

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED

JUL 23 2012

S.C. Supreme Court

THURSTON M. BOLTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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South Carolina Commission on Indigent
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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 08-GS-10-4635-4637
	)	
Thurston M. Bolton,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within jury trial was held August 31, 2009 - September 1, 2009, before The Honorable R. Markley Dennis, Jr. in Courtroom 3B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Peter McCoy, Assistant Solicitor
Adam Young, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
100 Broad Street, 4th Floor
Charleston, South Carolina 29401
Appearing for State of South Carolina

Ted Smith, Assistant Public Defender
Mary Ford, Assistant Public Defendant
CHARLESTON PUBLIC DEFENDER'S OFFICE
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Appearing for Defendant

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1 AUGUST 31, 2009 9:00 A.M.

2

3 (STATUTORY JURY QUALIFICATION)

4 (JURY PANEL IN @ 11:20 A.M.)

5 (DEFENDANT PRESENT)

6 THE COURT: Thank you, Ladies and
7 Gentlemen. I appreciate your patience thus far.
8 The first dispute which we need your assistance
9 is a dispute that's captioned State of South
10 Carolina, and the first party I identify is the
11 person or party who's making the claim. The
12 State is making a claim against Mr. Thurston
13 Bolton in that it is accusing Mr. Bolton of
14 committing two offenses: one, the offense of
15 criminal sexual conduct in the first degree, and
16 two, kidnaping.
17 First, I'd like to introduce to you Mr. Bolton
18 who is seated at the table to my left. Good
19 morning, Mr. Bolton. If you would please state
20 and face the jury panel.

21 DEFENDANT: (Complies)..

22 THE COURT: The individual in the
23 middle is Mr. Thurston Bolton. Thank you, sir.
24 You may take your seat.

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1 Are there any members of the jury panel
2 related by blood or marriage, had any business
3 dealings with, socially or casually acquainted
4 with Mr. Bolton? If so, please stand. (No
5 response). Thank you. There appear to be none.

6 Mr. Bolton is represented in this
7 matter by Mr. Smith. If you would identify
8 yourself and anyone that will be assisting you,
9 please.

10 MR. SMITH: My name is Ted Smith. I
11 work for the Charleston County Public Defender's
12 Office. Assisting me today is Ms. Mary Ford.
13 She is also an Assistant Public Defender.

14 THE COURT: Thank you, Mr. Smith.
15 Are there any members of the jury panel related
16 by blood or marriage, have any business dealings
17 with, socially or casually acquainted with, ever
18 been represented by Mr. Smith or Ms. Ford? If
19 so, please stand. Yes?

20 JUROR: I knew Mary when she was
21 in high school here.

22 THE COURT: Your name and number?

23 JUROR: Number 26.

24 THE COURT: The fact that you know
25 Ms. Ford, would that influence or affect you in

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1 this dispute?

2 JUROR NUMBER 26: No.

3 THE COURT: Would you base your
4 decision on the evidence and the law, and would
5 that decision be fair to both sides?

6 JUROR NUMBER 26: Yes.

7 THE COURT: Your number again?

8 THE COURT: Yes, sir.

9 JUROR NUMBER 221: Robert Polk,
10 Juror 221. My memory is that at some point I
11 was involved in a post-conviction relief with
12 Mr. Smith.

13 THE COURT: The fact that you had
14 that connection with Mr. Smith, would that
15 influence you at all in this dispute, sir?

16 JUROR NUMBER 221: No, sir.

17 THE COURT: Would you base your
18 decision on the evidence and the law, and would
19 your decision be fair to both sides?

20 JUROR NUMBER 221: Yes, sir.

21 THE COURT: Are there others? (No
22 response). Thank you. There appear to be none.

23 Are there any members of the jury panel
24 related by blood or marriage, have any business
25 dealings with, social or casually acquainted

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1 with, ever been represented by Mr. Ashley
2 Pennington who is the Public Defender for the
3 Ninth Judicial Circuit? If so, please stand.
4 (No response). Thank you. There are none.

5 Are there any members of the jury panel
6 related by blood or marriage to anyone employed
7 with or have any business dealings with anyone
8 employed with the Public Defender's Office for
9 basically the Ninth Circuit, which it has
10 offices in Berkeley and in Charleston? If so,
11 please stand. (No response). Thank you. There
12 appear to be none.

13 Or any members related by blood or
14 marriage, have any business dealings with,
15 socially or casually acquainted with, ever been
16 represented by Scarlet Wilson who is the
17 Solicitor for the Ninth Judicial Circuit? If
18 so, please stand. (No response). Thank you.
19 There are none.

20 The State is being represented in this
21 matter by Mr. McCoy. Will you identify yourself
22 and anyone that will be assisting you, please?

23 MR. MCCOY: Good morning. My name's
24 Peter McCoy. I'm an Assistant Solicitor for the
25 Ninth Circuit, which is Charleston and Berkeley

1 County. Helping me with this case is Assistant
2 Solicitor Adam Young.

3 THE COURT: Are there any members of
4 the jury panel related by blood or marriage,
5 have any business dealings with, socially or
6 casually acquainted with Mr. McCoy or Mr. Young
7 or ever been represented by either of them? If
8 so, please stand.

9 JUROR NUMBER 221: Again, Your
10 Honor, I think I've done some business with the
11 Prosecutor's Office, and I think one of these
12 two attorneys.

13 THE COURT: Would that affect or
14 influence you, Mr. Poke?

15 JUROR: No, sir.

16 THE COURT: And again, would you base
17 your decision on the evidence and the law, and
18 would you be fair to both side?

19 JUROR: Yes, sir.

20 THE COURT: Your number again?

21 JUROR: 221.

22 THE COURT: Thank you, sir. Are
23 there others? (No response). There appear to
24 be none.

25 Are there any members of the jury panel

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1 related by blood or marriage, have any business
2 dealings with anyone employed with the
3 Solicitor's Office for the Ninth Circuit?
4 It has offices in Charleston and Berkeley
5 County. If so, please stand. (No response).
6 Thank you. There appear to be none.

7 I'm going to identify a number of
8 persons, Ladies and Gentlemen. If you are
9 related by blood or marriage, have any business
10 dealings with or are socially or casually
11 acquainted with any of these individuals, you
12 need to stand and share that information,
13 please, with the Court:

14 Shaquinna McNeil,
15 Johnsey McNeil,
16 Michelle Emerson,
17 James Cooper,
18 Officer John Wilson,
19 Officer Harry Mather,
20 Paula Davis,
21 Alex Techee,
22 Scott Wyant,
23 Al Hallman,
24 Kelly Murphy, and
25 Angie Bucker, all of whom are with the

1 North Charleston Police Department.

2 Faye LeBoeuf with MUSC Forensics.

3 Tim Rambo,

4 Manuel Ortuno,

5 Mickey Perry,

6 Amy Stephens,

7 Coronda Williams,

8 Verona Gibson, all of whom are employed

9 with the South Carolina Law Enforcement

10 Division, also known as SLED.

11 Sherry Niblock with the Solicitor's

12 Office for the Ninth Judicial Circuit.

13 Ronald Ostrowski,

14 Darren Proietti.

15 Any of those persons? (No response).

16 Thank you. There appear to be none.

17 The dispute, Ladies and Gentlemen, that

18 brings us here today is framed by these two

19 documents that I hold in my hand. They are what

20 they appear to be to you. They are pieces of

21 paper. They're called indictments, which really

22 are formal documents that accuse Mr. Bolton of

23 the two offenses I mentioned. They are not

24 evidence.

25 And what I'm about to share with you is

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1 not evidence but I need to share with you what's
2 alleged so I can ask you some questions.

3 It's alleged that Mr. Bolton did, on or
4 about March 22, 2008, in Charleston County,
5 commit a sexual battery upon the victim,
6 Shaquinna McNeil, without her consent and the
7 use of aggravated force in that he forcibly
8 restrained the victim while inside the house and
9 that he forced the victim onto a bed within the
10 defendant's residence and aggressively removed
11 the victim's clothing from her person and
12 penetrated her vagina with his penis.

13 All of that is further alleged to be a
14 violation of the crime of criminal sexual
15 conduct in the first degree.

16 It is also alleged at that time and
17 place that he did unlawfully seize and confine
18 Shaquinna McNeil without authority of law, which
19 violated the kidnaping statute describing such
20 conduct.

21 I share that with you, first of all, to
22 find out whether or not any member of the jury
23 panel has heard anything, read anything, do you
24 have any prior knowledge of this dispute? If
25 so, please stand. (No response). Thank you.

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1 There are none.

2 Is there anything about the nature of
3 this offense that you, because of something
4 that's happened to you in your life or a close
5 family member or personal friend, some strong
6 feeling that you may have concerning these
7 charges, some philosophy you may have concerning
8 these charges that would affect in any way your
9 ability to fairly and impartially consider the
10 evidence and decide what you believe to be the
11 true facts; and once deciding those facts,
12 taking the law as I give it to you and applying
13 that law fairly and impartially to those facts
14 so that you would reach a fair and impartial
15 determination? If you feel you could not do
16 that for some reason, please stand. (No
17 response). Thank you. There appear to be none.

18 Are there any members of the jury panel
19 or member of your immediate family or a close
20 personal friend who has been involved, either
21 you were a victim or you were testifying on
22 behalf of a victim or you were just there for
23 support of an alleged victim, or you were
24 accused of committing a violent crime, or you
25 were testifying on behalf of a person who was so

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1 accused, or there for support? If at any time
2 you've had any involvement with any violent
3 crime, including criminal sexual conduct and/or
4 kidnaping, if so, please stand. (Juror stands).
5 I'll ask that juror to come forward, please, if
6 you would.

7 BENCH CONFERENCE:

8 THE COURT: Your name and number?

9 JUROR NUMBER 146: Amy Johnson,
10 Number 146.

11 THE COURT: Good morning.

12 JUROR NUMBER 146: My rapist was
13 raped and the rapist ran into my house and I
14 testified for my neighbor.

15 THE COURT: Would that affect or
16 influence you in this matter?

17 JUROR NUMBER 146: It would not.

18 THE COURT: You would base your
19 decision on the evidence and the law and it
20 would be fair to both sides?

21 JUROR NUMBER 146: Yes, sir, I
22 would.

23 THE COURT: Thank you.

24 (BENCH CONFERENCE CONCLUDED)

25 THE COURT: Number 146 will remain.

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1 Are there others? (No response). Thank you.

2 There appear to be none.

3 Are there any members of the jury panel
4 who are members of any victim's rights or law
5 enforcement organizations such as Mothers
6 Against Drunk Driving, Citizens Against Violent
7 Crime, known as CAVE, People Against Rape, known
8 as PAR, or similar organizations? If so, please
9 stand. (No response). Thank you. There appear
10 to be none.

11 Any additional specific questions from
12 the State?

13 MR. MCCOY: None from the State, Your
14 Honor.

15 THE COURT: Any specific questions
16 from the Defendant?

17 MR. SMITH: No, Your Honor.

18 THE COURT: Thank you. Ladies and
19 Gentlemen, one of the things that will happen,
20 as I mentioned to you, is that you will become a
21 judge with me in resolving this dispute. And
22 one of the things that will happen when you're
23 selected to be a juror, the first thing, in
24 fact, is that you will raise your hand and you
25 will take an oath that you will, at the

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1 appropriate time, fairly and impartially apply
2 your common sense, your sense of logic and
3 reason in analyzing the evidence, and once
4 decide what you believe to be the true facts.

5 You further promise to take the law as
6 I give it to you and apply that law fairly and
7 impartially to those facts.

8 Based on what you've heard thus far, is
9 there anything that would give you a concern
10 about your ability to make that commitment to
11 the Court and to both sides? (No response).
12 Thank you very much.

13 What's going to happen now, the
14 Solicitor will call your name, one at the time,
15 and ask you to come forward. I ask you, when
16 you come forward, to come stand where I'm
17 standing right now, facing outward.

18 Each side, first the State will have an
19 opportunity to say keep the juror, swear the
20 juror, excuse the juror. If they say keep the
21 juror, then Mr. Bolton will have an opportunity,
22 through his attorney, Mr. Smith, to say keep the
23 juror, swear the juror, excuse the juror. And
24 we'll go through that process.

25 The State may excuse five persons. Mr.

1 Bolton may excuse ten persons. And we'll go
2 through that until we select our twelve jurors,
3 and then we'll select one alternate. Please
4 understand, if either side excuses you, that
5 doesn't mean anything. That's just the process.
6 If you're excused, just return to your seat and
7 we'll proceed with the next one until we get our
8 jury empaneled.

9 Thank you. Give your attention now to
10 Ms. Wilson as we proceed with the selection.

11 CLERK: Juror number 60, Ronald
12 Conway.

13 (JUROR BEFORE COUNSEL)

14 CLERK: What say you for the State?

15 MR. MCCOY: Please present the juror.

16 CLERK: What say you for the
17 Defendant?

18 MR. SMITH: Please excuse the juror.

19 CLERK: Sir, you've been excused from
20 the trial of this case. Please have a seat back
21 in the audience.

22 (JUROR NUMBER 60 EXCUSED)

23 CLERK: Juror number 303, Cathy Bryan.

24 (JUROR BEFORE COUNSEL)

25 CLERK: What say you for the State?

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1 MR. MCCOY: Please present the juror.

2 CLERK: What say you for the

3 Defendant?

4 MR. SMITH: Please seat the juror.

5 CLERK: Ma'am, you've been selected

6 for the trial of this case. Please have a seat

7 in the jury box.

8 (JUROR NUMBER 303 SEATED)

9 CLERK: Juror number 212, Thomas

10 Olson.

11 (JUROR BEFORE COUNSEL)

12 CLERK: What say you for the State?

13 MR. MCCOY: Please present the juror.

14 CLERK: What say you for the

15 Defendant?

16 MR. SMITH: Please seat the juror.

17 CLERK: Sir, you've been selected for

18 the trial of this case. Please have a seat in

19 the jury box.

20 (JUROR NUMBER 212 SEATED)

21 CLERK: Juror number 290, Christine

22 Williams.

23 (JUROR BEFORE COUNSEL)

24 CLERK: What say you for the State?

25 MR. MCCOY: Please present the juror.

1 CLERK: What say you for the
2 Defendant?

3 MR. SMITH: Please excuse the juror.

4 CLERK: Ma'am, you've been excused
5 from the trial of this case. Please have a seat
6 back in the audience.

7 (JUROR NUMBER 290 EXCUSED)

8 CLERK: Juror number 327, Calvin
9 Randolph.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What say you for the State?

12 MR. MCCOY: Please excuse the juror.

13 CLERK: Sir, you've been excused from
14 the trial of this case. Please have a seat back
15 in the audience.

16 (JUROR NUMBER 327 EXCUSED)

17 CLERK: Juror number 128, Charles
18 Hipp.

19 (JUROR BEFORE COUNSEL)

20 CLERK: What say you for the State?

21 MR. MCCOY: Please present the juror.

22 CLERK: What say you for the
23 Defendant?

24 MR. SMITH: Please excuse the juror.

25 CLERK: Sir, you've been excused from

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1 the trial of this case. Please have a seat back
2 in the audience.

3 (JUROR NUMBER 128 EXCUSED)

4 CLERK: Juror number 260, Jeremy
5 Spencer.

6 (JUROR BEFORE COUNSEL)

7 THE COURT: What say you for the
8 State?

9 MR. MCCOY: Please present the juror.

10 CLERK: What say you for the
11 Defendant?

12 MR. SMITH: Please seat this juror.

13 CLERK: Sir, you're selected for the
14 trial of this case. If you will, please have a
15 seat in the jury box.

16 (JUROR NUMBER 260 SEATED)

17 CLERK: Juror number 243, Susan Sill.

18 (JUROR BEFORE COUNSEL)

19 CLERK: What say you for the State?

20 MR. MCCOY: Please present the juror.

21 CLERK: What say you for the
22 Defendant?

23 MR. SMITH: Please excuse the juror.

24 CLERK: Ma'am, you're excused from the
25 trial of this case. Please have a seat back in

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1 the audience.

2 (JUROR NUMBER 243 EXCUSED)

3 CLERK: Juror number 146, Amy
4 Johnson.

5 (JUROR BEFORE COUNSEL)

6 CLERK: What say you for the State?

7 MR. MCCOY: Please present this
8 juror.

9 CLERK: What say you for the
10 Defendant?

11 MR. SMITH: Please excuse the juror.

12 CLERK: Ma'am, you're excused from the
13 trial of this case. Please have a seat back in
14 the audience.

15 (JUROR NUMBER 146 EXCUSED)

16 CLERK: Juror number 6, Jenny Altman.

17 (JUROR BEFORE COUNSEL)

18 CLERK: What say you for the State?

19 MR. MCCOY: Please present this
20 juror.

21 CLERK: What say you for the
22 Defendant?

23 MR. SMITH: Please seat this juror.

24 CLERK: Ma'am, you've been selected
25 for the trial of this case. Please have a seat

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1 in the jury box.

2 (JUROR NUMBER 6 SEATED)

3 CLERK: Juror number 221, Robert Polk.

4 (JUROR BEFORE COUNSEL)

5 CLERK: What say you for the State?

6 MR. MCCOY: Please present the juror.

7 CLERK: What say you for the

8 Defendant?

9 MR. SMITH: Please excuse this juror.

10 CLERK: Sir, you've been excused from
11 the trial of this case. Please have a seat back
12 in the audience.

13 (JUROR NUMBER 221 EXCUSED)

14 CLERK: Juror number 139, Pamela
15 Huggins.

16 (JUROR BEFORE COUNSEL)

17 CLERK: What say you for the State?

18 MR. MCCOY: Please present the juror.

19 CLERK: What say you for the

20 Defendant?

21 MR. SMITH: Please seat the juror.

22 CLERK: Ma'am, you've been selected
23 for the trial of this case. Please have a seat
24 in the jury box.

25 (JUROR NUMBER 139 SEATED)

1 CLERK: Juror number 314, Alfred

2 Jamison.

3 (JUROR BEFORE COUNSEL)

4 CLERK: What say you for the State?

5 MR. MCCOY: Please excuse this juror.

6 CLERK: Sir, you've been excused from
7 the trial of this case. Please have a seat back
8 in the audience.

9 (JUROR NUMBER 314 EXCUSED)

10 CLERK: Juror number 167, Mark Levine.

11 (JUROR BEFORE COUNSEL)

12 CLERK: What say you for the State?

13 MR. MCCOY: Please present the juror.

14 CLERK: What say you for the
15 Defendant?

16 MR. SMITH: Please seat this juror.

17 CLERK: Sir, you've been selected for
18 the trial of this case. Please have a seat in
19 the jury box.

20 (JUROR NUMBER 167 SEATED)

21 CLERK: Juror number 319, Robert
22 Lawrence.

23 (JUROR BEFORE COUNSEL)

24 THE COURT: What say you for the
25 State?

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1 MR. MCCOY: Please present the juror.

2 CLERK: What say you for the

3 Defendant?

4 MR. SMITH: Please seat this juror.

5 CLERK: Sir, you've been selected for

6 the trial of this case. Please have a seat in

7 the jury box.

8 (JUROR NUMBER 319 SEATED)

9 CLERK: Juror number 211, Nathan

10 Olson.

11 (JUROR BEFORE COUNSEL)

12 THE COURT: What say you for the

13 State?

14 MR. MCCOY: Please present the juror.

15 CLERK: What say you for the

16 Defendant?

17 MR. SMITH: Please seat this juror.

18 CLERK: Sir, you've been selected for

19 the trial of this case. Please have a seat in

20 the jury box.

21 (JUROR NUMBER 211 SEATED)

22 CLERK: Juror number 203, Robert Moss.

23 What say you for the State?

24 MR. MCCOY: Please present the juror.

25 CLERK: What say you for the

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1 Defendant?

2 MR. SMITH: Please excuse this juror.

3 CLERK: Sir, you've been excused from
4 the trial of this case. Please have a seat back
5 in the audience.

6 (JUROR NUMBER 203 EXCUSED)

7 CLERK: Juror number 38, John Buddin.

8 (JUROR BEFORE COUNSEL)

9 CLERK: What say you for the State?

10 MR. MCCOY: Please present this
11 juror.

12 CLERK: What say you for the
13 Defendant?

14 MR. SMITH: Please seat this juror.

15 CLERK: Sir, you've been selected for
16 the trial of this case. Please have a seat in
17 the jury box.

18 (JUROR NUMBER 38 SEATED)

19 CLERK: Juror number 162, Nicole
20 Lawrence.

21 (JUROR BEFORE COUNSEL)

22 CLERK: What say you for the State?

23 MR. MCCOY: Please present this
24 juror.

25 CLERK: What say you for the

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1 Defendant?

2 MR. SMITH: Please excuse the juror.

3 CLERK: Ma'am, you've been excused
4 from the trial of this case. Please have a seat
5 back in the audience.

6 (JUROR NUMBER 162 EXCUSED)

7 CLERK: Juror number 251, Albert
8 Singletary.

9 (JUROR BEFORE COUNSEL)

10 THE COURT: What say you for the
11 State?

12 MR. MCCOY: Please present this
13 juror.

14 CLERK: What say you for the
15 Defendant?

16 MR. SMITH: Please seat the juror.

17 CLERK: Sir, you've been selected for
18 the trial of this case. Please have a seat in
19 the jury box.

20 (JUROR NUMBER 251 SEATED)

21 CLERK: Juror number 181, Batiste
22 Marsh.

23 (JUROR BEFORE COUNSEL)

24 CLERK: What say you for the state?

25 MR. MCCOY: Please present this

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1 juror.

2 CLERK: What say you for the
3 Defendant?

4 MR. SMITH: Please seat this juror.

5 CLERK: Sir, you've been selected for
6 the trial of this case. Please have a seat in
7 the jury box.

8 (JUROR NUMBER 181 SEATED)

9 CLERK: Juror number 177, Robert
10 Mowder.

11 (JUROR BEFORE COUNSEL)

12 CLERK: What say you for the State?

13 MR. MCCOY: Please present this
14 juror.

15 CLERK: What say you for the
16 Defendant?

17 MR. SMITH: Please excuse this juror.

18 CLERK: Sir, you've been excused from
19 the trial of this case. Please have a seat back
20 in the audience.

21 (JUROR NUMBER 177 EXCUSED)

22 CLERK: Defendant has one strike
23 remaining. Juror number 335, Linda Ward.

24 (JUROR BEFORE COUNSEL)

25 CLERK: What say you for the State?

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1 MR. MCCOY: Please present this
2 juror.

3 CLERK: What say you for the
4 Defendant?

5 MR. SMITH: Please excuse this juror.

6 CLERK: Ma'am, you've been excused
7 from the trial of this case. Please have a seat
8 back in the audience.

9 (JUROR NUMBER 335 EXCUSED)

10 CLERK: Defendant has exhausted all
11 its strikes. Juror number 9, Michael Bailey.

12 (JUROR BEFORE COUNSEL)

13 CLERK: What say you for the State?

14 MR. MCCOY: Please present this
15 juror.

16 CLERK: Any challenge from the
17 Defendant?

18 MR. SMITH: No.

19 CLERK: Sir, you've been selected for
20 the trial of this case. Please have a seat in
21 the jury box.

22 (JUROR NUMBER 9 SEATED)

23 CLERK: Your Honor, those are our
24 twelve jurors.

25 THE COURT: Thank you. Let's select

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1 one alternate. Strikes will be one and two.

2 CLERK: Yes, sir. Juror number 43,
3 Robert Calhoun.

4 (JUROR BEFORE COUNSEL)

5 CLERK: What say you for the State?

6 MR. MCCOY: Please present this
7 juror.

8 CLERK: What say you for the
9 Defendant?

10 MR. SMITH: Please excuse this juror.

11 CLERK: Sir, you've been excused from
12 the trial of this case. Please have a seat back
13 in the audience.

14 (JUROR NUMBER 43 EXCUSED)

15 CLERK: Juror number 108, Alfred
16 Grant. What say you for the State?

17 MR. MCCOY: Please present this
18 juror.

19 CLERK: What say you for the
20 Defendant?

21 MR. SMITH: Please seat this juror.

22 CLERK: Sir, you've been selected for
23 the trial of this case. Please have a seat in
24 the jury box.

25 (JUROR NUMBER 108 SEATED)

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1 CLERK: Your Honor, our jury has been
2 selected.

3 THE COURT: Thank you, sir. Are
4 there any motions from the State regarding the
5 selection?

6 MR. MCCOY: Your Honor, may I have
7 one moment?

8 THE COURT: Certainly.

9 MR. MCCOY: Your Honor, if I could
10 talk with Ted for one moment, maybe we can
11 resolve the issue. (Sidebar with Mr. Smith) --
12 Your Honor, we don't have anything.

13 THE COURT: Are there any Motions
14 from the Defendant regarding the selection?

15 MR. SMITH: No, Your Honor.

16 THE COURT: Thank you very much.

17 (JURY SEATED @ 12:01 P.M.)

18 THE COURT: Ladies and Gentlemen,
19 those of you that were not selected, thank you
20 for your assistance. Please call the number
21 after 6:00 tonight and follow that instruction.
22 It will tell you when to report again, but you
23 are excused for the balance of the day. Have a
24 good day. Thank you.

25 (JURY PANEL EXCUSED)

1 THE COURT: Ladies and Gentlemen, those of
2 you that were selected, thank you for your
3 patience and thank you for your participation in
4 the process. At this point, it's 12:00 o'clock,
5 and I think the best thing to do -- there's some
6 matters of law that I need to take up out of
7 your presence, and we'll take care of those in
8 the next few minutes. I'll let you go to lunch.
9 I'll ask you to return to your jury room, and
10 when you exit, if you will go through this door
11 here to your left, they will show you where you
12 need to return.

13 Please remember that you have not heard
14 anything, you've not heard any evidence. You've
15 heard what was alleged. But don't speculate
16 about it. You will make a commitment to decide
17 this case based on what you hear in this
18 courtroom. So please understand that.

19 Also remember, too, that you are not at
20 liberty to talk among yourselves or talk with
21 anyone about this case at any time. That's very
22 important, and we'll talk about that more when
23 you return. But while you're out just don't
24 allow anybody to talk to you about serving on
25 this jury or talk about this case in your

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1 presence.

2 When you come back in -- well, let me
3 talk about a couple of things. At this point
4 our alternate is Mr. Grant. Mr. Grant you have
5 the privilege of occupying either of chairs on
6 the end. They belong to you, sir, as long as
7 you are the alternate. And the alternate really
8 doesn't mean anything at this point. If at the
9 end of this case the first twelve are able to
10 continue, then you would not participate in the
11 final deliberations.

12 But since neither you nor I know the
13 status of those jurors, please remember and
14 understand that you are very much a part of this
15 jury panel, notwithstanding you are the
16 alternate. And I'm sure that you will pay close
17 attention to the proceedings. But while you are
18 there, you may sit in that seat.

19 The only other designated seats, Father
20 Lawrence is sitting in it right now, and that
21 seat may be occupied by any of you until you
22 select your presiding juror. The presiding
23 juror is also called the foreperson, forelady,
24 foreman. I call them presiding juror. That's
25 what someone will have to do when you do begin

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1 your deliberations. The presiding juror has the
2 responsibility of signing the verdict form on
3 behalf of the jury panel when the jury's
4 completed its deliberations, and also receiving
5 any exhibits that might be introduced into
6 evidence here in the proceeding. Once the jury
7 has completed its deliberations the presiding
8 juror will be responsible for gathering that
9 information and returning it to the Court.
10 That's about the difference.

11 Any of the first twelve of you are
12 eligible to serve as the presiding juror. The
13 statute permits me to appoint the presiding
14 juror or you to select that person. I let the
15 jury pick their presiding juror. It does not
16 have to be done right away. But at some point
17 if you will identify that person, and once that
18 person has been so identified, I would simply
19 ask that they occupy that chair. The only
20 person that's not eligible to serve is Mr.
21 Grant.

22 Thank you for your attention. You are
23 now excused. Be back in your jury room, please,
24 by 1:30. Thank you.

25 (JURY OUT AT 12:05 P.M.)

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1 THE COURT: Are there any Motions
2 from the State at this point?

3 MR. MCCOY: No Motions from the
4 State, Your Honor.

5 THE COURT: Mr. Smith?

6 MR. SMITH: Your Honor, there are
7 just a couple of brief matters.

8 THE COURT: Sure.

9 MR. SMITH: We would ask that the
10 State's witnesses be sequestered. Mr. McCoy --
11 I think we made an agreement that the victim and
12 her mother would be allowed to remain in the
13 courtroom, and they are entitled to be in the
14 courtroom.

15 THE COURT: Correct.

16 MR. SMITH: We would just ask that
17 the others be sequestered.

18 THE COURT: Who's your chief
19 investigating officer?

20 MR. MCCOY: The chief investigator on
21 this case is John Wilson, but due to a conflict
22 in his schedule he will not be sitting with
23 them.

24 THE COURT: That's fine. The victim
25 and victim's mother, by agreement -- the

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1 victim's mother by agreement, the victim by law
2 will be permitted to remain. All other
3 witnesses will be sequestered, and that will
4 apply to the defense as well.

5 MR. SMITH: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. SMITH: Your Honor, we have a
8 matter which I guess we can take up if Mr.
9 Bolton intends to testify, and that would be
10 regarding his prior record.

11 THE COURT: Does he have one?

12 MR. SMITH: He does, Your Honor.

13 THE COURT: What is his prior record?

14 SOLICITOR McCOY: Your Honor, he has a
15 -- it is a 1982 conspiracy to commit murder and
16 attempted murder. And in 1989 it was a Burg 2nd
17 and an ABHAN.

18 THE COURT: Did he serve any time for
19 either of those?

20 SOLICITOR McCOY: The first charge he
21 did fifteen years. The second charge he did ten
22 years -- fifteen years, Your Honor.

23 THE COURT: When was he released?

24 SOLICITOR McCOY: On the burglary,
25 Your Honor, he was released -- I don't know the

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1 exact date, Your Honor, but I believe it was
2 1999. I can look that up.

3 THE COURT: So it would be beyond ten
4 years.

5 SOLICITOR MCCOY: Yes, sir.

6 THE COURT: If it's beyond the ten
7 years then the State would not be able to offer
8 that.

9 MR. SMITH: Thank you, Your Honor.
10 The only other brief motion -- I don't think
11 it's a Motion. I think we've agreed to this as
12 well, but I want to place it on the record.

13 Originally in this case there was a
14 life notice was served. It's my understanding
15 that at this point that that life without parole
16 notice is no longer and has been withdrawn.

17 THE COURT: Is that true?

18 MR. MCCOY: That's true.

19 THE COURT: Very well.

20 MR. SMITH: I think those are all the
21 pretrial matters that I have.

22 THE COURT: Thank you. Thank you
23 very much. We'll be at0ease then until 1:30.

24 SOLICITOR MCCOY: Thank you, Your
25 Honor.

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1 (LUNCH RECESS - 12:15 - 1:30 P.M.)

2 (DEFENDANT PRESENT)

3 THE COURT: State ready?

4 SOLICITOR McCOY: Yes, Your Honor.

5 THE COURT: Defense ready, Mr. Smith?

6 MR. SMITH: Yes, sir, Your Honor.

7 THE COURT: Invite the jury to

8 return.

9 (JURY ENTERS AT 1:55 P.M.)

10 BAILIFF: Jury is present.

11 THE COURT: Thank you, Mr. Williams

12 (bailiff). Thank you, Ladies and Gentlemen.

13 We're ready now to continue in the matter. I

14 ask you to give your attention, please, to Mr.

15 Wilson (Clerk) as he administers your oath.

16 CLERK: Thank you, Your Honor. Ladies

17 and Gentlemen of the jury, at this time please

18 stand and raise your right hands to be sworn.

19 Please respond verbally.

20 Do you swear or affirm that you will well

21 and truly try and true deliverance make to the

22 State of South Carolina and the defendant at the

23 bar, whom you shall have in charge, and a true

24 verdict rendered according to the evidence and

25 the law, so help you God?

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1 (UNANIMOUS AFFIRMATIVE RESPONSE BY JURORS)

2 THE COURT: Thank you, Mr. Wilson.
3 Thank you, Ladies and Gentlemen. You now have
4 become the judge with me in this case, and now
5 you and I will work together to resolve this
6 dispute.

7 Please remember something that I said
8 earlier when I was qualifying you. This is a
9 wonderful system and wonderful to a large extent
10 because of you, because I'm sure that each one
11 of you will honor the commitment that you have
12 made. That is that you will, at the appropriate
13 time, apply your common sense, your sense of
14 logic and reason fairly and impartially in
15 analyzing the evidence and then deciding what
16 you believe to be the true facts. Then once you
17 decide those true facts, then take the law as I
18 give it to you and apply that fairly and
19 impartially.

20 That's what that oath just said, that
21 you will base it on the evidence and the law.
22 I'm confident each one of you will do that. And
23 it's very important to this process because you
24 now, and you alone, have the responsibility of
25 deciding the true facts.

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1 You don't have anything to do with the
2 law. You've promised that you will accept that
3 law as I give it to you. And that's the
4 separation that we have to observe. Nothing
5 that I do or say in here in this trial should be
6 considered by you to be a discussion or a
7 suggestion of how you should resolve any of the
8 factual issues. Because that's what you will
9 resolve by applying your common sense and your
10 sense of logic and reason at the appropriate
11 time.

12 You brought with you when you came in
13 everything that you'll need to accomplish that.
14 No one expects you to leave your common sense,
15 your sense of logic outside. You brought it
16 with you. And you brought also something else
17 that I would suggest to you is very critical to
18 this process, an open mind. Because, if you
19 think about it, either through responding to any
20 questions that I asked of you, you indicated
21 that it would not influence or affect your
22 decision.

23 You heard me ask each person would they
24 base their decision on the evidence and the law,
25 and would that decision be fair to both sides?

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1 Either you indicated that or you didn't
2 respond, which says 'I don't know anything about
3 it and don't have anything to give me any
4 concern.' Remember my last question was is
5 there anything that would concern you about your
6 ability to make a commitment. And each of you,
7 by not responding, said no, there was nothing.

8 So, basically, you've said, 'Judge, I
9 don't know anything about this. I've heard what
10 you told me is alleged and there's nothing that
11 would cause me to predetermine any issues.'

12 So you brought an open mind. Keep that
13 open mind. It's very important to keep it until
14 I give you the instruction to begin your
15 deliberation. It's important for a number of
16 reasons. Number one, to change that position
17 would be contrary to the law and you've promised
18 that you will follow the law as I give it to
19 you. The last thing that I will tell you before
20 you begin your deliberations is when you leave
21 this courtroom, is when you may start. So until
22 then, keep an open mind.

23 Secondly, there are four distinct parts
24 to this process. In just a moment the attorneys
25 will have their first opportunity to address you

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1 and speak to you. They'll do that before you
2 hear the evidence. Then after you've heard the
3 evidence they have a second opportunity to speak
4 to you. Before you hear the evidence they will
5 give you an overview of the dispute. They may
6 discuss some evidentiary issues with you, and
7 they may discuss some of the legal principles
8 with you. Their remarks will be helpful to you,
9 both as you go through the trial, and the
10 closing remarks when they talk about the
11 evidence and the law. They'll help you in
12 analyzing the evidence and applying the law.
13 So please give them your attention.

14 But remember something. Just as my
15 remarks are not evidence, neither are their
16 remarks evidence. Because the evidence will
17 come through the testimony of the witnesses.
18 And it's that testimony that you will analyze.

19 After the opening statement we'll
20 proceed with the evidentiary portion. And the
21 first party to proceed will be the State. Why
22 is that? Because they make the claim. And the
23 law says in a criminal case, such as this, they
24 are the only party -- the only party -- that has
25 any burden of proof. They make the claim, they

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1 make the allegations, they have to prove it.

2 They have to prove each of the crimes,
3 criminal sexual conduct in the first degree and
4 kidnaping to a level or to the standard that I
5 will define for you during the charge of beyond
6 a reasonable doubt.

7 Maybe some of you have served in a
8 civil trial. And if you did, you heard that the
9 standard is a preponderance or greater weight of
10 the evidence, which is a probability standard.
11 Beyond a reasonable doubt is greater than that.
12 It's more than somebody being probably guilty.

13 Beyond a reasonable doubt -- and we'll
14 talk about that term during the charge - but I
15 will tell you now that a reasonable doubt is
16 that doubt that would make an honest,
17 conscientious juror, searching for the truth in
18 a case, hesitate to take some action on the act.
19 And that's the standard that you apply.

20 What do I mean by that? I mean when
21 you get to your deliberations you'll be asking
22 yourself as you analyze the evidence, 'Am I
23 convinced as to each of these elements?'

24 If your answer is that 'I'm convinced
25 beyond a reasonable doubt, yes,' then the State

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1 will have met it's burden of proof as to that
2 particular element, and you move on to the next
3 one until you've completed all the elements. If
4 the answer is yes to each of those elements,
5 then according to my instructions, you will be
6 instructed to return a verdict of guilty.
7 Because that's what a guilty verdict means. It
8 means the State met its burden of proof beyond a
9 reasonable doubt as to each element.

10 If your answer to one of those
11 questions -- one or more -- is 'it's possible,
12 might be, even probable,' if that's the
13 standard, then the State has failed to meet its
14 burden of proof and you must return a verdict of
15 not guilty as to that particular crime, because
16 the State has to meet each and every element
17 beyond a reasonable doubt before you may return
18 a verdict of guilty.

19 Whatever your verdict, of course, all
20 of you will be collectively discussing it at the
21 appropriate it, and it will be your collective
22 decision that will control. But remember
23 throughout the proceeding, you should never look
24 to Mr. Bolton to prove anything or disprove
25 anything, because he has no burden whatsoever.

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1 In fact, I will tell you and instruct
2 you during the charge that persons who are
3 accused of committing criminal offenses in this
4 state and really in this country are never
5 required to come in and prove or disprove
6 anything. They don't have any burden
7 whatsoever. So they certainly don't have the
8 burden to prove their innocence or explain
9 anything. You should never look to them for
10 anything at all, because they have no
11 responsibility. The only party that has a
12 burden is the State.

13 Now, after the State presents its case,
14 Mr. Bolton will have an opportunity -- he
15 doesn't have to do anything. He doesn't have to
16 present any evidence. But he will have an
17 opportunity to choose to present witnesses for
18 your consideration. That won't occur until
19 you've heard the entire State's case. It's
20 another very important reason that you keep that
21 open mind that is so critical to this process.

22 Now, after the evidentiary portion is
23 completed, you will hear from the attorneys in
24 closing arguments.

25 Then the last phase is when I will give

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1 you the law. During that charge I will discuss
2 with you reasonable doubt. I will discuss with
3 you certain elements and aspects of evidence and
4 factors to consider in evaluating credibility
5 and believability of witnesses, and I'll define
6 for you the two charges that have been brought
7 in this case.

8 Remember, no conclusions. But please
9 also remember when you are observing and
10 listening to this testimony, remember it's not
11 always what someone says but it might be how
12 they say it. It might be body language, little
13 things that you have learned during your life to
14 look for. They may be very important as you
15 assess and evaluate the credibility and
16 believability of that witness. Everyone expects
17 you to make those mental notes, but not reach
18 any conclusions until you've had a chance to
19 discuss that with each other.

20 So, please, as you go through you can
21 certainly catalogue those things that you need
22 that will help you when you begin your
23 deliberations. But do not, and resist the
24 temptation to resolve, determine issues until
25 you've had the opportunity to discuss that in

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1 your jury room.

2 I look forward to trying this case with
3 you. It's an honor to serve with each one of
4 you. I appreciate your attention to my remarks.
5 I ask you now to give that same attention to the
6 attorneys as they give their opening statements.
7 Mr. McCoy?

8 MR. MCCOY: Thank you, Your Honor.

9 MR. YOUNG: Ladies and Gentlemen of
10 the jury, "No" means no. No means no. This is
11 the key thing about the case that I want you all
12 to think about throughout today and tomorrow.
13 This is a woman's right anytime, to let the
14 other party know that intercourse is not
15 consensual and it's not wanted.

16 Ladies and Gentlemen, we have a rape
17 and kidnaping case. In South Carolina rape is
18 called criminal sexual conduct. These are the
19 types of cases don't normally come up for trial
20 because it's tough to talk about it. It's tough
21 to sit and listen to. But are they important?
22 The answer is yes. They are important for a
23 number of reasons. They're important in the
24 interest of justice. They're important to the
25 State of South Carolina. They're important to

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1 the victim, Shaquinna McNeil, twenty years old,
2 who's had to live with this crime over the past
3 year and a half.

4 Now, Ladies and Gentlemen, I ask you to
5 listen to the testimony, view the evidence that
6 the State puts up, it is important. When you
7 do, you'll find that it proves the Defendant
8 Thurston Bolton did, in fact, commit criminal
9 sexual conduct in the first degree and
10 kidnaping.

11 Ladies and Gentlemen, our facts are as
12 follows: On March 22, 2008 and our victim,
13 Shaquinna McNeil, spent the night at her
14 boyfriend's house in West Ashley. She wanted to
15 go to the mall that day to buy her friend a ring
16 for a birthday party.

17 Upon going to the mall she buys the
18 ring and needs a ride home. Through previous
19 dealings with the Defendant, she knew that he
20 operated a hot cab. What is "a hot cab"? That
21 terminology was new to me, it might be new to
22 some of you as well. A hot cab is an illegal
23 cab. What it is, is basically people who aren't
24 licensed, they aren't registered with a cab
25 company and they take low money for fares and

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1 they drive people around.

2 Again, a forty-three year-old male
3 operating this illegal cab picked up this
4 twenty-year-old young girl.

5 At this point Shaquinna told the
6 Defendant, "I need to go home." They get on
7 526, not going towards her house. A little bit
8 of nervousness sets in, she's a little confused.
9 But, again, a man over twice her age is driving
10 the car. She doesn't know who lives there.
11 They get to the house. She goes inside. She's
12 coerced to go inside. This girl is young, she's
13 innocent. She gets coerced to go inside the
14 house. He said it would just be a minute.

15 They walk in the door. At this point
16 the door closes behind her and click, click,
17 click -- three deadbolt locks later, she's
18 grabbed by the arm. She's forced back to the
19 bedroom. She's laid upon by the male body
20 weight, over a hundred pounds more than her, his
21 hand on her throat. He rapes her, not once, but
22 twice. Two times, he's raped Shaquinna.

23 She's fighting, she is pleading for the
24 Defendant to let her go. He won't. She goes
25 into survival mode at this point. She tries to

1 do anything she can to get away.

2 She tries to gain some distance by
3 asking for a drink of water. At this point she
4 goes to the sink to get a drink of water and
5 sprints for the door, her only line of freedom.
6 Mind you, she has no clothes on at this point,
7 -- completely naked - runs out the front door,
8 down the middle of the road in broad daylight at
9 5:00 p.m. with no clothes on in a neighborhood.
10 She's frantic. She's scared to death, and she
11 is looking for somebody to help her out. She
12 knows that the Defendant is in hot pursuit
13 behind her. This is where her savior comes in.

14 A lady you will meet by the name of
15 Michelle Emmerson. She's driving to the store
16 to get some milk. She sees our young victim
17 running down the middle of the road with no
18 clothes on at 5:00 p.m. in a neighborhood in
19 North Charleston. She stops, like any good
20 citizen, and picks her up. She gets in the car
21 and Shaquinna is frantic. She's crying.
22 Michelle immediately calls the police.
23 Shaquinna's so scared she's down in the
24 floorboard of the front seat. She can't even
25 sit in the seat. She is just kind of huddled

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1 together.

2 At this point Michelle looks up with
3 the victim, Shaquinna, and they see the
4 Defendant driving by shirtless in search of his
5 prey.

6 Ladies and Gentlemen, the officers told
7 them to meet her in a strip mall, which Michelle
8 proceeds to go to, all the while they continue
9 to see the Defendant circling the neighborhood
10 trying to find the victim that he had just
11 raped. They go to the strip mall. The officers
12 come. That's how we're here today.

13 Proper police work was done. You're
14 going to hear testimony of the officers today,
15 the lead detective, the DNA analyst, the SLED
16 agents. Listen to them. They'll tell you about
17 the creams, the lubricants that were at the
18 Defendant's house, hair. They will tell you
19 about the bed, they will tell you about the wet
20 spots on the bed. They're going to share that
21 with you. I ask you to listen.

22 Ladies and Gentlemen, stay with me here
23 for one moment. I want to show you what the --
24 the judge will instruct you at the end on the
25 law, but I want to touch base for just a moment

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1 on what the law is. The law of criminal sexual
2 conduct, as we bring it up here -- this is what
3 we must prove to you. Sexual battery where one
4 of the following occurs: the Defendant uses
5 aggravated force, or the victim committed sexual
6 battery while the victim is victim of forcible
7 confinement or kidnaping. I will give you a
8 moment to read that (visual screen).

9 Ladies and Gentlemen, the law of
10 kidnaping -- as the State of South Carolina
11 defines it: A statement of proof that there was
12 unlawful seizure, confinement, abduction or
13 carrying away of a person by any means without
14 the authority of law.

15 Ladies and Gentlemen, I submit to you
16 these elements will be proved throughout our
17 case. In closing, this case will take about a
18 day or two -- probably two days -- I ask you to
19 look at the testimony, observe the evidence that
20 we put up. When you do, I am confident that you
21 will return a verdict that the truth dictates
22 and justice demands, and that is a verdict of
23 guilty of criminal sexual conduct in the first
24 degree and guilty of kidnaping. Thank you.

25 THE COURT: Thank you, Mr. Young.

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1 Mr. Smith?

2 MR. SMITH: May it please the Court,
3 Your Honor. The stories differ just a little
4 bit. Thurston Bolton and Shaquinna McNeil met
5 each other downtown. They met at a Family
6 Dollar Store. They began to talk to one another
7 and she did ask him, 'Are you a hot cab?' He
8 told her 'No, I'm not, but what are you looking
9 for? Are you looking for a ride?' To which she
10 replied yes. And he said, 'Okay, I'll be glad
11 to take you. I'll be glad to give you a ride.'
12 He took her to that destination and he dropped
13 her off.

14 Over the next couple of weeks that was
15 repeated several times. She would call and say
16 'I really need a ride here. I really need a
17 ride there.' Each time he would take her. Each
18 time he would drop her off. He would leave her,
19 and nothing happened.

20 A little something did happen while
21 they were traveling together, however. Things
22 became more than a casual 'I need a ride, please
23 come and pick me up.' Things became a little
24 more romantic, I guess you would say.

25 There's no doubt Mr. Bolton became

1 infatuated with Ms. McNeil, and I think the same
2 could be said for Ms. McNeil of Mr. Bolton.

3 This all culminates over a several-week
4 period, and finally on Wednesday, March 19, just
5 a couple of days before this incident allegedly
6 occurs, Ms. McNeil wanted to go up to Northwoods
7 Mall. So again, she calls Mr. Bolton and said,
8 'Mr. Bolton, can you give me a ride to
9 Northwoods Mall?'

10 And during that ride to Northwoods Mall
11 they talked about going out on a date. Ms.
12 McNeil agreed that as soon as she was finished
13 at the mall that they could go and have their
14 date that night. So they did. They did what
15 any other couple would do on a date. They went
16 to a steakhouse up in North Charleston. They
17 talked about small talk. They talked about
18 schooling. They talked about her career
19 choices. And ultimately what they talked about
20 was just what any couple would out on a first
21 date after knowing each other for at least a
22 couple of weeks.

23 The evening didn't end there, however,
24 and it was not the first time, as the prosecutor
25 told you, Ms. McNeil had been to Mr. Bolton's

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1 house. That particular night after their date,
2 they left from the steakhouse and they went to
3 Mr. Bolton's house and they watched a movie, a
4 movie called *Dead Silence*. I don't know if any
5 of you have seen it. It's some crazy horror
6 flick. But it lasted about two hours. That
7 night at about 12:00 or 1:00 o'clock Ms. McNeil
8 said 'I want to go home.' He takes her home.
9 Again, there are no allegations of anything
10 happening during that visit.

11 They talk again on that Friday, just a
12 few days after. They talk about going out again
13 or at least her coming over for another movie.
14 But ultimately, Mr. Bolton was out of town and
15 they couldn't see each other that Friday. So
16 they agreed to get together on Saturday.

17 She was shopping at the Citadel Mall
18 and Mr. Bolton picked her up. No doubt about
19 that. By agreement she went to his house. They
20 are going to watch another film, and that's
21 exactly what they did. They watched a film
22 called *This Christmas*. She went into the house
23 willingly. She wasn't forced into the house.
24 She wasn't carried into the house. She wasn't
25 threatened in any way. She walked in with him

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1 and they watched that movie.

2 Now, at some point during that time
3 small talk interplays with the romance that has
4 been budding since a few days before, and they
5 begin to mess around. They begin to fool around
6 with one another. Ms. McNeil begins to undress.
7 Things begin to heat up, and then it happened.

8 You heard the prosecutor talk about the
9 fact that she had a boyfriend at the time. I
10 can't explain to you why she ran out of that
11 house. It may have been because she was feeling
12 guilt over her boyfriend. She may have just
13 felt the situation was out of control and it was
14 somewhere she didn't want to go. But it was not
15 a situation that she ran out because she was
16 being forced to have sex.

17 What happened then is exactly what the
18 prosecutor described and argued to you about in
19 showing Mr. Bolton's guilt, the fact that he was
20 in the neighborhood and was in the area. He's
21 not looking for his prey. She picked her
22 clothes up, he picked her driver's license up,
23 he picked her cell phone up and he put them in
24 the back of his car. Did he take off and go to
25 Charleston? Did he take off and did he leave

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1 town? No. He's circling the neighborhood
2 looking for her. He knows she's out there with
3 no clothes. If he had been and if he thought he
4 was guilty of such a crime, he certainly would
5 not have circled around and looked for her. He
6 would have left. But that's exactly what he
7 did. He knew she was out there with no clothes,
8 and he wanted to make sure that she was not left
9 out there on that day in that situation.

10 What I will tell you and what the
11 evidence will show is that in addition to there
12 not being a sexual assault in this case, what
13 you will see that the evidence will prove to you
14 and I will tell you already, up front, the
15 evidence is going to suggest to you they did
16 exactly what I said. They made out. They
17 fooled around, things got pretty hot and heavy.
18 But I will submit to you the evidence in this
19 case will not show you that there was a sexual
20 assault. It will certainly not show you that he
21 held her there, kidnaped her, forced her to be
22 there against her will.

23 At the conclusion of this trial I'm
24 going to speak to you again and talk to you
25 about the evidence. At that point I think

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1 you'll agree with me that Mr. Bolton is not
2 guilty. Thank you.

3 THE COURT: Thank you, Mr. Smith.
4 You may call your first witness.

5 MR. MCCOY: Thank you, Your Honor.
6 The State will call Shaquinna McNeil.

7 (WITNESS TAKES STAND)

8 SHAQUINNA McNEIL, being duly sworn to
9 tell the truth, the whole truth and nothing but
10 the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY MR. MCCOY:

13 Q. Shaquinna, just so everybody can hear you
14 and so I hear you and the judge and jury, I'm
15 going to ask you to sit forward in your chair
16 and speak into the microphone clearly so
17 everybody can understand you, okay?

18 A. Yes, sir.

19 Q. Shaquinna, can you tell the jury how old
20 you are?

21 A. I'm twenty-one.

22 Q. And can you tell the jury where you're
23 from?

24 A. Charleston, South Carolina.

25 Q. Tell the jury where you live.

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1 A. I live downtown.

2 Q. Can you tell the jury where you went to
3 high school?

4 A. I went to Burke High School.

5 Q. Did you graduate from high school?

6 A. Yes, sir.

7 Q. Shaquinna, are you working anywhere right
8 now?

9 A. Yes, sir.

10 Q. Where are you working?

11 A. At College of Charleston.

12 Q. Work for the College of Charleston? What
13 do you do for them?

14 A. I'm in food services.

15 Q. Food services?

16 A. Yes, sir.

17 Q. How long have you been working at the
18 College of Charleston?

19 A. A couple of months now.

20 Q. Do you have any children of your own?

21 A. No, sir; I don't.

22 Q. Shaquinna, I'm going to take you to March
23 22nd of 2008, okay?

24 A. Yes, sir.

25 Q. Almost a year and a half ago. Do you

1 remember that day?

2 A. Yes, sir, I do.

3 Q. Shaquinna, let's get a little background
4 here. Do you know what a "hot cab" is?

5 A. Yes, I do.

6 Q. Tell me what a hot cab is.

7 A. It's a person that doesn't have a license
8 that takes people around for lower cost than a
9 regular cab would.

10 Q. Are hot cabs common in the Charleston area?

11 A. Yes, sir.

12 Q. Shaquinna, did you have an opportunity to
13 get to know a man by the name of Thurston
14 Bolton?

15 A. Yes, sir.

16 Q. Tell me how you got to meet him and how you
17 got to know him.

18 A. I was on my way to North Charleston, and in
19 a shopping area where the Family Dollar is, and
20 that's where he usually be.

21 Q. Okay.

22 A. And he approached me. I think the bus was
23 running late and he asked me if I needed a ride.
24 I said 'sure'.

25 Q. Was this before March 22nd or on March 22nd?

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1 A. This was beforehand.

2 Q. And how long before do you think this was?

3 A. Maybe two weeks.

4 Q. Had you used a hot cab before?

5 A. Maybe once or twice.

6 Q. Did he end up giving you a ride that day?

7 A. Yes, sir, he did.

8 Q. And where did he take you?

9 A. To Dorchester Road.

10 Q. Do you remember why you went up to
11 Dorchester Road?

12 A. I believe I was going to get my hair fixed
13 that day.

14 Q. Now, Shaquinna, now you know Thurston is
15 somebody who operates a hot cab. You've already
16 gotten one ride from him. Did you receive
17 multiple rides from him in the next two weeks?

18 A. Yes, sir, I did.

19 Q. Approximately how many times did you ride
20 with him?

21 A. A couple. Three or four, maybe.

22 Q. Shaquinna, do you see Thurston Bolton in
23 the courtroom today?

24 A. Yes, sir, I do.

25 Q. Can you point out where he is?

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- 1 A. (Indicating).
- 2 Q. Can you describe what he's wearing?
- 3 A. He's the black man in the middle of the
- 4 table.
- 5 Q. At the table -- the defense table?
- 6 A. Yes, sir.
- 7 Q. You testified that you got maybe three or
- 8 four rides from him after your first initial
- 9 ride?
- 10 A. Yes, sir.
- 11 Q. How would you go about calling him or
- 12 getting a ride from him?
- 13 A. I had his number.
- 14 Q. When did you get his phone number?
- 15 A. I believe it was that same day.
- 16 Q. What same day? The same day he gave you
- 17 the first ride?
- 18 A. Yes, the same day of the first ride.
- 19 Q. And when you called him what would happen?
- 20 A. I would ask if he was in the area and if he
- 21 said yes, I would ask if he could give me a
- 22 ride.
- 23 Q. Shaquinna, could you tell from what you
- 24 observed and from what your feelings were if Mr.
- 25 Bolton had any sort of more than friendship

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1 feelings toward you?

2 A. Yes, sir.

3 Q. What could you tell?

4 A. Just by the way he talked to me.

5 Q. Did he ever touch you before the 22nd?

6 A. No. Maybe my hand, but that's about it.

7 Q. You say you could tell by his actions.

8 Would he compliment you? Would he ask you on
9 dates? How could you tell?

10 A. He would compliment me.

11 Q. Okay. He's a good bit older than you.

12 A. Yes, sir.

13 Q. Were you twenty or twenty-one at the time?

14 A. I was twenty at the time.

15 Q. Did you have a boyfriend at the time?

16 A. Yes, sir, I did.

17 Q. Did you have any sort of romantic or more
18 than friendship feelings toward Mr. Bolton?

19 A. No, sir, I did not.

20 Q. Did you ever make that clear to him or tell
21 him that?

22 A. Yes, sir. He knows that I did have a
23 boyfriend at the time.

24 Q. He understood you had a boyfriend?

25 A. Yes, sir.

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1 Q. Shaquinna, you just testified that a hot
2 cab is somebody who takes people from here to
3 there at a lower rate than a cab. Did he ever
4 charge you anything for these rides?

5 A. No.

6 Q. And why did he not charge you for these
7 rides?

8 A. Maybe because he did like me at the time.

9 Q. Did he have feelings for you?

10 A. Yes, sir.

11 Q. There was one time where you did go out to
12 eat with the defendant.

13 A. Yes, sir.

14 Q. Can you describe to the jury what happened
15 that day?

16 A. I think I called him earlier that day. I
17 needed to go to Northwoods Mall. He took me.
18 I just mentioned I was hungry at the time. He
19 said -- we were right there around the corner
20 from where we went.

21 Q. Shaquinna, was this a set up date?

22 A. No, sir.

23 Q. Was it a pre-planned date?

24 A. No, sir.

25 Q. Did you suggest where to go?

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1 A. No, sir.

2 Q. Did you suggest that 'we should go out to
3 eat together?'

4 A. No, sir.

5 Q. You simply just mentioned that you were
6 hungry?

7 A. Yes, sir.

8 Q. Where did Mr. Bolton take you after you
9 suggested you were hungry?

10 A. Longhorn's.

11 Q. What is Longhorn's?

12 A. It's a steakhouse.

13 Q. Do you remember what time this was? Was
14 this nighttime or was this daytime?

15 A. It was dark.

16 Q. It was dark outside?

17 A. Getting there, (affirmative nod).

18 Q. Getting dark?

19 A. Yes, sir.

20 Q. Shaquinna, when you'all went out on this
21 date what did you'all talk about?

22 A. We discussed the career I was trying to go
23 into.

24 Q. What kind of career were you thinking about
25 going into?

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- 1 A. I was thinking about going into the
2 military.
- 3 Q. Did he give you advice on the military?
- 4 A. (Affirmative nod), not to go.
- 5 Q. Did he give you advice about any other kind
6 of topic?
- 7 A. Yes, sir, he suggested real estate.
- 8 Q. Shaquinna, after this meal ended, what
9 happened next?
- 10 A. He took me home.
- 11 Q. He took you home?
- 12 A. Yes.
- 13 Q. Shaquinna, again, was there any sort of
14 contact, romantic feelings exchanged between you
15 or Mr. Bolton at that time?
- 16 A. No, sir; there wasn't.
- 17 Q. Could you tell, though, that he had
18 feelings toward you?
- 19 A. Yes, sir.
- 20 Q. Did you relay any sort of feelings after
21 this meal with him toward Mr. Bolton?
- 22 A. Repeat that, please.
- 23 Q. Did you show him any sort of romantic
24 feelings after the meal?
- 25 A. No, sir.

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1 Q. You've already testified that you had Mr.
2 Bolton's phone number and that you called him
3 for rides. How many times do you think you
4 called him?

5 A. A couple of times. I think I probably
6 called him more times than I got a ride, because
7 he couldn't come.

8 Q. So you made several phone calls to his
9 phone?

10 A. Yes, sir.

11 Q. Did he always pick up on all these calls?

12 A. That I can remember, (affirmative nod).

13 Yes.

14 Q. Were you calling for any other reason
15 besides a ride?

16 A. No, sir.

17 Q. Shaquinna, I'm going to take you now to the
18 actual day. I'm going to take you to March 22nd,
19 2008. Tell the jury where you spent the night
20 the night before.

21 A. I spent the night at my boyfriend's house.

22 Q. What's your boyfriend's name?

23 A. Derrick Brown.

24 Q. And you spent the night with him?

25 A. Yes, sir.

1 Q. And when you woke up the next morning on
2 the 22nd, where did you go?

3 A. I went to the Citadel Mall.

4 Q. How did you get to the Citadel Mall?

5 A. I walked from my boyfriend's house.

6 Q. So it's relatively close?

7 A. Yeah, a couple of blocks.

8 Q. And why were you going to the Citadel Mall?

9 A. I had a party to be to that day.

10 Q. Excuse me?

11 A. I had a party to be to that day.

12 Q. What kind of party was that?

13 A. A birthday party.

14 Q. Shaquinna, what were you doing at the mall?

15 A. Buying a gift.

16 Q. What did you end up buying for the birthday
17 party?

18 A. A baby ring.

19 Q. A baby ring?

20 A. Uh-huh, (affirmative nod).

21 Q. Was this party for a baby?

22 A. Yeah.

23 Q. I know it might be hard to remember -- I
24 know it was a year and a half ago, but do you
25 remember what time, roughly, you got to the

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1 mall?

2 A. I don't know. Maybe around 1:00. That's
3 just a rough estimate.

4 Q. And what time was your birthday party?

5 A. If I went to the mall like around 1:00 it
6 may have been like 2:00. Because I was like
7 real close on time to go to the party when it
8 started.

9 Q. Shaquinna, you were at the mall. You don't
10 have a car.

11 A. No, sir.

12 Q. How are you going to get to the birthday
13 party?

14 A. I called the defendant.

15 Q. Did he agree to come pick you up?

16 A. Yes, sir.

17 Q. And where did he pick you up?

18 A. Northwoods Mall. I mean Citadel Mall.

19 Q. Citadel Mall.

20 A. Yes.

21 Q. When he picked you up what did your
22 boyfriend do?

23 A. Nothing. He just gave me a hug and he
24 left.

25 Q. What did you have with you when you were

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- 1 leaving the mall?
- 2 A. My pocketbook, my cell phone and the bag
- 3 with the jewelry.
- 4 Q. The ring that you had bought?
- 5 A. Yes.
- 6 Q. Tell me what happened when Mr. Bolton
- 7 arrived.
- 8 A. I got in the car and he drove off.
- 9 Q. Did you tell him you needed to go home?
- 10 A. Yes.
- 11 Q. Why were you going to go home first?
- 12 A. To change and redress.
- 13 Q. Change clothes for the party?
- 14 A. Uh-huh, (affirmative nod).
- 15 Q. Shaquinna, what direction did he start
- 16 heading when you got in the car?
- 17 A. Towards the I. The I towards North
- 18 Charleston.
- 19 Q. What's "the I"?
- 20 A. I don't know what you call that -- the
- 21 highway.
- 22 Q. So he got on the highway?
- 23 A. Yes.
- 24 Q. And started heading towards North
- 25 Charleston?

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1 A. Um-humm.

2 THE COURT: Ma'am, you need to say
3 "yes" and "no" and not "um-humm" because the
4 court reporter needs to take down what you're
5 saying.

6 THE WITNESS: Yes, sir.

7 THE COURT: Thank you.

8 SOLICITOR McCOY: Yes, sir, Your
9 Honor.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR McCOY:

12 Q. Heading on 526 toward North Charleston, is
13 that in the direction of your house?

14 A. No, sir.

15 Q. Did you ask Thurston where you were going?

16 A. I asked where were we going.

17 Q. What did he say?

18 A. He said he had to go to his house to stop
19 off for something, that it wouldn't take that
20 long.

21 Q. Did you start to feel nervous at this time,
22 or were you still feeling okay?

23 A. I first I felt nervous, but once he said it
24 wouldn't take long, then it didn't seem like
25 anything to worry about.

1 Q. So you get to Mr. Bolton's house. Does he
2 invite you in the house?

3 A. Yes, sir.

4 Q. Did you want to go in the house?

5 A. No, I didn't want to get out of the car.

6 Q. Did you end up going in the house?

7 A. Yes, sir.

8 Q. Tell me why you went in the house?

9 A. He said it wouldn't take more than a
10 minute.

11 Q. Did he say he had anything in the house
12 regarding military material for you?

13 A. Yes, he said he had a CD for me to look at.

14 Q. Okay. So you were reluctant?

15 A. Yes.

16 Q. But you go in the house anyway?

17 A. Yes, sir.

18 Q. And this is where it's going to get a
19 little bit edgy. I know this might be tough for
20 you, but we need to remember every detail now.
21 Once you get inside the house, tell the jury
22 what happens.

23 A. As soon as we went inside the house he
24 immediately locked the doors and grabbed my arm
25 with force and like dragged me to the bedroom,

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1 like on the other side of the kitchen.

2 Q. Let's take this step-by-step. The door's
3 being locked?

4 A. Yes, sir.

5 Q. Do you remember how many locks were locked?

6 A. I believe it was three.

7 Q. But you may not be certain on that?

8 A. I'm not positive of it, but it was two or
9 more.

10 Q. And when this door shuts and he locks the
11 locks, where does he grab you?

12 A. My arm.

13 Q. Does he immediately grab you?

14 A. (Affirmative nod), as soon as he locked the
15 door.

16 Q. Is he holding on to you tight?

17 A. (Affirmative nod), very tight.

18 Q. Where does he pull you? Where does he drag
19 you?

20 A. Towards the bedroom.

21 Q. How many rooms did you have to go through
22 to get to the bedroom?

23 A. Just the kitchen, I guess, dining room.

24 Q. Once you get to this bedroom is he still
25 holding onto your arm?

1 A. Yes, sir.

2 Q. Tell the jury what he does to you next.

3 A. He just like threw me on the bed, one arm
4 had a very good grip on my arm. Then he had
5 both my arms and he had all his body weight on
6 top of mine. And, uh, he proceeded to try to
7 kiss me.

8 Q. What did you say at this time?

9 A. I told him to stop what he was doing. Like
10 -- (pause).

11 Q. Were you crying at all?

12 A. I was crying.

13 Q. At this point in time are you scared?

14 A. I was yelling and screaming and trying to
15 fight back. He like pulled me by the arm.

16 Q. When he is pulling you by the arm and
17 forcing you and has this grip on you and he gets
18 you on the bed, how was he holding you on the
19 bed?

20 A. Like pinned down.

21 Q. Pinned down using what?

22 A. His hands.

23 Q. His hands? Where are his hands?

24 A. One hand like had a grip on my arm the
25 whole time, and the other gripped like around my

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1 neck. I was crying and it was like hard for me
2 to breathe. Like my nose was snotty and I can't
3 breathe out of my nose. He was trying to kiss
4 me. Like it was hard for me to breathe. I kept
5 moving my head from side to side, trying for him
6 not to kiss me -- it was very hard for me to
7 breathe.

8 Q. Shaquinna, did he say anything to you at
9 this point?

10 A. He said what did I expect to come to this
11 house, like what did I expect to happen.

12 Q. Shaquinna, before this time, before this
13 incident, had you ever been to this house
14 before?

15 A. No, I had not.

16 Q. Had you ever watched a movie at this house
17 before?

18 A. No, I had not.

19 Q. After he said to you 'what do you expect
20 for coming to my house', do you have clothes on
21 at this point?

22 A. Yes, sir, I do.

23 Q. Are you still fighting him?

24 A. (Affirmative nod), the whole time.

25 Q. Are you crying?

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- 1 A. Yes, sir.
- 2 Q. Are you screaming?
- 3 A. Yes, sir.
- 4 Q. Does he hit you at any point in time?
- 5 A. He hit me like twice or three times across
- 6 my face.
- 7 Q. Did he hit you with an open hand or a fist?
- 8 A. Like an open hand.
- 9 Q. More a slap?
- 10 A. Yes, sir.
- 11 Q. Shaquinna, what happened next?
- 12 A. He just like -- for like a while, and it
- 13 seemed like forever, he just kept trying to kiss
- 14 me. I kept telling him to stop, and I kept
- 15 screaming. Then I -- after awhile I told him I
- 16 had to go to the restroom, and when he let me up
- 17 he still had ahold of my hand or my arm.
- 18 Q. So in the middle of this before your
- 19 clothes come off you tell him you have to go to
- 20 the restroom.
- 21 A. To the restroom, to see if he will let me
- 22 go by myself. But he follows me in.
- 23 Q. He does go in the restroom with you?
- 24 A. Yes.
- 25 Q. And what are you doing while you're in the

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1 restroom?

2 A. I was trying to talk to him. Trying to see
3 like why is he doing this.

4 Q. Does he say anything to you at this point?

5 A. Like he was saying stuff as if I was a
6 tease maybe, that I should have expected this.

7 Q. What happened when you leave the bathroom?

8 A. He threw me back on the bed.

9 Q. Does there come a point in time when Mr.
10 Bolton takes his pants off?

11 A. Yes, sir.

12 Q. And can you tell if he is aroused or not?

13 A. Yes, sir.

14 Q. He is?

15 A. Yes, sir.

16 Q. Does there come a point in time when your
17 clothes come off?

18 A. Yes, sir.

19 Q. And how do your clothes come off?

20 A. By force. He made me take them off.

21 Q. What does he take off first?

22 A. My pants.

23 Q. How does he take them off?

24 A. Rough.

25 Q. Was he rough with you?

- 1 A. Yes, sir.
- 2 Q. Your pants come off. Does he ever take
3 your shirt off?
- 4 A. Yes, sir.
- 5 Q. And how does he take your shirt off?
- 6 A. Aggressive.
- 7 Q. Very aggressive?
- 8 A. Um-humm -- yes, sir.
- 9 Q. How were you positioned on the bed at this
10 point?
- 11 A. Like laying in the middle.
- 12 Q. Are you lying on your back? Are you on
13 your side?
- 14 A. On my back.
- 15 Q. Is he on top of you still at this point?
- 16 A. Yes, sir.
- 17 Q. Does he still have one arm around your
18 neck?
- 19 A. Yes, sir.
- 20 Q. Is he still using his body weight to hold
21 you down?
- 22 A. Yes, sir.
- 23 Q. At any point in time even during this did
24 you feel free to leave?
- 25 A. No, sir.

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1 Q. Were any of your physical actions, trying
2 to fight him even making any headway to try to
3 leave?

4 A. I mean, I don't understand.

5 Q. Anything that you were doing, your fighting
6 back, was that helping you in your ability to
7 leave?

8 A. No.

9 Q. Were you being held there completely
10 against your will?

11 A. Yes, sir.

12 Q. Did you tell him you didn't want to?

13 A. Yes, sir. I told him plenty of times that
14 I wanted to leave. I was screaming. I was like
15 still crying.

16 Q. This next part will probably be the most
17 difficult. Did he have his shirt on or his
18 shirt off?

19 A. He had his shirt off.

20 Q. He had his shirt off. And now you're
21 completely naked as well.

22 A. Yes, sir.

23 Q. You can tell that he is sexually aroused?

24 A. Yes, sir.

25 Q. Are you sexually aroused at all at this

1 point?

2 A. No, sir.

3 Q. Does there come a point in time that he
4 forced his penis into your vagina?

5 A. Yes, sir.

6 Q. Does he use anything to help with that?

7 A. He put some Vaseline on him when it was not
8 going in like he wanted it to.

9 Q. It wasn't going in?

10 A. No.

11 Q. And what did he use to help it go in?

12 A. Vaseline.

13 Q. Shaquinna, can you tell at all during this
14 first time if he climaxed inside of you at all?

15 A. I wasn't sure at the time, no.

16 Q. How long did this first encounter last?

17 A. It seemed like forever, but maybe not that
18 long. I'm not too sure. Time was like standing
19 still.

20 Q. Shaquinna, are you still crying?

21 A. Yes, sir.

22 Q. Are you still saying no?

23 A. Yes, sir.

24 Q. Are you telling him you don't want this?

25 A. Yes, sir.

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1 Q. Are you fighting with him?

2 A. Yes, sir.

3 Q. Does he say anything while this first
4 situation is going on?

5 A. No. Just repeating the same thing, like
6 this is what I expected, what I should have
7 expected.

8 Q. Shaquinna, does there come a point in time
9 where this first instance ended?

10 A. Yes, sir.

11 Q. What happened after this?

12 A. He like still had all his body weight on
13 me. He was just laying there.

14 Q. He was laying there?

15 A. Uh-huh, (affirmative nod).

16 Q. How were you reacting, and how are you
17 feeling at this time?

18 A. Like maybe he'll let me go, he's finished,
19 like maybe it's over.

20 Q. Did there come a point in time where he
21 used his penis to enter your vagina again?

22 A. Yes, sir.

23 Q. When did that happen?

24 A. Not that long afterwards after the first
25 time.

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- 1 Q. And how long did that instance last?
- 2 A. It was longer than the first time.
- 3 Q. And could you tell if he climaxed at all
- 4 the second time?
- 5 A. No.
- 6 Q. You couldn't tell?
- 7 A. I couldn't tell.
- 8 Q. Shaquinna, at any point in time when you're
- 9 down in this bedroom did the Defendant tell you
- 10 he had any weapons?
- 11 A. Yes, sir, he did.
- 12 Q. And what did he tell you he had?
- 13 A. He said he had a gun.
- 14 Q. And when he told you that he had a gun, how
- 15 did that make you feel?
- 16 A. I was scared.
- 17 Q. Did he say anything to you about the gun?
- 18 A. He said when it's all over that I could use
- 19 it on him.
- 20 Q. He said when this is all over that you
- 21 could use the gun on him?
- 22 A. Yes, sir.
- 23 Q. Shaquinna, you've been raped twice. You've
- 24 tried fighting. You've tried crying. You've
- 25 trying pleading. Is there any point in time

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1 when you kind of changed your strategy as to how
2 to approach the Defendant?

3 A. Yeah, like after awhile it seemed like the
4 fighting wasn't helping and the crying wasn't
5 helping. And, like, I said I was hungry. He
6 was laying on me and, like, I said I was hungry
7 and we started to talk a little and he said he
8 still wanted to talk to me, but he -- I guess I
9 just tried to get back on his side. I said like
10 'yeah, you know, I would still talk to you and
11 stuff like that.'

12 Q. And why did you change up and try to tell
13 him what he wanted to hear?

14 A. Because I thought it might help me to be
15 able to leave if he was on my side.

16 Q. Were you trying to gain his trust?

17 A. Yes, sir.

18 Q. Shaquinna, did there come a point in time
19 after you were trying to gain his trust that you
20 did actually get up and off the bed?

21 A. Yes, sir, he let me off the bed. I opened
22 up the cabinets and probably kissed him and
23 headed to the door, the front door, and I just
24 ran.

25 Q. What did you take with you?

- 1 A. Nothing.
- 2 Q. Nothing. You didn't have your pants on?
- 3 A. Nothing on.
- 4 Q. You had nothing on. Did you take your
- 5 purse or your ring that you had just bought?
- 6 A. No, as soon we got in the room he like
- 7 threw all the items like off to the side of the
- 8 room. So I didn't even look for it, it was off
- 9 to the side of the room.
- 10 Q. Did you have your cell phone with you?
- 11 A. I didn't have anything.
- 12 Q. Where was your cell phone?
- 13 A. Thrown over on the side of the room.
- 14 Q. Had you ever been in this neighborhood
- 15 before?
- 16 A. No, sir.
- 17 Q. You have no clothes on?
- 18 A. No, sir.
- 19 Q. You're running in a neighborhood you've
- 20 never even been to. Where did you go?
- 21 A. I was just running to get away.
- 22 Q. Was it still daylight outside?
- 23 A. Yes, sir.
- 24 Q. And you didn't know what direction you were
- 25 running?

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1 A. No, sir.

2 Q. Did you try to knock on any doors of any
3 houses for help?

4 A. I went to a door one or two down and
5 knocked like briefly and like no one answered,
6 so I ran. When I was knocking on the neighbor's
7 door I could hear him from his doorway, like
8 cursing.

9 Q. You could hear who cursing?

10 A. The defendant.

11 Q. What was he saying?

12 A. He was like just cursing like -- at me
13 because I got away. I could hear him.

14 Q. Did anybody come to help from any house?

15 A. No, sir.

16 Q. Once you couldn't find help in houses and
17 you're naked in a neighborhood you don't know,
18 where did you go next?

19 A. I just ran.

20 Q. Who finally came to your rescue?

21 A. Miss Michelle. She was in a car pulling up
22 to a stop sign as I was running past her car.

23 Q. Did you know Miss Michelle?

24 A. No, sir.

25 Q. Had you ever met her before?

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- 1 A. No, sir.
- 2 Q. What did you say to her?
- 3 A. I believe I asked her to help me and she
- 4 like pulled something from the back seat to
- 5 cover me.
- 6 Q. What did she cover you with?
- 7 A. I think it was like -- it wasn't no -- it
- 8 was like a kite or something.
- 9 Q. It was a kite?
- 10 A. Yeah, just something to throw over me.
- 11 Q. Something to put over you?
- 12 A. She didn't give me anything to put on.
- 13 Q. What do you do once you're inside the car?
- 14 A. I was still crying. I told her I saw the
- 15 defendant's car, and I had scooted all the way
- 16 down -- like I didn't know like he was capable
- 17 of doing if he did find me.
- 18 Q. You were scared?
- 19 A. Uh-huh, (affirmative nod).
- 20 Q. You were in the car. You say you saw the
- 21 defendant.
- 22 A. Yes, sir.
- 23 Q. What do you mean by that? Was he walking
- 24 or where was he?
- 25 A. He was driving past.

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1 Q. Driving past you?

2 A. Yeah.

3 Q. In a car?

4 A. Uh-huh, (affirmative).

5 Q. You just testified that you stooped down.

6 What does that mean?

7 A. Like I was under the -- like on the floor
8 basically.

9 Q. Are you in the front seat of Miss
10 Michelle's car?

11 A. Yes, sir.

12 Q. You stooped down into the floorboard?

13 A. Yes, sir.

14 Q. Did Miss Michelle call the police?

15 A. Yes, sir.

16 Q. Did Miss Michelle call your mother?

17 A. Yes, sir.

18 Q. Where did you finally go with Miss
19 Michelle?

20 A. I went to like the head of the road or a
21 couple of blocks down the road to call.

22 Q. Was this another house or a shopping center
23 or what?

24 A. It was a little shopping center.

25 Q. While you were in the shopping center did

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- 1 you see the defendant in his car?
- 2 A. Yes, sir. We saw him a couple of times,
3 just driving. She just told me to stay down.
- 4 Q. Driving around?
- 5 A. Uh-huh, (affirmative nod). Yes.
- 6 Q. Did the police finally arrive?
- 7 A. Yes, sir.
- 8 Q. Did you explain to them what happened?
- 9 A. Yes, sir.
- 10 Q. Did there come a point in time where the
11 defendant was handcuffed for this and did you
12 see him that way?
- 13 A. Yes, sir. They took me -- and he was
14 there, and I was like in the back seat of the
15 police car, and I was all the way down in the
16 floor.
- 17 Q. You were even hiding in the police car?
- 18 A. Yes, sir.
- 19 Q. Was the man that they arrested Thurston
20 Bolton?
- 21 A. Yes, sir.
- 22 Q. Is this the same man who raped you against
23 your will?
- 24 A. Yes, sir.
- 25 Q. The same man that held you in his house

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1 against your will?

2 A. Yes, sir.

3 MR. MCCOY: The Court's indulgence,
4 Your Honor.

5 THE COURT: Certainly.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. MCCOY:

8 Q. Shaquinna, I appreciate your time. Thank
9 you.

10 THE COURT: Cross examine.

11 CROSS EXAMINATION

12 BY MR. SMITH:

13 Q. Ms. McNeil, I want to find out a little bit
14 more about your relationship with Mr. Bolton;
15 okay?

16 A. Yes, sir.

17 Q. You met Mr. Bolton the first time downtown.
18 Is that right?

19 A. Yes, sir.

20 Q. And you walked up to him and started
21 talking to him?

22 A. No, sir.

23 Q. But you ended up talking to him for a few
24 minutes?

25 A. Yes, sir.

1 Q. And then you got a ride with him?

2 A. Yes, sir.

3 Q. And you talked to him about him being a hot
4 cab?

5 A. Yes, sir.

6 Q. At some point he took you up to Dorchester
7 Road; is that right?

8 A. Yes, sir.

9 Q. And that ride took what, ten or twelve
10 minutes?

11 A. Maybe ten minutes.

12 Q. And that was the first time you'd ever met
13 him?

14 A. Yes, sir.

15 Q. And during that ride up, did you talk to
16 him on the ride up?

17 A. Yeah.

18 Q. You became friendly with him during that
19 ride, didn't you?

20 A. What do you mean by "friendly?"

21 Q. You got to the point where you got his
22 number?

23 A. Yes, sir.

24 Q. And just had small talk as you were going
25 up there?

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1 A. Yes, sir.

2 Q. Is that right?

3 A. (Affirmative nod).

4 Q. And when you got to your destination he
5 just let you out of the car?

6 A. Yes, sir.

7 Q. A few days later you remember calling him
8 again and asking for a ride?

9 A. Mostly likely, yes.

10 Q. Do you remember him taking you to
11 Hannibal's Restaurant?

12 A. (Pause) -- not really, no.

13 Q. Do you remember him taking you to Captain
14 D's?

15 A. Yes.

16 Q. Do you remember him taking you to a house
17 off Wappoo Road?

18 A. Yes.

19 Q. And that was all during one particular ride
20 with him?

21 A. No.

22 Q. Two different times?

23 A. Yes, sir.

24 Q. And in both those instances you again you
25 had time to talk to him while you were in the

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1 car; right?

2 A. Yes, sir.

3 Q. Do you remember at that time him asking you
4 about going out on a date?

5 A. No, sir.

6 Q. You had a chance to ride with him again
7 when he took you down to Spring Street. Is that
8 right? Do you remember that ride?

9 A. Yes, sir.

10 Q. To a place kind of close to where you lived
11 at the time?

12 A. (Pause) -- not really.

13 Q. But it was a situation where you picked up
14 the phone and called him for a ride.

15 A. Yes, sir.

16 Q. And, again, during that ride he picked you
17 up wherever you called him from. Is that right?

18 A. Yes, sir.

19 Q. And when you got to your destination, he
20 let you out?

21 A. Yes, sir.

22 Q. Do you remember him taking you at some
23 point -- I may have already asked you about this
24 -- to a Captain D's?

25 A. Yes.

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1 Q. And did you just get out there at Captain
2 D's?

3 A. I am not too sure.

4 Q. Do you remember if you went on anywhere
5 else after that?

6 A. I can't remember.

7 Q. But he let you out there?

8 A. Yes, sir.

9 Q. Do you remember him taking you to a
10 birthday party on Huger and Meeting Street?

11 A. No, sir.

12 Q. You don't ever remember him taking you to a
13 birthday party at all?

14 A. No, I don't remember going to any birthday
15 party.

16 Q. Do you remember going to a party on Huger
17 and Meeting Street?

18 A. No, sir.

19 Q. Do you remember calling him and saying that
20 you needed to go to Northwoods Mall at some
21 point?

22 A. Yes, sir.

23 Q. And that would have been at the point --
24 where did he come pick you up?

25 A. I believe it was my house.

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1 Q. And he dropped you off at the mall?

2 A. Yes.

3 Q. Is that right?

4 A. (Affirmative nod)

5 Q. And he waited for you?

6 A. Yes.

7 Q. And at some point, again, he picked you up
8 from the mall. Is that right?

9 A. Northwoods Mall?

10 Q. Yes.

11 A. I believe it was just that one time that we
12 went there.

13 Q. But he did pick you up after that visit to
14 Northwoods Mall?

15 A. Yes.

16 Q. And that's the night you went to dinner
17 with him?

18 A. Yes.

19 Q. And it was only the two of you that went to
20 dinner that particular evening; is that right?

21 A. Yes.

22 Q. You went to the Longhorn Steak House. Is
23 that correct?

24 A. Yes, sir.

25 Q. When you arrived were you'all able to sit

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1 down immediately?

2 A. No.

3 Q. How long did you wait? Do you remember?

4 A. Maybe five minutes, could have been a
5 little less.

6 Q. Could it have been a little longer than
7 that?

8 A. It probably could have been.

9 Q. And did you all sit down and talk while you
10 were waiting to eat?

11 A. I don't think so. I don't remember talking
12 while we were waiting.

13 Q. Eventually they did come in and seat the
14 two of you, is that right?

15 A. Yes.

16 Q. And you'all had a chance to sit there and I
17 think, as you told Mr. McCoy, you talked
18 throughout dinner. Is that right?

19 A. Yes, sir.

20 Q. Exchanged small talk about the military.
21 I think you even talked about something about a
22 signing bonus. Do you remember talking about
23 that about the military?

24 A. Yes.

25 Q. And then Mr. Bolton told you something

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1 about he thought maybe you could make more money
2 if you got into real estate.

3 A. Yes, sir.

4 Q. Do you remember that?

5 A. Yes, sir.

6 Q. At that point I think the food came and
7 you'all started eating. Is that right?

8 A. Most likely, yes.

9 Q. And do you remember that you had crab cakes
10 and shrimp that night?

11 A. No, I don't remember what I had.

12 Q. Do you remember what Mr. Bolton had that
13 night?

14 A. No, but I don't think I had crab cakes.

15 Q. But you maybe had shrimp that night?

16 A. I might have.

17 Q. At some point dinner is over. Is that
18 right?

19 A. Yes, sir.

20 Q. And you said you never went to his house?

21 A. No, sir.

22 Q. And you never watched a movie named *Dead*
23 *Silence*?

24 A. I've seen that move before.

25 Q. Did you with Mr. Bolton about the movie

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1 being kind of dumb and the whole premise behind
2 it being dumb?

3 A. I might have.

4 Q. Do you remember what time you got home that
5 night?

6 A. I'm not too sure. It was like right after
7 dinner.

8 Q. It would have been later in the evening.
9 You said it was already dark, right?

10 A. Yeah, it was getting dark by the time we
11 was leaving reached there -- or by the time that
12 we was leaving.

13 Q. And he took you right home that evening?

14 A. Yes, sir.

15 Q. And you, at some point -- he just dropped
16 you off at your house?

17 A. Yes, sir.

18 Q. He didn't try to take you back to his place
19 then or anything like that?

20 A. No, sir.

21 Q. And then a couple of days later you talked
22 to him kind of again on the phone. Do you
23 remember him -- calling him on a Friday?

24 A. I don't know what day it was. Maybe it was
25 a Friday.

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1 Q. Do you remember him being out of town?

2 A. No, sir.

3 Q. And not able to come and get you?

4 A. It might have been that I did call him
5 Friday night. I'm not too sure.

6 Q. Do you remember talking to him at some
7 point and asking him about borrowing thirty
8 dollars?

9 A. No, sir.

10 Q. You never remember talking to him about
11 that?

12 A. Not the money, no.

13 Q. Just so that we can be straight about this
14 relationship of him taking you several times for
15 rides, I just want to go back to that. You felt
16 comfortable enough that you would pick up the
17 phone and call him?

18 A. Yes, sir.

19 Q. And sometimes you'd call and you'd need a
20 ride just to anywhere. Is that right?

21 A. Yes, sir.

22 Q. And he each time would come and give you
23 that ride?

24 A. If he was available, yes.

25 Q. He took you to several places that you

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1 indicated earlier. Is that right?

2 A. Yes, sir.

3 Q. And each time you went, he let you out. Is
4 that right -- wherever you were going?

5 A. Yes, sir.

6 Q. And he never gave you any indication that
7 he was trying to harm you in any way on any of
8 those rides?

9 A. No, sir.

10 Q. And he never threatened you or forced you
11 to do anything during any of those rides?

12 A. No, sir.

13 Q. Let's talk about this particular Saturday,
14 March 22nd. You told the Solicitor that you were
15 at the Citadel Mall shopping. Is that right?

16 A. Yes, sir.

17 Q. And at some point you call Mr. Bolton and
18 say 'I need a ride. I have somewhere I want to
19 go.' Is that right?

20 A. Yes, sir.

21 Q. And he picked you up there at the mall
22 right around the food court?

23 A. Yes, sir.

24 Q. And you all, while you were in the car once
25 again, took a trip, as you said up I-526. Is

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1 that right?

2 A. Yes, I think -- I don't know the road.

3 Q. Do you remember how long that trip was?

4 A. To get to his house?

5 Q. Yes.

6 A. I don't know.

7 Q. So during that ride you continued to talk
8 with him?

9 A. Probably. I was probably on my phone, too.

10 Q. You didn't have any reason to think that he
11 was going to harm you in any way?

12 A. No, sir.

13 Q. And you probably did at some point make
14 small talk with him on that ride. Is that
15 right?

16 A. Yes, sir.

17 Q. And when you arrived at the house he asked
18 you to come in. Right?

19 A. Yeah.

20 Q. He didn't force you to come in in any way?

21 A. No.

22 Q. He didn't threaten you in any way to come
23 inside?

24 A. No.

25 Q. You went on into the house on your own

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1 accord. Is that right?

2 A. I went on my own, yes. But he was asking.

3 Q. But he didn't threaten or force you in any
4 way?

5 A. No, sir.

6 Q. Do you remember watching a movie that
7 particular day?

8 A. No, sir.

9 Q. Do you remember watching a movie called
10 *This Christmas*?

11 A. I've never seen that movie.

12 Q. You've never seen that movie?

13 A. No, sir.

14 Q. I want to talk to you a little bit about
15 your statement to police. Do you remember
16 giving your statement to the police?

17 A. Yes, sir.

18 Q. You gave that statement on March 22nd. Is
19 that right?

20 A. Yes, sir.

21 Q. Did you get a chance to read over your
22 statement and sign it at some point?

23 A. Yes, I read it.

24 Q. If I showed you a copy of it, would that
25 help you remember your statement or refresh your

1 recollection about what you did with it?

2 A. Yes, sir.

3 MR. SMITH: Your Honor, may I
4 approach?

5 THE COURT: You may.

6 CROSS EXAMINATION CONTINUED

7 BY MR. SMITH:

8 Q. Ms. McNeil, would you mind taking a look at
9 that and see if you can tell me what that is?

10 A. (Upon review), this is the statement that I
11 gave.

12 Q. Do you remember having a chance to look at
13 it and sign it?

14 A. Yes, sir.

15 MR. SMITH: Your Honor, I'd ask that
16 that be marked as Defense Exhibit 1 for ID
17 purposes.

18 THE COURT: All right, sir.

19 COURT REPORTER: Defendant's Exhibit
20 1 for identification.

21 CROSS EXAMINATION CONTINUED

22 BY MR. SMITH:

23 Q. In your statement you said that you wanted
24 to stay in the car, but Mr. Bolton insisted that
25 you come in. Is that right?

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1 A. Yes, sir.

2 Q. You also said in your statement that he
3 didn't force you to get out. Is that right?

4 A. Didn't force me to get out?

5 Q. Right.

6 A. No.

7 Q. And you also said he didn't threaten you to
8 come in in any way.

9 A. No, sir.

10 Q. What you also say in your statement is that
11 as soon as you come in, Mr. Bolton grabs you.
12 Is that right?

13 A. You're saying that's what I said in the
14 statement?

15 Q. Yes.

16 A. Okay.

17 Q. Is that what you said in your statement?

18 A. (Upon review), I said he locked the door.

19 Q. And did you say that he grabbed you by the
20 arm?

21 A. Yes, sir.

22 Q. That he grabbed you aggressively by the
23 arm, right?

24 A. Yes, sir.

25 Q. And forced you into the bedroom?

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- 1 A. Yes, sir.
- 2 Q. And at some point he threw you on the bed?
- 3 A. Yes, sir.
- 4 Q. And he had his hand around your neck?
- 5 A. Yes, sir.
- 6 Q. And he had all his weight on you, choking
- 7 you with his arm. Is that right?
- 8 A. Not on his arm. He had his body weight on
- 9 top of mine.
- 10 Q. At some point doesn't he put his arm on
- 11 your neck?
- 12 A. No. He had his hand on my neck.
- 13 Q. But he got his whole weight behind the arm.
- 14 Is that right?
- 15 A. Yes.
- 16 Q. And I think you told the Solicitor at some
- 17 point that your nose was running and you
- 18 couldn't hardly breathe as a result of him
- 19 having such a tight grip on you?
- 20 A. No, it was because of me crying and he was
- 21 trying to kiss me and choking me at the same
- 22 time and it was very hard to breathe.
- 23 Q. But he had his hand around your neck the
- 24 whole time?
- 25 A. Yes, sir.

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1 Q. He never let go of that while you were on
2 the bed?

3 A. He might have let go.

4 Q. But he put it back eventually?

5 A. Yes.

6 Q. This whole time that he's got you held down
7 like that you say, you were fighting back; is
8 that right?

9 A. Yes, sir.

10 Q. You were trying to get away from him?

11 A. Yes, sir.

12 Q. You tried everything you can to get up and
13 get away from him?

14 A. Yes, sir.

15 Q. You weren't successful in doing that?

16 A. No, sir.

17 Q. But you tried your best?

18 A. I did my best.

19 Q. You did everything you could?

20 A. Yes, sir.

21 Q. Your purse, you threw it on the floor;
22 right?

23 A. No, I did not throw it.

24 Q. You didn't throw it on the floor?

25 A. No, I didn't throw it.

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1 Q. Who threw the purse on the floor?

2 A. The defendant.

3 Q. At some point you get up and you were able
4 to leave the bedroom. Is that right?

5 A. Yes, sir.

6 Q. The first time you say it was to go to the
7 bathroom.

8 A. Yes, sir.

9 Q. The whole time he is with you or following
10 you during that time, right?

11 A. Yes, sir.

12 Q. And you remember he's got a tight grip on
13 your arm. That's what you told us.

14 A. Yes, sir.

15 Q. Do you remember which arm that was?

16 A. No.

17 Q. But the whole time he was hanging onto you
18 in some manner?

19 A. Yes, sir.

20 Q. In a way that you say you can't get away?

21 A. Yes, sir.

22 Q. I'd say he's squeezing you pretty hard. Is
23 that right?

24 A. Yes, sir. He was like right there.

25 Q. He was right there with you?

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1 A. Yes.

2 Q. But you couldn't get away because he's
3 squeezing your arm?

4 A. Yes, sir.

5 Q. You stayed in the bathroom for a little bit
6 of time. Is that right?

7 A. Yes, sir.

8 Q. And then eventually you say you're taken
9 back into the bedroom?

10 A. I didn't hear you.

11 Q. Eventually you're taken back into the
12 bedroom?

13 A. Yes, sir.

14 Q. The whole time being led back into the
15 bedroom, again he's got ahold of your arm. Is
16 that right?

17 A. Yes, sir.

18 Q. Pretty forceful -- he's not going to let
19 you go.

20 A. Yes, sir.

21 Q. At that point you say he threw you down on
22 the bed?

23 A. Yes, sir.

24 Q. And he slapped you across the face twice?

25 A. Yes, sir, or three times.

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1 Q. Three times?

2 A. Yes. Maybe not all at one time, but
3 throughout the whole -- (pause).

4 Q. Throughout the whole time?

5 A. Yes, sir.

6 Q. He slapped you across the face throughout
7 the whole time.

8 A. Like three times. I didn't say three times
9 like back to back.

10 Q. During this alleged incident, you're saying
11 during that time at some point he slapped you
12 across the face three times.

13 A. Yes, sir.

14 Q. And I would say that hurt. Right?

15 A. Yes, sir.

16 Q. Probably hurt pretty bad?

17 A. Yes, sir.

18 Q. He's a bigger guy than what you are?

19 A. Yes, sir.

20 Q. Wouldn't you agree with that?

21 A. Yes, sir.

22 Q. So you're saying he slapped you three times
23 throughout this whole time?

24 A. Yes, sir.

25 Q. At that point I think you testified that he

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1 pulled down his pants. Do you remember talking
2 about that?

3 A. Yes, sir.

4 Q. You were very specific in talking about him
5 having one hand on his genitals and the other
6 hand he's got around your neck. Do you remember
7 saying that?

8 A. Yes, sir.

9 Q. Again, he's got you tight by the neck. Is
10 that right?

11 A. Yes, sir.

12 Q. He's not allowing you to get up? During
13 that time, you say that's when he said "I've got
14 a gun."

15 A. Not at that particular time.

16 Q. A little bit later he says, "I have a gun."

17 A. Yes.

18 Q. You would characterize it as him threaten-
19 ing you in some way by having that gun. Is that
20 right?

21 A. When he first said it, yeah.

22 Q. Did he ever show you the gun?

23 A. No, sir.

24 Q. Throughout this thing one thing you're
25 clear about he's choking you pretty much the

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- 1 whole time in one fashion or another; right?
- 2 A. Yes, sir.
- 3 Q. Or at least has his hand tight around your
- 4 neck.
- 5 A. Yes, sir. If not the neck, then my arm.
- 6 Q. Or he had your arm pinned down?
- 7 A. (Affirmative nod), pinned down.
- 8 Q. And the whole time he was on top of you
- 9 with his weight either on your arm or on your
- 10 neck. Is that right?
- 11 A. Yes.
- 12 Q. And then kind of all of a sudden he let you
- 13 get up. Is that right?
- 14 A. At the end, (affirmative nod).
- 15 Q. He let you get up and let you go into the
- 16 kitchen, right?
- 17 A. Yes, sir.
- 18 Q. And at that point you said you wanted to
- 19 get some ice cream.
- 20 A. Yes, sir, or something to eat.
- 21 Q. And during that time Mr. Bolton stayed in
- 22 the bedroom. Is that correct?
- 23 A. Yes.
- 24 Q. He didn't have you by the arm and lead you
- 25 into the kitchen or anything like that?

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1 A. No, sir.

2 Q. When you talked to the police you
3 ultimately told them that you had been at the
4 residence for some time, right?

5 A. It seemed like that, it seemed like
6 forever.

7 Q. Your statement, I think, says you told them
8 that you'd been there for about two hours. Do
9 you remember telling them that?

10 A. I couldn't be exact about the time.

11 Q. So you think it was around two hours that
12 you were there?

13 A. Like I said, it seemed forever so I might
14 have said two hours.

15 Q. As far as sex goes in this particular case,
16 you never mentioned any oral sex in this case;
17 did you?

18 A. If I said ---

19 Q. Do you want to take a second look at your
20 statement?

21 A. (Upon review) -- no, it doesn't say that in
22 here.

23 Q. In your statement did you ever mention
24 using him using Vaseline?

25 A. No, sir.

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1 Q. But you mentioned that in Court today. Is
2 that correct?

3 A. Yes, sir.

4 Q. One thing that you were pretty clear about
5 with the Solicitor was your clothing that you
6 had on. You said Mr. Bolton forcibly removed
7 your clothing. Is that correct?

8 A. Yes, sir.

9 Q. You had on a pair of jeans that day?

10 A. Yes, sir.

11 Q. And you had on a white shirt that day?

12 A. Yes, sir.

13 Q. If I showed you those things would you be
14 able to identify them?

15 A. Yes, sir.

16 MR. SMITH: May I approach, Your
17 Honor?

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION CONTINUED

20 BY MR. SMITH:

21 Q. Ms. McNeil, I'm going to show you what I'm
22 going to be asked to be marked as Defendant's
23 Exhibit 2 for identification purposes.

24 COURT REPORTER: Defendant's Exhibits
25 2, 3 and 4 for identification.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. SMITH:

3 Q. I'm going to ask you if you can tell me
4 what that is.

5 A. The shirt I had on.

6 Q. Can you tell me what that is?

7 A. Yes, sir. Those are the leggings I had on.

8 Q. Those are the leggings you had on as well?

9 A. Yes.

10 THE COURT: Let's have them marked.

11 The shirt is one and the leggings are three.

12 MR. SMITH: Yes, sir, the shirt is

13 Exhibit 2 and the leggings are Exhibit 3.

14 THE COURT: Thank you.

15 CROSS EXAMINATION CONTINUED

16 BY MR. SMITH:

17 Q. Ms. McNeil, I'm also going to show you
18 these, marked as Defendant's Exhibit 4. Can
19 you tell me what those are?

20 A. Those are the jeans I had on.

21 MR. SMITH: Beg the Court's indulgence.

22 THE COURT: Certainly.

23 CROSS EXAMINATION CONTINUED

24 BY MR. SMITH:

25 Q. Just very briefly, Ms. McNeil, back on that

1 day at the Citadel Mall, you said that you
2 called Mr. Bolton. You remember him calling you
3 first that day?

4 A. No, sir.

5 Q. Just to follow up on what the Solicitor
6 asked you, did you ever pay for any rides you
7 had with Mr. Bolton?

8 A. No, sir.

9 MR. SMITH: No further questions,
10 Your Honor.

11 THE COURT: Redirect, Solicitor.

12 MR. MCCOY: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. MCCOY:

15 Q. We heard testimony about the grip that the
16 defendant had on your arm while you were inside
17 the house during the whole time. Was the grip
18 always in the same place?

19 A. Not quite the same place.

20 Q. Upper arm? Did the grip move around at
21 times on your arm?

22 A. No.

23 Q. It didn't move around. So it was right
24 there all the time?

25 A. Yeah.

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1 Q. Did he hold onto your arm the entire time?

2 A. Not the entire time, but most of the time.

3 Q. Did you have any sort of romantic
4 relationship with the defendant?

5 A. No, sir.

6 Q. Had you ever been intimate with the
7 defendant before?

8 A. No, sir.

9 Q. You testified that you trusted the
10 defendant.

11 A. Yes, sir.

12 Q. You trusted him to give you rides.
13 Shaquinna, did he betray that trust by raping
14 you twice and holding you inside his house
15 against your will?

16 A. Yes, sir.

17 MR. MCCOY: Thank you..

18 THE COURT: Recross.

19 MR. SMITH: Nothing, Your Honor.

20 THE COURT: Thank you. You may step
21 down, ma'am.

22 (WITNESS STEPS DOWN)

23 THE COURT: At this point, Ladies and
24 Gentlemen, we'll take a recess for about ten or
25 15 minutes. Do not begin your deliberations.

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1 Don't discuss the case. You may retire to your
2 jury room.

3 (JURY OUT AT 3:15 P.M.)

4 THE COURT: Anything from the State
5 before we recess, Mr. McCoy?

6 MR. MCCOY: No, sir, Your Honor.

7 THE COURT: Anything from the
8 defendant?

9 MR. SMITH: No, Your Honor.

10 THE COURT: We'll be at-ease for
11 about ten or fifteen minutes.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)_

14 THE COURT: Is the State ready?

15 MR. MCCOY: Yes, sir, Your Honor

16 THE COURT: Defense ready?

17 MR. SMITH: Yes, Your Honor.

18 THE COURT: Let the record reflect
19 Mr. Bolton is present. Let's bring in our jury,
20 please.

21 (JURY ENTERS AT 3:30 P.M.)

22 BAILIFF: Jury is present, Your
23 Honor.

24 THE COURT: Thank you very much,
25 Ladies and Gentlemen. We're ready to continue.

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1 You may call your next witness, Solicitor.

2 MR. MCCOY: Thank you, Your Honor.

3 The State would call Faye LeBoeuf with the MUSC
4 Tri-County Forensic Center.

5 (WITNESS TAKES STAND)

6 FAYE LeBOEUF, being duly sworn to tell
7 the truth, the whole truth and nothing but the
8 truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY MR. MCCOY:

11 Q. Faye, thank you for being here with us
12 today. I know how busy you are, and I really
13 appreciate your time. Faye, tell the jury where
14 you work?

15 A. I work for the Medical University of South
16 Carolina.

17 Q. What are your responsibilities for the
18 Medical University of South Carolina?

19 A. My full-time job at the Medical University
20 is as a certified nurse midwife. My second job
21 is a sexual assault examiner.

22 Q. And how long have you been employed with
23 these two duties at MUSC?

24 A. As a certified nurse midwife, I've been
25 employed for twenty-two years, and as a sexual

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1 assault examiner a little over ten.

2 Q. For these duties, specifically the sexual
3 examiner, have you received any sort of training
4 or education that has helped you in your duties?

5 A. I am Board-certified by the International
6 Forensic Association. I was Board-certified in
7 2002. I was recertified in 2005 and again in
8 2008.

9 Q. As a sexual examiner, forensic sexual
10 examiner, approximately how many cases have you
11 had an opportunity to review?

12 A. 1,045.

13 Q. 1,045, down to the exact number.

14 A. Actually, it's 1,047 as of this weekend.

15 Q. And these 1,047 cases, are these all rape,
16 sexually-related cases?

17 A. Yes, they are.

18 Q. Do you view anybody to be victim, anywhere
19 from a child to a male to a female?

20 A. Yes.

21 Q. Have you ever testified as an expert in
22 state of Federal court?

23 A. I have testified as an expert in State
24 court eleven times and military court once.

25 MR. MCCOY: Your Honor, at this

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1 point, we would move for Faye to be considered
2 an expert in forensic sexual examination.

3 THE COURT: Do you care to examine
4 her qualifications?

5 MR. SMITH: No, Your Honor.

6 THE COURT: She will be permitted to
7 render opinions in that area.

8 MR. MCCOY: Thank you, Your Honor.

9 DIRECT EXAMINATION CONTINUED

10 Q. Faye, let's talk a little bit more about
11 your duties as a sexual examiner. What does
12 that mean?

13 A. A sexual assault examiner is a nurse who
14 has extra training in the area of evidence
15 collection and working with sexual assault
16 victims.

17 Q. And when working with them, do you examine
18 them?

19 A. Yes, sir.

20 Q. Can you go through this and explain to the
21 jury how somebody comes in and how they're
22 examined?

23 A. We're on call 24/7. Usually we get a call
24 from law enforcement to help with a person who's
25 been sexually assaulted. They are brought to

1 our office in North Charleston which is the
2 Women's Center. There we go through their
3 medical history with them, we go through the
4 history of the sexual assault, and then we do an
5 examination which is evidence collection.

6 Q. And when victims come to see you is it
7 typically right after an assault has occurred,
8 or is it days later?

9 A. It could be either one.

10 Q. Does it make a difference as to when
11 somebody comes to see you?

12 A. The sooner they come to see me, the higher
13 probability of good evidence collection.

14 Q. When you're saying good evidence
15 collection, in your examination can different
16 factors play a role in how you collect evidence?

17 A. The factors don't play a role in how I
18 collect evidence. But factors such as bathing,
19 washing, just normal walking around and changing
20 clothes could affect the evidence collection
21 because it could wash away or take away evidence
22 that might be there.

23 Q. Does time affect evidence?

24 A. Yes, over time evidence can disintegrate
25 due to body secretions.

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1 Q. What's the point of doing a sexual abuse
2 exam?

3 A. It's to help with the victim who's been
4 assaulted to find the evidence that points to
5 that incident.

6 Q. Do you document your findings in a report?

7 A. Yes, I do.

8 Q. Do you create reports for each individual
9 victim that comes to see you?

10 A. Yes, I do.

11 Q. Do you remember writing a report and making
12 a report on a victim, Shaquinna McNeil?

13 A. Yes, I do.

14 Q. Do you remember the date that she came to
15 see you?

16 A. She came in on March 22nd, 2008.

17 Q. And why was she there?

18 A. She said that she'd been sexually
19 assaulted.

20 Q. Did she tell you where she'd been sexually
21 assaulted?

22 A. That she had been sexually assaulted on a
23 bed in a person's house.

24 Q. What is SAME kit?

25 A. A sexual assault kit is a kit that's set up

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1 by SLED up in Columbia, South Carolina. It's
2 set up to have a bunch of envelopes in it, and
3 it's set up for collecting -- some for DNA, some
4 for toxicology or looking for drugs, and the
5 other one is looking for fibers or hairs.

6 Q. And you performed or rendered a SAME kit
7 with this victim?

8 A. Yes, I did.

9 Q. And, again, before I talk about the
10 forensic exam, did you render a forensic exam to
11 this victim?

12 A. Yes.

13 Q. And in your medical diagnosis and in your
14 examination of the victim, did she tell you
15 anything that helped you with your medical
16 diagnosis and what you wanted to report in your
17 report?

18 MR. SMITH: Objection, Your Honor.

19 THE COURT: Sustain the objection
20 except for the two areas he's already asked
21 about.

22 MR. MCCOY: Your Honor, may I
23 approach for a moment?

24 THE COURT: Sure.

25 (BENCH CONFERENCE)

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1 THE COURT: Sustain the objection.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. MCCOY:

4 Q. Faye, how long do victims stay with you at
5 your facility?

6 A. They can be there anywhere from thirty
7 minutes to over three or four hours, depending
8 on what we have to do for the documentation.

9 Q. Do you remember how long Ms. McNeil was
10 with you that time?

11 A. She came in a little bit before 10:00
12 o'clock, and she left about ten minutes after
13 11:00.

14 Q. How did she appear to you when you spoke to
15 her?

16 A. When I saw her she was -- her eyes were red
17 and watery. She was trembling.

18 Q. Can you explain to the jury what a Tanner
19 stage is?

20 A. A Tanner stage is the age of a person
21 looking at their development, their ---

22 Q. Did she register on a certain Tanner stage?

23 A. She was a Tanner stage five which is a
24 normal adult.

25 Q. Faye, is it important to you to document

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1 how somebody looks, how long they're there, how
2 they answer questions? Is that all important to
3 your examination?

4 A. It does. It tells me if I need to get them
5 counseling or if I need to get other people
6 involved.

7 MR. MCCOY: The Court's indulgence,
8 Your Honor.

9 THE COURT: Certainly.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. MCCOY:

12 Q. Faye, upon her exam, you testified that you
13 examined her body. You looked for evidence.

14 Did you examine her vaginal area?

15 A. Yes, I did.

16 Q. And what were the results of what you found
17 in your examination?

18 A. I took the swabs that are used with a
19 sexual assault kit. I also take a swab for
20 myself to look and see if I can find any sperm
21 under the microscope, and I didn't see any
22 evidence of sperm at that point.

23 Q. Do you also document if you find any kind
24 of markings on her body anywhere?

25 A. Yes, I did.

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1 Q. Did you find any sort of redness or
2 markings along her arms?

3 A. No, I didn't.

4 Q. How about along her neck?

5 A. No, I didn't.

6 Q. Is it common when you do these examinations
7 to not see markings around somebody's neck or
8 arms if they are of a darker shade or African
9 American?

10 A. Yes, it's very hard.

11 Q. What did you do with the evidence collected
12 once you took it from a sexual assault victim?

13 A. I collect evidence and let it dry. Then I
14 package it up per envelope, per SLED's protocol.
15 All the toxicology goes in one envelope. All
16 the fibers go in another envelope, and the DNA
17 goes in another envelope. They're all sealed.
18 Then they're double-sealed. I put them back in
19 the box. A copy of my report goes in the box.
20 I then seal the box and sign the box with the
21 time I opened it and the time I closed it. I
22 log it into the evidence book and I put it in
23 our refrigerator that we have in our office.
24 Q. Does anybody have the ability to tamper
25 with this evidence once you have sealed it?

1 A. That's a test to see if there's any
2 evidence from someone who states that they were
3 strangled.

4 Q. And in this case what did you find with
5 regard to strangulation?

6 A. I did not find any evidence.

7 Q. You also do a pretty thorough physical
8 examination of the victim in the case. Is that
9 fair?

10 A. Yes, I do.

11 Q. During that, you note anything out of the
12 ordinary that you see during the exam. Is that
13 correct?

14 A. Yes, I do.

15 Q. Normally, they're like anatomically correct
16 drawings that you make findings or notes on
17 about what you see. Is that correct?

18 A. Yes, sir.

19 Q. You would note any kind of injuries you saw
20 with regard to that?

21 A. Yes, I would.

22 Q. You would note any kind of bruising that
23 you saw in that situation?

24 A. Yes, I would.

25 Q. You would note anything out of the ordinary

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1 that you would not normally see on a person.

2 You would use that to indicate that. Is that
3 correct?

4 A. Yes.

5 Q. There's some boxes that you checked. One
6 says, I think, findings, and the other says no
7 findings. With regard to this particular exam,
8 can you tell me what you found?

9 A. On the anatomical drawing I have no
10 findings.

11 Q. No findings. That meant that you saw
12 nothing out of the ordinary with regard to this
13 exam.

14 A. Yes, sir.

15 Q. You also did a more specific genital exam
16 in the case. Is that correct?

17 A. Yes, I did.

18 Q. Again, you use an anatomically-correct
19 drawing to note anything out of the ordinary
20 with regard to that and your findings. Is that
21 correct?

22 A. Yes, I do.

23 Q. With regard to this particular case were
24 there any findings with regard to that
25 examination?

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1 A. No, there were not.

2 Q. You talked briefly with the Solicitor about
3 the collection of trace evidence. Trace
4 evidence that you want to try to collect to
5 preserve for law enforcement. Is that correct?

6 A. For SLED.

7 Q. And ultimately, you know that those items
8 could be used in the prosecution of a case. Is
9 that correct?

10 A. Yes, sir.

11 Q. And in this case, some of the things that
12 you looked for were pubic hair, loose hair or
13 fiber or any kind of miscellaneous trace
14 evidence. Is that correct?

15 A. Right.

16 Q. And were you able to find any of those
17 things in this case?

18 A. The only thing I collected in this case for
19 trace evidence was hairs from her.

20 Q. And one of the other things that you look
21 at and is important in cases like this is
22 sometimes you do fingernail scrapings and
23 cuttings. Is that correct?

24 A. Yes, sir.

25 Q. And did you do that in this case?

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1 A. Yes, sir.

2 Q. In this particular case at the end of the
3 exam, she's not admitted to the hospital or
4 anything like that.

5 A. No.

6 Q. She was okay?

7 A. Yes, she was.

8 MR. SMITH: Beg the Court's
9 indulgence.

10 THE COURT: Certainly.

11 MR. SMITH: Nothing further, Your
12 Honor.

13 THE COURT: Redirect?

14 MR. MCCOY: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. MCCOY:

17 Q. Faye, you testified a little bit about
18 strangulation testing that you did on the victim
19 in this case. In your 1,047 cases that you've
20 examined, is it possible for somebody to be
21 strangled and not leave strangulation marks?

22 A. Yes, it is.

23 Q. And, again, is it hard to see strangulation
24 marks or redness on an African-American?

25 A. Yes, it's very hard.

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1 DIRECT EXAMINATION

2 BY SOLICITOR MCCOY:

3 Q. Officer Wilson, thank you for your time. I
4 appreciate you being here today. Can you tell
5 the jury where you are employed?

6 A. Employed as a police officer with the North
7 Charleston Police Department.

8 Q. Tell the jury how long you've been with
9 North Charleston.

10 A. I've been with North Charleston since
11 October of 2001.

12 Q. Okay. In your duties with North
13 Charleston, have you received any education or
14 training that has helped you become a police
15 officer?

16 A. Prior to that I was a United State Border
17 Patrol agent for approximately two years, total.
18 That helped me out considerably.

19 Q. Did you go to the police academy?

20 A. Yes, I did.

21 Q. Do you go to training like that?

22 A. Yes, I did.

23 Q. Officer Wilson, what are your current
24 duties with North Charleston?

25 A. I am a patrolman assigned to the north

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1 area.

2 Q. What is the north area mean?

3 A. The north area is the area of the city that
4 is designated from basically Ashley-Phosphate
5 Road north, Dorchester Road north. The area
6 cuts across I-26 over to Rivers. Basically the
7 entire northern portion of the city is
8 considered the north area.

9 Q. On March 22nd, 2008, what were you duties
10 then?

11 A. I was a patrol officer. At the time the
12 area was known as the west bureau and I was
13 assigned to an area in there called Zone 9,
14 which ran from South Rail down Ashley-Phosphate
15 to the northern part of the city.

16 Q. Are you assigned to patrol during certain
17 hours of the day?

18 A. Yes. At that time my work hours were from
19 2:45 in the afternoon until 1:00 a.m. in the
20 morning.

21 Q. Were you on patrol that day, March 22,
22 2008?

23 A. I was indeed.

24 Q. Do you recall responding to an assault that
25 happened that day?

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1 A. Correct.

2 Q. Can you tell the jury where you responded?

3 A. Initially I was dispatched to the area of
4 Ashley-Phosphate and Brandywine. Brandywine is
5 the entrance to Pepper Hill subdivision. While
6 en route, I was redirect by the dispatcher to
7 meet with the complainant in the parking lot of
8 the bowling alley which is across the street at
9 the intersection of Cross County and Brandywine.
10 It changes names as it goes through the
11 intersection.

12 Q. Can you describe to the jury and tell them
13 a little bit about the Brandywine, that area,
14 the neighborhood.

15 A. Brandywine is one of really two main
16 entrances into the Pepper Hill subdivision. It
17 kind of separates the northern portion of the
18 neighborhood into north and south sections of
19 it, small sections to the north and the larger
20 section to the south.

21 Q. Okay. When you responded to the
22 complainant, where did you go?

23 A. Due to being rerouted, I met with them in
24 the parking lot of the bowling alley at the
25 corner of Cross County and Ashley Phosphate,

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1 which is directly across the street from the
2 subdivision.

3 Q. Is this in Charleston County?

4 A. It is indeed.

5 Q. Why did you respond? What was the
6 complaint?

7 A. The dispatcher had advised that they
8 received a sexual assault call and that the
9 victim was located in the area of Brandywine and
10 Ashley-Phosphate. When I was redirected, they
11 advised me that they had called back and advised
12 that they had moved over into the parking lot of
13 the bowling alley.

14 Q. When you responded to the bowling alley,
15 did you have an opportunity to view the victim
16 in the case?

17 A. I did. She was seated in the front
18 passenger seat of the vehicle. EMS was on scene
19 with her, and two junior officers had arrived on
20 scene.

21 Q. Could you tell us if she was clothed, if
22 she was wearing any clothes?

23 A. She was -- I couldn't tell if she actually
24 had anything on, she was slightly wrapped
25 because she was -- appeared shaken, was hunched

1 over. I actually approached the driver's side
2 because EMS was on the passenger side of the
3 vehicle.

4 Q. How close did you get to her when you
5 responded?

6 A. Basically from the driver's door. The
7 window was open, from the driver's door looking
8 across.

9 Q. Could you tell if she was crying?

10 A. She appeared visibly shaken, highly upset.
11 I couldn't tell you as far as tears/crying, but
12 she was highly shaken.

13 Q. Okay. As an officer arriving on scene,
14 what are your duties. What is it your
15 responsibility to do once you get there?

16 A. Normally the first responsibility is to
17 care for the parties involved. Due to the fact
18 that EMS was already on the scene, that need was
19 already taken care. I was trying to get some
20 preliminary information about what happened,
21 where and who becomes the next priority for me.

22 Q. Is it important for you to talk to
23 witnesses and see what may have happened?

24 A. Yes.

25 Q. Is it important for you to also get leads

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1 to people, as to what may have happened?

2 A. Very important.

3 Q. During this time did you develop anybody as
4 a suspect while you were there with the victim?

5 A. I was advised that the -- the information
6 that I was provided was that, the suspect if was
7 a black male that the young lady that was in the
8 front seat knew only as "Thurston", that he was
9 seen driving around the Pepper Hill subdivision
10 in a black Mercedes.

11 Q. At this point in time, did you decide to
12 leave the victim?

13 A. Yes, I did because she was in the presence
14 of not only EMS but other officers.

15 Q. What do you go on to do at this point?

16 A. I then went to the neighborhood to attempt
17 to locate a vehicle matching that description,
18 trying to locate the suspect.

19 Q. Okay. How long did you ride around the
20 Pepper Hill subdivision?

21 A. Due to the way that the subdivision is
22 divided, with Brandywine being split, the north
23 side of that subdivision is actually the smaller
24 side, is the quicker side to check as opposed to
25 the larger size. I went down into that section.

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1 I was proceeding west down Chippendale Road.

2 Chippendale is intersected at one point with

3 Dublin, which I crossed over.

4 Q. Okay. Did there come a point in time when

5 you happened to see a black Mercedes in the

6 area?

7 A. There was. As I was crossing over Dublin,

8 I looked to my left as I passed through the

9 intersection and observed a black-in-color

10 Mercedes traveling southbound on Dublin towards

11 Brandywine Road.

12 Q. Could you see how many people were in that

13 car?

14 A. Initially I could not. I then turned to

15 follow the car, caught up with them as they came

16 up to the stop sign at Brandywine and I did see

17 one subject -- in the driver's seat. I did not

18 see anyone else.

19 Q. At what point in time did you initiate a

20 traffic stop?

21 A. Due to the fact that the vehicle matched

22 the description, I requested a backup unit to

23 come with me before I initiated a traffic stop.

24 The vehicle turned right onto Brandywine, back

25 to the Pepper Hill Community Center and pulled

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1 into the parking lot and stopped. At that time
2 I went ahead and activated my blue lights and
3 initiated a traffic stop, and then the backup
4 unit arrived.

5 Q. Officer Wilson, if you would estimate a
6 time as to when you left the victim and as to
7 when you actually initiated the traffic stop on
8 his car.

9 A. Approximately ten to fifteen minutes.

10 Q. When you pulled this car over, are you
11 looking for somebody in particular?

12 A. I am looking for a black male and possibly
13 his name is Thurston.

14 Q. Did you receive any kind of information as
15 to what his last name was?

16 A. No, I did not.

17 Q. What did you do when you approached the
18 car?

19 A. I approached the car, identified myself and
20 asked the driver for his license; at which time,
21 he stated that he didn't have one with him and
22 that he had left it at home.

23 Q. At any point in time did you ask him what
24 his name was?

25 A. I did, because moments later a backup unit

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1 had arrived with me and I went ahead and asked
2 him to step from the car and I asked him what
3 his name was. He advised me that it was
4 Thurston Bolton.

5 Q. At this point in time did your
6 investigation heighten?

7 A. It did indeed because the vehicle matched
8 and the first name of the subject, he was a
9 black male and the physical description matched.

10 Q. Okay. Tell the jury what you did next.

11 A. Due to the nature of the crime that was
12 reported to me, for further investigative
13 purposes and officer safety, I went ahead and
14 placed him in investigative custody, detained
15 him, placed him in handcuffs and seated him in
16 the back seat. I advised him that he was not
17 under arrest at the time, that he was simply
18 being detained for further criminal
19 investigation.

20 Q. Did you do anything to further your
21 investigation on this case?

22 A. I did. I then read him his Miranda rights,
23 to which he acknowledged that he understood them
24 and that he was willing to talk to me without an
25 attorney present.

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1 Q. What did he say to you?

2 A. I asked him what was going on between him
3 and the young lady. That was the extent of my
4 questioning. He replied to me that they had
5 been at his home, just hanging out together,
6 kissing and making out, just being with each
7 other. He then went on to say that at one point
8 she had asked for some ice cream, that she got
9 up and ran out of the house and that he didn't
10 know why.

11 Q. Did hem make any other statements to you
12 when you first investigated this?

13 A. Not me on that -- not at that time. It
14 was a very short time span in which that took
15 place.

16 Q. Was there ever a point in time when he told
17 you that nothing had happened between him and
18 the young lady?

19 A. After he was identified by the victim, he
20 was re-Mirandized and I asked him what happened,
21 which at that point he was given his written
22 Miranda rights at that time, again acknowledging
23 and waiving his right to an attorney, at which
24 time he did know the young lady, that he'd known
25 her for several weeks, that they had gone out on

1 a date and that neither he nor her -- that they
2 had not touched each other.

3 Q. That they had not touched each other that
4 night?

5 A. That's correct.

6 Q. You've already indicated to us a little bit
7 but was there a point in time when the victim
8 actually came over to where you had the
9 defendant?

10 A. Yes, there was. Sergeant Mowder with the
11 North Charleston Police Department transported
12 the victim over to the scene. I then had Mr.
13 Bolton step from the rear of the vehicle, to
14 where he was in plain view to her, and Sergeant
15 Mowder advised me over the radio that he had
16 been positively identified.

17 Q. Okay. Officer Wilson, did you have an
18 opportunity to examine the inside of the
19 defendant's car?

20 A. Only from the exterior of the car briefly
21 as I removed him from it. I was advised by the
22 other officers on the scene that they -- that
23 there was clothing present which was consistent
24 with the description of that belonging to the
25 victim. I advised them to leave the vehicle

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1 alone, not to touch it.

2 Q. Officer Wilson, once you'd investigated,
3 found a suspect, what are your duties next?

4 A. Basically I went over the incident scene,
5 basically provided security for the crime scene
6 folks who responded out. Once that was
7 completed, Sergeant Mowder was taking statements
8 and so forth from the victim. She was then
9 turned over to me and I transported her over to
10 the Women's Clinic for medical examination.

11 Q. Okay. Officer Wilson, you just testified
12 that you went to the actual scene.

13 A. Yes.

14 Q. Can you tell the jury where that was?

15 A. It was on , I believe that the
16 numeric was or . There was some
17 confusion about the exact numeric. One of those
18 two does not actually exist on that street.

19 Q. If I were to show you your report, would it
20 refresh your memory?

21 A. Yes, it would.

22 SOLICITOR McCOY: May I approach the
23 witness, Your Honor?

24 THE COURT: You may.

25 DIRECT EXAMINATION CONTINUED

1 BY SOLICITOR McCOY:

2 Q. Would you take a look at that for me,
3 Officer Wilson, and tell me what that is?

4 A. This is a police incident report that I
5 wrote the evening of the arrest.

6 Q. In taking a look at that report, does it
7 refresh your memory as to where you responded to
8 the actual incident location?

9 A. Yes, it does. It was
10 Initially Mr. Bolton advised me that he lived at

11
12 SOLICITOR McCOY: Your Honor, we have
13 this for ID purposes as State's Exhibit 22.

14 THE COURT: Very well. ID Only.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR McCOY:

17 Q. , what county is that in?

18 A. That's in Charleston County.

19 SOLICITOR McCOY: Beg the court's
20 indulgence, Your Honor.

21 THE COURT: Certainly.

22 SOLICITOR McCOY: Thank you, Your
23 Honor.

24 THE COURT: Cross examine?

25 MR. SMITH: Yes, Your Honor.

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1 CROSS EXAMINATION

2 BY MR. SMITH:

3 Q. Officer Wilson, you indicated to the
4 Solicitor that at some point you returned to the
5 scene in this case; is that correct?

6 A. Yes.

7 Q. And were you able to observe the front door
8 at that residence?

9 A. If you -- outside? Inside?

10 Q. Inside?

11 A. As we walked out, I looked at it with the
12 crime scene investigator. Yes, sir.

13 Q. Do you remember locks being on that door?

14 A. Yes, sir, I do.

15 Q. Do you remember that there were two locks
16 on the door?

17 A. No, sir, I could not tell you how many I
18 recall being on there.

19 Q. Do you remember testifying at the
20 preliminary hearing in this case?

21 A. To the number of locks?

22 Q. Um-humm.

23 A. No, sir, I do not remember.

24 Q. At that time I think what you'd told the
25 court was that there were two locks, a standard

1 door lock and then a deadbolt. Does that jog
2 your memory in any way?

3 A. I know that there were at least two, yes.

4 Q. With regard to this case, one of the things
5 that you kind of do is a make a decision about
6 else needs to be done in a case; is that
7 correct? As the responding officer.

8 A. Until a certain point, until a higher --
9 until a supervisor arrives on the scene.

10 Q. With regard to this case, did you conduct
11 any of the investigation beyond taking the
12 initial report in the case?

13 A. Beyond him being identified by the victim,
14 being detained; no.

15 Q. Is it your responsibility to call crime
16 scene out to a particular location?

17 A. No, sir. As a matter of fact, that
18 specifically has to be specified by a
19 supervisor.

20 Q. In this particular case you talked about
21 observing in the car some clothing that was
22 consistent with what you'd learned the victim
23 had had on; is that correct?

24 A. No, not entirely. The officers that had
25 approached when I removed Mr. Bolton back to the

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1 car advised me that there was clothing in the
2 backseat. At that time, I wouldn't have had a
3 description of the clothing.

4 Q. Did they give you any indication about
5 where the clothing was other than that it was in
6 the back seat?

7 A. They said that it was on the right, back
8 passenger's side seat.

9 Q. With regard to stopping Mr. Bolton, I just
10 want to make it clear, did you see the Mercedes
11 more than once or just the one time?

12 A. Just the one time when I began following
13 it.

14 Q. At that point he was still in the
15 subdivision, kind of in the area where he lived?

16 A. Approximately three blocks away. I believe
17 that's the correct information.

18 Q. How long would it take for travel time for
19 three blocks in that neighborhood?

20 A. Several minutes.

21 Q. When -- at first you indicated that you
22 just kind of got behind the car, is that
23 correct?

24 A. Correct.

25 Q. Did you have any flashing lights on or

1 anything like that?

2 A. No, I didn't.

3 Q. How long did you follow him without having
4 any flashing on, or siren, or anything?

5 A. The community center -- Dublin Road, from
6 where I first saw him in the second block, it's
7 actually a block width that I traveled down
8 observing him. It intersects with Brandywine,
9 so from that block and then a right turn onto
10 Brandywine and it's approximately two and a half
11 blocks away.

12 Q. During that brief time that you're behind
13 him, he didn't try to flee or get away from you
14 in any way?

15 A. No.

16 Q. And ultimately he pulled the car in and
17 just parked it in the community center lot, is
18 that right?

19 A. Correct.

20 Q. Now, when you talked to him, obviously he
21 doesn't have his license with him.

22 A. Correct.

23 Q. He gave you his name right off the bat?

24 A. Yes, sir.

25 Q. No question about that. Didn't give you

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1 any other name?

2 A. Correct.

3 Q. And all you had to go on at that point was
4 a black male possibly named Thurston, is that
5 correct?

6 A. Now, with regard to him talking with him in
7 the car, you indicated the first time that he
8 wasn't under arrest but that he was being
9 detained at that point. Correct?

10 A. Correct.

11 Q. He told you a few things specifically about
12 ho he knew Miss McNeil, how they'd known each
13 other; is that correct?

14 A. No, that was the second time.

15 Q. The second time?

16 A. (Affirmative nod).

17 Q. Can you tell me again, what did he indicate
18 to you the first time?

19 A. That they'd been simply at his home kissing
20 and hugging and -- kissing and making out and
21 just being together. I remember him using that
22 exact phrase, "just being together". It struck
23 me as an odd phrase.

24 Q. He talked about her getting up to go get
25 some ice cream at some point?

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1 A. Yes.

2 Q. Do you remember that?

3 A. Yes.

4 Q. At that time, was he pretty clear about
5 where he lived? Did he ever tell you that?

6 A. There was an issue with -- he couldn't
7 remember the exact numerics. He told me
8 and in fact there is no such number. For some
9 reason there is no such number on that street.
10 It's like they skipped it.

11 Q. Like they skipped that number?

12 A. (Affirmative nod).

13 Q. But you don't believe from what he told you
14 that that was intentional in any way, maybe just
15 a matter of ---

16 A. I have no reason to believe that it was
17 intentional, no.

18 MR. SMITH: Beg the court's
19 indulgence.

20 THE COURT: Certainly.

21 MR. SMITH: No further questions,
22 Your Honor.

23 THE COURT: Redirect?

24 SOLICITOR McCOY: No, sir.

25 THE COURT: You may come down.

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1 (WITNESS STEPS DOWN)

2 THE COURT: Call your next witness.

3 SOLICITOR MCCOY: The State calls
4 Kelly Murphy with Crime Scene, North Charleston.

5 (WITNESS TAKES STAND)

6 KELLY MURPHY, being duly sworn to tell
7 the truth, the whole truth and nothing but the
8 truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY MR. MCCOY:

11 Q. Officer Murphy, thank you for being here
12 with us today. I appreciate your time. Can you
13 tell the jury how long you've been with North
14 Charleston?

15 A. I've been with North Charleston for
16 approximately two years.

17 Q. In your two years with North Charleston are
18 you assigned to a particular division?

19 A. I'm assigned to the crime scene investiga-
20 tion unit.

21 Q. Can you tell the jury what the crime scene
22 investigation unit does?

23 A. We respond to numerous types of crime
24 scenes, process the scene, take evidence,
25 collect it, send it off to SLED for analysis,

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1 photograph the scene.

2 Q. Officer Murphy, have you received any
3 education or training that helps you in your
4 duties as a crime scene investigator?

5 A. Yes, both with the Department and previous
6 to being with the Department.

7 Q. Tell the jury what kind of education and
8 training you've received.

9 A. I hold a master's degree in biology and
10 I've gone through several crime scene processing
11 courses while at the Department as well as
12 fingerprint courses.

13 Q. These crime scene processing courses, what
14 do they teach you to do there?

15 A. Teach you how to collect evidence, how to
16 make sure all evidence is secured and not
17 contaminated, how to package it properly and
18 submit it to an evidence locker and that sort of
19 thing.

20 Q. This may sound like a strange question but
21 as a crime scene technician how important is it
22 for evidence to be preserved?

23 A. It's extremely important that all evidence
24 be preserved and packaged correctly to make sure
25 it's not contaminated or destroyed.

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1 Q. Officer Murphy, as your duties as a crime
2 scene investigator, do you respond to every
3 single crime that happens in North Charleston?

4 A. No.

5 Q. What kind of crimes do you respond to?

6 A. We respond mainly to home invasions,
7 homicides, sexual assaults, any kind of assault,
8 the more violent crimes.

9 Q. And why is it you respond to these kind of
10 crimes and not your everyday crimes?

11 A. We respond to these to ensure that evidence
12 is properly collected and preserved versus
13 something that a patrol officer could handle
14 without having to call everyone out.

15 Q. Officer Murphy, when you respond to these
16 places and you process scenes, do you complete
17 reports that you document for your file?

18 A. Yes, sir.

19 Q. And Officer Murphy, did you have the
20 opportunity to respond to a crime scene that
21 was on March 22nd, 2008?

22 A. Yes, sir.

23 Q. Tell the jury where you responded.

24 A. I responded to the Pepper Hill Community
25 Center on Brandywine Drive to an alleged sexual

1 assault.

2 Q. What is the Pepper Hill Community Center?

3 A. There is a baseball complex. It's a
4 recreational facility within the City of North
5 Charleston.

6 Q. Why did you respond to that location?

7 A. I was informed that there was a vehicle at
8 that location that belonged to a suspect in a
9 sexual assault that needed to be processed.

10 Q. Once you arrive on this scene, who's there?

11 A. I met with Sergeant Mowder with the North
12 Charleston Police Department.

13 Q. Are there any other officers there?

14 A. Not any other officers at that scene, no.

15 Q. Is Sergeant Mowder there to help preserve
16 the subject car and the evidence in the car?

17 A. He was there to secure the vehicle, to make
18 sure it was not tampered with prior to my
19 arrival. And he was also there with the victim.

20 Q. Once you arrive on the scene, ultimately
21 your responsibility is to make sure that vehicle
22 is secured and not tampered with.

23 A. That vehicle is then in my possession.

24 Q. And how do you ensure that nobody tampers
25 with this vehicle?

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1 A. Sergeant Mowder was making sure that no
2 other officers or anybody else passing by came
3 to the scene, and I took complete control of the
4 scene. Nobody was allowed to enter the car.
5 Nobody was allowed to touch the car. Nobody was
6 allowed around the car without my permission.

7 Q. Are things allowed to be taken in and out
8 of the car?

9 A. No, sir.

10 Q. And why is that?

11 A. Again, to secure evidence and make sure any
12 vital pieces of evidence aren't taken and
13 destroyed from the car and something put into
14 the car that was not there when the crime
15 occurred.

16 Q. When you responded, what kind of vehicle
17 was this?

18 A. It was a black in color Mercedes.

19 Q. Do you have any idea who this Mercedes
20 belonged to?

21 A. At that point in time I was told it
22 belonged to a possible.

23 Q. And once you get on the scene, this car is
24 your scene, what is your focus?

25 A. The first thing I do is take photographs of

1 both the exterior and interior of the vehicle.

2 Q. And why do you do that?

3 A. Just to document how it was upon my
4 arrival, to document anything that was
5 potentially in the car, any damage that was done
6 to the outside of the car, just to preserve the
7 state that it was in when I arrived.

8 Q. Does there come a point in time when you
9 also dust the car for fingerprints?

10 A. Yes.

11 Q. Tell the jury how you dust for
12 fingerprints.

13 A. Dusting for fingerprints at a scene like
14 that is generally the last thing I do on the
15 exterior car, and I use black powder and dust
16 the exterior and any part of the car that
17 anybody could possibly touch, mainly focusing on
18 the windows and the door handles are the best
19 places to retrieve latent prints.

20 Q. How long does it take you to process a car
21 such as this, go through the entire car and dust
22 it for prints?

23 A. Probably about an hour.

24 Q. When you're dusting for prints are you
25 looking for anything in particular?

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1 A. Looking for prints that have good ridge
2 detail so they can be identified, prints, like I
3 said, that would be at a particular spot that
4 would prove that somebody had been in or out of
5 that vehicle.

6 Q. What is good ridge detail? What does that
7 mean?

8 A. A fingerprint has to have ridge detail.
9 Every person's ridge detail on their finger is
10 different. Without the ridge detail a
11 fingerprint cannot be identified to one
12 individual over another.

13 Q. A common item on a car?

14 A. Yes.

15 Q. Were there fingerprints all over a car?

16 A. Yes.

17 Q. Fingerprints all over the outside?

18 A. Yes.

19 Q. As well as the inside?

20 A. Yes.

21 Q. And you already testified earlier that
22 there are certain spots that are easier or more
23 conducive to leave fingerprints.

24 A. Yes.

25 Q. What kind of spots are those again?

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1 A. Like I said, mainly the windows are a good
2 spot, door handles on the exterior of the car.
3 On the inside of the car, again the windows, and
4 depending upon the make and model of the car,
5 and what the interior is like, the dashboard
6 area of the vehicle.

7 Q. And in your processing this vehicle were
8 you able to lift any fingerprints?

9 A. I believe three were lifted off the
10 passenger's side door.

11 Q. And when you say "lift a print," how do you
12 do that?

13 A. Once it's dusted, clear tape is laid over
14 top of it. That tape is then removed and the
15 dust has attached to the fingerprint and is then
16 lifted and placed on a white card so it can be
17 analyzed.

18 Q. The prints you lift are placed on a card.

19 A. Uh-huh, (affirmative nod).

20 Q. What do you do with these cards?

21 A. They were submitted to Sergeant Hallman who
22 was also in a crime scene unit to run through
23 AFIS.

24 Q. Officer Murphy, you testified you did this
25 last?

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1 A. Yes.

2 Q. What did you do first besides photograph?
3 What did you do next?

4 A. Once I arrived on scene and photographed
5 the vehicle, I searched the inside of the
6 vehicle for any potential evidence in relation
7 to the sexual assault that had allegedly
8 occurred.

9 MR. MCCOY: Your Honor, I would like
10 to publish State's 16, 17, 18 and 19 to the
11 jury. They are already admitted into evidence.

12 THE COURT: You may do so.

13 MR. MCCOY: Thank you, Your Honor.

14 DIRECT EXAMINATION CONTINUED

15 Q. Officer Murphy, if you look behind you
16 here, I'm going to show you what's already in
17 evidence as State's 19. I know that's kind of
18 difficult to see. Tell me what that is.

19 A. That is the back of the Mercedes that was
20 at the community center.

21 Q. Is it the same Mercedes that you processed
22 that night?

23 A. Yes.

24 Q. I'm going to show you what's now in
25 evidence as State's 16. If you could take a

1 look at that and tell me what that is.

2 A. That is a silver-in-color cell phone that
3 was found on the back floorboard that was later
4 identified as belonging to the victim.

5 Q. I don't know if you can tell from this
6 photograph and from this angle, can you tell
7 what this bag is up here, up top?

8 A. I believe that's a black bag from a jewelry
9 store.

10 Q. Okay. I'm also going to show you what's
11 now into evidence as State's 18. Can you tell
12 me what this is, Officer Murphy?

13 A. That is the back seat of the black
14 Mercedes.

15 Q. You might be able to see it a little bit
16 better now. Down here on the passenger's side,
17 on the floor, can you tell what that is?

18 A. That's a pile of clothing.

19 Q. Do you know if this clothing was identified
20 by the victim at all?

21 A. Each item of clothing that was removed from
22 the vehicle was identified as belonging to the
23 victim by her on the scene.

24 Q. And the black bag you talked about earlier,
25 you see that in the photograph as well?

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1 A. Yes.

2 Q. Officer Murphy, finally I'm going to show
3 you what's been marked into evidence as State's
4 17. Do you know what that is?

5 A. That is the I.D. card that was found in the
6 wallet in the back seat.

7 Q. Can you read on there who that I.D. card
8 belongs to?

9 A. It's not very clear from here, but McNeil
10 is the last name.

11 Q. That's fine. Officer Murphy, you've now
12 examined the inside of the car. You've
13 photographed the outside and inside of the car
14 and dusted for prints. Is there anything else
15 that you did on the car as a crime scene
16 technician?

17 A. At that time at the scene I released the
18 vehicle over to Sergeant Mowder to have it towed
19 from the scene.

20 Q. And, finally, the evidence that you
21 collected from the black car, what did you do
22 with it?

23 A. All evidence was packaged and secured in my
24 City vehicle until I could respond back to the
25 North Charleston Police headquarters where it

1 was then packaged and submitted to the property
2 room.

3 Q. Finally, can you explain to the jury how
4 you submit evidence to the property room in
5 North Charleston?

6 A. Each item of evidence is packaged
7 individually. It's labeled with the case
8 information, where it was found, what time it
9 was collected, and a chain of custody signed
10 over from me to the evidence technician.

11 Q. Does anybody have a way to get to this
12 evidence once it's in your possession and you
13 turn it over?

14 A. No.

15 Q. Thank you.

16 MR. MCCOY: Thank you, Your Honor.

17 THE COURT: Cross.

18 CROSS EXAMINATION

19 BY MR. SMITH:

20 Q. With regard to this particular case, did
21 you ever have occasion to go back to the alleged
22 incident location?

23 A. I did. I met with Sergeant Hallman once I
24 cleared the community center, but I never went
25 inside the residence.

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1 Q. You never went inside.

2 A. I met him in the driveway when he was
3 getting ready to leave.

4 Q. With regard to the car, did you search all
5 areas of the car?

6 A. Yes.

7 Q. Did you open the trunk and search that?

8 A. I believe so, yes. It's standard
9 procedure, yes.

10 Q. But you didn't photograph that area of the
11 car?

12 A. I have not seen all the photographs
13 recently from the case. Those that were just
14 shown were not all of them.

15 Q. If I could show you what has been marked as
16 State's 18, everything that's in the back seat
17 of that car, was that when you first arrived
18 that you took those pictures?

19 A. Yes.

20 Q. And everything is as it was when you came
21 on the scene?

22 A. Yes.

23 Q. No one had touched any of this?

24 A. As far as I know, no, sir.

25 Q. Let me show you what's been marked as

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1 State's 17. Do you know where that was found?

2 A. It was in a wallet that was in a purse that
3 was found in the back seat of the car.

4 Q. And the purse was found on the back seat?

5 A. It was on the back seat; yes, sir.

6 Q. And the jewelry bag was setting on the back
7 seat as well?

8 A. Yes.

9 Q. But the clothing items were all just down
10 on the floor?

11 A. On the floor.

12 Q. They weren't covered up in any way?

13 A. No.

14 Q. They weren't under the seat?

15 A. No.

16 MR. SMITH: No further questions.

17 THE COURT: Redirect?

18 MR. MCCOY: No, sir, Your Honor.

19 THE COURT: You may come down. Thank
20 you.

21 (WITNESS STEPS DOWN)

22 MR. MCCOY: Your Honor, if I may
23 approach the Bench?

24 THE COURT: Sure.

25 (BENCH CONFERENCE)

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1 THE COURT: Call your next witness.

2 MR. MCCOY: The State calls Ms.

3 Johnsey McNeil.

4 (WITNESS TAKES STAND)

5 JOHNSEY McNEIL, being duly sworn to
6 tell the truth, the whole truth and nothing but
7 the truth, testified, as follows:

8 DIRECT EXAMINATION

9 BY MR. YOUNG:

10 Q. Thank you for being here, Ms. McNeil.

11 What's your occupation?

12 A. I work in a cafeteria.

13 Q. How long have you been doing that?

14 A. About five months.

15 Q. What is your relation to the victim in this
16 case?

17 A. That's my daughter.

18 Q. You're her mom?

19 A. Yes.

20 Q. Ms. McNeil, I just have a few questions for
21 you. I want to take you back to March 22nd of
22 2008. Do you recall the date?

23 A. Yes.

24 Q. What were you doing that day?

25 A. I was at my niece's birthday party.

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1 Q. You were at the party?

2 A. Yes.

3 Q. Was that pretty much all day?

4 A. We got there around about 5:00 o'clock, I
5 think.

6 Q. Did you receive two phone calls from your
7 daughter that day?

8 A. Yes, I did.

9 Q. Tell us about those phone calls. Approxi-
10 mately how many calls did she make to you?

11 A. She was not home that morning. So I called
12 her earlier just to check on her. She said she
13 was going to the mall to get a present. And I
14 received another call from her I'd say around
15 about 7:30.

16 Q. So the first call was earlier in the day?

17 A. Yes.

18 Q. And you didn't receive another call until
19 later in the day?

20 A. Right.

21 Q. Did that worry you at all?

22 A. Yes, because normally we talk and call.

23 She did call me around 7:30 or 8:00 o'clock.

24 I'm not sure of the time. After I received --
25 after what happened I received numerous calls.

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1 Q. How was her demeanor when she called you in
2 the later call? How was she acting?

3 A. Highly upset, crying, couldn't really
4 speak. I asked her what was going on and 'Where
5 are you at?' She was highly upset and crying.

6 Q. Did she say where she was?

7 A. She put the officer on the phone.

8 Q. What were your emotions that were going on
9 with you at the time she called?

10 A. I was upset. I wanted to find out what had
11 happened. I immediately started crying and
12 trying to -- I was around kids because this was
13 a little kids' party, you know. I tried to get
14 to her. She said Miss Michelle had picked her
15 up and the police were with her.

16 Q. Did she tell you what happened?

17 MR. SMITH: Objection, Your Honor.

18 THE COURT: Sustained.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. YOUNG:

21 Q. But you stated that she was upset?

22 A. Yes, sir, very upset.

23 Q. How did you know that?

24 A. I know my daughter. I could hear her
25 crying and she was raped and was just crying and

1 couldn't, you know, get everything out. Then
2 Miss Michelle got the phone and told me things.

3 Q. Ms. McNeil, do you know what a "hot cab"
4 is?

5 A. Yes, sir.

6 Q. How are you familiar with that term?

7 A. Just where we stay at downtown there's a
8 lot of people that drive their car, and they'll
9 charge you a little less than a cab would. And
10 I have caught one a couple of different times.

11 Q. So this is a common thing?

12 A. Yes, sir.

13 MR. YOUNG: The Court's indulgence.

14 THE COURT: Certainly.

15 MR. YOUNG: I have just a few more
16 questions, Your Honor.

17 THE COURT: Certainly.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. YOUNG:

20 Q. Ms. McNeil, did you learn that an assault
21 had happened that day?

22 MR. SMITH: Objection, Your Honor.

23 THE COURT: I'll allow that.

24 Overruled, as to 801(b)(1), provided it's
25 confined to that.

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1 DIRECT EXAMINATION CONTINUED

2 BY MR. YOUNG:

3 Q. Do you want me to repeat the question
4 again?

5 A. Yes, sir, I learned there was an assault
6 that day.

7 Q. I'm sorry.

8 A. You asked me did I hear about an assault
9 that day?

10 Q. You learned there was an assault that day?

11 A. Yes, sir.

12 MR. YOUNG: Nothing further.

13 MR. SMITH: No questions, Your Honor.

14 THE COURT: You may come down. Thank
15 you, Ms. McNeil.

16 (WITNESS STEPS DOWN)

17 THE COURT: Approach, Solicitor.

18 (BENCH CONFERENCE)

19 THE COURT: Ladies and Gentlemen, at
20 this point we have a witness en route. We need
21 to take a break and let you go to your jury
22 room. Do not begin your deliberations. As soon
23 as the witness arrives, we will return you to
24 the courtroom. Thank you.

25 (JURY OUT AT 4:37 P.M.)

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1 THE COURT: We'll be at-ease. If he
2 doesn't get here by about a quarter till, I'm
3 going to do a recess.

4 (BRIEF RECESS)

5 (DEFENDANT PRESENT)

6 (JURY IN AT 4:41 P.M.)

7 BAILIFF: Jury is present, Your
8 Honor.

9 THE COURT: Thank you, Mr. Williams
10 (bailiff). Thank you, Ladies and Gentlemen. We
11 were able to reach the witness. He is stuck in
12 traffic on 526. Imagine that. So rather than
13 have you sit here and wait until he can get
14 here, I'm going to let you go for the evening.
15 We wouldn't finish today anyway, so it's not a
16 matter that you would have avoided coming back
17 tomorrow.

18 You've heard some of the evidence,
19 obviously, that you're going to ultimately
20 decide and consider when you begin your
21 deliberations. It's still very important that
22 you not discuss this case among yourselves or
23 permit anyone to talk with you outside the
24 courtroom, and that includes anyone that might
25 be at home tonight. When you go home, I would

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1 imagine one of the first questions will be what
2 are you doing and what's going on? What's the
3 case about? That would be pretty normal. And
4 the temptation would be there to discuss it.
5 But if you do, you will at that point have
6 commenced your individual deliberations. Tell
7 the person you'll probably complete this case
8 tomorrow, and then you'll be free to talk about
9 it if you want to. So talk about something
10 else. Ask them how their day was, instead of
11 talking about what's going on with you in this
12 case.

13 I would ask you to return to your jury
14 room at 9:30 in the morning. There's no need to
15 call that number tonight because that message
16 does not apply to you. It applies to everyone
17 else. So have a good evening, and I'll see you
18 at 9:30 tomorrow. Thank you.

19 (JURY OUT AT 4:50 P.M.)

20 THE COURT: Anything from the State
21 before we recess?

22 MR. MCCOY: Other than apologizing
23 for our witness' delay, Your Honor.

24 (COURT IN RECESS)

25 (TRANSCRIPT CONTINUED NEXT PAGE)

16 THE COURT: You're on the jury, and I
17 told you Monday that I was proud to work with
18 jurors because they were very responsible.
19 Responsible people plan for that. They leave in
20 more time than necessary to get here at 9:30.
21 When the Court tells you to be here at 9:30, it
22 means 9:30. And if you continue, sir, I want
23 you to understand, it's not just the Court
24 telling you something. If you don't, it's
25 contempt of Court. Do you understand that, sir?

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1 JUROR NUMBER 251: Yes, sir.

2 THE COURT: I understand how things
3 can happen, but you just need to make
4 arrangements to leave more time than you need to
5 get here on time. Twelve other people came, and
6 they didn't have any problems. And that's been
7 three times. Okay?

8 JUROR NUMBER 251: Yes, sir.

9 THE COURT: Thank you, sir. Don't
10 let it happen anymore. Wait a minute. What was
11 that? What were you popping your ticket for?

12 JUROR NUMBER 251: Nothing.

13 THE COURT: You're sure?

14 JUROR NUMBER 251: Yes, sir.

15 THE COURT: Thank you, sir.

16 (JUROR NUMBER 251 EXITS COURTROOM)

17 THE COURT: Any exceptions from the
18 State concerning the Court addressing the juror
19 who's been late three times?

20 MR. MCCOY: No, sir, Your Honor.

21 THE COURT: Any exceptions from the
22 defendant?

23 MR. SMITH: No, Your Honor.

24 THE COURT: Thank you very much. I
25 apologize to you'all, but we just can't tolerate

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1 that kind of attitude towards this process.

2 Is the State ready?

3 MR. MCCOY: The State is ready, Your
4 Honor.

5 THE COURT: The defendant is ready,
6 Mr. Bolton is present.

7 MR. SMITH: Yes, sir.

8 THE COURT: Thank you. Let's bring
9 in our jury.

10 (JURY ENTERS AT 9:45 A.M.)

11 BAILIFF: All jurors are seated,
12 Your Honor.

13 THE COURT: Thank you very much.
14 Good morning, Ladies and Gentlemen. We're ready
15 now to continue. I hope you had a good evening.
16 I ask you to give your attention, please, to the
17 next witness.

18 Solicitor, you may call your next witness.

19 MR. YOUNG: Thank you, Judge. The
20 State calls Sergeant Al Hallman.

21 (WITNESS TAKES STAND)

22 AL HALLMAN, being duly sworn to tell
23 the truth, the whole truth and nothing but the
24 truth, testified, as follows:

25 DIRECT EXAMINATION

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1 BY MR. YOUNG:

2 Q. Sergeant Hallman, how long have you been
3 with North Charleston?

4 A. A little over twenty-two years.

5 Q. In those twenty-two years, what have been
6 your duties?

7 A. For the first five or six years I was a
8 patrol officer and also did a stint as an
9 investigator. And then I was transferred to
10 the crime scene unit where I am currently the
11 supervisor, and I've been in crime scene for
12 sixteen years.

13 Q. Have you received any special type of
14 training that helped you be a crime scene
15 investigator?

16 A. Oh, yes. I've attended numerous training
17 seminars in the area of crime scene
18 preservation, evidence collection and
19 processing, shooting incident reconstruction,
20 latent print detection and identification,
21 friction ridge analysis, and I have a diploma
22 from the American Institute of Applied Sciences
23 in the area of forensic science.

24 Q. What do crime scene investigators do?

25 A. We respond to all various types of crime

1 scenes, determine potential evidence that might
2 be present at the scene, document the scene with
3 photographs, collect these items of evidence,
4 process them for latent prints and conduct
5 fingerprint comparison and analysis.

6 Q. Do you respond to every crime?

7 A. No.

8 Q. What kind of crimes do you respond to?

9 A. Property crimes, person crimes, burglaries,
10 auto thefts, rapes, robberies, homicides, things
11 of that nature. Any scene that would require a
12 specialist to come in and analyze, detect and
13 collect evidence.

14 Q. About how many scenes have you analyzed
15 over the years?

16 A. I could not tell you. Thousands and
17 thousands.

18 Q. Could you specifically tell me about your
19 training you've received for fingerprints?

20 A. Yes. Like I said, I've been to numerous
21 training seminars that deal with the area of
22 latent print examination, friction ridge
23 analysis. I was certified by the IAI as a
24 latent print examiner, and I've been dealing
25 with latent print comparisons and examinations

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1 my entire sixteen years in forensics.

2 Q. If you had to put a number on how many
3 prints you've analyzed over the sixteen years,
4 could you do that?

5 A. No, sir, I could not. Tens of thousands,
6 best guess.

7 Q. Have you ever testified as an expert with
8 regard to crime scene investigation before?

9 A. Yes, sir.

10 Q. Approximately how many times has that been?

11 A. As a crime scene expert around ten times.
12 As a latent print examiner expert, in excess of
13 fifty.

14 MR. YOUNG: Your Honor, at this time
15 I would like to qualify the witness as an expert
16 in fingerprint analysis and crime scene
17 investigation.

18 THE COURT: Do you care to examine
19 him as to his qualifications, Mr. Smith?

20 MR. SMITH: No, Your Honor. We have
21 no objection.

22 THE COURT: Very well. He will be
23 permitted to render opinions in those two areas.

24 MR. YOUNG: Thank you.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. YOUNG:

2 Q. Sergeant Hallman, could you explain the
3 process of finding fingerprints?

4 A. First of all, when we respond to a crime
5 scene, you go into this scene and you try and
6 create a mental picture as to what the person
7 -- the perpetrator may have handled, touched or
8 came in contact with. Once we've identified
9 those surfaces, then we determine what type of
10 processing might be needed, whether it be
11 fingerprint powder, just regular black or white
12 powder, whether it be a more advanced process,
13 such as super glue fuming or a process called
14 ninhydrin, which we common use on paper. You
15 identify the items that are believed to have
16 been touched by the perpetrator, and then you
17 determine what process is necessary. And then
18 we process for latent prints to see if there is
19 anything identifiable there.

20 Q. Are different surfaces more conducive for
21 latent fingerprints?

22 A. Absolutely. The most conducive surfaces to
23 leave a print are a smooth surface, like this
24 water jug, a vehicle, piece of glass, Plexiglas,
25 things of that nature. Something with a real

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1 shiny surface really, really produces good
2 latent prints. Paper tends to produce really
3 good latent prints. Porous surfaces, like a
4 wood door, a little bit more difficult.

5 Q. Does every scene that you go to have a
6 fingerprint?

7 A. No. Well, I'm sure every scene has finger-
8 prints, but, you know, we don't find them every
9 single time, no.

10 Q. Is it possible for you to be sitting there
11 today and not leave a fingerprint?

12 A. Absolutely. If you were to bring a crime
13 scene investigator in here to the courtroom
14 right now and have them process this witness
15 bench, you wouldn't find my prints because my
16 hands have been in my lap the whole time. But
17 that doesn't mean I'm not sitting here.

18 Q. How do you I.D. or match the prints?

19 A. We conduct what's called a side-by-side
20 comparison. First, we take the latent print or
21 the image that was recovered from a piece of
22 evidence and place it down beside it. Then we
23 take ink or known impressions from any and all
24 suspects that might be involved in the case, and
25 put them next to the latent prints.

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1 The first thing I do when I'm conducting a
2 comparison is to identify what's called a target
3 area within that latent print, or something in
4 that print that just stands out above everything
5 else within the print. Then I go to the ink
6 impressions or the known impressions to see if I
7 can identify that target area in one of those
8 prints.

9 If I find it in one of those prints then we
10 do a back-and-back and side-by-side comparison,
11 point-to-point, until we're convinced that it is
12 a positive identification.

13 Q. Can you explain what a lift is?

14 A. A lift is simply -- first of all, let me
15 back up. A latent impression -- the word
16 "latent" means naked or invisible to the naked
17 eye, which means it takes further processing to
18 make it visible. Once a surface is dusted or
19 processed and a print is developed, becomes a
20 latent print, then we -- if it's on a shiny
21 surface and we use powder to develop it, we use
22 a piece of clear tape to place across a latent
23 print, lift the tape off the surface, which in
24 turn lifts the latent print off the surface.
25 And then that lift is actually applied to a

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1 white piece of photographic paper and that
2 becomes a latent lift, as we term it in the
3 field of fingerprinting.

4 Q. Did you have an opportunity on March 22nd,
5 2008 to examine the lifts from a crime scene?

6 A. Yes, I did.

7 Q. Was it from a sexual assault?

8 A. Yes, it was.

9 Q. What were your findings from that finger-
10 print examination?

11 A. These latent lifts were obtained by Crime
12 Scene Technician Murphy and were presented to me
13 for analysis. The latent prints on card number
14 one, no identifications were effected there.

15 Card number two was lifted from the front
16 passenger door of the vehicle and was positive
17 with the number eight, left middle finger, for
18 Thurston Maurice Bolton.

19 Latent card number three was lifted also on
20 the front passenger door of the vehicle.

21 And latent 3.1 was positive with the number
22 two, right index, finger of Thurston Maurice
23 Bolton.

24 Latent card number four was unidentified.

25 Q. Did you successfully match any of the lifts

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1 from anybody else?

2 A. No.

3 Q. Sergeant Hallman, I want to take you to
4 March 22nd of 2008. Did you respond to a crime
5 scene then?

6 A. Yes, I did.

7 Q. What was the crime?

8 A. I responded to in
9 reference to a criminal sexual assault.

10 Q. Is that in Charleston County?

11 A. Yes, it is.

12 Q. Are you considered a first responder to a
13 crime scene?

14 A. No, absolutely not. The first responder is
15 generally a patrol officer. And once they get
16 to a scene they establish the severity of the
17 scene and then secure the scene and call for
18 additional investigators and backup.

19 Q. Could you explain what to secure a crime
20 scene means?

21 A. Yes. When the patrol officer or the first
22 officer that gets to a scene determines that
23 there is an actual crime scene, he will then
24 tape off that scene with what we call yellow
25 crime scene tape. I'm sure everybody's seen it.

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1 And then he begins a crime scene log in
2 which he documents each and every person's name
3 that enters that scene for documentation and for
4 later -- if we need them to supply us with DNA
5 samples to exclude them as, you know, or exclude
6 some unknown samples from the scene. The crime
7 scene log is a way to reflect on who entered
8 that crime scene.

9 A scene being secured means that that
10 officer that secures it does not leave that
11 scene until he's properly relieved by an
12 investigator or myself.

13 Q. What is the importance of having a secure
14 crime scene?

15 A. It eliminates the possibility of a crime
16 scene being contaminated by outside sources.

17 Q. When you arrived at the crime scene at
18 , what did you do first?

19 A. I met with the officer on the scene and he
20 gave me a brief report as to what had taken
21 place. There was a gentleman on the scene, Mr.
22 Thurston Bolton. I was advised that he was a
23 suspect in this case. I asked him if I could
24 swab his mouth, which we refer to as a buccal
25 swab, for DNA comparison, which he agreed to. I

1 swabbed his mouth and secured the swab as
2 evidence.

3 Q. So after you swabbed it, you secured it in
4 evidence?

5 A. Yes, sir.

6 Q. Did you have an opportunity to process the
7 inside of the house?

8 A. Yes, I did. I was advised on the scene
9 that we have consent to go in the residence. I
10 went in the residence, photographed the area in
11 question. I noticed that there was a wet spot
12 on the bed itself, on the sheet. There was a
13 bottle of baby oil or some kind of oil that was
14 in the room. There was a hair braid or a hair
15 tie, I guess they call it, laying on the floor,
16 and there was hair fibers pretty much all over
17 the place.

18 MR. YOUNG: May we approach?

19 THE COURT: Certainly.

20 MR. YOUNG: Thank you, Your Honor.

21 Your Honor, permission to publish State's 2
22 through 15 to the jury?

23 THE COURT: You may do so.

24 MR. YOUNG: Thank you, Your Honor.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. YOUNG:

2 Q. Sergeant Hallman, I'm going to take you
3 through some photos, and I would ask you to just
4 explain to me what you processed in that house
5 and what you observed in that house.

6 A. I believe -- I can't tell by that picture,
7 but I believe that's a bottle of baby oil. This
8 is the bed here. And it was a bedroom/den area.
9 The area was actually most commonly used as a
10 den, but had been turned into a bedroom was the
11 impression I got at the scene. And I just took
12 photos of this room from numerous angles. That
13 just happens to be one of the angles that I took
14 a photograph of, and that's a bottle of baby
15 oil.

16 Q. Sergeant Hallman, do you have a pointer?

17 A. Yes.

18 MR. YOUNG: Your Honor, may I
19 approach the witness?

20 THE COURT: Certainly.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. YOUNG:

23 Q. Sergeant Hallman, I'm going to show you
24 what's been marked as State's Exhibit Number 3.
25 Can you explain this, please?

1 A. Yes, this is just another shot from the
2 room. Here's a bed, a couch. Like I said it
3 was a den/bedroom-type situation. I guess this
4 was a bookshelf at one point in time or another.
5 It's just cluttered with papers and all kinds of
6 things. I don't know anything about that.

7 Q. I show you what's been marked as State's
8 Exhibit 4. Can you please explain this picture?

9 A. That's just another picture within the
10 room. I can't tell by this photograph if there
11 any item of potential evidence in this picture.
12 But it's just like I said, I took pictures of
13 this room from all various angles to document
14 the entire room as much as possible.

15 Q. I'm going to show you what's been marked as
16 State's Exhibit 5.

17 A. That's another shot from a different angle.
18 This is the bed inside the room right here.

19 Q. I'm going to show you what's been marked as
20 State's Exhibit 6. What is that? Is that the
21 living room?

22 A. I can't recall if that's the living room or
23 if that's another shot within that bedroom. I
24 can't tell from that photograph.

25 Q. Is this a photograph that you took?

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1 A. Yes, I took the photograph. I just don't
2 know exactly where the evidence was.

3 Q. I show you what's been marked as State's
4 Exhibit 7.

5 A. That's a photograph inside the room.
6 There's the bookshelf.

7 There's a corner of the bed there.

8 Q. Now, State's Exhibit 8.

9 A. Yeah, that's the hair tie that I was
10 talking about that was found on the floor near
11 the bed.

12 Q. Now, State's Exhibit 9.

13 A. That's the bed in the photograph.

14 Q. What is that laying on the bed?

15 A. That's a pair of scissors, a pair of my EMS
16 scissors.

17 Q. And why did you have those?

18 A. Because I was cutting a piece of the fabric
19 off of the comforter where we observed the wet
20 spot.

21 Q. State's Exhibit 10.

22 A. This photograph shows an area where the
23 comforter was cut and a sample was collected.

24 Q. Sergeant Hallman, can you tell me a little
25 bit more about how you processed the bed with

1 the cutting?

2 A. I used what's called an alternate light
3 source. And what that does, it's a light that
4 we utilize, a UV light. It allows us to
5 identify with a special pair of glasses,
6 identify possible body fluids or hair fibers
7 within a crime scene.

8 In this scene, when I examined the bed,
9 there was an area on the comforter, this area
10 right here, that fluoresced bright, indicating
11 possible body fluids. So I marked that area and
12 then later came back and cut a swatch from the
13 comforter. And the swatch was packaged and sent
14 to SLED for analysis.

15 Q. I'm going to show you now State's Exhibit
16 11. Can you tell us what that is?

17 A. I believe that's the little hair tie again,
18 but I can't tell.

19 Q. Is that the bed right in front of you?

20 A. Yes, this is the bed right here.

21 Q. I'm going to show you State's Exhibit 12
22 now.

23 A. Again, that's another photograph of the
24 bed. The area that I cut was right around in
25 this area here.

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1 Q. Just a few more. I'm going to show you
2 State's Exhibit 13. What is that?

3 A. That's a group of hair fibers that were
4 present on the comforter up toward where the
5 pillows were.

6 Q. Now I'm going to show you State's Exhibit
7 14.

8 A. Again, that's the same group of hair
9 fibers, just a close-up shot -- as close as I
10 could get.

11 Q. I'm going to show you, lastly, State's
12 Exhibit 15. Can you tell what that is?

13 A. No, I cannot.

14 Q. Do you know if it's the middle of the bed?
15 See that darker area?

16 A. Right here?

17 Q. Yes, sir.

18 A. That could be that area, but I can't tell
19 by looking at this photograph up here.

20 Q. Sergeant Hallman, did you notice any
21 lotions or oils in the bedroom?

22 A. Yeah, there were several different bottles
23 of oils, baby oils and stuff like that, and
24 Vaseline, I think, if I'm not mistaken.

25 Q. What did you do with the items that you

1 collected that day?

2 A. The items that were collected at the scene
3 were later packaged and secured into our
4 property room and then sent to SLED for
5 analysis.

6 Q. Did you file them with North Charleston
7 evidence?

8 A. I'm sorry?

9 Q. Did you file them in the North Charleston
10 evidence locker?

11 A. Yes, sir, in our North Charleston property
12 room.

13 Q. How do you file those?

14 A. We take the evidence, once it's packaged.
15 We hand deliver it to our evidence technician.
16 They sign a chain of custody form from us taking
17 custody of those items. And once it's in their
18 hands, it does not leave their compound until
19 they themselves transport the items to SLED.

20 MR. YOUNG: The Court's indulgence
21 just a moment.

22 THE COURT: Certainly.

23 MR. YOUNG: No further questions.

24 THE COURT: Cross examine.

25 MR. SMITH: Thank you, Your Honor.

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1 CROSS EXAMINATION

2 BY MR. SMITH:

3 Q. Sergeant Hallman, good morning.

4 A. Morning.

5 Q. The photographs -- and I'm not going to run
6 through each of them with you again as the
7 Solicitor did. But each of those portrayed the
8 scene as it was when you got there. Is that
9 correct?

10 A. That is correct. Yes, sir.

11 Q. Nothing in those pictures has been moved in
12 any way?

13 A. No, sir.

14 Q. With regard to the bedroom area, we saw a
15 picture of the night stand -- not really a night
16 stand, but a TV stand very close to the bed.

17 A. Yes, sir.

18 Q. Nothing had been changed on that night
19 stand?

20 A. Nothing had been moved from the time that I
21 got to the scene after. Nothing was moved.
22 What was moved before I got there, I do not
23 know.

24 Q. But you don't have any indication that
25 anything was moved? Nobody reported moving

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1 anything?

2 A. No, sir.

3 Q. And that would not be normal procedure, to
4 move things at a crime scene?

5 A. No, sir. The normal procedure is not even
6 to go in the crime scene unless it's to render
7 first aid.

8 Q. The same thing is true of the shelf that's
9 in the bedroom? Nothing that you're aware of
10 was moved on the shelf?

11 A. No, sir.

12 Q. The comforter on the bed, it was not moved
13 or changed in any way?

14 A. The only way it was changed was when I cut
15 the comforter.

16 Q. But it was laid out as it was when you came
17 in?

18 A. Yes, sir.

19 Q. I want to go back to the prints for just a
20 minute. The fingerprints that you found, they
21 were on Mr. Bolton's car. Is that correct?

22 A. I did not find them. Crime Scene
23 Technician Murphy did, and she released the
24 actual lift to me, yes.

25 Q. And she indicated to you that's where they

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1 were from?

2 A. Yes, she did.

3 Q. With regard to the alternate light source
4 that you spoke about, you say that sometimes you
5 use that to identify possible body fluids.

6 A. Correct.

7 Q. That doesn't necessarily mean that they are
8 body fluids, does it?

9 A. No. But, normally, you know, from an
10 alternate light source perspective, the
11 different lenses that we use, the orange lens we
12 use, helps to identify areas that fluoresce.
13 And generally from the alternate light source
14 and those glasses that we use, the only things
15 that fluoresce are usually body fluids. Some
16 chemicals have been known to fluoresce and
17 fibers -- hair fibers and cloth fibers, things
18 of that nature.

19 Q. Things that fluoresce, you can't generally
20 tell the age of it just by ---

21 A. Oh, no, sir.

22 Q. Going to when you met up with Mr. Bolton,
23 when you got there, you knew that you had
24 permission to go into the house. Is that
25 correct?

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1 A. Yes, I was told as soon as I arrived on the
2 scene that I had permission to go in the house.

3 Q. And you were told that that permission was
4 given by Mr. Bolton?

5 A. Yes, sir.

6 Q. And he also gave you consent to this oral
7 swab?

8 A. Yes, he gave me the consent to take the
9 oral swab. Yes.

10 MR. SMITH: Thank you, Your Honor.
11 No further questions.

12 THE COURT: Redirect.

13 MR. YOUNG: Nothing further, Your
14 Honor.

15 THE COURT: Thank you. You may step
16 down, sir.

17 (WITNESS STEPS DOWN)

18 THE COURT: Call your next witness,
19 please.

20 MR. MCCOY: The State calls Paula
21 Davis.

22 (WITNESS TAKES STAND)

23 PAULA DAVIS, being duly sworn to tell
24 the truth, the whole truth and nothing but the
25 truth, testified, as follows:

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1 DIRECT EXAMINATION

2 BY MR. YOUNG:

3 Q. Good morning.

4 A. Good morning.

5 Q. How long have you worked for North
6 Charleston?

7 A. Almost five years.

8 Q. What are your duties in that office?

9 A. Anything that the officers bring in from
10 the street, we actually enter into the system
11 and tag it and place it and secure it.

12 Q. What kind of training did you receive to
13 perform those duties?

14 A. In-house training.

15 Q. To learn how to do all this?

16 A. Well, as far as -- what are you saying? As
17 far as what I do now?

18 Q. Exactly. When you're entering evidence,
19 what do they teach you how to do and how do you
20 do that?

21 A. Well, like I say I have in-house training
22 from my supervisor, Sergeant Bryant, and some of
23 the other young ladies there. So what I did
24 was, in essence, she showed me how to enter.
25 She showed me how to place things in evidence.

1 She showed me where to put it and how to secure
2 it.

3 Q. Can you explain what an evidence custodian
4 is for the jury?

5 A. What I do on a daily basis is when the
6 officers bring in the evidence, like I said, we
7 tag it, we place it and we secure it. So that's
8 what we do, basically.

9 Q. Is there a standard procedure that you
10 follow once that evidence comes in?

11 A. Yes.

12 Q. Can you explain that?

13 A. It means that the evidence has to be
14 secured and that it is not tampered with at all.
15 We don't open anything up. And we place it
16 where, like I said, it's secure.

17 Q. Is evidence secure once it's been filed by
18 the custodian?

19 A. Yes, absolutely. We have alarm systems.

20 Q. Do you remember a defendant, Thurston
21 Bolton case, where evidence came in?

22 A. I need to have a chain of custody? Do you
23 have a chain?

24 Q. I have.

25 MR. YOUNG: May I approach, Your

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1 Honor?

2 THE WITNESS: Yes.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. YOUNG:

5 Q. Was standard procedure followed with regard
6 to this case?

7 A. Yes, sir. It was entered into the system.
8 After it was submitted by the officer, entered
9 into the system, and in that case it had to be
10 placed in a refrigerator to maintain.

11 Q. What does that mean, to maintain?

12 A. Well, like, for instance, that was -- we
13 have to secure that so that the evidence doesn't
14 go bad, whatever was collected doesn't go bad,
15 because that is an PSA case.

16 Q. What is an PSA case?

17 A. It's a sexual assault case.

18 Q. Would there be proof if someone tampered
19 with the evidence?

20 A. Yes, sir. We would see it in that the
21 seals would be broken.

22 Q. Was evidence secure at all times in this
23 case?

24 A. Yes, sir; it was.

25 Q. After you logged it in, what did you do

1 with it?

2 A. Placed it in the refrigerator, in a
3 specified area in the refrigerator, that's
4 locked at all times. The refrigerator's locked
5 and also the system is set and alarmed. And
6 nobody else can - only us, only the people in
7 evidence, can actually know where it is.

8 Q. Did you drive this evidence up to SLED?

9 A. Yes, sir, I did.

10 Q. How do you file evidence with SLED?

11 A. Once it's entered it doesn't leave my
12 custody. Once we take it to SLED -- I'm the one
13 that takes it into SLED, and it's logged in by
14 their custodian.

15 MR. YOUNG: The Court's indulgence.

16 THE COURT: Certainly.

17 MR. YOUNG: Permission to approach
18 the witness, Your Honor.

19 THE COURT: Yes.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. YOUNG:

22 Q. Ms. Davis, I'm going to let you look at
23 this chain of custody sheet one more time and
24 refresh your memory on what exactly you drove up
25 to SLED.

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1 A. Okay.

2 Q. And if you could explain.

3 A. One chain of custody, the PSA kit that I
4 explained earlier. That's the sexual assault
5 kit.

6 Second chain of custody, there are four
7 items, a cutting from a comforter on the bed,
8 hair fibers from the bed, an oral swab which is
9 Thurston Bolton's and one hair tie.

10 Number four is one blue hand towel.

11 Q. Thank you.

12 MR. YOUNG: Nothing further, Your
13 Honor.

14 THE COURT: Any questions?

15 MR. SMITH: No questions.

16 THE COURT: You may come down. Thank
17 you.

18 (WITNESS STEPS DOWN)

19 THE COURT: Call your next witness,
20 please.

21 MR. MCCOY: Thank you, Your Honor.
22 The State calls Manuel Ortuno.

23 (WITNESS TAKES STAND)

24 MANUEL ORTUNO, being duly sworn to tell
25 the truth, the whole truth and nothing but the

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1 truth; testified, as follows:

2 DIRECT EXAMINATION

3 BY MR. YOUNG:

4 Q. Good morning, Mr. Ortuno.

5 A. Good morning.

6 Q. Could you tell us where you're employed?

7 A. The South Carolina Law Enforcement

8 Division, commonly referred to as SLED.

9 Q. And where is your office located?

10 A. 4416 Broad River Road in Columbia, South
11 Carolina.

12 Q. What do you do for SLED?

13 A. I'm a forensic DNA analyst.

14 Q. Can you tell me a little bit about your
15 educational background?

16 A. I graduated with honors from American
17 University in Washington, D.C. with a bachelor
18 of science degree majoring in chemistry.

19 I have a master's degree also in chemistry
20 from the University of South Carolina, Columbia.

21 I was hired as a specialist at the
22 University and I worked in the laboratory where
23 I performed experiments on DNA for three and a
24 half years, co-authored two publications in
25 journals.

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1 I'm a graduate of the South Carolina
2 Criminal Justice Academy.

3 I entered SLED as a trace evidence examiner
4 in 1980, so I've been with SLED for
5 approximately twenty years, eleven of those
6 years in the DNA department as a forensic DNA
7 analyst.

8 I attended the FBI's advanced DNA training
9 at Quantico, Virginia.

10 Have attended numerous conferences and
11 seminars and taken population statistics
12 required to perform my duties at SLED and
13 attended numerous conferences and seminars.

14 Q. Do you do DNA testing in Columbia?

15 A. Yes, sir, I do. It is the main laboratory
16 at SLED.

17 Q. Can you explain to the jury what DNA is?

18 A. DNA stands for deoxyribonucleic acid. It's
19 a very large complex molecule that's found in
20 essentially every cell of the human body. Most
21 of our DNA's the same. In other words, ninety-
22 nine percent of my DNA is indistinguishable from
23 yours. However, the DNA molecule is so large
24 that the remaining one percent is sufficient to
25 allow us to distinguish one person to the

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1 exclusion of all others. We do this in
2 forensics by tagging or identifying fifteen
3 locations along the DNA strand in which
4 different people have different sized
5 parameters.

6 Now, to use an analogy to help you better
7 understand it, let's take shoe sizes. If
8 someone were to present to me a Size 11 men's
9 shoe and ask who could wear this shoe, we would
10 first eliminate all women in this courtroom,
11 take the men and within a few minutes we could
12 put them in groups based on their shoe sizes --
13 size ten, size eleven, nine and a half and so
14 on. I happen to wear a size eleven men's shoe.
15 There may be some other man in this courtroom
16 that also wears a size eleven shoe. Let's say
17 there's three of us that wear a size eleven
18 shoe. Everyone else is excluded as being able
19 to wear that shoe.

20 We do the same way with DNA. We go to the
21 marker and we identify size fragments that some
22 people and other people don't have. Unlike
23 shoes where my left foot and my right foot are
24 the same, with DNA, half of our DNA comes from
25 our mother and half our DNA comes from our

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1 father. So at that location, we have one
2 contribution from our mother and one contribu-
3 tion from our father. We can identify
4 individuals whether they match or don't match,
5 those values at that location. And we do that
6 fifteen different times along the DNA strand.

7 So when you hear on your favorite C.S.I.
8 show a DNA profile or you read in the paper
9 referring to a DNA profile, what they're talking
10 about are these fragments along everyone's DNA
11 strand which have different fibers.

12 When we receive evidence at SLED, we take
13 that evidence and first see if we can find human
14 body fluids. What we're specifically looking
15 for is blood, semen, saliva or perhaps a hair
16 from which we can extract DNA. We take it
17 through a series of chemical steps, separating
18 the DNA from the rest of the constituents of the
19 cell, and identify the fifteen markers. It has
20 fifteen factors donated from our father and our
21 mother. We put it in a table. We then take
22 standards from an individual -- we can take
23 either blood or buccal swabs from the mouth,
24 develop their DNA profile, and simply compare at
25 each location these values. If they match, the

1 DNA came from that person. If they do not
2 match, it could not have come from that person.

3 Q. Thank you. Is the method or process you
4 use for analyzing DNA, is that a nationally-
5 recognized method?

6 A. It's been done this way since the late
7 eighties. It's been evaluated and reevaluated
8 many times.

9 Q. Are there different kinds of DNA?

10 A. Well, there are. The one we're referring
11 to here that is commonly referred to as PCR/SCR
12 is nuclear DNA. There's also DNA that's found
13 within a cell which is non-nuclear,
14 mitochondrial DNA. So there are two types of
15 DNA.

16 Q. Is everybody's DNA different?

17 A. There are six billion letters of a DNA
18 alphabet in everybody in every cell. If you
19 look at my six billion to your six billion or
20 anybody's six billion, it's going to be
21 different. Even identical twins, because of
22 mutations, are going to be different if you look
23 at all six billion. We don't look at the entire
24 DNA strand. We just look at fifteen locations.
25 So in this particular case, identical twins

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1 would probably have identical DNA profiles,
2 because we're not looking at the entire six
3 billion letters of the alphabet of DNA.

4 Q. Are the instruments and methods that you
5 use in your analysis regularly tested and
6 updated?

7 A. Yes, we are ASCLAB certified. That's the
8 American Society of Crime Laboratories. They
9 come in and examine what we do in the entire
10 forensics building every five years. DNA gets
11 audited every year externally. Another lab
12 comes in with trained auditors that looks at
13 everything we do, to make sure that we're doing
14 it according to the standards set by the DNA
15 advisory board.

16 Q. Are there any measures taken to back up
17 your findings and your test data?

18 A. When an analyst performs analyses such as I
19 did in this case, there is a second analyst that
20 will review everything that I've done in that
21 case and all the conclusions I arrived at. He
22 or she will sign and agree to what I've done and
23 my findings. Then there's a second person, who
24 is the team leader, who does a third review of
25 everything that I've done and also signs and

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1 agrees with my findings.

2 Q. You may have said this, but how many years
3 have you worked for SLED?

4 A. A total of twenty years. In DNA, eleven
5 years.

6 Q. In your twenty years with SLED and as a DNA
7 analyst, how many times per year do you run
8 tests on DNA?

9 A. I've run thousands upon thousands of
10 samples over my eleven years.

11 Q. Have you ever testified as an expert in
12 state or federal court?

13 A. Yes, sir, I have.

14 MR. YOUNG: Your Honor, at this time
15 I would move that the witness be admitted as an
16 expert in DNA analysis.

17 MR. SMITH: Without objection.

18 THE COURT: Very well. He will be
19 permitted to render opinions in that area.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. YOUNG:

22 Q. Mr. Ortuno, can you explain to the jury how
23 you go about receiving a sample from SLED? How
24 do you get them?

25 A. Well, there are two possible ways in which

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1 I receive evidence. It can be submitted and
2 sent directly to me for analysis, such as a
3 standard. If there is a case, as I mentioned
4 earlier, where we want to compare the evidence
5 to known individuals that are believed to be
6 involved in the case. In that particular
7 instance I received a buccal swab which is
8 simply, for lack of a better word, a Q-tip which
9 is placed inside the mouth to collect epithelial
10 cells that contain a person's DNA, which is
11 simply swab the inside of the mouth and submit
12 that swab as a buccal swab. So the standards I
13 received directly.

14 Also, in the case of criminal sexual
15 conduct cases, there is a kit that is collected,
16 typically at a hospital. It would contain a
17 series of swabs and slides that are required to
18 determine whether, in fact, there was a criminal
19 sexual assault. Those will come directly to me.
20 I will test them to see if there any hidden
21 molecules present. If they are present, I will
22 then take them to the series of DNA steps in the
23 profile.

24 There's a third case in which there is,
25 say, clothing, that will go through an evidence

1 processing department. Say there's a shirt or a
2 blanket or a blouse. It'll go through that
3 department first. The trained technicians in
4 the department have the equipment, using
5 ultraviolet light sources and other means, to
6 collect possible human body fluids. They will
7 do a preliminary test. If it's positive, they
8 will send it to me for further testing.

9 Q. Do you document your findings and report
10 after every analysis?

11 A. Yes, everything that I handle is submitted
12 in a report format.

13 Q. Did you happen to perform a report -- a DNA
14 analysis, rather, on Thurston Bolton and the
15 victim being Shaquinna McNeil with regard to a
16 sexual assault on March 22nd, 2008?

17 A. There were items submitted in that case,
18 yes.

19 Q. Can you tell me what items were submitted
20 for analysis?

21 A. Well, as I mentioned earlier, one of the
22 key components of a criminal sexual assault kit
23 are several items collected at a hospital, and
24 in this particular case from Ms. McNeil. I
25 received blood standards, smears, vaginal and

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1 oral, vaginal swabs, oral swabs, rectal swabs,
2 miscellaneous body fluids. And with that the
3 first thing is a process of -- with the victim,
4 if there is an indication that there might be
5 a dried body fluid on some part of her body.
6 It's collected at that time. That's called a
7 miscellaneous body fluid. Also fingernail
8 scrapings, known head hairs, a swab or swabs
9 from the right breast, swabs from the left
10 breast, and there was also a cutting from a
11 comforter on the bed, hair from the bed and then
12 the standard from the subject, Thurston Bolton.
13 Q. How do you analyze all these?
14 A. Well, as I mentioned earlier, the first
15 thing I had to determine whether, in fact, any
16 or all these items contain human body fluids.
17 So in the kit itself, the smears, vaginal, oral
18 and rectal, were examined for the presence of
19 spermatozoa, and none were identified. The
20 vaginal swabs, oral swabs and rectal swabs, we
21 do a presumptive test. What I mean by
22 presumptive is, is there a possibility of semen
23 present on these swabs? We do this by
24 identifying a protein that is called P30. Those
25 that are familiar with this protein, it's the

1 PSA protein that's used for potential cancer.

2 And if that protein is present in a sufficiently
3 high level, it's an indication that there could
4 be semen present.

5 So those three swabs were tested for that
6 and there were weak positives for the vaginal
7 swabs, the rectal swab and the miscellaneous
8 body swab. The oral swab was negative.

9 Fingernail scrapings were taken directly to
10 DNA. There was a possibility that in the act of
11 contact between two people, the fingernail
12 scrapings might contain skin cells from the
13 other individual.

14 No head hairs were examined. There was no
15 need to examine those.

16 The swabs from the right breast and the
17 left breast were taken directly to DNA.
18 Specifically, we were looking for saliva.
19 Saliva is a good source of cells, epithelial
20 cells. And we could take a part of that sample
21 to test for the presence of saliva. The only
22 danger in that is we're consuming, we're using
23 up some of the sample that could, in fact, help
24 us identify DNA. So I think most of us at SLED,
25 and certainly I do, I take it directly to DNA

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1 analysis, so that if there's a very small amount
2 there, I'm able to obtain a DNA profile. So I
3 didn't determine whether there was saliva or
4 not. I took it directly to DNA analysis.

5 The cutting from the comforter on the bed,
6 no semen was indicated. And in the hairs from
7 the bed, we can develop a DNA profile if there
8 is a root on the hair. There was no root on
9 these hairs, so I could not develop a DNA
10 profile from the hair.

11 Q. I'm referring to the second page of your
12 report. 1.9 and 1.10, what are those?

13 A. Swabs from the right breast and swabs from
14 the left breast. If during the course of the
15 interview with the patient, she said that there
16 was a kissing or biting along any part of the
17 body, typically we see the female breast or say
18 around the neck area. The nurse or the doctor
19 will collect with a swab the potential dried
20 saliva that could be present. And that's what
21 is believed to be the swabs from the right
22 breast and the left breast. This is the one
23 that I chose not to determine whether there was
24 saliva. Because what little DNA might be there,
25 I didn't want to consume in a serological test.

1 Q. Referring to page three of your results
2 page, can you explain your conclusions of this
3 test, of the 1.9?

4 A. SLED item 1.9 was the swabs from the right
5 breast. The DNA profile was found to be a
6 mixture. What that means is there is at least
7 two individuals that are present there. The
8 DNA, based on the size of this, -- and remember
9 I said that our DNA comes half from our father
10 and half from our mother. If we have two more
11 than two fragments present in any one location,
12 there has to be another person. So we can
13 comfortably say that there is a mixture of these
14 two individuals. In this particular case,
15 there's a major contributor. There's a strong
16 signal DNA, and that is consistent with
17 Shaquinna McNeil, which you would expect.
18 Because, once again, you are rubbing a part of
19 her body. So, clearly, there will be skin cells
20 from her body that are going to be present. So
21 she's the strongest contributor to the mixture.
22 There's a minor contributor, or a weaker
23 profile. Based on my analysis of the results,
24 no conclusive statement can be made as to the
25 inclusion or exclusion of Thurston Bolton as a

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1 possible contributor to the mixture. What this
2 means is it's such a weak profile I can't say
3 whether he's there or not.

4 Q. And 1.10, what is that, on page two?

5 A. SLED Item 1.10 is the other swab. In this
6 case it's from the left breast. It was also a
7 mixture of at least two individuals. And, once
8 again, you have the victim appearing to be
9 there, as you would expect from a swab from her
10 body. But in this case there's a more secondary
11 profile that is consistent with Thurston Bolton.
12 Therefore, neither one of them can be excluded
13 from the contributing mixture.

14 Q. Is there a certain probability that you did
15 find at 1.10?

16 A. Yes, in this location, among the fifteen
17 that we look at, in which there are strong
18 signals of a contributor to the mixture, we can
19 generate a probability of frequency of
20 occurrence. And the likelihood that any one of
21 us could contribute to this mixture, based on
22 what was developed, is one in 560,000.

23 Q. Again for 1.10, who were the two
24 individuals that could not be excluded as
25 possible contributors to that mixture?

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1 A. Well, I have only two standard to compare.
2 In this case it was Shaquinna McNeil and
3 Thurston Bolton. I had complete profiles for
4 both of them. And by looking at the mixture
5 from the left breast, it's consistent with a
6 roughly equal contribution of Shaquinna McNeil
7 and Thurston Bolton in that mixture with one
8 additional point. Of the fifteen locations,
9 there are two of the fifteen in which there is a
10 very, very weak profile from a third individual
11 -- very weak, easy to distinguish from the other
12 two. But nonetheless it was present.

13 MR. YOUNG: I'm going to ask
14 permission to publish what has been marked as
15 State's Exhibit 21 for I.D., the report, to Mr.
16 Ortuno.

17 THE COURT: Okay.

18 MR. YOUNG: May I approach?

19 THE COURT: You may.

20 MR. YOUNG: Thank you.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. YOUNG:

23 Q. I'm going to get you to explain this, and I
24 know it's going to be tough to see.

25 A. May I step down for a minute?

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1 THE COURT: You may.

2 THE WITNESS: This is the table that's
3 part of my report.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. YOUNG:

6 Q. We're looking at 1.10

7 A. If you could scroll down for them to better
8 understand what we're looking at.

9 Q. (Complies).

10 A. This is a part of the table. You'll note
11 here, Shaquinna McNeil and Thurston Bolton --
12 as we go across, Ms. McNeil's row, you see here
13 each of the fifteen locations that I referred
14 to. These are just names of the genetic
15 communities that are used to identify the
16 specific locations along the DNA strand. So
17 let's look at this first location. You have a
18 13/15. Each of the parents contributed one of
19 those two. The mother could have given it or
20 the father. But we know that these two are
21 donated by the parent.

22 At the second location we have another two,
23 two values, two, two, two and so on. Thurston
24 Bolton, in the very first column, has fourteen.
25 What that means is that both parents gave him a

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1 fourteen. Both parents had to have a fourteen
2 to give it to the son. So we see one number
3 that just means both parents gave the same
4 thing. When you see two numbers, like 29/30,
5 each of the parents gave a different number.

6 Now, this is going to be hard, because you
7 can't see the chart with the standards.

8 Q. Is this better?

9 A. Okay, right there. Let's go down to the
10 very last row, 1.10, which is the left breast.
11 This is the DNA profile from the left breast.
12 You will notice immediately that something is
13 different from the first two we looked at.
14 There's more than two inside the box. That
15 tells you it has to be a mixture. If there's
16 one person, you have either one number or two
17 numbers.

18 Let's look at the first box. The first
19 location is a thirteen, a fourteen and a
20 fifteen. You will note for Ms. McNeil is a
21 thirteen and a fourteen, and there's the
22 thirteen and the fourteen. Mr. Bolton is
23 fourteen. There's the fourteen. Let's go to
24 the second one.

25 Here there are three numbers. In our table

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1 this one is very, very weak. It's a much
2 smaller signal than the others. That's
3 important because it's much smaller and it's not
4 associated with the other ones.

5 But if you'll look at McNeil's, there's a
6 thirty and a thirty-one-point-two. There's the
7 thirty and there's the thirty-one-point-two.

8 Thurston Bolton is a twenty-nine and a
9 thirty. There the twenty-nine and thirty is
10 being shared both by the victim and the subject.
11 That's perfectly fine.

12 With respect to the third one, it's only
13 the eleven and a twelve. You will notice that
14 the victim's eleven/twelve. The subject is an
15 eleven.

16 All the numbers are present.

17 The next one 8, 10 is the victim.

18 Ten, 11 is the subject.

19 Once again, everything's matching.

20 We're on the fifth one. You have a 16, 18.
21 There's the 16. There's the 18. The victim is
22 16.

23 The next one you have -- I can't read that
24 - a six and a nine. There's the six and there's
25 the nine from Ms. McNeil, 7, 9, 3 - 7, 9, 3 from

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1 Mr. Bolton. This next one only has two numbers,
2 11, 12. Note that both the victim and the
3 subject are an 11, 12. That's what you expect
4 to see. Once again here there's a parenthesis.
5 What that means is there's a very weak profile
6 from a third individual. Here's an 11, 12. 12
7 is the victim. Eleven is the subject. So those
8 two are accounted for.

9 Let's go next to the victim, a 17, 26.
10 There's the 17. There's the 26. Mr. Bolton is
11 a 22, 23. 22, 23. The next one, 13, 14.2 - 13,
12 14.2. Mr. Bolton is a 13, 14. The 13 is
13 present and the 14 is present. The next one is
14 15, 16 - 15, 16. 16, 18 - 16, 18. 8, 10 for
15 both. There's another one with four different
16 ones, 17, 18 for the victim - 17, 18. 15, 16 is
17 also Mr. Bolton. 8, 12 - you have 8, 12 for the
18 victim. 12 by itself is present there.

19 The victim in the last one is a 20, 26.
20 There's the 20. There's the 26. 20, 22 - 20,
21 22.

22 And there's the next line -- once again,
23 you can also tell whether it's a male or female
24 if males have a Y and females have an X. So if
25 there's two X's for the female and one X for the

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1 male, the X contribution will be three times
2 greater than the Y contribution. And you can't
3 see it on this chart, but from the data itself,
4 sure enough, you have a very strong X syndrome
5 because the X is 2X, 2X. It's a much stronger
6 line. And that's what you see there.

7 Q. Thank you. Have a seat. Thank you for
8 explaining that. Mr. Ortuno, let me ask you
9 about numbers that show a weaker sample. Would
10 that be consistent with, say, a boyfriend the
11 night before?

12 A. Yes, someone that has had -- anyone that
13 has had contact with the victim at that same
14 location in the near past. It can't be several
15 -- you wouldn't expect it to be present several
16 days before. But certainly within a twenty-four
17 hour period, it's possible that it could be.

18 Q. From the night before?

19 A. Certainly possible.

20 Q. And is this report a fair and accurate
21 representation of your findings of the analysis
22 that you performed from the sexual assault with
23 regard to Shaquinna McNeil?

24 A. Yes, it is.

25 MR. YOUNG: Your Honor, at this time

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1 I would move State's Exhibit 21 into evidence.

2 THE COURT: Any objection?

3 MR. SMITH: Your Honor, I would just
4 like to confirm what portions of his report will
5 be admitted.

6 THE COURT: Are you admitting the
7 whole report?

8 MR. SMITH: I would like it to be the
9 whole report, Your Honor. There are two kind of
10 sections of it, and I just want to make sure
11 it's complete.

12 THE COURT: That's fine.

13 (SO ENTERED AS STATE'S EXHIBIT 21)

14 MR. YOUNG: The Court's indulgence
15 for just a moment.

16 THE COURT: Certainly.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. YOUNG:

19 Q. I have just a few more questions for you.
20 Can you explain to me what touch DNA is?

21 A. Touch DNA is a term that's referred to the
22 transfer of DNA by the act of touching. If I
23 were to place my hand here on this bench, there
24 is a possibility that some skin cells have
25 transferred to this location. And if someone

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1 were to swab this area, it's possible that a DNA
2 profile, either partial or full, could be
3 obtained from that.

4 Q. Is it possible for DNA to be removed or
5 wiped away?

6 A. Oh, absolutely.

7 Q. Is it easy to do that?

8 A. The moment you wipe that area, any
9 possibility of skin cells would be removed. And
10 the more vigorous the wiping, the more likely it
11 is to be removed.

12 Q. Can it be done without purposely trying to
13 do it?

14 A. Oh, certainly. The next person that would
15 sit here, if they rested their hand on the same
16 location, it might accidentally pick up some of
17 the cells that were placed there.

18 MR. YOUNG: The Court's indulgence
19 for a moment.

20 THE COURT: All right.

21 MR. YOUNG: No further questions.

22 MR. SMITH: If I may approach?

23 THE COURT: Certainly. You may cross
24 examine.

25 CROSS EXAMINATION

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1 BY MR. SMITH:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. The technology that you all use at SLED,
5 would you say that that could detect even the
6 smallest amount of DNA?

7 A. We've come a long way since we've been
8 doing DNA, (affirmative nod), very small
9 amounts.

10 Q. It's pretty much the standard that's used
11 today?

12 A. Across the world.

13 Q. In this particular case, you had a chance
14 to look at several samples in this case. Is
15 that correct?

16 A. Yes, sir.

17 Q. And with regard to the vaginal swab
18 samples, no DNA other than Ms. McNeil's was
19 found in those samples. Is that correct?

20 A. That's correct.

21 Q. And no DNA other than Ms. McNeil's was
22 found in the rectal swabs. Is that correct?

23 A. That's correct.

24 Q. And no DNA other than Ms. McNeil's was
25 found in the body fluid samples. Is that

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1 correct?

2 A. Excuse me. I apologize. SLED Item 125
3 which is the rectal one that you referred to.

4 Q. Yes.

5 A. Was one that has not been addressed to this
6 point. It was a mixture of at least two
7 individuals. The major contributor is, in fact,
8 consistent with Ms. McNeil.

9 The minor contributor was not suitable for
10 identification. So there appears to be somebody
11 else there that clearly did not match Mr.
12 Bolton.

13 Q. And there's no way you could determine who
14 that was?

15 A. No.

16 Q. Again, as far as the miscellaneous body
17 fluids, hers was the only DNA found with regard
18 to that. Is that correct?

19 A. That's correct. Only the victim was found
20 in that.

21 Q. Would the weak positive that you got be
22 specifically someone who's sexually active and
23 may have had consensual sex?

24 MR. YOUNG: Objection, Your Honor.

25 THE COURT: What's your objection?

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1 MR. YOUNG: We didn't go into her
2 sexual habits.

3 THE COURT: I haven't heard the
4 question. State your question. Don't answer
5 it.

6 MR. SMITH: I was asking whether the
7 weak positive result that you found with regard
8 to semen could be consistent with a woman having
9 consensual sex or sex within the last seven
10 days.

11 THE COURT: And you object to that
12 question?

13 MR. YOUNG: I withdraw the objection.

14 THE COURT: All right.

15 WITNESS: Seven days would be a
16 stretch. It's not impossible, but it's highly,
17 highly unlikely. Within three days would be
18 more probable. Define "possible."

19 CROSS EXAMINATION CONTINUED

20 BY MR. SMITH:

21 Q. The standard is usually around three or
22 four days?

23 A. Three days. Typically after three days
24 it's just with normal hygiene it's very, very,
25 very unlikely to find any.

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1 Q. In a situation where you have a younger
2 man, is their DNA profile and they have semen,
3 is it generally pretty prolific and you're able
4 to get DNA from that?

5 A. If what you're saying is if a male were to
6 ejaculate, you would have, yes, a very likely
7 probability of developing a profile from that
8 sample if it's recovered within a reasonable
9 period of time.

10 Q. If it's recovered within a reasonable time.
11 Now, with regard to the fingernail scrapings
12 which were taken, no other DNA other than Ms.
13 McNeil's was found with regard to those
14 scrapings. Is that correct?

15 A. That's correct.

16 Q. You testified about some DNA that could be
17 consistent with Mr. Bolton's that was found on
18 Ms. McNeil's breast. Is that correct?

19 A. That's correct, on the left breast.

20 Q. And that could be something -- could that
21 be consistent with Ms. McNeil being kissed on
22 that breast?

23 A. Most definitely.

24 Q. And would it be consistent with a situation
25 where there may have been heavy petting involved

1 and there was oral touching in that manner?

2 A. Yes.

3 Q. But what you found, at least here, there's
4 no DNA evidence with regard to intercourse that
5 would pinpoint Mr. Bolton as the contributor.

6 A. None of my findings pinpoint him
7 specifically to intercourse. There appears to
8 be a very, very weak indication, but there's not
9 enough to develop a DNA profile there ---

10 Q. So you don't know for sure?

11 A. No.

12 Q. And you don't have anything to indicate ---

13 A. That's where we have the semen indicated
14 only.

15 Q. And there's no way you could say it's Mr.
16 Bolton?

17 A. No.

18 MR. SMITH: No further questions,
19 Your Honor.

20 THE COURT: Redirect.

21 MR. YOUNG: Thank you, Judge.
22 Briefly.

23 REDIRECT EXAMINATION

24 BY MR. YOUNG:

25 Q. If the man does not climax, does that

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1 lessen the chance of your finding a profile?

2 A. Well, yes, significantly because that's the
3 main source of DNA other than touching and oral
4 contact.

5 Q. So the answer is yes?

6 A. The answer is yes. If you do not
7 ejaculate, it's going to be much more difficult.

8 Q. Thank you.

9 A. It's much less likely that the individual
10 is going to developed in DNA.

11 Q. Thank you.

12 THE COURT: Recross.

13 RECROSS EXAMINATION

14 BY MR. SMITH:

15 Q. Can DNA be found in that scenario?

16 A. Yes, through oral contact or touching,
17 perhaps.

18 MR. SMITH: Thank you, Your Honor.

19 No further questions.

20 THE COURT: Very well. Thank you,
21 sir. You may come down.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Do you wish this witness
24 to be excused?

25 MR. YOUNG: Yes, sir.

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1 THE COURT: Any objection?

2 MR. SMITH: No objection.

3 THE COURT: You are also free to
4 leave, sir.

5 THE WITNESS: Thank you, sir.

6 (WITNESS STEPS DOWN)

7 THE COURT: Call your next witness.

8 MR. MCCOY: Thank you, Judge. The
9 State calls Michelle Emmerson.

10 (WITNESS TAKES STAND)

11 MICHELLE EMMERSON, being duly sworn to
12 tell the truth, the whole truth and nothing but
13 the truth, testified, as follows:

14 DIRECT EXAMINATION

15 BY MR. YOUNG:

16 Q. Good morning, Michelle.

17 A. Good morning.

18 Q. I'm going to ask you to speak loud and
19 clear in that microphone so the jury can hear
20 you.

21 A. Okay.

22 Q. Where you live?

23 A. I live on Chippendale Road in North
24 Charleston.

25 Q. Is that in South Carolina?

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1 A. Yes.

2 Q. How long have you lived there?

3 A. On and off for approximately twenty years.

4 Q. Are you from here originally?

5 A. No, I'm from Savannah, Georgia originally.

6 Q. Do you have family here?

7 A. No.

8 Q. Tell the jury about what you do.

9 A. I am the marketing director for CARTA.

10 Q. Can you tell the jury a little bit more
11 about how that works?

12 A. My job is to oversee the marketing function
13 of CARTA. I deal with the advertising agencies
14 and all the marketing concepts including the ads
15 that you may see on billboards, radio
16 advertising and things of that nature. My job
17 is to make sure that we are out in the public
18 eye and that we are out being of service to the
19 public as well.

20 Q. Approximately how long have you worked
21 there?

22 A. For approximately three years.

23 Q. Michelle, I'm going to take you back to
24 March 22nd of 2008.

25 A. Okay.

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1 Q. Do you remember that day?

2 A. Yes, I do.

3 Q. What were you doing that day?

4 A. I had been running errands. It was a
5 Saturday. It was a nice spring day, so I think
6 I was planning on doing some gardening and some
7 cooking for the week. So I had been out to the
8 grocery store and running some errands. And I
9 had just gotten back home in the afternoon with
10 my son.

11 Q. Did you have to go back out to the store?

12 A. Yeah, I had forgotten something, so I left
13 him home and I was running back out to run to
14 the store and getting something I forgot.

15 Q. What did you have to get?

16 A. I can't recall. I don't know whether I had
17 to go back to the grocery store or Lowe's. But
18 it was something that I had left and once I had
19 got home I realized that I'd forgotten something
20 and needed to go back out and get it for a quick
21 second.

22 Q. What time of day was it? Was the weather
23 nice?

24 A. It was very nice. I remember thinking that
25 it was one of the first nice warm days of

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1 spring. You could hear people out doing lawn
2 work, lawn mowers running. You could smell
3 people grilling out in the air and so forth. It
4 was a nice day. Kids were out playing. You
5 could hear them out playing and so forth. There
6 were some people that were kind of hanging out
7 in the yard and so forth. So it was a nice
8 spring day, nice spring Charleston day.

9 Q. Describe the route that you took to get to
10 the store.

11 A. Normally, I just go straight up
12 Chippendale. That dead ends, I believe, into
13 Stonehaven. And then you just take a right out
14 of there and left onto Brandywine, and that gets
15 you out to Ashley-Phosphate. That's how you get
16 out of the subdivision.

17 Q. So on this nice spring day as you were
18 driving, describe what happened next.

19 A. As I was coming up around the corner from
20 there towards the end of Chippendale, I again
21 remember thinking that this is such a nice warm
22 spring day. And all those thoughts were going
23 through my mind, just how nice it was and that I
24 had planned to get back and do some of the
25 things I had planned to do to get ready for work

1 the next week and forth.

2 I remember rounding the corner and seeing
3 some gentlemen outside near a truck. It looked
4 like they were probably doing some lawn work and
5 some friends had stopped by. And they were just
6 outside chit-chatting. And I recall somewhere
7 around that time I remember -- that was about
8 maybe five or six houses from the end of the
9 block.

10 After noticing those gentlemen standing out
11 there kind of chit-chatting with the lawn mowers
12 and so forth, I remember seeing what I thought
13 was a young girl. And I couldn't tell if she
14 was running from a house or from the bushes
15 right next to the house. It was a corner house
16 on the corner. And the thought process that
17 went through my mind at the time was that, you
18 know, maybe they were having some type of water
19 activities in the back. But it seemed kind of
20 inappropriate for a young girl -- it seemed like
21 a young girl, maybe in her early teens from that
22 vantage point. And I was thinking wow, it's
23 kind of inappropriate for her to be out in the
24 front in such a little skimpy bathing suit. And
25 it all happened so quickly. And as I got closer

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1 I was thinking, 'wow, that's very inappropriate'
2 because it seemed like a flesh-colored bathing
3 suit, like the same color as her flesh almost.
4 And what she was doing was it looked like she
5 was running from the house, like if you're
6 tiptoeing, like if you're running trying to be
7 quiet or you're trying to dodge water puddles or
8 something and kind of running across the grass.

9 And so at this point I'm pulling up to the
10 corner. And it happened very quickly, all like
11 in a split second. I realized that she was kind
12 of running from the house, and I thought maybe
13 she was just running to the car to get
14 something. But it was all in that second that I
15 realized that she was kind of trying to hide
16 behind the car. And it was at that moment that
17 I realized that it wasn't a bathing suit, that
18 she was completely naked. And so I don't know
19 whether she started flagging me down, or whether
20 I started -- I think it kind of happened
21 simultaneously. I just wanted to get her in the
22 car. I didn't know what had happened, and she
23 was flagging me down asking me for help.

24 Q. Were you scared?

25 A. At the time, no, I was more confused. I

1 didn't know what was going on. I didn't know
2 whether something had happened in somebody's
3 house and she had to run out or if she had
4 somehow gotten locked out. I mean, I know it
5 sounds kind of strange. I know that some kids
6 have gotten locked out when they're real young.
7 So, again, I didn't have any idea of what had
8 actually transpired. I had no idea that it was
9 something of that dangerous of a situation. I
10 just wanted -- I guess it was just the mom-
11 protective thing. I just wanted to get her in
12 the car. I knew that whatever it was, that it
13 wasn't a good thing, that she'd be out there
14 like that, especially with like grown men around
15 mowing the lawns and so forth. And I didn't
16 know how anybody else might react. I just knew
17 I wanted to get her out of that situation. So I
18 waved her into the car at that point. And she
19 ran around the front of the car and she jumped
20 into the passenger's side. And I'm like,
21 'What's going on? What happened? You know,
22 what is going on?' And it was at that point
23 that she stated that she had just gotten raped;
24 that a man had just raped her in his house. And
25 so I grabbed a promotional flag that I had in

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1 the back and I gave it to her so she could kind
2 of drape herself, because she was still trying
3 to kind of cover herself. And when she ran in
4 front of the car she was trying to kind of cover
5 up. But her eyes were really wide, and she just
6 looked shocked and scared at that point.

7 So I just threw something at her so she
8 could cover herself up. And after she had told
9 me that, and I'm like, 'What are you talking
10 about?' And she said that this man had just
11 raped her in his house and she had just ran.

12 At some point in there I picked up -- I was
13 looking for the phone to call 9-1-1. And I
14 grabbed a shirt from the back so that she could
15 replace the other thing I had given her and
16 actually put the clothing on.

17 Q. Let me ask you did she appear scared when
18 she was outside the car coming toward you?
19 Could you tell what her demeanor was?

20 A. Yes, she was very, very, very -- I just
21 remember her eyes being -- she had very light
22 colored brown eyes. And I remember her eyes
23 being very, very wide. And she was looking
24 around her. And like I said that thing, like
25 tiptoeing, like you're trying to be quiet but

1 still running. But she seemed very much in
2 shock and just afraid at that point. And like I
3 said, at that point I had no idea what was going
4 on. And when she got in the car she was again
5 very fearful, very afraid at that point. And
6 she was telling me what had happened. I gave
7 her that -- and I can't remember whether the
8 dispatch started asking me questions or I was
9 asking her to tell me what happened. But at
10 that point she started telling what actually
11 transpired.

12 Q. Let me try to make this quick. When she
13 gets in the car at this point are you afraid?

14 A. Not yet. Because again, I'm still
15 confused. I don't know what has transpired at
16 that point. She didn't say that she -- you
17 know, anything about rape. That didn't even
18 cross my mind, honestly. Like I say, I have
19 known myself that I had gotten locked out when I
20 was much younger and other kids, and they might
21 be in a tee-shirt and some panties or whatever
22 the case may be. I had no idea that it was a
23 dangerous situation at that point. It took me
24 awhile for that, it all happened so quickly. It
25 took me awhile to realize how dangerous it was.

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1 Q. When she got in the car, how did she appear
2 when she got in the car?

3 A. Very shaken. Very scared, and very -- like
4 almost in shock. She seemed really still kind
5 of like in shock and very fearful. Because she
6 was still kind of, you know, looking around and
7 just very antsy, very anxious.

8 Q. Did she say anything to you in the car?

9 A. When I asked her ---

10 MR. SMITH: Objection.

11 THE COURT: What's the objection?

12 MR. SMITH: Hearsay.

13 THE COURT: At some point, she's
14 already described what she said. So you're
15 going to have to -- approach, please.

16 (BENCH CONFERENCE)

17 THE COURT: I sustain the objection
18 at this point without laying some foundation.
19 Thank you.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. YOUNG:

22 Q. Michelle, did you call the cops?

23 A. Yes.

24 Q. And when did that happen?

25 A. While we were -- I wasn't exactly at the

1 stop sign, but while we were right there very
2 close to the stop sign.

3 Q. At what point did you see a car drive by?

4 A. As we were sitting there and she was
5 telling me, and I had already given her the
6 shirt to put on and she -- I think, like I said,
7 those guys might have been questioning me about
8 what happened and she was telling me.

9 Q. Let's not go into that.

10 A. Okay. Yes, at that point the car drove by
11 in front of us.

12 Q. What kind of car was that?

13 A. It looked like it was a black car, two
14 door, maybe a Mercedes, I think it was.

15 Q. How did Shaquinna act when she saw the car?

16 A. Completely fearful. She actually -- and I
17 remember thinking that she was pretty -- she
18 seemed like she was a pretty tall girl but she
19 got down into the floorboard, the front area of
20 the car, in the front where you put your feet
21 at. She balled completed up and got her whole
22 entire body down there. I was amazed first at
23 how quickly she did that and the fact that she
24 got that much in that space. It was shocking at
25 that point. It was very fearful. She was very

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1 fearful.

2 Q. Do you drive a big car so it's easy to do,
3 or do you drive a sort of small car?

4 A. It's medium-sized car. That was an Acura,
5 two-door Acura -- four-door Acura.

6 Q. After she was down in the floorboard and
7 you saw the car drive by, what happened then?

8 A. It was at that point, I believe, that I
9 realized that it was a pretty dangerous
10 situation and that I needed to leave at that
11 point. Because she was the one that had told me
12 that that was him. So we began to drive off,
13 and I believe I was on the phone with dispatch
14 at the time and, so, I drove off at that point.

15 Q. Did you get a look at the driver of the
16 car?

17 A. From the side, very quickly, yes.

18 Q. What was his appearance like when you saw
19 him?

20 A. From what I saw, it was a brown-skinned man
21 with no shirt on.

22 Q. I want to take you back to where you called
23 the cops.

24 A. Uh-huh, (affirmative nod).

25 Q. And you leave the stop sign. Tell me what

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1 happened then? Where do you go?

2 A. At that point I figured that it would be
3 safer to go to a place that was a little bit
4 more populated. So I went up to the front of
5 the subdivision at the little shopping center
6 that's right up at the front. And I figured
7 that would be the safest place to meet anybody
8 or to try and handle whatever else the situation
9 involved.

10 Q. How was Shaquinna's demeanor at this point?

11 A. Still very upset. Still very scared and
12 thinking that he was going to see her and he was
13 going to get her physically.

14 Q. Did that sort of make you scared?

15 A. Yes. Like I said, I wasn't really scared
16 until that had happened. I think, again, that I
17 didn't realize how dangerous it was until I
18 actually saw the car.

19 Q. Let me take you to the point where you said
20 you were at the shopping center. At this point
21 are you still on the phone with the officers?

22 A. Somewhere in there we had gotten off the
23 phone. I told them that that's where we were
24 going. So I had gotten off the phone at that
25 point for us to get some place and for us to

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1 make other calls as well.

2 Q. Did anything happen at the shopping center?

3 A. Yes.

4 Q. Explain that to us.

5 A. While we were sitting there she had asked
6 to call her mom and she talked to her, and I
7 called my boyfriend and told him what had
8 happened. We were sitting there waiting for the
9 police officers and the car pulled into the
10 shopping center at that point.

11 Q. What car?

12 A. The black car. And I'm sorry. It was a
13 four-door Mercedes. It pulled into the shopping
14 center, and I thought that it was maybe just
15 going to drive around, like it was before, like
16 it was just driving the neighborhood. What
17 actually happened was we were kind of in the
18 middle of the parking lot. He actually pulled
19 up into a parking space across which really
20 frightened me at that point, because now I'm
21 thinking that he must have recognized my car
22 from over at the stop sign.

23 Q. Were you scared?

24 A. At that point I was much more scared than I
25 had been in the prior situation. Because,

1 again, I did not know what might transpire at
2 that point. And I didn't know if he had
3 recognized us. She was down in the floorboard
4 of the car again.

5 Q. She was in the floorboard again?

6 A. Right. And it was just a major production.
7 She had really long legs and for her to get down
8 there as quickly as she had -- at that point she
9 was crying and still very shaken.

10 Q. What happened then?

11 A. At that point I just got on the phone and I
12 was telling her just to stay down, that he
13 couldn't see her. And I got on the phone and
14 just pretended like, again, I'm just a regular
15 day, running errands. I'm nobody special. I
16 just drove out of the parking area and went to
17 the light right up at Ashley Phosphate right up
18 at that corner. And I believe I called 9-1-1
19 back at that point to let them know. And I just
20 drove Cross County and went into the back area
21 of the bowling alley so he couldn't -- you know,
22 I was driving off like nothing was happening.
23 And then I came around the other side to look,
24 so that I could come in on the other side of the
25 parking area to see what he -- what that car

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1 did. And he sat that for awhile. And after a
2 few minutes, he drove off. And about a minute
3 or so later the police had arrived over there.
4 And that's when I was on the phone with dispatch
5 telling them that we were now at the bowling
6 alley.

7 Q. Let me take you back just a little bit.
8 Approximately what time -- when you said you
9 were going to the store, what time was that,
10 would you estimate?

11 A. It was still light outside. So probably
12 around maybe 6:00 o'clock or somewhere in there.

13 Q. And once you guys got to the bowling alley,
14 the officers arrived?

15 A. Yes.

16 Q. Did you feel safe once they got there?

17 A. A little bit better because they then
18 informed me that they were going looking for
19 him. I believe then I was on the phone with my
20 boyfriend and I told him. So everybody was
21 pretty much aware of what was going on. So I
22 did feel a little bit safer at that point.

23 Q. At that point did you hand over Shaquinna
24 to the officers?

25 A. Right. At that point she just got out.

1 MR. YOUNG: The Court's indulgence.

2 THE COURT: Certainly.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. YOUNG:

5 Q. Just one more question, Michelle. Before
6 this day, had you ever met Shaquinna McNeil?

7 A. No.

8 Q. Thank you.

9 MR. YOUNG: Nothing further.

10 THE COURT: Cross examine.

11 CROSS EXAMINATION

12 BY MR. SMITH:

13 Q. Ms. Emmerson, with regard to this
14 particular day, you say at some point a black
15 Mercedes pulled up in the parking lot beside
16 you. Is that correct?

17 A. Not beside me, in one of the parking spaces
18 -- like, if we are in the middle, he was on the
19 edge.

20 Q. And how far away would you say he was?

21 A. I would believe it would be twelve feet, if
22 not more. Because we were kind of in the
23 middle. The shopping center kind of goes out
24 and goes back in and he was on the edge. So we
25 were a good ten parking, maybe twelve parking

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1 spaces away from where he was.

2 Q. And during that time nobody ever got out of
3 the car?

4 A. No. He just pulled up and parked and
5 nobody ever went in the store or got out.

6 Q. Nobody ever said anything to you?

7 A. No.

8 Q. Nobody threatened you from the car in any
9 way?

10 A. No.

11 Q. When you pulled out nobody followed you
12 out?

13 A. No.

14 Q. And when you went to the bowling alley you
15 said you saw the car still sitting there in that
16 parking lot?

17 A. Uh-huh, (affirmative nod).

18 Q. And the car was just sitting there?

19 A. Yes.

20 Q. And then eventually the car drives off?

21 A. Uh-huh, (affirmative nod).

22 Q. With regard to what you saw out there that
23 day, other than seeing Shaquinna, you didn't see
24 anything else that happened out there that day.

25 Is that correct?

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1 A. No.

2 Q. And your knowledge about what happened is
3 strictly from what she told you.

4 A. Yes.

5 Q. You don't have any independent knowledge of
6 what happened?

7 A. No.

8 MR. SMITH: No further questions.

9 THE COURT: Redirect.

10 MR. YOUNG: Nothing, Judge.

11 THE COURT: You may step down.

12 (WITNESS STEPS DOWN)

13 THE COURT: Any additional witnesses?

14 MR. YOUNG: No, sir, Your Honor.

15 THE COURT: At this point, Ladies and
16 Gentlemen, we'll take a break. There are some
17 matters that I need to take up out of your
18 presence. Do not begin your deliberations.
19 We'll be with you in probably about fifteen
20 minutes or so.

21 (JURY OUT AT 11:05 A.M.)

22 THE COURT: Any matters from the
23 State? You're going to rest at this point?

24 MR. YOUNG: Yes, sir, Your Honor.

25 I just want to take a look at some things.

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1 THE COURT: Sure. I understand.

2 You can do that. Any motions at this point?

3 MR. YOUNG: No, sir.

4 THE COURT: Mr. Smith?

5 MR. SMITH: Thank you, Your Honor.

6 At this point in time we would make a Motion for
7 a directed verdict in this case specifically as
8 to the criminal sexual conduct. There has been
9 no evidence that a sexual assault occurred, and
10 that is from the objective of evidence that we
11 have, such as the DNA analysis, as well as the
12 medical information that was testified to
13 yesterday.

14 In addition to that, Your Honor, with
15 regard to the kidnaping charge, it was the
16 victim's own testimony that she went in the
17 house willingly and voluntarily and that in no
18 way was she forced in. Therefore, on those
19 grounds, we would ask that you grant a directed
20 verdict on kidnaping.

21 THE COURT: I don't quarrel with
22 anything you said; unfortunately the way the
23 kidnaping law is written, that's true. But the
24 minute, according to the testimony, that he
25 restrained her from leaving or moving about,

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1 kidnapping took place. And there's certainly an
2 abundance of evidence to that, based on her own
3 testimony. There's also testimony concerning
4 the sexual battery, while I concur with you that
5 the DNA doesn't corroborate it, still we have
6 her testimony which, if the jury believes, then
7 would establish it. So that coupled with the
8 testimony of the last witness who described the
9 demeanor and her actions, which I think
10 certainly corroborate her version of it, that it
11 was not consensual. Thank you.

12 Do you -- at this point, have you
13 talked with your client about whether or not
14 he's going to testify?

15 MR. SMITH: I have, Your Honor.

16 THE COURT: Has he made a decision?

17 MR. SMITH: He has, Your Honor. He
18 has decided not to testify.

19 THE COURT: Very well. Mr. Bolton,
20 good morning, sir. You may remain seated, sir.
21 You've had the opportunity to discuss with your
22 lawyers, Mr. Smith and Ms. Ford, your right to
23 testify or not to testify. Is that correct,
24 sir?

25 DEFENDANT: Yes, I have.

1 THE COURT: And they've answered any
2 questions or concerns that you may have
3 concerning that issue. Is that correct?

4 DEFENDANT: Yes, sir.

5 THE COURT: You've had sufficient
6 time to reflect on your decision?

7 DEFENDANT: Yes, sir.

8 THE COURT: After fully considering
9 their advice and discussion with your lawyers,
10 you have made the decision not to testify. Is
11 that correct, sir?

12 DEFENDANT: Yes, sir.

13 THE COURT: And they've instructed
14 you that I will inform the jury that they
15 certainly cannot consider that against you in
16 any fashion. You understand that?

17 DEFENDANT: Yes, sir.

18 THE COURT: As I've already
19 indicated, you heard me, the jury is not to look
20 to you to prove anything. Because you don't
21 have any responsibility to do that. And
22 certainly I will reiterate that as well. You
23 understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: But it is your right to

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1 testify, if you wanted to you. You understand
2 that?

3 DEFENDANT: Yes, sir.

4 THE COURT: Are you under the
5 influence of any alcohol or any medication here
6 today, sir?

7 DEFENDANT: No, sir.

8 THE COURT: Do you know of anything
9 that's affecting your decision and your ability
10 to make a decision of this magnitude?

11 DEFENDANT: No, sir.

12 THE COURT: Are you comfortable with
13 your decision, sir?

14 DEFENDANT: Yes, I am.

15 THE COURT: And are you satisfied
16 with the manner in which your lawyers have
17 advised you concerning this issue, sir?

18 DEFENDANT: Yes, sir, I am.

19 THE COURT: Thank you very much, Mr.
20 Bolton. I find that Mr. Bolton has the benefit
21 of competent counsel. He's indicated he's
22 totally satisfied with their advice and
23 representation at this point. He's further
24 indicated that they've discussed his right to
25 testify or not to testify, and he has had time

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1 to reflect on that decision and has demonstrated
2 by his response and his actions here today that
3 he has made an election not to testify in this
4 case. And I find that decision to be one that
5 he makes freely, voluntarily, knowingly and
6 intelligently.

7 Mr. Bolton, I would ask, sir, at this
8 point -- and certainly it is your right to
9 change your mind, if you wish. You understand
10 that?

11 DEFENDANT: Yes, sir.

12 THE COURT: In just a moment I'm
13 going to invite the jury to return. And I'm
14 going to ask -- the State's going to formally
15 rest, and then I'm going to ask your lawyer
16 whether you wish to present any witnesses for
17 the jury's consideration. I assume Mr. Smith is
18 going to say that he does not. Is that correct,
19 Mr. Smith?

20 MR. SMITH: That's correct, Your
21 Honor.

22 THE COURT: At that moment, that
23 decision that you have just discussed with me
24 will become final. But until that point if you
25 change your mind, if you'll just let Mr. Smith

1 know, I can excuse the jury again, and we'll
2 revisit this issue. But if I don't hear
3 anything from you, I'm going to assume that you
4 stand by your decision. Is that fair, sir?

5 DEFENDANT It is.

6 THE COURT: After we do that -- well,
7 we'll excuse them for just a few minutes. But
8 I'll let you renew your Motions at that point
9 and then we'll discuss the requests to charge.
10 At this point, obviously the testimony is for
11 CSC First. Do you want me to charge CSC Second,
12 or do you want it to be all or nothing?

13 MR. YOUNG: Judge, we were thinking
14 about the possibility of a charge of ABHAN. We
15 think the testimony would support that.

16 THE COURT: I would decline ABHAN. I
17 don't think the ABHAN is there because there's
18 testimony of sexual battery. If there wasn't
19 any I might -- the only reason that I would even
20 think about CSC was the discussion of a gun,
21 although the gun was never present. However,
22 that was after the aggravated force. I don't
23 know that it -- I think it really could be
24 coupled with the first. And I think it's really
25 only one. I think it's CSC First or nothing.

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1 But you'all reflect on that.

2 What's the State's position on that?

3 SOLICITOR MCCOY: The state takes no
4 position on that.

5 THE COURT: Very well. Let's take a
6 few minutes and then we'll be ready to go.

7 (BRIEF RECESS)

8 (DEFENDANT PRESENT)

9 THE COURT: Let's bring in our jury,
10 please. And you are ready to formally rest.

11 SOLICITOR MCCOY: Yes, Your Honor. I
12 think we are all set to go.

13 (JURY ENTERS AT 11:22 A.M.)

14 BAILIFF: All jurors are present,
15 Your Honor.

16 THE COURT: Thank you very much. And
17 thank you, Ladies and Gentlemen. Father
18 Lawrence, I've noticed that that's the second
19 opportunity you've occupied that seat, so I
20 assume you were selected. Is that correct?

21 Juror NUMBER 319: Yes, sir.

22 THE COURT: That would be, of course,
23 your seat for the balance of the trial, and I
24 thank you very much, Ladies and Gentlemen.
25 As I understand, does the State rest, Solicitor?

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1 MR. MCCOY: Your Honor, the State
2 rests.

3 THE COURT: Very well. Mr. Smith,
4 does Mr. Bolton wish to present any testimony
5 for the jury's consideration?

6 MR. SMITH: No, Your Honor.

7 THE COURT: Thank you very much.
8 Ladies and Gentlemen, that will conclude the
9 evidentiary portion of this proceeding. There
10 still remains the closing arguments and, of
11 course, the charge on the law. There are some
12 matters now that I have to discuss out of your
13 presence concerning the charge and requests to
14 charge. We will be probably about ten minutes
15 or so. During this break Mr. Wilson is going to
16 come in there and take your lunch orders,
17 because we can proceed on with the closings and
18 the charge. And by the time we finish with all
19 of that, we ought to coordinate that with your
20 lunch arrival. And then you can start your
21 deliberations and have your lunch as well.

22 So, please, while you will not hear any
23 more evidence during this second portion or the
24 third portion, you still are not at the point
25 where you may begin to discuss or deliberate in

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1 this case and make any decisions. I ask you to
2 please retire to your jury room and we'll be
3 with you very shortly. Thank you.

4 (JURY OUT @ 11:24 A.M.)

5 THE COURT: Mr. McCoy, any matters
6 from the State?

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

8 THE COURT: Mr. Smith?

9 MR. SMITH: Thank you, Your Honor.

10 At this time we just renew our previous motions
11 and objections and ask the Court to make
12 findings based on the previous arguments.

13 THE COURT: Thank you very much. And
14 I certainly don't mean, when I deny your Motion,
15 to say that there's not some evidence in this
16 case to support consensual sex. But, clearly,
17 there is an abundance of evidence if the jury
18 chooses to believe it that supports the charge
19 of kidnaping as well as criminal sexual conduct
20 in the first degree.

21 The Court has to consider, and you're
22 not requesting it -- I do not think that it's
23 appropriate for criminal sexual conduct second
24 degree. I think it's either the aggravated
25 force or consensual. So thank you very much.

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1 Your Motion is denied. And, of course, the
2 objections stand. The rulings made previously
3 stand and the reasons therefor as well.

4 I'm going to charge kidnaping, criminal
5 sexual conduct in the first degree. I started,
6 and I think that the charge should be confined
7 to the fact -- I don't recall anything other
8 than sexual intercourse in this case. I think
9 that's the only battery that was testified to
10 concerning the intrusion into the genital
11 openings.

12 MR. MCCOY: Yes, sir, that's my
13 opinion on the sexual battery.

14 THE COURT: You agree with that?

15 MR. SMITH: I do.

16 THE COURT: So I'm not charging all
17 the other unrelated - cunnilingus, fellatio -
18 there's just no need to charge that when it's
19 not an issue in this case.

20 Also, the kidnaping is restraining -
21 you, in your opening statement talked about
22 abducting her. I think it's more of a restraint
23 than it is abducting or carrying away. She
24 wasn't carried anywhere. She went in
25 voluntarily. By her own testimony she doesn't

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1 say that she was forced to go inside. She was
2 forced to stay inside, which constitutes the
3 kidnaping. So I'm not going to - I'm going to
4 charge only the restraining. Because the bottom
5 line is the last part of my charge says
6 "kidnaping commences the moment a person is
7 restrained and it continues until the person is
8 free to leave." I mean, that's the element of
9 kidnaping. That's the essence of it, under our
10 law.

11 Do you wish to be heard on any of the
12 additional ---

13 MR. MCCOY: No, sir, I agree with you
14 on that.

15 THE COURT: Do you have any
16 disagreement with that?

17 MR. SMITH: No, Your Honor.

18 THE COURT: I think certainly
19 abducting and carrying away, all those are
20 legitimate elements of it. But they don't all
21 have to be present to establish kidnaping.

22 And again, I don't think it's necessary to
23 charge all the superfluous stuff. It has no
24 bearing on this case.

25 Okay, thank you very much. We'll be at

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1 ease for about five minutes or so. Thank you.

2 (BRIEF RECESS)

3 (DEFENDANT PRESENT)

4 THE COURT: The other element,
5 though, that can create that is the victim
6 submitted to sexual battery while the victim was
7 also a victim of kidnaping. That's the second
8 part of CSC First. So I'm going to charge that.

9 MR. MCCOY: Yes, sir. Your Honor,
10 I'm not going to explain kidnaping in my
11 closing. I'm just going to say an unlawful
12 restraining.

13 THE COURT: That's fine. I have no
14 problem with that. I'm going to use the word
15 "seized," because there's no question about her
16 being seized. But abducted, I don't think she
17 was abducted or carried away.

18 MR. MCCOY: I agree, Your Honor.

19 THE COURT: The bailiff reported that
20 Ms. Bryan made some observation concerning Ms.
21 Emmerson, that she works with an advertising
22 firm who apparently does business with her. But
23 she doesn't know her personally. So I'm going
24 to bring her out and find out about that. We'll
25 find out whether you all want her to deliberate

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1 or not.

2 (JUROR NUMBER 303 ENTERS COURTROOM)

3 THE COURT: Hello, Ms. Bryan. The
4 bailiff indicated that Ms. Emmerson, after you
5 saw her, that triggered something about where
6 you work. Would you share that with the Court,
7 please?

8 MS. BRYAN: Sure. The advertising
9 agency that she referred to is where I work. So
10 she's a client of my agency, but not a client of
11 me.

12 THE COURT: Okay. And you did not
13 know her and you did not recognize her?

14 MS. BRYAN: Right.

15 THE COURT: The fact that she is a
16 client of the agency with which you are
17 employed, would that influence or affect you in
18 any way in this case?

19 MS. BRYAN: It would not.

20 THE COURT: And you would make the
21 same statement to the State and to Mr. Bolton,
22 that you will just make your decision based on
23 the evidence and the law, and it will be fair to
24 both sides?

25 MS. BRYANT: Yes.

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1 THE COURT: Anything else, Mr. McCoy?

2 MR. MCCOY: No, Your Honor.

3 THE COURT: Anything else, Mr. Smith?

4 MR. SMITH: No, Your Honor.

5 THE COURT: If you would just step
6 out just for a moment and we'll be with you in
7 just a minute. If you'll just let her stand
8 with you outside the door, please.

9 (JUROR NUMBER 303 EXITS COURTROOM)

10 THE COURT: Any objection from the
11 State to Ms. Bryan continuing?

12 MR. MCCOY: No objection, Your Honor.

13 THE COURT: Any objection from Mr.
14 Bolton?

15 MR. SMITH: No, Your Honor.

16 THE COURT: Thank you. Ask her to
17 step in.

18 (JUROR NUMBER 303 ENTERS COURTROOM)

19 THE COURT: Ms. Bryan, thank you so
20 much for doing that. Again, that is one of the
21 reasons I believe so strongly in this system.
22 You're another example of that. The parties
23 have agreed and wish you to continue to serve,
24 and so you may return to your jury room. Thank
25 you.

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1 (JUROR NUMBER 303 EXITS COURTROOM)

2 THE COURT: Any exception or addition
3 from the State to the Court's remarks with Ms.
4 Bryan?

5 MR. MCCOY: No, sir.

6 THE COURT: Exceptions or additions
7 from Mr. Bolton?

8 MR. SMITH: No, Your Honor.

9 THE COURT: Thank you. Is the State
10 ready, Mr. McCoy?

11 MR. MCCOY: Yes, sir.

12 THE COURT: Is the defendant ready?

13 MR. SMITH: Yes, Your Honor.

14 THE COURT: Let's bring in our jury
15 please.

16 (JURY ENTERS AT 11:36 A.M.)

17 BAILIFF: All present, Your Honor

18 THE COURT: Thank you. Thank you so
19 much, Ladies and Gentlemen. We're ready now to
20 continue.

21 We're now moving to the closing
22 arguments. And, of course, that's the second
23 opportunity that the attorneys have to speak to
24 you. While you've heard the evidence and
25 shortly will receive the law, it's now proper

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1 for the attorneys to discuss with you the
2 evidence and discuss reasonable inferences that
3 you may draw from that evidence. I'm confident
4 you'll find their remarks extremely beneficial
5 when you begin the process of resolving this
6 dispute. So give them your attention, but
7 please remember their remarks, while very
8 important, should not be considered evidence.

9 Following the arguments, I will be
10 giving the charge on the law. Thank you very
11 much. Mr. McCoy.

12 MR. MCCOY: Thank you, Your Honor.
13 May it please the Court?

14 THE COURT: Yes, sir.

15 MR. MCCOY: March 22nd, 2008 is a day
16 that Shaquinna McNeil will never forget. It's
17 a day that her life was changed forever. It's
18 a day that she was raped and kidnaped by the
19 defendant, Thurston Bolton.

20 The day started as a normal day for
21 Shaquinna. She had spent the night in West
22 Ashley, spent the night with her boyfriend.
23 She had walked over to Citadel Mall. She was
24 going to a birthday party later that day. She
25 was going to buy a ring for her friend. She had

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1 places to be and she needed to get ready for the
2 party, but she didn't have a car. She didn't
3 have a ride. This is where the defendant,
4 Thurston Bolton, comes into play.

5 You've heard Shaquinna testify. You
6 heard her get on the stand. You heard her tell
7 you about hot cabs. She told you what a hot cab
8 was. A hot cab is an illegal cab. It's
9 somebody who operates, who drives a car for
10 money who just doesn't have a proper license to
11 drive a cab. That's how she met Thurston
12 Bolton. She told you that. She got on the
13 stand and told you that.

14 She told you she'd known him for about
15 two weeks. She told you that she got in the cab
16 -- or she called him, that she'd used him
17 several times. She'd called him and gotten a
18 ride to and from different places.

19 She told you that at no point and at no
20 time was this ever a romantic relationship. She
21 told you at no point and at no time had they
22 ever had any sort of romantic intimacy between
23 them -- no kissing, no touching, no sexual
24 intercourse before the 22nd of March. She told
25 you this on the stand.

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1 She told you that she used him for a
2 ride. She told you that she knew -- she could
3 tell that Thurston Bolton was fond of her, that
4 he liked her. She's a young, twenty-year-old
5 woman, and he's a man in his mid-forties. She
6 could tell that he liked her. But she didn't
7 exchange that feeling, she didn't like him back.

8 She told you that they had never been
9 on a planned date. She told you that she went
10 to the mall one time and was picked up by Mr.
11 Bolton and said she was hungry. That's all she
12 said, she said "I'm hungry." Mr. Bolton took
13 her and went and got something to eat. Mr.
14 Bolton paid for it. He was trying to be a
15 fatherly figure. He was trying to give her
16 advice. He was trying to gain her trust.

17 On March 22nd, 2008 he violated that
18 trust and he took that trust away. After
19 Shaquinna left the mall and got in the car with
20 Thurston Bolton they went to his house. They
21 didn't go downtown where she wanted to go, and
22 Shaquinna knew something wasn't right. She
23 wasn't scared yet, because she still trusted
24 him. She still had that trust. She wasn't
25 nervous yet.

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1 Once she got to the house she said 'No,
2 I'm going to stay in the car. I don't need to
3 come inside. He said no, come on in. Come on
4 in. Come inside. I've got some real estate
5 CD's in here for you. I know I'm trying to talk
6 to you about your future and trying to help you
7 out a little bit. I've got some CD's and I've
8 got some things inside. Come on inside.'

9 Again, Shaquinna knew something wasn't
10 right but she still trusted him. The trust is
11 still there, so she went inside. She didn't
12 want to, but she did. She voluntarily went
13 inside the house.

14 And what happened after that is a
15 complete nightmare for Shaquinna -- a complete
16 nightmare. As soon as she came inside the door
17 shut. One, two, three locks are bolted. She is
18 now not free to leave, and this trust is about
19 to be severely violated. Right away Thurston
20 Bolton grabs her by the arm, grabs her by the
21 arm and he forces her down to his bedroom,
22 through the kitchen down to his bedroom.

23 You'll have the pictures back there
24 with you. You can see what the room looks like.
25 You can see the kitchen is right next door.

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1 You'll be able to see that. Once he gets her
2 down there the trust is violated and the trust
3 is gone. She's scared. She's terrified. This
4 is a woman half his age, half his size, and
5 she's trapped. He tried to kiss her and
6 forcibly - puts her on the bed and tries to kiss
7 her. She's screaming "No. Please stop. No. I
8 don't want this. Please don't do this." She is
9 terrified.

10 Does he stop? No. He takes it to the
11 next level. His hand is around her throat and
12 his entire body weight is on top of her. There
13 is nothing she can do. Her fighting him will do
14 absolutely nothing. And she figures that out
15 the hard way.

16 It's not long after his pants come down
17 and his pants come off, and he's excited. He's
18 sexually aroused. She can see that. He takes
19 his shirt off. He's completely naked. He
20 starts to take her clothes off. He rips her
21 bottoms off her, rips her underwear off, rips
22 her top off, rips her bra off.

23 What did she tell you when she was on
24 the stand right before the first penetration
25 happened? She told you that he was concerned

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1 that it wasn't fitting right and it wasn't
2 working right. She told you that on the stand...
3 And what does he do? He grabs Vaseline or he
4 grabs some kind of gel or oil and he lubes
5 himself up. And then he penetrates her. He has
6 sex with her one time against her will. She's
7 fighting. She's crying. She told you she's
8 even having trouble breathing because she's
9 crying and her nose is stopped up.

10 She's been fighting. She continues to
11 fight saying she doesn't want this. She said
12 "May I please get up and go to the bathroom.
13 Let me go to the bathroom." He lets her up.
14 The whole time he's got one hand on her arm.
15 She isn't free to go anywhere, and he's going to
16 make sure she doesn't leave that house. They
17 walk to the bathroom, they go into the bathroom.
18 He doesn't even let her go in there by herself.
19 He holds her.

20 And what does he say to her? He says,
21 What did you expect? What did you think was
22 going to happen with coming in my house? This
23 is what you're going to get. What did you
24 expect was going to happen?" And he also told
25 her in the bathroom you're never going to want

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1 to talk to me again. I understand that. You're
2 never going to talk to me again. Our
3 relationship will never be the same, meanwhile
4 still holding on and she's not free to go
5 anywhere.

6 They leave and he grabs her and takes
7 her back down to the bedroom. What happens? He
8 has sex with her again, forcible sex with
9 Shaquinna McNeil.

10 What does she do now? What does she
11 tell you that she does now? She told you on the
12 stand, she said fighting and crying and pleading
13 was getting her nowhere. It wasn't helping her.
14 She decided to try to change tactics. She said
15 she tried to gain his trust, to try to be his
16 friend again, try to gain that trust back and
17 maybe he will release his grip from her, not
18 rape her and not keep her in his house any
19 longer. She said "No, I'll still call. We'll
20 still get rides together. It's fine.
21 Everything's fine. I'm not going to make a big
22 deal out of this." That's what she said. She's
23 trying to change her plan.

24 Meanwhile, naked, terrified, scared,
25 violated and being confined in this house

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1 against her will. What's his response to that?
2 What does he say? He said, "You know what,
3 Shaquinna, I've got a gun in this house. And
4 after I'm finished with all this stuff, I'm
5 going to give you the gun and you can use it on
6 me." Why would he say something like that? Why
7 would he say "I've got a gun", threaten her with
8 a gun, and say "I will give it to you and let
9 you use it on me"? He's doing that because he
10 knows he has done wrong. He knows he has
11 violated a young girl half his age. He knows
12 he's done wrong, and he knows he's not going to
13 get away with it.

14 But what happens next. Shaquinna gains
15 a little ground. She gains some ground. And
16 she said, "Can I please go to the kitchen and
17 get a drink of water?" He lets her up. She has
18 no clothes on. He pocketbook, her phone, the
19 ring she bought her friend, all of her
20 belongings are inside this house. She goes to
21 the kitchen and it's the first glimmer of hope
22 she has, the first glimmer. This is the first
23 time she can smell freedom and get out of the
24 restraints of that dungeon of a house.

25 And what does she do? She runs out the

1 front door. Does she take time to pack her
2 things up and leave? Does she get her belong-
3 ings? Does she get her clothes? Does she get
4 the ring she just bought, her pocketbook, her
5 cell phone, her I.D., her belongings? No, she
6 doesn't. And you know why? Because she's
7 terrified of this man right here. She's
8 terrified of what he has just done to her.

9 And you damn well better believe she's
10 not going to take the time to pack her things up
11 neat and tidy and run. You don't pack things
12 up, you don't grab your belongings and you don't
13 even worry about your clothes when, one, you are
14 in complete fear for your life and, two, you're
15 so scared of this man that all you want to do is
16 just run. All you want to do is run.

17 Where does she go when she leaves the
18 house? She runs. She said, "I could hear him
19 cussing behind me. I could hear him cursing."
20 She's in a neighborhood she's never been to.
21 She's in a house she'd never been to. She
22 doesn't even know where she is, except she's in
23 North Charleston. Think about that.

24 Think about her running naked out of
25 this house, broad daylight. You heard Ms.

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1 Emmerson take the stand and heard her say there
2 were people outdoors. It was a nice spring day.
3 This wasn't a street where nobody was on it.
4 This was a street that had things going on.
5 Children were playing. People were standing
6 outside hanging out. Grass was being cut. And
7 she takes off running and she's naked. She's
8 terrified.

9 She knocked on doors to no avail. She
10 knows Thurston Bolton is behind her. She knows
11 this. She has got to get to safety. She has
12 got to get to safety. And what happens?

13 You heard in the opening Mr. Young said
14 that Ms. Emmerson was her savior. And that's
15 exactly what Michelle Emmerson was. She was
16 Shaquinna McNeil's savior -- at the right place
17 at the right time. Things happen for a reason.

18 She's running. She's naked. She runs
19 and gets in the car and she tells Ms. Emmerson
20 what happened. Ms. Emmerson told you she had no
21 idea what in the world was going on. She lives
22 in that neighborhood. She was on the way to the
23 store. She had no idea what was going on. She
24 had never met Shaquinna McNeil before or seen
25 her before. Shaquinna gets in the car.

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1 Michelle told you she wasn't scared yet. She
2 said something just wasn't right. Something's
3 not right. 'I'm not scared yet. I'm fine.'
4 She could tell this girl -- she said she could
5 have gotten locked out of her house. She gets
6 in the car and the story starts to develop, and
7 she starts to learn what happened. She learned
8 that Shaquinna McNeil had just been raped. She
9 learned she'd just been raped in a house right
10 down the street.

11 And what's so important about Michelle
12 Emmerson? She is the first person to see
13 Shaquinna McNeil minutes, possibly even seconds,
14 after this rape and kidnaping had happened. Why
15 is that so important?

16 One, she gets to see her with no
17 clothes on. Two, she gets a picture and makes
18 an impression of somebody and she has seen and
19 feels the sheer terror that this young lady has
20 just experienced. She can sense it. She can
21 feel it. She can see her crying. She can see
22 how scared she looked. Ms. Emmerson told you
23 "All I remember is how big her eyes were. Her
24 eyes were so big, and she was crying and she was
25 terrified and she was scared."

1 She gets in the car. They begin to
2 talk. Michelle actually covers her up with a
3 CARTA map or some sort of banner she has in her
4 car. She doesn't have anything else to give her
5 right away. She calls the police. This is
6 sitting at a stop sign.

7 Michelle Emmerson has no idea, no idea
8 of the terror that's about to come out of that
9 house and start looking for his prey. Neither
10 does Shaquinna. And while they're sitting
11 there, what do they see? They see Thurston
12 Bolton come out of his house, get in his car and
13 drive around. He's looking for Shaquinna. He
14 doesn't even have a shirt on. He leaves the
15 house that fast. He throws all her stuff in
16 there, all the stuff that he had taken off her
17 body and taken off her person in his house.
18 He's got that and throws that in the back seat
19 of the car and he's out looking for Shaquinna.
20 Why is he out looking for Shaquinna? Because he
21 knows he has done something wrong. He knows
22 he's violated this young woman.

23 Michelle Emmerson now knows this is a
24 serious predicament, serious. Shaquinna has now
25 told Michelle that's him. That's the guy that's

1 out after me. We've got to get out of here.
2 And what does she say? Think about it. Think
3 about when you're back there the initial
4 reaction of Shaquinna when she sees Thurston
5 Bolton again. She doesn't have time to make up
6 these feelings or play and go along with
7 something. Her initial reaction is fear and
8 terror. She hides. She puts her body in the
9 floorboard of a mid-sized car she's so scared.
10 She gets all the way down in the floor. She's
11 terrified. She's scared. Again, this isn't
12 just a made up feeling. This is seconds,
13 minutes after this rape has just happened.

14 Michelle Emmerson has the foresight to
15 get away from the situation. She drives out of
16 the neighborhood and drives to a nearby shopping
17 center. She parks the car. Meanwhile she's on
18 the phone with the police and she makes several
19 calls doing this and that, trying to make sure
20 everybody's safe. Or they think they're safe.
21 They think they're in the right place and
22 everything's okay and the police are coming.

23 But what happens next? Thurston
24 Bolton, in his car, comes in the shopping
25 center. Her heart rate again goes through the

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1 roof. Now Michelle Emmerson's terrified, now
2 she fears for her life. She sees the fear and
3 recognizes the fear inside of Shaquinna, and she
4 knows it's a bad situation. She said "I'm going
5 to get on my cell phone -- get down low again,
6 I'm going to get on my cell phone and I'm going
7 to act like I'm an everyday woman doing everyday
8 errands, running everyday business." Shaquinna
9 again is tucked down in the floorboard of the
10 car, terrified for her life.

11 Thurston Bolton pulls his car to the
12 edge of the shopping center. What's he doing
13 there? He's sitting and he's waiting. He's
14 waiting because he knows Shaquinna McNeil has
15 just run out of his house naked. He knows he
16 has just raped this young girl and held her
17 against her will at his house. What better
18 vantage point in the vicinity to use than a
19 shopping center and just wait, and to wait and
20 see what direction she may run, either up or
21 down this street.

22 Again, Michelle Emmerson states that
23 she called the police. She said this isn't a
24 safe place, 'I'm going to change locations.'
25 And where do they go? They go to a bowling

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1 alley. They park there. And by the time
2 they're there, it's minutes before police arrive
3 and people begin to feel safe and secure. But
4 not completely safe and secure. They know that
5 he's still out there and they know that he's
6 still looking. And while Michelle Emmerson is
7 parked in the bowling alley, she sees the black
8 Mercedes cruise off. He's gone back in search
9 in the neighborhood.

10 The police arrive. Once the police are
11 there they start to do their investigation,
12 start to talk to witnesses, take statements,
13 trying to get some leads is what they're trying
14 to do. And they learn from Shaquinna that a
15 black male driving a Mercedes that she only
16 knows as "Thurston". You heard Officer Wilson
17 say on the stand she's didn't know his last
18 name. Is it sensible to believe that they'd
19 been on a date and watched movies and had some
20 sort of dating relationship, but she doesn't
21 even know his last name? They were doing a
22 search. You recall Officer Wilson said 'the
23 victim's fine and secure, I'm going to look for
24 this guy.' He canvasses the neighborhood in
25 search of him, and he sees a black Mercedes

1 riding in the neighborhood. It took him awhile
2 but he realized it was a single male in the car.
3 He said 'this is what I'm looking for'. He said
4 he flipped on his blue light and pulls him over
5 for investigation and, lo and behold, he said
6 his name's Thurston. He said my name's
7 Thurston. So now the cops have a black
8 Mercedes, black male, first name Thurston.

9 Officer Wilson says, 'I want to know what
10 happened between you and the young lady.'
11 Thurston Bolton first said there was some
12 kissing and some hanging out and then she wanted
13 to go get ice cream, and 'the next thing I knew
14 she was gone.' Okay, first story. Second
15 story, he comes back later and he says 'nothing
16 happened between me and the young lady. We
17 didn't even touch. Nothing happened.' Do these
18 stories make sense? No, they don't make any
19 sense. They make zero sense.

20 We move to , to the house.
21 This is where everything happened. A crime
22 scene is established there and Officer Al
23 Hallman testified today, and he told you he went
24 there. The crime scene was secure. He had a
25 chance to not only get some swabs from surfaces

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1 but he also had a chance to go inside and
2 process the interior of the house. He told you
3 he walked in, went down to the bedroom where it
4 was. What did he tell you about the bedroom?
5 He said it was more or less a converted living
6 room/bedroom. He said what was down there was
7 very important. It corroborates Shaquinna's
8 story, just like many pieces of evidence that
9 you'll have back there will do as well.

10 What did he say was down there? He
11 said there was a bed. He said there are oils,
12 lotions, Vaseline strewn about the room.
13 They're all over the room. What did he tell you
14 is on the bed, too? He said, "we found wet
15 spots." He found a wet spot on the bed. He
16 found hairs on the bed. He told you he found a
17 tie off a girl's hair on the ground. What does
18 he do? He does his job. He cuts a swab out of
19 where the wet spot was. He gathers some hair.
20 He collects evidence. He sends it all up to
21 SLED. He doesn't what he's supposed to do. He
22 does his job.

23 We heard the DNA analyst testify. He
24 came in here and testified this morning and
25 everybody heard him. What did he say? He said

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1 that there was no sperm found in Shaquinna's
2 vagina. He said there was a small trace of some
3 sort of DNA found near her rectum. And he said
4 there was -- on her right breast there were two
5 contributors. What's that mean? He said there
6 are two people that make up the DNA evidence on
7 her right breast. One's Shaquinna McNeil.
8 That's obvious. He said Thurston Bolton cannot
9 be included as a contributor, but he cannot be
10 excluded as a contributor on her right breast.
11 He said on her left breast that Thurston Bolton
12 cannot be excluded. His DNA is on that left
13 breast. It's there.

14 You heard him also testify, he was up
15 there on the stand, he said that if somebody
16 doesn't climax or ejaculate it can make it very
17 hard or difficult, very hard or difficult to
18 leave behind any sort of DNA. What did
19 Shaquinna tell you? She told you I don't think
20 he climaxed. I don't think he ejaculated. He
21 didn't do it, and that's why there was no DNA in
22 her vagina. It wasn't there.

23 Now I asked each one of you to please
24 pay attention to each person that testified here
25 over the past two days. I asked you to listen

1 intently to what they told you on the stand,
2 read their reactions, examine how they are on
3 the stand, their body language. And I want you
4 to keep in mind -- I want you to keep in mind
5 always, always how Shaquinna was on the stand.
6 She admitted what was asked of her and she
7 corrected things that weren't right. She came
8 in here. She told her story. I want you to
9 keep in mind and I want you to ask yourself
10 would somebody run out of a house completely
11 naked in a neighborhood they don't know, leaving
12 every one of their personal belonging in a house
13 that you've never been to if you hadn't just
14 been raped and your life wasn't in complete fear
15 of this man right here? In complete fear.

16 I've been talking about rape. It's
17 called criminal sexual conduct in the first
18 degree. It's defined as a sexual battery, which
19 is penetration of a penis into a vagina by a
20 person with the use of aggravated force, the
21 presence of a weapon or being confined by
22 kidnaping. Those are the things you can
23 consider that go along with a sexual battery.
24 Are any of those present? They're all present.
25 They're all present. They're all there.

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1 What's the aggravated force?

2 Aggravated force is standing over somebody,
3 holding them down by the neck with your body
4 weight while you forcibly have sex with them --
5 not once, but twice. Not only that, but you
6 have to use lotion because this is a rape.
7 Things aren't going to slide in there easily.

8 Was there a threat of a weapon or a
9 gun? Yes, there was. He told Shaquinna he had
10 a gun. He said, "I'm going to give it to you
11 after this and you're welcome to use it on me."
12 The threat of a weapon.

13 Is there any evidence of any sort of
14 kidnaping in this case? Kidnaping is defined as
15 the "unlawful seizure of somebody without the
16 authority of law." It means you don't have the
17 authority from a law officer to seize this
18 person or keep them there. Kidnaping is a big
19 misconception. You may think that kidnaping is
20 I could take a kid, go to my car and drive
21 across a state line and Amber Alerts go out.
22 Kidnaping is the unlawful seizure of somebody
23 without their consent without the authority of
24 law. It's restraining or seizing somebody in a
25 place without their permission. Was Shaquinna

1 kidnaped? Yes, she was.

2 Kidnaping starts as soon as the consent
3 is over. Okay? So when you walk into a house -
4 - she did voluntarily walk into the house. But
5 as soon as she said, 'I want to get out of here.
6 I'm out of here. I want to leave.' That's when
7 it ended. And what does he do when that
8 happened? One door locked. Three locks went
9 out, and he grabs her by the arm and held her
10 down by the throat the entire time she was in
11 there. She was not free to leave. That is
12 kidnaping.

13 I ask you to listen to everything I've
14 said. I ask you to pay attention to everything
15 the witnesses said. The wet spot on the bed.
16 There wasn't semen on it. Is it consistent with
17 somebody using gel or lotion? It is. The hairs
18 that were on the bed. The guy told you I can't
19 get a hair -- I can't get DNA sample off a hair
20 unless it's a root. There were no roots there.
21 But was there hair on the bed? Was there
22 forceful sex in that room? Yes, there was.

23 Today is Ms. McNeil's day in court, the
24 day she's waited for for a year and a half.
25 Today's the day she can finally put this behind

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1 her. I ask you to find Mr. Bolton guilty of the
2 rape of Shaquinna McNeil and the kidnaping of
3 Shaquinna McNeil.

4 THE COURT: Thank you, Mr. McCoy.
5 Mr. Smith?

6 MR. SMITH: Good afternoon, Ladies
7 and Gentlemen. As lawyers, both the Solicitor
8 and I have been trained to pull at your heart
9 strings. That's what we do. We've been taught
10 to manipulate your emotions. We've been taught
11 to try to make you think with your hearts and
12 not your heads. Mr. McCoy did a good job of it.
13 He told you about Shaquinna McNeil. He told you
14 about what she had endured. And he tried to
15 convince you to think with your heart and not
16 your head. That's exactly what he's done here
17 today. He wants you to feel pain. He wants you
18 to feel tribulation. He wants you to hate Mr.
19 Bolton.

20 If that were the end of the story, my
21 client, Mr. Bolton, would be in a whole lot of
22 trouble. But that's not the end of the story.
23 There's something in this case -- there's
24 something that cannot change, and those are the
25 objective facts in this case. They can't be

1 manipulated by the Solicitor. They can't be
2 manipulated by me, by Mr. Bolton, by law
3 enforcement. They're objective. Nobody can
4 manipulate or change those facts. They're free
5 from passion. They're free from empathy, and
6 they're free from any emotions. They are what
7 they are.

8 Now, I want to talk about certain
9 important areas in this case that we've heard
10 testimony about. And what I really want to
11 concentrate on are those objective facts. The
12 very first one, the DNA in this case. It's one
13 of the last ones that we heard in this case.
14 Simply put, the DNA in this case is consistent
15 with heavy petting ~~between Mr. Bolton and Ms.~~
16 McNeil. But it's not consistent or cannot
17 support a claim of forceful rape. Look at your
18 report. You're going to have that in front of
19 you. You'll be able to see everything that they
20 looked at, everything that they tested. All
21 that you will see is one small sample taken --
22 actually, two small samples taken from her
23 breast and they are consistent with two people
24 that were petting, that were making out. They
25 were being with each other. But you'll not see

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1 anything in that report that indicates any kind
2 of sex.

3 The Solicitor made a big deal about the
4 fact that if somebody's cleaned up or changed or
5 if he didn't ejaculate that there would not be
6 any DNA there. That's not what SLED said. They
7 said it was still possible.

8 It becomes important because you have
9 to also remember testimony that the Solicitor
10 didn't mention today. That testimony was from
11 Faye LaBoeuf at MUSC. And what was important
12 about what Faye told you is the set of tests
13 that they go through in every single rape case.
14 And something that's probably most important in
15 those cases are the factors they looked at and
16 see how and if this evidence they have collected
17 has in any way been contaminated. Has it been
18 degraded in any particular way? And what Faye
19 told you is she went through a whole list of
20 things. She told you. 'I've done 1,047 of these
21 things', and in every case she does them very
22 thoroughly.

23 She looks at these cases very seriously
24 and she looked at this case not days later, not
25 four days later. She looked at this case. She

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1 examined Ms. McNeil the night this occurred.

2 Now, she talked to you about the post-
3 hygiene exam. And that is kind of a weird way
4 of saying, 'was there anything that could have
5 affected the results that we took?' And she
6 told you that throughout checking down the
7 checklist, a long checklist, that nothing was
8 found. There was no urination. There was no
9 brushing of teeth. There was no showering.
10 There was no using wipes. There was no way that
11 if DNA were present that it could have gone
12 anywhere. It would have been found, and it was
13 not.

14 What else was important about what Faye
15 told you? She talked about the strangulation
16 effect. Strangulation effect is something they
17 look at. Anytime there's an allegation that
18 someone has been held down, pinned down in any
19 way, they're going to take a look at that. She
20 told you that Ms. McNeil never lost conscious-
21 ness, that her voice was normal. She wasn't
22 hoarse. There were no findings at all in that
23 category.

24 Also important about what Faye did is a
25 complete physical examination. In every rape

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1 case, in every case that there's any type of
2 physical injury, it's important that that is
3 documented. And, no, she talked about -- and
4 I asked her about giving a description, an
5 anatomically-correct drawing, to show was there
6 any physical injuries with regard to Ms. McNeil.
7 There were none. She went through it, she
8 looked at her chart and she looked at her
9 report. They have two boxes that they can
10 check, finding or no finding. In this
11 particular case she said, "I checked no
12 finding."

13 The same can be said of the genital
14 examination that was done. Again, that's an
15 important part of the exam, especially in a rape
16 case. There's no injury noted, no bruising
17 noted, no semen noted, no lubricants noted, no
18 Vaseline noted. And what she checked ultimately
19 was "no findings" once again. That's pretty
20 important.

21 She also talked to you about the trace
22 evidence in the case. She talked about
23 collecting hairs, trying to find if there were
24 any fibers out there. She wasn't able to find
25 anything like that during the examination.

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1 That's not unusual.

2 But the one thing that she was able to
3 collect and the one thing that is very important
4 in this case is she did collect fingernail
5 scrapings from Ms. McNeil. You heard Ms. McNeil
6 say through this thing "I was fighting, I was
7 doing everything I could to keep him off." SLED
8 looked at those scrapings that were taken from
9 Ms. McNeil. And what they found was no DNA.
10 There was nothing. There was nothing under her
11 nails. That's pretty important.

12 Now, let's talk about -- for just a
13 minute, about Mr. Bolton and his actions. The
14 Solicitor obviously characterized him in a way
15 that I don't think fits with this particular
16 case. When Shaquinna leaves the house, what
17 does Mr. Bolton do? He is not out 'looking for
18 his prey', as the Solicitor told you. His
19 actions and his movements don't suggest that at
20 all. He gathered up her clothes. You're going
21 to see the pictures. You're going to have it
22 back there. Her clothes are in the back seat of
23 the car. They're on the floorboard. They're
24 not stuffed under the seat. They're not in the
25 trunk. They are laying on the floor. It's the

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1 same thing he said about her purse and her bags.
2 They're not in the floor strewn about. They're
3 setting on the back seat of that car. That's
4 pretty important.

5 Think about this for a minute. If you
6 were charged with a crime or thought that you
7 were going to be charged with a crime as serious
8 as this, would you leave clothes in your car?
9 Would you leave a purse in your car? Would you
10 leave a cell phone in your car? Would you leave
11 someone's identification in your car?

12 The other thing that is interesting
13 about what Mr. Bolton does is where he stays.
14 He doesn't run. He doesn't leave the neighbor-
15 hood. Again, if he thought he had done
16 something wrong, he would have left the
17 neighborhood. I would have left the
18 neighborhood. I think anybody would have left
19 the neighborhood. They would have taken what
20 was in that car, they would have thrown it in
21 the Cooper River. They would have thrown it in
22 a dumpster. They would have burned what was
23 there. But that's not what he did. He stayed
24 in the neighborhood. He drove around in the
25 neighborhood.

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1 Officer Wilson told you exactly what he
2 did when he came upon him. He came upon him,
3 behind him, there were no lights. He followed
4 him for several blocks. Mr. Bolton didn't try
5 to run. What he ultimately did was he pulled
6 over in a parking lot and talked to the officer.
7 He didn't have identification with him. He
8 could have said 'my name is John Doe', and the
9 officer would have had no way to check that out.
10 That's not what he said. He said, I don't have
11 my license. My name is Thurston Bolton.' He
12 didn't try to run. He didn't try to hide, and
13 he didn't try to flee in this situation. He had
14 ten or fifteen to do it, plenty of time to get
15 out of that neighborhood and be somewhere else.

16 What I think you will find perhaps most
17 important in this case are the pictures of the
18 scene of this crime. The testimony is and the
19 Solicitor talked to you about Mr. Bolton
20 following her out immediately. He didn't have
21 a shirt on. He ran out. He was following her
22 immediately. That's the way the Solicitor
23 classifies it. Look at the pictures. Look at
24 the bed. The bed -- there is no evidence that
25 that bed had in any way been ruffled up,

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1 scrunched up. The pillows are neatly stacked on
2 the bed. The bed is completely flat. Officer
3 Hallman told you 'it is as it was when I came
4 into that house.' And he's telling you the
5 truth. They didn't move anything. They didn't
6 adjust anything. But that scene, in and of
7 itself, does not portray the scene of a place
8 where there's been a violent rape, a violent
9 assault or someone held against their will.

10 I want you to look at the pictures.
11 They prove it. Look at the CD stand. There's
12 CD's stacked up, kind of hari kari, they're on
13 top of each other. If there was a fight going
14 on in that room, if there was an assault going
15 on in that room, those would have been all over
16 the floor. The same thing is true of the
17 shelves. There were papers everywhere. You'll
18 see the pictures. There's all sorts of papers
19 and things stacked up. No question about it.
20 If there had been a fight in that room, those
21 would have been everywhere.

22 Look at the scene. He didn't have any
23 time to clean up at the scene. What it was and
24 the way it was was the way it was when he walked
25 out and he went to find Ms. McNeil. There

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1 wasn't anything done to it. He didn't have
2 time. The Solicitor told you that.

3 What else is important about the scene?
4 You saw pictures of the door. You saw pictures
5 of the mini-blinds on the door. You saw
6 pictures of the purse is on the door. Again,
7 the mini blinds closed as they normally would
8 be. You know and I know that if there's anybody
9 trying to struggle to get away or get out
10 quickly, usually those blinds are all crinkled
11 up or opened or turned one way or another. The
12 same thing can be said about the purse.

13 What I also want you to think about is
14 the inconsistency in exactly the physical
15 attributes of both Mr. Bolton and Ms. McNeil.
16 What she testified to and what has been later
17 disproven by Faye LaBoeuf is exactly this point
18 where Mr. Bolton has his hands on her neck. At
19 one point she said he had his arm down on her.
20 What has been consistently true during this
21 testimony is that he was constantly grabbing
22 that arm, constantly grabbing that arm. He's
23 bigger than she is. There's no question about
24 that. He's stronger than she is, there's no
25 question about that. What there is a question

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1 about is there is no physical manifestation of
2 those injuries.

3 The Solicitor wants to make you believe
4 there's nothing more to this relationship than
5 her calling him up for a ride. That's not
6 really the case. They exchanged phone numbers
7 on the first day. What she told you is I never
8 paid for a ride -- never once. So he wasn't a
9 hot cab. He was somebody that she knew she
10 could get a ride from, and that's exactly what
11 she did. They were together. I asked her to
12 remember five separate occasions that she
13 remembered. She didn't pay for any one of
14 those.

15 During those he never touched her
16 inappropriately. He never kissed her. Each
17 time he would take her to her destination and
18 allow her to get out. That's important.
19 Because if you're looking for someone to rape
20 and take advantage of, the perfect opportunity
21 is the first time you meet her, the second time
22 you meet her, the third time you meet her, in
23 locations that are not your house, in locations
24 where that person has no control. In each of
25 those scenarios Mr. Bolton had control. He had

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1 control of the car. He had control of where
2 they went. And in each of those situations she
3 testified that he took her to the destinations
4 and he let her out.

5 The other thing that's important about
6 the transportation with each other was that
7 there was never anybody else involved. It was
8 always the two of them alone. And, again, never
9 any reports of him doing anything inappropriate.

10 They had dinner at Longhorn Steak
11 House. She admitted to that. She might
12 describe it a little bit different, but they
13 talked about things that normal people would
14 talk about, what a couple would talk about when
15 they went out for the first time: career
16 choices, military, real estate, small talk.

17 And what did he do on that occasion?
18 He took her home. He let her out. He didn't do
19 anything to her. Something pretty important
20 about that particular time -- that particular
21 time that they were at the Northwoods Mall in
22 North Charleston, a perfect opportunity for him
23 to say 'Oh, I've got to go over to my house. I
24 want you to come in for just a minute.' Did he
25 do that? He did not. What he did was after

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1 dinner was over he took her home. He let her
2 out of the car, like he had the five other
3 times.

4 What I say to you with regard to this
5 case is that objective facts don't lie. They
6 tell a much different story than Ms. McNeil told
7 you. I'm asking you to do something greater
8 than what the Solicitor has asked you to do.
9 He's asking you to listen and to find and to
10 make a decision based purely on your heart.
11 What I'm asking you to do is to listen to your
12 heart, but to follow your mind in this case.
13 That's what it requires.

14 There are objective findings. They
15 tell the true story of what happened in this
16 case. Mr. Bolton was a man who developed a
17 relationship with a younger woman and she
18 developed a relationship with him. He went
19 beyond being just a ride. They had dinner.
20 They talked on the phone and ultimately they met
21 at Mr. Bolton's house, not by force, not by
22 threat or not by coercion. They went to his
23 apartment because they both wanted to.

24 Once things got heated, things
25 progressed, I can't explain to you why she ran

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1 out of the house as she did. Maybe she was
2 upset. She had a boyfriend and she knew that.
3 Maybe things happened too quickly and she
4 overreacted to the situation. Maybe she was not
5 emotionally ready for the relationship that they
6 were going to have. I can't explain that to
7 you.

8 But what I can say is, again, the
9 objective facts in this case don't lie. The DNA
10 in this case is consistent with heavy petting or
11 making out and there is nothing more. The DNA
12 evidence is not consistent with a rape.

13 There is no DNA evidence consistent
14 with defensive maneuvers by Ms. McNeil, there's
15 nothing indicating that. There's no note of
16 physical injuries and there was nothing noted
17 during the genital exam.

18 Mr. Bolton's actions, we've already
19 talked about. They're not consistent with
20 someone who knew they were in trouble as the
21 Solicitor likes to portray. He stayed in his
22 neighborhood. He remained in the car, but he
23 didn't waver. He stayed right there. And when
24 the police came up he said to them 'my name is
25 Thurston Bolton.' When they asked for a DNA

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1 sample he said yes. When they asked if he could
2 search his house he said yes.

3 The scene itself is probably the most
4 important thing that you'll look at. Again, I
5 implore you to look at those pictures and to
6 study those pictures and tell me if you believe
7 that's an area where a violent attack occurred.
8 Those pictures and what you see are not
9 consistent with a violent rape.

10 When we started I asked you to listen
11 to your hearts but to follow your minds in this
12 case. I'm asking you to continue to do that.
13 Look at the objective facts. The objective
14 facts that nobody can manipulate, that I can't
15 manipulate, the Solicitor can't manipulate and
16 the officers can't manipulate. I think if you
17 look at those objective facts you will find that
18 Mr. Bolton, my client, is not guilty of criminal
19 sexual conduct and of kidnaping. Thank you.

20 THE COURT: Thank you, Mr. Smith.

21 Ladies and Gentlemen, it now becomes my
22 responsibility as the judge of the law to give
23 you the law that you, of course, have promised
24 to accept and apply fairly and impartially to
25 the facts that you will determine very shortly,

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1 when you begin the process of evaluating the
2 evidence in this case.

3 Each of the parties, the State and Mr.
4 Bolton, expect that you will at that time
5 conscientiously apply your common sense, your
6 sense of logic and reason and analyze the
7 evidence and decide what you find to be credible
8 and believable. Then once deciding those true
9 facts, then you promised further to take the law
10 and apply it. And to that end, I would
11 respectfully submit that the State and Mr.
12 Bolton will receive a fair and impartial
13 determination from this proceeding.

14 During this instruction you may hear me
15 use the word "defendant" from time to time, and
16 that word is synonymous with Mr. Bolton. It
17 really has no significance other than to be a
18 means of identification. When a claim is made
19 against someone in these types of proceedings,
20 the term defendant applies. And that's simply a
21 designated person against whom a claim has been
22 made.

23 As I told you when we started Mr.
24 Bolton has been accused by these two documents
25 that I'm holding in my hand. They are

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1 indictments. They will not accompany you to the
2 jury room because they're not evidence. To
3 these indictments he rendered a plea of Not
4 Guilty, which places upon the State the burden
5 of proving his guilt beyond a reasonable doubt.

6 So as I mentioned when we started,
7 persons such as Mr. Bolton who are accused of
8 committing criminal offenses in this state and
9 in this country, are never required to come in
10 and prove anything at all. In fact, persons so
11 accused are presumed to be innocent. That's an
12 active presumption. That means that each one of
13 you, under that law and under our law in this
14 state and under your oath, must actively presume
15 that Mr. Bolton is not guilty. The presumption
16 of innocence is maintained at all times
17 throughout this case, and it's only removed when
18 and if the State brings in enough evidence to
19 persuade you beyond a reasonable doubt that he
20 is guilty of one of more of the offenses.

21 So, Ladies and Gentlemen, obviously the
22 fact that persons accused of criminal offenses
23 do not testify, do not present any evidence,
24 that cannot be considered by that person under
25 any circumstances. But as I mentioned, the

1 person so accused has no responsibility and
2 burden to prove anything. And furthermore, such
3 person has the Constitutional right to remain
4 silent. And the assertion of that right cannot
5 and must not be considered by a jury in their
6 deliberations.

7 Under your oath, therefore, you are to
8 reach no inference and draw no conclusion
9 whatsoever from the fact that Mr. Bolton did not
10 testify in this case. His failure to testify
11 should not even be discussed in the jury room.
12 If it is, you will have violated the oath that
13 you took. The burden remains and is upon the
14 State to prove the defendant guilty. His
15 failure to testify is not a fact to be
16 considered in making that determination.

17 What is a reasonable doubt? A
18 reasonable doubt is a doubt which would make an
19 honest, sincere, conscientious juror who's
20 searching for the truth in a case to hesitate.
21 Proof beyond a reasonable doubt is proof that
22 leaves you firmly convinced of the defendant's
23 guilt. There are very few things in this life
24 and in this world that we know with absolute
25 certainty. In criminal disputes, criminal cases

1 such as this the law does not require proof that
2 overcomes every possible doubt.

3 If, based on your consideration of the
4 evidence, you are firmly convinced that Mr.
5 Bolton is guilty of one or more of the crimes
6 charged, then you must return a verdict of
7 guilty.

8 If, on the other hand, you think there
9 is a real possibility that he's not guilty, then
10 you must give him the benefit of that doubt and
11 return a verdict of not guilty.

12 Reasonable doubt, Ladies and Gentlemen,
13 may arise from the evidence which is in a case
14 or the lack or absence of evidence in a case.
15 And it's up to you to determine whether or not a
16 reasonable doubt exists as to the guilt of this
17 defendant in considering the whole case. And
18 that simply means this: If, upon any issue of
19 fact which is essential to your returning a
20 verdict of guilty, as to that issue you should
21 have a reasonable doubt as to how that should be
22 resolved, I would instruct you that you must
23 resolve it in Mr. Bolton's favor.

24 The evidence which you are to consider
25 consists of the testimony of the witnesses and

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1 exhibits which were introduced through their
2 testimony and nothing else. Obviously, my
3 instructions, my rulings on any objections are
4 not to be considered by you at all in your
5 deliberations. The remarks of the attorneys, as
6 I stated, they are officers of this Court, they
7 will be helpful to you and very important in
8 this process, but those remarks should not be
9 considered as evidence either.

10 If, during your deliberations, your
11 conclusions as to what a witness said or didn't
12 say differs from that of what the attorneys
13 said, you must take your recollection, because
14 you are the sole judges of the facts in this
15 case. I would instruct you to disregard any
16 comment that is not consistent with your
17 recollection.

18 Likewise, any statement of the lawyers
19 which differs from any legal principle that I
20 gave you during this instruction, you're
21 instructed to disregard those remarks as well.
22 Because for purposes of this proceeding today, I
23 am the sole judge of the law.

24 Ladies and Gentlemen, when evidence is
25 presented in cases such as this and this type of

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1 dispute resolution or this process of dispute
2 resolution, there are two types typically used.
3 One is direct evidence and the other indirect or
4 more popularly or commonly called circumstantial
5 evidence.

6 Direct evidence is the testimony of a
7 person who claims to have actual knowledge of a
8 fact, such as an eyewitness. It's evidence
9 that, if you believe it, would firmly convince
10 and establish that particular fact or
11 circumstance. It generally deals with one's
12 sensory perception, such as 'I saw something, I
13 felt something or the like.'

14 Circumstantial evidence is the proof of
15 a chain of facts and circumstances indicating
16 the existence of another fact. It is evidence
17 which immediately establishes collateral facts
18 from which the main fact may be inferred.
19 Circumstantial evidence is based on inference
20 and not on personal knowledge or observation.

21 Ladies and Gentlemen, either method can
22 be used to present the case, and the law makes
23 absolutely no distinction between the weight or
24 the value to be given either to direct or
25 circumstantial evidence. Nor is there any

1 greater degree of certainty required of
2 circumstantial evidence than of direct evidence.
3 You're instructed to weigh all the evidence in
4 this case and decide what you find to be
5 credible and believable. I would instruction
6 you however, in that regard, that the mere fact
7 that the circumstances brought out in a case are
8 strongly suspicious of guilty or that the
9 circumstances are such that a person's guilt is
10 probable, that that would not be enough. That's
11 not sufficient. Because in order to sustain a
12 conviction, the proof offered by the State has
13 to be more than mere suspicion, or has to be
14 more than someone being probably guilty. It has
15 to be proof that convinced you beyond a
16 reasonable doubt.

17 Now, how do you decide the facts of the
18 case? You decide it by evaluating the testimony
19 of witnesses. You are instructed to evaluate
20 each witness. Because it's not only what a
21 witness says, but the inherent probability of
22 what a witness says that you have to assess.
23 The fact that testimony may not be contradicted
24 directly does not necessarily render it
25 undisputed, because you have to decide on the

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1 inherent credibility and believability of
2 testimony.

3 There are many factors that one may
4 consider to assist them in making this type of
5 decision. And I'm sure that you in your life
6 have made that decision many times. If I don't
7 mention a factor that you found to be reliable
8 and you used during your life, please use it
9 when you begin your deliberations. Some of the
10 factor that you may want to consider would be:

11 The appearance of a witness, how they
12 appear to you, straightforward or hesitant in
13 answering questions.

14 Was the testimony of a witness
15 consistent or was it inconsistent?

16 Was it strengthen or weakened by other
17 evidence in the case?

18 How did the witness come to know the
19 facts that he or she testified to, and what was
20 the ability of that witness to know those
21 particular facts or circumstances?

22 Is there some reason for a witness to
23 give testimony which may be beneficial for one
24 side or which may be detrimental to one side?
25 In other words, was the witness biased or

1 prejudiced in any fashion?

2 In making your determination of
3 credibility and believability you're given very
4 wide latitude, very broad discretion. For, you
5 see, you have the right to believe many
6 witnesses against one, one witness against many.
7 You have a right to believe all of a witness's
8 testimony, parts of a witness's testimony or
9 none of a witness's testimony.

10 Now, of course, you don't make these
11 decisions arbitrarily. But if there's a reason
12 in the record of this case, that is the evidence
13 in this case, you have that prerogative. Because
14 your purpose, your objective is to determine the
15 true facts in this dispute.

16 While you enjoy wide latitude regarding
17 the factual determinations, please remember that
18 you don't enjoy the same when it comes to the
19 law. You promised to accept the law as I give
20 it to you, notwithstanding your own personal
21 feelings about what the law was or is or should
22 be. I respect your right to feel that way, but
23 for the purposes of this proceeding you promised
24 to set aside those feelings and take the law and
25 apply that law fairly and impartially.

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1 Also the fact that I give you some
2 instruction on a particular area of law should
3 not be considered by you to be an indication or
4 suggestion of how you are to resolve a factual
5 issue. My charge has nothing to do with that at
6 all.

7 Also, consider the charge as a whole.
8 Don't put any greater emphasis or weight on any
9 one aspect of the charge.

10 As I mentioned to you when we started,
11 Mr. Bolton was accused of committing the offense
12 of criminal sexual conduct in the first degree
13 and the offense of kidnaping. I want to turn
14 our attention now to the criminal sexual conduct
15 charge in the first degree. The first element
16 which the State must prove beyond a reasonable
17 doubt for that charge is that the defendant, Mr.
18 Bolton, engaged in a sexual battery with the
19 victim. A sexual battery is sexual intercourse
20 or any intrusion, however slight, of any part of
21 a person's body into the genital openings of
22 another person's body, except when the intrusion
23 is accomplished for medically-recognized
24 treatment or diagnostic purposes.

25 If you find that the State has not

1 shown beyond a reasonable doubt that a sexual
2 battery occurred, then you would stop
3 deliberating and your verdict would have to be
4 not guilty.

5 If, on the other hand, you find that a
6 sexual battery did occur, you must then decide
7 whether the State has proven beyond a reasonable
8 doubt any of the following circumstances:

9 One, that the defendant used
10 aggravated force to accomplish the sexual
11 battery. Aggravated force, Ladies and Gentlemen,
12 means the use of physical force or physical
13 violence of a high and aggravated nature to
14 overcome the victim. This includes the threat
15 of using a deadly weapon or firearm.

16 Two, if the victim submitted to
17 sexual battery while the victim was also the
18 victim of a forcible confinement, a kidnaping or
19 any other similar act or offense.

20 Let's look at the charge of kidnaping.
21 The defendant is charged with kidnaping, and the
22 State must prove beyond a reasonable doubt that
23 Mr. Bolton, knowingly and unlawfully, seized,
24 confined and kidnaped another person without
25 authority of law.

1 To do something "unlawfully" is to do
2 it willfully against the law.

3 "Knowingly" means with knowledge,
4 consciously, not accidentally.

5 "Seized" means to take hold of suddenly
6 or forcibly.

7 "Confined" means to limit, restrict or
8 enclose within bounds, imprison or shut or keep
9 in.

10 "Kidnap" is to remove a person against
11 his or her will by unlawful force or by fraud.

12 The State does not have to prove that
13 the defendant did all of these things. Instead,
14 if you find beyond a reasonable doubt that the
15 defendant did any of these things and that's
16 been established by this evidence beyond a
17 reasonable doubt, you may then find the
18 defendant guilty of kidnaping.

19 Something done without authority of law
20 is something which the law does not permit,
21 allow, condone or provide justification for.

22 A kidnaping does not have to be for any
23 personal or monetary gain or any illegal
24 purpose, but may be for any reason whatsoever.
25 The gravamen of the offense of kidnaping is some

1 form of compulsion that the law says that
2 reckless force or compulsion need not consist of
3 the use of actual physical force or violence or
4 of express threat. The offense of kidnaping,
5 Ladies and Gentlemen, commences when one is
6 wrongfully and unlawfully deprived of his or her
7 ~~freedom and continues~~ until his or her freedom
8 has been restored.

9 Also, Ladies and Gentlemen, an element
10 of each of these offenses is criminal intent.
11 And that has to be established beyond a
12 reasonable doubt. Criminal intent is determined
13 by considering all the facts and circumstances
14 surrounding the situation, so it may be inferred
15 from the circumstances that the evidence shows
16 to have existed. Criminal intent is a state of
17 mind that operate jointly with an act in the
18 commission of a crime. Intent would include
19 those consequences which represent the very
20 purpose for which an act is done or known to be
21 substantially certain to result, regardless of
22 one's design. Criminal intent is a mental state
23 of conscious wrongdoing.

24 I instruct you that the State must
25 prove criminal intent, as it must prove every

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1 element, beyond a reasonable doubt.

2 Ladies and Gentlemen, you in this
3 matter have been selected to be a judge. You
4 aren't partisans or advocates for either side.
5 You don't have any friends or enemies in this
6 process. In fact, I would instruct you that
7 when performing the task of judging anything
8 that we must make a commitment to both the State
9 and to Mr. Bolton that we will not be influenced
10 by any human emotion whatsoever. In fact, it
11 has no place in this process. And you will do
12 that, I'm positive. When you retire to begin
13 your deliberations you must conscientiously and
14 methodically evaluate the evidence without being
15 influenced by any human emotion, and decide what
16 you believe to be the true facts. And then once
17 you make that decision, then you will take the
18 law as I've given it to you and apply that law
19 fairly and impartially to the facts. And when
20 you've done that you will have honored the
21 commitment you made.

22 To assist you in reporting your verdict
23 I have prepared two verdict forms which I will
24 be sending back to you with the evidence. Let's
25 discuss them. They both appear to be the same

1 insofar as the body. The captioning is simply
2 to designate the filing and it means nothing
3 more than that. On each indictment -- one deals
4 with criminal sexual conduct, and one deals with
5 the kidnaping. I'm discussing with you now the
6 two choices, the order in which they appear
7 means nothing. I had to put them in some order.
8 The first in this one happens to be the
9 kidnaping. It says, "We, the jury, by unanimous
10 consent, find the defendant..." -- the first
11 choice is guilty of kidnaping, the second choice
12 not guilty.

13 What will you be saying if the first
14 choice is the one selected? You will be saying
15 that you've evaluated the evidence and decided
16 that the State has met its burden of proof and
17 established each of the elements required beyond
18 a reasonable doubt. And therefore, consistent
19 with my instruction, you're returning a verdict
20 of guilty.

21 Not guilty, you're saying the State has
22 failed to convince you beyond a reasonable doubt
23 of one or more of those elements. Because if
24 they fail on one, then you must return a verdict
25 of not guilty.

State of South Carolina v. Thurston M. Bolton
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Jury Trial of August 31, 2009 - September 1, 2009
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1 Whichever your choice, it has to be
2 unanimous. All twelve of you must agree.
3 Eleven to one won't work. Ten to two is not
4 enough. Twelve to zero has to be the count.
5 Whichever the choice, as presiding juror, if you
6 would place a check in the line that precedes it
7 and circle it as well, then sign it where it
8 says presiding juror, you will have completed
9 that particular form.

10 You will have a similar form for the
11 offense of criminal sexual conduct in the first
12 degree. You have the same analysis. You'll be
13 analyzing it as to whether the State has met its
14 burden of proof as to each element.

15 I know you're anxious to get started,
16 and you're almost there. Like I told you, the
17 last thing that I would instruct you would be
18 when you commence your deliberations. I have to
19 excuse you now to discuss my instruction with
20 the attorneys. It might be necessary to return
21 you to the courtroom to give you some clarification
22 or additional instruction. And if so, we
23 will do that.

24 But if there aren't any additions that
25 need to be given, then we will gather the

1 exhibits and the verdict forms and deliver them
2 to you. When you receive the exhibits, then you
3 may begin your deliberations and not before.
4 Once the deliberations begin, the only
5 restriction I place on those deliberations is if
6 at any time a juror has to leave the table for
7 any reason, you must stop deliberating until all
8 twelve of you are together. Other than that,
9 you proceed as you see fit.

10 Let me ask you know, of the first
11 twelve that were selected, do any of you believe
12 that you will not be able to continue with the
13 deliberation to a final determination? If so,
14 raise your hand. (No response)

15 Ms. Grant, at this point it does appear
16 that the first twelve are able to continue. So
17 when the jury retires, I would ask that you not
18 rejoin them in the jury room. They'll take you
19 to another room, and I'll be with you in just a
20 moment to discuss how long you will remain
21 there.

22 Thank you very much, Ladies and
23 Gentlemen. You can retire to your jury room,
24 but wait before commencing your deliberations.

25 (JURY OUT AT 12:48 P.M.)

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1 THE COURT: Exceptions or additions
2 from the State?

3 MR. MCCOY: No, sir, Your Honor.

4 THE COURT: Exceptions or additions
5 from the defendant?

6 MR. SMITH: No, Your Honor.

7 THE COURT: Thank you.

8 (EXHIBITS APPROVED BY COUNSEL)

9 (JURY IN DELIBERATION @ 12:55 P.M.)

10 (NOTIFIED OF JURY REQUEST @ 1:40 P.M.)

11 (DEFENDANT PRESENT)

12 THE COURT: Court's Exhibit 1 is a
13 request to see the clothing. They were I.D.
14 only, so I'm going to bring them in and explain
15 that to them.

16 (SO ENTERED AS COURT'S EXHIBIT 1)

17 (JURY ENTERS AT 1:43 P.M.)

18 BAILIFF: Jury is present, Your
19 Honor.

20 THE COURT: Thank you very much,
21 Ladies and Gentlemen. And, thank you, Mr.
22 Presiding Juror. I have now what's Court's
23 Exhibit 1. Court Exhibit 1 says request to see
24 the clothing of the victim. And the clothing
25 were used during the testimony and discussed

1 during the testimony. certainly that testimony
2 is evidence for your consideration. But they
3 were not introduced into evidence, but merely
4 identified. So they cannot go back to the jury
5 room since they were not admitted into evidence
6 formally. But you may consider the testimony
7 concerning those clothing and put other weight
8 that you wish on any aspect of that. Thank you
9 very much. You may return to your jury room and
10 continue your deliberations.

11 (JURY OUT @ 1:45 P.M.)

12 THE COURT: Exceptions or additions
13 from the State?

14 MR. MCCOY: No, sir, Your Honor.

15 THE COURT: Exceptions or additions
16 from Mr. Bolton?

17 MR. SMITH: No, Your Honor.

18 THE COURT: Thank you. We'll be at
19 ease.

20 (JURY RESUMES DELIBERATIONS)

21 (NOTIFIED OF VERDICT @ 2:29 P.M.)

22 (DEFENDANT PRESENT)

23 THE COURT: Is the State ready to
24 received the verdict?

25 MR. MCCOY: Yes, sir.

State of South Carolina v. Thurston M. Bolton
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1 THE COURT: Is the defendant ready to
2 proceed with the verdict?

3 MR. SMITH: Yes, sir.

4 THE COURT: Let the record reflect
5 that Mr. Bolton is present.

6 (JURY ENTERS @ 2:33 P.M.)

7 BAILIFF: All jurors are present,
8 Your Honor.

9 THE COURT: Thank you very much. And
10 thank you, Ladies and Gentlemen. Father
11 Lawrence, as I understand, the jury has reached
12 a verdict. Is that correct, sir?

13 JUROR NUMBER 319: Yes, sir.

14 THE COURT: If you would pass the
15 verdict form, please.

16 JUROR NUMBER 319: (Tenders to
17 bailiff).

18 BAILIFF: (Tenders to Court).

19 THE COURT: (Upon review), the
20 verdict form has been properly completed. I ask
21 the defendant to please rise.

22 DEFENDANT: (Complies)

23 THE COURT: The State of South
24 Carolina, County of Charleston, Indictment
25 number 2008-GS-10-4635, State of South Carolina

State of South Carolina v. Thurston M. Bolton
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1 versus Thurston Maurice Bolton, as to Indictment
2 2008-GS-10-4635, (reading): "We, the jury, by
3 unanimous consent find the defendant not guilty
4 of criminal sexual conduct in the first degree."
5 And it's signed by the presiding juror and dated
6 September the 1st.

7 The same caption and case number,
8 Indictment number 2008-GS-10-4637, (reading):
9 "We, the jury, by unanimous consent find the
10 defendant guilty of the crime of kidnaping."
11 That's also signed by the presiding juror and
12 dated September 1st.

13 You may be seated.

14 Ladies and Gentlemen, if the Court has
15 accurately published your verdict in each
16 instance, please indicate that by raising your
17 right hands.

18 (UNANIMOUS AFFIRMATIVE RESPONSE BY JURORS)

19 THE COURT: Thank you. You may put
20 them down. Let the record reflect that each
21 juror raised the right hand in response to the
22 Court's inquiry. Anything further from the jury
23 from the State?

24 MR. MCCOY: No, sir, Your Honor.

25 THE COURT: Anything further of the

State of South Carolina v. Thurston M. Bolton
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1 jury from the defendant?

2 MR. SMITH: No, Your Honor.

3 THE COURT: Thank you very much.

4 Ladies and Gentlemen, thank you very much for
5 your participation in this matter. It's been an
6 honor to serve with each one of you. I'm
7 pleased to inform you we're going to select a
8 jury at 2:30, but we've taken your names out.
9 So you won't have to participate in the next
10 one. I would suggest that you call the number
11 after 6:00 tonight. What we're going to try to
12 do is pick two juries here. So I might not need
13 another jury. But it will depend on how long it
14 takes to try those cases. So I might not have a
15 chance to see you again. If I don't, I
16 appreciate your assistance and appreciate your
17 work in this matter. But follow that
18 instruction. The civil court may need you and,
19 there again, I may need one too. But have a
20 good day. You're free to leave. Thank you very
21 much.

22 (JURY EXCUSED)

23 THE COURT: Anything from the State?

24 MR. MCCOY: Your Honor, we are
25 waiting for the sentencing sheet.

1 THE COURT: That's fine. I'll be
2 happy to hear from you, Mr. Smith, on any
3 matters of law, sir.

4 MR. SMITH: Thank you, Judge. At
5 this time we would renew all previous motions
6 and objections and ask the Court for a new trial
7 regarding the charge of kidnaping, based on all
8 our previous comments.

9 THE COURT: Thank you, sir. I think
10 the jury has spoken. I think the jury -- in
11 fact we were talking about that at lunch. At
12 first blush, I thought how could that be. It
13 could be, very easily, because they didn't
14 testify to certain things that could have
15 established another crime. But they could
16 believe your argument that there was not any
17 battery but that she, nevertheless, was
18 restrained against her will, and that would be
19 consistent with the evidence of this case. So
20 given that, I must respectfully deny your
21 Motions. Thank you so much.

22 MR. MCCOY: Would you like for me to
23 go ahead?

24 THE COURT: Sure.

25 MR. MCCOY: Your Honor, I don't think

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1 I need to go the facts of what's happened and
2 what we've alleged. Your Honor, I would add
3 that, for his prior record, there's a 1982
4 attempted murder and a conspiracy to commit
5 murder in 1982. I would add that in 1989 he was
6 convicted of a Burg 2nd and an ABHAN which was
7 originally indicted as a Burg 1st and a CSC 1st
8 on that case, as well, Your Honor.

9 And we have Ms. McNeil in the courtroom
10 now along with her mother. I don't think she
11 wishes to address the judge, but she is present,
12 Your Honor.

13 THE COURT: I'd be happy to hear from
14 her if she wishes to speak, but I'll let her
15 make that decision.

16 MR. MCCOY: She does not want to
17 speak, Your Honor.

18 THE COURT: Very well. Thank you
19 very much. Mr. Smith, I'll be delighted to hear
20 from you now, and anyone who wishes to speak.

21 MR. SMITH: Thank you, Your Honor.
22 These are always tough situations as far as
23 defendants being in a situation to speak at this
24 point. He will have to have some time to decide
25 whether he wants to appeal the decision of the

1 Court. He indicated he probably will not, but
2 he may.

3 THE COURT: That's fine.

4 MR. SMITH: I will tell you what I
5 think I'm bound to, a little bit about him and
6 his history here in Charleston. He's been a
7 resident here in Charleston. He was married.
8 His wife and he went through some problems, but
9 she has stayed by his side and continued to do
10 that. He has a mother that lives here in
11 downtown Charleston.

12 Judge, I do think it's worth mentioning
13 on the case in the 1980's, the attempted murder.
14 That was one of the arguments that we would make
15 about his life situation. As you look behind
16 those facts, the attempted murder case and
17 assault and battery with intent to kill or
18 assault with intent to kill, the facts in the
19 1980's were akin to the assault with intent to
20 kill. Nobody was harmed in that particular
21 situation. So I think I need to bring that to
22 the Court's attention.

23 Obviously, as the Court knows, and we
24 what we would ask you to consider in the
25 sentencing is what the jury found in this case.

1 They do not believe that there was any crime of
2 a sexual nature. There was no penetration.
3 There was no criminal sexual conduct in this
4 case and we would ask you to sentence him as
5 such.

6 THE COURT: Thank you so much. How
7 old is Mr. Bolton?

8 MR. SMITH: Forty-five.

9 THE COURT: Given the history -- and
10 I agree with you, I'm not going to consider it
11 as a criminal sexual conduct case. But what is
12 significant to me is something that's
13 significant with the decision of the jury.
14 Those crimes that you've alluded to are crimes
15 of basic -- most of them, if I had to assess
16 then, and it's probably an over-generalization,
17 it seems to arise out of a control issue. That
18 "I'm going to control you, and unless you agree
19 with me, then I will respond accordingly." And
20 when you have what you said is an assault with
21 intent to kill and then an ABHAN accompanied
22 with a burglary, it's furtherance of what we
23 have here today. "I'll do whatever I want to
24 do, and I don't have to listen to you." That's
25 a concern, and it seems to be a repeating

1 situation. Because that I'm going to impose a
2 sentence of twenty years, and he gets credit for
3 time served. Thank you. That is on Indictment
4 08-GS-10-4637.

5 MR. SMITH: Your Honor, I don't know
6 if this has any implication along with the
7 kidnaping ~~statute~~, the registering?

8 THE COURT: I'm ~~not going to require~~
9 him to register.

10 MR. MCCOY: Thank you, Your Honor.

11 (END OF PROCEEDING)

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State of South Carolina v. Thurston M. Bolton
Case No. 08-GS-10-4635-4637
Jury Trial of August 31, 2009 - September 1, 2009
Before The Honorable R. Markley Dennis, Jr.

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CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the jury
trial before The Honorable R. Markley Dennis,
Jr., on August 1, 2009 and September 1, 2009;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

January 25, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

THE STATE,)

Respondent,)

v.)

THURSTON BOLTON)

Appellant.)

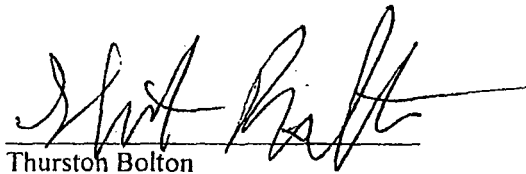
IN THE SOUTH CAROLINA COURT OF APPEALS

AFFIDAVIT

JUN 22 2010

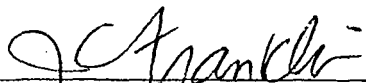
PERSONALLY appeared before me, Thurston Bolton, who being duly sworn, deposes and says:

1. I am the appellant in the above captioned case.
2. I understand that I am entitled to an appeal of my conviction, and that, because I am indigent, I am entitled to the assistance of an attorney from the South Carolina Office of Appellate Defense. I have been informed that if I drop my direct appeal that I forever waive those issues that could be raised.
3. In light of the risks which have been explained to me, it is my desire that the South Carolina Office of Appellate Defense drop the appeal formerly filed on my behalf.
4. I have made this decision on my own, with a full understanding of all the possible consequences of this action.
5. I do not wish to appeal.



Thurston Bolton

SWORN TO before me this 18
day of June, 2010.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 12-16-2019

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11/3

The South Carolina Court of Appeals

RECEIVED

JUN 25 2010

The State,

Respondent,

ATTORNEY GENERALS
OFFICE

v.

Thurston Bolton,

Appellant.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2008-GS-10-04637

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. It appears that Appellant, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal is dismissed. The remittitur will be sent to the lower court as provided by Rule 221(b), of the South Carolina Appellate Court Rules.

V. Claire Allen, Deputy CLERK
For the Court

Columbia, South Carolina
6/24/2010

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott
The Honorable Julie J. Armstrong

FILED
6/24/10

Close

The South Carolina Court of Appeals

RECEIVED

The State,

Respondent,

JUL 15 2010

v.

ATTORNEY GENERALS
OFFICE

Thurston Bolton,

Appellant.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2008-GS-10-04637

REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this
Court's Order dated June 24, 2010,

IT IS SO ORDERED that the above appeal be and hereby is remitted.

V. Claire Allen, Deputy CLERK
For the Court

Columbia, South Carolina
7/14/2010

Original to: The Honorable Julie Armstrong

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott

FILED

7/14/10

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)2010-CP-10-6416
IN THE COURT OF COMMON PLEASThurston M. Bolton, 115095

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2010 AUG -9 AM 11:53
JULIE CLERK OF COURTINSTRUCTIONS - 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 S. C. Dept. CORR. MCCORMICK CORRE
INSTIT.
2. Name and location of Court which imposed sentence Charleston County
COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-10-04637

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9-1-2009, 20 YEARS AT 85%
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes, judgment of conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Supreme Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 6/24/2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) SEE ATTACHMENT
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective assistance of trial counsel
 (b) Ground can only be raised in
 (c) post conviction

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? ☒
 (b) your trial, if any? ☒
 (c) your sentencing? ☒
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Judgment of conviction
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Not

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Ted Smith
Charleston County Public Defender's

ii.

iii.

(b) the proceedings at which each such attorney represented you:

i. Arraignment, trial and sentencing.

ii.

iii.

19. State clearly the relief you seek in filing this application:

VACATING CONVICTION

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, Thurston M. Bortner, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 05
day of August, 2010.

G C Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Thurston Bolton, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Signature]
Applicant

SWORN or affirmed to and subscribed before me this

05 day of August, 2010

[Signature]
Notary Public

My Commission Expires: 12.16.2019

2010-CF-10-64116

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Thurston M. Bolton,
Applicant

VS

THE STATE OF South
CAROLINA, Respondent

MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
RELIEF PURSUANT TO
THE UNIFORM POST CON-
VICTION PROCEDURE S.C.
CODE 17-27-10, ET SEQ.
Indictment No. 2008-GS-10-04637

As a matter of introduction, the Applicant respectfully submits that the events which transpired in the instant case constitute a denial of the Applicant's rights to due process of law as guaranteed by the fifth Amendment to the United States Constitution and to effective assistance of counsel as guaranteed by the sixth Amendment to the United States Constitution. These errors was not merely procedural, but substantially infringed upon the Applicant's constitutional rights to due process of law. At a minimum the Applicant request a hearing be held on these issues.

STATEMENT OF THE ISSUES

In response to paragraphs 10, and 11 the Applicant states that his trial counsel was ineffective because counsel failed to complete the following:

1. TRIAL COUNSEL'S FAILURE TO CONDUCT A PROPER PRE-TRIAL INVESTIGATION.

A. TRIAL COUNSEL'S FAILURE TO SUBPOENA WITNESSES TO TESTIFY IN APPLICANT'S BEHALF. SEE APPLICANT'S EXHIBIT 1, AND 14.

B. TRIAL COUNSEL'S FAILURE TO INTRODUCE APPLICANT'S TELEPHONE RECORD AT TRIAL EVEN THOUGH COUNSEL HAD THE RECORDS SUBPOENED. SEE APPLICANT'S EXHIBIT #2.

C. TRIAL COUNSEL'S FAILURE TO PRODUCE AND SHOW THAT THE BLUE TOWEL THAT WAS FOUND IN APPLICANT'S CAR SHOWED NO POSITIVE TEXT RESULTS. SEE APPLICANT'S EXHIBITS 3, 4, AND 5.

✓ 2. TRIAL COUNSEL FAILURE TO CONCUR WITH APPLICANT WHEN THE APPLICANT REQUESTED TWICE FORMALLY THAT COUNSEL BE RELIEVED FROM THE REPRESENTATION OF THE APPLICANT. SEE EXHIBIT 21, AND 22.

3. TRIAL COUNSEL'S FAILURE TO CARRY OUT THE OBJECTIVES AND DIRECTIVES OF THE APPLICANT.

A. TRIAL COUNSEL FAILED TO PROPERLY FILE APPLICANT'S SPEEDY TRIAL MOTION IN A PROPER AND TIMELY MANNER. SEE EXHIBITS 12, 13, 14, 15, 16, AND 17.

B. TRIAL COUNSEL'S FAILURE TO PROFESSIONAL AND COMPETENTLY REPRESENT THE APPLICANT. AFTER COUNSEL FILED FOR A MOTION OF CONTINUANCE. BEFORE THE REQUESTED CONTINUANCE DATE PASSED COUNSEL THEN FILED FOR A MOTION FOR A FAST AND SPEEDY TRIAL, ALONG WITH A MOTION FOR BOND MODIFICATION WHICH COUNSEL NEVER HELD A HEARING ON SAID MOTIONS. SEE EXHIBITS 18, 19, AND 20.

4. TRIAL COUNSEL'S FAILURE TO PROPERLY INTRODUCE ACCUSER'S CLOTHES INTO EVIDENCE FOR JURY CONSIDERATION. SEE TRIAL TRANSCRIPT PAGE 112 THRU 113 ALSO SEE JURY REQUEST ON TRANSCRIPT PAGE 317, LINE 12 THRU 25.

5. TRIAL COUNSEL'S FAILURE TO INTRODUCE EVIDENCE OF ACCUSER STATING THAT ORAL SEX OCCURRED BETWEEN ACCUSER AND APPLICANT. SEE EXHIBIT 6, 7, 8, 9 AND ALSO SEE TRIAL TRANSCRIPT PAGE 117, LINES 15 THRU 22.

6. TRIAL COUNSEL'S FAILURE TO OBJECT TO ASSISTANT SOLICITORS MISCONDUCT.

A. ASSISTANT SOLICITOR PETER MCCOY, STATES IN HIS CLOSING ARGUMENT THAT THE APPLICANT RIPS ACCUSER'S CLOTHES OFF. SEE TRIAL TRANSCRIPT PAGE 268, LINES 16 THRU 22. ALSO, SEE DEFENDANT'S EXHIBITS 2, 3, AND 4.

B. ASSISTANT SOLICITOR ADAM YOUNG, STATES THAT THE ACCUSER RUNS OUT AT 5:00 P.M. SEE TRIAL TRANSCRIPT PAGE 50, LINES 2 THRU 9. ALSO, SEE DEFENDANT'S ARREST WARRANT EXHIBIT 11, AND ALSO, SEE EXHIBIT 6.

7. TRIAL COUNSEL'S FAILURE TO OBJECT TO THE STATE WITNESS MICHELLE EMERSON'S STATEMENT GIVING THE WRONG TIME WHEN SHE STATED THAT IT WAS SIX O'CLOCK WHEN SHE WENT TO THE STORE ON THE DATE OF THIS INCIDENT. SEE TRIAL TRANSCRIPT PAGE 245, LINES 11 THRU 12.

8. TRIAL COUNSEL'S FAILURE TO OBJECT TO THE JURY RETURNING A LEGALLY INCONSISTANT VERDICT. SEE TRIAL TRANSCRIPT PAGE 320.

9. TRIAL COUNSEL'S STATEMENT TO THE JURY THAT HE CAN'T EXPLAIN THE REASONS THAT ACCUSER WAS BRINGING THESE FALSE ALLEGATIONS IS UNFOUNDED BECAUSE APPLICANT PROVIDED COUNSEL WITH THE REASONS. SEE EXHIBIT 23. ALSO, SEE TRIAL TRANSCRIPT PAGE 297 LINES 24, AND 25. ALSO PAGE 298 LINES 1 THRU 7.

10. TRIAL COUNSEL'S FAILURE TO REQUEST A LESSER INCLUDED OFFENSE IN REGARD TO THE APPLICANT'S KIDNAPPING INDICTMENT. WHEN THE EVIDENCE PRESENTED AT TRIAL AS WELL AS THE SAME ELEMENTS WERE PRESENT IN THE OFFENSE OF FALSE IMPRISONMENT. SEE TRIAL TRANSCRIPT PAGE 254 THRU 260, LINES 1 THRU 17. ALSO, SEE SOUTH CAROLINE ANN CODE OF LAWS 17-25-30. AND TRIAL TRANSCRIPT PAGE 58 THRU 90. LASTLY SEE EXHIBIT 10.

STATEMENT OF JURISDICTION

SOUTH CAROLINA LAW PROVIDES AN AVENUE FOR THOSE WHOSE CONVICTIONS HAVE BEEN OBTAINED IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES. THE UNIFORM POST-CONVICTION PROCEDURE ACT, S.C. CODE

17-27-10 ET SEQ., PROVIDES AN AVENUE FOR REDRESS OF FEDERAL CONSTITUTIONAL VIOLATIONS IN A SOUTH CAROLINA COURT. A PRISONER IN CUSTODY UNDER SENTENCE OF A SOUTH CAROLINA COURT MAY CHALLENGE HIS CONVICTION AND SENTENCE IF SUCH WERE OBTAINED IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION OR LAWS OF SOUTH CAROLINA. S.C. CODE 17-27-20(C)(1). THE APPLICANT FEELS THAT HIS BEST OPPORTUNITY TO OBTAIN FAIR AND SUBSTANTIAL JUSTICE REGARDING HIS CONVICTION IS THROUGH THIS PETITION, AS THE PROCEDURAL REMEDY UTILIZED HEREIN HAS HISTORICALLY SERVED AS A SAFETY NET FOR THOSE WHO HAVE HAD THEIR CONSTITUTIONAL RIGHTS VIOLATED.

ARGUMENT

IN ORDER TO SUCCEED IN A POST CONVICTION PROCEEDING, THE APPLICANT MUST SHOW THAT THE ADJUDICATION OF A CLAIM IN SOUTH CAROLINA COURT RESULTED IN A CONVICTION OR SENTENCE THAT WAS IMPOSED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES. S.C. CODE

17-27-20CA1C17. The Constitution, AS THE FRAMEWORK FROM WHICH ALL SOUTH CAROLINA LAW SPRING, MUST NOT BE VIOLATED AS APPLIED TO THE APPLICANT.

THE APPLICANT SUBMITS THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL PRIOR TO AND DURING HIS TRIAL. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES THAT EVERY CRIMINAL DEFENDANT IS ENTITLED TO THE ASSISTANCE OF COUNSEL IN PRESENTING THEIR DEFENSE. SEE ALSO, S.C. CONSTITUTION, ART. 1 § 14. THE SUPREME COURT HAS STATED, THE RIGHT TO COUNSEL IS A FUNDAMENTAL RIGHT OF CRIMINAL DEFENDANTS, IT ASSURES THE FAIRNESS, AND THUS THE LEGITIMACY OF OUR ADVERSARY PROCESS.

KIMMELMAN V. MORRISON, 477 U.S. 365, 374 (1986). FURTHERMORE, THE SUPREME COURT HAS RECOGNIZED THAT THE RIGHT TO COUNSEL IS THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL. McMANN-VS-RICHARDSON, 399 U.S. 759, 771 (1970).

TO SEE WHETHER COUNSEL HAS FALLEN BELOW THE MINIMUM STANDARD NEEDED FOR EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT TO THE CONSTITUTION, A TWO PRONG TEST MUST BE MET.

In *STRICKLAND V. WASHINGTON*, 466 U.S. 668, 688-694 (1984) THE SUPREME COURT held that A DETERMINATION OF INEFFECTIVE ASSISTANCE OF COUNSEL would be conditioned on two factors.

1. Counsel's performance must have fallen below an objective standard of reasonableness. And

2. There must be a reasonable probability that, but for counsel's errors, the results of the proceeding would probably have been different. South Carolina has adopted the *STRICKLAND* standard. See, e.g., *CHERRY V. STATE* 300 S.C. 115, 386 S.E. 2d 624 (1989). THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL may be violated by EVEN AN ISOLATED ERROR OF COUNSEL IF THE ERROR IS sufficiently Egregious AND prejudicial. *MURRY V. CARRICK*, 477 U.S. 478 (1986). It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client AND in undertaking representation of the client's interests. *FRAZER V. UNITED STATES*,

(9)

18 F.3d 778, 785 (9th Cir 1994). DEFENSE COUNSEL must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct the trial to the best of his ability; and at the bottom, serve as a vigorous and devoted advocate of the defendant's cause. UNITED STATES EX. REL. PARTEE V. LANE, 926 F.2d 694, 702 (7th Cir 1991). Counsel was ineffective for failing to conduct an adequate pre-trial investigation. As the Supreme Court also recognized in STRICKLAND, counsel bears a duty to make a reasonable investigation of the law and facts in his client's case. STRICKLAND, 466 U.S. at 691. Additionally, the ABA standard relating to the administration of criminal justice provides. It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore

ALL AVENUES LEADING TO FACTS RELEVANT TO THE MERITS OF THE CASE AND THE PENALTY IN THE EVENT OF CONVICTION. THE INVESTIGATION SHOULD ALWAYS INCLUDE EFFORTS TO SECURE INFORMATION IN THE POSSESSION OF THE PROSECUTION AND LAW ENFORCEMENT AUTHORITIES. THE DUTY TO INVESTIGATE EXISTS REGARDLESS OF THE ACCUSED'S ADMISSIONS OR STATEMENTS TO THE LAWYER OF FACTS CONSTITUTING GUILT OR THE ACCUSED'S STATED DESIRE TO PLEAD GUILTY. STANDARD 4-4.1. A DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL CONFERS A DUTY ON COUNSEL TO CONDUCT AN ADEQUATE PRE-TRIAL INVESTIGATION. WHEN A LAWYER FAILS TO CONDUCT A SUBSTANTIAL INVESTIGATION INTO ANY OF HIS CLIENT'S PLAUSIBLE LINES OF DEFENSE, THE LAWYER HAS FAILED TO RENDER EFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL MUST ARTICULATE A VALID REASON FOR EMPLOYING A CERTAIN STRATEGY TO AVOID A FINDING OF INEFFECTIVENESS. ROSEBORN V. STATE, 454 S.E.2d 312 (1995). COBBS V. STATE, 360 S.C. 229, 408 S.E.2d 223 (1971) PRE-TRIAL PREPARATION, PRINCIPALLY BECAUSE IT PROVIDES A

BASIS UPON WHICH MOST OF THE
 DEFENSE CASE MUST REST IS PERHAPS,
 THE MOST CRITICAL STAGE OF A LAWYER'S
 PREPARATION. FAILURE TO INVESTIGATE
 EVIDENCE THAT WOULD BE HELPTFUL TO
 THE DEFENSE IS ALSO AN INDICATION
 OF INEFFECTIVE ASSISTANCE OF COUNSEL.
 IN THE INSTANT CASE COUNSEL'S FAILURE
 TO INTRODUCE APPLICANT'S TELEPHONE
 RECORDS FOR JURY CONSIDERATION, COUNSEL'S
 FAILURE TO SUBPOENA WITNESSES THAT
 WOULD TESTIFY IN APPLICANT'S BEHALF,
 COUNSEL'S FAILURE TO PRODUCE THE BLUE
 TOWEL AS EVIDENCE, COUNSEL'S FAILURE TO
 INTRODUCE ACCUSER'S CLOTHES INTO EVIDENCE,
 COUNSEL'S FAILURE TO INTRODUCE ACCUSER
 STATING THAT ORAL SEX OCCURRED, STATE
 V PAULING, 503 S.E. 2d 469 STATE V MARTINEZ,
 403 S.E. 2d 113. STATE V. SANDERS, 534 S.E. 2d 686
 COUNSEL MUST PURSUE THE OBJECTIVES
 OF HIS CLIENT UNKNOWN NAME 376 S.C. 286,
 657 S.E. 2d 465. COUNSEL'S FAILURE TO OBJECT
 TO THE ASSISTANT SOLICITOR'S STATEMENT THAT
 ACCUSER'S CLOTHES WERE RIPPED OFF, ASSISTANT
 SOLICITOR STATING THAT ACCUSER RAN OUT
 AT 5:00 P.M., AND FAILURE TO OBJECT TO WITNESS
 STATING THE WRONG TIME THAT SHE WENT

to the store. Bobby Watson v. State, 370 S.C. 68, 634 S.E. 2d 642. Counsel failure to object to the jury returning an legally inconsistent verdict. State v. Amerson, 244 S.C. 374, 137 S.E. 2d 284. Counsel failure to request a lesser included offense. A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense. Nickie White v. State 361 S.C. 407, 605 S.E. 2d 540. Importantly, prosecutors are not at liberty to substitute emotion for evidence. United States v. Hawkins, 595 F.2d 751, 754 C.D.C. Cir (1979). Such prohibitions insure the sanctity of a criminal defendant's due process rights. The due process clause of the Fourteenth Amendment to the United States Constitution protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. In re Winship, 397 U.S. 358, 364 (1970). Emphasis added. The court in Winship makes clear that the requirement of

proof beyond a reasonable doubt is grounded upon accuracy concerns. The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. The applicant is entitled to an evidentiary hearing on these matters. The applicant contends that he is entitled to an evidentiary hearing on these issues. According to S.C. 17-27-80, a hearing shall be had on any properly filed motion for post conviction relief. In fact it has been ruled error to issue a conclusion of facts and law upon such a motion without first hearing

the facts of the matter. *McCRAY V. STATE* 305 S.C. 329, 408 S.E.2d 241 (1991). This is especially true in cases where ineffective assistance of counsel issues are raised, as such are often not able to be determined merely upon the record and must therefore rely upon evidence developed during an evidentiary hearing. *Delaney V. State*, 269 S.C. 555, 238 S.E.2d 679. Evaluating the precursor to the modern post-conviction relief act, the Supreme Court of South Carolina stated that an allegation in an application for post conviction relief that a applicant did not have the effective assistance of counsel in violation of his rights under the Sixth Amendment of the Constitution of the United States sets forth a prima facie violation of the applicant's constitutional rights, and raises a question of fact that can only be determined by a trial court by an evidentiary hearing. *Rogers V. State*, 261 S.C. 288, 199 S.E.2d 761 (1973). In the present case, the Applicant contends that entitled him to relief. Therefore,

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At a minimum, the Court should order
AN EVIDENTIARY HEARING IN THIS MATTER.

CONCLUSION

FOR THE FOREGOING REASONS, THE APPLICANT
RESPECTFULLY REQUEST THAT THIS HONORABLE
COURT GRANT HIS MOTION FOR POST-CON-
VICTION RELIEF OR AT A MINIMUM GRANT
HIM AN EVIDENTIARY HEARING.

Respectfully Submit,
Shirley M. Bolton
Thurston M. Bolton, PRO SE

2010-CP-10-6412

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THURSTON M. BOLTON,
Applicant

VS

THE STATE OF SOUTH
CAROLINA, RESPONDENT

IN THE COURT
OF GENERAL SESSIONS
FOR THE NINTH
JUDICIAL CIRCUIT

MOTION FOR ORDER
OF SUBPOENA FOR
PERSONS AND EXHIBITS

Indictment NO. 2008-
GS-10-4637

Now comes the Applicant Thurston M. Bolton, Pro SE, who moves this Honorable Court to require the State of South Carolina to produce the following persons for Applicant's Post conviction ~~Review~~ ^{Rebuttal} Hearing.

MRS. FAYE LABUEFF-MUSC/FORENSICS

OPC. HARRY MOWDER

MR. TOM GREEN

Additionally, the Applicant moves this Honorable Court to require the Respondent to produce its

Exhibit 1 thru 19 of Applicant's jury trial that was held on August 31, 2009-September 1, 2009.

Also, Defendant's Exhibits 2, 3, and 4. I so move

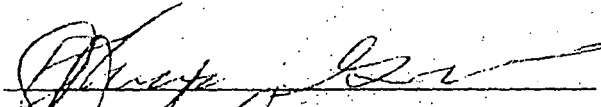
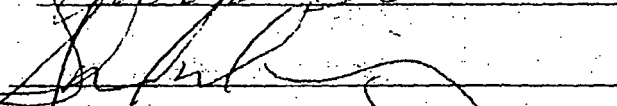
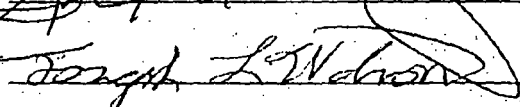
Thurston M. Bolton
Pro SE.

CLERK OF COURT
JUL 9 AM 11:53

EXHIBIT #1

To Whom It May Concern:

During the dates of March 8, 2008 and through March 22, 2008. Thurston M. Bolton, and I Tom Green, had many conversations about Thurston meeting and dating Shaquinna J. McNeil, I have seen Shaquinna, and Thurston meet at family dollar store and leave together during these dates provided. Thurston told me on March 22, 2008, that Shaquinna was asking him for money, this statement is true and correct to the best of my knowledge, and I have given this statement freely and voluntarily.

Signature: Date: 7-18-08Witness: Date: 7-18-08Witness: Date: 7-18-08

Copy

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Exhibit #2

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSION COURT

COUNTY: CHARLESTON

THE STATE OF v Thurston Bolton
SOUTH CAROLINA

CASE NO.

SUBPOENA FOR ☐ PERSON
☒ DOCUMENT(S) OR OBJECT(S)TO: Triton Pcs DbA Suncom
Business Security
1100 Cassatt Road
Berwyn, Pa 19312

YOU ARE COMMANDED to bring with you the following document(s) or object(s)

PLACE

Charleston Country Judicial Center
101 Meeting Street
Charleston, South Carolina

COURTROOM

GENERAL SESSIONS

DATE AND TIME

8-25-2008

LIST DOCUMENT(S) or OBJECT(S)

Please provide a copy of all incoming and out going calls to f# 843 345 4217 during the months of January. February March and April 2008.

This subpoena shall remain in effect until you are granted to depart by the court or by an officer acting on behalf of the court.

CLERK OF COURT

Julie J. Armstrong

DATE 8-11-2008

(BY) DEPUTY

Ronell J. Ringer

This subpoena is issued upon application of the

☐ SOLICITOR ☒ DEFENDANT

ATTORNEY'S NAME AND ADDRESS

Ted Smith
ASSISTANT PUBLIC DEFENDER
CHARLESTON COUNTY PUBLIC DEFENDER'S OFFICE
O.T. Wallace County Office Building
101 Meeting Street, 5th Floor
Charleston, South Carolina 29401-2214
(843) 958-1850

Date: 08/13/2008
Time: 12:58:28

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Report ID: UPS0551A.PL
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03/14/2008	10:38:36	40320	AR	8434421563	8433454217	INCOMING	1.00	MINUTES
03/14/2008	10:41:23	40320	AR	8433454217	8437350231	OUTGOING	1.00	MINUTES
03/14/2008	11:33:28	40320	AR	8433454217	8434784451	OUTGOING	1.00	MINUTES
03/14/2008	11:37:40	40320	AR	8433454217	8434784451	OUTGOING	1.00	MINUTES
03/14/2008	11:44:39	40320	AR	8433454217	8436092835	OUTGOING	1.00	MINUTES
03/14/2008	11:59:29	40320	AR	8433248335	8433454217	INCOMING	1.00	MINUTES
03/14/2008	12:31:09	40320	AR	8433454217	8435566088	OUTGOING	1.00	MINUTES
03/14/2008	13:12:02	40320	AR	8433454217	B86	OUTGOING	1.00	MINUTES
03/14/2008	14:28:21	40320	AR	8433454217	8438539697	OUTGOING	1.00	MINUTES
03/14/2008	14:29:16	40320	AR	8433454217	411	OUTGOING	3.00	MINUTES
03/14/2008	14:29:16	40320	DA	8433454217	411	OUTGOING	1.00	EVENT
03/14/2008	14:31:30	40320	AR	8433454217	411	OUTGOING	3.00	MINUTES
03/14/2008	14:31:30	40320	DA	8433454217	411	OUTGOING	1.00	EVENT
03/14/2008	14:33:52	40320	AR	8433454217	411	OUTGOING	3.00	MINUTES
03/14/2008	14:33:52	40320	DA	8433454217	411	OUTGOING	1.00	EVENT
03/14/2008	14:36:38	40320	AR	8433454217	8438539697	OUTGOING	1.00	MINUTES
03/14/2008	15:47:45	40320	AR	8433454217	8437351833	OUTGOING	1.00	MINUTES
03/14/2008	16:12:16	40320	AR	8433454217	8436092835	OUTGOING	7.00	MINUTES
03/14/2008	17:33:08	40320	AR	8433454217	8437351833	OUTGOING	1.00	MINUTES
03/14/2008	17:34:14	40320	AR	8433454217	7277120382	OUTGOING	1.00	MINUTES
03/14/2008	17:36:17	40320	AR	8433454217	8434526711	OUTGOING	2.00	MINUTES
03/14/2008	17:37:57	40320	AR	8433454217	8434526711	OUTGOING	1.00	MINUTES
03/14/2008	17:39:02	40320	AR	8433454217	8433773497	OUTGOING	1.00	MINUTES
03/14/2008	17:47:17	40320	AR	8433773497	8433454217	INCOMING	1.00	MINUTES
03/14/2008	17:53:02	40320	AR	8433454217	8433773497	OUTGOING	1.00	MINUTES
03/14/2008	19:11:54	40320	AR	8433454217	8437351833	OUTGOING	1.00	MINUTES
03/14/2008	20:43:04	40320	AR	8434421563	8433454217	INCOMING	1.00	MINUTES
03/14/2008	20:56:38	40320	AR	8434421563	8433454217	INCOMING	1.00	MINUTES
03/14/2008	21:44:13	40320	AR	8439267242	8433454217	INCOMING	1.00	MINUTES

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03/15/2008	08:52:31	40320	AR	8439267242	8433454217	INCOMING	1.00	MINUTES
03/15/2008	11:27:25	40320	AR	8433454217	8437644865	OUTGOING	2.00	MINUTES
03/15/2008	11:28:59	40320	AR	8433454217	8439267242	OUTGOING	5.00	MINUTES
03/15/2008	11:33:27	40320	AR	8433454217	8437644865	OUTGOING	1.00	MINUTES
03/15/2008	11:35:07	40320	AR	8434429256	8433454217	INCOMING	4.00	MINUTES
03/15/2008	12:47:41	40320	AR	8433454217	B86	OUTGOING	2.00	MINUTES
03/15/2008	12:49:41	40320	AR	8433454217	8433773497	OUTGOING	2.00	MINUTES
03/15/2008	12:51:14	40320	AR	8433454217	8437351833	OUTGOING	1.00	MINUTES
03/15/2008	12:52:15	40320	AR	8433773497	8433454217	INCOMING	1.00	MINUTES
03/15/2008	12:57:17	40320	AR	8433454217	8433773497	OUTGOING	1.00	MINUTES
03/15/2008	14:34:48	40320	AR	8433454217	8643373817	OUTGOING	3.00	MINUTES
03/15/2008	14:48:03	40320	AR	8433454217	7042585610	OUTGOING	2.00	MINUTES
03/15/2008	15:46:36	40320	AR	8437644865	8433454217	INCOMING	1.00	MINUTES
03/15/2008	17:13:23	40320	AR	8437351833	8433454217	INCOMING	3.00	MINUTES
03/15/2008	17:13:23	40320	CW	8437351833	8433454217	INCOMING	1.00	EVENT
03/15/2008	17:17:10	40320	AR	8437351833	8433454217	INCOMING	7.00	MINUTES
03/15/2008	17:52:17	40320	AR	8435721599	8433454217	INCOMING	1.00	MINUTES
03/15/2008	18:06:01	40320	AR	8433454217	8433248335	OUTGOING	4.00	MINUTES
03/15/2008	18:57:04	40320	AR	8433454217	8437351833	OUTGOING	3.00	MINUTES
03/15/2008	19:14:22	40320	AR	8433454217	8437351833	OUTGOING	5.00	MINUTES
03/15/2008	19:31:34	40320	AR	8433454217	8437351833	OUTGOING	3.00	MINUTES
03/15/2008	19:38:22	40320	AR	8433454217	8437351833	OUTGOING	18.00	MINUTES
03/15/2008	19:59:10	40320	AR	8433454217	8434526711	OUTGOING	2.00	MINUTES
03/15/2008	20:54:04	40320	AR	8433454217	8437351833	OUTGOING	1.00	MINUTES
03/15/2008	21:14:00	40320	AR	8432977341	8433454217	INCOMING	1.00	MINUTES
03/15/2008	23:20:06	40320	AR	8437351833	8433454217	INCOMING	10.00	MINUTES
03/16/2008	01:16:13	40320	AR	8437351833	8433454217	INCOMING	2.00	MINUTES
03/16/2008	09:16:10	40320	AR	8433454217	8436314296	OUTGOING	1.00	MINUTES
03/16/2008	09:16:28	40320	AR	8433454217	8435683161	OUTGOING	1.00	MINUTES
03/16/2008	13:36:58	01645	AR	8438135814	8433454217	INCOMING	1.00	MINUTES
03/16/2008	15:36:26	40320	AR	8433454217	8438135814	OUTGOING	2.00	MINUTES
03/16/2008	15:57:33	40320	AR	8437351833	8433454217	INCOMING	2.00	MINUTES
03/16/2008	16:04:22	40320	AR	8433454217	8438131456	OUTGOING	1.00	MINUTES
03/16/2008	16:51:15	40320	AR	8433454217	8437351833	OUTGOING	1.00	MINUTES
03/16/2008	16:55:52	40320	AR	8433454217	8437351833	OUTGOING	1.00	MINUTES
03/16/2008	17:39:13	40320	AR	8434421563	8433454217	INCOMING	1.00	MINUTES
03/16/2008	17:41:28	40320	AR	8437644865	8433454217	INCOMING	1.00	MINUTES

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03/16/2008	17:44:50	40320	AR	8438131456	8433454217	INCOMING	1.00	MINUTES
03/16/2008	18:57:12	40320	AR	8433454217	8432706205	OUTGOING	1.00	MINUTES
03/16/2008	18:57:41	40320	AR	8433454217	8432706205	OUTGOING	1.00	MINUTES
03/16/2008	19:01:06	40320	AR	8432706205	8433454217	INCOMING	1.00	MINUTES
03/16/2008	20:11:47	40320	AR	8433773497	8433454217	INCOMING	3.00	MINUTES
03/17/2008	00:31:11	40320	AR	8437351833	8433454217	INCOMING	1.00	MINUTES
03/17/2008	02:07:29	40320	AR	8433454217	8437351833	OUTGOING	75.00	MINUTES
03/17/2008	09:43:50	40320	AR	8433454217	8434377476	OUTGOING	3.00	MINUTES
03/17/2008	09:47:03	40320	AR	8433454217	8436079191	OUTGOING	2.00	MINUTES
03/17/2008	09:48:38	40320	AR	8433080922	8433454217	INCOMING	1.00	MINUTES
03/17/2008	10:11:59	40320	AR	8434421563	8433454217	INCOMING	1.00	MINUTES
03/17/2008	10:24:11	40320	AR	8433454217	8435683161	OUTGOING	1.00	MINUTES
03/17/2008	11:22:27	40320	AR	8433454217	8436079191	OUTGOING	2.00	MINUTES
03/17/2008	11:25:24	40320	AR	8037084796	8433454217	INCOMING	1.00	MINUTES
03/17/2008	12:41:37	40320	AR	8433454217	8038403098	OUTGOING	2.00	MINUTES
03/17/2008	12:43:07	40320	AR	8433454217	8434377476	OUTGOING	1.00	MINUTES
03/17/2008	13:10:57	40320	AR	8433454217	8432706205	OUTGOING	1.00	MINUTES
03/17/2008	13:14:49	40320	AR	8433454217	8434526711	OUTGOING	1.00	MINUTES
03/17/2008	13:15:08	40320	AR	8433454217	8434526711	OUTGOING	1.00	MINUTES
03/17/2008	13:23:21	40320	AR	8433454217	B86	OUTGOING	1.00	MINUTES
03/17/2008	13:23:57	40320	AR	8433454217	8434526711	OUTGOING	1.00	MINUTES
03/17/2008	14:15:35	40320	AR	8433454217	8434377476	OUTGOING	1.00	MINUTES
03/17/2008	14:18:45	40320	AR	8433454217	8432706205	OUTGOING	1.00	MINUTES
03/17/2008	14:25:53	40320	AR	8438135814	8433454217	INCOMING	2.00	MINUTES
03/17/2008	14:25:53	40320	CW	8438135814	8433454217	INCOMING	1.00	EVENT
03/17/2008	14:27:02	40320	AR	8034786293	8433454217	INCOMING	2.00	MINUTES
03/17/2008	14:27:02	40320	CW	8034786293	8433454217	INCOMING	1.00	EVENT
03/17/2008	14:32:59	40320	AR	8433454217	8034786293	OUTGOING	2.00	MINUTES
03/17/2008	14:40:11	40320	AR	8433454217	8034786293	OUTGOING	1.00	MINUTES
03/17/2008	14:42:44	40320	AR	8433454217	8438539697	OUTGOING	2.00	MINUTES
03/17/2008	14:44:08	40320	AR	8433454217	8435799855	OUTGOING	1.00	MINUTES
03/17/2008	14:45:50	40320	AR	8433454217	411	OUTGOING	2.00	MINUTES
03/17/2008	14:45:50	40320	DA	8433454217	411	OUTGOING	1.00	EVENT
03/17/2008	14:47:40	40320	AR	8433454217	8435799855	OUTGOING	1.00	MINUTES
03/17/2008	14:52:23	40320	AR	8438533711	8433454217	INCOMING	1.00	MINUTES
03/17/2008	14:53:51	40320	AR	8004658075	8433454217	INCOMING	1.00	MINUTES
03/17/2008	15:08:37	40320	AR	8433454217	8038403098	OUTGOING	1.00	MINUTES

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03/18/2008	18:40:26	40320	AR	8433454217	8439267242	OUTGOING	1.00	MINUTES
03/18/2008	18:43:11	40320	AR	8439267242	8433454217	INCOMING	1.00	MINUTES
03/18/2008	18:56:26	40320	AR	8433454217	8436092835	OUTGOING	1.00	MINUTES
03/18/2008	18:57:55	40320	AR	8433454217	8436092835	OUTGOING	1.00	MINUTES
03/18/2008	20:12:13	40320	AR	8433454217	8436092835	OUTGOING	1.00	MINUTES
03/18/2008	20:49:16	40320	AR	8437351833	8433454217	INCOMING	1.00	MINUTES
03/18/2008	20:56:09	40320	AR	8437351833	8433454217	INCOMING	5.00	MINUTES
03/18/2008	21:36:36	40320	AR	8433454217	8433259068	OUTGOING	1.00	MINUTES
03/18/2008	23:45:18	40320	AR	8437351833	8433454217	INCOMING	2.00	MINUTES
03/19/2008	08:31:12	40320	AR	8435668851	8433454217	INCOMING	2.00	MINUTES
03/19/2008	08:35:31	40320	AR	8434421563	8433454217	INCOMING	1.00	MINUTES
03/19/2008	08:37:26	40320	AR	8433454217	8433443101	OUTGOING	2.00	MINUTES
03/19/2008	09:50:28	40320	AR	8437923875	8433454217	INCOMING	2.00	MINUTES
03/19/2008	09:52:47	40320	AR	8433454217	8434421563	OUTGOING	1.00	MINUTES
03/19/2008	10:16:02	40320	AR	8437695800	8433454217	INCOMING	6.00	MINUTES
03/19/2008	10:43:41	40320	AR	8433454217	8436079191	OUTGOING	3.00	MINUTES
03/19/2008	10:52:09	40320	AR	8433454217	8433443101	OUTGOING	1.00	MINUTES
03/19/2008	10:55:38	40320	AR	8433454217	8432078308	OUTGOING	2.00	MINUTES
03/19/2008	10:58:38	40320	AR	8433454217	8438466689	OUTGOING	1.00	MINUTES
03/19/2008	11:00:40	40320	AR	8433454217	8438464727	OUTGOING	1.00	MINUTES
03/19/2008	11:05:55	40320	AR	8433454217	8435774300	OUTGOING	1.00	MINUTES
03/19/2008	11:06:55	40320	AR	8433454217	8437959705	OUTGOING	12.00	MINUTES
03/19/2008	11:27:14	40320	AR	8433454217	8438539697	OUTGOING	6.00	MINUTES
03/19/2008	11:32:36	40320	AR	8433454217	8034362276	OUTGOING	8.00	MINUTES
03/19/2008	11:42:29	40320	AR	8433454217	8038403098	OUTGOING	1.00	MINUTES
03/19/2008	11:43:12	40320	AR	8433454217	8039057650	OUTGOING	13.00	MINUTES
03/19/2008	12:32:26	40320	AR	8433454217	8039057650	OUTGOING	3.00	MINUTES
03/19/2008	12:47:02	40320	AR	8432663501	8433454217	INCOMING	1.00	MINUTES
03/19/2008	13:05:34	40320	AR	8777962497	8433454217	INCOMING	1.00	MINUTES
03/19/2008	14:07:26	40320	AR	8433454217	2023695802	OUTGOING	2.00	MINUTES
03/19/2008	14:38:35	40320	AR	2023695802	8433454217	INCOMING	3.00	MINUTES
03/19/2008	14:38:35	40320	CW	2023695802	8433454217	INCOMING	1.00	EVENT
03/19/2008	14:38:55	40320	AR	8433259068	8433454217	INCOMING	2.00	MINUTES
03/19/2008	14:38:55	40320	CW	8433259068	8433454217	INCOMING	1.00	EVENT
03/19/2008	15:09:08	40320	AR	8439267242	8433454217	INCOMING	2.00	MINUTES
03/19/2008	15:14:08	40320	AR	8433454217	8432078308	OUTGOING	1.00	MINUTES
03/19/2008	16:08:29	40320	AR	8433454217	8437351833	OUTGOING	6.00	MINUTES

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03/19/2008	16:33:28	40320	AR	8433454217	8434526711	OUTGOING	1.00	MINUTES
03/19/2008	16:34:18	40320	AR	8433454217	8432706205	OUTGOING	1.00	MINUTES
03/19/2008	16:36:19	40320	AR	8433454217	8432706205	OUTGOING	1.00	MINUTES
03/19/2008	17:10:50	40320	AR	8434421563	8433454217	INCOMING	1.00	MINUTES
03/19/2008	17:31:52	40320	AR	8433454217	8432706205	OUTGOING	1.00	MINUTES
03/19/2008	17:49:45	40320	AR	8433773497	8433454217	INCOMING	2.00	MINUTES
03/19/2008	17:49:45	40320	CW	8433773497	8433454217	INCOMING	1.00	EVENT
03/19/2008	18:24:27	40320	AR	8433454217	8433773497	OUTGOING	1.00	MINUTES
03/19/2008	18:33:00	40320	AR	8433454217	8433773497	OUTGOING	1.00	MINUTES
03/19/2008	19:06:51	40320	AR	8433454217	8779374098	OUTGOING	2.00	MINUTES
03/19/2008	19:14:15	40320	AR	8434421563	8433454217	INCOMING	1.00	MINUTES
03/19/2008	19:15:10	40320	AR	8433454217	8433443101	OUTGOING	1.00	MINUTES
03/19/2008	19:46:07	40320	AR	8433773497	8433454217	INCOMING	1.00	MINUTES
03/19/2008	20:07:50	40320	AR	8433773497	8433454217	INCOMING	1.00	MINUTES
03/20/2008	00:03:34	40320	AR	8433773497	8433454217	INCOMING	1.00	MINUTES
03/20/2008	00:05:53	40320	AR	8433454217	8437351833	OUTGOING	1.00	MINUTES
03/20/2008	00:09:13	40320	AR	8433454217	8434526711	OUTGOING	1.00	MINUTES
03/20/2008	00:27:44	40320	AR	8437351833	8433454217	INCOMING	3.00	MINUTES
03/20/2008	01:40:47	40320	AR	8433454217	8437351833	OUTGOING	85.00	MINUTES
03/20/2008	09:55:37	40320	AR	8433454217	B86	OUTGOING	2.00	MINUTES
03/20/2008	09:57:18	40320	AR	8433454217	8432078308	OUTGOING	1.00	MINUTES
03/20/2008	10:04:10	40320	AR	8433454217	8034362276	OUTGOING	12.00	MINUTES
03/20/2008	10:32:33	40320	AR	8433454217	8432078308	OUTGOING	1.00	MINUTES
03/20/2008	10:35:30	40320	AR	8433454217	8433443101	OUTGOING	2.00	MINUTES
03/20/2008	10:36:43	40320	AR	8433454217	B86	OUTGOING	1.00	MINUTES
03/20/2008	10:37:33	40320	AR	8433454217	8433301497	OUTGOING	6.00	MINUTES
03/20/2008	10:43:09	40320	AR	8433454217	8132486043	OUTGOING	2.00	MINUTES
03/20/2008	11:45:02	40320	AR	8433454217	8432078308	OUTGOING	2.00	MINUTES
03/20/2008	11:47:59	40320	AR	8433454217	8432708213	OUTGOING	1.00	MINUTES
03/20/2008	11:56:01	40320	AR	8004658075	8433454217	INCOMING	1.00	MINUTES
03/20/2008	11:59:19	40320	AR	8433248335	8433454217	INCOMING	1.00	MINUTES
03/20/2008	12:03:14	40320	AR	8433454217	8439263937	OUTGOING	3.00	MINUTES
03/20/2008	12:06:22	40320	AR	8433454217	8435575540	OUTGOING	1.00	MINUTES
03/20/2008	13:04:10	40320	AR	8433454217	8434377476	OUTGOING	1.00	MINUTES
03/20/2008	13:52:34	40320	AR	8433454217	8432708213	OUTGOING	1.00	MINUTES
03/20/2008	14:55:37	40320	AR	8435575540	8433454217	INCOMING	3.00	MINUTES
03/20/2008	15:00:12	40320	AR	8665303503	8433454217	INCOMING	1.00	MINUTES

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03/20/2008	16:19:44	40320	AR	8432246629	8433454217	INCOMING	1.00	MINUTES
03/20/2008	16:26:49	40320	AR	8432663501	8433454217	INCOMING	1.00	MINUTES
03/20/2008	16:44:48	40320	AR	8437351833	8433454217	INCOMING	1.00	MINUTES
03/20/2008	16:52:29	40320	AR	8433454217	8437351833	OUTGOING	2.00	MINUTES
03/20/2008	18:31:20	40320	AR	8433454217	8433773497	OUTGOING	1.00	MINUTES
03/20/2008	18:42:26	40320	AR	8665303503	8433454217	INCOMING	1.00	MINUTES
03/20/2008	19:05:39	40320	AR	8433248335	8433454217	INCOMING	5.00	MINUTES
03/20/2008	19:31:48	40320	AR	8434421563	8433454217	INCOMING	1.00	MINUTES
03/20/2008	20:58:18	40320	AR	8439267242	8433454217	INCOMING	1.00	MINUTES
03/20/2008	21:03:15	40320	AR	8433454217	8132486043	OUTGOING	1.00	MINUTES
03/20/2008	21:05:47	40320	AR	8433454217	8437351833	OUTGOING	6.00	MINUTES
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03/21/2008	18:16:59	01645	AR	8433454217	8433773497	OUTGOING	1.00	MINUTES
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Date: 08/13/2008
Time: 12:58:28

SunCom

Report ID: UPS6551A.PL
Page: 59

Usage Inquiry Detail by Subscription Report
Subscription ID 1003482874 - Cycle End Date 02/23/2008

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04/01/2008	03:10:12	40320	AR	8436092835	8433454217	INCOMING	1.00	MINUTES



SLED LABORATORY FORENSIC SERVICES REQUEST

SLED Lab No: _____ 365

Exhibit #3

Name of Investigating Officer: <u>Sgt. A.R. Hallman</u>		Agency ID/ORI No: <u>SC0100800</u>
Agency: <u>North Charleston Police Department</u> Phone No: <u>843-740-2830</u>		Case No: <u>2008012381</u>
Fax No: <u>843-308-4706</u> Email: <u>ncpdforensics@yahoo.com</u>		Case Type: <u>CSC Assault</u>
Mailing Address: <u>P.O. Box 62558</u>		Offense Date: <u>3-22-08</u>
City: <u>North Charleston</u> State: <u>SC</u> Zip Code: <u>29419</u>		County: <u>Charleston</u>
CC: _____		Officer Involved Shooting ☐ Yes

Has other evidence on this case been submitted to this lab? ☐ Yes ☒ No If yes, Lab Number: _____	Is this evidence related to another lab number? ☐ Yes ☒ No If yes, Lab Number: _____

For Toxicology Cases ONLY	
Death:	☐ Yes ☐ No If yes: ☐ Traffic Fatality ☐ Child Fatality ☐ Accidental ☐ Natural ☐ Unexplained
Traffic Fatality:	☐ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Bicyclist ☐ Boating ☐ Other: _____
Other Causes:	☐ Gunshot ☐ Stabbing ☐ Beating ☐ Strangulation/Suffocation ☐ Drug/Poison/Alcohol ☐ Fire ☐ Disease ☐ Carbon Monoxide ☐ Hanging ☐ Electrocution ☐ Heart Related ☐ Drowning ☐ Other: _____
DUI:	Felony ☐ Yes ☐ No (If felony resulted in death Victim's name is required) Breath test given: ☐ Yes ☐ No If yes, reading: _____
Drugs Suspected: ☐ Yes ☐ No If yes, list drugs: _____	

Subject(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
Bolton, Thurston Maurice		M	B	7-9-64	Unknown

Victim(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
McNeil, Shaquinna Jernie		F	B	20 yoa	Unknown

366

[illegible]

Print Name of Delivering Officer

Signature of Delivering Officer

North Charleston Police Department
Crime Scene/Forensic Services Unit



This document is an official report of the North Charleston Police Department Forensic Services Unit and is to be used in connection with an official criminal investigation.

Date: 03/25/08

Case No: 2008012381

Incident Type: Sexual Assault/Rape

Incident Date: 03/22/08

On Saturday March 22, 2008 at approximately 1850 hours, I responded to the Pepperhill Community Center located at 7695 Brandywine Drive in reference to processing a vehicle that belonged to a suspect in a sexual assault. Upon my arrival, I was met by Sgt. H. Mowder who advised me that the suspect's vehicle was at this location and needed to be processed. He also advised me that the victim, Shaquinna McNeil, was in the rear of his vehicle and would be able to identify any articles of clothing that were in the car.

I observed a black in color Mercedes S 500, SC tag 129OBM in the parking lot of the community center. As I approached the vehicle, I took several exterior photographs of the vehicle. Upon inspection of the interior of the car, I noticed a pile of women's clothing in the back seat. I photographed the location of the clothing inside the car, as well as other items within the vehicle. At this time, Sgt. Mowder asked me if I had found the victim's cell phone. I advised him that I had not, however I would keep looking. Upon further inspection of the car, the silver in color cell phone was located on the back right floorboard. The phone was photographed and handed over to the victim. I then began to remove the clothing items from the car. At this point, Sgt. Mowder pulled his vehicle up next to the Mercedes to allow the victim to identify the articles of clothing. I removed a jean jacket, a black bra, a pair of pink shoes, a pair of black panties, a pair of jeans, and a white blouse from the backseat of the suspect vehicle. The victim was able to look at each garment and identify them as belonging to her. Each item was packaged in a paper evidence bag and secured in my vehicle for transportation back to NCPD headquarters and submission to the property room. At this time, a small brown and tan handbag was found in the back seat. The victim again identified it as belonging to her. I then opened the wallet to obtain an identification card. The driver's license in the wallet was that of Shaquinna McNeil, the victim. The ID was photographed and the wallet and handbag were handed over to the victim.

While searching the car, a blue hand towel was found in the front driver's seat. This too was photographed and collected as evidence. At this time, the inspection of the interior of the car was complete. I then processed the outside of the car for latent fingerprints. Due to the car belonging to the suspect, only the passenger side was processed in order to place the victim in the vehicle. Three (3) latent fingerprints were located on the passenger side door. These prints were lifted and secured in my vehicle. At this time, processing of the scene was complete. I then

proceeded to the location at which the incident took place; to meet with Sgt. A. Hallman. Upon my arrival at this location, Sgt. Hallman informed me that the processing of the scene was complete. We then returned to NCPD Headquarters to turn in evidence. Nothing further at this time.

DETAIL OF EVIDENCE RECOVERED

<u>ITEM</u>	<u>LOCATION</u>	<u>STATUS</u>
One (1) Jean Jacket	NCPD Property Room	Evidence
One (1) Black Bra	NCPD Property Room	Evidence
One (1) Pair of Pink Shoes	NCPD Property Room	Evidence
One (1) Blue Hand Towel	NCPD Property Room	Evidence
One (1) Pair of Black Panites	NCPD Property Room	Evidence
One (1) Pair of Jeans	NCPD Property Room	Evidence
One (1) White Ladies Shirt	NCPD Property Room	Evidence

K. Murphy

EXHIBIT 1 #3

SOUTH CAROLINA LAW ENFORCEMENT DIVISION 369
FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Cpl. Scott Wyant
North Charleston Police Department
P.O. Box 62558
North Charleston, SC 29419

EVIDENCE PROCESSING

December 08, 2008
SLED LAB: L08-04539
Your Case No: 2008012381
Incident Date: 3/22/2008
(S) Thurston Bolton
(V) Shaquinna McNeil

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 6 Hand towel

RESULTS:

No hair found.
No semen detected.

A handwritten signature in black ink, appearing to read "Verona T. Gibson".

Verona T. Gibson
Forensic Technician

cc: Charleston County Solicitor's Office



370

Adult/Adolescent Forensic Record

Unit Record:

628868

Intake Information

EXHIBIT # 6

Patient Information:

- Name Shaquinn McNeil Soc Security: _____
- Age 21 Years DOB: _____ Gender Female Ethnicity African American
- Date of Arrival 3/22/2008 Time of Arrival 22:00 Entry Date 3/22/2008 10:57:15 PM
- Arrived with/by Law Enf
- Home address Charleston, SC 29403
- Contact information H# _____ C# _____

Law Enforcement:

- Agency: North Chareleston PD
- Forensic Exam Req.: ☒ Yes ☐ No If no, describe: _____
- SANE Kit Used: ☒ Yes ☐ No If no, describe: _____
- Consent obtained by: SANE
Written
- Reporting Officer: Ofc Wilson ☒ PTA Time: 22:00
- Investigator: _____ ☒ PTA Time: _____
- Second Law Enforcement Agency: _____
- Case Number _____

Advocacy: * If Indicated

- People Against Rape _____ Notified: 21:00 Arrival: 22:00
- _____ Notified: _____ Arrival: _____
- Social Services:* _____ Notified: _____ Arrival: _____

Medical Clearance by: _____ Time: _____ ☒ NAInterpreter: _____ ☒ NA

Persons present during collection of history:

- ☐ Advocate ☐ Family ☐ Law Enforcement ☒ Only SANE ☐ Other

Persons present during medical exam:

- ☐ Advocate ☐ Family ☒ Only SANE ☐ Other

958-1905

Pertinent Medical History

LMP: 2/17/2008

Normal: ☒ Yes ☐ No

G: 0 P: 0

Tampon use: ☒ No ☐ Yes last usage? _____

- Any recent (60 days) anal-genital injuries, surgeries, diagnostic procedures or medical treatment that may affect the interpretation of current physical findings ☐ Yes ☒ No

If yes, describe: _____

- Any other pertinent medical conditions or injuries that may affect the interpretation of current physical findings? ☐ Yes ☒ No

If yes, describe: _____

Current medications: ☒ NoneAllergies: ☒ NKA

Pertinent pre and post assault related history:

No Yes

- Consensual intercourse within 7 days?

☐ ☒

- Oral

☒ ☐

- Vaginal

☐ ☒

- Anal

☒ ☐

- If yes, was a condom used?

☒ ☐

- Comments: 0300 3/22/2008 with boyfriend

- Any voluntary use of alcohol 12 hours prior to assault?

☒ ☐

- Any voluntary use of drugs 96 hours prior to assault?

☒ ☐

- Any voluntary use of alcohol or drugs between time of assault and forensic exam?

☒ ☐

Post assault hygiene/activity:

No

Yes Describe:

- Urinated
- Defecated
- Genital or body wipes
- Douched
- Removed tampon/diaphragm
- Brushed teeth
- Mouthwash
- Bath/shower/wash
- Ate or drank
- Changed clothing
- Smoked

☒ ☐
☒ ☐
☒ ☐
☒ ☐
☒ ☐
☒ ☐
☒ ☐
☒ ☐
☒ ☐
☒ ☐
☒ ☐

Assault History

Date of Assault: 3/22/2008

~Time of Assault: 1640-1900

Location: assailant's house in his bed

City:

State:

History of assault per patient:

I have known him for 2 weeks. I called him today for a ride home from the Citadel Mall. He took me to his house first as he said he needed to get something from there. It was about 1640. As soon as I got into the house he locked the door. He then got very aggressive. He grabbed one of my wrists and yanked me towards the back room. He threw me on the bed. I pleaded with him. "Please let me go." "Please let me get up and go to the bathroom."

He let me get up by lead me there by grabbing my wrists.

I kept pleading with him. "Stop. I don't want this."

He said "You knew this was going to happen when you go to a guys house."

"I don't want this." I pleaded.

He lead me back to the bedroom and threw me on the bed. He aggressively took off my clothes. While he was taking off his clothes I tried to fight him. He began choking me. He slapped me in the face 2 times.

I screamed "let me go"

He forced his way in me. One hand was forcing his dick in me and the other was choking me. He stopped for a couple minutes. He had all his body weight on me and I couldn't move.

I pleaded more.

He raped me a second time. I don't think he nutted.

Then I decided to be nice so maybe he would let me go. I got quiet.

I said "I need something to eat." I could see the front door and saw there was 3 locks on the door. He let me up and I went to the frigerator. I opened the door and made a lot of noise so he would think I was getting something. I eased my way to the door. I unlocked the door and ran outside with no clothes on. I could hear him cursing as I ran down the street. I tried the person next door but a lady in a car stopped and let me get in. She gave me a shirt to put on and called the police. I saw his car and dropped down in the seat. He kept cruising around so we went over to the bowling alley. The police have arrested him.

When he raped me the first time he said he had a gun. I never saw it but I was really scared.

Assault History Continued:

Nbr	Assailant's Name	Age	Ethnicity	Gender	Relationship

1	Thurston	43	African American	M	Acquaintance

burn scars on face and arm

Methods employed	No	Yes	If yes, describe:

Weapons

Threatened	☐	☒	that he had a gun

Injuries Inflicted	☒	☐	

Types of weapons	☐	☒	gun

Physical Blows	☐	☒	slapped in face x 2

Grabbing/holding/pinching	☐	☒	grabbed wrist

Physical restraints	☐	☒	body weight held her down

Strangulation	☐	☒	

Burns(chemical/thermal)	☒	☐	

Verbal threats of harm	☒	☐	

Other methods	☒	☐	

Ingestion of alcohol/drugs by patient: ☒ No ☐ Yes ☐ Unsure• If yes, ☐ Alcohol ☐ Drugs Amount: _____ Time: _____ Date: _____

Describe: _____

• If yes, ☐ Voluntary ☐ Forced ☐ Coerced ☐ SuspectedAlcohol/drug use by assailant: ☐ No ☐ Yes ☒ Unsure• If yes, ☐ Alcohol ☐ Drugs Describe: _____

Time: _____ Date: _____

Were any injuries inflicted upon the assailant during the assault? ☒ No ☐ Yes

• If yes, describe: _____

Is assailant known:

• To have an STD: ☐ Yes ☒ No Describe: _____• Had a vasectomy: ☐ Yes ☒ No• Was sterile: ☐ Yes ☒ NoAny Witnesses see the assault? ☐ Yes ☒ No If yes, identify: _____

Assault History Continued:

Contacts Described By Patient: Assailant number 1

Penetration of vagina by:

Describe:

	No	Yes	Attempted	Unsure
Penis	☐	☒	☐	☐
Finger	☐	☒	☐	☐
Object	☒	☐	☐	☐

Penetration of anus by:

Penis	☒	☐	☐	☐
Finger	☒	☐	☐	☐
Object	☒	☐	☐	☐

Oral Copulation of genitals:

Of patient	☐	☒	☐	☐
Of assailant	☐	☒	☐	☐

Non-genital acts:

Licking	☐	☒	☐	☐	breasts bilaterally
Kissing	☐	☒	☐	☐	
Suction injury	☒	☐	☐	☐	
Biting	☒	☐	☐	☐	
Fondle	☐	☒	☐	☐	breasts

Other acts:

Other	☒	☐	☐	☐	
Masturbation	☐	☒		☐	to get himself erect

Did ejaculation occur:

Mouth	☒	☐	☐
Vagina	☐	☐	☒
Anus	☒	☐	☐
Body	☒	☐	☐
Clothing	☒	☐	☐
Bedding	☒	☐	☐
Other	☒	☐	☐

Contraceptive or lubricant used:

Describe type/brand if known:

Foam used	☒	☐	☐
Jelly used	☒	☐	☐
Lubricant	☐	☒	☐
Condom used	☒	☐	☐

Vaseline

General Physical Examination

Exam Start Time: 22:30 Exam Completed: 23:00

• Vitals signs: BP: Pulse: Resp: Temp: 0

• Tanner Stage: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☒ 5

• Describe general physical appearance: _____

Describe general demeanor: ☒ Quiet ☐ Tearful ☒ Trembling ☐ Anxious☐ Controlled ☐ Angry ☐ Sobbing ☐ Tense• Response to questions: ☐ Briefly ☐ Reluctantly ☒ Readily• Eye contact: ☒ Good ☐ Poor

• Describe: eyes red and watery

Assessment	Findings	Comment
HEENT	☒ Normocephalic, No exudate/redness	
Neck	☒ Nontender, supple	
Chest	☒ Clear, equal bilaterally	
Abdomen	☒ Soft, nontender, bowel sounds present	
Musc./Skel	☒ MAE, No deformities	
Neuro	☒ Alert and oriented x3, PERRL	
Skin	☒ Intact	

Strangulation Assessment*:

☐ NA

* Note patient history

• Object used on neck: ☒ one hand ☐ two hands ☐ forearm ☐ other _____

• How long was the patient strangled? off and on _____ How many times? 2

• Any loss of consciousness? ☐ Yes ☒ No• Throat hoarseness? ☐ Yes ☒ No

• Voice at time of exam: normal

• Any incontinence during? ☐ Yes ☒ NoDrug Facilitated Sexual Assault Assessment*: ☒ NA

* Note patient history

• Orientation: ☐ Oriented x 3 ☐ Disoriented; describe _____• Ability to recall events: ☐ Well ☐ No memory ☐ Lapses of memory loss• Patient's speech: ☐ Clear ☐ Garbled• Patient's gait: ☐ Steady ☐ Unsteady, describe _____• History of nausea: ☐ Yes ☐ No Vomiting: ☐ Yes ☐ No How many times? _____

• Other concerning symptoms or assessment: _____

General Physical Examination

Physical Examination: ☐ Findings (see below) ☒ No findings

Diagram A

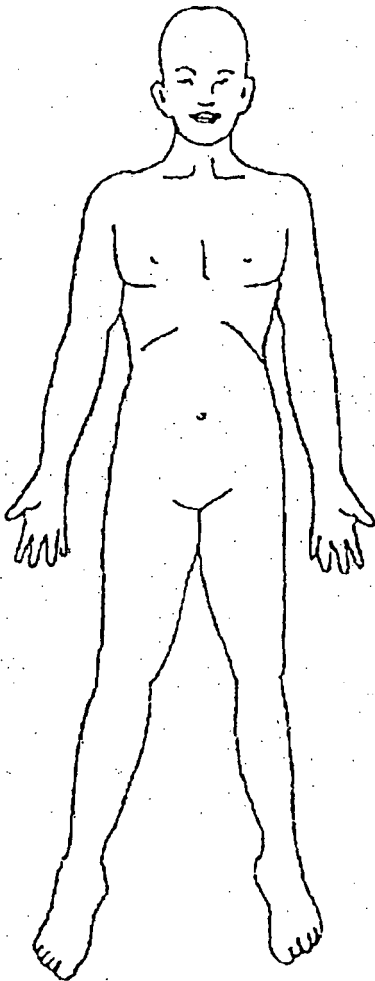
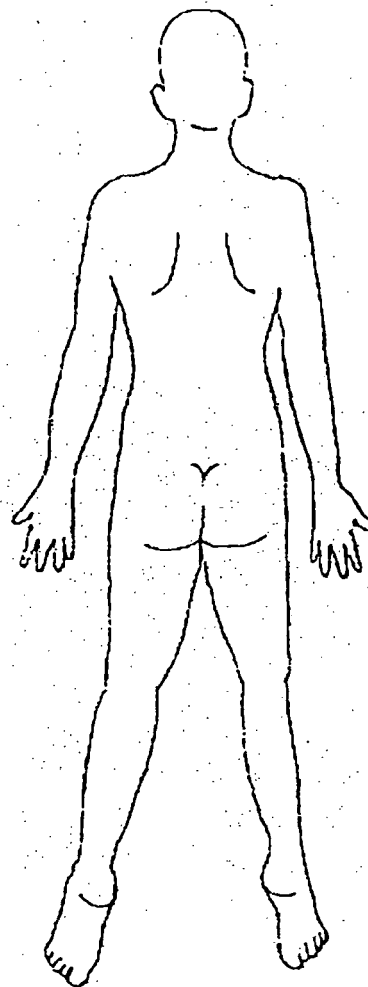


Diagram B



Genital Examination - Females

Location of findings. See details next page.

- ☒ No findings
- | | |
|---|---|
| ☐ Inner thigh | ☐ Perihymenal tissue |
| ☐ Perineum | ☐ Hymen |
| ☐ Labia majora | ☐ Fossa navicularis |
| ☐ Labia minora | ☐ Posterior fourchette |
| ☐ Clitoris | ☐ Anus |
| ☐ Vaginal Wall | ☐ Cervix |
| ☐ Perirethral tissue / urethral meatus | |

Exam position used:

- ☐ Supine ☒ Lithotomy ☐ Lateral ☐ Other
If other: _____

Exam methods:

- ☒ Water lubricated speculum ☐ Foley catheter
☐ Toluidine blue dye ☒ Colposcope ☐ UV light

Previous pelvic exams:

- ☒ Yes ☐ No ☒ Exam explained

Presence of sperm - vaginal wet prep:

- ☐ Motile ☐ Non-motile ☒ None visualized ☐ NA

Diagram K

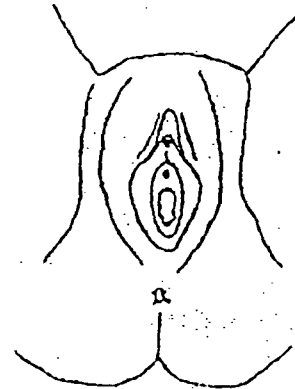


Diagram L

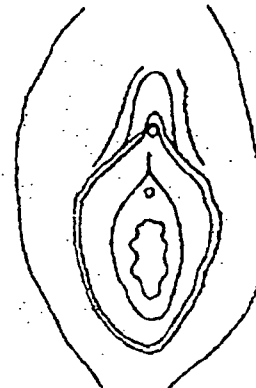


Diagram M

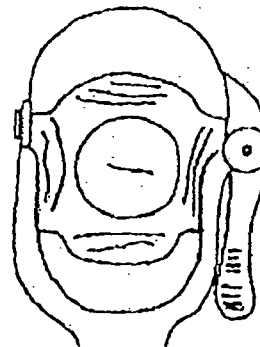
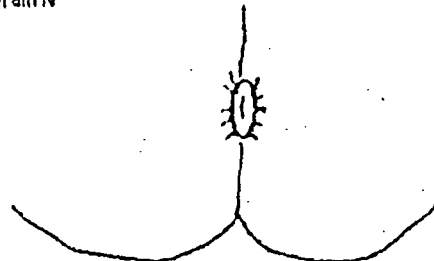


Diagram N



378

Evidence Collected

Clothing Collected: describe clothing ☐ NA ☐ Bathed ☒ Changed Clothes☐ Shirt☐ Pants☐ Underwear☐ Bra☐ Jacket☐ Belt☐ Shoes☐ Debris Sheet☐ Other

Trace Evidence Collected: No Yes Not Indicated Describe

Head hairs

☐☒☐

Combed pubic hairs

☒☐☐

Pulled pubic hairs

☒☐☐

Miscellaneous

☒☐☐

Intravaginal FB

☒☐☐

Fiber/loose hair

☒☐☐

DNA Evidence Collected:

Fingernail scraping/cuttings

☐☒☐

Oral swab and smear

☐☒☐

Bite mark/suck/kissing

☐☒☐

Miscellaneous secretions

☐☒☐

UV + area

☒☐☐

Vaginal swab and smear

☐☒☐

Rectal swab and smear

☐☒☐

Blood/lavender top

☐☒☐

Dried secretions

☒☐☐

Toxicology Evidence Collected:

Blood/gray top

☐☒☐

Urine

☒☐☐

Vomit

☒☐☐

Other

☒☐☐

Photography:

Colposcope

☐☒☐☒ 3.75 mag ☐ 7.5 mag ☐ 15 mag

35 mm camera

☒☐☐

of rolls 0

Polaroid pictures

☒☐☐

of pictures 0

Digital pictures

☒☐☐

of pictures 0

Post Examination

Lab Tests Performed*:

Pos Neg NA Comments

* Test results may not be immediately available

Urine pregnancy test

☐ ☒ ☐

Yeast

☐ ☒ ☐

Trichomonas

☐ ☒ ☐

Bacterial vaginosis

☐ ☒ ☐

Wet mount

☐ ☒ ☐

no sperm noted

Hospital Tests*:

RPR

☐ ☐ ☐

Hepatitis B

☐ ☐ ☐

HIV

☐ ☐ ☐

Post Exam: ☐ Showered ☒ New clothing given ☒ Ate or drank prior to medications

Medications Given:

☒ Medication discharge instructions given

Rocephin 250mg IM

Lot #: CG10120

Expiration Date: 5/2009

Zithromax 1 gram PO

Lot #: 12977V

Expiration Date: 1/2010

Metronidazole 2 grams PO

Lot #: 3347009A

Expiration Date: 2/2010

Emergency Contraception 2 doses 12 hou Lot #: 03257F EXP 2/2009

3 tablets at 2300 and 3 11a
3/23/2008

Discharge Information:

• Time: 23:15

• Discharged to: home

• Accompanied by: law enforcement

• Discharge Instructions given to: ☒ patient ☐ family ☐ other:

Admitted to Hospital: ☒ No ☐ Yes Room Number: Admitting MD:

Consults: ☒ NA ☐ Yes

Medical Follow Up:

Safe Clinic

5/6/2008 1 pm

Counselor Follow Up:

People Against Rape

Officer Receiving Evidence:

Signature: Time:

Print Name and ID #:

Agency

Evidence Released: ☐ SLED kit ☐ Clothing ☐ Urine ☐ Other

Signature of SANE (Faye LeBocuf CNM, SANE-A)

EXHIBIT #1

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Cpl. Scott Wyant
North Charleston Police Department
PO Box 62558
North Charleston, SC 29419

DNA ANALYSIS
April 14, 2009
SLED LAB: L08-04539
Your Case No: 2008012381
Incident Date: 3/22/2008
[S] Thurston Bolton
[V] Shaquinna McNeil

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

1	Sexual Assault Evidence Collection Kit from Shaquinna McNeil		
1.1	Blood standard	1.1	See DNA analysis.
1.2	Smears - vaginal, oral, rectal	1.2	No spermatozoa identified.
1.3	Vaginal swabs	1.3	Semen indicated. See DNA analysis.
1.4	Oral swabs	1.4	No semen identified.
1.5	Rectal swabs	1.5	Semen identified. See DNA analysis.
1.6	Miscellaneous body fluid	1.6	Semen indicated. See DNA analysis.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SLED LAB No. L08-04539

April 14, 2009

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Items Submitted:

1.7 Fingernail scrapings

1.8 Known head hairs

1.9 Swabs from right breast

1.10 Swabs from left breast

3 Cutting from comforter on bed

4 Buccal swab from Thurston Bolton

5 Hair from bed

Results of Examinations:

1.7 See DNA analysis.

1.8 No analysis performed.

1.9 See DNA analysis.

1.10 See DNA analysis.

3 No semen indicated.

4 See DNA analysis.

5 No hair suitable for STR PCR DNA analysis.

DNA ANALYSISITEMS ANALYZED:

1.1 Blood standard from Shaquinn McNeil

4 Buccal swab from Thurston Bolton

1.3 Vaginal swabs

1.5 Rectal swabs

1.6 Miscellaneous body fluid

1.7 Fingernail scrapings

1.9 Swabs from right breast

1.10 Swabs from left breast

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

April 14, 2009

RESULTS

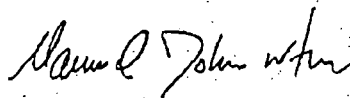
The DNA profile developed from item 1.9 is a mixture of at least two individuals. The major contributor to this mixture is consistent with Shaquinna McNeil. No conclusive statement can be made as to the inclusion or exclusion of Thurston Bolton as a possible contributor to this mixture. *11*

The DNA profile developed from item 1.10 is a mixture of at least two individuals. Shaquinna McNeil and Thurston Bolton cannot be excluded as possible contributors to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 560 thousand. The DNA profile developed from the major contributor foreign to the victim has been entered into the Combined DNA Index System (CODIS). *(2)*

The partial DNA profile developed from item 1.5 is a mixture of at least two individuals. The major contributor to this mixture is consistent with Shaquinna McNeil. The minor contributor to this mixture is not suitable for reliable interpretation.

No DNA profile foreign to Shaquinna McNeil was developed from items 1.3, 1.6, and 1.7.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Manuel J. Ortuno
Forensic Scientist

cc: Charleston County Solicitor's Office



P.O. Box 21393, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

ted, these are the issues that I would like for you to point out in my case!

1. She states that her and were not dating.

The phone records shows that there are 26 phone calls between her and I. The phone records will further show that most of the calls she is calling me. These phone records shows that these calls happen within a two week period.

I took her many different places to Captains D N West Ashley, A house off of Dorchester Rd, A house off of Wapoo Rd, Northwood Mall, and Long Horn restaurant. Also, meeting and Romney St. She states in the police report that I have given her rides.

She states at my first bond hearing that I stated to her that she was just using me! Why would I make a statement like that to her unless I was doing something for her and not charging her anything for it!

If we were not dating how did she know that when we came to my house that it was my house. Also, why did he come into the house with me!

2. In her witness statement she states that she was at the mall and then decided to call me. If we take that statement when I did not even know that day that I was going to be picking her up! Which means that I could not have planned to do this! Also, my phone record will show that I called her first! That day! And the records will show that I was on the phone with her the night before!

As I stated above she states in her witness statement that I have given her rides in my car. She says nothing in his statement or the statement given in the medical report but she received cab rides from me.

3. She says in her witness statement that I already had an erection when I started to have sex with her. But, in her medical report statement she says that I had to masturbate to get an erection.

4. In her two statements given she does not state anything like I and her had oral sex. In her medical report she answers a question when it is directed to her did we have oral sex she states YES. She says I performed oral sex on her and she performed oral sex with me. Also, my having oral sex with her didn't produce any DNA!

5. She states in her medical report that I used Vaseline. She says this when a question is asked directly. She does not say anything about this in her statements given. Witness statement or medical report. Also if I had to use Vaseline to enter her that means that she was very small in her vagina. Why is there no DNA if she was so small and I had to use Vaseline?

She states that we had intercourse from 1640 to 1900 hours. Yet, I did not produce any DNA.

6. She states in medical report that there was no injuries to me! How did she know that when she states that she tried to fight me off of her!

7. She had about one inch length finger nails and she states that we had a fight but no scraping or DNA was found under her finger nails!

8. In the medical report she states that she could see the front door with three locks on the door. This is from my bed. It is impossible to see my front door from my bed! She states in her witness statement that she saw the front door from my kitchen.

7. She states in her witness statement that I told her that I had a gun and that ~~she~~ I would give it to her to shoot me with once everything was over.

My house and car was searched by police and there was no gun found!

8. The hand towel that was found in my car was tested and no hair or semen was found!

9. My charge of kidnapping has no evidence of support but, her words.

10. Why didn't she run out back door when the back door was right next to kitchen ~~door~~ entrance?

11. She lives with her mother on Lee St. illegally. Her mother lives on housing and is not allowed to have someone live with her who is over 18 years. He does not have a job nor is she in school.

12. What is her mental status?

13. Medical report shows no injuries to her!

14. Her running out side naked is not an element of rape. ~~the~~ the law sees it!

She knew that the temperature was warm that day because I had just pick her up from the mall! Also, her wearing short pants and a short sleeve shirt shows that it was a warm day!

15. She states that I was choking her for ~~simply~~ ~~long~~ long time. Also, she states that she was ~~was~~ screaming but, no injuries or ~~her~~ her voice horse in any way! Thurtell Bottom

L A M L 151 / # 10

NCPD 017

PAGE

1 of 3

RULE 5

COMPLAINT # 2008012381

NORTH CHARLESTON POLICE DEPARTMENT

WITNESS STATEMENT

STATEMENT OF

SHAQUINNA JERNIC, McNeil

F BIRTH

20

HOME ADDRESS

EMPLOYER

None

BUS. ADDRESS

None

THIS STATEMENT IS IN REFERENCE TO

Kidnapping and Criminal Sexual Assault 1st

WHICH OCCURS AT

ON OR ABOUT 3-22-2008

AT APPROXIMATELY

11045

HOURS, IN NORTH CHARLESTON, SOUTH CAROLINA.

THIS STATEMENT IS GIVEN

3-22-2008

(DATE) AT

2000

(TIME) AT

Pepperhill

Community Center Inside Police unit

(LOCATION)

I was at the Citadel Mall and I needed a ride home. I already had the number of Thurston (Suspect) because Thurston had given me a few rides before. So I thought nothing of it. I called Thurston and he said Okay. Thurston met me at the Food Court. We got into his car & we left the Mall. We got onto I-526 (MARK CLARK) & headed towards North Charleston. I asked Thurston, "where are we going?" Thurston said, "I have to go pick something up at my house real quick". I said I have to be somewhere at a certain time so I don't have much time. When we arrived at his house my intention was to stay in the car but he insisted I come inside. As soon as I got inside the house

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS:

J. Mowder

WITNESS:

J. Mowder

SIGNATURE:

Shaq Jernic

NORTH CHARLESTON POLICE DEPARTMENT WITNESS STATEMENT

STATEMENT OF _____ DATE OF BIRTH _____ AGE _____

HOME ADDRESS _____ HOME PHONE _____ BUS. PH. _____

EMPLOYER _____ BUS. ADDRESS _____

THIS STATEMENT IS IN REFERENCE TO _____

WHICH OCCURS AT _____, ON OR ABOUT _____

AT APPROXIMATELY _____ HOURS, IN NORTH CHARLESTON, SOUTH CAROLINA.

THIS STATEMENT IS GIVEN _____ (DATE) AT _____ (TIME), AT _____

(LOCATION)

Thurston Locked ~~at~~ the front door. He then grabbed my arm, very aggressively, & forced me to the bedroom beside the kitchen. I was very scared & I told him to "Get off of me, you are hurting me." He threw me on the bed, he had one hand around my neck & the other holding my arm down. I WAS trying to fight him off but he was on top of me Kissing me & I was screaming for him to "Stop, please stop". All he said ~~was~~ "Since I came to his house that I should have known this was going to happen". I was trying to talk him out if he took my phone & purse & threw it on the floor. I told him I had to go to the bathroom so he let me up but he had a grip on my Right Arm & held me close to him as we went to the bathroom. We stayed in bathroom for sometime & I begged him to please let me go.

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS: St. NoorderWITNESS: [Signature]SIGNATURE: [Signature]

He Lead me back to the bedroom & threw me on the bed Again. I was crying & begged him to stop & let me go. He then slapped me Twice then he proceeded to take my close off with force. He started with my pants by yanking them off as I begged him to stop. I tried to fight him off but he was too big & strong. He then pulled down his pants & I could see he had an erection. He climbed on top of me with one hand on his dick trying to enter me & one hand choking me. He kept saying, "This is what I get for coming to his house". He ~~also~~ said, "I have a gun & when this is over I will give it to you & you can shoot me"! He then entered me & proceeded to have intercourse with me while choking me & kissing me. He stopped & I tried to gain his trust but he again entered me. After the second time he let me up & I told him I was hungry so went to the kitchen & asked AB if I was getting some food. Thurston was still in the bedroom. I could see the front door from the kitchen so I dashed to the front door, unlocked it and ran outside. I could hear him cursing AB-I ran.

THIS STATEMENT WAS TAKEN & WRITTEN BY SGT. H. Mowder.

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS:

H. Mowder
Jh

WITNESS:

SIGNATURE:

Thurston *W. H.*

RULE 5

I HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

SIGNATURE:

Thurston *W. H.*

EXHIBIT #17

389

Inv. Officer W. R. W.

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

OCA# 2008012381
Investigator

Personally appeared before me, a magistrate of this County, one Re Saul
who, first being duly sworn, deposes and says that (name of the defendant)

THURSTON MAURICE BOLTON

did within this County and State on the 22ND day of March 2008
violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
KIDNAPPING
VIOLATION OF SECTION 16-3-910

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on or about March 22, 2008, at approximately 1645 hours, while at located in the City of North Charleston, County of Charleston, State of South Carolina the defendant, THURSTON MAURICE BOLTON did commit the offense of KIDNAPPING, in violation of section 16-3-910 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully, unlawfully, and feloniously kidnap and confine Shaquinn J McNeil. Facts to establish the aforesaid are that the defendant had transported the victim to his residence at Dr and insisted she enter the home. Once inside the defendant grabbed the victim and forced her to another room. The victim was forcibly restrained from exiting the residence while the defendant sexually assaulted her. The victim was able to flee from the residence at approximately 1900 hours when the defendant allowed her to enter another room unsupervised. The victim had been detained for approximately two hours in the residence. Shaquinn J. McNeil and Pfc J. K. Wilson are witness to prove the same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this _____ day of MAR 23 2008
2008

[Signature]
Signature of Judge

[Signature]
(AFFLANT)

Address: _____

Phone: _____

RULE 5

EXHIBIT-12

Thurston M. Bolton
Charleston County Detention Center
5846 Leeds Ave
N. Charleston, SC 29405

Mr. D. Ashley Pennington, Circuit Defender
Ninth Circuit Public Defender
Berkeley & Charleston Counties
101 Meeting Street, 5th Floor
Charleston, SC 29401-2214

MARCH 8, 2009

RE: STATE VS Thurston M. Bolton:

DEAR MR. PENNINGTON:

I hope when this letter reach you it will find you and your love ones in the best of health and spirit! As for my self I am doing just fine!

I am writing you this letter out of concern that I have for Mr. Ted Smith, of your office. As you know Mr. Smith, was appointed to me by you back in July of 2008. Since, that time Mr. Smith and I have been working together on my case!

I told you back in July, that I wanted a jury trial in this present case and you told me that our appointment of Mr. Smith, to my case would give me the best possible trial that your office can provide for me.

Since, Mr. Smith, has provided to me some of my rules and he has provided me with my preliminary hearing transcript.

My problem with Mr. Smith, is that he refuse to file my speedy trial motion! I also, question Mr. Smith's professional ethics in his handling of my case! I am that he tells me that we are going to have a court date and then when the date comes my family and I find out on the court date that the date has been changed and Mr. Smith, does not even be at the court house to let us know this date has been changed. We find out by somebody in the court house! Mind you that Mr. Smith, has told me that if my court date changes he would call and let my family know! This has happen many times

Mr. Pennington, most importantly I have requested to Mr. Smith that he file my speedy trial motion back when you appointed him to represent my case and I have requested to him many many times through out the course of our client and attorney relationship that he file this motion. He has always found a reason why he can't file my motion and I think that it is high time after 8 or 9 months that my motion be filed immediately!

I have enclosed a copy of my motion for dismissal of counsel for your review and if there is any reason that you think that the statements that I have stated in this request to you is not true then you know how to contact me!

I will give you the opportunity of the remainder of this week to deal with this matter and after that I will start contacting the court for further court action in this matter! I am

Respectfully Yours,

Thurston Holton

Thurston Holton

Exhibit - 13

10/22/08

Mr. Thurston M. Bolton
3841 LEEDS AVE
NORTH CHARLESTON, SC 29405

MR. TED SMITH, ESQUIRE
CHARLESTON COUNTY PUBLIC DEFENDER
101 MEETING ST, 5TH FLOOR
CHARLESTON, SC 29401-2214

RE: REQUEST for Motions to be filed:

DEAR MR. SMITH:

I AM REQUESTING THAT YOU FILE THE FOLLOWING MOTION
ON MY BEHALF IMMEDIATELY! MY MOTION TO BE DISCHARGED
FROM CUSTODY THAT I SENT TO YOU ON OCTOBER 2, 2008

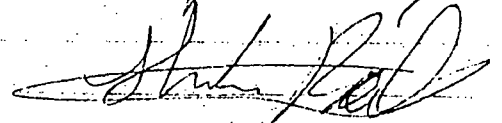
MOTION FOR A FAST AND SPEEDY TRIAL!

MOTION TO COMPEL THE SOLICITOR TO TURN OVER
DNA TEST RESULTS AND HOSPITAL REPORT.

I look forward to seeing you soon!

CC: FILE

Respectfully



Thurston Bolton

MR. Thurston M. Bolton
Charleston County Detention Center
North Charleston SC 29405

4/19/09

J. Ted Smith
21 Meeting St 5th Floor
Charleston SC 29403

RE: State VS Thurston Bolton

DEAR MR. Smith:

This letter is to advise you of the specific issues that I would like for you to bring forth in my upcoming board modification hearing. Also, I am providing you the names and telephone numbers of the witnesses that I want you to call in as my be have.

I want you to tell the Judge that I am innocent and I have been in here for a year! The medical and DNA records show that I have not did anything to this so called victim. That we are requesting a PR bond or a bond of less than \$10,000 ten thousand dollars.

Robert Gathers, is one of my witnesses and he can be reached at 843-330-7252. Dorothy Jenkins is also, a other witness that can be reached at 723-9641. Orlando Newkirk, can be reached at 843-602-~~9191~~ 9191. I may have more witness but, I need to talk to him first!

I have put together our defense theory and the inconsistency in my so called victim statements and I plan to have those to you by the latter part of this week.

Best Wishes to you
Thurston Bolton

Exhibit - 15

2/18/09

Dr. Ted Smith, Public Defender
 P.F. WALLACE Building 101 Meeting St 5th Floor
 Charleston SC 29401-8214 . . .

Dr. Thurston Bolton
 3211 Leeds Ave
 North Charleston SC 29405

Re: STATE vs Thurston Bolton

Dear Ted,

I hope that when this letter reach you it will find you and your love ones in the best of health and spirit. As for my self I'm doing fine

As you already know it is May 18, 2009 and my name is not on the trial docket. I hope that you have prepared my speedy trial motion to be heard on the 1st of June 1, 2009.

I have not heard anything from you on my bond hearing.

I have still not recieved a copy of your compel motion!

Ed, shouldn't we be meeting with each other now that my case is going to be going to trial soon!?

I would like to speak to you on some trial points that I sent you in my last letter to you.

So, I would like to advise you that I have filed a federal lawsuit against the detention center for things that are going on here at the detention center.

I look forward to seeing you soon! Sincerely

Exhibit-16

395

Charleston County Public Defender

101 Meeting Street, 5th Floor, Charleston, SC 29401-2214 ♦ (843) 958-1850 ♦ Fax (843) 958-1860

BY HAND DELIVERY

November 4, 2008

Thurston Maurice Bolton, Inmate #597374
Charleston County Detention Center

RE: State of South Carolina vs. Thurston Maurice Bolton
Warrant (s): K-297993; K-297994

Dear Mr. Bolton:

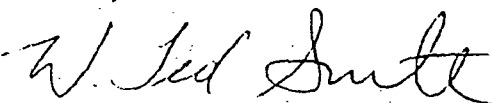
I received your letter dated October 22, 2008. I think that we covered most of these issues during our visit on October 9, 2008 but I will briefly explain each again.

Motion to Dismiss from Custody--As we discussed the grounds for that motion are not sound. The indictments were presented and filed within the time limits that we discussed. I forwarded you certified copies of both last week.

Motion for a Speedy Trial--As we discussed I will file this motion once I have received the medical/DNA results.

Motion to Compel--As we discussed, I again asked for the results of the DNA/medical reports. As of today I do not have them. My paralegal will be preparing a Motion to Compel these results today or tomorrow. I will forward a copy to you.

Sincerely,



W. Ted Smith
Assistant Public Defender

EXHIBIT-17

NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTYO.T. WALLACE COUNTY OFFICE BUILDING
101 MEETING STREET, 5th FLOOR
CHARLESTON, SC 29401-2214
(843) 958-1850

March 31, 2009

VIA HAND DELIVERY

Thurston Maurice Bolton
Inmate #: 597374
Charleston County Detention

RE: State of South Carolina v. Thurston Maurice Bolton

Dear Mr. Bolton:

I am in receipt of your letters dated March 24th and March 29th. I will address your issues below:

During your Motion to be Relieved, the Solicitor gave two proposed trial dates. That means that your case will likely be called during one of those two terms. At this time I do not believe that there is any merit in filing a Speedy Trial Motion

I have reviewed the case of State vs. Brown. Material evidence includes the testimony of a witness.

In South Carolina a Motion to Dismiss, takes the form of a Motion for Directed Verdict which will be heard by the trial judge at the conclusion of the State's case.

I don't believe that there has been any change of circumstances since your last General Sessions Bond Hearing. Your bond has been considered once by the Preliminary Hearing Court and twice by the General Sessions Court.

Sincerely,

W. Ted Smith
Assistant Public Defender

Enclosure as stated

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

2009 JUN-1 PM 2:23

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Warrant No(s) K-297993, K-297994

Charge(s) CSC 1st, Kidnapping

CLERK OF COURT

STATE OF SOUTH CAROLINA

vs.

THURSTON BOLTON,

Defendant.

BY

MOTION FOR CONTINUANCE

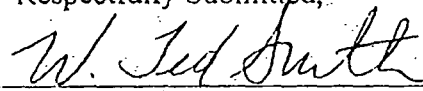
Now comes the defendant, by and through his undersigned attorney, moving for an Order of this Court granting a continuance in the above-referenced matter the week of June 1, 2009. On May 27, 2009 the defense expert in this case requested the following information:

1. Copies of all electropherograms;
2. Copies of all Lab bench notes for the instant case;
3. Copies of all pop stat calculations;
4. The solicitor's office immediately contacted SLED to obtain these items;
5. SLED responded and said the earliest they could produce the information would be June 1, 2009 via facsimile;
6. The defense expert has indicated that there will not be enough time to examine these results;
7. The defense expert has indicated that the results could be ready as early as the July 22, 2009 term;
8. The defense believes these results could impact defense strategy and are necessary in Mr. Bolton's defense

Charleston, South Carolina

Dated: 6/1, 2009.

Respectfully Submitted,



W. Ted Smith
Assistant Public Defender
Attorney for Defendant

EXHIBIT-19

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

THURSTON MAURICE BOLTON,

Defendant

TO: SOLICITOR, NINTH JUDICIAL CIRCUIT

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Warrant No(s): K-297993; K-297994
) Charge(s): CSC 1st, Kidnapping

MOTION TO SET OR REDUCE BOND

YOU WILL PLEASE TAKE NOTICE that the Defendant through the undersigned attorney will move before the Court of General Sessions, Ninth Judicial Circuit, on such date and at such time as the Court may provide, for a modification of bond of the above-named Defendant.

In making such Motion, the following information is provided to the Court:

DATE COMMITTED TO JAIL: 03/22/2008

OFFENSE(s):

PRESENT BOND:

CSC 1st;

\$100,000

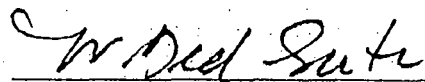
Kidnapping

\$100,000

FURTHER, the undersigned acknowledges that the Motion is properly held in General Sessions Court since:

- (X) the initial request for reconsideration has been heard by the Centralized Preliminary Hearing Court; or
- () the Centralized Preliminary Hearing Court has no jurisdiction to set bond by statute.

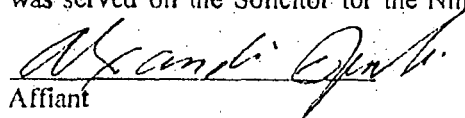
AND IT IS RESPECTFULLY SUBMITTED this 8 of July 2009 at Charleston, South Carolina.



W. Ted Smith
 Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that this Motion to Set or Reduce Bond was served on the Solicitor for the Ninth Judicial Circuit on July 9, 2009


 Affiant

2009 JUL -9 AM 11:11
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

) MOTION TO SET OR REDUCE BOND
) Warrant No(s): K-297993, K-297994

STATE OF SOUTH CAROLINA

) Defendant's DOB:
) Sex: Male

vs.

THURSTON BOLTON,

) MOTION FOR SPEEDY TRIAL OR IN THE
) ALTERNATIVE, FOR RELEASE FROM JAIL

Defendant

The Defendant above-named, through the undersigned attorney of the Public Defender's Office of Charleston County, would show unto this Court:

That the Defendant is presently incarcerated in the Charleston County Jail awaiting trial on the above-stated charge.

That the Defendant has been incarcerated since March 22, 2008.

That the Defendant is informed and believes to be entitled to a speedy trial and hereby demands such, as provided in the Sixth Amendment to the United States Constitution, Article 1, Section 9, of the South Carolina Constitution and Section 17-23-90 of the South Carolina Code of Laws as amended in 1976, and in the alternative moves to be discharged from imprisonment.

Respectfully Submitted,

W. Ted Smith

W. Ted Smith
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: _____ 2009.

2009 JUL -9 AM 11:12
JULIE J. ARMSTRONG
CLERK OF COURT
JH

Certificate of Service

I hereby certify that this Motion for Speedy Trial was served on Peter mccoys, Solicitor for the Ninth Judicial Circuit on July 9, 2009.

Affiant

Alexander Quint

EXHIBIT-21

08-19510-4635
4637

STATE OF SOUTH CAROLINA,)
COUNTY OF CHARLESTON - 5)
PH 3:42

STATE OF SOUTH CAROLINA,)
CLERK OF COURT)
Warrant No.: K297993, K297994
Charges: CSC 1ST, KIDNAPPING

BY MA
-versus-

MOTION TO BE RELIEVED AS COUNSEL

THURSTON BOLTON,
Defendant.

This motion is made by W. Ted Smith of the Ninth Circuit Public Defender's Office, on behalf of the Defendant, Thurston Bolton, who moves before this Honorable Court to remove the Ninth Circuit Public Defender as defense counsel on the above captioned matter. The grounds for the motion shall be submitted to the court by the defendant at the time of the hearing.

I SO MOVE:

W. Ted Smith
W. TED SMITH
Assistant Public Defender

Charleston, South Carolina

Dated: 8/4, 2008.

EXHIBIT-22

401

STATE OF SOUTH CAROLINA FILED IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT

2009 MAR 11 PM 4: 25
Warrant No.: K-297993, K-297994

STATE OF SOUTH CAROLINA STRONG Charges: CSC 1st, Kidnapping

CLERK OF COURT

-versus- BY

MOTION TO BE RELIEVED AS COUNSEL

THURSTON BOLTON,
Defendant.

This motion is made by W. Ted Smith of the Ninth Circuit Public Defender's Office, on behalf of the Defendant, Thurston Bolton, who moves before this Honorable Court to remove the Ninth Circuit Public Defender as defense counsel on the above captioned matter. The grounds for the motion shall be submitted to the court by the defendant at the time of the hearing.

ISO MOVE:



W. TED SMITH
Assistant Public Defender

Charleston, South Carolina

Dated: 3/11, 2009.

EXHIBIT-23

Ted Smith,
 01 Meeting St
 Charleston SC 29403

Thurston Bolton
 Charleston County Detention Center
 North Charleston SC 29405

Re: State vs. Thurston Bolton

Re: Ted

Enclosed you will find our defense theory. I would like to point out that we have multiple reasons in this theory.

1. She felt that I had hurt her feelings when I told her that I smelled sex on her!

2. She further felt anger when I told her that I did not want to date someone that had a boyfriend.

3. She was mad because I had caught her lying to me.

4. She was mad because I called her a whore.

5. She was mad because I refused to give her the money.

6. She was mad because she had shown me her naked body and she felt that I owed her something for showing me her body.

7. She was mad because she felt like she was cheating on her boyfriend.

8. I told her about a 1.2 million dollars real estate projects that I was working on.

~~8/2/10~~ 8/2/10

Thurston M. Bolton
386 Redemption Way
McCormick SC 29829

Julie J Armstrong
Clerk of Court
100 Broad Street
Charleston SC 29402

RE: PCR Application:

DEAR Mrs. Armstrong:

ENCLOSED you will find my PCR Application. I AM REQUESTING that you properly file, stamp and return to me a complete stamp copy of this PCR Action.

I would like to thank you in ADVANCE for your time AND ASSISTANCE in this matter.

Respectfully

Thurston M. Bolton

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
Thurston M. Bolton. #115095.	)	2010-CP-10-6416
	)	
Applicant.	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for post-conviction relief filed August 9, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the June 2008 term of the Charleston County Grand Jury for criminal sexual conduct (CSC) – 1st degree (2008-GS-10-4635) and kidnapping (2008-GS-10-4637). Ted Smith, Esquire, and Mary Ford, Esquire, represented the Applicant. The Applicant proceeded to trial on August 31 – September 1, 2009, after which a jury found him not guilty of CSC – 1st degree and guilty of kidnapping. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for twenty (20) years for kidnapping.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Applicant signed an affidavit dated June 18, 2010 indicating that we wished to withdraw the appeal. The Court of Appeals issued an Order of Dismissal on June 24, 2010 and a Remittitur on July 14, 2010.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the affidavit indicating that Applicant wished to withdraw the appeal, the Court of Appeals' Order of Dismissal dated June 24, 2010, and the Remittitur dated July 14, 2010.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to conduct a proper pre-trial investigation (i.e., subpoena witnesses, introduce telephone records, produce and show the blue towel found in Applicant's car with no positive test results).
 - b. Failed to concur with Applicant when Applicant requested twice formally that counsel be relieved from the representation of Applicant.
 - c. Failed to carry out the objectives and directives of Applicant (i.e., failed to properly file speedy trial motion, failed to professionally and competently represent Applicant).
 - d. Failed to properly introduce accuser's clothes into evidence for jury consideration.
 - e. Failed to introduce evidence of accuser stating that oral sex occurred between accuser and Applicant.
 - f. Failed to object to solicitor's misconduct (i.e., Assistant Solicitor Peter McCoy states in closing argument that Applicant rips accuser's clothes off, Assistant Solicitor Adam Young states that accuser runs out at 5:00 PM).
 - g. Failed to object to state witness Michelle Emerson's statement giving the wrong time when she stated that it was 6:00 when she went to the store on the date of this incident.
 - h. Failed to object to the jury returning a legally inconsistent verdict.
 - i. Counsel's statement to the jury that he cannot explain the reasons that accuser was bringing these false allegations is unfounded because Applicant provided counsel with the reasons.
 - j. Failed to request a lesser-included offense in regard to the kidnapping indictment.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

March 28, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2010-CP-10-06416

THURSTON M. BOLTON,

Plaintiff

V.

STATE OF SOUTH CAROLINA,

Defendant.

TRANSCRIPT OF RECORD

September 14, 2011
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

Mr. Matthew Friedman, Assistant Attorney General
Representing the State

Mr. David Holton, Esquire
Representing the Defendant

Anne Bouley Meyer, RPR

Circuit Court Reporter.

I N D E X
WITNESSES

ALL WITNESSES:	PAGE:
MR. THURSTON M. BOLTON for Petitioner:	
Direct Examination by MR. HOLTON	5:19
Cross-Examination by MR. FRIEDMAN	25:6
MR. WILLIAM TED SMITH for Petitioner:	
Direct Examination by MR. HOLTON	26:20
Cross-Examination by MR. FRIEDMAN	41:7
ARGUMENT by MR. HOLTON	45:1
ARGUMENT by MR. FRIEDMAN	45:25
RULING by THE COURT	46:19

EXHIBITS

None

1 THE COURT: This is Thurston M. Bolton versus
2 state of South Carolina, 2010-CP-10-6416. It's before
3 the court on an application for post-conviction relief
4 which was filed August 9, of 2010 pursuant to sentence
5 which was imposed on indictment 2008-GS-10-4637 where
6 he received it appears 20 years from a jury trial.

7 He initiated an appeal but voluntarily dismissed
8 that appeal. He is alleging ineffective assistance of
9 trial counsel, and that was filed August 9 of 2010.

10 There is a letter, however that indicates that
11 there is an amended application, and that letter is
12 dated August 24, 2010 where he says, you will find my
13 amendment to my PCR application -- I see, I got it
14 right here, and that was filed August 27 of 2010.

15 Actually those are issues that would have to
16 have been raised on a direct appeal because he is
17 indicating that the trial court abused its discretion
18 by not charging a lesser included offense.

19 MR. HOLTON: Your Honor, may we approach the
20 bench? I think I can clarify some matters.

21 THE COURT: Sure.

22 (Whereupon, a discussion was held at the bench
23 off the record.)

24 THE COURT: The State filed its return on March
25 29, 2011. And again, as I have indicated, this was

1 from certain indictments where the defendant -- and
2 that being indictment 2008-4635, which was CSC in the
3 first degree; kidnapping, 2088-GS-10-4637.

4 The applicant was represented at trial by Ted
5 Smith and Mary Ford. He proceeded to trial on August
6 31st through September 1st, 2009. He was acquitted on
7 the CSC first and found guilty of kidnapping.

8 Judge Dennis sentence him to confinement for 20
9 years for kidnapping.

10 Okay, are we ready to proceed?

11 MR. HOLTON: We are, Your Honor.

12 THE COURT: Okay, you may proceed.

13 MR. HOLTON: Your Honor, if it please the Court
14 I will call my client, Thurston Bolton as my first
15 witness.

16 THE COURT: Sir, if you would stand to be sworn.

17 MR. HOLTON: Judge, as a matter of the record,
18 before the clerk swears, my client wanted me to inform
19 everybody that he is of a faith that does not allow --

20 THE COURT: We say swear or affirm.

21 MR. HOLTON: Yes, Your Honor.

22 THE COURT: That's why we say swear or affirm.

23 MR. HOLTON: And that's what happened I
24 explained to him prior to court.

25 THE COURT: And that's why we don't ask him to

1 put his hand on the bible.

2 MR. HOLTON: And I told him that as well.

3 THE COURT: I certainly will respect that belief
4 on his part and would not want to make him feel
5 uncomfortable.

6 MR. THURSTON M. BOLTON,
7 after having first duly affirmed to state the truth,
8 the whole truth and nothing but the truth, testified on
9 his oath as follows:

10 THE COURT: Sir, you can take your seat.

11 Your middle initial is M, correct?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Mr. Holton, you may proceed when you
14 are ready.

15 MR. HOLTON: Thank you, Your Honor, may it
16 please the Court.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. HOLTON:

20 Q Mr. Bolton, as best you can while I'm talking to
21 you, if you'll direct your answers into that microphone
22 so the court reporter can take down what you say and so
23 the Judge can hear what you say.

24 How old are you, sir?

25 A 47 years old.

1 Q How far have you been with your education?

2 A I have a GED. And I have some vocational
3 training.

4 Q Do you have any difficulties understanding the
5 English language?

6 A No, sir.

7 Q Any difficulties with your reading and your
8 writing?

9 A No, sir.

10 Q Where are you presently located or incarcerated?

11 A McCormick Correctional Institution in McCormick,
12 South Carolina.

13 Q And why are you at McCormick?

14 A I was convicted for the charge of kidnapping,
15 and I received a 20-year sentence at 85 percent.

16 Q And that conviction came out of a jury trial; is
17 that correct?

18 A Correct.

19 Q How long have you been at McCormick now?

20 A Two years.

21 Q All right. And prior to your time at McCormick,
22 where were you incarcerated?

23 A At the Charleston County jail.

24 Q How much time did you spend in the Charleston
25 county jail?

1 A Approximately 18 months.

2 Q And was that time while you were awaiting for
3 trial on your case?

4 A Yes, sir.

5 Q Okay. And did you ever have any opportunity to
6 be released from jail on bond, or were you kept in jail
7 the whole time?

8 A I was kept in jail the whole time. The bond was
9 too high for me to make bond.

10 Q Okay. When you were arrested in this charge,
11 was someone from the public defender's office appointed
12 to represent you?

13 A Not initially. Initially I had retained two
14 different paid attorneys. And as it became a
15 realization to me that I couldn't afford to maintain my
16 attorney fees, that's when I turned to ask for help
17 from appointment of counsel.

18 Q Okay. And apparently some arrangement was made
19 to release your paid counsel and allow the public
20 defender's office to come in and take over your case?

21 A Yes, sir.

22 Q How old was your case at the point the public
23 defender's office took over?

24 A Approximately four or five months old.

25 Q And how long was the public defender's office

1 your lawyer before you had a trial?

2 A Approximately 14 or 15 months.

3 Q So more than a year?

4 A Yes.

5 Q Was Ted Smith from the public defender's office,
6 was he the lawyer that was appointed to represent you?

7 A Yes, he was.

8 Q And were you able to meet with Mr. Smith at the
9 jail?

10 A Yes, I was.

11 Q Did you ever have meetings any way other than in
12 person at the jail?

13 A We had a couple of telephone conversations as
14 well.

15 Q Did they ever do things by video from the public
16 defender's office?

17 A Yes.

18 Q Were you ever brought to Court to meet with your
19 lawyer prior to your trial?

20 A Yes. I came to trial on a few occasions that my
21 case was not called, which I did talk to Ted or his
22 investigator.

23 Q Now in fairness to Mr. Smith in the public
24 defender's office, did you have a good number of
25 meetings with your lawyer?

1 A Yes.

2 Q Did you understand your conversations with your
3 lawyer?

4 A Yes, I did.

5 Q What kind of, without too much detail, what kind
6 of topics would you discuss with your lawyer? For
7 example, did you discuss potential witnesses with your
8 lawyer?

9 A Yes, I did.

10 Q Did you discuss witness statements with your
11 lawyer?

12 A Yes, I did.

13 Q Did you discuss other evidentiary matters, such
14 as whether things could or could not be admitted into
15 evidence?

16 A Yes.

17 Q Okay. And as you are having these discussions
18 with your lawyer, are you taking the position that you
19 are an innocent man, or are you guilty man looking for
20 a plea bargain?

21 A I'm an innocent man.

22 Q And have you ever wavered from that position?

23 A No, I have not.

24 Q So today in this courtroom you still maintain
25 your innocence?

1 A Yes, I am.

2 Q And did you clearly communicate that to Mr.
3 Smith?

4 A Yes, I did.

5 Q So is it fair to say that for probably a
6 substantial portion of the representation, you and Mr.
7 Smith were working towards fighting these charges?

8 A Yes.

9 Q Either trying to convince the solicitor to
10 dismiss them, or take this case to trial?

11 A Yes.

12 Q So you were preparing with your lawyer for
13 trial; is that fair?

14 A Yes.

15 Q Did you understand the conversations you were
16 having with your lawyer?

17 A Yes, I did.

18 Q Well did you have some ideas about how you
19 wanted your case handled?

20 A Yes.

21 Q Did you begin to have some disagreements with
22 Mr. Smith as your lawyer?

23 A Yes, I did.

24 Q Did you take any actions to try to get a
25 different lawyer?

1 A Yes, I did.

2 Q Can you tell the Court just briefly about what
3 you did to try to get another lawyer?

4 A Initially I had a conversation with Ashley
5 Pennington, who was the head of the public defender's
6 office, and I told him that I was represented by the
7 public defender's office back in 1989. And that I
8 filed a post-conviction application against him for
9 ineffective assistance of counsel.

10 And I thought that that represented a conflict
11 of interest for the public defender's office to
12 represent me. And I was requesting to him that he
13 allow another appointment of counsel, other than his
14 public defender office to represent me.

15 And he told me that he was going to get in touch
16 with Judge Jefferson, as she was the chief
17 administrative judge, to bring that issue up with her
18 and to let her decide whether she wanted to appoint me
19 new counsel or have the public defender's office to
20 represent.

21 which never transpired because every time we
22 tried to schedule that particular meeting it was
23 reschedule. And eventually we went in front of Judge
24 Young who denied my motion to have them relieved from
25 my representation.

1 Q All right. Now you are here today on a charge
2 of kidnapping, so at this point is there any concern
3 about your lawyer that may have impacted this
4 conviction for kidnapping?

5 A Yes. I have numerous concerns.

6 Q All right. Can you begin to testify to the
7 Court, can you identify what your first or your most
8 important concern was about your lawyer?

9 A My most important concern about him was that I
10 had evidence that was collected by the solicitor, or
11 police officers, that they had intended to use against
12 me in court. And the evidence, after the scientific
13 analysis and medical screening or whatever, it came out
14 that the evidence was inside of my favor.

15 And I wanted my attorney to present that
16 evidence so that it could establish my innocence in
17 this matter.

18 Q All right. I'm going to remind you about prior
19 conversations, how does that impact your conviction for
20 kidnapping?

21 A It impacts my conviction for kidnapping because
22 the evidence could probably weigh in terms of
23 credibility to witnesses that might have been
24 testifying against me.

25 And it also could have affected the way, the

1 outcome of my trial. Because if the credibility was
2 affected, then the trial results could have been
3 affected.

4 Q Okay. What is the next concern that you want to
5 bring to the Court about your representation in this
6 case?

7 A The -- my going back and forth with my attorney
8 on filing for my speedy trial and my bond modification.

9 Q Well I'm interested in your speedy trial because
10 there is a constitutional right. Did you attempt,
11 through your lawyer, to exert your rights for a speedy
12 trial?

13 A Yes.

14 Q Tell the Court about that.

15 A I asked him initially, you know coming on my
16 case, that I wanted him to file a speedy trial motion
17 because of the fact that I was innocent, and because of
18 the fact that I was sitting in county jail and I could
19 not afford to make bond to get out.

20 And he kept giving me excuses about the reasons
21 why he can't file a speedy trial motion, which was the
22 fact that he wanted the DNA and medical test results
23 back before he filed a motion. And those were some of
24 the things, you know, getting into the speedy trial
25 motion.

1 Q And was this beginning to have any effect on
2 your confidence or your relationship with your lawyer
3 as you're moving towards your trial?

4 A Yes, it was.

5 Q Can you testify to anything specific about that?

6 A Yeah. I mean I just felt that him not filing a
7 speedy trial motion was kind of showing me that he
8 wasn't really doing the best that he could to represent
9 him inside this manner. Which left a real bad taste in
10 my mouth, so to speak, about his representation because
11 I have already stated I already had reservation about
12 the public defender's office representing me because
13 of, you know, the past history.

14 And he was just giving more validity to me
15 feeling uncomfortable in that respect.

16 Q All right. What's the next issue that you want
17 to raise with regard to representation by Mr. Smith?

18 A There was a second motion filed for removal of
19 Mr. Smith from my case. This second motion was based
20 on the failure to file a speedy trial motion.

21 And the second motion again I went in front of
22 another judge, which was Judge Dennis, and told him
23 that I wanted Ted specifically removed from my case
24 because he refused to file the speedy trial motion.
25 And again my motion was denied.

1 Q Okay. What is the next issue that you want to
2 raise before the Court regarding your representation?

3 A I don't think that Ted represented my case in a
4 most professional and confident manner.

5 Q Not to interrupt you, but I'm going to ask you
6 to testify to something specific. Your opinion doesn't
7 count, so you need to give this Court something
8 specific that they can look at.

9 A Yes, sir. Okay. Ted -- I was scheduled to go
10 trial on June 1st of 19 -- 2009. And Ted filed a
11 motion for continuance on this case.

12 And initially I thought that the solicitor had
13 filed a motion for continuance. I really -- I did not
14 find out about Ted filing this motion until later on.

15 But the point is when he filed this motion for
16 continuance, before the continuance even past he filed
17 a motion for speedy trial and bond modification.

18 And to this day I don't understand his
19 reasoning, his logic in doing that. Because if he
20 filed a motion for continuance and a continuance date
21 has not come, why would he file a motion for speedy
22 trial when the continuance date hasn't come.

23 And I just don't understand that, and that's one
24 of my issues.

25 Q All right. And I understand the way you are

1 framing these issues, but is it fair to say that
2 because of these issues, your confidence in your lawyer
3 was either eroded or was not there. Is that not what
4 the real issue was?

5 A Yes. Yes.

6 Q At this point you are now moving even closer to
7 your trial date, there are pretrial motions. Are you
8 -- are you getting the kind of information that you
9 need to tell you what is going on with your case?

10 A Yes. I am getting information that is going on
11 with my case, but I don't feel that it's credible. And
12 to my limited understanding and experience with the
13 law, not being a lawyer, and what he is telling me and
14 the changes that we are going through, I just don't
15 feel totally comfortable --

16 Q Let me ask the question a different way. Did
17 you have a relationship of trust with your lawyer?

18 A Yes. Yes, I did.

19 Q You did? All right. What is the next issue
20 that you want to raise with the court?

21 A The next issue is that the clothing that was --
22 that was not entered into evidence, I felt that the
23 issue of the clothing was something that I wanted the
24 jury to consider.

25 And the reason why I wanted it was because of

1 the fact that I knew that the clothing was undisturbed,
2 and it was alleged that the clothing was ripped off of
3 there. So since I knew that the clothing was
4 undisturbed, I wanted it entered into evidence.

5 And I requested -- I mean I had thought that Ted
6 was going to enter it into evidence. And throughout
7 the course of the trial I didn't know that when he
8 brought the clothes up for ID purposes that that didn't
9 represent the fact that it wasn't going to be entered
10 into evidence.

11 But the point is is that it wasn't entered into
12 evidence. And I feel that if it was, it could have
13 affected the way that the jury felt about my kidnap
14 conviction, and they may have not had convicted me for
15 the kidnapping.

16 Q Okay. For the benefit of those who weren't
17 present for all the testimony at your trial, what did
18 the clothes that you are concerned about, what did they
19 have to do with your kidnapping case? What issue did
20 you want them to address?

21 A The issue of force. It was stated during the
22 course of the trial that the clothes was ripped off,
23 that they were ripped off, which would indicate that
24 they would be have some type of tear or torn inside the
25 clothes.

1 Q And your position would be more it was always
2 the victim was free to go?

3 A Exactly.

4 Q All right. What's the next issue you had
5 concern about your lawyer you want to testify to today?

6 A There was an issue, there was some documents of
7 my phone records. Inside of -- or whatever. My
8 accuser was denying a close relationship with me.

9 Q Did she deny during her testimony at trial that
10 she had a close relationship with you?

11 A Yes, she did.

12 Q And did you disagree with that?

13 A Yes, I did.

14 Q Then just briefly for purposes of this hearing,
15 what was your relationship with your accuser?

16 A My relationship with my accuser was that her and
17 I had met, we were dating. Our situation escalated in
18 a very fast manner. And she misunderstood some of my
19 actions that led to this situation occurring.

20 Q I got you. And so now you started this
21 testimony off with phone records. What is it you think
22 should have been done with these phone records by your
23 lawyer that wasn't?

24 A I think that my lawyer should have entered the
25 phone records into evidence for consideration because

1 the phone records was going to establish the close
2 relationship that -- the close communications that her
3 and I had.

4 Q And you thought that would have helped you on
5 the issue of kidnapping?

6 A Right. I thought that was going to help me on
7 the issue of kidnapping.

8 Q Are there -- I don't want to cut you off. Are
9 there other issues that you had concerns about your
10 representation with your lawyer?

11 A Yes, it is.

12 Q What is the next issue?

13 A The next issue is is that inside the Solicitor
14 Peter McCoy closing arguments, he made this specific
15 statement that I was speaking upon is that the clothes
16 was ripped off of my accuser.

17 Q All right. So it's your position that the
18 solicitor makes inaccurate or unfair statements?

19 A Yes.

20 Q Does your lawyer stand up and object?

21 A No, he does not.

22 Q If your lawyer had stood up and objected, do you
23 think it could have impacted the results of your case?

24 A Yes, I do.

25 Q What's the next issue?

1 A The next issue is, is that inside his
2 explanation of the reasons --

3 Q Who is his? Tell us the name of the person that
4 you are talking about.

5 A Ted Smith.

6 Q Ted Smith?

7 A Right. Inside of Ted Smith's reason for the
8 accuser bringing these accusations against me, or
9 charges against me, he says that he does not now why
10 the accuser is bringing these charges against me.

11 Q Are you talking about Mr. Smith's closing
12 argument, or his opening statement, or some other part
13 of the trial?

14 A Throughout the course of the trial.

15 Q Throughout the trial?

16 A Yeah, throughout the whole trial.

17 Q Okay, so you are talking about his trial
18 strategy?

19 A Right. He says that he does not know the reason
20 why the accuser is bringing these charges against me
21 when I wrote him a letter, and it's a part of the
22 post-conviction application, one of the exhibits, that
23 is explaining to him specifically the reasons why the
24 accuser is bringing these false charges against me.

25 But he decided not to use any of them and said

1 that he did not know the reason at all.

2 Q So as I understand it there was evidence out
3 there that was available that could explain a motive
4 for the victim to make false charges against you. Have
5 I said that correctly?

6 A Correct.

7 Q And you made your lawyer aware of these false
8 motives?

9 A Yes, I did.

10 Q Is it your testimony, is it your concern that
11 your lawyer did not do anything with that information?

12 A Correct.

13 Q All right. So he didn't try to advocate for you
14 in that manner at your trial?

15 A No, he did not.

16 Q Is there another issue you wish to address to
17 the court?

18 A On the kidnapping charge within itself, I don't
19 believe that my attorney, Ted Smith, gave me any type
20 of defense against kidnapping charge.

21 I think that the efforts that he did put forth
22 was surrounded by or directed to the first CSC which I
23 was acquitted of. And that he simply did not give me
24 no type of defense against the kidnapping charge at
25 all.

1 Q All right. I want to discuss a couple of issues
2 that are always important here, the conduct at trial.

3 during the pretrial investigation and pretrial
4 meetings with Mr. Smith, did you all have any
5 conversations about your prior criminal record?

6 A Yes.

7 Q What was your understanding about whether your
8 prior record was going to be used against you if you
9 testified at trial?

10 A Mr. Smith told me that he did not know what the
11 judge was going to do about my past criminal record.
12 When he went through the charges that, you know, I was
13 convicted for, he said that he thought that my second
14 degree burglary charge, which was a charge of
15 dishonesty according to him, and he said that that
16 might be what he allows to come in.

17 But he was simply not sure what the judge was
18 going to do and that we would find that out once we got
19 into the pretrial motions.

20 Q All right. Did Mr. Smith give you any advice or
21 opinion one way or the other as to whether or not you
22 should testify prior to your trial?

23 A Yes. He said that -- he asked me, did I want to
24 testify.

25 Q What was your answer?

1 A And my answer was that, no, I did not want to
2 testify because of the reality of my past criminal
3 record.

4 Q Okay. If you had known that your prior record
5 was not going to be used against you, that you could
6 testify to a jury and they would not have heard about
7 that, would that have affected your decision to
8 testify?

9 A It would have. Along with -- along with he told
10 me that his trial strategy was that if I did not
11 testify that he would have the last argument and be
12 able to sort of like clean up anything that the
13 solicitor presented in their closing argument.

14 He would have the last argument and be able to
15 bring forth, you know, understandable on my behalf.

16 Q All right. I want to draw your attention now to
17 the point in the trial after the jury has been selected
18 and qualified, and then there is a pretrial motion
19 about your record.

20 Is it your understanding that it appears that
21 Judge Dennis was not going to let them use your prior
22 record again based on the age of the convictions?

23 A Correct.

24 Q This is the important question. Did you get to
25 have any fresh conversation with your lawyer after that

1 judge giving us that preliminary ruling as to whether
2 or not you wanted to testify in your own defense
3 knowing this new information?

4 A No.

5 Q Okay. Is there anything else you want to tell
6 the Court about your concerns with your representation
7 by Mr. Smith?

8 A Yes. There was one other issue that I thought
9 was real important and I wrote him about. And it was
10 like my accuser stating that oral sex had happened
11 between us. And she, inside her original statement and
12 inside the statement that she gave to the medical --
13 the nurse, she didn't mention anything about any oral
14 sex.

15 But inside the medical report, a question was
16 asked and she said, yes, oral sex happened between us.

17 Q So what you wanted was your lawyer to try to use
18 that issue for impeachment at trial?

19 A Correct.

20 Q Did he?

21 A No, he did not.

22 Q Okay. Any further concerns you want to bring to
23 the Court?

24 A No, that's all of my concern.

25 Q Mr. Bolton, if you'll answer any questions of

1 the lawyer from the attorney's general office.

2 THE COURT: Mr. Friedman.

3 MR. FRIEDMAN: Thank you, Your Honor, just
4 briefly.

5 CROSS-EXAMINATION

6 BY MR. FRIEDMAN:

7 Q Mr. Bolton, do you remember the Court
8 questioning you about your right to testify?

9 A Sir?

10 Q Do you remember the Court asking you about your
11 right to testify?

12 A Yes, I do.

13 Q And you indicated that you understood that
14 right?

15 A Yes, I did.

16 Q Do you remember telling the Court that you were
17 comfortable with making that decision?

18 A Yes, I do.

19 Q And you told the Court that you were satisfied
20 with your attorney?

21 A Yes, yes, I did.

22 MR. FRIEDMAN: Nothing further.

23 THE COURT: Anything further?

24 MR. HOLTON: Redirect on that one point.

25 REDIRECT EXAMINATION

1 BY MR. HOLTON:

2 Q Did you have any conversation with your lawyer
3 about the new information before you make that
4 decision?

5 A No, I did not.

6 MR. HOLTON: That's all I have, Your Honor.

7 THE COURT: Any further witnesses.

8 MR. HOLTON: Judge, I would go ahead and call
9 Ted Smith.

10 THE COURT: Mr. Smith, come to the witness
11 stand.

12 MR. WILLIAM TED SMITH,
13 after having first been duly sworn to state the truth,
14 the whole truth and nothing but the truth, testified on
15 his oath as follows:

16 THE COURT: You may proceed.

17 MR. HOLTON: Thank you, Your Honor, may it please
18 the Court.

19 DIRECT EXAMINATION

20 BY MR. HOLTON:

21 Q Mr. Smith, where are you currently employed?

22 A Charleston County Public Defender's Office.

23 Q How long have you been in that position?

24 A Little over eight years.

25 Q And you have your file with you on this case?

1 A I do.

2 Q And according to your records, when did you
3 undertake representation of Mr. Bolton?

4 A If I may step down, I think I may have got that.

5 MR. HOLTON: Judge, may the witness step down to
6 get additional files?

7 THE COURT: Absolutely.

8 A My file was opened in the office on July 21st,
9 2008.

10 Q (By Mr. Holton) July 21st, 2008. What was the
11 trial date in this case again?

12 A I believe it was 8/31.

13 Q End of August, 1st of September?

14 A That's correct.

15 Q Of the next year?

16 A That's correct.

17 Q So you had slightly more than a year to get to
18 know and to represent the defendant, Mr. Bolton. Is
19 that accurate?

20 A That's correct.

21 Q One of the first allegations that Mr. Bolton
22 raises in his brief is he says that his trial counsel
23 failed to conduct a proper pretrial investigation, so
24 let me talk to you about that issue more in a couple
25 minutes.

1 It sounds like Mr. Bolton had lots of
2 information about the victim, and from my conversations
3 with him some potential witnesses. Did he share that
4 information with you?

5 A He did share some information about several
6 potential witnesses.

7 Q Did he share any information about the victim
8 with you?

9 A He did.

10 Q About the nature of his relationship?

11 A He did.

12 Q What if any action did you or your office take
13 with the information that he provided as part of your
14 pretrial investigation?

15 A We went out and spoke to both the victim in the
16 case, as well as two witnesses that he asked us to
17 connect. My investigator made contact with all three
18 of those people.

19 Q Let's start with the victim. Was she willing to
20 speak with your office?

21 A She started out fairly cooperative, but promptly
22 ended that discussion and was not willing to talk to us
23 further.

24 Q All right. Did you ever have the opportunity to
25 discuss with her directly her potential motives behind

1 bringing these accusations?

2 A No, I did not.

3 Q Tell us about the two witnesses?

4 A There were two witnesses that Mr. Bolton had
5 identified as potential witnesses in his case; one was
6 Mr. Tom Green and the other a Joe Watson. And both of
7 those I asked that my investigator go out and speak
8 with them.

9 Q And as a result of that investigation, what if
10 any information did you learn?

11 A My investigator went out and spoke to both
12 parties. Mr. Watson stated that he felt like the
13 victim needed to be checked out. That was the extent
14 of what he could say about this case.

15 Mr. Green said that the victim had spoken with
16 him and he was going to check her out again and get
17 back in contact with me.

18 I was using -- and he goes on to say, I was
19 using up his minutes, meaning they were using up the
20 cell phone minutes.

21 He thought she had done the same thing to
22 another man on the east side. They were going to get a
23 petition together from people who witnessed them
24 together.

25 And my investigator at this point said there is

1 no crime in them being together, and that was kind of
2 the end of the conversation.

3 Q All right. Now it sound like it might have been
4 a pretty important issue to explore if there was an
5 allegation that the victim had made charges against
6 someone before.

7 Did your office conduct any investigation into
8 that issue?

9 A We attempted to try to get some more information
10 from Mr. Green about that, but there was no other
11 victim that we -- or no other defendant that we could
12 identify that Mr. -- or that Ms. -- that the victim in
13 this case had been involved with.

14 Q Did you ever go back to Mr. Bolton and discuss
15 this information these issues with him?

16 A I did.

17 Q And did he have any additional information for
18 you about the credibility of the witness or her motive
19 or anything along those lines?

20 A We talked at great length about what some of the
21 motivations might be. And one of the things that I
22 talked to him about in a case like it be important that
23 the jury have a motivation for why the victim may have
24 been trying to hide this relationship or lie about
25 this.

1 And he indicated to me that she was seeing
2 someone as a motivation.

3 Q All right. And certainly that would have been a
4 potential fruit for cross-examination?

5 A That's correct.

6 Q Did you ever place any of these witnesses under
7 subpoena for trial?

8 A I looked back through my file. I do not know.
9 I don't believe so because I believe shortly after our
10 contact with Mr. Green we lost contact with him and
11 didn't hear back from him.

12 Q All right. Another concern that Mr. Bolton has
13 expressed during the course of your pretrial
14 investigation, was somebody able to obtain telephone
15 records of conversations or exchanges of phone numbers
16 between Mr. Bolton and the victim?

17 A That's correct.

18 Q What can you tell us about that?

19 A There were -- we subpoenaed phone records, again
20 my investigator was involved in that. And we were able
21 to subpoena a number of phone records which would link
22 the numbers that Mr. Bolton had and the numbers that he
23 said that the victim had in this case.

24 Q All right. And would you agree with me that
25 those phone records do bear some fruit, that there were

1 apparently a number of conversations between Mr.
2 Bolton's phone number and the numbers that he
3 attributes to the victim?

4 A That's correct.

5 Q Well armed with that information, did you take
6 any action on Mr. Bolton's behalf to use that
7 information?

8 A We obviously had those records available. We
9 had someone prepared to testify if we ultimately needed
10 them to. However, at trial the victim in the case
11 admitted to multiple calls to Mr. Bolton.

12 So it was then my decision not to put -- or to
13 enter those records because of the fact that it could
14 impinge our ability to have last argument.

15 Q While we are talking -- let me stick with the
16 order that Mr. Bolton briefed the issues.

17 One of the next concerns that Mr. Bolton
18 expressed in his application was that during the
19 pretrial representation there was some friction or
20 disagreement and he sought to have a new lawyer a
21 couple of different times?

22 A That is correct. Initially, I believe when I
23 was initially appointed he raised a concern, and I
24 think that conversation took place with Ashley
25 Pennington. I wasn't involved in that particular

1 instance.

2 At a later time he also indicated that he wanted
3 new counsel which is when I had him brought before the
4 Court and that was denied.

5 Q What position did you take as to whether or not,
6 if any, what position if any did you take as to whether
7 or not he should be given new counsel?

8 A I did not take a position.

9 Q Mr. Bolton brought up the issue of exercising
10 one of his constitutional rights, in filing a speedy
11 trial motion. So the first question is were you aware
12 that your client wanted you to file a speedy trial
13 motion?

14 A I was aware of that.

15 Q And what if any action did you take to address
16 your client's concern?

17 A Initially what I spoke with him about, and this
18 continued throughout the entirety of the case, but I
19 told him that I would not file a speedy trial motion
20 until I had an entire and complete picture of the
21 evidence that they had against him.

22 Most specifically what we waited on were DNA
23 results from SLED. And then once we got those results
24 we wanted to have an independent expert look at those.
25 So it did take some time in order to have that done as

1 well.

2 Q Did it ever enter into your consideration or
3 consultation that perhaps if we could force this case
4 to trial quickly that we might catch the solicitor's
5 office off guard seeing that they would not be able to
6 present all their evidence?

7 A No, I didn't think that was actually a safe
8 strategy to take. Certainly if there had been
9 something very damaging what had occurred from SLED and
10 they were able to get it done very quickly, that could
11 have put Mr. Bolton in a very bad position.

12 Q Is it fair to say you chose caution over speed?

13 A That is correct.

14 Q Trying to see if there is any other pretrial
15 issues. All right. One of the other issues that Mr.
16 Bolton has raised pretty consistently is, and I'm just
17 going to kind of lump this all into one thing.

18 There were a number of instances where he wanted
19 evidence introduced on his behalf that he thought would
20 support a verdict for not guilty. And it is my
21 understanding that you made a trial strategy decision
22 in this case not to introduce any evidence; is that
23 correct?

24 A That's correct.

25 Q All right. Can you tell us why the opportunity,

1 and I assume your strategy was to have last argument?

2 A That's correct.

3 Q Okay. In this case why was last argument more
4 valuable to you than introducing evidence that your
5 client thought would tend to support his innocence?

6 A I felt that there was other evidence that had
7 been entered that would actually support my client's
8 position anyway. And so therefore I chose not to
9 introduce the clothing, and I chose not to introduce
10 the phone records.

11 Q All right. Then you also chose not to
12 cross-examine on the issue of whether or not there was
13 or was not oral sex; is that correct?

14 A That's correct.

15 THE COURT: I'm sorry, could you repeat that
16 question, I did not hear you clearly.

17 Q (By Mr. Bolton) I said, and you also chose not
18 to cross-examine on whether or whether or not there was
19 oral section. That was another concern.

20 Mr. Bolton -- I believe there was conflicting
21 evidence in the case or information as to what the
22 victim did or did not say?

23 A That is correct. And I thought that was pointed
24 out in testimony as opposed to introducing any type of
25 report.

1 Q Okay. So what I'm hearing from your testimony
2 is actually part of what you were basing your decisions
3 on is that the issues were already being dealt with
4 with other matters that had been testified to or were
5 in evidence at trial?

6 A That's correct.

7 Q Again just because it's a constitutional issue I
8 discussed with Mr. Bolton his decision whether or not
9 to testify. During your pretrial investigation, did
10 you come into information that Mr. Bolton had a prior
11 criminal record?

12 A I did.

13 Q And referring to your file if you need to, what
14 convictions did you become aware of if any?

15 A I know that there was -- let me refer to the
16 file.

17 During my investigation it indicated in '82 he
18 had a charge of attempted murder, conspiracy to commit
19 murder, and possession of an illegal sawed-off shotgun.

20 He also had a charge of burglary second, and
21 assault and battery of a high and aggravated nature in
22 1988. And fraudulent check in 1999.

23 Q And ordinarily, setting aside the age of the
24 convictions, convictions like that could potentially be
25 used against the client if he testified at trial; is

1 that correct?

2 A That's correct.

3 Q Were you having those kind of conversations with
4 Mr. Bolton prior to the trial?

5 A Yes.

6 Q And do you recall that there was a pretrial
7 hearing related to his prior record?

8 A I believe that there was.

9 Q Would it assist you to refer to the transcript
10 for a moment?

11 A It would. I think it's Page 36 and 37.

12 Q That's right. And you asked the Court for some
13 guidance as to whether or not the prior convictions
14 could be used against Mr. Bolton if he choose to
15 testify?

16 A That's correct.

17 Q And what was the Court's indication at this in
18 limine or pretrial stage?

19 A The Court indicated they would not be able to
20 use the prior record.

21 Q And just for the record, what was the Court's
22 reason?

23 A The Court's reason on this is it's beyond the 10
24 years.

25 Q So you had a client that could have testified

1 and these very serious, in some cases violent felonies,
2 would not have been introduced against him; is that
3 correct?

4 A That's correct.

5 THE COURT: What is the transcript page you are
6 referring to?

7 MR. HOLTON: Judge, we are referring to Page 36
8 and 37. There is just a very brief pretrial hearing,
9 and the trial judge --

10 THE COURT: Yeah, I just wanted to make sure
11 because it's made reference to later, and I wanted to
12 make sure that that was not the same part you all were
13 referring to.

14 You may continue.

15 Q (By Mr. Holton) Now you were present in the
16 courtroom while Mr. Bolton just testified; is that
17 correct?

18 A That's correct.

19 Q He testified, he affirmed under oath, he
20 testified that you did not have any further
21 conversations with him about the possibility of his
22 testifying at trial in his own defense. Would you
23 agree with that?

24 A I don't think that's correct.

25 Q Do you have any written notes to indicate that?

1 A I do not. But generally speaking at the time
2 before a judge questions the defendant about whether or
3 not he or she wishes to testify, I will again after
4 that and before that talk to them about testifying.

5 I don't have any specific notes as to that
6 though.

7 Q But you would agree, particularly when it comes
8 to the charge of kidnapping, that the testimony of the
9 defendant under certain circumstances could be valuable
10 testimony?

11 A It's very valuable testimony. And actually, I
12 had indicated early on, because of the allegation not
13 only of the kidnapping but we are dealing with criminal
14 sexual conduct first degree as well, that I thought it
15 was probably a good idea for Mr. Bolton to testify
16 regardless of his prior record and whether that
17 encompasses not?

18 A So you disagreed with his testimony before the
19 Court today?

20 A I do.

21 Q But you don't have any written records that
22 support your testimony?

23 A I do not.

24 Q The least certain point I want to go into -- and
25 then I'm going to ask a little bit for the Court's

1 indulgence -- as you look through the transcript of
2 this trial as a whole, it would appear that you are
3 focusing most if not all of your energies on defending
4 the criminal sexual conduct charge. Is that accurate?

5 A I actually think they kind of are paired up and
6 go one in the same. I will say that I think there was
7 more objective evidence about the criminal sexual
8 conduct then there was about the kidnapping, especially
9 in light of Mr. Bolton's decision not to testify.

10 Q Well you placed -- certainly had a trial
11 strategy that was placing emphasis on your closing
12 argument; is that correct?

13 A That's correct.

14 Q Most of your closing argument you are talking
15 about objective facts that you believe are in evidence
16 that the jury cannot disagree with; is that correct?

17 A That's correct.

18 Q All right. Do you, each time you bring up these
19 facts, do you link them to the charge of kidnapping and
20 ask that the jury find your client not guilty of the
21 kidnapping?

22 A I do not.

23 MR. HOLTON: Judge, may I have a moment of the
24 Court's indulgence, please.

25 THE COURT: Absolutely.

1 MR. HOLTON: I don't have any further questions.

2 THE COURT: Any questions for the witness, Mr.

3 Friedman?

4 MR. FRIEDMAN: Yes, thank you.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. FRIEDMAN:

8 Q Mr. Smith, how long have you been practicing
9 law?

10 A Nine years.

11 Q How much of time has been in criminal law?

12 A The entire time.

13 Q Do you recall if you discussed the elements of
14 the charges and what the State was required to prove?

15 A We did.

16 Q Did you discuss potential defenses?

17 A We did.

18 Q You heard the applicant testify that with the
19 kidnapping charge, he testified that you had no defense
20 to that charge. Would you agree to that?

21 A No. I think there was a defense to that charge
22 that's contained in both the testimony and I believe in
23 my closing argument, though I may not have said the
24 kidnapping specifically.

25 Q Do you recall Judge Dennis only charge part of

1 the kidnapping statute?

2 A He did.

3 Q What part was that?

4 A He charged the restraining portion of the
5 kidnapping statute.

6 Q Do you think that was to your client's benefit?

7 A I'm not sure whether it was to his benefit or
8 not. There was certainly testimony about how the
9 victim had been restrained and the manner in which she
10 had been restrained, and there was objective evidence
11 that was inconsistent with that.

12 Q Do you recall if you discussed the applicant's
13 rights to testify with him?

14 A I did.

15 Q Did you explain to him that you would have the
16 last argument if he did not testify or present
17 evidence?

18 A I did.

19 Q Whose decision was it for him not to testify?

20 A It was his decision.

21 Q Do you recall if you were able to cross-examine
22 the victim about her relationship with the applicant?

23 A I did. I was able to cross-examine her at
24 trial.

25 Q Do you recall if she admitted that there was

1 a prior relationship prior to the day of the incident?

2 A She did admit that they -- that Mr. Bolton had
3 given her rides on several occasions, and that she had
4 talked to him on the phone several times.

5 Q Do you recall if there was any point where you
6 requested a continuance prior to the trial?

7 A That's correct. It was initially placed on --
8 I'm sorry I don't have the exact date -- but it was
9 placed on a trial docket. At that point we had just
10 received the information from SLED, the DNA analysis.

11 And at that point I immediately contacted an
12 expert for the defense and he said that it would take
13 at least a couple of weeks for him to look at that.
14 And that's when I filed the motion for continuance.

15 Q I believe you testified that the applicant gave
16 you the names of two witnesses to contact?

17 A That's correct.

18 Q I believe it was Tom Green and Joe Watson; is
19 that correct?

20 A That's correct.

21 Q Do you think those two witnesses would have
22 helped the defense at trial?

23 A I don't have any reason to believe -- they kind
24 of became uncooperative, so I cannot tell you if they
25 would have added anything else or not.

1 They certainly didn't seem to be able to give
2 anything other than kind of insinuated things about the
3 victim in the case.

4 Q Is it correct that the victim would not speak to
5 you?

6 A She spoke to my investigator for during a brief
7 conversation. But it was -- I spoke to my
8 investigator, it was probably about a three minute
9 conversation and she abruptly hung up.

10 MR. FRIEDMAN: I have nothing further, Your
11 Honor.

12 THE COURT: Any redirect?

13 MR. HOLTON: No, Your Honor.

14 THE COURT: Any objection to the witness being
15 excused?

16 MR. HOLTON: No, Your Honor.

17 MR. FRIEDMAN: No, Your Honor.

18 THE COURT: Sir, you are excused.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 Anything further from the applicant?

22 MR. HOLTON: No further witnesses, Your Honor.

23 THE COURT: Does the State have any witnesses?

24 MR. FRIEDMAN: No witnesses, Your Honor.

25 THE COURT: Glad to hear any argument.

1 MR. HOLTON: Thank you, Your Honor, please the
2 Court.

3 I believe Mr. Bolton's position is that he
4 testified to a number of issues, a number of concerns
5 that he had with his lawyer both before the trial and
6 during the trial.

7 It seems that the lawyer took a particular trial
8 strategy trying to obtain and preserve last closing
9 argument and did not waiver from that. It is my
10 understanding that Mr. Bolton's position that he thinks
11 it would have been better to waiver from that and offer
12 up some evidence on his behalf.

13 Obviously we have directly conflicting testimony
14 between the two witnesses as to whether or not Mr.
15 Bolton had further conversations in wanting to take the
16 stand. Mr. Smith testified that he encouraged his
17 client, but he doesn't have any written documentation
18 of that. Mr. Bolton says he was discouraged from
19 testifying.

20 So, Judge, cumulatively I would ask to you find
21 that there was an ineffective assistance of counsel in
22 this case, and that but for that the results of this
23 case at trial would have been different.

24 THE COURT: Anything from the State?

25 MR. FRIEDMAN: Thank you, Your Honor. The State

1 would submit that the applicant has failed to meet his
2 burden. The testimony indicates that Mr. Smith
3 conducted a proper investigation. He tried to speak
4 with the victim and any witnesses that the applicant
5 provided him with. Ultimately the victim chose not to
6 speak with him, and the two witnesses were
7 uncooperative.

8 As far as the phone records, on
9 cross-examination the victim admitted that she had
10 multiple phone calls with the applicant. Mr. Smith did
11 not think that was something that he needed to enter
12 into evidence. And after his discussions with the
13 applicant about last argument and his right to testify,
14 the applicant ultimately decided not to testify.

15 And we would submit that it was a valid trial
16 strategy not to submit any evidence or provide any
17 testimony. And we would ask the Court to deny the
18 application.

19 THE COURT: The case law is very clear, and just
20 in the interest of time I'm not going to repeat what we
21 all already know the applicable standard to be.
22 However, the applicant does have the burden of proof.
23 And I may take these in a reverse order dealing with
24 the transcript.

25 And I will say for the record that what I find

1 most compelling is the contemporaneous record, what
2 took place actually at that time. Hindsight is a funny
3 thing, and memories can wane as time goes on.

4 So what actually happened in the record of that
5 is what the Court finds most compelling. However, I
6 will note for the record that I do find the testimony
7 of Mr. Smith to be persuasive and credible.

8 I find for the record that he did meet with his
9 client adequately, and that is corroborated by the
10 testimony of the applicant that he understood his talks
11 with him, that he went through the discovery, as well
12 as any potential defenses and witnesses with him.

13 I do find credible that his investigator did try
14 to track those witnesses down, and did in fact have
15 some limited communication with them, and at some point
16 they did become uncooperative.

17 So I do find his testimony credible that it is
18 hard to say, at least at this point, whether they would
19 have added anything to this trial, and certainly not
20 rising to the level of being able to exculpate the
21 defendant on the charge of kidnapping other than that
22 which would have risen to the level of insinuation.

23 There are several issues the defendant raises
24 regarding the reasonable performance of his counsel,
25 none of which rise to the level of ineffective

1 assistance of counsel; none of which undermine the
2 Court's confidence in the outcome of the trial, or
3 anything that would indicate the outcome of the trial
4 would have been different absent these things that the
5 applicant complains of.

6 And again I may take these a little out of
7 order, and I apologize if I do. The applicant
8 indicated that he had some problem with his attorney
9 failing to file a speedy trial motion. That certainly
10 would not rise to the level of ineffective assistance.

11 Having heard many of those motions, having
12 reviewed this record, there is nothing that would have
13 indicated that a speedy trial motion would have been
14 granted, and that it would have been anything other
15 than superfluous in this case.

16 The amount of pre-detention time that he served
17 was not unreasonable under the circumstances. And
18 there are many others that have served really
19 significantly more time. And our Supreme Court has not
20 indicated that is a basis for a motion for speedy trial
21 or relief under that theory.

22 And in addition to that, there is no indication
23 in the record that the State had been dilatory
24 deliberately in some way as to prevent the matter from
25 coming to trial, other than ordinary course of there

1 being clogged dockets, and just the time it takes for a
2 trial to be placed on a trial roster.

3 So there is no indication that Mr. Smith was
4 ineffective for failing to file it. And there is no
5 indication in the record that it would have been
6 granted even if it had been filed.

7 Now as it regards the issues for the removal of
8 Mr. Smith, those are all completely beyond his control.
9 He testified that he took no position on the request
10 that he be removed, and there is really no indication
11 in the record that it would have been granted.

12 I haven't heard anything that would have risen
13 to the level of Mr. Smith having been removed as
14 counsel in this case. The record indicates that he was
15 ready for trial and that he was a zealous advocate for
16 his client.

17 But even above and beyond that, whether -- the
18 decision of whether a lawyer is removed is one solely
19 for the Court, and that is an issue for direct appeal.
20 So there is nothing that Mr. Smith could have done to
21 have facilitated it.

22 Even if he had come to court and said, I agree
23 with him, there is no guarantee the Court would have
24 granted it. And in all likelihood, it would have been
25 denied. So there is no indication that he was

1 ineffective for that basis.

2 Again that's beyond his control. It's within
3 the sole discretion of the Court whether someone is
4 removed or not. And it's unlikely, based on this
5 record, that that would have been successful.

6 As regards the admissability of the clothing and
7 the phone records. There is no indication in the
8 record of the necessity of the phone records being
9 admitted with the victim in this case, or the accuser
10 as she has been referred to, indicating and agreeing
11 and admitting for the record that they had a
12 relationship, that in fact there had been multiple
13 calls, and that there was close communication near the
14 time of this event.

15 So as a matter of strategy, and that being
16 preserving last argument, there would have been no
17 basis to admit that which would have been cumulative.
18 Now if she had denied it that's different because it
19 could have been used for impeachment. But there would
20 have been no purpose for it because she did not deny
21 this.

22 As regards -- and again I may be going a little
23 out of order -- the admissability of the clothing.
24 Again that was a matter of valid strategy to preserve
25 last argument where the clothing really would not have

1 added appreciably as regards to her credibility.

2 Again I've read the record, and there were many
3 other issues or line of questioning pursued that
4 attacked her credibility. So it really as it regards
5 -- and the clothing goes more to the CSC, which he was
6 acquitted of, than the kidnapping.

7 Kidnapping requires very little, it's a very
8 minimal element. And all the State has to prove on
9 kidnapping is that the defendant knowingly and
10 unlawfully seized, confined, inveigled, decoyed,
11 kidnapped, abducted or carried away another person
12 without authority of law.

13 It really does not have to involve force.
14 Except seize means suddenly or forcibly. But you can
15 confine somebody, kidnap them, without ever putting
16 your hands on them. You can threaten them and obscure
17 their ability to leave, that's still kidnapping.

18 So I don't know that the clothes would have
19 added anything appreciable to that. And again, when
20 weighed against the valid strategy of preserving last
21 argument, especially where credibility is such a
22 crucial issue in this case, the Court would observe
23 that that is a valid strategy, to have the last word
24 where credibility is an issue.

25

1 There has been some argument that there was a
2 failure to object because Mr. McCoy made an inaccurate
3 statement of the law. Again I have reviewed the
4 record, and at Page 77 the victim testified that her
5 clothes were taken off forcibly.

6 And so -- and I have read Mr. McCoy's closing
7 argument and he basically restates what she testified
8 to, so that's an accurate statement. Now whether he
9 says it differently than she says is really not the
10 issue. He is required to argue what the evidence
11 shows, and he did argue that. So there would have been
12 no basis for Mr. Smith to have objected to that.

13 I do not see any evidence in the record that he
14 failed to mount a defense on the charge of kidnapping.

15 Now as it regards the issue of his prior
16 criminal record. The record simply does not support
17 his allegation or his contention that he did not have a
18 full opportunity to discuss this with his lawyer.

19 The preliminary discussion with the judge takes
20 place very early in the transcript. It is not until
21 the end of the State's case where he is advised of his
22 right to testify.

23 And the Court goes into an extended colloquy
24 with him about that, from Page 250 to 254. And it
25 simply does not support his contention that he did not

1 have the ability to make an honest, knowing and valid
2 decision regarding his right to testify.

3 And without me belaboring it, the Court goes
4 through it with him thoroughly, and asks him about his
5 ability to talk about it with his lawyer, and the whole
6 colloquy with him.

7 So there is just no support in the record that
8 he didn't have the right to testify -- that he didn't
9 have adequate opportunity to revisit this issue. He
10 had the whole trial to revisit the issue. Because the
11 colloquy with the Court took place very early regarding
12 whether his prior convictions would have been
13 admissible against him.

14 What I find most compelling in the record is the
15 last few conversations or colloquy that the Court has
16 with him, Judge Dennis very clearly instructs him that
17 this isn't final. That he will not bring the jury back
18 in. If you change your mind, you need to let me know.
19 And he indicates that he understands that.

20 And I'm paraphrasing what Judge Dennis said, but
21 he goes through it with him and says, you understand
22 that even though I've gone through this with you, it's
23 not final. And if you should talk with your lawyer and
24 decide that you want to change your mind, then it's not
25 final until I say to your lawyer, do you have anything

1 to present, and he rests.

2 So he gives him very adequate opportunity to
3 change his mind. He says, at that moment that decision
4 that you have just discussed with me will become final.
5 But until that point, if you change your mind, if you
6 will just let Mr. Smith know, I can excuse the jury
7 again and we will revisit this issue.

8 But if I don't hear anything from you, I am
9 going to assume that you stand by your decision. Is
10 that fair, sir. And he answered, it is. And that
11 starts at Page 253 and goes on to Page 254.

12 So the colloquy, which is the contemporaneous
13 recording of what took place at that time, simply does
14 not support that he did not have a full and adequate
15 opportunity to discuss with his lawyer whether he
16 should testify, and that he was fully informed that his
17 record would not be used against him.

18 Again it reflects, however, the valid strategy
19 that he wanted to preserve last argument. Which again
20 is a strategy that is employed every day by defense
21 lawyers. And it is a valid one. It is a valuable tool
22 to keep in your arsenal in defending a case.

23 And apparently it worked to some extent because
24 he was acquitted of the criminal sexual conduct charge
25 which really was a direct bearing on the credibility of

1 the accuser, or the victim. However, the jury could
2 still have believed, which it appears, that they had an
3 ongoing relationship however that soured. And that she
4 was being held against her will, even though the sexual
5 contact, or some form of sexual contact, may well have
6 been consensual or started out consensual.

7 So the record simply does not support those
8 assertion.

9 The fact that he did not mention oral sex, or
10 the consensual act of oral sex, really in the grand
11 scheme of things doesn't amount to making this Court
12 have any doubts regarding this verdict or that the
13 outcome would have been different because ultimately he
14 was acquitted of the criminal sexual conduct.

15 So it would have been used to impeach her, but
16 in this instance the net affect would have been a
17 nullity since he was acquitted of that charge.

18 And there has been some discussion about whether
19 it enured to his benefit that the judge only charged
20 the restraining portion of the kidnapping statute, I
21 think it clearly did enure to his benefit. The State
22 does not have to prove all of those elements, it only
23 has to prove one.

24 And there are several parts of it. And most of
25 which were less -- required really to some extent a

1 lesser burden of proof because it required the State to
2 prove less.

3 So it's almost like the judge placed -- not
4 placed a higher burden on the State because the State
5 has the burden of proof, but certainly I think that
6 enured to his benefit.

7 Again as it regards the other witnesses, it
8 appears they were uncooperative. So there is no
9 indication in the record they would have offered any
10 exculpatory evidence to the defendant's benefit.

11 And there was, which really I'm surprised that
12 the victim spoke to the investigator at all because
13 normally they don't. The fact that they had a short
14 conversation is an indication of the persuasiveness of
15 Mr. Smith's investigator because normally they won't
16 answer the phone or return phone calls or speak with
17 you which they don't have any obligation to do so.

18 Now there has been some indication of the
19 applicant's dissatisfaction with certain decisions that
20 Mr. Smith made regarding the strategy of this case.
21 And again, without belaboring the hour, the Court would
22 acknowledge for the record -- and sometimes clients
23 misunderstand this -- it's not an attorney's job to do
24 what you want them to do, it's their job to do what is
25 in their professional judgment and your best interest,

1 which means sometimes you will disagree. Most times
2 you'll disagree.

3 Because a lay person's understanding of the
4 system is very different than what the law actually is.
5 So while an attorney is required to explain and to
6 discuss strategy, it is not their job to do what you
7 direct them to do.

8 So the record reflects that he discussed the
9 strategy, that is was a valid strategy, and that he
10 employed it. And whether his client disagreed with
11 that does not mean he was ineffective.

12 Again, based on the totality of this record,
13 there is nothing that would undermine the outcome, and
14 therefore the motion for post-conviction relief is
15 denied.

16 I have done a Form 4 on that issue. Mr.
17 Friedman will do an order which outlines findings of
18 facts and conclusions of law consistent with the
19 record. That will be provided to Mr. Holton by e-mail
20 as well.

21 And if you have anything you want to add to the
22 order or otherwise, please let us know, Mr. Holton.
23 And that will be submitted to the Court within 20 days
24 of today.

25 MR. HOLTON: Judge, the question I would have is

1 how much time will you give me to review this order?
2 Because I may have to go to McCormick to discuss it
3 with my client.

4 THE COURT: It takes me time because I don't
5 ever sign them just like they're submitted to me. So
6 as they come in, we review them and I usually make
7 additional charges.

8 So you'll probably have -- if you are looking at
9 it and you have some concern, let us know and we will
10 sort of take that one as it comes.

11 MR. HOLTON: So there's no specific time
12 requirement?

13 THE COURT: He is going to get it to us in 20
14 day. So he'll give it to you the same time he gives it
15 to us. I would imagine, though, you looking through it
16 will give you some initial indication. And if you have
17 some initial concern, please let us know and then we
18 will cross that bridge.

19 MR. HOLTON: Thank you.

20 THE COURT: You're welcome.

21 (Whereupon, the proceedings in this matter
22 before the Court were adjourned.)

23 * * * * *

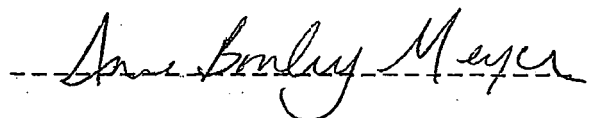
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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
complete transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto.



Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Thurston M. Bolton, #115095,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-6416

ORDER OF DISMISSAL

FILED
2011 NOV -3 AM 9:59
JULIE J. ARMSTRONG
CLERK OF COURTPresiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:Deadra L. Jefferson
David M. Holton, Esq.
Matthew J. Friedman, Esq.
Ted Smith, Esq.
September 14, 2011
Anne Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 9, 2010. The Respondent filed its Return on March 29, 2011. An evidentiary hearing into the matter was convened on September 14, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by David M. Holton, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Ted Smith, Esquire, also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the affidavit indicating that Applicant wished to withdraw the appeal, the Court of Appeals' Order of Dismissal dated June 24, 2010, the Remittitur dated July 14, 2010, the PCR application, and the State's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the June 2008 term of the Charleston County Grand Jury for criminal sexual conduct (CSC), first degree (2008-GS-10-4635) and kidnapping (2008-GS-10-4637). Ted Smith, Esquire, sitting first chair, and Mary Ford, Esquire, sitting second chair, represented the Applicant. The Applicant proceeded to trial on August 31–September 1, 2009, after which a jury found him not guilty of CSC, first degree and guilty of kidnapping. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for twenty (20) years for kidnapping.¹

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Applicant signed an affidavit dated June 18, 2010 indicating he wished to withdraw the appeal. The Court of Appeals issued an Order of Dismissal on June 24, 2010 and a Remittitur on July 14, 2010.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to conduct a proper pre-trial investigation (i.e., subpoena witnesses, introduce telephone records, produce and show the blue towel found in Applicant's car with no positive test results).
 - b. Failed to concur with Applicant when Applicant requested twice formally that counsel be relieved from the representation of Applicant.
 - c. Failed to carry out the objectives and directives of Applicant (i.e., failed to properly file speedy trial motion, failed to professionally and competently represent Applicant).
 - d. Failed to properly introduce accuser's clothes into evidence for jury consideration.
 - e. Failed to introduce evidence of accuser stating that oral sex occurred between accuser and Applicant.

¹ Pursuant to S.C. Code Ann. 16-3-910, the charge of kidnapping carries a maximum penalty of thirty (30) years.

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- f. Failed to object to solicitor's misconduct (i.e., Assistant Solicitor Peter McCoy states in closing argument that Applicant rips accuser's clothes off, Assistant Solicitor Adam Young states that accuser runs out at 5:00 PM).
- g. Failed to object to state witness Michelle Emerson's statement giving the wrong time when she stated that it was 6:00 when she went to the store on the date of this incident.
- h. Failed to object to the jury returning a legally inconsistent verdict.
- i. Counsel's statement to the jury that he cannot explain the reasons that accuser was bringing these false allegations is unfounded because Applicant provided counsel with the reasons.
- j. Failed to request a lesser-included offense in regard to the kidnapping indictment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified he originally had two (2) retained attorneys, but applied for a public defender due to the expense of a retained attorney. He testified the case was four (4) to five (5) months old when the public defender took over. Applicant testified he had several meetings with trial counsel at the jail in addition to phone conversations and video conferences. He asserted he understood the conversations about potential witnesses, witness statements, and evidentiary matters. He testified he maintains his innocence, and he communicated to counsel that he did not want to plead guilty. He further testified he had several disagreements with counsel and attempted to have another attorney appointed. Applicant filed a PCR in 1989 against a public defender in another case, and Applicant felt this formed a conflict of interest. Applicant's Motion to be Relieved was denied by the Honorable Roger M. Young. Applicant

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asserted he asked counsel to file a speedy trial motion, but counsel failed to do so because he wanted to wait until he received the DNA analysis. Based on counsel's failure to file a speedy trial motion, Applicant testified he filed a second Motion to be Relieved. Applicant's second motion was denied by the Honorable R. Markley Dennis, Jr. He testified he was scheduled to go to trial June 1, 2009, but counsel filed a motion for a continuance.

Applicant testified counsel failed to introduce evidence at trial that was in Applicant's favor. He testified he wanted clothing entered into evidence to show that he did not rip the clothing off of the victim. Applicant testified counsel should have entered the phone records into evidence to show there was a prior relationship between the victim and the Applicant. He also felt counsel should have cross-examined the victim regarding a prior statement that she and the Applicant engaged in oral sex. He asserted counsel failed to object to the solicitor's closing statement in which he stated the Applicant ripped the victim's clothes off. Applicant testified counsel provided no defense for the kidnapping charge and focused solely on the CSC, first degree charge. He asserted he would have testified if he had known his prior record would not have been used against him. Applicant testified he discussed his right to testify and last argument with counsel.

Trial counsel testified he had over one (1) year to get to know Applicant and prepare his case. Counsel testified Applicant identified two (2) potential witnesses and informed counsel of his relationship with the victim. He testified Applicant informed him the victim was seeing someone, and thought this may be her potential motivation. He testified an investigator made contact with the victim and the two (2) witnesses, Tom Green and Joe Watson. He testified the victim was cooperative at first but shortly thereafter ended all communication with the public defender's office. He testified Mr. Watson thought the victim needed to be checked out, and Mr.

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Green thought the victim had done the same thing to another guy in another part of town. Counsel testified he had no reason to think either of these witnesses would offer anything at trial other than to insinuate things about the victim, and, furthermore, the witnesses eventually became uncooperative. Counsel testified he subpoenaed the phone records, and they linked Applicant's number to the victim's number. He testified he had a witness available to testify regarding the phone records, but he did not call the witness or admit the records at trial because the victim admitted to multiple calls with Applicant, and counsel did not want to lose last closing argument. He testified he cross-examined the victim about her relationship with Applicant, but chose not to cross-examine the victim regarding an earlier statement that oral sex occurred between she and the Applicant because he felt it was already laid out in the testimony.

He testified he was aware his client wanted him to file a speedy trial motion, and he told Applicant he would not file a speedy trial motion until he had a complete picture of the evidence. Counsel testified he wanted the DNA results and an independent evaluation of the DNA results, thus, choosing caution over speed. He asserted he filed a continuance motion, because he had just received the DNA analysis from SLED, and it would take weeks to be reviewed by an expert. Counsel testified he made a strategic decision not to enter evidence to preserve last closing argument. He asserted there was other evidence entered that supported Applicant's position. Counsel testified he discussed Applicant's prior record with him. He testified the trial court ruled in a pre-trial hearing that the State could not use any prior conviction beyond ten (10) years. He asserted he told Applicant early on that it was probably a good idea to testify even if his prior record came in. He testified it was Applicant's decision not to testify. Counsel testified he did raise a defense for the kidnapping in his closing argument. He asserted Judge Dennis charged only the restraining portion of the kidnapping statute.

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Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

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This Court finds Applicant's testimony is not credible while also finding that trial counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has nine (9) years of experience in the trial of serious criminal offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, discovery, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Counsel had an investigator speak with the two (2) witnesses named by the Applicant, as well as the victim. The Court notes the fact the victim spoke to counsel's investigator shows the persuasiveness of the investigator. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds counsel made a valid strategic decision not to call any witnesses or present any evidence to preserve last closing argument. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292,

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294, 454 S.E.2d 312, 313 (1995). Counsel's strategy will be reviewed under "an objective standard of reasonableness." Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Here, counsel testified the witnesses he spoke with were not helpful and eventually became uncooperative. He testified the phone records were not necessary, because the victim admitted to multiple calls near the time of this event and a prior relationship with Applicant. Counsel testified he did not enter the victim's clothing into evidence, because there was other evidence that supported Applicant's position and he wanted to preserve last argument. Moreover, the clothing would have gone to support Applicant's position on the charge of CSC, first degree, of which the Applicant was acquitted; thus, the victim's clothing would have made no appreciable difference in the outcome of the case. This Court finds that further evidence regarding the phone conversations or victim's clothing would have been cumulative to evidence already in the record. This Court finds counsel's trial strategy to preserve last argument was valid and reasonable, particularly because credibility was an issue in this case.

This Court also finds counsel was not ineffective for failing to cross-examine the victim about a prior statement that she and the Applicant engaged in oral sex. Counsel could have used the victim's prior out-of-court statement to impeach the victim's testimony which did not include any mention of oral sex between the two. (Tr. 111:15:22.) However, counsel's failure to cross-examine the victim on this issue is a nullity since he was acquitted of CSC, first degree.

This Court finds counsel made a valid strategic decision in not filing a speedy trial motion. Counsel testified he told Applicant he would not file a speedy trial motion until he had reviewed all of the evidence and was prepared to go to trial. This Court finds there is nothing to indicate the motion would have been granted. Furthermore, this Court finds Applicant did not have an unreasonable detention prior to proceeding to trial. Moreover, this Court notes it is not

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an attorney's responsibility to do everything a client asks him to do. Counsel was only required to explain and discuss strategy and put up a meritorious defense which he did. Counsel's failure to file a speedy trial motion was not dilatory and does not rise to the level of ineffective assistance of counsel.

This Court finds counsel did not fail to concur with Applicant when he requested in two (2) separate motions that counsel be relieved. Counsel testified he took no position as to whether he was to be relieved as Applicant's counsel. This Court finds counsel had no control over whether he was relieved; the court had sole discretion and chose to deny Applicant's motion on both occasions. Furthermore, this is a direct appeal issue procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue in a motion for reconsideration or on appeal. His failure to do so waives this allegation as a ground for relief. Though a direct appeal issue, this Court notes there is no indication in the record counsel should have been removed.

This Court finds it was Applicant's decision not to testify. Counsel and Applicant testified they discussed Applicant's prior record and last argument. At trial, Applicant told the trial court he had sufficient time to reflect on his decision not to testify, he was satisfied with the manner in which counsel advised him concerning this issue, and he was comfortable with his decision not to testify. (Tr. 250:19-253:11.) This Court also finds it inured to Applicant's benefit that the trial court only charged the restraining portion of the kidnapping statute, because it, in essence, placed a higher burden of proof on the State. (Tr. 310:20-312:8.)

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This Court finds counsel had no basis to object to the solicitor's remark in closing about the victim's clothes being forcibly removed. (Tr.268:16-22.) The victim testified the Applicant took her clothes off "by force." (Tr. 77:19-20.) When asked how he took her pants and shirt off, the victim testified Applicant was "rough" when taking off her pants and was "aggressive" when taking off her shirt. (Tr. 77:21-78:8.) The solicitor's remark merely re-states what the victim's testimony shows. This Court finds that counsel was not ineffective for failing to object to the solicitor's closing argument.

This Court finds counsel presented an adequate defense to the offense of kidnapping in light of the facts adduced at trial. In his closing argument, counsel noted the victim had been in the car with Applicant before, that he never charged her for rides, that there was no force or coercion to get her into the car, and that they had been out to dinner before. (Tr. 295:3-297:23.) This Court finds counsel adequately represented Applicant of both charges.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to

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present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

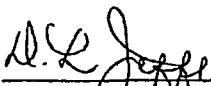
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 28th day of October, 2011.



 The Honorable Deadra L. Jefferson
 Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

PMC20080301897

WITNESSES

JOHN WILSON

North Charleston Police Department

AGENCY CASE NUMBER

2008012381

ARREST WARRANT NUMBER

K297994

DATE OF ARREST

2008-03-22

ACTION OF GRAND JURY

TRUE BILL
TRUE BILLEddie Cochran
Foreperson of Grand Jury
Date:

JUN 10 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1004637

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2008

THE STATE

vs.

THURSTON MAURICE BOLTON

DOB: 1964-07-09

B/M

Indictment for

Kidnapping

FILED

2008 JUN 13 AM 11:09

JULIE J. ARMSTRONG
CLERK OF COURT

68-1932(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

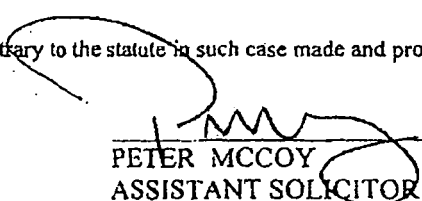
INDICTMENT

At a Court of General Sessions, convened on June 9, 2008 the Grand Jurors of Charleston County present upon their oath:

Kidnapping

That in Charleston County, South Carolina, on or about March 22, 2008, the Defendant, THURSTON MAURICE BOLTON, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Shaquinn McNeil, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


PETER MCCOY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
THURSTON MAURICE BOLTON
 AKA:
 Race: B Sex: M Age: 45
 DOB: SS#
 Address:
CHARLESTON, SC 294030000
 DL#: SID#:

INDICTMENT/CASE#: 2008GS1004637
 A/W#: K297994
 Date of Offense: 3/22/2008
 S.C. Code §: 16-03-0910
 CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 IO: Kidnapping

☒ CONVICTED OF or ☐ PLEADS

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 §17-25-45
 w/minor 1st or Lewd Act)

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:

McCoy, Peter

73846
 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 20 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 ☐ Def. Waives Hearing ☐ Ordered PTUP

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	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 47-12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(1) (Vehicle Assessment)	\$40/ea	\$
§ 90.7 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

of Court Deputy Clerk

By: D. Garrison

06/2009)

_____ 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 Public Defender Fund

Other: _____

not required to register as
a sex offender

☐ Appointed PD or appointed other counsel, \$47.12
 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2

Sentence Date: 9/1/09