fault the other two females for
12 not being here.

13 I also want to say how courageous I think
14 Miss **Minor** was for having the inner fortitude
15 to be here, but the two cases against the other two
16 females will most certainly be dropped.

17 THE COURT: All right now, thank you.

18 Ms. Cusack, ma'am, do you have something
19 you wish to say? We don't require you. You've
20 already testified; you don't have to speak further.
21 But do you have something you wish to say, ma'am?

22 THE VICTIM: No, sir.

23 THE COURT: All right. I want to echo
24 what Mr. Holt just said. I know that although it's
25 my job -- and I work in the courtroom every day so

1 I'm somewhat comfortable in this room -- but I know
2 you are not. I know you're not here every day. I
3 know you don't have the benefit of being familiar
4 with legal procedures. You heard a lot of criticism
5 in this courtroom where it almost appeared to you
6 that you were on trial, and your reputation, and
7 whether or not you were telling the truth. And I
8 want to say to you, ma'am, it takes a lot of courage
9 to come in and just bow up and push under those
10 circumstances. Even though you were the victim
11 here, you were not on trial here and I was impressed
12 with the way you handled yourself here in the
13 courtroom. Thank you for the courage to come
14 forward and to persevere and to make sure to do that
15 so that justice is done and to make sure that other
16 people who may somehow some way find themselves in
17 your situation will not find themselves in that
18 situation now because you spoke up and prevented it
19 from happening, so thank you, ma'am, for your
20 courage.

21 THE VICTIM: You're welcome.

22 THE COURT: Anything further from the
23 State?

24 MR. HOLT: No, sir, Your Honor.

25 THE COURT: Now from Defense if you have

1 something you wish to say, Ms. Wise, or if your
2 client wishes to speak, we'll be glad to hear from
3 Mr. Cotton.

4 MS. WISE: I do not believe Mr. Cotton
5 wishes to speak.

6 THE COURT: Come to the microphone so our
7 folks in the back can hear you please.

8 MS. WISE: I don't believe Mr. Cotton
9 wishes to speak. What that being said, this Court
10 heard all of the evidence that was presented over
11 the course of this trial. You know everything that
12 went on. I will be the first to say I have worked
13 with Damyon for over a year now. He has never been
14 nothing but polite respectful, and kind to me. He
15 has been out at the detention center for 379 days as
16 of today. He is a very young man, 21 years old, and
17 has a wonderful support system, a wonderful family.
18 This young man has a lot of potential. He is
19 employed at Voc Rehab before these charges arose.
20 He was a very productive member of society in my
21 opinion.

22 I would ask that this Court to consider
23 some sort of split sentence, consider the amount of
24 time that he has been incarcerated. I believe he's
25 a very viable candidate for probation if a split

1 sentence is deemed appropriate. And I would also
2 request that he not be on any sort of monitoring or
3 life long sex offender registry. I think this young
4 man has a lot of potential, believe that the facts
5 of this case and the evidence presented reflect that
6 that way.

7 THE COURT: First of all, let me ask you,
8 ma'am, what discretion does this Court have not to
9 place Mr. Cotton on the sex offender registry? He's
10 been convicted of first degree criminal sexual
11 conduct. The Court is of the opinion that it is not
12 discretionary with the court. The statute requires
13 that Mr. Cotton, regardless of what happens with
14 sentencing, upon release be required to register as
15 a sex offender. Do you have any precedent or any
16 law to the contrary?

17 MS. WISE: I don't, Your Honor, I was just
18 asking.

19 THE COURT: Very good. And do you have
20 anything further that you wish to say, ma'am, or
21 anyone from the defendant's side of the case?

22 MS. WISE: I don't think so, Your Honor.

23 THE COURT: All right, Mr. Cotton, I want
24 to make sure you are aware, first of all, what the
25 sentencing ranges are for these charges. They carry

1 each from 0 to 30 years in prison. You are required
2 as a result of the criminal sexual conduct
3 conviction that should you be released from the
4 Department of Corrections that you must register as
5 a sex offender. That requires registry under
6 current law twice a year. Failure to register as a
7 sex offender, of course, results in a mandatory jail
8 sentence. These charges are also classified as most
9 serious criminal charges under South Carolina
10 statutory scheme. We have a statute which we call
11 two strikes and you are out which means that if you
12 have two most serious charges, which you have today,
13 that the next most serious charge you have,
14 regardless of what it carries, what penalty it
15 carries, the result is life in prison without the
16 possibility of the parole.

17 So do you understand that if you have any
18 future charges that would be serious or most serious
19 in their classification it will result in life in
20 prison for you, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. The State did not
23 make a recommendation as to sentencing. The Court
24 will give you that opportunity. You heard a
25 response from Ms. Wise, and if you have something

1 you wish to say on that point I'll be glad to hear
2 from you.

3 MR. HOLT: I have full faith and trust in
4 whatever Your Honor decides, would all I know to
5 say, Judge.

6 THE COURT: All right, just one moment
7 please. I want to make sure you understand that one
8 of the requirements of a most serious charge is that
9 any sentence you are given, you're gonna be required
10 to serve at least 85 percent of the sentence; and
11 what that means is basically you're not eligible for
12 parole. You must complete at least 85 percent and
13 you may serve every day of these sentences. And do
14 you understand that, Mr. Cotton?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right, just one moment
17 please. Mr. Cotton, I just ask you this. I hear
18 your mother crying, sir, in the courtroom. And I
19 know your testimony was that you weren't even there
20 when this happened; but yet, you had two people who
21 came in here testified as to a very similar
22 incident. You had two others who apparently either
23 recanted or simply due to family pressure or
24 whatever happened, didn't respond to the subpoena.
25 Sir, well just tell me, I mean, what happened here?

1 What right do you have, sir, to take someone's -- to
2 take advantage of someone, first of all, who's not
3 able to defend themselves physically and perhaps not
4 mentally or emotionally in that moment. So tell me.

5 THE DEFENDANT: I mean, I really didn't do
6 anything, but I respect what the jury said because
7 it's a young woman's story; but like I said, my
8 alibi and my witnesses all told this couldn't have
9 happened so I fully respect whatever you're saying.

10 THE COURT: In other words, you tell me
11 that you persist with your defense that you did not
12 commit these crimes and you were not there?

13 THE DEFENDANT: Yes, I do, because like I
14 already told you in front of the jury and everybody,
15 just like his -- you asked me did I have sexual
16 relationship with them so therefore, of course,
17 they're gonna -- Mr. Holt is gonna make it seem like
18 I'm kind of a monster, whatever, the way he was
19 trying to pretty much discriminate me in front of
20 everybody but I'd just like to keep my composure.
21 But like I said ---

22 THE COURT: Well, I understand, sir, and
23 that you're telling me you -- that the prosecutors
24 have made you look like a monster, that you're not a
25 monster but how do you -- what explanation do you

1 have for a broken zipper and your touch DNA on the
2 pants at the zipper at the button of a victim?

3 THE DEFENDANT: See, my DNA was never
4 found on no zipper, period. They said on the button
5 part. Like I said, when I first saw her, yeah, I
6 gave her a hug but that was before I went. I never
7 saw her any other time.

8 THE COURT: All right, sir. Just one
9 moment please. All right, sir, Mr. Cotton, based on
10 the fact that you have been convicted by a jury of
11 your peers after a full and fair trial, sir, in
12 which all of your rights have been protected, you've
13 been accorded every opportunity to participate in
14 trial including choosing a jury, testifying to the
15 jury, contesting the evidence, confronting the
16 witnesses against you, all of which you -- has been
17 capably done for you by counsel, the Court finds
18 based on the multiple allegations here against you,
19 sir, and what the Court perceives to be the truth
20 and credibility of the victims, I sentence you to 15
21 years in the Department of Corrections on each of
22 these charges. That sentence is to be concurrently
23 served meaning you have a total of 15 years against
24 you. I'm gonna credit you for 379 days that you
25 have already served against that sentence. That is

1 the sentence of the Court. We're gonna remand you
2 now to the Department of Corrections, sir, and we
3 will wish you well.

4 MR. JONES: Your Honor, before we go might
5 we make a motion for new trial?

6 THE COURT: You may.

7 MS. WISE: Yes, if I could make my
8 motions.

9 THE COURT: All right, let's just take
10 that right now. What motion do you have for a new
11 trial?

12 MS. WISE: I would renew all of my
13 previous motions and objections as well as for a new
14 trial.

15 THE COURT: All right. I'm gonna
16 respectfully deny those motions for the same reasons
17 that the Court has denied the motions throughout the
18 trial finding there's ample evidence in this record
19 to support the verdict; and of course, the sentence
20 is within the statutory framework so.

21 We'll let you just remain right there.

22 Counsel, step up one moment if you will
23 please. Just, Mr. Cotton and family, just remain
24 where right where you are. Ms. Cusack and others,
25 please remain where you are.

1 (WHEREUPON, counsel approached the Bench
2 for an off-the-record discussion.)

3 THE COURT: All right, ladies and
4 gentlemen, what we were discussing here was whether
5 or not a split sentence is available which the Court
6 does not perceive a suspendible sentence is
7 available here. The Court is not inclined to
8 suspend the sentence. Again, you have a total of 15
9 years. This is a concurrent sentence. You have 15
10 times two which you're gonna serve them at the same
11 time, which is a total of 15 years, so we're gonna
12 remand you now to the detention center. Good luck
13 to you, Mr. Cotton.

14 Ms. Cotton, I'm sorry, ma'am.

15 (WHEREUPON, the proceedings were
16 concluded.)

17

18

19 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

20

21

22

23

24

25

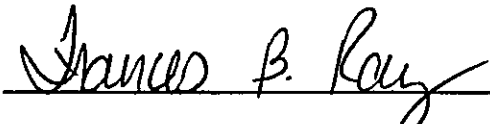
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA }
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 3rd day of July, 2014.


FRANCES BAKIS-RAY, RPR

WITNESSES

Brandon Peavy

Darlington County Sheriff

Law Enforcement Case #: 201302-0022



495

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2013A1610400081

ARRESTED ON: 2013-02-13

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson



Date JUL 18 2013

VERDICT

Petit Jury Foreperson

Date

21CP160559

DOCKET NUMBER:
2013-GS-16-1438

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
July 2013

THE STATE

VS. .

Damyon Marquise Cotton

INDICTMENT FOR

Kidnapping / Kidnapping

§16-03-0910

CDR Code: 0095

2013 JUL 13 A 9:28
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)

21 CP 160559
 INDICTMENT FOR

Kidnapping / Kidnapping

§16-03-0910

At a Court of General Sessions, convened on July 18, 2013, the Grand Jurors of Darlington County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Damyon Marquise Cotton did in Darlington County on or about February 1, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Yasmin Cusack, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

FILED
 2013 JUL 13 A 9 26
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 WILLIAM B. ROGERS, JR.
 SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Darlington
STATE VS.
Danyon Marquise Cotton

AKA:

Race: Black Sex: M Age: 21

City, State, Zip:

SID#:

☐ MV Yes ☐ No ☐ Hazmat Yes ☐ No

In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Holt, John

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 371 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-10 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	✓
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	
§ 56-5-2995 (DUI Assessment)	\$12	
§ 56-5-286 (DUI Breath Test)	\$25	
Proviso 47.9 (Public Def/Prob)	\$500	
§ 14-1-212 (Law Enforce. Funding)	\$25	✓
§ 14-1-213 (Drug Court Surcharge)	\$150	
§ 50-21-114(BUT Breath Test Fee)	\$50	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	
Proviso 90.5 (SCCJA Surcharge)	\$5	✓
3% to County (if paid in installments)	\$	
TOTAL	\$	

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-16-1438A/W#: 2013A1610400081Date of Offense: 2/1/2013S.C. Code § 16-03-0910CDR Code #: 0095

SENTENCE SHEET

21CP160559

CONVICTED OF or ☐ PLBADS

 days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp ☐

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive, or lump sum payments of \$

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2121Sentence Date: 02/26/14

WITNESSES

Brandon Peavy

Darlington County Sheriff

Law Enforcement Case #: 201302-0022



495

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2013A1610400082

ARRESTED ON: 2013-02-13

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

Date

JUL 18 2013

VERDICT

Petit Jury Foreperson

Date

21 CP 160559

DOCKET NUMBER:

2013-GS-16-1439

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:

July 2013

THE STATE

vs.

Damyon Marquise Cotton

INDICTMENT FOR

Sex / Criminal sexual conduct - First degree

§16-03-0652

CDR Code: 0160

2013 JUL 13 A 9:26
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

William B. Rogers, Jr., Solicitor

21 CP 160559

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

Sex / Criminal sexual conduct - First degree

§16-03-0652

At a Court of General Sessions, convened on July 18, 2013, the Grand Jurors of Darlington County present upon their oath:

CRIMINAL SEXUAL CONDUCT, FIRST DEGREE

CDR: 0160 16-03-0652

That Damyon Marquise Cotton did in Darlington on or about February 1, 2013, engage in sexual battery with Yasmin Cusack, while the victim was also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act, in violation of Section 16-03-0652, S. C. Code of Laws, 1976, as amended.

FILED
2013 JUL 13 A 9:26...
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Darlington

VS.

Damyon Marquise Cotton

AKA:

Race: Black

Sex: M

Age: 21

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-16-1439

A/W#: 2013A1610400082

Date of Offense: 2/1/2013

S.C. Code §: 16-03-0652

CDR Code #: 0160

SENTENCE SHEET

21CP160559

☒ CONVICTED OF or ☐ PLEADS*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct - First degree

in violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Holt, John

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 11 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Del. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$300	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2121

Sentence Date: 02/26/14

FORM 5

STATE OF SOUTH CAROLINA)

County of)

Darlington)

Dampn Cotton #359012)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

21 CP 160559

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - 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 Kershaw Correctional
2. Name and location of Court which imposed sentence Darlington County Court House Darlington County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offense for which sentence was imposed:
 - (a) 2013 GS 1601438
 - (b) 2013 GS 1601439

FILED
 JUL 13 A 9 25
 SCOTT B. SUGGS
 CLERK OF COURT, O.D.
 DARLINGTON COUNTY, S.C.