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**Jan 17 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Charleston County

Honorable Donald B. Hocker, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CHAD LAVICTOR SIMMONS,

APPELLANT

APPELLATE CASE NO. 2022-001729

---

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:  
STATE’S EXHIBIT NO. 46 (CD 911 RECORDING), STATE’S EXHIBIT NO. 47 (DVD  
INTERVIEW 9/22/18), AND STATE’S EXHIBIT NO. 48 (DVD INTERVIEW 9/25/18).**

|                          |   |                           |
|--------------------------|---|---------------------------|
| State Of South Carolina  | ) | Court of General Sessions |
| County of Charleston     | ) |                           |
|                          | ) | Indictment Numbers        |
| STATE OF SOUTH CAROLINA, | ) | 2019-GS-10-04403          |
|                          | ) | 2019-GS-10-04404          |
| Plaintiff,               | ) | 2019-GS-10-04405          |
|                          | ) |                           |
| vs.                      | ) | JURY TRIAL                |
|                          | ) | Transcript of Record      |
| CHAD LAVICTOR SIMMONS,   | ) |                           |
|                          | ) |                           |
| Defendant.               | ) |                           |
| _____                    | ) |                           |

November 28-December 1, 2022  
Charleston, South Carolina

B E F O R E:

The Honorable Donald B. Hocker, Judge; and a jury

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

MR. B. CHAD SIMPSON  
and MR. NICHOLAS B. URICCHIO,  
Assistant Solicitors,  
for the Plaintiff;

MS. MARY A. FORD  
and MR. BRENDAN M. DANIELS,  
Assistant Public Defenders,  
for the Defendant.

Jamie Bickett  
Official Court Reporter

1 THE COURT: Okay.

2 (Witness sworn.)

3 THE COURT: You may have a seat.

4 THE WITNESS: Thank you.

5 CLERK OF THE COURT: Please state your name for the  
6 record and spell your last name.

7 THE WITNESS: Elizabeth Wolfson, W-O-L-F-S-E-N.

8 ELIZABETH WOLFSEN,

9 called as a witness on behalf of the State in the matter of a  
10 pretrial motion, being first duly sworn, was examined and  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SIMPSON:

14 Q. Detective Wolfson, who do you work for?

15 A. Charleston Police Department.

16 Q. And how long have you worked for the Charleston Police  
17 Department?

18 A. Little over 12 years now.

19 Q. If you could, just kind of briefly recount for the Court  
20 your educational background.

21 A. I have a bachelor's degree in criminal justice and  
22 psychology. I also have a master's degree in social sciences  
23 and a graduate certificate in leadership.

24 Q. Okay. And following that education, is that when you  
25 became employed by the Charleston Police Department?



1 A. Yes, sir. I attended the Criminal Justice Academy in  
2 2010.

3 Q. Okay. And if you could, just briefly summarize sort of  
4 your job and roles you've played for the Charleston Police  
5 Department during your 12-year career.

6 A. Sure. I started as a patrol officer. I worked the  
7 majority of my time downtown. I started doing sort of  
8 low-level investigations in 2015. I then went to our field  
9 intelligence unit, worked there for about a year. I moved  
10 from there to our special victims unit as a detective. That  
11 was in the beginning part of 2018. I went from there to our  
12 violent crime, or homicide, division kind of the end of that  
13 year and worked there until the very end of 2019, maybe the  
14 beginning of 2020.

15 I was promoted and became a sergeant, went to patrol  
16 squad for a few months. I then went from there to internal  
17 affairs, and I did investigations for internal affairs  
18 division for about a year and a half. And since then, I'm a  
19 public information officer, so essentially the spokesman for  
20 the police department.

21 Q. Okay. And currently still a sergeant for the police  
22 department?

23 A. Yes, sir.

24 Q. Okay. Sergeant Wolfsen, to backtrack a little bit,  
25 remind us where were you positioned in September of 2018.

1 A. I was assigned as a detective in the special victims  
2 unit.

3 Q. And is one of the roles of a detective the interrogation  
4 of potential witnesses and suspects?

5 A. Yes, sir.

6 Q. And in that vein, did you have occasion in September of  
7 2018 to interview the individual seated here?

8 A. Yes, sir.

9 Q. And who is that?

10 A. That's Mr. Chad Simmons.

11 Q. Okay. And at the time of your interview of Mr. Simmons,  
12 did you have executed arrest warrants for him?

13 A. We had picked him up pursuant to arrest warrants, yes,  
14 sir.

15 Q. Okay. And you weren't involved in the actual picking up  
16 of Mr. Simmons, were you?

17 A. No, I was not.

18 Q. Okay. And how did you come to learn that Mr. Simmons  
19 had been arrested or detained?

20 A. I had received a phone call. I had been at work that  
21 day. I had since gone home and received a phone call that he  
22 had been arrested and in the process of being brought back  
23 down to the police station. So I came back to work.

24 Q. And then approximately what time was that?

25 A. I believe he was picked up shortly after 1 a.m. I got

1 the phone call pretty shortly thereafter and made it down to  
2 the station a little after 2:00.

3 Q. Okay. And your purpose, again, of coming back to the  
4 station was what?

5 A. To speak with Mr. Simmons.

6 Q. Okay. In relation to these charges?

7 A. Yes, sir.

8 Q. Okay. Tell the Court a little bit about how you go  
9 about conducting an interview of the person of a suspect.

10 A. So generally I come into the room, ask if they need  
11 water, snack, anything like that, use the bathroom. I  
12 introduce myself and then just sort of get some general  
13 demographic information and then present them with a Miranda  
14 warning.

15 Q. Okay. And are they -- is this discussion typically  
16 conducted on audio and video?

17 A. Yes. The room -- I audio recorded it on a handheld  
18 recorder, and the room is additionally recorded by audio and  
19 video.

20 (State's Exhibit Number 47 introduced for  
21 identification.)

22 BY MR. SIMPSON:

23 Q. Okay. I'm showing you, Sergeant Wolfesen, what's been  
24 marked for identification only at this time as State's  
25 Exhibit 47.

1 A. Yes, sir.

2 Q. Do you recognize that exhibit?

3 A. Yes, sir.

4 Q. And what's contained on that exhibit?

5 A. An interview of that night's events.

6 Q. And is that on video and audio?

7 A. Yes, sir.

8 Q. Does it include the entirety of your interview with  
9 Mr. Simmons?

10 A. Yes, sir.

11 Q. Was there any portion on that day, the 22nd, of your  
12 interaction with Mr. Simmons that was not on audio and video?

13 A. No, sir.

14 Q. Okay.

15 THE COURT: What number is that, Solicitor?

16 MR. SIMPSON: State's 47 for ID only.

17 THE COURT: Okay.

18 MR. SIMPSON: Your Honor, at this point in time, we'd  
19 like to publish for you a brief portion of State's 47.

20 THE COURT: Okay. All right.

21 MR. SIMPSON: And Judge, I appreciate your patience.

22 We're going a little out of order, so if I seem a little --

23 THE COURT: I perfectly and certainly understand.

24 MR. SIMPSON: Okay. Thank you.

25 THE COURT: Can you see that okay, Officer?

1 THE WITNESS: Yes, sir. Thank you.

2 THE COURT: Okay.

3 (Video played in open court.)

4 BY MR. SIMPSON:

5 Q. So is this the room you've already described for us?

6 A. Yes, sir.

7 Q. Is that an interrogation room?

8 A. We call them interview rooms, but yeah.

9 Q. Okay.

10 (Video continued.)

11 BY MR. SIMPSON:

12 Q. And who is this with you in the interview room?

13 A. That's Detective Gertin.

14 Q. Okay. He's just there to assist you?

15 A. Yes, sir.

16 (Video continued.)

17 BY MR. SIMPSON:

18 Q. Sergeant Wolfsen, so we see you sit down there and first  
19 engage in a little introductory information gathering?

20 A. Yes, sir.

21 Q. Did you ask him any questions at that point, you know,  
22 that relate specifically to the crimes he's accused of?

23 A. No, sir.

24 THE COURT: Solicitor, let me stop you just a second.

25 I've been informed the remaining jury panel, they're out in

1 the hallway. I think probably we may need to go ahead and  
2 just stop the *Jackson v. Denno* if the officer can hang around  
3 a little longer.

4 THE WITNESS: Yes, sir.

5 THE COURT: Let's go ahead and deal with the jury panel,  
6 and then we'll go from there. Okay? Is that okay?

7 MR. SIMPSON: Yes, sir.

8 THE COURT: Both sides?

9 MS. FORD: Yes, your Honor.

10 THE COURT: Okay.

11 (Witness excused.)

12 (The following proceedings were had in the presence of  
13 potential jurors who entered the courtroom at 1:16 p.m.)

14 THE COURT: All right. Good afternoon, ladies and  
15 gentlemen. Thank you, thank you, thank you. I know that we  
16 have interfered with your -- those of you who eat lunch,  
17 we've interfered with that, and we greatly apologize for  
18 that. We've just had a few unexpected things. We're trying  
19 to get a jury picked in one courtroom and a jury picked in  
20 this courtroom, and we've just gone a little bit longer than  
21 we would like. So I apologize to you for that.

22 My name is Donald Hocker. I am a circuit court judge,  
23 just as Judge Griffin is. You've been over in his courtroom.  
24 And I've been assigned by the South Carolina Supreme Court to  
25 preside over a week of court here in Charleston. Our circuit

1 have a chance sometime in the future to come back to this  
2 courthouse or, if you change counties of residence, that you  
3 go to another courthouse and have an opportunity to sit on a  
4 jury. It's been my experience since I've been doing this job  
5 that the vast majority of people who sit on a jury -- whether  
6 it's a civil case, a criminal case -- have found the  
7 experience to be a good one and an educational one and one  
8 that they enjoyed and would like to do it again. So,  
9 hopefully, you'll get a chance sometime in the future to come  
10 back.

11 With that said, you are excused. And you're excused for  
12 the remainder of the week. You do not need to come back.  
13 Okay? All right. Have a good rest of your day.

14 And if anybody would like to sit in this trial as just a  
15 member of the public, you're more than welcome to.

16 (Remaining potential jurors excused.)

17 (Court recessed.)

18 (Court resumed outside the presence of the jury.)

19 THE COURT: All right. Thank you very much. Have a  
20 seat.

21 All right. We're back on the record. And we're in the  
22 middle of our *Jackson v. Denno*.

23 Solicitor, are you ready to proceed?

24 MR. SIMPSON: I am, your Honor. Thank you.

25 THE COURT: Okay.

1           MR. SIMPSON: The State asks Sergeant Wolfesen back to  
2 the stand.

3           THE COURT: Yeah. Come on back, please, ma'am. Just  
4 remind you you're still under oath.

5           (Witness resumed the witness stand.)

6           THE COURT: I'm not exactly sure, Solicitor, where we --  
7 where I interrupted you and stopped, but I'll leave that up  
8 to you where we are.

9           MR. SIMPSON: Okay. Thank you, your Honor.

10                               ELIZABETH WOLFSEN,  
11 resuming as a witness on behalf of the State in the matter of  
12 a pretrial motion, being previously sworn, was examined and  
13 testified as follows:

14                               RESUMED DIRECT EXAMINATION

15                               BY MR. SIMPSON:

16 Q.    Sergeant Wolfesen, when we last spoke, we had just  
17 reviewed a portion of the interview you gave with  
18 Mr. Simmons; is that correct?

19 A.    Yes, sir.

20 Q.    And you had recounted for Mr. Simmons his Miranda  
21 rights?

22 A.    Yes, sir.

23 Q.    Did you explain this to him one by one?

24 A.    Yes, sir. It's our practice to usually do them one by  
25 one and have them verbally acknowledge that they understand



1 each of those rights and also initial them on the card and  
2 the back of the card.

3 Q. And did Mr. Simmons follow that procedure?

4 A. Yes, sir.

5 Q. And did he indicate to you that he understood each of  
6 those rights?

7 A. Yes, sir.

8 Q. Did he indicate to you that he was willing to speak with  
9 you that day?

10 A. Yes, sir.

11 Q. Now, there was also some back and forth about the fact,  
12 you know, how the rest of his day was going to proceed, if  
13 there were warrants out for him. Were you secretive about  
14 that fact?

15 A. No, sir.

16 Q. And when he expressed some concern with you about  
17 needing to make work the next day, what did you tell him?

18 A. He was not going to make work the next day.

19 Q. Okay. And I believe he -- at the end of the Miranda  
20 rights, he expressed again to you that concern with being a  
21 suspect or a person of interest, and you made it pretty clear  
22 that he was a suspect; is that correct?

23 A. Yes, sir.

24 Q. Okay. Did the interview proceed from there?

25 A. Yes, sir.

1 Q. And approximately how long did the interview proceed in  
2 total?

3 A. About two hours or so.

4 Q. Okay. During that sort of initial back and forth with  
5 the defendant and the Miranda rights and the approximate  
6 two-hour interview that happened later, at any point in time  
7 did you develop any sort of concerns that Mr. Simmons was not  
8 mentally understanding what y'all were talking about or  
9 asking him about?

10 A. Not at all.

11 Q. And did he -- does he appear to be to you a fairly  
12 intelligent individual?

13 A. Yes, sir.

14 Q. And was he able to answer questions with you cogently?

15 A. Yes, sir.

16 Q. Was he of an age of maturity that would lead you to  
17 conclude he was able to have an adult conversation with you?

18 A. Yes, sir.

19 Q. In fact, in sort of your initial back and forth with  
20 Mr. Simmons, did you ask him about his educational  
21 background?

22 A. I did.

23 Q. And what was that?

24 A. He has a GED. He did attend high school, but then he  
25 went to a GED program. He also has a couple of hours of

1 college.

2 Q. Oh, so some college education?

3 A. Yes, sir.

4 Q. Okay. Any sort of mental defects that were apparent to  
5 you throughout the interview?

6 A. Not at all.

7 Q. Did he ever appear to you to be intoxicated?

8 A. No, sir.

9 Q. Did he ever appear to you to be under the influence of  
10 any sort of narcotics or other mind-altering substances?

11 A. No, sir.

12 Q. Did you ever smell any odor of marijuana or alcohol on  
13 the defendant?

14 A. No, sir.

15 Q. Did he ever express to you any physical pain or  
16 discomfort during that, you know, approximate two-hour  
17 interview?

18 A. No, sir.

19 Q. And I believe one of your first answers when we started  
20 this earlier was you offered snacks?

21 A. Yes, sir.

22 Q. Bathroom breaks?

23 A. Yes, sir.

24 Q. Something to drink?

25 A. Yes, sir.

1 Q. And was that sort of practice of offering those things  
2 continued throughout the interview?

3 A. Yes, sir.

4 Q. And what's the purpose of offering a person in the  
5 interview room snacks, drinks, opportunity to use the  
6 restroom?

7 A. To make sure that they're comfortable, that they're not  
8 under any sort of duress or any additional stress than what  
9 the situation is already causing.

10 Q. And you recounted for the Court earlier that you had  
11 some -- quite an extensive amount of experience in  
12 investigation; is that correct?

13 A. Yes, sir.

14 Q. In that experience, have you conducted interviews  
15 before?

16 A. Yes.

17 Q. I know there's no way to answer this exactly, but  
18 approximately how many interviews have you watched,  
19 participated in, reviewed?

20 A. Certainly dozens.

21 Q. Okay. And is two hours, in your experience, an  
22 exceedingly long period of time for a major-case interview to  
23 go on?

24 A. No, sir.

25 Q. During the course of this interview, did you make any

1 sort of intentional misrepresentations to the defendant?

2 A. Not at all.

3 Q. Okay. Part of this first two-hour interview, did you  
4 review the warrants with him?

5 A. He and I talked about the situation therein.

6 Q. Uh-huh.

7 A. I was not the one that presented him with the warrants.

8 Q. Okay. Were those warrants presented to him prior to the  
9 conclusion -- the ultimate conclusion of his interview?

10 A. Yes, sir. Detective Gertin presented him with those  
11 warrants.

12 Q. Okay. And I don't want to insult you with this  
13 question, but were there any threats of violence or physical  
14 harm that would come to this defendant if he didn't cooperate  
15 with you?

16 A. No, sir.

17 Q. Were there any promises that you made of future leniency  
18 to this defendant?

19 A. No, sir.

20 Q. And again, did he appear throughout the interview to  
21 understand the Miranda rights you explained to him?

22 A. Yes, sir.

23 Q. And the rest of the interview, he proceeded in a manner  
24 that gave you no concerns about his mental abilities or any  
25 kind of intoxication?

1 A. Correct.

2 Q. Okay. We see in this short clip we watched a couple of  
3 times where there's sort of a -- albeit awkward, there's sort  
4 of a laughing, conversational tone you took with the  
5 defendant?

6 A. Yes, sir.

7 Q. Is that sort of a strategy of yours, a way you like to  
8 conduct interviews?

9 A. It is, yeah. I feel like if I can build sort of a  
10 rapport, make the person feel as comfortable as they can be  
11 given the uncomfortable situation, that person is more likely  
12 to be open, honest, transparent.

13 Q. Okay. Have you ever seen what they call different  
14 styles of interrogation, or perhaps a little more aggressive  
15 and assertive?

16 A. Yes, sir.

17 Q. All right. Does that -- at any point during this  
18 interview of approximately two hours, did you scream at the  
19 defendant?

20 A. No, sir.

21 Q. Did you point fingers or call him a liar?

22 A. No, sir.

23 Q. Okay. Did you curse at him?

24 A. No, sir. I believe I used a curse word here or there.  
25 But no, I did not curse at him.

1 Q. Directed at him, call him any names, anything like that?

2 A. No, sir.

3 Q. Okay. At one point in time -- well, did the interview  
4 proceed from that brief clip that we watched of Miranda?

5 A. Yes, sir.

6 Q. Did the defendant relate to you -- and it's not the  
7 subject of this hearing, but did he relate to you, we'll say  
8 a story of his version of the events of the evening you were  
9 asking about?

10 A. Yes, sir.

11 Q. And did that portion of the interview conclude with sort  
12 of that being his story?

13 A. Yes, sir.

14 Q. And what happened in that?

15 A. He told a version of events where he had gone out on  
16 this particular evening to downtown Charleston with some  
17 friends.

18 Q. And I'm sorry to interrupt. I'm just going to --

19 A. That's okay.

20 Q. -- speed things along. We'll get into the substance of  
21 that statement later. But once he gave you that sort of  
22 version of the events, did the interview, from your point of  
23 view, end?

24 A. Apologies. Yes, sir. Yeah, I did terminate it at that  
25 point.

1 Q. Okay. And then you left the room?

2 A. Yes, sir.

3 Q. Okay. And did the interview then strike back up again  
4 for a second time?

5 A. It did.

6 Q. And what was the cause of the interview restarting or  
7 re-initiating?

8 A. Mr. Simmons asked us to come back in because he wanted  
9 to speak with us.

10 Q. Okay. And how did he signal to you that he wanted to  
11 continue this interview?

12 A. He knocked on the door, as we had asked him to do if he  
13 needed anything or wanted to talk again.

14 Q. Okay. And then he asked to continue the interview?

15 A. He did.

16 Q. And did the interview continue from that point?

17 A. It did.

18 Q. Okay. And again, at the request of Mr. Simmons?

19 A. Yes, sir.

20 Q. Okay. And we're including both that sort of first  
21 section and second section in the approximate two hours that  
22 we're talking about now?

23 A. Yes, sir.

24 Q. And the two hours we're talking about is the interview  
25 time, right?



1 A. Yes, sir.

2 Q. There's some time before?

3 A. Yes, sir.

4 Q. Probably some time after, as you were working on getting  
5 him back to the jail?

6 A. Yes, sir.

7 Q. Okay. I want to fast forward two days forward. Was a  
8 second interview conducted of Mr. Simmons?

9 A. Yes, sir.

10 MR. SIMPSON: The Court's indulgence?

11 THE COURT: Sure.

12 (State's Exhibit Number 48 introduced for  
13 identification.)

14 BY MR. SIMPSON:

15 Q. I'm showing you what's been marked for ID only as  
16 State's 48. Do you recognize that?

17 A. Yes, sir.

18 Q. And what is that?

19 A. A copy of the second interview done a couple days later.

20 MR. SIMPSON: Your Honor, at this point in time, we  
21 would like to publish a short -- for your Honor a short  
22 portion of State's 48 for ID only.

23 THE COURT: 48, you said?

24 MR. SIMPSON: Yes, sir.

25 THE COURT: Okay. Yes, sir. Go ahead.

1           And this is a couple days later?

2           MR. SIMPSON: Yes. I should probably fill in that gap.

3           Q.    [By Mr. Simpson] What led to the re-initiation of an  
4           interview with Mr. Simmons?

5           A.    We understood that Mr. Simmons had been calling a  
6           relative of his who had called CPD to say that Mr. Simmons  
7           wanted to speak with us again.

8           Q.    So it was your understanding, accurate or not, at the  
9           time you re-initiate -- you had him brought back over to do a  
10          second interview, that he wished to add more to the statement  
11          he had previously given?

12          A.    Yes, sir.

13          Q.    Okay. And so when you learned that, how did you  
14          proceed?

15          A.    A detective and I went to the detention center. We  
16          retrieved Mr. Simmons, stopped for food on the way, actually,  
17          and brought him back to the police station for a second  
18          interview.

19          Q.    Okay. And again, what is the purpose for stopping for  
20          some food on the way back to the interview?

21          A.    Again, just to make sure he's comfortable, he has what  
22          he needs, that he's not under any duress, he has sustenance  
23          to be able to speak with us.

24          Q.    And when you got back to the jail, did Mr. Simmons say  
25          anything to you to the effect of, "Oh, you got it wrong. I

1 don't want to talk to you anymore"?

2 A. No, sir.

3 Q. Did he say anything like, you know, "I've got a lawyer  
4 now. I don't wish to talk to you without he or she here  
5 present"?

6 A. No, sir.

7 Q. Okay. So you picked him up and brought him back to the  
8 interview room?

9 A. Yes, sir.

10 (Video played in open court.)

11 BY MR. SIMPSON:

12 Q. Now is that a different individual with you during this  
13 interview?

14 A. Yes, sir.

15 Q. And who's that?

16 A. That's Detective Eric Tuttle.

17 Q. Okay. And again, was his role similar to that of  
18 Detective Gertin's earlier?

19 A. Yes, sir.

20 (Video continued.)

21 BY MR. SIMPSON:

22 Q. So again, Sergeant Wolfson, we see you kind of making a  
23 -- I think a sports joke with Mr. Simmons?

24 A. Yes, sir.

25 Q. I realize particularly in the second interview, are

1     there times where you are certainly kind of confronting him  
2     with the fact that you feel you don't -- you're not getting  
3     the whole story?

4     A.     Absolutely.

5     Q.     But at any point in time, did it really derivate much  
6     from that sort of conversational tone that you like to  
7     conduct your interviews with?

8     A.     No. I would say we were candid certainly, but it was  
9     conversational.

10    Q.     Okay. Maybe assertive but not aggressive?

11    A.     Yes, sir.

12            (Video continued.)

13    BY MR. SIMPSON:

14    Q.     So Sergeant, were Miranda rights re-administered at that  
15    point?

16    A.     Yes, sir.

17    Q.     And again, the first interview occurred when?

18    A.     It was the very early morning hours of the 20th.

19    Q.     Okay. The 20th or -- are you sure that's correct?

20    A.     Excuse me. The 22nd.

21    Q.     Okay. And --

22    A.     The incident was on the 20th.

23    Q.     Okay. And this is how much longer from the first  
24    interview?

25    A.     Couple days. I think this was the 25th.

1 Q. Okay. So he had recently received Miranda warnings from  
2 you?

3 A. He had.

4 Q. Right. But you would, nonetheless, repeat them for him  
5 here?

6 A. Yes, sir.

7 Q. And you described your policy that when you see him, you  
8 re-execute a Miranda card where he initials after each right?

9 A. Yes, sir.

10 Q. Does he sign the part where he indicates that he wishes  
11 to proceed in discussions with you?

12 A. He does.

13 Q. Okay. And again, you said you participated in taking  
14 him from the jail to here?

15 A. Yes, sir.

16 Q. Any substantive conversations take place in that car  
17 that you want to share with the Court about this case, or do  
18 you like to keep everything on video and audio.

19 A. No, sir. Yes, we keep everything on video and audio.

20 Q. And I'll just repeat some questions for you. Anything  
21 during the course of the second interview give you pause  
22 regarding his ability to comprehend and engage in this  
23 interview with you mentally?

24 A. Not at all.

25 Q. And any signs -- and I know he's been incarcerated at

1     this point, but any signs of intoxication or under the  
2     influence of narcotics at this point?

3     A.    No, sir.

4     Q.    Any complaints of physical discomfort or physical  
5     defects?

6     A.    No, sir.

7     Q.    The length of the interview on the second go-round is a  
8     little bit longer than the first; is that correct?

9     A.    Yes, sir.

10    Q.    Approximately how much?

11    A.    I think it's closer to three hours or so.

12    Q.    Closer to three than two?

13    A.    Yes, sir.

14    Q.    Okay. And again, in your experience as a major-case  
15    investigator, is three hours an unusual duration of time for  
16    a major-case interview such as this?

17    A.    No, sir.

18    Q.    During this interview, any purposeful misrepresentations  
19    on your part?

20    A.    No, sir.

21    Q.    Threats of violence or physical harm that would come to  
22    the defendant if he didn't cooperate with you?

23    A.    No, sir.

24    Q.    Any promises of leniency that you made to the defendant?

25    A.    No, sir.

1 Q. Did he proceed from this point in this interview to  
2 cooperate with you, or at least to engage in this interview  
3 voluntarily, knowingly, and give you information during this  
4 period of time?

5 A. Yes, sir.

6 Q. And in your experience and your point of view at that  
7 time, was this a decision he made freely and voluntarily?

8 A. Yes, sir.

9 Q. I'll ask sort of a general questions like we've asked  
10 our jury panel today. Is there anything that you can think  
11 of that you wish to share with us or the Court that would  
12 give you some pause as to some hesitancy from the defendant's  
13 point of view or any lack of voluntariness?

14 A. Not in the least.

15 Q. During the course of either interview?

16 A. No, sir.

17 Q. Okay.

18 MR. SIMPSON: The Court's indulgence?

19 THE COURT: Sure. Take your time.

20 (Mr. Simpson conferred with co-counsel.)

21 MR. SIMPSON: Thank you, Sergeant Wolfen. Please  
22 answer any questions Ms. Ford has for you.

23 THE WITNESS: Yes, sir.

24 THE COURT: Ms. Ford, do you have any examination of  
25 this officer?

1 MS. FORD: Yes, your Honor.

2 Thank you. May it please the Court?

3 CROSS-EXAMINATION

4 BY MS. FORD:

5 Q. Hi, Sergeant.

6 A. Hi. How are you?

7 Q. Good. When you first met with Chad, the first interview  
8 was in the early morning hours of September 22, correct?

9 A. Yes, ma'am.

10 Q. The warrants were actually taken out and signed by a  
11 judge the evening prior, correct?

12 A. I believe that's correct. Yes, ma'am.

13 Q. On the 21st?

14 A. Yes, ma'am.

15 Q. So when you spoke to Chad, warrants had already been  
16 signed by a judge?

17 A. Yes, ma'am.

18 Q. So he was under arrest?

19 A. Yes, ma'am.

20 Q. And when you met with him, the interview started -- or  
21 he started in a room at about 2:11 a.m., correct?

22 A. Yes, ma'am.

23 Q. And your actual interview started closer to 2:48 a.m.;  
24 does that sound about right?

25 A. Yes, ma'am.



1 Q. So he was sitting there in the early morning hours for  
2 nearly 40 minutes, correct?

3 A. Yes, ma'am.

4 Q. And the actual interview lasted about two hours, as you  
5 testified to, correct?

6 A. Yes, ma'am.

7 Q. After that, about 20 minutes later, Detective Gertin  
8 then reads him his warrants, correct?

9 A. Yes, ma'am.

10 Q. So he was read his warrants after the interview?

11 A. Correct.

12 Q. When he met with y'all on the 22nd, he seemed confused  
13 about exactly why he was there, correct?

14 A. He asked if he could know what it was about.

15 Q. He had thought he was a person of interest, correct?

16 A. That's what he said.

17 Q. So he didn't seem to understand that he was actually --  
18 had been arrested for these charges?

19 A. As he signed the suspect signature on the Miranda card,  
20 we had a conversation. And I made no qualms that he was a  
21 suspect.

22 Q. But he seemed confused; is that fair to say? He asked,  
23 "Am I going to be able to go to work tomorrow?" Correct?

24 A. He did. Yes, ma'am.

25 Q. And he asked what he was being charged with, correct?

1 A. I believe he did. Yes, ma'am.

2 Q. He asked repeatedly what he was being charged with,  
3 correct?

4 A. I don't know that I would say "repeatedly."

5 Q. Okay. You --

6 A. He more phrased it that he would like to know what's  
7 going on.

8 Q. He asked what the charges were?

9 A. Yes, ma'am.

10 Q. Correct?

11 A. Yes, ma'am.

12 Q. And you made the choice not to tell him until after the  
13 interview, correct?

14 A. Correct.

15 Q. And that's even though there is a statute actually  
16 saying that when someone is arrested, if they ask what  
17 they're being arrested for, officers are supposed to tell  
18 them what they're being arrested for, correct?

19 A. Yes, ma'am.

20 Q. Okay. When you met with him that first interview, he  
21 was not immediately forthcoming about that evening, correct?  
22 Is that fair to say?

23 A. Yes, ma'am.

24 Q. Eventually, he did admit that he had been in some house  
25 and remembered a couch and falling down the stairs, correct?

1 A. Yes, ma'am.

2 Q. So that's probably the main information gathered during  
3 that evening about the actual incident, correct?

4 A. Yes, ma'am.

5 Q. Before he admitted that, though, he maintained for a  
6 while that he did not remember being there, correct?

7 A. Yes, ma'am.

8 Q. He explained that he had been at some bars, correct?

9 A. Yes, ma'am.

10 Q. And met a female?

11 A. Yes, ma'am.

12 Q. But he did not admit to being at the Radcliffe house?

13 A. Not immediately, correct.

14 Q. But he did tell you that that evening was blurry and he  
15 couldn't remember things?

16 A. Portions of it, correct.

17 Q. And you told him about -- you did inform him of some of  
18 the forensic evidence, correct? The fingerprints?

19 A. Yes, ma'am.

20 Q. So you told him repeatedly that he was there, even when  
21 he was saying he wasn't, correct?

22 A. Eventually, yes.

23 Q. And you told him repeatedly that you knew he was there?

24 A. Yes, ma'am.

25 THE COURT: Are we still talking about the first

1 interview, Ms. Ford? Or the --

2 MS. FORD: Yes, your Honor.

3 THE COURT: The first interview. Okay.

4 BY MS. FORD:

5 Q. So it wasn't -- so again, the interview -- the actual  
6 interview started at about 2:48 a.m., and it wasn't until  
7 4:15 a.m. when he admitted remembering the couch and falling  
8 down the stairs, correct?

9 A. Yes, ma'am. Sounds right.

10 Q. And so that was about an hour-and-a-half difference,  
11 correct?

12 A. Yes, ma'am.

13 Q. So during that hour and a half, he had maintained he  
14 didn't remember, correct?

15 A. When he --

16 Q. Being there?

17 A. Yes, ma'am.

18 Q. And during that hour and a half, you repeatedly told  
19 him, "I know you were there. I know you were there"?

20 A. Eventually I did, yes.

21 Q. And he had actually, before admitting that there was  
22 some memory of being at the house, he indicated he understood  
23 that he was not giving you the answers that you wanted,  
24 correct?

25 A. I believe he did say that. Yes, ma'am.

1 Q. So when you again met with him about three days later --  
2 on the 25th, correct?

3 A. Yes, ma'am.

4 Q. So this is the second interview. And this interview was  
5 done to see if he had remembered anything else, correct?

6 A. Yes, ma'am.

7 Q. So it was a continuation of the first interview?

8 A. I would agree with that.

9 THE COURT: What was your answer, Officer?

10 THE WITNESS: "Yes, ma'am," your Honor.

11 BY MS. FORD:

12 Q. So at this point, he again started out y'all were under  
13 the understanding that he remembered the couch and falling  
14 down the stairs, correct?

15 A. Yes, ma'am.

16 Q. But he again repeatedly stated that he really didn't  
17 remember anything else?

18 A. Yes, ma'am.

19 Q. But you and Detective Tuttle, you kept pressing for --  
20 to try to get more details; is that fair to say?

21 A. Yes, ma'am.

22 Q. You actually expressed at one point that the jury would  
23 expect a story from him?

24 A. Certainly possible.

25 Q. And this interview, to go back to the timing, it started

1 at 12:44 p.m.; does that sound right?

2 A. Yes, ma'am.

3 Q. And the actual interview lasted until about 2:51 p.m.;  
4 does that sound right?

5 A. Yes, ma'am.

6 Q. Until he wrote a letter?

7 A. Yes, ma'am.

8 Q. An apology letter?

9 A. Yes, ma'am.

10 Q. And so during that timeframe, it was over two hours,  
11 correct?

12 A. Yes, ma'am.

13 Q. And at about 2:20 p.m., he said he was spiraling and  
14 knew he screwed up for life because he couldn't give answers?

15 A. Yes, ma'am.

16 Q. He was crying during this time, correct?

17 A. Yes, ma'am.

18 Q. And shortly after that, at 2:35 p.m., that's when he did  
19 also indicate that there is some memory of seeing the victim  
20 in her bedroom, correct?

21 A. Yes, ma'am.

22 Q. I want to go to a bit about his history. You testified  
23 that he has -- or he indicated that he had a little college,  
24 correct?

25 A. Yes, ma'am.

1 Q. But it was also clear he did not have a lot of  
2 experience in the criminal justice system with anything  
3 serious, correct?

4 A. Yes, ma'am.

5 Q. That he had had issues with a few misdemeanors and  
6 driving offenses, correct?

7 A. Yes, ma'am.

8 Q. So and again, he expressed confusion during the first  
9 interview -- just to go over that again -- about the whole  
10 process of what it meant to be arrested for these charges?

11 A. I wouldn't qualify him as confused, but I suppose that's  
12 sort of subjective.

13 MS. FORD: Beg the Court's indulgence?

14 THE COURT: Sure. Take your time.

15 (Ms. Ford conferred with co-counsel and their client.)

16 MS. FORD: I have no further questions.

17 THE COURT: Okay. Solicitor, you have anything in  
18 redirect?

19 MR. SIMPSON: Sure. Just briefly, your Honor.

20 THE COURT: Sure.

21 REDIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q. Sergeant Wolfsen, so the warrants -- upon the arrest of  
24 Mr. Simmons, the warrants were brought into the room by  
25 Detective Gertin and read word for word for Mr. Simmons

1 before he was taken to jail and formally booked; is that  
2 correct?

3 A. Yes, sir.

4 Q. Okay.

5 MR. SIMPSON: I have no further questions, your Honor.

6 THE COURT: All right. So I want to make sure I  
7 understand. All right? First interview is conducted  
8 approximately two hours, or thereabouts, and it was at the  
9 end of the interview that the warrants were read to the  
10 defendant, correct?

11 MR. SIMPSON: Correct, your Honor.

12 THE COURT: Okay. And you referred to a statute,  
13 Ms. Ford?

14 MS. FORD: Yes, sir.

15 THE COURT: Could you give me that statute number? I'd  
16 like to read that statute. I haven't seen it in a while.

17 MS. FORD: Yes, Judge. It's Section 17-13-50.

18 THE COURT: Okay.

19 MS. FORD: And there is case law saying that a subject  
20 not knowing the matter of the interrogation would not  
21 necessarily find it to be involuntary. However, we would  
22 argue that it should be considered in the totality of the  
23 circumstances because it led to confusion.

24 THE COURT: Okay. All right. Solicitor?

25 MR. SIMPSON: Thank you. That would be *State versus*



1 *Crawley*, 349 SC 459, citing --

2 THE COURT: 349 SC what?

3 MR. SIMPSON: 459. Citing the U.S. Supreme Court  
4 opinion on *Colorado v. Spring*, 479 U.S. 564. And the nature  
5 of the statute is that a person cannot be arrested and logged  
6 and booked into jail and sit there not knowing why they're in  
7 jail. There is no constitutional or statutory requirement  
8 that a person be briefed on the charges or the evidence or  
9 what all the State knows or the government knows prior to an  
10 interrogation.

11 THE COURT: Okay.

12 MR. SIMPSON: You know, obviously, we can't have people  
13 over there at the detention center booked and lodged sitting  
14 there and not knowing why they're there. And that's why, as  
15 part of the booking process, Detective Gertin came into the  
16 room and read to and presented copies of the warrants to  
17 Mr. Simmons as part of the formal arrest process, as that  
18 statute requires. And again, those cases make that clear,  
19 your Honor.

20 THE COURT: Okay. All right. Does the State intend to  
21 offer any further evidence in this *Jackson v. Denno* hearing?

22 MR. SIMPSON: Not for the purposes of this hearing.

23 THE COURT: Okay. All right. And does the defense  
24 intend to offer any evidence at this *Jackson v. Denno*  
25 hearing?

1 MS. FORD: No, your Honor.

2 THE COURT: Okay. All right. Let's take a short break.  
3 I just want to read that statute and read the case that was  
4 referred to, and then I can make my ruling.

5 One other question, Officer, and this is in response to  
6 a question that Ms. Ford asked. You told him in the second  
7 interview -- "him" being the defendant -- something to the  
8 effect that the jury would expect something. And I didn't  
9 catch what that was. What did you tell him about the jury?

10 THE WITNESS: The context of that was that I wanted to  
11 allow him to tell his own story.

12 THE COURT: Okay.

13 THE WITNESS: And so the jury and whomever would expect  
14 that he has that right --

15 THE COURT: Okay.

16 THE WITNESS: -- to tell his own story, not me putting  
17 words in his mouth.

18 THE COURT: Okay. All right. Now, my last question,  
19 back to the lawyers, assuming that I do allow both statements  
20 in, are there any portions of either interview that will need  
21 to be redacted or at least a request by the defense, or the  
22 State for that matter, that certain portions need to be  
23 redacted? Is that going to be an issue, assuming I'll allow  
24 the statements in?

25 Solicitor?

1           MR. SIMPSON: I indicated to Ms. Ford that during our  
2 lunch break actually, but certainly when we conclude today,  
3 that I would send her the exact timed portions of what I seek  
4 to admit. She raised an obvious concern of prior record.  
5 There's going to be no mention of prior record --

6           THE COURT: Right.

7           MR. SIMPSON: -- unless it's raised by the defense.  
8 Otherwise, I'm going to have to, obviously, get that to  
9 Mr. Ford.

10          THE COURT: Okay. And then you really need to see what  
11 he intends to -- and I condition this on me allowing the  
12 statements in, but you want to wait to see what he wants in  
13 and then see if you're going to agree to that or see if you  
14 want some other stuff redacted. That's just going to be,  
15 potentially, a work in progress, correct?

16          MS. FORD: Yes, your Honor. My main concern with that  
17 statement is that the detective at the time talked a lot  
18 about the DNA -- er, the fingerprints being at the scene, so  
19 I would argue that shouldn't come in because it's hearsay and  
20 it's an expert opinion and just that that shouldn't be  
21 allowed in.

22          THE COURT: All right.

23          MR. SIMPSON: Your Honor, obviously we've got some time  
24 before we take this up, but I think what the defendant knows,  
25 as far as the evidence is concerned, is incredibly relevant

1 to what his story's given. Now, I would never put in  
2 fingerprint evidence or DNA evidence through this detective  
3 initially. The only time that's going to come out is, when  
4 and if your Honor has already deemed that information to be  
5 admissible, through its proper sources.

6 Just, you know, for planning purposes, Sergeant Wolfson  
7 is going to be my last witness in this case. And certainly,  
8 you know, if the information about fingerprints is deemed  
9 inadmissible, no go.

10 THE COURT: It would be a moot point.

11 MR. SIMPSON: Yeah, no go. But we would certainly admit  
12 that properly --

13 THE COURT: Sure.

14 MR. SIMPSON: -- before eliciting that information  
15 through the individual.

16 THE COURT: Okay. Well, you know, if there's any  
17 portions that are in contest concerning redaction or  
18 non-redaction, we're just going to have to spend some time  
19 and let me see exactly what is even being sought to be  
20 redacted or not. Because all I've seen, which really all I  
21 need to see, is whether or not the statements were voluntary  
22 or not and whether or not Miranda was complied with. So  
23 that's just something we may need to take up at the  
24 appropriate time.

25 MR. SIMPSON: And your Honor, with your approval, I

1 believe what I'll do is when I send these portions to  
2 Ms. Ford, I'll also include your clerk on it and bring in  
3 extra copies of those interviews tomorrow with me.

4 THE COURT: Okay. All right. Very good. Let's take a  
5 ten-minute break and -- well, let me do this. You know, one  
6 thing I just always kind of get concerned about is when  
7 juries are left in the jury room and they have no clue what's  
8 going on. So I probably will bring the jury out now just to  
9 tell them, "Hey, we're doing some work in this case. We've  
10 got some legal issues. Hopefully, we can get started here  
11 soon. Please be patient with us."

12 So let's do that. Let's bring the jury out just so I  
13 can explain to them that we're not sitting back drinking  
14 coffee back in chambers, that we are working.

15 MR. SIMPSON: Your Honor, may the officer step down from  
16 the stand, or do you want her to stay there?

17 THE COURT: No, you can step down. You probably need to  
18 step down.

19 (Witness excused.)

20 (The jury came into open court at 3:50 p.m.)

21 THE BAILIFF: All jurors are present, your Honor.

22 THE COURT: Okay. Thank you.

23 Ladies and gentlemen, I wanted to offer an explanation.  
24 I know that, well, many of you got back to the jury room  
25 before 3:30, the reported time, and I just wanted to give you

1 an explanation. We're dealing with some legal issues, and  
2 we're not quite finished yet. We're close, but we're not  
3 quite finished. And I wanted to explain to you why you're  
4 sitting back in the jury room while nothing is going on.

5 One of the necessary -- and I'm going to use the word,  
6 but I'm going to put it in quotes -- "evils" when we go  
7 through a trial is that oftentimes juries have to sit back in  
8 the jury room not doing anything. But I can assure you when  
9 that happens, we're working out here. When you get good  
10 lawyers like I have, they raise legal issues. They're issues  
11 that I need to deal with, and I typically, in many cases,  
12 can't deal with them in your presence.

13 So we'll ask you now and we'll ask you throughout this  
14 trial for your continued patience and understanding. And  
15 hopefully maybe in about 15, 20 minutes, we'll be ready to  
16 bring you out and get started with this case.

17 We're going to work maybe a little bit longer. I  
18 typically don't like to go much past 5:00. Today may be a  
19 little longer because we've got a particular witness for the  
20 State that has some commitments elsewhere after today, so  
21 that witness needs to be put up. So just please have some  
22 understanding, and we'll get you back out just as soon as we  
23 can. Okay?

24 Now, before I send you back, there's one thing I want  
25 you to do. I need to have a foreperson of the jury. If it

1 is a male, it's called a "foreman." If it is a female,  
2 "forelady." And a lot of times, I pick the foreperson.  
3 Sometimes I get my law clerk to. Sometimes I get the jury to  
4 select their own foreperson. In this case, I'm going to let  
5 the jury pick their own foreperson.

6 Now, what a foreperson does is wear several hats. One,  
7 I need someone to be the communicator between the jury and  
8 the Court. If at any time during the course of the trial or  
9 while you're engaged in deliberations there's an issue that  
10 arises, a question that arises, then I need someone to serve  
11 as the spokesperson for the jury to the Court. If there is  
12 an issue, question, whatever, it needs to always be in  
13 writing and signed by the foreperson.

14 Secondly, I need someone to make sure that all of my  
15 instructions are being followed. As I told you downstairs,  
16 don't start any discussions among yourselves or anybody that  
17 you come into contact with during a break, and no research on  
18 the Internet or social media. And again, I'll go into more  
19 detail on that later, but I need to make sure that all of my  
20 instructions are being followed. It's everybody's  
21 responsibility but primarily the foreperson.

22 Lastly, when I give you the case to begin your  
23 deliberations, I need someone to organize and get those  
24 deliberations started for the purpose of attempting to reach  
25 a unanimous verdict in the case. And I'm confident that all

1 14 of you would make excellent forepersons, but I can only  
2 have one. So while you're back there, I want you to elect  
3 your foreperson.

4 And the alternates, you can participate in the election  
5 process. Now, if -- when the jury gets to deliberations and  
6 I haven't excused anybody, then, of course, deliberations,  
7 the alternates would not participate in that. But the  
8 foreperson election, you can participate in that.

9 So go back to the jury room, get you a good foreperson  
10 picked, and we'll get you back out shortly.

11 (The jury exited the courtroom at 3:54 p.m.)

12 THE COURT: All right. We'll be in recess about ten  
13 minutes, and I'll be back out.

14 (Court recessed.)

15 (Court resumed outside the presence of the jury.)

16 THE COURT: Okay. We're back on the record.

17 Does the defense wish to put anything further on the  
18 record concerning the issue of allowing the statements in or  
19 not, other than what's been put on the record?

20 MS. FORD: Yes, your Honor. In general, just because of  
21 the confusion created by not allowing -- er, not telling my  
22 client what the charges are and just by repeatedly saying, "I  
23 know you did it," and, you know, my client's really thinking  
24 he needed to say something. And while he's educated to an  
25 extent, he clearly is not educated in the criminal justice



1 system. We would argue his will was misinformed.

2 But other than that, nothing further.

3 THE COURT: Okay. Anything further by the State on this  
4 issue of the suppression or not of the statements?

5 MR. SIMPSON: Your Honor, only just very briefly to say  
6 that we believe that we have explored every factor relevant  
7 to the voluntariness of the statement, pursuant to the case  
8 law, and also discussed the completely separate issue of  
9 apprising someone of the charges for which they're under  
10 arrest. Two different determinations, and the one does not  
11 impact the other.

12 THE COURT: Well, I think the *Crawley* case certainly is  
13 right on point and would allow the finding of voluntariness  
14 concerning, well, his first statement, but I'll say both  
15 statements. And the fact that the defendant was not apprised  
16 of the nature of the charges till after the first statement  
17 was made, under *Crawley*, voluntariness is not affected. The  
18 statute referred to by the defense does not provide the  
19 remedy of suppression. It just provides what could happen  
20 for the officer not informing upon request the nature of the  
21 charges.

22 So I find -- from viewing the portions of both  
23 interviews, I find that they were voluntarily made, Miranda  
24 was complied with each time, and I will allow the statements  
25 of -- both interview statements into evidence, subject to

1     whatever redaction that we decide needs to take place.

2             I will, however, go ahead and order one redaction now,  
3     that being the statement by the officer concerning the -- and  
4     it's what I followed up questioning her about, about the jury  
5     wanting to hear from the defendant his side of the story, or  
6     something to that effect. Certainly, that would fly in the  
7     face of what his -- the defendant's rights are to testify or  
8     not testify, and that would really create an issue if the  
9     defendant decides not to testify in this case. And I'd  
10    instruct the jury that they can't consider that, and then  
11    here we have an officer stating --

12            And I'm not going off on you, Officer.

13            But we have an officer saying something to the contrary,  
14    so I want that redacted. And then whatever else redactions  
15    that we need to discuss, take up, we can certainly do that at  
16    the appropriate time.

17            MR. SIMPSON: Understood, your Honor. Thank you.

18            THE COURT: All right. Anything further before we bring  
19    the jury out and get them sworn? I'll give them just a real  
20    brief preliminary charge, and then we'll go with opening and  
21    then the one witness for the State that we need to take up  
22    with. And that will probably finish this up for the day.  
23    Okay?

24            All right. Anything further from the State before we  
25    bring the jury out?

1 MR. SIMPSON: No, your Honor.

2 THE COURT: And from the defense?

3 MS. FORD: No, your Honor.

4 THE COURT: Okay. Thank you.

5 All right. Let's bring the jury out, please.

6 THE BAILIFF: Yes, sir.

7 (The jury came into open court at 4:15 p.m.)

8 THE BAILIFF: All jurors are present, your Honor.

9 THE COURT: All right. Thank you very much.

10 Do we have a foreperson?

11 Congratulations.

12 JURY FOREPERSON: Donya Amer.

13 THE COURT: Okay. Madam Clerk, would you swear the  
14 trial jury in, please?

15 CLERK OF THE COURT: Defendant, will you please stand?

16 And jury, can you please stand as well and raise your  
17 right hand?

18 (Jury sworn to try the issues.)

19 CLERK OF THE COURT: If you have accepted this oath,  
20 please be seated. If you have not, please remain standing.

21 Let the record reflect that all jurors are seated.

22 THE COURT: Okay. Thank you, Madam Clerk.

23 Madam Forelady, you will always maintain that seat  
24 throughout the trial.

25 My two alternates, raise your hand.

1           Okay. Is that typically where the alternates sit?

2           Okay. You will maintain those two seats there  
3 throughout the trial.

4           The rest of you, ladies and gentlemen, you can sit in  
5 whatever seat you like. It's been my experience that, more  
6 times than not, jurors like to stay in the same seat  
7 throughout the trial. That's perfectly fine. It's totally  
8 up to you. But the two alternates and the forelady have  
9 their assigned seats.

10           I want to just give you just a few -- make a few  
11 comments to you before we start the trial of this case.

12           First of all, it's extremely important that you remain  
13 alert and attentive throughout this trial. I don't allow  
14 jurors to take notes. Some judges do. That's fine. I have  
15 found that when jurors take notes, a lot of times they're  
16 paying more attention to the note taking than they are  
17 listening to the testimony from the witness stand or  
18 something that the lawyers say.

19           So collectively, at the end of this case you're going to  
20 have a pretty good memory of what has been presented to you.  
21 Individually, you're not going to remember everything; but  
22 collectively, I think you will. So but stay alert. Be  
23 attentive. There's nothing more disappointing to a judge  
24 than to see a juror nodding off. I've even had jurors  
25 actually fall asleep, and that's really disappointing. I

1 don't like that. So be sure to get a good night's rest each  
2 evening so you can come into court fresh and alert.

3 I like to not go longer than an hour and a half at any  
4 given time before we take a break. But if you need a break  
5 and we haven't taken one yet, all you need to do is raise  
6 your hand. That will be the signal to me to take a break.  
7 So don't hesitate to do that.

8 I don't mind you bringing in water or coffee or whatever  
9 they have for you back in the jury room into the courtroom.  
10 Don't bring food. We're not going to have snacks. But -- at  
11 least out here. But a drink, that's perfectly fine with me.  
12 Okay?

13 So no note taking. Be alert. Don't come to any quick  
14 decisions about this case. As I told you earlier, it's the  
15 burden on the State of South Carolina to prove this case to  
16 you. The defendant has no burden of proof. It's up to the  
17 State to prove this case to you beyond a reasonable doubt.  
18 But wait for all of the evidence to come in before -- and  
19 then I instruct you on the law and I instruct you to begin  
20 your deliberations. Up to that point, keep an open mind.  
21 Okay? And don't come to any quick decisions about anything  
22 related to this case.

23 Now, once again, I've already instructed you no early  
24 discussions among yourselves, no early discussions with  
25 anybody that you come into contact with on your lunch break

1 or break in the evening, and don't go on the Internet or  
2 social media to try to get any information about anything  
3 related to this case.

4 Your decision, ladies and gentlemen, has to be based 100  
5 percent on what is brought out in this courtroom either by  
6 way of testimony from the witness stand; there's going to be  
7 some exhibits, possibly some photographs, some documents,  
8 that sort of thing; or these lawyers may stipulate to some  
9 things, agree to some things that you are to accept.

10 But it has to be based on that. If you're out there  
11 doing independent research into this case while the  
12 information more than likely will be wrong information, it's  
13 at least information that is not brought out into this  
14 courtroom where the 14 of you have heard it and seen it.  
15 After the case is over with, if you want to do some research,  
16 then have at it, but not until the case is over with.

17 Unfortunately, several years ago -- and I think I've  
18 already told you I'm from Laurens in the Eighth Circuit -- I  
19 had a very significant case in Laurens where three jurors  
20 completely disregarded my instructions and Googled the name  
21 of the defendant and came across some information that they  
22 shouldn't have. And luckily, I found out about it before  
23 they reached a verdict in the case.

24 And there are consequences to anyone not following the  
25 directives of the Court. I'm just stating that to you. I'm

1 not making threats. I'm just stating it to you. So please  
2 honor your oath that you've taken and your indication to me  
3 that you can be completely fair and impartial to both sides  
4 in this case.

5 Lastly, my alternates, it's very -- you have a very  
6 important role. It's not unusual for somebody in the 12 to  
7 get sick, have an emergency at home and have to be excused,  
8 and then I need someone who has sat through all of the  
9 evidence up to that point that can fill those shoes of the  
10 excused juror. So that -- and I'm not saying that's going to  
11 happen. I don't know. But if it does happen, then I would  
12 appoint one of you to become one of the 12. So your role is  
13 very important. Okay?

14 All right. Now, is the State ready for opening?

15 MR. SIMPSON: We are, your Honor.

16 THE COURT: Okay. These opening statements, ladies and  
17 gentlemen, are not evidence. They're what the lawyers think  
18 the evidence will be and what they believe the case is about.  
19 Okay? So listen up.

20 MR. SIMPSON: Thank you, your Honor.

21 Madam Forelady, members of the jury, good afternoon.  
22 Let me begin how I begin any trial, with the State's profound  
23 thanks. Obviously, we're here for a matter that's very  
24 important. We understand, like all involved in this process,  
25 that you have lives as well and that we're interrupting your

1 lives. And I want you to know, on behalf of the State of  
2 South Carolina, and I'm sure the defense and Mr. Simmons and  
3 the Court, that we appreciate it and thank you.

4 It's been a very long day today. I know that you've had  
5 a lot of sitting around and a lot of wondering how the rest  
6 of the week is going to go. I'll attest to that, that it's  
7 all just part of the process. But we're here now, and you've  
8 just made a very important oath. And that's all that we  
9 expect you to do is fulfill that promise that you've just  
10 made to all of the parties involved.

11 And that is to give us your attention and follow the  
12 evidence and put your passions, your emotions to the side.  
13 Any sort of preconceived ideas about the system that you may  
14 bring in here, put it to the side. You're not here to help  
15 me. You're not here to hurt the other side. You're not here  
16 to help them or hurt us. You're just here to hear the  
17 evidence and make a decision accordingly. And I'm confident  
18 that you can all fulfill that promise.

19 And so that I don't put you to sleep, I'm going to be  
20 brief since we're late in the afternoon of a late day.

21 September of 2018. September 19 was a Wednesday. For  
22 Kimberly Cantwell, a college student, it was just a normal  
23 student Wednesday. She went to the gym. She's a good  
24 student. She went and studied. She went to the beach, one  
25 of the nice things we get to do here.



1           She went to a friend's house that night and had a little  
2 show that they liked to watch together. So she watched her  
3 Wednesday night show, and went back to her apartment that she  
4 shared with some roommates on Radcliffe Street downtown.  
5 It's a little later in the evening, you know, after the show,  
6 about 11:00.

7           Between 11:00 and 12:00, she gets back home. Her  
8 roommates are asleep. She gets in bed, cuts the TV on, and  
9 fades into sleep. And so ends a normal day for a normal  
10 college student. And what should have happened at that point  
11 is that her normal college-student Wednesday faded into a  
12 normal Thursday. But that didn't happen. What happened was  
13 every person's living nightmare, particularly a young woman.

14           Laying in her bed at about 3:00, she sort of slowly  
15 stirs from sleep, and a stranger enters her room, a person  
16 who is uninvited, a person she does not know, and a person  
17 who is unwelcome. And that person made their intentions  
18 clear very quickly by their actions. In law, we judge a  
19 person's intentions, their inner monologue, by what they do.  
20 And this person went right straight to the bed, went right  
21 straight to the bed and drug Kim -- "Kimmy" as her friends  
22 and family call her -- drug her down to the floor.

23           At some point in this struggle down to the floor, she  
24 was hit. She was hit in the head by a hard object. We know  
25 what that object was, and we're going to show you through the

1 course of this trial.

2 She was drug down to the floor and began to be strangled  
3 from behind by the intruder into her bedroom and into her  
4 home. And she screamed. She screamed out, like anyone would  
5 living that nightmare. But her consciousness faded, and her  
6 screams quieted, and Kimmy faded to black. She was being  
7 strangled from behind and was rendered unconscious.

8 And that very well might be where Kim's story sadly  
9 could have ended. It could have ended right there, but it  
10 didn't. Thank God it didn't, because her screams were heard.  
11 Her screams -- described by one roommate as the worst  
12 screams, the worst sounds they've ever heard -- were heard by  
13 other people in the home.

14 She shared this apartment with a lot of roommates, like  
15 a lot of college students. One of those roommates had a guy  
16 over at the house that night, a guy you're going to meet  
17 named Dan Schwarz. And thank God he was there, because when  
18 you hear screams and you're awakened in the middle of the  
19 night -- I'm going to be honest about myself; if I'm awakened  
20 at 3:15 to screams, I don't know if my first instinct is  
21 going to be running right to the screams. But thank God it  
22 was Dan Schwarz's first instinct to do.

23 And so Dan busts into that room and sees the person in  
24 the room and there's Kimmy on the floor. A struggle ensues  
25 between Dan and this intruder. The struggle goes over to the

1 stairs. They wrestle with one another. Through the course  
2 of wrestling, an item of clothing is taken off the intruder,  
3 but the intruder runs from the house.

4 Kimmy, understandably, is hysterical. Who can blame  
5 her? The police are contacted, and the story is told to  
6 them.

7 It's been a long day. It's near the end of the day, so  
8 I'm going to get right to the point. Over the course of the  
9 next two or three days, I'm going to prove to each and every  
10 one of you beyond a reasonable doubt who that man was in that  
11 room, who that man was that strangled Kimberly Cantwell until  
12 she was unconscious. And it was Mr. Chad Simmons sitting  
13 right there.

14 That's my burden. That's my job. And I'm confident  
15 that each and every one of you is going to follow that  
16 promise, that important promise that you just made to the  
17 Court, hear the evidence, and find him guilty as charged.

18 At the conclusion of the trial, we get to go through  
19 each -- what we call the elements of each offense that  
20 Mr. Simmons is charged with, each element it's my job to  
21 prove to you. I will go through it in more detail at the  
22 conclusion of the trial, but I want to give you an idea here  
23 at the beginning, just generally speaking, what he's charged  
24 with and what that means.

25 One, he's charged with burglary in the first degree.

1 That means he entered someone else's residence without  
2 permission and with the intent, or the mental purpose of  
3 entering that residence, of committing a crime once he got  
4 inside that residence. That's burglary.

5 Two, assault with intent to commit CSC. That's when one  
6 commits assault on another with the intent -- again, we have  
7 to talk about what's inside of a person's head, and we judge  
8 that by their actions. That he committed an assault with  
9 intent to commit a sexual assault upon Ms. Cantwell.

10 And lastly, assault and battery of a high and aggravated  
11 nature. Assault and battery of a high and aggravated nature  
12 means it was an assault conducted in a manner that could have  
13 caused death or great bodily injury. And we all know from  
14 our experience that we bring with us into this courtroom,  
15 that choking someone to the point of unconsciousness is, in  
16 fact, a way in which one can cause great bodily injury or  
17 death to another.

18 Again, thank you so much for your time this week. We'll  
19 be together for a few days here. Over the course of those  
20 days, I'm going to prove to each of you beyond a reasonable  
21 doubt that that individual, who most certainly did commit  
22 those offenses on Kim Cantwell, was Mr. Chad Simmons.

23 Thank you.

24 THE COURT: Okay. Thank you, Solicitor.

25 Ms. Ford, are you ready?

1 MS. FORD: Yes, your Honor.

2 THE COURT: You may proceed.

3 MS. FORD: Good afternoon.

4 "Wrong house. Wrong house. Wrong house." This is a  
5 phrase you're going to hear throughout this trial, because  
6 this is a phrase that many of the witnesses heard that  
7 evening over and over. Because this is a case about being in  
8 the wrong house. It's about being confused and out of your  
9 mind.

10 Kimberly Cantwell went through something terrible and  
11 traumatic, something no one would wish to go through for  
12 themselves or their loved ones. No one is disputing that,  
13 certainly not Chad Simmons. But this is not a trial to  
14 determine something that happened. This is a criminal trial  
15 and not a civil trial to determine damages, for example.

16 And when you're looking at a crime, what makes a crime  
17 is criminal intent. And in this case, there was no criminal  
18 intent. Intent is not necessarily something easy to see,  
19 because it's not concrete. So you have to look at the  
20 circumstances to determine if you can figure out what was  
21 going through somebody's head.

22 Here, one evening back in 2018, Kimberly Cantwell went  
23 to bed on what she thought was an average night. So she  
24 wakes up to a man at her door. And at first, she wonders,  
25 "Well, is he here for one of my roommates?" Because she has

1 three roommates.

2 And it's odd that this man would end up in her room  
3 because she lived or she was in the room at the very back.  
4 So in this apartment, there is one room in one area with some  
5 French doors that one of the roommates was in or stays in,  
6 Katie. And then there's a hallway with three bedrooms.  
7 There's Harley, Gwen, and then Kimmy at the very back.

8 So it seemed odd that this man was here. He doesn't say  
9 anything and he attacks her. And he does scare her out of  
10 her mind. And as many women would think, she thought, "Am I  
11 going to be raped?" Nothing like that happened here.

12 She screams, and the screams wake up the entire  
13 household. So Dan that you heard about, he's staying with  
14 Gwen, who's in the room right next to Kimmy. So he hears the  
15 screams, and his reaction is to see what is going on and to  
16 see what he can do to help. So he gets out of that room as  
17 soon as possible. And when he does, when he exits Gwen's  
18 room, he nearly runs into this man who's outside of Kimmy's  
19 room. And this man holds up his arms like this and says,  
20 "Wrong room. Wrong house," repeatedly, over and over. The  
21 whole household hears it.

22 Now, this man is much larger than Dan, much stronger,  
23 but Dan, he decides to grab him, to try to get him. And this  
24 man tussles with him to get away. But at no point during  
25 this struggle does the man ever try to hurt him in order to

1 achieve that goal of getting away. But ultimately, the two  
2 stumble down the stairs and the man was able to run away.

3 Now, police come within minutes. And when they  
4 investigate the scene, everything seemed -- it seemed pretty  
5 odd a lot of what went on.

6 The next day, the girls discover some olive oil that had  
7 been spilled in the kitchen, and they knew it wasn't them.  
8 But there's this olive oil everywhere. And when people --  
9 when Dan is going over what happened, he remembers the guy  
10 had been greasy. So they're assuming this man took the olive  
11 oil and just put it over himself, over his body.

12 There was just some really odd things.

13 When police investigate, so the evidence at the scene  
14 leads them to believing that Chad Simmons is a suspect. So  
15 they arrest Chad Simmons, and he talked to them. He tells  
16 them that he had been downtown that evening, he had been  
17 drinking, but that he believed that someone had put something  
18 in his drink because all this was not in his character in any  
19 way, whether sober or under the influence of alcohol.

20 The police do not look into that. It seems simple to  
21 them. However, it's not so simple. It's not simple because  
22 there's that thing, criminal intent, which not only did I  
23 mention earlier, but the solicitor mentioned in his opening  
24 statement as well.

25 In this case, there are also a lot of assumptions, but

1     assumptions do not equal evidence of guilt.

2             Now, this case will not be an easy one to hear because  
3     Kimberly Cantwell went through some serious trauma. And it's  
4     totally natural to feel nothing but the utmost sympathy for  
5     this young woman. But the reason we're here is to look into  
6     Chad Simmons and what was actually going on. And when you  
7     do, you'll be able to conclude that Chad is not guilty  
8     because what happened that night, that was not Chad Simmons.

9             Thank you.

10            THE COURT: All right. Thank you, Ms. Ford.

11            All right. Solicitor, is the State ready to call its  
12     first witness?

13            MR. URICCHIO: We are, your Honor.

14            THE COURT: Okay.

15            MR. URICCHIO: The State calls Dan Schwarz.

16            CLERK OF THE COURT: Could you raise your right hand,  
17     left hand on the Bible, please?

18            (Witness sworn.)

19            CLERK OF THE COURT: Yes, sir. You may have a seat.

20            Please state your name for the record and spell your  
21     last name.

22            THE WITNESS: My name is Dan Schwarz, spelled  
23     S-C-H-W-A-R-Z.

24

25



1 DAN SCHWARZ,  
2 called as a witness on behalf of the State, being first duly  
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. URICCHIO:

6 Q. Thank you, Dan, for being here today.

7 A. Mm-hmm.

8 Q. Let's introduce you to the jury. Where do you live?

9 A. I live in Boston, Massachusetts, currently.

10 Q. And you came down here? Flew down here?

11 A. Yes, sir. Flew down here.

12 Q. What do you do for a living?

13 A. I'm a freight broker.

14 Q. And did you previously live in Charleston?

15 A. I did.

16 Q. And did you go to College of Charleston?

17 A. I did.

18 Q. And were you at College of Charleston in 2018?

19 A. I was.

20 Q. And did you know a Gwendolyn Cox while you went to  
21 school?

22 A. Yes, sir.

23 Q. And did you and Gwen see each other in 2018?

24 A. Yes. She was my girlfriend at the time.

25 Q. Okay. And do you remember where Gwen was living in

1 September of 2018?

2 A. Yes, sir. In a house on the corner of Radcliffe and  
3 Coming.

4 Q. Okay. Was it an apartment?

5 A. It was a duplex.

6 Q. Okay. And was that duplex upstairs?

7 A. Yes, sir.

8 Q. Okay. Does ■■■ Radcliffe Street, Apartment ■■■, sound  
9 right?

10 A. Yep.

11 Q. Okay. Did Kim -- er, did Gwen have any roommates?

12 A. Yes, sir.

13 Q. Do you know their names?

14 A. Yes. There was Kimmy, Harley, and Katie.

15 Q. Okay. Now, did you used to go over to Gwen's apartment  
16 much?

17 A. Yes, sir.

18 Q. Okay. In the early morning hours of September 20 of  
19 2018, did you go to Gwen's apartment?

20 A. I did.

21 Q. Okay. Let's talk about September 19, because you went  
22 over there on the 20th, so it was past 12:00, past midnight,  
23 correct?

24 A. Mm-hmm. Yes.

25 Q. Okay. So what did you do on that day, on the 19th?

1 A. I went to class. I got dinner with my friends. And  
2 then I went out to the bars, Public House, to be exact.

3 Q. Okay. And then after Public House, what did you do?

4 A. I went over to Gwen's house.

5 Q. And what time do you think that was?

6 A. Just after midnight.

7 Q. Okay. And when you got to Gwen's house, was the front  
8 door locked or unlocked?

9 A. It was unlocked.

10 Q. Okay. And what did you do when you got there?

11 A. I got there, immediately used the bathroom, and went  
12 straight to Gwen's room, went to bed.

13 Q. Okay. And after you fell asleep, what happened next?

14 A. We fell asleep, and we woke up to some screaming  
15 somewhere in the house.

16 Q. And what did you do when you heard that screaming?

17 A. I shot up out of bed, immediately threw on some shorts,  
18 and went to go find the source of the screaming.

19 Q. Okay. So did you walk out of Gwen's room at that time?

20 A. Yes, sir.

21 Q. Okay. How was the apartment set up?

22 A. The apartment -- the part of the apartment where Gwen  
23 lived was there were three -- there was a hallway right  
24 adjacent to the living room and three doors. There was  
25 Katie, Gwen, Kimmy.

1 Q. Okay. So Gwen had the middle door, pretty much?

2 A. Yes, sir.

3 Q. Okay. When you went out of that middle door, what  
4 happened next?

5 A. I could tell that the screaming was coming from Kimmy's  
6 room, and I ran in there and saw a man on top of Kimmy.

7 Q. Okay. And what did that man look like?

8 A. He was a -- he had darker skin, probably around 5-9,  
9 5-10, with broad shoulders, a big chest, and a thick neck.

10 Q. Okay. Was he African American?

11 A. I believe so.

12 Q. Okay. What did you do when you saw him?

13 A. Well, I ran up to him, grabbed him, and shoved him into  
14 the hallway.

15 Q. Okay. And when you shoved him, did you notice anything  
16 about his skin?

17 A. Yes. He did have an oily texture to him.

18 Q. Okay. And was he saying anything at that time?

19 A. He immediately said, "Stop it. Wrong house," and  
20 continued saying, "Wrong house. Wrong house."

21 Q. Okay. Now, when you're engaged with him, you're in the  
22 hallway, correct?

23 A. Yes.

24 Q. Okay. What transpired in the hallway? Did y'all stay  
25 in the hallway?

1 A. We stayed in the hallway briefly. I was trying to get  
2 ahold of him, take him down. He was scrambling, trying to  
3 get to an exit.

4 Q. Okay. And when you say "trying to get to an exit,"  
5 where was he headed to?

6 A. He was running to the front of the house by the stairs.

7 Q. Okay. And did you have to go up those stairs to get  
8 into the apartment?

9 A. Yes.

10 Q. Okay. So y'all go through the -- y'all start in the  
11 hallway, and y'all end up at the top of the stairs?

12 A. Yes.

13 Q. Okay. What happens at the top of the stairs?

14 A. At the top of the stairs, we -- this is when I really  
15 kind of got ahold of him, and we tumbled down the stairs and  
16 -- yeah, tumbled down the stairs.

17 Q. Okay. Now, at the bottom of the stairs, what's at the  
18 bottom of the stairs?

19 A. At the bottom of the stairs, there's a small area where  
20 you put your shoes, maybe three, four feet of space, and then  
21 the front door.

22 Q. Okay. So when you got to the bottom of the stairs --  
23 y'all both fell down the stairs, correct, during the tussle?

24 A. Yes.

25 Q. All right. What happened when you got to the bottom of

1 the stairs after y'all fell?

2 A. When we got to the bottom of the stairs, I was grabbing  
3 him, holding him, trying to get him down. He was reaching  
4 for the front door.

5 Q. Okay. Did he make it out the front door?

6 A. He did eventually, yes.

7 Q. Okay. Before he made it out the front door, did he  
8 leave anything behind?

9 A. Yes. I was able to rip off his shirt as he was exiting.

10 Q. Okay. So he runs out the door, and you rip off his  
11 shirt. Do you go after him out the front door?

12 A. I do not. I maybe take a step out and I yell something,  
13 and then I immediately run back upstairs to go check on the  
14 girls.

15 Q. Okay. Do you know what road he ran -- did he run down a  
16 road?

17 A. He ran down Radcliffe.

18 Q. Okay. Now, how long do you think the interaction  
19 between you and this person lasted?

20 A. Between confronting him in the room and him getting out  
21 the door was maybe 45 to -- 45 seconds to a minute.

22 Q. Okay. And that shirt, do you remember the color of the  
23 shirt?

24 A. It was a sleeveless shirt. I believe it was black.

25 Q. Okay. And is there anything else that stuck out about

1 it?

2 Let me rephrase this. After he left, what did you do?

3 A. I immediately ran up to go check on the girls. They  
4 were both sitting in the living room consoling Kimmy. Yeah.

5 Q. Okay. And did law enforcement respond?

6 A. Yes.

7 Q. Okay.

8 A. Yes. They were also -- when I got upstairs, they were  
9 also on the phone with police.

10 Q. All right. And you spoke with law enforcement?

11 A. Yes, sir.

12 Q. Okay.

13 MR. URICCHIO: The Court's indulgence?

14 THE COURT: Sure. Take your time.

15 (Mr. Uricchio conferred with co-counsel.)

16 BY MR. URICCHIO:

17 Q. So you said his shirt fell and came off of him, correct?

18 A. Yes, sir.

19 Q. What did you do with the shirt?

20 A. I believe I just left it there right by the shoes.

21 Q. Okay. And let me ask you this. What was the demeanor  
22 of everyone in the house when this was all going on?

23 A. Pretty frantic. I remember Kimmy was crying pretty  
24 hard.

25 Q. And crying is what woke you up?

1 A. Can you repeat that?

2 Q. What woke you up again? Was it Kimmy crying that woke  
3 you up?

4 A. Kimmy was screaming.

5 Q. Screaming. And was she -- how was she after the person  
6 left?

7 A. Hysterical. Completely hysterical. She was laying down  
8 in the corner of the living room with one of the girls  
9 holding her, and, yeah, she was hysterically crying. She had  
10 marks on her. Yeah.

11 MR. URICCHIO: No further questions at this time.  
12 Please answer any questions the defense may have for you.

13 THE COURT: Any cross-examination?

14 MS. FORD: Yes, your Honor.

15 CROSS-EXAMINATION

16 BY MS. FORD:

17 Q. Hi, Dan.

18 A. Hello.

19 Q. You got to Radcliffe that evening pretty late, correct?

20 A. Yes.

21 Q. And when you got there, you went into Gwen's room?

22 A. Yes.

23 Q. And Gwen's room was the room next to Kimmy?

24 A. Yes.

25 Q. You actually didn't even really know Kimmy?



1 A. Correct.

2 Q. You actually didn't know that she was their roommate; is  
3 that fair to say?

4 A. Correct.

5 Q. Because you knew the other roommates pretty well,  
6 though?

7 A. Yes. Very well.

8 Q. You woke up to the scream, correct?

9 A. Correct.

10 Q. And you got up right away?

11 A. Yes.

12 Q. So you got outside of the room right away?

13 A. Yes.

14 Q. You didn't hesitate?

15 A. I did throw on some shorts.

16 Q. But other than that, you didn't hesitate?

17 A. No.

18 Q. You knew that there was a household full of females,  
19 correct?

20 A. Yes.

21 Q. When you went to bed, the lights were off?

22 A. Yes.

23 Q. And when you woke up and you went outside of Gwen's  
24 room, the lights were actually on at this point?

25 A. I may have flipped on the lights.

1 Q. No. They were already on when you got outside.

2 A. Okay.

3 Q. Okay. Well, that's what you told police at the time,  
4 correct?

5 A. That's correct.

6 Q. The lights were on in the living room, correct?

7 A. Correct.

8 Q. The lights were on in the hallway?

9 A. Correct.

10 Q. And they were maybe on in the kitchen as well?

11 A. I don't recall.

12 Q. When you left Gwen's room, you didn't know what you  
13 would actually find, right?

14 A. That's correct.

15 Q. Because you didn't know exactly what was going on?

16 A. Correct.

17 Q. You testified today that you went into Kimmy's room?

18 A. Correct.

19 Q. So Dan, police came out to the apartment that night,  
20 right?

21 A. Correct.

22 Q. And there were numerous officers there?

23 A. From what I remember, yeah.

24 Q. And you talked to multiple officers that night?

25 A. Yes.

1 Q. So you talked to the responding officers?

2 A. I talked to a lot of policeman that night.

3 Q. Okay. And they were wearing body cameras?

4 A. I don't recall.

5 Q. A detective actually came to the scene that night, a  
6 Detective Gertin, a male. Did you talk to him as well that  
7 evening?

8 A. I don't recall the names.

9 Q. But you talked to a male detective that evening?

10 A. I don't recall if it was a male or female officer.

11 Q. Okay. The next day -- or rather, the same date but  
12 during the daylight, you also met with Detective Wolfsen, the  
13 female in charge, correct?

14 A. Correct.

15 Q. Okay. So you talked to at least three officers, but  
16 likely more?

17 A. Correct.

18 Q. Within 24 hours of this all happening?

19 A. That's correct.

20 Q. And when officers came to the scene, they were  
21 interested to know what you saw, right?

22 A. That's correct.

23 Q. And where things had occurred?

24 A. That's correct.

25 Q. So you showed them?

1 A. Correct.

2 Q. So you actually told officers, during again that first  
3 24 hours, that when you left Gwen's room, that man was  
4 already outside Kimmy's room as if he was leaving and you  
5 nearly bumped into him?

6 A. I don't recall that.

7 Q. Okay. You never told the police, not one time, that you  
8 saw the man on Kimmy, correct?

9 A. I don't recall.

10 Q. Okay. So you don't seem to recall a lot today; is that  
11 fair to say?

12 A. I don't think that's super fair. I -- for how quick it  
13 happened and how traumatic it was, I remember a fair amount.

14 Q. Okay. But is it fair to say you do not remember all the  
15 details?

16 A. That's fair to say.

17 Q. All right. But you don't remember if you told Detective  
18 Wolfson that as he went out of the room, the suspect was  
19 turning as if on the way out, so they essentially -- y'all  
20 essentially bumped into each other, correct?

21 A. No. I grabbed him and put him through in the hall.  
22 There was not a lot of space between the bed and the hall.  
23 There was maybe five feet of space. It wasn't a bumping  
24 into. It was I grabbed him and pushed him into the hall.

25 Q. So you're saying the door to Kimmy's room was open?

1 A. It was closed.

2 Q. It was closed?

3 A. It was opened by me when I came in.

4 Q. Okay. But yet you never told one single officer at the  
5 time that you opened Kimmy's door?

6 A. I don't recall if I was specifically asked.

7 Q. You did explain to them that you saw the man outside of  
8 Kimmy's room, though?

9 A. Yes.

10 Q. All right. So this man was a big man, correct?

11 A. Correct.

12 Q. And he was a lot stronger than you?

13 A. Yes.

14 Q. Okay. When you first bumped into him, you asked what he  
15 was doing there?

16 A. I did not.

17 Q. Okay. Did you tell police that?

18 A. I don't recall.

19 Q. When you saw the man, he held up his hands like this,  
20 correct?

21 A. I don't recall.

22 Q. But you told police that he held up his hands. You  
23 showed them that --

24 A. Oh, yes. Yes, yes, he did. When we were in the hall  
25 and he was up against the wall, he did put his hands up like

1     that.

2     Q.     Okay. Well, you told police that he put his hands up  
3     before you ever put your hands on him?

4     A.     I don't recall.

5     Q.     Okay. So this man, after putting up his hands, he said,  
6     "Wrong house," correct?

7     A.     Correct.

8     Q.     And he actually said "Wrong house" multiple times?

9     A.     Correct.

10    Q.     So this man, when you ran into him, he had -- you told  
11    us that he had his shirt on, correct?

12    A.     That's correct.

13    Q.     And he had bottoms on?

14    A.     That's correct.

15    Q.     But you just were not sure what kind of pants he was  
16    wearing?

17    A.     Not sure.

18    Q.     When you -- you told us that you grabbed a black tank  
19    top off of the man. At that time, the man never tried to  
20    grab that tank top back, correct?

21    A.     No. I ripped it off of him as he was out the door. The  
22    force of him leaving and me holding onto the shirt ripped it  
23    off.

24    Q.     And it actually more like slid off of him?

25    A.     I don't know.

1 Q. Well, that's what you told police at the time.

2 A. Yeah.

3 Q. And during this altercation -- and y'all basically --  
4 y'all started outside of Kimmy's room and went all the way  
5 through the living room, correct?

6 A. That's correct.

7 Q. Because you had to go through the living room in order  
8 to get to the front door?

9 A. Yes.

10 Q. And then the two of y'all, while you were tussling, fell  
11 down the stairs?

12 A. Correct.

13 Q. At no time did you see him pick up anything on his way  
14 leaving?

15 A. No.

16 Q. So you were basically on him the whole time between  
17 outside of Kimmy's room and the time he ran from the  
18 apartment?

19 A. Yes.

20 Q. Okay. So this guy, you told us that he was really  
21 strong, correct?

22 A. Yep.

23 Q. In fact, you compared him to, like, a running back?

24 A. Exactly.

25 Q. But you still -- you grabbed him?

1 A. (Indicated.)

2 Q. And the two of you did tussle?

3 A. That's correct.

4 Q. But he never tried to grab you?

5 A. Maybe not grab. Pushing me off.

6 Q. Okay. He never tried to punch you?

7 A. Don't recall.

8 Q. He never tried to hit you?

9 A. Don't recall.

10 Q. He didn't hurt you?

11 A. I hurt my hands.

12 Q. Okay. Well, that was just during the altercation and  
13 not as a result of him directly doing something to you,  
14 correct?

15 A. Correct.

16 Q. In fact, it was clear during this tussle that he was  
17 only trying to get away?

18 A. Correct.

19 Q. When you -- going back to when this man was saying  
20 "Wrong house," it stood out to you that he did really seem to  
21 say that he was in the wrong house?

22 A. Yes.

23 Q. Okay.

24 MS. FORD: Beg the Court's indulgence?

25 THE COURT: Sure. Take your time.



1 (Ms. Ford conferred with co-counsel and their client.)

2 MS. FORD: No further questions, your Honor.

3 THE COURT: Any redirect?

4 MR. URICCHIO: Yes, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. URICCHIO:

7 Q. How many years ago is 2018?

8 A. Four years.

9 Q. Now, it's safe to say that four years can be a long time  
10 for remembering a 45-second incident, correct?

11 A. Correct.

12 Q. Now, when you walked out of the room, did you have an  
13 altercation with an individual?

14 A. Yes.

15 Q. And had you ever seen that individual before?

16 A. No.

17 Q. Do you know -- have you ever seen Gwen with that  
18 individual before?

19 A. No.

20 Q. Have you ever seen Kimmy with that individual before?

21 A. No.

22 Q. Have you ever seen Harley with that individual before?

23 A. No.

24 Q. Have you ever seen Katie with that individual before?

25 A. No.

1 Q. And what did that individual look like?

2 A. He was a dark man, broad shoulders, big chest, thick  
3 neck.

4 Q. And did y'all tussle?

5 A. Yes.

6 Q. And did y'all go through the house?

7 A. Yes.

8 Q. And did y'all fall down the stairs?

9 A. Yes.

10 Q. And did he run away?

11 A. Yes.

12 Q. And did he leave his shirt behind?

13 A. Yes.

14 Q. And is there anything else?

15 A. That's it.

16 Q. Is it safe to say that four years is a pretty long time?

17 A. Yes, sir.

18 Q. But you remember most of it, right?

19 A. Yes, sir.

20 MR. URICCHIO: No further questions.

21 THE COURT: Any re-cross, Ms. Ford?

22 MS. FORD: No, your Honor.

23 THE COURT: Okay. You can step down, sir. And if  
24 there's no objection from either side, Mr. Schwarz, you are  
25 free to leave the courthouse.

1 MR. SIMPSON: None from the State.

2 THE COURT: Okay. Defense?

3 MS. FORD: No, your Honor.

4 THE COURT: Okay. Thank you. You're free to go.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 THE COURT: All right. Ladies and gentlemen, this is  
8 going to be a good time to go ahead and break for the  
9 evening. Be sure to go home and get you a good night's rest,  
10 get you a good meal, so you can be alert and attentive in the  
11 morning. We'll start back at 9:45, so allow yourselves  
12 enough time to get here.

13 And remember all my instructions. No discussion among  
14 yourselves about this case and nobody that you come into  
15 contact with when you leave the courthouse. You can say,  
16 "I've been selected on a jury," but leave it at that. No  
17 research on the Internet, social media, and the like.

18 And we will see you back here at 9:45 in the morning.  
19 Have a good evening.

20 (The jury was released for the day and exited the  
21 courtroom at 5:02 p.m.)

22 (The following proceedings were had outside the presence  
23 of the jury.)

24 THE COURT: Okay. Anything further from either side  
25 before we recess for the night?

1           MR. SIMPSON: Yes, your Honor. First, I just want to  
2 offer the State's profound thanks. I realize you missed  
3 something that was important to you this afternoon, and you  
4 did that because of this trial.

5           THE COURT: Thank you very much for saying that. I  
6 appreciate that.

7           MR. SIMPSON: Secondly, I'd just like to address the  
8 custody status of the defendant. It's fairly typical in the  
9 Ninth Circuit that they not be allowed out on bond. I'm sure  
10 that the Court would like to address that as well, but I  
11 wanted to bring it out. It's caused, you know, our victim  
12 some discomfort.

13          THE COURT: Okay. Is the State aware of any bond  
14 violations over the last four years?

15          MR. SIMPSON: We reserve the right to address that  
16 later. We think that his bond conditions are very permissive  
17 and were rather undefined in ways that we've discussed with  
18 his bondsman.

19          THE COURT: Okay.

20          MR. SIMPSON: But no. Strictly speaking, no.

21          THE COURT: My typical response to the State's request  
22 for bond revocation is if there's been no bond violations, or  
23 maybe some very minor violations, I typically do not revoke  
24 bond. I'll allow you to renew your motion at any time if you  
25 come across some information that you feel like is important

1 to the Court.

2 Mr. Simmons, let me go ahead and instruct you. You're  
3 still subject to whatever bond conditions were in effect.  
4 And also, if you were to decide -- and I'm not saying you're  
5 going to do this, but if you were to decide not to re-appear  
6 tomorrow and the rest of the days for this trial, the trial  
7 will go forward. Do you understand that, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. And so my strong recommendation to  
10 you, you've got two good lawyers. Whatever they tell you to  
11 do, where to be, at what time, then you do exactly what they  
12 tell you. Okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. So the State's motion at this  
15 time is denied, but you have the right to renew it if you  
16 obtain some information that would be important to the Court.

17 MR. SIMPSON: Okay. Thank you, your Honor.

18 THE COURT: All right. Thank you.

19 Anything from the defense?

20 MS. FORD: No, your Honor.

21 THE COURT: All right. Y'all have a good evening. See  
22 you in the morning.

23 (Court recessed at 5:05 p.m., to resume at 9:45 a.m.,  
24 Tuesday, November 29, 2022.)

25

1 (Court resumed at 9:56 a.m., Tuesday, November 29, 2022,  
2 outside the presence of the jury.)

3 THE COURT: Anything to go on the record before we bring  
4 the jury out?

5 MR. SIMPSON: Nothing from the State, your Honor.

6 THE COURT: Okay.

7 MS. FORD: No, your Honor.

8 THE COURT: Okay. All right. Let's bring the jury out,  
9 please.

10 THE BAILIFF: Yes, sir.

11 (The jury came into open court at 9:59 a.m.)

12 THE BAILIFF: Judge, all jurors are present and seated.

13 THE COURT: Thank you, sir.

14 Good morning, ladies and gentlemen. Hopefully, you had  
15 a good, restful evening and are ready to get back to work.

16 Is the State ready to call its next witness?

17 MR. SIMPSON: We are, your Honor.

18 THE COURT: Okay.

19 MR. SIMPSON: May it please the Court, the State calls  
20 Kimberly Cantwell.

21 THE COURT: Okay.

22 CLERK OF THE COURT: Raise your right hand and place  
23 your left on the Bible.

24 (Witness sworn.)

25 CLERK OF THE COURT: You may have a seat.

1           Please state your name for the record and spell your  
2   last name.

3           THE WITNESS:   Kimberly Cantwell, C-A-N-T-W-E-L-L.

4                           KIMBERLY CANTWELL,  
5   called as a witness on behalf of the State, being first duly  
6   sworn, was examined and testified as follows:

7                           DIRECT EXAMINATION

8                           BY MS. SIMPSON:

9   Q.    Ms. Cantwell, good morning.

10 A.    Morning.

11 Q.    How old are you currently?

12 A.    I'm 24.

13 Q.    And where do you live presently?

14 A.    Currently in West Ashley, Charleston.

15 Q.    Okay.   And where did you live in 2018?

16 A.    I lived on Radcliffe Street in downtown Charleston.

17 Q.    And where are you from?

18 A.    I'm from right outside Philadelphia.

19 Q.    Okay.   And what brought you to the Charleston area?

20 A.    I went to College of Charleston and graduated in 2020.

21 Q.    Okay.   Taking you back to September of 2018, I'd like to  
22 just sort of introduce you to the jury.   What was your life  
23 -- going on in your life in September of 2018?

24 A.    I was a junior in College of Charleston, so taking  
25 classes and hanging out with my friends and being a college

1 student.

2 Q. Okay. And you previously mentioned where you lived at  
3 that time. Where was that?

4 A. ■ Radcliffe Street.

5 Q. Okay. And you mentioned that you ultimately graduated  
6 from the College of Charleston?

7 A. Yes.

8 Q. And what is it that you do now?

9 A. I'm a sales representative.

10 Q. Okay. Did you -- when you were in college, did you work  
11 at all -- er, were you employed?

12 A. I had a couple of part-time restaurant, food-and-bev  
13 positions.

14 Q. Okay. And did you have a full slate of classes back in  
15 2018? Were you a full-time student pretty much?

16 A. Yes.

17 Q. Okay. And who did you live with there at ■ Radcliffe  
18 Street?

19 A. I had three roommates: Katie, Harley, and Gwen.

20 Q. Okay. I'd like to take a few moments and sort of  
21 introduce ■ Radcliffe to the jury here so they know what  
22 we're talking about. I'll hand you what's been marked for ID  
23 only as State's 1 through 11. Would you take a moment to  
24 sort of look through those?

25 And do you recognize those images?



1 A. Yes. These are all photos of the house of some sort.

2 Q. Okay. Yeah. It includes some maps, right?

3 A. Yes.

4 Q. And there's some photos of the actual apartment?

5 A. Correct.

6 Q. Okay.

7 MR. SIMPSON: Your Honor, at this point in time, the  
8 State would seek to admit 1 through 11. I believe it's  
9 without objection.

10 THE COURT: All right. So says the defense?

11 MS. FORD: No objection, your Honor.

12 THE COURT: All right. Without objection, 1 through 11  
13 into evidence for the State.

14 MR. SIMPSON: Thank you.

15 (State's Exhibits Number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,  
16 and 11 admitted into evidence.)

17 MR. SIMPSON: May I approach the witness, your Honor?

18 THE COURT: You sure can.

19 BY MR. SIMPSON:

20 Q. Kimberly, do your friends and family call you "Kimmy"?

21 A. Yes.

22 Q. Are you comfortable with that? Is that okay if I do  
23 that?

24 A. Yes. That's fine.

25 Q. Okay. Thank you.

1           Kimmy, we're going to just kind of go through these  
2 images one at a time, and I'd ask that you just sort of  
3 explain to the jury what we're looking at here. That screen  
4 in front of you should show the image and actually has a  
5 touch function, where you can circle something or point  
6 something out to the jury.

7           (Exhibit displayed on screen in open court.)

8 BY MR. SIMPSON:

9 Q.    So this is State's 1. What are we looking at here?

10 A.    That is -- it looks like an aerial map of Radcliffe  
11 Street. That's the house that I lived in at that time.

12 Q.    Okay. And we see that it's two stories, right?

13 A.    Yes.

14 Q.    Where -- was it split into more than one sort of living  
15 area?

16 A.    Yeah. It was split into two apartments, the first and  
17 the second floor, and I lived on the second floor.

18 Q.    Okay.

19           (Exhibit displayed on screen in open court.)

20 BY MR. SIMPSON:

21 Q.    I'm publishing State's Exhibit 2. What are we looking  
22 at here?

23 A.    It's a front view of the house.

24 Q.    And if one were to want to enter where you lived back in  
25 September of 2018, where would one do that?

1 A. That would be the door on the left here.

2 Q. Okay.

3 (Exhibit displayed on screen in open court.)

4 BY MR. SIMPSON:

5 Q. And this may be somewhat repetitive, but State's 3?

6 A. Yes. That's the same door, open.

7 Q. Okay. And you said you lived on the second floor?

8 A. Yes.

9 Q. This would walk up to your apartment?

10 A. Yes.

11 (Exhibit displayed on screen in open court.)

12 BY MR. SIMPSON:

13 Q. State's 4?

14 A. That's another picture of the stairway going up to the  
15 apartment.

16 (Exhibit displayed on screen in open court.)

17 BY MR. SIMPSON:

18 Q. State's 5?

19 A. That's our shared living room.

20 Q. Okay. Is this at the top of that stairwell that we just  
21 saw?

22 A. Yes.

23 Q. And it would enter into the living room here?

24 A. Correct.

25 Q. And it, you know, seems to be sort of pointing out the

1 obvious, but is this sort of a kitchenette back attached to  
2 the living room?

3 A. Yes.

4 Q. And how many bedrooms was this apartment?

5 A. Four.

6 (Exhibit displayed on screen in open court.)

7 BY MR. SIMPSON:

8 Q. State's 6 depicts the same living room and kitchen?

9 A. Yes.

10 Q. And I'm pointing at sort of a doorway here. Where does  
11 that lead?

12 A. My room was at the end of that hallway back there.

13 Q. Were there any other bedrooms in that hallway?

14 A. Yes, Gwen's room. This would be -- this door would be  
15 Gwen's room right there.

16 Q. Okay. So describe to us where -- if that's Gwen and  
17 your rooms, where is Kathryn and Harley's room?

18 A. So Katie's room was right at the top of those stairs, to  
19 the right. The living room is to the left of the stairway.  
20 And then Harley's room is behind this wall right here.

21 Q. Okay. So at the time at the top of the stairs, you sort  
22 of have a -- you step left for the living room and right for  
23 the other two bedrooms?

24 A. Yes.

25 (Exhibit displayed on screen in open court.)

1 BY MR. SIMPSON:

2 Q. State's 7?

3 A. That was the entryway to my room.

4 Q. Okay. So we've got -- is this Gwen's room here?

5 A. Yes.

6 Q. And this is the entry to your bedroom?

7 A. Yes.

8 (Exhibit displayed on screen in open court.)

9 BY MR. SIMPSON:

10 Q. State's 8?

11 A. That was my bedroom.

12 (Exhibit displayed on screen in open court.)

13 BY MR. SIMPSON:

14 Q. State's 9?

15 A. That was behind the kitchenette in the previous  
16 pictures. That was the fire escape at the back of the house.

17 Q. Okay. So this is an additional way to enter and exit  
18 that apartment?

19 A. Yes.

20 Q. Okay. And that's at the back of that kitchenette that  
21 you've already identified?

22 A. Yes.

23 Q. Okay.

24 (Exhibit displayed on screen in open court.)

25

1 BY MR. SIMPSON:

2 Q. State's 10, is this another overhead view of that  
3 address?

4 A. Yes.

5 Q. And where was your apartment there?

6 A. It's here.

7 Q. Okay. And so the rear entrance we just saw would just  
8 come down in the back there?

9 A. Yes.

10 Q. Okay.

11 (Exhibit displayed on screen in open court.)

12 BY MR. SIMPSON:

13 Q. And finally, State's 11. And you see that there is a  
14 house marked here. Is that the location of your residence at  
15 the time?

16 A. Yes.

17 Q. And can you identify to the jury where King Street is?

18 A. Yeah. This is the street right there.

19 Q. And is this -- describe if you could, just in your own  
20 words, what's that sort of area of King Street all about?  
21 What's a good way to describe that?

22 A. Restaurants, bars, shopping, nightlife.

23 Q. Okay. So is that a popular area for people to go out  
24 and have some drinks?

25 A. Yes.

1 Q. It's a crowded-on-a-Friday-and-Saturday-night sort of  
2 place?

3 A. Yes.

4 Q. Okay. And that's the street that runs here?

5 A. Correct.

6 MR. SIMPSON: The Court's indulgence.

7 THE COURT: Sure.

8 BY MR. SIMPSON:

9 Q. Ms. Cantwell, I want to take you to a tough day in your  
10 life, but I want to start with just Wednesday, September 19,  
11 the day. Again, you've told us you were a student at that  
12 time and working in F and B. What do you recall about that  
13 day, to the best of your ability? What did you do that day?

14 A. I believe I went to the gym with a friend. I went to  
15 the library to study, went to one of my classes, and then in  
16 the afternoon went to the beach with a different friend. And  
17 then later that night, I walked over to one of my friend's  
18 houses to watch a show that we watched together that night.

19 Q. Okay. And do you remember what time you went to your  
20 friend's house to watch that show?

21 A. Around 9:00 or 10:00 at night.

22 Q. Okay. And after you watched that show with a friend --  
23 did the friend live nearby?

24 A. Yeah. She lived a block away, so I walked there.

25 Q. Okay. What did you do after you watched the show with a

1 friend?

2 A. I walked back home.

3 Q. Okay. When you got back home, were any of your  
4 roommates awake or in that living room we've just seen?

5 A. No. I don't remember them being awake.

6 Q. Okay. And what did you do when you got back home?

7 A. Got home and basically just got ready for bed, and I  
8 went to bed.

9 Q. Okay. And can you approximate -- I know times are  
10 difficult, particularly this far away. Can you approximate  
11 for the jury about what time you think you were in your  
12 bedroom laying down to go to bed?

13 A. Probably in bed getting ready to go to sleep between  
14 11:30 and midnight.

15 Q. Okay. I noticed that you did not mention in that day on  
16 Wednesday any point in time where you went to King Street.

17 A. That's correct.

18 Q. So you did not go out partying that night; is that fair  
19 to say?

20 A. No, I did not. That's correct.

21 Q. Okay. Did you hang out with any people, to your  
22 recollection, that day other than the one you've already  
23 recounted for the jury?

24 A. No.

25 Q. Okay. Were you drinking that night?



1 A. We might have had a glass of wine watching the show, but  
2 no. No heavy drinking, no.

3 Q. Okay. And again, I don't want to insult you with this  
4 question, but any use of narcotics or anything like that?

5 A. No.

6 Q. Okay. Were you able to go to sleep once you got back to  
7 your room and back to bed?

8 A. Yes.

9 Q. Okay. And in your own words -- and I may interrupt from  
10 time to time, and I'm sorry about that when I do. But please  
11 describe for the jury what occurred and how you were awoken  
12 that night?

13 A. So I'd fallen asleep, again, around midnight. I usually  
14 fell asleep with the TV on, so the TV was on. I woke up, I  
15 don't know what time in the middle of the night to a dark  
16 figure opening my door. And I believe I said, "Wrong room.  
17 Wrong room," assuming that it was one of my roommates'  
18 boyfriends at the time, you know, looking for the bathroom.  
19 My room was right across from the bathroom, so I said, "Wrong  
20 room."

21 But the person had shut the door behind them and  
22 proceeded to lunge at me and grab me and pull me to the  
23 ground.

24 Q. Okay. Ms. Cantwell, I don't want to make this worse  
25 than it needs to be, but I want to slow you down a little

1 bit.

2 The person, you just used the word "lunged." So you  
3 said, "Wrong room." You said they shut the door behind them?

4 A. That's correct.

5 Q. And then came right to you?

6 A. Yes.

7 Q. Okay. No ability to explain why they were there or  
8 answer your questions?

9 A. The person did not say anything, no.

10 Q. Okay. And what did that person do when they got there  
11 to your bed?

12 A. It's a little blurry, but I remember being, you know,  
13 pulled from my bed, thrown onto the floor, and then  
14 strangled.

15 Q. Okay. And again, I hate to have to do this, but if you  
16 could, to the best of your ability -- I know it was a  
17 traumatic experience. So first, he pulls you from your bed?

18 A. Yes.

19 Q. Did you -- he just grabs you? Describe the position of  
20 your body as best you can.

21 A. I was probably sleeping on my side and woke up a little  
22 bit. I don't recall exactly how I was dragged to the ground,  
23 but that's all I remember.

24 Q. And once on the ground, were you facing the floor or  
25 were you facing the ceiling?

1 A. I was facing the floor.

2 Q. Okay.

3 A. The person was behind me.

4 Q. Okay. And the person behind you, sort of how was that  
5 person -- you mentioned being strangled. How was that person  
6 positioned behind you?

7 A. I would say the person was directly behind me and just  
8 strangling me from behind, so at my back, I guess.

9 Q. Okay. And what were you doing during this sort of  
10 struggle with the person?

11 A. I think I was screaming.

12 Q. Okay. Do you remember at some point during this  
13 interaction any sort of contact or injury to your head?

14 A. Yes, I do remember being hit on the head. I don't  
15 remember exactly how that happened, but yes.

16 Q. Was your belief at that time that you were hit with  
17 something other than a fist or a hand?

18 A. Yes. A hard object.

19 Q. Okay. And if you could just show the jury, what part of  
20 the head did you sustain an injury to?

21 A. It was the corner of my forehead, at my hairline.

22 Q. Okay. And let me ask you a little bit about this  
23 person. What was the light like in your room at the time  
24 that this intrusion occurred?

25 A. It was dark, other than the glow of the TV screen. The

1 lights were off.

2 Q. Okay. And was the TV on? Or what was on the TV?

3 A. It was kind of like the screensaver when the TV's been  
4 on too long.

5 Q. Okay.

6 A. So it was kind of like a purplish screensaver.

7 Q. And is that a bright light or a very dim light?

8 A. I would say pretty dim.

9 Q. Okay. Did you -- were you able, through all this, to  
10 get a great look at the person's face?

11 A. No.

12 Q. So you were unable to sort of identify an individual  
13 person; is that fair to say?

14 A. That's fair to say, yep.

15 Q. But nevertheless, can you explain to the jury, just  
16 generally speaking, any sort of characteristics of this  
17 person that you are able to?

18 A. It was definitely a man. He was African American and  
19 big and strong.

20 Q. Okay. Any observations -- do you recall making any  
21 observations about this person's clothing?

22 A. No, I don't recall.

23 Q. Okay. Do you remember anything about whether he was  
24 fully clothed or not?

25 A. I don't remember.

1 Q. Okay. When he was strangling you, is it fair to say  
2 that he was in contact with you from behind like this? Is  
3 this --

4 A. Yeah. I would say he was kind of in a crouching  
5 position, because I was on the floor.

6 Q. Okay. And was he on top of you on the floor?

7 A. Yes.

8 Q. Okay. You mentioned that you think you were screaming;  
9 is that correct?

10 A. Yes.

11 Q. Do you remember at any point in time during this losing  
12 consciousness?

13 A. Yes.

14 Q. Okay. Can you tell the jury a little bit about that?

15 A. The last thing I remember was being strangled and then  
16 waking up on the floor -- I don't know how long after that --  
17 and seeing the person and Dan Schwarz in the hallway right  
18 outside of my bedroom door.

19 Q. Okay. You don't know how long you were unconscious, but  
20 you know that when you came to, there was a struggle taking  
21 place between the person -- the individual that was in your  
22 room and Mr. Schwarz?

23 A. Yes.

24 Q. Okay. Do you remember that individual saying anything  
25 to Mr. Schwarz?

1 A. I don't remember that, no.

2 Q. Were the -- soon thereafter, was it your understanding  
3 that the person was gone from the residence?

4 A. I was pretty confused and distraught at the time, so I  
5 don't recall exactly when I had realized that the person was  
6 out of the house. But yeah.

7 Q. You mentioned something important there. What -- and I  
8 know it's difficult, but what was your mental state following  
9 this interaction with this intruder?

10 MS. FORD: Objection. Relevance.

11 THE COURT: Okay. Relevance, Solicitor?

12 MR. SIMPSON: Well, your Honor, I think obviously her  
13 reaction to this incident is relevant to show whether or not  
14 it occurred: a minor interaction in her mind or a traumatic  
15 one.

16 THE COURT: Okay. I'll overrule at this time. You may  
17 proceed.

18 BY MR. SIMPSON:

19 A. I was hysterical and crying.

20 Q. Okay. Did the police -- were the police contacted  
21 promptly after this occurred?

22 A. Yes.

23 Q. And who was -- who initially called 911?

24 A. I believe it was Harley or myself or both of us  
25 together.

1 Q. Okay.

2 MR. SIMPSON: May I approach the witness, your Honor?

3 THE COURT: You sure can.

4 BY MR. SIMPSON:

5 Q. I'm going to show you what's been marked as State's  
6 Exhibit 46 for ID only at this time. Do you recognize that  
7 exhibit?

8 A. Yes, I do.

9 Q. And what is that?

10 A. That is a recording of the 911 call that was made.

11 Q. Okay. And is that a fair and accurate representation of  
12 that 911 call?

13 A. Yes.

14 Q. Okay. And do you hear yourself making that 911 call?

15 A. Yes.

16 Q. And you just answered a question that it was you and  
17 Harley kind of in conjunction making that call?

18 A. Yes.

19 Q. Okay. Why would someone else have to get on that 911  
20 call, do you think?

21 A. I was pretty unable to form sentences. I was, again,  
22 hysterically crying.

23 MR. SIMPSON: Your Honor, at this point in time, the  
24 State would seek to admit and publish State's 46.

25 THE COURT: Okay. And what says the defense?

1           MS. FORD: I object. It's based on bolstering, 403, and  
2 hearsay.

3           THE COURT: Okay. Well, let's probably -- so we can  
4 fully flesh this out, let's -- ladies and gentlemen, I've got  
5 a legal issue that I need to take up with the lawyers. It  
6 should not take long at all, but I'm going to have to ask you  
7 to go back to the jury room so I can discuss it with them a  
8 little further.

9           Thank you.

10          (The jury exited open court at 10:21 a.m.)

11          (The following proceedings were had outside the presence  
12 of the jury.)

13          THE COURT: Okay. Ms. Ford, you are stating your  
14 objection is based upon 403, that the prejudicial -- unfair  
15 prejudicial effect of this 911 call would outweigh any  
16 probative value. Is that -- I'm not trying to put words in  
17 your mouth. You mentioned 403.

18          MS. FORD: Yes, your Honor. That is one basis. And  
19 bolstering.

20          THE COURT: Okay.

21          MS. FORD: Partially, as I mentioned in my opening --  
22 we're early in the case, of course, and I understand the  
23 State still has to make their case. But as I said in my  
24 opening, we're not disputing that Ms. Cantwell was attacked  
25 that evening. So I think, especially in light of that, that



1 403 comes into play even more and the bolstering aspect.

2 THE COURT: Okay.

3 MS. FORD: She was quite hysterical in the call, and  
4 that's why I think it would be more prejudicial than  
5 probative.

6 THE COURT: All right. Solicitor, you want to respond  
7 to the defense objection?

8 MR. SIMPSON: Yes, your Honor.

9 I'll paraphrase something that you see pop up in several  
10 different cases addressing issues such as this, and that's  
11 that traumatic and difficult cases have traumatic and  
12 difficult evidence. It's always the right of any party to  
13 corroborate -- and I would say that the more proper framing  
14 of this evidence is "corroboration," not "bolstering." But  
15 it's always the right of a party to corroborate evidence.

16 The jury has just heard, in a very sanitized environment  
17 of a courtroom, what Ms. Cantwell experienced that night.  
18 It's -- in order for them to believe or disbelieve an  
19 incident such as this, it's important that they get to  
20 consider evidence of the actual nature of the attack and its  
21 impact. And I think corroborating Ms. Cantwell's instant  
22 impression of this occurrence is an important right that the  
23 State has, and that any party has, when presenting evidence  
24 to the jury, your Honor.

25 And I think it survives a 403 analysis because her live

1 impression of what just occurred is very probative, your  
2 Honor, and probative to the degree that it would outweigh any  
3 prejudice.

4 THE COURT: Okay. Well, how long is the call,  
5 Solicitor, roughly?

6 MR. SIMPSON: The call -- I'm unsure. I'm sorry.

7 THE COURT: That's okay. I was just thinking --

8 MR. SIMPSON: And honestly, the clip I was going to  
9 publish for right now would be rather brief. Because as you  
10 heard, one of the roommates sort of takes over the call at  
11 one point, and I was going to play that portion with that  
12 witness.

13 THE COURT: Okay.

14 MR. SIMPSON: What I was going to play is just the  
15 beginning portion of this before the roommate steps in to  
16 sort of take over.

17 THE COURT: Okay. Well, you know, certainly in cases of  
18 this nature, 911 calls are pretty routine as far as coming  
19 into evidence. But in all fairness, let me -- if you can,  
20 play for me the portion with this witness that you want to  
21 publish out of the 911 call. Let me hear it, and then we'll  
22 go from there.

23 MR. SIMPSON: Understood. Thank you, your Honor.

24 MS. FORD: And your Honor, just since the solicitor said  
25 he's going to put in the rest, it's not long all together. I

1 think it's about seven minute. Well, it's about nine  
2 minutes, and the last few minutes are dispatch. But if  
3 they're going to -- I think it's about seven minutes. I  
4 don't know if we should listen to it all so that we don't  
5 have to --

6 THE COURT: Let's just go ahead and listen to the  
7 portion that the State wants to play with this witness, and  
8 then we'll go from there.

9 (Audio played in open court.)

10 MR. SIMPSON: And your Honor, the second voice you heard  
11 for the address was Harley, and we'll hear from her later.

12 THE COURT: Okay. So it sounds like maybe the call was  
13 interrupted and then it was initiated again. So the first --  
14 I'm going to call it the first call would have been the voice  
15 of this witness here, right?

16 MR. SIMPSON: And the beginning of the second call until  
17 the point where you hear -- we can keep going, but a calmer  
18 voice at this point takes over.

19 THE COURT: But all that voice says is the address?

20 MR. SIMPSON: Right. We'd be seeking to admit more  
21 later.

22 THE COURT: Right. With the other witness.

23 MR. SIMPSON: Right. Right.

24 THE COURT: I think for purposes of corroboration, I  
25 think the State is entitled to do that. So at least with

1 respect to what has just been played, I will overrule the  
2 objection and allow it to come into evidence. And then the  
3 remainder that the State wants to play later on in the case,  
4 you certainly have every right, Ms. Ford, to renew your  
5 objection if you so wish.

6 MS. FORD: Thank you, your Honor.

7 THE COURT: Okay. All right. All right. Let's bring  
8 the jury out, please, sir.

9 And just for the record, I do find, with respect to this  
10 first part, there is more probative value than any unfair  
11 prejudicial effect to the defense.

12 (The jury came into open court at 10:30 a.m.)

13 THE BAILIFF: Judge, all jurors are present and seated.

14 THE COURT: Thank you, sir.

15 Solicitor, you may proceed.

16 MR. SIMPSON: Thank you, your Honor.

17 Q. [By Mr. Simpson] Ms. Cantwell, when we last left, you  
18 were describing an attempted call to 911. And again, could  
19 you describe sort of your emotional state at that time for  
20 the jury?

21 A. "Hysterical" was the word I used.

22 Q. And you do recall that at some point I believe you said  
23 a roommate got on the phone to further assist in the 911  
24 call?

25 A. Yes.

1           MR. SIMPSON: Your Honor, at this point the State would  
2 seek to publish a portion of State's 47. Again, renew our  
3 request to admit State's 47 into evidence subject to --

4           THE COURT: I think it's 46.

5           MR. SIMPSON: Oh, thank you, your Honor. State's 46,  
6 subject to your ruling, and publish that.

7           THE COURT: Okay. It will come in -- that portion  
8 that's already been played for the Court, that will come into  
9 evidence, certainly subject to any objection made by defense.  
10 And then we can deal with the remaining part of the call when  
11 needed.

12          MR. SIMPSON: Thank you, your Honor.

13          (State's Exhibit Number 46 admitted into evidence.)

14          (Audio played in open court.)

15 BY MR. SIMPSON:

16 Q.     So Ms. Cantwell, I know that's difficult to listen to,  
17 but do you recognize yourself in that 911 call?

18 A.     Yes.

19 Q.     And is that the call made in close proximity to the time  
20 after this intrusion had occurred?

21 A.     Yes.

22 Q.     Did police respond --

23 A.     Yes.

24 Q.     -- to that call?

25 A.     Yes.

1 Q. And could you tell the jury just a little bit about what  
2 you remember, where you were at when the police responded?

3 A. The four of us, my roommates and myself, were in the  
4 living room with Dan as well. I was sitting on the couch,  
5 and I think they were consoling me. And once the police  
6 came, they were just trying to talk to me and see what  
7 happened and look at the extent of the injuries that I had.

8 Q. Okay. And having, you know, experienced that type of  
9 ordeal, did you then have to sit and talk with a lot of  
10 strangers about what had just happened to you?

11 A. Could you say the question again? I'm sorry.

12 Q. All right. Were you then made to have to sit and talk  
13 to a bunch of police officers --

14 A. Yes.

15 Q. -- about what had just happened?

16 A. Yes.

17 Q. Okay. And did you do that?

18 A. Yes.

19 Q. Okay. And I know that was traumatic, but do you recall  
20 at any point in time talking with anybody that night after  
21 the incident occurred about the defendant and whether or not  
22 he was clothed during the assault?

23 A. I -- um -- I believe I might have talked to either a  
24 nurse or a police officer and said that at some point the  
25 person's pants might have been off, but I didn't recall

1 exactly.

2 Q. Okay. And that give me a good segue into what -- after  
3 you spoke to the police, what happened? Where did you go?

4 A. I was taken by ambulance to the hospital and admitted  
5 overnight.

6 Q. Okay. And during that admittance to a hospital, was an  
7 exam conducted of you?

8 A. Yes.

9 Q. Photographs taken?

10 A. Yes.

11 Q. Was that -- and we'll just leave it at this: Was that  
12 exam a rather intrusive medical exam?

13 A. Extremely intrusive, yes.

14 Q. Okay. Were you at least able to call and talk to  
15 anybody else in your life that night that gave you some  
16 comfort?

17 A. Yes. I had called my -- one of my best friends at the  
18 time, Emily. And I had called my parents as well.

19 Q. And where did your parents live at the time?

20 A. Right outside of Philadelphia.

21 Q. Okay. Did they rush to your side?

22 A. Yes. My dad had flown down that morning.

23 Q. Okay. So he was able to be with you the next morning?

24 A. Yes.

25 Q. And are they here with you today?

1 A. They are.

2 Q. Kimberly, you remember a knife block or any sort of  
3 knife utensils that you had in the kitchen at the time you  
4 lived at Radcliffe Street?

5 A. Yes. We had a knife block, yes, in the kitchen.

6 Q. Okay. Just kind of your standard knife set? Is that --

7 A. Yes. It was one of my roommate's, but we all shared it.

8 Q. Okay. Do you have any recollection whatsoever, or even  
9 any sort of hypothetical reason, that possibly the largest  
10 knife from that block would have been taken by you to your  
11 room that night?

12 A. No. There's no reason for that, no.

13 Q. Okay. In the days, weeks before, would you have taken  
14 that knife to your bedroom for some purpose?

15 A. No.

16 Q. Okay. Finally, Ms. Cantwell, I want you to talk to the  
17 jury a little bit about kind of the longer-term effects that  
18 this had on your life.

19 MS. FORD: Objection. Relevance.

20 THE COURT: Okay. Well, I mean, the -- whatever  
21 injuries, the nature of her injuries that she may have  
22 sustained certainly is at issue.

23 MS. FORD: May we approach, your Honor?

24 THE COURT: Sure.

25 (An off-the-record discussion was held at the bench in



1 the presence of the jury but outside the hearing of the  
2 jury.)

3 BY MR. SIMPSON:

4 Q. Ms. Cantwell, I want to focus just briefly just on the  
5 physical injuries sustained. Do you -- you mentioned a  
6 location of your head. Can you indicate that again?

7 A. Yes. I don't recall if it was the left or the right  
8 side of my forehead, but a large injury on the top of my  
9 forehead.

10 Q. Did you also -- did you suffer any other sort of  
11 abrasions or markings to your body that night?

12 A. Yes. I would say bruising and scratches on my neck.

13 Q. Okay.

14 MR. SIMPSON: The Court's indulgence.

15 THE COURT: Sure take your time.

16 (Mr. Simpson conferred with co-counsel.)

17 BY MR. SIMPSON:

18 Q. Ms. Cantwell, do you remember what, if anything, you  
19 were wearing that night when you went to bed?

20 A. I believe I went to bed just in my underwear, mainly  
21 because it was still hot in September in Charleston and our  
22 house was old and didn't have good air conditioning so it was  
23 hot in my room.

24 Q. Okay.

25 MR. SIMPSON: Ms. Cantwell, thank you so much for being

1 here. If you could answer any questions Ms. Ford has for  
2 you.

3 THE COURT: Defense, have any cross-examination?

4 MS. FORD: Yes, your Honor.

5 CROSS-EXAMINATION

6 BY MS. FORD:

7 Q. Hi, Ms. Cantwell.

8 A. Hi.

9 Q. So Ms. Cantwell, that day, earlier in the day, you told  
10 us a little of what you did that day. At no time do you  
11 recall seeing someone who matched the description of the  
12 person who was in your room, correct?

13 A. That's correct.

14 Q. And at no time that day while you were out did you see  
15 my client, Mr. Simmons, correct?

16 A. I did not see him, no.

17 Q. And you were out of the house most of that day; is that  
18 fair to say?

19 A. Yes, that's fair to say.

20 Q. You told us that when the man -- after you came to, you  
21 saw the man outside in your hallway with Dan, correct?

22 A. That's correct.

23 Q. And you don't recall -- today you don't recall the man  
24 saying anything?

25 A. No, I don't. Personally, I don't remember that, no.

1 Q. But you actually did hear him say, "Wrong house,"  
2 multiple times?

3 A. I believe after the fact I remembered things, but at the  
4 time, I don't remember hearing him say that with Dan, no.

5 Q. Okay. So you met -- that night was really upsetting, of  
6 course, correct?

7 A. Correct.

8 Q. But you did meet with a variety of police officers  
9 within the 24 hours afterwards?

10 A. Yes.

11 Q. There were numerous regular officers in, you know, their  
12 uniforms at the scene?

13 A. Yes.

14 Q. And you -- when you went to the hospital, a detective  
15 came to talk to you?

16 A. Yes.

17 Q. And that was a male detective, Detective Gertin?

18 A. I don't recall his name, but a detective, yes.

19 Q. Okay. And at that point, you were able to give him --  
20 tell him what happened, what you could recall at that point?

21 A. Yes.

22 Q. And when you spoke to Detective Gertin, you told him  
23 that the man had told Dan -- that you heard him say, "Wrong  
24 house. Wrong house," correct?

25 A. Correct. Yes.

1 Q. Later that day, in the actual daytime, you met with  
2 Detective, now Sergeant Wolfsen, correct?

3 A. Yes.

4 Q. And when you met with her, again, you did tell her that  
5 you heard the man say to Dan, "Wrong house. Wrong house"?

6 A. I -- I don't recall the exact details of what we talked  
7 about, but I'm -- I'm not sure. I don't remember.

8 Q. Okay. Would watching or listening to that clip of the  
9 interview help refresh your memory?

10 A. I talked to several police officers, so if there's a  
11 video of me saying it, then I'm sure I did. It's just it's  
12 all kind of blurry. So if that's what's on the video, then  
13 that's what I said, yes.

14 Q. But you recall -- er, at some point you did tell police  
15 right afterwards that you did hear the man say, "Wrong  
16 house"?

17 A. I -- yes. Correct.

18 Q. Okay. When the man came in the room, he didn't say  
19 anything at that point?

20 A. Correct.

21 Q. And he just came straight towards the bed?

22 A. Yes.

23 Q. When you landed on the floor, he immediately strangled  
24 you?

25 A. Yes.

1 Q. So there wasn't a time lapse or anything like that?

2 A. No.

3 Q. And when you saw the man in the door, when the man first  
4 -- when you woke up, he was wearing sweatpants?

5 A. I don't remember what he was wearing.

6 Q. Okay. Do you remember telling Detective Gertin, the  
7 male detective at MUSC, that you believed he was wearing  
8 sweatpants?

9 A. Yes. I believe I said that, yes.

10 Q. And you also saw him wearing a black shirt?

11 A. I don't remember.

12 Q. So while you were on the ground, you couldn't actually  
13 see the man because he was behind you, correct?

14 A. Yes, that's correct.

15 Q. You told us that you thought you saw something in the  
16 man's hands when he came in the room?

17 A. Yes, some sort of object. I wasn't sure what it was.

18 Q. Okay. So you never could actually see what it was?

19 A. No. I just noticed an object in his hand.

20 Q. And after he grabbed you, you didn't see what happened  
21 to that object?

22 A. No, I did not.

23 Q. Okay. And you actually -- at the time when you spoke to  
24 police, you didn't necessarily remember him hitting you with  
25 anything; you just assumed it because you did have a knot on

1 your head. Correct?

2 A. That's correct. I didn't remember exactly how I got the  
3 injury, yes.

4 Q. Okay. At your apartment at the time, there were four of  
5 y'all living there all together, correct?

6 A. Correct.

7 Q. And so you explained a little with Mr. Simpson, but when  
8 you go into the hallway, there's a hallway with three  
9 bedrooms, correct?

10 A. Yes.

11 Q. And at first, you would pass Harley's room?

12 A. Yes.

13 Q. And then Gwen's room?

14 A. Yes.

15 Q. Okay. And then there's your room at the very end?

16 A. Yes.

17 Q. Okay. When you were talking to police that evening, you  
18 did note that you found it surprising that the man ended up  
19 in your room because your room was at the very back, correct?

20 A. Yes.

21 Q. Because that man would have had to have passed Katie's  
22 room at the front, correct?

23 A. Yes.

24 Q. And then he would have had to have passed Harley's room,  
25 correct?

1 A. Yes. Yes.

2 Q. And then Gwen's room?

3 A. Yes.

4 Q. Okay. And in fact, it actually felt as if he was  
5 looking for someone; that's what you told the police?

6 A. That's what I thought, yes, because my room was in the  
7 back. Yes.

8 Q. But you just had no idea who he could have been looking  
9 for?

10 A. Yes. Correct.

11 Q. You told us a little earlier that some of the incident  
12 is blurry?

13 A. Yes.

14 Q. At the time you met with police, things were still a  
15 little -- were actually blurry at that point too, correct?

16 A. Yes.

17 Q. You told us you believe you were sleeping in your  
18 underwear?

19 A. Yes.

20 Q. Were you actually sleeping nude?

21 A. I don't remember.

22 Q. Okay. But at no time did the man take off your  
23 clothing, correct?

24 A. That's correct.

25 Q. And the man, you explained to us how he choked you?

1 A. Yes.

2 Q. Okay. But he didn't grab your butt, for example?

3 A. Not that I remember, no.

4 Q. Okay. Or your breast?

5 A. No. Not that I remember, no.

6 Q. Or your privates?

7 A. No.

8 Q. And he never said anything at all, correct?

9 A. No.

10 Q. Okay.

11 MS. FORD: Beg the Court's indulgence.

12 THE COURT: Sure.

13 (Ms. Ford conferred with co-counsel and their client.)

14 MS. FORD: I have no further questions.

15 THE COURT: Okay. Any redirect?

16 MR. SIMPSON: Yes, your Honor. Just briefly.

17 REDIRECT EXAMINATION

18 BY MR. SIMPSON:

19 Q. Ms. Cantwell, Ms. Ford asked you about the individual  
20 seated here. Have you ever seen this person before?

21 A. In photos, yes.

22 Q. Prior to the intrusion, I should have said. That's a  
23 poorly phrased question on my part. But prior to the  
24 intrusion into your home, had you ever interacted with this  
25 person?



1 A. No.

2 Q. Did you invite him into your home that night?

3 A. No.

4 Q. Did you know him at all at that time?

5 A. No.

6 Q. All right.

7 THE COURT: Let the record reflect that the solicitor,  
8 in questioning this witness, is referring to the defendant.

9 MR. SIMPSON: Thank you, your Honor.

10 Q. [By Mr. Simpson] You testified initially, and then  
11 clarified with Ms. Ford, that he came into your room,  
12 opening, closing the door behind him, and came immediately to  
13 your bed; is that correct?

14 A. Yes.

15 Q. You used the word "lunged" in your initial testimony?

16 A. Yes.

17 Q. And immediately forced you to the floor?

18 A. I'm not sure how -- what the timeframe was, but it was  
19 very quickly, yes.

20 Q. Okay. Ms. Ford also explored with you the idea that you  
21 spoke to a lot of people, as you have to in an incident like  
22 this, that night, correct?

23 A. Yes.

24 Q. And she stated that -- gave some examples of some things  
25 that you're alleged to have said to various officers?

1 A. Yes.

2 Q. Okay. And asked if you recalled saying those things?

3 A. Yes.

4 Q. Okay. Do you recall speaking with a nurse that night?

5 A. I do, yes.

6 Q. Do you recall telling that nurse, "I looked back at one  
7 point and his pants were not on"?

8 A. I do not remember saying that, no.

9 Q. Okay. Do you remember speaking with officers?

10 A. That night, yes. Yes.

11 Q. And do you remember suggesting to them that you looked  
12 back and maybe he didn't have his pants on?

13 MS. FORD: Objection. Misleading.

14 THE COURT: Okay. Try to rephrase, Solicitor, if you  
15 would, please, sir.

16 MR. SIMPSON: Sure, your Honor.

17 Q. [By Mr. Simpson] Do you remember mentioning anything in  
18 relation to the defendant's pants to officers that night?

19 A. I believe I mentioned that, yes. Like I said, it was  
20 dark and I wasn't sure. So they asked me that question, and  
21 I said they could have been off, yes.

22 Q. Okay. You were asked by Ms. Ford to elicit specific  
23 details about this hit to the head, and you said, you know,  
24 "I wasn't sure exactly when that occurred during the  
25 assault"; is that fair?

1 A. That's fair, yes.

2 Q. Okay. But in your direct, you did answer that you know  
3 that it wasn't -- your perception is it was not with a fist;  
4 it was with an object?

5 A. It felt like a hard object, yes. Yes.

6 Q. And you also mentioned in Ms. Ford's testimony that  
7 there seemed to be some object in his hand when he entered  
8 the room?

9 A. Yes.

10 Q. And you're -- being very transparent -- unsure what that  
11 object was, correct?

12 A. Yes, that's correct.

13 Q. Okay. And it was a dark room?

14 A. Yes.

15 Q. Okay. You were also oddly asked to give an opinion as  
16 to what the defendant was doing. I think Ms. Ford said  
17 "looking for someone." Do you know why he was in your house?

18 A. No. I have no idea, no.

19 Q. Okay. But when he came in your room, he attacked you  
20 quickly; is that correct?

21 A. Yes.

22 Q. You were also asked by Ms. Ford different parts of the  
23 body and whether or not he touched them; is that correct?

24 A. Yes.

25 Q. But you -- Ms. Cantwell, you were unconscious for a

1 period of time in the room with this man; is that correct?

2 A. That's correct.

3 Q. Okay. And you were understandably hysterical following  
4 this intrusion; is that accurate?

5 A. Yes.

6 Q. But there were others in the home that responded to your  
7 screams fairly quickly; you know that, right?

8 A. Yes.

9 Q. Okay.

10 MR. SIMPSON: I don't have any further questions, your  
11 Honor.

12 Thank you, Ms. Cantwell.

13 THE COURT: Any recross?

14 MS. FORD: Yes, your Honor.

15 RE CROSS-EXAMINATION

16 BY MS. FORD:

17 Q. Ms. Cantwell, the solicitor asked you a few questions  
18 about pants. You never -- you were on the floor being  
19 choked, correct?

20 A. Yes.

21 Q. You never actually could look behind you?

22 A. I believe I might have looked over my shoulder, but it  
23 was dark and I did not see much, no.

24 Q. When you talked to the police, you actually indicated at  
25 some point you did try to elbow the man, to get him off of

1 you perhaps?

2 A. Yes. I was trying to fight him off, yes.

3 Q. And you indicated that you may have felt skin at that  
4 point?

5 A. Yes.

6 Q. So that is why you were uncertain if he was wearing  
7 pants or not?

8 A. Yes. That's correct. Yes.

9 Q. But you never told police that you looked back and saw  
10 him not wearing pants, correct?

11 A. That's correct. Yes.

12 Q. And all of this happened very quickly?

13 A. Yes.

14 Q. And when the man took you off the bed and you landed on  
15 the floor, he immediately strangled you at that point?

16 A. Yes.

17 Q. Okay.

18 MS. FORD: No further questions.

19 THE COURT: You can step down, ma'am. Thank you.

20 (Witness excused.)

21 THE COURT: Next witness?

22 MR. SIMPSON: Your Honor, at this point in time, the  
23 State calls Kathryn Costantini.

24 CLERK OF THE COURT: Can you raise your right hand, left  
25 hand on the Bible, please?

1 (Witness sworn.)

2 CLERK OF THE COURT: You may have a seat.

3 Please state your name for the record and spell your  
4 last name.

5 THE WITNESS: Kathryn Costantini, C-O-S-T-A-N-T-I-N-I.

6 KATHRYN COSTANTINI,

7 called as a witness on behalf of the State, being first duly  
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SIMPSON:

11 Q. Good morning, Ms. Costantini.

12 A. Morning.

13 Q. Where do you live now?

14 A. I live in San Diego, California.

15 Q. And how old are you?

16 THE COURT: Can you speak up a little bit, please,  
17 ma'am?

18 THE WITNESS: Yes. Sorry. San Diego, California.

19 BY MR. SIMPSON:

20 Q. And how old are you?

21 A. I'm 25.

22 Q. And are you present here today in Charleston because of  
23 this trial?

24 A. Yes.

25 Q. Against your will?

1 A. No.

2 Q. Okay. Where are you from originally?

3 A. I'm from South Florida.

4 Q. And what do you do?

5 A. I'm a yoga instructor.

6 Q. And currently? You do that now?

7 A. Mm-hmm.

8 Q. Okay. I want to introduce you a little bit to this  
9 jury. What's your educational background?

10 A. Exercise science. I graduated from College of  
11 Charleston.

12 Q. Okay. And what years were in the College of Charleston?

13 A. 2015 to 2019.

14 Q. And during that time, did you at any point in time live  
15 with Kimberly Cantwell?

16 A. Yes.

17 Q. And what time period was that?

18 A. 2018 to 2019.

19 Q. And did you live with Ms. Cantwell in 2018? September  
20 of 2018?

21 A. Yes.

22 Q. And where did y'all live?

23 A. ■ Radcliffe.

24 Q. And who else lived there?

25 A. Harley, Gwen, myself.

1 Q. And where -- with the layout of the, sort of, apartment,  
2 where was your bedroom?

3 A. Right at the top of the stairs.

4 Q. I'm going to show you what's been marked as -- and  
5 entered as State's 3.

6 (Exhibit displayed on screen in open court.)

7 BY MR. SIMPSON:

8 Q. Do you recognize that?

9 A. Mm-hmm.

10 Q. And you walk up those stairs and you go into a living  
11 room; is that correct?

12 A. Yes.

13 (Exhibit displayed on screen in open court.)

14 BY MR. SIMPSON:

15 Q. I'm showing you State's 6. Where, in relation to this  
16 photograph, was your bedroom at this time?

17 A. My bedroom is behind to the right.

18 Q. Okay. So at the top of the stairs, there's sort of two  
19 ways you can go?

20 A. Mm-hmm. Left to the living room, right into my room.

21 Q. And was your room the first room to the right?

22 A. Yes.

23 Q. Okay. And where was Kimberly's bedroom in relation to  
24 yours?

25 A. On the complete opposite end.



1 Q. Okay. Did you know Kimberly really well at that time?

2 A. Mm-hmm.

3 Q. Okay.

4 THE COURT: You need to verbally answer that --

5 THE WITNESS: Yes.

6 THE COURT: -- so she can take it down. Thank you.

7 THE WITNESS: Sorry.

8 BY MR. SIMPSON:

9 Q. And we won't waste much of your time, Ms. Costantini.

10 Do you remember an incident, why we're here, that took place  
11 in the early morning hours of September 20, 2018?

12 A. Yes.

13 Q. To the degree you can, do you remember anything about  
14 that day or what you did that day leading up to that evening?

15 A. It was a normal day. We had just gotten back in town  
16 after the hurricane. I remember that night we just watched  
17 our favorite show. Kimmy had gone, like, three houses down  
18 to watch the same show with her friends. None of us were  
19 going out. None of us were doing anything. It was just a  
20 normal day.

21 Q. Okay. So you were even aware of where Kimmy was that  
22 evening, right?

23 A. Yes.

24 Q. Now, did you go to bed before she got back?

25 A. Yes.

1 Q. Okay. And just to the best -- you can approximate, but  
2 do you remember what time you went to bed?

3 A. Probably around 10:00.

4 Q. Okay.

5 A. 9:00.

6 Q. And did you fall asleep?

7 A. Yes.

8 Q. And so if I could, I'd just ask you, in your own words,  
9 to explain to the jury how your sleep became disturbed that  
10 evening.

11 A. My bedroom had French double doors, and so when the  
12 lights turned on in the living room, it bled into my room.  
13 And I woke up. The lights were on. I was confused why they  
14 were on. I heard something but then it stopped. I peeked  
15 out the window, like the curtains of my doors, and I saw  
16 clothes at the top of the stairs that I didn't recognize.  
17 There were a man's clothes. And then I heard screaming.

18 Q. And can you describe anything about that screaming you  
19 heard?

20 A. It was terrible. It was the worst thing I've ever  
21 heard. And then I hid in my bathroom until I heard arguing,  
22 two men's voices arguing, and I heard the tumbling down the  
23 stairs. And then as soon as I heard the front door shut, I  
24 ran into the living room and I saw Kimmy.

25 Q. And what was Kimmy's emotional state at that time?

1 A. Awful.

2 Q. Okay.

3 A. Hysterical. Terrified.

4 Q. Do you remember if she was wearing anything initially?

5 A. She wasn't.

6 Q. Okay. Were the police contacted?

7 A. Yes.

8 Q. Okay. And did they respond fairly quickly?

9 A. Yes.

10 Q. Was Kimberly still emotional about the incident when the  
11 police arrived?

12 A. Absolutely.

13 Q. Did you ever see -- you just described a series of  
14 sounds and things you heard and perceived. Did you ever see  
15 with your eyes this person that had intruded into your home?

16 A. No.

17 Q. Do you see this individual seated at the defense table  
18 here?

19 A. Yes.

20 Q. Do you know him?

21 A. No.

22 Q. Did you ever invite him into your home?

23 A. No.

24 Q. Have you ever met him before?

25 A. No.

1 Q. Have you ever spoken with him before?

2 A. No.

3 THE COURT: All right. Let the record reflect, she's  
4 referring -- the solicitor's pointing at the defendant in his  
5 questioning of this witness.

6 You may proceed.

7 BY MR. SIMPSON:

8 Q. And to that point, do you recall talking to an officer  
9 the day -- I mean, about what time on the 20th did this  
10 happen, to the best you can recall?

11 A. I think it was like 2:00 a.m.

12 Q. Okay. Do you remember the next day -- meaning, really  
13 just the same day --

14 A. Mm-hmm.

15 Q. -- speaking with an officer and being shown a picture?

16 A. Yes.

17 Q. And did you know the person in the picture?

18 A. No.

19 Q. Had you ever seen the person in the picture before?

20 A. No.

21 Q. Did you invite the person in the picture to your house  
22 that night?

23 A. No.

24 Q. Any interaction with that person on the picture at all?

25 A. No.

1 Q. Staying with that next day, taking that this intrusion  
2 occurred in the early morning hours, so going just to the  
3 same day -- I should ask, did you ever get a good night's  
4 sleep that night?

5 A. No.

6 Q. Okay. But a lot of officers came to the house?

7 A. Yes.

8 Q. Talked to a lot of people?

9 A. Yes.

10 Q. The next day, did you notice, you know -- things began  
11 to calm down. Did you notice anything additionally unusual  
12 about your apartment?

13 A. Yes. We got back to the apartment. The officers had  
14 left, and we were starving so we went into the kitchen to  
15 make food. And I noticed that there was a bottle of olive  
16 oil open on the counter and what looked like olive oil on the  
17 floor. And I opened the pantry, and there had been a bottle  
18 of olive oil that none of us could open all week. It was  
19 kind of a joke that we couldn't open it. But it was open.  
20 And we were like, "Who opened the olive oil?"

21 And then I noticed the knife block, and I noticed --  
22 they're my knives. I noticed a knife was missing, and so I  
23 went into Kimmy's room. I lifted up her comforter, and I  
24 found a knife. I called the officers and they came back.  
25 They took the olive-oil bottles and the knife.

1 MR. SIMPSON: The Court's indulgence?

2 THE COURT: Sure.

3 MR. SIMPSON: May I approach the witness, your Honor?

4 THE COURT: You sure can.

5 BY MR. SIMPSON:

6 Q. Ms. Costantini, I'm going to show you what's been marked  
7 for ID only at this point as State's 15, 16, 17, 18, 19, 20,  
8 and 21. Can you take a moment to review these?

9 Do you recognize those images?

10 A. Yes.

11 Q. Are those fair and accurate representations of some of  
12 the places and things you just discussed with this jury?

13 A. Yes.

14 MR. SIMPSON: Your Honor, at this point in time, the  
15 State would seek to admit State's 15 through 21, I believe  
16 without objection.

17 THE COURT: What says the defense?

18 MR. DANIELS: No objection.

19 THE COURT: All right. Without objection, 15 through 21  
20 into evidence on behalf of the State.

21 (State's Exhibits Numbers 15, 16, 17, 18, 19, 20, and 21  
22 admitted into evidence.)

23 MR. SIMPSON: Permission to publish, your Honor?

24 THE COURT: Certainly.

25

1 BY MR. SIMPSON:

2 Q. Kathryn, I'd like you to describe again sort of the time  
3 the next day things -- these observations were taking place.  
4 You're saying so the police have gone at this point?

5 A. Mm-hmm. Yes.

6 Q. Things were starting to calm down, I imagine, for quite  
7 an exciting event?

8 A. Yes.

9 Q. You had gotten some food?

10 A. Yes.

11 Q. Or had decided at the time to get some food and gone to  
12 the kitchen?

13 A. Yes.

14 Q. Okay. And what did you observe again in the kitchen?

15 A. I saw an olive-oil bottle on the counter.

16 Q. Okay.

17 A. It was opened. I saw --

18 Q. I'm going to interrupt you from time to time.

19 (Exhibit displayed on screen in open court.)

20 BY MR. SIMPSON:

21 Q. I'm showing you State's 19. And Kathryn, that screen in  
22 front of you is actually a touch screen, if you want to point  
23 something out.

24 So what are we talking about here?

25 A. The olive-oil bottle there.

1 Q. Okay. And then you said you noticed something else,  
2 right? Related to that?

3 A. Yes. I saw what looked like olive oil on the floor.  
4 (Exhibit displayed on screen in open court.)

5 BY MR. SIMPSON:

6 Q. Okay. Can you show us what you're describing there?

7 A. Yes.

8 Q. Okay. Why is that -- why were those interesting  
9 observations to you?

10 A. I really liked to keep the house clean, so it was weird  
11 that it was out of the pantry and it was on the floor.

12 Q. Would you have left the olive oil out?

13 A. No.

14 Q. Would you have left a spill, if you knew about that, out  
15 on the floor?

16 A. No.

17 Q. And who were you with when these sort of things were  
18 being observed?

19 A. With Harley and Gwen.

20 Q. Okay. And after speaking -- after -- did you discuss  
21 these observations with Harley and Gwen?

22 A. Yes.

23 Q. After that discussion, did you still find them unusual?

24 A. Yes.

25 Q. You mentioned a second olive-oil bottle in your --



1 A. Yes.

2 Q. -- testimony. And what did you say about that?

3 A. It was in our pantry, and we hadn't been able to open  
4 it. And it was opened.

5 (Exhibit displayed on screen in open court.)

6 BY MR. SIMPSON:

7 Q. Okay. Showing State's 20. Is that the olive-oil bottle  
8 in the --

9 A. Yes.

10 Q. -- image there? And where is that?

11 A. (Indicated.)

12 Q. Now, had you tried to open that bottle?

13 A. Yes. We all tried to open it.

14 Q. And you mentioned it was kind of like a joke in the  
15 apartment, right?

16 A. Yes.

17 Q. And you mentioned "we all." That means all the  
18 roommates in your presence had tried to open that bottle?

19 A. I believe it was just me, Harley, and Gwen.

20 Q. Okay. And no one was able to open that?

21 A. No.

22 Q. Okay. And so what was unusual about what you're  
23 observing in the pantry in State's 20?

24 A. It was open.

25 Q. Okay. And by "open," you mean just the seal broken?

1 A. Yes.

2 Q. I mean, obviously the cap was on it, but --

3 A. Yes.

4 Q. Okay.

5 (Exhibit displayed on screen in open court.)

6 BY MR. SIMPSON:

7 Q. And what can you tell us about State's 21?

8 A. A knife missing from the knife block.

9 Q. Okay. And is this -- I'm assuming you recognize that  
10 knife block?

11 A. Yes.

12 Q. Okay. Was that knife located there in the kitchen?

13 A. Yes -- er, the missing knife? No.

14 Q. The missing knife.

15 A. The block was in the kitchen.

16 Q. Okay.

17 (Exhibit displayed on screen in open court.)

18 BY MR. SIMPSON:

19 Q. Publishing now State's 15. Whose room is that?

20 A. Kimmy's.

21 Q. And is that a pretty fair and accurate representation of  
22 her room as it looked --

23 A. Yes.

24 Q. -- that day?

25 A. Yes.

1 Q. Describe for the jury -- so what did -- did you go into  
2 that room after noticing the olive oils and the missing  
3 knife?

4 A. Yes.

5 Q. And what was the purpose of you going to that room?

6 A. I was looking for the knife.

7 Q. Okay. Did you find it?

8 A. Yes.

9 Q. Was it in plain sight or was it covered by something?

10 A. It was covered.

11 Q. Okay. By what?

12 A. The comforter.

13 Q. Okay.

14 (Exhibit displayed on screen in open court.)

15 BY MR. SIMPSON:

16 Q. What can you tell us here about State's 16?

17 A. That's the knife on the bed.

18 Q. Okay. Was it -- tell us about how you discovered it.

19 You said it was covered by the comforter?

20 A. Yes.

21 Q. And so what -- did you just go through her bed or just  
22 sort of lift up the --

23 A. I just lifted from the bottom corner, and it was right  
24 there.

25 Q. Okay. And then once you noticed that that knife was

1     there in Kimmy's room, what did you do?

2     A.    I immediately called the detective back who had just  
3     been there.

4     Q.    Okay. Did they come back to the residence?

5     A.    Yes.

6     Q.    Okay. So in the picture we see here, other than you  
7     lifting the comfort up, was the knife there or any other  
8     object tampered with in any way by you?

9     A.    No.

10    Q.    And I don't want you to take any offense to this  
11    question. I've just gotta ask it. Did you put that knife  
12    there in some --

13    A.    No.

14    Q.    -- scheme to --

15    A.    Absolutely not.

16    Q.    Okay. Any reason you can think of that you would have,  
17    in the days leading up to this or prior, moved that knife  
18    into Kimmy's room?

19    A.    No reason.

20    Q.    No use of a knife of that size that you can think of for  
21    why that would be there?

22    A.    No.

23           MR. SIMPSON: Okay. Ms. Costantini, thank you. Please  
24    answer any questions that Ms. Ford has for you.

25           THE COURT: Ms. Ford, cross-examination?

1 MS. FORD: Mr. Daniels is going to handle this.

2 MR. DANIELS: Request the Court's indulgence?

3 THE COURT: Sure. Take your time.

4 (Mr. Daniels conferred with co-counsel and their  
5 client.)

6 CROSS-EXAMINATION

7 BY MR. DANIELS:

8 Q. So after watching your show, everybody in the apartment  
9 just went to their own rooms, right?

10 A. Yes.

11 Q. And that would be you?

12 A. Yes.

13 Q. And Gwen?

14 A. Yes.

15 Q. And Harley?

16 A. Yes.

17 Q. Okay. Dan was not in the apartment at this time?

18 A. No.

19 Q. And neither is Kimmy?

20 A. No.

21 Q. And this is after your show. You said it was 10:00 to  
22 11:00?

23 A. Like 9:00 or 10:00.

24 Q. Okay. Like 9:00 or 10:00. And you seem pretty  
25 particular about your apartment, keeping it clean?

1 A. Yes.

2 Q. So you notice things about the apartment?

3 A. Yes.

4 Q. And you turn off the lights at night?

5 A. Yes.

6 Q. Okay. And that was one of the things that you noticed  
7 when you woke up?

8 A. Yes.

9 Q. Was lights coming in from the living room?

10 A. Yes.

11 Q. Through your blinds -- er, your curtains?

12 A. Yes.

13 Q. And you woke up to Kimmy screaming?

14 A. I didn't hear the screaming right when I woke up.

15 Something woke me up that sounded, but it wasn't the screams  
16 that made me hide.

17 Q. Well, I wasn't asking about that. But that's what woke  
18 you up; nothing woke you up prior to that?

19 A. No.

20 Q. Okay. So you didn't hear Kimmy come into the house?

21 A. No.

22 Q. You didn't hear Dan coming in the house?

23 A. No.

24 Q. Okay. And there was some confusion when you woke up.

25 You didn't know if the sound was coming from outside the

1 apartment or inside the apartment?

2 A. Yes.

3 Q. Okay. And you never saw the man?

4 A. No.

5 Q. You said you heard the argument between two men?

6 A. Yes.

7 Q. And you had no idea any man was in the house?

8 A. No.

9 Q. Okay. And in that argument before the tumble, you  
10 heard, "Wrong house"?

11 A. Yes.

12 Q. You heard that repeatedly?

13 A. Yes.

14 Q. And then the tumble?

15 A. Yes.

16 MR. DANIELS: The Court's indulgence?

17 THE COURT: Sure.

18 (Mr. Daniels conferred with co-counsel and their  
19 client.)

20 BY MR. DANIELS:

21 Q. I just -- I need to clarify. You told police that night  
22 you woke up to the scream; does that sound correct?

23 A. That sounds correct.

24 Q. Okay. And that's when you noticed the lights on?

25 A. Yes.

1 MR. DANIELS: Thank you. No further questions.

2 THE COURT: Okay. Solicitor, any redirect?

3 MR. SIMPSON: Very brief, your Honor. Thank you.

4 REDIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. Ms. Costantini, Mr. Daniels asked you about what you saw  
7 and heard, and you mentioned that something woke you up,  
8 correct?

9 A. Yes.

10 Q. And then you heard screams. And how would you describe  
11 those screams again?

12 A. Terrible. Most horrific sounds I've ever heard, like  
13 blood-curdling screams.

14 MR. DANIELS: Objection. Outside the scope.

15 THE COURT: Well, there was some discussion about what  
16 she -- what woke her up. I'm going to allow it.

17 You may proceed.

18 MR. SIMPSON: Thank you.

19 Q. [By Mr. Simpson] And Mr. Daniels also asked you about  
20 what you saw that night, right?

21 A. Yes.

22 Q. Or what you perceived. I'm going to show you what's  
23 been marked for ID only as State's 45. You did not see this  
24 man enter the house?

25 A. No.



1 Q. Okay.

2 MR. SIMPSON: Nothing further, your Honor.

3 THE COURT: Okay. Mr. Daniels, you have anything in  
4 recross?

5 MR. DANIELS: I do not, your Honor.

6 THE COURT: Okay. Thank you.

7 You can step down, ma'am. You're more than welcome to  
8 remain with us. However, if you need to leave --

9 Anyone have any objection to this witness leaving the  
10 courthouse?

11 MR. SIMPSON: None from the State, your Honor.

12 MS. FORD: No, your Honor.

13 THE COURT: Okay. You're welcome to stay with us if you  
14 like, ma'am.

15 (Witness excused.)

16 THE COURT: Solicitor, your next witness would be who?

17 MR. SIMPSON: Our next witness would be an RN from MUSC.

18 THE COURT: Okay. About how long? I'm just trying to  
19 figure out whether we go one more witness and then break, or  
20 break and --

21 MR. SIMPSON: I would request a break now.

22 THE COURT: Okay.

23 MR. SIMPSON: If that would be okay with the Court.

24 THE COURT: That's fine. That's fine.

25 All right, ladies and gentlemen. We're going to take a

1 morning break. Remember all my instructions. And we'll get  
2 you back out shortly. Okay?

3 (The jury exited open court at 11:20 a.m.)

4 THE COURT: All right. We'll be in a short recess.

5 (Court recessed.)

6 (Court resumed outside the presence of the jury.)

7 MR. SIMPSON: Your Honor, I'm sorry if they're on their  
8 way. I have a brief matter of law I'd like to discuss.

9 THE COURT: Okay. All right. I'll be glad to hear from  
10 you now.

11 MR. SIMPSON: Thank you. Forgive me because this has  
12 developed on the fly, but I believe the rules in admitting  
13 external evidence of a prior inconsistent statement require  
14 that a witness be questioned on it, confronted by it, and  
15 deny it, and once they do that, the party can then introduce  
16 external evidence of a prior inconsistent statement. The  
17 SANE nurse, part of her sexual-assault exam is a brief review  
18 of what happened from the point of view of the victim of the  
19 case. When she took that statement in her exam in this case,  
20 Ms. Cantwell said, "I looked back at one point and his pants  
21 were not on."

22 THE COURT: Okay.

23 MR. SIMPSON: That was obviously relevant to the medical  
24 treatment she was receiving because, you know, they're  
25 checking for bodily fluids and that would certainly be

1 relevant.

2       The witness who stated that -- as to a hearsay  
3 objection -- which is inevitable, I think, when I seek to  
4 produce it. As to that objection, it would come in under the  
5 prior-inconsistent-statement exception to hearsay. And the  
6 predicate that is required to be set down for that is that  
7 the witness be confronted with the prior statement and deny  
8 making it -- which occurred, I believe, in my direct and in  
9 cross -- for witness Kimberly Cantwell.

10       THE COURT: Right. I think the response was, "I don't  
11 remember making it," as opposed to, "I did not make it," if I  
12 recall correctly, which I think has the same effect.

13       MR. SIMPSON: By my recollection, the responses, there  
14 were two statements, one to the police department --

15       THE COURT: Right.

16       MR. SIMPSON: -- and that was the one she said she  
17 doesn't remember making.

18       THE COURT: Okay.

19       MR. SIMPSON: And then there was one to the nurse, and  
20 that one she absolutely denied making.

21       THE COURT: Okay.

22       MR. SIMPSON: And a review of the record would reflect  
23 that, I believe it was during the cross of Ms. Ford, she --  
24 no, I believe it was with my redirect she actually said, "I  
25 did not say that."

1           THE COURT: Okay. Let me look at my notes, and then  
2 I'll be glad to hear from Ms. Ford. Just let me --

3           MS. FORD: I believe Mr. Daniels is checking his notes  
4 as well, your Honor.

5           THE COURT: Here's what my notes indicate, and I'd  
6 certainly -- yeah. Concerning what she told the nurse about  
7 the man did not have pants on, my notes say she did not  
8 recall saying that -- okay? -- which I think has the same  
9 effect as a denial. But at least that's what my notes  
10 reflect, and my law clerk's are the same. And then when she  
11 spoke to police, she mentioned that his pants were off.  
12 That's based on my notes.

13          MS. FORD: Well, she just declared -- so when she talked  
14 to police, she said that when she was trying to elbow him off  
15 of her, she felt skin so she thought maybe his pants were  
16 off. But and she seemed to -- I believe that was clear on  
17 the stand that when she talked to police, she told them she  
18 did not look back. And when she testified, her current  
19 memory is that she did not look back.

20          THE COURT: Right.

21          MS. FORD: But there is a statement in the report -- the  
22 SANE report saying, "I was able to look back and see there  
23 were no pants."

24          THE COURT: But the issue we have at hand now is the  
25 State wants to examine the nurse who, evidently in her notes,

1 recorded that Kimmy told her that the pants were off.

2 Is that correct, Solicitor?

3 MR. SIMPSON: It is, your Honor. Yeah.

4 THE COURT: Okay. So regardless of whatever she told  
5 police, at least right now that's not an issue. So what the  
6 solicitor is wanting to do is bring out the inconsistent  
7 statement from -- that Kimmy made to the nurse at the  
8 hospital.

9 And the position of the defense would be what? I'm  
10 asking if there's any objection, and if so, the basis for  
11 that objection.

12 MS. FORD: Yes, your Honor. I really just -- I'm trying  
13 to make my decision based on what --

14 THE COURT: Sure. Sure. Take your time. And then, you  
15 know, the solicitor indicated that this matter of law was on  
16 the fly. When you try cases, you do a lot on the fly because  
17 you don't anticipate a lot of things that are going to  
18 happen. So, you know, if you need time to kind of formulate  
19 your thoughts, you know, during this whole trial, I'll give  
20 you whatever time you need. Okay?

21 MS. FORD: Yes, sir. I mean, I think in this case, a  
22 lot of people are going to say things. It's clear that a lot  
23 -- no one gave, like, a truly lengthy statement, other than  
24 my client, in this case.

25 THE COURT: Right.

1           MS. FORD: But it sounds like a lot of them, their  
2 statements are slightly inconsistent. At least -- I mean,  
3 nothing necessarily groundbreaking, but it seems so far, the  
4 testimony has been slightly inconsistent with what they  
5 originally told police and other people. So I've been trying  
6 to impeach on the stand, of course. And when appropriate, I  
7 was planning to impeach -- you know, follow through with the  
8 officers, if need be. So that's what I would intend to do as  
9 well.

10           And so in light of that, I don't necessarily have, I  
11 think, an objection to the solicitor's --

12           THE COURT: Okay. To --

13           MR. SIMPSON: For the record, your Honor, I would also  
14 note the hearsay exception of 803(4), which are statements  
15 made for the purposes of medical diagnosis or treatment.

16           THE COURT: Okay. But at least concerning the State's  
17 -- go ahead, y'all, you talk, and then I'll make sure I'm  
18 clear of what your position is.

19           (Ms. Ford conferred with co-counsel and their client.)

20           THE COURT: Okay. So just to make sure I'm clear, the  
21 State wants to examine the nurse who the State claims Kimmy  
22 told them that the guy's pants were off. And does the  
23 defense have any objection to the State pursuing that line of  
24 questioning with the nurse?

25           MS. FORD: Your Honor, I apologize for the delay.

1 THE COURT: That's okay. That's all right.

2 MS. FORD: I just want to make sure. I believe, just  
3 based on how all the witnesses are testifying and how I think  
4 this trial's going to proceed, in fairness, I'm going to say  
5 that I'm okay with it.

6 THE COURT: Okay. And I think under 613(b), the fact  
7 that Kimmy did not deny it but said, "I don't recall making  
8 it," has the same effect as a denial. And under 613(b),  
9 extrinsic evidence of a prior statement can be brought out.  
10 So I mean, I appreciate your willingness to concede this  
11 issue, but I think the State, under 613(b), would have the  
12 right to do it even if you objected. Okay?

13 MS. FORD: Yes, sir. Thank you.

14 THE COURT: Okay.

15 MR. SIMPSON: Thank you.

16 THE COURT: Okay. All right. Let's bring the jury out.

17 THE BAILIFF: Yes, sir.

18 (The jury came into open court at 11:45 a.m.)

19 THE COURT: When the jury comes in, you're more than  
20 welcome to go ahead and take your seat. It's just a matter  
21 of formality with me standing when the jury comes back in.  
22 And a lot of times -- and I appreciate it, but a lot of  
23 times, the lawyers think, "Well, because the Judge is  
24 standing up, then we better stand up." So when you come in,  
25 feel free to take your seat then. Okay?

1 All right. Is the State ready to call its next witness?

2 MR. SIMPSON: We are, your Honor. The State calls Anne  
3 Goliver from MUSC.

4 CLERK OF THE COURT: Can you raise your right hand, left  
5 hand on the Bible, please?

6 (Witness sworn.)

7 CLERK OF THE COURT: You may have a seat.

8 Please state your name for the record and spell your  
9 last name.

10 THE WITNESS: Anne Goliver, G-O-L-I-V-E-R.

11 ANNE GOLIVER,  
12 called as a witness on behalf of the State, being first duly  
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SIMPSON:

16 Q. Ms. Goliver, good morning.

17 A. Good morning.

18 Q. Almost afternoon. What is your occupation?

19 A. I'm a registered nurse.

20 Q. And where do you work?

21 A. At the Medical University of South Carolina.

22 Q. And can you describe a little bit for our jury sort of  
23 what kind of education is required to become a registered  
24 nurse?

25 A. Sure. An associate's -- I went to school for an



1    associate's, and then I went to school for a bachelor's. And  
2    then you do have to take a license test to become a  
3    registered nurse, so I am licensed.

4    Q.    And what's the difference between a registered nurse and  
5    -- what does the "registered" part mean? I'm just curious.

6    A.    You're able to give medication, to assess patients, and  
7    you're licensed.

8    Q.    Okay. Are there any sort of continuing-education  
9    requirements to maintain that licensure?

10   A.    So in my current job, there are typically continuing  
11   education, but I am in patient care, so that is my continuing  
12   education. As far as my SANE position, I do require 12 a  
13   year.

14   Q.    That allows me a great segue into my next question. Do  
15   you have any sort of specialty areas you practice as an RN?

16   A.    So right now, I do two different jobs at the Medical  
17   University of South Carolina. One of those is a  
18   sexual-assault nurse examiner.

19   Q.    And you mentioned the phrase a "SANE" nurse. Is that a  
20   shortening of "sexual-assault nurse examiner"?

21   A.    Yes.

22   Q.    Okay. So what is a SANE nurse? What does a  
23   sexual-assault nurse do?

24   A.    It is a specialty registered nurse that's able to help a  
25   person that comes to the hospital that's in need after a

1 sexual assault, into the emergency room.

2 Q. And I would imagine a primary purpose of that, is that  
3 the treatment of the individual?

4 A. Yes.

5 Q. Does it also have an evidentiary component to it?

6 A. Yeah. We collect evidence, write up a SLED report.

7 Q. So what is -- to the degree you'd like to answer, what  
8 is the purpose of a SANE exam?

9 A. To be able to provide trauma-informed care to the  
10 patient, to be able to educate them, provide medications,  
11 collect evidence, assess the individual based on what is  
12 stated to the nurse.

13 Q. And does being a SANE nurse require any specialized  
14 education, training, or certification?

15 A. Yes. We require a 40-hour training that is done in the  
16 classroom. And then after that, we work with live models.  
17 We have education in regards to the camera and the speculum  
18 exams. We also go through the orientation process for the  
19 sexual-assault nurse exams, you know, at -- in the  
20 orientation process with other nurses. And then we go  
21 through a mock exam. And then you're deemed competent.

22 Q. So you have to go through all of those steps before you  
23 even perform your first real-world --

24 A. Yes.

25 Q. -- sexual-assault exam?

1 A. Yes.

2 Q. Okay. How long have you been an RN?

3 A. Twelve years.

4 Q. And how long have you been a SANE nurse?

5 A. Four years.

6 Q. Okay. And understanding that you probably can't nail  
7 this down exactly, but approximately how many sexual-assault  
8 exams do you think you've conducted in that time?

9 A. Forty-five.

10 Q. Well, that sounds pretty specific. So you do know?

11 A. I do.

12 Q. Okay. Forty-five. All right. If you could, take this  
13 jury, please, through just what is involved in a normal SANE  
14 exam.

15 A. Yes, absolutely. So what happens is the patient will  
16 come to the hospital, typically to the ER. And we get a  
17 phone call paged to our pager, and we are -- if they're over  
18 the age of 18 and it has been within 120 hours and they are  
19 able to consent, then we from there do the consent, go over  
20 what will be done. It is up to that individual to make the  
21 decision to go forward with the exam.

22 We listen to what has happened, so we get their story.  
23 And then from there, we'll take pictures, we'll collect  
24 evidence swabs, and we'll provide medication, education,  
25 advocacy. And we, you know, discharge them safely home.

1 Q. Okay. Thank you. And in your role as a SANE nurse at  
2 MUSC, do you recall becoming involved in an exam of an  
3 individual named Kimberly Cantwell in the early morning of  
4 September 20, 2018?

5 A. Yes.

6 Q. And I want to also ask you, through all that process you  
7 just described to the jury, do you also compile a report in  
8 writing?

9 A. Yes.

10 Q. Okay. And document your exam?

11 A. Yes.

12 Q. For purposes if we need to -- anyone needs to refer to  
13 it later?

14 A. Yes, that's correct.

15 Q. Okay. With Ms. Cantwell, did you follow the general  
16 procedures that you just described?

17 A. I did, yes.

18 Q. Did she report the use of any drugs or alcohol in the  
19 previous 12 hours?

20 A. She did not.

21 Q. Did she report the nature of her assault to you?

22 A. Yes.

23 Q. And is that report important to you as a SANE nurse in  
24 order to determine the proper manner to conduct your exam,  
25 collect evidence, and proffer treatment?

1 A. Yes.

2 Q. Do you note on your -- in your report the patient's  
3 recitation of what occurred to her?

4 A. Yes.

5 Q. Okay. Is that noted -- do you recall -- and if you need  
6 to refer to your report, just make that known. Do you recall  
7 Ms. Cantwell's recitation of what had occurred to her in this  
8 case?

9 A. Yes.

10 Q. And that was given on September 20, right?

11 A. Yes, that's correct.

12 Q. Is that sort of an initial part of your exam? One of  
13 the first things you do?

14 A. The very first thing I do is to find out, you know, that  
15 she is consenting for this exam.

16 Q. Okay.

17 A. And then once I get the consent and I go over everything  
18 that I would be doing, then we proceed typically with the  
19 story.

20 Q. Okay. And that story, again, is taken by you for the  
21 purposes of formulating the best medical treatment; is that  
22 correct?

23 A. That is correct.

24 Q. And do you recall Ms. Cantwell saying to you that she  
25 recalls that at one point he had something in his hand?

1 A. Yes.

2 Q. And do you recall her saying to you that at one point  
3 she looked behind and his pants were off?

4 A. Yes, that's correct.

5 Q. And I don't want to miscommunicate that quote. "I  
6 looked back at one point and his pants were not on."

7 A. That is correct.

8 Q. Okay. After the story is taken from the patient, how  
9 does your -- how did your exam proceed with Ms. Cantwell?

10 A. So once I hear the story, then based on that is how I  
11 know to collect my evidence, take pictures of what the areas  
12 that I need to take pictures of so I can concentrate and  
13 focus on those areas to help the patient.

14 Q. That gives me a good example to ask you. Did she  
15 recount to you that the perpetrator choked her?

16 A. Yes. And -- yes.

17 Q. So considering what you just said, taking her story and  
18 then going and looking for treatment or evidence of that, did  
19 you make any observations relevant to this report of being  
20 choked?

21 A. Yes. And so when you say "choked," I would use the  
22 terminology of "strangulation."

23 Q. Okay. Thank you. And explain that. Why is that better  
24 terminology?

25 A. Because choked would be like if you are drinking a water

1 and it goes down the wrong pipe. To me, strangulation is the  
2 force of something around your neck.

3 Q. Thank you. Thanks for educating me. I didn't know that  
4 distinction. Thank you.

5 But did you make any observations relevant in your  
6 report to Ms. Cantwell being strangled?

7 A. Yes.

8 Q. And what were they?

9 A. There was abrasions noted to her left and right side of  
10 her neck, which would be -- another word would be  
11 "scratches," which are consistent with strangulation.

12 Q. Any observations you made regarding her voice?

13 A. Yes. It was hoarse.

14 Q. Okay. Would that also be consistent with strangulation?

15 A. Yes.

16 Q. Nurse Goliver, I'm going to show you what's been marked  
17 for ID only as State's 33 to 36 and give you a moment to sort  
18 of review these items.

19 Do you recognize 33 through 36?

20 A. Yes.

21 Q. Are those fair and accurate --

22 MR. SIMPSON: May I approach the witness again, your  
23 Honor?

24 THE COURT: You may.

25

1 BY MR. SIMPSON:

2 Q. Referring to 33 through 36, are those fair and accurate  
3 representations of Ms. Cantwell during her exam with you?

4 A. Yes.

5 MR. SIMPSON: Your Honor, at this point in time, the  
6 State would seek to admit State's 33 through 36, I believe  
7 without objection.

8 MS. FORD: No objection, your Honor.

9 THE COURT: Without objection, Number 33 through 36 in  
10 evidence for the State.

11 (State's Exhibits Numbers 33, 34, 35, and 36 admitted  
12 into evidence.)

13 MR. SIMPSON: And seek permission to publish?

14 THE COURT: Certainly.

15 (Exhibit displayed on screen in open court.)

16 BY MR. SIMPSON:

17 Q. Ms. Goliver, I'm going to start with State's 33. Can  
18 you describe for the jury what we're looking at and any sort  
19 of relevant observations you made to Ms. Cantwell's report  
20 that night?

21 A. So you can see here that there are some abrasions noted  
22 to her right side of the neck.

23 Q. I'm going to interrupt you briefly and just note that  
24 that screen in front of you allows, if you so choose, to mark  
25 it and it will show up on the screen here. So if there's



1 anything you want to draw the jury's attention to, you can  
2 just circle it on there.

3 A. Okay.

4 Q. Continue. Thank you.

5 A. So I can mark on this?

6 Q. Yep.

7 A. Okay. So you can see here these would be what we're  
8 looking at as far as markings here on her neck. They would  
9 be abrasions. And it would be -- when someone is  
10 strangled, it -- or this -- looking at the picture, it  
11 shows that it could be, you know, signs of strangulation due  
12 to the abrasions that you see one centimeter to -- I'd have  
13 to refer to my report, but I believe four centimeters to her  
14 right side.

15 Q. Okay.

16 (Exhibit displayed on screen in open court.)

17 BY MR. SIMPSON:

18 Q. Moving to State's 34?

19 A. That's another look here of her right side of --  
20 consistent with abrasions. With strangulation, it could  
21 be -- consistent with strangulation, it could be somebody's  
22 fingernails there.

23 Q. Okay. And you noted both of these were to her right  
24 side?

25 A. Yes.

1 (Exhibit displayed on screen in open court.)

2 BY MR. SIMPSON:

3 Q. State's 36. Is this the --

4 A. That's her left.

5 Q. Okay. And any observations you made here?

6 A. Again, you can see the longer abrasions here on the side  
7 consistent with -- you know, I would call these abrasions up  
8 to about seven and a half centimeters. They're multiple,  
9 bearing in what would be more like scratches.

10 Q. Okay.

11 (Exhibit displayed on screen in open court.)

12 BY MR. SIMPSON:

13 Q. And State's 35?

14 A. I believe that's also -- I'd have to refer to my report,  
15 but left side of her neck.

16 Q. And Ms. Goliver, if you ever need to refer to your  
17 report, that's okay. Just indicate that you're doing so.

18 A. Okay.

19 Q. And that's the report you did contemporaneously with  
20 this exam?

21 A. Yes.

22 Q. Okay. And that would help you refresh your recollection  
23 of these observations?

24 A. Yes.

25 Q. Okay.

1 A. Mm-hmm. I will refer to it.

2 So I wrote that there were -- that was the left side?  
3 Okay. So it's an abrasion about seven and a half centimeters  
4 long.

5 Q. What's been marked for ID only at this point as State's  
6 37 I believe is still in front of you there.

7 A. Mm-hmm.

8 Q. Did Ms. Cantwell also report to you an injury to her  
9 forehead?

10 A. Yes, she did.

11 Q. And did you make any -- did she report to you being hit  
12 with a hard object in that area?

13 A. Yes.

14 Q. And did you make any observations regarding that report  
15 to you?

16 A. Yes. I'm going to refer to my report as well.

17 It was a hematoma noted at two centimeters?

18 Q. Okay. And is that State's 37 a fair and accurate  
19 representation of that area of Ms. Cantwell at that time?

20 A. Yes.

21 MR. SIMPSON: Your Honor, at this point in time, the  
22 State would seek to admit State's 37.

23 THE COURT: What says the defense?

24 MS. FORD: No objection.

25 THE COURT: Without objection, 37 into evidence.

1 (State's Exhibit Number 37 admitted into evidence.)

2 MR. SIMPSON: Permission to publish?

3 THE COURT: Yes, sir.

4 (Exhibit displayed on screen in open court.)

5 BY MR. SIMPSON:

6 Q. So could you indicate for the jury what you're referring  
7 to about the injury to Ms. Cantwell's head -- forehead?

8 A. The left frontal forehead hematoma.

9 Q. And what is a hematoma?

10 A. It's, like, where blood pools. It's a bruise that's  
11 raised and swollen.

12 Q. Okay. And would that be consistent in your experience  
13 with being hit with some sort of hard object in that area?

14 A. Yes.

15 Q. Okay. We discussed sort of briefly the evidentiary kind  
16 of portion of a SANE exam, right? I know it's not just a  
17 SANE exam, but sexual-assault nurse exam?

18 A. Mm-hmm.

19 Q. Can you describe for the jury sort of the  
20 evidence-collection portion of the SANE exam? What are some  
21 areas you might look at? What are some things you might take  
22 for future potential evidence analysis?

23 A. So depending on what the patient has stated to me or the  
24 SANE nurse would depend on what evidence we'd collect. We  
25 also collect the buccal swab, which is their DNA.

1 Q. And thank you. If you could, just elaborate on that for  
2 the jury. This buccal swab, what is a buccal swab?

3 A. It is a swab -- oral swab that's done of their cheeks.  
4 And we do that on every single case.

5 Q. And again, what does a buccal swab do?

6 A. It collects the individual's DNA --

7 Q. Okay.

8 A. -- of that patient.

9 Q. Of the patient?

10 A. Yes.

11 Q. Okay. Continue.

12 A. Depending on also the story, we would collect an oral  
13 swab, which is different. It goes along the inside of the  
14 mouth and, depending on where the patient states that they  
15 may have been touched, we will also swab that area as well.  
16 And we also -- for the vaginal exam, we swab for vaginal  
17 swabs for DNA.

18 Q. And did you do that collection in this case?

19 A. Yes.

20 Q. What about relevant to fingernails? Do you do any sort  
21 of collection of evidence there?

22 A. Yes. We also collect underneath the fingernails, again  
23 depending on the story.

24 Q. Okay. Did you do that in this case?

25 A. Yes, I did.

1 Q. Okay. And did you collect any evidence -- you mentioned  
2 you want to try to collect evidence from anywhere a person  
3 reports being touched. Did you do anything relevant to that  
4 in this case?

5 A. I did. I collected two areas: one on the face and one  
6 on the neck.

7 Q. Okay. And again, is the purpose of this for future  
8 analysis --

9 A. That is correct.

10 Q. -- for potential evidence?

11 A. Yes.

12 Q. Okay. Once you've taken these sort of various samples,  
13 are they sealed in some manner by you?

14 A. Yes. We seal them and put evidence tape in the SANE  
15 kit.

16 Q. Okay. You mentioned a "SANE kit." What is a SANE kit?

17 A. It is a box, or a bag now, that is collected of all of  
18 the swabs of the DNA that we've collected of this patient.

19 Q. During that exam?

20 A. During the exam.

21 Q. Okay. And did you do that in this case?

22 A. Yes, I did.

23 Q. Did it include a buccal swab of Kimberly Cantwell?

24 A. Yes.

25 Q. Did it include swabs taken of the area of the neck?

1 A. Yes.

2 Q. Did it include the fingernail evidence that you just  
3 described?

4 A. Yes.

5 Q. And is it just all thrown into one container, or do you  
6 seal each thing individually?

7 A. They're all individually sealed.

8 Q. Okay. And why is that?

9 A. So they don't contaminate each other.

10 Q. Okay. I'm going to hand you what's been marked for ID  
11 only at this point as State's 38. This probably does not  
12 look like it did when you last saw it, but if you could --  
13 and it's fine if you undo it. It's just masking tape here.  
14 And take a look at what's in that. And is -- again, just  
15 take a look long enough for you to say -- you need to  
16 recognize what that is.

17 And what is State's 38?

18 A. This is my SANE kit.

19 Q. Okay. And so all of the items we just talked about  
20 would be contained within State's 38?

21 A. Yes, that's correct. And sealed.

22 Q. Okay. Thank you.

23 Once you have sealed a SANE kit, what's done?

24 A. Can you repeat that, please?

25 Q. I'm sorry. I turned my back on you.

1           Once you have a sealed SANE kit and you've, you, know,  
2   put the items in it and you've sealed it up, what do you do  
3   with it then?

4   A.   It stays with me until law enforcement picks it up.

5   Q.   Okay. And did law -- did a member of law enforcement  
6   come pick it up in this case?

7   A.   Yes.

8   Q.   Okay.

9           MR. SIMPSON: The Court's indulgence?

10          THE COURT: Sure.

11          (Mr. Simpson conferred with co-counsel.)

12          MR. SIMPSON: Ms. Goliver, thanks so much for being  
13   here. Please answer any questions that the defense has for  
14   you.

15          THE COURT: Cross-examination, Ms. Ford?

16          MS. FORD: Thank you, your Honor.

17                           CROSS-EXAMINATION

18                           BY MS. FORD:

19   Q.   Hi.

20   A.   Hello.

21   Q.   I believe you testified earlier that you've been doing  
22   this specific type of work as a SANE nurse for four years?

23   A.   For a SANE? For sexual-assault nurse examiner?

24   Q.   Yes.

25   A.   Yes.



1 Q. So does that mean in 2018 you were brand new to that  
2 position?

3 A. I had had several -- I had had cases before, but yes, I  
4 had started that year.

5 Q. And do you record your interview with a victim or with  
6 somebody who's there to be examined?

7 A. Do I record the interview?

8 Q. Yes.

9 A. No.

10 Q. Okay. Rather, while you're talking to them, you take  
11 notes; is that fair to say?

12 A. That is correct.

13 Q. And often when you're meeting with your patients,  
14 they're upset; is that fair to say?

15 A. Yes.

16 Q. Okay. So part of your job is trying to make it as easy  
17 as possible, to the extent that you can, for them?

18 A. To make it easy as possible? I mean, I'm there to help  
19 them with trauma-informed care, but, you know, they are able  
20 to help me, you know, to give me the statement.

21 Q. When -- the solicitor asked you about the statement a  
22 bit. Ms. Cantwell also had indicated that she was trying to  
23 elbow him off of her, correct?

24 A. I'd have to read my report.

25 Q. Do you have it in front of you?

1 A. Yes.

2 Q. Okay.

3 A. So I do not have that in my report. That was not stated  
4 to me.

5 MS. FORD: I apologize, your Honor.

6 THE COURT: Take your time.

7 MS. FORD: I'm trying to see if I can find it.

8 Q. [By Ms. Ford] So I believe that it's actually under the  
9 methods -- er, it is under the "Methods Employed by  
10 Assailant." On page 2, there's an additional note when you  
11 asked about injuries inflicted on the assailant, and  
12 Ms. Cantwell said that she does remember trying to scratch  
13 him to stop him and also using her elbow to make the  
14 assailant stop. Correct?

15 A. Oh, yes. That's correct.

16 Q. And when people come to you, sometimes there's a very  
17 clear disclosure; is that fair to say? Like a man, for  
18 example, put his penis into the patient's vagina. Correct?

19 A. We typically have to clarify that with the patient, but  
20 yes.

21 Q. Okay. But often when you're examining people, they are  
22 able to make a clear disclosure; is that fair to say?

23 A. Yes. In this case, you know, she was being strangled.

24 Q. So you do at times have people come in and they don't  
25 know what may have happened?

1 A. Yes.

2 Q. Sometimes people may have even have been drugged?

3 A. Yes, that's correct.

4 Q. And so as part of your protocol, you're able to take  
5 blood work to help determine that?

6 A. We are, based on timing of the event.

7 Q. And what's that timing?

8 A. Twelve hours.

9 Q. Twelve hours?

10 A. Mm-hmm.

11 Q. And in this case after meeting with Ms. Cantwell --  
12 sometimes when you meet with your clients, you can determine  
13 if there should be any medication given to them?

14 A. Yes.

15 Q. And that would be based on possible exposure to  
16 diseases?

17 A. Yes.

18 Q. In this case, you did not feel that she met the  
19 requirement to be administered medication for exposure to  
20 HIV, for example, correct?

21 A. That is correct.

22 MS. FORD: Beg the Court's indulgence?

23 THE COURT: Sure.

24 (Ms. Ford conferred with co-counsel and their client.)

25

1 BY MS. FORD:

2 Q. And just one more question. Ms. Cantwell, she didn't --  
3 you did note that there were certain lapses of memory,  
4 correct?

5 A. That is correct.

6 MS. FORD: No further questions.

7 THE COURT: Okay. Any redirect, Solicitor?

8 MR. SIMPSON: Yes, your Honor. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. SIMPSON:

11 Q. Nurse Goliver, you were asked about dealing sometimes  
12 with patients who have either voluntarily become intoxicated  
13 themselves or perhaps been drugged by others. That's what  
14 Ms. Ford asked you about, correct?

15 A. Yes.

16 Q. And there's a class of narcotics -- er, is there a class  
17 of narcotics that might frequently be used to facilitate a  
18 sexual assault on a victim?

19 A. Yes.

20 Q. And what sort of observations would you be looking for  
21 in a patient who was under the influence of those types of  
22 drugs?

23 MS. FORD: Objection. This is out of the scope, your  
24 Honor.

25 THE COURT: Okay. What is this line of questioning in

1 response to the cross-examination by the defense?

2 MR. SIMPSON: Ms. Ford opened the subject of  
3 Ms. Cantwell and examining people who have been subject to  
4 narcotics.

5 THE COURT: Okay.

6 MR. SIMPSON: And she opened the door to her expertise  
7 in making those observations and when one would determine to  
8 test someone for these narcotics and when one would determine  
9 not to. This all arises from very specific questions asked  
10 in cross-examination.

11 THE COURT: Right. I did note that the witness did  
12 indicate that if there had been drugs ingested within 12  
13 hours, then a test would be administered. So I think there  
14 was some door opening there. I'll allow the solicitor to  
15 pursue this line.

16 BY MR. SIMPSON:

17 Q. So you did inquire as to Ms. Cantwell whether she had  
18 voluntarily consumed drugs or alcohol, correct?

19 A. Yes, I did.

20 Q. And what kind of conditions would a person who  
21 involuntarily was still under the influence of a -- I will  
22 call them the layman's terms -- a date-rape drug, what sort  
23 of characteristics would one display?

24 A. Being lethargic. You would also see memory lapses.

25 Q. And "lethargic," is that like listless?

1 A. Like, for me, it would be they were not consentable at  
2 the time, so they would have to wait to be able to have the  
3 exam. The patient was not consentable.

4 Q. Out of it?

5 A. Very. They would be out of it, yes.

6 Q. You said "very" out of it?

7 A. Yes.

8 Q. Okay.

9 A. They're sleeping. You can't keep them awake for very  
10 long to answer any questions.

11 Q. Okay. Testing outside of 12 hours, is that 12 hours  
12 something you're trained? Is that a scientific norm in the  
13 SANE exam protocol?

14 A. Yes. It's 12 hours for blood and 24 hours for urine.

15 Q. Okay. And again, is that an established professional  
16 standard that you're trained in?

17 A. Yes.

18 Q. Okay. And if you know, why not test outside of the 12  
19 hours?

20 A. It wouldn't give you the correct results.

21 Q. Okay.

22 MR. SIMPSON: I have no further questions of this  
23 witness.

24 THE COURT: Recross?

25 MS. FORD: Just briefly.

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RECROSS-EXAMINATION

BY MS. FORD:

Q. There's the -- you discussed the symptoms of a particular type of drug that you might see, but there are a lot of different drugs out there, correct?

A. Yes.

MS. FORD: No further questions.

THE COURT: Thank you, ma'am. You can step down. If there's no objection, you are free to leave the courthouse. But you're more than welcome to remain with us if you so choose.

(Witness excused.)

THE COURT: Next witness, Solicitor?

MR. URICCHIO: The State calls Sarah Gladwell.

CLERK OF THE COURT: Can you raise your right hand, left hand on the Bible, please?

(Witness sworn.)

CLERK OF THE COURT: You may have a seat.

Please state your name for the record and spell your last name.

THE WITNESS: My name is Sarah Gladwell,  
G-L-A-D-W-E-L-L.

1 SARAH GLADWELL,  
2 called as a witness on behalf of the State, being first duly  
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. URICCHIO:

6 Q. Good afternoon, Ms. Gladwell. Thank you for being here  
7 today.

8 Where are you currently employed?

9 A. I work for the City of Charleston Police Department.

10 Q. And how long have you been with the City of Charleston  
11 Police Department?

12 A. Twelve years.

13 Q. And what is your position with the CPD?

14 A. I'm a crime-scene investigator in our forensic services  
15 division.

16 Q. And did you have that position in 2018?

17 A. I did.

18 Q. And what are some -- what does that job entail?

19 A. As a crime-scene investigator, we respond to various  
20 calls, anywhere from car break-ins to murders. And we go  
21 photograph, collect evidence, document crime scenes.

22 Q. Do you transport evidence sometimes?

23 A. Yes.

24 Q. Okay. And how were you involved in this case?

25 A. For this case, I responded to the Medical University of



1 South Carolina public safety office and picked up a  
2 sexual-assault kit and clothing to transport to our evidence  
3 unit at the police station.

4 Q. And when you picked up that kit, are they usually  
5 sealed?

6 A. Yes.

7 Q. And if they aren't sealed, what would you do?

8 A. If we ever get a kit and it wouldn't be sealed, we would  
9 not take it until the SANE nurse was able to sign the seals.

10 Q. And in this case, were they sealed?

11 A. Yes, sir.

12 Q. Okay. What would you do after you picked it up from  
13 MUSC?

14 A. After I picked it up from MUSC, I drove to the police  
15 station at 180 Lockwood and submitted it to our evidence  
16 unit.

17 Q. And would you document that?

18 A. Yes. It's all documented electronically.

19 Q. And what is that document called?

20 A. Um --

21 Q. Is it a chain of custody?

22 A. Yes.

23 Q. Okay. And what does a chain of custody do? What is it?

24 A. Chain of custody is just the documentation on the  
25 evidence, where it begins and follows that trail to where it

1 ends.

2 Q. Okay. And does that say who's handled the evidence?

3 A. Yes, sir.

4 Q. Okay. Showing you what's been marked for ID only as  
5 State's Exhibit 38. Do you recognize this? Now it might not  
6 look the same, but if you want to read it.

7 A. Yes. These are the contents of the kit. Whenever we  
8 pick up kits, they're already sealed so we can't see what's  
9 inside.

10 Q. And are they sealed in a box or a bag?

11 A. They're sealed in a box.

12 Q. And you never broke the seal on the SANE kit when you  
13 picked it up?

14 A. No, sir.

15 Q. Okay. So what did you do with this evidence?

16 A. I picked it up from the public safety office and brought  
17 it to the police station evidence unit.

18 Q. Okay. And do you know what date that was?

19 A. Yes. September 21, 2018. I picked it up at 12:40.

20 Q. Okay. And then you transported it directly to CPD's  
21 evidence room?

22 A. Yes, sir.

23 Q. And when you transported it, did you sign it into  
24 evidence?

25 A. Yes. Electronically, yes.

1 Q. And was that the same day, on the 21st of 2018?

2 A. Yes, at 12:56.

3 Q. Okay. And did that end your involvement with the CSU in  
4 this case?

5 A. Yes, sir.

6 MR. URICCHIO: All right. No further questions. Please  
7 answer any questions asked that the defense may have for you.

8 THE COURT: Ms. Ford, any examination of this witness?

9 MS. FORD: Beg the Court's indulgence?

10 THE COURT: Sure.

11 (Ms. Ford conferred with co-counsel and their client.)

12 MS. FORD: I have no questions.

13 THE COURT: You can step down, ma'am. Thank you very  
14 much.

15 THE WITNESS: Thank you.

16 THE COURT: You're free to leave the courthouse, and  
17 you're welcome to remain with us if you so choose.

18 (Witness excused.)

19 MR. URICCHIO: Your Honor, may I approach to grab that?

20 THE COURT: Sure.

21 Next witness?

22 MR. URICCHIO: The State calls Holly Saunders with the  
23 Charleston Police Department.

24 CLERK OF THE COURT: Can you raise your right hand, left  
25 hand on the Bible, please?

1 (Witness sworn.)

2 CLERK OF THE COURT: You may have a seat.

3 Please state your name for the record and spell your  
4 last name.

5 THE WITNESS: Holly Saunders, S-A-U-N-D-E-R-S.

6 HOLLY SAUNDERS,

7 called as a witness on behalf of the State, being first duly  
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. URICCHIO:

11 Q. Good afternoon, Ms. Saunders. How are you today?

12 A. Good. How are you?

13 Q. I'm well. Where do you work?

14 A. The Charleston Police Department.

15 Q. And how long have you been at the Charleston Police  
16 Department?

17 A. About six years.

18 Q. Okay. And what's your current position there?

19 A. Crime-scene investigator.

20 Q. And was that your position in September of 2018?

21 A. Yes.

22 Q. What does that job entail?

23 A. We respond to minor and major crime scenes that can  
24 range from a car break-in to a robbery to a homicide. And at  
25 those scenes, we locate, collect, document, and -- all the

1 evidence.

2 Q. And what kind of training or certifications do you have  
3 to have for that?

4 A. It varies. I personally have over 500 hours of  
5 in-service training and accreditation from the International  
6 Association for Identification for crime scenes, as well as  
7 outside training for things like photography and blood  
8 spatter.

9 Q. Okay. Were you working the morning of September 20,  
10 2018?

11 A. Yes.

12 Q. And did you respond to ■ Radcliffe Street, Apartment ■?

13 A. Yes.

14 Q. And what county is ■ Radcliffe Street, Apartment ■,  
15 located in?

16 A. Charleston.

17 Q. And is that in the city of Charleston?

18 A. Yes.

19 Q. Okay. What time do you think you responded? And if you  
20 have your report, you can look at it.

21 A. Yeah. 3:42 a.m.

22 Q. Okay. And what did you do when you arrived?

23 A. So when I first got there, I met with officers and they  
24 gave me a rundown of what they had gathered so far.

25 Q. And what information did you gather?

1 A. I was told that an unknown male entered the residence,  
2 went into the victim's bedroom, pulled her out of her bed,  
3 attempted to choke her, and --

4 MS. FORD: Objection. This is hearsay, your Honor.

5 THE COURT: Okay. I believe just as a result of her  
6 receiving typical information that she needs to do her work,  
7 she did what -- I think that would be the best way to  
8 approach that. So I'll sustain the objection.

9 BY MR. URICCHIO:

10 Q. Okay. When you arrived, you got that information. What  
11 part of the house did that lead you to investigate?

12 A. Mostly the victim's bedroom.

13 Q. Okay. And also, did you take photographs while you were  
14 there?

15 A. Yes. Of the entire residence.

16 Q. Okay. And was that a two-story duplex?

17 A. Yes.

18 Q. All right. And we've already seen some of those  
19 photographs, but let me show you what has been marked as  
20 Exhibit 30 and 31.

21 Do you recognize those?

22 A. Yes.

23 Q. And what are those?

24 A. These are photos that I took.

25 Q. Okay. And are -- what are they photos of?

1 A. The first one is a photo of the living room coffee table  
2 with some items on it. And then a photo of a black tank top.

3 Q. Okay. And are those substantially the same as the  
4 photos you took?

5 A. Yes.

6 Q. Okay.

7 MR. URICCHIO: The State would admit 30 and 31.

8 THE COURT: What says the defense? You need to look at  
9 them first?

10 MS. FORD: Yes, sir.

11 No objection.

12 THE COURT: All right. Without objection, 30 and 31  
13 into evidence for the State.

14 (State's Exhibits Numbers 30 and 31 admitted into  
15 evidence.)

16 BY MR. URICCHIO:

17 Q. Okay. When you arrived, you said you took photos?

18 A. Mm-hmm.

19 Q. And did you go to the victim's bedroom?

20 A. Yes.

21 Q. All right. And what did the victim's bedroom look like?

22 A. So kind of in disarray. There was a rug on the floor  
23 that had been flipped over. The blinds above her bed were  
24 askew.

25 Q. And when you also were there, were you pointed into the

1 picture of a shirt? You took a picture of the shirt. What  
2 was important about that shirt?

3 A. The victim's roommate's boyfriend had removed it from  
4 the suspect when they encountered each other that night.

5 (Exhibit displayed on screen in open court.)

6 BY MR. URICCHIO:

7 Q. And is that where the shirt was located when you  
8 arrived?

9 A. Yes.

10 Q. And you documented that with this photo?

11 A. Yes.

12 Q. And would you have removed that shirt before taking the  
13 photo?

14 A. No.

15 Q. Okay.

16 (Exhibit displayed on screen in open court.)

17 BY MR. URICCHIO:

18 Q. And is this also a picture of the shirt?

19 A. Yes.

20 Q. Okay. Did you take that shirt into -- did you collect  
21 that shirt?

22 A. I did.

23 Q. All right. And showing you what's marked for ID as  
24 State's 32. Is that what you collected from the apartment?

25 A. Yes.



1 Q. Okay. And what is that?

2 A. It's a black tank top.

3 Q. Okay.

4 A. And it's signed with my name, sealed with my initials.

5 Q. Perfect. And that's how you know that you're the one  
6 who collected it?

7 A. Correct.

8 Q. All right. What did you do with that after you  
9 collected it?

10 A. I took it back to our office, and I photographed it with  
11 it all laid out. And then I packaged it like this and  
12 submitted it to our evidence.

13 Q. Okay. And before that, did you go anywhere else after  
14 you left that house?

15 A. Yes. I went to MUSC to photograph the victim.

16 Q. And did you photograph the victim?

17 A. Yes.

18 MR. URICCHIO: The Court's indulgence?

19 THE COURT: Sure.

20 (Mr. Uricchio conferred with co-counsel.)

21 MR. URICCHIO: No further questions at this time.

22 Please answer any questions the defense may have for you.

23 THE WITNESS: Okay.

24 THE COURT: Okay. Does the defense have any  
25 cross-examination?

1 MS. FORD: Yes, your Honor. Beg the Court's indulgence?

2 THE COURT: Sure.

3 (Ms. Ford conferred with co-counsel and their client.)

4 CROSS-EXAMINATION

5 BY MS. FORD:

6 Q. I just have a few questions. When you got to the  
7 apartment on Radcliffe that evening, you did not note any  
8 signs of forced entry, correct?

9 A. Correct.

10 Q. And it's your job to look around for anything that might  
11 be of value as far as evidence?

12 A. Correct.

13 Q. That evening when you were there -- and you arrived --  
14 you were the first crime -- er, you were the reporting  
15 crime-scene technician that evening when the police were  
16 initially called, correct?

17 A. Correct.

18 Q. And there were a lot of people there; is that fair to  
19 say?

20 A. Yes.

21 Q. The residents -- there were other residents there?

22 A. Yes.

23 Q. And numerous police officers there?

24 A. Yes.

25 Q. When you were there, though, you did not note any

1 olive-oil bottles, correct?

2 A. No.

3 Q. You didn't see or you didn't note an olive-oil bottle on  
4 the counter?

5 A. No.

6 Q. You didn't note that there was olive oil that had been  
7 spilled on the counter?

8 A. No. I focused mainly on the victim's bedroom.

9 Q. But you also didn't notice olive oil on the ground  
10 anywhere in the apartment?

11 A. No.

12 Q. And you were in the victim's bedroom that night. You  
13 did not find a knife or anything?

14 A. No.

15 Q. So you did not take a knife into evidence?

16 A. Correct.

17 Q. And you didn't note anything in particular about the  
18 victim's bedding, correct?

19 A. It was just at the end of the bed.

20 Q. You didn't note in the bedroom a blue-and-white towel on  
21 the floor by the bed?

22 A. No.

23 Q. You told us about this black tank top. We saw a photo  
24 of it on the coffee table?

25 A. Yes.

1 Q. That is where it was when you arrived to the scene,  
2 correct?

3 A. Correct.

4 Q. So you don't actually know where it was before you  
5 arrived?

6 A. Correct.

7 Q. And you didn't actually see who that tank top came from?

8 A. No.

9 Q. And you didn't see who put that tank top there -- er,  
10 there on the table?

11 A. Right.

12 MS. FORD: Beg the Court's indulgence?

13 THE COURT: Sure.

14 (Ms. Ford conferred with co-counsel and their client.)

15 MS. FORD: No further questions.

16 THE COURT: Anything redirect, Solicitor?

17 MR. URICCHIO: Yes. Just briefly, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. URICCHIO:

20 Q. With the information you're provided when you arrive,  
21 does that entail where you look at a crime scene?

22 A. Yes.

23 Q. Was there any information that had anything to do with  
24 olive oil?

25 A. No.

1 Q. Was there any information that had anything to do with  
2 the kitchen?

3 A. No.

4 Q. But there was information about the victim's bedroom?

5 A. Correct.

6 Q. And there was information about a shirt?

7 A. Correct.

8 Q. And did you document those things?

9 A. Yes.

10 Q. Would you have documented olive oil if you'd have had  
11 information about olive oil?

12 A. Yes.

13 Q. Would you have gone to the kitchen if you'd have had  
14 information about the kitchen?

15 A. Yes.

16 MR. URICCHIO: No further questions.

17 THE COURT: Any recross?

18 (Ms. Ford conferred with co- counsel and their client.)

19 RE CROSS-EXAMINATION

20 BY MS. FORD:

21 Q. Briefly, just the apartment itself, the living area when  
22 you walk in, it's all a pretty small area; is that fair to  
23 say?

24 A. Yes.

25 Q. The living room and the kitchen -- as soon as you walk

1 in, you can see the living room and the kitchen?

2 Everything's right there?

3 A. Yes.

4 Q. So you would have passed -- you would have been in the  
5 kitchen area, just by -- er, around the kitchen area,  
6 correct?

7 A. No. There was a bar that blocked half the kitchen from  
8 your view when you walked in the living room.

9 Q. Okay. But you would have -- in the living -- the  
10 kitchen is just off the living room?

11 A. It's behind the living room, yes.

12 Q. Okay. It's visible?

13 A. Partially, yeah.

14 MS. FORD: No further questions.

15 THE COURT: Okay. You can step down, ma'am. Thank you.  
16 You're free to leave the courthouse, or you're more than  
17 welcome to remain with us if you so choose.

18 (Witness excused.)

19 THE COURT: Solicitor, do we have maybe one more witness  
20 that can get us to the 1:00 hour?

21 MR. SIMPSON: Your Honor, I think our next witness would  
22 probably overrun that --

23 THE COURT: Okay.

24 MR. SIMPSON: -- 1:00 hour, but I'm happy to call her,  
25 if you'd like. She's here and ready to proceed.

1           THE COURT: Okay. And I'm not going to hold you to any  
2 sort of time limitations. If we go past 1:00 for a little  
3 bit, I don't think that would be a problem. But if you think  
4 we may be risking that, we can go ahead and break for lunch  
5 right now.

6           MR. SIMPSON: I think I'll leave that up to the Court.  
7 Either is fine with me. She's here and ready to go, or  
8 she'll be here after lunch.

9           THE COURT: All right. Everybody good with maybe trying  
10 to get one more witness in before we break for lunch, or you  
11 want to go ahead and break for lunch now?

12           One more witness? Y'all good with that?

13           Okay. Thank you.

14           MR. SIMPSON: Thank you.

15           THE COURT: Solicitor, call your next witness.

16           MR. SIMPSON: The State calls Ashleigh Wojslawowicz.

17           CLERK OF THE COURT: Can you raise your right hand, left  
18 hand on the Bible, please?

19           (Witness sworn.)

20           CLERK OF THE COURT: You may have a seat, ma'am.

21           Please state your name for the record and spell your  
22 last name.

23           THE WITNESS: Ashleigh Wojslawowicz,  
24 W-O-J-S-L-A-W-O-W-I-C-Z.

25           THE COURT: You pronounce your last name a whole lot

1 better than I did yesterday.

2 You may proceed, Solicitor.

3 MR. SIMPSON: Thank you. May the record reflect I think  
4 I also messed it up.

5 ASHLEIGH WOJSLAWOWICZ,  
6 called as a witness on behalf of the State, being first duly  
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q. Ashleigh, good afternoon. How are you?

11 A. I'm fantastic. How are you?

12 Q. I'm good. Thanks for being here.

13 What is your current employment?

14 A. I am a master crime-scene investigator with the  
15 Charleston Police Department.

16 Q. And what sort of educational background do you have to  
17 become a master crime-scene investigator?

18 A. I have a bachelor of science in criminal justice, a  
19 minor in psychology, a master's in criminal justice, and a  
20 doctorate of education with an emphasis in organizational  
21 leadership.

22 Q. And can you explain to this jury a little bit of your  
23 work history associated in that field?

24 A. Of course. So I have been employed with Charleston for  
25 almost 12 years where I served as a crime-scene investigator.



1 So I would respond to different types of crimes scenes --  
2 property crimes, violent crimes -- and with the  
3 responsibility of locating, documenting, collecting, and  
4 preserving different types of physical evidence. As a master  
5 crime-scene investigator, I perform the same roles but with  
6 additional administrative and leadership duties.

7 Q. And are there any continuing education, certifications,  
8 etc., that you either are required to maintain or just  
9 maintain as part of your personal practice?

10 A. Yes, there are. I'm a certified senior crime-scene  
11 analyst through the International Association for  
12 Identification. I'm a member of the International  
13 Association of Bloodstain Pattern Analysts. I'm a member of  
14 the National Association of Women Law Enforcement Executives.  
15 And all those are -- it's not required, but it is beneficial  
16 for professional and credentials and training.

17 Q. And so through all of those organizations and various  
18 certifications, do you receive training in -- to update you  
19 on the best practices in crime-scene investigation?

20 A. Yes. Specifically, through the International  
21 Association for Identification, there is a certification  
22 process that you must renew every so many years depending on  
23 your certification level. So for myself being a senior  
24 certified crime-scene analyst, every five years I go through  
25 different additional training, conferences, and research.

1 Q. And do you, in fact, not only receive training, do you,  
2 in fact, conduct training for other crime-scene  
3 investigators?

4 A. I do. In addition to that, I am also a subject-matter  
5 expert for the National Center for Biomedical Research and  
6 Training through Louisiana State University. So through  
7 that, I also develop curriculum and training specifically  
8 geared towards first responders, forensic scientists,  
9 crime-scene investigators. I've been doing that for about  
10 six years.

11 Q. And in that role with the Charleston Police Department,  
12 do you have any recollection of becoming involved in a  
13 alleged sexual assault taking place on September 20 of 2018?

14 A. Yes, I do.

15 Q. And if you could explain to the jury, how did your  
16 involvement begin in that case?

17 A. Of course. So I was involved beginning on September 20,  
18 which was the day after I had been contacted by the central  
19 investigations unit to respond to a location in reference to  
20 our K-9 unit was performing a track in the area and they had  
21 located a set of tire tracks in a gravel parking-lot area  
22 that the detectives wished to be documented. So that is what  
23 brought me to this case.

24 Q. And after going and looking at these tire tracks, by  
25 "documented" you just mean photographs?

1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. Where did you proceed from there?

5 A. Once those tire tracks had been photographed, I was then  
6 requested to respond to 45 Morris Street in reference to  
7 meeting with another investigator, as well as an individual  
8 who had -- I was informed had been involved with a physical  
9 altercation with a suspect.

10 Q. Do you recall that individual's name?

11 A. Yes. His name was Dan Schwarz.

12 Q. And what did you do in your meeting with Dan Schwarz?

13 A. I spoke with Mr. Schwarz briefly, and I was informed  
14 that he had been involved physically with an altercation of  
15 the suspect. Because of that information and his physical  
16 contact with the individual, it was requested that I perform  
17 fingernail scrapings on Mr. Schwarz for the purpose of  
18 potentially gathering DNA from underneath his fingernails.

19 Q. Okay. And why would that be important to your  
20 investigation?

21 A. Identifying possible suspect DNA that did not belong to  
22 Mr. Schwarz would be of interest since it was alleged that he  
23 had been involved with a physical altercation of that suspect  
24 individual.

25 MR. SIMPSON: May I approach, your Honor?

1 THE COURT: Sure.

2 BY MR. SIMPSON:

3 Q. I'm going to show you what's been marked for ID only as  
4 State's 12 and 13.

5 A. Mm-hmm.

6 Q. Do you recognize those items?

7 A. Yes.

8 Q. And what do they depict?

9 A. They are photographs of Mr. Schwarz and his hands prior  
10 to me collecting the fingernail scrapings.

11 MR. SIMPSON: Your Honor, at this point in time, the  
12 State would seek to admit State's 12 and 13, I believe  
13 without objection.

14 THE COURT: What's says the defense?

15 MR. SIMPSON: No objection, your Honor.

16 THE COURT: All right. Without objection, 12 and 13 for  
17 the State.

18 (State's Exhibits Numbers 12 and 13 admitted into  
19 evidence.)

20 (Exhibit displayed on screen in open court.)

21 BY MR. SIMPSON:

22 Q. So you were there to document Mr. Schwarz's hands and  
23 fingernails?

24 A. That's correct.

25 Q. Is that Mr. Schwarz?

1 A. Yes, it is.

2 (Exhibit displayed on screen in open court.)

3 BY MR. SIMPSON:

4 Q. And 13?

5 A. And those are his hands.

6 Q. Any apparent injuries to his hands that you would note?

7 A. No, no apparent injuries were visibly noted.

8 Q. And did you take scrapings from his fingernails?

9 A. I did.

10 Q. And what's done with an item like that once it's  
11 collected?

12 A. Once the fingernail scrapings are collected, they are  
13 packaged in such a way to prevent degradation and  
14 cross-contamination. So those items were sealed in an  
15 envelope and then placed into a secondary envelope, which was  
16 then sealed again for submission to our evidence unit.

17 Q. Okay. And once you -- would you have sealed those and  
18 logged them into your evidence unit personally?

19 A. Yes.

20 Q. Okay. And again, what's the purpose of the seal and  
21 packaging them in that nature?

22 A. The purpose would be to demonstrate there has not been  
23 tampering with that item, as well as to demonstrate an effort  
24 made against cross-contamination.

25 Q. And again, is it logged with the evidence unit in that

1 sealed manner, correct?

2 A. Yes.

3 Q. And to your knowledge and experience with the city  
4 police department's evidence unit, would they accept it if  
5 you didn't?

6 A. No.

7 Q. If you attempted to log it into evidence in an unsealed  
8 or open --

9 A. Correct. If it was not packaged in a correct manner  
10 according to policy, they would reject the voucher,  
11 essentially is what we refer to it. Or the individual would  
12 have to come in and fix it.

13 Q. Does storing them that way also prevent it from coming  
14 in contact with other evidence?

15 A. Yes.

16 MR. SIMPSON: The Court's indulgence?

17 My apologies to the Court and jury.

18 THE COURT: That's okay. No problem.

19 BY MR. SIMPSON:

20 Q. After logging the fingernail clippings from Dan Schwarz,  
21 where did you go from there?

22 A. While I was performing the fingernail scrapings, we were  
23 advised on scene that Mr. Schwarz had received a text message  
24 from one of the roommates that resided at the incident  
25 location and that those roommates had located a knife.

1 MS. FORD: Objection. Hearsay.

2 THE COURT: All right. As a result of that conversation  
3 or the text message that Dan Schwarz received, you did what?

4 THE WITNESS: I responded to the incident location.

5 BY MR. SIMPSON:

6 Q. Okay. And the incident location was where again?

7 A. It is at ■ Radcliffe Street, Apartment ■.

8 Q. And what approximate time did this occur that you went  
9 back to ■ Radcliffe?

10 A. My arrival -- can I refer to my report to get the  
11 correct time?

12 Q. Sure. Would that refresh your recollection?

13 A. Yes.

14 My approximate arrival at Radcliffe Street was  
15 11:33 a.m.

16 Q. Okay. And you mentioned that the approximate time of  
17 this intrusion was just the early morning hours of the same  
18 day, correct?

19 A. Yes.

20 Q. All right. And what did you observe when you got to ■  
21 Radcliffe Street?

22 A. Once I arrived at ■ Radcliffe Street, myself and  
23 Investigator Wolfsen met with the roommates at the location,  
24 and they directed us to --

25 Q. Without saying exactly what they said, after speaking

1 with the roommates, where did your investigation proceed?

2 A. Yeah, we were directed to the bedroom where the incident  
3 was stated to have occurred.

4 Q. Okay.

5 A. And from there, we observed a knife that was on the bed.

6 Q. Okay. Did you document that observation?

7 A. Yes.

8 Q. I'm going to show you what's been marked as State's 15  
9 and 16.

10 MR. SIMPSON: Permission to publish again, your Honor?

11 THE COURT: Yes. Okay. They're photographs. Okay.  
12 Yeah.

13 (Exhibit displayed on screen in open court.)

14 BY MR. SIMPSON:

15 Q. State's 15, do you recognize this?

16 A. Yes, I do.

17 Q. And what is that?

18 A. This is a photograph of the bedroom that I was informed  
19 belonged to the victim.

20 (Exhibit displayed on screen in open court.)

21 BY MR. SIMPSON:

22 Q. And State's 16?

23 A. This is a closer photograph of the same bed. And then  
24 within the comforter, you can see the knife in the center of  
25 the bed.



1 Q. And is that an accurate representation of where the  
2 knife was when you arrived?

3 A. Yes. When I arrived, that's where I saw the knife.

4 Q. Without being moved or tampered with in any way by you?

5 A. Correct.

6 Q. Okay. You work with others in the crime scene unit,  
7 correct?

8 A. I do.

9 Q. And you understand that the crime scene had previously  
10 been in this bedroom, right?

11 A. Yes.

12 Q. Okay. Your unit is very skilled with -- by your own  
13 assessment, do you have a good crime scene unit?

14 A. Yes, we do.

15 Q. But do occasionally things get overlooked?

16 A. Yes.

17 Q. Is that inevitable in any investigation of a crime  
18 scene?

19 A. Absolutely. Especially when you have an investigation  
20 that is as fluid as this, where information was continuing to  
21 come in. We were being advised that the circumstances were  
22 constantly adapting, and we were getting more information.

23 Q. So as the investigation typically continues, more  
24 information is gathered and you adjust what a crime-scene  
25 investigator does in accordance with the investigation that

1 is learned through the investigation?

2 A. Yes.

3 Q. Okay. So just to say what it was, the knife was not  
4 observed, found, or documented in the initial trip to this  
5 room?

6 A. Correct.

7 Q. By other members of your unit?

8 A. Mm-hmm.

9 Q. Okay. But you found it here in the location that you  
10 documented?

11 A. (Indicated.)

12 Q. Did your investigation continue after documenting the  
13 location of the knife?

14 A. Yes, it did.

15 Q. And where did you go from there?

16 A. I was then directed to the kitchen area where I was  
17 informed that there were several items that were noticed to  
18 have been disturbed and moved, not where they were last left.  
19 And my attention was drawn to those specific items in the  
20 area of the kitchen.

21 Q. I'm showing you what's been marked as State's 17, and  
22 entered.

23 (Exhibit displayed on screen in open court.)

24 BY MR. SIMPSON:

25 Q. What's this?

1 A. This is a photograph of the kitchen.

2 Q. And you see a trash can here?

3 A. Yes.

4 Q. And actually, you can mark on the screen there if you  
5 want.

6 A. Okay.

7 (Exhibit displayed on screen in open court.)

8 BY MR. SIMPSON:

9 Q. State's 18, is this an observation that the residents  
10 led you to document?

11 A. Yes. At the base of that trash can, there was a clear  
12 liquid substance that was very slippery. One of the  
13 roommates, I don't know if you want to say had slipped in it,  
14 and so that's what drew my attention to that area.

15 (Exhibit displayed on screen in open court.)

16 BY MR. SIMPSON:

17 Q. State's 19?

18 A. So this is a photograph of the same kitchen. And  
19 further in on the counter, there was a bottle of olive oil  
20 that was missing its cap and depleted of some of its  
21 contents.

22 (Exhibit displayed on screen in open court.)

23 BY MR. SIMPSON:

24 Q. And State's 20?

25 A. This is a photograph of inside the kitchen pantry.

1     There was another bottle of olive oil that my attention was  
2     directed to because the roommates told me that the bottle  
3     was --

4             MS. FORD:  Objection.  Hearsay.

5             THE COURT:  Don't repeat what the roommates told you.

6     BY MR. SIMPSON:

7     Q.     So backtracking a bit --

8             MR. SIMPSON:  May I approach the witness, your Honor?

9             THE COURT:  Sure.

10    BY MR. SIMPSON:

11    Q.     I'm handing you what's been marked for ID only as  
12    State's 22.  Take a moment.

13             And do you recognize that exhibit?

14    A.     I do recognize it.

15    Q.     And what is that?

16    A.     This is the knife that was collected from the bed.

17    Q.     Okay.

18             MR. SIMPSON:  Your Honor, at this point in time, I'd  
19    seek to admit State's 22 into evidence.

20             THE COURT:  And what says the defense?  You need to take  
21    a look at it first, the package?

22             MS. FORD:  Yes, your Honor.

23             THE COURT:  That's fine.

24             MS. FORD:  No objection, your Honor.

25             THE COURT:  All right.  Without objection, 22 into

1 evidence for the State.

2 (State's Exhibit Number 22 admitted into evidence.)

3 BY MR. SIMPSON:

4 Q. I'm handing you what's been marked for ID only as  
5 State's 14. Do the markings on that allow you to identify  
6 that?

7 A. Yes, it does.

8 Q. And what is that?

9 A. These are the fingernail scrapings that I collected from  
10 Mr. Schwarz.

11 Q. Okay. And again, where was that knife found?

12 A. The knife was collected from on top of the bed.

13 Q. And were you able to match this knife with other  
14 silverware in the house?

15 A. I was able to observe that there was a knife block in  
16 the kitchen on the kitchen counter that did possess similar  
17 knives that were consistent with what was observed on the  
18 bed.

19 Q. I'm showing you what's already been marked and entered  
20 into evidence as State's 21.

21 (Exhibit displayed on screen in open court.)

22 BY MR. SIMPSON:

23 Q. And what is that a photograph of?

24 A. This is a photograph of the knife block. Of specific  
25 interest, the tip of the handle -- I can mark on this? Right

1 here, this pattern was of interest.

2 Q. And did that pattern exist on State's 22, already  
3 entered into evidence?

4 A. Yes. The handle was consistent with the same pattern.

5 Q. I'm showing you what's been marked for ID only as  
6 State's 23.

7 A. Mm-hmm.

8 Q. Do you recognize that?

9 A. I do.

10 Q. Is that a fair and accurate representation of that logo  
11 pattern on State's 22?

12 A. Yes, it is.

13 MR. SIMPSON: Your Honor, the State would seek to enter  
14 State's 23 into evidence.

15 THE COURT: All right. What says the defense?

16 MS. FORD: No objection, your Honor.

17 THE COURT: All right. 23 into evidence for the State.  
18 (State's Exhibit Number 23 admitted into evidence.)

19 BY MR. SIMPSON:

20 Q. Did you also collect the bottles of olive oil?

21 A. Yes, I did.

22 Q. I'm showing you what's been marked for ID only as  
23 State's 24 and 25. Does this packaging -- or what's  
24 contained inside if you need to look inside -- allow you to  
25 assess what State's 24 and 25 are?

1 A. Yes. These are the bottles of olive oil that I  
2 collected.

3 Q. Okay. Now, without saying what specifically you were  
4 told by the residents of the Radcliffe Street address, was  
5 your investigation drawn in any specific manner to these  
6 olive-oil bottles?

7 A. Yes.

8 Q. And how did you -- given that information, how did you  
9 proceed in regard to the olive-oil bottles?

10 A. Specifically, my interest was drawn to the olive oil  
11 beginning with the liquid that was on the floor of the  
12 kitchen. Also, one of the olive-oil bottles were opened and  
13 appeared to be out of place, so that's what drew my attention  
14 to that first bottle that was on the counter. The second  
15 olive-oil bottle, inside the pantry, appeared to be opened  
16 and still relatively full, but unused. It's in a good  
17 condition.

18 Q. Did any information lead you to any specific area of  
19 that olive-oil bottle?

20 A. The possible liquid on the floor?

21 Q. Oh. That was a poorly articulated question. How did  
22 you proceed with any sort of crime-scene processing of the  
23 olive-oil bottles?

24 A. Of course. So the olive-oil bottle on the counter was  
25 collected for submission to our latent fingerprint recovery

1 section for additional analysis. The bottle inside the  
2 pantry, because it still possessed its cap, I determined that  
3 would be a sufficient location for a possible DNA collection.  
4 So the cap of that bottle was swabbed for possible touch DNA.

5 Q. And what is touch DNA?

6 A. Touch DNA refers to a DNA profile that could potentially  
7 be gathered from usually skin cells. You have different  
8 types of DNA, but when we talk about touch, it's the skin  
9 sloughing off or being exfoliated from the rest of the body.  
10 And that is where this particular type of DNA, as your skin  
11 rubs against off the different surface, you are essentially  
12 leaving skin cells behind. So this method was a process to  
13 attempt to collect those possible skin cells.

14 Q. And did you follow the procedure that you sort of  
15 previously articulated for this jury in regard to the swab  
16 that you took from that?

17 A. I did, yes.

18 Q. And a little more information, how is potential touch  
19 DNA taken and stored?

20 A. So for this particular method, we use something that's  
21 called a wet/dry collection method. So you wet a sterile  
22 cotton swab with distilled water and rub it against the  
23 textured surface. We follow that with a dry swab in order to  
24 collect, potentially, any additional skin cells. Then those  
25 swabs are allowed to dry in a porous swab box container.



1 That box is then sealed in a secondary envelope to prevent  
2 cross-contamination from any other items.

3 Q. And after that swab from the olive-oil bottle was sealed  
4 in that manner, what did you do with it?

5 A. Those swabs were then submitted to our evidence unit.

6 Q. Okay. And would you have -- when submitting, you  
7 referenced earlier electronic submission?

8 A. Mm-hmm.

9 Q. And you document that along with a description of the  
10 item?

11 A. Yes, we do.

12 Q. And so that submission would have your name?

13 A. Yes.

14 Q. And what it was?

15 A. Yes.

16 Q. So it would say something like "swab from the olive-oil  
17 bottle"?

18 A. Exactly.

19 Q. Okay. And that's submitted to the secure CPD evidence  
20 unit?

21 A. Yes.

22 Q. Okay. So similarly, did you do that with the knife and  
23 both the olive-oil bottles?

24 A. Yes. The knife and the olive-oil bottles were packaged  
25 similarly to preserve those items, but those three items were

1 submitted to our latent recovery unit for additional  
2 analysis.

3 Q. Okay. And that additional analysis was for what?

4 A. For latent fingerprint recovery.

5 Q. And was anything else collected from this visit to the  
6 crime scene?

7 A. There were additional fingerprints that were also  
8 collected from the kitchen area.

9 Q. Okay. And were they also submitted for analysis?

10 A. Yes, they were.

11 Q. What about going back to the victim's bedroom? Was  
12 anything else collected from the bedroom other than the  
13 knife?

14 A. Yes. In addition to the knife, the bedding was also  
15 collected, as well as some clothing items that were near the  
16 foot of the bed.

17 Q. And once collected and back at the crime scene unit, was  
18 any further investigation done to the bedding taken from the  
19 victim's bed?

20 A. Yes. I visually examined each of the items to note  
21 their overall condition or any items of interest.

22 Q. And any observations of note in relation to the bedding?

23 A. Yes.

24 Q. And what was that?

25 A. The fitted bedsheet, upon visual examination, I noted a

1 cut or tear to the fabric that was linear. That was  
2 photographed with scale, in addition to some discoloration.

3 Q. And what was sort of your idea in the potential  
4 relevance in documenting that tear to the sheet?

5 A. It could have been related to the investigation. The  
6 damage to the sheet might have been involved.

7 Q. Any relation to the knife in that tear of the sheet?

8 A. Potentially, yes.

9 Q. Okay. Any followup sort of done to see if perhaps the  
10 knife had caused the damage to that bedsheet?

11 A. Yes.

12 Q. And when and what type of followup was done in that  
13 regard?

14 A. So additional followup was performed on September 26. I  
15 was contacted by Investigator Tuttle. He and his team had  
16 examined the photographs of the damage, and it was requested  
17 for crime-scene investigators to return to the incident  
18 location to determine if there was any damage that might be  
19 consistent with the knife or consistent with the damage  
20 observed to the fitted bedsheet on the mattress or the  
21 mattress pad.

22 Q. So if I understand correctly, you have a fitted  
23 bedsheet --

24 A. Mm-hmm.

25 Q. -- and you've noted a rip in that sheet?

1 A. Yes.

2 Q. And the idea is that that could be consistent with the  
3 knife that was also collected?

4 A. Potentially, yes.

5 Q. So going with this potential theory, you're going back  
6 to Radcliffe to see if there's any damage to the mattress or  
7 mattress pad there --

8 A. Yes.

9 Q. -- that could be consistent with the size and shape of  
10 this knife?

11 A. Yes.

12 Q. Okay. And did you find damage that could be consistent  
13 in that manner?

14 A. I did.

15 Q. And I'm showing you what's been marked for ID only as  
16 State's 27, 28, and 29.

17 A. Mm-hmm.

18 Q. And what do those images depict?

19 A. This is a photograph of the victim's bed without the  
20 comforter or the bedsheets, because I had collected those  
21 already. This was my observation on returning to the  
22 incident location.

23 Q. Okay.

24 MR. SIMPSON: And your Honor, at this point in time, the  
25 State would seek to admit 27 through 29 into evidence.

1 THE COURT: What says the defense?

2 MS. FORD: No objection, your Honor.

3 THE COURT: All right. 27 through 29 into evidence for  
4 the State.

5 (State's Exhibits Numbers 27, 28, and 29 admitted into  
6 evidence.)

7 (Exhibit displayed on screen in open court.)

8 BY MR. SIMPSON:

9 Q. State's 27, what do we see here?

10 A. This is a photograph of the mattress with the mattress  
11 pad on top of it.

12 (Exhibit displayed on screen in open court.)

13 BY MR. SIMPSON:

14 Q. State's 28?

15 A. And this is the edge of that mattress pad where the cut  
16 and/or tear was observed.

17 (Exhibit displayed on screen in open court.)

18 BY MR. SIMPSON:

19 Q. And 29?

20 A. And this is my slight manipulation of the mattress pad  
21 to demonstrate the damage to the mattress pad from inside to  
22 show that it was a clean, not jagged, ripped edge.

23 Q. And to the degree possible -- obviously a sheet can move  
24 -- was the area of the tear in the fitted sheet consistent  
25 with this damage to -- the general area of this damage to the

1 mattress pad?

2 A. Yes. It appeared to be consistent.

3 Q. And was the -- you noted the length of the damage there?

4 A. I did.

5 Q. And was that damage at least consistent with some  
6 portion of State's 22, the knife?

7 A. It appeared so, yes.

8 Q. To be clear, is there any way you know to say with  
9 absolute certainty that that knife caused that damage?

10 A. No.

11 Q. But in size, shape, location, consistent with the size,  
12 shape of the knife?

13 A. Yes.

14 MR. SIMPSON: The Court's indulgence?

15 THE COURT: Sure.

16 (Mr. Simpson conferred with co-counsel.)

17 MR. SIMPSON: Thank you, your Honor. May I approach the  
18 witness?

19 THE COURT: Sure.

20 BY MR. SIMPSON:

21 Q. I'm showing you what's been marked as State's 54 for ID  
22 only.

23 A. Mm-hmm.

24 Q. Does the marking on that packaging allow you to testify  
25 to that exhibit?

1 A. Yes, it does.

2 Q. And backing up to previous testimony, what is that  
3 exhibit?

4 A. This is a swab from the olive-oil bottle cap.

5 Q. Okay. Thank you. Again, what was the purpose of taking  
6 that swab?

7 A. For the possible collection of touch DNA.

8 Q. Thank you.

9 MR. SIMPSON: Ms. Wojslawowicz, I have no further  
10 questions of you. Please answer any questions that Ms. Ford  
11 has for you.

12 THE COURT: Solicitor, just for my clarification, was  
13 Number 14, the fingernail scrapings, does that remain ID or  
14 did you offer that into evidence?

15 MR. SIMPSON: That remains ID only at the moment.

16 THE COURT: Okay. And same for the 24 and 25, the  
17 bottles?

18 MR. SIMPSON: Your Honor, thank you. At this point in  
19 time, the State would seek to admit 24 and 25 into evidence.

20 THE COURT: All right. Any objection to that, Ms. Ford?

21 MS. FORD: No, your Honor.

22 THE COURT: Okay. All right. 24 and 25 into evidence.

23 (State's Exhibits Number 24 and 25 admitted into  
24 evidence.)

25 THE COURT: And then lastly, this last one, 54, that

1 remains ID as well?

2 MR. SIMPSON: Remains ID.

3 THE COURT: All right. Very good. Thank you.

4 Now, Ms. Ford, do you have any cross-examination of this  
5 witness?

6 MS. FORD: Yes, your Honor. Thank you.

7 CROSS-EXAMINATION

8 BY MS. FORD:

9 Q. When police go to a scene, sometimes they're not even  
10 sure what they may be looking for, correct?

11 A. That is correct.

12 Q. So when you, as a crime-scene investigator, go, at times  
13 you are directed to certain pieces of possible evidence --

14 A. Mm-hmm.

15 Q. -- or to certain particular areas, correct?

16 A. Yes.

17 Q. But sometimes you aren't directed because police don't  
18 know, correct?

19 A. That is correct.

20 Q. And even when you are directed, as someone who's  
21 trained, you could still make observations of other things  
22 that you might see that might seem relevant, correct?

23 A. Correct. Yes.

24 Q. And you're still allowed to explore the area, so to  
25 speak; is that fair?



1 A. Yes, that's fair.

2 Q. Here you told us that you got involved the day of the  
3 incident but that it was hours later in the daytime, correct?

4 A. Correct. Yes.

5 Q. So by the time you got involved, hours had passed since  
6 the incident?

7 A. Yes.

8 Q. And from your -- you knew -- er, you were told that  
9 other officers had been at the scene closer to the incident,  
10 correct?

11 A. Yes.

12 Q. Including another crime-scene investigator?

13 A. Correct.

14 Q. But between that time -- between the time they left and  
15 you got there, you do not know what may have gone on in that  
16 apartment?

17 A. That's correct.

18 Q. And you do not know who may have been in that apartment?

19 A. Correct.

20 Q. When you initially went to recover the bedding -- and so  
21 you took all of the bedding, correct?

22 A. Yes.

23 Q. You did not -- did you -- you never noted that you saw a  
24 slit in the mattress pad at that point in time?

25 A. Right.

1 Q. So you did not notice that until you went back to the  
2 apartment days later?

3 A. No. The slit in the fitted bedsheet was noted when --  
4 right after it was collected and examined in a secured  
5 laboratory environment. So during that visual examination,  
6 the tear was noted and it was documented with scale.

7 Q. But I mean the mattress pad.

8 A. Oh.

9 Q. So when you took the sheet, you did not notice the slit  
10 in the mattress pad at that time?

11 A. Correct. Yeah.

12 Q. And again, when you found that mattress pad -- or when  
13 you took that picture and collected that, that was days  
14 later?

15 A. Yes. Correct.

16 Q. And again, during that time gap, you're unsure of who  
17 may have been in the apartment, correct?

18 A. Yes.

19 Q. When you went initially, you told us you were directed  
20 to the olive oil?

21 A. Yes.

22 Q. And you did find the olive oil on -- some was on the  
23 counter?

24 A. Yes.

25 Q. And then some olive oil had been spilled on the ground

1 as well?

2 A. Yes.

3 Q. And so when you came into the kitchen, this was readily  
4 apparent?

5 A. Yes.

6 Q. When you -- I want to talk briefly about Dan. When you  
7 met with Dan Schwarz, you took a picture of his hands?

8 A. Mm-hmm.

9 Q. And you told us you didn't see any visible injuries on  
10 his hands?

11 A. Correct.

12 Q. You also didn't observe any injuries to the rest of his  
13 body either?

14 A. That is correct.

15 Q. So there was no bruising from being punched or anything  
16 of that nature that you saw?

17 A. Not that I had noted at that time.

18 Q. And you were also directed when you arrived the first  
19 time, in addition to the olive oil, you were directed to the  
20 back door?

21 A. Yes.

22 Q. And that back door was partially open?

23 A. Yes.

24 Q. Okay. And again, that's something that you noted after  
25 being directed to it?

1 A. That is correct, yes.

2 MS. FORD: Beg the Court's indulgence?

3 THE COURT: Sure. Take your time.

4 (Ms. Ford conferred with co-counsel and their client.)

5 MS. FORD: No further questions, your Honor.

6 THE COURT: Solicitor, any redirect of this witness?

7 MR. SIMPSON: No, your Honor.

8 THE COURT: Okay. You can step down, ma'am. Thank you.

9 THE WITNESS: Thank you.

10 THE COURT: You're free to leave the courthouse or  
11 you're welcome to remain with us if you so choose.

12 (Witness excused.)

13 THE COURT: Okay. Ladies and gentlemen, I think it  
14 would be a good time now to break for lunch. We're a little  
15 bit past the hour -- 1:00-hour mark. You're to be back here  
16 at 2:45. That will give you an hour and a half. Hopefully,  
17 that will be plenty of time to get you some lunch and  
18 recharge, and we'll get back to work this afternoon.  
19 Remember all of my instructions, and have a good lunch.

20 (The jury was released for lunch at 1:16 p.m.)

21 (The following proceedings were had outside the presence  
22 of the jury.)

23 THE COURT: Let me just note for the record, we had a  
24 sidebar, and this was when Kimberly Cantwell was on the  
25 stand. The State attempted to elicit some testimony

1 concerning the mental-type injuries. Defense objected. We  
2 had a sidebar. I ruled that the State could not get into  
3 that, and so I sustained the objection.

4 I'm just putting that on the record for whatever purpose  
5 necessary.

6 Let's go off the record.

7 (Court recessed.)

8 (Court resumed outside the presence of the jury.)

9 THE COURT: All right. Solicitors, the next witness is  
10 going to be virtual; is that correct?

11 MR. URICCHIO: Yes, your Honor. Due to some illness,  
12 she was unable to come today. So we just, for better safe  
13 than sorry, we decided to do her virtually. And I don't  
14 think the defense counsel objects.

15 THE COURT: Okay. And which witness is this, Solicitor?

16 MR. URICCHIO: This will be Sally Pranger.

17 THE COURT: All right. And does the defense have any  
18 objection to taking Ms. Pranger's testimony virtually through  
19 the Court's courtroom.

20 MS. FORD: No, your Honor.

21 THE COURT: Okay. Thank you.

22 Okay. Are we ready for the jury?

23 MR. SIMPSON: Yes, your Honor.

24 THE COURT: All right. Let's bring the jury in, please.

25 (The jury came into open court at 2:47 p.m.)

1 THE BAILIFF: Judge, all jurors are present and seated.

2 THE COURT: Thank you, sir.

3 Good afternoon, ladies and gentlemen. I hope you had a  
4 good lunch and are ready to get back to work.

5 The next witness that the State is calling, her  
6 testimony will be taken virtually. That's why we have the  
7 screen.

8 So solicitors, I'll turn it over to you.

9 MR. SIMPSON: The State calls Sally Pranger.

10 And your Honor, with the Court's indulgence, I'm going  
11 to sit so she can actually see me during her testimony.

12 THE COURT: Sure. Sure.

13 Well, since I'm on the screen, I'll swear her in. Okay?

14 All right. Ms. Pranger, raise your right hand, please,  
15 ma'am.

16 (Witness sworn.)

17 THE COURT: Okay. State your name and spell your last  
18 name for the Court, please.

19 THE WITNESS: My name is Sally Pranger. My last name is  
20 P-R-A-N-G-E-R.

21 THE COURT: Thank you very much.

22 Your witness.

23 MR. URICCHIO: Thank you, your Honor.

24

25

1 SALLY PRANGER,  
2 called as a witness on behalf of the State, being first duly  
3 sworn, was examined and testified via videoconference as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. URICCHIO:

7 Q. How you doing today, Ms. Pranger?

8 A. Good. How are you?

9 Q. I'm doing well. Let's introduce you to the jury. Where  
10 did you go to college?

11 A. I'm sorry. Say that one more time.

12 Q. Where did you go college?

13 A. After I graduated high school, I went to a community  
14 college in Fayetteville, North Carolina, and got my  
15 associate's, and then finished my bachelor's at Illinois  
16 State University in 2006.

17 Q. And where do you currently work?

18 A. I currently work with the Charleston Police Department.

19 Q. And what is your position today?

20 A. Currently I am a school resource officer, working at a  
21 school in West Ashley.

22 Q. And how long have you had that position?

23 A. I've been in this position about three years.

24 Q. And what was your position in September of 2018?

25 A. I was a violent-crimes detective.

1 Q. And what does that entail?

2 A. To be a violent-crimes detective, the priority is to  
3 investigate cases anywhere from threats of harm all the way  
4 to homicide. A secondary feature of being a detective at all  
5 is helping other detectives when they need help with their  
6 cases.

7 Q. And are you required to go through training and have  
8 certificates for that position -- certifications?

9 A. Yes, sir.

10 Q. And what training or certifications do you have?

11 A. Specifically, I graduated in 2007 from the South  
12 Carolina Law Enforcement Academy. Then I've gone on to do  
13 additional classes for investigations, data examination,  
14 technology, and so forth.

15 Q. Now, turning to this case, were you working on  
16 September 20, 2018?

17 A. Yes, sir, I was.

18 Q. And were you involved in this case?

19 A. Yes, sir, I was.

20 Q. And what was your involvement?

21 A. To review video surveillance in the area of Thomas  
22 Street.

23 Q. All right. And are --

24 A. Thomas Street specifically.

25 Q. And are you familiar with the area of Thomas Street?



1 A. Through this investigation, yes.

2 Q. And while you were in the violent crimes unit, were you  
3 working downtown cases in Charleston?

4 A. They would be assigned to me, yes.

5 Q. Okay. I'm showing you what's been marked for ID as --  
6 I'm showing you what's been marked for ID purposes only. Do  
7 you recognize this? I know it's hard to tell.

8 A. Yeah. It's an overview of the area for Thomas Street.

9 Q. And for the record, I'm showing you Exhibit 42. And  
10 does that fairly and accurately depict the area of Thomas  
11 Street?

12 A. Yes, sir.

13 Q. Okay.

14 MR. URICCHIO: The State wishes to admit State's 42,  
15 your Honor.

16 THE COURT: 42 or 52?

17 MR. URICCHIO: It's 42, your Honor.

18 THE COURT: 42. Okay. All right. What says the  
19 defense?

20 MS. FORD: No objection, your Honor.

21 THE COURT: All right. Without objection, 42 will be  
22 into evidence for the State.

23 (State's Exhibit Number 42 admitted into evidence.)

24 BY MR. URICCHIO:

25 Q. And can you see -- I know it's really difficult -- that

1     little dot right there, little arrow?

2     A.     Yes. I can see where your finger was at.

3     Q.     Okay. Would that be around where 24 Thomas Street is?

4     A.     Yes.

5     Q.     Okay.

6           THE COURT: Solicitor, can you spell that street name  
7     that you've been referring to, please?

8           MR. URICCHIO: Yes, your Honor. It's T-H-O-M-A-S.

9           THE COURT: Thomas. Okay. All right.

10    BY MR. URICCHIO:

11    Q.     Now, what did you do at 24 Thomas Street? Or how -- why  
12    is 24 Thomas Street relevant?

13    A.     The Charleston Police Department had access -- remote  
14    access to the video surveillance system at the property. The  
15    people from the property gave us the password to access the  
16    account on their server. So I used that to look at the video  
17    cameras specifically at that site.

18    Q.     And do you remember the dates and times of those video  
19    cameras?

20    A.     Um --

21    Q.     And are you -- do you have your police report in front  
22    of you? Your report?

23    A.     Yeah. I'm sorry. I thought that's on the screen too.

24    Q.     Okay.

25    A.     Yeah, that would have been the morning of September 20

1 at approximately 3:13 in the morning.

2 Q. Okay. Were the -- were you able to get video  
3 surveillance from that address from the morning of  
4 September 20, 2018?

5 A. Yes. I was able to get video footage from there,  
6 specifically to pick up a person on the street.

7 Q. Okay. And would those videos have time stamps on them?

8 A. Yes, sir, they did.

9 Q. And were those time stamps correct?

10 A. They're off by a few minutes.

11 Q. Okay. Was it -- how many approximate minutes, per your  
12 report?

13 A. Three approximate minutes --

14 Q. Okay.

15 A. -- for the video.

16 Q. Were you able to download those videos into evidence?

17 A. Yes, sir. I downloaded the video and placed it into  
18 evidence.

19 Q. Okay. I'm showing you what's been marked for ID as  
20 State's Exhibit 41. Do you recognize that?

21 A. Yes, sir.

22 Q. And how do you recognize that?

23 A. My initials on the top --

24 Q. And what --

25 A. -- and the date on it.

1 Q. -- is that?

2 A. Sorry. Can you repeat that?

3 Q. And what is it? What's on that DVD?

4 A. Video that I got from the video surveillance system that  
5 documented September 20 around 3:13 in the morning.

6 Q. And you reviewed those videos in my office before you  
7 signed this DVD, correct?

8 A. Yes, that's correct.

9 Q. All right. And are the videos on the DVD substantially  
10 the same or the same videos you pulled from 24 Thomas Street?

11 A. Yes, sir.

12 MR. URICCHIO: The State would seek to admit 41 Thomas  
13 Street, your Honor.

14 THE COURT: And what says the defense?

15 MR. URICCHIO: Er, State's Exhibit 41.

16 MS. FORD: Beg the Court's indulgence.

17 (Ms. Ford conferred with co-counsel and their client.)

18 MS. FORD: No objection, your Honor.

19 THE COURT: All right. Without objection, 41 into  
20 evidence for the State.

21 (State's Exhibit Number 41 admitted into evidence.)

22 MR. URICCHIO: The State wishes to publish portions of  
23 State's Exhibit 41 at this time.

24 THE COURT: Okay. All right. Very good.

25 MR. URICCHIO: Thank you.

1 THE COURT: And how do you intend to publish the  
2 exhibit? Will it show up on that screen?

3 MR. URICCHIO: No, your Honor. What I intend to do is  
4 I'm just going to play it on our screen. So Ms. Pranger --  
5 Officer Pranger will not be able to view it, but per her  
6 report, she'll be able to testify on the video since she's  
7 seen it beforehand.

8 THE COURT: Okay. All right. Very good.

9 MR. URICCHIO: The Court's indulgence, your Honor. It  
10 goes with technology that it doesn't work when you want it  
11 to.

12 THE COURT: That's always the case. Take your time.  
13 You're fine.

14 MR. URICCHIO: Madam Clerk, could you put it on my  
15 computer?

16 CLERK OF THE COURT: Mm-hmm.

17 BY MR. URICCHIO:

18 Q. Now, Officer Pranger, can you hear me?

19 A. Yes, sir.

20 Q. All right. I'm showing what is Camera 2 on your report.  
21 I'm going to publish it now. Give me one second.

22 A. Okay.

23 (Video played in open court.)

24 BY MR. URICCHIO:

25 Q. And what does Camera 2 depict?

1 A. A shot of Radcliffe Street going west towards Rutledge  
2 Avenue.

3 Q. And was anything in that video?

4 A. Yes. There should be a black male seen walking away  
5 from the area of Jasper Street. You should see that person  
6 going towards Rutledge Avenue. The black male was described  
7 as a stocky, muscular, bald male.

8 Q. Okay. I'm going to play it one more time for them.

9 (Video played in open court.)

10 THE COURT: Solicitor, where on the screen is that  
11 showing?

12 Oh, it's over here. I've been looking here.

13 MR. URICCHIO: Would you like me to play it again, your  
14 Honor?

15 THE COURT: If you don't mind.

16 (Video played in open court.)

17 BY MR. URICCHIO:

18 Q. Now, Officer Pranger, there was two different camera  
19 angles, correct?

20 A. Yes, sir.

21 Q. And there was a Camera Angle 4, correct?

22 A. Yes.

23 Q. Okay. I'm going to play --

24 A. The opposite direction.

25 Q. I'm going to play Camera Angle 4 right now.

1 (Video played in open court.)

2 BY MR. URICCHIO:

3 Q. What does Camera Angle 4 depict?

4 A. Again. It's going to be Radcliffe Street this time,  
5 facing east towards Jasper Street. Again, you can still see  
6 a black male walking away from the area of Jasper Street  
7 toward Rutledge.

8 Q. And you said the time stamps on these videos are three  
9 minutes -- approximately three minutes different than regular  
10 time?

11 A. Yes, sir.

12 Q. Okay. I'm going to play it one more time.

13 (Video played in open court.)

14 BY MR. URICCHIO:

15 Q. Now I'm going to show you what's marked for ID as  
16 State's 43. Tell me if you recognize it.

17 A. Yes, sir, I do.

18 Q. And what does that depict?

19 A. That's Camera Number 2 angle.

20 MR. URICCHIO: So your Honor, we're going to move 43 and  
21 44, without objection, please.

22 THE COURT: All right.

23 MR. URICCHIO: They are stills from the camera angles.

24 THE COURT: All right. 44's another still shot?

25 MR. URICCHIO: Correct, your Honor.

1 THE COURT: That would be from Camera 4?

2 MR. URICCHIO: That would be correct, your Honor.

3 THE COURT: Okay. What says the defense?

4 MS. FORD: No objection, your Honor.

5 THE COURT: Without objection, 43 and 44 into evidence  
6 for the State.

7 (State's Exhibits Numbers 43 and 44 admitted into  
8 evidence.)

9 (Exhibit displayed on screen in open court.)

10 BY MR. URICCHIO:

11 Q. So that's a still from Camera Angle 2?

12 A. Yes, sir.

13 Q. Okay.

14 (Exhibit displayed on screen in open court.)

15 BY MR. URICCHIO:

16 Q. And this is a still from Camera Angle 4?

17 A. Yes, sir.

18 Q. Did you have any other involvement in this case?

19 A. No, sir.

20 Q. Okay.

21 MR. URICCHIO: Answer any questions that the defense may  
22 have for you. Thank you for bearing with us and all the  
23 technology.

24 THE COURT: All right. Defense --

25 THE WITNESS: Thank you.



1 THE COURT: -- have any cross-exam?

2 MS. FORD: Beg the Court's indulgence?

3 THE COURT: Yes.

4 (Ms. Ford conferred with co-counsel and their client.)

5 MS. FORD: I have no questions for this witness.

6 THE COURT: Thank you.

7 Thank you, Officer Pranger.

8 THE WITNESS: All right. Thank you, sir.

9 (Witness excused.)

10 MR. URICCHIO: Next, the State would call Mary Phillips,  
11 your Honor.

12 THE COURT: Okay. This is going to be live and not  
13 virtual?

14 MR. URICCHIO: That's correct, your Honor.

15 THE COURT: Okay.

16 CLERK OF THE COURT: Please raise your right hand, left  
17 hand on the Bible.

18 (Witness sworn.)

19 CLERK OF THE COURT: You may have a seat.

20 Please state your name for the record and spell your  
21 last name.

22 THE WITNESS: Mary Katherine Phillips. Phillips is  
23 P-H-I-L-L-I-P-S.

24

25

1 MARY PHILLIPS,  
2 called as a witness on behalf of the State, being first duly  
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. URICCHIO:

6 Q. Good afternoon, Ms. Phillips. How you doing today?

7 A. I'm okay.

8 Q. Where are you currently employed?

9 A. I work for the City of Charleston Police Department in  
10 the crime scene unit.

11 Q. And how long have you been employed by CPD?

12 A. Since 2006.

13 Q. And what is your current position?

14 A. I'm the crime-scene manager.

15 Q. And how long have you had that position?

16 A. About two years now.

17 Q. Okay. And what was your position in September of 2018?

18 A. I was the one of the master crime-scene investigators,  
19 and I also worked in latent recovery as a latent recovery  
20 specialist.

21 Q. And how long were you employed in the area of latent  
22 recovery?

23 A. I started that position in January of 2012.

24 Q. And what is your education background?

25 A. I have a bachelor of science degree.

1 Q. And do you have to go through any training or  
2 certifications for your position in latent recovery?

3 A. Yes. You have to have specialized in-house training, as  
4 well as keep up continuing education classes throughout your  
5 years, as well as taking -- you have to take a competency  
6 test to be able to do actual case work, and every year you  
7 have to take a proficiency test.

8 Q. So there's multiple education courses you have to do to  
9 make sure you're keeping up with your certification?

10 A. Correct.

11 Q. Okay. And what kind of -- what professional  
12 organizations are you a member of?

13 A. I'm part of the International Association for  
14 Identification. They mainly do a lot of crime-scene  
15 certifications. And then the lab we work through is  
16 accredited through ANAB labs.

17 Q. And what exactly is latent recovery?

18 A. So latent recovery is when crime scene goes out to  
19 scenes, they collect items of evidence that are better suited  
20 to do processing for fingerprints in a laboratory setting, as  
21 opposed to printing them out on the scene. So latent  
22 recovery is the processing of items for fingerprints.

23 Q. And that's done in a lab?

24 A. Yes, sir.

25 Q. Okay. And what sort of technology or equipment do you

1 use for latent recovery?

2 A. We use a variety of things. Fingerprints are kind of  
3 grouped into two categories. They're either grouped into  
4 processing porous items, which are anything that can seep  
5 into an item. So like paper, a tissue, if we were to print  
6 those, it's a different process than using the powder that  
7 you, like, see on TV. So you have the porous items and then  
8 the nonporous items. The nonporous are like your plastic or  
9 your metals.

10 And with those, we use a system -- it's usually a visual  
11 exam for everything. And then we use what's called  
12 cyanoacrylate fuming, so it's with the Super Glue. So they  
13 put the items in a chamber. It kind of heats it up. And  
14 that Super Glue turns into, like, a vapor that adheres to the  
15 oils in your skin. And then after that processing, we will  
16 use a powder to kind of visualize the prints more and -- like  
17 you'd see on TV with the powder. And then we use just tape  
18 to lift those.

19 Q. And are latent prints always recovered?

20 A. No.

21 Q. And while I'm at it, what is a latent print exactly?

22 A. So a latent print is an invisible fingerprint. It's not  
23 something that you're going to see prior to processing. It  
24 requires process to make it visible.

25 Q. And were you involved in this case?

1 A. I was.

2 Q. And how were you involved?

3 A. I worked in latent recovery at the time, and items were  
4 submitted to me for processing.

5 Q. And do you know -- how were items submitted to the  
6 latent recovery?

7 A. So crime scene would go out, and they would do their  
8 part of documenting the scene and collecting the items. Once  
9 they're back at our office, they would make sure to package  
10 those items, seal the packaging, voucher them into our  
11 computer system, and then they would submit them to me  
12 through a series of lockers that we have. So they have  
13 access to the lockers when they're unlocked, but then they  
14 would put the evidence in there and then only latent recovery  
15 has access to open those lockers, where they stay secured  
16 until we pull them out for processing.

17 Q. And are those items sealed until you process them?

18 A. Yes, they are sealed. The crime scene seals them and  
19 submits them to us through the lockers. And then we would  
20 then have to open the package to get the items out to process  
21 them.

22 Q. Okay. And if they weren't sealed, would you have noted  
23 that in your report?

24 A. Correct.

25 Q. Okay. And were you submitted any items in this case?

1 A. I was.

2 Q. And what were the items?

3 A. There was a knife and two olive-oil bottles.

4 MR. URICCHIO: May I approach, your Honor?

5 THE COURT: Sure can.

6 BY MR. URICCHIO:

7 Q. I'm showing what's already been admitted as State's 24,  
8 which is -- and State's 25 and State's 22.

9 Did you have a chance to look over these items?

10 A. I did.

11 Q. All right. State's -- and who submitted those items to  
12 latent recovery?

13 A. Ashleigh Wojslawowicz.

14 Q. And what date did she submit them?

15 A. I believe it was on the 21st. I don't have my chain  
16 with me.

17 Q. Okay. Would September 20, 2018, sound right?

18 A. Yes.

19 Q. Okay. And what is the process that you use to recover  
20 latent prints off these items?

21 A. So all of those items were nonporous items. So they  
22 would have had that initial visual examination that I said  
23 and then that Super Glue processing in the chamber, followed  
24 by powder processing.

25 Q. And just for the record, State's 25, what is that?

1 A. 25? Oh, I have a 301, 302 --

2 Q. Okay.

3 A. -- 303.

4 Q. So 302 would be Exhibit 25.

5 A. Okay. It is an olive-oil bottle.

6 Q. All right. And Exhibit 26, which is Item 301?

7 A. It is another olive-oil bottle.

8 Q. And then State's 25?

9 A. Well, 25 was one of the olive-oil bottles.

10 Q. Oh, I'm sorry. Excuse me. 22.

11 A. It is a knife.

12 Q. Okay. And were all these submitted to you for latent  
13 recovery?

14 A. They were.

15 Q. And were you able to recover any latent prints off these  
16 items?

17 A. I was.

18 Q. And what did you do once you recovered those latent  
19 prints?

20 A. So after the processing with the powder, we'll look at  
21 it under, you know, a visual examination. And I saw prints  
22 on them, so what we would do is use like a clear tape. We  
23 put it over there. It's able to lift the powder that has  
24 adhered to the print off of it, and we put those on  
25 fingerprint cards. And then those cards are submitted to

1 friction ridge. We package them, voucher them into the  
2 system because they're new evidence for us, and then we  
3 submit them to friction ridge for analysis.

4 MR. URICCHIO: May I approach, your Honor?

5 THE COURT: You sure can.

6 BY MR. URICCHIO:

7 Q. I'm handing you what's been marked as State's Exhibits  
8 39 and 40. Do you recognize those?

9 A. I do.

10 Q. And what are those?

11 A. These are fingerprints that were collected.

12 Q. And were they -- were you the one who collected them?

13 A. Yes, sir.

14 Q. And what were they collected off of? What item number?

15 A. Item Number 302.

16 Q. And what is Item 302?

17 A. It is an olive-oil bottle.

18 Q. Okay. Is that the olive-oil bottle in front of you?

19 A. Yes. This one.

20 Q. And that is State's Exhibit 25?

21 A. Correct.

22 Q. Okay. And did you have any other involvement in the  
23 case?

24 A. No, sir.

25 Q. Okay. And what did you do after you made the



1 fingerprint cards?

2 A. I would have, you know, filled them out, vouchered them,  
3 packaged them, and sealed them. And then I would have -- we  
4 have a similar for dropping fingerprints that crime scene has  
5 for dropping evidence. It's a secure locker that we would  
6 place them in that we can access when it's empty, and then  
7 only friction ridge, the analysis people, can open it. It's  
8 no different. So we would put the packaged and vouchered  
9 prints into that locker.

10 Q. And would you have done that immediately after you made  
11 the fingerprint cards?

12 A. Yeah, then packaged them and vouchered them. Yes, sir.

13 Q. Okay.

14 MR. URICCHIO: Answer any questions that the defense  
15 might have for you.

16 THE WITNESS: Okay.

17 THE COURT: Any examination of this witness?

18 MS. FORD: Beg the Court's indulgence?

19 THE COURT: Sure.

20 (Ms. Ford conferred with co-counsel and their client.)

21 MS. FORD: I have no questions, your Honor.

22 THE COURT: Okay. Solicitors, 39 and 40 are fingerprint  
23 cards and they are off one olive-oil bottle or two?

24 MR. URICCHIO: They're off one olive-oil bottle, your  
25 Honor.

1 THE COURT: Okay.

2 MR. URICCHIO: And they are just marked for ID.

3 THE COURT: Fine. Gotcha.

4 Thank you, ma'am. You can step down. You're free to  
5 leave the courthouse or you're more than welcome to remain  
6 with us if you'd like to.

7 (Witness excused.)

8 THE COURT: Who do we have next, solicitors?

9 MR. URICCHIO: We have Nova Grilli with the Charleston  
10 Police Department.

11 THE COURT: Okay.

12 CLERK OF THE COURT: Please raise your right hand, left  
13 hand on the Bible.

14 (Witness sworn.)

15 CLERK OF THE COURT: You may have a seat.

16 Please state your name for the record and spell your  
17 last name.

18 THE WITNESS: Nova Grilli, G-R-I-L-L-I.

19 NOVA GRILLI,  
20 called as a witness on behalf of the State, being first duly  
21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. URICCHIO:

24 Q. Good afternoon, Ms. Grilli. Thank you for being here.

25 A. Thank you.

1 Q. Where are you currently employed?

2 A. Charleston PD.

3 Q. And how long have you been there?

4 A. About six years.

5 Q. And what is your current position?

6 A. I am the friction-ridge manager.

7 Q. And what are the duties of a friction-ridge manager?

8 A. I analyze, compare, and evaluate latent prints recovered  
9 from crime scene units. And I'm also responsible for  
10 maintaining the friction-ridge policies and procedures based  
11 on the accreditation requirements.

12 Q. And CPD does have an accredited lab for friction ridge?

13 A. Yes, we are accredited.

14 Q. Okay. And how long have you been employed in the area  
15 of fingerprint analysis?

16 A. Sixteen years, which would include ten years in latent  
17 prints.

18 Q. And what is your educational background?

19 A. I have two bachelor's degrees, one in criminology and  
20 one in forensic science, through the University of Montana.  
21 I also hold a master's degree in forensic science through  
22 National University.

23 Q. And what specialized education and training have you  
24 received in latent-print examination?

25 A. My last employer, they had a formal latent-print

1 training program that I went through. I'm also a certified  
2 latent-print examiner through the International Association  
3 for Identification, also known as IAI. I've also attended  
4 multiple conferences, workshops, and training classes that  
5 pertain to latent-print examination.

6 Q. And are you a member of any professional organizations?

7 A. I'm a member of the IAI, as well as the South Carolina  
8 Division of the IAI. I'm also a member of OSAC, which stands  
9 for the Organization of Scientific Area Committees for  
10 Forensic Science. And we are responsible for creating  
11 recommendations for policies and procedures for latent-print  
12 examinations worldwide.

13 Q. And just for the record, what is the IAI?

14 A. International Association for Identification.

15 Q. Okay. And when you make an analysis, what sort of  
16 technical equipment do you use?

17 A. We have magnifying glasses and pointers with that, as  
18 well as we're able to scan the evidence onto a computer  
19 monitor. And we can use Photoshop as well.

20 Q. And what is a known print?

21 A. A known print is an intentional recording of one's  
22 friction-ridge skin. It can be done using black ink and  
23 rolling the fingers onto a white fingerprint card.

24 Q. And what is a latent print?

25 A. "Latent" in Latin means hidden. So when somebody

1 touches a surface and leaves a latent print behind, it's not  
2 visible. So you need some type of way to process it to make  
3 it visible.

4 Q. And are latent prints always recovered?

5 A. No.

6 Q. Okay. And what does that depend on?

7 A. It depends on sweat. You have pores in your friction  
8 ridge. So if you have sweat or some oils, like if you touch  
9 your face. You have to have some kind of residue on your  
10 prints in order for something to be left behind.

11 Q. And how can you develop a latent print?

12 A. I actually do not personally do it, but I know powder  
13 and chemical processing can be used.

14 Q. And you said "friction ridge" earlier. What is a  
15 friction ridge?

16 A. So on your hands and feet, you have friction-ridge skin,  
17 which is different than the rest of the skin on your body.  
18 You have what's called "ridges" and "furrows." Think of  
19 ridges as hills and valleys -- er, sorry, ridges as hills and  
20 furrows as valleys. And on those ridges, you have pores that  
21 exude sweat. So when you touch a surface, those ridges are  
22 making contact first. So that is what creates a latent  
23 print.

24 Q. Are there any variables that can affect -- excuse me.  
25 Are you always able to make a comparison to latent prints?

1 A. No. There's times where we have too much, it's called  
2 "distortion." There's different types of distortion. Too  
3 much pressure can make it hard to see those ridges and  
4 furrows. Movement can obliterate those ridges. And then  
5 there's times where we have just a very, very small portion  
6 of a friction ridge where there's just not enough information  
7 within that to do anything with.

8 Q. And do you compare latent prints to known on occasion?

9 A. Yes. All the time.

10 Q. And approximately how many times have you done any sort  
11 of comparison?

12 A. From my initial training, daily casework, and yearly  
13 proficiency tests, and any classes that I do that require  
14 doing comparisons, I've done hundreds of thousands.

15 Q. And have you ever been qualified as an expert in court  
16 before?

17 A. Yes.

18 Q. And have you testified in court before?

19 A. Yes.

20 MR. URICCHIO: At this point, the State would offer her  
21 as an expert in friction-ridge or latent-print analysis, your  
22 Honor.

23 THE COURT: Okay. Does the defense have any examination  
24 of this witness concerning qualifications?

25 MS. FORD: No, your Honor.

1 THE COURT: Okay. The Court will find Ms. Grilli as an  
2 expert in the area of fingerprint analysis.

3 Ladies and gentlemen, when the Court declares a witness,  
4 as I have done here with Ms. Grilli, as an expert in some  
5 area by virtue of some training, education, experience, that  
6 witness will be permitted to offer opinions in the particular  
7 subject matter that they are an expert in and further offer  
8 any basis for those opinions. Typically, witnesses cannot do  
9 that. Lay witnesses cannot do that. There's some  
10 exceptions. But expert witness are allowed to offer opinions  
11 in those areas that they are an expert in.

12 Now, just because I have declared Ms. Grilli as an  
13 expert in the area of fingerprint analysis, you give her  
14 testimony whatever weight that you feel like it deserves, as  
15 you would with each and every other witness that has or will  
16 testify in this case.

17 Solicitor, you may proceed.

18 MR. URICCHIO: Thank you.

19 Q. [By Mr. Uricchio] Now, why are fingerprints used as a  
20 form of identification?

21 A. There's two factors: persistence and uniqueness.  
22 Persistence is based on the permanence of friction-ridge  
23 skin. You have many layers in your friction-ridge skin. The  
24 bottom layer, you have what's called keratinocytes, cells  
25 that are generated and they move up. These help stabilize

1 your friction-ridge skin, where everything kind of stays in  
2 place and remains stable through your life. This changes if  
3 you have injury to that bottom layer which then produces a  
4 scar. That scar, once it's healed, that also continues to be  
5 stable through your life unless another injury hurts that  
6 bottom layer.

7       Uniqueness, this is based on when you're developed in  
8 the womb, everybody goes through different growth factors.  
9 So my prints are different than yours because of what I went  
10 through, the different movements and everything else. And  
11 this is seen with identical twins. Identical twins share  
12 DNA, but they don't share the same fingerprints. And as  
13 fingerprints have been used as a means of identification for  
14 over a hundred years, no two people have been yet found that  
15 have the same fingerprints.

16 Q. And what are the specific characteristics of  
17 fingerprints that make them unique?

18 A. So we all share common pattern types, which are whorls,  
19 loops, and arches. And within each of those, there's  
20 different subcategories. But we go down to the smaller  
21 detail of what makes ours different, and we use the  
22 terminology "minutiae" or "points."

23       The two main minutiae that we talk about are called  
24 ending ridge and bifurcation. An ending ridge is where a  
25 ridge flows and at some point just abruptly stops. A



1 bifurcation is a ridge that flows and then at one point just  
2 forks into two.

3 And then going even further in those ridges, I talked  
4 about how we have pores. Those pores, the placement and  
5 shapes of those also are unique to one another. Along the  
6 ridges we have edge shapes, and so our edge shapes are  
7 different from one another as well. We have different  
8 characteristics that dip or like they have lumps.

9 So all of that unique, fine detail is what makes it  
10 different.

11 Q. And how many points are needed to make an  
12 identification?

13 A. There's no minimum standard in the United States.

14 Q. And how are comparisons performed?

15 A. We use a methodology called ACEV. It stands for  
16 analyze, compare, evaluate, and verification.

17 So when I obtain latent-print evidence, my job is to  
18 analyze what's in front of me. The first thing I'm going to  
19 do is I'm looking to see are there ridges? Is there enough  
20 to tell me what I'm looking at? If there's ridges present,  
21 I'm looking at the shape, the ridge flow, like their  
22 patterns. Is it a finger? Is it part of the palm? What is  
23 there to tell me what I'm looking at?

24 If there's enough information of that, then I go further  
25 into those fine details that I previously discussed. I'm

1 looking to see based on how much ridge detail is there versus  
2 how much distortion is present. We always see distortion in  
3 prints. Some can be very, very minor. Some can be a lot.  
4 So it's all dependent on quantity and quality of the prints.

5 If I find that there's enough to compare that print,  
6 then I move to the next step. And that is when I have the  
7 latent and known side by side, and I take what's called  
8 "target groups" in the latent. It's a cluster of minutiae  
9 that I'm going to memorize, and it's going to be in certain  
10 areas of that print that I can then take over to the known  
11 and find that same cluster.

12 And I'm going back and forth between the latent and  
13 known. I don't just stop at one look. I'm going as many  
14 times as I need so I'm confident in my ability to come to a  
15 conclusion.

16 So once I'm done with the comparison, I have three  
17 decisions for my evaluation: identification, exclusion, or  
18 inconclusive. And inconclusive is basically I don't have  
19 enough information there to go one way or another. Once I'm  
20 confident in my evaluation, then it gets turned over to  
21 another latent-print examiner for them to go through the  
22 whole process themselves.

23 Q. So every time you do an evaluation, somebody's backing  
24 you up to make sure y'all come to the same conclusion?

25 A. Yes.

1 Q. Okay. And how did you -- did you have an opportunity to  
2 become involved in this case?

3 A. Yes.

4 Q. And did you conduct any latent-print analysis?

5 A. Yes.

6 Q. And what did you analyze?

7 A. Could I have a copy of the report so I could see the  
8 evidence listed, please?

9 Q. Sure.

10 MR. URICCHIO: May I approach the witness, your Honor?

11 THE COURT: You sure can.

12 BY MR. URICCHIO:

13 A. I analyzed Bag 18, items from olive-oil bottles.

14 Q. Okay. And was that Item 301 and 302?

15 A. Yes.

16 Q. I believe if you look in front of you, you actually have  
17 Items 301 and 302 in those brown bags that are actually  
18 State's -- admitted as State's 25 and 26 (verbatim).

19 A. Okay.

20 Q. Did any of the prints analyzed on the items produce a  
21 positive match?

22 A. Yes.

23 Q. And before we get into that, where did you get those  
24 latent-print cards from the olive-oil bottle?

25 A. Do you mean, like, who I got them from?

1 Q. Yes, ma'am.

2 A. Crime scene.

3 Q. Crime scene? Okay. And then you took them from crime  
4 scene and did your analysis from there?

5 A. Correct.

6 Q. Okay. And after you did your comparison, did you come  
7 to any conclusion?

8 A. I did.

9 Q. And what were your conclusions?

10 A. 18-3a identified to a left thumb. 18-5a identified to a  
11 left ring. 18-5b I identified to a left middle. And 18-5c I  
12 identified to a left index.

13 Q. And who did those identify to?

14 A. To the ten-print card bearing the name "Chad Simmons."

15 Q. And did you write a report in this case?

16 A. Yes.

17 Q. And is that the report in front of you?

18 A. It is.

19 Q. And once again, what were the results of that report?  
20 Was there any conclusion?

21 A. I had four identifications.

22 Q. And they were to who?

23 A. The ten-print card bearing the name "Chad Simmons."

24 MR. URICCHIO: The Court's indulgence?

25 THE COURT: Sure.

1 (Mr. Uricchio conferred with co-counsel.)

2 MR. URICCHIO: Please answer any questions the defense  
3 may have for you.

4 THE WITNESS: Okay.

5 THE COURT: Does the defense have any cross-examination  
6 of this witness?

7 MS. FORD: Just a few, your Honor.

8 THE COURT: Sure.

9 CROSS-EXAMINATION

10 BY MS. FORD:

11 Q. So you were able to find some prints on one olive-oil  
12 bottle, correct?

13 A. They were lift cards that were submitted to me by crime  
14 scene. I had nothing to do with the actual bottle itself.

15 Q. Okay. So you're unsure then where the prints are from?

16 A. I get the lift cards from crime scene, and they state in  
17 the name exactly where they came from. And so that's where I  
18 know that they're from.

19 Q. To your knowledge --

20 A. Correct.

21 Q. -- is that from one olive-oil bottle?

22 A. I know that 18-1, 18-2 were Item 301, olive-oil bottle.  
23 And then 18-3 through 18-5 was from Item 302, olive-oil  
24 bottle.

25 Q. So the one there, they were insufficient?

1 A. Which one?

2 Q. The prints?

3 A. I'm sorry. Say for which one?

4 Q. I'm sorry. Let's start over. So there's 18-3?

5 A. Uh-huh.

6 Q. And 18-5?

7 A. For -- sorry?

8 Q. Oh, okay. I apologize.

9 A. It's okay.

10 Q. There are no prints that you found that came from a  
11 knife, to your knowledge, correct?

12 A. To a knife?

13 Q. Yes.

14 A. I would have to see the other reports of mine, because I  
15 know there was multiple bags of evidence. So I don't recall  
16 everything that I had done, just besides what's in front of  
17 me here.

18 Q. Okay. So today, right now, though, what the State went  
19 over is that you're just testifying that prints were found on  
20 this olive-oil bottle?

21 A. Correct.

22 Q. And so to your knowledge, there are no prints that were  
23 found on a knife?

24 A. Correct, to my knowledge.

25 Q. And there were no prints found from a door, for example?

1 A. Correct, to my knowledge.

2 Q. And no prints found from the pantry area of the house,  
3 for example?

4 A. Correct, to my knowledge.

5 Q. Or prints found -- no prints from the floor of the  
6 residence, for example?

7 A. Correct, to my knowledge.

8 Q. Okay. So all that you know today is that prints were  
9 found on one olive-oil bottle?

10 A. Correct, to my knowledge.

11 MS. FORD: Beg the Court's indulgence?

12 THE COURT: Sure.

13 (Ms. Ford conferred with co-counsel and their client.)

14 MS. FORD: I have no further questions.

15 THE COURT: Any redirect, Solicitor?

16 MR. URICCHIO: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. URICCHIO:

19 Q. If I touched that table, this, that wall, will latent  
20 prints be recovered off all of those things?

21 A. It may not.

22 Q. And why is that?

23 A. You have to have some residue on your hands, normally  
24 sweat or oils, for those ridges to make contact with the  
25 surface to leave a latent print behind.

1 Q. So if a latent print isn't left behind, does that mean I  
2 didn't touch it?

3 A. Not necessarily.

4 Q. Okay. And per your report, did you find -- did you make  
5 a comparison on Item 8-3, which came from olive-oil bottle  
6 Item 302? It's the last page of your report.

7 A. Yes. 18- -- er, yeah, 18-3, identifier A.

8 Q. Okay. And then 18-5 --

9 A. Correct.

10 Q. -- which also came from Item 302, the olive-oil bottle,  
11 correct?

12 A. Yes.

13 Q. And were you able to make an analysis on those?

14 A. Yes.

15 Q. And what was that?

16 A. They were of comparison quality.

17 Q. And who were they found to be to?

18 A. To the ten-print card bearing the name "Chad Simmons."

19 MR. URICCHIO: Thank you so much.

20 THE COURT: Recross?

21 MS. FORD: Just briefly.

22 RECROSS-EXAMINATION

23 BY MS. FORD:

24 Q. You have no actual idea how the prints got on the  
25 bottle, though, correct?



1 A. Correct.

2 MS. FORD: Okay. No further questions.

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

4 THE WITNESS: Thank you.

5 THE COURT: You're free to leave the courthouse, or  
6 you're welcome to remain with us.

7 (Witness excused.)

8 MR. URICCHIO: Your Honor, may I approach the witness  
9 stand and remove some of those?

10 THE COURT: Sure. Yeah. You've got a lot up there.  
11 Who do you have there, Solicitor?

12 MR. SIMPSON: I'm sorry. The State calls Mr. Brian  
13 Hinton.

14 (Witness sworn.)

15 CLERK OF THE COURT: You may have a seat.

16 Please state your name for the record and spell your  
17 last name.

18 THE WITNESS: Brian Hinton, H-I-N-T-O-N.

19 BRIAN HINTON,

20 called as a witness on behalf of the State, being first duly  
21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SIMPSON:

24 Q. Mr. Hinton, good afternoon.

25 A. Good afternoon.

1 Q. Thank you for being here today. If you could, just  
2 introduce yourself to this jury by explaining what you do for  
3 a living.

4 A. I manage the evidence room for the Charleston Police  
5 Department, and I've been there for 22 years.

6 Q. Okay. And that entire 22 years, has it been with the  
7 evidence department at CPD?

8 A. Three of those were communications. The rest has all  
9 been evidence.

10 Q. Evidence? I'm terrible at math. That's what, 19 years?

11 A. Nineteen.

12 Q. Yeah. So 19 years you've been with the evidence room  
13 there. What -- you know, just for those who, you know,  
14 aren't familiar with such things, what is an evidence room?

15 A. So we -- anything that's collected from a scene gets  
16 submitted to us. The officers create a voucher. We verify  
17 that the vouchers are properly filled out, the evidence is  
18 properly sealed, properly initialed, and has an evidence  
19 label on it. Bag numbers and item numbers on those labels  
20 correspond to what is in the voucher that the officer  
21 creates. Once all that is verified as correct, we'll accept  
22 it, assign it a storage location, and place it in a storage  
23 location until such time as it's needed.

24 Q. Okay. So when any witness has testified in this trial  
25 about logging something into evidence or into the evidence

1 room, we're talking about your department; is that correct?

2 A. Yes, sir.

3 Q. And tell me a little bit about the security of your  
4 department. You get a lot of people walking in and out? Can  
5 anyone just come in there?

6 A. No. It's under surveillance cameras. It's under an  
7 alarm system. And the only people that have access to it are  
8 myself and the evidence -- two evidence technicians.

9 Q. Okay. So if I'm going to log something into evidence,  
10 if I'm a crime-scene investigator or a detective, I can't  
11 just walk in and stick it on a shelf?

12 A. No, sir.

13 Q. Okay. Also, I think we've probably all seen true-crime  
14 movies where you see an evidence room at a police department  
15 and it's just piles of stuff in some disorganized manner and  
16 somebody walks in and pulls it out or just asks for something  
17 and it's handed to them. Is that how you do things there at  
18 CPD?

19 A. No, sir.

20 Q. Can you explain that a little bit to the jury?

21 A. So it's all broken down by year, by offense, and by case  
22 type. So, like, all the homicides are on a shelf, all the  
23 burglaries are on a shelf, all the robberies, etc.

24 Q. You also mentioned something important about the  
25 condition -- well, let me back up. So if I'm a crime-scene

1 officer or detective, what is the physical process of me  
2 logging something into evidence? You used the terminology --

3 A. So if our office is open, it's a hand-to-hand  
4 transaction once they create the voucher. The evidence  
5 voucher is in our computer records-management system. I do  
6 the sealing, packaging, sealing, initialing, whatnot. So  
7 it's a hand-to-hand transaction during normal office hours.  
8 If it's not, there's temporary storage locations, which are  
9 basically lockers outside of our office which once they're  
10 locked, they can't be reopened until an evidence staff opens  
11 them up.

12 Q. So once I log something, even, say, a senior ranking  
13 officer with the Charleston Police Department, I put  
14 something in there and lock it, I can't even take it out  
15 again?

16 A. No, sir.

17 Q. Okay. Is movement of items of evidence throughout your  
18 department tracked in any way?

19 A. Yes.

20 Q. And how is that done?

21 A. Through our chain-of-custody paperwork. So if it goes  
22 out of the office or if there's a storage location change,  
23 all of that is tracked through our records-management system.

24 Q. So if I came to you as an officer with some evidentiary  
25 purpose of taking an item back out of your department, that

1 would be tracked and monitored and documented?

2 A. Yes, sir.

3 Q. Okay.

4 MR. SIMPSON: May I approach the witness, your Honor?

5 THE COURT: Sure.

6 BY MR. SIMPSON:

7 Q. I'm showing you what's been marked for ID only as  
8 State's 58. Is that a document that you would recognize?

9 A. Yes.

10 Q. And what is that?

11 A. This is a list of evidence by case number. So if it was  
12 submitted under a certain case number, it would be printed  
13 out. And that's what we have here.

14 Q. Okay. So is that sort of a master list for certain case  
15 numbers?

16 A. Correct.

17 Q. And does that case number correspond with the case  
18 you're testifying in presently?

19 A. Yes.

20 Q. And did you bring any documentation with you?

21 A. Yes. I have the chain-of-custody report.

22 Q. Okay. And what is a chain-of-custody report?

23 A. So it has each item that's listed on the State's  
24 exhibits. Each item has its own sheet that says who  
25 collected it and who seized it -- er, who stored it and

1 submitted it to evidence, who accepted it into evidence. And  
2 any time it moved after that going out of the office, it  
3 would be tracked on chain of custody, in or out, date and  
4 time, and who took it.

5 Q. Okay. And so again, no one is allowed in there to  
6 tamper with evidence, correct?

7 A. That's correct.

8 Q. The only people allowed in there are you and two people  
9 that work for you?

10 A. That's correct.

11 Q. Okay. And any other movement within or taken out of  
12 there would be documented --

13 A. Yes, sir.

14 Q. -- by you and your department?

15 A. Correct.

16 Q. Does the master evidence list in front of you include  
17 Item -- Bag 1, Item 101, a black tank top?

18 A. It does.

19 Q. Does it include Item -- Bag 7 -- er, Bag 16, Item 309,  
20 touch DNA swab from Item 302?

21 A. It does.

22 Q. Does it include Bag 19, Item 401, sealed sexual-assault  
23 kit for victim?

24 A. It does.

25 Q. Does it -- moving to the second page -- include Bag 21,

1 Item 1, buccal swabs?

2 A. It does.

3 Q. Bag 29, Item 1, buccal swabs?

4 A. It does.

5 Q. And I believe that covers it. Who is -- does your  
6 department perform any sort of analysis on evidentiary items?

7 A. No, sir.

8 Q. So it's mainly just concerned with the organization,  
9 storage, and protection of evidence?

10 A. Correct.

11 Q. Who is Luke Spratt?

12 A. He's a crime-scene investigator for Charleston Police  
13 Department.

14 Q. Okay. And does one of his less dramatic jobs involve  
15 picking things up and taking them to SLED?

16 A. Yes.

17 Q. And what is SLED?

18 A. South Carolina State Law Enforcement Division.

19 Q. And do they, to your knowledge, contain capabilities --  
20 forensic capabilities above and beyond what your department  
21 can do?

22 A. Yes.

23 Q. And so is, from time to time, items logged out of your  
24 department and taken to SLED for the purpose of forensic  
25 analysis?

1 A. That's correct.

2 Q. Okay. Again, what would happen if you were to arrive at  
3 work one morning -- and you mentioned receiving evidence in a  
4 sealed status. What would you do if you opened up a locker  
5 one morning and found just a bunch of items thrown into the  
6 locker unmarked and unsealed?

7 A. It would stay in that locker. It would be re-locked.  
8 And then the officer that submitted it would be contacted to  
9 come and correct the error.

10 Q. Okay.

11 MR. SIMPSON: The Court's indulgence?

12 (Mr. Simpson conferred with co-counsel.)

13 MR. SIMPSON: I have no further questions for this  
14 witness, your Honor.

15 THE COURT: Okay. Defense have any cross-examination?

16 MS. FORD: No, your Honor.

17 THE COURT: Okay. Thank you.

18 All right. Sir, you can step down. Thank you, sir.  
19 You can stay with us if you like or you're free to go.

20 THE WITNESS: Thank you, sir.

21 (Witness excused.)

22 MR. URICCHIO: The next witness the State will be  
23 calling is Luke Spratt with Charleston Police Department.

24 THE COURT: Okay. All right. We'll take him and then  
25 maybe take an afternoon break.



1 CLERK OF THE COURT: Can you raise your right hand, left  
2 hand on the Bible, please?

3 (Witness sworn.)

4 CLERK OF THE COURT: You may have a seat.

5 Please state your name for the record and spell your  
6 last name.

7 THE WITNESS: Luke Spratt, S-P-R-A-T-T.

8 LUKE SPRATT,  
9 called as a witness on behalf of the State, being first duly  
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. URICCHIO:

13 Q. Good afternoon, Mr. Spratt. Where are you currently  
14 employed?

15 A. I work for the Charleston Police Department.

16 Q. And how long have you been with the Charleston Police  
17 Department?

18 A. Seven years.

19 Q. And what is your position?

20 A. I'm a crime-scene investigator.

21 Q. And how long have you held that position?

22 A. Four of those seven years.

23 Q. And in 2018, were you a crime-scene investigator?

24 A. I was.

25 Q. And as a crime-scene investigator, does that entail

1 transporting evidence?

2 A. It does.

3 Q. And have you ever transported evidence to SLED?

4 A. I have.

5 Q. And in this case, what was your involvement?

6 A. Transporting multiple pieces of evidence to SLED, which  
7 is our state laboratory.

8 Q. And where would you get that evidence from?

9 A. The evidence would get checked out of our evidence unit  
10 here downtown, and then I would have driven that up to the  
11 state lab.

12 Q. And if you were to get evidence out of the evidence unit  
13 and it was unsealed, what would you do?

14 A. I would have to reject that piece. I wouldn't be able  
15 to transport evidence that wasn't already sealed.

16 Q. Okay. And when you get to SLED, what happens?

17 A. At that time they used a locker system, so I would take  
18 those pieces of evidence, they would get time stamped on the  
19 paperwork, and that would all go in a locker for their  
20 evidence person to pick up.

21 Q. So you sign evidence out of CPD's evidence room, you  
22 drive it to SLED, and then you put it in an evidence locker;  
23 is that correct?

24 A. Correct.

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

1 A. I did.

2 Q. And were any of the seals broken that you transported?

3 A. No.

4 Q. And like you said, you would not take it if they were,  
5 correct?

6 A. Yes.

7 Q. And how is all of that documented?

8 A. We use an electronic chain-of-custody system. So I  
9 would have signed for those pieces of evidence when I took  
10 them from our evidence room, and then paperwork would have  
11 gone to SLED where their chain of custody would start.

12 Q. Okay. So CPD has their chain of custody, and SLED also  
13 has a chain of custody; correct?

14 A. Correct.

15 Q. And you would be on both, correct?

16 A. Yes. That should be the end of CPD custody and the  
17 start of the SLED custody.

18 Q. Okay. Did you take the defendant's buccal swab to SLED?

19 A. I did.

20 Q. Okay. And when did you take that to SLED?

21 A. That was November 13 of 2018.

22 Q. And just for identification purposes, that would be  
23 State's Exhibit 50.

24 And when you got to SLED, what did you do with it?

25 A. I would have time stamped the paperwork, and it would

1 have been secured in an evidence locker.

2 Q. And for ID purposes, State's Exhibit 51, Dan Schwarz's  
3 buccal swab, what did you do with that in this case?

4 A. It was transported, the paperwork was stamped, and it  
5 would have been secured in an evidence locker.

6 Q. And what date was that?

7 A. November 13 of 2018.

8 Q. Same process, right?

9 A. Yep.

10 Q. And for ID purposes, State's Exhibit 38, the victim's  
11 CSC kit, which also contains Exhibit 49, victim's buccal  
12 swabs, Exhibit 53, did you transport those items?

13 A. I did.

14 Q. And what date did you transport them?

15 A. November 13 of 2018.

16 Q. And did you sign those in SLED?

17 A. I did.

18 Q. And were the seals intact when you transported them?

19 A. They were.

20 Q. And State's Exhibit 32, which was a black tank top, did  
21 you transport that to SLED?

22 A. I did.

23 Q. And what date did you transport that?

24 A. November 13 of 2018.

25 Q. And was that sealed when you transported it?

1 A. It was.

2 Q. And for ID purposes, State's Exhibit 54, swabs of an  
3 olive-oil bottle, did you transport that to SLED?

4 A. I did.

5 Q. And when was that?

6 A. November 13 of 2018.

7 Q. Okay. And was that sealed?

8 A. Yes.

9 Q. And did you do anything else in this case?

10 A. I believe I transported one more piece of evidence.

11 Q. Did you transport Exhibit 22, a knife?

12 A. Yes.

13 Q. And was that done the same way?

14 A. It was.

15 Q. And was that the same day?

16 A. Yes.

17 Q. And what was that date?

18 A. November 13 of 2018.

19 MR. URICCHIO: The Court's indulgence?

20 THE COURT: Sure.

21 (Mr. Uricchio conferred with co-counsel.)

22 MR. URICCHIO: May I approach the witness?

23 THE COURT: Sure.

24 BY MR. URICCHIO:

25 Q. And I'm showing you the items we were just talking

1 about, and I'll read then into the record. Those items are  
2 items -- and I have one more for you. So for identification  
3 purposes, Exhibit 22, Exhibit 32, Exhibit 38, Exhibit 50,  
4 Exhibit 51, Exhibit 40 -- er, 54, excuse me. Did you  
5 transport those items to SLED?

6 A. I don't think this one, the fingernail scrapings, unless  
7 that's part of -- oh, I returned that, actually.

8 Q. You returned that, yeah. Well, 54. We'll note that  
9 swab from olive-oil bottle, Item Number 6. Did you transport  
10 that?

11 A. Yes.

12 Q. Okay.

13 MR. URICCHIO: Please answer any questions the defense  
14 may have for you.

15 THE WITNESS: Okay.

16 MS. FORD: I have no questions, your Honor.

17 THE COURT: Okay. You can step down, sir. Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: You're free to leave the courthouse, or  
20 you're more than welcome to stay with us.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: All right. Ladies and gentlemen, I think it  
24 would be a good time to take a short afternoon break. I ask  
25 you to go back to the jury room, and we'll get you back out

1     shortly.   Okay?

2             (The jury exited open court at 3:53 p.m.)

3             (The following proceedings were had outside the presence  
4     of the jury.)

5             THE COURT:   Okay.   If we can hold it down for just a  
6     minute, I'm going to stay on the record concerning the  
7     exhibits.

8             Now, I'm not suggesting that my note-taking is  
9     completely accurate, but I do not have -- and I may have put  
10    the wrong number down on my exhibit list, and I try to keep  
11    up with the exhibits even though I know our good court  
12    reporter has likewise done that.   But I did not have Exhibit  
13    50, the buccal swab, nor 51, and I'm not sure what that is,  
14    on my list, nor did I have 49 and 53.   And either I didn't  
15    record it on my list or I maybe placed a different number.  
16    The others I do, 32, 24, 25, 42, and 38, I have those.

17            MR. SIMPSON:   That's correct, your Honor.   50 and -- for  
18    the defendant's purposes and the Court's purposes, 50 and 51  
19    are buccal swabs taken, initially collected by a witness who  
20    comes later.

21            THE COURT:   Okay.   So they're not -- they have not been  
22    addressed yet, and that's why they're not on the list?

23            MR. SIMPSON:   Correct, your Honor.   We are identifying  
24    their chain --

25            THE COURT:   Okay.   I gotcha.

1 MR. SIMPSON: -- for chain-of-evidence purposes.

2 THE COURT: I gotcha.

3 MR. SIMPSON: I can also -- since we have a good time to  
4 be talking about these things -- say that I'm going to be  
5 requesting that the Court tomorrow allow conditional  
6 admissibility of the DNA analysis report based on my  
7 assertions as an officer of the Court that we will be  
8 addressing the collection of the DNA swabs in a witness -- in  
9 our last witness. In other words, at the time the DNA expert  
10 testifies, we will have established the entire chain of  
11 evidence for these buccal swabs except for their collection,  
12 which I believe we are allowed.

13 THE COURT: Sure.

14 MR. SIMPSON: We're at risk of a mistrial if we don't  
15 ultimately establish that chain and admit the results of  
16 those DNA.

17 THE COURT: All right. 49 and 53, what are those?

18 MR. SIMPSON: 49 and 53 are subsets of the  
19 sexual-assault kit. So what we have marked and entered is  
20 the entirety of the sexual-assault kit --

21 THE COURT: Which is 38.

22 MR. SIMPSON: -- which is 38. And within that kit,  
23 which once -- once that kit gets to SLED is when it's broken  
24 down --

25 THE COURT: I gotcha.



1           MR. SIMPSON: -- and analyzed. And so 49 is the buccal  
2 swab from Kimberly Cantwell, testified to as taken by Nurse  
3 Anne Goliver.

4           THE COURT: Gotcha.

5           MR. SIMPSON: And the scraping from Kimberly Cantwell's  
6 fingernails is 53.

7           THE COURT: Okay.

8           MR. SIMPSON: There's also 54, which is similar -- I  
9 guess you have. It's the swabs from the olive-oil bottle.

10          THE COURT: Yes, I've got 54. So you've answered my  
11 question. Why I don't have those four exhibit numbers on my  
12 list is because they've not been addressed yet but will be  
13 addressed. So all you were doing with this witness is  
14 concerning chain of custody. So my question is resolved.

15          MR. SIMPSON: Thank you, your Honor.

16          THE COURT: All right. Okay. Let's take a little  
17 break.

18          (Court recessed.)

19          (Court resumed outside the presence of the jury.)

20          MR. SIMPSON: Your Honor, for planning purposes, we're  
21 going to intend to call two more relatively short chain  
22 witnesses, and then we think we'll be at a pretty good  
23 stopping point, if the Court agrees.

24          THE COURT: Okay. Sure.

25          MR. SIMPSON: It's close to 5:00. And then after that,

1 we've got some lengthier witnesses for tomorrow.

2 THE COURT: Okay. Very good.

3 MR. SIMPSON: And with your permission, can I test out  
4 the equipment real quick before the jury comes in?

5 THE COURT: Yes. These are both going to be virtual?

6 MR. SIMPSON: Yes, your Honor.

7 THE COURT: Okay.

8 (Off the record for technological matters.)

9 THE COURT: Who's this first witness?

10 MR. SIMPSON: This is Bethany Davidson from SLED.

11 THE COURT: Gotcha. Do you need to test it out with the  
12 other witness now, or you want to wait?

13 MR. URICCHIO: We've got the other witness, your Honor.

14 THE COURT: Oh, you've got the witness? Okay.

15 All right. Let's bring the jury in, please.

16 THE BAILIFF: Yes, sir.

17 THE COURT: And the defense consents to the last two  
18 witnesses for today being virtual?

19 MS. FORD: Yes, sir.

20 THE COURT: Okay. Thank you very much.

21 (The jury came into open court at 4:26 p.m.)

22 THE BAILIFF: Judge, all the jurors are present and  
23 seated.

24 THE COURT: Thank you.

25 Is the State ready?

1 MR. SIMPSON: We are, your Honor.

2 THE COURT: Ladies and gentlemen, the last two witnesses  
3 for today, for this afternoon, are both going to be virtual  
4 witnesses. Okay?

5 MR. SIMPSON: Thank you, your Honor. The State calls  
6 Bethany Davidson with the State Law Enforcement Division.

7 THE COURT: Okay. Ms. Davidson, can you see me okay?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Raise your right hand.

10 (Witness sworn.)

11 THE COURT: Thank you, ma'am.

12 You may proceed, Solicitor.

13 MR. SIMPSON: Thank you, your Honor. With your  
14 permission, I'd like to stay seated so she can see me.

15 THE COURT: Yeah. Can you see Solicitor Simpson okay?

16 THE WITNESS: Not when he's standing up, no.

17 THE COURT: Okay.

18 THE WITNESS: Now I can see him.

19 THE COURT: Okay. Just keep seated then so she can see  
20 you.

21 MR. SIMPSON: Okay. Thank you, sir.

22

23

24

25

1 BETHANY DAVIDSON,  
2 called as a witness on behalf of the State, being first duly  
3 sworn, was examined and testified via videoconference as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. SIMPSON:

7 Q. Ms. Davidson, how are you this afternoon?

8 A. I'm good. How are you?

9 Q. I'm doing good. Where are you currently employed?

10 A. I'm currently employed with the South Carolina Law  
11 Enforcement Division, also known as SLED, in their training  
12 unit as a coordinator.

13 Q. Okay. And what sort of duties and roles do you perform  
14 for SLED in that role?

15 A. Right now, I keep track of all of our class 1 and  
16 non-sworn personnel certificates and any type of training  
17 related to specific job duties.

18 Q. And were you employed by SLED in the latter part of 2018  
19 and early part of 2019?

20 A. Yes, sir. During that timeframe, I would have been a  
21 forensic technician in our evidence control department for  
22 the forensic laboratory.

23 Q. And what does the evidence control department do for the  
24 State Law Enforcement Division?

25 A. We handled all of the evidence that came into our

1 laboratory. When that evidence came in, we would log it in  
2 and generate a unique lab and item number. We then would  
3 store that evidence in our secured evidence room, where it  
4 stayed until the analyst requested to retrieve that item of  
5 evidence for testing. Upon completion of testing, we then  
6 returned that evidence to the submitting agency.

7 Q. Okay. So as the name suggests, is evidence control  
8 concerned with the storage, keeping, and security of evidence  
9 in major cases?

10 A. Yes, sir.

11 Q. And to that aim, how are items sort of tracked through  
12 the SLED forensics division? Is there some record kept of  
13 their movement?

14 A. Yes. When we log in evidence, like I said, we generate  
15 a unique lab and item number. That unique lab and item  
16 number is on a bar code that is placed on the packaging of  
17 the evidence. That bar code traces everywhere the item of  
18 evidence has been throughout our laboratory, and that is  
19 generated on what we call a chain of custody.

20 Q. Okay. And is the purpose of that to ensure that  
21 evidence is kept in a manner that it can be controlled and  
22 not tampered with between collection -- er, input into SLED  
23 and analysis by a forensic examiner?

24 A. Yes, sir.

25 Q. And you said that the intake of that evidence was part

1 of your job back in 2019?

2 A. Yes, sir, it was.

3 Q. And were there any sort of standards that SLED would  
4 apply to the status of evidence before it would be accepted?  
5 Would it have to be in any sort of condition?

6 A. When we retrieve the evidence once it's submitted by the  
7 outside agency, we ensure that that item of evidence is  
8 sealed and secured to meet our laboratory policies. Once we  
9 deem that that evidence is sealed and secured, we would  
10 continue on with our login process.

11 Q. And what would happen if some outside law-enforcement  
12 agency ever tried to submit a piece of evidence that was just  
13 loose or unsealed or even maybe sealed not to the  
14 satisfaction of your agency? What would happen with that  
15 evidence?

16 A. If the evidence was received and it did not meet our  
17 laboratory policy, we would photograph that piece of evidence  
18 to show how it appeared when it was submitted to our  
19 laboratory. We then would properly seal the evidence, take  
20 photographs of that once it's properly sealed, and then we  
21 would make numerous documentations and notes throughout the  
22 case stating how the evidence was submitted to us.

23 Q. So if there were any failures on an agency's part to  
24 properly seal evidence in this case, we would know about it  
25 through thorough documentation by SLED?

1 A. Correct. Yes, sir.

2 Q. And to your knowledge, in the case that we've called you  
3 here to testify about today, was there any such documentation  
4 of flaws in evidence -- evidentiary sealing or storage?

5 A. No, sir. There is no documentation, to my knowledge, of  
6 any unsealed or any type of evidence not meeting our  
7 standard.

8 Q. Okay. And you mentioned that when evidence is  
9 submitted, it's given a unique case number that's going to  
10 apply to all of the evidence for that particular case; is  
11 that correct?

12 A. That is correct.

13 Q. And you've been called here today to testify regarding a  
14 specific case; is that also correct?

15 A. Yes, sir.

16 Q. And what is the lab number for that case?

17 A. The lab number that I have is L18-16560.

18 Q. And did you have any involvement with some of the  
19 evidence that was submitted to SLED under that lab number?

20 A. I did. Yes, sir.

21 Q. I'd like to draw your attention first to what was  
22 assigned SLED Item 2. Are items also given sort of a  
23 description along with an item number when they arrive there  
24 at your agency?

25 A. Yes, sir.

1 Q. And what is SLED Item 2?

2 A. According to my documentation, it says Item 2 is a  
3 heat-sealed pouch containing a buccal swab described as  
4 "Simmons."

5 Q. Okay. I'm showing you what's been marked for ID only as  
6 State's Exhibit 50. This is going to be a little awkward  
7 since we're by Zoom. Do you need me to move? Can you see  
8 this label I'm showing you?

9 A. Yes, sir.

10 Q. And does State's 50 correspond to SLED Item 2?

11 A. Yes, sir.

12 Q. And what was your involvement with SLED Item 2 in this  
13 case?

14 A. I would have retrieved that item of evidence from our  
15 evidence submission locker. Once I retrieved that evidence  
16 from the locker, I then would take it to my desk. I would go  
17 over it to make sure that the evidence was properly sealed to  
18 meet our laboratory standard.

19 Once I confirmed that the evidence was sealed and met  
20 our standard, I'd log it in. And the login process is simply  
21 just scanning in paperwork and then generating that unique  
22 lab and item number. And then once I finished generating  
23 that bar code with the unique lab and item number, I would  
24 have transferred it to our secure evidence room to the DNA  
25 Intake Shelf 13.



1 Q. Okay. And at any time, would it have been removed from  
2 intake -- from that locker that you referred to?

3 A. I'm sorry. Can you repeat that?

4 Q. Would it have later been removed from that locker that  
5 you referred to?

6 A. Yes. Once -- it appears -- according to the chain of  
7 custody, it appears that forensic technician Jackie M. Davis  
8 retrieved it from that DNA shelf that I placed it on and  
9 transferred it to the scientist.

10 Q. Okay. Moving on to SLED Item 1. Was that given a  
11 description?

12 A. That is also a heat-sealed pouch containing a buccal  
13 swab described as -- and I'm not even going to try to  
14 pronounce that last name, but it starts with S.

15 Q. Dan Schwarz. How's that sound?

16 A. Yes. Thank you. Sorry.

17 Q. I'm showing you what's been marked for ID only as  
18 State's 51. And again, showing you the label here, does that  
19 correspond State's 51 with SLED Item 1?

20 A. Yes, that's correct.

21 Q. To save some of your time, would Item 1 have been logged  
22 and stored and protected in the same manner that you  
23 previously testified to?

24 A. Yes, sir, it would have.

25 Q. And would your records also reflect that that would have

1    been removed from that secured storage and sort of put  
2    further down the line in the chain of custody for forensic  
3    analysis?

4    A.    That's correct.

5    Q.    And would the next person involved in that process also  
6    be Jackie Davis?

7    A.    That is correct.

8    Q.    At this time, I'd like to refer you to SLED Item 4.  
9    What's the description that SLED gave this item?

10   A.    Item Number 4 would be a heat-sealed pouch containing a  
11   CSC kit described as "Kimberly Cantwell."

12   Q.    Okay. And, you know, if you're comfortable answering  
13   this, please do. If you're not, just, you know, indicate  
14   such. But in your training and experience there at SLED,  
15   does the CSC kit contain within it possibly several different  
16   items?

17   A.    Yes. The CSC kit contains several different items that  
18   the nurse -- the SANE nurse would have collected.

19   Q.    Okay. And that wouldn't have been -- the seal would not  
20   have been broken -- er, broken down by you; the entirety of  
21   the kit would have been moved on down the line. Is that fair  
22   to say?

23   A.    Yes, sir. All that evidence is transported in the CSC  
24   kit, which is the box. And on top of that box being sealed,  
25   all of the evidence inside of that box would have also been

1 sealed and secured.

2 Q. And again, much effort would be put into documenting and  
3 sharing the information would that box have arrived with the  
4 seal broken or open or tampered with in some way?

5 A. Correct. There would have been numerous documentations  
6 made in the case.

7 Q. Okay. I'm showing you what's been marked for ID only as  
8 State's 38. Again, I'm showing you some markings here. Does  
9 this State's 38 correspond with the SLED item for the  
10 sexual-assault kit collected from Kimberly Cantwell?

11 A. Yes, it does.

12 Q. Okay. Moving you sort of back up a little to SLED  
13 Item 3, what description was given to that?

14 A. Item Number 3 would have been a heat-sealed pouch  
15 containing clothing described as "black tank top."

16 Q. And would that item have been logged, labeled,  
17 documented, secured, and stored in the manner that you've  
18 previously testified to for the other items as well?

19 A. Yes, sir.

20 Q. I'm showing you some handwriting here. Do you see that?

21 A. Yes, sir, I do.

22 Q. Is that enough information for you to confidently  
23 testify that State's 32, marked and previously entered into  
24 evidence, corresponds with SLED Item 3?

25 A. Yes. It has the unique lab number on there.

1 Q. Okay. Moving forward to SLED Item 6, and what  
2 description was given for SLED Item 6?

3 A. Item 6 was one sealed -- er, I'm sorry, one heat-sealed  
4 pouch containing swabs described as "touch from bottle."

5 Q. Okay. And would that have been labeled, secured, and  
6 stored in the same manner as previously described?

7 A. Yes, sir.

8 Q. Okay. And I'm showing you what's been marked for ID  
9 only at this point as State's 54. Do those markings allow  
10 you to confidently state that State's 54 corresponds to SLED  
11 Item 6?

12 A. That is correct.

13 Q. And with each of these items, once logged and secured,  
14 they would then later be moved by others to ultimately end up  
15 in the hands of a forensic analyst; is that correct?

16 A. That is correct.

17 Q. Okay.

18 MR. SIMPSON: The Court's indulgence?

19 (Mr. Simpson conferred with co-counsel.)

20 MR. SIMPSON: Ms. Davidson, thank you for being with us  
21 today. I appreciate it. Answer any questions -- I'm going  
22 to move, and Ms. Ford might possibly come here and ask you  
23 some questions. Okay?

24 THE COURT: Ms. Ford, do you have any cross-examination  
25 of this witness?

1 MS. FORD: No, your Honor.

2 THE COURT: Okay. Thank you very much.

3 MR. SIMPSON: Thank you, ma'am.

4 THE COURT: Thank you very much, ma'am. You are  
5 excused.

6 THE WITNESS: All right. Thank you.

7 (Witness excused.)

8 MR. URICCHIO: Your Honor, the State's next witness is  
9 also appearing virtually. Her name is Jackie Davis.

10 THE COURT: Okay. And likewise, the defense consents to  
11 Jackie Davis's testimony taken virtually?

12 MS. FORD: Yes, your Honor.

13 THE COURT: Thank you, Ms. Ford.

14 Ms. Davis, can you see me okay?

15 THE WITNESS: Yes, sir, I can.

16 THE COURT: Raise your right hand, please, ma'am.

17 (Witness sworn.)

18 THE COURT: All right. Put your hand down.

19 State your name and spell your last name, please.

20 THE WITNESS: Jackie Davis, D-A-V-I-S.

21 THE COURT: Okay. You may proceed, Solicitor.

22 MR. URICCHIO: Thank you, Judge.

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1 JACKIE DAVIS,  
2 called as a witness on behalf of the State, being first duly  
3 sworn, was examined and testified via videoconference as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. URICCHIO:

7 Q. Good afternoon, Ms. Davis. Thank you for bearing with  
8 us today.

9 Where are you currently employed?

10 A. I work at the Department of Juvenile Justice currently.

11 Q. And did you previously work at the South Carolina Law  
12 Enforcement Division, also known as SLED?

13 A. I did.

14 Q. And how long did you work at SLED?

15 A. I worked at SLED for eight years.

16 Q. And were you at SLED in 2008?

17 A. I -- 2008?

18 Q. 2018. Excuse me. 2018.

19 A. '18, yes, sir.

20 Q. And what was your position?

21 A. I was a forensic technician.

22 Q. And what are some of the duties of a forensic  
23 technician?

24 A. We package, transfer, and log in evidence received to  
25 SLED.

1 Q. And when you handled or moved evidence or logged it in,  
2 did you document it?

3 A. Yes, sir.

4 Q. And was that document the SLED chain of custody?

5 A. It was.

6 Q. And if evidence was opened or unsealed, would that have  
7 been documented?

8 A. Yes, sir.

9 Q. And did you handle evidence in this case?

10 A. Yes, sir, I did.

11 Q. Okay. I'm showing you what's been marked for  
12 identification purposes as State's Exhibit 50, which is also  
13 SLED Item 2. Do you recognize this?

14 A. Yes, sir, I do by the unique lab number it has.

15 Q. All right. And do you have your chain of custody in  
16 front of you?

17 A. I do.

18 Q. And what is SLED Item 2?

19 A. It is a heat-sealed pack containing a buccal swab  
20 described as "Simmons."

21 Q. Okay. And did you have any involvement with that item?

22 A. Did I have any what? I'm sorry.

23 Q. Involvement with that item. Did you move that item?

24 A. Yes. Yes, I did.

25 Q. Okay. What did you do with it?

1 A. On 6/25/20 at 2:30 in the morning, I retrieved that item  
2 from the DNA evidence room, Intake Shelf 13, and I  
3 transferred it to a forensic scientist, Sarah Zapata.

4 Q. Okay. And was that item sealed when you did that?

5 A. It was.

6 Q. Okay. Now, turning to -- for identification purposes,  
7 this is State's Exhibit 51. It's SLED Item 1. What is SLED  
8 Item 1 on your chain of custody?

9 A. It is a sealed -- heat-sealed pouch containing a buccal  
10 swab described as "Schwarz."

11 Q. Okay. And is that that right here? Can you tell from  
12 this?

13 A. Yes, it is.

14 Q. Okay. And did you have any involvement with this  
15 evidence?

16 A. I did. On 6/25/20 at 10:30, I retrieved that from the  
17 secured evidence room, and I -- from DNA Intake Shelf 13, and  
18 I transferred it to the scientist, Sarah Zapata.

19 Q. Okay. And was that sealed when you transferred it?

20 A. It was.

21 Q. All right. And were all standard practices of SLED  
22 followed for that transfer?

23 A. Yes, they were.

24 Q. And were they all documented in the chain of custody?

25 A. They were.



1 MR. URICCHIO: I don't have any further questions for  
2 you. Please answer any the defense may have for you.

3 THE COURT: Any cross-examination?

4 MS. FORD: I have no questions, your Honor.

5 THE COURT: Okay. Thank you, ma'am.

6 Thank you for your testimony, ma'am. You are excused.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 THE COURT: Okay. I understand that will be it for this  
10 afternoon as far as State's witnesses.

11 MR. SIMPSON: Correct, your Honor. Our next witness is  
12 going to be lengthy.

13 THE COURT: Okay. All right. Ladies and gentlemen,  
14 we're going to go ahead and take our evening break. I want  
15 you back here at 9:45 to get started, like we did this  
16 morning.

17 I do want to commend you. I mentioned a little bit  
18 yesterday, I think, about the responsibility you have to be  
19 alert and attentive, and I keep my eyes on the jury on a  
20 regular basis. And you've done a really good job. You at  
21 least appear that you're very alert and attentive. So I have  
22 to trust that you are, in fact. So I appreciate that, and  
23 please continue to do that.

24 Thank you for your patience and spending time back in  
25 the jury room. Get you a good night's rest, and we'll see

1     you again in the morning at 9:45. Have a great evening.

2             (The jury was released for the day and exited the  
3     courtroom at 4:46 p.m.)

4             (The following proceedings were had outside the presence  
5     of the jury.)

6             THE COURT: Okay. Y'all have a good evening. We'll see  
7     you in the morning at 9:45.

8             (Court recessed at 4:46 p.m., to resume at 9:45 a.m.,  
9     Wednesday, November 30, 2022.)

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1 (Court resumed at 9:49 a.m., Wednesday, November 30,  
2 2022, outside the presence of the jury.)

3 THE COURT: All right. Anything we need to put on the  
4 record this morning before we bring the jury out?

5 MR. SIMPSON: Nothing from the State, your Honor.

6 MS. FORD: No, your Honor.

7 THE COURT: Okay. Very good. All right. Let's bring  
8 the jury out.

9 THE BAILIFF: Yes, sir.

10 MR. SIMPSON: Judge, I apologize. There is a matter I  
11 could bring up briefly now to prevent us from having to take  
12 a break a little later.

13 THE COURT: Okay. Let's -- can you get word, tell him  
14 to hold off on the jury?

15 CLERK OF THE COURT: Yes sir.

16 THE COURT: Okay. Solicitor?

17 MR. SIMPSON: Thank you.

18 My third witness this morning is going to be the DNA  
19 analyst from SLED.

20 THE COURT: Okay.

21 MR. SIMPSON: She is going to testify to DNA analysis  
22 done to several items of evidence that have been discussed.  
23 I sort of brought up yesterday the collection of two of those  
24 items, that being the DNA buccal swab from the defendant --

25 THE COURT: Okay.

1           MR. SIMPSON:  -- and the DNA buccal swab from Dan  
2   Schwarz --

3           THE COURT:  Okay.

4           MR. SIMPSON:  -- that were collected by Sergeant  
5   then-Detective Elizabeth Wolfesen who will be testifying --

6           THE COURT:  Last?

7           MR. SIMPSON:  -- last.

8           THE COURT:  Right.

9           MR. SIMPSON:  And what we talked about, we believe we've  
10  already established the chain of command pertaining to that  
11  collection, the first part of the chain.

12          THE COURT:  Okay.

13          MR. SIMPSON:  And we are going to ask that the analyst  
14  be able to, you know, obviously address the conclusion she  
15  made using that evidence.

16          THE COURT:  Okay.

17          MR. SIMPSON:  I believe it's called maybe "conditional  
18  admissibility" --

19          THE COURT:  Okay.

20          MR. SIMPSON:  -- that, as an officer of the Court, I can  
21  hold out that you will hear testimony about the collection of  
22  those two items.

23          THE COURT:  Okay.

24          MR. SIMPSON:  So we're acknowledging that that testimony  
25  has not happened yet.

1 THE COURT: Okay.

2 MR. SIMPSON: However, the DNA analyst is going to  
3 address her findings regarding that evidence.

4 THE COURT: Okay. Based upon the representation from  
5 the State, does the defense have any problems or objections  
6 to the DNA evidence coming in when the chain will be brought  
7 -- the rest of the chain will be brought out by the officer  
8 at the end of the State's case?

9 And of course -- and I trust what you're telling me, but  
10 if for some reason that doesn't come in, then, of course,  
11 you're risking a mistrial.

12 MR. SIMPSON: Yes, sir. It's a risky -- a mistrial  
13 would be the remedy.

14 THE COURT: Right. Right.

15 So is there any objection to taking the witness after  
16 the evidence is brought in?

17 MS. FORD: No, your Honor.

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

19 All right. So that issue's resolved. Okay?

20 All right. Now we're ready for the jury.

21 THE BAILIFF: Yes, sir.

22 (The jury came into open court at 9:55 a.m.)

23 THE BAILIFF: Judge, all the jurors are present and  
24 seated.

25 THE COURT: Thank you, sir.

1 Morning, ladies and gentlemen. Hope you had a good,  
2 restful evening and are ready to get back to work today.

3 Okay. Is the State ready to call its next witness?

4 MR. SIMPSON: We are, your Honor. The State calls  
5 Harley Kowalski.

6 CLERK OF THE COURT: Please raise your right hand and  
7 put your left hand on the Bible, please.

8 (Witness sworn.)

9 CLERK OF THE COURT: You may have a seat.

10 Please state your name for the record and spell your  
11 last name.

12 THE WITNESS: Harley Kowalski, K-O-W-A-L-S-K-I.

13 HARLEY KOWALSKI,  
14 called as a witness on behalf of the State, being first duly  
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SIMPSON:

18 Q. All right. Good morning, Ms. Kowalski. How are you?

19 A. Good. Thank you.

20 Q. Where do you currently live?

21 A. New York City.

22 Q. Okay. So did you travel here today for these purposes  
23 to be with us?

24 A. Yes.

25 Q. Okay. We appreciate that. Thank you.

1 A. Yep.

2 Q. What do you do in New York?

3 A. I work in marketing for a clothing brand.

4 Q. Okay. And how long have you lived up there?

5 A. A year and a half.

6 Q. Okay. How old are you?

7 A. Twenty-five.

8 THE COURT: Would you speak up just a little bit louder,  
9 please?

10 THE WITNESS: Twenty-five.

11 THE COURT: Okay.

12 BY MR. SIMPSON:

13 Q. And have you been to, lived in Charleston before?

14 A. Yes.

15 Q. And why was that?

16 A. For college.

17 Q. Okay. Where did you go to college?

18 A. College of Charleston.

19 Q. And were you at College of Charleston in September of  
20 2018?

21 A. Yes.

22 Q. Where did you live in 2018?

23 A. Charleston.

24 Q. I'm sorry. What address did you live at?

25 A. Oh. ■ Radcliffe Street.

1 Q. Okay. And who did you live with back then?

2 A. My roommates Katie, Kimmy, and Gwen.

3 Q. Okay. And when you say "Kimmy," are you referring to  
4 Kimmy Cantwell?

5 A. Yes.

6 Q. And you would have been 21 then?

7 A. Yes.

8 Q. Okay. Describe a little bit to the jury what kind of a  
9 place ■ Radcliffe was.

10 A. It's a two-story home. It was split into two  
11 apartments, and we were in the top-floor apartment with four  
12 bedrooms.

13 (Exhibit displayed on screen in open court.)

14 BY MR. SIMPSON:

15 Q. I'm showing you what's been marked and entered as  
16 State's 6. Do you recognize that?

17 A. Yes. Our living room.

18 Q. Okay. And where was your bedroom at the time?

19 A. To the right.

20 Q. Okay.

21 A. If you're in the corner here, there's like a little --  
22 you can see the fireplace. It's down on the floor, and my  
23 bedroom is right behind that.

24 Q. Okay. So we heard previous testimony that if you walked  
25 up the stairs, there's sort of a living room to your left and



1 some bedrooms to the right?

2 A. Correct.

3 Q. And you were in one of those?

4 A. Mm-hmm.

5 Q. Okay. And what about Ms. Cantwell? Where was her  
6 bedroom?

7 A. This doorway through the right, past that first door.

8 Q. All right. We'll note for you that that's a touch  
9 screen, and you can mark it up however you like, if that will  
10 help.

11 A. If you just walked through here, her bedroom was right  
12 back there.

13 Q. Okay. Now, do you recall -- you, of course, know the  
14 purpose of your testimony here today, right?

15 A. Yes.

16 Q. And do you recall an incident at that home in the early  
17 morning hours of September 20?

18 A. Yes.

19 Q. Okay. I'd like to let you start with just sort of your  
20 day on the 19th, the day leading up to that. Do you recall  
21 just basically what you were up to that day, what you did?

22 A. Yes. I think I was home most of the day, and we had  
23 furniture delivered.

24 Q. Okay.

25 A. I think I FaceTimed with my brother later that night,

1 and then went to bed.

2 Q. Okay. So you were home most of the day that day?

3 A. Mm-hmm.

4 Q. Okay. You didn't go out to King Street or anything like  
5 that?

6 A. No.

7 Q. Okay. And ■ Radcliffe, that was kind of close to King  
8 Street, right?

9 A. Yes.

10 Q. And what kind of area is King Street?

11 A. Very, very busy. Restaurants, bars.

12 Q. Okay.

13 A. A lot of people.

14 Q. But you weren't in that mix on this particular evening,  
15 right?

16 A. No.

17 Q. Okay. Just I know that times are difficult,  
18 particularly when it's been a long time, but do you recall  
19 about what time you might have gone to bed that night?

20 A. I probably went to bed around 11:00 or 12:00. That's  
21 usually when I went to bed.

22 Q. Okay. Was Kimmy home when you went to bed?

23 A. No.

24 Q. Okay. Did you go to sleep?

25 A. Yes.

1 Q. Okay. And what happened to disturb that sleep?

2 A. I woke up in the middle of the night to screaming.

3 Q. Okay. And just sort of screaming like partying? Loud  
4 talking? What type of screaming?

5 A. No. Like horrible screaming from, like, a horror film.

6 Q. Okay. That was obviously -- how did you react to that  
7 when you heard that?

8 A. I remember just being really caught off guard, so I was  
9 quite, like, frozen and I didn't know what to do.

10 Q. Okay. Obviously it -- did it get your attention,  
11 obviously?

12 A. Yes.

13 Q. What did you hear following the screams?

14 A. Then I heard two male voices kind of arguing.

15 Q. Okay. You said "arguing." Could you hear anything that  
16 was being said?

17 A. I heard one male voice, something along the lines of,  
18 "What's going on? What are you doing? What are you doing?"

19 Q. Okay. Uh-huh.

20 A. And the other male voice repeatedly saying, "Wrong  
21 house. Wrong house."

22 Q. Okay. And what happened then after that? Did there  
23 come a time where you sort of -- you mentioned some almost  
24 paralysis, just in shock. Was there a time when that broke?

25 A. I heard the two male voices kind of moving away from my

1 door, and I heard two people running down the stairs and the  
2 door shut. So then I realized, okay, they're not here  
3 anymore. I can go out and see what's happening.

4 Q. Okay. And when you left your bedroom, what room did you  
5 go to?

6 A. The living room.

7 Q. Okay. And at that time you walk into the living room at  
8 this point in time, was anyone else there in the living room?

9 A. Kimmy.

10 Q. Okay. Is that Kimmy Cantwell?

11 A. Yes.

12 Q. And is there anything you can say about the condition  
13 that Kimberly Cantwell was in?

14 A. Yes. She was pretty hysterical, on the floor,  
15 completely naked.

16 Q. Okay. Was she crying?

17 A. Yes, hysterically.

18 Q. Okay. Was it clear to you that something had happened  
19 to her to elicit a pretty dramatic emotional response?

20 A. Yeah. She was quite disturbed.

21 Q. Okay. And you mentioned she had -- she was naked at  
22 that time?

23 A. Mm-hmm. Yes.

24 Q. Did there come a point in time in relation to this where  
25 the police were called?

1 A. Yes. I believe Kimmy dialed the police, and she was  
2 quite hysterical so she wasn't making any sense to the police  
3 on the phone. So then I took the phone and tried to speak to  
4 the police.

5 Q. Okay. So it was pretty clear to you she was not in a  
6 state of mind to handle something like a 911 call at that  
7 point?

8 A. Definitely not.

9 Q. Okay. So you remember you taking over as somewhat of a  
10 calmer presence on that 911 call?

11 A. Yes.

12 Q. Okay.

13 MR. SIMPSON: Your Honor, at this point in time, the  
14 State would seek to publish an additional portion of State's  
15 46, already in evidence, the recording of the 911.

16 THE COURT: The 911 call? Okay. You want to publish an  
17 additional portion that was not published yesterday?

18 MR. SIMPSON: Correct.

19 MR. DANIELS: Your Honor, we would need to listen to  
20 that first --

21 THE COURT: Okay.

22 MR. DANIELS: -- and see if we need to make any  
23 objections then.

24 THE COURT: Okay. All right. So let's do that then.  
25 How long a portion is this, Solicitor, that you want to

1 publish?

2 MR. SIMPSON: I think we discussed it at about seven  
3 minutes.

4 MS. FORD: If that.

5 MR. SIMPSON: And I don't know that I will go the whole  
6 way.

7 THE COURT: All right.

8 MR. SIMPSON: I'll probably cut it down shorter than  
9 that.

10 THE COURT: Okay. All right.

11 MR. SIMPSON: No longer than that.

12 THE COURT: All right. Ladies and gentlemen, I'm going  
13 to need for you to go back to the jury room so the defense  
14 has an opportunity to review this portion of the 911 call to  
15 see if there's any objection. Hopefully, it won't be too  
16 long at all. Thank you very much.

17 (The jury exited open court at 10:05 a.m.)

18 (The following proceedings were had outside the presence  
19 of the jury.)

20 (Video played in open court.)

21 MR. SIMPSON: Yeah, I don't think we would need to go  
22 much farther than that.

23 THE COURT: Okay. All right. Mr. Daniels, any  
24 objection by the defense to that portion?

25 MR. SIMPSON: We would note that that was -- for the

1 record, that that was stopped at the two-minute mark.

2 THE COURT: Okay.

3 MR. SIMPSON: On the nose, two zero zero.

4 THE COURT: Okay.

5 MR. DANIELS: Yes, your Honor. First of all, we believe  
6 it's cumulative. We also believe that there's some 403  
7 issues. They've already been discussed, but for the purposes  
8 of this, I don't think that the first 40 seconds of it need  
9 to be heard because that's not Ms. Kowalski. There's also a  
10 hearsay issue of relaying information that is the purpose of  
11 this case. And playing the earlier portion I believe would  
12 also be inflammatory.

13 THE COURT: Okay. Well, I agree with you concerning the  
14 initial part is when Kimmy calls; that's already been played,  
15 so I don't think that needs to be played again. But as far  
16 as any hearsay, it's not offered to prove the truth of any  
17 matter asserted. So I'll allow once she gets on -- once  
18 Harley gets on the phone to the two-minute mark, I'm going to  
19 allow that to be played basically along the same lines as the  
20 first part that was played, I guess, yesterday.

21 MR. SIMPSON: Could we have a moment to get --

22 THE COURT: Yeah. Take a moment and get it to where she  
23 gets on the phone.

24 MR. DANIELS: We would also like to address the  
25 cumulative issue. All of this has also been testified to

1 already.

2 THE COURT: Okay. So noted.

3 MR. SIMPSON: Do you want to hear a response on that?

4 THE COURT: Well, I think I've already ruled in your  
5 favor, Solicitor --

6 MR. SIMPSON: Okay.

7 THE COURT: -- so I don't know if you want to talk me  
8 out of it or not.

9 MR. SIMPSON: No, sir.

10 (Off the record for technological matters.)

11 MR. SIMPSON: It's from 42 seconds to two minutes.

12 THE COURT: Okay. All right. Very good.

13 Let's bring the jury back out, please.

14 (The jury came into open court at 10:13 a.m.)

15 THE BAILIFF: All jurors are present, your Honor.

16 THE COURT: Thank you, ma'am.

17 All right, Solicitor. You want to proceed?

18 MR. SIMPSON: Yes. Thank you, your Honor.

19 Q. [By Mr. Simpson] Ms. Kowalski, did you just listen to  
20 a portion of a 911 phone call?

21 A. Yes.

22 Q. And were you able to recognize your voice on that phone  
23 call?

24 A. Yes.

25 Q. Okay.



1 MR. SIMPSON: You Honor, at this point in time, the  
2 State would seek to admit the short portion of the 911 call  
3 that we just discussed.

4 THE COURT: Okay. All right. Very good.

5 MR. SIMPSON: Playing from approximately 42 seconds to  
6 the two-minute mark.

7 (Audio played in open court.)

8 BY MR. SIMPSON:

9 Q. So Ms. Kowalski, you were able to give some details to  
10 the 911 operator regarding your location and what you  
11 understood just occurred, albeit your knowledge was somewhat  
12 limited at that time, correct?

13 A. Yes.

14 Q. Did the police arrive?

15 A. Yes.

16 Q. Were they pretty prompt in their arrival?

17 A. Yes.

18 Q. Okay. Do you recall the next day and -- well, again,  
19 times are funny. But was this -- about what time was this  
20 occurring, to the best of your recollection?

21 A. When the police came?

22 Q. The whole incident. I mean, was it -- were you -- was  
23 it in the middle of the night --

24 A. Yes.

25 Q. -- to early morning hours?

1 A. Yes.

2 Q. So moving forward to, you know, eventually the sun comes  
3 up and it's the next day, do you remember speaking with an  
4 officer the next day and being shown a photograph?

5 A. Yes. He came back to our house.

6 Q. Okay. I'm showing you what's been marked for ID only as  
7 State's 57. Do you recognize any handwriting on that?

8 A. Yes. That's my handwriting.

9 Q. Okay. And were you shown this photograph the day after  
10 this occurred?

11 A. Yes.

12 Q. And were you asked if you recognized that individual?

13 A. Yes.

14 Q. And what was your answer?

15 A. No.

16 Q. Had you ever seen that individual before?

17 A. No.

18 Q. Ever met that person socially before?

19 A. No.

20 Q. Ever social media or had any contact with that person?

21 A. No.

22 Q. Would you have even have been able to name that person's  
23 name at that time?

24 A. No.

25 Q. Did you invite that person into your house on that

1 night?

2 A. No.

3 MR. SIMPSON: Your Honor, at this point in time, the  
4 State would seek to admit into evidence State's Exhibit 57.

5 THE COURT: You want to show that to defense?

6 MR. SIMPSON: We did prior to this.

7 THE COURT: Oh, okay.

8 MR. DANIELS: No objection.

9 THE COURT: All right. 57 into evidence for the State.

10 (State's Exhibit Number 57 admitted into evidence.)

11 BY MR. SIMPSON:

12 Q. Ms. Kowalski, obviously there would come a point in time  
13 where the police left your apartment; is that correct?

14 A. Yes.

15 Q. After they left and, you know, into the next day, did  
16 you or your roommates come to discover anything out of place,  
17 some items that you thought needed to be conveyed to the  
18 police department?

19 A. Yes.

20 Q. And what were they?

21 A. I think the next day we were -- there was, like, a lot  
22 of crime-scene stuff there, so we just were looking around  
23 the apartment. And we specifically were in the kitchen. I  
24 remember we stepped into olive oil on the floor, which was  
25 definitely weird because why would there be olive oil on the

1 floor? And we found two bottles of olive oil open.

2 Q. Okay. What was interesting about them being open?

3 A. Well, one of them was my bottle personally that I had  
4 for, I don't know, maybe a few weeks to a month and I was  
5 never able to use it because I couldn't open it because the  
6 cap was screwed on in a way that I couldn't open it. And  
7 that specific bottle was open and some was used, olive oil,  
8 from that bottle, which was neither me or any of my roommates  
9 because none of us were able to open the bottle.

10 Q. Okay. Did you go locate anything in Kimmy's bedroom at  
11 this point?

12 A. Well, when we noticed the olive oil, it kind of sparked  
13 our interest of thinking, "Okay. What's different around  
14 here?" And we have a knife rack in our kitchen. We noticed  
15 one was missing, which, to me, was remarkable because when I  
16 was at the hospital with Kimmy, she had relayed that she saw  
17 a figure standing in her doorway and it looked like they had  
18 a weapon in their hand. So we then went into Kimmy's room  
19 and found the knife from the kitchen in her bed.

20 Q. Okay. And did that knife match the knife set from the  
21 kitchen?

22 A. Yes.

23 Q. And did it match the missing slot on the knife block?

24 A. Yes.

25 Q. Okay. Is there any reason or recollection that you have

1 of moving that knife from the knife block into Kimmy's room?

2 A. No.

3 Q. Any reason -- not just this night, but the days leading  
4 up, weeks leading up, any knowledge you would have of a  
5 reason or perception that that knife would have been moved by  
6 you or moved by someone else in your presence from that knife  
7 block into Kimmy's room?

8 A. No, not at all.

9 Q. Ms. Kowalski, I'm going to direct your attention to the  
10 individual seated here in the center.

11 MR. SIMPSON: And let the record reflect I'm motioning  
12 to the defendant in this case.

13 THE COURT: Okay.

14 BY MR. SIMPSON:

15 Q. Do you recognize that person?

16 A. No.

17 Q. Have you ever met this person?

18 A. No.

19 Q. Did you invite that person into your house back in  
20 September of 2018?

21 A. No.

22 Q. Okay. Are you seeing that person today for the first  
23 time, to the best of your knowledge?

24 A. Yes.

25 MR. SIMPSON: The Court's indulgence?

1 (Mr. Simpson conferred with co-counsel.)

2 MR. SIMPSON: Ms. Kowalski, please answer any questions  
3 that Ms. Ford or Mr. Daniels have for you.

4 THE COURT: Defense have any cross-examination?

5 MR. DANIELS: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. DANIELS:

8 Q. The night before, when you FaceTimed with your brother,  
9 everybody in the house was together, right? Before that?  
10 About 11:00?

11 A. No. I was probably -- I know Kimmy wasn't home, so we  
12 weren't all together.

13 Q. But the people that were in the house were all together  
14 in the living room, weren't they?

15 A. I was with, I believe, Katie and Gwen --

16 Q. Okay.

17 A. -- in either the living room or kitchen.

18 Q. And Kimmy wasn't home?

19 A. No.

20 Q. And Dan wasn't there?

21 A. No.

22 Q. Okay. And at about 11:00, the evening kind of  
23 dissipates and everybody goes to their own room, the three  
24 people that are there, right?

25 A. Yes.

1 Q. And you go into your room, and you have a conversation  
2 with your brother?

3 A. Yes.

4 Q. And that lasts for several minutes? A while? How long  
5 did that last?

6 A. I'm not sure exactly.

7 Q. Okay. But after that, you fall asleep shortly?

8 A. Yes.

9 Q. And you don't wake up until you hear Kimmy?

10 A. Correct.

11 Q. Screaming?

12 A. Correct.

13 Q. So you don't hear Kimmy come home?

14 A. No.

15 Q. You don't hear Dan enter the apartment?

16 A. No.

17 Q. And your bedroom is right above the stairs that you have  
18 to go through to get into the house, correct?

19 A. No, not right above the stairs.

20 Q. Okay. But you don't know who's in the apartment when  
21 you wake up at about 3:00 a.m.?

22 A. Correct.

23 Q. And you hear one of the men say, "Wrong house"?

24 A. Yes.

25 Q. And he says that multiple times?

1 A. Mm-hmm. Yes.

2 Q. And he says, "Wrong house," as you hear them tumble --  
3 er, leading up to the tumbling down the stairs, correct?

4 A. Yes.

5 Q. Now, when you get up, you told police about what you saw  
6 that night?

7 A. (Indicated.)

8 Q. I need you to say yes.

9 A. Yes.

10 Q. Or whatever the answer would be, for the record.

11 And you told the police that night that the lights were  
12 on when you woke up?

13 A. Yes.

14 Q. And you told them that that was out of place for how the  
15 household operated?

16 A. For how the house what?

17 Q. For how you guys moved in your normal daily. You didn't  
18 leave those lights on?

19 A. Not going to sleep, no.

20 Q. So you turned those lights off?

21 A. Mm-hmm. Yes.

22 Q. All right. And they were off when you went to sleep  
23 after talking with your brother?

24 A. Yes.

25 Q. All right. The next -- the morning after the police had



1 left, when you found the olive oil that had been opened,  
2 where was that?

3 A. In the kitchen.

4 Q. In the pantry, specifically?

5 A. I think it was in the pantry.

6 Q. Okay. And that's where it was before it had been  
7 opened, correct?

8 A. Correct.

9 Q. All right. But it was open now?

10 A. Yes.

11 Q. And some of it had been used?

12 A. Yes.

13 Q. And then it was put back where it was?

14 A. Yes.

15 Q. All right.

16 MR. DANIELS: The Court's indulgence?

17 THE COURT: Sure.

18 (Mr. Daniels conferred with co-counsel and their  
19 client.)

20 MR. DANIELS: No further questions.

21 THE COURT: Any redirect?

22 MR. SIMPSON: None, your Honor.

23 THE COURT: You can step down, ma'am. You're free to  
24 leave the courthouse, or you're more than welcome to remain  
25 with us if you like.

1 (Witness excused.)

2 THE COURT: All right. Next witness, Solicitor?

3 MR. SIMPSON: I think, your Honor, the State calls  
4 Rachel Nguyen with the South Carolina Law Enforcement  
5 Division.

6 THE COURT: Okay.

7 (Witness sworn.)

8 CLERK OF THE COURT: You may have a seat.

9 Please state your name for the record and spell your  
10 last name.

11 THE WITNESS: Rachel Nguyen, N-G-U-Y-E-N.

12 RACHEL NGUYEN,  
13 called as a witness on behalf of the State, being first duly  
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SIMPSON:

17 Q. Ms. Nguyen, good morning.

18 A. Good morning.

19 Q. Where do you work?

20 A. I work at the South Carolina Law Enforcement Division,  
21 more commonly known as SLED.

22 Q. And where is that located?

23 A. That's in Columbia.

24 Q. You live in Columbia as well?

25 A. I do.

1 Q. Thank you for traveling here to be with us this morning.

2 A. Not a problem.

3 Q. And what role do you have with the State Law Enforcement  
4 Division?

5 A. I am a forensic scientist within the DNA casework  
6 department.

7 Q. And what sort of --

8 THE COURT: Could you sit a little closer to the  
9 microphone, Ms. Nguyen? Thank you.

10 BY MR. SIMPSON:

11 Q. And what role do you play within that department,  
12 Ms. Nguyen?

13 A. So I have several duties. My primary duties are to do  
14 serology, which is body-fluid identification, as well as  
15 evidence processing, which is to collect potential DNA from  
16 items of evidence.

17 Q. Okay. So focusing on that second part, can you  
18 elaborate a little bit on that? So what sort of things are  
19 sort of brought to SLED, and what do you do with them?

20 A. So I'm going to kind of combine them.

21 Q. Okay.

22 A. As a general overview, we test for blood -- human blood  
23 and other body fluids.

24 Q. Mm-hmm.

25 A. And then we also do collection for ownership, which

1 would be the primary wearer or owner of an item. So like  
2 your shirt, we would do ownership to see who's wearing that  
3 shirt primarily. We also do touch collection, which would be  
4 identification to see who had handled a pen, if you might  
5 have handled that pen in the past.

6 Q. Okay. So is it fair if I were to describe that -- you  
7 know, because I'm not a very smart person -- you're given an  
8 item and then you process that to take the DNA off of that  
9 item and pass that on to a forensic analyst?

10 A. Yes, in layman's term. Eventually, I'm taking large  
11 items of evidence -- I mean, bed linens, clothing, weapons --  
12 and trying to make them smaller for DNA analysis. So I will  
13 swab them. I'll take cuttings. And that's what's being sent  
14 on for analysis.

15 Q. And so are you often sort of that last step in evidence  
16 processing between the collection, transport, logging, and  
17 storage of evidence? You're sort of that last step before it  
18 gets to the analyst, traditionally?

19 A. Yes. So I'm going to be screening for any body fluids,  
20 doing any type of collection, as I mentioned. And then in  
21 addition to that, I will prepare the samples for DNA  
22 analysis, which includes, you know, either cutting a small  
23 portion of these swabs, which is like a small Q-tip, cutting  
24 a smaller portion of a smaller cutting and putting it in a  
25 tube for the DNA analyst to further analyze.

1 Q. Okay. And do evidentiary items come to you typically in  
2 a sealed, tamper-proof sort of format?

3 A. Yes. The majority of items will come in what we call a  
4 heat-sealed pouch. It's a plastic pouch which is sealed with  
5 heat, so it is tamper proof, tamper evident. And then  
6 sometimes things will come in boxes, but they will also be  
7 sealed and have evidence tape so that in the event someone  
8 were to open it, you could see that it was opened.

9 Q. And what would ever happen if an item came to you and  
10 you noticed that the seal had been broken or something was  
11 not in the format that was consistent with SLED policy?

12 A. It would depend on the severity. For example, if a box  
13 was clearly open, I would have to either, you know, go to our  
14 evidence control department, which is where the evidence is  
15 stored at SLED, and see if it arrived that way, or call the  
16 investigator to see if they know anything about that. Or it  
17 could be something as simple as an envelope within a  
18 heat-sealed pouch, as I mentioned, is not sealed, but the  
19 heat-sealed pouch itself is sealed. So that would be fine,  
20 because the exterior-most packaging is sealed.

21 Q. Okay. So if anything about how the evidence arrived to  
22 you were to give you any sort of professional concern, would  
23 that be something you would document, flag, and we would all  
24 know about it? Is that fair?

25 A. Yes. It would be documented in several places. It

1 would be documented on my evidence worksheet, which is where  
2 I denote all my processing and testing. It would also be  
3 denoted in the case file itself.

4 Q. Okay. To your knowledge, in the case you're here to  
5 testify about today, were there any similar concerns about  
6 packaging or how the evidence arrived to you?

7 A. No. I have no notes that I received anything that was  
8 possibly tampered with or opened.

9 Q. And as the person that sort of is that step right before  
10 the analyst, you're often the person that is breaking that  
11 seal; is that correct?

12 A. Yes. I would be the first person to open the evidence  
13 at SLED.

14 Q. Okay. Evidence submitted under a single case, how is  
15 that tracked through sort of SLED's internal system?

16 A. So upon receiving it at our laboratory, each case is  
17 assigned a unique case number within our lab, and then each  
18 item that is submitted is assigned a unique item number.  
19 Each item number is tracked by what we call a chain of  
20 custody. We have an electronic chain of custody.

21 So what that means is once it arrives at SLED, it's  
22 going to be scanned to an evidence-control technician.  
23 They're going to put it in their storage facility. The  
24 location also has a scan tag, so it records where it's kept.  
25 When I request the evidence, they're going to scan it to me,

1 and so forth. It's going to track it all the way through its  
2 path within the laboratory.

3 Q. Okay. And what lab number was this case given?

4 A. This case number is L18-16560.

5 Q. Okay. And in your role that you've already described  
6 for the jury, did you have an opportunity to do some work on  
7 Case L18-16560?

8 A. Yes.

9 Q. I want to just sort of focus on a few items for you.  
10 I'm going to --

11 MR. SIMPSON: May I approach the witness, your Honor?

12 THE COURT: You sure can.

13 BY MR. SIMPSON:

14 Q. I'm showing you what's marked for ID only at this point  
15 as State's 38. Does that item or the markings on it allow  
16 you to identify it? And I know we give a lot of numbers.  
17 That would be SLED Item 4?

18 A. Yes, I can identify this item. I'm looking for the case  
19 number that I mentioned. This is a container. A container  
20 means that there's multiple items within the packaging. It  
21 also has a seal with my initials and date.

22 Q. Okay. And what is that State's 38?

23 A. This appears to be --

24 Q. Collectively, yeah.

25 A. -- Item 4, which is the sexual-assault evidence

1 collection kit from Kimberly Cantwell.

2 Q. And in your experience with SLED, the handling and  
3 processing of CSC exam kits, is that something that you're  
4 pretty familiar with?

5 A. Oh, yes. We receive sexual-assault evidence-collection  
6 kits quite frequently.

7 Q. And again, you already mentioned that that's a kit in  
8 itself containing many sub-items; is that correct?

9 A. Yes. So the kit itself has various types of collection  
10 envelopes, which the sexual assault nurse examiner will  
11 collect when the victim arrives to the hospital. They have  
12 various options. Not everything is always collected. It's  
13 pretty much dependent on what the nurse feels is probative  
14 evidence.

15 So once I receive it, I will open the kit and see what  
16 swabs or see if any clothes has been submitted within the  
17 kit.

18 Q. So are you the one that creates the, I'll call them  
19 sub-exhibits? You know, you take the collective whole and  
20 you break it apart into its sections and separately ID those  
21 items; is that correct?

22 A. Yes. So once I inventory the kit, I will assign a  
23 unique item number to each envelope that's inside.

24 Q. So for instance, this is Item 4. So it would then have  
25 a 4.1, 4.2, 4.3? Is that typically the system that you use?



1 A. That's correct. So whatever the original item number  
2 is, it will have .1, .2, .3, and so forth for as many items  
3 that are within the, we'll call it the parent item.

4 Q. And if you could, if you wouldn't mind opening up  
5 State's Exhibit 38. Inside, do you see something marked for  
6 ID only as State's 49, also marked as SLED Item 4.2?

7 A. You want me to open it all the way?

8 Q. Yes, if you could, please.

9 THE COURT: So the State numbers are the red stickers.

10 THE WITNESS: Okay.

11 BY MR. SIMPSON:

12 Q. Again, looking for State's 49, Sled 4.2.

13 A. Yes, I have found it. It's 49, which is SLED  
14 Number 4.8.

15 Q. Oh, I'm sorry. So what is State's 49? And you're  
16 right; that is 4.8. My apologies.

17 A. Did you want me to identify it?

18 Q. Oh, yeah.

19 A. So State's 49, SLED Item 4.8, is the known standard  
20 buccal swabs from Kimberly Cantwell, it says on this label.

21 Q. Okay. And similarly, if you could, for State's ID only  
22 53, SLED Item 4.6?

23 A. So State's 53 is SLED Item 4.6, which is the fingernail  
24 scrapings collected from the victim.

25 Q. Okay. And would those items be processed by you to

1 prepare them for analysis by a DNA analyst?

2 A. So in general, I'm going to -- after I assign each  
3 envelope an item number, I'll see what was submitted, do any  
4 screenings on any items. Some items don't require  
5 screenings, such as the fingernail scrapings. So I'll  
6 portion it off, put it in a tube, and forward it to an  
7 analyst.

8 Q. Thank you.

9 MR. SIMPSON: May I approach the witness again, your  
10 Honor?

11 THE COURT: You sure can.

12 BY MR. SIMPSON:

13 Q. I'm handing you what has been marked for ID only as  
14 State's 52 --

15 A. Okay.

16 Q. -- and what's been marked for ID only as State's 32.  
17 Earlier you described to the jury how you might receive a  
18 larger item and then you process it for -- to make  
19 identifications from it, thus often creating a smaller  
20 exhibit. Is that --

21 A. Yes.

22 Q. -- an inarticulate way of describing it?

23 And so first, can you take a look there at the larger  
24 item? What is that?

25 A. Okay. So State's Exhibit 32 is SLED Item 3, which is a

1 black tank top. Originally, it looks like Item 3 was  
2 packaged in a bigger box with several items, but I separated  
3 it out because the large item will go back to the agency and  
4 anything I've taken off of it will proceed for analysis.

5 Q. And so did you process that black tank top for  
6 identification purposes?

7 A. I did. I'm identifying it the same way. It has the  
8 unique case number, and then it has my initials and the date  
9 I opened the packaging.

10 Q. Okay. And did you create then another exhibit from that  
11 item?

12 A. Yes.

13 Q. Directing you now to what's been marked for ID only as  
14 State's 52.

15 A. Okay. So State's Exhibit 52 is SLED Container D, which  
16 contains all of the items it appears that I have taken off of  
17 Item 3, the black tank top, which would be the swab from  
18 scraping underarms and collar of the black tank top, as well  
19 as hair that was collected off the black tank top.

20 Q. Okay. So and again, just for our education, what's your  
21 goal -- when you're processing a shirt, what are you trying  
22 to accomplish?

23 A. So this black tank top was processed for ownership  
24 processing. Once again, ownership processing is trying to  
25 find the primary wearer or owner of the tank top.

1           So when we process for ownership, it's also item  
2 dependent. In this case, you're going to -- we use a sterile  
3 scraper and scrape areas of high friction. So that's going  
4 to be underarms and the collar of the tank top. Once I've  
5 scraped it with a sterile scraper -- that is to rough up any  
6 skin cells that are on the item -- I'm going to take a  
7 sterile swab, dampen it with a little bit of water, and then  
8 swab those areas that I've just roughed up in hopes to  
9 collect any skin cells that are present.

10           Same with hair. Sometimes we shed hair when we're  
11 wearing an item. So the hair is collected to see who's  
12 predominantly wearing this article of clothing.

13 Q.     Okay. So the tank top doesn't go to the DNA analyst;  
14 the item you create -- the sub-item you create goes to the  
15 DNA analyst?

16 A.     No. So Item 3, the tank top, is only going to come to  
17 me, and I'm going to return it back to our evidence control  
18 department to be returned to the submitting agency. Then all  
19 the swabs and the hair that I mentioned that I collected,  
20 those are each going to get their own unique item numbers,  
21 and those are going to be forwarded to the DNA section for  
22 further analysis.

23 Q.     And finally, Ms. Nguyen, sometimes do items come to you  
24 that are just ready to pass on as-is to the DNA analyst?

25 A.     Yes. So sometimes, I believe in this case in

1 particular, there are submitted swabs for possible touch DNA.  
2 That does not require any type of screening for any body  
3 fluid or collection as it is already collected in a small  
4 area. So all that I would do with a swab that is submitted  
5 would be to cut it and prepare it for DNA analysis.

6 Q. And I'm showing you what's been marked as State's 54.  
7 Is that the swab for touch DNA that you just mentioned?

8 A. So State's 54 is our Item 6, which I can identify it by  
9 the unique case number, item number, my initials, and the  
10 date I opened it. And then Item 6 is swabs, and then in  
11 quotes, "touch from bottle."

12 Q. And so that would have been just opened by you,  
13 examined, and passed on to the DNA forensic analyst?

14 A. Yes. Opened by me. I would have cut a small portion  
15 off of the swab, put it in a tube, and forwarded that for DNA  
16 analysis.

17 Q. And that would have, again, arrived to you in a  
18 condition that would satisfy you professionally that it had  
19 not been tampered with in any manner?

20 A. Yes. I would check the seals and all the labeling on  
21 the package involved to make sure it was consistent for the  
22 way it should be.

23 Q. Okay.

24 MR. SIMPSON: The Court's indulgence?

25 THE COURT: Sure.

1 (Mr. Simpson conferred with co-counsel.)

2 MR. SIMPSON: Your Honor, at this point in time, the  
3 State would seek to introduce State's 32, the black tank top,  
4 into evidence.

5 THE COURT: Okay. 32. What says the defense?

6 MS. FORD: Just a minute, your Honor.

7 THE COURT: Sure.

8 (Ms. Ford conferred with co-counsel and their client.)

9 MS. FORD: No objection, your Honor.

10 THE COURT: All right. 32 into evidence for the State;  
11 32 being the tank top.

12 (State's Exhibit Number 32 admitted into evidence.)

13 MR. SIMPSON: Thank you for being here, Ms. Nguyen.  
14 Please answer any questions that the defense has for you.

15 THE WITNESS: Okay.

16 THE COURT: Any cross-examination?

17 MS. FORD: No, your Honor.

18 THE COURT: Okay. All right. Ms. Nguyen, you can step  
19 down. You're free to leave the courthouse, or you're more  
20 than welcome to remain with us if you'd like. Take your time  
21 getting -- putting your stuff together.

22 (Witness excused.)

23 MR. SIMPSON: Oh, sorry, your Honor.

24 THE COURT: Take your time.

25 MR. SIMPSON: I was thinking, "What are we waiting on?"

1 THE COURT: Yeah.

2 MR. SIMPSON: The State calls Sarah Zapata from the  
3 State Law Enforcement Division.

4 THE COURT: Okay.

5 (Witness sworn.)

6 CLERK OF THE COURT: You may have a seat.

7 Please state your name for the record and spell your  
8 last name.

9 THE WITNESS: Sarah Zapata, Z-A-P-A-T-A.

10 SARAH ZAPATA,  
11 called as a witness on behalf of the State, being first duly  
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SIMPSON:

15 Q. Ms. Zapata, good morning.

16 A. Good morning.

17 Q. Who do your work for?

18 A. I work for the South Carolina Law Enforcement Division,  
19 commonly known as SLED.

20 Q. And what do you do for the State Law Enforcement  
21 Division?

22 A. I am a DNA analyst.

23 Q. Okay. And I'm just going to give the floor to you. If  
24 you could, please explain to the jury what a DNA analyst  
25 does, a little bit about DNA, and why it's often relevant to

1 criminal investigations.

2 A. Sure. DNA is passed down from your parents. You get  
3 half from your mom, half from your dad. And DNA profiles are  
4 unique to an individual, with the exception of identical  
5 twins. And so we are able to develop DNA profiles from an  
6 item of evidence using our standard laboratory procedures,  
7 and then also develop a profile from a known standard from an  
8 individual and make comparisons to that evidence.

9 Q. Okay. And what sort of process do you use to make those  
10 comparisons?

11 A. Do you mean the laboratory process?

12 Q. Yes, the laboratory processes.

13 A. Sure. So we will extract DNA from the sample and then  
14 determine the amount of DNA in the sample and then amplify  
15 the DNA with a different kind of kit, depending on what it is  
16 that we are targeting, what kind of profile we're trying to  
17 develop, and then finally, develop the DNA profile and  
18 actually look at the profile to make those comparisons.

19 Q. And have there been a lot of advancements in your field  
20 in the recent decades?

21 A. Yes. It's always changing.

22 Q. Okay. I'd like for you to explain a little bit to  
23 myself and the jury --

24 A. Mm-hmm.

25 Q. -- how -- the results, how are those then given to the



1 end user? When your analysis is complete, how do you report  
2 your results?

3 A. Sure. We -- in our interpretation, we will first  
4 develop -- determine if the profile is suitable for  
5 comparison. So is there even enough DNA there for us to be  
6 able to make a comparison? If there is, then we'll determine  
7 how many individuals are in that DNA profile, potentially.

8 And then the way we calculate statistics is we will set  
9 up two opposing scenarios that could potentially be an  
10 explanation for the profile that we're seeing. And then we  
11 will compare each individual standard that we have to the DNA  
12 profile. And then if there's more than one person -- like if  
13 it's a mixture, for example -- if multiple people are  
14 included as potential contributors, then we also will compare  
15 those people to the other ones just to make sure the DNA  
16 profile can be explained by a contribution of all of those  
17 people together.

18 Q. So as a layperson describing it, is it fair to say that  
19 we're no longer reporting things as like a yes/no? We're  
20 reporting things like, "Here are the chances of certain  
21 propositions"; is that a fair statement?

22 A. Kind of. We -- it's more of a sliding scale. So if you  
23 think of a seesaw, we are comparing -- like, for example, if  
24 it's a mixture of two people, you have, on one hand, the  
25 person that you're comparing and an unidentified person as

1 contributing to the mixture, and then two unidentified people  
2 contributing to the mixture. And the DNA statistic results  
3 will be in support of one or the other, so it will swing one  
4 way or the other.

5 Q. Okay. So that's -- in the interest of, you know,  
6 extreme scientific accuracy, I guess I'll say, if there is  
7 such a thing, you report these things now as sort of a  
8 percentage often, right?

9 A. Right. It's a likelihood ratio --

10 Q. Okay.

11 A. -- is what it's called.

12 Q. Okay. Can you still exclude people, though, as  
13 contributors?

14 A. Yes.

15 Q. Okay. So you can certainly say a person's DNA  
16 absolutely isn't on something?

17 A. It falls more on that seesaw side of -- we develop a  
18 number to try to identify a contributing individual. If that  
19 number in support of that is greater than a hundred, then we  
20 call that an exclusion.

21 Q. Okay. And that's just a competent scientific conclusion  
22 that this person --

23 A. Is excluded, yes.

24 Q. -- is excluded as a contributor.

25 Evidence presented for one case, is it given a unique

1 lab number within SLED?

2 A. Yes.

3 Q. And so did you have occasion in regard to your  
4 employment with SLED to work on the case we're here for  
5 today, SLED Lab Number L18-16560?

6 A. Yes.

7 Q. I'd like to start by just having you ID some items, if  
8 you don't mind.

9 A. Mm-hmm.

10 Q. I'm handing you what's been marked for ID only as  
11 State's 50, SLED Item 1.

12 MR. SIMPSON: Can I approach the witness?

13 THE COURT: You sure can.

14 BY MR. SIMPSON:

15 A. This is SLED Item 2.

16 Q. Oh, sorry. Well, can you identify that item for me?

17 A. Yes.

18 Q. And what is that?

19 A. Buccal swabs from Chad Simmons.

20 THE COURT: Can you sit a little closer to the  
21 microphone, Ms. Zapata, please?

22 THE WITNESS: Sorry.

23 THE COURT: It's okay.

24 BY MR. SIMPSON:

25 A. Can you repeat that?

1 Q. What is it?

2 A. It's a buccal swab from Chad Simmons.

3 Q. I'm showing you State's 51 for ID only.

4 A. Okay.

5 Q. And can you identify that item?

6 A. This is the buccal swab from Dan Schwarz.

7 Q. And I'm going to hand you a larger exhibit containing  
8 some smaller --

9 A. This also has my extracts in it.

10 Q. Okay. And what is an extract?

11 A. That's the sample that we produce in the lab when we get  
12 the DNA -- for DNA on it. And then we'll dry it down and  
13 return it with the rest of the evidence when we return it.

14 Q. And those are contained within this exhibit?

15 A. Yes, sir.

16 Q. State's 38 collectively, can you sort of identify what  
17 that is?

18 A. It's labeled as our Container B and Item 4.

19 Q. Okay.

20 A. So it appears to be the contents of a sexual-assault  
21 kit.

22 Q. And a sexual-assault kit contains sub-items; is that  
23 fair?

24 A. Correct.

25 Q. I'm showing you what's marked for ID only as

1 State's 49 --

2 A. Okay.

3 Q. -- and State's 53. Can you identify those?

4 A. 49 is SLED Item 4.8, which is the buccal swab from  
5 Kimberly Cantwell. 53 is SLED Item 4.6, which are the  
6 fingernail scrapings from Kimberly Cantwell.

7 Q. Okay. And is a buccal swab sort of just a way in which  
8 a known sample of DNA would come to you?

9 A. Yes.

10 Q. Okay.

11 THE COURT: What is 53 again, please, Ms. Zapata? I  
12 know it's inside 38, but what was it?

13 THE WITNESS: All right. 53 is item 4.6, fingernail  
14 scrapings from Kimberly Cantwell.

15 THE COURT: Okay.

16 BY MR. SIMPSON:

17 Q. I'm showing you what's marked for ID only as State's 52.

18 A. Okay. This is our labeled Container D. It appears to  
19 contain cuttings from the tank top, as well as some hairs  
20 from the tank top and my extracts.

21 Q. Okay. And the cuttings, do you know who would have  
22 performed the cuttings from the tank top?

23 A. For this case, I believe it was Rachel Nguyen.

24 Q. Okay.

25 A. Yes.

1 Q. Finally, State's 54 for ID only?

2 A. This is our Container A. There are several items:  
3 fingernail scrapings from Dan Schwarz, swab from the bottle,  
4 and also my DNA extracts.

5 Q. Okay. That includes swabs from the bottle, though,  
6 correct?

7 A. Correct.

8 Q. Okay. Were all of these items part of your DNA analysis  
9 in this case?

10 A. Yes.

11 Q. Okay. If we could, we'll just go through just one by  
12 one, and I'd like you just to kind of report on your  
13 findings. And I may interrupt you when I get confused.

14 Starting with SLED Item 3.1, swab from the scraping from  
15 the underarms and collar of the black tank top, if you could,  
16 describe to the jury what those swabs were compared to --  
17 what items they were compared to and your findings.

18 A. Okay. Like I explained earlier, first I --

19 MR. DANIELS: Objection.

20 THE COURT: Okay. Yes?

21 MR. DANIELS: She's not been qualified as an expert.

22 THE COURT: Okay. You may want to offer this witness as  
23 an expert in DNA analysis. Is that what the State wants to  
24 do?

25 MR. SIMPSON: I would love to do that.

1 Q. [By Mr. Simpson] Could I have the witness please  
2 explain a little bit about your training, your employment  
3 history, and any sort of continuing education requirements  
4 that a SLED analyst has to go through there at SLED?

5 A. I have been with SLED for about seven and a half years.  
6 Before coming to SLED, I earned a bachelor of science in  
7 forensic science from the Pennsylvania State University.

8 Once I was employed at SLED, I went through a training  
9 process under a court-qualified DNA analyst for approximately  
10 a year and a half. In that training, I had to learn all of  
11 our laboratory procedures, all of our interpretations, report  
12 writing, statistics. I had to pass several written exams, an  
13 oral exam, do a mock trial, do several mock cases, and then  
14 also pass a competency exam before I was able to actually do  
15 any real casework.

16 I also have to successfully complete several proficiency  
17 tests each year and have at least eight hours of continuing  
18 education, so that means going to conferences, attending  
19 different trainings, all just to learn about what advances  
20 are being made in the field of forensic DNA.

21 Q. And is the lab itself that you work for, is it certified  
22 or accredited by any sort of external organizations?

23 A. Yes.

24 Q. Okay.

25 MR. SIMPSON: Your Honor, at this point in time, the

1 State would offer Sarah Zapata as an expert in DNA forensic  
2 analysis.

3 THE COURT: Does the defense have any examination of  
4 this witness concerning qualifications?

5 MR. DANIELS: Your Honor, we have objections under 702  
6 and 403 that we need to discuss.

7 THE COURT: Okay. All right. Ladies and gentlemen, I  
8 need to send you back to the jury room. It's probably a good  
9 time to take a morning break. And we'll get you back out  
10 shortly.

11 (The jury exited open court at 10:56 a.m.)

12 (The following proceedings were had outside the presence  
13 of the jury.)

14 THE COURT: All right. Mr. Daniels, I'd be glad to hear  
15 from you.

16 MR. DANIELS: Thank you, your Honor.

17 I think just for logic purposes, we are going to be  
18 objecting to the DNA evidence itself under 403 for cumulative  
19 purposes. And that's going to be the basis also for the 702  
20 objection.

21 The 702 objection requires -- er, Rule 702 requires that  
22 the opinion testimony or special knowledge of the expert  
23 would assist the trier of fact in determining the facts at  
24 issue. The only issue they can address in this is  
25 identification. That's all DNA can be used for. That's what



1 the purpose is.

2       Knowing the identification, you move into a 403 analysis  
3 just on the expert's opinion. The prejudice has -- er, the  
4 probative weight has to be examined at the evidentiary  
5 landscape of everything that's going towards the salient  
6 issue of identification in this case. When there's more  
7 evidence supporting one of -- one issue, the identification  
8 of Mr. Simmons here, there's less probative value.

9       Here there's so much other evidence for the  
10 identification. This is cumulative and the expert testimony  
11 really isn't needed because you have the video that's been  
12 shown from the area, you have fingerprint identification that  
13 has already been done under an expert opinion, and you have  
14 two statements from Mr. Simmons that it's already been  
15 indicated that they, of course, will be coming in from  
16 pretrial hearings under the *Denno*.

17       So we believe that all of this is cumulative. We need  
18 to safeguard against taking an expert's opinion and going  
19 into the jury's realm. And I think this is inappropriate  
20 here given the other landscape of evidence.

21       Furthermore, looking at this and looking at the *Phillips*  
22 case from 2020 and the *Gray* case from 2024 (verbatim), when  
23 we're dealing with touch DNA and the likelihood ratios, there  
24 is a significant issue of prejudice to the defendant of  
25 misapplication. In the *Phillips* case, the Supreme Court goes

1 far enough to say not all DNA evidence needs to be admitted.  
2 Most of our past history is without DNA. And so the Court  
3 needs to exercise extreme caution when letting touch DNA in.

4 This is highlighted in this case with the previous  
5 expert -- excuse me, the previous testimony of looking for  
6 the primary owner. And there's really no explanation on  
7 that, so that may lead into some misapplication by the jury.

8 Again, looking at that *Phillips* case, it lends support  
9 to that of using extreme caution while dealing with touch  
10 DNA.

11 THE COURT: Okay. All right. Can you give me the cite  
12 of that *Phillips* case?

13 MR. DANIELS: I can, your Honor. I have a copy here.

14 THE COURT: You've got a copy for me?

15 MR. DANIELS: Yes, I do.

16 THE COURT: Thank you.

17 MR. DANIELS: I also have a copy of the *Gray* case, but  
18 I only have one copy.

19 THE COURT: Sure.

20 All right. Let me hear from the -- Solicitors, do you  
21 want to take a look at those cases before you make your  
22 response to this objection?

23 MR. SIMPSON: I would, but it's not going to take me  
24 very long at all.

25 THE COURT: Well, why don't we --

1 MR. SIMPSON: Maybe a three-minute break would be great.

2 THE COURT: Well, let's go a little bit longer break,  
3 because I need some time to read these two cases. So we'll  
4 take about a ten-minute break, and then we'll resume this  
5 discussion.

6 MR. DANIELS: Thank you.

7 MR. SIMPSON: Thank you, your Honor.

8 (Court recessed.)

9 (Court resumed outside the presence of the jury.)

10 THE COURT: All right. I think how we're going to do  
11 this -- this, I believe, will take some time to fully analyze  
12 the particular issue and objection that the defense has  
13 raised. So what I want to do is go ahead and send the jury  
14 on for an early lunch. I know it's going to require  
15 Ms. Zapata to hang out with us for a while, but I'm going to  
16 go ahead and send them on for an early lunch and then hear  
17 full argument from both sides on this issue, give me some  
18 more time to study it in order to, hopefully, make a correct  
19 ruling.

20 Anybody have a big issue with handling it like that? I  
21 just don't think I am prepared to take argument right now and  
22 make a ruling right now. So that's kind of where I'm coming  
23 from.

24 MR. DANIELS: Your Honor, just for purposes of while  
25 we're doing this, I have no objection to the jury being

1 released, but if we can continue with my questioning of  
2 Ms. -- I'm sorry. I don't want to mess it up.

3 THE WITNESS: Zapata.

4 MR. DANIELS: Zapata, yeah, sorry.

5 -- of Mr. Zapata for purposes of counsel hearing, I can  
6 ask those questions before we break.

7 THE COURT: Okay. Yeah, we can do that. We can do  
8 that.

9 Solicitor, you want to chime in?

10 MR. SIMPSON: That would be fine.

11 THE COURT: Okay.

12 MR. SIMPSON: Or -- and maybe I'm off track here. I  
13 imagine what you want to hear to better analyze this issue  
14 are the statistical probabilities that Ms. Zapata is going to  
15 testify to in this case, considering that the *Phillips* case  
16 involved a one in two. We could stipulate just for the  
17 purposes of this issue that you've reviewed her report, which  
18 would be easier than conducting -- but, I mean, that would  
19 require the defense's consent, of course. I don't know if  
20 he's, you know -- I guess I'm at a loss. I feel that the  
21 case doesn't even remotely apply to the situation that we  
22 have here.

23 THE COURT: Right.

24 MR. SIMPSON: But I respect the Court's need to go into  
25 those. I don't know. I mean, we can certainly proffer the

1 probability that she's going to testify to and the items that  
2 she's going to testify to you once the jury's released, if  
3 you would find that helpful, your Honor. Or we could just  
4 submit those with the report.

5 MR. DANIELS: I think the issue with that would be --  
6 with reading the report would be to assume some knowledge  
7 that I would like to get out at a hearing.

8 THE COURT: Yeah, I'll give you certainly the right to  
9 examine Ms. Zapata. And while I recognize, from my quick  
10 reading of the *Phillips* case, there certainly are some  
11 distinctions, there's some things went on in the *Phillips*  
12 case that has no relevancy to this case. But there may, in  
13 fact -- and I emphasize the word "may" -- there may, in fact,  
14 be some similarities which would justify a more closer look  
15 at this issue, and that's why I just want to have some more  
16 time.

17 So here's what we're going to do. It is 11:30. I'm  
18 going to go ahead and send the jury on for a two-hour lunch  
19 break. That will give us enough time to do whatever we need  
20 to on this and plus get something to eat. So that's kind of  
21 my plan.

22 But again, Ms. Zapata, I'm going to have to apologize to  
23 you. This is going to keep you here for a while. I know the  
24 schedules of people with SLED are very busy and you're pulled  
25 from one direction to another and all that, but it is what it

1 is. But I do offer my apology to you. Okay?

2 All right. So let's bring the jury out. I'm going to  
3 go ahead and cut them loose, and then we'll continue further.

4 (The jury came into open court at 11:34 a.m.)

5 THE BAILIFF: Judge, all jurors are present and seated.

6 THE COURT: Thank you, sir.

7 Ladies and gentlemen, here's the plan. We've got some  
8 legal issues that we just have to discuss or I need to  
9 discuss more with the lawyers. And you know, I just hate --  
10 and I think I mentioned this maybe yesterday -- I just hate  
11 leaving juries back in the jury room for extended periods of  
12 time. So what I'm going to do, I'm going to go ahead and  
13 excuse you now for an early lunch and a little bit longer  
14 lunch than normal. I want to try to allow us enough time to  
15 be able to deal with the legal issues that these fine lawyers  
16 have presented to me.

17 So I'll excuse you now. Be back here at 1:30, so that  
18 will give you a two-hour lunch break. Hopefully, we'll be  
19 ready for you, hopefully, when you get back. Okay? Again,  
20 remember all my instructions, and we'll see you back at 1:30.  
21 Okay?

22 (The jury exited open court at 11:35 a.m.)

23 (The following proceedings were had outside the presence  
24 of the jury.)

25 THE COURT: Okay. Let's go ahead and I'm going to give

1 the defense an opportunity to examine Ms. Zapata. And then  
2 once that is done, then I want to get, again, in detail the  
3 defense objection to any of the DNA evidence coming in or the  
4 results of the testing of the DNA, and then certainly hear  
5 from the State as to why they believe it should come in.

6 So we'll start off allowing, Mr. Daniels, your  
7 examination of Ms. Zapata.

8 Certainly, you can followup examination from the State,  
9 and we'll just go from there.

10 MR. SIMPSON: Your Honor, may I suggest, for efficiency  
11 purposes, that I put on the record that there's a big report  
12 with a lot of items. I'm not messing with most of them. And  
13 I think I could save Mr. Daniels a lot of time if I went  
14 ahead and explained on the record which items we're going to  
15 have her testify to.

16 THE COURT: Okay. Well, that may be of some benefit.

17 MR. SIMPSON: It might shrink our universe down a little  
18 bit.

19 THE COURT: Well, if it helps the Court at all, then I'm  
20 always open to being helped. Okay? So let's go ahead and --  
21 give me just one second -- and we'll allow you to do that  
22 first, Solicitor, and then go from there.

23 MR. SIMPSON: We were going to elicit testimony  
24 regarding the comparisons of the black tank top, obviously,  
25 and the scrapings, and those results in regard to the

1 proposition that both the victim Ms. Cantwell and the  
2 defendant were contributors to that -- scrapings from the  
3 black tank top.

4 Similarly, we're going to get into --

5 THE COURT: All right. Wait a minute. Wait a minute.

6 Okay. Concerning the tank top, the comparisons, the  
7 results were that the defendant and the victim contributed to  
8 the scrapings of the tank top. Correct?

9 MR. SIMPSON: Correct.

10 THE COURT: Okay. All right. Next one.

11 MR. SIMPSON: Similar findings from the scrapings from  
12 underneath the victim's fingernails on her right and left  
13 hands.

14 THE COURT: All right. Both hands. Okay.

15 MR. SIMPSON: And the touch DNA from the olive-oil cap  
16 -- the swab taken from the olive-oil cap matching -- well, I  
17 know we don't use "matching" anymore, but the statistical  
18 likelihood that the defendant contributed to the swab from  
19 the olive-oil cap.

20 There's several other -- and again, I know this will be  
21 flushed out from the expert. But in my estimation, those are  
22 all really high-probability matches, for lack of a better  
23 word. The reports contained a lot of lesser matches and  
24 exclusions, etc. I'm not -- those are the only things we're  
25 going to be focusing on, so that's what we're seeking to



1 admit.

2 THE COURT: Okay. So the three areas: the tank top,  
3 defendant and victim contributed; the scrapings under  
4 fingernails of both hands of the victim, defendant and victim  
5 contributed; and the olive-oil cap, defendant. Correct?

6 MR. SIMPSON: Correct.

7 THE COURT: Okay. Does that help you at all or narrow  
8 things down?

9 MR. DANIELS: It doesn't. That's what we were  
10 expecting.

11 THE COURT: It does not necessarily change your  
12 argument, maybe?

13 MR. DANIELS: No, it doesn't. And again, I think part  
14 of what *Phillips* is warning is we have to be careful in our  
15 terminology with this and the use of terminology. That's  
16 just one of the concerns I think *Phillips* speaks to, and  
17 that's why I think it's important that we go through this.

18 THE COURT: Okay. Go ahead and conduct your examination  
19 of Ms. Zapata.

20 VOIR DIRE OF SARAH ZAPATA

21 BY MR. DANIELS:

22 Q. So like the solicitor said, we don't use "matching"?

23 A. Correct.

24 Q. All right. And you don't use "random match" probability  
25 in this, do you?

1 A. No. We no longer use "random match."

2 Q. Okay. And what's random match?

3 A. It is the way we used to calculate statistics. It used  
4 a less, I guess, totalitarian view of the DNA profile. Now  
5 we are able to use more data than we could before because of  
6 the way the statistic is calculated.

7 Q. Okay. And the statistic is calculated as a likelihood  
8 ratio?

9 A. Yes.

10 Q. And the likelihood ratio is a comparison of two  
11 different numbers?

12 A. Mm-hmm.

13 Q. And those numbers really aren't a measurement, are they?  
14 An objective measurement? So when I say "a mile," everybody  
15 knows that's over 5,000 feet, so less than 6,000 feet. When  
16 I say "a kilometer," everybody knows what that means. But  
17 this is still based on a universe that a number that one side  
18 of that ratio is coming up with is based on a proposition  
19 that you define, correct?

20 A. We define the proposition, but the actual numbers are  
21 calculated based off of known allele frequencies.

22 Q. Through STA R Max?

23 A. Yes.

24 Q. And that's a -- that you put --

25 A. It's a statistical software program that we use.

1 Q. Okay. And I'm not trying to get into the STA R Max  
2 issue right now. Obviously, I don't think that's needed in  
3 this case. But the likelihood ratios are fluid, correct?  
4 Depending on the propositions used, they're going to change  
5 significantly?

6 A. It depends on what you mean, yeah. What are you -- can  
7 you clarify that question?

8 Q. Yes. How do you create the propositions for those  
9 likelihood ratios?

10 A. Like, kind of how I explained earlier, we will compare  
11 one person individually to a profile. And so we are  
12 comparing that person individually and however many unknown  
13 potential contributors in the case of a mixture, versus just  
14 four completely unknown unidentified individuals.

15 The exception to that would be swabs taken off of  
16 someone's body or even sometimes, like, intimate clothing  
17 where we know that that person is contributing to the  
18 profile. Then we are treating that person as being a  
19 contributor. So for example, fingernail scrapings, we know  
20 the victim's contributing to her own fingernail scrapings,  
21 which is expected. And then we're making comparison to the  
22 other DNA present in that profile. And that's just a  
23 standard way that we make all the comparisons.

24 And then the additional -- there is a statement at the  
25 end of the report that if any -- um, I'm trying to find the

1 actual word -- alternate propositions may require calculation  
2 of additional likelihood ratios if interpretation based on  
3 propositions other than those reported is needed, please  
4 contact the analyst listed below and allow up to 30 business  
5 days for calculation and reporting of additional likelihood  
6 ratios.

7 Q. Okay. And the number of contributors were decided by  
8 STA R Max?

9 A. No. I decide that.

10 Q. Okay.

11 A. I tell STA R Max how many contributors.

12 Q. Okay.

13 MR. DANIELS: I have no further questions.

14 THE COURT: Okay. Solicitor, do you have any  
15 examination -- not going necessarily to the results yet, but  
16 any other examination of Ms. Zapata.

17 MR. SIMPSON: I would just explore the results a little  
18 bit. And if that's not something that you feel helpful to  
19 you at this point, then no.

20 THE COURT: Okay. Just keep your seat, Ms. Zapata.

21 What I want to do now is, again, I want the defense to  
22 state exactly -- what I understand from what you stated  
23 earlier, you believe that any DNA evidence would be  
24 cumulative, that 702 is not met, and that there's more unfair  
25 prejudice than probative value for these three areas of DNA

1 evidence to come into evidence. Is that basically the nature  
2 of your three objections?

3 MR. DANIELS: Correct.

4 THE COURT: Okay. All right. Now, let's take them one  
5 at a time, Mr. Daniels. How do you believe that the DNA  
6 evidence, the three areas, would be cumulative to whatever  
7 evidence is already in the record?

8 MR. DANIELS: The evidence can only go to identity of  
9 the contributors. Okay? For all of the items highlighted,  
10 it's either Ms. Cantwell, Mr. Schwarz, or Mr. Simmons. It  
11 can only be proof for identity. That's what DNA does.

12 THE COURT: Right.

13 MR. DANIELS: Because of that, the issue becomes is --  
14 how much of that issue is actually in fact of who the man  
15 was? Then maybe I think you just kind of have to look at  
16 that through the secondary 403 analysis, following that 702.  
17 And because there's not a lot of case law for that 702  
18 component, that's why I'm trying to put this together. The  
19 403 analysis --

20 THE COURT: Wait a minute. I want to know why -- what  
21 is in evidence currently to where this DNA evidence would be  
22 cumulative to? I'm not aware of any evidence related to the  
23 tank top that is in evidence.

24 MR. DANIELS: There's been testimony that the tank top  
25 was taken off of the man. But for identification of the man

1 in the apartment, there is fingerprint testimony that has  
2 already been given. And there's video from the neighboring  
3 area, and there is Mr. Schwarz's testimony as well.

4 THE COURT: Okay. Let me just stop you right there.

5 Solicitor, do you believe that the DNA evidence  
6 concerning the tank top is cumulative?

7 MR. SIMPSON: Absolutely not, your Honor.

8 THE COURT: Okay. Why?

9 MR. SIMPSON: And I would submit to this Court that the  
10 proposition that all DNA evidence shows is ID is an absolute  
11 fallacy, because we also look at where was this DNA evidence  
12 collected and what role did that play in the crime that  
13 occurred?

14 At issue here is not merely, Was Mr. Simmons in the  
15 house? It is, What did Mr. Simmons do while in the house?  
16 And the fact that we have Kimberly Cantwell's DNA and  
17 Mr. Simmons' DNA, at least to an outrageously high  
18 probability on the black tank top, suggests contact between  
19 the black tank top and Ms. Cantwell and corroborating the --  
20 one of the most important aspects of her testimony, which is,  
21 of course, a proper probative purpose for the State to  
22 explore.

23 Similarly, the DNA found is not just presented to prove  
24 Mr. Simmons was in the house. It's presented to prove that  
25 Mr. Simmons was in the house and his DNA was located under

1 the fingernails of the assault victim. We don't just -- it's  
2 not just, Yes, he's in the house. It's, Where was he? In  
3 contact with the victim, corroborating again the central  
4 premise of our entire case, that being the testimony of what  
5 happened to Ms. Cantwell in that room.

6 The fingerprint on the olive-oil bottle can be explained  
7 in any number of ways. Did Mr. Simmons shop at a grocery  
8 store and look at that olive-oil bottle? You know, was it  
9 put at some other time? Therefore, hearing the story from  
10 the roommates about how they couldn't open that bottle, his  
11 actual touch DNA on the cap of that bottle is probative.

12 It may -- you know, again, when we're talking about  
13 cumulative for 403 purposes, we're not saying, oh, if  
14 something repeats -- if there's other evidence of something,  
15 then it's inadmissible. That's not a 403 analysis. What  
16 we're saying is it is so cumulative, it is such overkill by  
17 the party which is presenting the evidence that it becomes  
18 confusing and misleading to the jury.

19 What we're talking about is two things: fingerprints,  
20 DNA. Even if that may arguably go towards the same fact,  
21 cumulative to the point of the extreme remedy of exclusion  
22 under rule 403, I would suggest to the Court we are nowhere  
23 near that in this case.

24 And all of this is very easily distinguished from the  
25 *Phillips* case when you look at what kind of DNA evidence the

1     *Phillips* case was talking about. One, it was not even a  
2     probability. It was just a cannot-exclude finding on a gun  
3     the defendant admitted handling. And so, Judge Few found  
4     that that really served no probative purpose at all because  
5     it's a very incredibly low finding, a cannot-exclude finding,  
6     and served no probative purpose because the defendant in that  
7     case admitted handling the firearm in question.

8             The second piece of evidence was more probative because  
9     it was the touch DNA in the victim's pocket, which was an  
10    important probative point that the person had touched the  
11    victim. But the DNA finding was one in two, and what the  
12    judge said is that might mislead a jury because, you know,  
13    we've got half of the world's population that's still sort of  
14    in the mix there, and that really isn't a very strong  
15    probative finding.

16            Those aren't the kind of statistics that we're dealing  
17    with here. We're dealing with very high probability  
18    statistics here, each that serves a very important probative  
19    point in our case, which is not merely identifying the fact  
20    that Chad Simmons may be the one that went in the house, but  
21    also what he did while in the house. And that is, in fact,  
22    the central probative purpose that brings us here.

23            THE COURT: Okay. All right. Mr. Daniels?

24            MR. DANIELS: Again, I'd stand by my earlier argument.  
25    There's also the prior result of the *Denno* hearing, and I



1 believe Mr. Simmons and I -- er, Mr. Simpson and I just  
2 disagree about the identification element and how far DNA can  
3 be used without the use of the proposition of hierarchies or  
4 any other statement there.

5 THE COURT: Okay. All right. And I don't think the  
6 defense is necessarily objecting to the State failing to lay  
7 any proper foundations concerning the analysis conducted by  
8 Ms. Zapata. Correct?

9 MR. DANIELS: Correct.

10 THE COURT: Okay. Anything further from the defense  
11 concerning this objection to the DNA evidence coming in? Any  
12 further argument?

13 MR. DANIELS: No, your Honor.

14 THE COURT: Okay. Thank you, Mr. Daniels.

15 Okay. Anything further from the State concerning the  
16 defense objection to the DNA evidence coming in?

17 MR. SIMPSON: Nothing further, your Honor.

18 THE COURT: Okay. All right. While we've got  
19 Ms. Zapata on the stand just in-camera, let's go ahead and  
20 finish up your examination of her with respect to the  
21 findings. We'll just do that just so I'll have a pretty good  
22 handle on what she's going to say. Again, I do want a copy  
23 of her report to review. Not right now, but when we finish  
24 up and take our, quote, lunch break, I want the report.

25 You may proceed.

1 MR. SIMPSON: All right. Thank you, your Honor.

2 VOIR DIRE OF ZARAH ZAPATA

3 BY MR. SIMPSON

4 Q. Ms. Zapata, when we last left, we were talking about  
5 some results of swabs from scrapings of underarms and collar  
6 of black tank top?

7 A. Yes.

8 Q. What known samples was that exhibit compared to?

9 A. It was compared to all three standards I had, so buccal  
10 swabs from Dan Schwarz, buccal swabs from Chad Simmons, and  
11 buccal swabs from Kimberly Cantwell.

12 Q. Okay. And Mr. Daniels had explained a little bit about  
13 that. And you had analyzed those things using what are  
14 called "proposition sets." Can you explain that to the  
15 Court?

16 A. Sure. Kind of like I was explaining earlier, first we  
17 determine how many people are in this DNA profile, in this  
18 mixture. So the very first sentence under each proposition  
19 set will tell you how many individuals it's being interpreted  
20 as. And so this item, the DNA profile was interpreted as a  
21 mixture originating from four individuals.

22 And so when we're making a comparison to one specific  
23 individual, the proposition set will be that person that we  
24 are comparing and three unidentified, unrelated individuals  
25 contributing to the mixture, versus four unidentified,

1 unrelated individuals contributing to the mixture. And then  
2 the result of the comparison will be a likelihood ratio in  
3 support of one of those two statements.

4 Q. And related to that, I would like to have you jump ahead  
5 to the Proposition Set Number 4 that you ran for that  
6 evidence. What was the proposition -- scientific proposition  
7 underlying that analysis in 4?

8 A. So for 4, this was after I had individually compared  
9 Chad Simmons and Kimberly Cantwell to the mixture, and they  
10 both had an inclusionary likelihood ratio, so that means that  
11 it was in support of that individual contributing to the  
12 mixture. So then I compared them together, and the result of  
13 that comparison is the DNA profile is approximately 340  
14 sextillion times more likely that Chad Simmons, Kimberly  
15 Cantwell, and two unidentified, unrelated individuals  
16 contributed to the mixture than if four unrelated,  
17 unidentified individuals contributed to the mixture.

18 Q. So in comparing four just random humans to the  
19 proposition that the four contributors include Chad and  
20 Kimberly, this is more likely by what amount?

21 A. 340 sextillion.

22 Q. And how many zeros is in sextillion? I'm not sure.

23 A. After the 340, it would be 22 zeros.

24 Q. Okay. Moving on to item -- SLED Item 4.61, describing  
25 the left-hand fingernail scrapings of Kimberly Cantwell,

1     could you describe the proposition set you used to analyze  
2     that item?

3     A.     So for this, because it is a fingernail scraping off of  
4     her body, I assume her as a contributor. And so the  
5     proposition sets for that comparison are Kimberly Cantwell  
6     and Chad Simmons contributed to the mixture versus Kimberly  
7     Cantwell and an unrelated, identified individual contributed  
8     to the mixture.

9     Q.     And what was the result of those propositions being  
10    compared?

11    A.     The DNA profile is approximately 100 million times more  
12    likely if Kimberly Cantwell and Chad Simmons contributed to  
13    the mixture than if Kimberly Cantwell and an unidentified,  
14    unrelated individual contributed to the mixture.

15    Q.     All right. So the idea that -- we assume Kimberly  
16    Cantwell's contribution because it's her fingernails.

17    A.     Correct.

18    Q.     But the idea that the other contributor is Chad Simmons  
19    is how much more likely again?

20    A.     The profile is approximately 100 million times more  
21    likely if Kimberly Cantwell and Chad Simmons contributed --

22    Q.     Okay.

23    A.     -- than if Kimberly and unidentified, unrelated  
24    individual contributed.

25    Q.     Was a similar proposition set scientifically presented

1 in 4.62, the fingernail scrapings from the other hand?

2 A. Yes.

3 Q. And what was the result of that comparison?

4 A. The DNA profile is approximately 150 octillion times  
5 more likely if Kimberly Cantwell and Chad Simmons contributed  
6 to the mixture than if Kimberly Cantwell and an unidentified,  
7 unrelated individual contributed to the mixture.

8 Q. And how many zeros is 150 octillion?

9 A. After the 150, it is 27 zeros.

10 Q. And finally, the swab from the bottle, SLED Item 6?

11 A. Do you want both proposition sets?

12 Q. Let's move on to proposition -- would you explain to the  
13 Court Proposition Set 2?

14 A. Okay. This profile was interpreted as a mixture between  
15 two individuals. And the result of the comparison for Chad  
16 Simmons is the DNA profile is approximately 10 billion times  
17 more likely if Chad and an unidentified, unrelated individual  
18 contributed to the mixture than if two unidentified,  
19 unrelated individuals contributed to the mixture.

20 Q. So I should point out you first determined that the DNA  
21 sample taken from the bottle was most likely two  
22 contributors?

23 A. It was interpreted as a mixture originating from two.

24 Q. And the comparison between if Chad Simmons was not one  
25 of those two people or was one of those people, the fact that

1 he was one of those two people is how much more likely?

2 A. The DNA profile is approximately 10 billion times more  
3 likely if Chad Simmons and an unidentified, unrelated  
4 individual contributed to the mixture than if two  
5 unidentified, unrelated individuals contributed to the  
6 mixture.

7 Q. Okay.

8 MR. SIMPSON: Thank you, Judge. I have no more  
9 questions on this point.

10 THE COURT: Mr. Daniels, any examination in-camera of  
11 Ms. Zapata?

12 MR. DANIELS: No, your Honor.

13 THE COURT: Okay. All right.

14 Okay. We're going to go ahead and take our break. I'm  
15 going to look at everything. We'll exercise our lunch break  
16 and start back at 1:30. If I can go ahead and get a copy of  
17 her report to review, then more than likely, I will make her  
18 report a Court's exhibit. It will not be in the record for  
19 the jury, but for the purposes of the record, a Court's  
20 exhibit I think would be important to do that.

21 MR. URICCHIO: Your Honor, would you like me to e-mail a  
22 copy to you and your law clerk, or would you --

23 THE COURT: I'd rather have just a hard copy if you've  
24 got an extra copy of it.

25 MR. SIMPSON: You can have my copy. It's got some

1 markings on it, but I just think it might even help you  
2 because I've just circled what we were talking about.

3 MR. DANIELS: I think I have a fresh copy.

4 THE COURT: Let him look at what you got and see if he's  
5 concerned about the markings.

6 MR. SIMPSON: He found a clean copy.

7 THE COURT: Okay. Thank you.

8 All right. So on this report, solicitors, if you would  
9 just point me to the correct page and number concerning the  
10 results on the three items, that just will kind of make it a  
11 little easier for me.

12 MR. SIMPSON: Certainly. Page 1 just contains  
13 descriptions of the known samples from the three individuals.  
14 We begin really at page 2, Item 3.1.

15 THE COURT: Okay.

16 MR. SIMPSON: The purpose of my examination of  
17 Ms. Zapata was on the top of page 3, which is Proposition  
18 Set 4.

19 THE COURT: All right. Okay. All right.

20 MR. SIMPSON: Moving on to page 4, down at the bottom,  
21 you'll see on the left-hand column is the item number,  
22 Item 4.61.

23 THE COURT: Right.

24 MR. SIMPSON: That's the left-hand fingernail scrapings.

25 THE COURT: Okay.

1           MR. SIMPSON: We focused on her proposition findings at  
2 the top of page 5 in regards to that.

3           THE COURT: Okay.

4           MR. SIMPSON: Directly under that is 4.62, which is the  
5 other hand, and the proposition findings there.

6           And then as to the olive-oil bottle, you will skip to  
7 page 7.

8           THE COURT: All right.

9           MR. SIMPSON: And what we -- and that's Item 6 there.

10          THE COURT: Uh-huh.

11          MR. SIMPSON: But what we've mainly focused on was  
12 Proposition Set 2, found at the top of page 8.

13          THE COURT: All right. Okay.

14          Okay. We'll be in recess until 1:30.

15          And again, my apologies to you, Ms. Zapata.

16          THE WITNESS: Okay. Thank you.

17          THE COURT: Okay. Thank you very much.

18          (Court recessed.)

19          (Court resumed outside the presence of the jury.)

20          THE COURT: Okay. We're on the record concerning the  
21 issue related to the DNA evidence. In making my ruling, I  
22 considered Ms. Zapata's testimony, her report, and arguments  
23 from counsel.

24          I want to note for the record as far as the defense  
25 objections, one, DNA evidence is cumulative to other evidence



1 in this case; two, DNA evidence should not come in under Rule  
2 702; three, DNA evidence is unfairly prejudicial more than  
3 being probative under 403. I recognize that the defendant's  
4 defense did not object to a liability of the DNA analysis nor  
5 on the basis that the State failed to lay a proper foundation  
6 and explanation for the analysis conducted by Ms. Zapata.

7 As to the issue of being cumulative, the Court finds  
8 that it's not cumulative, especially with respect to the tank  
9 top and the fingernail scrapings. I find that it's simply  
10 another piece of evidence that an assault occurred. As to  
11 the olive-oil cap, while arguably this may be cumulative to  
12 the fingerprint evidence, I find that it's just simply  
13 another piece of evidence to show that the defendant was in  
14 the home and may go towards his argument as far as being in  
15 the wrong house.

16 Under 702, I find that this evidence will assist the  
17 jury that Ms. Zapata is qualified. And even though  
18 reliability of her methods was not contested or is not  
19 contested, I find under *State versus Jones* reliability has  
20 been met.

21 And under the 403 argument, I find that the probative  
22 value of the evidence far outweighs any unfair prejudicial  
23 effect. I find no confusion of the issues, nothing to  
24 mislead the jury, no undue delay, and no waste of time. And  
25 again, I find that it is not cumulative.

1           Now, let me just make two observation points concerning  
2   the *Phillips* case, which the defense has relied on. I  
3   believe the *Phillips* case can be distinguished from our case  
4   on two primary points. One, our case deals with high  
5   probability. As far as -- I'm using the word "matching"  
6   although I know "matching" is not the correct term, but high  
7   probability in our case versus a very low probability in the  
8   *Phillips* case of the two pieces of DNA evidence was one out  
9   of 200 and one out of two, which certainly is very low.

10           And two, I feel like it's very important that in the  
11   *Phillips* case, it was noted that the State misstated certain  
12   things to the Court and jury and actually presented incorrect  
13   information, and Justice Few found that to be very important.  
14   In our case, nothing like that has happened. So I'm going to  
15   allow the DNA evidence, the three points, into evidence. And  
16   I will make Ms. Zapata's report a Court's exhibit, which I  
17   believe would be Number 1. So the record is complete with  
18   respect to her report.

19           (Court's Exhibit Number 1 admitted into evidence.)

20           THE COURT: So with that being said, if you'll just  
21   please indulge me for a few minutes so I can tend to my other  
22   matter that I have scheduled, and we can start back and  
23   proceed forward. Anything that you wish to put on the record  
24   with respect to my ruling or anything else before we bring  
25   the jury out, we can do that when I come back into the

1 courtroom. Okay?

2 Thank you very much. I appreciate your understanding.

3 (Court recessed.)

4 (Court resumed outside the presence of the jury.)

5 THE COURT: Okay. Let's bring the jury out, please.

6 Just stay right there, and then when we get the jury in,  
7 we can call you back to the stand.

8 THE WITNESS: Okay.

9 (The jury came into open court at 2:09 p.m.)

10 THE BAILIFF: All jurors are present and seated, your  
11 Honor.

12 THE COURT: Thank you, ma'am.

13 All right. Good afternoon, ladies and gentlemen. Let  
14 me explain to you the reason why we're not starting this  
15 afternoon's session until ten after. I had forgot that I had  
16 scheduled something unrelated to this case, something in my  
17 circuit, the Eighth Circuit, for 1:45, some video conferences  
18 with some lawyers. I had completely forgotten about that or  
19 I would have adjusted the time for you to report back. But  
20 since I forgot, then that's why you've been back there for a  
21 while. So I do apologize.

22 Ms. Zapata, you want to come back up to the stand,  
23 please, ma'am?

24 Solicitor, you can continue with your examination.

25 MR. SIMPSON: Thank you, your Honor.

1           Your Honor, if my memory is correct, when we left off, I  
2           had moved to qualify this witness as an expert in DNA  
3           forensic analysis. And I could be wrong, but I think the  
4           objection came simultaneously to that.

5           THE COURT: I think it did. And for purposes of the  
6           record in the presence of the jury, is there any examination  
7           that the defense wants to engage in with Ms. Zapata related  
8           to her qualifications to render certain opinions?

9           MR. DANIELS: No, your Honor.

10          THE COURT: Okay. Thank you.

11          All right. The Court will find that Ms. Zapata is an  
12          expert in the area of DNA analysis.

13          MR. SIMPSON: Thank you.

14                               RESUMED DIRECT EXAMINATION

15                               BY MR. SIMPSON:

16          Q.    Ms. Zapata, before we broke for lunch and those other  
17          matters, you had ID'd several pieces of evidence. Do you  
18          recall that?

19          A.    Yes.

20          Q.    And those were pieces of evidence that were later  
21          analyzed by you?

22          A.    Yes.

23          Q.    And again, just by way of a brief recap, DNA science has  
24          progressed to the point where we no longer sort of give  
25          simple yes/no answers; is that correct?

1 A. Correct.

2 Q. How are results now explained in DNA analysis?

3 A. So as I explained before, the statistic that we  
4 calculate now is called a likelihood ratio, and that is a  
5 comparison of two potential scenarios that could explain the  
6 DNA profile. And so the result will be in support of one of  
7 those over the other.

8 Q. Okay. And again, what we're doing when we're comparing  
9 things is taking known samples and comparing them to  
10 evidentiary items; is that correct?

11 A. Correct.

12 Q. And the known sample that you identified, the buccal  
13 swab from Dan Schwarz, do you recall that?

14 A. Yes.

15 Q. Buccal swab from Chad Simmons?

16 A. Yes.

17 Q. And a buccal swab from Kimberly Cantwell?

18 A. Yes.

19 Q. And those were the base known samples used to do your  
20 comparisons?

21 A. Yes, they were.

22 Q. And I want to -- do you have your report with you?

23 A. I do.

24 Q. Okay. And does that help you refresh your recollection  
25 of your results, looking at that report?

1 A. Yes.

2 Q. And how many DNA results would you approximate you do in  
3 a year's time?

4 A. Oh, gosh. Several hundred items of evidence, so as many  
5 comparisons as we're given within a case.

6 Q. Likely thousands --

7 A. Yes.

8 Q. -- and thousands?

9 A. Yeah.

10 Q. Okay. So if I could, let's start with Item 3.1. Remind  
11 the jury what SLED Item 3.1 is.

12 A. That was the swab from scraping underarms and collar of  
13 black tank top.

14 Q. Okay. And can you -- what you're doing is taking those  
15 swabs and comparing it to the three -- using the three knowns  
16 to produce proposition sets?

17 A. Yes.

18 Q. Can I draw your attention to Proposition Set 4 for that  
19 piece of evidence? Can you explain to me again what a  
20 proposition set is and then, specifically, what was the  
21 Proposition Set 4 for that piece of evidence and how did you  
22 get to that point?

23 A. Okay. So the proposition set is that setting up of the  
24 scenarios that I explained before. So the first part of that  
25 is saying how many individuals are in the mixture. And so

1 for Item 3.1, the DNA profile was interpreted as a mixture  
2 originating from four individuals. And so the first scenario  
3 is the person that's being compared and three unidentified,  
4 unrelated individuals versus four unidentified, unrelated  
5 individuals contributing to the mixture.

6 And so I will compare each person individually. And if  
7 the result of that comparison is in support of that being  
8 included and if multiple people are being included, then I  
9 will run that comparison together to make sure that the DNA  
10 given was right for potential contribution from all of those  
11 people who were included.

12 And so for Proposition Set 4, this is after I have run  
13 the individual comparison, so the person of interest and  
14 three unidentified, unrelated individuals versus four. And  
15 so for Proposition Set 4, it's Chad Simmons, Kimberly  
16 Cantwell, and two unidentified, unrelated individuals  
17 contributed to the mixture versus four unidentified,  
18 unrelated individuals contributed to the mixture.

19 And the result of that comparison is a DNA profile that  
20 is approximately 340 sextillion times more likely if Chad  
21 Simmons, Kimberly Cantwell, and two unidentified, unrelated  
22 individuals contributed to the mixture than if four  
23 unidentified, unrelated individuals contributed to the  
24 mixture.

25 Q. So you just stated a number that I doubt a lot of us are

1 familiar with, 340 sextillion. That's 340 and how many zeros  
2 behind the 340?

3 A. Twenty-one.

4 Q. So it's 340 and 21 zeros to get 340 sextillion, right?

5 A. Yes.

6 Q. Okay. And so if I understand you correctly, you have an  
7 idea here --

8 A. Mm-hmm.

9 Q. -- that four people unknown generated that DNA?

10 A. Mm-hmm.

11 Q. That's one idea. And then an idea here that Kimberly  
12 Cantwell and Chad Simmons are two of the four?

13 A. Right. Chad Simmons, Kimberly Cantwell, and two  
14 unidentified.

15 Q. And so we're finding that the chance that this is true  
16 are 340 and 29 zeros more likely than this is true?

17 A. Twenty-one zeros.

18 Q. Twenty-one zeros. Sorry.

19 A. It's in support of that Proposition 4.

20 Q. Okay. Thank you. Moving on now to what's been referred  
21 to as SLED Item 4.6.1, if you could, remind the jury what  
22 that item is.

23 A. This is the left-hand fingernail scrapings from Kimberly  
24 Cantwell.

25 Q. The scrapings from under her fingernails?



1 A. Yes.

2 Q. Okay. And again, talk about your proposition set that  
3 you proposed scientifically with that piece of evidence and  
4 your results of that.

5 A. For this item, the DNA profile was interpreted as a  
6 mixture originating from two individuals. And because we  
7 know it's an item coming off of her body, we can clearly see  
8 her DNA profile in that mixture. We are assuming her DNA  
9 into the mixture.

10 And so the proposition sets for this are slightly  
11 different because it's Kimberly Cantwell and Chad Simmons  
12 contributed to the mixture versus Kimberly Cantwell and an  
13 unidentified, unrelated individual contributed to the  
14 mixture. And the result of that comparison is -- the DNA  
15 profile is approximately 100 million times more likely if  
16 Kimberly Cantwell and Chad Simmons contributed to the mixture  
17 than if Kimberly Cantwell and an unidentified, unrelated  
18 individual contradicted to the mixture.

19 Q. So again, Kim and somebody we don't know versus Kim and  
20 Chad Simmons. And a more fathomable number here, but still  
21 very high. What's the chances of Kim and Chad?

22 A. The profile is approximately 100 million times more  
23 likely if Kimberly and Chad contributed to the mixture than  
24 if Kimberly and an unidentified, unrelated individual  
25 contributed.

1 Q. Was the same breakdown and analysis done from the  
2 fingernail scrapings from the opposite hand?

3 A. Yes.

4 Q. So what were the same -- what were the results from the  
5 other hand?

6 A. So just like with the other item, the profile was  
7 interpreted as a mixture originating from two individuals,  
8 with Kimberly Cantwell contributing to the mixture. So our  
9 two scenarios are Kimberly Cantwell and Chad Simmons  
10 contributed to the mixture versus Kimberly Cantwell and an  
11 unidentified, unrelated individual contributed to the  
12 mixture.

13 And the DNA profile is approximately 150 octillion times  
14 more likely if Kimberly Cantwell and Chad Simmons contributed  
15 to the mixture than if Kimberly Cantwell and an unidentified,  
16 unrelated individual contributed to the mixture.

17 Q. And what is an octillion?

18 A. So after the 150, there are 27 zeros.

19 Q. Moving on to what your agency marked as SLED Item 6, can  
20 you identify and again remind the jury what SLED Item 6 is?

21 A. Item 6 were swabs from a bottle.

22 Q. Okay. And did you -- can you explain your proposition  
23 sets that you used for that piece of evidence, with a  
24 particular focus on Proposition Set 2?

25 A. This profile was interpreted as a mixture originating

1 from two individuals. And so Proposition Set 2 is a  
2 comparison to Chad Simmons. And so the proposition sets for  
3 that are Chad Simmons and an unidentified, unrelated  
4 individual contributed to the mixture versus two  
5 unidentified, unrelated individuals contributed to the  
6 mixture.

7 And the DNA profile is approximately 10 billion times  
8 more likely if Chad Simmons and an unidentified, unrelated  
9 individual contributed to the mixture than if two  
10 unidentified, unrelated individuals contributed to the  
11 mixture.

12 Q. That was 10 billion times more likely that Chad Simmons  
13 was one of the two contributors to that DNA sample?

14 A. The DNA profile is approximately 10 billion times more  
15 likely if Chad Simmons and an unidentified, unrelated  
16 individual contributed to the mixture than if two  
17 unidentified, unrelated individuals contributed to the  
18 mixture.

19 Q. Thank you.

20 MR. SIMPSON: Your Honor, at this time, the State would  
21 seek to move into evidence State's 50 and 51 under the  
22 conditional admissibility discussed off the record, your  
23 Honor.

24 THE COURT: Okay.

25 MR. SIMPSON: We're also going to move in now -- would

1     you like me to list the names of these items?

2             THE COURT:   Yes.

3             MR. SIMPSON:   State's 50 would be buccal swab from Chad  
4     Simmons; 51, buccal swab from Dan Schwarz.  Those are being  
5     -- we're seeking to conditionally admit those.  And we're  
6     seeking to admit into evidence 49, the buccal swab from  
7     Kimberly Cantwell; 52, the scrapings from the black tank top;  
8     53, the scrapings from Kimberly Cantwell's fingernails; 54,  
9     the swabs from the cap of the olive-oil bottle; and 38 is the  
10    sexual-assault kit of Kimberly Cantwell containing two of  
11    those other items.

12            THE COURT:   Okay.  All right.  Other than what's already  
13    been noted on the record, does the defense have any  
14    additional objections to one, two, three, four, five -- seven  
15    exhibits that were previously marked for ID only now coming  
16    into evidence?

17            MR. DANIELS:   No new objections.

18            THE COURT:   All right.  Thank you.

19            All right.  50, 51, 49, 52, 53, 54, 38 into evidence for  
20    the State.

21            (State's Exhibits Numbers 38, 49, 50, 51, 52, 53, and 54  
22    admitted into evidence.)

23            MR. SIMPSON:   Thank you.  Please answer any questions  
24    the defense has for you, Ms. Zapata.

25            THE COURT:   If you'll just hold that just one second.

1 I'm just marking off my list to make sure it's correct,  
2 please.

3 Okay. Mr. Daniels, you may proceed with your  
4 cross-examination.

5 CROSS-EXAMINATION

6 BY MR. DANIELS:

7 Q. You received a lot of materials for SLED to analyze,  
8 correct? More than just those admitted?

9 A. Yes.

10 Q. Okay. And one of those items was SLED Item 4.1?

11 A. 4.1? Yes.

12 Q. And what is that?

13 A. Those were vaginal swabs.

14 Q. Of Ms. Cantwell?

15 A. Yes.

16 Q. And there was no male DNA found on those swabs, correct?

17 A. The DNA profile developed is attributable to Kimberly  
18 Cantwell.

19 Q. So just her? No other contributors?

20 A. Correct.

21 Q. Okay. And you would have found if there was another  
22 contributor in your analysis? That's what the report is  
23 showing?

24 A. Correct.

25 Q. All right. And on that black tank top, you identified a

1 profile that was also Mr. Simmons?

2 A. On Item 3.1?

3 Q. Yes.

4 A. Yes. Well, he was included as a contributor.

5 MR. DANIELS: No further questions.

6 THE COURT: Okay. Anything in redirect, Solicitor?

7 MR. SIMPSON: No, your Honor.

8 THE COURT: Okay. You can step down, Ms. Zapata. You  
9 are free to leave the courthouse, and you're certainly more  
10 than welcome to remain with us if you'd like to.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 THE COURT: All right. Next witness, Solicitor.

14 MR. SIMPSON: Thank you, your Honor. It is with our  
15 next witness that I believe we have a brief legal matter  
16 that --

17 THE COURT: Okay.

18 MR. SIMPSON: -- might be more efficient to take up  
19 before the testimony.

20 THE COURT: All right. We can certainly accommodate you  
21 on that.

22 Ladies and gentlemen, if you'll go back to the jury  
23 room. I made a joke to one of our bailiffs earlier; you're  
24 going to thank me for all the walking you're doing in the  
25 hallway because you're going to get a lot of exercise. And

1 maybe that will take care of some of the candy that I  
2 understand some of you may have been eating. So you may  
3 thank me for all of this.

4 (The jury exited open court at 2:25 p.m.)

5 (The following proceedings were had outside the presence  
6 of the jury.)

7 THE COURT: Okay, Solicitor. What do you anticipate is  
8 going to be objected to?

9 MR. SIMPSON: Thank you, your Honor. Our next witness  
10 is an individual named Jermaine Blake, and he is alleged to  
11 have spent some time the evening of this assault with  
12 Mr. Simmons, earlier in the evening. He's going to  
13 discuss --

14 THE COURT: What's his name?

15 MR. SIMPSON: Jermaine Blake.

16 THE COURT: Jermaine Blake?

17 MR. SIMPSON: Yeah.

18 THE COURT: All right. I do not see his name on either  
19 witness list. Am I overlooking it?

20 MR. SIMPSON: Uh --

21 THE COURT: No, I've got him. He's on there, the 25  
22 spot. I'm sorry.

23 MR. SIMPSON: Well, that's just a minor heart attack.

24 He is a -- to put this in a little more context, he's  
25 been sitting here all day. He might make more narrative

1 sense after the testimony of Elizabeth Wolfson, who took the  
2 statement of the defendant.

3 THE COURT: Right.

4 MR. SIMPSON: In the defendant's statement, which we  
5 anticipate we'll be -- portions of it we'll be seeing today,  
6 the defendant talks about spending a night out -- that night  
7 out on King Street hanging out with friends and people that  
8 he knows, consuming alcohol, and proposes the theory of the  
9 case that perhaps an individual named Jermaine or Jay, whom  
10 he identifies as this witness, could have drugged him that  
11 night. Okay?

12 So primarily this witness is going to deny any sort of  
13 drugging of the defendant whatsoever. But also, I think  
14 relevant to this case, he's going to testify to what I'm  
15 certainly going to categorize as the intake, by himself and  
16 Mr. Simmons, that night of an incredibly large amount of  
17 alcohol, which, of course, is legal and I don't see any  
18 objectionable legal challenges to that. But he also informed  
19 us today that he witnessed Mr. Simmons also using marijuana  
20 that evening.

21 Because marijuana is a crime, we anticipated a sort of  
22 other-bad-acts objection from the defense, and I'm happy to  
23 address that. And then anticipating that, I let them know,  
24 and I appreciate that they told me, "Yeah, that would be  
25 something we would find objectionable." So I thought if it



1     could be taken up now, we could just know the ground rules  
2     before we call this witness.

3           THE COURT:   Right.  Well, I mean, I'm certainly not  
4     trying to tell you nor the defense how to try your case.  
5     Y'all are doing an excellent job.  But with that, it would  
6     seem like to me he would be more of a rebuttal witness,  
7     depending upon specifically -- even though they've  
8     acknowledged that they're going to put that up as a defense,  
9     it would seem like, to me, that you would want to call  
10    Mr. Blake as a rebuttal witness.

11          MR. SIMPSON:  Well, your Honor, the idea that he may  
12    have -- or the idea or defense that he may have drugged  
13    Mr. Simmons is brought up by Mr. Simmons himself in the  
14    context of his interview.

15          THE COURT:  Right.

16          MR. SIMPSON:  So it's going to be talked about.

17          THE COURT:  And I think Ms. Ford alluded to that in her  
18    opening too, to some extent.

19          MR. SIMPSON:  And I'll be honest, you know, even though  
20    I agree with you and I think that that might be, again, where  
21    he might make more narrative sense, I'm simply calling him  
22    now to be a courteous person.  The guy's been sitting here  
23    all day.

24          THE COURT:  Yeah.  Yeah.

25          MR. SIMPSON:  I want to get him out and not make him

1     come back here another day.

2             THE COURT:   And not that you want to strike the first  
3     blow or anything like that.

4             MR. SIMPSON:  Oh, no.

5             THE COURT:  All right.  So does the defense have any  
6     objection to what the State intends to do with Mr. Blake?  
7     And certainly, you have the right and you reserve the right  
8     to make any objections during his testimony.  But since you  
9     have a general idea of the purpose and nature of calling  
10    Mr. Blake as a witness, do you anticipate any -- or do you  
11    have any objections now, understanding that you can object at  
12    any time?

13            MS. FORD:  Your Honor, just that, well, Mr. Blake never  
14    gave a statement to police.  My office did talk to him at  
15    some point.  My understanding is that, as far as I know,  
16    nobody from the State talked to him until recently.

17            THE COURT:  Right.

18            MS. FORD:  So he's providing information from four years  
19    ago.  So we have -- even though I obviously will bring that  
20    up in my --

21            THE COURT:  Sure.

22            MS. FORD:  -- cross-examination of him --

23            THE COURT:  Okay.

24            MS. FORD:  -- and the length of time, what we would  
25    argue is that it may depend how he testifies how the impact

1 of marijuana. Marijuana is not a drug that would typically  
2 cause any kind of activity that is alleged in this case. And  
3 so because of that, we think it is not relevant and would be  
4 more prejudicial than probative. And we would go with that.

5 THE COURT: All right. Solicitor?

6 MR. SIMPSON: Thank you.

7 What -- and I'm sorry, the name escapes me, but it's  
8 Judge Ralph Anderson wrote a very lengthy opinion on prior  
9 bad acts and an exception of prior bad acts. In other words,  
10 if a bad act is such a part of the telling of a story of a  
11 case, it's admissible, you know, despite the normal  
12 prohibition on a separate bad act.

13 I mean, I'll note, for whatever it's worth, I don't  
14 think people really these days interpret the use of marijuana  
15 as a particularly heinous thing to do. It's much more  
16 acceptable today than it used to be. But that's neither here  
17 nor there. I don't think it's the type of act that a jury  
18 would draw a huge amount of prejudice from. I just bring it  
19 up because it is technically still illegal.

20 Why it is relevant, though -- and that's the more  
21 important point that Ms. Ford makes -- as your Honor knows,  
22 voluntary intoxication is not a defense to a crime. And what  
23 we're going to have in this case, I anticipate, is testimony  
24 largely uncontested that the level of intoxication played a  
25 role in Mr. Simmons' actions that night. And the question

1     that's going to come before the jury is, Was that a level of  
2     intoxication that might, you know, make a person act what may  
3     be out of character? Was that brought on by himself becoming  
4     voluntarily intoxicated or intoxicated by another?

5             So the fact that -- you know, I might be making a  
6     mountain out of a molehill. And if we don't get it in, we  
7     don't get it in. But the fact that he was very intoxicated  
8     that night, both from the amount of alcohol he consumed and  
9     any other substances, is something relevant, I think, in this  
10    case for the jury to know about. And marijuana, you know,  
11    often works in conjunction with alcohol to heighten that  
12    degree of intoxication.

13            THE COURT: Okay. Well, I think he can testify that  
14    there was alcohol consumption and marijuana consumption, and  
15    then he can also be asked under direct or cross, "Okay. What  
16    did you observe about Mr. Simmons after the consumption took  
17    place?" I don't know what he's going to say. He might say  
18    that he was, you know, acting crazy and terrible and out of  
19    his head and all that, or he could say, you know, he really  
20    seemed to be fine, didn't seem to affect him. So I think  
21    it's permissible in that it just goes to whatever weight the  
22    jury wishes to make of it.

23            And certainly, on cross you can certainly get Mr. Blake  
24    to acknowledge that he's not a chemist and he's not qualified  
25    to testify as to the effects of certain substances on

1 someone. But I think, you know, if he testifies as to his  
2 observations and then let the jury make whatever  
3 determination they want to make from that testimony. So I'll  
4 certainly allow it but give both the State and the defense  
5 wide latitude to conduct appropriate examination of  
6 Mr. Blake.

7 MR. SIMPSON: Thank you, your Honor.

8 THE COURT: And of course -- this is just an  
9 observation, purely an observation. You know, this might  
10 even go to the advantage of the defense because they get, you  
11 know, a right in their case to rebut whatever they feel like  
12 they need to rebut from Mr. Blake, as opposed to the State  
13 waiting to call him as a rebuttal witness and then, you know,  
14 they're kind of stuck with whatever he says. So this may go  
15 to the defendant's advantage. Purely an observation. Not  
16 any sort of ruling or otherwise.

17 MR. SIMPSON: My blunder is noted, your Honor.

18 THE COURT: What?

19 MR. SIMPSON: I said my blunder is noted.

20 THE COURT: All right. Let's bring the jury out.

21 (The jury came into open court at 2:37 p.m.)

22 THE BAILIFF: All jurors are present and seated, your  
23 Honor.

24 THE COURT: Thank you, ma'am.

25 Solicitor, you may call your next witness.

1           MR. SIMPSON: Thank you, your Honor. The State calls  
2 Jermaine Blake.

3           CLERK OF THE COURT: Can you raise your right hand, left  
4 hand on the Bible, please?

5           (Witness sworn.)

6           CLERK OF THE COURT: You may have a seat.

7           Please state your name for the record and spell your  
8 last name.

9           THE WITNESS: Jermaine Blake, B-L-A-K-E.

10          THE COURT: Be sure and sit close to the microphone,  
11 Mr. Blake. Okay? Thank you, sir.

12          THE WITNESS: Okay.

13                       JERMAINE BLAKE,  
14 called as a witness on behalf of the State, being first duly  
15 sworn, was examined and testified as follows:

16                       DIRECT EXAMINATION

17                       BY MR. SIMPSON:

18 Q.    Mr. Blake, good afternoon.

19 A.    How you doing?

20 Q.    Doing well. You've been with us for a long time today?

21 A.    Yes. Yeah.

22 Q.    And been waiting around?

23 A.    Yeah.

24 Q.    I appreciate that. Thank you so much.

25 A.    That's okay.

1 Q. How old are you?

2 A. Forty.

3 Q. Forty? And where do you live?

4 A. Downtown Charleston area.

5 Q. Okay. And how long have you lived in Charleston?

6 A. Practically all my life.

7 Q. Okay. Did you grow up here?

8 A. Yes, sir.

9 Q. Yeah? Did you attend school here?

10 A. Yes.

11 Q. Okay. What sort of work do you do?

12 A. Now?

13 Q. Yeah.

14 A. Well, I work customer service.

15 Q. Okay. Now, what -- and you don't have to go into every  
16 detail. It's not a job application. But what about your  
17 work history? Just sort of an outline of what you've done as  
18 an occupation most of your adult life.

19 A. Bartended, management, mostly hospitality.

20 Q. Okay. Did you ever work in an Applebee's?

21 A. Yes.

22 Q. And go ahead and -- you know why you're here today,  
23 right?

24 A. Yeah.

25 Q. Okay. You know this individual seated here?

1 A. Yes.

2 Q. And who's that?

3 A. Chad Simmons.

4 Q. Okay. And how did you meet Mr. Simmons?

5 A. Work. Applebee's from West Ashley to North Charleston.

6 Q. So it was while you were working at Applebee's --

7 A. Mm-hmm.

8 Q. -- that you met him?

9 A. Yes.

10 Q. Okay. Did you ever spend any time hanging out with  
11 Mr. Simmons socially?

12 A. No, not really. Mostly at work or just, like, when  
13 Applebee's closed. And I think there was a couple times  
14 after Applebee's we went out.

15 Q. Okay. And when you say "went out," what do you mean?

16 A. Like a group, like some friends of his and our  
17 coworkers.

18 Q. Okay.

19 A. We all went out.

20 Q. Did there come a time in September of 2018, like a  
21 specific night you remember going out?

22 A. Yes. We went to Juanita Greenberg's. We hang there  
23 for, like, approximately two hours. We went there, then we  
24 went across the street to JohnKing.

25 Q. Okay. And this is in sort of that King Street bar area?



1 A. Yes. They're right across the street from each other.

2 Q. Okay. And I want to talk about --

3 A. That night?

4 Q. I want to talk a little bit about that night.

5 A. That's fine.

6 Q. Is that okay?

7 A. Yes.

8 Q. Okay. And again, none of my questions asked are meant  
9 to pass judgment. I consume alcohol too. But were you guys  
10 consuming alcohol that night?

11 A. Yes.

12 Q. Were any shots taken?

13 A. Several.

14 Q. Okay. Several shots taken. Did you buy some shots?

15 A. Yes.

16 Q. Did other people buy some shots?

17 A. Yes, sir.

18 Q. Okay. And "shots," I sound stupid, but what --

19 A. Like tequila, Grand Marnier, Long Island iced tea, green  
20 tea, blue motorcycles.

21 Q. Okay. All right. What are you doing this weekend? No,  
22 I'm just kidding.

23 So taking a lot of -- is it fair to say that a lot of  
24 alcohol was being consumed?

25 A. Yes, sir.

1 Q. Was Mr. Simmons part of that group?

2 A. Yes.

3 Q. Was he taking part in that consumption of alcohol that  
4 you've already referred to?

5 A. Mm-hmm.

6 Q. Were these shots being taken -- you know, a lot of times  
7 you'll take shots in sort of a group, where everybody takes  
8 one?

9 A. Mm-hmm. Yes.

10 Q. Was that how it was? I mean, this wasn't just you  
11 alone, right?

12 A. I could possibly say it was like six to seven of us.

13 Q. Okay.

14 A. Yeah.

15 Q. And were y'all taking these shots in sort of rounds as a  
16 group?

17 A. Yes.

18 Q. And was Mr. Simmons part of that group?

19 A. Yes, sir.

20 Q. And were people consuming alcohol separate and apart  
21 from the shots?

22 A. They probably had like Budweiser or Heinekens or Coronas  
23 possibly.

24 Q. Okay. So yeah, the people --

25 A. Everyone buying a round, you know.

1 Q. But also drinking their own drinks --

2 A. Mm-hmm.

3 Q. -- at the same time?

4 A. And the bartender letting us go off separate getting  
5 enough drinks.

6 Q. Okay. So is it fair to say everybody's getting pretty  
7 intoxicated that night?

8 A. I would say not really.

9 Q. Oh, do you -- my question is, do you feel like as you  
10 sit here today, you have a pretty clear recollection of that  
11 evening?

12 A. Yes, I do.

13 Q. Okay. And again, I don't ask you this question at all  
14 to pry into your personal life.

15 A. Yes, sir. Ask your question.

16 Q. Was an individual hanging out with you that night, not  
17 Mr. Simmons, that you were interested in romantically?

18 A. My boyfriend was there.

19 Q. Thank you. I didn't want to call it the wrong thing.

20 A. I don't care. Just ask the questions.

21 Q. Okay. But you were with your boyfriend that night?

22 A. Mm-hmm.

23 Q. He was one of the other people?

24 A. He was actually working. He just came prior to me  
25 coming home. He was working at JohnKing.

1 Q. Okay. Did you ultimately leave that night from that  
2 group?

3 A. We all was together. There was some that went outside  
4 sometimes to smoke. I always stick to the bar, so I was just  
5 like back and forth. I would head outside to the back patio  
6 like that. And I would go from the bar inside and hanging in  
7 the back patio.

8 Q. Okay. And when you say "hanging in the back patio," are  
9 you talking about Juanita's now?

10 A. Yeah, Juanita's. Yes.

11 Q. And Juanita's has a front bar?

12 A. A front bar and a back bar and the patio that went to  
13 the side and they smoke or do whatever they want to do,  
14 staying close to socialize with the group.

15 Q. Okay. You mentioned "smoke." Now, anybody in your  
16 group that night smoking cigarettes?

17 A. Yes.

18 Q. Anybody in your group that night smoking marijuana?

19 A. Yes.

20 Q. Did you observe personally Mr. Simmons ingest any  
21 marijuana that evening?

22 A. Truthfully, yes and no. Because you can smell it. It  
23 has a smell, you know?

24 Q. Okay.

25 A. I would say that he'd been outside in a group with

1 everybody. Okay? I would not say that he was smoking. You  
2 understand?

3 Q. Okay. So maybe with the group, but you don't know  
4 exactly --

5 A. Yes.

6 Q. -- if he was smoking or not; is that fair?

7 A. (Indicated.)

8 Q. Okay. You mentioned the night starts at Juanita's and  
9 you mentioned moving to a second location. Where was that?

10 A. Right across the street.

11 Q. Okay. And what's right across the street from  
12 Juanita's?

13 A. JohnKing. It was called Joe Pasta before.

14 Q. Okay. And does that have sort of -- does that have an  
15 upstairs?

16 A. Upstairs, downstairs. Two bars: one down, one up.  
17 Open patio outside -- an open patio with the windows open.

18 Q. And did consumption of alcohol continue across the  
19 street at JohnKing?

20 A. No.

21 Q. It didn't? Not for you?

22 A. I just had a frose.

23 Q. Okay. You had a frose at JohnKing?

24 A. Yes. Yes.

25 Q. And then did you call it a night after JohnKing?

1 A. They called it a night.

2 Q. Okay. Did you leave Mr. Simmons at some point after  
3 JohnKing?

4 A. Yes, because he was parked, like, four spots down from  
5 JohnKing.

6 Q. Okay. And did you go home?

7 A. No.

8 Q. Okay. Where did you go that night?

9 A. I still was downtown because they left about quarter to  
10 12:00, probably.

11 Q. Okay.

12 A. Yes.

13 Q. Gotcha. Were you ever spoken to by the public  
14 defender's office about this case? By a representative of  
15 the public defender's office?

16 A. You mean prior to today?

17 Q. Prior to today.

18 A. Today -- before?

19 Q. Yes.

20 A. Right. There was another time that they called me, and  
21 they called to say that the case was -- well, somebody called  
22 me.

23 Q. Okay. So they have talked to you about this before?

24 A. Mm-hmm.

25 Q. Okay. Mr. Blake, again, I'm going to preface this with

1 saying don't take any offense. I've got to ask these  
2 questions.

3 A. That's fine. That's fine.

4 Q. Back on this night we're talking about, were you in  
5 possession of any sort of date-rape drug or anything like  
6 that?

7 A. No.

8 Q. Okay.

9 A. That's not my personality. That's not me.

10 Q. Okay. Have you ever been in possession of any sort of  
11 narcotic that would render someone listless, asleep,  
12 lethargic, etc.?

13 A. No.

14 Q. Okay. You were with your boyfriend that night, right?

15 A. Yes.

16 Q. I'm just going to ask you straight up. And you know,  
17 and I appreciate you making eye contact. You're talking to  
18 me, but we're really addressing them --

19 A. Oh, I'm sorry.

20 Q. -- when I ask this question.

21 A. So I address them and not you?

22 Q. No, no. I'm just, for this question.

23 A. Oh, okay.

24 Q. Did you drug Mr. Simmons that night?

25 A. No. No, sir. No, ma'am.

1 Q. Okay. And when was it you learned that that was being  
2 suggested?

3 A. I hear it because I know he had a girlfriend that just  
4 had --

5 Q. Okay. Not talking about what anybody --

6 A. Oh, okay.

7 Q. This is my fault. I phrased that badly.

8 A. Okay.

9 Q. Okay. How about this: When the public defender's  
10 office talked to you, did they tell you, "Hey, you're being  
11 accused of drugging Chad Simmons"?

12 A. Not the first time.

13 Q. Okay.

14 A. But this time they said it to me.

15 Q. Okay.

16 A. Because I guess that -- it was a lady first that came to  
17 me. Then Chad came to me.

18 Q. Chuck?

19 A. Oh, yeah. Chuck, yeah.

20 Q. I don't mean to correct you, but could it be Chuck?

21 A. Huh?

22 Q. Could it have been Chuck, the second person that talked  
23 to you?

24 A. You mean the one that came before Thanksgiving and gave  
25 me the paper?



1 Q. Oh, I'm sorry. I think I'm being confusing here. Go  
2 ahead and answer the question. Sorry.

3 A member of the public defender talked to you the first  
4 time?

5 A. Yes.

6 Q. And then somebody else talked to you the second time?

7 A. The second time, after, just to tell me about this case  
8 now, just this week --

9 Q. Okay.

10 A. -- that I got papers on.

11 Q. And that was Chad?

12 A. I believe that's his name.

13 Q. Yeah.

14 A. Okay.

15 Q. That was me.

16 A. Okay.

17 Q. And it was that second time was the first time that you  
18 were told officially that you were being --

19 A. The first time, it was just like seeing some pictures.  
20 But like, you actually came to me and said to me -- because I  
21 was talking to you, just, like, actually, what's going on?  
22 Why is this happening? You understand?

23 Q. Okay. And how did that make you feel to learn that you  
24 were --

25 MS. FORD: Objection. Relevance.

1 THE COURT: Sustained.

2 MR. SIMPSON: Okay. The Court's indulgence?

3 THE COURT: Sure.

4 (Mr. Simpson conferred with co-counsel.)

5 MR. SIMPSON: Mr. Blake, thank you for your patience  
6 today and waiting around for us. Please answer any questions  
7 the defense may have for you.

8 THE COURT: All right. Anything by the defense?

9 MS. FORD: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MS. FORD:

12 Q. Hi, Jermaine.

13 A. Hey.

14 Q. You remember me?

15 A. Yes. You was the first one I talked to.

16 Q. Jermaine, we're talking about a night from 2018?

17 A. Yes.

18 Q. And that was four years ago?

19 A. Mm-hmm.

20 Q. Okay.

21 THE COURT: You need to verbally answer.

22 THE WITNESS: Yes, ma'am. Yes.

23 BY MS. FORD:

24 Q. So no one -- the police did not come speak to you after  
25 that evening?

1 A. No.

2 Q. You didn't even know about Chad being charged for a few  
3 months?

4 A. That's right. Yes.

5 Q. The first time anyone came to speak to you about this  
6 case was my office earlier this year?

7 A. Couple of months ago. Like, two months ago, I believe.

8 Q. So the State didn't come talk to you until just  
9 recently, before Thanksgiving?

10 A. Yes.

11 Q. Okay. But police never came to talk to you?

12 A. The guy in the blue suit behind you?

13 Q. Okay. He's with the solicitor's office.

14 A. Okay. Yeah.

15 Q. But back in 2018, no one got a statement from you --

16 A. No.

17 Q. -- documenting what you remembered from that evening at  
18 the time, correct?

19 A. No, ma'am. No, ma'am. Nobody got a statement.

20 Q. And in the past four years between the time of the  
21 incident, or the night y'all went out --

22 A. Mm-hmm.

23 Q. -- and the time you started talking to people, at no  
24 time did you record or document what you remembered, correct?

25 A. No, ma'am.

1 Q. And you mentioned it briefly, but I just want to make  
2 sure. It's your recollection that Chad left the bars at  
3 about midnight?

4 A. It could have been around midnight. Yes, ma'am.

5 Q. Okay. And you also remember him leaving in a pickup  
6 truck, right?

7 A. Yes.

8 Q. Okay. And you told us about y'all drinking that  
9 evening. But you don't even recall noticing that Chad was  
10 drunk or anything, correct?

11 A. No.

12 Q. So and when you saw him, he wasn't even acting strange?

13 A. No, ma'am.

14 Q. And the solicitor asked you about purchasing alcohol.  
15 Did you purchase alcohol for Chad?

16 A. For everyone.

17 Q. For everyone?

18 A. As a shot as a group. We were all buying rounds.

19 Q. Okay. Did you buy Chad a lot of drinks that evening?

20 A. Everyone had drinks, so everyone had rounds. So I can't  
21 say that I personally bought him. I brought everyone. I can  
22 say that I bought three rounds.

23 Q. Okay. And you were telling us about some drinks --

24 A. Yes.

25 Q. -- the type of drinks that y'all were drinking. You

1     remembered tequila?

2     A.     Tequila, Rumple Minze, Fireball, stuff like that.

3     Q.     So you remember all of the different drinks?

4     A.     Yes, everything.

5     Q.     Okay. And you have primarily worked in the food and bev  
6     business, right?

7     A.     Yes, ma'am.

8     Q.     Is it fair to say you've had a lot of nights drinking,  
9     going out and drinking with your friends --

10    A.     Yes.

11    Q.     -- and everyone?

12    A.     Well, this was different, you know, because Applebee's  
13    just had closed. Probably I would say a month later or two  
14    we all decided to hook up and we went out.

15    Q.     Okay. And so you actually -- you met Chad in 2014; does  
16    that sound right?

17    A.     That possibly could be right.

18    Q.     Okay. And y'all, again, worked at several different  
19    Applebee's together?

20    A.     Several different Applebee's, yes. And he had drinks  
21    with me before at the bar. He come to the bar where we was  
22    working and come back and said he wanted something to drink  
23    so I would just give it to him.

24    Q.     Okay. So you had been around Chad before while he was  
25    drinking?

1 A. Yes, ma'am.

2 Q. And in that four years between the time you met him and  
3 the time of this evening we're talking about, when drinking,  
4 you had never seen him violent?

5 A. No.

6 Q. Okay. And Chad would -- is it fair to say he was kind  
7 of a ladies' man?

8 A. Yes.

9 Q. He would like flirting with the ladies?

10 A. Mm-hmm.

11 Q. And Chad was always a gentleman towards them?

12 A. Yes.

13 Q. He was kind?

14 A. Yes.

15 Q. And in your experience, he would never want to hurt  
16 anyone?

17 A. No. I don't believe he would hurt anyone.

18 MS. FORD: Beg the Court's indulgence?

19 THE COURT: Sure.

20 (Ms. Ford conferred with co-counsel and their client.)

21 MS. FORD: No further questions.

22 THE COURT: Anything on redirect?

23 MR. SIMPSON: Just briefly, your Honor.

24

25

## 1 REDIRECT EXAMINATION

2 BY MR. SIMPSON:

3 Q. Mr. Blake, you didn't make Chad take any of those shots,  
4 did you?

5 A. No.

6 Q. Okay. He participated willingly in the --

7 A. Yes.

8 Q. -- festivities that evening?

9 A. Yes.

10 Q. You just testified that Mr. Blake (verbatim) would never  
11 hurt anybody?

12 A. Yes.

13 Q. Okay. Isn't falsely accusing a friend of drugging him a  
14 way of hurting someone?

15 A. Yes.

16 Q. Have you ever drugged anybody against their will in your  
17 life?

18 A. No.

19 MR. SIMPSON: Nothing further, your Honor.

20 THE COURT: Any recross?

21 MS. FORD: No, your Honor.

22 THE COURT: You can step down, sir. Thank you.

23 THE WITNESS: Okay.

24 THE COURT: You're free to leave the courthouse, and  
25 you're more than welcome to remain with us.

1 (Witness excused.)

2 THE COURT: All right, Solicitor.

3 MR. SIMPSON: Thank you, your Honor. The State would  
4 call Sergeant Elizabeth Wolfesen.

5 (Witness sworn.)

6 CLERK OF THE COURT: You may have a seat.

7 Please state your name for the record and spell your  
8 last name.

9 THE WITNESS: Elizabeth Wolfesen, W-O-L-F-S-E-N.

10 ELIZABETH WOLFSEN,  
11 called as a witness on behalf of the State, being first duly  
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SIMPSON:

15 Q. It's Sergeant Wolfesen currently, right?

16 A. Yes, sir.

17 Q. And what agency are you with, Sergeant Wolfesen?

18 A. Charleston Police Department.

19 Q. And could you explain to the jury a little bit about  
20 your educational background before you joined the police  
21 force?

22 A. Sure. I did my undergraduate degree, a bachelor's in  
23 criminal justice and psychology, at Charleston Southern  
24 University. I then went on to do my master's degree, which  
25 is in social science, as well as a graduate certificate in



1 leadership from the Citadel.

2 Q. Okay. And following that education, did you then go  
3 into law enforcement?

4 A. Yes. I joined the police department in 2010. I  
5 graduated from the Criminal Justice Academy that year.

6 Q. Okay. And if you could, recount some of your work  
7 history with the Charleston Police Department for the jury.

8 A. Originally, I worked in a patrol division downtown,  
9 primarily above Calhoun Street on the peninsula. I worked  
10 there until about 2015. I started doing kind of low-level  
11 investigations in that same geographical area until about  
12 2016. At that point, I joined the field intelligence unit,  
13 which essentially operates as an undercover unit, gathering  
14 intelligence, assisting in investigations, and things of that  
15 nature.

16 From there I went to the special victims unit, so think  
17 sexual assaults, domestic violence, things involving  
18 children, those sorts of investigations. From there I went  
19 to the violent crime unit. I worked there from kind of the  
20 September/October 2018 until December of 2019. There I  
21 investigated anything: violent assaults involving shootings,  
22 stabbings, any sort of deaths, homicides, things of that  
23 nature.

24 I was promoted from that unit. I went to supervising  
25 squad of the patrol division in West Ashley until March of

1 2020. I worked in the internal affairs division until  
2 October of last year, where then I was moved to the Office of  
3 Public Information. So currently I serve the police  
4 department in a role -- I'm essentially the spokesperson for  
5 the department. I'm the public information officer, so think  
6 media interviews, press releases, things of that nature.  
7 That's everything I'm responsible for right now.

8 Q. Okay. And that's your role you have with the CPD now.  
9 But if I followed you, in September of 2018, that would have  
10 been sort of the beginning of your time in the violent crimes  
11 unit?

12 A. Yes, sir. Yeah. At that time, I was kind of  
13 transitioning. I was assigned to the special victims unit,  
14 but I was kind of moving toward the violent crimes unit.

15 Q. Okay. In that regard, so employed, did you have  
16 occurrence to become involved in an assault that took place  
17 at ■■■ Radcliffe Street?

18 A. Yes, sir.

19 Q. And in what capacity -- was that on September 20, 2018?

20 A. It was, the early morning hours of September 20.

21 Q. And tell us a little bit about how you became involved,  
22 when you became involved, and your role in that  
23 investigation.

24 A. So as y'all know, this occurred pretty early in the  
25 morning hours of that day. I appeared for work that morning,

1 kind of normal business hours. I was briefed on what had  
2 been done in the investigation at that point. I familiarized  
3 myself with all the details and what was going on and what  
4 had been done and what needed to be done from that point.

5 Q. And the Radcliffe Street address, is that -- that's in  
6 the City of Charleston?

7 A. Yes, sir.

8 Q. Okay. And that jurisdiction of CPD, is that wholly  
9 within Charleston County?

10 A. Yes, sir.

11 Q. Okay. So you went in and you were briefed on what had  
12 been done so far. What did you do then?

13 A. I began to familiarize myself and, again, kind of  
14 learned what needed to be done, where we were going, what  
15 information we had at that point. I wanted to kind of go  
16 back over the details of what had been done so I could  
17 familiarize myself and then begin to do kind of my primary  
18 points of investigation.

19 Q. And did you go speak with anybody that day that was  
20 involved in the incident?

21 A. I did. Initially, I went over to Morris Street that  
22 morning. I think it was around 9:00 or 10:00 in the morning  
23 by that point. I went to Mr. Dan Schwarz's residence.

24 Q. And was part of your interaction with Mr. Schwarz  
25 obtaining a buccal swab from Dan Schwarz?

1 A. It was.

2 Q. And what's a buccal swab?

3 A. So essentially -- and you've probably seen this on  
4 television -- when you take like a Q-tip and you swab the  
5 inside of someone's cheek and it provides saliva, and you can  
6 gather DNA from there.

7 Q. I'm showing you what's been conditionally entered as  
8 State's 50. Any markings on that that allow you to identify  
9 that item?

10 A. Yes, sir. This is marked in my handwriting, and the  
11 seals are my initials.

12 Q. Okay. And after taking that buccal swab, what would you  
13 have done with it?

14 A. I would have entered it into our evidence division.

15 Q. Okay. I'm sorry. I think I read the wrong number.  
16 Okay.

17 MR. SIMPSON: Your Honor, at this point in time, I'd  
18 just note that we've met the conditional requirements  
19 discussed earlier.

20 THE COURT: Any objection?

21 MS. FORD: No, your Honor.

22 THE COURT: Okay. So noted for the record.

23 BY MR. SIMPSON:

24 Q. Following meeting with Dan Schwarz, what did you do?

25 A. While I and one of the crime-scene technicians that you

1 met earlier -- she came there to take the fingernail  
2 scrapings from Mr. Schwarz -- we were informed that some  
3 things had been noticed to be out of place at the incident  
4 location at [REDACTED] Radcliffe Street. We were informed of that  
5 by one of the other roommates that lived there at the time.  
6 Upon their return, they had noticed some things out of place.  
7 So I and the crime-scene technician responded over to  
8 Radcliffe Street.

9 Q. Okay. So then duties as far as documenting and  
10 collecting those things were not your responsibility, were  
11 they?

12 A. No, sir.

13 Q. The crime scene unit would handle that?

14 A. Correct.

15 Q. Okay. And have you been with us here all week?

16 A. Yes, sir.

17 Q. Okay. So as lead agent on a case, are you continually  
18 kept abreast of the evidence and the analysis of that  
19 evidence?

20 A. Yes, sir.

21 Q. Did you come -- have occasion in that role at some point  
22 in time to learn about some fingerprint evidence that was  
23 taken in the case?

24 A. Yes, I did. On the 21st, so this would be the following  
25 day, I learned that some of the evidence that was taken and

1 had subsequently been processed by our crime scene division  
2 resulted in an identification of, I believe it was four  
3 fingerprints that led to the defendant's ID.

4 Q. And was the status of the evidence at that point in time  
5 in the investigation such that you believed to have probable  
6 cause to charge a person of that?

7 A. Yes. So we determined through that portion that we  
8 could think of no other reason --

9 MS. FORD: Objection. May we approach?

10 THE COURT: Okay.

11 (An off-the-record discussion was held at the bench in  
12 the presence of the jury but outside the hearing of the  
13 jury.)

14 BY MR. SIMPSON:

15 Q. Sergeant Wolfsen, did you come to learn that a suspect  
16 -- at any point in time that a suspect had been taken into  
17 custody?

18 A. I did, in the early morning hours of the 22nd.

19 Q. Okay. And how -- as the lead investigator, how would  
20 you proceed knowing the suspect for the crime was in custody?

21 A. I, by that point, had been at work and since been home.  
22 I received a phone call that the defendant was taken into  
23 custody, and so I came back down to the police station in  
24 order to conduct an interview with him if he so chose.

25 Q. And so your purposes of coming down that night was to

1 interview the suspect?

2 A. Yes, sir.

3 Q. And just for the record, is that individual seated at  
4 the defense table there?

5 A. Yes, sir.

6 MR. SIMPSON: Let the record show that she identified  
7 the defendant.

8 THE COURT: So noted.

9 BY MR. SIMPSON:

10 Q. Sergeant Wolfesen, I'm handing you what's been marked for  
11 ID only as State's 47. Do you recognize that exhibit?

12 A. Yes. It's the copy of the interview that I did on that  
13 early morning.

14 Q. The early morning of the 22nd?

15 A. Yes, sir.

16 Q. Okay.

17 MR. SIMPSON: Your Honor, at this point in time, the  
18 State would seek to admit State's 47 and publish portions to  
19 the jury.

20 THE COURT: Okay. Let me -- if the lawyers would come  
21 back up to the bench for just a second.

22 (An off-the-record discussion was held at the bench in  
23 the presence of the jury but outside the hearing of the  
24 jury.)

25 THE COURT: All right. Subject to what has previously

1    been placed on the record, we move 47 and 48 -- or just 47  
2    right now?

3           MR. SIMPSON:   Just 47 at this point.

4           THE COURT:   Okay.  All right.  Into evidence for the  
5    State.

6           (State's Exhibit Number 47 admitted into evidence.)

7    BY MR. SIMPSON:

8    Q.    Sergeant Wolfesen, while we're getting our technology all  
9    in order, can you explain a little bit to the jury your basic  
10   beginning process in any suspect interview, sort of what  
11   steps you take and what's important to you in conducting an  
12   interview?

13   A.    Sure.  So for any interview, of course, I make sure that  
14   I introduce myself so the person knows who they're talking  
15   to.  I also make sure that person has everything they need,  
16   so food, water, drink, coffee, whether they need to use the  
17   restroom.  I ask all those questions kind of prior to  
18   beginning just to make sure that they're not there under any  
19   undue duress or make it any more stressful than it needs to  
20   be given the situation.

21           And I then usually gather just kind of some demographic  
22   information from the person, so confirming what your name is,  
23   where you live, what your phone number is, that sort of  
24   thing.  And then I advise the person of their Miranda rights.

25   Q.    And what are a person's Miranda rights?



1 A. In short, they are that person's right to not have to  
2 talk to me without a lawyer present if they don't wish to.  
3 So my process in doing that -- there are several rights that  
4 a person is guaranteed. So what I do is I read from a  
5 preprinted Miranda warning card. And in going through each  
6 of those steps, I ask at the end of each whether the person  
7 understands that particular one. I ask them to verbally  
8 acknowledge, yes, that they understand.

9 Once that's completed, I ask them to initial each of  
10 those on the card. And then there's a place that a person  
11 would sign on the card to say that they understand the rights  
12 that they have been written or proposed to them. And then I  
13 ask whether they, knowing those rights, agree to speak with  
14 me or not.

15 Q. Okay. So you -- back that up. You go through -- the  
16 standard Miranda rights are written for you on a card?

17 A. Yes, sir.

18 Q. And you go through each one individually?

19 A. Yes, I do.

20 Q. And then individually, you have next to each individual  
21 right that person initial?

22 A. Yes, sir.

23 Q. And does that signify their understanding of those  
24 rights?

25 A. That's the point. Yes, sir.

1 Q. And then if the suspect -- I mean, have you ever had a  
2 suspect to say, you know, "I don't want to talk to you. Go  
3 away"?

4 A. Yes.

5 Q. Okay. And then so if a person says, "I don't want to  
6 talk to you. Go away," what do you do?

7 A. I don't talk to them and go away.

8 Q. Okay. And so you have the person initial by each right  
9 individually, signifying they understand it?

10 A. Yes.

11 Q. And then sign it. And when they sign it, what's that  
12 part that they're signing with their signature?

13 A. It's on the back of the card and it says, "Suspect  
14 Signature," with a date. And so they sign on the "Suspect  
15 Signature" line.

16 Q. And does that signify in writing that they understand  
17 their rights and that they wish to proceed with an interview  
18 and wish to proceed to talk to you?

19 A. Yes, sir.

20 Q. You say you like to have, like, a little initial  
21 discussion before you do that, just sort of biographical  
22 information, work, phone number, etc.?

23 A. Yes, sir.

24 Q. Does that also allow you to kind of get a sense of what  
25 type of person you're talking to?

1 A. Yes. I would liken it to sort of like being introduced  
2 to the jury.

3 Q. Might you ask them also about their educational  
4 background?

5 A. Yes.

6 Q. Okay. Moving now to this particular interview, did you  
7 follow that process with Mr. Simmons?

8 A. Yes, sir.

9 Q. Did Mr. Simmons seem like a normally intelligent person?

10 A. I would agree with that.

11 Q. Did he seem to be cogent and understand what you were  
12 saying?

13 A. He did.

14 Q. Did he answer your questions in a manner that was easy  
15 to understand?

16 A. Yes, sir.

17 Q. Of an age that he would be able to understand what he  
18 was doing?

19 A. Yes, sir.

20 Q. Did you ask him about his educational background?

21 A. Yes, sir, I did.

22 Q. Did he have an educational background of a type that  
23 would lead you to conclude that he could understand you and  
24 carry on an adult cogent conversation with you?

25 A. Yes, sir, he did.

1 Q. Did he have a high school degree?

2 A. He has a GED.

3 Q. Yeah? Any college?

4 A. He told me that he had a couple of college hours.

5 Q. Okay. Any -- apparent to you any mental defects at all  
6 that he was suffering from?

7 A. No, not at all.

8 Q. Any signs of any intoxication at that time of this  
9 interview?

10 A. Not at all.

11 Q. Any sign of being under the influence of any narcotics?

12 A. Not at all.

13 Q. Any complaints of physical discomfort, hunger, having to  
14 use the bathroom, cold, or anything that would lead -- you  
15 know, give you pause to conduct that interview?

16 A. No, sir, not at all.

17 Q. Did you make any misrepresentations to him to get him to  
18 talk with you?

19 A. No, sir.

20 Q. Did you make him any promises of future leniency to get  
21 him to talk to you?

22 A. No, sir.

23 Q. And I don't want you to be insulted by this question,  
24 but did you make any threats against him of any sort of  
25 physical harm that would come to him if he didn't talk to

1 you?

2 A. No, sir.

3 Q. And all those questions sort of lead me up to, I guess,  
4 a question about sort of your interviewing style. Let me ask  
5 you about that. Tell the jury a little bit about how -- what  
6 kind of tone you like to establish in an interview with a  
7 suspect.

8 A. So, of course, it's somewhat dictated by the nature of  
9 the person when I get in there. You know, if the person  
10 tells you to pack sand, you're not going to be super friendly  
11 with them. But my particular style is relatively easygoing.  
12 I try to build a rapport with the person. I may tell a joke  
13 here and there. And it's already an uncomfortable situation,  
14 and sometimes you want to make it even more comfortable than  
15 it needs to be.

16 Q. And do you find that you get more success sort of  
17 striking a calm and friendly tone than with a more, say,  
18 aggressive tone?

19 A. Yes, sir. Yeah, I've never found that shouting or being  
20 aggressive really gets me anywhere.

21 Q. Does that also lead you to be a little more confident in  
22 the voluntary nature of that interaction?

23 A. Absolutely.

24 Q. And was there anything in this interview that led you to  
25 have concerns whether or not Mr. Simmons was talking to you

1 voluntarily?

2 A. No, sir.

3 Q. Okay. You mentioned earlier that that's sort of an  
4 inherently uncomfortable situation, right?

5 A. Yes, sir.

6 Q. Do you recall Mr. Simmons asking if he was a suspect or  
7 had warrants?

8 A. Yes, I do.

9 Q. And did you -- how did you respond to those questions?

10 A. I believe I said something to the effect of, "Of course  
11 you're a suspect. You're in here."

12 Q. Yeah. But you made it clear that he also had warrants  
13 for his arrest --

14 A. Yes.

15 Q. -- is that correct?

16 A. Yes, sir.

17 Q. Okay. And as part of this initial interview, before  
18 being booked, were those warrants -- copies of those warrants  
19 given to him?

20 A. Yes, sir. Copies were given to him, and they were read  
21 to him verbatim by another detective.

22 Q. Now, an arrest warrant would contain information about  
23 evidence, right?

24 A. Yes, sir.

25 Q. Is it a good idea before you conduct an interview to

1 just sort of lay out all the evidence you have on the table?

2 A. No, sir.

3 Q. Do you kind of want to hold what you know back a --

4 MS. FORD: Objection. He's leading the witness, your  
5 Honor.

6 THE COURT: What's your objection?

7 MS. FORD: He's leading the witness.

8 MR. SIMPSON: I'll rephrase.

9 THE COURT: Yes. Try to rephrase, Solicitor, if you  
10 would, please.

11 MR. SIMPSON: Sure.

12 Q. [By Mr. Simpson] Why wouldn't you tell the person in  
13 the room everything that you know?

14 A. The intent is you want them to tell you the version of  
15 events in their own words. Just like here, I wouldn't  
16 certainly want to lead them with anything that I knew that  
17 might sway them into making a decision one way or the other.

18 Q. And is part of your interview process meant to determine  
19 whether a person is being frank with you?

20 A. Yes, sir.

21 Q. And honest?

22 A. Yes, sir.

23 Q. Okay. And how does not giving them all of the  
24 information up front play into that?

25 A. So, of course, by part of the evidence, I can know at

1    least in part what's true and what's not true. And so the  
2    version of events that comes to me, if it completely  
3    misaligns with what I know, then I know that person is being  
4    untruthful.

5    Q.    Okay. And I should have noted this. The interview  
6    rooms at the Charleston Police Department, are they outfitted  
7    with video capability?

8    A.    Yes, sir.

9    Q.    Audio capabilities?

10   A.    Yes, sir.

11   Q.    And so this portion of the interview we're just  
12   discussing with the Miranda warning and all that, that would  
13   have been captured on audio and video, correct?

14   A.    Yes, sir.

15   Q.    Provided to the State?

16   A.    Yes, sir.

17   Q.    And provided to the other side as well, correct?

18   A.    Yes, sir.

19   Q.    Okay. Is that true of the entirety of this interview  
20   we're discussing about -- er, State's 47?

21   A.    Yes, sir.

22   Q.    Okay. So if there's any part of that interview I just  
23   -- that we need to go back and talk about, we can just show  
24   it and look at it and watch it, right?

25   A.    Yes, sir.



1 Q. Okay. And you said, again, Mr. Simmons, after being  
2 apprised of his rights, signifying his understanding of those  
3 rights, agreeing to continue with the interview, the  
4 interview proceeded, right?

5 A. Yes, sir.

6 Q. Okay. And is it fair to say that you allowed him sort  
7 of an open forum to tell his version of events of the night  
8 in question?

9 A. That's fair.

10 Q. Did he provide to you a version of events for that night  
11 in question?

12 A. He did.

13 Q. Okay.

14 MR. SIMPSON: Your Honor, at this time, the People would  
15 seek to publish for the record -- for the record, each  
16 interview is sort of broken down in four subsections, and I  
17 just think that's the size of the file that's manageable. So  
18 I'm going to call this Clip 1. This is Interview 1. I'm  
19 going to call this Clip 1, Clip 2, Clip 3, and Clip 4.

20 THE COURT: Okay.

21 MR. SIMPSON: What I'm publishing for the record is  
22 Interview 1, Clip 1, and that's 45:50. And that's not the  
23 clock time. It's 45 minutes and 50 seconds into the clip.

24 THE COURT: Okay. All right. So there would be some  
25 portions of the interview that will not be published?

1 MR. SIMPSON: Yes, that I'm not going to publish.

2 And just while we're waiting for that to pull up, we're  
3 going to be publishing 45:50 of Clip 1 to the end of Clip 1,  
4 and then starting Clip 2 and going to 3 minutes, 55 seconds.

5 THE COURT: Okay. Ladies and gentlemen, there's certain  
6 portions of this interview that have been, we use the word  
7 "redacted." Place no significance to the fact that portions  
8 have been redacted. We want you to have what you need to  
9 have, and there maybe are some things that just are not  
10 relevant or unnecessary or inadmissible possibly. So place  
11 no significance on what has not been shown to you out of this  
12 interview. Okay? It should not come into your  
13 decision-making process whatsoever.

14 So about lengthwise of what's going to be published,  
15 just so the jury and I can know what kind of time factor  
16 we're looking at.

17 MR. SIMPSON: I think we're looking at about 18 minutes.

18 THE COURT: Okay. All right. Very good. Thank you.

19 Make sure everybody can see and hear. If you can't,  
20 raise your hand.

21 (Video played in open court.)

22 THE COURT: Okay. Up the volume, please.

23 JUROR: Yeah, I can't hear well, Judge. I'm sorry.

24 THE COURT: If you can up the video some, Solicitor.

25 MR. URICCHIO: Yes, your Honor. I believe the clerk is

1     upping it on her end as well.

2             THE COURT:   Okay.   Thank you.

3             (Video played in open court.)

4             MR. SIMPSON:   Your Honor, at this point we're moving to  
5     Clip 2 of Video 1 -- Interview 1, Clip 2.

6             THE COURT:   Okay.   Very well.

7             (Video played in open court.)

8     BY MR. SIMPSON:

9     Q.     Sergeant Wolfesen, so is that a -- I mean, obviously it's  
10    a video.   Is that a fair sort of review of the -- what you  
11    call, like, the first version of Mr. Simmons' story?

12    A.     Yes, sir.

13    Q.     Okay.   Does that involve a consensual encounter with a  
14    female, according to Mr. Simmons?

15    A.     Yes, sir.

16    Q.     That took place -- did it take place inside of a house  
17    or outside of a house?

18    A.     He said outside of a house.

19    Q.     Okay.   You had mentioned before that at this point in  
20    time in your investigation, you already knew the results of  
21    some fingerprint analysis, right?

22    A.     Yes, sir.

23    Q.     And of course, that was found inside ■■■ Radcliffe,  
24    correct?

25    A.     Correct.

1 Q. Okay. Was there any reason, to your knowledge, that  
2 Mr. Simmons would have known that you knew that information  
3 at that point in the interview?

4 A. No, sir.

5 Q. Okay. Did there come a point in time in the interview  
6 where you shared that interview with Mr. Simmons?

7 A. Yes, sir. Yeah, eventually I kind of confronted him  
8 with that, asking him why then his fingerprints might be  
9 inside of the house if he insisted he had only been outside.

10 Q. Okay. So what happened once he was confronted with the  
11 fact that his fingerprints had been found inside a residence?

12 A. Essentially, he stuck with his story. He maintained  
13 that he had been outside and had a consensual encounter with  
14 a woman.

15 Q. Okay. And so did you at any point then discontinue the  
16 interview with him?

17 A. Yes. At some point I decided there wasn't really any  
18 progress being made. I terminated the interview, and I  
19 advised Mr. Simmons that someone would come in to read his  
20 warrants and take him to the booking department.

21 Q. Okay. So you ceased the interview, but does the  
22 interview strike back up again at some point?

23 A. Yes, sir.

24 Q. So what was the cause of that interview starting again?

25 A. So when we exit the interview room, we tell the person,

1 "If you need anything -- food, drink, bathroom break, or if  
2 you wish to speak with us again -- tap on the door and we're  
3 happy to come back." So that's what happened. Mr. Simmons  
4 tapped on the door, and he said he wished to talk with us  
5 again.

6 Q. Okay. And just you raised a good point there. Do you  
7 continually throughout sort of an interview process check on  
8 the subject of the interview's comfort level --

9 A. Yes.

10 Q. -- regarding bathroom, snacks, drinks?

11 A. Yes, sir.

12 Q. Okay. And is the point, again, to ensure that that  
13 person is giving you a voluntary statement and not influenced  
14 by any sort of undue pressure?

15 A. Correct. And so that they have the sustenance to  
16 maintain whatever mental state they need to be in.

17 Q. Okay.

18 MR. SIMPSON: Your Honor, at this point in time, I'm  
19 going to publish a portion of Interview 1. This is  
20 Interview 1, Clip 3, at 2 minutes and 45 seconds.

21 And if you don't mind, just keep it black so we can find  
22 the right spot.

23 It's going to 9 minutes and 46 seconds. So, you know,  
24 approximately a six-minute clip.

25 THE COURT: Sure.

1           (Video played in open court.)

2   BY MR. SIMPSON:

3   Q.    So Sergeant Wolfsen, he re-initiates this interview with  
4   you?

5   A.    Correct.

6   Q.    And that was after being told and giving some time to  
7   sort of think about the fact that his fingerprints were found  
8   in the house?

9   A.    Yes, sir.

10   Q.   Okay. Then now what are sort of the new parts to this  
11   new version of the events that occurred?

12   A.    So the new version, essentially, he -- the version where  
13   he had this consensual encounter went away, and he conceded  
14   that he had been inside the house. But again, no real memory  
15   of that, with the exception of sitting on the couch, looking  
16   at the ground, and then at some point tumbling down and  
17   laying at the bottom of a set of stairs.

18   Q.    Now, did he persist, more or less, with this version of  
19   events for the remainder of the interview on the 22nd?

20   A.    Yes, sir.

21   Q.    And he seemed to remember a lot about -- well, did he  
22   remember a lot about the night leading up to this moment he's  
23   in this house?

24   A.    Yes. So he had a pretty, I would say, good recollection  
25   of all the events leading up to this, to the point that he

1 left the bar. And additionally, he had a pretty good  
2 recollection of the events after this event happened. He  
3 could tell me that he got to his brother's house, his brother  
4 was awake. A number of kind of trivial details, he could  
5 remember those things.

6 Q. Okay. But just not this one moment from a couch and the  
7 stairs?

8 A. Correct.

9 Q. Okay. So after -- again, you know that he persisted  
10 with this more-or-less version of events for the remainder of  
11 the interview?

12 A. Yes, sir.

13 Q. Was that interview concluded?

14 A. Yes, sir. Eventually, once he stuck with this, I  
15 terminated this interview, and the other detective, Detective  
16 Gertin, presented him with the warrants.

17 Q. Okay. And again, would the warrants contain information  
18 about sort of the investigation up to this point?

19 A. Yes. So the affidavit serves as a charging document.  
20 It essentially entails the information that would be probable  
21 cause for an arrest to be made on the charges listed therein.

22 Q. Okay. And those were read to him?

23 A. They were read verbatim to him.

24 Q. Were copies given to him?

25 A. Yes, they were.

1 Q. So more information -- at the conclusion of this  
2 interview, more information about what you guys know is  
3 shared with him; is that fair?

4 A. Yes, sir.

5 Q. Also, in regards to any evidence collection from the  
6 body of the defendant, do you recall conducting -- doing any  
7 further -- taking any further steps with the defendant?

8 A. Yes, sir. I also had a search warrant to collect DNA  
9 samples from him. So again, same process with the buccal  
10 swab: Q-tip inside of his mouth, which I then packaged and  
11 submitted to evidence.

12 Q. I'm going to show you what's been marked for -- marked  
13 and conditionally entered as State's 50. Do you recognize  
14 that?

15 A. Yes, sir. This is my handwriting and my initials on the  
16 seal.

17 Q. Okay.

18 MR. SIMPSON: I'd just note for the record the  
19 conditions discussed earlier have been met for admissibility.

20 THE COURT: So noted.

21 BY MR. SIMPSON:

22 Q. Would that have been sealed, packaged, and logged into  
23 CPD's evidence room consistently with how you described  
24 handling the prior buccal swabs?

25 A. Yes, sir.



1 Q. Okay. And again, that would have been submitted for  
2 later forensic analysis by SLED?

3 A. That's correct.

4 Q. Okay. So at this point in time, Mr. Simmons is under  
5 formal arrest; is that true?

6 A. That's true.

7 Q. And he's taken to the detention center?

8 A. He is.

9 Q. Was that your last interview with Mr. Simmons?

10 A. No, sir.

11 Q. And was a second interview conducted?

12 A. Yes, sir.

13 Q. And could you explain to the jury a little bit about how  
14 that second interview came to happen?

15 A. Yes, sir. So by the time the 25th of September came, we  
16 received some information that Mr. Simmons wanted to talk  
17 with us again, so we made those accommodations for him to be  
18 transported back down to the police station again. And  
19 again, I conducted a second interview with him.

20 Q. Was the Miranda processed followed -- repeated a second  
21 time for this interview?

22 A. Yes, sir.

23 Q. At the time of the second interview, did anything give  
24 you pause as to the defendant's mental state at that time?

25 A. Not at all.

1 Q. Any signs of intoxication?

2 A. No, sir.

3 Q. Physical discomfort?

4 A. No, sir.

5 Q. Were any threats made at this point?

6 A. No, sir.

7 Q. Any promises made to him?

8 A. No, sir.

9 Q. When you showed back up to initiate sort of a second  
10 interview, did he seem like he, you know, wanted to speak to  
11 you, or did he say, "I don't know why you're here. I don't  
12 want to speak to you"?

13 A. He did want to speak with us.

14 Q. Okay. And again, to be safe, you re-administered  
15 Miranda?

16 A. Yes, sir.

17 Q. And did he indicate to you that he wished to speak with  
18 you after the re-initiation of that Miranda?

19 A. Yes, sir.

20 MR. SIMPSON: The Court's indulgence?

21 THE COURT: Certainly.

22 (Mr. Simpson conferred with co-counsel.)

23 MR. SIMPSON: May I approach the witness, your Honor?

24 THE COURT: Sure.

25

1 BY MR. SIMPSON:

2 Q. Sergeant Wolfesen, I'm showing you what's been marked as  
3 State's 48 for ID only. Do you recognize that exhibit?

4 A. Yes, sir.

5 Q. And what is contained on that DVD?

6 A. This is an audio and video recording of that second  
7 interview.

8 Q. And does this take place under the same -- essentially  
9 the same conditions and circumstances as that first interview  
10 that took place in a controlled interview room at CPD?

11 A. Yes, sir.

12 MR. SIMPSON: At this point in time, your Honor, the  
13 State would seek to admit State's 48 and publish portions to  
14 the jury.

15 THE COURT: Subject to what's already been noted on the  
16 record, any additional objections?

17 MS. FORD: No additional objections.

18 THE COURT: Okay. 48 into evidence for the State.

19 (State's Exhibit Number 48 admitted into evidence.)

20 MR. SIMPSON: Your Honor, for the record, we're playing  
21 now State's 48, which is interview -- what I'll call  
22 Interview 2. It's Interview 2, Clip 1, at 24 minutes. And  
23 we're going to be playing to 27 minutes and 30 seconds.

24 THE COURT: Okay. So just one clip on the second  
25 interview?

1           MR. SIMPSON: There will be a second clip as well, but  
2 this time it's the first clip.

3           THE COURT: All right. Very good.

4           (Video played in open court.)

5 BY MR. SIMPSON:

6 Q.    So Sergeant Wolfsen, I should clarify that the date you  
7 testified of the first interview was the 22nd?

8 A.    Yes, sir.

9 Q.    What is the date of this interview?

10 A.    The 25th.

11 Q.    So Mr. Simmons has had three days to sort of think about  
12 and process that first interview?

13 A.    Yes, sir.

14 Q.    And initially when this interview starts, does he sort  
15 of persist with essentially the same story he told you at the  
16 end of the first interview?

17 A.    Yes, sir. He basically reiterated that he remembered  
18 being on the couch and he remembered hitting the bottom of  
19 the stairs.

20 Q.    But it seems that he does offer to you sort of a new  
21 hypothetical for your consideration after having thought  
22 about this for three days. And what was that?

23 A.    Yes, sir. This is when he kind of hypothesizes that  
24 perhaps "Jay" drugged his drink.

25 Q.    Okay. And later in this interview, does he identify Jay

1 with specificity?

2 A. Yes, sir.

3 Q. Okay. And have you been with us all week?

4 A. Yes, sir.

5 Q. Was that the "Jay" that testified earlier?

6 A. Yes, sir. Mr. Blake.

7 Q. Okay. Does he continue throughout this second interview  
8 suggesting that Jay drugged him?

9 A. A few times, yes, sir.

10 Q. Okay. He also discussed, and we saw on video, a little  
11 more detail from his point of view of the amount of alcohol  
12 he voluntarily consumed that night; isn't that true?

13 A. Yes, sir.

14 Q. And did he mention five or six tequila shots?

15 A. Yes, sir.

16 Q. And a tequila cocktail?

17 A. Yes, sir.

18 Q. And as to his -- do you recall as to how he was feeling,  
19 as far as normal or not? He says everything felt normal  
20 except that he didn't stop drinking?

21 A. Correct.

22 Q. Okay. But again, at this point in time in the  
23 interview, does he persist with essentially the same version  
24 of the story from the end of Interview 1?

25 A. Yes, sir.

1 Q. And then what happens then?

2 A. At that point, we had some -- I had some pretty  
3 significant concerns that he had a pretty good memory, again,  
4 of the events prior to this and a pretty good memory of the  
5 events after this, but that for some reason he supposedly  
6 could not remember the events that we're all here to talk  
7 about.

8 Q. Okay. Did you decide to take a break from the  
9 interview?

10 A. Yes, sir, we did.

11 Q. Okay. And what happened after you took a break?

12 A. He again knocked on the door and advised that he wanted  
13 to talk to us again.

14 Q. Okay. So while you're on the break, he comes back to  
15 the door and wants to give it another go?

16 A. Yes, sir.

17 Q. Okay.

18 MR. SIMPSON: Your Honor, at this time we're going to  
19 show Interview 2, Clip 2, from minute 50 and 10 seconds to  
20 the end of Clip 2.

21 THE COURT: Okay.

22 MR. SIMPSON: Approximately -- this is our final  
23 publication of the -- for us of the interview, and it's  
24 approximately ten minutes long.

25 THE COURT: Okay.

1 (Video played in open court.)

2 BY MR. SIMPSON:

3 Q. Sergeant Wolfson, this second interview took place,  
4 again, on September 25?

5 A. Yes, sir.

6 Q. And what was the date of the incident?

7 A. The early morning hours of September 20.

8 Q. And so it was, you know, approximately five days later  
9 that was the first time it was hypothesized to you that  
10 someone may have drugged Mr. Simmons?

11 A. Yes, sir.

12 Q. About five days later?

13 A. Yes, sir.

14 Q. Again, did that ever develop in any manner other than  
15 just an attempted statement from the -- any further evidence  
16 other than what the defendant claimed of being drugged?

17 A. No, sir.

18 Q. Okay. Again, we saw some food on the table there. That  
19 was just some -- looked like McDonald's?

20 A. I believe it was Taco Bell.

21 Q. Okay. Was that some food you bought for Mr. Simmons on  
22 the way to --

23 A. Yes, sir.

24 MR. SIMPSON: Thank you for being with us. Answer any  
25 questions that Ms. Ford may have for you.

1 THE WITNESS: Yes, sir.

2 THE COURT: Defense have any cross-examination?

3 MS. FORD: Yes, your Honor.

4 CROSS-EXAMINATION

5 BY MS. FORD:

6 Q. Okay. Detective Wolfesen -- er, I'm sorry, Sergeant.

7 A. No problem.

8 Q. I want to clear up something, because you seemed to just  
9 testify that the first time you heard that Chad raised that  
10 he thought someone put something in his drink was on the  
11 25th?

12 A. Yes, ma'am.

13 Q. Did you watch your interview before coming to trial?

14 A. Yes, ma'am.

15 Q. Well, in fact, he mentioned on the 22nd that he thought  
16 someone had put something in his drink, and he wasn't sure,  
17 but he thought maybe it was Jay. Does that sound right? Are  
18 you remembering that now?

19 A. Sure. Yes, ma'am.

20 Q. Okay. So in fact, in the first interview he told you  
21 that?

22 A. Yes, ma'am.

23 Q. All right. The bar scene downtown, or bars in  
24 Charleston, there's a closing time, correct?

25 A. Yes, ma'am.



1 Q. And it's 2:00 a.m.

2 A. Yes, ma'am.

3 Q. This incident, y'all got the call a little after  
4 3:00 a.m., correct?

5 A. Yes, ma'am.

6 Q. And the area where Juanita Greenberg's is and Joe Pasta  
7 or JohnKing, to be specific, they're actually pretty close in  
8 walking distance to the address on Radcliffe, correct?

9 A. Yes, ma'am.

10 Q. So it wouldn't have taken an hour-plus just to walk  
11 there, is that fair to say, if someone was going directly  
12 there?

13 A. That's fair.

14 Q. So when Chad met with you, he did initially give you a  
15 story about meeting a girl --

16 A. Yes, ma'am.

17 Q. -- correct? And we saw that?

18 A. Yes, ma'am.

19 Q. But he admitted that that was not true?

20 A. Yes, ma'am.

21 Q. And he told you that -- he apologized, actually, for  
22 telling you that, correct?

23 A. He did.

24 Q. And he said "my dumbass cousin" -- er, he gave that  
25 story because he was listening to his "dumbass cousin," but

1 he apologized for telling that misstatement or that lie, to  
2 be quite honest.

3 A. Yes, ma'am.

4 Q. When he talked about Jay, he was clear, he didn't say he  
5 saw him put anything in his drink, correct?

6 A. Correct. Yes, ma'am.

7 Q. And he said, "I don't know that he did it," correct?

8 A. Yes, ma'am.

9 Q. He actually said he felt more or less badly for saying  
10 that without actually knowing it, correct?

11 A. Yes, ma'am.

12 Q. He just thought that that was basically the only thing  
13 that he could think of as far as where a drug may have come  
14 from --

15 A. Yes, ma'am.

16 Q. -- correct? Is that fair?

17 A. Yes, ma'am.

18 Q. And Chad said -- and we heard he talked a lot about  
19 drinking that night?

20 A. He did.

21 Q. But he also told you that nothing like this had ever  
22 happened to him before while drinking, correct?

23 A. Nothing else like?

24 Q. Like blacking out, to be specific.

25 A. Yes, ma'am.

1 Q. That he had never blacked out before.

2 A. He did say that, yes.

3 Q. And he was often emotional throughout that interview; is  
4 that fair to say? Like when we saw him crying?

5 A. I would say not throughout. He was emotional toward the  
6 end of the second interview, yes.

7 Q. Initially, when you met with Chad the first time, he was  
8 aware that he was being charged with a crime, correct?

9 A. He was aware that he had warrants, yes.

10 Q. And he admitted he had seen, basically, more or less  
11 "Wanted" photos or whatever from Live 5 News?

12 A. My understanding was not that he had seen "Wanted"  
13 photos. We had -- in an effort to identify him before we had  
14 the fingerprints back to learn who the suspect was, we had  
15 the video that then-Detective Pranger got from Thomas Street.  
16 Those still images, those were put on, I believe, Live 5  
17 News. And so there were a couple of still images of a person  
18 we did not know, who we did not say was wanted, to my  
19 knowledge, other than wanting to identify him.

20 Q. But he was aware -- he was obviously aware that y'all  
21 were there to question him about something that had happened  
22 about a crime, correct?

23 A. Yes, ma'am. He actually said that at some point,  
24 because once we determined who he was, a couple of detectives  
25 had gone to a relative of his home in an attempt to locate

1 him. And I believe that person had shown him the Live 5  
2 News.

3 Q. But you talk about the warrants. He actually just  
4 wanted to know what the charges were. He didn't actually ask  
5 to read the warrants throughout that first interview,  
6 correct?

7 A. He did not. I will say that he was more, "What is this  
8 about?" And in my experience, that is -- again, for me to  
9 offer evidence of what I know to a person would preclude that  
10 person from being able to provide their own version of  
11 events. And it would also, in effect, show my hand, so to  
12 speak.

13 Q. Well, at this point, he was already under arrest,  
14 correct?

15 A. At this point he had been taken into custody, so for  
16 those purposes, he was not free to leave. However, he had  
17 not been presented with those charging documents, those  
18 affidavits, and formally booked into a detention center of  
19 any sort.

20 Q. Well, the warrants had been taken out and signed by a  
21 judge, correct?

22 A. Yes, ma'am.

23 Q. So you had the arrest warrants already officially  
24 signed, ready to go?

25 A. Yes, ma'am, as with many other investigations that I've

1 done.

2 Q. But again, you wouldn't -- if he didn't ask for the  
3 warrants, for the detailed information, you would not at that  
4 point even tell him what charges he was a suspect for,  
5 correct?

6 A. To my recollection, he did not ask specifically what the  
7 charges were. He asked what was going on, which again was,  
8 in my perception, his means of trying to get me to tell him  
9 what I knew.

10 Q. He told you who he was with that night, correct?

11 A. Yes, ma'am.

12 Q. So he actually is the one who gave Jerome's name?

13 A. Jermaine?

14 Q. Jermaine. I'm sorry.

15 A. That's okay.

16 Q. Jermaine. He gave Jay. "Jay" is what he called him  
17 primarily, correct?

18 A. Yes, ma'am.

19 Q. Okay. And so at that point, y'all, even in that second  
20 interview, had him identify Jay from a photo to make sure you  
21 have the right guy, correct?

22 A. Yes, ma'am. Mm-hmm.

23 Q. And but at no point did you or anyone at the Charleston  
24 Police Department go and talk to Jay, correct?

25 A. That's correct.

1 Q. He also gave the names of other people. He gave the  
2 name of Michael Simmons?

3 A. Yes.

4 Q. And he told y'all he worked on Beaufain Street?

5 A. Yes, ma'am.

6 Q. But y'all never tried to talk to Michael Simmons?

7 A. We did not speak with him, no.

8 Q. He told you what bars he was at. You obviously know he  
9 was at Juanita Greenberg's?

10 A. Yes, ma'am.

11 Q. Nobody was sent to Juanita Greenberg's to talk to anyone  
12 there, correct?

13 A. I'm not actually certain.

14 Q. Well, someone was sent to JohnKing --

15 A. Definitely JohnKing. Yes, ma'am.

16 Q. -- but not Juanita Greenberg's.

17 A. I believe that's accurate. I can't account for every  
18 single person's actions, whether they went there or not.

19 Q. Well, when someone went to JohnKing, they talked to a  
20 manager; am I correct?

21 A. Yes, ma'am.

22 Q. But they never attempted to get any type of video  
23 surveillance?

24 A. I'm not sure what the conversation entailed.

25 Q. But based on your knowledge as the case agent, other

1     than talking to the manager at JohnKing, nothing was done to  
2     look into Chad's telling y'all that he thought something was  
3     put into his drink?

4     A.     That's fair.

5     Q.     You also at times, as part of your job, you can request  
6     a toxicology report and have someone's blood or urine tested  
7     for any substances, correct?

8     A.     Situationally dependent, yes.

9     Q.     You have the ability to do that; is that fair to say?

10    A.     To some degree.

11    Q.     Okay. You did not do that here with Chad?

12    A.     No, ma'am. Again, I didn't even meet with him until two  
13    days later.

14    Q.     But you did not inquire into it; is that fair to say?

15    A.     That's fair.

16    Q.     I want to talk about the second interview. We just saw  
17    that a few minutes ago, and Chad was quite emotional at that  
18    point. He talked about seeing Ms. Cantwell and then being on  
19    the floor, but he couldn't remember too many details other  
20    than that, correct?

21    A.     For the most part, yes, ma'am.

22    Q.     At that point, he had seen the warrants -- had been read  
23    the warrants, correct?

24    A.     Yes, ma'am.

25    Q.     And through that interview, that was about -- that was

1 several hours into the interview, correct?

2 A. When?

3 Q. When he gave that statement about seeing Ms. Cantwell.

4 A. Yes, ma'am. Yes. That entire interview that day lasted  
5 close to three hours. So yes, this was towards the end.

6 Q. And throughout that interview, he repeatedly was telling  
7 you he did not remember things, correct?

8 A. He stuck with his story --

9 Q. Okay.

10 A. -- for the most part.

11 Q. But you kept questioning him, telling him how important  
12 it was to provide information, that people would expect him  
13 to give information?

14 A. I think that his ability to give information --  
15 especially in light of the fact that he had, again, a pretty  
16 good memory of what happened before and after, but somehow  
17 just didn't remember this portion -- for me, it was  
18 important, yes. This was the crux of the incident. This was  
19 the crime that was committed. And again, it struck me as odd  
20 that he might have a memory of prior to this event and after  
21 this event, and yet he could come up with no version of the  
22 events that, frankly, mattered to him the most in that  
23 moment.

24 Q. Well, so I want to talk about these details. When you  
25 met with him the first time, he gave you all the details of



1 what he did that night, of how he ended up downtown, correct?

2 A. Yes, ma'am.

3 Q. And talking about football and meeting the girl,  
4 correct?

5 A. Mm-hmm. Yes, ma'am.

6 Q. But he admitted that that was a story that he came up  
7 with with his cousin, correct?

8 A. My understanding was that none of that was a story, with  
9 the exception of the part where he went and engaged in this  
10 consensual sexual encounter with the female after he left the  
11 bar. He told me actually, in fact, that up until the point  
12 he left Joe Pasta, everything he said was fact.

13 Q. So he remembered -- er, he indicated that he remembered  
14 going downtown and drinking and feeling really off, correct?

15 A. That's not my recollection, no.

16 Q. He told you that he felt -- he could tell something  
17 wasn't right. It was after he left Juanita Greenberg's, he  
18 could tell something wasn't right.

19 A. He said that everything felt right with the exception  
20 that he didn't stop drinking.

21 Q. No. He said he didn't feel right, but he kept drinking.

22 Sergeant, you were not actually one of the officers or  
23 detectives to respond to the apartment that evening, correct?

24 A. At the incident time?

25 Q. Yes.

1 A. That's correct.

2 Q. There was a -- I guess he may have been the duty  
3 detective, Detective Gertin?

4 A. Yes, ma'am.

5 Q. So he's the one who responded to the scene?

6 A. Yes, ma'am.

7 Q. But you did speak to all of the witnesses, to the best  
8 of your ability, shortly afterwards the same day, in the  
9 daytime, correct?

10 A. With the exception of Harley. She was interviewed by a  
11 different detective at the same time who responded with me  
12 that same morning. But yes, I did speak with everyone else  
13 and conducted secondary interviews. Some of them were on the  
14 20th. Some were on the 21st.

15 Q. And you actually -- part of when you were training to be  
16 an officer, you learned how to take interviews and how  
17 important it is to document things, correct?

18 A. Yes, ma'am.

19 Q. And that is because sometimes it might take four years  
20 to get to trial?

21 A. That's fair.

22 Q. And when possible, you record things so there's no  
23 question about what was actually said, correct?

24 A. Yes, ma'am.

25 Q. And so you met with -- and this was all within 24 hours

1 of the incident, correct, that you met with the witnesses  
2 initially?

3 A. Some of it was not, no. Because some of it I did,  
4 again, on the 21st.

5 Q. Okay.

6 A. So not within 24 hours, no.

7 Q. But Ms. Cantwell you met --

8 A. On the 21st.

9 Q. Okay. And you met with Dan as well?

10 A. I conducted a secondary interview with Dan on the 21st.  
11 I met with Dan with a crime-scene technician on the 20th at  
12 his residence.

13 Q. It's important, if possible, to talk to people as soon  
14 as possible; is that fair to say?

15 A. For all intents and purposes, yes, although as it's  
16 feasible. Of course, there were a lot of moving parts with  
17 this. We were very concerned with determining who this  
18 person was, so -- and also, this was a particularly traumatic  
19 event, and so Kimmy was, of course, dealing with family and  
20 the fallout from what happened to her. So yes, it was as  
21 early as was feasible. Yes, ma'am.

22 Q. Just in general, it's important to talk to people as  
23 soon as you can so that things are fresh in their memory,  
24 correct?

25 A. I would agree with that for the most part.

1 Q. So you told us just now that you were able to speak to  
2 Ms. Cantwell and get a statement from her, correct?

3 A. Yes, ma'am.

4 Q. And this is recorded?

5 A. Yes, ma'am.

6 Q. She had previously talked to Detective Gertin closer to  
7 the incident; is that your understanding?

8 A. Yes, ma'am. Yeah, I understood that Detective Gertin  
9 went and met with her at the hospital kind of later that  
10 morning.

11 Q. And when you spoke to her, you wanted to get as many  
12 details as you could at that point, correct?

13 A. Yes, ma'am.

14 Q. During this interview, she had indicated that when she  
15 was trying to elbow the man, she thought she felt skin so  
16 perhaps maybe his pants were not on, correct?

17 A. Yes, ma'am.

18 Q. But she never at any time said that she saw the man not  
19 wearing pants?

20 A. That's correct.

21 Q. And she said that she thought she felt skin, but she  
22 didn't give any more particular specific details about the  
23 skin, correct?

24 A. That's correct. Yeah, the way it was stated to me is  
25 that when he was behind her or kind of almost, one could say,

1 mounted on the back of her and they were both on the ground,  
2 that she was attempting to elbow him. And so in using her  
3 elbows in an attempt to strike him, she felt what she  
4 believed to be skin versus clothing. And that was the detail  
5 she provided to me.

6 Q. But she never indicated she saw him with no pants?

7 A. No, ma'am.

8 Q. And you also -- I want to go back to Dan. He was the  
9 only other person, to your knowledge, who had an interaction  
10 with the man at the residence, correct?

11 A. Yes, ma'am. Mm-hmm.

12 Q. And so he was a pretty important witness because of that  
13 then?

14 A. Sure.

15 Q. And so you were able to speak to him fairly quickly  
16 after the incident?

17 A. Relatively, yes, ma'am.

18 Q. And he also had spoken to Detective Gertin first?

19 A. He had.

20 Q. And on scene, he had spoken to numerous officers on  
21 scene?

22 A. That was -- yes, ma'am. I assume so. Mm-hmm.

23 Q. Okay. When you spoke to Dan -- and this interview was  
24 recorded as well, correct?

25 A. Yes, ma'am.

1 Q. He indicated that upon leaving --

2 MR. SIMPSON: I'm going to object on hearsay grounds.

3 MS. FORD: This would be impeachment.

4 THE COURT: Was this line of questioning -- when Dan  
5 testified, the first witness in this case, was this line of  
6 questioning pursued with Dan?

7 MS. FORD: Yes, your Honor. Definitely.

8 THE COURT: I'll overrule. I'll allow it.

9 MS. FORD: Thank you.

10 Q. [By Ms. Ford] Dan indicated that upon exiting Gwen's  
11 room, he ran into the man outside Kimmy's room?

12 A. To my recollection, it was that the man was in the  
13 process of exiting the room. Like, maybe it was in the  
14 doorway, maybe it was just inside the room, maybe it was in  
15 the hallway. Like, you know, that very small vicinity.

16 Q. He never indicated that he opened Kimmy's room and saw  
17 the man on top of Kimmy, correct?

18 A. To me, correct.

19 Q. Okay. So to your knowledge, that was never relayed to  
20 you or to the police?

21 A. I can only speak for myself, but correct.

22 MS. FORD: Beg the Court's indulgence?

23 THE COURT: Sure. Take your time.

24 (Ms. Ford conferred with co-counsel and their client.)

25 MS. FORD: I have no further questions.

1 THE COURT: Okay. Any redirect?

2 MR. SIMPSON: Yes, your Honor. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. SIMPSON:

5 Q. Sergeant Wolfson, just to clarify a point that Ms. Ford  
6 ended on, I believe she said it was never conveyed to the  
7 police that the intruder was on top of Kimmy, and you said  
8 not to you. It was never conveyed by Dan that that was the  
9 case?

10 A. That's correct.

11 Q. But it was, in fact, conveyed by Kimmy?

12 A. Absolutely.

13 Q. Okay.

14 A. Vehemently.

15 Q. Just to clarify that. And it was conveyed to you by  
16 Kimmy?

17 A. It was.

18 Q. To other investigators by Kimmy?

19 A. Yes.

20 Q. To the best of your knowledge, to treating healthcare  
21 professionals by Kimmy?

22 A. That's correct.

23 Q. Okay. And again, now, toward sort of what Kimmy stated  
24 to you and the elbowing, skin-to-skin contact, as the lead  
25 investigator, do you know that she conveyed to others that

1 she saw him with his pants off?

2 A. Yes, I do.

3 Q. Okay. That being --

4 THE COURT: Wait a minute, Solicitor. I think we may  
5 have an objection.

6 MS. FORD: Object. I think that's misleading.

7 THE COURT: Okay.

8 MS. FORD: There's the SANE nurse, and that's it.

9 THE COURT: Yep. Okay. Come on up to the bench, guys,  
10 for a second here.

11 (An off-the-record discussion was held at the bench in  
12 the presence of the jury but outside the hearing of the  
13 jury.)

14 BY MR. SIMPSON:

15 Q. And Sergeant Wolfesen, it's not our intent to mislead.  
16 It's that she told the SANE nurse that --

17 A. That's correct.

18 Q. -- there was a record of that. Okay? Not multiple  
19 people; I didn't want to imply that.

20 A. No.

21 Q. Okay. The SANE nurse, though, right?

22 A. The SANE nurse, yes.

23 Q. Okay. But certainly to multiple people that he was on  
24 top of her?

25 A. Yes.



1 Q. Strangled her?

2 A. Yes.

3 Q. To the point of unconsciousness?

4 A. Correct.

5 Q. Okay. Also, what we've been calling Interview 1 took  
6 place on September 22?

7 A. Yes, sir.

8 Q. And the incident took place on September 20?

9 A. Yes, sir.

10 Q. So Interview 1 was almost a full two days?

11 A. It was roughly almost exactly 48 hours later.

12 Q. Forty-eight hours later. Okay. The different versions  
13 of the story recounted to you by the defendant, could we, I  
14 guess, accurately call them sort of version 1, 2, and 3?

15 A. Sure.

16 Q. Did the -- he was given an open forum to tell his  
17 version of events; is that fair? Initially?

18 A. Yes, absolutely.

19 Q. And in Ms. Ford's cross-examination of you, you  
20 discussed that he may have known that you knew a shirtless  
21 black male was in the area right off King Street?

22 A. That's correct.

23 Q. And that was from a Live 5? I believe you testified a  
24 Live 5 broadcast?

25 A. Yes, sir.

1 Q. So when he sits in Interview 1, what he knows you know  
2 is a shirtless black male in the vicinity of King Street?

3 A. That's correct.

4 Q. And so the story he gives about his consensual encounter  
5 with a female -- is that correct?

6 A. Yes, sir. I would also mention -- and I apologize for  
7 cutting you off. He stated to me that when he was -- when  
8 some detectives had located him and brought him in in this  
9 early morning hour when this interview ended up occurring,  
10 that they said "Radcliffe." So he also had heard the word  
11 "Radcliffe." And knowing what he knew, I assume he connected  
12 those dots.

13 Q. And recounts to you a consensual encounter with a female  
14 that takes place outdoors?

15 A. That's correct.

16 Q. And did he also recount anything about his shirt?

17 A. Yes. He said that during this consensual encounter,  
18 that he had taken his shirt off and had laid it down as a  
19 means of this female being on top of that while they engaged  
20 in this consensual encounter.

21 Q. Okay. So he takes, in Interview 1, every detail that he  
22 knows you know and has an explanation for it?

23 A. He does.

24 Q. But it's not until after that version is given that you  
25 share more information with him?

1 A. Correct.

2 Q. And that information is the fingerprints; am I right?

3 A. Yes, sir.

4 Q. And those fingerprints were located where?

5 A. They were recovered from off the olive-oil bottle, which  
6 was inside the residence at ■ Radcliffe Street.

7 Q. So now he knows that you know that he was shirtless but  
8 was also inside the house?

9 A. That's correct.

10 Q. And it's not until he knows that you know that, that his  
11 story changes; is that true?

12 A. That's true.

13 Q. And at the conclusion of that interview, you said the  
14 warrants were shared with him?

15 A. They were.

16 Q. Would those warrants contain more information about what  
17 you knew?

18 A. That's accurate.

19 Q. And that was shared with him?

20 A. Yes. Verbatim.

21 Q. And it's not until more information about what you know  
22 is shared with Mr. Simmons that his story changes for the  
23 third time; is that accurate?

24 A. Yes, sir.

25 MR. SIMPSON: I have no further questions, your Honor.

1 THE COURT: Anything on recross?

2 MS. FORD: Yes, your Honor.

3 RECROSS-EXAMINATION

4 BY MS. FORD:

5 Q. Just briefly about the SANE nurse, you were not present  
6 during that examination, correct?

7 A. That's correct.

8 Q. And that interview was not recorded in any way, correct?

9 A. Not to my knowledge.

10 MS. FORD: Thank you.

11 THE COURT: Sergeant, you can step down. Thank you.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 THE COURT: All right. Solicitor?

15 MR. SIMPSON: Your Honor, at this point in time, the  
16 State rests.

17 THE COURT: Okay. Thank you very much.

18 Ladies and gentlemen, I have some legal issues to deal  
19 with with the lawyers, as well as kind of a planning -- a  
20 few-minutes planning meeting with the lawyers to see where we  
21 go from here. So if you'll go back to the jury room, and  
22 we'll get you back out shortly. Okay?

23 (The jury exited open court at 4:38 p.m.)

24 (The following proceedings were had outside the presence  
25 of the jury.)

1 THE COURT: Okay. Let's take a couple-minute break, and  
2 then I'll be glad to entertain any motions that need to be  
3 entertained.

4 MS. FORD: Thank you, your Honor. And just for planning  
5 purposes, I do have a witness who drove in from Spartanburg  
6 today. I don't think he'd be long. Normally I would imagine  
7 we would quit for the day --

8 THE COURT: Okay.

9 MS. FORD: -- but I am hoping to get him. Former  
10 Detective Gertin is here as well. He retired early for  
11 medical reasons, but if it's too late, I guess we can ask him  
12 to come back tomorrow since he's not coming from a distance.

13 THE COURT: Sure. And you think that Spartanburg  
14 witness would not be too long on the stand?

15 MS. FORD: I don't think so. I don't have that many  
16 questions, and I don't think --

17 THE COURT: Sure.

18 MS. FORD: I don't think Mr. Simpson would probably have  
19 too many either.

20 THE COURT: We'll do what we can to accommodate.

21 MS. FORD: Thank you.

22 (Court recessed.)

23 (Court resumed outside the presence of the jury.)

24 THE COURT: Okay. We are back on the record. And does  
25 the defense have any motions that they would like to make at

1     this time?

2             MS. FORD: Yes, your Honor. At this time, we would  
3     renew all objections.

4             THE COURT: Sure.

5             MS. FORD: We'd also move for a directed verdict on all  
6     charges, but specifically the assault with intent to commit a  
7     CSC. Quite frankly, I don't think there's any evidence for  
8     that.

9             I believe, essentially, Ms. Cantwell was sleeping nude.  
10     She was very clear that no one took clothes off of her. And  
11     I think that set the tone. But Ms. Cantwell doesn't even  
12     testify that she thought she was going to be raped, even  
13     though I understand that's what people would maybe assume,  
14     but it's just an assumption.

15             And there's been no evidence. In fact, it was laid out  
16     that the person who went in would not have even have known  
17     who was in that back room, whether it was a female or not.  
18     This person didn't come in and look around and see her and  
19     see that she was nude. He immediately, in the dark, lunged  
20     for her.

21             He, again, did not undress her. She testified he did  
22     not touch her breast or her butt or her privates. He did not  
23     press his body up against her, like his genitals. She did  
24     not feel his genitals.

25             The only thing is that maybe he had taken his pants off.

1 She testified she doesn't have any recollection of that at  
2 all. During the SANE interview, which was not recorded, the  
3 nurse did write a note that she looked back and saw he didn't  
4 have pants on. However, as you heard from Detective Wolfsen,  
5 when she spoke to police, she was clear, "No. I was elbowing  
6 him, felt skin," didn't specify more than that. "Thought I  
7 felt skin, so perhaps he wasn't wearing pants."

8 She said that the man was wearing pants when he entered.  
9 She said he immediately threw her on the ground and started  
10 choking her. There wouldn't have been time to take off the  
11 pants. As you could see from the surveillance footage that  
12 the State put forward, the man was wearing pretty tight  
13 pants. I can't imagine those pants would have gotten off and  
14 on so easily.

15 The witness Dan, when he came over, there's testimony  
16 that there may be some discrepancy of where he was -- the man  
17 was when Dan saw him, but Dan testified he was wearing pants  
18 at that point.

19 And so we would think there is literally nothing other  
20 than an assumption, and we would ask for a directed verdict  
21 on that.

22 We also think there's an issue because the AB HAN and  
23 the assault with intent to commit CSC is literally on the  
24 same conduct. The AB HAN as well, we understand there is no  
25 medical testimony of -- there was testimony that she was

1     choked, but no testimony that it was great bodily injury or  
2     could have resulted in great bodily injury. I think the  
3     actual injury itself is more like moderate bodily injury.

4             As far as the burglary part, burglary law is actually  
5     very clear; someone has to enter with the intent to commit a  
6     crime. There's a lot of testimony that there is really no  
7     way that anyone would have known who was in there.

8             There's testimony that the man inside, who the State has  
9     established as my client, messed with multiple olive-oil  
10    bottles. So clearly there was time. There was just time --  
11    and nobody knows exactly what the olive oil was about. But  
12    there was time where the man was in the apartment. He didn't  
13    directly go and attack someone.

14            And so we would argue that the -- for a directed verdict  
15    on that charge as well.

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

17            Solicitor, you want to respond to the defense motion,  
18    with a particular response concerning the assault or intent  
19    -- or assault with intent to commit a criminal sexual  
20    conduct? That's the charge out of the three that I'm most  
21    concerned about.

22            MR. SIMPSON: Understood, your Honor.

23            Anytime, I think in any case involving a charge that  
24    requires a finder of fact to determine a person's intent,  
25    obviously, certain -- common sense is going to be --



1 inferences are going to be made that a person's intent isn't  
2 consistent with their actions. And I believe there's case  
3 law to that fact, but it's also sort of just an obvious point  
4 to make. And so when we talk about a CSC with an assault --  
5 which certainly occurred; I don't think that's the issue --  
6 the intent to commit the CSC, first we are -- I wouldn't use  
7 the word "assumptions," but we are making proper inferences  
8 from the conduct of the defendant on what was intended.

9       And what we hear when we heard the testimony of Kimberly  
10 Cantwell is that the word she used is "lunged." In other  
11 words, you know, awakes to see a figure entering her room  
12 from a closed door and lunges at her bed, pulls her to the  
13 floor. The testimony at one point is she was mounted from  
14 behind while strangling from behind, obviously with an intent  
15 to render that person into a state that would allow further  
16 assault of her. I don't know what would have been the  
17 purpose for strangling a person from behind other than to  
18 achieve that.

19       We also have testimony that he did take his shirt off.  
20 We have the skin-to-skin contact, which I think is  
21 uncontested that Kimberly testified and gave the police back  
22 then that she believed that some items of his clothing were  
23 off. We also have the video of him running from the place  
24 with his shirt off and then putting -- a couple blocks away,  
25 putting his shirt back on. And the fact that the tank top

1 was -- the undershirt was what Dan Schwarz pulled from him,  
2 one could infer that he did remove at least one item of  
3 clothing.

4       Also, obviously this is a point in the trial where we're  
5 not looking at the weight of evidence. We're looking at the  
6 existence of any evidence whatsoever. So we've got the  
7 statement alleged to be made to the SANE nurse that she  
8 looked back and saw that he didn't have his pants on. She  
9 did testify that she was unsure of whether or not his pants  
10 were on or off, but, again, did testify to the skin-to-skin  
11 contact that led her to think that at least some portion of  
12 his body was uncovered.

13       So again, we have a person entering the bedroom of a  
14 female, lunging at her, ripping her from the bed, getting on  
15 top of her, mounting her from behind, and choking her to the  
16 point of unconsciousness. And nothing stops about this until  
17 it's interrupted by, initially, her screams and then what  
18 would obviously be the response of the roommates.

19       And so I think given the standard that we're analyzing,  
20 the evidence at this point, with all inferences being made in  
21 favor of the State, the existence of evidence not -- you  
22 know, giving that evidence any weight, just asking is there  
23 any evidence whatsoever of this, I think we'd survive the  
24 directed verdict on the CSC first.

25       On the burg first, obviously the defendant -- obviously

1   there's evidence the defendant entered what is obviously a  
2   residential property without permission. And without the  
3   unlawful entry, his intent -- I mean, when he entered, what's  
4   obvious is -- again, consistent with his actions once  
5   inside -- his intent was to commit a crime therein.

6         Now, the fact that he didn't know if ultimately he would  
7   be successful once he got in there -- I guess the point  
8   Ms. Ford made is that he couldn't have known that he would  
9   find a sleeping female in this, you know, area of town where  
10  college students lived. I mean, that's -- certainly I would  
11  acknowledge that's true. But the fact of whether or not he  
12  would be successful in carrying out that intent doesn't  
13  negate the intent when he crosses the threshold of that  
14  house. He certainly intended to commit a crime therein.

15         As outlined in our indictment, there is evidence also  
16  certainly to support several different aggravating  
17  circumstances that give rise to the burglary first degree:  
18  the fact that he was armed, the fact that an assault  
19  occurred, the fact that it was in the nighttime, etc. So the  
20  elements of burg first are certainly met.

21         AB HAN, again, we don't need expert testimony to  
22  establish things that can be accepted by a jury in the course  
23  of their own experience and common sense that we ask every  
24  juror to bring with them into a case. Choking a person to a  
25  point of unconsciousness is obviously an assault that can

1 arise that, if carried out in a manner, that could -- and  
2 that's what we're looking at -- that could cause great bodily  
3 injury or death.

4 THE COURT: All right. Thank you.

5 Well, as you know, what I have to look at is whether  
6 there exists any direct or substantial circumstantial  
7 evidence to justify sending a particular charge to the jury.  
8 That's naturally the standard I have to look at.

9 On the assault and battery high and aggravated, I  
10 believe that elements have been met insofar as the existence  
11 of any evidence to send that charge to the jury. Unlawfully  
12 injuring another, either causing great bodily injury or an  
13 act accompanied by means likely to produce death or great  
14 bodily injury. We do have the choking, causing  
15 unconsciousness. We do have Kimmy being stricken with an  
16 object, a hard object that she said, to the forehead. And so  
17 I think that in and of itself would exist enough evidence to  
18 send that case to the jury.

19 Now, my question is, before I go to the other two  
20 charges, does either side want a lesser included AB 1, 2, and  
21 3 to be in the jury charge? I'd like to have an answer  
22 before I leave today. If you can't tell me right now, then  
23 that's fine. But before I leave the courthouse today, I'd  
24 like to have an answer if either side wants lesser included  
25 on that. Okay?

1           Now, concerning the burglary, certainly entering the  
2 dwelling without consent with the intent to commit a crime, I  
3 know intent is going to be a big part of the defense case and  
4 argument. And of course, that's just determined by the facts  
5 and circumstances of the particular case.

6           There is enough evidence on -- you know, as you know,  
7 burglary 1 is kind of in three sections: the use of a deadly  
8 weapon and physical injury and that sort of thing; second,  
9 whether or not there are any prior burglary convictions,  
10 which I don't think apply in this case, at least you've not  
11 indicated that; or three, the nighttime element. I find that  
12 the first section, there's enough to go to the jury. And the  
13 third, the nighttime section. So I find that there is enough  
14 direct and substantial circumstantial evidence to send  
15 burglary first to the jury.

16           Now, with respect to the assault with intent to commit a  
17 CSC, all I've got -- all I've heard is, one, she told or  
18 allegedly told the SANE nurse that he did not have pants on,  
19 but then on the witness stand, she does not remember making  
20 that statement. That coupled with, just kind of however you  
21 want to look at it, the defendant's interaction with olive  
22 oil, what was that about? You know, I mean, you can  
23 certainly -- you could certainly argue, "Well, maybe he was  
24 using that as some sort of lubricant," but maybe not.

25           Bottom line, I don't find that there is substantial

1     circumstantial evidence to -- or any direct evidence to  
2     justify sending the assault with intent to commit CSC to the  
3     jury. So I'm going to grant the defense's directed verdict  
4     motion on that.

5             But the other two are going to the jury.

6             So with that said, now, before, you indicated that you  
7     want to call one witness now before we finish, and I'll  
8     certainly allow you to do that. When we start back first  
9     thing in the morning, I will need to advise your client  
10    concerning his rights to testify or not testify. So I will  
11    do that just because time-wise, I won't do that now but I'll  
12    do that first thing in the morning. Okay?

13            So anything else before we get the jury out and call  
14    your one witness? And I know you have another witness  
15    waiting in the wings, but he's a local guy, retired. So if  
16    there's not going to be any issue there, we'll just wait for  
17    him until the morning.

18            MS. FORD: Yes, sir.

19            THE COURT: Okay. All right. Anything else?

20            MR. SIMPSON: Not from the State, your Honor.

21            THE COURT: Okay.

22            Okay. Let's bring the jury out, please.

23            (The jury came into open court at 5:06 p.m.)

24            THE BAILIFF: All jurors are present, your Honor.

25            THE COURT: All right. Thank you, sir.

1           Ladies and gentlemen, we're going to start into the  
2 defense case with one witness before we break for the  
3 evening. I understand the witness drove all the way down  
4 from Spartanburg. That's a nice little drive for that  
5 witness, so we're going to accommodate him, along with the  
6 defense lawyers. And we don't -- they don't anticipate he's  
7 going to be a lengthy witness, so we're going to go ahead and  
8 take him, and then we'll adjourn for the evening. Okay?

9           So Ms. Ford, you want to call your first witness?

10          MS. FORD: Yes, your Honor. Thank you. The defense  
11 calls Matthew Rowan.

12          CLERK OF THE COURT: Can you raise your right hand, left  
13 hand on the Bible, please?

14          (Witness sworn.)

15          CLERK OF THE COURT: You may have a seat.

16          THE WITNESS: Thank you.

17          CLERK OF THE COURT: Please state your name for the  
18 record and spell your last name.

19          THE WITNESS: Matthew W. Rowan, Sr., R-O-W-A-N.

20          THE COURT: You may proceed.

21          MS. FORD: Thank you, your Honor.

22

23

24

25

1 MATTHEW ROWAN, SR.,  
2 called as a witness on behalf of the Defendant, being first  
3 duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. FORD:

6 Q. Matthew, do you know Chad Simmons?

7 A. Yes, I do.

8 Q. And how do you know him?

9 A. He moved into an apartment complex that I was doing  
10 property management -- er, property maintenance for in 2015.

11 Q. So what is your relationship with him then?

12 A. After a while, me and him got to be good friends. He  
13 lived there about four years.

14 Q. And do you -- where do you currently live?

15 A. I live in West Spartanburg.

16 Q. Okay. And does Chad live in that area now?

17 A. No.

18 Q. Okay. Do the two of you continue to still be friends?

19 A. Absolutely, on social media.

20 Q. All right. And are you aware of the charges we're here  
21 for?

22 A. No.

23 Q. Okay. In general, do you know what --

24 A. Somewhat, yes.

25 Q. Okay. So you told us you met in -- was it 2015, did you



1 say?

2 A. Yes.

3 Q. Okay. And during the time where y'all lived close to  
4 each other, would the two of you ever drink alcohol together?

5 A. Offsite.

6 Q. When Chad had been drinking, how would he tend to act?

7 A. Act like a clown. I mean, he's a clown.

8 Q. And have you ever seen him be violent when he's  
9 drinking?

10 A. No.

11 Q. Okay. Is he a violent person, to your knowledge?

12 A. No.

13 Q. Has he talked about violence -- liking violence when it  
14 comes to females?

15 A. No.

16 Q. Have you seen him interact with women?

17 A. Yes.

18 Q. Is he violent towards females?

19 A. No.

20 Q. How does he behave towards females in general?

21 A. Me and him rode down the road, and he'd be like, "Slow  
22 down. Hey, beautiful," or, "Hey, gorgeous," you know,  
23 "What's going on?" Just being a typical guy.

24 Q. Okay.

25 MS. FORD: Beg the Court's indulgence?

1 THE COURT: Sure.

2 (Ms. Ford conferred with co-counsel and their client.)

3 MS. FORD: No further questions.

4 THE COURT: Okay. Solicitor, anything in  
5 cross-examination?

6 MR. SIMPSON: Yes, briefly.

7 CROSS-EXAMINATION

8 BY MR. SIMPSON:

9 Q. It's Mr. Rowan?

10 A. Yes.

11 Q. Thanks for being here today.

12 A. My pleasure.

13 Q. Just to clarify, you weren't in the Charleston area when  
14 this incident occurred?

15 A. No. I was in West Spartanburg.

16 Q. You don't know anything about what Kimberly Cantwell  
17 endured in September of 2018?

18 A. No, I don't.

19 Q. Have you heard her version of events?

20 A. No, I have not.

21 Q. Have you heard her descriptions of her interaction with  
22 Mr. Simmons?

23 A. No, I have not.

24 Q. Okay. And your relationship, it sounds like you said  
25 you met Mr. Simmons as a proper -- you maintained his

1 property or managed his property?

2 A. I was maintenance.

3 Q. Okay. And somehow that relationship evolved where you  
4 would be close enough where you guys would go out drinking  
5 together?

6 A. Yes.

7 Q. Okay. Would you guys drink to the point of, sort of,  
8 obliteration?

9 A. No.

10 Q. No? How much would you typically have to drink?

11 A. Maybe over the course of four hours, three pitchers.

12 Q. Shared?

13 A. Yes.

14 Q. Okay. So just really light to moderate drinking?

15 A. Yes.

16 Q. Okay. So you really don't know what Mr. Simmons acts  
17 like when he has several cocktails and somewhere between five  
18 and ten shots of liquor?

19 A. There were shots in the pitchers.

20 Q. Okay. But have you ever been with him when he had  
21 consumed so much alcohol as to be seriously intoxicated?

22 A. Not to my recollection.

23 Q. Okay. Sounds to me like, when I initially asked you the  
24 question, it's usually just sharing a couple pitchers  
25 together and joking around?

1 A. Basically.

2 Q. Okay. But it sounds like women are important to  
3 Mr. Simmons?

4 A. Absolutely.

5 Q. To the fact that he'll even compliment the appearance of  
6 complete strangers?

7 A. Yes.

8 Q. Okay. So a player, for lack of a better term?

9 A. No, absolutely not.

10 Q. Oh, really? He's just driving around saying, "Hey,  
11 gorgeous," to complete strangers? "Hey, beautiful. You're  
12 looking good," to complete strangers?

13 A. What gentleman has not?

14 Q. Okay. I'm doing it wrong, apparently.

15 But is it fair to say that a person who would engage  
16 women in that sort of manner takes -- you know, values  
17 contact with women pretty highly; is that fair to say?

18 A. Absolutely. Very highly.

19 Q. Okay. And again, it sounds to me like you don't know  
20 anything about ■ Radcliffe Street and what happened there in  
21 September?

22 A. No.

23 Q. Okay.

24 MR. SIMPSON: I don't have any further questions, your  
25 Honor.

1 THE COURT: Anything in redirect, Ms. Ford?

2 MS. FORD: No, your Honor.

3 THE COURT: Okay. You can step down, sir.

4 THE WITNESS: Thank you.

5 THE COURT: You're free to leave and go back to  
6 Spartanburg.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 THE COURT: Let me see the lawyers for just a second up  
10 at the bench, please.

11 (An off-the-record discussion was held at the bench in  
12 the presence of the jury but outside the hearing of the  
13 jury.)

14 THE COURT: All right. Ladies and gentlemen, that does  
15 it for today. In the morning, I want you here at 10:30.  
16 We've got some work to do, and so I suppose that you can sit  
17 back there, even though I don't think you're having a pretty  
18 good time. My chambers is just right down the hall.

19 So 10:30, and we'll continue with the defense case. And  
20 then sometime tomorrow, then the lawyers will do their  
21 closing arguments, I will charge you on the law, and some  
22 point in time tomorrow I will be telling you to begin your  
23 deliberations. Okay?

24 But until I do that, again, my instructions apply. No  
25 communication among yourselves about this case or anyone you

1     come into contact with. And absolutely no research into this  
2     case.

3             All right. Have a good evening. Get some rest, and  
4     we'll see you in the morning.

5             (The jury was released for the day and exited the  
6     courtroom at 5:15 p.m.)

7             (The following proceedings were had outside the presence  
8     of the jury.)

9             THE COURT: All right. Before we finish up, let me just  
10    go ahead and, while I'm pulling up that script, Ms. Ford and  
11    Mr. Daniels, if you'll advise your client of what I'm fixing  
12    to advise him on: his right to testify or not testify.

13            You don't have to tell me this evening. You can tell me  
14    in the morning, Mr. Simmons, what you plan to do concerning  
15    testifying. But I want to go ahead and get your rights  
16    advised to you. So give me just a minute to pull that up. I  
17    should have it memorized, as many times as I've done this.

18            All right. Mr. Simmons, would you please stand? And I  
19    need to place you under oath.

20            Madam Clerk, would you swear Mr. Simmons in, please?

21            (Defendant sworn.)

22            THE COURT: Okay. Mr. Simmons, at this time I'm going  
23    to explain to you certain of your rights. If you do not  
24    understand anything I say, please let me know that. If you  
25    want me to explain anything in more detail, please let me

1 know that as well. Do you understand, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. We now have reached the stage of the  
4 trial where you may present your defense. You have a right  
5 -- you've already presented one witness in your defense. You  
6 have the right to claim the protections given to you by the  
7 Fifth Amendment of the Constitution of the United States.

8 This amendment states, in part, no person shall be  
9 compelled in any criminal case to be a witness against  
10 himself. That means that you cannot be required to testify  
11 in this case. You have a right to testify on your own  
12 behalf. However, no one can make you testify. This is a  
13 personal right, and no one can waive this right except you,  
14 sir.

15 If you decide to testify, you would be subject to the  
16 same rules that govern other witnesses, and you may be  
17 examined and cross-examined on any relevant issue in this  
18 case. In addition, if you have any convictions involving  
19 dishonesty or false statement or for crimes punishable by  
20 imprisonment of more than one year and this Court determines  
21 that the probative value of admitting this evidence outweighs  
22 the prejudicial effect to you, the solicitor will be able to  
23 introduce your records and attack your credibility.

24 If you decide to testify, this decision on your part  
25 must be freely, voluntary, and intelligently made, with

1 knowledge of the protections given to you by the Fifth  
2 Amendment and the consequences of your decision to testify.  
3 If you decide not to testify, this decision must be freely,  
4 voluntarily, and intelligently made by you.

5 If you decide not to testify, I will specifically  
6 instruct the jurors that they cannot give the fact that you  
7 did not testify any consideration whatsoever and that there's  
8 to be absolutely no prejudice to you because you did not  
9 testify.

10 This is left entirely up to you whether or not you  
11 testify. You certainly have the right -- which I'm sure  
12 you've already done -- to talk with your attorneys, any  
13 family members, friends, or anyone else, but the final  
14 decision will be left entirely up to you.

15 Have you understood what I've explained to you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. Do you have any questions about what  
18 I've explained to you?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. Have you had ample time to discuss  
21 this issue with lawyers and anybody else you decided to talk  
22 to?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Now, if you're not prepared to give  
25 me an answer concerning whether or not you'll testify, that's



1 perfectly fine. You can tell me in the morning. However, if  
2 you do know that you are going to testify or not testify and  
3 you're ready to tell me, then I'll hear from you now. Either  
4 way is fine with me.

5 THE DEFENDANT: I'd like to say it in the morning.

6 THE COURT: Okay. All right. Very good. I'll give you  
7 till the morning. Okay?

8 THE DEFENDANT: Thank you, sir.

9 THE COURT: All right. Thank you very much. All right.  
10 You can have a seat.

11 And anything else for the record before we dismiss for  
12 the evening?

13 From the State?

14 MR. SIMPSON: You mentioned earlier wanting to maybe get  
15 an idea of our positions on lesser includeds.

16 THE COURT: Yeah, I do need to know that. What is the  
17 State's position on whether or not to charge lesser includeds  
18 on AB 1, 2, and 3?

19 MR. SIMPSON: If I could reserve the right to change my  
20 mind overnight, I think I am going to -- I would be fine with  
21 charging the lesser --

22 THE COURT: Okay.

23 MR. SIMPSON: -- includeds on the assault charges.  
24 Obviously nothing on the burglary.

25 THE COURT: Because there's no lesser includeds on the

1 other.

2 MR. SIMPSON: Yeah.

3 THE COURT: And certainly, you have a right to change  
4 your mind, if you want -- you know, decide to.

5 MR. SIMPSON: I think there may be --

6 THE COURT: That doesn't mean that I'll go along with  
7 what you change your mind to.

8 MR. SIMPSON: Sure.

9 THE COURT: Ms. Ford, what is the defense position on  
10 charging lesser includeds on the assault?

11 MS. FORD: Yes, your Honor. I was going to request that  
12 you do charge them.

13 THE COURT: You know, normally on assault and battery, I  
14 typically do charge lesser includeds, unless it's just a real  
15 unusual situation.

16 So we'll plan on that. If you change your mind, you can  
17 put it on the record.

18 MR. SIMPSON: Understood, your Honor. Thank you.

19 MS. FORD: Thank you.

20 THE COURT: Thank you.

21 MR. SIMPSON: I think there may just be one that might  
22 not apply. That would only be my --

23 THE COURT: Well, I know there's always that one, and  
24 I'm going to look at that. Sometimes AB 1 does not apply.  
25 Even though it's a lesser included, sometimes it doesn't

1     apply to the facts of the case. And we'll certainly take a  
2     look at that as well. Yeah, 1's a little tricky.

3           MR. SIMPSON: I believe it does here because of the  
4     presence of the burglary charge.

5           THE COURT: Yeah.

6           MR. SIMPSON: But I just want to look it up.

7           THE COURT: Yeah. Yeah. All right. We'll take a look  
8     at it.

9           All right. Thank you very much. I appreciate y'all's  
10    hard work. And we'll see you in the morning.

11           (Off the record.)

12           THE COURT: Okay. Yeah. Let's be on the record on  
13    this.

14           All right. Voluntary intoxication is not a defense.  
15    And you're wanting transferred intent with respect to what,  
16    Solicitor?

17           MR. SIMPSON: The assault charge. And the burglary  
18    charge, due to the repeated entry into evidence in this trial  
19    of the "Wrong house, Wrong house," assertions from the  
20    defendant.

21           THE COURT: All right. Now --

22           MR. SIMPSON: I suppose that would, you know, apply more  
23    to the assault than the burglary charge. I'm sort of  
24    thinking about this on the fly.

25           THE COURT: Yeah.

1           MR. SIMPSON: I can maybe articulate that a little  
2 better in the morning.

3           THE COURT: All right. I'll take a look at that now.

4           Ms. Ford, are you going to be requesting an  
5 involuntary-intoxication charge.

6           MS. FORD: Yes, sir, I would.

7           THE COURT: Okay. Now, am I going to hear a little bit  
8 more to work with on that particular area?

9           MS. FORD: I mean, I do plan to put up another character  
10 witness who may be able to flesh out things a little more. I  
11 don't have proof obviously.

12          THE COURT: Yeah.

13          MS. FORD: There's no way we can prove that someone did  
14 something. My intent with the character witnesses is just to  
15 show while, you know, he drinks, he doesn't get this way when  
16 he drinks and this is not in character when he's drinking.

17          THE COURT: Right.

18          MS. FORD: And that's why I asked specifically questions  
19 about alcohol and his behavior. So that -- but I don't have  
20 any --

21          THE COURT: Right. Yeah.

22          MS. FORD: -- concrete proof, your Honor.

23          THE COURT: Well, certainly I'll give you full  
24 opportunity to argue for whatever you want. I mean, I'll say  
25 this right now: I don't think I've got enough to charge an

1 involuntary-intoxication charge. And we've already looked at  
2 that, but I think I'm going to need to get a little bit more.

3 Now, that certainly doesn't preclude you from, as you've  
4 already done, as far as character evidence as far as how your  
5 client typically acts when he's been drinking. But  
6 suspecting that maybe somebody put something in his drink,  
7 that probably doesn't apply to the level of me charging that.  
8 But I'm not going to shut the door on that.

9 MS. FORD: Okay.

10 THE COURT: Yeah. But just to kind of give you my  
11 general thoughts at this time.

12 MS. FORD: Yes, sir.

13 THE COURT: Okay.

14 All right. Okay. Thank you, guys. We'll see you in  
15 the morning.

16 (Court recessed at 5:26 p.m., to resume at 10:30 a.m.,  
17 Thursday, December 1, 2022.)

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1           (Court resumed at 10:39 a.m., Thursday, December 1,  
2   2022, outside the presence of the jury.)

3           THE COURT: All right. We're on the record this  
4   morning. I had an informal charge conference with the  
5   lawyers. Certain requests were made.

6           But concerning the Court's charge, is there anything  
7   that needs to be put on the record by the State?

8           MR. SIMPSON: Your Honor, we discussed in chambers the  
9   involuntary-intoxication charge.

10          THE COURT: Right.

11          MR. SIMPSON: And it's sort of our anticipation that,  
12   you know -- our first request would be that the level of  
13   evidence in support of involuntary intoxication does not rise  
14   to the level of putting that issue before a jury. But that  
15   should come with the prohibition against arguing that point  
16   by the defense.

17          Secondarily, if the defense is going to be allowed to  
18   assert that in a closing argument, that they believe this  
19   arose because of the involuntary intoxication of their client  
20   or that they believe he lacked criminal intent due to  
21   involuntary intoxication, I think the better course of action  
22   in that situation is that they receive that charge --

23          THE COURT: Right.

24          MR. SIMPSON: -- because I would certainly want to  
25   counter that argument in my rebuttal close with the high

1 level of the *M'Naghten* test --

2 THE COURT: Right.

3 MR. SIMPSON: -- that would apply to involuntary  
4 intoxication, as well as, of course, factual disputes that --

5 THE COURT: Sure.

6 MR. SIMPSON: -- have been established.

7 THE COURT: Right. And I think we sent you the language  
8 that we originally were going to use, and I think you were  
9 going to use that along with maybe adding additional  
10 language. And so just as soon as you get that together, you  
11 can send it to Manning. Okay?

12 MR. SIMPSON: We have a proposal that we're sending to  
13 you, and we've reviewed the defense's proposal. They're  
14 slightly different. So whichever the Court chooses.

15 THE COURT: Okay. All right. They're similar but a  
16 little different, correct?

17 MS. FORD: I mean, primarily. We took out the last  
18 sentence, more or less, because we found it to be repetitive.

19 THE COURT: Okay.

20 MS. FORD: And so we took that out. And there might  
21 have been a change from -- the solicitors used the words  
22 "alcohol or drugs," and we just changed it to "intoxicants"  
23 to --

24 THE COURT: Okay.

25 MS. FORD: -- be more efficient, I guess.

1 THE COURT: Sure.

2 MS. FORD: But that's, you know, not a big deal.

3 THE COURT: Okay.

4 MR. SIMPSON: I would also point out in both versions,  
5 we omitted the section about a medical prescription that --

6 THE COURT: Right. Right.

7 MR. SIMPSON: -- there's -- there's --

8 THE COURT: Yeah, yeah.

9 MR. SIMPSON: There's truly no evidence of that.

10 THE COURT: Right. That's right.

11 All right. Well, I will take a look at that. What  
12 we'll do is the defense will finish up their case. I'm  
13 assuming no rebuttal case by the State.

14 MR. SIMPSON: That's accurate.

15 THE COURT: And then we'll take a break. We'll get the  
16 charge exactly where we want it, and then bring the jury out.  
17 Y'all can do closing, and then I'll charge and we'll go from  
18 there.

19 You've already recognized that you have a right to a  
20 reply argument under *Beaty* because the defense has put up a  
21 case. So the State will close in full, defense closes in  
22 full, and the State will come back, if it so chooses, with  
23 any reply argument as to any new matters that defense has  
24 raised in their closing.

25 MR. SIMPSON: Thank you.



1 THE COURT: All right. Okay. Let's bring the jury out.

2 MR. DANIELS: I just sent that to you.

3 THE COURT: I'm sorry?

4 MR. DANIELS: I just sent that to you.

5 THE COURT: Okay. We'll take a look at it during our  
6 little break after you put up your case. And then we'll have  
7 one final charge, get you each a copy of it. You can look at  
8 it and make sure that we've included everything that you've  
9 requested.

10 And I think Ms. Ford, you said you just have one  
11 witness?

12 MS. FORD: Yes, your Honor.

13 THE COURT: Okay.

14 MS. FORD: And I don't know if you want to put on the  
15 record my client not wanting to testify.

16 THE COURT: Oh, yeah.

17 Tell them to hold off just a minute, if they're even out  
18 of the jury room yet.

19 Okay. Mr. Simmons, yesterday I advised you of your  
20 rights concerning testifying or not testifying. And have you  
21 made a decision on that issue and are prepared to tell the  
22 Court?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And what is your decision, sir?

25 THE DEFENDANT: I wish not to testify, sir.

1           THE COURT: Okay. And has that decision not to testify,  
2 has that been freely, voluntarily, and intelligently made by  
3 you with, certainly, advice from your attorneys?

4           THE DEFENDANT: Yes, sir.

5           THE COURT: Okay. Thank you very much. You can have a  
6 seat.

7           All right. We're good now.

8           THE BAILIFF: All good?

9           THE COURT: Yes, sir.

10          (The jury came into open court at 10:45 a.m.)

11          THE BAILIFF: All jurors are present, your Honor.

12          THE COURT: Thank you, sir.

13          Good morning, ladies and gentlemen. I hope you're doing  
14 well. And I hope maybe you were a little surprised when the  
15 bailiffs brought back a lunch order form. Maybe you were not  
16 expecting that we were going to feed you lunch, but we figure  
17 that when I give you the case to begin your deliberations,  
18 it's going to be around lunchtime. So we thought we'd just  
19 go ahead and order lunch for you. So hopefully, you found  
20 something on that form that you liked and ordered.

21          What we have left to do, ladies and gentlemen, the  
22 defense informs me they have one more witness. Then we'll  
23 take probably a 15- or 20-minute break, and then bring you  
24 back out. The lawyers will make their closing argument to  
25 you, and then I will give you the charge on the law that you

1 are to apply to this case.

2 So is the defense ready to call its witness?

3 MS. FORD: Yes, your Honor.

4 THE COURT: Okay.

5 MS. FORD: We call Shaney Weston to the stand.

6 THE COURT: Can you give me that name again, please?

7 MS. FORD: Shaney Weston.

8 THE COURT: Okay. Got it.

9 CLERK OF THE COURT: Raise your right hand, left hand on  
10 the Bible, please.

11 (Witness sworn.)

12 CLERK OF THE COURT: You may have a seat, ma'am.

13 Please state your name for the record and spell your  
14 last name.

15 THE WITNESS: Shaney Weston, W-E-S-T-O-N.

16 SHANEY WESTON,  
17 called as a witness on behalf of the Defendant, being first  
18 duly sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. FORD:

21 Q. Hi, Shaney.

22 A. Hi.

23 Q. Do you know Chad Simmons?

24 A. Yes.

25 Q. And how do you know him?

1 A. He's my fiance.

2 Q. How long have you known Chad?

3 A. Since 2009.

4 Q. And have y'all been in a romantic relationship all that  
5 time?

6 A. A majority of that time.

7 Q. Okay. How about in 2018? Were y'all together at that  
8 point?

9 A. We were not romantically involved at that time.

10 Q. Okay. Were y'all still in communication with one  
11 another?

12 A. Yes.

13 Q. And why is that?

14 A. We have a child.

15 Q. Okay. And what's that child's name?

16 A. [REDACTED]. He's a junior.

17 Q. Junior?

18 A. Yeah.

19 Q. Okay. How old is he now?

20 A. Nine.

21 Q. Okay. When did you get back together with Chad then?

22 A. In 2020.

23 Q. Okay. And are you generally aware of the charges which  
24 we're here for?

25 A. Yes.

1 Q. Did you talk to police at any time?

2 A. In the beginning when he was first arrested, I talked to  
3 the cops at that time. That was the only time.

4 Q. Okay. So what age were you and Chad when y'all first  
5 met?

6 A. Eighteen.

7 Q. All right. So are both y'all the same age?

8 A. Yeah. He's a few months older than me, but pretty much  
9 the same age, yeah.

10 Q. So since you've known Chad all of this time, have you  
11 seen Chad drinking before?

12 A. Yes.

13 Q. When Chad drinks, does his demeanor typically change at  
14 all?

15 A. He's more relaxed. He's, like, laid back. But most of  
16 the time he's tired. He'll go to sleep, like, when he's  
17 intoxicated.

18 Q. Have you been around Chad when he's had a lot to drink?

19 A. Yes.

20 Q. And when he has a lot to drink, is he any different than  
21 when he's just had a little to drink, for example?

22 A. No, not necessarily. He'll go to sleep --

23 Q. Okay.

24 A. -- when he's heavily intoxicated.

25 Q. When he's drunk, does he get violent at all?

1 A. No. Never.

2 Q. Okay. And you are a female, of course.

3 A. Yes, ma'am.

4 Q. Has Chad ever been violent towards you?

5 A. No. Never.

6 Q. Would you describe Chad as a violent person?

7 A. No, not at all.

8 MS. FORD: Beg the Court's indulgence?

9 THE COURT: Certainly.

10 (Ms. Ford conferred with co-counsel and their client.)

11 MS. FORD: I have no further questions.

12 THE COURT: All right. Does the State have any  
13 cross-examination?

14 MR. URICCHIO: Yes, your Honor.

15 CROSS-EXAMINATION

16 BY MR. URICCHIO:

17 Q. Hey, Ms. Weston. My name is Nick Uricchio.

18 A. Hi.

19 Q. Thank you for being here today. And congratulations on  
20 being engaged.

21 A. Thank you.

22 Q. Ms. Weston, you love Chad, right?

23 A. I do, yes.

24 Q. And y'all share a child, right?

25 A. Yes.

1 Q. And you weren't with him on September 20, 2018, correct?

2 A. Correct. I was not.

3 Q. And you weren't in ■■■ Radcliffe, Apartment ■■, were you?

4 A. No, I was not.

5 Q. Okay. And you don't know Kimberly Cantwell, right?

6 A. No, I don't.

7 Q. And you don't know what happened to Ms. Cantwell, right?

8 A. I don't, no.

9 MR. URICCHIO: No further questions.

10 THE COURT: Okay. Anything on redirect?

11 MS. FORD: No, your Honor.

12 THE COURT: Okay. You can step down, ma'am. You're  
13 welcome to remain with us, or you're free to leave the  
14 courthouse.

15 (Witness excused.)

16 MR. URICCHIO: We don't have anything further, your  
17 Honor.

18 THE COURT: All right. Defense rests?

19 MS. FORD: Yes, your Honor. The defense rests at this  
20 point.

21 THE COURT: And the State has no rebuttal case?

22 MR. URICCHIO: No rebuttal from the State.

23 THE COURT: All right. Thank you very much. The entry  
24 of record in this case is now closed.

25 Ladies and gentlemen, as I told you just a few moments

1 ago, we're going to take a little break. The purpose for  
2 that break is that the lawyers want to kind of get their  
3 thoughts together for purposes of their closing argument and  
4 I want to get my charge finalized, so we need a few minutes  
5 to accomplish those things. So if you'll go back to the jury  
6 room. Remember my instructions, and we'll get you back out  
7 shortly.

8 (The jury exited open court at 10:53 a.m.)

9 (The following proceedings were had outside the presence  
10 of the jury.)

11 THE COURT: Okay. We will be in recess about 20  
12 minutes.

13 MR. SIMPSON: Thank you, your Honor.

14 (Court recessed.)

15 (Court resumed outside the presence of the jury.)

16 THE COURT: Thank you. Have a seat.

17 All right. Has everybody had a chance to look at the  
18 final draft? I want to make sure it includes everything  
19 we've discussed.

20 MR. URICCHIO: I believe Ms. Ford had something they'd  
21 like --

22 MS. FORD: I'm sorry. I was outside and I didn't know  
23 that we were starting. I wasn't aware. I'm sorry.

24 THE COURT: Let's just take a few minutes off the record  
25 and have a chance to take a look.



1 (Off the record.)

2 THE COURT: So on the record, the State and the defense  
3 both are in agreement with the final charge, subject to  
4 anything that's been put on the record previously.

5 It was also asked whether or not I'll submit a copy of  
6 the written charge to the jury, which I do. And I explain to  
7 them they can use it in any manner that they wish, if at all.

8 And lastly, I do not place any time limitations  
9 concerning closing arguments, but I always encourage some  
10 sense of brevity when the closing arguments are being made.  
11 But I don't put any time limitations on it. Okay?

12 Anything else before we bring the jury out?

13 MR. SIMPSON: Nothing from the State, your Honor.

14 THE COURT: Okay. Defense?

15 MS. FORD: I think I just have to renew all of my prior  
16 motions at the end of my case.

17 THE COURT: Sure.

18 MS. FORD: So I would just do that at this time.

19 THE COURT: Okay.

20 MS. FORD: But no additional arguments.

21 THE COURT: All right. So noted. Thank you.

22 All right. Let's bring the jury out, please.

23 (The jury came into open court at 11:18 a.m.)

24 THE BAILIFF: All jurors are present, your Honor.

25 THE COURT: Thank you, sir.

1           Ladies and gentlemen, as I had indicated before we took  
2           our break, what remains to be done is the lawyers will give  
3           their closing arguments to you. How that goes is the State  
4           will go first with their closing argument, then the defense,  
5           and then the State has the right, if it so chooses, to put up  
6           what we call a rebuttal or reply argument as to any new  
7           matters that defense brings out in their closing. And then I  
8           will then charge you the law that applies to this case, and  
9           then we'll give you a direction and instruction to begin your  
10          deliberations.

11          This is the very last time that the lawyers have an  
12          opportunity to advocate for their respective sides, so I  
13          would urge you to give the lawyers your undivided attention.

14          Is the State ready?

15          MR. SIMPSON: We are, your Honor.

16          THE COURT: You may proceed.

17          MR. SIMPSON: Thank you.

18          Ladies and gentlemen, good morning. I'd like to start  
19          my closing statement the same way I started my opening  
20          statement, by offering you the State of South Carolina's  
21          profound thanks. I know you all have lives and things to do.  
22          And particularly around the holiday season, I'm sure y'all  
23          have plenty to do rather than sit in a courtroom for an  
24          entire week and listen to us prattle on.

25          So with that in mind, I'll try to be as brief and direct

1 as I can in my closing arguments. But we thank you and are  
2 certainly aware of the sacrifices that you've had to make  
3 this week.

4 Kimberly Cantwell, in September of 2018, as at this  
5 point you are well aware, lived a waking nightmare. She was  
6 stirred from her peaceful sleep with a stranger in her  
7 bedroom, and that stranger made his intent known instantly:  
8 a lunge directly at her. For as horrifying as this situation  
9 was, though, it was, thankfully, short. So let's review what  
10 we absolutely know about the situation.

11 Mr. Chad Simmons entered ■ Radcliffe Street, went and  
12 examined the house. We know that because of the residents  
13 finding olive oil in the house. He touches it, opens it, and  
14 pours it, uses it to coat his body. Dan Schwarz describes  
15 the confusing part of his interaction with Mr. Simmons, him  
16 being slippery and slick and having that feeling. And later  
17 we find olive oil on the floor, open olive-oil bottles that  
18 previously couldn't have been opened, Chad Simmons'  
19 fingerprints on that bottle, Chad Simmons' touch DNA on the  
20 twist cap. Purpose. Intent.

21 Chad Simmons then examined the inside of this house and  
22 opened a closed bedroom door and entered it. And we ask  
23 intent? Purpose? His shirt's off. He takes his shirt off.  
24 We haven't talked a lot about that, but how do we know that?  
25 We know that because he is shirtless, with a shirt in his

1 hand when he flees the house. And we know that Dan, in  
2 struggling with him, takes off a shirt, a tank top. He takes  
3 off an undershirt.

4 So his over shirt -- an undershirt tank top. His over  
5 shirt, a black T-shirt, as you can see in the video that's in  
6 evidence, was taken off by Mr. Simmons. We know that because  
7 Kimmy Cantwell describes in her struggles -- her horrific  
8 struggles with this man, skin-to-skin contact. She told the  
9 SANE nurse -- at least we heard from the SANE nurse that she  
10 looks back and thinks at one point in time that his pants are  
11 off. Although admittedly, on the stand, she says in all of  
12 this chaos, she's less certain of that point today. But we  
13 know he takes his shirt off.

14 We also know that he doesn't come in a closed bedroom  
15 door and say, "Where am I? I'm confused. Whose house is  
16 this? Oh, you're in bed? Did I wake you? I'm so sorry.  
17 Who are you? I'm so confused." That wasn't his intent.  
18 That wasn't his purpose.

19 The word we heard more than once from this stand from  
20 Ms. Cantwell is "lunged." Lunged to a sleeping woman, pulled  
21 her off of the bed, got on top of her, mounted her, placed  
22 his hands around her throat, and squeezed and applied  
23 pressure, causing injuries that you've all seen with your own  
24 eyes. I don't think anyone in this room sits and doubts what  
25 we hear from Ms. Cantwell, but if we did, we could look at

1 the physical evidence as well, because the physical  
2 evidence -- the DNA doesn't just show who was in the house.  
3 It shows what that person did in the house.

4 You heard -- and I'll take this moment aside. I thought  
5 about this. I meant to warn you in the opening about chain  
6 of evidence and how boring that can get. That's a  
7 requirement that we have to go through.

8 But through all that chain of evidence, you heard an  
9 important thing about one piece of evidence: the black  
10 undershirt that was worn by the assailant at the time of the  
11 assault. What did they process or do at SLED with that  
12 undershirt? They scraped just the neck and the underarms.  
13 Right? What did they find in the scraping of the tank top  
14 neck and the underarms? The DNA of Chad Simmons? Certainly.  
15 He was the assailant. He was in the house.

16 What else did they find to some degree of certainty of  
17 sextillion -- 340 and 22 zeros, I think it was that we heard  
18 from the stand? The DNA of Kimberly Cantwell. Contact with  
19 the person with the body between the neck -- the neck or the  
20 underarms of the shirt Mr. Simmons is wearing. Contact with  
21 the body of Ms. Cantwell to the degree that they can be  
22 certain her DNA is on that shirt as well.

23 Under the fingernails of Ms. Cantwell. Struggling,  
24 trying -- had just been aroused from her sleep, being  
25 attacked and choked and mounted -- to get away. Of course we

1 have the DNA of Ms. Cantwell. But whose DNA do we have under  
2 her fingernails? That of Mr. Simmons.

3 No conversation. No "Wrong house" at that point in  
4 time. No "I'm sorry. Wrong house," when he enters the  
5 bedroom of a sleeping female. Intent, purpose is obvious.  
6 Pulled to the floor, mounted, body-to-body contact,  
7 skin-to-skin contact.

8 And why does that horrific assault stop? It stops  
9 because roommates respond. People get up. Noise -- you can  
10 be certain there's noise in the house. People are getting  
11 up. People are responding to these screams. And Dan Schwarz  
12 responds to that bedroom, thankfully. As I told you in the  
13 opening, I don't know if I'd be that brave, but he did.

14 I ask of you, and I will ask you this repeatedly, do not  
15 give him credit for the heroism of Dan Schwarz. This assault  
16 could have been longer, sure. Could it have been worse?  
17 Yes. Thankfully, it was not. But he doesn't deserve credit  
18 for that. That's not why the assault stopped when it  
19 stopped. It wasn't a decision Mr. Simmons made. Don't give  
20 him credit for the heroism of Dan Schwarz.

21 Tragically, and the part in cases like this I always  
22 find so sad, is that someone who's experienced something that  
23 Ms. Cantwell experienced, and someone in an emotional state  
24 -- and how do we question or doubt what happened to her if  
25 you hear her emotional state that you got to hear live on the

1 911 call? Someone in that emotional state, having  
2 experienced that degree of trauma, doesn't get to process it.  
3 They don't get to go and be alone or be with their family and  
4 friends and calm down.

5 What happens to them? They're questioned over and over  
6 again by the police. They're driven to a hospital with a  
7 bunch of strangers who come in and probe in the most  
8 intrusive manner. And they do it for good purpose. I'm not  
9 criticizing it. But has to spend the rest of the night being  
10 probed in the most intrusive manner that you can imagine and  
11 thoroughly examined head to toe by strangers. It happens for  
12 a good reason, but it's just another tragedy on top of what's  
13 already happened.

14 Those are the facts of this case. Again, I won't  
15 belabor them. It's been a long time. But what your job is  
16 and the promise that you've made us and the Court and  
17 Mr. Simmons is to take those facts as proven and apply them  
18 to the law. So I want to take a minute to talk about some  
19 aspects of the law, talk about what Mr. Simmons is charged  
20 with, and to talk about the boxes that the evidence as I've  
21 presented it to you has to check for you to find a verdict of  
22 guilty, which is certainly the proper verdict in this case.

23 Burglary is a statute. It is a criminal offense that  
24 acknowledges the importance in everyone's life of the home.  
25 We often take it for granted. We don't think about it a

1 whole lot until it's violated.

2 But, you know, the sort of cheesy cliché is, "The home  
3 is your castle." It's an area where you go and sort of leave  
4 the world behind and you feel safe and you feel secure and  
5 feel that you're somewhere where the world can't impact you.  
6 It's your safe place. And so what burglary -- the crime of  
7 burglary acknowledges for all is that sacred nature of the  
8 home.

9 A person is guilty of burglary in the first degree --  
10 we'll talk about what makes it first degree in a moment. But  
11 the crime occurs when they enter the home -- a person enters  
12 the home unlawfully, which just means without permission.  
13 And I think you've heard over and over again that Mr. Simmons  
14 did not have permission from any of the residents of this  
15 home to enter it.

16 Without consent, without permission, enters with the  
17 intent to commit a crime. And I'm going to talk about intent  
18 in some detail in a few minutes, but we determine intent by  
19 actions. And I'm going to address that in a minute, so just  
20 put that to the side.

21 When Mr. Simmons entered a complete stranger's home in a  
22 big college area off King Street on Radcliffe, he intends, we  
23 know from his actions in there, to commit a crime therein.  
24 And that is the offense of burglary.

25 What makes it a first-degree burglary? It's burglary in



1 the first degree if you find that any one of these apply to  
2 the facts of our case. You don't have to -- in other words,  
3 you don't have to check four boxes here. You just have to  
4 check one. If you find any of these four things apply to our  
5 case, then it's a burglary first degree.

6 And we can belabor them. I'll address them. But we  
7 start -- I'll start at Number 4 because that is that the  
8 entering of the home or the remaining in the home occurred at  
9 night. And we've heard again and again it was 3:00 in the  
10 morning. That's certainly at night. So certainly the State  
11 can check one of these boxes, and that's all we have to do.

12 But the law also talks about other reasons that burglary  
13 can be considered serious.

14 A person is armed with a deadly weapon. We heard from  
15 Ms. Cantwell that the person that entered her room, that  
16 brief momentary look before the lunge happened and she was  
17 pulled to the floor, had something in his hand. Okay? We  
18 can't expect, in a situation like that, for a person to  
19 notice every little detail, but there certainly was an item  
20 in her room that should not have been there. And it was a  
21 knife taken from the downstairs knife block.

22 Causes physical injury to a person who is not a  
23 participant in the crime. Certainly that makes the burglary  
24 worse and makes it a first degree, and certainly we've  
25 checked that box. You've heard from Nurse Goliver who

1 explained to you in some detail the injuries that were  
2 suffered by Ms. Cantwell. We're going to talk about another  
3 crime where we're asked to determine the level of an injury  
4 or what type of injury occurred. That's not true in the burg  
5 first. It's "any injury." If somebody got hurt in any  
6 manner, burg first.

7       Uses or threatens the use of a dangerous instrument.  
8 Again, we have an object in the person's hand that is not a  
9 fist. She remembers at some point in this assault getting  
10 hit in the head with it. And we see an injury that certainly  
11 looks the size and shape consistent with the butt of that  
12 knife to Ms. Cantwell's head right here.

13       But again, if you have any sort of struggles with any  
14 one of these four, the requirement that the State has to meet  
15 is that we check just one of those four boxes, not all four.  
16 As long as you believe that this occurred at night, we've met  
17 that element of burglary.

18       Moving on now to the assault charges.

19       Mr. Simmons is charged with assault and battery of a  
20 high and aggravated nature. Assault and battery of a high  
21 and aggravated nature means we begin -- again, we've  
22 certainly established in this case that the person accused  
23 injures another person. Certainly, we heard from Nurse  
24 Goliver and Ms. Cantwell that she sustained injuries. It's  
25 certain to police that she was injured.

1           And this is the offense where you're asked to determine  
2 the type of injury. To be guilty of assault and battery of a  
3 high and aggravated nature, it has to be an injury  
4 accomplished by a means that is likely to produce death or  
5 great bodily injury. Let's address this. And I really want  
6 you to think about this when you're considering the AB HAN  
7 charge.

8           After we talk about AB HAN, we're going to talk about  
9 something called "lesser includeds." Those are lower levels  
10 of the assault charge that you can, if you so choose,  
11 determine Mr. Simmons guilty of if you don't believe that the  
12 AB HAN charge has been satisfied by the evidence you've  
13 heard. But I want to talk about it for a second.

14           One of the lower charges is going to say, "an injury  
15 that causes unconsciousness." And the temptation is going to  
16 be for you -- and certainly I anticipate you'll hear from the  
17 defense, "Well, that's what happened here. This is just an  
18 injury that caused unconsciousness."

19           And so what I want to present to you and what I want to  
20 have you consider back there is an injury that causes  
21 unconsciousness, like a bop to the head that hits in a  
22 certain place and the guy kind of goes down, versus pulling a  
23 body to the floor, getting behind it, putting your hands  
24 around the throat, squeezing, and maintaining that pressure  
25 until the person is unconscious.

1           Strangulation leads to great bodily injury or death.  
2   That is different than a bop to the head. That is different  
3   than a knock with some object that renders someone  
4   unconscious for a moment. Strangulation is intent.  
5   Strangulation is purpose.

6           And keep in mind, too, that strangulation didn't end  
7   until the house began to stir, until Dan started coming.  
8   Strangulation is assault and battery of a high and aggravated  
9   nature. A bop to the head might render someone unconscious,  
10   but strangulation is likely to produce death or great bodily  
11   injury.

12           Another lesser charge, if you find that AB HAN has not  
13   been satisfied, if you are not unanimously agreeing that  
14   grabbing a female from behind and choking her out is not  
15   likely to produce death or great bodily injury, if you find  
16   that's not the case, you can move on to assault and battery  
17   first degree.

18           Again, obviously, we have an injury. And in this case  
19   we have an injury occurring from the course of a burglary.  
20   So you probably -- this probably already occurred to you, but  
21   to find the assault and battery first degree applies, you  
22   have to also find him guilty of the burglary-first-degree  
23   charge.

24           Assault and battery second degree, again, obviously,  
25   it's an assault and battery, so there's an injury to another

1 person. And the act of moderate bodily injury to another  
2 person results or could have resulted. It's the "moderate  
3 bodily injury" where you hear -- got some kind of, like --  
4 you know, needed anesthesia or had to go to treatment or  
5 rendered a person unconscious for a period of time.

6 And then finally, you'll have the option -- and again,  
7 these options are only if you find that those previous  
8 options don't apply -- assault and battery third degree,  
9 which is merely person A injures person B.

10 Obviously, you're going to get some charges in some  
11 other areas as well. The first one is crucially important  
12 that you understand, and I am here, luckily, to tell you that  
13 it is not difficult to understand. It is not ambiguous. It  
14 is not a long definition that you have to parse out.

15 And that is the law on "voluntary intoxication." That  
16 is the law that applies where if I go out and have -- what  
17 was it? It started with dark liquor, five or six tequila  
18 shots. I heard green tea, some shots that I was unfamiliar  
19 with, drinks in the hands all night.

20 I think we can all agree the level of intoxication that  
21 was undertaken by Mr. Simmons purposefully that night was  
22 pretty extreme. We've heard that evidence from Mr. Blake and  
23 from the statements of Mr. Simmons himself. We have, "I was  
24 feeling good. I was drinking before I even went out. And  
25 once I got there, I got drinks," round of shots after round

1 of shots after round of shots.

2 And so it's natural that you're thinking, "All right.  
3 What the heck does this have to do with the law?" Well,  
4 thank God that we live in a society where "I was drunk" is  
5 not a legal excuse for our actions. The law on voluntary  
6 intoxication is crystal clear. And it's a crystal-clear  
7 absolutely not does that forgive your actions. Absolutely  
8 not. You went out and voluntarily got incredibly  
9 intoxicated, it seems in this case. It relieves you of your  
10 legal culpability? Not at all. Unambiguous, easy to  
11 understand.

12 You may also hear something about "involuntary  
13 intoxication." And that comes from this absurdest assertion,  
14 or shall we call it "hunch," that Jermaine or Jay  
15 involuntarily put something in Mr. Simmons' drink. The  
16 evidence that you have heard and the evidence before you  
17 simply does not support that. So I'm going to ask you --  
18 this defense is struck down on three levels, and that's where  
19 we're going to start.

20 We're going to start with the fact that that didn't  
21 happen, that that is absurd, and there's no evidence  
22 whatsoever that supports that fact. He blamed someone he  
23 purported was one of his good friends, accused him of  
24 committing what is a crime, and said, "My friend drugged me  
25 against my will." That is a crime, and so I wanted you to

1 hear from that person right here. He looked at all of you  
2 and said, "Absolutely not. Not only did I not do it that  
3 night, I would never drug another human being against their  
4 will or have access to it."

5 It didn't happen. That's one reason involuntary  
6 intoxication won't apply to this case, because it's a farce.  
7 It didn't occur. It's not supported by the evidence.

8 Where did the hunch come from? Words are important. It  
9 came from Mr. Simmons. And he was asked in a clip that you  
10 heard and you saw -- and I'll just take advantage right now  
11 of -- the whole entire CD might not go back with you to the  
12 jury room, but if you have a point in time in your  
13 deliberations when you want to re-watch any portion of  
14 Mr. Simmons' interview, it's in evidence. The portions  
15 you've already seen, if you want to re-watch some of that  
16 evidence, all you have to do is ask.

17 And you'll hear him say on that when questioned, "What  
18 put you onto this hunch? Were you feeling" -- and he said at  
19 one point, "Well, I'm feeling" -- you know, I should have the  
20 quote, but it's to the degree of "I'm feeling fine. The only  
21 difference really is I kept drinking. I kept on drinking,  
22 and I think normally I would have stopped. But I kept  
23 drinking."

24 That's not involuntary. That's voluntary intoxication.  
25 So we don't apply that defense because it's not supported by

1 the evidence. We don't apply that defense because his own  
2 words are just that he kept drinking; that was the real  
3 problem.

4 And we don't apply that defense, thirdly, for a legal  
5 reason. Because involuntary intoxication is not something  
6 where you say, "Somebody might have slipped me something, so  
7 find me not guilty." Involuntary intoxication is -- and  
8 you're going to hear from the judge and he's going to explain  
9 the law -- requires that you believe that a person is  
10 involuntarily intoxicated.

11 "Involuntarily," that means takes away -- has nothing to  
12 do with all the shots, nothing to do with the tequila,  
13 nothing to do with all the brown liquor he had before he went  
14 out. Only the involuntary portion rendered him to such a  
15 state that he could not possibly understand the difference  
16 between right and wrong. That's a high, high bar.

17 So first, we don't -- first, we don't find involuntary  
18 intoxication because it didn't happen and it's unsupported.  
19 Secondly, we don't find it for his own words and his own  
20 descriptions of that night. And thirdly, we don't find it  
21 because that is a super high bar -- that is also unsupported  
22 by the evidence -- of a degree of not even understanding or  
23 being able to fathom right and wrong.

24 And again, when he is caught red-handed, immediately he  
25 begins to explain, "Wrong house. Wrong house." Now, that's



1    been submitted to you as some source of confusion that he was  
2    having, but let's backtrack a little bit.

3           Again, when he walks in that bedroom, sees a female, and  
4    she wakes up, does he say, "Wrong house. I'm sorry. Wrong  
5    house. Where I am?" He's not confused then about his intent  
6    and purpose. He's very sure of it, and he acted on it.  
7    "Wrong house. Wrong house," is when roommates are waking up  
8    and Dan comes in and he's caught red-handed. And he's  
9    saying, "Wrong house. Wrong house," because he knows his  
10   presence in that house is wrong. He knows the difference  
11   between right and wrong, and so involuntary intoxication as a  
12   defense cannot fly in this case for the third reason.

13           Intent and purpose is determined by a person's actions.  
14   And that is not just me talking. You're going to get a  
15   charge -- a portion of the charge from the judge that says  
16   something to the effect of, We can't look in someone's brain  
17   and computer -- like a computer printout and read what  
18   they're thinking. You see a person's actions, you hear a  
19   person's words, and you infer their intent, just like you do  
20   every day, a hundred times a day.

21           How do you know I just intended to drop that pen? You  
22   can't read my mind, but you know it because you watched me  
23   drop that pen. That's how intent in the law works. You take  
24   the circumstances, you take the evidence, you know what you  
25   know, and you infer what a person intended to do because of

1     their actions and because of their words. You infer the  
2     intent from the circumstances, and that's the instruction  
3     that you'll receive from the Court.

4             And so you sit here today, like all juries, having to  
5     ask who you believe. So we need to talk about words and we  
6     need to talk for a moment about what Mr. Simmons had to say  
7     about that night and how his statements -- although due to a  
8     rather remarkable and incredible lapse of memory which seems  
9     to only cover the moments he committed major felonies -- are  
10    important.

11            Lies have to constantly follow the evidence. That's  
12    what lies have to do. Okay? The truth is followed by and  
13    supported by the evidence. When I'm asked what happened, if  
14    I tell the truth, every single bit of evidence is going to  
15    confirm what I say. But as you all know, lies work  
16    differently. And that's what's so funny about lying is you  
17    have to constantly change the lie to respond to the  
18    situation.

19            You know, kids are like that. And if you have kids or  
20    ever had any interaction with kids, you know that. We don't  
21    -- we might get a little bit more sophisticated with it as  
22    adults, but it doesn't really change. You know, "Did you eat  
23    that cookie?" "Absolutely not, Dad. You told me not to eat  
24    that cookie." "Really? There are cookie crumbs all over the  
25    floor in your room." "You know, I meant to tell you about