

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Horry County

S.C. SUPREME COURT

Honorable Debra R. McCaslin, Circuit Court Judge

DAVID JAMES WELCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000811

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 17-20, 2017	1
APPLICATION FOR POST-CONVICTION RELIEF	396
RETURN AND MOTION FOR A MORE DEFINITE STATEMENT	405
AMENDED PCR APPLICATION.....	420
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 5, 2023	421
APPLICANT’S EXHIBIT NO. 2 (DISCOVERY MATERIALS).....	524
APPLICANT’S EXHIBIT NO. 3 (LETTERS TO DEFENSE COUNSEL)	528
ORDER OF DISMISSAL.....	532
INDICTMENTS AND SENTENCE SHEETS.....	548

THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

APPLICANT’S EXHIBIT NO. 1 (AUDIO RECORDING)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2015-GS-26-969,970,971,972

STATE OF SOUTH CAROLINA,)

Plaintiff,) Transcript of Record

vs.) April 17-20, 2017

DAVID JAMES WELCH,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

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TAKEN BY:

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1	<u>I N D E X</u>	
2	<u>APRIL 17, 2017 - DAY ONE</u>	<u>Pg.</u>
3	Voir Dire	9
4	Jury Selection	23
5	By the Court	30
6	<u>JACKSON V. DENNO</u>	
7	Jeremiah Beam	
8	Direct by Holford	37
9	(State's 2 published - not transcribed herein)	41
10	Cross by Wilson	43
11	Redirect by Holford	46
12	Argument by Counsel	47
13	Ruling of the Court	53
14	<u>APRIL 18, 2017 - DAY TWO</u>	
15	By the Court	57
16	Opening by Holford	62
17	Opening by Wilson	66
18	Jennifer Dalmida	
19	Direct by Holford	70
20	Cross by Wilson	74
21	Redirect by Holford	75
22	Jerrica Nelson	
23	Direct by Holford	76
24	(State's 21 published - not transcribed herein)	107
25	Cross by Wilson	115

State v. Welch - 2015-GS-26-969,970,971,972
INDEX

3

	<u>I N D E X</u>	<u>Pg.</u>
1		
2	Jerrica Nelson	
3	Redirect by Holford	174
4	Eric Cambre	
5	Direct by Walker	177
6	Cross by Wilson	180
7	By the Court	181
8	Vanessa Lynn Thompson	
9	Direct by Holford	183
10	Cross by Wilson	189
11	Brittany Southerland	
12	Direct by Walker	190
13	Cross by Wilson	193
14	Austin McCray Cox	
15	Direct by Holford	195
16	Motion	198
17	Cross by Wilson	202
18	Michael Dame	
19	Direct by Holford	204
20	Cross by Wilson	208
21	Redirect by Holford	211
22	Malinda Shadoan	
23	Direct by Holford	212
24	Cross by Wilson	218
25	By the Court	228

State v. Welch - 2015-GS-26-969,970,971,972
INDEX

4

	<u>I N D E X</u>	<u>Pg.</u>
1		
2	Motion	229
3	Jeremiah Beam	
4	Direct by Holford	232
5	By the Court	250
6	(State's 28 published - not transcribed herein)	252
7	Cross by Wilson	255
8	(Defendant's 5 published - not transcribed herein) ...	260
9	(Defendant's 13 published - not transcribed herein) ..	262
10	Redirect by Holford	264
11	Recross by Wilson	266
12	By the Court	268
13	<u>APRIL 19,2017 - DAY THREE</u>	
14	Motions	270
15	Stipulation of Counsel	283
16	Jessica Stowe	
17	Direct by Wilson	284
18	Examination by Holford (as to chain).....	287
19	Direct by Wilson	290
20	Cross by Holford	298
21	Redirect by Wilson	300
22	By the Court	302
23	Jeremiah Beam	
24	Direct by Wilson	306
25	(Defendant's 4 published - not transcribed herein) ...	307

State v. Welch - 2015-GS-26-969,970,971,972

5

INDEX

1	<u>I N D E X</u>	<u>Pg.</u>
2	Cross by Holford	307
3	David James Welch	
4	By the Court	309
5	Motions	315
6	By the Court	316
7	Charge Conference	317
8	By the Court	328
9	Closing by Holford	330
10	Closing by Wilson	335
11	Reply Closing by Holford	347
12	Charge to Jury	349
13	By the Court	361
14	Verdict of Jury	369
15	Polling of Jury	370
16	By the Court	382
17	Motions	373
18	By the Court	372
19	Argument of Holford	383
20	Statement by Michelle Lewis	385
21	Argument by Wilson	387
22	Statement by Teresa Welch	392
23	By the Court	393
24	Sentence of the Court	394
25	Certificate of Court Reporter	395

State v. Welch - 2015-GS-26-969,970,971,972
INDEX

6

1	<u>E X H I B I T S</u>		
2	<u>No.</u>	<u>ID</u>	<u>EV</u>
3	S1 Miranda Rights Form	39	244
4	S2 DVD Audio Statement	41	
5	S3 1 Photo		98
6	S4 1 Photo		100
7	S5 1 Photo		92
8	S6 1 Photo		100
9	S7 1 Photo		100
10	S8 1 Photo		100
11	S9 1 Photo		100
12	S10 1 Photo		100
13	S11 1 Photo		100
14	S12 1 Photo		100
15	S13 1 Photo		100
16	S14 1 Photo		100
17	S15 Phone Record		72
18	S16 Toll Records		73
19	S17 1 Photo		84
20	S18 Facebook Printout		83
21	S19 Large Photo Chart		88
22	S20 Large Photo Chart		94
23	S21 CD of 911 Call		104
24	S22 Time Warner's Records		179
25	S23 1 Photo		186

State v. Welch - 2015-GS-26-969,970,971,972
INDEX

7

1	<u>E X H I B I T S</u>			
2	<u>No.</u>	<u>ID</u>	<u>EV</u>	
3	S24 1 Photo		186	
4	S25 1 Photo		186	
5	S26 1 Photo		186	
6	S27 1 Photo		206	
7	S28 CD of Redacted Interview		246	
8	S29 Large Brown Bag and contents		214	
9	S30 Small Brown Bag and contents		217	
10	S31 1 Photo		241	
11	S32 1 Photo		241	
12	S33 Stipulation by Counsel As to Time		278	
13	D1 Requested Voir Dire			
14	D2 Phone Records for Facebook		123	
15	D3 Phone Records for Facebook		125	
16	D4 DVD		307	
17	D5 CD (Detective Beam)	170	260	
18	D6 Rape Kit	220		
19	D7 Chain of Custody	221		
20	D8 Swabs from Rear Passenger Side Door	222		
21	D9 Suspect Underwear	224		
22	D10 Swabs Passenger Side Door Handle	225		
23	D11 Eight Items in Envelope	226		
24	D12 Buccal Swabs Tested by SLED	227		
25	D13 CD Part 2 - Interview with victim		262	

State v. Welch - 2015-GS-26-969,970,971,972
INDEX

8

1	<u>E X H I B I T S</u>		
2	<u>No.</u>	<u>ID</u>	<u>EV</u>
3	D14 Assault Kit		291
4	D15 Underwear		291
5	D16 SLED Report	292	296
6	D17 Chain of Custody		297
7	C1 Note from Jury	363	
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

9

1 **APRIL 17, 2017 - DAY ONE**

2 VOIR DIRE:

3 THE COURT: We are going to pick the jury in the case of
4 the State of South Carolina versus David James Welch. The
5 State has charged the Defendant, Mr. Welch, with various
6 crimes. Now, I'm going to read to you some information
7 contained in the indictments regarding those crimes. Before I
8 do that, I want to tell you the indictment is merely the
9 charging document, the document which brings the matter to
10 court. It is not evidence, cannot be considered by anyone as
11 evidence in the case. The only reason I would read to you
12 anything from the indictment is to see if you know anything
13 about this particular case, have any information about this
14 case that you need to inform the Court about.

15 Now, the State has charged David James Welch with the
16 crimes of kidnapping, armed robbery, criminal sexual conduct
17 and possession of a weapon during the commission of a violent
18 crime. Regarding the charge of kidnapping, the State alleges
19 that David James Welch did in Horry County on or about January
20 8th, 2015, unlawfully seize, confine, inveigle, decoy, kidnap,
21 abduct or carry away one Jerrica N. without authority of law
22 in violation of the Code of Laws of the State of South
23 Carolina, 1976, as amended.

24 In the indictment where charged for armed robbery, the
25 State alleges that David James Welch did in Horry County, on

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

10

1 or about January 8th, 2015, while armed with a deadly weapon
2 or while alleging either by actions or words that he was armed
3 while using a representative of a deadly weapon or any object
4 which a person present during the commission of the robbery
5 reasonably believed to be a deadly weapon, did take and carry
6 away the personal property of one Jerrica N. from her
7 immediate presence with the intent to deprive Jerrica N. of
8 the possession by the use of force, threats or intimidation,
9 again in violation of the Code of Laws of the State of South
10 Carolina, 1976, as amended.

11 The State alleges in the indictment for criminal sexual
12 conduct that David James Welch, did in Horry County, on or
13 about January 8th, 2015, engage in sexual battery with Jerrica
14 N. using aggravated force and/or the Defendant did engage in a
15 sexual battery with the victim while the victim was also the
16 victim of either forcible confinement, kidnapping, robbery,
17 burglary, housebreaking or some similar offense, all in
18 violation of the Code of Laws of the State of South Carolina,
19 1976, as amended.

20 The State also alleges in the indictment for possession
21 of a weapon during the commission of a violent crime that
22 David James Welch, did in Horry County, on or about January
23 8th, 2015, possess a firearm or visibly display what appeared
24 to be a firearm or visibly display the representative of a
25 weapon during the commission or attempted commission of a

State v. Welch - 2015-GS-26-969, 970, 971, 972
VOIR DIRE

11

1 violent crime in violation of the Code of Laws of the State of
2 South Carolina, 1976, as amended.

3 Is there any member of the jury panel that knows anything
4 about this particular case, has any information about this
5 case, anything they need to bring to the Court's attention at
6 this time? If so, please stand.

7 First, sir, I need your name and your juror number.

8 JUROR 378: Juror number 378, Richard Soliday.

9 THE COURT: All right, sir. Just answer my questions,
10 don't elaborate in any way. Do you know about the incident or
11 do you know -- let's say, do you know about the incident; yes
12 or no?

13 JUROR 378: Yes.

14 THE COURT: All right, sir. Please come forward and talk
15 to me. Counsel, y'all come around, please.

16 (REPORTER'S NOTE: A bench conference was held off the record
17 in the presence of but out of hearing of the Jury. Juror 378
18 excused from this case).

19 THE COURT: All right. Anybody else?

20 (REPORTER'S NOTE: No response.)

21 THE COURT: All right, ladies and gentlemen, what I'm
22 gonna do is read to you a possible or potential witness list
23 regarding the possible potential witnesses that may be called
24 in this particular case. Just because I read it doesn't mean
25 that they will be, but it is certainly possible and potential

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

12

1 that all or any one of these persons could be called as a
2 witness in this particular matter.

3 Jerrica Nelson; Officer Austin Cox, Myrtle Beach Police
4 Department; Officer Brittany Southerland, Myrtle Beach Police
5 Department; Officer Asia Sououd, S-O-U-O-U-D, Myrtle Beach
6 Police Department; Detective Jeremiah Beam, B-E-A-M, Myrtle
7 Beach Police Department; Detective Hugh Jones, Myrtle Beach
8 Police Department; Crime Scene Specialist Scott Williamson,
9 Myrtle Beach Police Department; Mike Dame, D-A-M-E, formerly
10 of the Myrtle Beach Police Department; a representative from
11 Time Warner; a representative from Verizon; Vanessa Thompson;
12 Melinda Shadoan, S-H-A-D-O-A-N; Milton Adams; Jennifer Aycock;
13 Steve Bassett; Edna Blackmon; M. Bland; S. Donovan; Linda
14 Hopkins; Kenny Harlow; M.L. Hearon, H-E-A-R-O-N; N. Howitt, H-
15 O-W-I-T-T; Tony Humes; Jay Liber; Sonya Mamoozaden, M-A-M-O-O-
16 Z-A-D-E-N; L. Mauro, M-A-U-R-O; Tracy Michelle Lewis; M.
17 Merfert, M-E-R-F-E-R-T; Bryan Murphy; Rena Joy Natali, N-A-T-
18 A-L-I; an individual with the last name of Stair, S-T-A-I-R;
19 Carter Starr, S-T-A-R-R; Jessica Stow; Brad Townsend; David
20 Welch; Theresa Welch; Ben Wilson; Pete Woods; Doris
21 Yarborough; David James Welch. Anybody related by blood or
22 marriage, close personal friends, acquaintances of any one of
23 these individuals the Court has named? If so, please stand.
24 Yes, sir, tell me your name and juror number first.
25 please.

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

13

1 JUROR 230: Dustin Jordan, Juror 230.

2 THE COURT: All right. And who is that you might know?

3 JUROR 230: I work for the City of Myrtle Beach.

4 THE COURT: All right. So what -- refresh my memory and
5 tell me again what you do for the City of Myrtle Beach?

6 JUROR 230: I work in the Recreation Department.

7 THE COURT: All right, Recreation Department, because of
8 that, you would potentially have some occasion to know or run
9 into persons employed by the Myrtle Beach Police Department?

10 JUROR 230: Correct.

11 THE COURT: All right, sir. My question to you is, can
12 you give to the State of South Carolina and to the Defendant a
13 fair and impartial trial; can you be a fair and impartial
14 juror in this case?

15 JUROR 230: Yes, sir.

16 THE COURT: Thank you very much.

17 Anybody else?

18 (REPORTER'S NOTE: No response.)

19 THE COURT: All right. Is there any matter -- or any
20 member of the jury panel either you yourself or a member of
21 your immediate family has ever had any kind of matter,
22 situation of any kind handled, touched, worked on by the
23 Fifteenth Circuit Solicitor's Office? That's the prosecuting
24 office that covers Horry and Georgetown Counties. If so,
25 please stand.

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

14

1 (REPORTER'S NOTE: No response.)

2 THE COURT: Is there any member of the jury panel, either
3 you yourself or a member of your immediate family, that is
4 related by blood or marriage, close personal friends of
5 anybody employed by the Fifteenth Circuit Solicitor's office
6 either in Horry or Georgetown Counties?

7 Yes, sir, again you have to tell me your name and juror
8 number.

9 JUROR 230: Dustin Jordan, Juror 230.

10 THE COURT: All right, sir. And who might you be related
11 by blood or marriage, personal friends of?

12 JUROR 230: My mother works in the Solicitor's office.

13 THE COURT: All right, sir. Very good. Can you give to
14 the State of South Carolina and to the Defendant a fair and
15 impartial trial; can you be a fair and impartial juror in this
16 case?

17 JUROR 230: Yes, sir.

18 THE COURT: Thank you very much.

19 All right. If you would, Solicitor, if you would stand,
20 identify yourself and -- both of you please stand and identify
21 yourselves.

22 MR. HOLFORD: My name is Josh Holford; I'm an Assistant
23 Solicitor here in Horry County.

24 MS. WALKER: And I'm Cara Walker, also an Assistant
25 Solicitor here.

State v. Welch - 2015-GS-26-969, 970, 971, 972
VOIR DIRE

15

1 THE COURT: Mr. Cooley?

2 MR. COOLEY: David Cooley also Assistant Solicitor.

3 THE COURT: All right. Very good.

4 Mr. Wilson, if you'd stand up and introduce yourself also
5 please?

6 MR. WILSON: Thank you, Your Honor. My name is Ralph
7 Wilson, Jr. and I represent the Defendant in this matter. I
8 have a law firm here in Horry County. I practice in State and
9 Federal Court. This young lady to my right is my right and
10 left hand; she is Jessica Marburger and she is my Senior
11 Paralegal on my staff. This young lady to my left, further
12 left, is an Associate Attorney in my office and she works on
13 cases with me such as this. Her name is Allison -- I forgot
14 Allison's last name.

15 MS. GORDON: Gordon.

16 MR. WILSON: Jordan.

17 MS. GORDON: Gordon.

18 MR. WILSON: Gordon. I apologize. Allyson Gordon; she
19 just joined my office. My mind is bad. I apologize.

20 THE COURT: All right, sir. Thank you, sir.

21 Is there any member of the jury panel that's related by
22 blood or marriage, close personal friends, acquaintances of
23 any of these individuals that have stood up and identified
24 themselves to you? If so, please stand.

25 (REPORTER'S NOTE: No response.)

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

16

1 THE COURT: Very good.

2 Is there any member of the jury panel that has -- that
3 you believe you have any kind of personal, political,
4 religious, philosophical belief that you believe would prevent
5 you from being a fair and impartial juror in this case?

6 (REPORTER'S NOTE: No response.)

7 THE COURT: Is there any member of the jury panel either
8 you yourself or a member of your immediate family that have
9 been in law enforcement either you were -- you yourself were
10 in law enforcement in the past or you currently have a family
11 member who is now in law enforcement or was in law enforcement
12 in the past? If any of that applies to you, please stand at
13 this time.

14 All right. Very good. Yes, ma'am, I'll start with you.

15 JUROR 137: My name is Carolyn Ford, I'm 137. I have a
16 nephew in Mullins that's a police officer. Excuse me. And I
17 have a nephew in North Myrtle Beach, Jonathan, and he's a
18 police officer.

19 THE COURT: All right. Can you give to the State of
20 South Carolina and to the Defendant a fair and impartial
21 trial; can you be a fair and impartial juror in this case?

22 JUROR 137: Yes, I can.

23 THE COURT: Thank you, ma'am.

24 THE COURT: Yes, ma'am, name and juror number, please?

25 JUROR 29: Barbara Bellamy, Number 29. My brother-in-law

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

17

1 just retired.

2 THE COURT: Okay. And from what law enforcement agency?

3 JUROR 29: In New Jersey.

4 THE COURT: All right. Very good. Can you give -- I'm
5 sorry, I need to ask you the qualification question.

6 JUROR 29: I'm sorry.

7 THE COURT: That's all right. Can you give to the
8 State of South Carolina and to the Defendant a fair and
9 impartial trial; can you be a fair and impartial juror in this
10 case?

11 JUROR 29: Yes, sir.

12 THE COURT: Thank you very much, ma'am.

13 All right. Yes, sir, your name and juror number please?

14 JUROR 166: Harold Green, Juror 166. My daughter is a
15 detective in Georgia.

16 THE COURT: All right, sir. Can you give to the State of
17 South Carolina and to the Defendant a fair and impartial
18 trial; can you be a fair and impartial juror in this case?

19 JUROR 169: Yes, sir.

20 THE COURT: Thank you very much.

21 And behind?

22 JUROR 100: Brian Dabrowski, Juror 100. My father was a
23 Police Commander in Detroit.

24 THE COURT: All right, sir. Can you give to the State of
25 South Carolina and to the Defendant a fair and impartial

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

18

1 trial; can you be a fair and impartial juror in this case?

2 JUROR 100: Yes, I can.

3 THE COURT: Thank you very much, sir.

4 All right. Yes, sir, your name and juror number please?

5 JUROR 314: John Nobles, 314. My uncle was a bailiff.

6 THE COURT: All right, sir. Can you give to the State of
7 South Carolina and to the Defendant a fair and impartial
8 trial; can you be a fair and impartial juror in this case?

9 JUROR 314: Yes, sir.

10 THE COURT: Thank you very much.

11 Yes, sir, name and juror number, please?

12 JUROR 295: Drexel Mixson, Juror 295. My uncle was a
13 Major for the South Carolina Highway Department, and I
14 currently have a sister-in-law who is with SLED.

15 THE COURT: All right, sir. Can you give to the State of
16 South Carolina and to the Defendant a fair and impartial
17 trial; can you be a fair and impartial juror in this case?

18 JUROR 295: Yes, sir.

19 THE COURT: Thank you very much. All right. The next
20 question I'm gonna ask you, ladies and gentlemen, is whether
21 you yourself or a member of your immediate family has ever
22 been a member of any kind of victim's rights or law
23 enforcement support organization. Let me just give you a few
24 examples. This is not an exhaustive list of any kind; this is
25 just examples of what I'm talking about, and that would be

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

19

1 like Mothers Against Drunk Driving, the South Carolina Law
2 Enforcement Officer's Association, or the South Carolina
3 Sheriff's Association, just some kind of victim's rights or
4 law enforcement support organization? If so, please stand.

5 (REPORTER'S NOTE: No response.)

6 THE COURT: Very good.

7 Now the next question I'm gonna ask you, ladies and
8 gentlemen, is whether or not you yourself or a member of your
9 immediate family has ever been the victim of a crime. Now, I
10 am not going to ask you what occurred. I do not want you to
11 volunteer any information to me about what occurred. The
12 question is going to be straightforward; was it yourself or a
13 family member, and after that I'll ask the qualification
14 question. So, is there any member of the jury panel either
15 you yourself or a member of your immediate family has ever
16 been the victim of a crime? If so, please stand.

17 All right. In the front row, yes, ma'am, your name and
18 juror number, please?

19 JUROR 411: Yvette Veideman, Juror 411.

20 THE COURT: All right, ma'am, and was it yourself or a
21 family member?

22 JUROR 411: Myself.

23 THE COURT: Can you give to the State of South Carolina
24 and to the Defendant a fair and impartial trial; can you be a
25 fair and impartial juror in this case?

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

20

1 JUROR 411: Yes.

2 THE COURT: Thank you very much, ma'am.

3 All right. Yes, ma'am, name and juror number again?

4 JUROR 252: My name is Dawne Linseman and my number is
5 252.

6 THE COURT: And was it yourself or a family member?

7 JUROR 252: It was myself.

8 THE COURT: Can you give to the State of South Carolina
9 and to the Defendant a fair and impartial trial; can you be a
10 fair and impartial juror in this case?

11 JUROR 252: I'm not sure about it.

12 THE COURT: All right. Very good then come and talk to
13 me please, ma'am. Counsel.

14 (REPORTER'S NOTE: A bench conference was held off the record
15 in the presence of but out of hearing of the Jury. Juror 252
16 excused.

17 THE COURT: All right. Yes, sir, at the center, please.
18 Your name and juror number again?

19 JUROR 54: Olin Brown, 54.

20 THE COURT: All right, sir. And was it yourself?

21 JUROR 54: Yes, sir.

22 THE COURT: All right, sir. Can you give to the State of
23 South Carolina and to the Defendant a fair and impartial
24 trial; can you be a fair and impartial juror in this case?

25 JUROR 54: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
VOIR DIRE

21

1 THE COURT: Thank you very much.

2 Yes, ma'am, your name and juror number please, ma'am?

3 JUROR 415: Victoria Vidmar, Number 415.

4 THE COURT: Yourself or a family member?

5 JUROR 415: Both.

6 THE COURT: Can you give to the State of South Carolina
7 and to the Defendant a fair and impartial trial; can you be a
8 fair and impartial juror in this case?

9 JUROR 415: Yes, I can.

10 THE COURT: Thank you very much, ma'am.

11 Yes, sir, tell me your name and juror number again.

12 JUROR 295: Drexel Mixson, 295.

13 THE COURT: And yourself or a family member?

14 JUROR 295: Both.

15 THE COURT: Can you give to the State of South Carolina
16 and to the Defendant a fair and impartial trial; can you be a
17 fair and impartial juror in this case?

18 JUROR 295: Yes, sir.

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

20 All right. Before I ask the Court's final question,
21 further questions from the State?

22 MR. HOLFORD: Your Honor, may we approach?

23 THE COURT: Absolutely.

24 (REPORTER'S NOTE: A bench conference was held off the record
25 in the presence of but out of hearing of the Jury.)

1 THE COURT: All right. I classify this as my general or
2 catch-all question. Do you know of any reason, have any
3 question in your mind, any doubt in your mind that you cannot
4 give to the State of South Carolina and to the Defendant a
5 fair and impartial trial, that is for any reason whatsoever
6 you believe you cannot be a fair and impartial juror in this
7 case? If so, please stand.

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Very good.

10 All right. What's gonna happen, ladies and gentlemen, is
11 again your names have been placed in a random order by a
12 computer program. The Clerk representative is going to call
13 out a name of a juror. If and when your name is called, you
14 will stand up, you'll come forward, you'll come around and
15 you'll come to a place basically right in front of the Court
16 Reporter that's seated right here, right there, Ms. Dixie, and
17 you'll stand and you will face to the back of the courtroom.
18 At that point in time, the Clerk's representative will inquire
19 of the State to present or excuse the juror. After that
20 response, the Clerk will inquire of the Defense to seat or
21 excuse the juror. If you are excused by the State or the
22 Defense, you go back and have a seat from whence you came. If
23 you are presented by the State and you are seated by the
24 Defense, the Clerk will instruct you to go to the jury box
25 right over there and have a seat in the jury box. So, if you

State v. Welch - 2015-GS-26-969,970,971,972
JURY SELECTION

23

1 happen to have any personal items, you know a book, purse,
2 hat, whatever it might be, bring that along with you in case
3 that you are seated you can go directly to the jury box.

4 All right. Madam Clerk?

5 JURY SELECTION:

6 CLERK: 323, Richard ---

7 THE COURT: Patelunas.

8 CLERK: --- Patelunas.

9 JUROR 323: Patelunas.

10 CLERK: What say the State?

11 MR. HOLFORD: Please present this juror.

12 CLERK: Defense?

13 MR. WILSON: Please present the juror.

14 CLERK: Please be seated in our jury box.

15 274, Daniel Matz.

16 What say the State?

17 MR. HOLFORD: Please present this juror.

18 CLERK: Defense?

19 MR. WILSON: Please excuse this juror from this
20 particular case.

21 CLERK: You're excused from this particular case.

22 217, Christina James.

23 What say the State?

24 MR. HOLFORD: Please present this juror.

25 CLERK: Defense?

State v. Welch - 2015-GS-26-969,970,971,972
JURY SELECTION

24

1 MR. WILSON: Please seat the juror.
2 CLERK: Please be seated in our jury box.
3 276, Margueritte Mazza.
4 What say the State?
5 MR. HOLFORD: Please present this juror.
6 CLERK: Defense?
7 MR. WILSON: Please excuse the juror from this particular
8 case.
9 CLERK: You're excused from this particular case.
10 364, McCullin Shimwell.
11 What say the State?
12 MR. HOLFORD: Please excuse this juror from this case.
13 CLERK: You're excused from this particular case.
14 54, Olin Brown.
15 What say the State?
16 MR. HOLFORD: Please present this juror.
17 CLERK: Defense?
18 MR. WILSON: Please excuse this juror from this
19 particular case.
20 CLERK: You're excused from this particular case.
21 179, Amanda Hatcher.
22 What say the State?
23 MR. HOLFORD: Please excuse this juror from this case.
24 CLERK: You're excused from this particular case.
25 44, Michael Bralley.

State v. Welch - 2015-GS-26-969,970,971,972
JURY SELECTION

25

1 What say the State?
2 MR. HOLFORD: Please present this juror.
3 CLERK: Defense?
4 MR. WILSON: Please excuse the juror from this particular
5 case.
6 CLERK: You're excused from this particular case.
7 411, Yvette Veideman.
8 What say the State?
9 MR. HOLFORD: Please present this juror.
10 CLERK: Defense?
11 MR. WILSON: Please excuse this juror from this
12 particular case.
13 CLERK: You're excused from this particular case.
14 450, William Zimmerman.
15 What say the State?
16 MR. HOLFORD: Please excuse this juror from this case.
17 CLERK: You're excused from this particular case.
18 29, Barbara Bellamy.
19 What say the State?
20 MR. HOLFORD: Please present this juror.
21 CLERK: Defense?
22 MR. WILSON: Please excuse this juror from this
23 particular case.
24 CLERK: You're excused from this particular case.
25 446, Barbara Wright.

State v. Welch - 2015-GS-26-969,970,971,972
JURY SELECTION

26

1 What say the State?

2 MR. HOLFORD: Please present this juror.

3 CLERK: Defense?

4 MR. WILSON: Please seat this juror.

5 CLERK: Please be seated in our jury box.

6 58, Michael Bunts.

7 What say the State?

8 MR. HOLFORD: Please present this juror.

9 CLERK: Defense?

10 MR. WILSON: Please seat this juror.

11 CLERK: Please be seated in our jury box.

12 314, John Nobles.

13 What say the State?

14 MR. HOLFORD: Please excuse this juror from this case.

15 CLERK: You're excused from this particular case.

16 269, Jonathan Marks.

17 What say the State?

18 MR. HOLFORD: Please present this juror.

19 CLERK: Defense?

20 MR. WILSON: Please present this juror.

21 CLERK: Please be seated in our jury box.

22 153, Paula Gibbons.

23 What say the State?

24 MR. HOLFORD: Please present this juror.

25 CLERK: Defense?

State v. Welch - 2015-GS-26-969,970,971,972
JURY SELECTION

27

1 MR. WILSON: Seat the juror.
2 CLERK: Please be seated in our jury box.
3 109, Emily Demasters.
4 What say the State?
5 MR. HOLFORD: Please present this juror.
6 CLERK: Defense?
7 MR. WILSON: Seat the juror.
8 CLERK: Please be seated in our jury box.
9 415, Victoria Vidmar.
10 What say the State?
11 MR. HOLFORD: Please present the juror.
12 CLERK: Defense?
13 MR. WILSON: Please excuse this juror from this
14 particular case.
15 CLERK: You're excused from this particular case.
16 104, Paul Deitrick.
17 What say the State?
18 MR. HOLFORD: Please present this juror.
19 CLERK: Defense?
20 MR. WILSON: Seat the juror.
21 CLERK: Please be seated in our jury box.
22 100, Brian Dabrowski.
23 What say the State?
24 MR. HOLFORD: Please present the juror.
25 CLERK: Defense?

State v. Welch - 2015-GS-26-969,970,971,972
JURY SELECTION

28

1 MR. WILSON: Please excuse the juror from this particular
2 case.
3 CLERK: You're excused from this particular case.
4 440, Michael Wlock.
5 What say the State?
6 MR. HOLFORD: Please present the juror.
7 CLERK: Defense?
8 MR. WILSON: Please seat the juror.
9 CLERK: Please be seated in our jury box.
10 434, Janice Wilson.
11 What say the State?
12 MR. HOLFORD: Please present the juror.
13 CLERK: Defense?
14 MR. WILSON: Please excuse this juror from this
15 particular case.
16 CLERK: You're excused from this particular case.
17 166, Harold Green.
18 What say the State?
19 MR. HOLFORD: Please present the juror.
20 CLERK: Defense?
21 MR. WILSON: Please seat the juror.
22 CLERK: Please be seated in our jury box.
23 357, Cheri Schmidt.
24 What say the State?
25 MR. HOLFORD: Please present the juror.

State v. Welch - 2015-GS-26-969,970,971,972
JURY SELECTION

29

1 CLERK: Defense?

2 MR. WILSON: Please seat the juror.

3 CLERK: Please be seated in our jury box.

4 23, Joshua Barrett.

5 What say the State?

6 MR. HOLFORD: Please excuse the juror.

7 CLERK: You're excused from this particular case.

8 230 Dustin Jordan.

9 What say the State?

10 MR. HOLFORD: Please present the juror.

11 CLERK: Defense?

12 MR. WILSON: Please excuse the juror from this particular

13 case.

14 CLERK: You're excused from this particular case.

15 131, Lindsey Fipps.

16 What say the State?

17 MR. HOLFORD: Please present the juror

18 CLERK: Defense?

19 MR. WILSON: Seat the juror.

20 CLERK: Please be seated in our jury box.

21 THE COURT: All right, Counsel, we're gonna have two

22 alternates. It will be one and two on each alternate.

23 Proceed.

24 CLERK: 413, Trisha Vereen.

25 What say the State?

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

30

1 MR. HOLFORD: Please present the juror.

2 CLERK: Defense?

3 MR. WILSON: Seat the juror.

4 CLERK: Please be seated in our jury box.

5 THE COURT: All right. Ms. Vereen, you are one of the
6 alternates, please, ma'am. Thank you.

7 CLERK: 16, Donald Baiata.

8 What say the State?

9 MR. HOLFORD: Please present the juror.

10 CLERK: Defense?

11 MR. WILSON: Please seat the juror.

12 CLERK: Please be seated in our jury box.

13 THE COURT: All right, sir, you are the second alternate
14 or another alternate in this particular panel.

15 All right. Any exceptions or objections to the jury
16 panel from the State?

17 MR. HOLFORD: Nothing from the State, Your Honor.

18 THE COURT: From the Defense?

19 MR. WILSON: Nothing, Your Honor.

20 THE COURT: Very good. I find the jury has been properly
21 empaneled pursuant to *Batson v. Kentucky* and *J.E.B v. Alabama*.

22 BY THE COURT:

23 THE COURT: All right. Ladies and gentlemen, you are the
24 jury in this particular case. In just a minute, I'm gonna ask
25 that you go back to the jury room and do one thing for me and

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

31

1 that is going to be select the foreperson for your particular
2 jury. So, let me tell you very briefly what the duties of the
3 foreperson are during the course of the trial. We are here in
4 the courtroom. If there is any matter that the jury needs
5 attention to, a witness needs to speak up or the lawyers or
6 whatever the issue is, the foreperson raise their hand, get
7 the Court's attention. We'll handle the matter, whatever it
8 might be. If you're back in the jury room and some issue
9 comes up, you'll take the pad and pen provided to you, you'll
10 write out a note, you'll sign it, you'll give it to the
11 Bailiff. It'll come to me and, again, we'll handle that
12 matter, whatever it might be. When we have gone through the
13 evidentiary portion of the trial, we have heard all of the
14 witnesses testify under oath in this matter, there has been
15 the receipt of maybe some type of documentary or other type of
16 evidence that might be introduced in this particular case and
17 then you've heard the closing arguments of the attorneys in
18 this particular case, after which I will give you the law that
19 you will apply to the facts and evidence you collectively find
20 to be true in this particular case. After that, I will submit
21 the case to you for your deliberations and your unanimous
22 decision in this particular matter.

23 Now, at that point in time, when the Court excuses you to
24 deliberate and reach a unanimous decision, the foreperson's
25 duties change in this regard. You're gonna act like the

State v. Welch - 2015-GS-26-969, 970, 971, 972
BY THE COURT

32

1 chairperson at a meeting. You're gonna guide the discussions,
2 if necessary. Now, the foreperson's voice and vote carries no
3 more weight than any other member of the jury; everybody is
4 equal in that regard. But, somebody needs to remain in
5 charge, if necessary, again guide the discussions. An
6 important duty and responsibility that the foreperson has at
7 this time is to make sure that everybody that wants to has an
8 opportunity to speak, everybody's voice has an opportunity to
9 be heard. After that, you will conduct the matters and such
10 that the jury deliberates and reaches a unanimous decision on
11 the matters presented to you. After that time, once the
12 unanimous decision is reached, you will take the verdict form
13 that the Court will provide to you. You will check the
14 appropriate block or write out the appropriate words
15 thereafter signing your name as foreperson indicating that
16 that verdict is indeed the unanimous verdict of each and every
17 member of the jury in this particular case.

18 So, understanding those to be the duties and
19 responsibilities of the foreperson, I'm gonna ask that you
20 retire to the jury room and select your foreperson. Now, the
21 two alternates in this matter -- they are seated here at the
22 end. Y'all can vote on who is the foreperson but, obviously
23 being alternates, neither one of you can be the foreperson.
24 Everybody else is eligible except for the two alternates.
25 All right?

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

33

1 So, if you'd all accompany the Bailiff to the jury room,
2 select your foreperson, knock on the door and let the Bailiff
3 know who the foreperson is.

4 (REPORTER'S NOTE: Jury exits courtroom.)

5 THE COURT: All right. Ladies and gentlemen, the jury
6 panel that were not selected for this particular case, I'm
7 gonna excuse you for the balance of the day. I'm gonna ask
8 that you call back the juror information line tomorrow after
9 12:00 noon. Call that number after 12:00 noon, follow the
10 instructions, whatever they may be. It might very well be
11 that it tells you to call back. This case will probably take
12 a couple of days, but I do expect to try one other case, a
13 very short one, but to try one other matter this week besides
14 this particular case. So, just call the information line and
15 follow the instructions. With that, you are now excused.
16 Thank you very much.

17 (REPORTER'S NOTE: Remaining jury venire exits courtroom. The
18 following takes place outside the presence of the Jury.)

19 THE COURT: All right. Counsel, as I understand it,
20 y'all have indicated we needed a *Jackson v. Denno* hearing in
21 this particular case; is that correct, Solicitor?

22 MR. HOLFORD: That's correct, Your Honor.

23 THE COURT: All right. We'll do that after lunch, but
24 there are several cases on the trial roster that we'll be
25 pleading. I'm gonna do those first. I'll do those at 2

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

34

1 o'clock. We'll do those pleas after which we'll do the
2 *Jackson v. Denno* hearing. How many witnesses would the State
3 have?

4 MR. HOLFORD: One or two witnesses, Your Honor.

5 THE COURT: And is that a written statement?

6 MR. HOLFORD: It's a recorded statement.

7 THE COURT: A recorded statement approximately how long?

8 MR. HOLFORD: Ten minutes, eight to ten minutes.

9 THE COURT: All right. Very good.

10 The State's best approximation as to the length of the
11 trial?

12 MR. HOLFORD: A day and a half, Your Honor.

13 THE COURT: From the Defense?

14 MR. WILSON: Judge, I would say probably no more than
15 three days, Judge. I don't want to put myself in a box, but -
16 --

17 THE COURT: I understand that. Okay. That's fine. With
18 that, I'm just trying to think how many -- what we could do
19 this afternoon and having the jury come back. The *Jackson v.*
20 *Denno* hearing doesn't sound like it will take an extensive
21 period of time. So, we could probably have the -- we can at
22 least do the opening statements today. Is that possible?

23 MR. HOLFORD: May I be heard?

24 THE COURT: Yes, sir.

25 MR. HOLFORD: My lead investigator, I texted him this

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

35

1 morning and up until this morning we were Number 2 on the
2 roster.

3 THE COURT: Right.

4 MR. HOLFORD: I expected to start Wednesday. He was on a
5 dead body call this morning. I told him that we had moved to
6 Number 1 and expected to start tomorrow morning.

7 THE COURT: Okay.

8 MR. HOLFORD: The victim also is working today from 11:00
9 to 7:00. I've been in contact with her. She was -- we asked
10 her to have off the rest of the week.

11 THE COURT: Okay.

12 MR. HOLFORD: After this morning's meeting, I anticipated
13 starting in the morning.

14 THE COURT: All right. Is there any objection then, Mr.
15 Wilson, to starting tomorrow morning?

16 MR. WILSON: Judge, I'm -- I'm here to work all week.

17 THE COURT: Okay. And I appreciate that.

18 All right. Based upon that then what we'll do is we'll
19 do the *Jackson v. Denno* hearing this afternoon. We'll finish
20 that up and get the matter ready for trial and we'll start
21 first thing tomorrow morning. Okay?

22 MR. WILSON: Thank you, Judge.

23 THE COURT: So, as you know, I'm gonna start with pleas
24 at 2:00. There's several of them, so, you know, we'll get
25 started as soon as we can after that. All right?

State v. Welch - 2015-GS-26-969, 970, 971, 972
BY THE COURT

36

1 MR. WILSON: Thank you, Your Honor.

2 THE COURT: Thank you very much.

3 MR. HOLFORD: Thank you, Your Honor.

4 *****OFF THE RECORD*****

5 (On the Record.)

6 (REPORTER'S NOTE: The following takes place outside the
7 presence of the Jury.)

8 THE COURT: All right. This is 2015-GS-26-969, 970, 971,
9 972, State of South Carolina versus David James Welch for the
10 crimes of kidnapping, armed robbery, criminal sexual conduct
11 in the first degree, possession of a weapon during the
12 commission of a violent crime.

13 As I understand it, Solicitor, there is necessity of a
14 Jackson v. Denno Hearing; is that correct?

15 MR. HOLFORD: That's correct, Your Honor.

16 THE COURT: Is the State ready to proceed?

17 MR. HOLFORD: Yes, Your Honor.

18 THE COURT: All right. Go ahead.

19 MR. HOLFORD: The State calls Detective Jeremiah Beam.

20 THE COURT: All right, sir, please come around to be
21 sworn.

22 JEREMIAH BEAM, HAVING BEEN SWORN
23 TESTIFIES AS FOLLOWS:

24 CLERK: Please state your full name and spell your first
25 and last name for the Court.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

37

1 MR. BEAM: It's Jeremiah Beam, J-E-R-E-M-I-A-H, Beam, B-
2 E-A-M.

3 THE COURT: Go ahead. Go ahead, Solicitor.

4 MR. HOLFORD: Thank you.

5 JACKSON V. DENNO:

6 DIRECT EXAMINATION OF JEREMIAH BEAM BY MR. HOLFORD:

7 Q: Detective Beam, where are you currently employed?

8 A: With the City of Myrtle Beach Police Department.

9 Q: And how long have you been there?

10 A: Almost 13 years.

11 Q: How many interviews of suspects or defendants have you
12 done?

13 A: Hundreds.

14 Q: And do you normally read Miranda?

15 A: Yes, sir, if it's applicable.

16 Q: And when we talk about Miranda, what are those warnings?

17 A: Usually we read it right off a sheet. It's a City of
18 Myrtle Beach form that we use. That's typically what we
19 always use.

20 Q: And that's when interviewing a suspect or a defendant?

21 A: Yes, sir.

22 Q: Did you have an occasion to interview the Defendant in
23 this case?

24 A: I did, yes, sir.

25 Q: Do you know the Defendant in this case?

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY HOLFORD

38

1 A: I know him from the case.

2 Q: And what's his name?

3 A: It's David Welch.

4 Q: And you were present when he was interviewed?

5 A: Yes, sir, myself and Detective Jones.

6 Q: How many other people were in the room, anyone else?

7 A: Just Mr. Welch.

8 Q: Okay. So, it was you, Detective Jones, and the
9 Defendant?

10 A: Yes, sir, we typically interview in twos; that's kind of
11 our standard operating policy.

12 Q: You said that you have a City of Myrtle Beach form that
13 you use?

14 A: Yes, sir.

15 Q: And did you use one of those in this case?

16 A: Yes, sir.

17 MR. HOLFORD: Your Honor, may I approach?

18 THE COURT: Certainly.

19 BY MR. HOLFORD:

20 Q: State's 1, it's been marked as State's 1 for ID. Can you
21 identify that form?

22 A: Yes, sir, it's our Myrtle Beach Miranda Form and it
23 appears to be signed by D.J.

24 Q: Was that the form that was used in this interview?

25 A: Yes, sir, it appears to be.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM'- DIRECT BY HOLFORD

39

1 Q: And witnessed it?

2 A: Detective Hugh Jones.

3 Q: And were you present during this?

4 A: I was; yes, sir.

5 Q: And are there check marks by the rights that were read?

6 A: Yes, sir, after each one they read, we put a check mark

7 ---

8 Q: Is that a clear and accurate copy of what would've been
9 used in this case?

10 A: Yes, sir.

11 MR. HOLFORD: The State moves State's 1 into evidence for
12 this hearing?

13 THE COURT: Any objection.

14 MR. WILSON: Without objection, Your Honor.

15 THE COURT: All right. It's in evidence for the hearing.

16 STATE'S EXHIBIT NUMBER 1

17 ADMITTED INTO EVIDENCE FOR JACKSON V. DENNO

18 BY MR. HOLFORD:

19 Q: And when you interviewed the Defendant, was this audio or
20 video recorded?

21 A: It was audio, yes, sir, it happened in our jail, so I
22 used our digital recorder.

23 Q: And did you turn over an audio recording to the State?

24 A: Yes, sir; it was transmitted to the Solicitor's office
25 with the case file.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

40

1 Q: And have you heard that interview after the -- after you
2 submitted it?

3 A: I've listened to bits and pieces of it.

4 MR. HOLFORD: May I approach, Your Honor?

5 THE COURT: Yes, sir, please.

6 BY MR. HOLFORD:

7 Q: I'm handing you State's 2, can you identify what that --
8 what I just handed you?

9 A: It's State v. David Welch and it's a disc, an audio disc.

10 Q: Is that -- you believe that's the interview that you're
11 referring to?

12 A: Yes, sir.

13 MR. HOLFORD: State moves to enter Exhibit 2 into
14 evidence?

15 THE COURT: Any objection?

16 MR. WILSON: Your Honor, just subject to objections that
17 may come to pass in a little bit. We have some issues but,
18 again, I have no objection to them entering it into evidence
19 at for this hearing.

20 THE COURT: All right, sir. Very good. So, the audio
21 portion is entered for the purposes of the hearing. If there
22 are objections as to issues within the audio itself, then I'll
23 hear those at the appropriate time. Thank you.

24 MR. HOLFORD: Yes, sir.

25 MR. WILSON: Thank you, Your Honor.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

41

1 STATE'S EXHIBIT NUMBER 2
2 ADMITTED INTO EVIDENCE FOR JACKSON V. DENNO
3 MR. HOLFORD: Yes, sir.
4 MR. WILSON: Thank you, Your Honor.
5 MR. HOLFORD: Permission to play the audio now?
6 THE COURT: You may do so.
7 *****OFF THE RECORD*****
8 (REPORTER'S NOTE: State's Exhibit 2 published, not
9 transcribed herein.)
10 **(On the Record.)**
11 BY MR. HOLFORD:
12 Q: Detective Beam, was that the entirety of the interview?
13 A: Yes, sir.
14 Q: And at that point, what did you do?
15 A: He was provided with copies of his warrants and taken
16 back to his cell.
17 COURT REPORTER: Can you pull up to the microphone,
18 please?
19 A: Yes, ma'am, I apologize.
20 BY MR. HOLFORD:
21 Q: In that interview, was the Defendant -- was he asked if
22 he was sober or under the influence?
23 A: Yes, sir.
24 Q: Do you remember his response?
25 A: He said he's been sober.

State v. Welch - 2015-GS¹-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY HOLFORD

42

- 1 Q: Could he understand English?
- 2 A: Yes, sir.
- 3 Q: Could he understand what you were asking him?
- 4 A: Yes, sir.
- 5 Q: Did he comprehend your questions?
- 6 A: I believe so.
- 7 Q: Was he familiar with his rights?
- 8 A: Yes, sir.
- 9 Q: Was he read each of his rights?
- 10 A: He was by Detective Jones.
- 11 Q: And did he sign this form?
- 12 A: Yes, sir.
- 13 Q: Did he -- did he eventually ask for his lawyer?
- 14 A: He did; yes, sir.
- 15 Q: And what did you do at that point?
- 16 A: The interview was terminated.
- 17 Q: Did you pressure him or coerce him into saying anything
- 18 he said in that interview?
- 19 A: No, sir.
- 20 Q: And do you remember about what time this was in the day?
- 21 A: It was in the afternoon, a little after 4:00 P.M., sir.
- 22 Q: And how soon after the crime had occurred was this
- 23 interview done?
- 24 A: It was hours after. I believe it was early morning hours
- 25 going into that day. It was much later.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - CROSS BY WILSON

43

1 MR. HOLFORD: The State has no further questions.

2 THE COURT: Cross examination?

3 MR. WILSON: Your Honor, if it please the Court?

4 CROSS EXAMINATION OF JEREMIAH BEAM BY MR. WILSON:

5 Q: Good afternoon, Detective?

6 A: Good afternoon, sir.

7 Q: How you doing?

8 A: Good.

9 Q: Just a few questions. In the interview and -- 20 seconds
10 in, you can be heard on the tape saying I remember that name;
11 do you recall saying that?

12 A: I don't.

13 Q: Okay. They just played it for you just now.

14 A: Okay.

15 Q: And at the very beginning you say, I remember that name,
16 I remember your name; do you remember saying that?

17 A: I don't recall that but, if it's on the audio, then I
18 said it.

19 Q: Okay. All right. And do you also recall that originally
20 you guys charged him with a felon in possession with a weapon;
21 do you recall that?

22 A: Initially, he was charged for fleeing from us, for the --
23 resisting arrest was the initial charge.

24 Q: Okay. But during this interview with him, do you
25 remember talking with him about being a felon in possession of

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - CROSS BY WILSON

44

- 1 a weapon?
- 2 A: That's what Detective Jones said.
- 3 Q: Okay. All right. But you can hear that sound -- you
- 4 were there, obviously, during the interview.
- 5 A: Yes, sir.
- 6 Q: Do you recall him saying that to him?
- 7 A: Yes, sir.
- 8 Q: Okay. But he's not being tried today for that particular
- 9 crime, is he?
- 10 A: No, sir.
- 11 Q: He was never indicted for that crime?
- 12 A: He was never, no, sir.
- 13 Q: Okay. All right.
- 14 A: Possession of a weapon during the commission of a violent
- 15 crime.
- 16 Q: Yes, sir. Yes, sir. All right. And also it was 1:50
- 17 seconds in where you read the form to him, the form that you
- 18 guys read from Myrtle Beach Police Department?
- 19 A: That was Detective Jones.
- 20 Q: Okay.
- 21 A: Yes, sir, but that was read to him; yes, sir.
- 22 Q: Okay. All right. And basically y'all were going over
- 23 his rights with him?
- 24 A: Yes, sir.
- 25 Q: All right. And then he says to you at some point in time

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - CROSS BY WILSON

45

1 during that conversation, he says that he needs to get a PR
2 bond and go see his probation officer?

3 A: Yes, sir.

4 Q: Okay. All right. And then again at 5:28 into the
5 interview there was another mention of him being charged with
6 a weapon by a felon, correct?

7 A: Detective Jones again said that incorrectly.

8 Q: Okay. All right. Okay. And then again at 6:02 into
9 interview is when he then signed the actual document, correct?

10 A: I don't have the timeline in front of me, but he
11 eventually signed the document, yes, sir.

12 Q: Okay. At that time then you started asking questions
13 about the girl and who he saw and that kind of thing, correct?

14 A: Yes, sir, he was asked some questions after he signed,
15 sir.

16 Q: Okay. All right. But he didn't sign right away, did he?

17 A: No, sir.

18 Q: Okay. So, the waiver that was signed -- and I know you
19 don't know the exact time, but approximately some minutes into
20 the interview?

21 A: Yeah, the initial Miranda Rights were read and there was
22 some argument and it took some time before he eventually
23 signed it; that is correct.

24 Q: Okay. And you know -- he told you he had a ninth grade
25 education?

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - REDIRECT BY HOLFORD

46

1 A: Yes, sir.

2 Q: Okay. All right.

3 I have no further questions, Your Honor.

4 THE COURT: All right. Very good. Any redirect?

5 MR. HOLFORD: Just briefly.

6 REDIRECT EXAMINATION OF JEREMIAH BEAM BY MR. HOLFORD:

7 Q: Was the Defendant making statements to you while you were
8 going over -- while Detective Jones was going over this
9 Miranda form?

10 A: Yes, sir, both very -- both animated, it was a fairly
11 animated conversation but, yes, sir.

12 Q: But it wasn't until you actually got -- until the
13 Defendant actually signed it that you started asking specific
14 questions about this case?

15 A: Correct. Very direct questions and that's when he
16 requested his attorney.

17 MR. HOLFORD: No further questions.

18 THE COURT: Anything on those questions?

19 MR. WILSON: Nothing further, Judge.

20 THE COURT: You may step down, sir.

21 Any further witnesses on behalf of the State?

22 MR. HOLFORD: No, Your Honor.

23 THE COURT: All right. Very good.

24 Witnesses on behalf of the Defense?

25 MR. WILSON: None, Your Honor.

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT BY COUNSEL

47

1 THE COURT: All right. Very good. All right. I'll be
2 glad to hear arguments.

3 ARGUMENT BY COUNSEL:

4 MR. HOLFORD: Your Honor, the State would argue that the
5 statements made by the Defendant David Welch in this case were
6 knowing, were voluntary, not under threat of coercion or
7 duress, they were not pressured by any law enforcement agents.
8 As the detectives in this case were going over Miranda telling
9 him of his rights, based on the audio, it seemed clear that he
10 understood his rights, he knew what they were. Even so much
11 so that at the point when they got to asking specific
12 questions, he said I'm not gonna answer any questions that I
13 don't want to. And then when they started asking questions
14 that he didn't like he said I want my lawyer and that ended
15 it. It seems clear to the State that the Defendant was well
16 aware of his rights. He was read his rights. In fact, he
17 signed that and initialed that he knew his rights, what his
18 rights were, and that the conversation leading up to that were
19 interjected by him, not necessarily responding to questions by
20 law enforcement, but interjections by him responding to what
21 law enforcement was saying at the time as they were attempting
22 to issue Miranda Warnings.

23 Your Honor, the State would ask the Court to hold that
24 this *Jackson v. Denno* hearing that the Defendant's statements
25 be held knowing and voluntary.

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT BY COUNSEL

48

1 THE COURT: All right, sir.

2 Mr. Wilson?

3 MR. WILSON: Your Honor, if it please the Court. Judge,
4 my concern here is that the officers actually are testifying
5 and if that is -- if the tape is not redacted, they say on
6 there at first -- Detective Beam first says that, again, 20
7 seconds in, I remember the name, I know the name. All right?
8 Which implies or could -- the jury could infer that he's had
9 some interaction with my client before. Again they then
10 mentioned -- my client then mentions the Charleston incident,
11 whatever that is, said that, okay, well, is this about
12 Charleston? At that point in time, they hadn't even told him
13 -- that's 45 seconds in and they hadn't even told him what the
14 charges were.

15 Charge not going forward at trial, again, the actual
16 felon in possession was made -- or the actual comment was made
17 twice by Detective, I assume, Jones, who was there as well
18 during this interview. And then after that the Defendant
19 says, okay, well, you know, I want to get a PR bond so I can
20 go and see my probation officer, again eluding to prior bad
21 acts which shouldn't come in, Judge, which I think are
22 prejudicial. But most importantly at 5:28 they say again
23 about the weapon by a felon, and then at 6:02 is when he
24 actually signs the waiver. And after that, then the actual
25 detective said, okay, well, now I'm gonna ask you questions,

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT BY COUNSEL

49

1 and he begins to ask him questions but even the detective says
2 before that, look, none of this even matters until I actually,
3 you know, get you to sign this waiver. None of this stuff
4 even happened is what the detective says to him. And I would
5 ask the Court at the very least have them redact the entirety
6 of all the information regarding prior bad acts or even, you
7 know, anything they're not trying him on inside of that
8 statement. But we're asking also for the Court to consider
9 allowing them to introduce anything from 6:02 on after he
10 signs the waiver, which I think would be appropriate under
11 Miranda, Judge.

12 THE COURT: Okay. Let's talk about your argument of
13 necessity. Assuming I let it in or some portion of it in, the
14 jury still needs to make a determination of the voluntariness
15 of it.

16 MR. WILSON: Yes, Your Honor.

17 THE COURT: So, at the very least, there would have to be
18 included in that the recitation of Miranda Warnings to the
19 Defendant, correct?

20 MR. WILSON: That's correct, Judge.

21 THE COURT: So, even if that occurred prior to him
22 signing it, that has to be included if I'm going to allow it
23 at all?

24 MR. WILSON: I think that's correct, Judge. I absolutely
25 think that's correct.

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT BY COUNSEL

50

1 THE COURT: All right. Solicitor, what about the issue
2 -- I mean there's two issues that probably is honestly
3 satisfied by the second one. The first one is they're talking
4 about a crime for which he is not charged. So, that doesn't
5 seem to be proper in and of itself. So -- because he's not
6 facing that and that's not what's in front of the jury and
7 then the second part of it would be wherever it is -- Mr.
8 Wilson says it's at 6:02. I don't know where it is on the
9 recording but wherever it is clear that he signs the document,
10 signs the Miranda Warning document. Would it not be proper
11 except for the conversation I just had with Mr. Wilson, all
12 the rest of it really is not proper for the jury to hear.
13 What would your argument be about that?

14 MR. HOLFORD: As to the first, the State will concede
15 that, although he was arrested and presented an arrest warrant
16 for possession of a firearm by a convicted felon, that was
17 never submitted to the Horry County Grand Jury; he's not being
18 tried on that offense. So, mention of that the State doesn't
19 see why it should remain in and is okay redacting it.

20 THE COURT: All right, sir.

21 MR. HOLFORD: We concede that it should be redacted.

22 THE COURT: Okay.

23 MR. HOLFORD: I guess is the proper way to say it.

24 THE COURT: Yes, sir.

25 MR. HOLFORD: However, as to, you know, all the prior

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT BY COUNSEL

51

1 statements up until at whatever point he signs the document,
2 Your Honor, the State would argue that those are not answers
3 to questions being directed by law enforcement such that they
4 should be excluded based on the fact that he had not yet
5 signed the document. At that point, he had been provided
6 Miranda. Miranda had been read to him. It was clear the
7 officers were trying to go over what his rights were and the
8 Defendant was volunteering information. He was interjecting
9 information. The State would argue that that's more akin to
10 an excited utterance or spontaneous statement made by the
11 Defendant. Certainly, in those instances, I don't think that
12 those types of statements would be disallowed just because the
13 police had not had a chance to have the Defendant sign his
14 name on the sheet. I think those statements should be allowed
15 as far as the Defendant is offering up information as to -- as
16 law enforcement is trying to go over his rights with him.

17 Further, I think it's clear that the Defendant knew his
18 rights in this situation and was trying to somewhat game the
19 system, get as much information out of law enforcement as he
20 could before he signed it. And then by the time he signs it
21 and they ask him a pointed question, then he asked for an
22 attorney.

23 THE COURT: All right. Mr. Wilson, what about the point
24 that the Defendant -- I think the State would concede he's
25 certainly in their custody and control, but he's making

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT BY COUNSEL

52

1 voluntary statements that are not in response to a question,
2 that's not a question by law enforcement, they're explaining
3 the situation to him and he's making statements not responsive
4 to anything they are inquiring or asking him about?

5 MR. WILSON: Judge, my response to that would be this.
6 My reading of Miranda is, is fairly simple and clear that,
7 again, one of the main reasons when law enforcement engages
8 him, they have to get him to sign a waiver so that those
9 statements then can be used against him in a court of law. My
10 real concern here is that they come in, they don't tell him
11 what he's charged with and they engage him in conversation.
12 Of course he's gonna have excited utterance saying what, what
13 in the world are you talking about if he obviously is thrown
14 back or surprised about what law enforcement says. But again,
15 the officer, during the actual conversation, you can hear him
16 on the tape. He says clearly, you know, talk to me, tell me
17 what's going on here, I want to know what happened here, can
18 you tell me about what's going on, do you want to talk to me.
19 He is prompting him to talk to him. All right. And he may
20 not be asking specific questions before he's Mirandized, but
21 he's absolutely prompting him into conversation. And again, I
22 would, you know, think that this is actually akin to again
23 before you get the horse you know before the cart, or get the
24 cart before the horse. You got the officer already going
25 ahead and trying to then get information from him. He

State v. Welch - 2015-GS-26-969,970,971,972
RULING OF THE COURT

53

1 could've clearly said, okay, look, I can't talk to you until
2 you sign this waiver but he didn't do that. He continued to
3 try to prompt him to talk and get him excited and say, look,
4 you know, you ain't getting no PR bond; that's not possible
5 here. You ain't going home, you know, for this. Again, these
6 types of statements are prompting him in his conversation.
7 But again, I would again argue, Judge, that the actual waiver
8 needs to be signed before he can actually go forward and then
9 ask him questions. And I think on the tape it's clear that's
10 his understanding of the law as well.

11 THE COURT: All right. Y'all have listened to this
12 obviously a lot more than I have. All right. As far as the
13 signing of the document, Solicitor, are you in agreement with
14 the point in time that Mr. Wilson suggests that the document
15 was signed or do you think it was signed in a different
16 timeframe?

17 MR. HOLFORD: I do not have an exact timeframe on it.

18 THE COURT: Okay.

19 MR. HOLFORD: I would assume that it's pretty close to
20 where Mr. Wilson said.

21 RULING OF THE COURT:

22 THE COURT: All right. Beforehand I think it is proper
23 before the where it indicates on the audio portion that the
24 Miranda Warning was signed. It is certainly proper that the
25 warnings portion be included. I think it is also proper the

State v. Welch - 2015-GS-26-969,970,971,972
RULING OF THE COURT

54

1 reading of the charges excluding felon in possession of a
2 weapon for which he has not been indicted or charged or not
3 being tried. But, other than that, I do not believe that
4 anything else should be included in the recording.

5 Now, if there is something, some other statement or
6 utterance, Solicitor, that you think should be, I will be glad
7 for you to bring that to my attention again, but certainly the
8 fact that the detective indicates that he knows the Defendant
9 prior to the signing of the document, the fact that he
10 mentions a charge for which he is not indicted nor being
11 tried, that's certainly not proper. The fact that the
12 exclamation by the detective, in some portion, there are
13 questions, may not be specific questions about this particular
14 incident, but they are of such nature as to illicit a response
15 from the Defendant and, until he has waived his rights, that
16 cannot be used. If you think there is some totally
17 spontaneous utterance that is unrelated to some type of
18 inquiry or statement by the detective prior to the signing of
19 the document, again, I'll be glad to hear you about that
20 particular utterance or statement by the Defendant. But in
21 general, nothing before the actual signing comes in except for
22 the reading of the Miranda Warnings and the reading of the
23 charges for which he is actually facing trial here today so
24 that it would be clearer to the jury for them to make their
25 own determination. Okay. Did he get his Miranda Warnings;

State v. Welch - 2015-GS-26-969,970,971,972
RULING OF THE COURT

55

1 did he understand them -- so that would include then a
2 question about being sober, the ninth grade, those kind of
3 questions and answers certainly go along with the Miranda
4 Warning, so that would be allowed. All right? Because that
5 gives the jury some basis to interpret one way or another; is
6 it voluntary or not. But everything else would be excluded
7 except if you think there is some spontaneous statement by the
8 Defendant or utterance that is not related or cannot be
9 related to some kind of prompting or questioning or influence
10 by the officer to make him give a response in some way. I'll
11 be glad to listen to that part of it again if you think there
12 is a certain portion that you want included also. Okay?

13 MR. HOLFORD: Yes, Your Honor.

14 THE COURT: So, so with that, that's the Court's ruling.
15 Now, everything after he signed it, then that's in. Okay?
16 And if y'all have a disagreement as to where it is on the tape
17 that he signed it, then we'll have to listen to it again and
18 I'll just have to tell you I think he signed it right then.

19 MR. HOLFORD: Yes, sir.

20 THE COURT: Okay. So, I'll leave that to you but, if
21 there's a disagreement, then let me know and I'll make a
22 decision one way or another.

23 MR. WILSON: Yes, sir.

24 THE COURT: Okay?

25 MR. WILSON: Yes, Your Honor.

State v. Welch - 2015-GS-26-969,970,971,972
RULING OF THE COURT

56

1 THE COURT: All right.

2 MR. WILSON: Thank you, Judge.

3 THE COURT: All right, Counsel.

4 We'll -- I want y'all here at very least by 9:15. Now,
5 if there is any issue with anything, Solicitor, if you come up
6 with something else you want to put in or if there is
7 questions about it, y'all be here at 9 o'clock. Okay. I'm
8 just assuming 9:15 there aren't any issues and y'all are ready
9 at 9:30 to go to trial and we don't have to talk about
10 anything. Okay?

11 MR. WILSON: Yes, sir.

12 THE COURT: Anything we got to talk about, y'all be here
13 at 9. All right?

14 MR. WILSON: Yes, sir.

15 MR. HOLFORD: Yes, sir.

16 THE COURT: So, that means I need the Defendant here by 9
17 o'clock ready to go. Okay? So, if there is any issues,
18 whatever notice y'all need or whatever notice you need to give
19 to the deputies, let's make sure that gets done so that he's
20 here right over there ready to come out at 9 o'clock if we
21 need him.

22 MR. WILSON: Your Honor, may we approach briefly, Judge?

23 THE COURT: Yes.

24 (REPORTER'S NOTE: A bench conference was held off the
25 record.)

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

57

1 THE COURT: All right. So, with that then I will see
2 y'all tomorrow morning at the appointed time.

3 Thank you.

4 MR. WILSON: Thank you, Your Honor.

5 MR. HOLFORD: Thank you, Your Honor.

6 END OF DAY ONE.

7 (RECESS.)

8 *****OFF THE RECORD*****

9 APRIL 18, 2017 - DAY TWO

10 (On the Record.)

11 THE COURT: The State ready to proceed, Solicitor?

12 MR. HOLFORD: Yes, Your Honor.

13 THE COURT: And Defense?

14 MR. WILSON: Yes, Your Honor.

15 THE COURT: Very good. All right. Ask the jury to come
16 in then, please.

17 BAILIFF: Yes, sir.

18 (REPORTER'S NOTE: Jury enters courtroom.)

19 BY THE COURT:

20 THE COURT: All right. So, so, the first thing -- is it
21 DeMasters, ma'am?

22 JUROR 109: Yes, sir.

23 THE COURT: All right. You were selected by the jury to
24 be the foreperson for this particular jury?

25 JUROR 109: Yes, sir.

State v. Welch - 2015-GS-26-969, 970, 971, 972
BY THE COURT

58

1 THE COURT: Very good. So you will always need to occupy
2 that particular seat when we come back from the jury room.
3 The two alternates always need to occupy the last two seats of
4 each row when y'all come back in and when I ask for y'all come
5 back, Madam Forelady, just make sure everybody is ready to
6 come on in. If they, you know, you need a minute or two,
7 y'all get everybody organized and when everybody is ready to
8 come in, y'all can come on in. Okay?

9 JUROR 109: Yes, sir.

10 THE COURT: All right. Very good.

11 So, the very first thing that's gonna happen in this
12 trial is the Clerk's representative is gonna administer your
13 oath to you, so if you would all please stand at this time.
14 (REPORTER'S NOTE: Jury is duly sworn.)

15 THE COURT: Is there any member of the jury panel that
16 did not just affirmatively take the oath as given by the
17 Clerk's representative? If so, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: No juror having stood, I find the jury
20 properly sworn in this particular case.

21 All right. Ladies and gentlemen, I'm sure you're sitting
22 there wondering exactly what is my job; what -- what are we
23 gonna be called upon to do in this particular case? You are
24 going to be collectively the judges of the facts of this
25 particular case. I will not indicate to you in any way what I

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

59

1 believe the facts of this case are because it's gonna be your
2 job and your responsibility to listen to the testimony, the
3 evidence presented and to determine the facts in this matter.
4 In this particular matter, the State has charged the Defendant
5 with several crimes with which the Defendant has pled not
6 guilty. That puts the burden of proof on the State of South
7 Carolina to prove the Defendant guilty of the crime or crimes
8 charged beyond a reasonable doubt. That's the State's job and
9 the State's responsibility to present to you the testimony and
10 the evidence from which you can determine whether or not the
11 State has proven the Defendant guilty of the crimes or crime
12 charged and, again, beyond a reasonable doubt. The Defendant
13 has nothing to show to you. The Defendant has nothing to
14 prove to you. When the State charges a Defendant with a crime
15 and the Defendant pleads not guilty, the Defendant is presumed
16 innocent. The State must accept and have the complete
17 responsibility to prove the Defendant guilty beyond a
18 reasonable doubt.

19 How the case will proceed. We'll have these opening
20 statements by the Court, by the attorneys. We'll then go into
21 the evidentiary portion of the trial. You'll hear witnesses
22 that will come before you and testify under oath. You might
23 receive some kind of documentary or paper or other kind of
24 evidence that may be produced in this particular trial. When
25 we have finished the evidentiary portion of the trial, then

State v. Welch - 2015-GS-26-969, 970, 971, 972
BY THE COURT

60

1 we'll have the closing arguments of the attorneys. Now, just
2 to tell you, the opening statements by the attorneys and the
3 closing arguments by the attorneys, they're important. The
4 initial opening statement, what they think is going to happen,
5 what they think the evidence will show to you during the
6 course of the trial; the closing arguments, their belief as to
7 what the evidence has shown to you during the course of the
8 trial. But, that's what they are. They are statements and
9 arguments; they are not evidence. They cannot be considered
10 by you as evidence in this case. It is the testimony of
11 individuals before you under oath, the receipt of certain
12 documents that the Court has already approved, that is the
13 evidence from which you must consider and determine whether or
14 not the State proves the Defendant guilty of the crime or
15 crimes charged beyond a reasonable doubt.

16 When we have -- when we are finished with the closing
17 arguments by the attorneys, I will give you the law that you
18 will apply to the facts and evidence you find to be true in
19 this case and then I'll submit the case to you for your
20 decision, your unanimous decision regarding the crimes charged
21 in this particular matter.

22 I'm gonna ask you not to talk about this case during the
23 course of the trial. You'll have all the time you deem
24 necessary to talk about it when I give it to you at the end
25 for your deliberations and your unanimous decision. The

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

61

1 reason for that is, let's say we took a break after the first
2 witness and y'all started talking about this and somebody says
3 I believe this or I don't believe that. Well, it could be
4 that the very next witness totally changes everybody's mind
5 about what they have heard in that. You need to hear all the
6 evidence in the case before you try and talk about it and
7 formulate even mentally your decision about this matter and
8 the law. That will come to you at the end. After you've
9 heard all the facts, then you'll have a better understanding
10 of how to apply the law to the facts that you have already
11 heard. So, wait until the end to discuss the case.

12 Sometimes during the course of the trial, the attorneys
13 raise certain issues or matters to the Court. One of my jobs
14 is to guide the trial as to what is proper and not proper and
15 they may have a question, raise an objection. I might rule on
16 it in your presence and I might send you back to the jury room
17 so I can discuss it more fully with them. But, if I make a
18 ruling in your presence based on a question or an objection
19 raised by the attorneys, please remember again that I'm
20 governing the conduct of the trial, whether something is
21 proper for you to hear or proper for you to consider or not.
22 But again, I'm not making any judgements about facts; that's
23 your job and your responsibility. And an important part of
24 that is in conjunction with that, credibility and
25 believability. Because I rule one way or another, that

State v. Welch - 2015-GS-26-969, 970, 971, 972
OPENING BY HOLFORD

62

1 doesn't have anything to do with anybody's credibility or
2 believability. That, again, is your responsibility. When
3 you're judging facts, when you're judging somebody's
4 testimony, you're judging their credibility and believability.
5 If you are thinking now how am I gonna judge somebody's
6 credibility and believability? You do it every single day of
7 your life. When somebody tells you something, you're
8 automatically in your own mind judging do I believe them or do
9 I not because you're using your good common sense. You're
10 using your good judgement and looking at the facts and
11 determining somebody's credibility or believability regarding
12 the testimony that they are giving to you.

13 So, that's gonna be your job and responsibility in this
14 matter. Evaluate the facts and evidence, decide whether or
15 not the evidence presented to you in this matter, whether or
16 not the State has proven the Defendant guilty beyond a
17 reasonable doubt of the crimes charged in this particular
18 matter.

19 All right, Solicitor?

20 MR. HOLFORD: May it please the Court?

21 THE COURT: Yes, sir.

22 OPENING BY HOLFORD:

23 MR. HOLFORD: Good morning, ladies and gentlemen. You
24 know, I've thought long and hard about what I was going to say
25 this morning. I had all night -- actually, a couple of years

State v. Welch - 2015-GS-26-969,970,971,972
OPENING BY HOLFORD

63

1 to think about this. The victim here, Jerrica Nelson, has
2 also had a couple of years before this day has come, the day
3 of trial. Obviously, it's the Defendant's day, too. He's on
4 trial. We also have a victim in this case. She has a trial.
5 She's here today. I want you to remember that.

6 What the Judge talked about, credibility, believability,
7 I think that's what this case will come down to. You know in
8 this day and age, we've got technology, we've got cameras
9 everywhere. We have DNA still now, since the 70s. Actually,
10 the first DNA case was tried Horry County. All this stuff
11 helps. It helps show what happened. Before the 70s does that
12 mean that no one ever committed a crime, no one was ever able
13 to be found guilty? Certainly not. People committed crimes,
14 they came to juries, we had trials, they were found guilty.
15 Now I, as the State, have this powerful burden beyond a
16 reasonable doubt. I take that burden. I take it seriously
17 and I think that you'll see by the end of this trial that we
18 will meet that burden. Are we gonna have video in this case
19 that shows the actual crime happening? No. Are we gonna have
20 forensic evidence? Probably not. But what you will have is
21 an eye witness to what happened. You'll have a victim telling
22 you exactly what happened to her, horrific events, tragic
23 events.

24 As I thought about what I was gonna say -- I usually try
25 to use analogies. How can I break this down? How can I make

State v. Welch - 2015-GS-26-969, 970, 971, 972
OPENING BY HOLFORD

64

1 it relatable? You know, people might understand a burglary.
2 So, if someone was coming into your house, how would you feel
3 if you got burglarized, if your house is being attacked? Do
4 you let someone in when they point a gun at you? Are you
5 consenting if you let them in, if you're at gun point?
6 Certainly not. But in a situation like this, I have to step
7 back and think. I can't trivialize the events. A burglary is
8 not strong enough because we're not talking about the sanctity
9 of the home; we're talking about the sanctity of a person.

10 On January the 8th, 2015, that man right there, David
11 Welch, met Jerrica Nelson for the first time in person.
12 They'd been talking on Facebook. They'd been communicating
13 for a day or so. They met in person after some time. He
14 pulls out a gun and forced her to have sex. Then he took her
15 purse, he took her phone, and he ran off.

16 All the charges that you've heard, this kidnapping, armed
17 robbery, criminal sexual conduct, possession of a weapon
18 during the commission of a violent crime, it's all the same
19 defendant. The holding of a gun, the taking of the purse, the
20 taking the phone, that's armed robbery. Committing a sexual
21 assault by holding someone at gunpoint is criminal sexual
22 conduct in the first degree. Committing a sexual assault
23 while committing an armed robbery or a kidnapping is criminal
24 sexual conduct in the first degree. Holding someone against
25 their will at gunpoint is kidnapping and possessing that

State v. Welch - 2015-GS-26-969,970,971,972
OPENING BY HOLFORD

65

1 firearm during those violent crimes is possession of a firearm
2 during the commission of a violent crime.

3 You might think why charge him so much, why, you know,
4 it's one thing. This is serious. She's 24 years old now; she
5 was 22 years old at the time. These are serious charges.
6 This was a serious event.

7 I wish I had a video showing you exactly what happened,
8 but we don't have one. Does that mean it didn't happen?
9 Absolutely not. Things happen every single day that are not
10 captured on video; that doesn't mean it didn't happen.

11 What I ask you do, please, do what I've done, judge her
12 credibility, her believability, listen to her. See if you
13 believe her; see if she's telling the truth; see if she's
14 making this all up. But she's waited for two years to come
15 into court, scared to death, to look at 14 people that she
16 doesn't even know, have to put on a court record in front of
17 the Judge, face her attacker for a lie? I would say to you
18 that would be absurd.

19 I would ask you to please use your common sense. When
20 she takes that stand, listen to her. Judge for yourself and
21 see what you think. By the end of this trial, I'm confident
22 that you will see that she's credible, that she's believable.
23 She may not have done everything that I would have done in
24 that situation, that someone else on the outside would have
25 done in that situation, that someone with all the knowledge

State v. Welch - 2015-GS-26-969,970,971,972
OPENING BY WILSON

66

1 and experience in years would've done in that situation. But
2 I don't get to play God. I wasn't in that situation at that
3 time. I wasn't a 22-year-old girl with a gun in my face; she
4 was.

5 Please pay attention, as I know you will. These are
6 serious matters.

7 I thank you for your time.

8 THE COURT: Mr. Wilson?

9 OPENING BY WILSON:

10 MR. WILSON: Your Honor, if it please the Court?

11 Good morning, ladies and gentlemen, how are you doing
12 this morning?

13 My name is Ralph Wilson, Jr. and I represent this young
14 man here. I've represented him now for several months and
15 he's been involved in this also for two years. And at the
16 time he was 22 -- he was 19 years old at the time when all
17 this happened. And after you've heard what the prosecutor
18 said, I know everybody is thinking to themselves, Mr. Wilson,
19 why after what he said -- it sounds like this is a locked up
20 case. Why are we here? Why are we here? It sounds like this
21 young man went out with the intentions of raping and robbing
22 Jerrica Nelson.

23 What I'm here to tell you today is this, there are
24 reasons why we have trials. I've known Josh for a long time;
25 he's a good prosecutor. He's known me for a long time.

State v. Welch - 2015-GS-26-969,970,971,972
OPENING BY WILSON

67

1 Neither one of us were in the car with Jerrica Nelson and with
2 the Defendant, David Welch. Neither one of us were actually
3 on Facebook talking about sex, talking about, well, whatever
4 happens, happens. Neither one of us were there. He's a
5 lawyer just like I'm a lawyer. He doesn't have any special
6 crystal ball; neither do I. I am not the trier of facts,
7 neither is he. I want you -- and the Judge is gonna instruct
8 you later on at the end of this trial to look at the
9 witnesses, use common sense, think about the circumstances,
10 think about what happens every single day in a common
11 scenario. I want you to listen. I want you to listen. All
12 of you were chosen specifically because we believe that you
13 can give us a fair trial. Are the allegations bad?
14 Absolutely. Anytime that a woman is attacked at gunpoint,
15 forced to have sex, that's bad. Anytime a woman is kidnapped
16 against her wishes, that's bad. Anytime somebody has their
17 purse taken at gunpoint, that's bad. But I don't believe
18 that's what the evidence is gonna show in this case.

19 I'm gonna tell you what I believe the evidence is gonna
20 show and what the prosecutor hadn't told you. What you're
21 gonna hear on this stand is that Jerrica Nelson, before she
22 called 911, before she called anybody, called her mother,
23 talked to her mother, never told her mother she was raped.
24 She then goes to Belk from Town Square Apartments, calls 911,
25 and the first thing she says on the 911 call -- and you can

State v. Welch - 2015-GS-26-969,970,971,972
OPENING BY WILSON

68

1 hear it, you'll hear testimony about it -- somebody stole my
2 purse, which is what she told her mother. Then she goes and
3 changes her story and said oh, no, no, no, I was robbed at
4 gunpoint. The 911 operator still talking to her on the phone,
5 I was robbed at gunpoint at Burger King. Somebody followed me
6 out the bathroom, put the gun in my back; that's what she
7 says. Then she says, well, no, that's not how it happened.
8 We left Burger King together. He made me drive him somewhere
9 at gunpoint. That is the third story we hear. Then she says
10 -- when pressed and when threatened by the police officers and
11 you will hear testimony about that, they threatened to charge
12 her with a felony and she continued to lie to them. Officer
13 Sououd was talking to her and said, look, if you continue to
14 lie to us, we'll gonna charge you with a felony. After that,
15 she then talks to Detective Beam and changing her story yet
16 again. And that's when she says he raped me at gunpoint.

17 You're gonna hear a lot of evidence in this case. You're
18 gonna hear about condoms. We're all grown folks. Okay?
19 You're gonna hear about Summer's Eve. You're gonna hear a lot
20 of evidence about sexual contact. And I'm asking you to weed
21 through the nonsense and ask yourself what is realistic, what
22 is probable? Because I'll tell you right now, in my
23 experience as a trial lawyer, I have rarely read the reports
24 and heard the type of evidence you'll hear in this case from
25 law enforcement questioning what happened, questioning the

State v. Welch - 2015-GS-26-969,970,971,972
OPENING BY WILSON

69

1 logic of some of the things that she says happened.

2 You are charged with giving this Defendant a fair trial.

3 Jerrica Nelson is not on trial. She's not on trial at all.

4 She's not facing years in prison. CSC first degree is a

5 serious charge. It is the most serious sex crime that you can

6 be charged with in South Carolina. It is forcible rape.

7 Kidnapping is a serious charge. Armed with a deadly weapon

8 during a violent offense is a serious charge. Armed robbery,

9 serious charges. And what I want you to do, when you listen

10 to these witnesses on the stand and you hear this testimony,

11 I'm asking you to do what the Judge is gonna ask you to do

12 which is again apply the law to the facts as you find them and

13 listen to whether or not what you hear is credible. Is it

14 credible? Is it believable? Does it make sense? That's what

15 I'm asking you to do. I'm not asking for any more and no

16 less. Give him a fair trial, listen to all the evidence and,

17 at the end of this, I promise you, you will see what I've seen

18 pouring through this evidence for the last several months

19 preparing for this trial. It doesn't make sense. And, if it

20 doesn't make sense, if it doesn't add up, as Detective Beam

21 said, it just doesn't seem like it's really realistic, didn't

22 happen.

23 Thank you so much for listening to me. I ask you to pay

24 attention. This is important. Again, he's on trial for some

25 serious stuff.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER DALMIDA - DIRECT BY HOLFORD

70

1 Thank you so much.

2 THE COURT: All right, Solicitor, your first witness
3 please, sir.

4 MR. HOLFORD: The State calls Jennifer Dalmida.

5 THE COURT: All right. Very good.

6 All right, ma'am, come all the way around; come all the
7 way around up here and meet the Clerk's representative right
8 up here at the corner, please.

9 Madam Clerk?

10 CLERK: Please raise your right hand and put your left
11 hand on the Bible.

12 JENNIFER DALMIDA, HAVING BEEN SWORN
13 TESTIFIES AS FOLLOWS:

14 CLERK: Please state your full name and spell your first
15 and last name for the Court?

16 A: Jennifer Dalmida; J-E-N-N-I-F-E-R, D-A-L-M-I-D-A.

17 DIRECT EXAMINATION OF JENNIFER DALMIDA BY MR. HOLFORD:

18 Q: Ms. Dalmida, can you tell me where you're employed?

19 A: With Verizon Wireless.

20 Q: And what is your job there?

21 A: I'm a Senior Analyst who is a custodian of records for
22 the company.

23 Q: And so what do you typically do in court?

24 A: I travel from court to court throughout the week and I
25 testify regarding any records that we provided in compliance

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER DALMIDA - DIRECT BY HOLFORD

71

1 with search warrants, court orders or subpoenas.

2 Q: And did you provide -- did Verizon provide warrant -- did
3 Verizon provide records in this case?

4 A: Yes.

5 Q: Do you have any specific knowledge about this case in
6 general?

7 A: No.

8 Q: You just know about the records that Verizon provided?

9 A: Correct.

10 Q: If I handed you a document, would you be able to identify
11 it?

12 A: Yes.

13 MR. HOLFORD: May I approach, Your Honor?

14 THE COURT: Yes, sir, please.

15 BY MR. HOLFORD:

16 Q: I'm handing you what's been marked for ID as State's 15.
17 Can you identify what that document is?

18 A: Yes. This is a copy of our subscriber information.

19 Q: Okay. And are you familiar with that document?

20 A: Yes.

21 Q: Is that something that you provided?

22 A: Yes.

23 Q: Or Verizon?

24 A: Verizon.

25 Q: And you're the custodian of records like this?

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER DALMIDA - DIRECT BY HOLFORD

72

1 A: Yes.

2 Q: Is that a true and accurate copy?

3 A: Yes.

4 MR. HOLFORD: Your Honor, the State would move State's 15
5 in evidence?

6 THE COURT: Any objection?

7 MR. WILSON: Without objection, Your Honor.

8 THE COURT: All right. So it's into evidence without
9 objection.

10 STATE'S EXHIBIT NUMBER 15

11 ADMITTED INTO EVIDENCE

12 BY MR. HOLFORD:

13 Q: Can you tell me what this document actually says?

14 A: This document would provide the name and the account
15 number for a specific target number in which we provided the
16 records. In this matter, we have [REDACTED] listed for a
17 Jerry Nelson. It also would provide a billing address in
18 which we would provide bill copies to.

19 Q: And what was that billing address?

20 A: We have [REDACTED] [REDACTED].

21 Q: Did you provide anything else other than the subscriber
22 information?

23 A: A copy of our toll records?

24 Q: What is a toll record?

25 A: A toll record would just indicate any type of billable

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER DALMIDA - DIRECT BY HOLFORD

73

1 calls that our subscriber was billed throughout a specific
2 billing period.

3 MR. HOLFORD: May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. HOLFORD:

6 Q: I'm handing you what's been marked for ID as State's 16.
7 Can you identify what that is?

8 A: This is a copy of our toll records.

9 Q: Okay. And is that a true and accurate copy of something
10 Verizon would provide?

11 A: Yes.

12 Q: And are you a custodian of records like that?

13 A: Yes.

14 MR. HOLFORD: Your Honor, the State would move 16 in
15 evidence?

16 THE COURT: Any objection to that?

17 MR. WILSON: Judge, without objection.

18 THE COURT: It's in evidence without objection.

19 STATE'S EXHIBIT NUMBER 16

20 ADMITTED INTO EVIDENCE

21 BY MR. HOLFORD:

22 Q: And can you tell the jury what that number says or that
23 sheet?

24 A: This is the details for [REDACTED] for the timeframe of
25 December 25th through January 12th, 2015.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER DALMIDA - CROSS BY WILSON

74

1 Q: And who did that number belong to?

2 A: A Jerrica Nelson.

3 Q: Okay. And is that all your involvement with this case
4 that you just gave us documents and said who the phone numbers
5 belonged to?

6 A: Yes.

7 MR. HOLFORD: No further questions, Your Honor.

8 THE COURT: Cross examination?

9 CROSS EXAMINATION OF JENNIFER DALMIDA BY MR. WILSON:

10 Q: Just briefly, ma'am.

11 Your Honor, may I approach the witness?

12 THE COURT: Yes, sir, please.

13 Q: Thank you, Judge.

14 This is just a copy of the actual document that you have.

15 A: Okay.

16 Q: The highlighted number, can you tell me what that number
17 is on that document?

18 A: [REDACTED].

19 Q: Okay. And is that an outgoing call or incoming call?

20 A: This is an outgoing call.

21 Q: And what time was that call coming out?

22 A: This call occurred at 7:32 P.M.

23 Q: Okay. And so that means that that phone number was
24 calling that number, correct?

25 A: Correct.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER DALMIDA - REDIRECT BY HOLFORD

75

1 Q: Okay.

2 Thank you, Judge. No further questions, Your Honor.

3 THE COURT: All right, sir.

4 Anything else, Solicitor?

5 REDIRECT EXAMINATION OF JENNIFER DALMIDA BY MR. HOLFORD:

6 Q: One more question. On that same sheet right before
7 there, was that same number making incoming calls to Ms.
8 Nelson?

9 A: Yes, we have an incoming call from [REDACTED].

10 Q: How many times?

11 A: Eight times.

12 Q: But you're not sure who that number belongs to?

13 A: Correct, I'm not sure.

14 MR. HOLFORD: No further questions, Your Honor.

15 THE COURT: Anything else, Mr. Wilson?

16 MR. WILSON: Nothing further, Your Honor.

17 THE COURT: Do you wish the witness to be excused?

18 MR. HOLFORD: Yes, Your Honor.

19 THE COURT: All right, ma'am, you are excused from your
20 subpoena and may go back to your regular duties. Thank you.

21 Next witness, please?

22 MR. HOLFORD: Your Honor, the State calls Jerrica Nelson
23 to the stand.

24 THE COURT: All right. Please come around, ma'am.

25 CLERK: Please raise your right hand and put your left

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

76

1 hand on the Bible?

2 JERRICA NELSON, HAVING BEEN SWORN

3 TESTIFIES AS FOLLOWS:

4 CLERK: Please state your full name and spell your first
5 and last name for the Court.

6 MS. NELSON: Jerrica Nelson; J-E-R-R-I-C-A, N-E-L-S-O-N.

7 DIRECT EXAMINATION OF JERRICA NELSON BY MR. HOLFORD:

8 Q: Ms. Nelson, is it okay if I call you Jerrica?

9 A: Yes.

10 Q: Now, you're gonna have to speak up just a little bit.

11 Lean up into the microphone if you can but we want to make
12 sure that everyone here is able to hear what you're saying.

13 Okay?

14 A: Okay.

15 Q: Tell me, how old are you?

16 A: Twenty-four.

17 Q: And where do you live right now?

18 A: In Murrells inlet.

19 Q: How long have you lived here in Horry County?

20 A: Ever since the third grade; so, for a while.

21 Q: Okay. When is your birthday?

22 A: [REDACTED], 1992.

23 Q: '92. And are you working anywhere right now?

24 A: Yes.

25 Q: Where do you work?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

77

- 1 A: Bojangles.
- 2 Q: How long have you worked at Bojangles?
- 3 A: For a year.
- 4 Q: A year?
- 5 A: Uh-huh (affirmative response).
- 6 Q: Did you work anywhere before that?
- 7 A: Uh-huh (affirmative response). Yes.
- 8 Q: Where did you work before that?
- 9 A: Stein Mart.
- 10 Q: Okay. Where you working back in January 2015?
- 11 A: Stein Mart.
- 12 Q: At Stein Mart. Were you going to school anywhere?
- 13 A: Yes.
- 14 Q: Where were you going to school?
- 15 A: Horry Georgetown Tech in Conway.
- 16 Q: Okay. Are you still going to school there?
- 17 A: No.
- 18 Q: Did you graduate?
- 19 A: Yes, I finished my Veterinary Assistant program.
- 20 Q: Okay. Do you plan to use that degree?
- 21 A: Yes.
- 22 Q: Are you looking for a job?
- 23 A: Yes.
- 24 Q: And let's move into January 8th, 2015. Do you remember
- 25 that day?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

78

1 A: Uh-huh (affirmative response), yes.

2 Q: Now, let's start at the beginning of the day. What did
3 you do that morning?

4 A: That morning, I got off work, and I was on my way home,
5 and he kept messaging me on Facebook, but I couldn't answer
6 because I was driving and then I heard my phone ring.

7 Q: All right. Let me -- I might interject at times. I'm
8 really not trying to interrupt you. But, when you say he, who
9 is he?

10 A: (Indicating.) David.

11 Q: Okay. You've pointed to David.

12 A: Uh-huh (affirmative response).

13 Q: Is the person in the courtroom?

14 A: Yes.

15 Q: And is he seated at the Defendant's table?

16 A: Yes.

17 Q: And what is he wearing?

18 A: I can't see.

19 Q: He's not the man who just gave the opening statement, is
20 he?

21 A: No.

22 Q: And they're two other females?

23 A: No.

24 Q: And there's one male at the table, right?

25 A: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

79

- 1 Q: Is he the Defendant here?
- 2 A: Yes.
- 3 Q: He's the one that messaged you on Facebook?
- 4 A: Yes.
- 5 Q: Okay. What did you know his name as on that day?
- 6 A: David Royal.
- 7 Q: David Royal. How did you know him as David Royal?
- 8 A: It was on Facebook.
- 9 Q: On Facebook?
- 10 A: Uh-huh (affirmative response).
- 11 Q: Okay. Now, let's go back. So, what time did you get off
- 12 of work?
- 13 A: I'm not quite sure. I would say around like 5:30 maybe
- 14 6:00. I'm not sure.
- 15 Q: Okay. And had you been talking to David on Facebook
- 16 before this date?
- 17 A: He messaged me the previous day.
- 18 Q: And so if that was the 8th, that would've been on the
- 19 7th?
- 20 A: Yes.
- 21 Q: Okay. Had you met him before?
- 22 A: No.
- 23 Q: You hadn't met him in person?
- 24 A: No.
- 25 Q: So, how did you get connected on Facebook?

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

80

- 1 A: It was under the suggestions of friends you might know.
- 2 Q: Okay. So, you're on Facebook and you've got -- did you
- 3 have friends in common?
- 4 A: I really didn't look into see who we had in common.
- 5 Q: But Facebook will give you like a you might know this
- 6 person, right?
- 7 A: Uh-huh (affirmative response), yeah.
- 8 Q: Did you add him or did he add you?
- 9 A: I'm not quite sure on that one.
- 10 Q: You might've added him?
- 11 A: Possibly.
- 12 Q: Were you adding other people at that time?
- 13 A: Hu-huh (negative response), no.
- 14 Q: Okay. Why would you have added someone on Facebook that
- 15 you didn't know?
- 16 A: I don't know. I was new to the area and just wanted to
- 17 meet new people.
- 18 Q: Now, when you say new to the area, if you've been in
- 19 Horry County since about third grade, what do you mean by
- 20 that?
- 21 A: Like in the Murrells Inlet area.
- 22 Q: Okay. Where did you live before?
- 23 A: In Carolina Forest.
- 24 Q: And so were you living with your parents in Murrells
- 25 Inlet?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

81

- 1 A: Yes.
- 2 Q: Had you just moved there though?
- 3 A: Yes, I moved after I graduated high school.
- 4 Q: So you're looking to meet people?
- 5 A: Uh-huh (affirmative response).
- 6 Q: Are you a pretty social person? Do you go out and meet
7 people out at bars and clubs?
- 8 A: No.
- 9 Q: Had you met anyone online before?
- 10 A: No.
- 11 Q: Did you know anything about David at that time?
- 12 A: No.
- 13 Q: You had some type of conversation with him on Facebook,
14 right?
- 15 A: Uh-huh (affirmative response), yes.
- 16 THE COURT: You need to answer yes or no, ma'am, please,
17 because the Court Reporter can't really tell what uh-huh
18 means. Okay? So if you could just answer yes or no. All
19 right?
- 20 A: Okay.
- 21 THE COURT: Thank you, ma'am.
- 22 Q: Would you recognize Facebook conversations if I showed
23 them to you?
- 24 A: Yes.
- 25 Q: Did you know it was possible for us to get your Facebook

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

82

1 records?
2 A: Yes.
3 Q: You did?
4 A: Yeah.
5 Q: Most people don't realize that.
6 Your Honor, may I approach with State's 18?
7 THE COURT: Yes, sir.
8 Q: I'm handing you what's been marked for identification as
9 State's 18. Can you just -- don't say exactly what it is, but
10 tell us, what is that? What's that appear to be?
11 A: The Facebook conversation between us.
12 Q: Between you?
13 A: Yes.
14 Q: And David?
15 A: Yes.
16 Q: Okay. Does that appear to be an accurate reflection of
17 what you -- what you wrote back and forth?
18 A: Yes.
19 Q: Do you even know if you would be able to go in and delete
20 stuff off of Facebook if you wanted to?
21 A: Hu-huh (negative response), no.
22 Q: Do you know if you'd be able to hide stuff from law
23 enforcement if we went to find it?
24 A: No.
25 Q: Does that appear to be a true and accurate copy of your

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

83

1 messages back and forth?

2 A: Yes.

3 MR. HOLFORD: Your Honor, the State would seek to admit
4 18 in evidence.

5 THE COURT: Any objection?

6 MR. WILSON: Judge, no objection.

7 THE COURT: In evidence without objection.

8 STATE'S EXHIBIT NUMBER 18

9 ADMITTED INTO EVIDENCE

10 BY MR. HOLFORD:

11 Q: Now we have some lengthy conversations. I want you to
12 look at this and tell -- tell the jury who -- who is this
13 conversation between?

14 A: Jerrica Nelson and David Royal.

15 Q: David Royal. Okay. So Jerrica Nelson is you?

16 A: Yes.

17 Q: And David Royal is the Defendant?

18 A: Yes.

19 Q: Are there a lot of pages there?

20 A: Yes.

21 Q: Had the Defendant ever asked you to have sex in that
22 conversation?

23 A: Yes.

24 Q: And did you ever agree to have sex?

25 A: No.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

84

1 Q: Did you ever say you weren't gonna have sex?

2 A: No.

3 Q: You never said you wouldn't?

4 A: I never said I wouldn't.

5 Q: But you never said you would?

6 A: Hu-huh (negative response), no.

7 MR. HOLFORD: May I approach with State's 17?

8 THE COURT: Yes, sir.

9 BY MR. HOLFORD:

10 Q: Now, I handed you what's been marked State's Exhibit 17.

11 Can you identify what that is?

12 A: Yes.

13 Q: What is that?

14 A: A picture of David Royal.

15 Q: A picture of David Royal?

16 A: Uh-huh (affirmative response).

17 Q: Okay. And is that an accurate picture of him?

18 A: Yes.

19 MR. HOLFORD: Your Honor, the State seeks to admit 17 in
20 evidence?

21 THE COURT: Any objection?

22 MR. WILSON: No objection, Judge.

23 THE COURT: All right, sir. In evidence without
24 objection.

25 STATE'S EXHIBIT NUMBER 17

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

85

1 ADMITTED INTO EVIDENCE

2 BY MR. HOLFORD:

3 Q: Now, this picture, you say this is David Royal. How do
4 you know that's David Royal?

5 A: That's the name that appeared under the picture.

6 Q: So, is this off his Facebook?

7 A: Yes.

8 Q: Okay. So, this is the Facebook picture of the Defendant

9 ---

10 A: Uh-huh (affirmative response).

11 Q: --- using the name David Royal online?

12 A: Yes.

13 Q: Okay. So, all these conversations between you and David
14 Royal, we can know are actually you and David Welch?

15 A: Yes.

16 Q: Is that the man you met on January the 8th, 2015?

17 A: Yes.

18 Q: Now, let's go back to that date. So, you get off work.
19 I'm gonna hand you what's been entered as State's 16. We just
20 had Verizon tell us they keep the phone records. Do you
21 recognize that phone number?

22 A: That's his.

23 Q: All right. So, let's say which is your phone number on
24 there?

25 A: The [REDACTED].

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

86

- 1 Q: That was your phone number?
- 2 A: Yes.
- 3 Q: And you know that?
- 4 A: Uh-huh (affirmative response), yes.
- 5 Q: And so is this a list of your calls?
- 6 A: Yes.
- 7 Q: And are some incoming to you?
- 8 A: Yes.
- 9 Q: Now had the Defendant called you that day?
- 10 A: Yes.
- 11 Q: Had he also messaged you on Facebook?
- 12 A: Yes.
- 13 Q: And did he want to meet with you?
- 14 A: Uh-huh (affirmative response), yes.
- 15 Q: Okay. How many times did he call you that day?
- 16 A: Eight.
- 17 Q: Eight? And then at the end there, did you call him back?
- 18 A: Yes.
- 19 Q: Did he answer when you called him back?
- 20 A: No.
- 21 Q: Who answered?
- 22 A: A lady.
- 23 Q: A lady?
- 24 A: Yes.
- 25 Q: Did you talk to her?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

87

1 A: No.

2 Q: Why did you call him back?

3 A: I was just waiting there for a while and I called him to,
4 I guess, see if he was actually gonna show up.

5 Q: Okay. Let's back up then again and walk me through the
6 Facebook messages and phone records. What did you guys plan
7 to do?

8 A: He asked to hang out and I kept like blowing it off
9 saying maybe another day because I'd been working and I really
10 don't want to do anything after and then he kept asking and
11 then I would -- I said no and that's when I got calls and I
12 didn't know who it was, so I didn't answer the phone and then
13 it said I had a voice mail. So I listened to the voice mail
14 and it was David and he claimed he was waiting for us to hang
15 out, that we made plans, and he had been waiting all day. And
16 so I messaged him and I was like we never made plans to hang
17 out. And then he kept asking, well, do you want to hang out?
18 I was like not really because I just want to go home, and then
19 he kept asking, asking and asking and kept like calling,
20 calling, and I was like fine. Fine, I'll meet you somewhere
21 and that's when we met up at Burger King.

22 Q: You met at Burger King? Where is the Burger King?

23 A: In front of Coastal Grand Mall by Sticky Fingers.

24 MR. HOLFORD: May I approach with State's 19?

25 THE COURT: Yes, sir.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

88

1 BY MR. HOLFORD:

2 Q: I'm showing you a big picture. What is this?

3 A: South Carolina.

4 Q: Is it a map?

5 A: Yes.

6 Q: Okay. And are you familiar with this area on the map?

7 A: A little bit.

8 Q: A little bit?

9 A: Uh-huh (affirmative response).

10 Q: Is Burger King shown on here anywhere?

11 A: (Inaudible.)

12 THE COURT: I'm sorry, ma'am, you have to speak into the
13 microphone. I'm sorry, we couldn't hear you.

14 A: It's in front of Dillard's.

15 MR. HOLFORD: Your Honor, the State would move Exhibit 19
16 into evidence?

17 THE COURT: Any objection?

18 MR. WILSON: No objection, Judge.

19 THE COURT: It's in evidence without objection.

20 STATE'S EXHIBIT NUMBER 19

21 ADMITTED INTO EVIDENCE

22 BY MR. HOLFORD:

23 Q: Now, let's show the jury where you're talking about.

24 Where is the Burger King?

25 A: Right there.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

89

- 1 Q: And is there a dot on that map?
- 2 A: Yes.
- 3 Q: What color is that dot?
- 4 A: Green.
- 5 Q: A green dot. Okay. So this is the Burger King right by
- 6 the mall?
- 7 A: Yes.
- 8 Q: And that's where you agreed to meet?
- 9 A: Yes.
- 10 Q: Okay. And what time did you actually meet there?
- 11 A: When I checked it was like, it was around 8:00.
- 12 Q: Around 8:00?
- 13 A: Yes.
- 14 Q: Okay. So walk me through that. How long were you
- 15 waiting at Burger King?
- 16 A: I would say probably like 10 minutes, 10 or 15 minutes.
- 17 I'm not quite sure how long it was.
- 18 Q: Okay. Why did you agree to meet at Burger King?
- 19 A: Because he kept calling about hanging out and I was just
- 20 fed up with it, so I was like, okay, I agree to meet you if
- 21 this would make you leave me alone.
- 22 Q: Did, did he leave there or did he live around there?
- 23 A: He said he lived by the mall.
- 24 Q: Did you know where he lived?
- 25 A: No.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

90

1 Q: Did you intend to have sex with him?

2 A: No.

3 Q: So, when did he come to the Burger King?

4 A: There was no one else around and then I saw a man walk up
5 to the door and while I was looking out the window, he turned
6 and saw the car and walked over.

7 Q: What was he wearing?

8 A: Jeans, like a khaki colored jeans, and sweatshirt.

9 Q: Anything on his head?

10 A: A hat.

11 Q: Like a hat like we see in that picture?

12 A: Yes. Well, no, it was like not a winter hat, but like a
13 I guess a small like beanie type thing.

14 Q: Okay. Do you remember what color it was?

15 A: No.

16 Q: Do you remember what color his sweatshirt was?

17 A: It was like a dark color; I'm not sure, no.

18 Q: Do you know what kind of shoes he had on?

19 A: I'm guessing tennis shoes.

20 Q: And so what happens, does he get in your car at the
21 Burger King?

22 A: He knocks on the window with his knuckle and then he gets
23 in the car and we just sit there talking. He asked me how my
24 day was; I said it was fine. And then he looked like, well,
25 what do you want to do? I responded nothing really because

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

91

1 I'm tired. I don't want to do anything and it's cold and then
2 he tried to kiss me and I said no, and he kept asking why and
3 I said I just don't want to. And then -- and then he asked me
4 again what do you want to do and I was like there's not much
5 really to do; I just don't want to do anything. I'm really
6 tired. I just want to go home and then he tried to kiss me
7 again and I said no, and he was rubbing my leg, and he asked
8 again why and I said because I just don't want to. And then
9 he was like okay. And then he was like well can you at least
10 take me home so I don't have to walk home in the cold, and I
11 said okay fine and that's when he said he lived in the
12 apartments.

13 Q: Okay. So, all that happened at the Burger King?

14 A: Yes.

15 Q: In the parking lot?

16 A: Yes.

17 Q: What kind of car do you drive?

18 A: A Honda Tucson.

19 Q: And were you in your car?

20 A: Yes.

21 MR. HOLFORD: May I approach with State's 4 and 5?

22 THE COURT: Yes, sir.

23 BY MR. HOLFORD:

24 Q: Do you recognize State's 4 and 5?

25 A: Yes.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

92

1 Q: What is that?

2 A: My car.

3 MR. HOLFORD: Your Honor, the State would move 4 and 5 in
4 evidence?

5 THE COURT: Any objection?

6 MR. WILSON: No objection, Your Honor.

7 THE COURT: All right. They're in evidence without
8 objection.

9 STATE'S EXHIBITS NUMBER 4 AND 5

10 ADMITTED INTO EVIDENCE

11 BY MR. HOLFORD:

12 Q: Is that the car you were driving that day?

13 A: Yes.

14 Q: And is that the car you were in?

15 A: Yes.

16 Q: So, you're in the Burger King and he says let's go to the
17 apartments, right?

18 A: Yes.

19 Q: Did you know what apartments?

20 A: No, he showed me the way to get there.

21 Q: Now this is State's 19, can you tell the jury on this map
22 which way you went?

23 A: Down this road past the Walmart.

24 Q: Okay.

25 A: Then we turned at that light right before you get to the

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

93

1 Walmart.

2 Q: Okay. Do you know what road it was?

3 A: I'm not sure what road, the name of it.

4 Q: Do you know where the apartments are?

5 A: It's on Highway 15, the Town Square Apartments.

6 Q: Okay. So, if this is Highway 15 here, it's on Highway
7 15?

8 A: Uh-huh (affirmative response).

9 Q: And you said the Town Square Apartments?

10 A: Yes.

11 Q: So, you came from Burger King down to Highway 15 Town
12 Square Apartments?

13 A: Yes, that's where he directed that he lived.

14 MR. HOLFORD: May I approach with State's 20?

15 THE COURT: Yes, sir.

16 BY MR. HOLFORD:

17 Q: Now, if you look at State's 20, can you identify what the
18 roads are?

19 A: This is the road where the apartment is on because there
20 was a gas station right across from it.

21 Q: Okay. So you're familiar with this area then?

22 A: A little bit.

23 MR. HOLFORD: Your Honor, the State would move State's 20
24 in evidence?

25 THE COURT: Any objection?

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

94

1 MR. WILSON: No objection, Your Honor.

2 THE COURT: All right. It's into evidence without
3 objection.

4 STATE'S EXHIBIT NUMBER 20

5 ADMITTED INTO EVIDENCE

6 BY MR. HOLFORD:

7 Q: So, is this a close up of what we were just looking at?

8 A: Yes.

9 Q: All right. Okay. And so what is this road right here?

10 A: Highway 15.

11 Q: And what's this red dot right there?

12 A: The apartment.

13 Q: The apartments, when you say the apartments, what
14 apartments are those?

15 A: The Town Square Apartments.

16 Q: Okay. And is that where he directed you to?

17 A: Yes.

18 Q: Where did he have you park?

19 A: He led me to the last spot.

20 Q: Right here?

21 A: Uh-huh (affirmative response).

22 Q: So, you actually pulled in the parking lot of the Town
23 Square Apartments?

24 A: Yes.

25 Q: What is this right here?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

95

- 1 A: The gas station.
- 2 Q: Okay. And so the red dot there is the Town Square
- 3 Apartments?
- 4 A: Yes.
- 5 Q: And State's 20 is just a close up of where State's 19 is
- 6 down here on the bottom right, correct?
- 7 A: Yes.
- 8 Q: So the red dot is ---
- 9 A: Uh-huh (affirmative response). Yes.
- 10 Q: Okay. So you get down here to these Town Square
- 11 Apartments. Is that where he lives?
- 12 A: He said he lived there and that's when after he took my
- 13 purse and ran out the car, I saw him run across the street to
- 14 the gas station, and that's when I figured he didn't live
- 15 there.
- 16 Q: Okay. So, show us on the map where he ran across the
- 17 street?
- 18 A: (Inaudible.)
- 19 COURT REPORTER: Excuse me.
- 20 Q: You need to get to the microphone, sorry.
- 21 A: He ran across the side of the apartments to the gas
- 22 station.
- 23 Q: Okay. And identify for the Court Reporter what Highway
- 24 this is?
- 25 A: 15.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

96

1 Q: So he ran across Highway 15 to the gas station?

2 A: Yes.

3 Q: Now, let's back up because in between the time that you
4 parked there in that last parking spot ---

5 A: Uh-huh (affirmative response).

6 Q: --- and he takes your purse and runs, walk me through
7 that?

8 A: We were in the car. We'd pulled up and he said there's a
9 window open, turn your lights off so you aren't shining in
10 their window, so I did that. The car was still running and
11 everything and that's when he pulled out the gun and he was
12 like, I want to have sex. I asked him, what, and he said I
13 want to have sex. And he was like I think this is funny that
14 you think this is fake and he rubbed the gun on my hand and
15 then that's -- he leaned over me, put it in his pocket and
16 leaned over me and tried to unbutton my pants. I said no, and
17 he was like I will shoot you and nobody will care. And, so he
18 unbuttoned my pants and tried to pull them down, but he
19 couldn't because I was sitting down, so he tried to lean the
20 seat back and it didn't work, so he said get in the back seat.
21 So I did and then my pants were off, and that's when he tried
22 to kiss me on the mouth. I turned away and he tried to pull
23 my face towards him and I kept looking away, and that's when
24 he -- like that's when he started to have sex with me and then
25 he stopped and I was like, just so you know, I'm not on birth

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

97

1 control, hoping that would stop him. And he just put on a
2 condom and proceeded. And then after it was done, he pulled
3 up his pants, grabbed my purse, so I grabbed the handle and I
4 was trying to pull it away from him. And he kept saying let
5 it go and I was like no, and then he was like let it go or I
6 will shoot you, and then so I let it go, and that's when he
7 opened the car door and ran out and, and ran down the side of
8 the apartments towards the gas station. And I didn't know
9 what to do for a minute and then I quickly got dressed and I
10 was shouting out the car and I was like, hey, give me my purse
11 back, what are you doing, shouting outside, and he didn't
12 stop, he kept running. And I just like just stood there
13 trying to figure out like everything that happened and then I
14 knocked on one door and no one answered, then I knocked on
15 another one and an old man answered, and I asked if I could
16 use his phone and he said no and shut the door in my face.
17 And then that's when I got back in the car and drove to Belk
18 and went in there and used their phone to call somebody.

19 Q: Why didn't you call from your cell phone?

20 A: Because I didn't have it.

21 Q: Where was it?

22 A: He took it.

23 MR. HOLFORD: May I approach with State's 3?

24 THE COURT: Yes, sir.

25 BY MR. HOLFORD:

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

98

1 Q: Can you identify what that is?

2 A: That's Belk.

3 Q: This is a picture of Belk, right?

4 A: Yes.

5 MR. HOLFORD: The State would move State's 3 into
6 evidence?

7 THE COURT: Any objection.

8 MR. WILSON: No objection, Your Honor.

9 THE COURT: All right. State's 3 is in evidence without
10 objection.

11 STATE'S EXHIBIT NUMBER 3

12 ADMITTED INTO EVIDENCE

13 BY MR. HOLFORD:

14 Q: This is where you went to make the phone call?

15 A: Yes.

16 Q: Is that back at the mall?

17 A: Yes.

18 Q: So, after you had been assaulted you tried to call from
19 there?

20 A: Yes, I knocked on their door to see if I could use a
21 phone and nobody will let me use the phone. So, I looked
22 around and then I went back in my car and drove to the mall to
23 use a phone.

24 Q: And point to us where the mall is on this map?

25 A: Right here.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

99

1 Q: And what side is the Belk on?

2 A: This side.

3 Q: All right. On the far side?

4 A: Yes.

5 Q: Did you call police?

6 A: No, I called my mom at first.

7 Q: Okay. From Belk?

8 A: Yes, and I told her that my stuff has been stolen and I
9 didn't know what to do, and she said hang up the phone and
10 call the police. So, I called the police and then that's when
11 I told them someone stole my stuff and they asked me like what
12 it was. I told them it was a purse with some stuff in it and
13 my iPhone. And then a security guard from the mall came and
14 then a few minutes after that is when the officers showed up.

15 MR. HOLFORD: May I approach, Your Honor?

16 THE COURT: Yes, sir.

17 BY MR. HOLFORD:

18 Q: I'm gonNA show you what's been marked for identification
19 as State's 8, 9, 10, 11, 12, 13, 14, and back to 6 and 7. Do
20 you know what these are pictures of?

21 A: My purse and the stuff that was inside of it.

22 MR. HOLFORD: Your Honor, the State would move 7 through
23 14 in evidence.

24 THE COURT: Any objection?

25 MR. WILSON: No objection, Your Honor.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

100

1 MR. HOLFORD: Well, 6 ---

2 THE COURT: I'm sorry -- 6 through 14; any objection?

3 MR. WILSON: No objection, Your Honor.

4 THE COURT: All right. They're all into evidence without
5 objection.

6 STATE'S EXHIBITS NUMBERS 6 THROUGH 14

7 ADMITTED INTO EVIDENCE

8 BY MR. HOLFORD:

9 Q: So these are pictures of your purse, right?

10 A: Yes.

11 Q: Do you know where those pictures were taken?

12 A: No.

13 Q: Have you seen your purse since that day?

14 A: No.

15 Q: State's 6, what's that show?

16 A: The front buckle on my purse.

17 Q: The front buckle of your purse?

18 A: Uh-huh (affirmative response).

19 Q: That just identifies what type of purse it was, right?

20 A: Yes.

21 Q: Is that how you know that that's your purse?

22 A: Yes.

23 Q: In State's 13, what is that?

24 A: It looks an old check stub.

25 Q: And who is it addressed to?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

101

- 1 A: Jerrica Nelson.
- 2 Q: Is that you?
- 3 A: Yes.
- 4 Q: Is that your address on it?
- 5 A: Yes.
- 6 Q: And 10, is that -- what's that a photo of?
- 7 A: The contents inside the purse.
- 8 Q: The contents inside the purse. State's 14, is that your
- 9 ID?
- 10 A: Yes.
- 11 Q: And 9, that's stuff in your purse?
- 12 A: Yes.
- 13 Q: State's 8, are those your things?
- 14 A: Yes.
- 15 Q: What are they?
- 16 A: My driver's license, military ID and work badge.
- 17 Q: And when is the last time that you saw all this stuff?
- 18 A: When I had my purse that day, the night I had it.
- 19 Q: Have you ever got any of that stuff back?
- 20 A: No.
- 21 Q: And so after the Defendant took it from you, that's the
- 22 last time you've seen any of that?
- 23 A: Yes.
- 24 Q: And this Defendant took that stuff from you?
- 25 A: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

102

- 1 Q: At gunpoint?
- 2 A: Yes.
- 3 Q: How sure are you that he had a gun?
- 4 A: Because he showed it to me before like we went in the
5 back seat. He showed me the gun and wiped it on my hand to
6 show me that it wasn't a fake one.
- 7 Q: Are you familiar with guns?
- 8 A: Not really.
- 9 Q: Do you know what kind of gun it was?
- 10 A: No, just that it was a small silver gun.
- 11 Q: Okay. So maybe not like a long rifle?
- 12 A: No.
- 13 Q: Or a shotgun?
- 14 A: No.
- 15 Q: A smaller gun?
- 16 A: Yes.
- 17 Q: Could it be held in one hand?
- 18 A: Yes.
- 19 Q: But you don't know the caliber or anything, do you?
- 20 A: No.
- 21 Q: I'm gonna let the jury take a second to look at some of
22 these pictures and just go back. So, you went to Belk and you
23 called your mom?
- 24 A: Yes.
- 25 Q: And you told your mom that you had just been robbed at

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

103

1 gunpoint?

2 A: Yes.

3 Q: Did you tell her about the sexual assault?

4 A: No.

5 Q: Why not?

6 A: Because I didn't want to think it happened.

7 Q: Has something like this ever happened to you before?

8 A: No.

9 Q: Have you ever accused anyone of this before?

10 A: No.

11 Q: So, your mom told you to call the police; did you call

12 the police?

13 A: Yes.

14 Q: And did you tell them about the sexual assault?

15 A: Not at first.

16 Q: Not at first. What did you tell them?

17 A: I was just robbed.

18 Q: That you were robbed?

19 A: Yes.

20 Q: Did you tell them you were robbed at gunpoint?

21 A: Yeah.

22 Q: Have you listened to that 911 tape?

23 A: Yes.

24 MR. HOLFORD: May I approach with State's 21?

25 THE COURT: Yes, sir.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

104

1 BY MR. HOLFORD:

2 Q: What am I handing you?

3 A: The 911 call.

4 Q: Is it a CD?

5 A: Yes.

6 Q: Have you listened to that earlier today?

7 A: Yes.

8 Q: And is that the call that you made?

9 A: Yes.

10 Q: Is that you on the call?

11 A: Yes.

12 MR. HOLFORD: Your Honor, the State would move 21 into
13 evidence.

14 THE COURT: Any objection?

15 MR. WILSON: No objection, Your Honor.

16 THE COURT: It's in evidence without objection.

17 STATE'S EXHIBIT NUMBER 21

18 ADMITTED INTO EVIDENCE

19 MR. HOLFORD: Permission to publish?

20 THE COURT: You may do so.

21 BY MR. HOLFORD:

22 Q: We're gonna listen to this 911 call that you made.

23 A: Okay.

24 MR. HOLFORD: Your Honor, may we approach?

25 THE COURT: Yes, sir.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

105

1 (REPORTER'S NOTE: A bench conference was held off the record
2 in the presence of but out of hearing of the Jury.)

3 MR. HOLFORD: Your Honor, I swear I used the computer
4 this morning and ---

5 THE COURT: You want to take a short break to get it
6 operational?

7 MR. HOLFORD: May I please?

8 THE COURT: Yes, sir. Ladies and gentlemen, if you'll
9 got to the jury room for just a few minutes and we'll get this
10 organized for you. Okay? Just leave the exhibits on the
11 front rail there, please.

12 (REPORTER'S NOTE: Jury exits courtroom.)

13 THE COURT: All right. We'll take a short break and just
14 let me know.

15 Yes, sir, Mr. Wilson?

16 MR. WILSON: Judge, can the Defendant use the restroom?

17 THE COURT: Yes, sir. We'll take a short break. Y'all
18 let me know when you're organized, please.

19 MR. WILSON: Thank you.

20 THE COURT: And, Ms. Nelson, you can step down. You just
21 can't talk about the case with the Solicitor, but you can
22 certainly step down and if you need to use the restroom or
23 something you can.

24 (RECESS.)

25 *****OFF THE RECORD*****

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

106

1 (On the Record.)

2 THE COURT: Ms. Nelson, could you come back up please,
3 ma'am? Thank you.

4 We got it organized, Solicitor?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: All right. Very good. So you ready for the
7 jury to come back in?

8 MR. HOLFORD: Yes, Your Honor.

9 THE COURT: And the Defense?

10 MR. WILSON: Yes, Your Honor, we're ready, Judge.

11 THE COURT: All right. Very good. Ask the jury to come
12 in.

13 (REPORTER'S NOTE: Jury enters courtroom.)

14 THE COURT: All right, Solicitor, you ready to go?

15 MR. HOLFORD: May it please the Court?

16 THE COURT: Yes, sir.

17 BY MR. HOLFORD:

18 Q: All right, Jerrica. Right before we took a break, I was
19 trying to play an audio of your 911 call. We've got that set
20 up now, so you said you've heard it before, right?

21 A: Yes.

22 THE COURT: Is that a yes?

23 A: Yes.

24 THE COURT: Thank you, ma'am.

25 Q: And this is the call that you made at the Belk?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

107

1 A: Yes.

2 Q: Right after you had been robbed and assaulted?

3 A: Yes.

4 *****OFF THE RECORD*****

5 (REPORTER'S NOTE: State's 21 published - not transcribed
6 herein.)

7 (On the Record.)

8 BY MR. HOLFORD:

9 Q: Was that the entirety of the call?

10 A: Yes.

11 Q: And then did the officers show up where you were?

12 A: Yes.

13 Q: And on that call at the very beginning it said it was at
14 8:32 P.M., right?

15 A: Uh-huh (affirmative response), yes.

16 Q: And you had called your mom right before then from that
17 Belk phone?

18 A: Yes.

19 MR. HOLFORD: May I approach?

20 THE COURT: Yes, sir.

21 BY MR. HOLFORD:

22 Q: This has been entered as State's 16. This is your phone
23 record. Can you see on there what time you called from your
24 cell phone to David's house?

25 A: I'm not sure which one.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

108

- 1 Q: Okay. What's the -- on January the 8th, if you see the
2 date on the left-hand side, January the 8th, what's the last
3 time that a call went out on January the 8th?
- 4 A: It says 7:32 P.M.
- 5 Q: 7:32 P.M. So, you would have your cell phone at 7:32
6 P.M.?
- 7 A: Yes.
- 8 Q: And then you made this 911 call at 8:32 P.M. and you
9 didn't have your phone then?
- 10 A: No.
- 11 Q: So, in the course of an hour, you had your phone?
- 12 A: Uh-huh (affirmative response).
- 13 Q: You had your purse?
- 14 A: Yes.
- 15 Q: And you had your wallet?
- 16 A: Yes.
- 17 Q: And then you said you met with David here at the Burger
18 King?
- 19 A: Yes.
- 20 Q: You drove down to Town Square Apartments?
- 21 A: Yes.
- 22 Q: He assaulted you?
- 23 A: Yes.
- 24 Q: At gunpoint?
- 25 A: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

109

- 1 Q: Took your things?
- 2 A: Yes.
- 3 Q: He ran?
- 4 A: Yes.
- 5 Q: And then you drove to the Belk and made a phone call?
- 6 A: Yes.
- 7 Q: I want to talk about this 911 call just briefly. In the
- 8 beginning, you say -- you used the pronoun they. Were you
- 9 talking about multiple people that robbed you?
- 10 A: No.
- 11 Q: Did you ever clarify that for the operator?
- 12 A: No, I wasn't thinking clearly.
- 13 Q: When she said both of them, what did you say at that
- 14 point?
- 15 A: I told her there was only one person.
- 16 Q: Okay. So in the beginning, you're going back and forth
- 17 talking about they, but you're really talking about they or
- 18 them as a single person, right?
- 19 A: Yes.
- 20 Q: There were never multiple individuals, were there?
- 21 A: No.
- 22 Q: And it wasn't until the operator said both that you ended
- 23 up clarifying its one person, right?
- 24 A: Yes.
- 25 Q: You told her that you didn't have your phone and why was

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

110

- 1 that?
- 2 A: Because he took it.
- 3 Q: Now, you told her on the phone that someone had followed
4 you out of the restroom. You said it was a white male, maybe
5 19 to 20, maybe 21, right?
- 6 A: Yes.
- 7 Q: Had someone followed you out of the restroom at the
8 Burger King?
- 9 A: No.
- 10 Q: Why would you say that?
- 11 A: I didn't want what happened -- like after it happened, I
12 didn't want anybody to know.
- 13 Q: You didn't want to talk about the sexual assault over the
14 phone?
- 15 A: No.
- 16 Q: You said it was a silver gun, right?
- 17 A: Yes.
- 18 Q: Right afterwards?
- 19 A: Uh-huh (affirmative response), yeah.
- 20 Q: Now you said you didn't recognize him; is that true?
- 21 A: At first, no.
- 22 Q: Do you know who assaulted you?
- 23 A: David.
- 24 Q: Do you know that for sure?
- 25 A: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

111

- 1 Q: How do you know that for sure?
- 2 A: Because he was in the car with me.
- 3 Q: Is it the same person you had been messaging on Facebook?
- 4 A: Yes.
- 5 Q: Is it the same person that had called you before?
- 6 A: Yes.
- 7 Q: Is it the same person that you identified by the Facebook
- 8 picture?
- 9 A: Yes.
- 10 Q: Is the same person who assaulted you and robbed you the
- 11 Defendant sitting in the courtroom?
- 12 A: Yes.
- 13 Q: But why would you tell an operator on 911 that you didn't
- 14 know who it was?
- 15 A: I don't know.
- 16 Q: Why would you tell them that you didn't recognize him?
- 17 A: I don't know. I wasn't thinking about it clearly and I
- 18 just hoped it was a bad dream that happened and it wasn't.
- 19 Q: Did you describe him as wearing some type of navy blue
- 20 beanie but you weren't sure?
- 21 A: Yes.
- 22 Q: And a sweatshirt and jeans?
- 23 A: Yes.
- 24 Q: When you talked about the incident to us in court a
- 25 minute ago, you talked about him putting the gun in his

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

112

1 sweatshirt, right?

2 A: Yes.

3 Q: We're talking about the same person, right?

4 A: Yes.

5 Q: You couldn't go back and create Facebook messages between

6 you and the Defendant after the fact, could you?

7 A: No.

8 Q: You couldn't go back and create phone calls that happened

9 before between you and the Defendant, could you?

10 A: No.

11 Q: So, you couldn't, after the fact, decide to point the

12 finger at someone who hadn't actually assaulted you and say it

13 was this person, could you?

14 A: No.

15 Q: The cops questioned you pretty hard, didn't they?

16 A: Yes.

17 Q: They might have been a little rough on you, huh?

18 A: Yes.

19 Q: And me questioning you, sometimes, it can come across as

20 disbelief, right?

21 A: Yes.

22 Q: Tell this jury though -- sometimes it's hard for me to

23 understand why you did or didn't do certain things you did.

24 MR. WILSON: Objection, Judge.

25 THE COURT: Rephrase your question.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - DIRECT BY HOLFORD

113

1 MR. HOLFORD: Yes, sir.

2 BY MR. HOLFORD:

3 Q: What the jury really needs to know is why -- when did you
4 first say that it was the Defendant that attacked you?

5 A: After I was in the car.

6 Q: After you were in what car?

7 A: The police car.

8 Q: Okay. Was it the first officer you talked to?

9 A: Yes.

10 Q: And then did you talk to another officer after that?

11 A: Yes.

12 Q: And did they -- did they threaten you about filing a
13 false police report?

14 A: They said if I was lying about anything that I could be
15 charged with filing a false police report.

16 Q: And did you change your story?

17 A: Yes.

18 Q: Did you say that, okay, no, it didn't happen?

19 A: No.

20 Q: Was your mom pretty tough on you?

21 A: She kept asking are you sure you didn't want to go meet
22 up, are you sure this didn't happen -- like you didn't want it
23 to happen and just had a bad judgment call, and I said no.

24 Q: Did you just have a bad experience?

25 A: You could say, yes, but I didn't want it to happen.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - DIRECT BY HOLFORD

114

- 1 Q: Did you ever agree to have sex with him?
- 2 A: No.
- 3 Q: And did he force you to have sex at gunpoint?
- 4 A: He said he wanted to have sex and then he put the gun in
5 his sweatshirt pocket but he always had it his like hoodie
6 pocket. And that's when he was like, I will shoot you if you
7 don't do what I say.
- 8 Q: Were you afraid for your life?
- 9 A: Yes.
- 10 Q: And that light pink purse that you described on the 911
11 call, is that what is State's 12? Is that that purse that we
12 talked about earlier that you saw?
- 13 A: Yes.
- 14 Q: That you haven't seen since that day?
- 15 A: Yes.
- 16 Q: So, the only thing here that has changed is initially you
17 said you didn't know who did it and now you've come forward
18 and said you know who it was.
- 19 A: Yes.
- 20 Q: And that not only did he rob you at gunpoint and steal
21 your things, but he sexually assaulted you?
- 22 A: Yes.
- 23 Q: Is that tough to say?
- 24 A: A little.
- 25 Q: How sure are you?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

115

1 A: I'm positive.

2 MR. HOLFORD: I have no further questions, Your Honor.

3 THE COURT: Cross examination?

4 MR. WILSON: Please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 MR. WILSON: Thank you, sir.

7 CROSS EXAMINATION OF JERRICA NELSON BY MR. WILSON:

8 Q: Good morning, Ms. Nelson, how are you doing?

9 A: I'm okay.

10 Q: Let's go back a little bit for the jury. You testified
11 earlier that you never met people on Facebook; is that true?

12 A: I don't go and message people just to like hook up or
13 anything.

14 Q: Okay. Have you ever posted on your Facebook page you
15 want to meet new people, trying to meet new people? You
16 testified earlier that you were trying to meet new people,
17 correct?

18 A: Yeah.

19 Q: Okay. All right. So, you were on Facebook trying to
20 meet new people in this area, is that a fair statement?

21 A: Yeah.

22 Q: Okay. So, that wasn't exactly true when you said you
23 weren't trying to meet new people; you were trying to meet new
24 people. You were trying to meet new people on Facebook; is
25 that right?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

116

1 A: Yes, but I wasn't like advertising or anything.

2 Q: Okay. Fair enough. On January 6th, you say that David
3 Welch came up as suggestion for a friend, right?

4 A: Yeah.

5 Q: Okay. That doesn't mean that David Welch tried to
6 actually befriend you on Facebook, right?

7 A: No.

8 Q: Okay. When someone gets suggestions, explain to the jury
9 what that means when someone gets a suggestion on Facebook.

10 A: It popped up under people that you may know and it's a
11 list of people.

12 Q: Okay. Very good. You got a list of people?

13 A: Yes.

14 Q: And normally they're connected to your other friends
15 somehow or another, right?

16 A: Some way or another.

17 Q: Okay. All right. And on this particular day, did you
18 send him a Facebook friend request?

19 A: I'm not sure.

20 Q: Okay. Court's indulgence, Your Honor?

21 THE COURT: Yes, sir.

22 Q: All right. Let me ask you this, do you recall at 10:34
23 P.M. -- do you have the Facebook message in front of you?

24 A: No.

25 Q: Let me see if I can find then for you. Thank you so

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

117

1 much. I'll give that to you, what's been marked as State's
2 Exhibit 18. Do you recall at 10:34 P.M. saying, hey, to David
3 Welch on January 6th, 2015?

4 A: I guess.

5 Q: You got to speak up for the jury?

6 A: I said, I guess.

7 Q: Okay. Do you recall at 10:39, he responded and says, do
8 I know you?

9 A: Yes.

10 Q: Okay. Very good. All right. And that starts out the
11 conversation, right?

12 A: Yeah.

13 Q: Okay. Very good. All right. And then at 10:42 you
14 explain to him that you want to meet new people; do you recall
15 that?

16 A: Yeah.

17 Q: Okay. Very good. All right. And then he says at 10:51,
18 to be honest with you, you're a cutie, we should chill. Is
19 that a fair statement?

20 A: Yeah.

21 Q: Okay. All right. And then you say, ha-ha, ah, thank
22 you. Do you recall saying that on Facebook?

23 A: Yeah.

24 Q: Okay. All right. And then he even goes on later on in
25 the conversation -- y'all were still talking at 11:08 P.M. and

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

118

1 he says, we should get together, cuddle, and watch movies
2 together. And then you respond -- do you recall what you said
3 in response to that?

4 A: I'm not sure.

5 Q: All right. If I told you that you said, at 11:11 P.M.,
6 that you were laying in bed watching T.V. Does that sound
7 about right?

8 A: Yeah.

9 Q: Okay. And now this is the first time y'all are talking
10 on this particular night. Okay? And at 11:13, you say -- or
11 excuse me, at 11:12 you said I want to hang out with you and
12 cuddle. At 11:13 you respond and said, yeah, I know what guys
13 mean when they say that. Explain to the jury what you mean
14 when you say that?

15 A: That it wasn't just gonna be cuddling and watching T.V.
16 what he suggested.

17 Q: Okay. All right. Meaning basically that -- and I'm not
18 trying to put words in your mouth, just clarify for me, that
19 it's not just a simple innocent meeting kind of activity,
20 right?

21 A: Yeah.

22 Q: All right. Very good. And then he says -- tells you
23 that he wants to cuddle, but that if you want to you can have
24 sex. Do you recall him putting that down there?

25 A: Yeah.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

119

1 Q: Okay. 11:16 you say and you tell me if I'm wrong, well
2 that happens to me every time, that's all someone wants from
3 me. Do you recall saying that to David Welch on Facebook?

4 A: Yes.

5 Q: I'm sorry?

6 A: Yes.

7 Q: You recall? Okay. All right. At 11:16 you asked where
8 he lives. Do you recall asking where he lived?

9 A: I don't.

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

11 THE COURT: Yes, sir.

12 BY MR. WILSON:

13 Q: This is already part -- it's just a copy to make it
14 easier for you. Just tell me if you recognize that and
15 recognize that statement that you made.

16 A: I see it.

17 Q: Do you recognize that?

18 A: Yes.

19 Q: Okay. And that's you saying that, right? Where do you
20 live?

21 A: Yes.

22 Q: Okay. All right. Then he tells you later on, well, I
23 love sex. He tells you that, correct?

24 A: Yeah.

25 Q: All right. And then later on you guys are talking and

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

120

1 having good conversation; is that about right?

2 A: Yeah.

3 Q: Y'all continue to talk until 11:37 that night, correct?

4 A: Yes.

5 Q: All right. And at 11:37, you ask him to do what? Do you
6 recall what it was you asked him to do?

7 A: I'm not sure.

8 Q: Do you recall asking him to send you a picture?

9 THE COURT: Is there any way that you could make
10 reference to a page or a line on the exhibit that's in
11 evidence?

12 MR. WILSON: Absolutely, Judge.

13 BY MR. WILSON:

14 Q: If you can turn to Page 454?

15 A: Okay.

16 Q: You see it on there? You have Page 454 up?

17 A: No, it goes by -- the 600, the page ---

18 MR. WILSON: May I approach, Judge?

19 THE COURT: Yes.

20 MR. WILSON: Thank you, Judge.

21 THE COURT: Try and use the exhibit.

22 MR. WILSON: Yes, sir.

23 Court's indulgence, Your Honor?

24 THE COURT: Yes, sir. Show that to the Solicitor first,
25 please.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

121

1 MR. WILSON: Thank you, Judge. Thank you.

2 Your Honor, may I approach the witness?

3 THE COURT: Yes, sir.

4 BY MR. WILSON:

5 Q: Let me ask you if you recognize this conversation you're
6 having on Facebook?

7 A: Yeah.

8 Q: Okay. And who is that conversation between?

9 A: Me and David Royal.

10 Q: Okay. All right. And is that an accurate depiction of
11 the conversation that took place?

12 A: Yes.

13 MR. WILSON: Your Honor, I'd like to have this entered
14 into evidence.

15 THE COURT: All right. And we need to keep them separate
16 if we can, please.

17 MR. WILSON: Yes, sir. Yes, sir.

18 THE COURT: Do you have a clip you can put on it?

19 MR. HOLFORD: Your Honor, the State has no objection to
20 the material, just the notes and highlighting on them.

21 THE COURT: So -- I'm sorry. There are notes and
22 highlights on it?

23 MR. WILSON: There are notes and highlights on it, Your
24 Honor.

25 THE COURT: All right. So, what we'll do is -- we're

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

122

1 gonna mark it as what, Defendant's what?

2 MR. WILSON: Number 3, I believe, Judge.

3 THE COURT: Defendant's 3.

4 COURT REPORTER: 2.

5 MR. WILSON: 2, Judge.

6 COURT REPORTER: For ID?

7 MR. WILSON: For ID purposes at this point in time.

8 THE COURT: All right.

9 BY MR. WILSON:

10 Q: All right. Just once again for the record. You have
11 identified this, correct?

12 A: Yes.

13 Q: And that's an accurate depiction of your Facebook page?

14 A: Yes.

15 Q: And conversations that you're having?

16 A: Yes.

17 MR. WILSON: Judge, at this time, I'd move it to be
18 entered as Defendant's Exhibit Number 3?

19 THE COURT: Any objection? Or Defendant's 2?

20 MR. WILSON: Defendant's 2, I apologize, Your Honor.

21 MR. HOLFORD: Just to the notes and highlights, Your
22 Honor.

23 THE COURT: All right. So, what we'll do is I'm gonna
24 allow Defendant's 2 into evidence. Before it's shown to the
25 jury, you will need to substitute a copy that eliminates all

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

123

1 highlights and notes.

2 MR. HOLFORD: Thank you, Your Honor.

3 DEFENDANT'S EXHIBIT NUMBER 2

4 ADMITTED INTO EVIDENCE

5 BY MR. WILSON:

6 Q: Let me ask you this, also. On -- do you recall asking
7 him to send you a picture or do you recall asking him to send
8 you a picture?

9 A: Yes.

10 Q: Okay. Why did you want a picture from David Welch?

11 A: To I could see what he looked like.

12 Q: Why were you concerned with what he looked like?

13 A: Who wouldn't be concerned?

14 Q: You got to speak up. I'm sorry; I can't hear you.

15 A: Who wouldn't -- I just wanted to know what he looked
16 like.

17 Q: Okay. All right. So later on, on January 7th, the
18 conversation with him continues at 12:49 A.M. Okay? And he
19 doesn't respond and give you a picture right away, does he?
20 It's not on there; I'm just asking you a question. Do you
21 know if he responded right away to give you a picture?

22 A: I'm not sure.

23 Q: Okay. Do you recall saying or not, LOL, at 12:49 A.M.?

24 A: Yes.

25 Q: Okay. All right. And he doesn't respond until 1:59 and

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

124

1 say, why are you up so late? Do you recall that?

2 A: Yeah.

3 Q: All right. And then he also says at 2:55 P.M. the next
4 day, send me a picture of what? What picture do you want? Do
5 you know when you responded?

6 A: Of you.

7 Q: Okay. Do you recall saying, so you're not fake and have
8 you not seen Catfish? Did you ever say that to him?

9 A: Yeah.

10 Q: Okay. And he does end up sending you a picture, doesn't
11 he?

12 A: Yes.

13 Q: Okay. Can you tell me about the picture that he sent
14 you; do you recall?

15 A: I'm not sure which one.

16 MR. WILSON: Your Honor, may I approach the witness?

17 THE COURT: Yes, sir.

18 MR. WILSON: Thank you.

19 BY MR. WILSON:

20 Q: Can you identify this document that I'm handing you right
21 now?

22 A: It's a picture.

23 Q: It's a picture of who?

24 A: David.

25 Q: David Welch?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

125

1 A: Yes.

2 Q: Okay. And who else is in the picture?

3 A: A girl.

4 Q: But you don't know the girl, correct?

5 A: No.

6 Q: All right. And that's the picture that he sends you,
7 correct?

8 A: Yeah.

9 Q: Okay. All right. And just to clear up, you can identify
10 this document?

11 A: Yes.

12 Q: Okay. Is this an accurate depiction of the conversation
13 you had?

14 A: Yes.

15 MR. WILSON: Judge, I'm gonna show this to the
16 prosecution. I'd like to have this entered as State's Number
17 3 -- I mean, Defendant's Number 3?

18 THE COURT: Any objection?

19 MR. HOLFORD: No objection.

20 THE COURT: Defendant's 3 is in evidence without
21 objection.

22 MR. WILSON: Thank you, Your Honor.

23 DEFENDANT'S EXHIBIT NUMBER 3

24 ADMITTED INTO EVIDENCE

25 MR. WILSON: May I approach, Judge?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

126

1 THE COURT: Yes, sir.

2 MR. WILSON: Thank you.

3 BY MR. WILSON:

4 Q: Now, on this particular night at 10:05, you contacted him
5 saying it was snowing. Do you recall that? Just tell me from
6 your recollection if you recall that.

7 A: I don't remember.

8 Q: Okay. Do you recall him saying, I don't care, sweetie.
9 Cuddling involves passing out with each other?

10 A: Yes.

11 Q: Okay. All right. And did you say -- did he tell you at
12 10:24 P.M., yeah, it would be nice, but you are not down for
13 that cuddling. Do you recall that?

14 A: Yes.

15 Q: Okay. And you said -- you responded to him at 10:26
16 P.M., don't put words in my mouth. Do you recall saying that?

17 A: Yes.

18 Q: All right. Do you recall at 10:49 P.M. telling David
19 again that you always end up getting screwed in these
20 situations?

21 A: Uh-huh (affirmative response).

22 Q: Okay. Is that a yes?

23 A: Yes.

24 Q: Okay. At 10:52, you accuse him of dodging questions. Do
25 you remember that?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

127

- 1 A: Yes.
- 2 Q: Okay. He then asked you at 11:07, are you a virgin? Do
3 you recall that?
- 4 A: Yes.
- 5 Q: Okay. And what was your answer?
- 6 A: No.
- 7 Q: Okay. And he said at 11:13 P.M., well, what do you want?
8 What do you say? Do you recall saying whatever happens
9 happens?
- 10 A: No.
- 11 Q: No, you didn't say that?
- 12 A: I don't recall.
- 13 Q: From your own recollection, do you recall telling him
14 again, whatever happens happens?
- 15 A: Yeah.
- 16 Q: Okay. So at some point in time, y'all were having a
17 conversation about sexual things; is that correct?
- 18 A: I guess.
- 19 Q: Okay. All right. 11:55 P.M. same night, he texted you
20 or y'all were messaging on Facebook and then you say again, it
21 says, she just wants to meet people but, if something happens
22 it happens; you say that again, correct? This is on January
23 7th at 11:55 P.M. Just tell me if you recall making that
24 statement at all.
- 25 A: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

128

1 Q: Okay. All right. Now, I want to skip forward a little
2 bit. Okay? And I want to talk about a 911 call that you made
3 to the police department, and you recall what your testimony
4 was earlier, correct?

5 A: Yes.

6 Q: All right. Do you recall what the first thing that you
7 said to the 911 operator on the phone that day?

8 A: My name.

9 Q: Okay. That was one of the first things. What was the
10 other thing you said first?

11 A: That I was robbed.

12 Q: Okay. You don't recall telling the 911 operator that the
13 first thing you said was my purse and my cell phone were
14 stolen?

15 A: Yeah.

16 Q: Okay. All right. And you had already called your mother
17 before that, correct?

18 A: Yes.

19 Q: Okay. All right. And you hadn't told your mother a word
20 about being raped, did you?

21 A: No.

22 Q: Okay. And you didn't say anything to the 911 operator
23 about being raped?

24 A: No.

25 Q: Okay. And you also didn't tell the 911 operator that you

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

129

1 knew who you had originally been with, correct?

2 A: No.

3 Q: Okay. All right. So again the Solicitor asked you the
4 question and I'm gonna ask you again, why is that you made up
5 the story to the 911 operator about going to Burger King,
6 which is why they were confused about where you were, going to
7 the Burger King, getting robbed at gunpoint -- somebody is
8 following you out of the Burger King, getting robbed at
9 gunpoint and then walking over to Belk or driving over to
10 Belk, which is literally on the other side of the department
11 store?

12 A: After everything that happened, I wasn't thinking clearly
13 and didn't really want anybody to know what like just
14 happened.

15 Q: Okay. If you were really at the Burger King, it would
16 make sense that you would go inside the Burger King, wouldn't
17 it?

18 A: Yes.

19 Q: Which is what the confusion was, right?

20 A: Yes.

21 Q: Okay. But that's not really what happened, is it?

22 A: No.

23 Q: No, okay. All right. So, on this particular night, you
24 call 911 and tell 911 this story; that's right?

25 A: Uh-huh (affirmative response).

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

130

1 Q: Would you admit now that that was a lie? The story that
2 you told 911, was it a lie?

3 A: Yes.

4 Q: Okay. So, you lied to 911, and when 911 was trying to
5 help you in this situation, they couldn't really help you
6 because you weren't telling them everything that really
7 happened, right?

8 A: Yes, I was leaving some out.

9 Q: You were leaving some out?

10 A: Yeah.

11 Q: Okay. And your reason -- and please tell the jury, what
12 was your particular reason for leaving all this stuff out,
13 that you didn't want to tell anybody?

14 A: Yeah. I didn't want to tell anybody and I didn't want to
15 think it had actually happened.

16 Q: Okay. And so is that why you didn't tell your mother?

17 A: Yes.

18 Q: Okay. Your mother shows up later on on the scene,
19 doesn't she?

20 A: Yes.

21 Q: Okay. And tell the jury specifically what your mother
22 said after an hour and a half or two hours where you had lied
23 to the officers, you lied to Detective Beam -- tell the jury
24 what your mother said to you when she came up to you?

25 A: She asked if what I was saying really happened and if I

State v. Welch - 2015-GS-26-969,970,971,972

131

JENNIFER NELSON - CROSS BY WILSON

1 for sure didn't like want this to happen and just had a bad
2 judgment call.

3 Q: She basically said to you that, honey, were in a bad
4 spot? Go ahead and, if you were, let us know, and it's gonna
5 be okay. And that's basically what she said?

6 A: Basically.

7 Q: Okay. All right. Now after 911 is called and you made
8 the statements to 911, Officer Sououd -- do you recall talking
9 to Officer Sououd?

10 A: The lady, yes.

11 Q: Yes, the lady cop?

12 A: Yes.

13 Q: She came and she was there talking with you about what
14 happened, correct?

15 A: Yeah.

16 Q: All right. And you were having this conversation with
17 her telling her pretty much the same story and then you said,
18 well, he then took me to Town Square Apartments. Is that
19 right?

20 A: Yes.

21 Q: Okay. All right. And on the way to Town Square
22 Apartments, was it your allegation at that time that he had
23 you at gunpoint and then he got out of the car. Is that
24 right?

25 A: I don't recall.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

132

1 Q: Okay. You don't recall telling Officer Sououd that he
2 forced you to drive to Pridgen and 15, Highway 15, and then
3 stopped the car?

4 A: I ---

5 Q: And that he got out at the stop sign and walked away?

6 A: No.

7 Q: You never told them that? You were in the car with
8 Officer Sououd, correct?

9 A: Yes.

10 Q: And y'all rode around going to Burger King to try to see
11 where you parked at. Y'all then rode to off of Seaboard
12 Avenue, right?

13 A: Yeah.

14 Q: And then you went down Pine Island?

15 A: Uh-huh (affirmative response).

16 Q: And then you also went down Pridgen Road; was that right
17 -- Highway 15 and Pridgen Road?

18 A: Yes.

19 Q: Okay. And during that time, you knew that you were being
20 recorded?

21 A: I guess.

22 Q: Okay. Well, she was talking to you and trying to get
23 information from you, correct?

24 A: Yes.

25 Q: Okay. This is the sound and video from her car. Did

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

133

1 they let you listen to that statement yet?

2 A: No.

3 Q: You never heard this before?

4 A: I don't think so.

5 Q: Okay. All right.

6 MR. WILSON: Judge, can I have this marked for
7 identification at this point in time?

8 THE COURT: Yes, sir.

9 MR. WILSON: Thank you, Judge. Marked for identification
10 purposes, Judge, only at this time.

11 THE COURT: Yes, sir.

12 MR. WILSON: Thank you, Your Honor.

13 THE COURT: That's Defendant's 4?

14 MR. WILSON: Defendant's 4, Judge.

15 THE COURT: All right. Very good.

16 MR. WILSON: Thank you, Judge.

17 BY MR. WILSON:

18 Q: Now, Officer Sououd, during this ride along with you
19 eventually stops you and says, look, something is not right
20 here, correct?

21 A: Yes.

22 Q: She then stops you at a road and says, look, before when
23 you were talking to me, you said y'all stopped here and he got
24 out. Do you recall her saying that to you?

25 A: No.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

134

1 Q: Okay. You recall her telling you at some point in time
2 that she thought you were lying?

3 A: When we drove back to the mall.

4 Q: Okay.

5 A: That's when she turned around in the car and was like,
6 look, if there's anything else or something you're not saying
7 or you're lying, you could be charged with filing a false
8 police report.

9 Q: Okay. Did she also tell you during that conversation you
10 could be charged with a felony?

11 A: Yes.

12 Q: Okay. All right. So, right then the officer is telling
13 you that she doesn't believe you, correct?

14 A: Basically.

15 Q: Okay. All right. And then tell me then what it is that
16 you began to tell her after that, after she threatened you
17 with being arrested for a felony, what is it you tell her?

18 A: That I did meet him at Burger King and that I didn't want
19 to hang out, and he was like can you drive me home and I said
20 sure. And then I told her that when he told me he lived at
21 the Town Square Apartments and that's when everything
22 happened.

23 Q: Okay. So now this story you're telling to Officer
24 Sououd, you tell her then that he does not pull a gun on you
25 in the car, right, at Burger King?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

135

- 1 A: No.
- 2 Q: Okay. And at Burger King, y'all are actually sitting
3 down in the car having a conversation, right?
- 4 A: For like a few minutes.
- 5 Q: Earlier you testified it was 10 to 15 minutes?
- 6 A: That I was waiting before he got there.
- 7 Q: So, y'all didn't talk for 10 or 15 minutes in the car?
- 8 A: No.
- 9 Q: How long did y'all talk for?
- 10 A: It wasn't long.
- 11 Q: How long would you say, five minutes, three minutes, two
12 minutes?
- 13 A: I guess five minutes.
- 14 Q: Okay. Do you recall in the car and the time when you
15 were sitting in the car with David Welch that he was joking
16 with you about being on your cell phone and trying to pay
17 attention to him? Do you recall that happening?
- 18 A: Yes, he said that.
- 19 Q: And he was joking with you because you're always -- you
20 were constantly on your cell phone, correct?
- 21 A: Yes.
- 22 Q: Okay. And do you recall him saying I really want to get
23 something to eat but I ain't got no money?
- 24 A: He never said that.
- 25 Q: Did you have money?

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

136

1 A: I had my -- not cash. I had my wallet; that's it.

2 Q: Did he tell you on Facebook that he was a broke man?

3 A: No.

4 Q: All right. That never happened?

5 A: He never said he was broke.

6 Q: Okay. During the conversation, also, did you ever tell
7 him why you were having a bad day?

8 A: No.

9 Q: During the conversation you had at Burger King, did you
10 ever tell him that you had a bad experience where you were
11 blackmailed by a guy?

12 A: No.

13 MR. HOLFORD: Objection.

14 THE COURT: She denied the conversation. Move along.

15 MR. WILSON: That was a separate conversation, Judge.

16 THE COURT: I know she denied having it so move along.

17 MR. WILSON: Thank you, Judge.

18 BY MR. WILSON:

19 Q: So in the car for three to five minutes, you basically
20 just sat there pretty much?

21 A: Basically.

22 Q: Okay. All right. And then you testified earlier that he
23 said to you, well, what do you want to do? Didn't you testify
24 to that earlier?

25 A: Yeah.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

137

- 1 Q: Okay. All right. So, y'all did talk some in the car?
- 2 A: Yeah.
- 3 Q: Okay. All right. And then you left there with him,
- 4 right?
- 5 A: Yes, because he asked me to drive him home.
- 6 Q: He asked you to drive him home. Okay. And then we're
- 7 going down to Town Square, right?
- 8 A: Yes.
- 9 Q: Now, you're familiar with this area a little bit?
- 10 A: A little bit.
- 11 Q: Okay. All right. This is marked as State's Exhibit 19.
- 12 And I'm just gonna -- you tell me if I'm wrong about how y'all
- 13 left the Burger King and then y'all went down to Pridgen Road.
- 14 Okay? Y'all got off -- came out at the mall somewhere around
- 15 here, correct?
- 16 A: Yes.
- 17 Q: And came out on Seaboard?
- 18 A: Uh-huh (affirmative response).
- 19 Q: And then went down Sea Pine Boulevard?
- 20 A: Yes.
- 21 Q: All right. And then where did y'all go from there? It's
- 22 okay. I need to get a little bit closer.
- 23 A: He was telling me where to go. He took me there and then
- 24 we went on that road by the Walmart.
- 25 Q: Okay.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

138

1 A: And then we turned down at the first light ---
2 Q: Okay.
3 A: --- before Walmart we turned.
4 Q: So, you're talking about Pine Island, right here?
5 A: Yeah.
6 Q: This is the Walmart, correct?
7 A: I believe so.
8 Q: Okay. All right. And then you went down where?
9 A: We went down and we just kept going straight to where
10 then he said in the apartment parking lot.
11 Q: Okay. Very good. Now in this area going up here, there
12 are woods, there are empty parking lots, there are empty
13 places over here, there are empty woods over here on the way
14 to Highway 15, correct; is that right?
15 A: Yes.
16 Q: Okay. Is that right?
17 A: Yes.
18 Q: Okay. All right. So, the layout of the land is that
19 there are tons of places that you can go -- and I apologize --
20 on this path and you can park a car, right?
21 A: Yes.
22 Q: All right. And you could go in the woods anywhere around
23 here during this time of day and get privacy; is that correct?
24 A: Yes.
25 Q: All right. But y'all didn't go there, did you?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

139

1 A: No.

2 Q: Y'all didn't stop anywhere except those Town Square
3 Apartments, right?

4 A: Yes.

5 Q: All right. And when you get to Town Square Apartments,
6 the apartments are actually really close to the parking
7 spaces, aren't they?

8 A: Yes.

9 Q: Wouldn't you say 10 or 15 feet?

10 A: Yeah.

11 Q: When you get out of your car, you can literally walk and
12 you'll be there in 5 or 10 steps; isn't that about right?

13 A: Yeah.

14 Q: Okay. So, let's say it's 10 or 15 feet.

15 MR. WILSON: May I approach the witness, Judge?

16 THE COURT: Yes, sir.

17 MR. WILSON: Thank you, Your Honor.

18 BY MR. WILSON:

19 Q: Hold that for me. All right. I'm gonna go ahead and
20 give it 15 feet just to be sure. And, I don't think it's this
21 far, but let's say it's that far. Is that fair enough?

22 A: Yeah.

23 Q: Okay. All right. And your car would've been parked --
24 and I don't want to hurt you with this so let go; I don't want
25 to hurt you. Sorry about that. Your car was parked basically

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

140

1 right here in front of an apartment, right?

2 A: Basically, yes.

3 Q: Because you said earlier that the lights were basically
4 going through somebody's window?

5 A: Yes.

6 Q: Because the window was open?

7 A: Yes.

8 Q: All right. And when you come out of this apartment
9 complex, just to kind of let the jury know what's going on,
10 there are lights everywhere out in this complex, correct?

11 A: They were dim but there was like some street lights, but
12 yeah.

13 Q: But there was light in the parking lot, right? Was there
14 light in the parking lot?

15 A: A little bit.

16 Q: There was a little bit of light. Literally it's set up
17 that there's one set of apartments right here and you park
18 into the apartments, right?

19 A: Yes.

20 Q: And then there's another set that's right behind it that
21 you park into, right?

22 A: Yes.

23 Q: Okay. So, when you turn in, you've got to go into the
24 right or left and either way you're parking in front of
25 apartment complexes?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

141

- 1 A: Yes.
- 2 Q: All right. And this is not at 11 o'clock at night; this
3 is at 8:05, 8:15, right?
- 4 A: Yes.
- 5 Q: Okay. All right. And basically your testimony to this
6 jury and your statement at the end to Detective Beam -- and
7 we'll get that in a minute -- is basically that you and him
8 were sitting there. The windows to your front car -- excuse
9 me -- the front windows of your car are not tinted, correct?
- 10 A: No.
- 11 Q: Okay. I think the prosecutor had some pictures of it. I
12 don't see where they are. There it is. This is your vehicle,
13 right? This is State's Exhibit Number 4 and State's Exhibit
14 Number 5?
- 15 A: Yes.
- 16 Q: And there is no tint on your window, is there?
- 17 A: No.
- 18 Q: Okay. All right. So, you're sitting in this parking
19 lot, 8:15 at night, there's no tint on your window and your
20 allegation is that when you get there, he pulls a gun on you,
21 right?
- 22 A: Yes.
- 23 Q: Okay. Is that what you originally told 911?
- 24 A: I didn't tell them about the apartment.
- 25 Q: I understand. Did you tell them that he pulled a gun on

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

142

1 you at Town Square Apartments?

2 A: No.

3 Q: Okay. All right. Is that what you told Detective
4 Sououd?

5 A: I said that after they told me that I could be charged
6 with a filing a false police report.

7 Q: They were basically telling you you could be charged with
8 a felony, right?

9 A: Yes.

10 Q: Okay. So then you tell them, look, this is the other
11 stuff that happened, right?

12 A: Yes.

13 Q: Okay. Now, in this car in the parking lot at this
14 complex, you say that he pulled a gun on you, right?

15 A: Yes.

16 Q: All right. And when he pulls the gun on you, you say he
17 then tells you, look, let's have sex because I want to have
18 sex?

19 A: Yes.

20 Q: All right. But you begin to have a conversation with him
21 about having sex, right?

22 A: I said, no, I don't want to.

23 Q: All right. So, he's brandishing a gun. Tell me -- show
24 the jury how he was holding the gun at you.

25 A: He was just holding it in his hand.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

143

- 1 Q: Okay. He was holding it in is hand?
- 2 A: Yes.
- 3 Q: And he was pointing it at you -- now, he was sitting down
- 4 this entire time, right?
- 5 A: Yes.
- 6 Q: And he's pointing the gun at you?
- 7 A: Yes, he pulled it out and he went like that. And that's
- 8 when he said, I want to have sex.
- 9 Q: Okay. And you said that he cocked it, right?
- 10 A: I'm not sure.
- 11 Q: You don't recall saying he cocked it or you're not sure
- 12 if he cocked it?
- 13 A: I'm not sure if he did cock it or not.
- 14 Q: All right. Do you recall telling the detective that he
- 15 cocked the gun?
- 16 A: No.
- 17 Q: You never said that?
- 18 A: I don't recall.
- 19 Q: Okay. All right. So, you don't recall him cocking the
- 20 gun at all? You don't recall saying that to Detective Sououd;
- 21 you don't recall saying that to Detective Beam; and you don't
- 22 recall saying it to any other officer that was out there?
- 23 A: I probably did, but I don't recall.
- 24 Q: Okay. Well, tell the jury this ---
- 25 A: Sure.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

144

- 1 Q: You originally made some motion in the car with the
2 officers when they said, well, how did you cock it? The
3 detective asked you how did he cock it and then you made --
4 you said it clicked back; do you recall saying that to him?
5 A: Yes.
6 Q: All right. So tell me was it like this or was it like
7 this with his thumb?
8 A: I'm not sure. I didn't really -- I wasn't staring dead
9 at the gun while he was doing it, but I didn't ---
10 Q: Okay. All right. Now you say that y'all are having this
11 conversation in the car where he is saying to you, I want to
12 have sex, and you're saying he's got a gun at the time, right?
13 A: Yes.
14 Q: And then he is also unzipping his pants, right?
15 A: He was like, yeah.
16 Q: Okay. So he's got the gun in his right hand, he's taking
17 off his pants with the left hand and then he is also taking
18 your pants off simultaneously, right?
19 A: He leaned over me and tried to unbutton my pants.
20 Q: Okay. And you say to him what, in response to him trying
21 to unbutton your pants? What did you say to him?
22 A: I said, no.
23 Q: You said no, don't do that, right?
24 A: Yes.
25 Q: Okay. And what else did you say to him?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

145

1 A: I said, I don't want to.

2 Q: You said you don't want to? And this is a man who's got
3 a gun, right?

4 A: Yes.

5 Q: All right. And then you say that you tell him, look,
6 this is not something I want to do. This is not something I
7 want to have with you and I'm not gonna do this, basically,
8 right?

9 A: Yes.

10 Q: All right. And you're not doing it. And then he says
11 I'm gonna shoot you, right?

12 A: Yes.

13 Q: All right. And then you say okay, well, let me go ahead
14 and take my pants leg off. Do you recall telling Detective
15 Beam that you were gonna take your pants leg off?

16 A: He was trying to unbutton my pants, but he couldn't get
17 it unbuttoned ---

18 Q: Okay.

19 A: --- because of how the seat was positioned. So, he tried
20 to pull the front seat back but it didn't work.

21 Q: Okay.

22 A: But my pants are unbuttoned and he was like, you just do
23 it and ---

24 Q: Ma'am, you don't recall telling him you had on skinny
25 jeans and so they were hard to come off?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

146

- 1 A: Yes.
- 2 Q: So, you did tell him that, right?
- 3 A: Sure, yes.
- 4 Q: Okay. All right. And during this conversation, you say
- 5 he had a gun the entire time, right?
- 6 A: Yes.
- 7 Q: All right. So then he puts the gun up according to you,
- 8 right?
- 9 A: He put it in his pocket.
- 10 Q: He put it in his pocket. And then he leans over you
- 11 because the lever is on the left side, isn't it, of that car?
- 12 A: Uh-huh (affirmative response).
- 13 Q: All right. So, if I'm sitting in the driver's seat right
- 14 here and he's in the passenger seat, there is a center console
- 15 right here, correct?
- 16 A: Uh-huh (affirmative response).
- 17 Q: And you're sitting on the left side, but the lever to
- 18 pull that seat back is on the left, right?
- 19 A: Yes.
- 20 Q: Okay. So, if you're going back, you can pull it like
- 21 this, can't you?
- 22 A: Uh-huh (affirmative response).
- 23 Q: All right. But your testimony to the Court and to the
- 24 jury is that he leaned over you, knew where the lever was, and
- 25 then pulled you back?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

147

- 1 A: Yes.
- 2 Q: Okay. All right. Had he been in your car before?
- 3 A: No.
- 4 Q: How did he know where the lever was? How did he know it
- 5 wasn't automatic?
- 6 A: That's where every seat lever is.
- 7 Q: Every seat lever is there?
- 8 A: I guess.
- 9 Q: Okay. All right. So, he does that. He's got the gun
- 10 still in his pouch, right?
- 11 A: Yes.
- 12 Q: All right. Now, are your pants down by this time?
- 13 A: Yes.
- 14 Q: Okay. And what are you doing while you're leaning back?
- 15 A: He tried to kiss me.
- 16 Q: He tried to kiss you?
- 17 A: Yes.
- 18 Q: All right. With a gun in his hand?
- 19 A: It was in his pocket.
- 20 Q: It was in his pocket at that point in time. All right.
- 21 So, what are y'all doing during this time then when he's
- 22 trying to kiss you; what do you say?
- 23 A: He got frustrated.
- 24 Q: Okay. He got frustrated why?
- 25 A: I guess because there was no room in the front seat.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

148

- 1 Q: Okay.
- 2 A: And he said go in the back seat.
- 3 Q: All right.
- 4 A: And, so I did.
- 5 Q: Okay.
- 6 A: And he got back there, too.
- 7 Q: All right. So, he told you -- he ordered you in the back
- 8 seat?
- 9 A: Yes.
- 10 Q: Now, you tell the police that you got from the front seat
- 11 into the back right side, correct?
- 12 A: Behind the driver.
- 13 Q: Yeah, behind the driver's seat?
- 14 A: Uh-huh (affirmative response).
- 15 Q: All right. And then your purse was in that space, right?
- 16 A: Yeah, it was on the floor.
- 17 Q: And you moved it where? I'm sorry?
- 18 A: It was on the floor.
- 19 Q: And where did you put it at?
- 20 A: It was still on the floor.
- 21 Q: Okay. Did you move it?
- 22 A: I don't think, no.
- 23 Q: Do you recall telling the detectives that you moved it?
- 24 A: I might have moved it over.
- 25 Q: Okay. Okay. So you get in the back seat with him,

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

149

- 1 right? Or you get in the back seat first?
- 2 A: Uh-huh (affirmative response).
- 3 Q: The door is to your left, isn't it?
- 4 A: Yes.
- 5 Q: Okay. There's four doors?
- 6 A: Yes.
- 7 Q: All right. So there's a door to your left and he's still
- 8 in the front?
- 9 A: He got in the back seat, too.
- 10 Q: Eventually, but you got in the back first, right?
- 11 A: Yes.
- 12 Q: Why don't you leave? Why don't you try to make a run for
- 13 it? Why don't you try to go? He is threatening you with a
- 14 gun, right?
- 15 A: Yes.
- 16 Q: He's got it and he said he's gonna shoot you and kill
- 17 you, right?
- 18 A: Yes.
- 19 Q: All right. You're afraid for your life?
- 20 A: Yes.
- 21 Q: Okay. All right. Then tell me why don't you run? Why
- 22 don't you run? Why don't you get out of the car and run?
- 23 A: I don't know.
- 24 Q: You don't know? You don't know why you didn't run?
- 25 A: No, I didn't.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

150

- 1 Q: Detective Beam asked you also the same question. Why
2 didn't you try to run? Why didn't you try to fight, right?
- 3 A: Yes.
- 4 Q: All right. And do you know why he asked you that
5 question?
- 6 A: To understand why I didn't.
- 7 Q: Do you understand that the sanctity of your body would be
8 more important than the sanctity of a purse, right? You would
9 agree with that?
- 10 A: Yes.
- 11 Q: And he asked you that question and you never answered
12 him, but I'm gone ask you today again. Tell the jury why it
13 is that you fought him over the purse, you grabbed the handle
14 is what you told the police officers, right?
- 15 A: Yes.
- 16 Q: And he had a gun still?
- 17 A: Yes.
- 18 Q: After he had sexually assaulted you, right?
- 19 A: Yes.
- 20 Q: You're saying he raped you, basically, right?
- 21 A: Yes.
- 22 Q: At gunpoint, correct?
- 23 A: Yes.
- 24 Q: All right. And then you say that he then takes the purse
25 after sex, correct?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

151

1 A: Uh-huh (affirmative response).

2 Q: And then you say that he takes the purse and you grab the
3 handle and you argue with him back and forth about the purse.
4 Tell the jury why you would argue with a man who has
5 threatened to kill you already about a purse?

6 A: I don't know.

7 Q: You're not sure?

8 A: Huh-uh (negative response).

9 Q: Okay. But you did argue with him about that purse,
10 didn't you?

11 A: Yes.

12 Q: All right. As a matter of fact, you got out of the car
13 and yelled at him, correct?

14 A: Yes.

15 Q: Okay. All right. The man you say just raped you and
16 just tried to, I guess, assault you, you say that you got out
17 of the car then and then you were yelling at him about the
18 purse, correct?

19 A: Yes.

20 Q: Okay. All right. Now, during the actual act, and this
21 is something the prosecutor asked you about, you said that
22 when y'all got in the back seat that you told him you were on
23 birth control or you weren't on birth control?

24 A: Yeah.

25 Q: Okay. So, y'all had that conversation in the car about

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

152

- 1 you being on birth control, correct?
- 2 A: When he tried.
- 3 Q: Right, when he tried to have sex?
- 4 A: Yeah, I told him I wasn't thinking he would stop and be
- 5 like never mind, but ---
- 6 Q: Okay. And your testimony or what you told Detective Beam
- 7 was that basically you then tell him this and then he says
- 8 what to you in return?
- 9 A: He didn't say anything.
- 10 Q: Well, you said he got a condom, right?
- 11 A: Yes.
- 12 Q: Where did he get the condom from?
- 13 A: I guess his pocket.
- 14 Q: Okay. Do you recall him pulling it out?
- 15 A: I didn't see him pull it out.
- 16 Q: Okay. So, he's raping you at gunpoint, he stops raping
- 17 you at gunpoint to go get a condom from his pocket and then
- 18 continue to have sex, correct?
- 19 A: Yes.
- 20 Q: All right. All right. The condom, the police asked you
- 21 where that condom was, right?
- 22 A: Yes.
- 23 Q: And you said you didn't know where the condom was?
- 24 A: No.
- 25 Q: You said you never saw him take it off?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

153

1 A: No.

2 Q: I wasn't so much concerned about the actual condom
3 itself, I'm wondering where the wrapper was. Where was the
4 condom wrapper?

5 A: I don't know.

6 Q: The condom wrapper was never found in your car, was it?

7 A: I don't think so; I'm not sure.

8 Q: Okay. Did he pull the condom out of thin air?

9 A: I don't know. I guess he had it in his pocket or
10 wherever.

11 Q: Did you ever see him take the condom out of the wrapper?

12 A: Yes.

13 Q: Okay.

14 A: I saw him put it on.

15 Q: Okay. You saw him put it on. So, tell the jury then
16 what he did with the wrapper. You saw all this other stuff
17 going on and you have good recollection about some things, but
18 I want you to tell the jury what he did with that wrapper.
19 Where was the wrapper?

20 A: I'm not sure what he did with it.

21 Q: Do you recall Detective Beam telling you that you never
22 told him about him cocking the gun or having -- pulling the
23 gun on you during the conversation? You told Detective Beam
24 at one point in time that he simply grabbed the purse and left
25 the car, and then the second time he asked you to repeat the

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

154

1 story, you repeat the story and tell him, look, he then pulled
2 a gun out on me again. Do you recall that discrepancy?

3 A: He had it in his pocket and he always had his hand on it.

4 Q: Ma'am, did he pull the gun on you again when he tried to
5 take the purse?

6 A: He pulled it out of the pocket a little bit but not all
7 the way out.

8 Q: Okay. Do you recall telling Detective Beam that he
9 pulled it out on you?

10 A: I guess.

11 Q: Okay. Now, you also say that he ended up cocking the gun
12 again. Do you recall saying that?

13 A: I don't recall.

14 Q: Okay. All right. So, you don't recall him cocking the
15 gun ever, that never happened or you're not sure?

16 A: I'm not sure.

17 Q: Okay. Fair enough. Now when you're engaged the sexual
18 act that you say occurred, right?

19 A: Yes.

20 Q: You said he asked you, does it feel good?

21 A: Yes.

22 Q: All right. You also say that he is asking you or telling
23 you, look, I'm gonna go put on a condom for you, right?

24 A: I never said that.

25 Q: No, I'm asking you, is that what he said? I'm asking.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

155

- 1 A: No.
- 2 Q: Okay. So, what did he say when you told him you wanted
3 him to go put on a condom?
- 4 A: He never said anything.
- 5 Q: So he just went and put one on?
- 6 A: Yeah, he didn't say anything to me.
- 7 Q: Okay.
- 8 A: He just stopped.
- 9 Q: All right. Did he ever penetrate you without a condom?
- 10 A: For a second.
- 11 Q: Okay. And then he decided he was gone put the condom on?
- 12 A: Yes.
- 13 Q: All right. All right. So, at some point in time while
14 you guys were there in the car, he then says, are you ready?
15 That's what you told the police, right?
- 16 A: Uh-huh (affirmative response).
- 17 Q: So, with a gun, and he's already trying to rape you, he's
18 then saying, are you ready?
- 19 A: Uh-huh (affirmative response).
- 20 Q: Yes or no?
- 21 A: Yes.
- 22 Q: Okay. Now, your car is an SUV, correct?
- 23 A: Yes.
- 24 Q: Like a mini SUV if you will?
- 25 A: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

156

1 Q: All right. In your testimony or your statement to the
2 police officers that he was on one knee, correct? He was down
3 on the floorboard?

4 A: He was on the seat and the floor. He had one foot on the
5 seat and one on the floor.

6 Q: And one on the floor?

7 A: Yes.

8 Q: Okay. And then y'all were trying to have sex like that,
9 correct?

10 A: I guess, yeah.

11 Q: Ma'am, did the prosecutors or anyone share with you the
12 results of the rape kit test?

13 A: No.

14 Q: No one ever shared that with you?

15 A: No.

16 Q: Okay. You went to the hospital, correct?

17 A: Yes.

18 Q: And they gave you a rape kit exam?

19 A: Yes.

20 Q: And Detective Beam told you that you were gonna have to
21 do that after he told you that there was some issues that
22 things weren't adding up, right?

23 A: I guess, yes.

24 Q: Do you recall going to the hospital?

25 A: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

157

1 Q: Okay. All right. And do you know if they found sperm
2 inside of you?

3 A: I'm not sure.

4 Q: All right. Do you know what they found?

5 A: No.

6 Q: Do you know if they found any bleeding inside you?

7 A: I don't know.

8 Q: Would you be surprised if I said ---

9 MR. HOLFORD: Objection, Your Honor.

10 THE COURT: Mr. Wilson ---

11 MR. WILSON: Yes, sir.

12 THE COURT: She's responded to the question that she
13 does not know.

14 MR. WILSON: Judge, I understand.

15 THE COURT: All right. So phrase your questions
16 differently then.

17 BY MR. WILSON:

18 Q: Did anyone tell you that that rape kit came back
19 positive?

20 A: No.

21 Q: All right. Okay. Now, at some point in time, you were
22 posting things on Facebook, do you recall that, after this all
23 happened?

24 A: I guess.

25 Q: I'm not asking you if you guess; I'm asking you, do you

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

158

1 recall posting anything on Facebook?

2 A: Sure.

3 Q: Okay. Tell the jury some of the things that you were
4 posting on Facebook after this occurred?

5 A: I ---

6 Q: About this case.

7 COURT REPORTER: Excuse me. Pull the microphone closer
8 to you please and use it.

9 A: That I said at one time that, that I hoped this all like
10 blows over eventually. I don't know what -- like, I didn't
11 plan for this to happen.

12 BY MR. WILSON:

13 Q: Okay. All right. Did you ever tell anyone on Facebook
14 that you wanted him to rot in jail?

15 A: No.

16 Q: Okay. You never said that?

17 A: I don't ---

18 Q: Do you recall making any statements about the Defendant
19 on Facebook?

20 A: No.

21 Q: So, you never said anything about him on Facebook to
22 anybody?

23 A: I talked to my friend, but I never posted anything about
24 anybody.

25 Q: Okay. All right.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

159

1 MR. WILSON: Court's indulgence, Your Honor?

2 THE COURT: All right, sir.

3 BY MR. WILSON:

4 Q: Let me ask you this, ma'am. During this time while you
5 were there and you said you were fearing for your life, is
6 what you told Detective Beam. Detective Beam says to you, why
7 didn't you honk your horn, why didn't you go and talk to
8 somebody, why didn't you try to go and run, why didn't you try
9 to fight? And your response to him was that he had a gun,
10 right?

11 A: Yes.

12 Q: Okay. All right. And then later on when you are out of
13 the car and chasing him about the purse, what was your thought
14 then?

15 A: Was that I need to try to find a phone to call somebody.

16 Q: Okay. And you say that you actually went to someone's
17 house and tried to get in, right?

18 A: Yes, I knocked on a door.

19 Q: Did you ever tell the police which door you knocked on?

20 A: I explained it the best I could.

21 Q: Okay. But did they ever go and check and confirm that
22 this ever happened?

23 A: They said they did.

24 Q: Okay. All right. Now, on your way back to Belk -- why
25 did you go all the way back to Belk? there are tons of places

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

160

- 1 to go, to stop. This is 8:30, 8:25 whatever time it is, it's
2 before 9 o'clock. So, there are tons of businesses on up and
3 down that road. Why did you not go and stop at one of those
4 businesses instead of going all the way back to Belk?
- 5 A: Because they ---
- 6 Q: I'm sorry?
- 7 A: --- they didn't look safe like -- so, I went to the only
8 place I knew a lot of people would be at.
- 9 Q: Okay. So, Walmart was before you get to Belk, okay, on
10 that road, there's gas stations on that road and off that
11 road, there are residences on that road, but you didn't go to
12 any of those places, did you?
- 13 A: No.
- 14 Q: So you drove back to Belk and then told the 911 operator
15 the story that you told him earlier, right?
- 16 A: Yes.
- 17 Q: Okay. All right. Your clothes, tell the jury what you
18 had on that day?
- 19 A: I had some jeans with holes in them.
- 20 Q: Okay.
- 21 A: And then a sweatshirt and I think it was a burgundy, a
22 burgundy sweatshirt.
- 23 Q: Okay.
- 24 A: And some shoes.
- 25 Q: All right. Were any of your clothes torn during this?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

161

- 1 A: No.
- 2 Q: Okay.
- 3 A: Just the holes that were already in the pants.
- 4 Q: Okay. But those holes weren't caused by Mr. Welch, were
- 5 they?
- 6 A: No.
- 7 Q: Okay. All right. So, the shirt that you had on was
- 8 completely intact when the police got to you, correct?
- 9 A: Yeah.
- 10 Q: Was your bra torn; was it torn?
- 11 A: No.
- 12 Q: You had a bra on that day, correct?
- 13 A: Yeah.
- 14 Q: Okay. That wasn't torn either, was it?
- 15 A: No.
- 16 Q: Were your jeans torn or ripped at all other than the
- 17 holes that were on there?
- 18 A: No.
- 19 Q: Okay. All right. Was anything else torn, anything else
- 20 -- and I apologize, but I've got to ask you this question
- 21 obviously. Were your underwear torn?
- 22 A: No.
- 23 Q: Okay. All right. So nothing was torn on you, correct?
- 24 A: No.
- 25 Q: Okay. Do you know if they looked for DNA evidence inside

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

162

1 of your underwear or on you?

2 A: I'm guessing they did.

3 Q: Okay.

4 A: Because they swabbed.

5 Q: They swabbed you. And did anybody tell you what the

6 results of that test were?

7 A: No.

8 Q: Okay. Now your conversation with Detective Beam, Beam

9 gave you a hard time, didn't he?

10 A: Yes.

11 Q: All right. Tell the jury what is that Beam was saying to

12 you almost the entire time you were telling him the story.

13 A: If I was sure if that was exactly what happened and to

14 repeat what happened to make sure nothing changed and, or like

15 left anything out, and then he kept asking like if I was sure

16 that I just didn't like at the last second change my mind and

17 decided to make this up.

18 Q: Okay. All right. And he gave you several chances to

19 pull back your story, didn't he?

20 A: Yeah.

21 Q: Okay. All right. And he advised you that this was

22 inconsistent with what he's normally used to, correct?

23 A: Yes, he said it was kind of confusing.

24 Q: Okay. All right. And you didn't pull your story back,

25 did you?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

163

- 1 A: No.
- 2 Q: Okay. And even when your mother came, this was when
3 Detective Beam was talking to you, correct?
- 4 A: Yes.
- 5 Q: And then she said Jerrica, are you sure you just didn't
6 find yourself in a bad spot and make some bad decisions
7 because that's not what you told me when you got in the car;
8 did she tell you that?
- 9 A: She said are you sure you didn't make bad decisions. She
10 didn't say because you didn't tell me anything different.
- 11 Q: Your mother -- what did you tell your mother that
12 happened?
- 13 A: I told her like about the robbing and stuff, and I didn't
14 mention the sexual assault to her until she got in the car
15 with me and the detective and I was telling the story.
- 16 Q: Did you ever tell your mother that there was a gun
17 involved in this, ma'am?
- 18 A: Yes.
- 19 Q: You did? When did you tell her there was a gun?
- 20 A: When I was telling the story in the car with the
21 detectives.
- 22 Q: When you were telling the story in the car?
- 23 A: Yeah.
- 24 Q: I mean, on the phone with her?
- 25 A: No.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

164

1 Q: Okay. No, you did not tell your mother on the phone
2 there was a gun involved in this, did you?

3 A: I'm not sure, no.

4 Q: Okay. All right. Let me ask you this. And, ma'am, isn't
5 it true that y'all talked at the Burger King parking lot,
6 y'all agreed that neither one of you had money. You had said
7 that you didn't want to hang out. He said take me home. And
8 y'all agreed to meet at the Burger King; is that correct?

9 A: Yes.

10 Q: Okay. You called him didn't you actually at 7:32 P.M.?

11 A: Yes.

12 Q: You testified to this jury earlier that you didn't want
13 to hang out and you couldn't find him, right?

14 A: No.

15 Q: All right. But, you called him at 7:32. Why did you
16 call him at 7:32 if you didn't want to hang out?

17 A: Because he made a big deal about hanging out and when I
18 finally did agree to meet him, so he'll leave me alone, I
19 called to see where he was at and he didn't have a phone.

20 Q: Do you recall telling Detective Beam and your mother that
21 what really made you mad that day, annoyed is the word you
22 used, was the fact that another boy you were trying to see
23 that day earlier refused to see or wouldn't see you and
24 Detective Beam even says to you, you considered that to be a
25 dis, didn't you?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

165

- 1 A: He was kind of hard to get a hold of and then he said he
2 was busy, and I was like okay.
- 3 Q: What I'm asking you is this, were you not scheduled to
4 see another boy that day earlier?
- 5 A: Yes.
- 6 Q: Okay. And then he didn't show up, right?
- 7 A: No, I was waiting and got some food, and then I was like
8 -- and then I -- after he said that he couldn't and he was
9 busy and all that stuff, I drove home.
- 10 Q: Okay. You drove home and you told your mother and
11 Detective Beam in the car that that pretty much upset you and
12 annoyed you and you had a bad day because of that, correct?
- 13 A: Not just because of that, because of everything else.
- 14 Q: Okay. And everything else?
- 15 A: Yes.
- 16 Q: Okay. All right. But again, when you were going to meet
17 him and you agreed to meet him, at 7:32 you called him because
18 you didn't see him, right? David Welch that is.
- 19 A: Yes, while I was sitting in the parking lot.
- 20 Q: All right. And the prosecutor asked you earlier, you
21 said you called -- he called you eight times, right?
- 22 A: Yes.
- 23 Q: Okay. Is that correct?
- 24 A: YEs.
- 25 Q: All right. Did David Welch have a cell phone at the

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

166

1 time?

2 A: He -- seems like he had one because he kept calling me
3 off of it.

4 Q: Okay. Now, you're telling this Court that you didn't
5 know that that same number that's on there was his home
6 number, that's why you got his momma or his grandmomma on the
7 phone?

8 A: No.

9 Q: Okay. So, he's grandmomma answered why?

10 A: I didn't know who answered. I just hung up.

11 Q: You sent him also a Facebook message around 7:30 saying
12 call me, didn't you?

13 A: Yes.

14 Q: Why did you send him a Facebook message saying call me?

15 A: Because he -- because I finally agreed to meet up so he
16 would quit calling and saying we made plans, and so I tried to
17 call, got someone else, hung up and then I messaged him. I
18 was like I don't know if you have a phone, but call me because
19 why aren't you showing up if you wanted to so badly hang out.

20 Q: Right and that upset you that he was late, right?

21 A: No.

22 Q: All right. So you're telling the jury that didn't upset
23 you?

24 A: No, I was just wondering.

25 Q: Okay. Fair enough. So you're out there waiting on him

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

167

1 pretty much?

2 A: Yes.

3 Q: How long were you waiting on?

4 A: I would guess 15 or 20 minutes. I'm not sure.

5 Q: Okay. All right.

6 MR. WILSON: Your Honor, Court's indulgence, Judge.

7 THE COURT: Yes, sir.

8 BY MR. WILSON:

9 Q: Now on the phone calls -- may I approach the witness,
10 Judge?

11 THE COURT: Yes, sir.

12 Q: Just briefly, on these phone calls on the 8th, there is a
13 -- this has been marked as State's Exhibit Number 16. There
14 is a minute section on these phone calls, on the eight phone
15 calls you said that he made to you, correct?

16 A: Yes.

17 Q: I want you to read for the jury the number of minutes
18 each phone call has logged in.

19 A: (Inaudible.)

20 COURT REPORTER: Excuse me.

21 THE COURT: You're gonna have to speak up, ma'am.

22 A: One says 13.

23 BY MR. WILSON:

24 Q: What time was that call that was 13 minutes; what time
25 was that?

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - CROSS BY WILSON

168

1 A: 6:23 P.M.

2 Q: Okay. 6:23 P.M. that day. All right. What's the next
3 call, what time was that and then how many minutes?

4 A: 6:45 P.M. and it says five, and then there's one at 6:50
5 and it says four; and at 7:00 --- no at 6:58 it says three;
6 and then at 7:00 it says two; and then at 7:02 it says one;
7 and then 7:04 it says three; and then at 7:12 it says two.

8 Q: Okay. So this is not David Welch simply calling you over
9 and over again; y'all were having conversations, weren't you?

10 A: I guess you could say that, yes.

11 Q: Ma'am, tell the jury whether or not y'all were talking on
12 the phone?

13 A: Yes.

14 Q: Okay. Y'all were having conversations. And can you tell
15 the jury what y'all were talking about?

16 A: He -- when we called the first time, he was asking if I
17 wanted to hang out. I said, not really, I had a long day I
18 just want to go home.

19 Q: Okay.

20 A: And then he responded and he was like, but I've been
21 waiting all day. We've made plans. And I was like, we never
22 specifically made plans for any date to hang out. Then he
23 said, yes, you did. And then that's when I said, no, I
24 didn't, and then he hung up. And then he called again and was
25 like would you just please meet me, and I was like I really

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

169

1 don't want to. I just want to go home. And he was like, just
2 please, just this once, and then I finally agreed. I was
3 like, fine, where? And he was like, come to my house. I said
4 no, I'm not coming to your house. And he asked on and I was
5 like because I'm not driving to wherever you live at night
6 coming to your house. And then -- and then he was like, okay,
7 I live by the mall. He asked me if I know where it is. I
8 said, yeah. And he was like, meet me there and we -- I was
9 like, okay. And he said, Burger King in front of the mall,
10 and I was like, okay, I'll be there. He asked me what kind of
11 car I was driving and I was like it would be a red one. And
12 he was like, okay, I'll walk there. And I was like -- and I
13 said, okay, and we hung up. And then that's when I got to the
14 mall and was waiting in the parking lot.

15 Q: Okay. And that basically took you about two minutes to
16 say, right, just now?

17 A: Uh-huh (affirmative response).

18 Q: And there's 37 minutes of actual talk time on that phone
19 and you're telling this jury, your testimony is, that's all
20 y'all talked about, right?

21 A: Was meeting up, yes.

22 Q: And that's up?

23 A: He got kind of mad every time I would say I didn't want
24 to.

25 Q: Well, you didn't tell the detectives earlier, didn't you

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

170

1 tell Detective Beam during a conversation that he never got
2 angry with you? You never told him that?

3 A: I don't recall saying that.

4 Q: All right. Okay.

5 Your Honor, I'd like to have this -- let me ask you.
6 Have you heard this interview that you had with Detective
7 Beam?

8 A: No. No, I haven't.

9 Q: All right. But you recall being interviewed by Detective
10 Beam, correct?

11 A: Yes.

12 Q: Okay.

13 MR. WILSON: Your Honor, at this time, I'd just like to
14 have it marked for identification purposes only.

15 THE COURT: All right, sir.

16 MR. WILSON: Judge, I believe this is gonna be Defendant's
17 ---

18 COURT REPORTER: 5 for ID.

19 MR. WILSON: 5 for ID, Judge.

20 THE COURT: Very good.

21 DEFENDANT'S EXHIBIT NUMBER 5

22 MARKED FOR IDENTIFICATION

23 BY MR. WILSON:

24 Q: Let me ask you this. Did you ever in that car with David
25 Welch start to make out with him?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

171

- 1 A: No.
- 2 Q: All right. So, y'all never kissed at all?
- 3 A: No.
- 4 Q: Okay. Did he ever give you oral sex?
- 5 A: No.
- 6 Q: He never gave you oral sex in that car?
- 7 A: No.
- 8 Q: You never told him at Burger King that you enjoyed oral
- 9 sex more than you liked vaginal sex; you never told him that?
- 10 A: No.
- 11 Q: Okay. One of the items in your purse, do you recall
- 12 having Summer's Eve in your purse?
- 13 A: I guess, yes.
- 14 Q: All right. Summer's Eve wipes what are they for?
- 15 A: For when you have, I guess, a little like UTI or vaginal
- 16 odor.
- 17 Q: You had those in your purse that day, ma'am?
- 18 A: Yeah.
- 19 Q: Do you recall that?
- 20 A: Uh-huh (affirmative response).
- 21 Q: Okay. All right. Now your purse, actually somebody
- 22 called and said they found your purse, didn't they?
- 23 A: They didn't call me, but ---
- 24 Q: Who did they call?
- 25 A: I guess the police.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

172

- 1 Q: Okay.
- 2 A: The detectives or whoever.
- 3 Q: No one ever called your mother and said they found the
- 4 purse?
- 5 A: They called my mom and she told me, but they didn't call
- 6 me personally.
- 7 Q: Okay. All right. So, they call your mother and they
- 8 said look, we found the purse, right?
- 9 A: Uh-huh (affirmative response).
- 10 Q: But they didn't find the cell phone, did they?
- 11 A: No.
- 12 Q: All right. And everything that you had in the purse when
- 13 you said you lost it was still in the purse, wasn't it?
- 14 A: Yeah, I'm pretty sure.
- 15 Q: Well, let me ask you this just to be sure. This is the
- 16 purse, correct?
- 17 A: Yeah.
- 18 Q: That's marked as State's Exhibit Number 12. And this is
- 19 your check which is marked State's Exhibit Number 13, and that
- 20 was still in the purse, right?
- 21 A: That is it.
- 22 Q: Okay. And this has been marked State's Exhibit Number 8
- 23 and that was your Stein Mart badge. It looks like a uniform
- 24 service ID and South Carolina Driver's License.
- 25 A: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - CROSS BY WILSON

173

1 Q: Okay. All right. And these are just miscellaneous
2 items, Avocado Clay mask, some balls of some sort, a band, and
3 some reward cards.
4 A: Yes.
5 Q: That were still in your purse. And this is the ID,
6 again. This stuff was still in your purse, correct?
7 A: Yes.
8 Q: All right. And there was a picture of -- your debit card
9 was still in that purse, wasn't it?
10 A: It was in my wallet.
11 Q: It was in your wallet?
12 A: Uh-huh (affirmative response).
13 Q: You had your wallet?
14 A: It was in my purse.
15 Q: Okay. But the debit card was -- was recovered with the
16 actual purse, correct?
17 A: I guess so, I haven't seen it.
18 Q: Okay. All right.
19 A: I'm not sure.
20 Q: And the prosecutor asked you earlier, he said, well, you
21 haven't received any of this stuff back. The reason you
22 haven't received it back is because it's in evidence, correct?
23 A: Yes.
24 Q: Okay. The State has possession of it is what I'm asking
25 you?

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - REDIRECT BY HOLFORD

174

1 A: Yes.

2 Q: All right. Very good. Very good.

3 MR. WILSON: Court's indulgence, Your Honor?

4 THE COURT: Yes, sir.

5 MR. WILSON: No further questions, Judge.

6 THE COURT: Very good.

7 MR. WILSON: Thank you, Judge. Thank you.

8 THE COURT: Redirect?

9 MR. HOLFORD: Yes, Your Honor.

10 REDIRECT EXAMINATION OF JERRICA NELSON BY MR. HOLFORD:

11 Q: Ms. Nelson, the jury is gonna have a copy of everything
12 that's on that Facebook record, so they'll be able to read the
13 conversations back and forth. So, we don't need to go over it
14 in detail but did you at least on multiple occasions tell
15 David that you didn't want to have sex the first time you met?

16 A: Yes.

17 Q: Did you say that you weren't that type of girl?

18 A: Yes.

19 Q: And they'll be able to see that, right?

20 A: Yes.

21 Q: They'll be able to say who's getting frustrated in the
22 conversations?

23 A: Yes.

24 Q: And they'll be able to see the back and forth?

25 A: Yes.

State v. Welch - 2015-GS-26-969,970,971,972
JENNIFER NELSON - REDIRECT BY HOLFORD

175

1 Q: Now, the word lie was used a lot in the beginning about
2 what you said happened. Was it a lie that David used a gun?
3 A: No.
4 Q: And that's what you told 911, right?
5 A: I believe so, yes.
6 Q: And that's what you told the detective?
7 A: Yes.
8 Q: And that's what you told your mom?
9 A: Yes.
10 Q: And that's what you told the jury?
11 A: Yes.
12 Q: It wasn't a lie that he took your purse and that this is
13 your purse and these are your contents that you haven't seen
14 since that day?
15 A: No.
16 Q: It wasn't a lie that you met at Burger King?
17 A: No.
18 Q: It wasn't a lie that you were in your car?
19 A: No.
20 Q: The only thing you didn't tell them in the beginning was
21 that you knew who it was who robbed you at gunpoint, right?
22 A: Yes.
23 Q: And the only thing you didn't tell them in the beginning
24 over the phone was the fact that he also sexually assaulted
25 you, right?

State v. Welch - 2015-GS-26-969, 970, 971, 972
JENNIFER NELSON - REDIRECT BY HOLFORD

176

1 A: Yes.

2 Q: So, did you lie to the police?

3 A: I don't believe I did lie. I left some things out.

4 Q: And when, when pressed by mom, when pressed by

5 detectives, when pressed by the officers, when -- as the

6 Defense has brought up, they said you can be charged with a

7 felony?

8 A: Yes.

9 Q: You were given chances to change your story?

10 A: Yes.

11 Q: Did you change your story?

12 A: No.

13 Q: Did you back down?

14 A: No.

15 Q: What did you do instead?

16 A: I told them everything that happened.

17 Q: You told them everything; you told them the full story?

18 A: Yes.

19 MR. HOLFORD: I have no further questions, Your Honor.

20 THE COURT: Anything on those questions just asked?

21 MR. WILSON: Nothing, Judge.

22 THE COURT: All right. You may step down.

23 Y'all come up and talk with me for just a second.

24 (REPORTER'S NOTE: A bench conference was held off the record

25 in the presence of but out of hearing of the Jury.)

State v. Welch - 2015-GS-26-969,970,971,972
ERIC CAMBRE - DIRECT BY WALKER

177

1 THE COURT: Call your next witness then.

2 MR. HOLFORD: Your Honor, the State calls the Time Warner
3 representative.

4 MS. WALKER: Eric Cambree.

5 THE COURT: Very good. Come all the way around, sir.
6 Just come up to the corner of the bench up here, please.

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

9 ERIC CAMBRE, HAVING BEEN SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK: Please state your full name and spell your first
12 and last name for the Court.

13 MR. CAMBRE: Eric Cambre, E-R-I-C, C-A-M-B-R-E.

14 THE COURT: Go ahead.

15 MS. WALKER: Thank you, Your Honor.

16 DIRECT EXAMINATION OF ERIC CAMBRE BY MS. WALKER:

17 Q: Mr. Cambre, who do you work for?

18 A: It's Charter Communications Cell, so probably Spectrum,
19 locally is known as Spectrum, formerly Time Warner Cable.

20 Q: Okay. And what is your position there with them?

21 A: I'm a Physical Security Supervisor for the Carolinas.

22 Q: What does that involve?

23 A: I manage access control, video and alarms, our, our
24 Security Operations Department. It's kind of like the
25 umbrella of subpoena compliance as well.

State v. Welch - 2015-GS-26-969,970,971,972
ERIC CAMBRE - DIRECT BY WALKER

178

1 Q: Okay. And what does subpoena compliance entail?

2 A: Just whenever our company receives a court order or
3 subpoena or requesting documents, we have a legal team and
4 Herndon, Virginia that takes care of that.

5 Q: Okay. And are you in any way familiar with this case and
6 what we're doing here today?

7 A: No, ma'am, not at all.

8 Q: Okay. And for what purpose are you here?

9 A: I received a subpoena as custodian of records just to
10 verify that some records that my company provided are in fact
11 records from our company.

12 Q: Okay. And do you have those records with you?

13 A: I have the subpoena and I have the copy of the search
14 warrant and also have the declaration from our company. I
15 don't have the actual call detail records; those were
16 provided.

17 Q: Right. And what is the declaration?

18 A: A declaration is from the paralegal, the subpoena analyst
19 in Virginia. Her name is Verna, so she is the one that pulled
20 the information and provided it to the investigating -- Mr.
21 Townsend.

22 Q: Okay. All right.

23 MS. WALKER: I beg the Court's indulgence?

24 THE COURT: Yes, ma'am.

25 MS. WALKER: May I approach the witness?

State v. Welch - 2015-GS-26-969,970,971,972
ERIC CAMBRE - DIRECT BY WALKER

179

1 THE COURT: Yes, ma'am.

2 BY MS. WALKER:

3 Q: I'm gonna have you take a look at what's been marked as
4 State's Exhibit 22 for identification purposes.

5 A: Okay.

6 Q: And could I ask you to just tell me what that is?

7 A: It -- it's a Time Warner Cable document. It's got our
8 case number, which is 22415. It basically indicates the
9 issuing party, it tells who the request is from, the type of
10 request, it gives the phone number that the records pertain
11 to, what the information is seeking, inbound and outbound call
12 detail records for these specific dates, and it indicates the
13 attachment of the records that we provided.

14 Q: Okay. And could you tell me whether that's a fair and
15 accurate representation of that document as it comes from Time
16 Warner?

17 A: Yes, this -- would've been directly from our subpoena
18 analyst in Virginia.

19 Q: Okay.

20 MS. WALKER: Your Honor, the State would move this as
21 State's Exhibit 22 into evidence.

22 THE COURT: Any objection?

23 MR. WILSON: No objection, Your Honor.

24 THE COURT: All right. It's in evidence without
25 objection.

State v. Welch - 2015-GS-26-969, 970, 971, 972
ERIC CAMBRE - CROSS BY WILSON

180

STATE'S EXHIBIT NUMBER 22

ADMITTED INTO EVIDENCE

BY MS. WALKER:

Q: And could I ask you which phone number is listed there?

A: The information is pertaining to area code [REDACTED].

Q: Okay. And does it have any indication as to whether it's a landline or a cell phone?

A: Our company only provides landlines. So, this would be a landline.

Q: Okay. And does it provide the address for which the number is associated?

A: They did request the -- the search warrant did request detailed information on the subscriber and it does; it's on Page 2.

Q: Okay. Would you mind reading that to us?

A: The subscriber name is Edna Blackmon.

Q: Okay. And what address?

A: [REDACTED] Oak Drive, Myrtle Beach, South Carolina.

Q: Okay. All right. Just one second, please.

MS. WALKER: Your Honor, I have no other questions for this witness.

THE COURT: Very good.

Cross examination?

MR. WILSON: Just briefly, Judge.

CROSS EXAMINATION OF ERIC CAMBRE BY MR. WILSON:

State v. Welch - 2015-GS-26-969,970,971,972
ERIC CAMBRE - CROSS BY WILSON

181

1 Q: You don't know who was on the other end of those phone
2 calls, correct?

3 A: No, sir, the call detail records would provide incoming
4 and outgoing phone numbers and numbers only, durations of
5 calls.

6 Q: Thank you, sir.

7 MR. WILSON: No further questions, Judge.

8 THE COURT: Anything else?

9 MS. WALKER: No, sir, Your Honor.

10 THE COURT: Do you wish the witness to be excused?

11 MS. WALKER: We do.

12 THE COURT: All right, sir. You're released from your
13 subpoena and may go back to your regular duties.

14 A: Thank you, Your Honor.

15 THE COURT: Thank you, sir. Leave the documents there.
16 Thank you, sir.

17 A: Yes, sir.

18 BY THE COURT:

19 THE COURT: All right, ladies and gentlemen, we're going
20 to break for lunch at this time. We're going to want to
21 resume the trial at 2 o'clock. So, Madam Bailiff, if you will
22 organize them such that they'll be ready to come back into the
23 courtroom at 2 o'clock. Whatever time you need to have them
24 be organized to come back in at 2 o'clock.

25 Remember don't talk about the case, don't allow anybody

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

182

1 to talk to you about it. All right?

2 Thank you very much.

3 (REPORTER'S NOTE: Jury exits courtroom. The following takes
4 place outside the presence of the Jury.)

5 THE COURT: All right, Solicitor, is there any matters
6 you need to cover before we break for lunch?

7 MR. HOLFORD: Your Honor, we did get a revised -- I
8 apologize, Your Honor. After we had the *Jackson v. Denno*
9 yesterday ---

10 THE COURT: Yes.

11 MR. HOLFORD: The State did do a redacted version. There
12 was a couple of seconds the Defense listened to this morning
13 that they want edited. We'll have the revised version during
14 the lunch break. We'll get together and make sure it comports
15 to the Court's order.

16 THE COURT: Great. Very good.

17 Anything else, Mr. Wilson?

18 MR. WILSON: Nothing further, Judge.

19 THE COURT: All right. Very good.

20 We'll see you back at 2 o'clock then.

21 MR. WILSON: Thank you, Your Honor.

22 THE COURT: Thank you very much.

23 (RECESS.)

24 *****OFF THE RECORD*****

25 (On the Record.)

State v. Welch - 2015-GS-26-969,970,971,972
VANESSA LYNN THOMPSON - DIRECT BY WALKER

183

1 THE COURT: The State ready for the jury to come in?

2 MR. HOLFORD: Yes, sir.

3 THE COURT: And Defense?

4 MR. WILSON: Yes, Your Honor.

5 THE COURT: Very good. Ask the jury to come in please.

6 (REPORTER'S NOTE: Jury enters courtroom.)

7 THE COURT: All right, Solicitor, you ready to proceed?

8 MR. HOLFORD: Yes, Your Honor.

9 THE COURT: All right. Call your next witness please.

10 MS. WALKER: Your Honor, the State calls Vanessa

11 Thompson.

12 THE COURT: All right. Very good. Ms. Thompson, if
13 you'd come all the way up and right up all the way to the
14 front here and meet the Clerk right over here, please.

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

17 VANESSA LYNN THOMPSON, HAVING BEEN SWORN
18 TESTIFIES AS FOLLOWS:

19 CLERK: Please state your full name and spell your first
20 and last name for the Court.

21 MS. THOMPSON: Vanessa Lynn Thompson, V-A-N-E-S-S-A, T-H-
22 O-M-P-S-O-N.

23 THE COURT: Go ahead, Solicitor.

24 DIRECT EXAMINATION OF VANESSA LYNN THOMPSON BY MS. WALKER:

25 Q: Ms. Thompson, can you tell me how long you've lived here

State v. Welch - 2015-GS-26-969,970,971,972
VANESSA LYNN THOMPSON - DIRECT BY WALKER

184

1 in the Horry County area?

2 A: My great grandfather used to be a solicitor and he passed
3 away before my 80-year-old mother -- I think she was four --
4 so most of my life.

5 Q: All right. And what's your current address?

6 A: [REDACTED] Page, P-A-G-E Street, Myrtle Beach, South Carolina.

7 Q: Okay. And is that where you were living in 2015?

8 A: Yes, ma'am.

9 Q: Okay. And have you lived there since 2015?

10 A: I have lived there for almost the last 13 years.

11 Q: Okay. All right. I'm gonna show you what has been
12 marked as State's Exhibit 20. Based on this map, can you
13 point to me approximately where your house is?

14 A: It's about right here (indicating).

15 Q: Okay. All right. And that's the one you were living in
16 in 2015 and you still live there?

17 A: Uh-huh (affirmative response).

18 Q: Okay. And can you tell me how you became involved in
19 this case?

20 A: My sister used to live in the house across the street
21 from us and the house had -- I think had gone into
22 foreclosure, it was abandoned. And when she moved back in
23 with us like a month or two prior, well we decided we were
24 gonna walk across the street and just check it out, I mean she
25 used to live there, you know we went over.

State v. Welch - 2015-GS-26-969,970,971,972
VANESSA LYNN THOMPSON - DIRECT BY WALKER

185

1 Q: Okay. And, and let me ask you to point out that house on
2 this map.

3 A: It's dead-end road, seven houses. This is mine, the last
4 house on the left, and it was the house right across the
5 street.

6 Q: Okay. So, are you pointing to the one with the pink?

7 A: The pink dot.

8 Q: The pink dot on it. Okay. And let me show you what's
9 been marked as State's Exhibits 23, 24, 25, and 26 for
10 identification purposes, and ask you to flip through those and
11 tell me if you recognize any of them.

12 A: Yeah, yeah; I recognize all of it.

13 Q: Okay. And what are those pictures of?

14 A: It's of the house that's across the street from the one I
15 live in, you know, it's the carport with the utility room,
16 it's the air conditioning unit in the backyard, the front
17 door, you know, the house itself.

18 Q: Okay. Those are a fair and accurate representation of
19 the house?

20 A: Oh, it's definitely the house.

21 Q: Okay.

22 MS. WALKER: The State would like to move State's
23 Exhibits 23 through 26 into evidence.

24 THE COURT: Any objection?

25 MR. WILSON: Judge, let me take a look at them.

State v. Welch - 2015-GS-26-969, 970, 971, 972
VANESSA LYNN THOMPSON - DIRECT BY WALKER

186

1 MS. WALKER: I apologize.

2 THE COURT: All right. Very good.

3 MR. WILSON: No objection, Your Honor.

4 THE COURT: All right, sir. So they're in evidence
5 without objection.

6 MR. WILSON: Thank you, Judge.

7 STATE'S EXHIBITS NUMBERS 23 THROUGH 26

8 ADMITTED INTO EVIDENCE

9 BY MS. WALKER:

10 Q: So, you say this house is why you became involved in the
11 case?

12 A: Yeah.

13 Q: How is that? What does that house have to do with
14 anything?

15 A: Well, my sister used to live in it, and when she moved
16 back in with us, you know, we decided we'd just walk across
17 and check out the house. I mean, it was abandoned.

18 Q: Okay.

19 A: We just went to look at it.

20 Q: Okay.

21 A: Yeah, they got a -- or had a big pear tree in the
22 backyard and everything. And as we're going through the
23 carport, there's like a little, not even a doorway, but a
24 little open area there at the kitchen door and the utility
25 room, and she went through there to go to the backyard and

State v. Welch - 2015-GS-26-969,970,971,972
VANESSA LYNN THOMPSON - DIRECT BY WALKER

187

1 check it out. And I glanced in the utility room and I found a
2 purse.
3 Q: Okay. And is this a picture of the utility room?
4 A: Yes, it is.
5 Q: Okay. And you said you found a purse in there?
6 A: There was a purse in there with stuff scattered like it
7 had been thrown out of the purse. There was still stuff in
8 the purse, you know, ID's and everything.
9 Q: Okay.
10 A: And my sister found more ID's back on the air
11 conditioning unit.
12 Q: Okay. And what did you guys do with purse and its
13 contents.
14 A: Well, I figured the purse had been stolen. And it had
15 where the person worked in there. So, I called ---
16 Q: Sorry, just back up. Do you mean an identification?
17 A: Yeah, like a name tag I believe it was.
18 Q: Okay.
19 A: And so I called the company ---
20 Q: Okay. Well ---
21 A: --- and asked to speak to the girl to let her know that I
22 had found her pocketbook.
23 Q: Okay. And do you remember whose name was on the
24 identification?
25 A: I don't remember.

State v. Welch - 2015-GS-26-969,970,971,972
VANESSA LYNN THOMPSON - DIRECT BY WALKER

188

1 Q: Okay.

2 A: I mean, I just thought I found a lost purse, you know.

3 Q: Okay.

4 A: Or a stolen purse.

5 Q: Okay. And then what did you do after you called to let
6 them know?

7 A: Well, they said they would have her call me and instead
8 an officer called me, and then he came out to the house and I
9 gave a statement about finding the purse.

10 Q: Okay. And so beyond finding the purse and living across
11 the street from the house that you've identified, did you have
12 any other involvement in the case?

13 A: No.

14 Q: No?

15 A: I just found a purse and tried to do the right thing.

16 Q: Okay. And do you remember what the purse looked like at
17 all?

18 A: I honestly really don't. I want to say beige or tan, but
19 I mean that's -- I don't know; I really don't.

20 Q: Okay. Did you give the purse to the officer?

21 A: Yes, I did.

22 Q: Okay. All right. I'm gonna ask you to answer any
23 questions that, that Mr. Wilson has.

24 THE COURT: Cross examination?

25 MR. WILSON: Your Honor, just very briefly.

State v. Welch - 2015-GS-26-969,970,971,972
VANESSA LYNN THOMPSON - CROSS BY WILSON

189

1 CROSS EXAMINATION OF VANESSA LYNN THOMPSON BY MR. WILSON:

2 Q: Ms. Thompson, how are you today, ma'am?

3 A: I'm fine. How are you?

4 Q: You don't know who put the purse in that house, do you?

5 A: Sir?

6 Q: Do you know who put the purse in that house?

7 A: I have no clue.

8 Q: Okay. Have you ever seen Mr. David Welch before, sitting
9 right here in this gray shirt?

10 A: No, I have not.

11 MR. WILSON: All right. No further questions, Your
12 Honor.

13 THE COURT: Any redirect?

14 MS. WALKER: No, Your Honor.

15 THE COURT: All right. Do you wish the witness to be
16 excused?

17 MS. WALKER: Yes, sir, Your Honor.

18 THE COURT: All right, ma'am, you're released from your
19 subpoena and you may go back to your regular activities.

20 Thank you.

21 A: Thank you.

22 THE COURT: All right, Solicitor, your next witness,
23 please, ma'am.

24 MS. WALKER: Yes, Your Honor, the State calls Officer
25 Brittany Southerland.

State v. Welch - 2015-GS-26-969,970,971,972
BRITTANY SOUTHERLAND - DIRECT BY WALKER

190

1 THE COURT: All right. Very good.

2 Please come around all the way up front and meet the
3 Clerk's representative all the way up here, please.

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

6 BRITTANY SOUTHERLAND, HAVING BEEN
7 SWORN TESTIFIES AS FOLLOWS:

8 CLERK: Please state your full name and spell your first
9 and last name for the Court.

10 MS. SOUTHERLAND: Brittany Southerland; first name, B-R-
11 I-T-T-A-N-Y, last name, S-O-U-T-H-E-R-L-A-N-D.

12 THE COURT: Go ahead, Solicitor.

13 DIRECT EXAMINATION OF BRITTANY SOUTHERLAND BY MS. WALKER:

14 Q: Officer Southerland, who are you employed by?

15 A: The Myrtle Beach Police Department.

16 Q: Okay. And what's your position with them there?

17 A: I'm a patrol officer.

18 Q: All right. And what, what do your duties involve as a
19 patrol officer?

20 A: Daily patrol activities on the road, answering calls,
21 responding to all sorts of calls, basically.

22 Q: Okay. And did you have a reason to respond to a call
23 about this case in February of 2015?

24 A: Yes, ma'am.

25 Q: Okay. And what was the nature of that involvement?

State v. Welch - 2015-GS-26-969, 970, 971, 972
BRITTANY SOUTHERLAND - DIRECT BY WALKER

191

- 1 A: That was gonna be for a follow-up to found property.
- 2 Q: Okay. And who contacted you about that?
- 3 A: I was actually dispatched there. It was a call that came
- 4 in from Detective Beam.
- 5 Q: Okay. And what was the property that was found?
- 6 A: It was a purse with contents.
- 7 Q: Okay. And I'm gonna show you this map also what's been
- 8 marked as State's Exhibit 20 and ask you if you can tell me
- 9 where it was that you responded to?
- 10 A: My original call was dispatched to [REDACTED] Page Street,
- 11 which would've been on this side of the road. The property
- 12 was located on the -- directly across the street at the house,
- 13 abandoned property across the road.
- 14 Q: And that would be [REDACTED]?
- 15 A: [REDACTED], ma'am, yes.
- 16 Q: Okay. And that's where the pink dot is?
- 17 A: Yes, ma'am.
- 18 Q: Okay. All right. And I'll show you what's been marked
- 19 State's Exhibits 23 through 26 and ask you if that's the house
- 20 that you responded to?
- 21 A: Yes, ma'am. Yes, that's gonna be [REDACTED].
- 22 Q: Okay. So, these pictures are basically the pink dot?
- 23 A: Yes, ma'am.
- 24 Q: Okay. I will show these to the jury.
- 25 When you got to [REDACTED] Page Street, who did you meet with?

State v. Welch - 2015-GS-26-969, 970, 971, 972
BRITTANY SOUTHERLAND - DIRECT BY WALKER

192

1 A: I met with the two complainants; they were sisters.

2 Q: Okay. And what did they tell you? How did they tell you
3 they found this?

4 A: They had stated earlier in the day there were some
5 workers doing work at the house. A few hours later after the
6 workers had left, they had gone over there just to see what
7 was done. As they were walking around the back of the house,
8 they said there was an AC unit that had a driver's license on
9 there and a military ID card.

10 Q: Okay.

11 A: As they continued around the house, they explained to me
12 that there was an outside storage shed. There was a purse
13 sitting in there with its contents sprawled around. At that
14 point, they went and looked at some of the items and they
15 discovered a debit card and a employee ID tag. That's when
16 they collected those items and went ahead and began making
17 phone calls.

18 Q: Okay. And what did you do with those items once you
19 collected them from the scene?

20 A: When I collected it, I just took a look at the
21 identification just to confirm that it was who Detective Beam
22 had called about. At that point, I placed the contents in my
23 trunk of my car and continued on with the investigation. I
24 went ahead and collected statements from them and then I
25 notified Detective Beam.

State v. Welch - 2015-GS-26-969,970,971,972
BRITTANY SOUTHERLAND - CROSS BY WILSON

193

1 Q: Okay. And did you turn in the purse as evidence?

2 A: No, ma'am. Detective Beam advised me that Crime Scene
3 was on their way to that location to collect all that. I was
4 just to stand by until they got there.

5 Q: Okay. And then to whom did you hand the purse off to?

6 A: That would have Crime Scene Officer Williamson.

7 Q: Okay. All right. And so from there did you have any
8 other involvement in this case?

9 A: No, ma'am.

10 Q: Okay.

11 MS. WALKER: I beg the Court's indulgence?

12 THE COURT: Yes, ma'am.

13 BY MS. WALKER:

14 Q: If you would, please answer any questions that Mr. Wilson
15 has.

16 A: Yes, ma'am.

17 THE COURT: Cross examination?

18 MR. WILSON: Your Honor, just briefly.

19 CROSS EXAMINATION OF BRITTANY SOUTHERLAND BY MR. WILSON:

20 Q: Officer, how are you doing today?

21 A: Good, how are you?

22 Q: Pretty good. So, when you found the purse, you said one
23 of the things that was in the purse was a debit card, correct?

24 A: It was some type of debit card, yes.

25 Q: Okay. Do you recall what kind of debit card it was? If

State v. Welch - 2015-GS-26-969, 970, 971, 972
BRITTANY SOUTHERLAND - CROSS BY WILSON

194

1 you don't, that's okay.

2 A: I do not.

3 Q: Okay.

4 MR. WILSON: No further questions, Your Honor.

5 THE COURT: Any redirect?

6 MS. WALKER: No, sir, Your Honor.

7 THE COURT: Do you wish the witness to be excused?

8 MS. WALKER: We do.

9 THE COURT: All right, ma'am, you are released from your
10 subpoena. You may go back to your regular duties.

11 All right. Next witness please?

12 MR. HOLFORD: The State calls Officer Austin Cox.

13 THE COURT: All right. All right, Officer, if you'll
14 come all the way around up here to the front and meet the
15 Clerk's representative, please.

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

18 AUSTIN COX, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: Please state your full name and spell your first
21 and last name for the Court.

22 MR. COX: My name is Austin McCray Cox, A-U-S-T-I-N and
23 then C-O-X.

24 THE COURT: Go ahead, Solicitor.

25 DIRECT EXAMINATION OF AUSTIN MCCRAY COX BY MR. HOLFORD:

State v. Welch - 2015-GS-26-969,970,971,972
AUSTIN MCCRAY COX - DIRECT BY HOLFORD

195

- 1 Q: Officer Cox, where are you employed?
- 2 A: Myrtle Beach Police Department.
- 3 Q: And how long have you been with Myrtle Beach?
- 4 A: A little over five years.
- 5 Q: Okay. What's your position now?
- 6 A: I work for the Street Crimes Unit.
- 7 Q: What kind of training do you have in Street Crimes?
- 8 A: I've been a part of various narcotics related
- 9 investigations. I've been a part of investigations related to
- 10 prostitution and then also as a patrol officer leading up to
- 11 my position, I've been involved in various investigations up
- 12 to and including CSC's, shoplifting, things like that.
- 13 Q: And did you go to the Police Academy?
- 14 A: Yes, sir.
- 15 Q: So you did?
- 16 A: I did.
- 17 Q: How long was that?
- 18 A: It was 12 weeks.
- 19 Q: And then do you do continuing certifications?
- 20 A: Yes, we have -- I believe it's yearly.
- 21 Q: So, in the past five years, is it fair to say you've done
- 22 a lot of training?
- 23 A: Yes, sir.
- 24 Q: Now this case back on January the 8th, 2015, were you
- 25 with Myrtle Beach Police Department?

State v. Welch - 2015-GS-26-969,970,971,972
AUSTIN MCCRAY COX - DIRECT BY HOLFORD

196

- 1 A: Yes, sir.
- 2 Q: And what was your position back then?
- 3 A: I was a patrol officer.
- 4 Q: Okay. And so what do you do as a patrol officer?
- 5 A: I respond to calls for service, generally 911 calls,
- 6 citizen complaints, things of that nature.
- 7 Q: And did you -- I apologize, go ahead.
- 8 A: That's okay. Go ahead.
- 9 Q: Did you respond to a call to service in this case?
- 10 A: Yes, I did.
- 11 Q: And what was the nature of that call?
- 12 A: I believe the initial nature was an armed robbery.
- 13 Q: Okay. And where did you respond to?
- 14 A: I responded to Belk.
- 15 Q: And what did you find out at Belk?
- 16 A: I don't remember the extent of the interview, you know
- 17 the content of the interview, but more or less, there was a
- 18 crime that was alleged in the city and I was just there to
- 19 listen.
- 20 Q: Okay. At some point, did you have contact with the --
- 21 with the victim, Jerrica Nelson?
- 22 A: I did.
- 23 Q: And was it to identify a person?
- 24 A: Yes, it was.
- 25 MR. HOLFORD: May I approach, Your Honor?

State v. Welch - 2015-GS-26-969,970,971,972
AUSTIN MCCRAY COX - DIRECT BY HOLFORD

197

1 THE COURT: Yes, sir.

2 BY MR. HOLFORD:

3 Q: I'm gonna hand you what's been entered as 17?

4 A: Okay.

5 Q: Are you familiar with that photo?

6 A: I am.

7 Q: How are you familiar with this photo?

8 A: It was a Facebook photo.

9 Q: Could you pull this photo up?

10 A: I believe Detective Beam pulled the photo up on his
11 department cell phone.

12 Q: Okay. And at that point in time, who was the victim
13 referring to this individual as?

14 A: I believe it was David Royal, David Royal.

15 Q: And did you in fact know his name to be something
16 different?

17 A: I did.

18 Q: And what do you know this individuals name to be?

19 A: David James Welch or D.J. Welch.

20 Q: Okay. So, you knew that the person identified on
21 Facebook as David Royal is in fact the Defendant in the
22 courtroom, David Welch?

23 A: Correct.

24 MR. WILSON: Your Honor, may we approach, Judge?

25 THE COURT: Sure.

State v. Welch - 2015-GS-26-969,970,971,972
MOTION

198

1 MR. WILSON: Thank you.

2 (REPORTER'S NOTE: A bench conference was held off the record
3 in the presence of but out of hearing of the Jury.)

4 THE COURT: Ladies and gentlemen of the jury, go to your
5 jury room, please.

6 (REPORTER'S NOTE: Jury exits courtroom. The following takes
7 place outside the presence of the Jury.)

8 THE COURT: All right, Mr. Wilson, be glad to hear from
9 you, sir.

10 MOTION:

11 MR. WILSON: Judge, my concern here is this, that we
12 obviously want to keep out any inference to the jury that this
13 Defendant had any sort of prior bad act or conduct which would
14 obviously be something this officer would know him from and
15 he's testifying on the stand, which was elicited by the
16 Solicitor about testimony saying that he knows him as David
17 Welch, and that's how they identified him. And based on what
18 I understand from the actual tapes as well as listening to the
19 interviews is that how they identified him was a conversation.
20 Again, this was the issue that I filed a motion about, Judge.
21 The conversation that they had where Detective Cox comes up
22 and this individual is named as David Royal on Facebook and
23 then the young lady saying, okay, well, you know, do you know
24 him -- this is Officer Sououd saying that and then he says in
25 front of, and we believe in earshot -- within earshot of the

State v. Welch - 2015-GS-26-969,970,971,972

199

MOTION

1 victim or the alleged victim in this case, oh yeah, I know
2 him, I know his name, which is the whole point of why we
3 redacted everything out of the, the interview with Woods
4 before and now he's testifying for the record that he knew him
5 before, that he knew his name, that he identified him. And
6 how else would he know him unless he had some run-ins with
7 him, which is the inference that the jury would jump to.

8 THE COURT: Solicitor, what's your response?

9 MR. HOLFORD: Your Honor, the State's been very careful
10 not to bring up anything about a conversation between Sououd,
11 not to bring up anything -- any mention of he knew him through
12 R.M.S. or he knew him through any prior involvement or in what
13 way he knew him. The only thing that has been testified to
14 the jury is that this picture known to be David Royal, this
15 officer knows is David Welch. That's how we get to the point
16 we are and how this Defendant gets arrested. Your Honor,
17 that's an important piece for the jury to know how we jump
18 from a David Royal to this Defendant sitting here in the
19 courtroom. There's been no inference made by the State or by
20 this officer on the stand in front of the jury that it
21 involves any prior crime, any prior bad act, any act
22 whatsoever. There's been zero inference as to how he knows
23 him or why he knows him. It's simply a connection between we
24 know that we talk about David Royal but how does that get us
25 to this defendant, David Welch, and he's the key link. He's

State v. Welch - 2015-GS-26-969,970,971,972
MOTION

200

1 the one who says I know that person in that photo; that's
2 David Welch.

3 MR. WILSON: He testified ---

4 THE COURT: All right.

5 MR. WILSON: I apologize, Your Honor.

6 THE COURT: Go ahead.

7 MR. WILSON: Just for the record, he testified earlier
8 that he does narcotics and that he does CSC. He said that
9 himself. Okay? And so the jury has already heard that.

10 THE COURT: Well, that's his job.

11 MR. WILSON: It is. Absolutely.

12 THE COURT: But he has not made a connection between his
13 job and the Defendant. For all the jury knows is he was a,
14 you know, YMCA basketball coach and that's how he knows that
15 individual to be David Welch. They don't know how he knows
16 him. He did not say how he knows him. The State did not ask
17 him how do you know him. So, I do not see how -- there is no
18 evidence in the record. There is nothing for the jury that
19 has been said before them to make a connection between this
20 witness and the Defendant and some prior crime.

21 If your request is for a mistrial, I deny your request
22 for a mistrial based on the fact that I do not believe there
23 is anything that has been said to the jury that would rise to
24 the level of a mistrial. In fact, I do not think anything has
25 been said improper to the jury in any shape, manner or form.

State v. Welch - 2015-GS-26-969,970,971,972
MOTION

201

1 With that, and the Court's denying your request for a
2 mistrial, do you want me to give some kind of curative
3 instruction to the jury?

4 MR. WILSON: Yes, sir, I would.

5 THE COURT: All right. And what would you like me to say
6 to them so that I don't indicate to them there's a problem
7 because I don't think they have any idea there's a problem
8 now, but I'll be glad to give them instruction, but what is it
9 that you want me to tell them.

10 MR. WILSON: Judge, I guess my -- my real concern, I
11 guess, is that if the jury -- even if -- you're right. He may
12 say that he's a YMCA coach and he coached him in basketball;
13 that's true. But they also may equally say, why did this
14 officer have contact with him? Again, I'm not sure how to
15 cure it. I ---

16 THE COURT: Well, I mean that's what I'll -- you know, I
17 am glad to give them a curative instruction. I'm not sure
18 what I'm curing, and I don't want that to lead to further
19 problems.

20 MR. WILSON: Right.

21 THE COURT: I'm glad for you to suggest to me, you know,
22 what you would want me to say to them that, you know,
23 something just in general that the jury must be guided by the
24 facts and evidence in the case or what -- what is it you want
25 me to tell them?

State v. Welch - 2015-GS-26-969,970,971,972
AUSTIN MCCRAY COX - CROSS BY WILSON

202

1 MR. WILSON: Judge, just that they -- actually, no, no
2 curative instruction, Judge.

3 THE COURT: All right. Very good.

4 MR. WILSON: Thank you, Judge.

5 THE COURT: All right. Thank you.

6 MR. WILSON: Thank you, Judge.

7 THE COURT: All right. All right. Let's ask the jury to
8 come back in then.

9 (REPORTER'S NOTE: Jury enters courtroom.)

10 THE COURT: All right, Solicitor, you may proceed.

11 MR. HOLFORD: Thank you, Your Honor.

12 BY MR. HOLFORD:

13 Q: Officer Cox, so you were able to provide -- State's 17,
14 this picture that the victim identified as David Royals is in
15 fact the Defendant, David Welch?

16 A: Correct.

17 MR. HOLFORD: No further questions, Your Honor.

18 THE COURT: All right. Cross examination?

19 MR. WILSON: Just briefly, Judge.

20 CROSS EXAMINATION OF AUSTIN MCCRAY COX BY MR. WILSON:

21 Q: Officer Cox, how are you doing today, sir?

22 A: Good.

23 Q: Your involvement in this case was pretty limited,
24 correct?

25 A: Yes, sir.

State v. Welch - 2015-GS-26-969,970,971,972
AUSTIN MCCRAY COX - CROSS BY WILSON

203

1 Q: Okay. You didn't do any of the actual conversations with
2 Jerrica Nelson or with David Welch, did you?

3 A: As far as I -- I don't believe I did.

4 Q: Okay. All right. So, your involvement was simply just
5 the picture; is that right?

6 A: Yes, sir.

7 Q: Thank you so much. Nothing further.

8 THE COURT: Any redirect?

9 MR. HOLFORD: No, Your Honor.

10 THE COURT: All right. Do you wish the witness to be
11 excused?

12 MR. HOLFORD: Yes, Your Honor.

13 THE COURT: Any objection?

14 MR. WILSON: No objection, Your Honor.

15 THE COURT: All right, sir, you're released from your
16 subpoena and may go back to your regular duties.

17 A: Thank you, Your Honor.

18 THE COURT: Thank you, sir.

19 All right, Solicitor, your next witness, please.

20 MR. HOLFORD: Yes, Your Honor. The State calls Mike
21 Dame.

22 THE COURT: All right. Very good.

23 All right, Mr. Dame, if you want to come all the way
24 around and just meet the Clerk's representative right up front
25 please, sir.

State v. Welch - 2015-GS-26-969,970,971,972
MICHAEL DAME - DIRECT BY HOLFORD

204

1 CLERK: Please raise your right hand.

2 MICHAEL DAME, HAVING BEEN SWORN

3 TESTIFIES AS FOLLOWS:

4 CLERK: Please state your full name and spell your first
5 and last name.

6 MR. DAME: Michael Dame, D-A-M-E.

7 THE COURT: Go ahead and have a seat, sir.

8 All right, Solicitor, go ahead.

9 DIRECT EXAMINATION OF MICHAEL DAME BY MR. HOLFORD:

10 Q: Mr. Dame, how are you today?

11 A: Good, how are you, sir?

12 Q: Where are you currently employed?

13 A: I'm retired from the Myrtle Beach Police Department.

14 Q: Okay. You were with Myrtle Beach back in 2015?

15 A: Yes, sir.

16 Q: And so I would've known you back then as Officer Dame?

17 A: Yes, sir.

18 Q: How long have you been employed with Myrtle Beach Police
19 Department?

20 A: Almost 18 years.

21 Q: Okay. And when did you retire?

22 A: Last year; last March, 2016.

23 Q: How did you come to be involved in this case?

24 A: We were made aware that we'd be going out to [REDACTED] Oak to
25 pick up a subject that was involved in something we were told

State v. Welch - 2015-GS-26-969, 970, 971, 972
MICHAEL DAME - DIRECT BY HOLFORD

205

1 of a sexual nature, some assault. We were there basically for
2 assistance; I was on the Street Crimes Unit.

3 Q: Okay. And did you know the individual you were looking
4 for?

5 A: I did not know him personally, no.

6 Q: All right. Did you know the name of this ---

7 A: We were given the name.

8 Q: And what was the name of the subject?

9 A: David Welch.

10 Q: Okay. And you said you were going to [REDACTED] Oak, right?

11 A: Yes.

12 Q: On State's 20, do you know where [REDACTED] Oak is on this map?

13 A: I'm not used to looking at it -- I mean, from the air, it
14 would be hard for me to tell, but ---

15 Q: All right. So, if Highway 15 is here, Ramsey, Jennings,
16 Oak Drive is there, Poplar is here.

17 A: Right. I mean, from a Google Map, I couldn't pick it out
18 without ---

19 Q: Okay.

20 A: It's not an area that I was in constantly, but ---

21 Q: Okay. But the Defendant's location was [REDACTED] Oak Street?

22 A: That we were sure of, yes.

23 MR. HOLFORD: May I approach with the State's 27 for ID?

24 THE COURT: Yes, sir.

25 BY MR. HOLFORD:

State v. Welch - 2015-GS-26-969, 970, 971, 972
MICHAEL DAME - DIRECT BY HOLFORD

206

1 Q: Are you familiar with State's 27?

2 A: Yes, I do recognize that residence.

3 Q: Is that a picture of the residence that you went to?

4 A: Yes, it is.

5 MR. HOLFORD: Your Honor, the State would move 27 in
6 evidence.

7 THE COURT: Any objection?

8 MR. WILSON: No objection, Your Honor.

9 THE COURT: All right, sir. It's in evidence without
10 objection.

11 STATE'S EXHIBIT NUMBER 27

12 ADMITTED INTO EVIDENCE

13 BY MR. HOLFORD:

14 Q: So is this [REDACTED] Oak that you were heading to?

15 A: It is, sir.

16 Q: And that was to find the subject, David Welch?

17 A: Yes, sir.

18 Q: Okay. Tell me what happened when you went there?

19 A: Myself and Sergeant Murphy, he was my Sergeant in Street
20 Crimes; we approached the house from the rear in anticipation
21 of anything. There were officers that approached from the
22 front to knock on the door. We approached from the side rear
23 and I was to the back of the house to the right.

24 Q: Okay.

25 A: There was a fence there; we sat alongside the fence.

State v. Welch - 2015-GS-26-969,970,971,972
MICHAEL DAME - DIRECT BY HOLFORD

207

1 Q: So multiple people approached this house?

2 A: Yes, sir.

3 Q: And did you knock?

4 A: I believe they knocked up front. Like I said, I was in
5 the back. We could hear people talking up front.

6 Q: Okay. And what happened?

7 A: Basically, we could hear on the radio right away as soon
8 as they approached because they made the announcement we're
9 approaching the house at this time. Almost simultaneously the
10 back door flew open and the subject exited very quickly out
11 the back of the house.

12 Q: Okay. And did you give chase?

13 A: Officer -- some officers went over to the fence to give
14 chase. I've been in a lot of chases in my career; I went wide
15 knowing this could go either way. There was a lot of stuff in
16 the back, a lot of fences, a lot of neighbors' yards and it
17 was very dark.

18 Q: Do you know if you were running north or south?

19 A: It seemed like we would be running north.

20 Q: Okay. Did you eventually find the subject?

21 A: I did.

22 Q: Where did you find him?

23 A: While certain officers were running through back yards
24 and over fences, like I said, I went wide down the street and
25 as I came around to anticipate, well, they should be about

State v. Welch - 2015-GS-26-969, 970, 971, 972
MICHAEL DAME - CROSS BY WILSON

208

1 here, I saw the same subject that left the house going
2 underneath a vehicle, cowering underneath a vehicle.

3 Q: Okay. Do you remember where that road -- what that road
4 was?

5 A: I don't recall the name of the road.

6 Q: Okay. But you did find the subject hiding under a car?

7 A: I did.

8 Q: And he ran from that [REDACTED] Oak Street address?

9 A: It was the same individual that left the building, yes.

10 Q: Okay. And did you apprehend him?

11 A: We did remove him from underneath the vehicle and he was
12 placed under arrest.

13 Q: And is that same individual David Welch?

14 A: Yes, it is.

15 Q: And he was taken into custody at that point?

16 A: He was.

17 MR. HOLFORD: No further questions, Your Honor.

18 THE COURT: Cross examination?

19 MR. WILSON: Your Honor, if it please the Court, Judge?

20 THE COURT: Go ahead.

21 CROSS EXAMINATION OF MICHAEL DAME BY MR. WILSON:

22 Q: Good afternoon, Officer, how are you doing?

23 A: Good, sir.

24 Q: Good to see you. Just a couple of questions. When you
25 gave chase at this residence, did David Welch -- you

State v. Welch - 2015-GS-26-969,970,971,972
MICHAEL DAME - CROSS BY WILSON

209

1 eventually caught him, right?
2 A: Yes, sir.
3 Q: Okay. And when you gave chase, do you know why he ran?
4 A: Do I know why he ran?
5 Q: Yes.
6 A: I can't speak for him.
7 Q: Okay. All right. You personally don't know why he ran?
8 A: I can't speak for him, sir.
9 Q: Okay. Let me ask you this, when you caught him, he had
10 clothes on, correct?
11 A: He did have clothes.
12 Q: Can you tell me what he had on?
13 A: I don't recall. It wasn't anything that stood out.
14 Q: Okay. All right. And normally when y'all catch
15 somebody, y'all do Terry pat, right?
16 A: Yes, sir.
17 Q: Okay. Explain to the jury what a Terry pat is?
18 A: Basically, a light patting down of the person to make
19 sure there's no weapons on them at that time.
20 Q: Okay. And did you find a weapon on David Welch?
21 A: I did not do the pat down.
22 Q: All right. You know who did the pat down?
23 A: I do not, sir.
24 Q: All right. You would've been there when he was taken
25 down?

State v. Welch - 2015-GS-26-969, 970, 971, 972
MICHAEL DAME - CROSS BY WILSON

210

1 A: Yes, sir.

2 Q: Did you actually tackle him?

3 A: No, he was cowering underneath the vehicle.

4 Q: Okay. Who pulled him from underneath the vehicle?

5 A: I, I don't recall who exactly. My, my focus was to watch
6 his hands. I could not see his left hand.

7 Q: Okay.

8 A: I'm concerned with a gun. There was mention of a gun
9 earlier. My concern is with this man's hands.

10 Q: Okay. All right. Did you see the officers pat him down?

11 A: I don't recall if I did.

12 Q: Okay. Do you recall if you guys recovered a weapon from
13 his person when you caught him?

14 A: I don't recall if they did.

15 Q: Okay. Do you recall if they searched him and found
16 condoms?

17 A: I don't recall if they did.

18 Q: Okay. All right. So, all you recall is that he ran out
19 of the house?

20 A: Yes, sir.

21 MR. WILSON: Okay. No further questions, Judge.

22 THE COURT: Very good.

23 Redirect?

24 MR. HOLFORD: Just one quick question.

25 REDIRECT EXAMINATION OF MICHAEL DAME BY MR. HOLFORD:

State v. Welch - 2015-GS-26-969,970,971,972
MICHAEL DAME - REDIRECT BY HOLFORD

211

1 Q: Do you know about what time you went to that house?

2 A: I believe it to be around midnight or shortly thereafter.

3 Q: Okay.

4 A: It was between 11 and 1; there was a timeframe there
5 between January 8th and 9th.

6 Q: Okay. No further questions.

7 THE COURT: Anything on that question, Mr. Wilson?

8 MR. WILSON: Nothing, Your Honor.

9 THE COURT: All right, sir.

10 Do you wish the witness to be excused, Solicitor?

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: All right, sir, you're released from your
13 subpoena and may go back to your regular duties.

14 A: All right.

15 THE COURT: Thank you, sir.

16 A: Thank you, sir.

17 THE COURT: All right, Solicitor, your next witness
18 please.

19 MR. HOLFORD: Yes, Your Honor, the State calls Malinda
20 Shadoan.

21 THE COURT: All right.

22 CLERK: Please raise your right hand.

23 MELINDA SHADOAN, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Please state your full name and spell your first

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - DIRECT BY HOLFORD

212

1 and last name for the Court.

2 MS. SHADOAN: Malinda Shadoan, M-A-L-I-N-D-A, Shadoan, S-
3 H-A-D-O-A-N.

4 THE COURT: All right. Go ahead, Solicitor.

5 DIRECT EXAMINATION OF MALINDA SHADOAN BY MR. HOLFORD:

6 Q: Malinda, where are you currently employed?

7 A: At the City of Myrtle Beach Police Department.

8 Q: And how long have you been there?

9 A: Nine years in July.

10 Q: What's your position at Myrtle Beach?

11 A: I am the Property and Evidence Technician.

12 Q: And so what does that mean you do?

13 A: I basically secure all the evidence of the City and the
14 lost and found.

15 Q: Okay. And have you secured evidence in this case?

16 A: I have.

17 Q: Is there a case number associated with it?

18 A: There is.

19 Q: And do you keep track of all the evidence that comes in
20 and out based on case number?

21 A: We do.

22 Q: Do you have lot numbers and bag numbers and ---

23 A: Yeah, there's personal record numbers and they're each
24 assigned its own individual number.

25 Q: And did you bring evidence in this case here today?

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - DIRECT BY HOLFORD

213

1 A: I did.

2 Q: Is that what this box is?

3 A: It is.

4 Q: With the bags and stuff in it?

5 A: Yes, sir.

6 Q: Are pictures taken of the evidence as well?

7 A: At times, whether by the officers or Crime Scene.

8 Q: I'm gonna show you what's been marked as State's 7?

9 A: Okay.

10 Q: Do you recognize that?

11 A: I wouldn't know; it's in a brown bag.

12 Q: Do you have a list of the evidence that's kept in this

13 case?

14 A: I do.

15 Q: And so you'd be able to tell what all you had pertaining

16 to this case?

17 A: Correct.

18 Q: Is there a purse?

19 A: There is. That would be Group Number 25.

20 Q: Group 25?

21 A: At the bottom.

22 Q: Now, if an item gets in evidence, it stays with the case

23 doesn't it?

24 A: It does.

25 MR. HOLFORD: Can I mark this just for ID?

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - DIRECT BY HOLFORD

214

1 THE COURT: Yes. What number is that, please, ma'am?

2 COURT REPORTER: 29 for ID.

3 STATE'S EXHIBIT NUMBER 29

4 MARKED FOR IDENTIFICATION

5 MR. HOLFORD: I'm gonna approach with what's been marked
6 as ID for State's 29, may I, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. HOLFORD:

9 Q: So, this says Item 25/1, right

10 A: Correct?

11 Q: And then what's on the bag?

12 A: It's the case number, our agency, MBPD, and then the date
13 that it was actually processed into my room.

14 Q: Okay. And what's inside here? What does it say is
15 inside?

16 A: It says peach-colored purse with contents Group 25/1.

17 Q: Okay. Now, if I actually hand you the purse -- it's got
18 to stay with all this stuff, doesn't it?

19 A: If it's introduced as an exhibit, yes, sir.

20 THE COURT: Y'all come up here for just one second.

21 (REPORTER'S NOTE: A bench conference was held off the record
22 in the presence of but out of hearing of the Jury.)

23 BY MR. HOLFORD:

24 Q: This bag is sealed, isn't it?

25 A: Correct.

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - DIRECT BY HOLFORD

215

- 1 Q: And why is that tape on that?
- 2 A: That's so nobody can tamper with it. So if it comes into
3 my room and shows that the officer or the Crime Scene officer
4 had secured it in that location and I can't or anybody else
5 can't open it up and tamper with it.
- 6 Q: And are there other initials on there?
- 7 A: Initially they were Scott Williamson's and then mine
8 initials after that.
- 9 Q: Okay. And so what do you when you tape it, you initial
10 over it?
- 11 A: Initial and date and that shows that nobody else; this
12 tape is very sticky. If you try to even open it up, it can
13 show that it's tampered with and at that point, then you can
14 tell that it's been either opened or tried to be opened.
- 15 Q: Okay. Will you open that up and tell the jury what's
16 inside?
- 17 A: You want me to take it out? It looks like it's the peach
18 colored purse.
- 19 Q: Like it says on the -- on your inventory sheet?
- 20 A: Correct.
- 21 Q: And what it said it was on the bag?
- 22 A: Correct.
- 23 Q: Now, you don't actually go out and collect any of this,
24 do you?
- 25 A: I do not.

State v. Welch - 2015-GS-26-969, 970, 971, 972
MALINDA SHADOAN - DIRECT BY HOLFORD

216

1 Q: You're just in charge of holding it?

2 A: Securing it in the location for us; we're just the
3 custodians.

4 Q: Was there a -- was there clothing from the Defendant
5 collected?

6 A: Yes, sir.

7 Q: What is that clothing?

8 A: I've got Group 19, says it's suspect clothing, shirt,
9 fleece, socks, shorts and it continues on. I'm not sure what
10 it says on that one. Then it's suspect's shoes, a pair of
11 them, and the suspect underwear.

12 Q: And are there photographs of the suspect's clothing?

13 A: There are.

14 Q: Are those also kept?

15 A: Correct.

16 Q: They would be kept on a CD, right?

17 A: This might be actual photographs. I'd have to look at
18 the envelope to see.

19 Q: You also have a 911 recording?

20 A: I do.

21 Q: So, you actually have a recording. If we would've played
22 that in court already, it wouldn't be the one that's in
23 evidence, but it'd be the same recording?

24 A: The same exact one.

25 MR. HOLFORD: Court's indulgence?

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - DIRECT BY HOLFORD

217

1 THE COURT: Yes, sir.

2 BY MR. HOLFORD:

3 Q: Do you keep a record of who turned the purse in to you?

4 A: Yes, sir.

5 Q: And who turned that purse in to you?

6 A: It was Scott Williamson, who was a Crime Scene officer.

7 Q: Okay. Now, he wouldn't tell you where he found it or
8 anything like that, he just says this is associated with this
9 case and I'm turning it in?

10 A: Correct, unless it was listed on the bag, I'd never know.

11 Q: But a Crime Scene officer, Scott Williamson, turned that
12 purse in?

13 A: He did.

14 Q: And are there identifying information about who turns
15 every piece of evidence in?

16 A: Yes, sir.

17 Q: Okay.

18 A: Date and time as well.

19 Q: Is there a black hat in evidence?

20 A: Yep, that would be Group Number 5.

21 COURT REPORTER: 30 for ID.

22 STATE'S EXHIBIT NUMBER 30

23 MARKED FOR IDENTIFICATION

24 MR. HOLFORD: May I approach, Your Honor?

25 THE COURT: Yes, sir.

State v. Welch - 2015-GS-26-969, 970, 971, 972
MALINDA SHADOAN - CROSS BY WILSON

218

1 BY MR. HOLFORD:

2 Q: This has been marked as State's 30 for ID. Is that a --
3 can you tell me what's in that bag or what it says?

4 A: It states it's a black hat, Group 5, Item 1.

5 Q: Okay. And who turned that into you?

6 A: It looks like the seizing officer at the time was William
7 Stair, who was at the time another Crime Scene officer.

8 Q: Okay. You don't know where he got it from, do you?

9 A: No.

10 Q: You just know he turned it into evidence?

11 A: Right.

12 Q: Is there a black hat in there? Can you open it?

13 A: Yeah. You want me to take it out?

14 Q: Yes.

15 A: (Witness complies.)

16 MR. HOLFORD: Your Honor, I have no further questions at
17 this time.

18 THE COURT: All right. Cross examination?

19 MR. WILSON: Your Honor, if it please the Court?

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION OF MALINDA SHADOAN BY MR. WILSON:

22 Q: And I apologize, how do you pronounce your last name, I'm
23 sorry?

24 A: Shadoan.

25 Q: Shadoan. Officer Shadoan, how are you doing today?

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - CROSS BY WILSON

219

- 1 A: Good thank you; how are you?
- 2 Q: Doing well. You also took possession of a CSC kit?
- 3 A: Yes, sir.
- 4 Q: In this case?
- 5 A: Sure.
- 6 Q: Can you tell the Court about what number that is and also
- 7 about how you took possession of it and who you took
- 8 possession from?
- 9 A: That would be Group Number 1.
- 10 Q: Group Number 1?
- 11 A: And it looks like it was Officer Humes, Tony Humes, and
- 12 he was also a Crime Scene officer.
- 13 MR. WILSON: Court's indulgence, Your Honor?
- 14 THE COURT: Yes, sir.
- 15 MR. WILSON: May I approach the witness, Judge?
- 16 THE COURT: Yes, sir.
- 17 BY MR. WILSON:
- 18 Q: And can you tell the Court if you recognize that
- 19 particular CSC Kit?
- 20 A: Yes, sir.
- 21 Q: Okay. And can you read the numbers that are on there and
- 22 identify it for me?
- 23 A: The case number?
- 24 Q: Yes, ma'am.
- 25 A: 15000445 would be the case number, Group 1, Item 1.

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - CROSS BY WILSON

220

1 Q: Very good. Thank you so much.

2 A: You're welcome.

3 MR. WILSON: Your Honor, at this time, I'd just like to
4 have it marked for identification purposes only.

5 THE COURT: All right. Very good.

6 MR. WILSON: Thank you so much.

7 DEFENDANT'S EXHIBIT NUMBER 6

8 MARKED FOR IDENTIFICATION

9 MR. WILSON: This will be Defendant's identification
10 only, Judge, number 6.

11 THE COURT: Thank you very much.

12 MR. WILSON: Thank you, Judge.

13 BY MR. WILSON:

14 Q: Now, you would have taken that into possession from
15 Humes, correct?

16 A: Correct.

17 Q: Okay. And then what would you have done with that?

18 A: Something like that, like a CSC kit, it has to be housed
19 in the refrigerator, so I would go ahead and label it like I
20 did with all the other ones and put it right in the
21 refrigerator.

22 Q: Okay.

23 MR. WILSON: Your Honor, may I approach the witness?

24 THE COURT: Yes, sir.

25 BY MR. WILSON:

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - CROSS BY WILSON

221

1 Q: Okay. This is a certified copy from SLED, State Law
2 Enforcement Division, who took possession of it; is that your
3 signature on that document?

4 A: That would be mine.

5 Q: Okay. And then who would you have handed the document to
6 and handed the materials off to?

7 A: One of the login techs; her name is Jennifer Aycock.

8 Q: Okay. All right. And you did hand it off to her?

9 A: I did.

10 Q: Thank you so much.

11 THE COURT: Your Honor, at this time, I'd like to have
12 this marked for identification purposes only.

13 THE COURT: Yes, sir.

14 MR. WILSON: It's gone be Defendant's identification
15 only, Number 7.

16 THE COURT: All right.

17 DEFENDANT'S EXHIBIT NUMBER 7

18 MARKED FOR IDENTIFICATION

19 THE COURT: All right.

20 MR. WILSON: Court's indulgence, Your Honor.

21 THE COURT: Yes, sir.

22 BY MR. WILSON:

23 Q: Now, you also took possession of a swab, a buccal swab;
24 is that correct?

25 A: Yes, sir.

State v. Welch - 2015-GS-26-969, 970, 971, 972
MALINDA SHADOAN - CROSS BY WILSON

222

1 Q: Okay. And you know what group that's from?

2 A: There's a few of them. Which ones exactly were you
3 looking for? We've got swabs from the vehicle.

4 Q: Yeah, you got a lot of them.

5 A: Yeah.

6 Q: You're right. Here I have a Group 11, Item 1, two swabs
7 from the rear passenger side door and interior handle?

8 A: Correct.

9 Q: Okay. And you would've taken possession of this?

10 A: Correct.

11 Q: Okay. See if you can just identify -- you don't have to
12 remove its contents, but you took possession of that?

13 A: Yes, sir.

14 Q: Okay. And was that forwarded to anyone?

15 A: This one, no.

16 Q: Okay. And why wouldn't that have been forwarded to
17 anyone in this case?

18 A: No one has requested it for testing at the time.

19 Q: All right. And I apologize, Your Honor, may I enter this
20 for identification purposes only?

21 THE COURT: Yes, sir.

22 MR. WILSON: Thank you, Judge. It will be Defendant's
23 identification only Number 8.

24 THE COURT: All right.

25 DEFENDANT'S EXHIBIT NUMBER 8

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - CROSS BY WILSON

223

1 MARKED FOR IDENTIFICATION

2 MR. WILSON: Thank you, ma'am, I appreciate that.

3 BY MR. WILSON:

4 Q: Now, just be clear, you said that someone would have to
5 actually request that it be processed or request that it be
6 tested?

7 A: Correct.

8 Q: Okay. So, it wouldn't be your responsibility to actually
9 send it off, you would wait for a request from whom?

10 A: It would either be from the Solicitors, from the Crime
11 Scene officers or the detective that's assigned to the case.

12 Q: Okay. This is Group 21, Item 1?

13 A: Okay.

14 Q: All right. And this would have also been sent to you,
15 correct?

16 A: Yes.

17 Q: Okay.

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

19 THE COURT: Yes, sir.

20 BY MR. WILSON:

21 Q: Now you'll have to open the contents ---

22 A: Thank you.

23 Q: Just tell the jury what that is and whether or not it was
24 sent off for processing.

25 A: Yes, sir. It is the suspect underwear, Group 21; and

State v. Welch - 2015-GS-26-969, 970, 971, 972
MALINDA SHADOAN - CROSS BY WILSON

224

1 no, it was not.

2 Q: Okay. Thank you, ma'am.

3 A: You're welcome.

4 MR. WILSON: Your Honor, at this time, can I move this in
5 for identification purposes only?

6 THE COURT: Yes, sir.

7 MR. WILSON: Thank you, Judge.

8 COURT REPORTER: Defendant's 9 for ID.

9 THE COURT: All right.

10 MR. WILSON: Defendant's 9, ID only, Judge.

11 THE COURT: All right. Very good.

12 MR. WILSON: Thank you, Your Honor.

13 DEFENDANT'S EXHIBIT NUMBER 9

14 MARKED FOR IDENTIFICATION

15 BY MR. WILSON:

16 Q: Okay. This is Group 12, Item 1, swabs from passenger
17 side front door handle inside?

18 A: Yes, sir.

19 Q: Okay. And did you also receive this?

20 A: I did.

21 MR. WILSON: Judge, may I approach?

22 THE COURT: Yes, sir.

23 MR. WILSON: Thank you, Your Honor.

24 BY MR. WILSON:

25 Q: And can you tell the jury whether or not that was sent

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - CROSS BY WILSON

225

1 off for processing or requested to be processed?

2 A: It was not.

3 Q: Okay. All right. And but you can identify this?

4 A: Yes, it's the swab passenger side front door handle
5 inside, two of them.

6 Q: Thank you so much.

7 A: Okay.

8 MR. WILSON: Judge, if I could move this in for
9 identification purposes only?

10 THE COURT: Yes, sir.

11 MR. WILSON: Thank you. Your Honor, this is gonna be
12 identification purposes Number 10 Defense.

13 THE COURT: All right. Very good.

14 DEFENDANT'S EXHIBIT NUMBER 10

15 MARKED FOR IDENTIFICATION

16 BY MR. WILSON:

17 Q: And I'm holding in my hand, just to kind of move this
18 along if the Court's willing?

19 THE COURT: Yes, sir.

20 Q: Group 13, Item 1; Group 14, Item 1; Group 16, Item 1,
21 which is paperwork from the hospital, Item 1 also, CDs, search
22 warrant residence; and then Group 22, Item 1, CD, suspect
23 clothing; and then CSC Group 23, Item 1, and then this is the
24 CDR scene with lab photographs?

25 A: Yes, sir.

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - CROSS BY WILSON

226

1 Q: At one time, can you just tell me whether or not you
2 recognize these items and if any of these items were sent off
3 to be processed, if appropriate?

4 A: I wouldn't know if they're appropriate or not, but they
5 did not go.

6 Q: Okay. All right. Very well. Thank you, ma'am.

7 A: You're welcome.

8 MR. WILSON: Your Honor, at this time, if there are no
9 objections, I'd like to move all these into evidence?

10 THE COURT: As?

11 MR. WILSON: For identification purposes only, Judge.

12 THE COURT: As one or do you want them separately
13 marked?

14 MR. WILSON: As one, Judge, if I could.

15 THE COURT: All right. Very good.

16 MR. WILSON: Is that possible?

17 THE COURT: Mr. Wilson?

18 MR. WILSON: Oh, thank you. Thank you.

19 COURT REPORTER: How many items are there?

20 MR. WILSON: There are 1, 2, 3, 4, 5, 6, 7, 8 items.

21 COURT REPORTER: And that's 11 for ID.

22 THE COURT: Thank you.

23 MR. WILSON: Yes, ma'am. Thank you, ma'am.

24 DEFENDANT'S EXHIBIT NUMBER 11

25 MARKED FOR IDENTIFICATION

State v. Welch - 2015-GS-26-969,970,971,972
MALINDA SHADOAN - CROSS BY WILSON

227

1 MR. WILSON: Court's indulgence, Your Honor?

2 THE COURT: Yes, sir.

3 MR. WILSON: And this is gonna be the last one. May I
4 approach, Judge?

5 THE COURT: Yes, sir, please.

6 BY MR. WILSON:

7 Q: Can you tell the jury what this is and whether or not it
8 was also sent off to be processed or not?

9 A: This one is Group 10. It looks like two buccal swabs,
10 DNA victim standards of Jerrica Nelson and, because it's in
11 the SLED packaging, it did get sent off for testing.

12 Q: Okay. All right. And it would've been sent to who?

13 A: To SLED.

14 Q: Okay. All right. Thank you so much.

15 A: You're welcome.

16 MR. WILSON: Judge, at this time, I'd like to have this
17 entered into evidence as just for identification purposes
18 only.

19 THE COURT: All right, sir.

20 MR. WILSON: Thank you, ma'am.

21 COURT REPORTER: Defendant's 12 for ID.

22 MR. WILSON: Defendant's 12 for Defendant's ID.

23 DEFENDANT'S EXHIBIT NUMBER 12

24 MARKED FOR IDENTIFICATION

25 BY MR. WILSON:

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

228

1 Q: All right. Would you have received back results or
2 anything like that?

3 A: No, I just receive back the items when they're done with
4 the analysis?

5 Q: Okay. All right.

6 No further questions, Your Honor.

7 THE COURT: All right. Very good.

8 MR. WILSON: Thank you, Your Honor.

9 THE COURT: Redirect?

10 A: Thank you.

11 MR. HOLFORD: Nothing further, Your Honor.

12 THE COURT: Do you wish the witness to be excused?

13 MR. HOLFORD: Yes, Your Honor.

14 THE COURT: All right, ma'am, you're released from your
15 subpoena and may go back to your regular duties. Before you
16 do that, can you put those two items back in the bags that
17 they belong in, please?

18 MR. HOLFORD: Your Honor, may we approach?

19 THE COURT: Sure.

20 (REPORTER'S NOTE: A bench conference was held off the record
21 in the presence of but out of hearing of the Jury.)

22 BY THE COURT:

23 THE COURT: All right. Ladies and gentlemen, we'll take
24 a short break at this time. If you'll go to your jury room
25 for a short break, remember don't talk about the case and

State v. Welch - 2015-GS-26-969,970,971,972
MOTION

229

1 don't allow anybody to talk to you about it. Okay?

2 Thank you very much.

3 (REPORTER'S NOTE: Jury exits courtroom. The following takes
4 place outside the presence of the Jury.)

5 THE COURT: All right. Solicitor, anything we need to do
6 before we take a break?

7 MR. HOLFORD: No, Your Honor.

8 THE COURT: And, Mr. Wilson?

9 MR. WILSON: Nothing, Your Honor.

10 THE COURT: All right. Very good.

11 (RECESS.)

12 *****OFF THE RECORD*****

13 (On the Record.)

14 (REPORTER'S NOTE: The following takes place outside the
15 presence of the Jury.)

16 THE COURT: All right. Solicitor, you ready for the jury
17 to come in?

18 MOTION:

19 MR. HOLFORD: Your Honor, if we could put one matter on
20 the record?

21 THE COURT: Sure.

22 MR. HOLFORD: I just realized, we talked about this back
23 in Chambers about the issue of the search warrant where the
24 bullets were found at the house.

25 THE COURT: Yes.

State v. Welch - 2015-GS-26-969, 970, 971, 972
MOTION

230

1 MR. HOLFORD: The State would like to introduce the fact
2 that the bullets, .38 caliber bullets were found during that
3 search warrant. We intend to do so during this witness,
4 Detective Beam, we just want to place that in the record.

5 THE COURT: All right. Very good. And the position of
6 the Defense, Mr. Wilson?

7 MR. WILSON: Judge, there is case law on this regarding
8 that and we talked about this in Chambers, jumping from one
9 inference to the other and what the State is asking the jury
10 to do is use the actual bullets as a stepping stone to get to
11 the gun and the bullets were found nowhere at the scene of the
12 crime. They weren't found on the person of the Defendant and
13 they weren't found near the actual apartment complex where
14 they say all this happened. I think that it is highly
15 prejudicial and the actual probative value of it, because
16 again, these are old bullets. I've seen them; so has the
17 prosecution. These are really old bullets that were found in
18 a box in a house. I would ask the Court to deny their ability
19 to actually put that stuff in; it's prejudicial. Again, I
20 don't think it's relevant and, again, I'd liken it to on the
21 record, having a baseball bat murder and then going to the
22 house and finding a baseball and saying, look, they definitely
23 had a baseball bat.

24 THE COURT: All right, sir.

25 MR. WILSON: Too far.

State v. Welch - 2015-GS-26-969,970,971,972
MOTION

231

1 THE COURT: And I appreciate that.

2 Solicitor, what I'm gonna do at this point in time is I'm
3 not gonna allow the State to present the bullets in evidence
4 in its direct presentation of evidence. However, I'll reserve
5 the issue of whether or not -- because I don't find them to be
6 directly relevant to the issue that the -- that the
7 prejudicial value outweighs the probative value at this point
8 in time in this case. But, should the Defendant testify or
9 should there be other witnesses that might testify on behalf
10 of the Defendant, which would raise the issue that -- and I'm
11 just using this as an example, not making any kind of ruling,
12 but that the Defendant knows nothing about weapons, has never
13 had a weapon in his life or anything of that nature, then it
14 might then bridge that hurdle of becoming more probative than
15 prejudicial at that -- at that point in time. So, in the
16 State's direct presentation, I'm not gonna allow it, but it is
17 not a absolute bar. It depends on what may develop through
18 the Defendant's presentation of the case. We'll just see
19 about that. All right?

20 MR. HOLFORD: Yes, Your Honor.

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

22 MR. WILSON: Thank you, Judge.

23 THE COURT: Ask the jury to come in, please.

24 (REPORTER'S NOTE: Jury enters courtroom.)

25 THE COURT: All right, Solicitor, your next witness,

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY HOLFORD

232

1 please.

2 MR. HOLFORD: Thank you, Your Honor. The State calls
3 Detective Jeremiah Beam.

4 THE COURT: All right. Please come around to be sworn,
5 sir.

6 CLERK: Please raise your right hand.

7 JEREMIAH BEAM, HAVING BEEN SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK: State your full name and spell your first and
10 last name for the Court.

11 MR. BEAM: It's Jeremiah Beam; J-E-R-E-M-I-A-H, last name
12 is Beam, B-E-A-M.

13 DIRECT EXAMINATION OF JEREMIAH BEAM BY MR. HOLFORD:

14 Q: Detective Beam, where are you currently employed?

15 A: With the City of Myrtle Beach Police Department.

16 Q: How long have you been a detective there?

17 A: Almost three years.

18 Q: And were you employed with Myrtle Beach before that?

19 A: Yes, sir.

20 Q: For how long?

21 A: Almost 13.

22 Q: Okay. So, you've been on the force about 16 years now
23 total?

24 A: Thirteen.

25 Q: Thirteen.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

233

- 1 A: So, 10 years before I joined the detectives.
- 2 Q: Okay. And are you tasked to a specific division?
- 3 A: I am. I'm assigned -- I'm one of six assigned to our
4 Violent Crimes Unit.
- 5 Q: Okay. And what type of training do you go through in
6 order to be a detective?
- 7 A: It varies. We have homicide training, different types of
8 training with crime scenes and stuff of that nature.
- 9 Q: What separates you from a patrol officer -- what's the
10 difference between a patrol officer and a detective?
- 11 A: Other than a fancy suit sometimes and a little bit more
12 training, you have to get promoted and test for it and it's --
13 typically, you've been there a certain amount of time and
14 you've excelled and done some things to do get to that point.
- 15 Q: Do you do more investigation?
- 16 A: Yes, sir.
- 17 Q: And so what happens when you're called out to a crime
18 scene?
- 19 A: It's usually we're summonsed by a on-scene patrol
20 supervisor and it meets a criteria, typically a violent crime
21 or something that needs additional follow-up that patrol may
22 not be able to handle.
- 23 Q: So, you're not usually the first one to show up to a
24 crime scene, are you?
- 25 A: No, sir, very rarely.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

234

1 Q: Were you the first one to show up on this scene?
2 A: No, sir.
3 Q: When did you respond on January the 8th?
4 A: After I was notified, notified by the patrol supervisor.
5 Corporal Bland notified me of what he had and that's when I
6 responded.
7 Q: And what location did you respond to?
8 A: Initially, to the Belk's parking lot, sir.
9 Q: We've got a picture of the Belk that we've seen before,
10 but it's the Belk by the mall, right?
11 A: Yes, sir.
12 Q: Okay. I've got a big map here. This is State's 19. And
13 just for the jury's reference, can you show us where the Belk
14 is on here?
15 A: That would be right in this area.
16 Q: Okay. So -- so, this is the mall right here?
17 A: Yes, sir; it appears to be from the aerial.
18 Q: Okay. And are you familiar with this area of Myrtle
19 Beach?
20 A: Yes, sir.
21 Q: And you've been, like you said, with the force for 13
22 years?
23 A: Yes, sir.
24 Q: I don't know if you actually call it the force or if
25 that's something I saw in a movie, but -- this green dot right

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

235

- 1 here, what is that?
- 2 A: That should be the area of Belk's on that side of the
- 3 Coastal Grande Mall.
- 4 Q: I'll bring it a little closer. That green dot at the top
- 5 left?
- 6 A: Yes, sir.
- 7 Q: Is that on the other side?
- 8 A: Yeah, that's gonna be by Highway 17, the Bypass side,
- 9 sir.
- 10 Q: Okay. Is Belk over here on the Pine Island side?
- 11 A: Yeah, it's closer to the Sticky Fingers and that side.
- 12 Q: Okay. Do you know what these dots are down here, the red
- 13 dot?
- 14 A: Let me slide it over, sir.
- 15 Q: Down near Pridgen and Highway 15?
- 16 A: So, that's gonna be the apartment complex there. It
- 17 looks like the yellow dot is gonna be Ramsey Drive, and then
- 18 the blue dot here is off Jennings in the area of Oak and Pine.
- 19 Q: Okay. Let me -- let me get you a close-up actually. Let
- 20 me back up. You were -- were you the lead detective on this
- 21 case?
- 22 A: I was one; I was the lead, yes, sir.
- 23 Q: Okay. So you're familiar with, with the Defendant in
- 24 this case?
- 25 A: Yes.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY HOLFORD

236

- 1 Q: You are familiar with the victim in this case?
- 2 A: Yes.
- 3 Q: Did you actually interview the victim?
- 4 A: I did.
- 5 Q: Okay. This is a close-up; this is State's 20. Those
6 dots, are you able to tell it a little easier where they are
7 -- just tell us, so we can have a record and so the jury can
8 see, the red dot, what's the intersection there?
- 9 A: That's gonna be Pridgen Road this way and Highway 15 runs
10 this way. So, that's gonna be the Town Square Apartments.
- 11 Q: The Town Square Apartments. Okay. And why is that
12 relevant in this case?
- 13 A: That's where the sexual assault occurred in the parking
14 lot.
- 15 Q: Okay. So, red dot is where the assault occurs?
- 16 A: Yes.
- 17 Q: Now, what about the blue dot? What's that on the corner
18 of?
- 19 A: That's Jennings and Oak. That's actually where the
20 Defendant resides.
- 21 Q: Okay. Do you know the Defendant's address?
- 22 A: I believe it's [REDACTED].
- 23 Q: [REDACTED] Oak. Now you've been in the courtroom the whole
24 time, right?
- 25 A: Yes, sir.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

237

1 Q: You kind of have that special privilege as the chief
2 agent?

3 A: Yes, sir.

4 Q: So you know that other people have testified already?

5 A: Yes, sir.

6 Q: Do you also have this in your case notes though where the
7 addresses are?

8 A: Yes, sir.

9 Q: Where was the purse found?

10 A: It was found -- I'm gonna refer to my notes, if that's
11 all right, just so I don't -- so it's gonna be Officer
12 Southerland responded to [REDACTED] Page Street, which is across
13 from [REDACTED] Page.

14 Q: Okay. And is there a dot there?

15 A: Let's see; yep, there's a dot there.

16 Q: And what color is that?

17 A: That's purple.

18 Q: Purple?

19 A: Pink.

20 Q: Purple or pink is where the purse was found. Now, when
21 was that purse found; was it the same night?

22 A: No, sir. It was approximately about a month later, I
23 believe.

24 Q: Sometime in February?

25 A: Yes, sir.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY HOLFORD

238

- 1 Q: Okay. And then ---
- 2 A: February 3rd.
- 3 Q: There's a yellow dot on Pine Drive; what would that be
- 4 referenced to?
- 5 A: That's gonna be where the Defendant was located after
- 6 fleeing from the residence.
- 7 Q: Okay.
- 8 A: And that should be [REDACTED].
- 9 Q: [REDACTED] Pine?
- 10 A: Yes, sir.
- 11 Q: Okay. So, blue is Defendant's residence, and yellow is
- 12 where he was found, right?
- 13 A: Yes, sir.
- 14 Q: And were you there when you went to [REDACTED] Oak?
- 15 A: I was there; I was not involved in the pursuit.
- 16 Q: So, you didn't run after him?
- 17 A: I did not; no, sir.
- 18 Q: But did you know that law enforcement was going to look
- 19 for him?
- 20 A: Yes, sir, I was -- I was in the area as they were
- 21 knocking on the door, but I was not in the rear or involved in
- 22 the pursuit.
- 23 Q: Okay. But you know they found him where that yellow dot
- 24 is?
- 25 A: Yes, sir, I know that based off reports and radio traffic

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY HOLFORD

239

1 as well.

2 Q: I actually want to ask you a question about -- you see
3 across from Highway 15 where this red dot is by the Town
4 Square -- on the corner of Pine and Highway 15, what is this
5 right here; do you know what that is?

6 A: It's hard to tell from the aerial, sir. It looks like
7 some type of maybe a parking lot or an entrance I can see. It
8 looks like a very large driveway or parking lot there.

9 Q: Okay. In speaking with the victim, did she tell you
10 where the Defendant fled after the assault?

11 A: He went down toward -- initially, she said that he was
12 walking on foot and then once he got toward the end of that
13 complex, that's when he ran and he ran toward Highway 15.

14 Q: Okay. So ---

15 A: It should be west if you need a direction, sir.

16 Q: And if I -- I'm holding this map where Highway 15 runs
17 left to right?

18 A: Correct.

19 Q: So, if the Town Square Apartments are below Highway 15,
20 is he running ---

21 A: He's running up.

22 Q: Up. Okay. And which direction is his house located?

23 A: Up.

24 Q: And in which direction is the purse located?

25 A: Up.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

240

1 Q: Now, I'm sure this is gonna come up; I brought it up a
2 little bit with Jerrica as well. You were pretty tough on her
3 that night, weren't you?

4 A: I was. I try to be thorough and make sure I asked the
5 right questions, make sure that I go over the story. I
6 typically do that in all interviews to make sure they were not
7 just, you know, doing it halfway. I wanted to make sure that
8 I was thorough.

9 Q: In your job, could you even be able to ballpark how many
10 complaints of sexual assault you get?

11 A: We get a lot. Unfortunately, we're a tourist town,
12 Spring Break, college, it's a lot.

13 Q: And are you trained to vet these complaints?

14 A: We have to vet them just like any other case. So, yes,
15 sir, we do our very best to try to vet it to make sure it
16 appears to be credible and that it's true.

17 Q: And did you -- do you sometimes threaten them telling
18 them they could be facing a felony if they're filing a false
19 police report?

20 A: Sometimes. I personally try not to. Not often,
21 especially for sexual assault, I'm not a big fan of that, but
22 sometimes there is a time and place where you have to let them
23 know that if it is a false report, that there are
24 consequences.

25 Q: And in this case, did Jerrica ever deny that she was

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY HOLFORD

241

1 sexually assaulted?

2 A: No, sir.

3 Q: Did she ever deny that she was robbed at gunpoint?

4 A: No, sir.

5 Q: Even when questioned hard by you, a trained detective,
6 did she deny her story?

7 A: She never denied it. The story didn't really change.

8 MR. HOLFORD: May I approach with State's 31 and 32?

9 THE COURT: Yes, sir.

10 MR. HOLFORD: They have not been entered yet.

11 BY MR. HOLFORD:

12 Q: Do you recognize 31 and 32?

13 A: Yes, sir. Those appear to be the clothing that he was
14 wearing at the time he was arrested.

15 Q: Do they appear a fair and accurate depiction of his
16 clothing?

17 A: Yes, sir.

18 MR. HOLFORD: The State moves 31 and 32 into evidence.

19 THE COURT: Any objection.

20 MR. WILSON: No objection, Your Honor.

21 THE COURT: All right. So State's 31 and 32 are in
22 evidence without objection.

23 STATE'S EXHIBITS NUMBERS 31 AND 32

24 ADMITTED INTO EVIDENCE

25 BY MR. HOLFORD:

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

242

1 Q: Now when you say clothing he was wearing, who are we
2 talking about?

3 A: Mr. Welch.

4 Q: Okay. So, this is the clothing the Defendant was wearing
5 at the time?

6 A: Yes, sir. After his arrest, Crime Scene responded to the
7 Myrtle Beach Jail and his clothing was seized and
8 photographed. So, that was photographed by our Crime Scene
9 Unit.

10 Q: Now, walk me through the timeline. So, Myrtle Beach
11 Police Department gets a call of a sexual assault; about what
12 time was that?

13 A: I'm not sure of the exact time. I know I responded
14 around 21:14, so around about 9:14, 9:15 is when I began my
15 interview.

16 Q: Now, January the 8th, 2015, was it dark out at that
17 point?

18 A: Yes, sir.

19 Q: How long had it been dark?

20 A: Fairly a while; I mean it was January, it's winter, so
21 it's dark fairly early.

22 Q: So, you respond out at -- I'm sorry, remind me again,
23 21:14?

24 A: Yes, sir.

25 Q: So ---

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY HOLFORD

243

1 A: And that's when I began my initial interview. I was on
2 scene for a few minutes and then began the interview.

3 Q: Okay. And then at what point do you go to [REDACTED] Oak to
4 try and get the Defendant?

5 A: It was several hours later until we are at that point.

6 Q: Was it still on the 8th or could it have gone into early
7 morning hours?

8 A: I believe it was early morning of the 9th.

9 Q: Okay. And so at some point you get the Defendant in
10 custody?

11 A: Yes, sir.

12 Q: Do you question him at any point?

13 A: Not initially; it's later that following afternoon on the
14 9th.

15 Q: Okay. But you were involved in that questioning?

16 A: I was; yes, sir.

17 Q: Do you give what's typically known as Miranda?

18 A: Yes, sir, Detective Jones and I conducted the interview
19 and Miranda Rights were read to the Defendant.

20 Q: And explain to the jury -- I'm sure we've all seen T.V.,
21 but what are Miranda Rights?

22 A: Miranda Rights are the rights we have to read to somebody
23 if they're in custody in an interrogation setting such as jail
24 after arrest. We have a form that we read per our policy and
25 that was done with Mr. Welch.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

244

1 Q: And you actually present them with the form?

2 A: Other departments don't have forms. Sometimes people
3 have cards; we have to have a form and we read it line by line
4 and usually check off after we read each right to acknowledge
5 that they understand it.

6 Q: Is that necessary?

7 A: No, it's not necessary and sometimes it hinders us or
8 it's more work, but it's what our policy is.

9 MR. HOLFORD: May I approach?

10 THE COURT: Yes, sir.

11 BY MR. HOLFORD:

12 Q: I'm gonna hand you what's been marked as State's 1. Are
13 you familiar with that?

14 A: Yes, sir.

15 Q: And what is that?

16 A: That's the Miranda Form that we read that night.

17 MR. HOLFORD: Your Honor, the State would seek to
18 introduce State's 1 into evidence.

19 THE COURT: Any objection?

20 MR. WILSON: No objection, Your Honor.

21 THE COURT: All right. It's into evidence without
22 objection.

23 STATE'S EXHIBIT NUMBER 1

24 ADMITTED INTO EVIDENCE

25 BY MR. HOLFORD:

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

245

1 Q: And so this is a typical Miranda form, right?

2 A: Yes, sir.

3 Q: And was it signed?

4 A: It was; it's initialed. It looks like D.J.

5 Q: Okay. Is that the Defendant who signed it?

6 A: Yes, sir.

7 Q: Now, there's a printed name of a witness; it looks like
8 H. Jones, who is that?

9 A: That's the other detective that was present with me in
10 the interview and was the primary detective that did this
11 interview.

12 Q: And the date 1/9/15?

13 A: Yes, sir.

14 Q: So, would you have interviewed the Defendant with
15 Detective Jones on 1/9/15?

16 A: Yes, sir.

17 Q: Is there an audio of that interview?

18 A: Yes, sir. It was in our B.A. Room; there was no video,
19 but there was audio. We used our digital recorder as we
20 typically do.

21 Q: Have you had a chance to listen to it?

22 A: I have; yes, sir.

23 MR. HOLFORD: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. HOLFORD:

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

246

1 Q: I'm approaching with what's been marked as State's 28 for
2 ID at this point.

3 A: Yes, sir.

4 Q: And is that an audio recording of the interview you did
5 with the Defendant?

6 A: Yes, sir; it appears so.

7 MR. HOLFORD: The State would move State's 28 into
8 evidence.

9 THE COURT: Any objection?

10 MR. WILSON: No objections, Your Honor.

11 THE COURT: All right. State's 28 is in evidence without
12 objection.

13 STATE'S EXHIBIT NUMBER 28

14 ADMITTED INTO EVIDENCE

15 MR. HOLFORD: May I publish?

16 THE COURT: Yes, sir.

17 BY MR. HOLFORD:

18 Q: So, at this point, you've read the Defendant his Miranda
19 Rights?

20 A: Detective Jones did, yes, sir.

21 Q: Okay. You're in the room the whole time?

22 A: I'm present taking notes and he's the one speaking.

23 Q: Okay. And this is the day after, so this was on January
24 the 9th, 2015?

25 A: Yes, sir; it was the afternoon hours.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

247

1 Q: Okay. We'll probably hear a time on there, won't we?

2 A: You may -- you should, but I'm not sure if it's on there
3 or not, but typically I will give a header with the date and
4 time, location and who's present.

5 Q: We're gonna figure it out and get back to the audio
6 portion.

7 Did you do search warrants for Facebook results in this
8 case?

9 A: Yes, sir, I did two search warrants on both the
10 Defendant's and the victim's Facebook account.

11 Q: And did you get Facebook results back?

12 A: I did; yes, sir.

13 Q: And does that show conversation between the Defendant and
14 the victim in this case?

15 A: Yes, sir; it does.

16 Q: What name was the Defendant using on Facebook?

17 A: His Facebook user name was David Royal.

18 Q: Okay. But we know that that's the Defendant sitting in
19 the courtroom?

20 A: Correct.

21 Q: This picture we've seen, 17, State's 17, did you pull
22 that up on Facebook?

23 A: I did; yes, sir.

24 Q: And under what name did you pull it up?

25 A: It was under David Royal.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

248

1 Q: Okay. And then the victim told you this was the person
2 who had assaulted her and stolen her stuff?

3 A: That is correct.

4 Q: Did she ever change that story?

5 A: No, sir.

6 Q: She stuck to that to this day?

7 A: She did.

8 Q: This purse that we have pictures of in 7 and the contents
9 we have in 8, whose purse is that?

10 A: That's the victim's purse.

11 Q: And that's the purse that we saw we found at that pink
12 dot on Page Street?

13 A: Yes, sir.

14 Q: When I say we, it was actually another individual, right?

15 A: Correct.

16 Q: All right. I'm gonna show you what's been entered as
17 State's 22. This is Time Warner Cable response. We had the
18 technician come in earlier. Can you read the phone number off
19 there and tell me what address the subscriber information is?

20 A: Yes, sir. The phone number is [REDACTED] it's to an
21 Edna Blackmon and the address is [REDACTED] Oak Drive, Myrtle Beach,
22 South Carolina.

23 Q: Okay. So, [REDACTED] Oak Drive, that's the Defendant's
24 residence?

25 A: Correct.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

249

- 1 Q: Now, on State's 16, can you identify what the -- well,
2 tell me what the phone number is associated with that account.
3 A: It doesn't say on here. Okay. Yeah, I'm sorry. It says
4 this is the detail records for Jerrica Nelson and that's gonna
5 be [REDACTED].
6 Q: Okay. Now, that's not the same number you just read?
7 A: No, sir.
8 Q: But the number of calls on -- the last number of calls on
9 January the 8th, what number are they to?
10 A: [REDACTED].
11 Q: Is that the same as this Time Warner data that they told
12 us was [REDACTED] Oak?
13 A: Yes, sir.
14 Q: That's a long drawn out to say that Jerrica Nelson was
15 talking to someone at the Defendant's residence?
16 A: Correct.
17 Q: And that's back here at the blue on Oak Street?
18 A: Oak Drive, yes, sir.
19 Q: Oak Drive, I apologize. Hopefully, we've got the audio.
20 When you respond to a scene and there's alleged to be sexual
21 assault, what are some of the questions that you normally ask
22 a victim?
23 A: Just standard questions; date, time, where it occurred,
24 suspect information, what kind of sexual assault actually
25 occurred. We ask questions about condoms, you know, looking

State v. Welch - 2015-GS-26-969, 970, 971, 972
BY THE COURT

250

1 for forensic evidence, stuff of that nature.

2 Q: Do you take any -- do you take any swabs or is there a
3 Crime Scene Unit that does that?

4 A: We call Crime Scene.

5 Q: Okay. So, you don't do that?

6 A: No, sir; I do not do that.

7 Q: But do you know what swabs are taken for?

8 A: Buccal swabs are for DNA swabs, typically is what they're
9 used for.

10 Q: Okay. And -- Your Honor, Court's indulgence?

11 BY THE COURT:

12 THE COURT: Yes, sir. You need to take a break?

13 MR. HOLFORD: May we please?

14 THE COURT: Yes, sir.

15 All right, ladies and gentlemen, if you'd go to your jury
16 room for a few minutes while they resolve technical
17 difficulties.

18 (REPORTER'S NOTE: Jury exits courtroom. The following takes
19 place outside the presence of the Jury.)

20 THE COURT: All right. So we know it works because you
21 and Mr. Wilson listened to it, right?

22 MR. WILSON: That's correct, Your Honor, and we didn't do
23 anything to it, Judge.

24 THE COURT: All right. Y'all get it working and let me
25 know. Thank you very much.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

251

1 MR. WILSON: Yes, sir.

2 THE COURT: You can step down; just don't talk to
3 anybody.

4 (RECESS.)

5 *****OFF THE RECORD*****

6 (On the Record.)

7 THE COURT: All right, Solicitor. Are you ready to
8 proceed?

9 MR. HOLFORD: I believe so, Your Honor.

10 THE COURT: All right. Very good. Defense?

11 MR. WILSON: Yes, Your Honor.

12 THE COURT: All right. Good.

13 Ask the jury to come in, please.

14 (REPORTER'S NOTE: Jury enters courtroom.)

15 THE COURT: All right, Solicitor, you may proceed.

16 MR. HOLFORD: Thank you, Your Honor.

17 BY MR. HOLFORD:

18 Q: All right, Detective Beam. Let's try this one more time.

19 So, you interviewed the Defendant in this case, correct?

20 A: Correct.

21 Q: And that interview was audio recorded?

22 A: Correct.

23 Q: After you had done Miranda?

24 A: Yes, sir.

25 Q: And have you listened to that interview?

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

252

1 A: Yes, sir; I have.

2 *****OFF THE RECORD*****

3 (REPORTER'S NOTE: State's Exhibit 28 published, not
4 transcribed herein.)

5 (On the Record.)

6 BY MR. HOLFORD:

7 Q: Is that the whole interview?

8 A: Yes, sir, I mean it was ---

9 Q: Did it end at that point?

10 A: Yes, sir.

11 Q: When he said he wanted to have a lawyer, you stopped?

12 A: And we cut off the recorder and he was given his warrants
13 and taken back to his cell.

14 Q: You didn't keep asking him questions?

15 A: No, sir.

16 Q: So, at that point you had advised him he had the right to
17 remain silent, he could talk to you if he wanted to?

18 A: Correct.

19 Q: That he could have a lawyer if he wanted to?

20 A: Detective Jones advised him of his -- yes, sir, Miranda
21 Rights.

22 Q: And you were there?

23 A: Yes, sir.

24 Q: And he ended up signing that form, D.J.?

25 A: Yes, sir.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - DIRECT BY HOLFORD

253

1 Q: He made those couple of brief statements and then he said
2 he wanted a lawyer and he quit talking?

3 A: Yes, sir.

4 Q: And you respected that?

5 COURT REPORTER: Excuse me, your answer?

6 A: I'm sorry, yes, ma'am. I apologize. Yes.

7 BY MR. HOLFORD:

8 Q: When you asked, if he was talking to that girl that
9 night, did he say I wasn't talking to any girl last night?

10 A: I believe that's what he said.

11 Q: And that he had met plenty of girls on Facebook?

12 A: Right.

13 Q: That was in response to, you know, I'm talking about that
14 girl you met on Facebook, right?

15 A: Correct.

16 Q: He said he had met plenty of girls?

17 A: Plenty of girls.

18 Q: You asked, did you see a girl last night? What was his
19 response?

20 A: No.

21 Q: And then he said, for one, no one caught me with no gun?

22 A: Correct.

23 Q: He wasn't caught with a gun, was he?

24 A: He was not. We did not recover a handgun.

25 Q: Now, the, the armed robbery and sexual assault occurred

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY HOLFORD

254

1 before what time?

2 A: It was well before I responded. I mean, it was on
3 January 8th, I believe.

4 Q: So, before at least 9 o'clock on January 8th?

5 A: Yes, sir.

6 Q: And he wasn't apprehended until early morning hours of
7 January 9th?

8 A: Correct.

9 Q: So, there was some hours in between?

10 A: Sure.

11 Q: And then he just says he was family, he was with a bunch
12 of people.

13 A: Right.

14 Q: And then asked for a lawyer and that's it?

15 A: Correct.

16 Q: But he denies being with a girl that night?

17 A: Correct.

18 Q: Town Square Apartments where all of this occurred on
19 Pridgen Road and Highway 15 in Myrtle Beach, what county is
20 that in?

21 A: That's in Horry County.

22 Q: A pretty common question, right?

23 A: Yes, sir, the city limits of Myrtle Beach in Horry
24 County.

25 Q: That's within your jurisdiction?

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - CROSS BY WILSON

255

1 A: Yes, it is.

2 Q: No further questions at this time.

3 THE COURT: All right.

4 Cross examination?

5 MR. WILSON: Your Honor, may we approach briefly?

6 THE COURT: Absolutely.

7 MR. WILSON: Thank you, Judge.

8 (REPORTER'S NOTE: A bench conference was held off the record
9 in the presence of but out of hearing of the Jury.)

10 CROSS EXAMINATION OF JEREMIAH BEAM BY MR. WILSON:

11 Q: Good afternoon, Detective.

12 A: Good afternoon, sir.

13 Q: How are you doing?

14 A: Good, how are you?

15 Q: Pretty good, man. It's good to see you.

16 All right. Let's talk about earlier you testified under
17 oath that, that Jerrica Nelson, when you talked to her that
18 she didn't change her statement?

19 A: Not -- when I interviewed her, no, sir.

20 Q: Okay. Let me ask you this, do you recall in a
21 conversation where you're talking to her, 52 minutes in, and
22 she says to you, I was like, I told you, I don't have cash on
23 me. He's like, I don't believe you, grabbed my purse out of
24 the front seat and turned away towards the door, and I was
25 like I have the handle, give me my purse. He was like, back

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - CROSS BY WILSON

256

1 up. He held the gun out, I let the purse go. And do you
2 recall responding to her saying that you let -- you left that
3 whole thing out before about having the gun and when you got
4 out -- when he got out. Do you recall saying that at all?

5 A: It was like well over an hour and a half interview, so
6 ---

7 Q: Absolutely. But do you recall that is what I'm asking?

8 A: I don't recall that, but it sounds like you've got a
9 transcript or you've got it, so I mean, that sounds like some
10 -- a lot of questions that we spoke about.

11 Q: Okay. So, she did change her story?

12 A: I don't think she changed her story. There might have
13 been some stuff that, as we continued to ask and re-ask it
14 came out. I don't think it was changing her story.

15 Q: Well, let me ask you this, then why did you ask her --
16 why did you say to her you left that whole thing out before?

17 A: It was a detail that I hadn't heard.

18 Q: Okay. All right. Fair enough. You also say to the
19 jury, this was on direct examination that you don't believe
20 she ever changed her story, right?

21 A: I don't believe the story changed.

22 Q: All right. You're the lead detective in this case,
23 correct?

24 A: Yes, sir.

25 Q: All right. And you review all the evidence in this case?

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - CROSS BY WILSON

257

1 A: I review the evidence.

2 Q: Okay. And my question to you is this, please tell the
3 jury whether or not her story changed, whether or not she
4 omitted things when she first called 911?

5 A: Yeah. Initially, she did not tell about the sexual
6 assault.

7 Q: Okay. Let me ask you a question, are omissions lies in
8 your book?

9 A: Omissions, it depends on the context, situational based.

10 Q: I've known you for a long time; you're a good detective?

11 A: Uh-huh (affirmative response).

12 Q: And you're very seasoned. So, if you go and you talk to
13 anyone, a victim or you talk to someone who did something
14 wrong, and they leave something out and it's pertinent to the
15 case, would you consider it to be a lie, yes or no?

16 A: I think it depends on the intent and also she's a victim
17 of sexual assault. So, I mean she's a trauma victim. So,
18 there's explanations for her state of mind.

19 Q: Okay. And so the explanation for her state of mind here
20 in your opinion was what?

21 A: She's been a victim of sexual assault and that, you know,
22 we were speaking and continued to ask questions and gather
23 details.

24 Q: Okay. Do you recall ever telling her that this just
25 didn't add up?

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - CROSS BY WILSON

258

1 A: Some of the stuff did not add up, initially, that's why
2 we continued on with the questioning.

3 Q: Tell the jury what it is that -- and you're lead
4 detective, tell the jury what it is that you meant when you
5 said this is not adding up?

6 A: Yeah, and we discussed it earlier, going all the way to
7 Belk instead of going to certain places, that didn't make
8 sense to me; it didn't add up. But again, she testified, she
9 gave a reason of why she went to Belk but, you know, to me,
10 I'm not a victim of sexual assault, I'm not in her shoes, but
11 to me that did not make sense.

12 Q: Okay. Now you've audio taped this entire interview,
13 correct?

14 A: Yes, sir.

15 Q: Okay. All right. And this is basically an interview
16 between you and Ms. Nelson; is that correct?

17 A: Yes, sir; that appears to be that, yes, sir.

18 Q: Is that correct? I just want to make sure.

19 A: Yes, sir; that appears to be correct.

20 Q: Now this has been marked as Defendant's Exhibit 5 for
21 identification purposes only. I'll show this to the
22 prosecution. Let me ask you to lay the foundation. Let me
23 ask you this. Also in this interview, the mother actually
24 comes in on this interview at the end, correct?

25 A: She does; yes, sir.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - CROSS BY WILSON

259

1 Q: Okay. All right. And you actually let her speak on this
2 interview?

3 A: I did; yes, sir.

4 Q: All right. Is that something you typically do and record
5 it?

6 A: Sometimes we'll do that especially dealing with young --
7 young, young adults. Sometimes a parent can elicit responses
8 or get the truth or it just helps to make sure that we're on
9 the same page.

10 Q: Okay.

11 MR. WILSON: Your Honor, at this time, I'd move this into
12 evidence as Defendant's Exhibit -- where we gonna be at?

13 COURT REPORTER: 5. It's marked 5 for ID, right?

14 MR. WILSON: Yes, ma'am.

15 COURT REPORTER: It's 5.

16 MR. WILSON: So 5, Judge.

17 THE COURT: Objection by the State?

18 MR. HOLFORD: Your Honor, if that's the audio recording
19 of her interview and that's all then no objection.

20 THE COURT: So ---

21 MR. HOLFORD: Having not listened to the entirety of it,
22 I don't know exactly what's on there. But I know we have
23 turned over Nelson Interview Part 1 and Part 2.

24 THE COURT: All right. So ---

25 MR. WILSON: It is all inclusive, Judge. This is the

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - CROSS BY WILSON

260

1 entire interview that goes from beginning when he first got on
2 the scene and then at the very end.

3 THE COURT: All right, sir. With that, that it's that
4 interview and nothing else?

5 MR. WILSON: Yes, sir, that's it.

6 THE COURT: All right. Very good. That's in evidence

7 ---

8 MR. WILSON: Yes, sir.

9 THE COURT: --- with that stipulation. Very good.

10 MR. WILSON: Thank you, Your Honor.

11 DEFENDANT'S EXHIBIT NUMBER 5

12 ADMITTED INTO EVIDENCE

13 MR. WILSON: Permission to publish, Judge?

14 THE COURT: Yes, sir.

15 *****OFF THE RECORD*****

16 (REPORTER'S NOTE: Defendant's Exhibit 5 published, not
17 transcribed herein.)

18 (On the Record.)

19 MR. WILSON: Your Honor ---

20 THE COURT: Yes, sir.

21 MR. WILSON: I apologize. Part 2 is actually on a
22 separate disc. It's not that long, Judge.

23 THE COURT: All right.

24 MR. WILSON: It won't take me long.

25 THE COURT: Well, we're gonna -- we're gonna ---

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - CROSS BY WILSON

261

1 MR. WILSON: May I approach?

2 THE COURT: We're gonna be here until we're done with
3 this witness.

4 MR. WILSON: Thank you, Your Honor, it won't be long,
5 Judge.

6 BY MR. WILSON:

7 Q: Is that Part 2?

8 A: It appears to be, sir.

9 MR. WILSON: Judge, at this time, I ---

10 THE COURT: You need to mark it.

11 MR. WILSON: I apologize, Judge. Mark it for
12 identification purposes only.

13 MR. HOLFORD: Your Honor, I don't object if this is the
14 Detective, I guess, questioning the witness. My notes show
15 that it's the mom questioning.

16 MR. WILSON: It's both of them talking to her, Judge.

17 THE COURT: All right.

18 MR. WILSON: I could be mistaken, but I think that's both
19 of them.

20 COURT REPORTER: Defendant's 13 for identification.

21 MR. WILSON: Thank you, ma'am. Thank you.

22 BY MR. WILSON:

23 Q: This would be the actual interview with you present as
24 well as the mother and Jerrica Nelson?

25 A: Yes, sir; it appears to be, sir.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - CROSS BY WILSON

262

1 Q: Okay.

2 MR. WILSON: Judge, can I move this in at this time?

3 THE COURT: Any objection?

4 MR. HOLFORD: No objection, Your Honor.

5 THE COURT: All right. So, that's in evidence without
6 objection. You may proceed.

7 MR. WILSON: Thank you, Your Honor.

8 DEFENDANT'S EXHIBIT NUMBER 13

9 ADMITTED INTO EVIDENCE

10 MR. WILSON: May I publish to the jury?

11 THE COURT: Yes, sir.

12 MR. WILSON: Thank you, Judge.

13 *******OFF THE RECORD*******

14 (REPORTER'S NOTE: Defendant's Exhibit 13 published, not
15 transcribed herein.)

16 **(On the Record.)**

17 BY MR. WILSON:

18 Q: Detective, let me ask you just a few questions and then
19 I'll be done. When the mother comes up, do you recall what
20 she was asking her daughter?

21 A: I don't. I remember stepping out giving her -- I think
22 the first time that I stepped out, I was on the phone with
23 them for a couple of minutes, that's when you heard a little
24 bit of lag time.

25 Q: Okay.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - CROSS BY WILSON

263

1 A: And it took them some time to get there. I stepped out
2 at one point and briefed them of the scenario and that's when
3 we concluded with the second interview there, the second part.

4 Q: Okay. It's hardly audible, but I just want to ask you
5 this, do you remember her saying when you got in the car a
6 while ago, you didn't tell me that, you didn't tell me you
7 were raped. Were you raped or did you just make a bad choice,
8 Jerrica, and hook up with some guy you met? Do you recall her
9 saying anything like that?

10 A: It's hard to hear, but that's very possible. I'm not
11 saying that did not happen, sir.

12 Q: Okay. All right. Just a couple other questions. Y'all
13 processed the car, correct?

14 A: Crime Scene, our Crime Scene Unit did, yes, sir.

15 Q: Yes, sir, and did y'all recover any evidence at all, any
16 forensic evidence of rape?

17 A: I would have to defer to their Crime Scene Report or what
18 they did. That's what they specialize in. My job was to get
19 them over there.

20 Q: Okay.

21 A: We obtained written consent and the car was processed.

22 Q: All right. Did you go through the case file before you
23 came here today?

24 A: Yes, sir.

25 Q: Okay. Did you find anything in the case file that was

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - REDIRECT BY HOLFORD

264

1 recovered from that car?

2 A: When the case file was transmitted, sir, none of that was
3 back from SLED. It takes, you know, years sometimes to get
4 stuff back. So, I don't know what's come back and what hasn't
5 come back as far as SLED evidence.

6 Q: Okay. All right. So, you're not aware of any evidence?

7 A: I'm not, no. I've heard some stuff this morning that I
8 didn't know. So ---

9 MR. WILSON: No further questions, Judge.

10 THE COURT: All right. Redirect?

11 MR. HOLFORD: Briefly, Your Honor.

12 REDIRECT EXAMINATION OF JEREMIAH BEAM BY MR. HOLFORD:

13 Q: Detective Beam, in that interview, basically you go over
14 the story with her about three times and then one more time
15 with her mom?

16 A: We went over it, yes, sir, several times.

17 Q: And of course the jury is gonna have this recording back
18 there so they can listen to it about what changes and what
19 doesn't change, right?

20 A: Correct.

21 Q: But can we agree that some points never change?

22 A: It's my understanding that, you know, you can split hairs
23 and say, you know, certain times, details were said or
24 weren't, but the story did not change in my opinion.

25 Q: The Defendant used a gun?

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - REDIRECT BY HOLFORD

265

- 1 A: Yes.
- 2 Q: He stole her purse and her phone?
- 3 A: Yes.
- 4 Q: He forcibly made her have sex at gunpoint?
- 5 A: Yes.
- 6 Q: It was at the Town Square Mall?
- 7 A: Yes, sir.
- 8 Q: There was a struggle ---
- 9 A: Town Square Apartments, I'm sorry.
- 10 Q: --- Time Square Apartments, I apologize. Okay. There
- 11 was a struggle over the purse?
- 12 A: Yes, sir.
- 13 Q: And the Defendant ran afterwards?
- 14 A: Correct.
- 15 Q: Even when pressed with her mom, by you multiple times,
- 16 she stuck to that story?
- 17 A: And a lot of times, in our experience, pressing you get
- 18 -- sometimes you're able to break them, whether it be a rape
- 19 allegation or any other kind of investigation, that's why we
- 20 go over it again and again to see if we get -- we're able to
- 21 get them to recant.
- 22 Q: No question you were skeptical at first?
- 23 A: Always -- not always but, you know, we have a lot of, of
- 24 sexual assaults. I mean, it's just the nature of Myrtle
- 25 Beach, unfortunately, and Horry County, and some of it did not

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - RECROSS BY WILSON

266

1 make sense to me initially.

2 Q: Did you do a further investigation after that interview?

3 A: I did; yes, sir.

4 Q: And did Myrtle Beach Police Department choose to charge
5 this Defendant with criminal sexual conduct and kidnapping,
6 armed robbery, and possession of a weapon during the
7 commission of a violent crime?

8 A: Yes, sir; we did.

9 Q: And was he arrested for those offenses?

10 A: Yes, sir; he was.

11 Q: No further questions.

12 THE COURT: Questions on those just asked?

13 MR. WILSON: Yes, sir.

14 RECROSS EXAMINATION OF JEREMIAH BEAM BY MR. WILSON:

15 Q: What additional evidence did you gather after all this?
16 What other evidence was presented to you other than Jerrica's
17 statement because that's what you based the charges on, right?

18 A: Yes, sir. We were able to get search warrants for
19 Facebook, both accounts.

20 Q: All right.

21 A: That's additional evidence that corroborated what she was
22 saying.

23 Q: That they had a Facebook conversation?

24 A: That they were talking, yes, sir; that was one element
25 that we were able to corroborate, yes, sir.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - RECROSS BY WILSON

267

1 Q: No, but what -- what he just asked you was, he says that
2 kidnapping, CSC, armed robbery, he then says possession of a
3 weapon during a violent offense. Does the Facebook messages
4 give you any information that might add to those charges?

5 A: That doesn't add to that, but it corroborates some of
6 what she said, sir.

7 Q: Okay. It doesn't add to the elements of those crimes,
8 does it?

9 A: It doesn't change the elements of what was met or nor
10 met; no, sir.

11 Q: That's right. All right. But there was a conversation
12 that was had by them, right?

13 A: Yes, sir.

14 Q: Okay. But that night, that night in the car at the crime
15 scene, what additional evidence do you have for this jury that
16 this happened other than what Jerrica Nelson told you?

17 A: The primary basis was her statement, sir.

18 Q: Okay. All right. So, there was nothing additional, was
19 there?

20 A: I don't know what's come back from SLED or what hasn't,
21 sir.

22 Q: It's the day of trial and this man is on trial for some
23 serious charges and you're telling the Court and the jury you
24 don't have the additional SLED information and you're
25 testifying today before the Court?

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

268

1 A: It wasn't brought to my attention, sir.

2 MR. WILSON: No further questions, Judge.

3 THE COURT: Anything else, Solicitor?

4 MR. HOLFORD: Nothing further, Your Honor.

5 THE COURT: All right, sir. You may step down, sir.

6 BY THE COURT:

7 THE COURT: All right, ladies and gentlemen, we're gonna
8 stop for the evening. I'm going to ask you to be back
9 tomorrow morning by 9:30. I know the Clerk's office again
10 will have something for you in the jury room. So, I'm sure
11 the Bailiff will have you come back a little bit earlier so
12 that you're able to enjoy that before you come into the
13 courtroom at 9:30.

14 I'll remind you as I've told you before, you go home, you
15 see your husband, wife, boyfriend, girlfriend, person down the
16 street, if they happen to know you're on a jury, that's fine,
17 but obviously you can't talk to them about the case because
18 intentionally or unintentionally, they would give you their
19 opinion about it. They don't have one. Y'all shouldn't have
20 one at this point in time because we haven't heard all the
21 evidence in the case and you do not know the law that you must
22 apply to the facts and evidence you have heard in this case.
23 So, again, don't talk about it, don't allow anybody to talk to
24 you about it. I'll see you back tomorrow morning at 9:30.

25 Thank you very much.

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

269

1 (REPORTER'S NOTE: Jury exits courtroom. The following takes
2 place outside the presence of the Jury.)

3 THE COURT: All right. Anything further from the State
4 before we recess for the evening, at this point in time?

5 MR. HOLFORD: Nothing at this point, Your Honor.

6 THE COURT: All right. From the Defense?

7 MR. WILSON: Nothing right now, Judge.

8 THE COURT: All right. Again, I would like to if at all
9 possible, we'd start right at 9:30. So, y'all make sure
10 you're here by at least by 9:15 and if we can have the
11 Defendant here at least by that time so that he can come on
12 it. All right?

13 MR. WILSON: Yes, Your Honor.

14 MR. HOLFORD: Yes, Your Honor.

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

16 MR. HOLFORD: Your Honor, if I could?

17 THE COURT: Yes.

18 MR. HOLFORD: Because it will come up in the morning
19 anyway. Would I need to call someone to set what time sunset
20 was on that day or would the Court be willing to take judicial
21 notice of that?

22 THE COURT: Well, I think that's a question you would
23 need to ask Mr. Wilson and see if he's in agreement with that.
24 If not, then I'm assuming you're gone have to call somebody.

25 MR. HOLFORD: Okay.

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

270

1 THE COURT: All right. So, y'all talk about that okay?

2 MR. WILSON: Thank you, Judge.

3 THE COURT: Thank you very much.

4 MR. WILSON: Thank you, Your Honor.

5 END OF DAY TWO

6 (RECESS.)

7 *****OFF THE RECORD*****

8 (On the Record.)

9 APRIL 19, 2017 - DAY THREE

10 (REPORTER'S NOTE: The following takes place outside the
11 presence of the Jury.)

12 MOTIONS:

13 THE COURT: All right. We had a matter presented to the
14 Court's attention regarding the potential use of a exhibit
15 that had been marked for identification, I believe. Which one
16 was that, Mr. Wilson? what was the tape, was that Defendant's
17 4?

18 MR. WILSON: I believe it was number 4, Judge.

19 THE COURT: Okay. The interview or contact that Myrtle
20 Beach Police Officer ---

21 MR. WILSON: Sououd.

22 THE COURT: --- and the first name is Assia; is that
23 correct, Assia Sououd?

24 MR. WILSON: Sououd.

25 THE COURT: Sououd, okay, had with the -- with the victim

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

271

1 in this matter. Tell me, Mr. Wilson, the situation regarding
2 the subpoenas for that particular officer?

3 MR. WILSON: Your Honor, we attempted to serve the
4 Assistant Chief. The Assistant Chief told us that the policy
5 was to serve the attorney for the City. And, at that time,
6 the private investigator went and attempted to serve the
7 actual subpoenas on the City Attorney. The City Manager took
8 possession of them and said that he would pass them on. He
9 did pass them on and we have proof of service as well as the
10 affidavit of service by the actual process server, the
11 investigation company. And, we received a phone call from Mr.
12 Ellenburg (spelled phonetically) saying that he didn't have
13 time to serve them. And then after that I received a phone
14 call from Mr. James Battle. I informed them that I would file
15 a motion with the Court to compel. And Mr. James Battle,
16 while he was on vacation, called me and said that he would
17 then would try to take care of that and I got a call from
18 Ellenburg saying that he would then attempt service and get
19 back with us. We had two responses. Primarily, the issue
20 regarding Officer Sououd is the important issue. We believe
21 that she's germane to the Defense's case and that's the status
22 at this point in time, Judge.

23 THE COURT: That particular officer had the -- one of the
24 initial or initial contacts with the victim?

25 MR. WILSON: Correct, Your Honor. The Officer Sououd was

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

272

1 the first responding officer to make contact with the victim
2 and we believe that -- that that contact -- and she was the
3 first person, also, we believe that threatened her with
4 charging her with a felony for making false statements to the
5 police.

6 THE COURT: All right. And your intention would be to
7 call this particular officer to the stand to identify the
8 audio or video contact with the victim; is that correct?

9 MR. WILSON: That's correct, Your Honor.

10 THE COURT: All right. What's the State's position,
11 Solicitor?

12 MR. HOLFORD: Your Honor, would you like to hear from
13 James Battle?

14 THE COURT: I am going to hear from Mr. Battle in just a
15 second, but I want to know the State's -- I'm assuming Mr.
16 Wilson has -- and I suppose we should have it clear that your
17 -- the information that you have regarding this particular
18 officer is that the officer never got the subpoena and is out
19 of the state at this point in time and unavailable at this
20 point in time to be called by the Court to be a witness in
21 this matter?

22 MR. WILSON: Your Honor, that's my understanding, Judge.

23 THE COURT: All right. Is that the State's understanding
24 regarding that particular witness?

25 MR. HOLFORD: Your Honor, the State -- the State's

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

273

1 understanding is that we did not subpoena this -- this officer
2 as a witness. They were not under a State subpoena. The
3 State did not know the status of the Defense's subpoena with
4 this witness. That was an issue between the Defense and the
5 City Attorney which the State did not play a role in.

6 THE COURT: All right, sir.

7 Mr. Battle, can you illuminate the Court a little bit
8 about what happened at the City regarding this?

9 MR. BATTLE: Certainly, Your Honor. So, the City
10 Attorney got copies of Mr. Wilson's subpoenas. He then
11 emailed the officer saying that if they wanted, he could be
12 their agent of service. The City Attorney does not serve
13 subpoenas, but they will contact officers and say I will be
14 your agent to accept service.

15 THE COURT: And there was a large number of them, right?

16 MR. BATTLE: Yes, sir, Your Honor. This was early last
17 week, 17 subpoenas got dropped off at City Hall.

18 THE COURT: All right.

19 MR. BATTLE: He emailed the officers, didn't hear back
20 from any of them. But, with Officer Sououd, she was out of
21 state. I called her yesterday. She said she was never served
22 with a subpoena and that she was in Maryland and I wasn't
23 authorized to accept service on her behalf.

24 THE COURT: Very good. All right. With this situation,
25 I'm not -- two things I'm concerned with. One, Mr. Wilson, I

State v. Welch - 2015-GS-26-969, 970, 971, 972
MOTIONS

274

1 appreciate the fact that you tried to cooperate with the City
2 of Myrtle Beach and to get their assistance and also try to
3 work with them regarding the officers and not pulling 17
4 people off duty and have them show up to court on Monday
5 morning and trying to work with the City on that. But, when
6 you did not get immediate assistance from the City of Myrtle
7 Beach, your recourse should've been to drop off all of those
8 17 subpoenas with the Sheriff's office and have them serve
9 those individuals directly and, whatever impact that had on
10 the City of Myrtle Beach regarding those 17 officers showing
11 up on Monday morning, that's just the way it was.

12 MR. WILSON: Yes, Your Honor.

13 THE COURT: Okay?

14 MR. WILSON: Yes, Your Honor.

15 THE COURT: So, I appreciate you trying to work with the
16 City, but you didn't do what you should've done to follow up
17 on that.

18 MR. WILSON: Yes, sir.

19 THE COURT: Now -- that's fine, you can sit down. And
20 then on the City's behalf, I appreciate the fact that they may
21 or may not be the agent of service, but when you want the
22 cooperation of counsel in trying to work around the officer's
23 schedule and, however it may be viewed by the City, they did
24 not accept the subpoenas, in reality, they did. So, I'm not
25 thrilled with how the City approached this either. Now, the

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

275

1 Court's duty and responsibility is to do justice to all
2 parties in this matter, the State and the Defense, and more
3 importantly to have proper information presented to the jury
4 so that they can -- the jury can make an informed decision in
5 this matter with all available information.

6 Because of the situation as it is presented to the Court,
7 what I'm going to do is I'm going to allow the Defense to call
8 the Chief Investigating Officer, that is Detective Beam, to
9 stand in the part of the Defense's case to identify that what
10 has been marked as Defendant's for ID, for identification as
11 part of the case file of this matter reflecting the initial
12 contact with the victim by Officer Sououd. I am gonna allow
13 the Defense to play the video/audio interview with the victim,
14 which the Court would have allowed had Officer Sououd been
15 present. I'm not doing something I wouldn't have done if
16 Officer Sououd had been present.

17 What I would like the State and Defense to do is to go
18 through that audio/video interview and make sure -- I want all
19 matters that the State wants played before the jury and all
20 matters that the Defense wants played before the jury to be
21 played. But, if there is extraneous matters, matters that
22 both the State and Defense agree that, you know, it's just,
23 you know, scenery, driving one place to another or whatever it
24 is that can be skipped, then I would ask you to do that, but
25 if both of you feel that the matter, or either one of you feel

State v. Welch - 2015-GS-26-969, 970, 971, 972
MOTIONS

276

1 that it ought to be played in its' entirety, we're gonna play
2 it in its entirety. That's just whatever time that it takes,
3 but, you know, if there's some extraneous stuff that's not
4 gonna help this jury and y'all can agree on that then I'll be
5 glad for y'all to skip over that particular part. But, I am
6 gonna allow the Defense in its presentation of its case to
7 call -- re-call Detective Beam to identify that particular
8 audio/video as part of the case file in this matter and then
9 I'll allow the State -- I'm sorry -- allow the Defense to play
10 that before. And, I'm doing that based upon the factual
11 pattern as this has developed regarding the issue of subpoenas
12 and the Court's ultimate responsibility to do justice to all
13 parties in this matter and make sure the jury hears all the
14 possible evidence that is proper to be played in this matter.

15 All right. So, with that, we're still in the State's
16 case. Solicitor, is the State ready for the next witness to
17 be called?

18 MR. HOLFORD: Your Honor, the State has a stipulation
19 between the parties that we'd like to read when the jury comes
20 in and that will conclude the State's case.

21 THE COURT: Okay. All right. Like is it very brief or
22 it a lengthy ---

23 MR. HOLFORD: Yes, Your Honor, very brief.

24 THE COURT: Okay. Well, if we're gonna do that then, I'm
25 gonna call them in and you're gonna read it like two or three

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

277

1 minutes and then I'm gonna send them out for the motions on
2 behalf of the Defense. Why don't we, at this point in time,
3 that's a stipulation by both parties; I'm gonna allow that to
4 be read to the -- read to the jury, but other than that, there
5 is no other presentation by the -- by the State; is that
6 correct?

7 MR. HOLFORD: That's correct, Your Honor, that's why I
8 wanted to bring it up before the jury came in.

9 THE COURT: All right. So, go ahead and have it marked
10 as a -- as an exhibit -- and you're in agreement with that
11 stipulation, Mr. Wilson?

12 MR. WILSON: Your Honor, absolutely, without objection,
13 Judge.

14 THE COURT: All right. So, we'll make that part of the
15 record now. Obviously, I'll let you publish it to the jury
16 when they come back in, but I'm gonna make it part of the
17 record now and with that being part of the record, would that
18 end the State's presentation?

19 MR. HOLFORD: Yes, Your Honor, the State ---

20 THE COURT: Would rest after that?

21 MR. HOLFORD: It would be State's ---

22 COURT REPORTER: 33.

23 MR. HOLFORD: 33, a stipulation as to sunrise, sunset and
24 the weather on January the 8th of 2015 in Myrtle Beach. With
25 that being published to the jury, the State would rest.

State v. Welch - 2015-GS-26-969, 970, 971, 972
MOTIONS

278

1 THE COURT: All right, sir. All right. The State allows
2 -- the Court allows into evidence State's 33 without
3 objection. That being the case and the case would rest after
4 that. Again, I'm gone allow it to be published to the jury
5 when they come in.

6 STATE'S EXHIBIT NUMBER 33

7 ADMITTED INTO EVIDENCE

8 THE COURT: Are there motions -- and Mr. Battle, I
9 appreciate the -- you coming and being available and
10 explaining the situation both here in Court and in Chambers.
11 I appreciate it. I just ask if you would communicate with the
12 City what they'd like me to do about this. Okay?

13 MR. BATTLE: Yes, sir. Thank you, Judge.

14 THE COURT: Thank you very much. I appreciate it very
15 much, sir.

16 All right, Mr. Wilson, I'll be glad to hear from you
17 regarding any motions that you might have.

18 MR. WILSON: Your Honor, at this point in time, the
19 Defense would move for obviously a directed verdict, Judge.
20 After listening to the testimony that's been presented,
21 there's been no corroborating evidence. The case is -- the
22 case law and I know the Court is very aware and I'm not going
23 to belabor the point. There is case law that talks about
24 whether or not the evidence is competent, whether or not the
25 evidence is reliable in this matter. There's been nothing

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

279

1 else in the record other than the testimony of Jerrica Nelson,
2 who was the alleged victim in this matter, that this crime
3 ever occurred. My real concern is, is that after hearing all
4 of the evidence and then hearing all of the -- the stories
5 that were told to, not just 911, not just to her mother, but
6 also to Officer Sououd and to Detective Beam, who also had his
7 doubts about this whole thing. The question is what they
8 found after that which would get them over suspicion.

9 Now, they arrested him on probable cause because that's
10 what she said happened. Again, directed verdicts are used
11 when the Court knows that there's no real competent or
12 reliable evidence to go to a jury. And I would suggest to the
13 Court that after all the inconsistent stories that this
14 particular witness told and there's no other circumstantial
15 evidence at all which supports it, no forensic evidence which
16 supports it, I would ask the Court to -- ask the Court for a
17 directed verdict for the Defendant in this matter and also for
18 the interest of justice, Judge. And my concern obviously with
19 this case going to a jury verdict with that type of evidence
20 knowing the inconsistent stories, knowing the veracity of the
21 witness obviously was attacked I think successfully. I'm
22 really concerned, Judge. We just respectfully request.

23 THE COURT: Thank you. Solicitor, be glad to hear from
24 you.

25 MR. HOLFORD: Yes, Your Honor. As to a directed verdict,

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

280

1 in the light most favorable to the State in a motion like
2 this, Your Honor, the State would submit that there is
3 substantial evidence to submit this case to the jury. There's
4 direct evidence in the form of witness testimony. There's
5 also circumstantial evidence. There's more than just witness
6 testimony, there's Facebook records, phone records that
7 corroborate, there's a story that remains the same throughout
8 although more details are added. It all points to one
9 Defendant in this case; that being James Welch or David James
10 Welch that did commit these crimes. Each and every crime has
11 been shown to the jury and they can make a decision based on
12 the facts and the evidence in this case that the Defendant is
13 guilty of each and every crime charged by the State.

14 THE COURT: All right, sir. Thank you. As indicated by
15 the State and the Defense regarding a motion for directed
16 verdict, the Court's concerned with the existence or non-
17 existence of evidence, not with its weight, not with its
18 credibility, not with its believability; that's the jury's job
19 is credibility and believability. All I'm looking at is
20 whether or not the evidence exists.

21 Now, obviously, a Defendant would be entitled to a
22 directed verdict when the State fails to produce evidence of
23 the offense charged, and the Court would grant a motion for a
24 directed verdict if the evidence merely raises a suspicion
25 that the accused is guilty. The Court has to view the

State v. Welch - 2015-GS-26-969, 970, 971, 972
MOTIONS

281

1 evidence and all reasonable inferences therefrom in the light
2 most favorable to the non-moving party and that obviously here
3 is the -- is the State. And if any direct evidence or
4 substantial circumstantial evidence reasonably tends to prove
5 the guilt of the accused, it would be the Court's
6 responsibility to let the case be submitted to the jury.

7 In this particular case, there is direct evidence,
8 testimony of the victim that directly accuses and directly
9 states that the Defendant committed the crimes of criminal
10 sexual conduct in the first degree, as it is defined by the
11 law, that did take place; that she was confined or held
12 against her will for some portion of time, that being the
13 offense of kidnapping; that there was the use of a deadly
14 weapon, that is a firearm, in the criminal sexual conduct and
15 kidnapping and that with the use of the deadly weapon, an
16 armed robbery took place, that is the purse and belongings of
17 the Defendant did take place and that was removed from the
18 victim in this matter by force and without her consent. And,
19 criminal sexual conduct in the first degree, kidnapping, armed
20 robbery, all those being most serious offenses, felonies, that
21 also tends to prove the crime of possession of a weapon during
22 the commission of a violent crime.

23 Whether or not the believability or the credibility of
24 this particular witness has been or has not been successfully
25 attacked by the Defense, again, that is not my job to assign

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

282

1 believability or credibility one way or another. The victim
2 gave direct testimony that comports to the status of the law
3 regarding the elements to be proved of all four crimes for
4 which the Defendant is charged. Therefore, there is more than
5 sufficient evidence, if that evidence is so believed by the
6 jury, to convict the Defendant of all four crimes. Therefore,
7 I find that the matter is properly -- shall be properly
8 submitted to the jury. Directed verdict in this matter is
9 denied.

10 Further motions on behalf of the Defense?

11 MR. WILSON: Nothing further, Your Honor.

12 THE COURT: All right. Is there anything that we need to
13 talk about before we call the jury in, Solicitor?

14 MR. HOLFORD: Nothing further, Your Honor.

15 THE COURT: And from the Defense?

16 MR. WILSON: Judge, just one thing. Can we approach real
17 quick?

18 THE COURT: Absolutely, sure.

19 MR. WILSON: Thank you.

20 (REPORTER'S NOTE: A bench conference was held off the
21 record.)

22 THE COURT: Thank you.

23 All right. Ask the jury to come in please, sir.

24 (REPORTER'S NOTE: Jury enters courtroom.)

25 THE COURT: All right, Solicitor, your next matter

State v. Welch - 2015-GS-26-969,970,971,972
STIPULATION OF COUNSEL

283

1 please?

2 STIPULATION OF COUNSEL:

3 MR. HOLFORD: Yes, Your Honor. The State has State's
4 Exhibit 33, which has been entered into evidence. It's a
5 stipulation of the parties. It reads that in the above
6 captioned trial, both the State and Defendant consent and
7 stipulate to the following facts as provided by the National
8 Oceanic and Atmospheric Administration. The State would wish
9 to publish this to the jury.

10 THE COURT: You may and that is the stipulation of the
11 Defense, also; is that correct, Mr. Wilson?

12 MR. WILSON: That is correct, Your Honor, without
13 objection.

14 THE COURT: All right. Very good. So you can go ahead
15 and publish it to the jury.

16 MR. HOLFORD: Your Honor, it says that in Myrtle Beach,
17 South Carolina, the weather for January the 8th, 2015, high
18 32, low 17; sunrise 7:21 A.M. and Sunset 5:24 P.M. I would
19 ask to publish it.

20 THE COURT: You may do so.

21 All right. With that stipulation being published to the
22 jury, what's the position of the State?

23 MR. HOLFORD: Your Honor, at this point, the State
24 rests.

25 THE COURT: All right. Very good. All right, Mr.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JESSICA STOWE - DIRECT BY WILSON

284

1 Wilson, you ready to proceed with the defense?

2 MR. WILSON: Your Honor, I am, Judge.

3 THE COURT: All right. Very good. Call your -- call
4 your witness, please?

5 MR. WILSON: She's been sequestered. We're gonna go get
6 her, Judge.

7 THE COURT: All right. Very good.

8 All right. Come all the way around. Just come around
9 all the way up here and meet the Clerk's representative right
10 at the corner over here, please, ma'am.

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

13 JESSICA STOWE, HAVING BEEN SWORN

14 TESTIFIES AS FOLLOWS:

15 CLERK: Please state your full name and spell your first
16 and last name for the Court.

17 MS. STOWE: My name is Jessica Stowe, J-E-S-S-I-C-A,
18 Stowe, S-T-O-W-E.

19 THE COURT: All right. Go ahead, Mr. Wilson.

20 MR. WILSON: Thank you, Your Honor.

21 DIRECT EXAMINATION OF JESSICA STOWE BY MR. WILSON:

22 Q: Ms. Stowe, where are you currently employed?

23 A: I currently work for the South Carolina Law Enforcement
24 Division, often referred to as SLED.

25 Q: Okay. And how long have you worked at SLED?

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - DIRECT BY WILSON

285

1 A: Five years next month.

2 Q: Okay. And could you tell the jury briefly what you do at
3 SLED?

4 A: Yes, I am a Forensic Serologist. So what Forensic
5 Serology is, is it's the identification of body fluids such as
6 blood, semen, saliva. We screen items of evidence from
7 clothing, sexual assault kits, doors, knives, anything really,
8 for body fluids that may contain DNA. We compress those
9 samples into cuttings or swabs and forward those for DNA
10 analysis. We generate reports based on our findings and we
11 testify in court.

12 Q: All right. What sort of training or education would you
13 have to be a Forensic Serologist?

14 A: I participated in SLED's in-house training program. It
15 lasted about a year. At the end, we took a five-part
16 competency exam that encompassed all aspects of being a
17 Forensic Serologist and as far as my education is concerned, I
18 have a Bachelor's of Science in Biology with a minor in
19 Chemistry from the University of South Carolina.

20 Q: Okay. And how many times have you performed these exams
21 on kits, if you will?

22 A: Oh gosh, hundreds.

23 Q: Okay. How many times have you testified at trial as an
24 expert?

25 A: Nine.

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - DIRECT BY WILSON

286

1 MR. WILSON: Okay. Your Honor, I'd like to offer Ms.
2 Stowe as an expert in the area of Forensic Serology at this
3 time.

4 THE COURT: Solicitor, do you wish voir dire the witness
5 regarding qualifications or challenge the offer by the
6 Defense?

7 MR. HOLFORD: No, Your Honor, the State believes she's
8 qualified.

9 THE COURT: All right. Very good. I'm gonna qualify her
10 to give her opinion in this matter.

11 You may proceed.

12 MR. WILSON: Thank you, Your Honor.

13 BY MR. WILSON:

14 Q: Now, at some point in time, you would have received --
15 you had some involvement in this matter?

16 A: Yes, I did.

17 Q: Okay. Can you tell the jury what your involvement was in
18 this matter?

19 A: I screened the sexual assault kit.

20 Q: Okay.

21 MR. WILSON: May I approach the witness, Judge?

22 THE COURT: Yes, sir.

23 BY MR. WILSON:

24 Q: Okay. Now I'm now showing you what's been marked for
25 identification purposes only, Defendant's Exhibit 6, ID.

State v. Welch - 2015-GS-26-969,970,971,972

287

JESSICA STOWE - EXAMINATION BY HOLFORD (AS TO CHAIN)

1 A: Okay.

2 Q: Do you recognize that box and that item?

3 A: We do not typically routinely get the boxes. We get the
4 internal contents, which I do recognize, Item 1 and Item 3.
5 Item 1 is the sexual assault kit. Item 3 is the underwear. I
6 recognize them with our SLED specific case number and my
7 initials and the date on both packages.

8 Q: Okay.

9 A: There you go.

10 Q: Thank you. Now, you would've received these and then
11 performed a analysis on these items?

12 A: That would be correct.

13 Q: Okay. All right.

14 MR. WILSON: Your Honor, at this point in time, I'd ask
15 to move this into evidence as Defendant's Exhibit ---

16 COURT REPORTER: 14.

17 MR. WILSON: 14 and 15, Judge.

18 THE COURT: All right. 14 and 15, is there any objection
19 to that from that State?

20 MR. HOLFORD: Your Honor, I would like to question as to
21 the chain?

22 THE COURT: Yes, sir, be glad for you do to so.

23 EXAMINATION OF JESSICA STOWE BY MR. HOLFORD AS TO CHAIN OF
24 CUSTODY:

25 Q: Do you go by agent?

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - EXAMINATION BY HOLFORD (AS TO CHAIN)

288

- 1 A: You can just call me Ms. Stowe, whatever.
- 2 Q: Did you receive this evidence yourself?
- 3 A: Yes. I submitted a formal request to our Evidence
4 Control area, they're the ones who store the evidence, and I
5 received it from one of our evidence people.
- 6 Q: But Myrtle Beach Police didn't hand it to you
7 specifically, did they?
- 8 A: No, they did not; huh-uh (negative response).
- 9 Q: Melinda Shadoan actually gave it to Jennifer Aycock?
- 10 A: That would be correct by looking at the chain of custody.
- 11 Q: And then Jennifer gave it to Doris Yarborough?
- 12 A: Jennifer then placed it on a DNA shelf, and when I
13 requested it, Doris Yarborough received it from the DNA shelf
14 and handed it to me.
- 15 Q: Are those both people who work at SLED?
- 16 A: Jennifer Aycock no longer works at SLED, but Doris
17 Yarborough does.
- 18 Q: Is there a specific reason she doesn't work at SLED
19 anymore?
- 20 A: I'm not sure of her reasoning, no.
- 21 Q: Was there any problem with her work?
- 22 A: Not that I'm aware of.
- 23 Q: Was she fired or did she quit?
- 24 A: I believe she moved to another position; she wasn't
25 fired.

State v. Welch - 2015-GS-26-969,970,971,972

289

JESSICA STOWE - EXAMINATION BY HOLFORD (AS TO CHAIN)

1 Q: And then after you handled it, you gave it back to
2 Jennifer Aycock?

3 A: That would be correct.

4 Q: And then you gave it back to -- she gave it to Jackie
5 Davis?

6 A: She placed it on another shelf where it was stored until
7 the agency came to get it. And, in that case, Jackie Davis
8 received it from that shelf that Jennifer placed the evidence
9 on and then returned it to the agency.

10 Q: And then -- okay. And then it was returned to Myrtle
11 Beach Police Department?

12 A: Uh-huh (affirmative response).

13 Q: And your report was -- was given to Tony Humes?

14 A: That's the -- that's who it was addressed to in our
15 system so it automatically generates to Tony Humes.

16 Q: Okay. And he's someone with Myrtle Beach Police
17 Department?

18 A: (Indicates affirmatively.)

19 Q: Okay. But you -- you don't have any knowledge of the
20 point between Melinda, Jennifer; you just know when you got it
21 after Doris, right?

22 A: Right, I'm not physically there.

23 MR. HOLFORD: No further questions, Your Honor.

24 THE COURT: All right. Do you have any matters for the
25 Court that you want to -- the Court to address regarding those

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - DIRECT BY WILSON

290

1 questions?

2 MR. HOLFORD: No, Your Honor.

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

4 You may proceed, Mr. Wilson?

5 MR. WILSON: Thank you, Your Honor.

6 CONTINUATION OF DIRECT EXAMINATION OF JESSICA STOWE BY MR.

7 WILSON:

8 Q: When you received this, you would not -- I apologize.

9 Yes, thank you. Thank you.

10 MR. WILSON: into evidence, I think without objection,
11 Defendant's Exhibit 14, Judge, and then Defendant's Exhibit
12 15?

13 THE COURT: All right. Why don't you have the witness
14 tell you exactly which one is which, please?

15 MR. WILSON: Yes, Your Honor.

16 BY MR. WILSON:

17 Q: Will you please for the jury tell me which one this is,
18 Defendant's Exhibit 14; what item is that?

19 A: This is Item 1, the sexual assault kit.

20 Q: Okay. And Defendant's Exhibit 15, which item is that?

21 A: This is Item 3, these are -- this is the underwear.

22 Q: Thank you.

23 A: Uh-huh (affirmative response).

24 THE COURT: All right. Based upon that, the Court allows
25 into evidence Defendant's 14 and 15. Thank you very much.

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - DIRECT BY WILSON

291

1 MR. WILSON: Thank you, Your Honor.

2 DEFENDANT'S EXHIBITS NUMBERS 14 AND 15

3 ADMITTED INTO EVIDENCE

4 BY MR. WILSON:

5 Q: Now, when you receive these, they are always sealed,
6 correct?

7 A: Yes.

8 Q: Okay. And what's your policy if they're not sealed?

9 A: If it's not sealed, we document, contact the submitter,
10 if necessary, and we will always seal it ourselves.

11 Q: Okay. Now explain to the jury what process you would go
12 through to do an analysis on this type of CSC rape kit?

13 A: Okay. The first thing I do is review the documentation
14 that was submitted. We figure out what body fluid needs to be
15 screened for. The sexual assault kit, as you see, comes in a
16 box so it's our job to see what exactly was submitted. In
17 this case, there was multiple items that were submitted within
18 the sexual assault kit that was collected from the hospital.

19 Q: Okay. And do you have a copy of -- do you issue a report
20 from the analysis?

21 A: Yes, we do.

22 Q: Okay. And did you perform the analysis yourself on these
23 items?

24 A: I did.

25 Q: Okay. And as a result of that report, do you have a copy

State v. Welch - 2015-GS-26-969, 970, 971, 972
JESSICA STOWE - DIRECT BY WILSON

292

1 with you today?

2 A: I do.

3 Q: Okay. Let me ask you if you recognize this document and
4 if that looks familiar to you and if your signature is
5 attached to that?

6 A: Yes, this appears to be a copy of my serology report with
7 my signature.

8 Q: Okay. All right. Thank you, ma'am.

9 A: You're welcome.

10 MR. WILSON: Your Honor, at this time, I'd just like to
11 have this marked for identification purposes only.

12 THE COURT: All right, sir. Any objection?

13 MR. HOLFORD: No objection.

14 COURT REPORTER: Defendant's 16 for identification.

15 THE COURT: All right. Thank you.

16 MR. WILSON: Thank you, ma'am.

17 DEFENDANT'S EXHIBIT NUMBER 16

18 MARKED FOR IDENTIFICATION

19 BY MR. WILSON:

20 Q: Now, inside of a sexual assault kit -- tell the jury what
21 would commonly be in a sexual assault kit?

22 A: So, inside a sexual assault kit, are small envelopes.
23 They contain collection devices that the nurse can use to
24 collect from different parts of the body. You may have
25 vaginal swabs, oral swabs, rectal swabs, pubic hair combings,

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - DIRECT BY WILSON

293

1 suspected saliva swabs, suspected body fluid swabs, a debris
2 collection; there's multiple types of evidence collection.

3 Q: All right. And based on your report, did you perform a
4 analysis regarding any smears from the vaginal or rectal area
5 in this particular case?

6 A: Yes. Item 1.1 within the sexual assault evidence
7 collection kit are smears, vaginal and rectal smears.

8 Q: Okay. And what was the result of that particular test?

9 A: No spermatozoa identified.

10 Q: And just for the purposes so -- I understand because I
11 had to look it up myself -- what is spermatozoa?

12 A: Spermatozoa is the male sperm cell; it's the reproductive
13 cell. It's very unique in form and is -- we do a microscopic
14 examination looking for it.

15 Q: Okay. So, you do examination or microscopic examination
16 looking for that particular cell?

17 A: That's correct, yes.

18 Q: Okay. All right. And was there also a vaginal swab
19 done?

20 A: Yes, I examined 1.2 vaginal swabs.

21 Q: Okay. And what was the result of the vaginal
22 examination?

23 A: Examinations for components of semen P30 and spermatozoa
24 were negative; no semen identified.

25 Q: So, again you were looking for sperm?

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - DIRECT BY WILSON

294

1 A: We're -- well, I was looking for sperm, yes, but I was
2 also looking for another component called P30. It's a protein
3 found in high concentrations in male seminal fluid. So, we do
4 two types of screening.

5 Q: Okay. And what would the P30 be indicative of, why
6 would you be looking for that as well?

7 A: Like I said, it's found in high concentrations in male
8 seminal fluid, semen; so, that's a good indicator that semen
9 is present.

10 Q: And there was none found?

11 A: No.

12 Q: Okay. And did you also do a rectal swab in this matter?

13 A: Yes, I did.

14 Q: All right. And what was the result of the rectal swab?

15 A: Examinations for components of semen, P30 and
16 spermatozoa, were negative, no semen identified.

17 Q: Okay. And did you also do a pubic hair combings
18 analysis?

19 A: I did.

20 Q: Okay. Did you find any pubic hairs at all?

21 A: No hair found.

22 Q: Okay. All right. Did you also do a buccal swab analysis
23 or did you not?

24 A: Victim buccal swabs were submitted in the kit, but no
25 analysis was performed.

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - DIRECT BY WILSON

295

1 Q: Okay. And Item 1.6, suspected bodily fluids, can you
2 explain what that is to the jury?

3 A: Uh-huh (affirmative response). The nurse collected, took
4 swabs in a suspected body fluid envelope and they collected it
5 from a specific part of the body, and I tested those for
6 semen.

7 Q: Okay. And what was the results of that particular test?

8 A: Examinations for components of semen, P30 and
9 spermatozoa, were negative, no semen identified.

10 Q: Okay. And in Number 2, buccal swabs from a Jerrica
11 Nelson, you did no analysis?

12 A: That's correct.

13 Q: Okay. And on the underwear, what analysis did you do on
14 the underwear?

15 A: I performed semen screening and looked for hair.

16 Q: Okay. And were there any results from that particular
17 analysis?

18 A: Examination for a component of semen acid phosphatase was
19 negative, no hair found.

20 Q: Okay. And as an expert in this field, these are your
21 findings?

22 A: Yes.

23 Q: Okay.

24 MR. WILSON: Your Honor, at this point in time, I'd ask
25 to move this report, the Serology Report, into evidence.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JESSICA STOWE - DIRECT BY WILSON

296

1 THE COURT: That's Defendant's 16?

2 MR. WILSON: That's correct, Your Honor.

3 THE COURT: Any objection?

4 MR. HOLFORD: No objection, Your Honor.

5 THE COURT: All right. It's into evidence without
6 objection.

7 MR. WILSON: Thank you, Your Honor.

8 DEFENDANT'S NUMBER 16

9 ADMITTED INTO EVIDENCE

10 MR. WILSON: Court's indulgence, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. WILSON:

13 Q: Let me ask you if you recognize this document from SLED.
14 Can you tell me what that is?

15 A: This appears to be the chain of custody.

16 Q: Okay. And explain what the chain of custody is to the
17 jury. I know we've already gotten that out there, but just
18 briefly.

19 A: The chain of custody is a business document that we have
20 that essentially allows us to -- we can look at it at any time
21 and see where the evidence is. We can see how the evidence
22 has traveled, so it's important as a reference to see how the
23 evidence moved throughout the laboratory.

24 Q: Okay. And is your name on that document?

25 A: It is.

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - DIRECT BY WILSON

297

1 Q: Okay. And why would your name appear on that document?

2 A: Because I took items of evidence in this case into my
3 custody.

4 Q: Okay. All right.

5 MR. WILSON: Your Honor, at this point in time, I'd ask
6 to move into evidence the certified chain of custody from
7 SLED.

8 THE COURT: Any objection to that document?

9 MR. HOLFORD: No objection, Your Honor.

10 THE COURT: All right. What's the number, please?

11 COURT REPORTER: 17.

12 THE COURT: All right. Defendant's 17 is into evidence
13 without objection. You may proceed.

14 MR. WILSON: Thank you, Your Honor.

15 DEFENDANT'S EXHIBIT NUMBER 17

16 ADMITTED INTO EVIDENCE

17 BY MR. WILSON:

18 Q: Did that end your involvement in this matter?

19 A: Yes.

20 Q: Okay. Did you have any further involvement in this
21 matter?

22 A: I did not.

23 MR. WILSON: No further questions, Your Honor.

24 THE COURT: All right. Cross examination, please?

25 MR. HOLFORD: Thank you, Your Honor.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JESSICA STOWE - CROSS BY HOLFORD

298

1 CROSS EXAMINATION OF JESSICA STOWE BY MR. HOLFORD:

2 Q: Ms. Stowe, is there a correct way to process one of these
3 rape kits or to collect it at the scene?

4 A: To collect it at the scene?

5 Q: Yeah.

6 A: I'm not trained in collection at the scene, which would
7 be the hospital where the nurse collects the evidence. So, I
8 can't really answer to that.

9 Q: Do you know the nurse who collected these vaginal swabs
10 and vaginal and rectal smears?

11 A: I do not.

12 Q: So you don't know if that nurse is trained?

13 A: I have no idea.

14 Q: Do you know if it was Tony Humes that did it?

15 A: I wouldn't think so since he is on the report as
16 affiliated with the Myrtle Beach Police Department.

17 Q: Okay. So, it would be a nurse at the hospital that
18 collected it?

19 A: Yes, I believe so or any medical personal, a doctor;
20 we've had doctors collect it.

21 Q: There are actually certified nurses that -- that are
22 supposed to perform these tests, right?

23 A: I don't know if they're supposed to but I know that
24 nurses can receive training in this area.

25 Q: But sometimes a nurse who doesn't have training will --

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - CROSS BY HOLFORD

299

1 will collect these types of swabs and smears?

2 MR. WILSON: Objection, Your Honor; speculation, Judge.

3 THE COURT: If she knows or if she doesn't know, I'll
4 allow the witness to answer the question.

5 A: Can you repeat the question?

6 BY MR. HOLFORD:

7 Q: There are nurses who don't have this training that can
8 collect those smears and swabs?

9 A: I -- I'm not sure. I guess that would depend on the
10 hospital's policy.

11 Q: You wouldn't know?

12 A: I wouldn't know.

13 Q: Because by the time it gets to you, all you have is the
14 smear or the swab itself?

15 A: Correct. Sometimes we can review documentation and we
16 see that the nurses have stuff behind their name that may
17 indicate that they're a sexual assault nurse, sometimes they
18 don't, but just because they don't, doesn't mean that they're
19 not trained.

20 Q: And so whether it was correctly properly or not, you
21 wouldn't have any idea?

22 A: I would not know.

23 Q: Now, when it shows that on the smears and the vaginal
24 swabs that there's no sperma -- no sperm; can we call it that?

25 A: Yeah, perfect, yeah.

State v. Welch - 2015-GS-26-969, 970, 971, 972
JESSICA STOWE - REDIRECT BY WILSON

300

1 Q: Or no semen ---

2 A: Uh-huh (affirmative response).

3 Q: That does not mean that the victim hadn't had sex, right?

4 A: That's correct; uh-huh (affirmative response).

5 Q: That doesn't mean that the victim wasn't raped?

6 A: That would be correct.

7 Q: Could a condom prevent semen from being collected?

8 A: Absolutely.

9 Q: Are these rare findings?

10 A: No, they are not.

11 Q: And again, that just -- it has no bearing on whether the
12 Defendant -- or whether the victim was actually sexually
13 assaulted in this case?

14 A: No, we're just looking for body fluids.

15 MR. HOLFORD: No further questions, Your Honor.

16 THE COURT: Any redirect?

17 MR. WILSON: Just briefly, Judge.

18 THE COURT: Yes, sir.

19 REDIRECT EXAMINATION OF JESSICA STOWE BY MR. WILSON:

20 Q: In sexual assault cases where there is contact -- and the
21 prosecutor was asking you just now about whether or not there
22 would be semen available or present. If someone was having
23 sex with someone and you did a pubic hair swab, would you
24 typically find pubic hair in the underwear or on the vaginal
25 swab?

State v. Welch - 2015-GS-26-969,970,971,972
JESSICA STOWE - REDIRECT BY WILSON

301

1 A: That completely depends. When we're looking for pubic
2 hair, whether it's in the underwear, whether it's on pubic
3 hair combings, we're looking for the subject's. So it
4 completely depends if they shed hair or not.

5 Q: Okay. And the P30 that you were talking earlier, you
6 look for that because it's smaller, it's a -- it's a --
7 obviously highly present in the actual fluid from a male,
8 correct?

9 A: That is correct.

10 Q: All right. So it could be something that could be
11 transferred extremely easily, correct?

12 A: That would be correct if it's in liquid form, yes.

13 Q: Okay.

14 MR. WILSON: No further questions, Your Honor.

15 THE COURT: All right. Do you wish the witness to be
16 excused?

17 MR. WILSON: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. HOLFORD: No objection, Your Honor.

20 THE COURT: All right, ma'am, you're released from your
21 subpoena and may go back to your regular duties. Thank you.

22 A: Thank you.

23 THE COURT: All right. Mr. Wilson, the next matter?

24 MR. WILSON: Yes, Your Honor.

25 THE COURT: All right.

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

302

1 MR. WILSON: May we approach, Judge?

2 THE COURT: Yes, please.

3 (REPORTER'S NOTE: A bench conference was held off the record
4 in the presence of but out of hearing of the Jury.)

5 BY THE COURT:

6 THE COURT: All right, ladies and gentlemen, we're gonna
7 need to take a break. There's a presentation of an
8 audio/video matter and it needs to be played in a fashion that
9 the Court has approved and that requires the assistance of
10 other personnel to make sure that the Court's directions are
11 followed. So, I'll need for y'all to go the jury room and
12 I'll call you out just as soon as I can. Okay?

13 Thank you very much.

14 (REPORTER'S NOTE: Jury exits courtroom. The following takes
15 place outside the presence of the Jury.)

16 THE COURT: All right, Counsel, y'all just let me know
17 when you're ready. As I told you, when you're ready, we'll
18 come back in and then we'll also do the matter regarding the
19 Defendant's constitutional rights to testify. Okay?

20 MR. WILSON: Yes, Your Honor.

21 MR. HOLFORD: Yes, Your Honor.

22 THE COURT: Thank you very much.

23 (RECESS.)

24 *****OFF THE RECORD*****

25 (On the Record.)

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

303

1 (REPORTER'S NOTE: The following takes place outside the
2 presence of the Jury.)

3 THE COURT: You ready for the jury to come in?

4 MR. HOLFORD: Your Honor, if we could put one matter on
5 the record?

6 THE COURT: Sure.

7 MR. HOLFORD: I just realized and we talked about this
8 back in chambers, but the issue of the search warrant where
9 the bullets were found at the house?

10 THE COURT: Yes.

11 MR. HOLFORD: The State would like to introduce the fact
12 that the bullets, .38 caliber bullets were found during that
13 search warrant. We would intend to do so during this witness,
14 Detective Beam. I just want to place that on the record.

15 THE COURT: All right. Very good. And the position of
16 the Defense, Mr. Wilson?

17 MR. WILSON: Judge, there is case law on this regarding it
18 and we talked about this in chambers, jumping from one
19 inference to the other. And what the State is asking the
20 jury to do is use the actual bullets as a stepping stone to
21 get to the gun and the bullets were found nowhere else during
22 the crime. They weren't found on the person of the Defendant,
23 they weren't found near the actual apartment complex where
24 they say all this happened. I think that it is highly
25 prejudicial and the actual probative value of it, because

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

304

1 again, these are old bullets; I've seen them, so has the
2 prosecution. These are really old bullets that were found in
3 a box at a house. I would ask the Court to deny their ability
4 to actually put that stuff in; it's prejudicial and again I
5 don't think it's relevant and again I'd like it to, on the
6 record, having a baseball bat murder and then going to the
7 house and finding the baseball and saying look, they
8 definitely had a baseball bat.

9 THE COURT: All right.

10 MR. WILSON: It's too far.

11 THE COURT: Well and I appreciate that. Solicitor, what
12 I'm gonna do at this point in time is I'm not gonna allow the
13 State to present the bullets in evidence in its direct exam --
14 direct presentation of evidence. However, I'll reserve the
15 issue of whether or not, because I don't find them to be
16 directly relevant to the issue that the -- that the
17 prejudicial value outweighs the probative value at this point
18 in time in this case, but should the Defendant testify or
19 should there be other witnesses that might testify on behalf
20 of the Defendant which would raise the issue that, and I'm
21 just using this as an example. I'm not making any kind of
22 ruling, but that the Defendant knows nothing about weapons,
23 has never had a weapon in his life or anything of that nature,
24 then it might then bridge that hurdle of becoming more
25 probative than prejudicial at that -- that point in time. So

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

305

1 in the State's direct presentation, I'm not gonna allow it,
2 but it is not an absolute bar. It depends on what may develop
3 through the Defendant's presentation of the case. We'll just
4 see about that, all right?

5 MR. HOLFORD: Yes, Your Honor.

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

7 MR. WILSON: Thank you, Judge.

8 THE COURT: So with that, are we ready for the jury then?

9 MR. WILSON: Yes, Your Honor.

10 THE COURT: All right. Ask the jury to come in.

11 (REPORTER'S NOTE: Jury enters courtroom.)

12 THE COURT: All right, ladies and gentlemen, I want to
13 first apologize for the delay, but apparently when the counsel
14 went to play this next audio/video found that it was in such a
15 encrypted and protected mode that it took it a long time to go
16 through the protocol such that it could be actually viewed.
17 So that's what the delay was about. Sorry about that.

18 All right, Mr. Wilson.

19 MR. WILSON: Your Honor, it please the Court?

20 THE COURT: Yes, sir.

21 MR. WILSON: Your Honor, we call Detective Beam to the
22 stand.

23 THE COURT: All right, sir, please come around, sir.

24 CLERK: Please raise your right hand.

25 JEREMIAH BEAM, HAVING BEEN SWORN

State v. Welch - 2015-GS-26-969, 970, 971, 972
JEREMIAH BEAM - DIRECT BY WILSON

306

1 TESTIFIED AS FOLLOWS:

2 CLERK: State your full name and spell your first and
3 last name for the Court?

4 MR. BEAM: Jeremiah Beam, J-E-R-E-M-I-A-H., last name is
5 Beam, B-E-A-M.

6 DIRECT EXAMINATION OF JEREMIAH BEAM BY MR. WILSON:

7 Q: Good afternoon, Detective?

8 A: Good afternoon, sir.

9 Q: You're lead detective in this case, correct?

10 A: Yes, sir.

11 Q: All right. And as a part of any response to any sort of
12 call to 911, they will get an initial officer on the scene?

13 A: Yes, sir.

14 Q: And the initial officer in this particular case was who?

15 A: Ms. Sououd.

16 Q: And she's a police officer on the force?

17 A: Yes, sir.

18 Q: And you know her?

19 A: Yes, sir.

20 Q: Okay. All right. And as a result of that, she would've
21 actually had first contact with Ms. Jerrica Nelson?

22 A: Yes, sir.

23 Q: Okay. And she did actually have an interview with her?

24 A: Yes, sir.

25 Q: Okay. All right. Can you identify this for me?

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - CROSS BY HOLFORD

307

1 A: This is her car video, her in-car video, sir.

2 MR. WILSON: Okay. All right. Judge, at this time, I'd
3 ask this be moved into evidence; it is Defendant's Exhibit 4?

4 THE COURT: All right. Based upon the Court's previous
5 ruling I will allow Defendant's 4 into evidence. Thank you
6 very much.

7 MR. WILSON: Thank you, Your Honor.

8 DEFENDANT'S EXHIBIT NUMBER 4

9 ADMITTED INTO EVIDENCE

10 MR. WILSON: May I publish, Judge?

11 THE COURT: Yes, sir.

12 MR. WILSON: Thank you.

13 THE COURT: As far as the size, ladies and gentlemen,
14 that's the best that it can be.

15 *****OFF THE RECORD*****

16 (REPORTER'S NOTE: Defendant's Exhibit 4 published, not
17 transcribed herein.)

18 **(On the Record.)**

19 MR. WILSON: Your Honor, no further questions.

20 THE COURT: All right. Very good. Cross examination?

21 MR. HOLFORD: Briefly, Your Honor.

22 CROSS EXAMINATION OF JEREMIAH BEAM BY MR. HOLFORD:

23 Q: Detective Beam, the time stamp on that right now is
24 21:07:47. Can you see that?

25 A: No, sir.

State v. Welch - 2015-GS-26-969,970,971,972
JEREMIAH BEAM - CROSS BY HOLFORD

308

1 Q: Would you think that's true?

2 A: It sounds accurate.

3 Q: Okay. And earlier you told the -- you told the jury that
4 you met with Jerrica at -- I'm trying to flip to it, I
5 apologize -- 21:14?

6 A: Yes, sir.

7 Q: And so approximately seven minutes after that is when you
8 come in and you start your whole interview, right?

9 A: Yes, sir, I was notified by the on-scene road supervisor
10 and then I responded from our annex office.

11 Q: Okay. And that 21, that's all Eastern Standard Time?

12 A: Yes, sir.

13 Q: That's not UTC.

14 A: No, sir.

15 Q: So, that's the time it was here in Myrtle Beach?

16 A: Correct.

17 Q: And that would be 9:00, 9:07 on there, 9:14?

18 A: Yes, sir. That's military time.

19 Q: No further questions.

20 THE COURT: Anything on those questions, Mr. Wilson?

21 MR. WILSON: Nothing, Your Honor.

22 THE COURT: All right, sir. You may step down.

23 Y'all come talk to me for one second, please.

24 MR. WILSON: Yes, sir.

25 (REPORTER'S NOTE: A bench conference was held off the record

State v. Welch - 2015-GS-26-969,970,971,972
DAVID WELCH - BY THE COURT

309

1 in the presence of but out of hearing of the Jury.)

2 THE COURT: All right, ladies and gentlemen, I'm gonna
3 send y'all to lunch. I need to go over some things with the
4 attorneys and I want y'all to be back, let's see, I want y'all
5 to be back at 1:50, please. Be back at 1:50. All right?

6 Thank you very much.

7 (REPORTER'S NOTE: Jury exits courtroom. The following takes
8 place outside the presence of the Jury.)

9 THE COURT: All right, Mr. Wilson, other than potential
10 testimony from the Defendant, Mr. Welch, is there anything --
11 any other presentation of evidence from the Defense?

12 MR. WILSON: Nothing at all, Judge.

13 THE COURT: All right. Very good.

14 All right, Mr. Welch, if you'd please stand up.

15 Madam Clerk, place him under oath.

16 CLERK: Please raise your right hand.

17 DAVID JAMES WELCH, HAVING BEEN SWORN
18 TESTIFIED AS FOLLOWS:

19 THE COURT: All right, Mr. Welch, at this point in time,
20 I'm going to explain to you certain of your constitutional
21 rights. Now, if at any point in time you don't understand
22 what I'm saying, you have a question about what I'm saying,
23 there's any confusion of any kind, you need to indicate that
24 to me. You can raise your hand, you can tell your attorney,
25 but you've got to let me know that you're not understanding or

State v. Welch - 2015-GS-26-969,970,971,972
DAVID WELCH - BY THE COURT

310

1 you have some question.

2 Are we in agreement there?

3 MR. WELCH: Yes, sir.

4 THE COURT: All right. Very good. We've reached the
5 stage of the trial where you've been presenting your defense.
6 Now, you have the right to testify. You also have the right
7 to claim the protection given to you by the Fifth Amendment of
8 the Constitution of the United States of America. Now that
9 states in part that no person shall be compelled to be a
10 witness in a case against themselves. That means nobody can
11 make you testify. You can testify if you want to, but nobody
12 can make you do that; you understand that?

13 MR. WELCH: Yes, sir.

14 THE COURT: All right, sir. Now, if you decide to
15 testify, you'll be subject to the same rules that have
16 governed all the other witnesses that have testified in this
17 case. You'd be examined or questioned by your attorney and
18 then the State would cross examine you or question you about
19 matters that they believe and, if called upon, the Court would
20 rule relevant in this particular matter. You understand that?

21 MR. WELCH: Yes, sir.

22 THE COURT: Now, Solicitor, is there any issue of a prior
23 record regarding Mr. Welch?

24 MR. HOLFORD: Your Honor, the prior record includes a
25 2013 -- I'm gonna read them all for the Court ---

State v. Welch - 2015-GS-26-969,970,971,972
DAVID WELCH - BY THE COURT

311

1 THE COURT: Yes, sir.

2 MR. HOLFORD: Some of these may not be applicable.

3 THE COURT: All right. Very good.

4 MR. HOLFORD: 2013 simple possession of marijuana
5 conviction; a 2014 driving without a license; a 2014
6 possession of beer or wine by a minor; and I know he is on
7 probation for strong armed robbery, that offense occurred in
8 2013, however, the conviction -- I do not see the conviction,
9 but I know he is on probation. I know he's convicted of
10 strong armed robbery.

11 THE COURT: All right. So, other than the strong armed
12 robbery, would -- do you believe any of those others would
13 qualify under the rule regarding credibility or believability?

14 MR. HOLFORD: Your Honor, they're all less than a year
15 and I -- the State would concede they did not.

16 THE COURT: All right, sir. So, any issue about the --
17 the crime of strong armed robbery being one that the State
18 could impeach the Defendant's testimony about?

19 MR. WILSON: Judge, I believe it qualifies under the
20 rule.

21 THE COURT: All right. Very good.

22 So, Mr. Welch, you understand that if you decided to
23 testify, the State would be allowed to ask you whether or not
24 you had been convicted of the crime of strong armed or common
25 law robbery in the past and they've established the date; you

State v. Welch - 2015-GS-26-969, 970, 971, 972
DAVID WELCH - BY THE COURT

312

1 understand that?

2 MR. WELCH: Yes, sir.

3 THE COURT: And if you admit that, that's the end of it.
4 The State can't go any further into it or talk about the
5 circumstances in any way. If you would deny it, then the
6 State would be allowed to bring forth proof that the
7 conviction actually occurred. You understand that?

8 MR. WELCH: Yes, sir.

9 THE COURT: All right, sir. Now, and the Court rules
10 that is proper, the reason for that being that any, under our
11 Criminal Rules of Evidence, the convictions involving
12 dishonesty or crimes that are punishable by imprisonment for
13 more than one year can be probative as to the issue of
14 credibility or believability and I -- the Court does rule that
15 the prejudice to you by the State asking you that question is
16 outweighed by the probative value or the value of it to let
17 the jury judge credibility and believability. So, I would
18 allow the State to ask that question; you understand that?

19 MR. WELCH: Yes, sir.

20 THE COURT: All right, sir. Now, if you decide to
21 testify, that's got to be your decision. It's got to be
22 freely made, voluntarily, intelligently made, knowing what we
23 have discussed about. Now, you are welcome to discuss that
24 with your attorney, family members to make the decisions, but
25 you understand, ultimately it's your decision in this

State v. Welch - 2015-GS-26-969,970,971,972
DAVID WELCH - BY THE COURT

313

1 particular matter. You understand that?

2 MR. WELCH: Yes, sir.

3 THE COURT: All right, sir. If you decided not to
4 testify, part of the Court's instructions to the jury will be
5 that the jury cannot consider that fact whatsoever. They
6 can't talk about it in the jury room, they can't use it
7 mentally to make a decision. I will tell them it's not part
8 of this particular case, the fact that you decided not to
9 testify. They can't use it in any fashion in making this
10 decision. Do you understand that?

11 MR. WELCH: Yes, sir.

12 THE COURT: All right, sir. Do you wish to talk to your
13 attorney or any family member before I ask you what you want
14 to do in this matter?

15 MR. WELCH: I do not. I've talked enough to everybody.
16 I pretty much have in my mind made up about what I'm gonna do.

17 THE COURT: All right, sir. Well, I'm just giving you
18 the opportunity now if you wanted to -- if you wanted to ask
19 either Mr. Wilson or a family member, that's fine; if you
20 don't, that's your choice, too.

21 MR. WELCH: Right.

22 THE COURT: All right, sir. So, do you understand
23 everything that we've talked about?

24 MR. WELCH: Yes, sir.

25 THE COURT: All right, sir. Do you wish to testify in

State v. Welch - 2015-GS-26-969,970,971,972
DAVID WELCH - BY THE COURT

314

1 this particular matter?

2 MR. WELCH: May I voice why I do not wish to testify just
3 so everybody ---

4 THE COURT: Yes, sir, I'll be glad for you to make that
5 statement; yes, sir.

6 MR. WELCH: I feel like it would be very prejudicial to
7 bring in certain things from my past. When Jerrica Nelson was
8 cross examined, we were not allowed to bring certain things
9 up. Also, it's -- I just feel like the evidence should speak
10 for itself in this case.

11 THE COURT: All right, sir. Very good.

12 MR. WELCH: Thank you.

13 THE COURT: So you've made a decision that you do not
14 wish to testify in this case; is that correct?

15 MR. WELCH: Yes, sir.

16 THE COURT: Very good. Thank you very much.

17 All right. So, with that -- you can have a seat, sir,
18 thank you.

19 All right. So, with that, Mr. Wilson, does the defense
20 rest in this matter?

21 MR. WILSON: Yes, Your Honor.

22 THE COURT: All right. Very good.

23 Hold on one second.

24 Is there any reply testimony from the State?

25 MR. HOLFORD: No reply, Your Honor.

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

315

1 THE COURT: All right. Very good. All right.

2 So, with that, then the Court will hear any motions or
3 renewed motions in this particular matter.

4 MOTIONS:

5 MR. WILSON: Your Honor, just a renewed motion for
6 directed verdict, Judge. And, I understand the Court's
7 ruling. I ask for reconsideration on that matter. That would
8 be it, Judge, nothing else.

9 THE COURT: All right. Very good. Regarding the request
10 for a directed verdict, I'm not gonna go over the -- the law
11 that I previously talked about at the end of the State's case,
12 but just emphasize the fact that my job is to look at the
13 existence of evidence, not judge credibility or believability.
14 And I do find that there is more than sufficient evidence that
15 exists in the record, if that evidence is believed by the
16 jury, and again that's their job and responsibility ---

17 MR. WILSON: Sure.

18 THE COURT: --- that would allow the jury to convict the
19 Defendant of the crimes charged beyond a reasonable doubt and,
20 on that basis, I respectfully decline to grant your motion for
21 a directed verdict.

22 MR. WILSON: Thank you, Your Honor.

23 BY THE COURT:

24 THE COURT: All right, sir. All right. So, with that
25 then I told them to come back at 1:50. It'd be my intention

State v. Welch - 2015-GS-26-969, 970, 971, 972
BY THE COURT

316

1 at that point in time then for us to go into the closing
2 arguments. At that point in time, since it has been such --
3 are there any issues about who goes first or who goes second
4 in this particular matter?

5 MR. HOLFORD: Your Honor, I believe that if I read it
6 correctly, the current state of the law as passed down by the
7 Supreme Court, maybe not the legislature but the Supreme
8 Court, says that unless waived by the defense, since he
9 presented evidence, then the State would have to open on the
10 law and facts and then would have a chance to do a rebuttal
11 after the defense.

12 THE COURT: That's my understanding. Is that your
13 understanding also, Mr. Wilson?

14 MR. WILSON: That would be my understanding of the law,
15 Judge.

16 CHARGE CONFERENCE:

17 THE COURT: All right. So, very good. So, that's how we
18 will proceed. Now, as far as the charge on the law in this
19 particular matter -- I'll have my Clerk go get all that -- but
20 obviously we're gonna talk about the things that we normally
21 talk about in any criminal case, credibility, believability,
22 talk about those issues with -- with the jury, direct and
23 circumstantial evidence. Again, as to the issue of
24 circumstantial evidence, I will say that the law doesn't make
25 any distinction between the weight or value to be given either

State v. Welch - 2015-GS-26-969, 970, 971, 972
CHARGE CONFERENCE

317

1 direct or circumstantial evidence and the greater degree of
2 certainty is not required, but I will state to the extent that
3 the State relies on any circumstantial evidence, all the
4 circumstances must be consistent with each other and when
5 taken together point conclusively to the guilt of the accused
6 beyond a reasonable doubt. And if the circumstances merely
7 portray the Defendant's behavior as suspicious, proof has
8 failed in that the State has the burden of proving the
9 Defendant guilty beyond a reasonable doubt and the burden
10 rests with the State regardless of whether the State relies on
11 direct or circumstantial evidence or some combination of the
12 two.

13 Expert witnesses that -- that normally we don't allow
14 people to give their opinion but, if somebody is qualified to
15 give their opinion would do so, but it doesn't give it any
16 greater degree of weight or certainty. The jury judges all
17 those the same.

18 Y'all had a stipulation and so I'll just tell them that's
19 an agreement that's binding upon the parties when they do
20 that.

21 The statement about the Defendant, reiterating it to the
22 jury that they have to make the decision whether it was the
23 voluntary statement of the Defendant of his own free will,
24 whether the Miranda warnings were given, they can also examine
25 -- consider age, education, IQ, intelligence, background,

State v. Welch - 2015-GS-26-969, 970, 971, 972
CHARGE CONFERENCE

318

1 place and length of detention. And, again, the State has the
2 burden of proving beyond a reasonable doubt that his statement
3 was voluntary and was given with the proper Miranda warnings.

4 As I told Mr. Welch, I will instruct the jury about the
5 fact that the Defendant didn't testify is not a fact to be
6 considered by them in any way or in their consideration of the
7 guilt or innocence of the Defendant. It's not to be
8 considered by them, they're not to talk about it. I'll go
9 over clearly with them.

10 Presumption of innocence, I'll go over that with them as
11 we always do. Reasonable doubt, the kind of doubt that would
12 cause a reasonable person to hesitate to act, proof that
13 leaves you firmly convinced of the Defendant's guilt.

14 The law on first degree criminal sexual conduct, engaged
15 in a sexual battery. The definition of sexual battery and
16 then, if the jury finds that it did occur, they also have to
17 decide if the Defendant used aggravated force to accomplish
18 the sexual battery. Define aggravated force or the victim
19 submitted to sexual battery while the victim was also the
20 victim of forcible confinement, kidnapping, robbery,
21 extortion, burglary, house breaking or some similar act or
22 defense or offense. Again, obviously all that has to be
23 proved by the State beyond a reasonable doubt.

24 Kidnapping, the State must prove beyond a reasonable
25 doubt the Defendant knowingly and unlawfully seized, confined,

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE CONFERENCE

319

1 inveigled, decoyed, kidnapped, abducted or carried away
2 another person without authority of law and to define those
3 terms.

4 Armed robbery, that the Defendant took personal property
5 from the person or presence of another. The State must also
6 prove beyond a reasonable doubt that the Defendant carried the
7 property away intending to permanently deprive the owner of it
8 and the State has to prove beyond a reasonable doubt that the
9 Defendant was armed with a deadly weapon during the robbery.
10 A deadly weapon being any kind of article, instrument, or
11 substance which is likely to cause death or great bodily harm.

12 Possession of weapon during the commission of or an
13 attempt to commit a violent crime, the State has to prove
14 beyond a reasonable doubt the Defendant was in possession of a
15 firearm or visibly displayed what appeared to be a firearm
16 during the commission of a violent crime and firearm means any
17 type of gun, rifle, pistol, weapon, which will and is designed
18 to expel a projectile. In order to find the Defendant guilty
19 of the possession of a weapon during the commission of a
20 violent crime, you must first find the Defendant guilty of
21 committing a violent crime, and I will tell them that first
22 degree criminal sexual conduct, kidnapping and armed robbery
23 are all defined as violent crimes by the State of South
24 Carolina. And, the State finally has to prove beyond a
25 reasonable doubt that the weapon further advanced or helped in

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE CONFERENCE

320

1 the commission of a crime.

2 So, that would be the Court's intention in this matter.
3 Obviously, when we've got to the verdict form, going over that
4 with them, telling them they have to be unanimous and all of
5 that. And, also, emphasize and I will emphasize to them that
6 all the charges are separate. They have to be considered
7 separately and each has to be proved separately by the State
8 by proof that they believe beyond a reasonable doubt.

9 So, that in essence is the Court's intention. Is there
10 anything the State would like me to add to that?

11 MR. HOLFORD: No, Your Honor.

12 THE COURT: From the Defense, Mr. Wilson?

13 MR. WILSON: Your Honor, briefly. I'm gonna ask that the
14 Court add a charge to the jury for petit larceny. I think
15 there is evidence that the jury, based on the testimony that
16 came in through Detective Beam, who suggested that the
17 Defendant could've possibly simply taken the purse, taken the
18 cell phone from the Defendant. The value of those items could
19 be obviously below, obviously, below the amount for petit
20 larceny. My concern here obviously is that again that was
21 stated. I'm gone obviously talk about it in closing about
22 this being a petit larceny, possibly. I think the inference
23 is there and the jury could infer that from what was said.
24 Also, in the 911 call, again the -- Jerrica Nelson says, my
25 purse was stolen. That's one of the things she says, and my

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE CONFERENCE

321

1 cell phone was stolen. So, I would ask that the Court would
2 charge the jury on petit larceny as well, Judge.

3 THE COURT: All right, Solicitor, what's your -- what's
4 your position?

5 MR. HOLFORD: Your Honor, the State would object to the
6 petit larceny being included. Quite frankly, there's not --
7 if a larceny charge is to be added, I don't think it's a
8 lessor included on armed robbery. That would be the first
9 objection and if it is, there's not sufficient evidence in the
10 record to determine whether the value is over 2,000 making it
11 grand larceny or under 2,000 making it petit larceny. There's
12 alleged to have been a purse, a phone. There's some
13 discussion of debit cards, ID cards, jewelry, and other items,
14 a Vera Bradley wallet -- I don't know much a Vera Bradley
15 wallet is -- a Jessica Simpson purse, a Galaxy S3. There's
16 not testimony as to the value of those items. If the jury
17 were to -- if it was a lessor included of armed robbery, which
18 I don't think it is, the jury would then be left with trying
19 to value somewhere between grand larceny and petit larceny.

20 MR. WILSON: Your Honor, if I may?

21 THE COURT: Yes, sir, please.

22 MR. WILSON: Judge, larceny is a trespass or taking and
23 carrying away of personal property with intent to permanently
24 deprive. The only thing that separates the element according
25 to blockbuster -- *Blockburger*, the only thing that separates

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE CONFERENCE

322

1 the elements are the force that's applied with a weapon, which
2 is what they've alleged. So, the larceny is a lessor included
3 offense of armed robbery. I mean that is simply what the
4 Court would read out to the jury, not necessarily trespassing
5 but the rest of it would be a part of the actual taking from
6 an armed robbery. It's no different.

7 THE COURT: All right. Hold on a second.

8 Looking at the elements of petit larceny or grand larceny
9 it does not seem that the facts of this case would -- that
10 there's any testimony that would cover the elements of petit
11 or grand larceny. At best -- I'm not sure this is correct or
12 that it actually has occurred -- but at best, there might be
13 an issue of, if the State has not proved armed robbery, then
14 the jury could consider robbery. But if you look at the
15 elements -- and I'm inviting you to do so, Mr. Wilson -- look
16 at the elements of larceny and explain to me how that can be a
17 lessor included offense of armed robbery.

18 MR. WILSON: Yes, sir, Judge. When you talk about armed
19 robbery, the only thing that separates armed robbery from
20 simple larcenies or, excuse me, grand larceny or larceny are
21 the amounts and then the force. The force being the really
22 indicator for armed robbery.

23 THE COURT: Right.

24 MR. WILSON: The *Blockburger* test or *Blockburger* the
25 actual test that they employed to determine whether or not the

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE CONFERENCE

323

1 lessor included offenses would apply, you look at the actual
2 elements, each element. So, if I'm talking about larceny,
3 which is the grand or petit, trespassing, the taking and
4 carrying away of the personal property of another with the
5 intent to permanently deprive. That actually is in Your
6 Honor's charge already as part of the law. That would be
7 larceny; that's what larceny is. And then you attach the
8 value to it. If it's less than 2,000, it can be petit; if
9 it's more than that, it's grand larceny. Again, the armed
10 robbery, the only thing you add to it, the only element that's
11 next is the force. Again, larceny on steroids; that's what it
12 would be.

13 THE COURT: Solicitor, what's your position?

14 MR. HOLFORD: Your Honor, I think it fails the
15 *Blockburger* test. In that, you could have an armed robbery of
16 less than \$2,000, and so you have a situation -- if it were
17 proven over \$2,000, an element of grand larceny adds that
18 value over \$2,000, which is not included in the armed robbery
19 statute. Therefore, you have an element in the grand larceny
20 that is not included in the armed robbery and so it would fail
21 the *Blockburger* test in that it adds an additional element.
22 And so it would seem that the intent would not be to allow
23 someone to claim protection under just petit larceny and not
24 grand larceny, because grand larceny certainly couldn't be
25 charged under the *Blockburger* test and so I don't think that

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE CONFERENCE

324

1 petit larceny could also be charged. It also adds this
2 element of a dollar amount, a value that is not included in
3 either strong armed robbery or armed robbery. There's no
4 value. It just, there's no dollar amount value that's
5 attached to it. The statute attaches a dollar amount value to
6 the grand larceny and petit larceny but not to the strong
7 armed robbery and common law robbery.

8 THE COURT: All right. Mr. Wilson, I just don't think,
9 looking at the elements of larceny, grand larceny or petit
10 larceny, that those elements are -- all of them are included
11 in the crime of armed robbery, and that has to be -- if I'm
12 going to say it's a lessor included offense, all the elements
13 of grand larceny or petit larceny have to be subsumed and part
14 of the crime of armed robbery and I find they are not. Now,
15 I'll listen to you if you want me to consider common law
16 robbery or strong armed robbery. Obviously, that has all the
17 elements with the exception of the armed with a deadly weapon.
18 Now, I'm not suggesting that I'm gonna do it but if you want
19 to argue that, I'll be glad to listen to you and I'll give the
20 State an opportunity to respond. But as to larceny and petit
21 larceny, I just don't see that those elements, all of those
22 elements that make up larceny and petit larceny are the same
23 elements, all those same elements are in armed robbery and
24 that would be the basis to decline to grant your request for a
25 lessor of larceny or grand larceny or petit larceny. All

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE CONFERENCE

325

1 right?

2 MR. WILSON: Thank you, Your Honor.

3 THE COURT: Did you want to argue the other issue or not?

4 MR. WILSON: No, Your Honor.

5 THE COURT: All right. Very Good.

6 MR. WILSON: Thank you, Judge.

7 THE COURT: So then with that, the verdict form then will
8 go to the jury with -- and let me just go over it with you
9 real briefly then. Again, in talking to them about the
10 verdict form, it has to be unanimous and all the charges again
11 have to be considered separately, proved separately by the
12 State, different degrees of proof beyond a reasonable doubt.
13 First, the verdict form I have here has got the caption of the
14 case, and then it has criminal sexual conduct in the first
15 degree, On the charge of criminal sexual conduct in the first
16 degree, we, the jury, by unanimous consent, find the Defendant
17 -- and there's two choices. You got one, not guilty or
18 guilty. And, I've got the note that, you know, when you reach
19 a unanimous decision, you go on. The next one is kidnapping.
20 It basically says the same thing. On the charge of
21 kidnapping, we, the jury, by unanimous consent, find the
22 Defendant not guilty or guilty. Armed robbery, On the charge
23 of armed robbery, we, the jury, by unanimous consent, find the
24 Defendant not guilty or guilty. Possession of a weapon during
25 the commission of a violent crime, On the charge of possession

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE CONFERENCE

326

1 of a weapon during the commission of a violent crime, we, the
2 jury, by unanimous consent, find the Defendant not guilty or
3 guilty. And then the note, you know, once they've considered
4 all those and reached a unanimous verdict on all of them, they
5 knock on the door and let the Bailiff know they've reached a
6 decision. All right?

7 So, anything else that you would like the Court to do,
8 Solicitor?

9 MR. HOLFORD: Nothing further, Your Honor.

10 THE COURT: From the Defense?

11 MR. WILSON: Nothing, Your Honor.

12 THE COURT: All right. Very good. All right. So we'll
13 be back at 1:50 then. Okay?

14 MR. WILSON: Thank you, Judge.

15 THE COURT: Thank y'all.

16 **(RECESS.)**

17 *******OFF THE RECORD*******

18 **(On the Record.)**

19 (REPORTER'S NOTE: The following takes place outside the
20 presence of the Jury.)

21 THE COURT: You may be seated. Thank y'all. All right.
22 One thing I want to talk to y'all about, and I'm -- apparently
23 y'all have already talked about it is that Defendant's Exhibit
24 Number 4, which we did allow into evidence.

25 Dixie, it still has ID on here. Do we need to change

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE CONFERENCE

327

1 that? Okay. Thank you.

2 That at the very end of it, as I understand it, there is
3 -- when we stopped that there was a portion of the video that
4 we didn't have the jury listen to because it was some comments
5 by another officer about knowing or having contact with the
6 Defendant, and so that's at the end of it. So, what's the
7 State's understanding and the Defense's understanding about
8 Defendant's Exhibit 4 and going into the jury room?

9 MR. HOLFORD: Your Honor, the State's understanding would
10 be that typically all evidence goes in the jury room. We've
11 now formulated a system where they have a blank laptop that
12 they can watch and view the audio. We used to have them come
13 out into the courtroom and actually view and listen to audio.
14 In this case, for this specific piece of evidence, should they
15 wish to hear or view that video again, the State would suggest
16 that they be brought into the courtroom and view the audio
17 like they used to probably a year or two ago.

18 THE COURT: All right, sir. What -- how about -- what's
19 the Defense's position, Mr. Wilson?

20 MR. WILSON: Your Honor, we concur. We think that's
21 appropriate.

22 THE COURT: What I will do is at the very end when after
23 we've gone through the charge to the jury and I'm telling that
24 the bailiffs will be bringing in the exhibits to them. I will
25 tell them about we're gonna send in a laptop such as they can

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

328

1 view or listen to the -- the other disc and what I'll say
2 about this one, Defendant's 4, is since I already talked to
3 them about it, that it had the issues about encryption and --
4 and security that if they do want to listen to that one then
5 they'll need to come back into the courtroom for that. Okay?

6 MR. WILSON: Yes, sir,

7 MR. HOLFORD: Thank you, Your Honor.

8 THE COURT: All right. Very good.

9 All right. So, with that, is the State ready for the
10 jury to come in?

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: And Defense?

13 MR. WILSON: Yes, Your Honor.

14 THE COURT: Very good. Ask the jury to come in please,
15 ma'am.

16 When the jury comes in, Mr. Wilson, I'll ask you about
17 the status of the Defense's case and tell me that you rest.

18 MR. WILSON: Yes, Your Honor.

19 (REPORTER'S NOTE: Jury enters courtroom.)

20 BY THE COURT:

21 THE COURT: All right, Mr. Wilson, the status of the
22 Defense?

23 MR. WILSON: Your Honor, the Defense rests at this time.

24 THE COURT: All right. Very good.

25 Any reply testimony from the State?

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

329

1 MR. HOLFORD: No, Your Honor.

2 THE COURT: All right. Very good.

3 All right, ladies and gentlemen, we have concluded the
4 evidentiary portion of the trial in this matter. There will
5 be no more evidence received in this matter. What we're going
6 to do now is we are gonna go into the closing arguments of
7 counsel and then I will give you the charge on the law or the
8 law that you will apply to the facts and evidence you find to
9 be true in this matter. And you remember at the very
10 beginning, I told you about opening statements and closing
11 arguments. Closing arguments are important. They're each
12 side's summation to you of what they believe the evidence has
13 shown to you during the course of the trial. You remember, of
14 course, that you are the judges of the facts and understand
15 that the attorneys' suggestion about what they believe, that's
16 not evidence. That's their opinion, that's their position to
17 you, what they're asking you to do as a result of your
18 unanimous verdict but remembering, of course, that you are the
19 judges of the facts. After that I will give you the law that
20 you will apply in this particular matter. Thank you.

21 All right, Solicitor?

22 MR. HOLFORD: May it please the Court?

23 THE COURT: Yes, sir.

24 CLOSING BY HOLFORD:

25 MR. HOLFORD: Good afternoon. We all like to think that

State v. Welch - 2015-GS-26-969, 970, 971, 972
CLOSING BY HOLFORD

330

1 in a traumatic situation that we'd be the super hero. I like
2 to think that if someone comes at me with a gun that I'd be
3 that person that would react quickly, snatch the gun from his
4 hand, maybe scream, maybe run, maybe take the appropriate
5 action. I've never been a 22-year-old female faced with that
6 situation.

7 I'm sitting in the courtroom now with lights, with
8 security and safety. It's easy for me to think about what I
9 would do in a particular situation but it's much harder when
10 I'm actually in that situation. When I'm laying in my bed at
11 night at home and I hear a sound outside, I don't immediately
12 think someone is breaking into my house to rob me. I wake up,
13 turn over, go back to sleep. Do I immediately jump up, grab a
14 gun and go confront someone? Generally, no. But I'd like to
15 at this point think that I would have the wherewithal to make
16 all those clear conscious decisions. That's not what happened
17 in this case.

18 I'm not a 22-year-old female. I've never been put in
19 that situation. I cannot say for certainty how I would react
20 in that situation. What you know and what I can tell you is
21 how Jerrica Nelson handled that situation. In retrospect it
22 wasn't perfect. Was it the way that it would be the best? I
23 don't know. The comments by how she could have done this or
24 done that, what she should've said, how she should've acted?
25 Possibly. Does that change the facts in this case? No. I've

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY HOLFORD

331

1 never been raped before. I'd like to think that I would be
2 strong, I'd be courageous, I would stand up and tell what
3 happened. I know, as a prosecutor, that doesn't happen. Why
4 not tell immediately when she calls 911? I don't know. But,
5 what did she tell us? What did she say? Let's go through
6 what have been called inconsistencies, what have been called
7 lies, but I will submit to you are consistent statements
8 furthering the truth, further facts of the truth, more
9 forthcoming as the story develops.

10 911 call, 8:32 P.M., gun, silver, my phone and my purse
11 was stolen at gunpoint by a white male, 19 to 20 or 21 and she
12 gave a clothing description. Some type of khaki jeans, a
13 sweatshirt, maybe a dark blue beanie. It was at the Burger
14 King. I drove to the Belk and I called 911. Whenever the
15 responding officer or the responding Officer Sououd arrives,
16 8-something, something after 8:32 up until 9:07 that we heard.
17 You guys watched it. I was at the Burger King, gun, silver,
18 same; phone and purse were stolen at gunpoint; a white male.
19 The same description as given before. Then she was directed
20 in the car at Town Square Apartments. We saw as she directed
21 the officer as she was directed by the Defendant at gunpoint
22 to the Town Square Apartments. Then when she's questioned
23 about the suspect, do you know him, could that have been him,
24 when she's told that she could be facing a felony if she's
25 filing a false police report, what did she do? She tells the

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY HOLFORD

332

1 rest. This is not a lie; this is not an inconsistency. David
2 that she met on Facebook, the Defendant, is a white male, 19
3 to 20, same description that she gave to the officers. It's
4 the same person. Now she's added another true fact, his name,
5 David. We met on Facebook. How do we know that's true?
6 Facebook records, which you'll be able to read. David Royal,
7 Jerrica Nelson, a conversation, they met on Facebook. This is
8 not a lie. When pressed, she was more truthful, she gives
9 more.

10 Detective Beam comes about 9:14 and that conversation we
11 listened to went on maybe an hour, an hour and a half; I'm not
12 exactly sure how long. You can all listen again if you like.
13 We met at the Burger King, gun, silver, David Royal, we met on
14 Facebook. Yes, this is David Royal; we met on Facebook. The
15 Defendant told her to drive to the Town Square Apartments. He
16 took her phone and her purse and stole it at gunpoint. What
17 did she add when pressed again? A sexual assault occurs. Why
18 didn't she talk about the sexual assault at first? I don't
19 know. Was she traumatized, was she embarrassed, was she
20 ashamed; I can't tell you. I have not been in that situation.
21 But what I can tell you is that it's true. You know it's true
22 because you've heard it from her. You saw her mannerisms, you
23 saw how she acted, you saw what she told you. You see the
24 consistencies in her story, the Burger King, the silver gun,
25 the purse that was stolen, the drive from the Burger King down

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY HOLFORD

333

1 to the Town Square Apartments, the Defendant running around
2 the corner.

3 David Royal is David Welch. He's the Defendant. We have
4 her phone records. What does that do? That helps to show
5 that she was telling the truth. [REDACTED], subscriber
6 information is Jerry Nelson, and on the specific phone account
7 itself because you can have multiple accounts on one name,
8 Jerrica Nelson, detail for Jerrica Nelson, [REDACTED]. She
9 was telling the truth. This number, this [REDACTED] calls
10 her seven or eight times, and then she calls back. That's the
11 same story she told. That's the same story she told the
12 detective. That's the same story she told you. That's proven
13 by corroborating evidence because it's the truth.

14 That phone number I just read, we did a search warrant,
15 [REDACTED], it's [REDACTED] Oak Drive in Myrtle Beach, subscriber
16 information, Edna Blackmon. This is [REDACTED] Oak Drive, Myrtle
17 Beach. This is the Defendant's residence where he lives.
18 Like Jerrica told you with mom, grandma, aunts, uncles, other
19 people. It makes sense that a 20-year-old boy would not have
20 his name on the telephone. This is his house. It's
21 corroborated by evidence. Now, we see this is [REDACTED] Oak. And,
22 if you look at the closer map, [REDACTED] Oak, the blue. Is the
23 story making sense, is it fitting together, that's what you
24 have to ask yourselves. They drive to the Town Square
25 Apartments, she's robbed at gunpoint, sexually assaulted,

State v. Welch - 2015-GS-26-969, 970, 971, 972
CLOSING BY HOLFORD

334

1 raped, he runs around the corner and across Highway 15. Where
2 is he headed? Towards his home.

3 What do we find in February? The pink dot, we find a
4 purse. There's an abandoned house, [REDACTED] Page Street. And un
5 -- Vanessa Thompson, she's not connected to the case in any
6 other way, she just finds a purse and lets us know it's at
7 this house. Does it just so happen to be a pink purse with a
8 gold buckle with Jerrica Nelson's information, the exact same
9 pink purse that she talks about in the 911 call? The exact
10 same pink purse she told us about to Sououd, the exact same
11 pink purse she told Beam, she told her mother, she told you.
12 On the way to the Defendant's house. This is corroborating
13 evidence to show you her story is true.

14 When the detectives realized that David Royal on Facebook
15 is actually David Welch and they go to his house up here at
16 [REDACTED] Oak, they surround the house. What's he do? He runs.
17 He runs and he hides under a car. Are those actions of an
18 innocent man? What was he wearing? Shorts, a hoodie of some
19 sort, black shirt, and a beanie. I know what you're thinking,
20 well, she said he was wearing pants. A couple of hours later,
21 as we stipulated to, this is February the 8th, 2015, a high of
22 32 and a low of 17; it is cold outside. Do you think he was
23 wearing shorts all day long? I doubt it.

24 Ladies and gentlemen, when you're confronted with all the
25 facts in this case, all the evidence that you have, all the .

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

335

1 interviews you have to listen to -- I understand the want, the
2 need to go and say, yeah, but at first she just said she was
3 at Burger King and she was robbed. That's armed robbery.
4 Okay. I'm not satisfied with it because this young lady was
5 raped at gunpoint by that Defendant at the Town Square
6 Apartments. She took the action she took, she did what she
7 did, and I pass no judgment. But I'm asking you as the triers
8 of fact in this case to pass judgment on the Defendant. He
9 committed the act of criminal sexual conduct in the first
10 degree. He committed the act of armed robbery. He committed
11 the act of kidnapping when he led her by gunpoint from the
12 Burger King down to the Town Square Apartments and he
13 possessed a gun while committing these violent crimes.

14 I ask you to find him guilty of all offenses.

15 Thank you.

16 THE COURT: Mr. Wilson?

17 MR. WILSON: If it please the Court, Your Honor?

18 THE COURT: Yes, sir.

19 MR. WILSON: Thank you, Judge.

20 CLOSING BY WILSON:

21 MR. WILSON: Good afternoon, ladies and gentlemen; how
22 you doing?

23 Let's talk about this and the prosecutor was talking
24 about what she should've done or what we said she should've
25 done or how we think she should've acted. Let's explore why

State v. Welch - 2015-GS-26-969, 970, 971, 972
CLOSING BY WILSON

336

1 she lied. There's no doubt in anybody's mind, she admitted on
2 the stand that she lied to 911. Why is it do you think that
3 she refused to tell 911 his name? Let's say for a second that
4 she was raped. Let's say that's true and she was traumatized.
5 Why not tell 911 it's David Welch who robbed me. Even if you
6 going with the Burger King story, why not identify him from
7 the start? I'm gonna tell you why. She didn't want him to
8 get in trouble. Not because he raped her, not because he
9 committed armed robbery, she knew what she wanted and I'm
10 gonna tell you what I believe that she wanted, and this is a
11 civil case to be honest with you.
12 David Welch and this young lady, Jerrica Nelson, talking on
13 Facebook, talking about meeting up, multiple conversations
14 they're having. What she wanted was her purse and her phone
15 back. What she wanted was a police report saying, look, my
16 phone and my purse have been stolen. Think about it. She
17 leaves Town Square, which is where she was at with him, she
18 goes and drives to Belk. And I told you before, she passed
19 tons of businesses and, if you know the area, you're from this
20 area, you know what I'm talking about. I'm not gonna belabor
21 the point. She passes businesses, she passes residences, she
22 goes back to Belk and she concocts this story about being
23 robbed at the Burger King. She says to 911, the first thing
24 she says is somebody stole my purse and my cell phone. Listen
25 to the 911 tape; I challenge you. That's the first thing she

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

337

1 says. Then the next story she tells -- that's the first story
2 and I mind you she called her mother before that and told her
3 mother nothing about a gun. Purse, cell phone stolen. But
4 the problem with the story is if you're robbed at the actual
5 Burger King, well, who in the world is gone up to Burger King
6 and simply snatch a purse out your car? That's why she says
7 that somebody followed her out of Burger King with a gun, put
8 it in her back and then robbed her at Burger King, because the
9 story doesn't make sense otherwise. If she had told 911,
10 look, I was out with somebody, he snatched my purse, it was
11 David Welch, fine. If she had said to 911, David Welch just
12 ran off with my purse, fine, but that's not what she said.
13 And the reason that she said it was because she had to have a
14 story to tell them about how the purse got missing.
15 Otherwise, she'd have to tell them, look, I met the guy on
16 Facebook, we had some making out session in the car, we had
17 gone to the apartment complex to have sexual relations or do
18 whatever we wanted to do, she'd have to explain all that, but
19 she didn't care about telling them that this man allegedly
20 based on what she's saying, raped her. And it's tell-tale in
21 the evidence, and it's tell-tale because the prosecutor also
22 just got it wrong. That's not the last
23 story she said that she actually went and that he actually
24 made her with at gunpoint drive. Listen to the evidence.
25 Look at the actual or listen to Detective Beam's conversation.

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

338

1 The last story she tells Detective Beam is that they
2 drove -- he says that I want to go home. She says, okay, I'll
3 take you home; where you live? He takes her to the apartment
4 complex. Never a gun at the end of this conversation. She
5 says he didn't pull the gun out until he said he wanted some
6 sex. Remember? And he just told you that what she said was
7 no, no, driving from Burger King because it's that convoluted.
8 That's number three story.

9 Officer Sououd tells her in the car, we're gonna charge
10 you because I know you're lying, basically. We're gonna
11 charge you with a felony and the reason she's saying that is
12 because she's accusing someone of actually putting a gun in
13 somebody's back, of armed robbery, kidnapping. She's accusing
14 someone of that. And, if you lie about that, they charge you
15 with a felony. That's the first time she was threatened.

16 Then she goes on and she tells another story, and you can
17 hear her on the tape. She says, look, she wants to change her
18 story; that's what Sououd said. She's changing her story; I
19 need a supervisor. And the reason she changed her story
20 because then she was like, look, I'm locked into this gun
21 story; now I got to roll with it, and she does. Then she
22 says, well, no, Detective Beam, who pulls her out of the car
23 and says, look, let's go over here and talk. And he himself
24 tells her, look, I'm gonna talk to you about honesty off the
25 tape and, off the tape, he's talking to her about being

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

339

1 honest. And when he gets on the tape, he's saying look, this
2 does not add up. I told you at the beginning, it doesn't add
3 up, and he's right. Detective Beam a seasoned detective; he
4 knows when people are lying. And I know what he said about
5 the omissions, but use your own common sense. If right now my
6 daughter, and I got two of them, come and tells me, Daddy, I'm
7 going over to Jerrica's house or I'm going over to Tonya's
8 house or I'm going over to Jessica's house, but leaves out the
9 fact that Jeremy, if you will, or John Doe's gonna be there,
10 she just lied to me. That is basic common sense. Omissions
11 are lies.

12 Detective Beam says, look, this ain't adding up, Jerrica;
13 it doesn't make sense. Tell me what really happened. And if
14 this really happened this way, then y'all had consensual sex
15 and this man ran off with your purse after that, tell me that.
16 He gave her multiple opportunities to tell him and she said
17 no, no, no, no, no, he had a silver gun -- and I agree with
18 the prosecutor, but the gun couldn't leave the scenario
19 because if she told them that she lied about that gun, they
20 were gonna charge her. Beam then goes on again and says, look
21 -- brings in her mother. I just want to get it right. When
22 you got in the car a while ago, you didn't tell me that; you
23 didn't tell me you were raped. Were you raped or did you just
24 make a bad choice Jerrica to hook up with some guy you met?
25 Her mother said that on tape and she testified that when she

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

340

1 first talked to her momma, she never told her about a gun.

2 This is a situation where two people, both of them made
3 mistakes absolutely positively. And, if you look at the
4 evidence very clearly, it's obvious. They met up willingly.
5 They talk about these eight phone calls. She testified on the
6 stand and you heard her testify about the number of minutes
7 they were talking to each other, 13 minutes, one minute, five
8 minutes, three minutes. These were conversations they were
9 having with each other. Not a situation where this man was
10 trying to go to her house, trying to track her down, bothering
11 her, she waited for him at the Burger King. She testified he
12 wasn't even there. Her testimony to you was she really didn't
13 want to hang out. And I'll be honest with you, my time is
14 very, very, very small that I have time available. If I don't
15 want to hang out with somebody, I'm not hang out with you, and
16 I definitely wait on you if you're late. But she says she
17 didn't want to hang out; you heard her on the stand say that
18 and you saw how she said it. Over and over again, I didn't
19 want to hang out; I didn't want to hang out. Read the
20 Facebook messages. In the Facebook messages, she says one
21 day, when he says, look, I'm about to go outside and walk
22 since you don't want to talk to me. She says, and have sex
23 with somebody else?

24 She waits at the Burger King. He gets there and her
25 story to you is that they talk, not about much. Let me tell

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

341

1 you what happened here. They get in the car, they go, they
2 make out at Burger King. For whatever reason, they decide
3 they're gonna leave and go to these apartment complexes. This
4 apartment complex and you saw on the video that we played
5 where Sououd went there, lit up, cars everywhere, cars
6 everywhere. I told you 10 feet; it might've been shorter than
7 that from one parking space right in front of the actual
8 apartment complex. People driving in and out. And her
9 testimony to you is that he pulls a gun and I apologize, but I
10 got to go over this, plays with himself in the car while he's
11 got the gun in his hand and then decides he's gonna take off
12 her pants with the gun still somewhere on his person, still
13 playing with himself and then reclined her chair and then she
14 tells that then they're having a conversation. She's saying
15 to him, hey, look here, I don't want to do this. He's saying
16 why? She's saying, look, I want to do this, this is not
17 something I want to do; I don't want to have sex. This is a
18 normal conversation between two people, not between a somehow
19 criminal, ravage rapist, which is what she makes him sound
20 like. This is a normal conversation that two people are
21 having in a car with each other. If you are afraid for your
22 life -- and I might add, listen to the evidence, she never
23 says one time she was fearful until Detective Beam prompts her
24 and says, were you afraid? And she then says my heart was
25 beating fast.

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

342

1 They're in the car, he's doing all this stuff and got a
2 gun and telling her, look, you're gonna do it because it's --
3 even though if you're unwilling, I still want to have sex. I
4 want to have sex. That's what I want to do.

5 A kid who's got no money to his name, not a dime, not
6 even a wallet, but he had a gun and a pack of condoms on him.
7 They don't have money for food that night, either one of them.
8 Get in the back seat, she says. He -- she gets in the back
9 seat. He's still in the front seat. She doesn't leave. He
10 then gets in the backseat. She says he's on one knee. Says
11 he's about to have sex with her because her pant leg is down
12 now and then as he penetrates her, he penetrates her, that's
13 what she says. And then she says, look, whatever you
14 thinking about doing, you can't do it. Here's a man who still
15 has a gun, who has a gun and has threatened, based on her
16 testimony, to shoot you dead. She says no, no, no, you can't
17 do this. This is regular conversation. I would submit to you
18 this is regular everyday conversation between two people who
19 are about to have consensual sex. But then no less to make
20 the story even quackier, she says stop; go get a condom. The
21 rapist, the rapist then goes into his pocket, I guess his
22 wallet or whatever he had, and says, hey, I've got a condom;
23 that's what condoms are for because we're gonna do this rape.
24 Puts on a condom with a gun still in his pocket on his person
25 and then proceeds to have sex and says are you ready? I have

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

343

1 tried cases a lot of places. I have never heard a rapist say
2 are you ready. Never heard a rapist saying does it feel good
3 to you, never ever.

4 It's done, he's still got the gun, and she says that he
5 then decides he's gonna take her purse with the gun. She
6 didn't fight him at all over the sex. She testified to that
7 on the stand and told Detective Beam the same thing. She then
8 grabs the purse handle, that's her testimony; she's fighting
9 him over that purse. Let it go; it's my purse. I'll show you
10 I have no money; it's mine. Give me my phone back; that's
11 mine. That's what happens in this car. She says she was
12 raped at gunpoint. And then after the cell phone is stolen
13 she says, her testimony is, is that she yelled out of the car
14 and says to him, a man with a gun who just threatened to kill
15 her twice, who rubbed a gun against her skin and its silver,
16 oh, well, give me back my purse, give me back my purse. And
17 I'll tell you something else, too, how is it he gets to the
18 end of the building, he's walking, how do you think she saw
19 him run then across Highway 15? Because she followed him.
20 They were both outside that car.

21 If you listen to the evidence in this case, you will hear
22 the truth. Listen to the evidence. The State has charged him
23 with serious crimes. These are no laughing matters.
24 Detective Beam, you heard him on the actual tape, he says,
25 look, this is a 20 or 30 year offense, nothing to laugh about,

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

344

1 nothing to lie about, nothing to take trivially, 20 to 30
2 years on the offense is what he says.

3 MR. HOLFORD: Objection, Your Honor.

4 THE COURT: Let's move along.

5 MR. WILSON: Thank you, Judge.

6 My concern here is this, all the lies, omissions,
7 whatever the State wants to call them, really seem as if the
8 credibility should come in question. Can you trust it; can
9 you trust her testimony? And the answer is no, you can't;
10 it's not possible.

11 The other issue I have is this, everyone in here -- and I
12 said this earlier, we're all grown folks -- everyone in here
13 either knows about how to open a condom or how it happens. If
14 you have a condom and you open it, the first thing that man is
15 gonna do is drop that thing on the floor; that's where it's
16 going. It ain't going in his pocket if he's about to have
17 sex; it definitely is not going in the pocket if he's about to
18 rape you. No condom wrapper was found. No condom was found.
19 The amazing thing is this, CSC Kit. In every case I've ever
20 seen tried, everyone I've been a part of in trial, the State
21 introduces this kit. The State does. It's a novel thing for
22 me to have to introduce -- and I'll tell you this is my first
23 time to introduce a CSC Kit, because they didn't introduce it
24 to you, did they? And you know why they didn't introduce it?
25 Because they knew what the results were of this CSC Kit. They

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

345

1 knew what the serology report said regarding P30, saliva,
2 semen as well as follicle hair, pubic hair. You heard
3 testimony that she went to the hospital. Did you hear a rape
4 crisis expert come in here and testify? Did you hear a nurse
5 from the hospital come in here and testify? The prosecutor
6 talked about her while the expert from SLED was up on the
7 stand. Well, what if that nurse made mistakes. They got
8 subpoena power. The State is a powerful entity. They can
9 call whoever they want to come into this and testify. You
10 didn't see that, did you; you didn't hear that?

11 CSC first degree is forcible rape. It is forcible rape;
12 that's what it is, somebody forced you and it's forcible rape,
13 that's what it is. Somebody forced you to do something you
14 didn't want to do, to have sex in a violent manner. In this
15 case, with a gun. Kidnapping, confining somebody to a space
16 they don't want to be confined. Armed robbery, that is when
17 you take a gun or some deadly weapon and take something from
18 somebody. Possession of a weapon in a violent offense, when
19 you possess a weapon and you commit a violent offense like
20 kidnapping or rape or CSC or whatever. These are the crimes
21 they charged him with. These are the crimes they charged him
22 with. The State can bring whatever charge it wants. The
23 Solicitor has all power to decide what charge he wants to
24 indict. They chose to indict this Defendant on these charges;
25 that was their choice. What actually happened was something

State v. Welch - 2015-GS-26-969,970,971,972
CLOSING BY WILSON

346

1 quite different. This is not armed robbery, not an armed
2 robbery. There was no weapon, no weapon whatsoever. You've
3 got to crazy dumb kids out there doing things they probably
4 shouldn't be doing and then one of them decides that, again,
5 she wants to call the police and tell a story. The other one
6 is doing dumb stuff like taking her cell phone because he
7 thinks it's funny or wants to be a jerk. That's what happened
8 in this case, but that's not armed robbery, that is not
9 kidnapping and that is absolutely not possession of a weapon
10 during a violent offense and that is not CSC in the first
11 degree.

12 You swore an oath, each one of you, swore an oath to give
13 the Defendant a fair trial based on the evidence, not on your
14 gut feelings, you know, not on any intuitions you might have,
15 on the evidence presented at trial and I would submit to you,
16 the only evidence that was submitted regarding the four counts
17 against this Defendant is the statement of Jerrica Nelson.
18 That's it. There's nothing else, nothing else in the record.
19 You can talk about Facebook messages, you can call every
20 police officer up here and talk about pictures of David Welch
21 and Facebook pictures of him and location of a purse, but
22 nobody else got up here and said, I saw this. Nobody else
23 said anything, no evidence was produced, no forensic, not one
24 drop of forensic evidence and they went through that car. I
25 asked the detective did they use swabs on that vehicle, did

State v. Welch - 2015-GS-26-969,970,971,972
REPLY CLOSING BY HOLFORD

347

1 they process that vehicle. And let me tell you something,
2 they're good. They know how to process a vehicle. If there
3 had been sperm, if there had been any fluids, any evidence,
4 you would've heard it today on this stand; I promise you. You
5 didn't hear anything else.

6 I'm not gonna belabor the point. I'm asking you to do
7 your duty individually, not as a group, because I didn't
8 select you and the prosecutor didn't select you as a group.
9 Each individual swore an oath individually to go back in that
10 room and deliberate fairly based on the evidence. I'm asking
11 you to come back with the verdict unanimous of not guilty
12 because he did not break the law the way they describe the law
13 being broken. They could've charged him with anything. They
14 could've charged him with larceny, they could've charged him
15 with grand larceny, petit larceny, but they didn't do that.
16 They chose these four charges. Not guilty.

17 Thank you so much.

18 THE COURT: Reply argument, Solicitor?

19 MR. HOLFORD: Yes, Your Honor, may it please the Court?

20 THE COURT: Certainly.

21 REPLY CLOSING BY HOLFORD:

22 MR. HOLFORD: Ladies and gentlemen, I want to address
23 this CSC kit just briefly. I'm not hiding the ball. It's
24 true, I know that the kit comes back with no semen. You know
25 what he didn't tell you is that the State provides all this

State v. Welch - 2015-GS-26-969, 970, 971, 972
REPLY CLOSING BY HOLFORD

348

1 evidence to them. I don't know what his argument is gonna be
2 until we get here in court. Apparently now we're just arguing
3 over the fact that it was consensual or not. Up until today,
4 that would've come as a surprise. I have to prove to you that
5 it's actually David Welch who is sitting in the car. If we
6 had taken DNA swabs and those came back positive, what's that
7 prove to you? He's in the car. Well he just admitted that.
8 Okay. Would that help you make your determination? No. CSC
9 kit coming back with no semen, easy to explain. As I asked
10 her, is there gonna be semen present if a condom is worn?
11 Could not be. Okay. A condom was worn in this case. Here's
12 what we're talking about, apparently, a consensual act versus
13 a non-consensual act. Let's talk about some things to see if
14 they sound consensual to you. After consensual sex, a purse
15 gets stolen, a phone gets stolen, so you can't call the police
16 so you have to drive to Belk to call the police. The police
17 immediately get called. You're pressed. Are you telling the
18 truth? You stick to your story. We're gonna charge you with
19 a felony; you stick to your story. Does that sound like
20 consensual sex to you? So, apparently we're admitting now
21 everything that happened took place. Yeah, we're at Town
22 Square Apartments. So, don't even worry about that; check
23 that off the list. He's saying it's a consensual act. That's
24 ludicrous. Look at the evidence. Does this sound like
25 consensual sex to you? Stolen purse, stolen phone. If it's

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE TO JURY

349

1 consensual, maybe we'd find the condom wrapper, maybe we'd
2 find the condom. Why did he hide those? If it's consensual,
3 do you run from the cops when they come to your house? No.
4 If it's consensual, when you're questioned by the police, do
5 you say, no, I didn't see a girl that night, I was with family
6 and a bunch of people. Who's telling the truth?

7 This is not a consensual act. It never was; it never
8 will be. The victim told you that.

9 Thank you.

10 THE COURT: Solicitor, if you don't mind could you move
11 the ---

12 MR. HOLFORD: Yes, sir.

13 CHARGE TO JURY:

14 THE COURT: Yes, sir. All right, ladies and gentlemen,
15 it's now my duty and responsibility to give you the law that
16 you will apply to the facts and evidence you find to be true
17 in this case. I told you at the very beginning, one of your
18 job duties and responsibilities was to judge the credibility,
19 that is the believability of the witnesses that came before
20 you and testified in this particular case. Now, in doing so,
21 you can believe one witness against several, several against
22 one. You can believe a portion of what a witness says and
23 disregard the remaining portion of it. If you've got a good
24 sound reason for doing so, you can disregard it in its
25 entirety the testimony of a particular witness.

State v. Welch - 2015-GS-26-969, 970, 971, 972
CHARGE TO JURY

350

1 You listen and you determine from that testimony, you can
2 look at whether or not the witness has exhibited to you any
3 kind of interest, motive, bias, prejudice they might have in
4 giving you the testimony they gave you from the witness stand.
5 Obviously, you consider the opportunity for knowledge, how
6 they came about that information that they gave you. I told
7 you at the very beginning, judging credibility and
8 believability is something you do every single day of your
9 life. You use your good common sense. You use your good
10 judgments that you use in conducting your own affairs, apply
11 it to the facts and evidence in this case and find that
12 evidence that you find credible, that you find believable.
13 You don't have any friends to reward. You don't have enemies
14 to punish and your verdict can't be the result of any kind of
15 passion, prejudice, or sympathy. It has to be an examination
16 of the facts and evidence in this case and finding that
17 evidence that you find to be credible and believable.

18 In general, there's two types of evidence, direct and
19 circumstantial evidence. The law doesn't make any distinction
20 between the two. Greater degree of certainty of one over the
21 other, it's not required. Direct evidence, something happens
22 in your presence and you say what happens in your presence or
23 what you heard, what occurred; that's direct evidence.
24 Circumstantial evidence is a chain of facts indicating the
25 existence of a fact. To the extent that the State of South

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE TO JURY

351

1 Carolina relies on any circumstantial evidence, all of the
2 circumstances must be consistent with each other and when
3 taken together, point conclusively to the guilt of the accused
4 beyond a reasonable doubt. If the circumstances merely
5 portray a defendant's behavior as suspicious, that proof has
6 failed. The State has the burden of proving to you the
7 Defendant guilty of the crime or crimes charged beyond a
8 reasonable doubt. That burden rests on the State whether the
9 State relies on direct evidence, circumstantial evidence or
10 some combination of the two.

11 I qualified one witness to give their opinion. Sometimes
12 they're called expert witnesses. We don't normally allow
13 people to give their opinion. Certain witnesses by reason of
14 their training expertise in a certain field, we may allow them
15 to give their opinion, but that doesn't give them any special
16 status. You judge all the witnesses the same and you look at
17 all the witnesses the same and judge their credibility and
18 believability.

19 The parties presented to you a stipulation about a fact.
20 That's an agreement, an admission, a concession in a judicial
21 proceeding by both sides and it's binding upon them as an
22 agreement and a fact, and you will take that stipulation that
23 they agreed upon as being conclusively proven.

24 In this particular case, a statement alleged to have been
25 made by the Defendant was admitted into evidence. The Court

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE TO JURY

352

1 allowed that into evidence. Now, while I determined that it
2 was proper evidence for you to hear, it is your ultimate
3 decision as to whether or not several things. Did the
4 Defendant make the statement; was it a voluntary statement,
5 did it make it of his own free will; was it the -- did it come
6 about because of pressure, force, fear, threats? You consider
7 the characteristics of the testimony, of the questioning, the
8 age of the Defendant, his education or lack thereof,
9 intelligence or IQ, background and environment, the nature of
10 the questioning, and the advice or lack thereof of the
11 Defendant of his constitutional rights. That includes the
12 right to remain silent, and any statement that you make can be
13 used against you in a court of law, that you have the right to
14 have a lawyer present and if you cannot afford one, a
15 appointed lawyer will represent you, and that you can stop
16 making the statement at any time. The State again has the
17 burden of proof on the statement, as the State has the burden
18 of proof on everything. As I told you at the very beginning,
19 the State must prove to you that the Defendant made the
20 statement, it was voluntary, that he was given the proper
21 Miranda warnings and then you find all that, then you give
22 whatever weight you want to to that statement of the
23 Defendant.

24 In this particular case, the Defendant did not testify.
25 That is not a fact for you to consider in this case in your

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE TO JURY

353

1 deliberations in any way. You may not talk about it, you may
2 not consider it, you may not think about it, you may not use
3 it in your determination of whether or not the State has
4 proven the Defendant guilty beyond a reasonable doubt. Every
5 Defendant, every American, has the right to remain silent, a
6 constitutional right and it cannot be used against them in any
7 shape, manner or form. You will draw no conclusions from that
8 whatsoever.

9 Presumption of innocence. I told you at the very
10 beginning, the State levied, brought these charges against the
11 Defendant to which the Defendant pled not guilty. That put
12 the burden of proof upon the State of South Carolina to prove
13 the Defendant guilty beyond a reasonable doubt of the charges
14 levied or brought against him. Also at that point in time,
15 the presumption of innocence came upon the Defendant. The
16 Defendant is presumed innocent of the crimes if and until you
17 decide from the evidence you find to be credible and
18 believable that the State has proven the guilt of the
19 Defendant beyond a reasonable doubt. This presumption of
20 innocence didn't end at the start of the trial, it hadn't
21 ended now. It only ends, if at all, if you find from the
22 evidence you find to be credible and believable, the State has
23 proved the Defendant guilty beyond a reasonable doubt.

24 We liken the presumption of innocence to a robe of
25 righteousness. It's place on the shoulders of the Defendant

State v. Welch - 2015-GS-26-969, 970, 971, 972
CHARGE TO JURY

354

1 and it stays on the shoulders of the Defendant until the
2 State, if it can, rips that robe of righteousness from the
3 Defendant's shoulder by evidence which convinces you of the
4 guilt of the Defendant beyond a reasonable doubt.

5 So what's reasonable doubt? The kind of doubt that would
6 cause an ordinary, reasonable person to hesitate to act.
7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the Defendant's guilt. Now, there are
9 very few things we can know with absolute certainty. The law
10 doesn't require the State of South Carolina to give you that
11 kind of proof. What is required is if based upon your
12 consideration of the evidence, the evidence you find to be
13 credible and believable, you are firmly convinced the
14 Defendant is guilty of the crime charged, you must find the
15 Defendant guilty. On the other hand, based upon the evidence
16 you find to be credible and believable in this case, you are
17 not firmly convinced that the Defendant is guilty of the crime
18 charged, then you must give the Defendant the benefit of the
19 doubt and find him not guilty. Now, I'll go over this fact
20 again at the very end when I'm talking about the verdict form.

21 Each one of these four charges is a separate charge.
22 It's like trying four cases in one. You must -- each crime
23 has different elements -- we're gonna go over that in just a
24 second -- but each crime has different elements that the State
25 has to prove to you beyond a reasonable doubt. Because you

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE TO JURY

355

1 would find the Defendant guilty of one crime or not guilty of
2 one crime has no effect and cannot have an effect on the other
3 charges. The elements are different and the State has to
4 prove the elements of that particular crime to you beyond a
5 reasonable doubt.

6 So, what's the elements of the crime? First degree
7 criminal sexual conduct, the first element which the State
8 must prove to you beyond a reasonable doubt is that the
9 Defendant engaged in a sexual battery with the victim. Now,
10 sexual battery, that's intercourse, cunnilingus, fellatio,
11 anal intercourse, any kind of intrusion, however slight, of
12 any part of a person's body or object into the genital or anal
13 openings of the other person. If you find the State has not
14 shown beyond a reasonable doubt that a sexual battery
15 occurred, you stop deliberating on that particular charge and
16 find the Defendant not guilty. If you find a sexual battery
17 did occur, then you must decide whether the State has proven
18 to you beyond a reasonable doubt one of these two things:
19 Either the Defendant used aggravated force to accomplish the
20 sexual battery -- now aggravated force means use of physical
21 force or violence to overcome a victim. It can include the
22 threat of using a deadly weapon -- or the victim submitted to
23 the sexual battery while the victim was also the victim of a
24 forcible confinement, a kidnapping, a robbery, extortion,
25 burglary or some other similar act or offense. So, it has to

State v. Welch - 2015-GS-26-969, 970, 971, 972
CHARGE TO JURY

356

1 be the combination beyond a reasonable doubt proven to you,
2 sexual battery or one of those two items.

3 Kidnapping, the State has to prove to you beyond a
4 reasonable doubt that the Defendant knowingly and unlawfully
5 seized or confined or decoyed or kidnapped or abducted or
6 carried away another person without authority of law. To do a
7 thing unlawfully is to do it willfully against the law.
8 Knowingly means consciously, not accidentally. Seized means
9 to take hold of. Confine means to limit or restrict or
10 enclose within bounds or shut in or keep in for any period of
11 time. Inveigle means to lure, entice, or lead somebody astray
12 by false representations. Decoy basically to entice someone
13 into doing or into a trap. Kidnap is to remove a person
14 against their will by unlawful force or fraud. Abduct means
15 to carry off secretly or by force for an illegal purpose. The
16 State doesn't have to prove all of those things to you, the
17 State must prove to you that one of them occurred beyond a
18 reasonable doubt. Something done without the authority of law
19 is something which the law does not sanction, permit, allow or
20 condone. And again, kidnapping doesn't have to be for any
21 purpose, personal or monetary gain, but may be for any reason
22 whatsoever.

23 Armed robbery, the State must prove to you beyond a
24 reasonable doubt that the Defendant took personal property
25 from the person or presence of another person. Property is

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE TO JURY

357

1 within the presence of a person if it's within their reach or
2 inspection, observation or control so that the person could,
3 if not overcome with violence or prevented by fear, keep
4 possession of the property. The State must also prove to you
5 beyond a reasonable doubt the Defendant carried the property
6 away intending to permanently deprive the owner of the
7 property and to keep the property for his own use. The
8 slightest removal of the property or the complete possession
9 of the property, even for an instant, by the Defendant is
10 sufficient to show a taking and carrying away of the property.
11 The taking and carrying away the property has to be done with
12 violence or putting the owner of the property in fear of
13 violence. The State has to prove to you beyond a reasonable
14 doubt the Defendant was armed with a deadly weapon during the
15 robbery. A deadly weapon, it's any kind of article,
16 instrument, substance, which is likely to cause death or great
17 bodily harm. Whether something has been used as a deadly
18 weapon depends on the facts and circumstances of each case.

19 And the fourth charge the Defendant is facing is
20 possession of a weapon during the commission of or attempt to
21 commit a violent crime. The State must prove to you beyond a
22 reasonable doubt that the Defendant was in possession of a
23 firearm or visibly displayed what appeared to be a firearm
24 during the commission of a violent crime. A firearm means any
25 type of gun, rifle, revolver, pistol or any weapon which is

State v. Welch - 2015-GS-26-969, 970, 971, 972
CHARGE TO JURY

358

1 designed to expel a projectile. In order to find the
2 Defendant guilty of possession of a weapon during the
3 commission of a violent crime, you must have found the
4 Defendant guilty of a violent crime before you can consider
5 whether they had a weapon during the commission of a violent
6 crime. And I'm telling you the law defines or classifies
7 first degree criminal sexual conduct, kidnapping, armed
8 robbery are all classified as violent offenses by the State of
9 South Carolina. So, meaning to consider this last charge, you
10 must have convicted the Defendant of at least one of those
11 three prior to considering possession of the weapon. If you
12 find the Defendant not guilty of those three, then you don't
13 even consider this one because you have not convicted him of a
14 violent crime. The final part of the possession of a weapon
15 during the commission of a violent crime is that that weapon
16 furthered or advanced or helped in the commission of that
17 crime.

18 The verdict form, the Court has prepared for you a
19 verdict form; they're pretty straightforward. I'm reiterating
20 to you again, these four charges, they have to be considered
21 separately. Each crime has different elements that the State
22 has to prove to you beyond a reasonable doubt for the
23 Defendant to be convicted of that particular crime. And just
24 because you find the Defendant not guilty or guilty of one
25 does not mean that same verdict must be of the others because

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE TO JURY

359

1 there's different elements. You consider each one of them
2 separately. You arrive at a separate verdict for each crime.

3 The first one, criminal sexual conduct in the first
4 degree. On the charge of criminal sexual conduct in the first
5 degree, we, the jury, by unanimous consent, find the Defendant
6 -- I have to put one before the other, don't assign anything
7 to that; I've got to put one before the other -- not guilty or
8 guilty. So, Madam Forelady, whatever your jury's unanimous
9 verdict on that particular charge is, you reflect that on the
10 verdict form, sign your name, and you go on to the next
11 charge.

12 Kidnapping, on the charge of kidnapping, we, the jury, by
13 unanimous consent, find the Defendant, again two choices, pick
14 one unanimously, sign your name, put the correct date.

15 Armed robbery, on the charge of armed robbery, we, the
16 jury, by unanimous consent, find the Defendant, again, not
17 guilty or guilty.

18 And the final one, possession of a weapon during the
19 commission of a violent crime. Again, if you have found the
20 Defendant guilty of one of those prior three, at least one of
21 those, then you consider that one. But if you have, on the
22 charge of possession of a weapon during the commission of a
23 violent crime, we, the jury, by unanimous consent, find the
24 Defendant -- again two choices, not guilty or guilty. And
25 once you've returned a verdict on all those matters, Madam

State v. Welch - 2015-GS-26-969,970,971,972
CHARGE TO JURY

360

1 Forelady, y'all knock on the door and let the Bailiff know
2 that the jury has reached a unanimous verdict on these
3 matters.

4 I have said unanimous I don't know how many times, but it
5 means exactly what you think it means. It means 12/0. It
6 does not mean 11/1, 10/2 or any combination thereof. Whatever
7 verdict you reach, it is the verdict of every single member of
8 the jury. So, Madam Forelady, you check the appropriate
9 block, whatever it is, you sign your name, put today's date on
10 there, you bring this back into the courtroom, you are telling
11 the Court that every single member of the jury agrees that's
12 their verdict. So, if called upon by the Clerk of Court, once
13 the verdict is read, to raise your right hand and say, yes,
14 that is my verdict, all members of the jury will be able to do
15 so.

16 Now, what I'm gonna ask that you do in just a minute,
17 Madam Forelady, is to take yourself and the other 11 members
18 of the regular jury back to the jury room. The two alternates
19 will stay with us. Do not, do not begin your deliberations
20 until the verdict form and all the exhibits come into the jury
21 room from the Bailiff.

22 Now, I will tell you there were several CDs that were
23 introduced into evidence. We're gonna give to you a laptop
24 that can play several of the CDs, but that last one that we
25 had the issues with that had the protection and the encryption

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

361

1 on that one, if you want to listen to any portion of that one,
2 that one you're gonna have to come back from the jury room and
3 we'll have to do that for you. That one, you can't listen to
4 that one on the equipment that you have. So, all the rest of
5 them you can listen to on the laptop that's gonna go back in.
6 If you want to listen to this one, the Defendant's Exhibit 4,
7 you need to send a note and you'll have to come back out to
8 the courtroom and listen to it. All right?

9 So, if you will take the jury to the jury room. The two
10 alternates, if you would stay with ,us please. Don't start
11 your deliberations until I send this in to you.

12 (REPORTER'S NOTE: Jury exits courtroom. The following takes
13 place outside the presence of the Jury.)

14 BY THE COURT:

15 THE COURT: All right. As to the alternates in this
16 matter, is there any reason the Court should not excuse the
17 two alternates at this point in time from the State?

18 MR. HOLFORD: The State sees none, Your Honor.

19 THE COURT: From the Defense?

20 MR. WILSON: None, Your Honor.

21 THE COURT: All right. Very good.

22 I want to thank y'all for your service. I can't tell you
23 how many times already this year we've had to substitute in an
24 alternate for a regular member of the jury. It happens all
25 the time. It just didn't happen in this particular case, but

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

362

1 that's why we need alternates because it just happens on a
2 regular basis for some reason or another we've got to put an
3 alternate in for somebody else that can't perform, they get
4 sick or whatever the issue is.

5 Y'all have given your service for this particular week.
6 I'm gonna excuse you from the rest of jury service for this
7 week and you also earn that exemption for the next three
8 years. If you get a summons from the Clerk of Court for jury
9 duty, you can tell her that you did serve this particular week
10 and with that, you are now excused. Thank you very much.

11 (REPORTER'S NOTE: Alternate jurors released.)

12 THE COURT: All right. Exceptions, deletions, additions
13 to the charge from the State?

14 MR. HOLFORD: None, Your Honor.

15 THE COURT: From the Defense?

16 MR. WILSON: None, Your Honor.

17 THE COURT: All right. First, gentlemen, I want to thank
18 you and all the counsel that participated in this matter. You
19 did exactly what the Court expected of you to do. You
20 represented your particular interest and your sides very well
21 and I want to thank both of you or all of y'all for your
22 representation in this matter. Thank you.

23 MR. WILSON: Thank you, Your Honor.

24 MR. HOLFORD: Thank you, Judge.

25 THE COURT: Please get with the Court Reporter and make

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

363

1 sure we have all the proper exhibits going into the jury room.

2 MR. WILSON: Yes, sir.

3 THE COURT: And that we send in the laptop with that.

4 And with that, we'll be at ease until the jury needs us. All
5 right?

6 Thank you.

7 MR. WILSON: Thank you, Judge.

8 (REPORTER'S NOTE: Counsel stipulate to exhibits)

9 (RECESS.)

10 *****OFF THE RECORD*****

11 (On the Record.)

12 THE COURT: All right. Counsel, as I indicated to you,
13 the jury sent us a note and wanted us to provide them a copy
14 of the law and, as we discussed, we're gonna do that here in
15 the courtroom on the record. I wrote back then and told them
16 this is to be done on the record in the courtroom and do you
17 wish the entire charge or some portion of it and the -- the
18 written response was to read definitions again of criminal
19 sexual conduct in the first degree and kidnapping. That being
20 the jury's request, that's what I'm going to do. I will tell
21 them obviously if there's anything else that they would like
22 me to charge, I'll be glad to do so. I'll be guided by their
23 requests.

24 Ask the jury to come in please.

25 (REPORTER'S NOTE: Jury enters courtroom.)

State v. Welch - 2015-GS-26-969, 970, 971, 972
BY THE COURT

364

COURT'S EXHIBIT NUMBER 1

ADMITTED INTO EVIDENCE

THE COURT: All right. Madam Forelady, ladies and gentlemen of the jury, I've got your note and I'm prepared to read that portion of the charge to you. I want to tell you that you obviously need to take it conjunction with the entire charge that I gave to you before and if there's anything else that you want me to charge to you, please let me know and I will be glad to do so.

Starting off with criminal sexual conduct in the first degree. The State has to prove beyond a reasonable doubt that the Defendant engaged in a sexual battery with the victim. Now, again sexual battery, that means intercourse, cunnilingus, fellatio, anal intercourse, any intrusion, however slight, of any part of a person's body or any object into the genital or anal openings of another person. Now, if you find the State has not proved that to you beyond a reasonable doubt that a sexual battery occurred, obviously that's the end of your discussion on that and you'll find the Defendant not guilty. If you find that a sexual battery did occur, then you have to go and determine whether or not the State has proven to you beyond a reasonable doubt one of these two elements. The first one being the Defendant used aggravated force to accomplish the sexual battery. Aggravated force means the use of physical force or violence, high and

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

365

1 aggravated nature to overcome a victim, but this includes and
2 can include the threat of using a deadly weapon, or the victim
3 submitted to sexual battery while the victim was also a victim
4 of forcible confinement or kidnapping or robbery or burglary
5 or some other similar act or offense. So the State has to
6 prove the sexual battery occurred beyond a reasonable doubt
7 and then one of those two other items or elements.

8 Kidnapping, the State has to prove beyond a reasonable
9 doubt that the Defendant knowingly and unlawfully seized,
10 confined, decoyed or kidnapped or abducted or carried away
11 another person without authority of law. The State has to
12 prove to you one of those, not all of them, one of those
13 beyond a reasonable doubt. Knowingly means with knowledge,
14 not accidentally. Seized means to take hold of. Confine means
15 to limit or restrict or enclose within bounds or shut or keep
16 in. Decoy means to lure, entice someone into a trap. Kidnap
17 means to remove a person against their will. Abduct means to
18 carry off or by force for an illegal purpose and carry away
19 means to remove. Now the State has to prove one of those to
20 you beyond a reasonable doubt. And again something done
21 without authority of law means the law doesn't sanction it in
22 any way or condone it, and kidnapping does not have to be for
23 any personal or monetary gain or any illegal purpose, but it
24 must -- or may be just for any purpose whatsoever. But again,
25 the State has to prove it to you and all the items for both

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

366

1 these matters and the other crimes beyond a reasonable doubt.

2 That's the State's burden.

3 All right?

4 JUROR 109: Yes, sir.

5 THE COURT: Thank you very much.

6 (REPORTER'S NOTE: Jury exits courtroom. The following takes
7 place outside the presence of the Jury.)

8 THE COURT: All right. Any objection, addition, deletion
9 from the State?

10 MR. HOLFORD: No, Your Honor.

11 THE COURT: From the Defense?

12 MR. WILSON: None, Your Honor.

13 THE COURT: All right. Very good.

14 All right. Again we'll be at ease until the jury needs
15 us.

16 Thank y'all very much.

17 MR. WILSON: Thank you, Judge.

18 (RECESS.)

19 *****OFF THE RECORD*****

20 (On the Record.)

21 THE COURT: All right. Counsel, I'm going to send the
22 jury home for the evening. They're continuing to -- obviously
23 continue to deliberate. And it being Wednesday, there's no
24 sense in keeping them here all night to do that. So, I'm
25 gonna call them in and give them instructions to obviously not

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

367

1 talk about it until they all reconvene tomorrow morning and
2 then we'll come back tomorrow morning at 9:30. All right?

3 Ask the jury to come back in, please.

4 (REPORTER'S NOTE: Jury enters courtroom.)

5 THE COURT: All right, ladies and gentlemen, I'm gonna
6 send y'all home for the evening as obviously I've explained to
7 you more than once, you go home and see whoever, obviously you
8 can't talk about this case. Don't allow anybody to talk to
9 you about it. When you come back in the morning and we'll
10 reconvene as we have the other days this week, but the little
11 difference being is tomorrow morning when y'all reconvene,
12 make sure that everyone is present in the jury room, Madam
13 Forelady, before y'all start talking about the case. As soon
14 as everyone is assembled, the Bailiff and deputies, they'll
15 have the exhibits and all the documents there before you in
16 the jury room and when everybody, all the jurors are assembled
17 together, then you can resume your deliberations and then
18 we'll be at your call whenever you reach a verdict in this
19 matter. All right?

20 So, with that, I'll see y'all back tomorrow morning.

21 JURY 109: What time?

22 THE COURT: The time, as we did every day, we'll -- I
23 want y'all to be there at least by 9:30. If you get there
24 earlier and -- that's fine. I don't have a problem with you
25 getting there early if y'all decide to do that, but again, you

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

368

1 cannot deliberate, cannot talk about the case until all 12 of
2 you are present. But everybody decides and y'all want to get
3 there earlier than that, I'm perfectly fine with that. I will
4 be here; that's not a problem. All right?

5 Thank you very much.

6 (REPORTER'S NOTE: Jury exits courtroom.)

7 THE COURT: All right. I would like y'all to make sure
8 you're here at least by 9:15 at the latest. Okay?

9 MR. HOLFORD: Yes, Your Honor.

10 MR. WILSON: Yes, Your Honor.

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

12 MR. WILSON: Thank you, Judge.

13 MR. HOLFORD: Thank you, Your Honor.

14 **END OF DAY THREE**

15 (RECESS.)

16 *****OFF THE RECORD*****

17 (On the Record.)

18 **APRIL 20, 2017 - DAY FOUR**

19 THE COURT: Thank you. All right. Counsel, as I
20 understand the jury has returned a verdict in this matter. Is
21 the State ready to receive it?

22 MR. HOLFORD: Yes, Your Honor.

23 THE COURT: And the Defense?

24 MR. WILSON: Yes, Your Honor.

25 THE COURT: All right. Very good.

State v. Welch - 2015-GS-26-969,970,971,972
VERDICT OF JURY

369

1 Ask the jury to come in, please.

2 (REPORTER'S NOTE: Jury enters courtroom.)

3 VERDICT OF JURY:

4 THE COURT: All right. Madam Forelady, has your jury
5 returned a verdict in this matter?

6 JUROR 109: Yes, sir; we have.

7 THE COURT: All right. Good. Could you hand the verdict
8 forms to the Clerk's representative, please, ma'am? You can
9 just stay right there; she'll come to you. That's all right.
10 Thank you, ma'am.

11 All right. Thank you.

12 You may publish the verdicts.

13 CLERK: Indictment number 2015-GS-26-00969, Indictment
14 number 2015-GS-26-00970, Indictment number 2015-GS-26-00971,
15 Indictment number 2015-GS-26-00972, State of South Carolina
16 versus David James Welch. On the charge of criminal sexual
17 conduct first degree, we, the jury, by unanimous consent, find
18 the Defendant guilty. On the charge of kidnapping, we, the
19 jury, by unanimous consent, find the Defendant guilty. On the
20 charge of armed robbery, we, the jury, by unanimous consent,
21 find the Defendant not guilty. On the charge of possession of
22 a weapon during the commission of a violent crime, we, the
23 jury, by unanimous consent, find the Defendant not guilty.
24 Signed by Foreperson Emily DeMasters dated April 20th, 2017.

25 Ladies and gentlemen of the jury, if this is your

State v. Welch - 2015-GS-26-969,970,971,972
POLLING OF JURY

370

1 verdict, please so signify by raising your right hand.

2 THE COURT: Thank you.

3 All the jurors having affirmed the verdict by the raising
4 of their right hand, does the State wish the jury polled?

5 MR. HOLFORD: No, Your Honor.

6 THE COURT: Does the Defense wish the jury polled?

7 MR. WILSON: Yes, Your Honor.

8 THE COURT: Madam Clerk, if you'll poll the jury by their
9 juror number, please, ma'am.

10 POLLING OF JURY:

11 CLERK: Please stand when I call your number. I'm gonna
12 ask you two questions. After you answer them, please be
13 seated.

14 Number 109, Emily DeMasters?

15 THE COURT: By their juror number only, Madam Clerk.
16 Thank you.

17 CLERK: Is this your verdict?

18 JUROR 109: Yes, ma'am.

19 CLERK: Is this still your verdict?

20 JUROR 109: Yes, ma'am.

21 CLERK: You can be seated.

22 323. Is this your verdict?

23 JUROR 323: Yes, it is.

24 CLERK: Is this still your verdict?

25 JUROR 323: Yes, it is.

State v. Welch - 2015-GS-26-969,970,971,972
POLLING OF JURY

371

1 CLERK: You can be seated.
2 217. Is this your verdict?
3 JUROR 217: Yes, it is.
4 CLERK: Is it still your verdict?
5 JUROR 217: Yes, it is.
6 CLERK: You can be seated.
7 446. Is this your verdict?
8 JUROR 446: Yes, ma'am.
9 CLERK: Is it still your verdict?
10 JUROR 446: Yes, ma'am.
11 CLERK: Please be seated.
12 58. Is this your verdict?
13 JUROR 58: Yes, it is.
14 CLERK: Is it still your verdict?
15 JUROR 58: Yes.
16 CLERK: 269.
17 Is this your verdict?
18 JUROR 269: Yes.
19 CLERK: Is it still your verdict?
20 JUROR 269: Yes.
21 CLERK: 153. Is this your verdict?
22 JUROR 153: Yes, ma'am.
23 CLERK: Is it still your verdict?
24 JUROR 153: Yes, ma'am.
25 CLERK: 104. Is this your verdict?

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

372

1 JUROR 104: Yes.

2 CLERK: Is it still your verdict?

3 JUROR 104: Yes.

4 CLERK: 440. Is this your verdict?

5 JUROR 440: Yes, ma'am.

6 CLERK: Is it still your verdict?

7 JUROR 440: Yes, ma'am.

8 CLERK: 166. Is this your verdict?

9 JUROR 166: Yes.

10 CLERK: Is it still your verdict?

11 JUROR 166: Yes.

12 CLERK: 357. Is this your verdict?

13 JUROR 357: Yes, ma'am.

14 CLERK: Is it still your verdict?

15 JUROR 357: Yes, ma'am.

16 CLERK: And 131; is this your verdict?

17 JUROR 131: Yes, ma'am.

18 CLERK: Is it still your verdict?

19 JUROR 131: Yes, ma'am.

20 THE COURT: Thank you, ma'am. The jury having been

21 polled by the Clerk and affirming the verdict in this matter,

22 is there anything as to the jury from the State?

23 MR. HOLFORD: Nothing, Your Honor.

24 THE COURT: From the Defense?

25 MR. WILSON: Nothing, Your Honor.

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

373

1 BY THE COURT:

2 THE COURT: Ladies and gentlemen of the jury, I want to
3 thank you for your service in this case. You did everything
4 that the Court asked you to do in this case, that is well and
5 truly try this case and listen to all the facts and evidence
6 and arrive at a true and just verdict in this matter. I want
7 to thank you for your service. Please remember you earned
8 that exemption from coming back and seeing us for the next
9 three years from Circuit Court jury duty. As far as the
10 proceedings that are left, the Court will in a short period of
11 time go into sentencing. It's not necessary for you to remain
12 for that. I will excuse all of y'all to go back to the jury
13 room. If you want to come back in the courtroom, the bailiffs
14 will take you around and bring you back the other way. But
15 with that and with my thanks, you are now excused.

16 Thank you very much.

17 (REPORTER'S NOTE: Jury exits courtroom. The following takes
18 place outside the presence of the Jury.)

19 MOTIONS:

20 THE COURT: Motions, Mr. Wilson?

21 MR. WILSON: Your Honor, Judge, at this time, I'm going
22 to ask the Court to set aside the jury's verdict and ask the
23 Court, motion the Court for a judgment of acquittal and let me
24 explain why.

25 Two things, one yesterday the jury came back with two

State v. Welch - 2015-GS-26-969, 970, 971, 972
MOTIONS

374

1 questions. Both questions were regarding the CSC first degree
2 and the kidnapping. Your Honor then allowed the jury to go
3 home at 6:00, I think a little bit before 6 o'clock, and now
4 the jury comes back with a guilty verdict on both of those
5 issues. Two things, one there was no instruction yesterday on
6 letting them know that they were not supposed to do any
7 research or go online or anything like that. Your Honor,
8 explained to them that they were simply not to talk about the
9 case. My other concern is this, Judge, is that the verdict
10 itself is inconsistent with the evidence that was put up
11 before the jury. The jury found him not guilty on possession
12 of a weapon during a violent offense. The jury also found him
13 not guilty on the actual charge of armed robbery. So the jury
14 is saying, look, we don't believe he had a gun because if they
15 found him guilty of the CSC first degree and the kidnapping
16 they could easily jump to the possession of a weapon which
17 Your Honor explained to them. So they're not saying that he
18 had a gun. They're saying he committed the CSC first degree
19 and then they're saying that he kidnapped Jerrica Nelson.
20 That's what the jury is coming back saying without a gun at
21 all. And the testimony that was presented is very clear that
22 he and her drove willingly from Burger King. She testified
23 they drove from Burger King to the apartments. She was
24 driving; he wasn't driving. And if the jury doesn't believe
25 he has a gun, how is he forcing her to drive? That fact was

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

375

1 never in evidence; that was a story that she told, but it was
2 never something that she ended up telling Detective Beam and
3 she told Detective Beam that he didn't pull a gun on her until
4 he wanted sex, which would have been about forcing her to have
5 sex and there was no gun. So that verdict is inconsistent
6 with -- I apologize, Judge.

7 THE COURT: Go ahead.

8 MR. WILSON: The verdict was inconsistent with what
9 Jerrica Nelson testified to as to the actual CSC first degree.
10 And obviously when it comes down to kidnapping, he would have
11 to lure or somehow decoy her or somehow confine her to her own
12 vehicle and she never testified that he lured her there. She
13 never testified that she was decoyed there. She said, for the
14 record, that she was actually held at gunpoint there. And if
15 she was held at gunpoint, if they believed that, the jury
16 would have found him guilty also, Judge, of the possession of
17 a weapon during a violent offense because that's how he would
18 hold her there. Otherwise, there's no other testimony in the
19 record, Judge, to support that he held her there against her
20 will. My concern here is that justice and -- again, my
21 concern from the beginning of this case was about the
22 different stories that were being told and I explained to the
23 Court, I had real serious concerns about believability and
24 credibility and the jury obviously struggled that as well
25 which is why they came back asking the questions about those

State v. Welch - 2015-GS-26-969, 970, 971, 972
MOTIONS

376

1 issues.

2 I am asking the Court, I know it is a rare act, it is a
3 rare act, I'm asking the Court either to grant him a new trial
4 because the verdict itself is inconsistent with the evidence
5 that was put up. There was no other evidence of kidnapping.
6 There was no other evidence of a CSC first degree, nothing,
7 not forensically, not in the car, not video evidence, nothing
8 at all supported. About forcible rape, the only thing they
9 say about forcible rape was that she was forced at gunpoint.
10 That's what she says and this Defendant forced her at
11 gunpoint. And so now the jury has come back and said, look,
12 we're gonna give the CSC against him and the kidnapping.
13 Well, how did that get accomplished? Nothing in evidence
14 supports that, Judge. I'm asking for either a new trial or a
15 judgment of acquittal from the Court based on what was found
16 by the jury and what was put up and this Court does have that
17 authority. It has that power to look at whether or not it is
18 consistent with the actual law and the facts that are
19 presented at trial.

20 THE COURT: Thank you, sir.

21 MR. WILSON: Thank you, Your Honor.

22 THE COURT: Your reply, Solicitor?

23 MR. HOLFORD: Yes, Your Honor. I believe in South
24 Carolina the inconsistent verdicts by juries are accepted.
25 That's the first point. Further, the State would urge the

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

377

1 Court to see that these are consistent verdicts actually. If
2 the jury believed that there was not a gun, therefore there
3 was not an armed robbery, they could still easily believe that
4 there was a kidnapping or a -- or a robbery without a gun.
5 Kidnapping includes decoy, inveigle, trickery causing her as
6 the direct evidence would show in this case, there's ample
7 evidence for the jury to conclude that there was a kidnapping
8 as they did. They obviously found the victim credible in this
9 case. They believed at least portions of her testimony.
10 There's enough testimony in the record and enough evidence in
11 the record to support their finding of kidnapping that he
12 directed her down to those apartments for -- for a false
13 reason. And further, that in doing so, he did kidnap her and
14 then afterwards performed a sexual battery on her during the
15 commission of a robbery or kidnapping, which is CSC in the
16 first degree.

17 So, even if we were to look at the verdict as believing
18 the jury didn't believe there was a gun, there's still ample
19 evidence in the record to be believed by the jury to support
20 the finding of kidnapping and therefore to support CSC in the
21 first degree during the commission of a robbery or a
22 kidnapping. Your Honor, I believe the evidence speaks for
23 itself in this case, it is strong, it's direct and there is
24 circumstantial evidence that, if believed, supports the jury's
25 verdicts in this case. I would ask that the Court accept the

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

378

1 jury's verdict and proceed with sentencing in this case.

2 THE COURT: All right, sir. Thank you.

3 Yes, sir, Mr. Wilson, anything else you wanted to say?

4 MR. WILSON: Judge, just lastly. Your Honor, going
5 through this trial and listening to all the evidence in this
6 particular case, I know the Court has been attentive to what's
7 been going on. In this particular case, the entire
8 allegation, the entire case in chief of the State was that she
9 was held at gunpoint. That's what she said when she lied
10 about the Burger King incident; that's what she said when she
11 told Sououd that she was at gunpoint, that she was held at
12 gunpoint. Trickery was never even an issue. That was never a
13 issue that they raised, that he tricked her somehow. The
14 evidence showed that they drove there and stopped the car and
15 that they cut the lights off and then something began. The
16 jury didn't believe he had a gun. There was no evidence that
17 she said on the record, well he tricked me into going down
18 there or he lured me down there or he called me down to the
19 Town Square Apartments. They drove down together, willingly,
20 voluntarily. And, I would ask the Court again, it is
21 appropriate in this matter considering the fact that the jury
22 came back with this really strange and inconsistent verdict
23 where they're saying there's no weapon, no armed robbery, but
24 the CSC first and the kidnapping occurred, when the only
25 evidence is that she voluntarily drove from the Burger King,

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

379

1 met him out there, had Facebook messages with him and then
2 they were there together at this particular place.

3 Thank you, Your Honor.

4 THE COURT: All right, sir. Regarding your motion for a
5 new trial or a motion for a verdict in arrest of judgment to
6 vent the entry of judgment of guilt on the two charges that
7 the jury returned the verdict on. The Court respectfully
8 declines to grant your motions. The jury returned the verdict
9 of guilty on the charge of criminal sexual conduct and
10 kidnapping. Criminal sexual conduct is defined that the State
11 must prove beyond a reasonable doubt that the Defendant
12 engaged in the sexual battery with the victim. There is more
13 than sufficient testimony in the record to sustain the jury's
14 verdict that the Defendant did indeed engage in a sexual
15 battery with the victim as defined by the statute and as I
16 defined it to the jury. There being sufficient evidence to
17 find that a sexual battery occurred, the jury then had to find
18 either that the Defendant used aggravated force to accomplish
19 the sexual battery. Aggravated force means the use of
20 physical force or physical violence of a high and aggravated
21 nature to overcome the victim, this includes the threat of
22 using a deadly weapon, or the victim submitted to sexual
23 battery while the victim was also the victim of a forcible
24 confinement, kidnapping, or some other similar act or offense.

25 Regarding the offense of kidnapping, the State had to

State v. Welch - 2015-GS-26-969, 970, 971, 972
MOTIONS

380

1 prove beyond a reasonable doubt that the Defendant knowingly
2 and unlawfully either seized or confined or inveigled or
3 decoyed or kidnapped or abducted or carried away another
4 person without authority of law. Seize means to take hold of
5 suddenly or forcibly. There's certainly more than sufficient
6 evidence in the record to sustain that. Confine means to
7 limit or restrict or enclose within bounds. There was
8 certainly more than sufficient evidence to sustain the jury
9 regarding that particular issue. Inveigle means to lure,
10 entice or lead astray by false representation, promise or
11 other deceitful means. Whether or not the State emphasized
12 that, it is clear that from the testimony, the Defendant told
13 and asked the victim to take him to a place where he said he
14 lived, which he did not, and she agreed to do so. Decoy means
15 to lure by or as if by decoy -- decoy is something to entice a
16 person into a trap. Kidnap, removing a person against their
17 will and abduct, carrying them away. Now, there is more than
18 sufficient evidence in the record and the jury must have
19 believed that evidence to find the Defendant guilty of the
20 crime of kidnapping to sustain the jury's verdict of
21 kidnapping.

22 You combine that with the elements of criminal sexual
23 conduct in the first degree, the Court finds that the evidence
24 in the record is more than sufficient to convict the Defendant
25 of the two crimes for which he was found guilty,

State v. Welch - 2015-GS-26-969,970,971,972
MOTIONS

381

1 notwithstanding the jury finding him not guilty of the crime
2 of armed robbery or possession of a weapon. It is unnecessary
3 for the jury to have found him guilty on the two charges of
4 CSC first and kidnapping for there to have been a weapon.
5 There is more than sufficient testimony in the record to
6 sustain the jury's verdict on the elements of those two crimes
7 even without the use of a weapon, based upon the testimony
8 presented by the victim in this matter. Therefore, the Court
9 respectfully declines to grant your motion for a directed
10 verdict or a verdict in arrest of judgment.

11 Anything further from the Defense?

12 MR. WILSON: Yes, Your Honor. One last motion for a new
13 trial, Judge. I asked yesterday for the -- Your Honor to
14 charge the jury on petit larceny and there was an issue about
15 whether or not petit larceny was a lesser included offense. I
16 found South Carolina case law which I'd like to submit to the
17 Court where petit larceny and grand larceny or lesser included
18 offenses of strong armed robbery and strong armed robbery is a
19 lesser included offense of armed robbery, Judge, if the Court
20 would be so willing. I'll renew the motion at this time.

21 THE COURT: I'll be glad for you to renew the motion.
22 You, of course, declined to have the Court charge the jury for
23 strong armed robbery.

24 MR. WILSON: That's correct.

25 THE COURT: I specifically asked you and you asked the

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

382

1 Court not to do so.

2 MR. WILSON: Absolutely, Judge.

3 THE COURT: So, the logic does not flow then that you
4 would then have the elements of grand larceny and petit
5 larceny, but anyway, besides -- with that, I do not find that
6 the evidence as presented in this case allowed the Court to
7 submit the issue of grand larceny and petit larceny. Those
8 elements of those crimes were not testified to, were not
9 present in the evidence that was presented to the jury,
10 especially as to valuation. They're not present. That would
11 cause the jury to speculate. The Defense did not put any
12 issue evaluation in; the State did not put any issue
13 evaluation in. And that would cause the jury to completely
14 speculate as to what value of the items are, on top of the
15 fact that the jury found the Defendant not guilty of the crime
16 of armed robbery. So, that to me, in and of itself, would
17 negate this argument since the Defendant has been found not
18 guilty of that particular crime.

19 MR. WILSON: Thank you, Your Honor.

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

21 Anything, any further motions from the Defense?

22 MR. WILSON: No further motions, Judge.

23 THE COURT: All right. Very good.

24 BY THE COURT:

25 THE COURT: All right. We'll proceed with sentencing at

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT AS TO SENTENCING BY HOLFORD

383

1 this time. Is the State ready?

2 MR. HOLFORD: Court's indulgence; may I have one moment?

3 THE COURT: Yes, sir, please.

4 MR. HOLFORD: The State's ready to proceed, Your Honor.

5 THE COURT: All right, sir. Very good.

6 ARGUMENT AS TO SENTENCING BY HOLFORD:

7 MR. HOLFORD: Your Honor, as to Indictment 2015-GS-26-
8 00969 for kidnapping, that's an offense that carries zero to
9 30 years; it's violent and most serious. The Defendant was
10 convicted. As to Indictment 2015-GS-26-00971 for criminal
11 sexual conduct first degree, an offense that carries zero to
12 30 years is violent and most serious. It's a sexually violent
13 offense and it requires sex offender registry. The Defendant
14 was convicted.

15 If I may approach with the sentence sheets?

16 THE COURT: Please. Did you wish to look at how they
17 were presented to the -- to the Court, Mr. Wilson?

18 MR. WILSON: Your Honor, if I could review them briefly.

19 THE COURT: Sure, absolutely.

20 MR. WILSON: May I approach, Your Honor?

21 THE COURT: Absolutely, please.

22 MR. HOLFORD: Your Honor, may I also approach?

23 THE COURT: Certainly.

24 MR. HOLFORD: I just handed Defense Counsel a copy and
25 I'll explain it in one second.

State v. Welch - 2015-GS-26-969, 970, 971, 972
ARGUMENT AS TO SENTENCING BY HOLFORD

384

1 THE COURT: All right. Very good.

2 MR. WILSON: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 Yes, Solicitor, I'll be glad to hear from you?

5 MR. HOLFORD: Yes, Your Honor, the Defendant is 21 at
6 this time. His birthday is [REDACTED] of '95. So, he's
7 young; he has not had a lot of time to get a criminal record,
8 but I do show on his criminal record NCIC from an offense date
9 of April 29th, 2013 for strong armed or common law robbery.
10 He was convicted under a guilty plea in September -- on
11 September 15th, 2014. Of that offense for strong armed
12 robbery, he was sentenced to YOA not to exceed six years
13 suspended to probation. He is currently on probation for that
14 offense. In addition to that offense, a 2013 simple
15 possession of marijuana and a traffic offense in 2014 and a
16 minor in possession of alcohol in June of 2014. In addition
17 to his adult criminal record, I have handed Defense Counsel as
18 well as Your Honor and presented to the Court, these are
19 orders for the Family Court, the Juvenile Court. They involve
20 his juvenile infractions.

21 Your Honor, if I could make that a part of the record
22 without reading into the record his juvenile infractions. I
23 believe they're appropriate for the Court to consider in all
24 sentencing matters although I would not publicly disclose his
25 juvenile record.

State v. Welch - 2015-GS-26-969,970,971,972
STATEMENT BY MICHELLE LEWIS

385

1 THE COURT: What's your position, Mr. Wilson?

2 MR. WILSON: Your Honor, I would object. Again this is
3 juvenile issues. He is now an adult. This crime didn't occur
4 when he was a juvenile. I would ask the Court to keep this
5 out of the record. It is not related to or should not hold
6 any weight to what Your Honor does as far as sentencing goes,
7 Judge.

8 THE COURT: I will state for the record that this Court's
9 sentencing is going to be based upon the facts and
10 circumstances of this particular case and the adult criminal
11 record of the Defendant, and I will not be taking into
12 consideration regarding the sentencing, any crimes or
13 misdemeanors he may have committed as a juvenile.

14 Thank you.

15 MR. HOLFORD: Yes, Your Honor.

16 At the appropriate time, the mother of the victim would
17 like to speak.

18 Your Honor, on behalf of the State, the State would ask
19 the Court for the maximum punishment in this case.

20 THE COURT: All right, sir.

21 All right. Ma'am, if you'd like to come forward, I'll be
22 glad for you to state your name and then I'll be glad for you
23 to speak to me.

24 Yes, ma'am?

25 STATEMENT TO COURT BY MICHELLE LEWIS:

State v. Welch - 2015-GS-26-969,970,971,972
STATEMENT BY MICHELLE LEWIS

386

1 MS. LEWIS: My name is Michelle Lewis; I'm Jerrica's
2 mother.

3 THE COURT: Yes, ma'am.

4 MS. LEWIS: I've watched Jerrica for the last couple of
5 years withdraw and go into a form of denial. She's very
6 stoic; she always has been. But, it's changed our life and
7 it's just been a nightmare for the last two years. While I
8 respect what the jury has decided and I understand their
9 choice, I believe a lot of the reasons they didn't go with the
10 armed robbery is because there was no physical evidence of a
11 weapon, but we all know that that doesn't necessarily mean
12 there wasn't one. So, I have heard my daughter tell the story
13 of what happened to her multiple times and I know she's not a
14 liar, and I know he did everything she said. And I just would
15 like to ask for you to please consider maximum sentencing on
16 the charges that he was found guilty for. Thank you.

17 THE COURT: Thank you, ma'am.

18 Anything further from the State?

19 MR. HOLFORD: Your Honor, the -- I believe the record
20 speaks for itself. I don't need to go into detail about that.
21 It was a particularly violent and heinous crime perpetrated by
22 the Defendant, although he is young at this time, he started
23 at a very young age. He was already on probation for strong
24 armed robbery and he continued to commit crimes. Your Honor,
25 the State would ask the Court for the maximum sentence in this

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT AS TO SENTENCING BY WILSON

387

1 case in light of his behavior.

2 THE COURT: All right. I did ask for the Probation
3 Department to be present. It appears that this particular
4 Defendant, Mr. David James Welch, is currently on probation
5 for the crime of strong armed or common law robbery from a
6 prior sentence where he received a youthful offender sentence
7 suspended to a probationary period. The jury has now
8 convicted him this date of criminal sexual conduct in the
9 first degree and kidnapping. Therefore, I found it proper to
10 notify the Probation Department since he is currently on
11 probation for another offense.

12 MR. ANDERSON: Thank you, Judge.

13 THE COURT: All right, sir. Mr. Wilson, I'll be glad to
14 hear from you?

15 ARGUMENT AS TO SENTENCING BY WILSON:

16 MR. WILSON: Your Honor, if it please the Court, Judge.
17 Your Honor, CSC first and kidnapping carry zero to 30 years,
18 both statutes. Congress intended, even for a CSC first
19 degree, that there would be degrees of severity to the actual
20 crime itself. That is considered in the statute. That's
21 something they intended. And when you look at this particular
22 case, with the jury finding him not guilty of the armed
23 robbery, not guilty of the actual possession of a weapon
24 during the violent offense, and then no evidence presented
25 that her clothes were torn, no evidence presented in this case

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT AS TO SENTENCING BY WILSON

388

1 that she was hurt physically. There was a rape kit that was
2 submitted to the hospital in this case. There was testimony
3 and evidence of that coming in. No submission of anything
4 about tears or bleeding or anything that would be consistent
5 with some sort of violent rape that would've occurred.

6 Sexual battery could be a number of things and I'm not
7 sitting here I know what the jury was thinking when they
8 thought sexual battery. It is such a vague term in our law.
9 It could be anything; it could be fellatio, it could be
10 kissing someone, it could be anything. Sexual battery is
11 simply a touching of someone that is unwanted. That's what it
12 is. And again in this particular case, unlike most rapes
13 which are violent and heinous, that evidence did not come
14 through in this particular case.

15 The kidnapping, where somebody is held and confined to a
16 location secretly for hours or days did not occur in this
17 situation. There is evidence in this particular case and I
18 think the Court eluded to it earlier, where again even if he
19 held her for a moment down, and that's what the jury could've
20 been thinking, for that moment. We don't know if the jury
21 though, okay, well look, at some point in time, this may've
22 become consensual. We don't know if they thought, okay, well
23 it wasn't consensual. I don't know what they were thinking.
24 But, I do know that when you look at battery itself, that
25 could occur in a moment. Even rubbing somebody's leg could be

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT AS TO SENTENCING BY WILSON

389

1 a sexual battery.

2 I would submit to the Court if you look at the evidence
3 in this matter and you look at what came through on the stand
4 that this is the lessor of the CSC cases that you see and I
5 would remind the Court that they didn't find that he had a gun
6 during all this, which would add to the first prong and the
7 second part of CSC first, which would be the aggravated
8 circumstances that there was a weapon involved, which was what
9 the State was claiming.

10 The other issue is that again, if there were no injuries,
11 if there was nothing done to her physically that hurt her and
12 that there was no evidence that came across of that on the
13 stand, I would submit to the Court again that that is not
14 evidence of a violent attack or rape.

15 I am asking the Court -- he is 22 years old at this point
16 in time, I'm asking the Court to consider a sentence of
17 anywhere between zero to five years. He's gonna be violated
18 on the probation under the Youthful Offenders Act. I'm asking
19 the Court to also turn that into an adult sentence for him and
20 then allow him to go and either serve his time, but not to
21 give him 30 years, Judge. And yes, he has a strong armed
22 robbery, but that is common law robbery and Your Honor is
23 aware of how those cases are and why they plead out and this
24 was a plea, not a conviction. That strong armed robbery, my
25 understanding is he was somewhere, wasn't identified by

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT AS TO SENTENCING BY WILSON

390

1 anybody, and he pled guilty just to get the case done with, to
2 be done with the case, and that happens. And I understand the
3 Court has to obviously lay down punishment for him. He was
4 convicted by a jury and we have to accept that verdict, and he
5 understands that as well, but this is not one of those cases
6 where the State's requesting that he get 30 years in prison
7 and spend the rest of his youthful life in jail. I don't
8 think that's appropriate. I don't think that in light of what
9 we know about this case and in light of what came across on
10 the stand that that is appropriate at all. I think it's very
11 telling that the jury came back and asked questions
12 specifically about those two crimes and I would submit to the
13 Court my belief is that they had already found him not guilty
14 of the armed robbery and the possession of a weapon in a
15 violent offense. What they were struggling with was, how you
16 define and what creates sexual battery, what creates
17 kidnapping? How quickly can it occur? And literally right
18 now, if I held somebody down right here, that could be
19 technically considered as kidnapping, if I hold you for a
20 second, and Your Honor made that -- but this is slight
21 compared to what would probably see in a CSC first or
22 kidnapping case, Judge. And again, I'm asking the Court for
23 -- I'm asking for the minimal commitment, allow him to be
24 terminated -- excuse me -- allowed to be sentenced under the
25 YOA Act or converted to an adult sentence and then give him a

State v. Welch - 2015-GS-26-969,970,971,972
ARGUMENT AS TO SENTENCING BY WILSON

391

1 chance to get out of jail during his youthful life. He has a
2 child who is two years old. He has family here who loves him.
3 His mother, who I know wants to speak at the appropriate time.
4 His grandmother is- here. They've been here the entire time.
5 And he has a, obviously, a family that he lived with. And
6 just for the record, so the record is clear for the purposes,
7 I was appointed to this case on a 608 contract, Judge.
8 Originally, his lawyer was Tom Floyd and then he asked me to
9 step in as first chair and Tom was going to be second chair,
10 but then Tom was removed and I simply took over in November to
11 prep him for trial and get ready for it. He's not a man of
12 great means. They don't have a lot of money. So, again I
13 would ask the Court to take all these things into
14 consideration. He has a 9th grade education. And, you know,
15 this situation, I think, is just tragic. That's what I
16 believe about the situation. I think this whole thing is just
17 tragic.

18 I think his momma would like to speak at the appropriate
19 time, Your Honor, if the Court is so willing?

20 THE COURT: I'll be glad to hear from her.

21 Has the Defendant, he's been incarcerated for some period
22 of time, do you know when that occurred?

23 MR. WILSON: Court's indulgence?

24 THE COURT: And while you're looking at that up, I'll be
25 glad to hear from his mother if she'd like to come around and

State v. Welch - 2015-GS-26-969, 970, 971, 972
STATEMENT BY TERESA WELCH

392

1 -- and speak to the Court?

2 MR. WILSON: Yes, Your Honor.

3 THE COURT: Yes, ma'am. If you'd just tell me your name
4 and then I'll be glad to hear from you.

5 MS. WELCH: Okay. My name is Teresa Welch.

6 THE COURT: Yes, ma'am.

7 STATEMENT BY TERESA WELCH:

8 MS. WELCH: And I'm not here to disrespect anybody or how
9 they're feeling, but when -- when she says their lives have
10 changed; so has mine. Now, I've watched on Facebook everyday
11 how her daughter's life has changed and it's not changed. And
12 the innocence that she's proclaiming, that's hers, but I know
13 different. I'm reading it, I'm seeing it, I'm listening to
14 her friends. It's not the first time, and unfortunately I
15 don't think it's gonna be the last time, so I really -- I have
16 a grandson who is two years old. He's gonna grow up and he's
17 not gonna know his father and that's gonna be the same thing
18 that happened to D.J. He grew up and didn't know his father.
19 So, I'm asking you to give my grandson a chance to know his
20 father. Just because someone is saying they're innocent, you
21 as a Judge, know that that's not true. I am begging you to
22 give my grandson a chance to know his father. I do believe
23 that he's innocent and I'll stand by that, but I would like my
24 grandson to know his father.

25 BY THE COURT:

State v. Welch - 2015-GS-26-969,970,971,972
BY THE COURT

393

1 THE COURT: Thank you, ma'am.

2 Yes, sir?

3 MR. WILSON: Your Honor, he has been incarcerated now at
4 the time two years and 94 days, Judge.

5 THE COURT: And I'm sorry, tell me that again, please?

6 MR. WILSON: Two years and 94 days, Judge, by our
7 calculations.

8 THE COURT: Thank you very much.

9 MR. HOLFORD: Your Honor, he was out on home detention
10 for a period of that time. Now, he got revoked multiple times
11 while on home detention, but there were times where he bonded
12 out and was out and then violated and got put back in and
13 bonded out and was out and then violated and got put back in.
14 That doesn't mean he was in custody the entire time.

15 THE COURT: All right. Thank you.

16 MR. WILSON: Judge, he was only out three or four days.

17 THE COURT: All right.

18 Agent, did you wish to present the matter to the Court at
19 this time?

20 MR. ANDERSON: Yes, Your Honor.

21 THE COURT: I'll be glad to hear from you, sir.

22 MR. ANDERSON: Judge, he is currently on YOA suspended to
23 probation. He was sentenced on 9/15/2014, and that was a
24 strong armed robbery. He got YOA six years suspended to
25 probation and it appears today's conviction will be the

State v. Welch - 2015-GS-26-969, 970, 971, 972
SENTENCE OF THE COURT

394

1 violation.

2 THE COURT: All right, sir. Thank you very much.

3 SENTENCE OF THE COURT:

4 THE COURT: All right. Mr. Welch, stand up, please, sir.

5 Regarding the matter of the probation violation, I do
6 find there's been a willful violation of the terms and
7 condition of the probation. I'm revoking the sentence,
8 turning it into an adult sentence for the time of six years.

9 MR. ANDERSON: Thank you, Judge.

10 THE COURT: That will run concurrent with the sentence in
11 2015-GS-26-971. Regarding that particular offense, the State
12 of South Carolina, County of Horry, versus David James Welch,
13 the sentence of criminal sexual conduct first degree. The
14 sentence of the Court is the Defendant is committed to the
15 State Department of Corrections for a determinate term of 24
16 years. The Defendant is given credit for the time that he has
17 already served. Sex offender registry is required. This is a
18 sexually violent offense. I am not giving him credit for the
19 home detention time due to the violations.

20 2015-GS-26-969, kidnapping, the sentence is the same,
21 determinate term of 24 years concurrent with 2015-GS-26-971.

22 Thank you very much.

23 MR. WILSON: Thank you, Your Honor.

24 MR. HOLFORD: Thank you, Your Honor.

25 END OF DAY FOUR - ADJOURNED.

State v. Welch - 2015-GS-26-969,970,971,972
CERTIFICATE OF COURT REPORTER

395

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus David James Welch, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on April 17-20, 2017, as reported by Dixie C. Eubank.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

July 17, 2017.

STATE OF SOUTH CAROLINA

COUNTY OF HORRYDAVID JAMES WELCH (#372246)

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: Christopher R. Geel
 Address: 171 Church St., Suite 330
Charleston, SC 29401

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

20 19 CP GP26 - 1035

SC Bar #: 101458
 Telephone #: 843-277-5080
 Fax #: 843-800-8070

Other: _____
 E-mail: Chris@GeelLawFirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
 Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
 Previous Notice of Intent Case #
 20 19 - NT - _____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____

- Torts - Personal Injury**
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Label (380)
☐ Other (399) _____

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____

- Inmate Petitions**
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____

- Administrative Law/Relief**
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
 Settlement Payment Rights
 Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers'
 Compensation Settlement
 Approval (780)
☐ Incapacitated Adult Settlement
 (790)
☐ Other (799) _____

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
 an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)

Submitting Party Signature: CR GeelDate: 2-19-19

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

FORM 5

STATE OF SOUTH CAROLINA

County of HORRYDAVID JAMES WELCH (#372246)

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

20 19 CP26 1035

APPLICATION FOR

POST-CONVICTION RELIEF

RECEIVED
CLERK OF COURT
HORRY COUNTY, S.C.

2019 FEB 21 PM 1:31

HORRY COUNTY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence HORRY COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 15GS2600969
 - (b) 15GS2600971

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4/20/17 --- 24 YEARS
- (b) 4/20/17 --- 24 YEARS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DISMISSED PURSUANT TO ANDERS V. CALIFORNIA, 386 U.S. 738 (1967)
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. DECEMBER 12, 2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 18-UP-451
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
N/A
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL: FAILURE TO OBTAIN INDEPENDENT DNA TESTING
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL: FAILURE TO INVESTIGATE & SUBPOENA WITNESSES
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL: FAILURE TO ADVISE DEFENDANT RE: RIGHT TO TESTIFY
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) TRIAL COUNSEL FAILED TO CONDUCT INDEPENDENT DNA TESTING ON EVIDENCE
- (b) TRIAL COUNSEL FAILED TO SUBPOENA A KEY WITNESS TO THE DEFENDANT'S TRIAL
- (c) TRIAL COUNSEL FAILED TO ADEQUATELY ADVISE DEFENDANT REGARDING HIS RIGHT TO TESTIFY AT TRIAL
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii.

iii.

(b) the proceedings in which each ground was raised:

i. N/A

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. RALPH WILSON, JR., - PO BOX 860, CONWAY SC 29528.
 ii. KATHERINE HUGGINS - SCCID APPELLATE DIVISION, PO BOX 11589
COLUMBIA, SC 29211
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. PRE-TRIAL, TRIAL, AND SENTENCING.
 ii. DIRECT APPEAL
 iii. _____

19. State clearly the relief you seek in filing this application:
 VACATE CONVICTION AND SENTENCE, GRANT A NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?
 NO

20 19 CP26 1035

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, CHRISTOPHER GEEL, ESQ., O/B/O DAVID JAMES WELCH, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application: that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 19th
 day of February, 2019.
[Signature] (L.S.)
 Notary Public

My Commission Expires: 12-3-2024

NOTARY PUBLIC
 CLERK OF COURT
 Horry County, SC

2019 FEB 21 PM 1:31

Horry County

20 19 CP26 1035

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, CHRISTOPHER R. GEEL, ESQ., O/B/O DAVID JAMES WELCH, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof. NOTE: APPLICANT IS CURRENTLY INCARCERATED AND UNABLE TO PAY



ATTORNEY FOR Applicant

SWORN or affirmed to and subscribed before me this
19th day of FEBRUARY, 2019.


Notary Public

My Commission Expires: 12-3-2024

CLERK OF COURT
HORRY COUNTY, SC

2019 FEB 21 PM 1:31

HORRY COUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
David James Welch,	)	Case No.: 2019-CP-26-01035
S.C.D.C. No. 372246,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR A MORE
v.	)	DEFINITE STATEMENT
	)	(Counsel Retained)
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the application for post-conviction relief filed by David James Welch (Applicant) on February 21, 2019, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the March 2015 term of the Horry County Grand Jury for kidnapping (2015-GS-26-00969), armed robbery (2015-GS-26-00970), criminal sexual conduct, first degree (2015-GS-26-00971), and possession of a weapon during the commission of a violent crime (2015-GS-26-00972). Ralph J. Wilson, Jr., Esq. represented Applicant, and Joshua D. Holford and Cara J. Walker, Esqs., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On April 17, 2017, Applicant proceeded to trial before the Honorable Steven H. John and a jury. The jury found Applicant guilty as indicted for kidnapping and CSC on April 20, 2017; the jury acquitted Applicant of armed robbery and the weapon charge. Judge John sentenced Applicant to imprisonment for concurrent terms of 24 years each for kidnapping and CSC.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which offered the following issue:

Did the trial judge err in refusing to grant a mistrial when a detective testified that he knew the Appellant as the individual identified on Facebook as David Royal, implying the detective knew Appellant because of prior criminal activity?

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Welch, Op. No. 2018-UP-451 (S.C. Ct. App. filed Dec. 12, 2018). The Remittitur was issued on December 28, 2018.

II. STATEMENT OF THE FACTS

Jerrica Nelson, the victim, was at the time of trial a twenty-four year old resident of Murrells Inlet, South Carolina, who grew up in Horry County. (R. 76, ll. 8-20; R. 80-81). On January 8, 2015, Nelson got off from work and was on her way home when her phone lit up with messages from Applicant on Facebook. (R. 77-78). Nelson did not answer Applicant's messages because she was driving, but then her phone rang with a call from Applicant. (R. 78, ll. 4-6; R. 85-86).

Nelson became acquainted with Applicant over the internet after Facebook suggested him as a friend, but had never met him in person. (Tr. 79-80). She didn't really know Applicant, but conversed with him anyway. (R. 81-83; State's Trial Exhibit #18). Nelson initiated the first conversation, on January 6, 2015. (R. 116-17). Applicant flattered Nelson as "a cutie" and proposed that they "chill." (R. 117, ll. 17-20). When Applicant continued by suggesting they hang out and cuddle, Nelson replied: "I know what guys mean when they say that." (R. 118, ll. 9-20). Applicant obliquely propositioned Nelson for sex in his Facebook messages, but Nelson neither agreed nor refused his entreaties. (R. 83-84; R. 126-27). Applicant wanted to meet

Nelson in person and hang out, but Nelson delayed until she received a voicemail from Applicant amid a flurry of eight phone calls. (R. 86-87). In the voicemail, Applicant claimed he was waiting for Applicant, and that he had been waiting for her all day after they made plans. (R. 87, ll. 13-15). Nelson finally messaged Applicant back asserting she had never made plans to hang out with him, but under the persuasion of repeated messages and eight total phone calls, Nelson relented and agreed to meet him at the Burger King “[i]n front of Coastal Grand Mall by Sticky Fingers.” (R. 86-89). Nelson called Applicant while waiting at the Burger King to “see if he was actually gonna show up.” (R. 86-87).

After waiting for ten to fifteen minutes, Applicant appeared wearing khaki colored jeans, a dark colored sweatshirt, and a “small like beanie type” hat. (R. 89-90). Applicant knocked on the window of Nelson’s Hyundai Tucson¹ and she let him into the SUV, where Applicant asked Nelson how her day was. (R. 90, ll. 22-24). Nelson resisted Applicant’s efforts to kiss her and initiate more intimate relations; she told Applicant she was tired, cold, and that she didn’t want to do anything but go home. (R. 90-91). Applicant finally relented and asked her to take him home so he would not have to walk home in the cold. (R. 91, ll. 8-12). Nelson drove him to the Town Square Apartments, pulled into the parking lot, and parked in “the last spot” in the parking lot. (R. 92-96).

After Applicant pointed out an open window, Nelson turned off her headlights and Applicant again asked her to have sex with him. (R. 96, ll. 8-12). Applicant “rubbed the gun on my hand” before pocketing it again, then began to unbutton Nelson’s pants over her objections, offering that he would shoot her “and nobody will care.” (R. 96, ll. 12-17). Finding Applicant’s pants a challenge to remove, Applicant ordered Nelson into the back seat, where they fornicated.

¹ Applicant described her vehicle as a “Honda Tucson” at trial, but the Tucson is manufactured by Hyundai. (R. 91, ll. 17-18).

(R. 96, ll. 17-24). Nelson told Applicant she was not on birth control in the hopes of dissuading him, but he responded by simply putting on a condom. (R. 96-97). After Applicant finished with Nelson, he grabbed her purse. (R. 97, ll. 2-4). Nelson refused to let go until he again threatened to shoot her, at which point she released and Applicant ran out of the SUV to a gas station across Highway 15. (R. 97, ll. 4-8). Nelson shouted after him to return the purse, but Applicant paid her no attention. (R. 97, ll. 8-12). Deprived of her purse and her iPhone, Nelson knocked on doors at the apartment complex to borrow the use of a phone to no avail, then drove to a Belk department store to call her mother, and then the police. (R. 97-99; R. 102-03). Nelson did not see her purse, its contents, or Applicant again until trial. (R. 99-101). Nelson denied ever agreeing to have sex with Applicant, and asserted she was afraid for her life. (R. 114, ll. 1-9).

Nelson initially did not tell her mother or the police about the sexual assault “[b]ecause [she] didn’t want to think it happened.” (R. 102-03; R. 128-29). Instead, Nelson only reported that she was armed at gunpoint at the Burger King, prompting officers to respond. (R. 107-09; R. 129-30; State’s Trial Exhibit #21). Nelson also initially reported she did not recognize her attacker, explaining at trial that she “wasn’t thinking about it clearly” and she “just hoped it was a bad dream that happened and it wasn’t.” (R. 110-111). Nelson admitted that the story she told to 911 dispatch was a lie, and that she left things out because she “didn’t want to think it had actually happened.” (R. 130, ll. 1-15). Nelson agreed that law enforcement’s questioning of her was “rough.” (R. 112, ll. 15-21). Officer Sououd went so far as to warn Nelson that she could be charged with filing a false police report if she lied to police, which prompted Nelson to fully disclose the sexual assault. (R. 133-34; R. 142, ll. 3-12).

Officer Michael Dame, of the Myrtle Beach Police Department, assisted in Applicant's arrest. (R. 204-06). Multiple law enforcement officers positioned at the front and rear of the house around midnight between January 8 and 9, 2015, with Dame situated "to the back of the house to the right." (R. 206-07; R. 211, ll. 1-5). An officer knocked on the front door; "the back door flew open and the subject exited very quickly out of the back of the house." (R. 207, ll. 4-11). While other officers pursued through yards and over fences, Dame took a wider route down the street and "saw the same subject that left the house going underneath a vehicle, cowering underneath a vehicle." (R. 207-08). Applicant was there apprehended. (R. 208, ll. 6-16).

Detective Jeremiah Beam, of the Myrtle Beach Police Department, responded to the Belk's at Coastal Grand Mall on January 8, 2015. (R. 232-35). Det. Beam acknowledged he was tough on Nelson in order to vet her complaint, and affirmed that Nelson never denied being sexually assaulted, and never denied being robbed at gunpoint. (R. 240-41). Det. Beam interviewed Applicant on January 9, 2015, after his arrest. (R. 242-45). Applicant was Mirandized and initialed the form utilized by the detective. (R. 243-45). Applicant asked for a lawyer after a couple of brief statements. (R. 252-54).

Vanessa Lynn Thompson, a resident of the Myrtle Beach area for nearly thirteen years at the time of trial, decided with her sister one day in February 2015 to go check out a foreclosed, abandoned house that her sister had previously lived in. (R. 183-86; R. 190-91). While exploring the utility room in the abandoned house, Thompson found a purse and "stuff scattered like it had been thrown out of the purse." (R. 186-87). Thompson's sister found more identification cards on the air conditioning unit. (R. 187, ll. 10-11). Thompson found a name tag for where the purse's owner worked and called the company try and alert the owner that she had found her pocketbook. (R. 187, ll. 12-22). Law enforcement returned the phone call, and

Officer Brittany Southerland responded to the scene. (R. 188, ll. 5-13; R. 190-93; R. 237, ll. 9-13). At trial, Detective Beam noted that the house where the purse was found was along the direction of Applicant's flight from the scene after assaulting Nelson. (R. 239, ll. 9-25).

In Applicant's defense, Counsel called expert witness Jessica Stowe, a forensic serologist with the South Carolina Law Enforcement Division. (R. 284-85). Stowe screened the sexual assault kit submitted to SLED and found neither pubic hair, spermatozoa, nor seminal components. (R. 286-296; Defendant's Trial Exhibit #16). Buccal swabs were taken from Norris, but no analysis was performed on them. (R. 294, ll. 22-25).

Applicant's Decision to Testify

Before Det. Beam's testimony during the State's case-in-chief, Counsel and the State put on the record a discussion from chambers regarding the State's desire to introduce .38 caliber bullets found during a search of his house. (R. 229-30). Counsel argued that testimony as to those bullets would be irrelevant, highly prejudicial, and of essentially no probative value, explaining "[t]hese are really old bullets that were found in a box in a house." (R. 230, ll. 7-23). Judge John held that he would not permit the State to present the bullets in evidence during its case in chief, finding the prejudicial value outweighed their probative value. (R. 231, ll. 2-8). However, the trial court reserved judgment as to whether the State could introduce them in reply to Applicant's case, and cautioned that Applicant could "bridge that hurdle of becoming more probative than prejudicial[.]" (R. 231, ll. 8-19).

After Beam's testimony during the Applicant's case, Judge John conducted a standard colloquy with Applicant regarding his rights to testify and remain silent. (R. 309-14). The trial court cautiously advised Applicant that if he at any point did not understand anything or was confused about anything, that he should indicate as much to the court and his attorney; Applicant

indicated he understood. (R. 309-10). Applicant acknowledged his rights to testify or remain silent, and indicated he understood that if he *did* testify that he could be cross-examined by the State. (R. 310, ll. 4-21). The State thereafter recited Applicant's prior record, which included a 2013 simple possession of marijuana, a 2014 possession of beer or wine by a minor, and that Applicant was on probation for a conviction for strong arm robbery. (R. 311, ll. 4-10). The State conceded the marijuana and booze charges had nothing to do with credibility or believability. (R. 311, ll. 11-15). Counsel conceded the strong arm robbery "qualifies under the rule." (R. 311, ll. 16-21). Judge John then informed Applicant that the State could ask him about the prior robbery conviction if he testified, as well as what could happen if Applicant admitted the prior conviction and what would happen if he denied the prior conviction. (R. 311-12). When the trial court asked Applicant if he required any additional time to discuss the issue with his attorney or family, Applicant replied that he did not, and that he had "talked enough to everybody. I pretty much have in my mind made up what I'm gonna do." (R. 313, ll. 12-16). Applicant thereafter explained that he did not wish to testify: "I feel like it would be very prejudicial to bring in certain things from my past. When Jerrica Nelson was cross examined, we were not allowed to bring certain things up. Also, it's - I just feel like the evidence should speak for itself in this case." (R. 314, ll. 6-10). Counsel thereafter rested, the State declined to present any testimony in reply, and the parties proceeded to consider Counsel's renewed motion for a directed verdict. (R. 314-15).

Subpoena for Officer Sououd

At the start of the third day of trial, Counsel raised to the trial court's attention an issue regarding his efforts to subpoena Officer Assia Sououd, of the Myrtle Beach Police Department. (R. 270-71). Counsel explained that when he attempted to serve the assistant chief of the

department, he was told that he needed to serve the attorney for the City of Myrtle Beach. (R. 271, ll. 3-7). When Counsel's private investigator took the subpoenas to the city attorney, the city manager took possession of them and said he would pass them on—he did so. (R. 271, ll. 5-11). Counsel thereafter received a phone call from a "Mr. Ellenburg" indicating that he did not have time to serve the subpoenas for him. (R. 271, ll. 11-13). Counsel threatened to move to compel, and received some assurance that the city would attempt service and get back to him. (R. 271, ll. 13-19). Counsel then explained that Officer Sououd was the important subpoena, as she was the first responding officer to make contact with Nelson and allegedly threatened to charge her with a felony for making false statements to the police. (R. 271-72). The State noted it did not subpoena Officer Sououd and had no knowledge of Counsel's adventures in attempting to work with the city. (R. 272-73).

James R. Battle, II, Esq., appearing on behalf of the City of Myrtle Beach, explained that the city attorney received the subpoenas, and that while he does not serve subpoenas, he would e-mail officers and offer to act as their agent to accept service. (R. 273, ll. 9-14). The city attorney e-mailed the seventeen officers to be subpoenaed and heard back from none of them. (R. 273, ll. 19-20). Battle reported that Officer Sououd was out of the state, and that when he called her the preceding day, she denied ever receiving a subpoena, explained she was in Maryland, and did not authorize him to accept service on her behalf. (R. 273, ll. 20-23).

Judge John chided both Counsel and the City of Myrtle Beach. The trial court advised Counsel that although the court appreciated his effort to work with the City, he should have dropped all of the subpoenas off with the Sheriff's Office as soon as he did not receive immediate assistance. (R. 273-74). The trial court declared it was "not thrilled with how the City approached this either[.]" and criticized them for giving the illusion of accepting the

subpoenas to Counsel. (R. 274-75). The trial court thereafter ruled that it would permit Counsel to call Detective Beam in lieu of Officer Sououd for the purposes of identifying the part of the case file reflecting Sououd's initial contact with Nelson—i.e. to authenticate the video and audio of the interview with Nelson. (R. 275, ll. 6-16).

III. CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
 - a. "Trial counsel failed to conduct independent DNA testing on evidence"
 - b. "Trial counsel failed to subpoena a key witness to the defendant's trial"
 - c. "Trial counsel failed to adequately advise Defendant regarding his right to testify at trial"

Applicant requests relief as follows:

- "Vacate conviction and sentence, grant a new trial"

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records (including the entire trial transcript as provided in the Record on Appeal), and the current application for relief. Respondent incorporates by reference the exhibits introduced during the original trial, retained with the Horry County Clerk of Court's office. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Trial Counsel, Generally

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of

counsel as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Investigate

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v.

State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Respondent denies Applicant's claim that Counsel was ineffective in failing to independently test DNA evidence. Respondent strongly suspects Counsel intentionally declined to do so subject to valid strategic reasoning—testing DNA is a dangerous move which could potentially inculcate one's own client. Even if a DNA test of the buccal swabs recovered from Nelson excluded Applicant as a contributor, the evidence would be merely cumulative to the testimony elicited from the SLED forensic serologist which found no sperm, semen, or pubic hair from the sexual assault kit.

Failure to Call a Witness

Respondent is without information or knowledge sufficient to admit or deny Applicant's claim Counsel was ineffective in failing to subpoena a witness—Applicant does not specifically identify the "key witness" and Respondent can only speculate that it was Officer Sououd, or potentially one of the other sixteen officers whose presence Counsel attempted to obtain.

Failure to Advise Applicant on the Right to Testify

Respondent denies Applicant's claim that Counsel was ineffective in failing to adequately advise Applicant regarding his right to testify at trial. Applicant firmly and clearly acknowledged he understood his right to testify and his right to remain silent during the colloquy

with the trial court. Applicant declined the opportunity to discuss the matter further with either his family or Counsel, and went so far as to specifically articulate his reasoning on the record as to why he wished to remain silent, rather than testify.

Conclusion and Action Requested

Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. MOTION FOR MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with sufficient specificity the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Namely, Applicant does not identify who the "key witness" is that Counsel should have subpoenaed. Respondent can make a well educated guess, but such speculation is ill-suited to litigation.

Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court grant its motion for a more definite statement as set forth in Section V, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

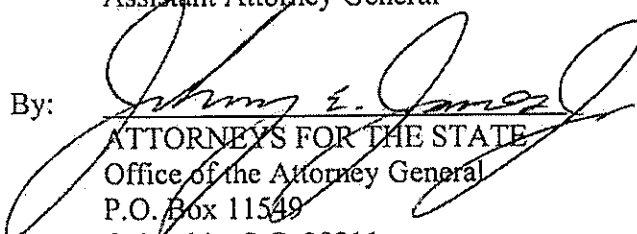
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:



ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

29 May, 2019

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

DAVID JAMES WELCH #372246 ,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2019-CP-26-01035

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

David James Welch, #372246
 Lee Correctional Institution
 990 Wisacky Highway
 Bishopville, South Carolina 29010

DATED this 29th of April


 Eva Cook, Legal Assistant
 For Respondent

State of South Carolina Horry County	In the Court of Common Pleas For the Fifteenth Judicial Circuit
	Case No: 19-CP-26-1035
David James Welch (#372246)	
v.	
State of South Carolina	AMENDED PCR APPLICATION

COMES NOW the Applicant, by and through undersigned Counsel, and hereby amends his PCR application to include the following additional grounds for relief:

1. **Ground One:** Trial counsel was constitutionally ineffective pursuant to *Strickland v. Washington* when he failed to object to improper corroboration of the victim's statements, improper vouching, and improper bolstering testimony. (Tr. 240-41, 247-48, 257, 259, 264-66).
2. **Ground Two:** Trial counsel was constitutionally ineffective pursuant to *Strickland v. Washington* when he failed to object to and/or move to exclude audio of the Applicant's custodial interview based on his pre-interview invocation of his right to counsel.
3. **Ground Three:** Trial counsel was constitutionally ineffective pursuant to *Strickland v. Washington* when he failed to object to improper remarks and arguments by the State during opening and closing arguments, including impermissible "golden rule" arguments. (Tr. 65, 330-32, 333, 334). *Tappeiner v. State*, 416 S.C. 239, 785 S.E.2d 471 (2016).

On this day, January 2, 2023 it is
RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE: I hereby certify that I have served a copy of this document upon the Attorney General's via U.S. Mail, on this day, January 2, 2023.

FILED
HORRY COUNTY
2023 JAN -5 P 1:36
RENEE H. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

1 SOUTH CAROLINA **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY Case No. 2019-CP-26-01035
3 **ORIGINAL - PCR**

4 -----
5 January 5, 2023

6 **BEFORE:** The Honorable Debra McCaslin

7 -----
8 DAVID JAMES WELCH,

9 Applicant,

10 vs.

11 THE STATE OF SOUTH CAROLINA,

12 Respondent.

13 -----

14
15 APPEARANCES:

16
17 Christopher Geel, Esq.
18 Appearing for the Applicant.

19 Chelsey Marto, Esq.
20 Appearing for the Respondent.

21 Official Court Reporter
22 Natalie Dahl, RPR

23

24

25

INDEX

WITNESSES:

DAVID JAMES WELCH

Direct Examination by Mr. Geel..... 8
Cross-Examination by Ms. Marto..... 55

RALPH WILSON, JR.

Direct Examination by Mr. Geel..... 64
Cross-Examination by Ms. Marto..... 92

JOSHUA HOLFORD

Direct Examination by Ms. Marto..... 94
Cross-Examination by Mr. Falk..... 98
Examination by the Court..... 99
Recross-Examination by Mr. Geel..... 100

EXHIBITS

APPLICANT'S

MARKED ADMITTED

1	Audio recording	7	7
2	Discovery materials	7	7
3	Letters to defense counsel	7	7

1 NOTE: Pursuant to Rule 607 (h)(1)(B), SCACR
2 "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00
3 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY
4 PREPARED TRANSCRIPT." All requests for a copy of
5 the enclosed transcript shall be sent to: Natalie
6 Dahl, RPR, P.O. Box 762, Conway, SC 29526

5 P-R-O-C-E-E-D-I-N-G-S

6 MS. MARTO: Your Honor, we are here in the
7 case of David Welch v. South Carolina,
8 2019-CP-26-1035. He is presently confined in the
9 South Carolina Department of Corrections. He was
10 indicted in March 2015 for a kidnapping, armed
11 robbery, criminal sexual conduct, and possession of
12 a weapon. He was represented by Ralph Wilson, Jr.
13 The prosecutors were Joshua Holford and Cara
14 Walker.

15 On April 17, 2017, he proceeded to trial
16 before Judge John where he was found guilty as
17 indicted for kidnapping and CSC. The jury
18 acquitted him of armed robbery and the weapons
19 charge.

20 He was sentenced to 24 years imprisonment for
21 both kidnapping and CSC, sentences running
22 concurrently.

23 Notice of Appeal was filed, and an Anders
24 brief was issued. South Carolina Court of Appeals
25 dismissed it by an unpublished opinion, and a

1 remittitur was issued December 28, 2018. The
2 application was filed February 21, 2019, and
3 State's return was May 29, 2019.

4 With that, I'll turn it over to Mr. Geel.

5 MR. GEEL: Good afternoon, Your Honor. Just
6 a few housekeeping matters before we begin. We did
7 file an amendment to our application. I'm not sure
8 that that would have made it to you in your AG's
9 file. May I approach with a copy of that?

10 THE COURT: Yes, please.

11 MR. GEEL: Additionally, I have a couple of
12 exhibits that I can tender without objection. The
13 first is an audio interview that's pertinent to
14 Ground 2, the custodial interview. This was
15 admitted at trial as State's Exhibit 2. I wanted
16 to tender a copy of that for this record so the
17 Court would have a new copy of that, just in case.
18 The second is an incident report that was in the
19 discovery materials in this case, and the third is
20 some letters from my client to his trial counsel.
21 I showed these to Ms. Marto in advance, and I
22 believe she has no objection to us tendering these
23 exhibits at this time.

24 THE COURT: My law clerk just sent me a note.
25 Was this amendment filed?

1 MR. GEEL: Yes.

2 THE CLERK: I don't have it. Did you mail
3 it?

4 MR. GEEL: No. No. I just stamped it in
5 downstairs just before the hearing. It just got
6 filed. But I served this on the Attorney General
7 in the past, but I just filed it now.

8 THE COURT: Okay. I want to be sure. All
9 right. I see it filed as of today.

10 THE CLERK: Okay.

11 THE COURT: Let me address you, Mr. Welch.
12 You know, when you ask for post-conviction relief,
13 there is only two things that can happen. If I
14 deny it, you will be sent back and serve out the
15 rest of your sentence. You understand that?

16 MR. WELCH: Yes, ma'am.

17 THE COURT: If I grant your post-conviction
18 relief, I'll vacate your conviction, send your case
19 back to state court, to the Solicitor's Office.
20 You will start all over. It's not that these
21 charges get dismissed. In fact, all of your
22 original charges will be brought back. If there
23 were any that were dismissed, nolle prossed, or
24 plead to something reduced, any of that, it all
25 gets vacated. You start all over with your

1 original charges. Do you understand that?

2 MR. WELCH: Yes, ma'am. Totally.

3 THE COURT: Knowing that, do you still wish
4 to go forward with your PCR?

5 MR. WELCH: Yes, ma'am, I do.

6 THE COURT: Okay. That's great.

7 Mr. Geel, call your first witness.

8 MR. GEEL: Yes, Your Honor. Before we begin,
9 could I tender these three exhibits for the record?

10 THE COURT: With no objection?

11 MS. MARTO: No objection.

12 THE COURT: Let me ask, the video, what is
13 that? Of your client?

14 MR. GEEL: Yes, it's the custodial interview
15 of Mr. Welch. It was admitted at trial as State's
16 Exhibit 2. There was a Jackson v. Denno hearing
17 pretrial, and it was admitted as evidence at trial
18 as well.

19 THE COURT: So the judge already ruled its
20 admission during the trial?

21 MR. GEEL: Correct.

22 Applicant's Exhibit 2, this is from trial
23 counsel's file. It is some of the discovery
24 materials. I'll ask Mr. Welch about it. It deals
25 with Ground No. 2, Mr. Welch's indication of his

1 right to counsel before that interview, that is
2 recorded in Applicant's or Plaintiff's No. 1.

3 THE COURT: Which is the -- No. 1 is the
4 audio?

5 MR. GEEL: Correct, audio. That's correct.

6 THE COURT: And No. 3?

7 MR. GEEL: These are all from trial counsel's
8 file. These are letters from Mr. Welch to his
9 trial attorney. It is three letters that he sent
10 prior to trial, for preparation for trial, and Mr.
11 Welch will authenticate these.

12 THE COURT: All right. Go ahead then.
13 (Applicant's Exhibits 1-3 marked and admitted.)

14 MR. GEEL: Our first witness is the
15 Applicant, David Welch.

16 THE COURT: Go forward and be sworn.

17 (DAVID WELCH, having been duly sworn,
18 testified as follows:)

19 THE WITNESS: Hello. I'm David Welch,
20 W-E-L-C-H.

21 MR. GEEL: Is it all right if I remain seated
22 while I question Mr. Welch?

23 THE COURT: Sure.
24
25

DIRECT-EXAMINATION

BY MR. GEEL:

Q Can you hear me from there?

A Yes.

Q Start off talking about your relationship with your trial attorney, Mr. Wilson. Can you describe how it is that he came to represent you in this case?

A Well, I was having some issues with my previous attorney. I ended up firing my previous attorney, and I was appointed Ralph Wilson.

Q When you were appointed to have Mr. Wilson represent you, were you in jail or out on bond; do you recall?

A I was still in jail.

Q Did you make bond at any point during this case?

A I did, yes, sir.

Q And at some point during this case, did you go back to jail and remain in jail? Is that what happened?

A I did. Before my trial, yes.

Q Do you recall how long you were in the county jail prior to trial, just an estimate?

A As a total or the last time?

1 **Q** Last time.

2 **A** Probably about a year.

3 **Q** And if you recall or estimate, how much of
4 that portion did Mr. Wilson represent you for?

5 **A** I think he only had me retained for a few
6 months, couple of months.

7 **Q** How often or how many times and how often
8 would you say that you met with him? What is your
9 best guess?

10 **A** It wasn't much, but maybe I met him around
11 four, five times, maybe.

12 **Q** Let's talk about the actual preparation for
13 trial. Tell the Court, if you would, what you
14 remember about the lead-up to trial, getting your
15 case ready for trial, and your discussions with
16 your lawyer.

17 **A** Well, as far as preparation for trial, we
18 only had one meeting about the actual trial.
19 Before we had a couple of visits, you know, just
20 talking about possible evidence, things that could
21 happen, but we only had like one meeting for a prep
22 before the trial actually.

23 **Q** And if you remember, how often in advance of
24 trial was that?

25 **A** That was -- I mean, we were going to trial I

1 believe the next day.

2 Q Okay.

3 MR. GEEL: Your Honor, may I approach?

4 THE COURT: Sure.

5 Q I'm handing you Exhibit 3. Do you recognize
6 those documents?

7 A I do.

8 Q Can you tell the Court what those are?

9 A Letters I wrote to Ralph Wilson.

10 Q Is that your handwriting?

11 A Yes, sir, it is.

12 Q Take a look at the first letter, Page 1 of
13 Plaintiff's 3. What is the date of that letter at
14 the top?

15 A That would be 3/14/17.

16 Q Again, what date did your case proceed to
17 trial; do you remember off the top of your head?

18 A I think April 20th -- no. It was
19 April 17th, I think it was.

20 Q So this letter is, approximately, a month
21 before your jury trial; is that correct?

22 A Yes, sir.

23 Q In this letter, would you mind reviewing the
24 last couple of sentences of that letter?

25 A Last paragraph?

1 Q Just right here.

2 A You want me to read it?

3 Q No, without -- just to yourself, not out
4 loud.

5 A Okay. (Witness examines document.)

6 Q Now, what are you asking Mr. Wilson for there
7 in the last line?

8 A Motion to discovery.

9 Q What are you meaning?

10 A The evidence in my case.

11 Q When you say, "Please send me a copy of my
12 discovery because I do not have a copy," at that
13 point, did you have your discovery materials?

14 A No.

15 Q You didn't?

16 A Huh-huh.

17 Q Let's jump forward to the next page of
18 Plaintiff's Exhibit 3, if we could.

19 Is this also a letter that you sent to
20 Mr. Wilson?

21 A Yes, sir, it is.

22 Q And what is this letter dated?

23 A 3/21/17.

24 Q So this is about a week after the first
25 letter we reviewed?

1 **A** Yes, sir.

2 **Q** Take a moment and review this letter. Tell
3 the Court what it is that you were concerned about
4 or the concerns you were expressing to Mr. Wilson
5 in this letter.

6 **A** Just skimming through it, I can see I'm
7 talking to him about the communication, how rough
8 it was between the two of us. I also talked to him
9 about preparing for trial. I also talked to him
10 about possible witnesses that I have or a witness
11 that could have been used. Basically, just trying
12 to communicate to him about my trial and trying to
13 talk to him about my evidence in my case.

14 **Q** At this point, did you know you were going to
15 trial the next month?

16 **A** Not positively, no.

17 **Q** Let's skip forward to Page 3 of Plaintiff's
18 3. Is this also a letter you sent to Mr. Wilson?

19 **A** Yes, sir, it is.

20 **Q** And what is the date of that letter?

21 **A** That would be April 1st -- I mean April 5,
22 2013 -- '17.

23 **Q** So this is 12 days before trial?

24 **A** Yes, sir.

25 **Q** I would like to direct your attention towards

1 the middle of the page here.

2 It says, "there are details in my case that I
3 need to go over with you, so please bring my
4 discovery and come visit me, sir."

5 A Uh-huh.

6 Q So, at this point, did you have your
7 discovery in this case?

8 A No, sir, I didn't.

9 Q Do you remember when you actually got copies
10 of your discovery?

11 A I had it from my previous attorney, but I
12 ended up losing it when I bonded out the first
13 time. I ended up losing it at home somewhere.
14 When I got arrested again, I was trying to get
15 another copy of it.

16 Q So in the lead-up to trial, is it fair to say
17 you were concerned because you didn't have copies
18 of your discovery?

19 A Yes, sir.

20 Q So moving forward to the actual preparation,
21 you had one meeting when you went over the case
22 with Mr. Wilson. What kind of strategic
23 discussions did you have about trial preparation
24 and defenses, anything along those lines?

25 A Well, I mean, none come to mind right now,

1 honestly, about any type of strategies or anything
2 of that nature.

3 Q Did you all talk about the evidence against
4 you?

5 A We did. We did.

6 Q Did you point to any defenses or witnesses
7 you wanted raised?

8 A There was a couple of photos that we gathered
9 from the alleged victim's Facebook that we wanted
10 shown. We also talked about video evidence,
11 because I had a bond hearing at the Myrtle Beach
12 Police Department, and we talked about what was
13 said from the alleged victim's father. She said
14 that -- well, he said that she was traumatized, she
15 didn't want to leave the house, didn't want to be
16 social anymore, anything of that nature.

17 Three days later, I get a call when I bond
18 out, and my friend tells me three days later she's
19 posting all kinds of stuff on Facebook about who
20 wants to chill, who wants to hang out, does anyone
21 want to drink, or something like that. He brought
22 it to my attention, so I figured that would be, you
23 know, useful in this case because she's claiming to
24 be traumatized and claiming she doesn't want to be
25 social, claiming after I, supposedly, did

1 something -- sexually assaulted her, that she's
2 just different, but she's not. You know, that's
3 something I wanted to bring to light.

4 As far as other strategies, none come to mind
5 other than that one right now.

6 Q Okay. Let's zoom in a bit on the second
7 ground we raised here. One of the issues we
8 described is your indication to right of counsel
9 prior to the interview that took place. Do you
10 recall what it is that we're discussing in that
11 ground?

12 A Can you say that again?

13 Q Your indication of your right to counsel, you
14 asked for a lawyer prior to the interview; do you
15 recall the circumstances?

16 A Yes.

17 Q Tell the judge a little bit about that
18 starting when you were arrested.

19 A Well, I remember when we got to the police
20 department they put me in a single-man cell. I
21 remember that particular cell did not have an
22 operating telephone. So I remember anybody I saw,
23 any officer or person that was working at the
24 department, I would knock on the door and try to
25 get a phone call and try to find out why I was

1 there. No one was telling me why I was there. No
2 one was giving me a phone call. I remember I sat
3 there for a little bit, and then an officer
4 approached my door. He asked if I wanted to take a
5 DNA sample, submit to one. I told him that I did
6 not want to, that I wanted to find out why I was
7 there. I wanted a phone call, and I wanted a
8 lawyer.

9 At that point, he departed from my door.
10 What seemed like hours later, another officer came
11 to my door. First thing out of his mouth is, So I
12 hear you don't want to talk or give a DNA sample,
13 so what is it going to take for you to submit to
14 one or talk to us, because if you want our help, we
15 won't be able to help you until you do. At that
16 point, I told him I wanted a phone call and find
17 out why I was there. You know, he pretty much
18 assured me that if I was to answer questions, if I
19 was to submit to a DNA sample, that he would make
20 sure I would get a phone call, make sure he would
21 find out why I was being held. I believe we had a
22 conversation about bond. He asked me a question if
23 I could make bond. I asked him what would be a
24 reasonable bond, and he told me if I do answer some
25 questions he would talk to the judge at 9:00 in the

1 morning to see that I get a PR bond or a reasonable
2 bond. That is pretty much how it went.

3 Once he promised me all of those things,
4 that's when I went to answer questions.

5 Q Let me ask some clarifying questions. The
6 initial statement you made where you said you
7 wanted a phone call and lawyer, do you know who you
8 made that statements to? Do you know that person's
9 name?

10 A No, I don't.

11 Q So you were later interviewed by Detective
12 Beam?

13 A Yes, sir.

14 Q So it was not Detective Beam you made that
15 statement to?

16 A No. No. It was not, no, sir.

17 Q So the person you made the statement to was
18 an officer at the detention center?

19 A Yes, sir.

20 Q This was not -- you didn't know who this
21 person was?

22 A Not by name.

23 Q And what about -- what is your best guess of
24 the duration of time between you making that
25 statement initially to when you were actually

1 interviewed by Detective Beam? How long was that
2 period of time?

3 A Some hours later.

4 Q Did you say some hours later?

5 A Some hours later, yes, sir.

6 Q So you don't recall a specific number?

7 A No, sir.

8 Q And then the other remarks about answering
9 questions and then the individual would talk to the
10 judge, et cetera, were those statements made by
11 Detective Beam, or were those made by the same
12 person you spoke with initially?

13 A Say that again.

14 Q You testified that there was someone who made
15 remarks to you on the lines of if you answer
16 questions, we'll talk to the judge. Was that
17 Detective Beam that made those remarks or the other
18 person?

19 A It was the other detective.

20 Q So all of the remarks you just described to
21 the judge was the same person?

22 A The same person.

23 Q Not Detective Beam?

24 A No, sir.

25 Q Now, later on that day, or in that morning,

1 you did end up talking to Detective Beam, correct?

2 A I did, yes, sir.

3 Q And that interview was recorded, correct, and
4 it was played for the jury at your trial?

5 A Yes, sir.

6 MR. GEEL: Your Honor, may I publish the
7 first portion that is relevant to this?

8 THE COURT: You may. And that is from
9 Exhibit 1?

10 MR. GEEL: Correct.

11 (Audio is played for the Court.)

12 Q Were you able to hear all of that?

13 A Yes, sir.

14 Q And so you made a remark in that audio about
15 asking last night about why you were there?

16 A Yes, sir.

17 Q When you made that remark, you were referring
18 to the facts you just testified to, that discussion
19 with the person at the detention center?

20 A Yes, sir.

21 Q This was Detective Beam you were speaking
22 with here?

23 A I believe it was, on the audio recording,
24 yes. Yes.

25 Q And for clarity, this was hours after you had

1 spoken with that initial officer at the detention
2 center?

3 A Yes, sir.

4 Q Did you discuss these matters with your
5 attorney, Mr. Wilson, the fact you had this
6 discussion, the interview, at the detention center?

7 A I did.

8 Q Did you tell him substantially similar to
9 what you told in terms of what you told the
10 detention officer and how he responded?

11 A Yes, sir.

12 Q Do you recall what Mr. -- what, if anything,
13 Mr. Wilson said about those facts?

14 A Well, I believe he said something along the
15 lines -- don't quote me -- but along the lines --
16 he said that it sounds good and fine, that if we
17 were to try to move the statement involuntary in
18 court, we would need some type of evidence to prove
19 that he said those types of remarks to me, and that
20 we would have to have some proof that I even
21 requested for a lawyer.

22 So, at that point, it was just my word, me
23 saying that that is something that happened. So he
24 didn't really act on it, investigate it, I guess,
25 when it came down to it.

1 I looked through my own case, and I see that
2 there was an officer in the case where he actually
3 has it in the notes -- I don't know what you call
4 it, but in the case file, he says that I asked for
5 a lawyer when I talked to him, when he asked me if
6 I wanted to submit to a DNA test.

7 But as far as Ralph Wilson, I mean, he just
8 told me it was really a shot in the dark to pursue
9 that.

10 Q Okay. Let's move forward to your actual
11 trial. We've numerated a few things about Beam's
12 testimony. There were things that you felt were
13 objectionable about his --

14 MR. GEEL: Your Honor, may I approach?

15 THE COURT: You may.

16 Q I'm handing you transcript pages. Let's go
17 through these. We will start with Detective Beam's
18 testimony.

19 Before I get into that, one of the things
20 that you had discussed was your issue with
21 vouching, bolstering, corroborating evidence. Were
22 you aware of what any of those things were when you
23 went to trial or preparing for trial?

24 A No, sir.

25 Q So are these, kind of, legal issues that came

1 to your attention since your trial; is that fair to
2 say?

3 A Yes, sir.

4 Q How did you learn about these things, these
5 legal concepts?

6 A Well, going through everything that I've been
7 through in the Department of Corrections, I just
8 have been tired of serving time. I'm innocent. I
9 did not commit these crimes. I shouldn't be here.
10 I just got tired of it, so I figured if no one is
11 going to do it for me, I might as well do it for
12 myself and learn something about the law, at least
13 try, and that is how I came across.

14 Q Let's identify specific testimony and talk
15 about your concerns about it.

16 MR. GEEL: Your Honor, this is Ground 1 of
17 our amended.

18 Q Start with the transcript, Page 240. Do you
19 have that in front of you?

20 A Yes, sir.

21 Q Again, Detective Beam's testimony -- the
22 question is at the top, Line 1.

23 "I'm sure this is going to come up. I
24 brought it up a little bit with Jerica as well.
25 You were pretty tough on her that night, weren't

1 you?"

2 Before I go into the answer, Jerica, who is
3 that in this case?

4 **A** The victim.

5 **Q** The answer was, "I was. I try to be thorough
6 and make sure I ask the right questions and make
7 sure I go over the story. I typically do that in
8 all interviews to make sure they were not just, you
9 know, doing it half way. I wanted to make sure I
10 was thorough."

11 Then the question is, "In your job, could you
12 ever -- could you even be able to ballpark how many
13 complaints of sexual assault you get?"

14 The answer is, "We get a lot. Unfortunately,
15 we're a tourist town, spring break, college. It's
16 a lot."

17 "Question: Are you trained to vet these
18 complaints?

19 "Answer: We have to vet them just like any
20 other case. So, yes, sir, we do our very best to
21 try to vet and make sure it appears credible and
22 that it's true."

23 Pause there for a moment. Do you have any
24 independent recollection of when this testimony took
25 place, like during your trial?

1 **A** Other than transcripts, no.

2 **Q** Right.

3 So do you recall having any discussion with
4 Mr. Wilson about this testimony or this type of
5 testimony coming out at your trial?

6 **A** No, sir.

7 **Q** Did you all discuss legal objections and
8 everything like that? Did he have any discussions
9 about that kind of thing during the trial?

10 **A** No, sir.

11 **Q** Now, having studied up on this stuff a little
12 bit and learning a little, do you now have concerns
13 about this testimony?

14 **A** I do.

15 **Q** What are those?

16 **A** I believe it is a form of vouching.

17 **Q** Vouching is?

18 **A** Improper vouching.

19 **Q** Vouching being?

20 **A** For the victim's credibility, believability.

21 **Q** Is this something that you would have brought
22 to Mr. Wilson's attention during the trial or knew
23 about?

24 **A** If I would have known, yes, sir.

25 **Q** But you didn't have that knowing at the time;

1 is that fair to say?

2 A No, sir.

3 Q You didn't have that knowledge?

4 A Fair to say, yes, sir.

5 Q Line 17.

6 "Question: And did you -- did you sometimes
7 threaten them -- by threatening them, telling them
8 that they could be facing a felony if they are
9 filing a false police report?

10 "Answer: Sometimes. I personally try not
11 to. Not often, especially for sexual assault. I'm
12 not a big fan of that, but sometimes there is a time
13 and place where you have to let them know if it's a
14 false report, that there are consequences."

15 Pause there. We don't have to go through
16 the whole litany of questions, but do you hold the
17 same opinion of that portion of Beam's testimony as
18 the prior portion I just read?

19 A I do.

20 Q Did you discuss that with Mr. Wilson in any
21 way, shape, or form?

22 A No, sir.

23 Q Jump to Page 241, if we could, Line 5. The
24 question is, "Even when questioned hard by you, a
25 trained detective, did she deny her story?"

1 And the answer is, "She never denied it. The
2 story didn't really change."

3 Again, do you have any thoughts on that other
4 than the ones you discussed regarding the prior
5 testimony?

6 **A** I don't really have anything to say about it.

7 **Q** Do you believe this is another example of
8 vouching or bolstering?

9 **A** Yeah. A form, yes. I believe the statement
10 is more so vouching than this one, but I believe
11 that given the fact that there is evidence in the
12 case that would prove that the victim gave three
13 different stories, to three different officers,
14 none of the stories matched.

15 First story she claims to be robbed at Burger
16 King, never sexually assaulted. She gets detailed
17 with that first story. That is to the 911 officer.

18 The second story is that she meets Officer
19 Asia Shawad (phonetic), which is the reporting
20 officer in the case. She goes to the furthest
21 extent after questioning her about what happened to
22 threatening her for filing a false police report,
23 I'm guessing, because -- I'm not going to make
24 any -- I'm just not going to talk about that as far
25 as that, but I believe that she went to the

1 furthest extent to threaten her, because something
2 wasn't right. You know, her story wasn't straight.

3 She goes to a third story, and that third
4 story was to Detective Jeremiah Beam, and that
5 story did not match the story that she gave to Asia
6 Shawad.

7 So none of the stories are matching. So when
8 you have the lead detective in this case, and he is
9 the one that goes through all of the evidence, he
10 should know the evidence. He's testifying in
11 trial, so he should know that the stories have
12 changed completely. The events have changed in all
13 three stories. So if the elements of events change
14 in all three stories, and you are getting on the
15 stand testifying and you are saying the story
16 didn't really change, like that is more so maybe
17 bias or just -- I mean, he's sticking up for her
18 when he knows the evidence shows that her story did
19 change multiple times.

20 Q Just to put an opinion on that, did you
21 discuss any of that with Mr. Wilson during the
22 trial or prior to trial?

23 A Well, yeah. Prior to trial, we talked about
24 the three different stories and how they didn't
25 match, and how anyone could believe that she's

1 credible giving the actual details of all three
2 different stories.

3 Q So when this testimony came out -- not to
4 belabor the points -- but were there any
5 discussions about objecting given the fact you all
6 had talked about this coming out during trial?

7 A I didn't really know when and where to
8 object, so, no. No, sir.

9 Q Okay. Let's jump forward to Page 247, if you
10 could, Line 21. Are you with me there?

11 A Yes, sir.

12 Q The question is, "This picture I've seen,
13 State's 17, did you pull that up on Facebook?"

14 The answer was, "I did, yes, sir.

15 "Question: And under what name did you pull
16 it up?

17 "Answer: It was under David Royal."

18 At the top of Page 248 -- let me know when
19 you flipped across there -- Line 1.

20 "Question: Okay. And then the victim told
21 you this was the person who had assaulted her and
22 stolen her stuff?

23 "Answer: That is correct.

24 "Question: Did she ever change that story?

25 "Answer: No, sir.

1 "Question: She stuck to it to this day?

2 "Answer: She did."

3 Do you have any specific concerns about that
4 portion of testimony that we haven't already covered
5 with the prior portion we discussed?

6 A No, just the fact that he's saying it didn't
7 change, when it did change.

8 Q So you have the same concerns, essentially;
9 is that fair to say?

10 A Yes, sir.

11 Q Let's jump forward, please, to Page 257, if
12 we could.

13 A Okay. I'm there.

14 Q Line 2. The question is, "okay. My question
15 to you is this: Please tell the jury whether or
16 not her story changed, whether or not she omitted
17 things when she first called 911.

18 "Answer: Yeah. Initially, she did not tell
19 about the sexual assault.

20 "Question: Okay. Let me ask you a
21 question. Are omissions lies, in your book?

22 "Answer: Omissions, it depends on the
23 context, situational-based.

24 "Question: I've known you for a long time.
25 You are a good detective.

1 "Answer: Uh-huh.

2 "Question: You are very seasoned, so if you
3 go and you talk to anyone, a victim, or you talk to
4 someone who did something wrong, and they leave
5 something out that is pertinent to the case, would
6 you consider it to be a lie? Yes or no.

7 "Answer: I think it depends on intent, and
8 also she's a victim of sexual assault. So, I mean,
9 she's a trauma victim, so there's explanations for
10 her state of mind."

11 Let's pause there. You expressed concerns
12 about this particular portion of testimony. Could
13 you tell the Court why this concerns you.

14 **A** Well, at that point in time, I'm considered
15 innocent, and no one has been found guilty. I
16 mean, he's getting on the stand and testifying
17 before a jury saying that she's been a victim of
18 sexual assault, and he goes on to say that she's a
19 trauma victim, so there is explanations for her
20 state of mind. Basically, he's giving reasons why
21 she could have -- why she changed her story, if she
22 changed story, or if she omitted things.

23 I believe he's just -- it's a form of
24 vouching, honestly. To the jury -- the jury could
25 have took it like he believes the victim, a victim

1 of a sexual assault, just from his words in saying
2 she was a trauma victim. I mean, she's not
3 testified to any trauma or anything of that nature,
4 but he went to the furthest extent to say that
5 she's been a victim that hasn't been proven at that
6 time.

7 I just don't believe it's his place to tell
8 anyone that she's a victim when, like I say, no one
9 knows the truth. No one was there. There is no
10 evidence to prove it. It is a case that bares down
11 on credibility and believability completely.

12 Q Okay. And jumping down to Line 19 on the
13 same page. The question is, "Okay. And so what
14 explanation for her state of" -- excuse me.

15 "So the explanation for her state of mind
16 here, in your opinion, is what?

17 "Answer: She's been a victim of sexual
18 assault and that, you know -- we were speaking and
19 continued to ask questions and gather details."

20 Do you have anything additional to add? Do
21 you share the same concerns for that portion of the
22 testimony?

23 A I do.

24 Q Is there anything else you would like to add
25 as to that part of the testimony?

1 **A** No, sir.

2 THE COURT: Could you tell me who that was on
3 the stand?

4 MR. GEEL: This is all Detective Beam, Your
5 Honor.

6 THE COURT: Detective Beam, okay.

7 **Q** Jumping forward to 259, still Detective Beam.
8 Let me know when you are on the top of 259, Line 1,
9 please.

10 **A** I'm there.

11 **Q** "Question: Okay. All right. And you
12 actually let her speak on this interview?

13 "Answer: I did, yes, sir.

14 "Question: All right. Is that something
15 you typically do and record it?

16 "Answer: Sometimes we'll do that,
17 especially dealing with young -- young adults.
18 Sometimes a parents can elicit responses or get the
19 truth or helps to make sure that we're on the same
20 page."

21 This reference to a parent, can you clarify
22 for the Court what Beam was talking about there with
23 her parents talking to her?

24 **A** What do you mean?

25 **Q** Okay. Let's take a step back.

1 Do you have any recollection in this case
2 about the victim's mother speaking with her at any
3 point?

4 **A** Yeah. Yeah.

5 **Q** Tell the Court what that was.

6 **A** Well, her mother was -- well, she came and
7 was a part of the interview with Detective Beam.
8 She sat along and asked questions with the
9 detectives.

10 **Q** So it's your recollection that that is what
11 Beam is talking about here, with the parent talking
12 to her?

13 **A** Yes, sir.

14 **Q** So focusing in on the portion where it says,
15 "Sometimes we'll do that, especially dealing with
16 young -- young adults. Sometimes a parent can
17 elicit responses or get to the truth or it just
18 helps to make sure that we're on the same page,"
19 did you have any concerns with that particular
20 portion of testimony alongside the other ones we've
21 already discussed?

22 **A** No.

23 **Q** You don't have anything specific to add about
24 that portion?

25 **A** No, sir.

1 THE COURT: Can I stop you just one second?
2 Do you have a copy of this trial transcript?
3 I don't have one. This is in the trial transcript?

4 MR. GEEL: Yes. Yes, ma'am.

5 MS. MARTO: Sorry. I was under the
6 impression it was sent to you.

7 MR. GEEL: I apologize as well, I thought you
8 had one, too.

9 THE COURT: That's okay. Because I usually
10 like to highlight it.

11 MR. GEEL: Sure. And, Your Honor, all of the
12 transcripts that I'm going over are in our
13 amendment, so they are all specifically cited. If
14 you are going back and reviewing everything,
15 everything is in there.

16 THE COURT: Okay. Thank you.

17 MR. GEEL: My pleasure.

18 May I proceed, Your Honor?

19 THE COURT: Yes, please.

20 MR. GEEL: Thank you.

21 Q (MR. GEEL) Are you on Page 264?

22 A All right. I'm there.

23 Q Do you believe on Line 17 -- again, this is
24 still during Detective Beam's testimony.

25 "Question: And, of course, the jury is

1 going to have this recording back there so they can
2 listen to it about what changes and what doesn't
3 change, right?

4 "Answer: Correct.

5 "Question: But we can agree that some
6 points never change?

7 "Answer: It's my understanding that, you
8 know, you can split hairs and say, you know, at
9 certain times details were said or weren't, but the
10 story did not change, in my opinion."

11 I don't mean to belabor the point, 'but do
12 you have anything additional to add as far as that
13 remark from Detective Beam?

14 **A** Well, I don't believe he's -- he should be
15 giving an opinion about what he believes. You
16 know, that is for the jury.

17 **Q** Any discussions with Mr. Wilson about your
18 concerns there at the time?

19 **A** No, sir.

20 **Q** Were you aware that there was an issue with
21 that type of testimony during your trial?

22 **A** No, sir.

23 **Q** All right. Can we jump forward to the next
24 page, Page 265?

25 **A** Yes, sir.

1 Q Line 15, still with Detective Beam.

2 "Question: Even when pressed -- with her
3 mom -- by you multiple times, she stuck to that
4 story?

5 "Answer: And a lot of times, in our
6 experience, pressing -- you get -- sometimes you're
7 able to break them whether it be a rape allegation
8 or any other kind of investigation. That's why we
9 go over it again and again, to see if we get --
10 we're able to get them to recant.

11 "Question: No question you were skeptical
12 at first?

13 "Answer: Always -- not always, but, you
14 know, we have a lot of sexual assaults. I mean,
15 it's just the nature of Myrtle Beach, unfortunately,
16 and Horry County. Some of it did not make sense to
17 me initially."

18 And we're at the top of 266 now, Line 2.

19 "Question: Did you do a further
20 investigation after that interview?

21 "Answer: I did, yes, sir.

22 "Question: And did Myrtle Beach Police
23 Department choose to charge this defendant with
24 criminal sexual conduct, kidnapping, armed robbery,
25 and possession of a weapon during the commission of

1 a violent crime?

2 "Answer: Yes, we did."

3 Is there anything additional you would like
4 to add or concerns for that portion of testimony?

5 A Not really, but I'll say something about the
6 tactic from Holford. I mean, the way he goes on to
7 ask about did you do a further investigation after
8 the interview, and he said, Yes, I did. And then
9 he said, Did the police department choose to charge
10 this defendant with criminal sexual conduct,
11 kidnapping, armed robbery, and possession of a
12 weapon during the commission of a violent crime, I
13 don't believe it is an issue, but I believe it is a
14 good tactic as an attorney. It is not an issue,
15 I'm sorry.

16 Q As far as the legal concepts, we talked about
17 the vouching, bolstering, corroboration. Do you
18 have anything in addition to add with respect to
19 that portion of the testimony?

20 A Well, no, I don't.

21 Q In your view, did you feel it was
22 objectionable on those grounds?

23 A I do now.

24 Q You do now?

25 A I do now.

1 Q Having now learned what those concepts are?

2 A Yes, sir.

3 Q Before we move on to Ground 3, is there
4 anything more you would tell the Court about Ground
5 1 for bolstering-type of issues?

6 A If I can look at my notes just to refresh my
7 memory?

8 MR. GEEL: Would that be okay, Judge?

9 THE WITNESS: Thank you, ma'am.

10 (A brief pause in the proceedings.)

11 A Just a couple of things I would like to state
12 about an issue of vouching on Page 264 through 265.

13 Q (MR. GEEL) Just a moment. 264 to 265?

14 A Yes, sir.

15 Q Go on.

16 A When questioning Detective Beam about what
17 the victim told him, the Solicitor asked Detective
18 Beam if the defendant used the gun and if the
19 defendant forced the victim to have sex at
20 gunpoint, in which Detective Beam gave an
21 affirmative response to both questions with no
22 objection made by the defense.

23 Now, I mean, from what I've learned, pursuant
24 to South Carolina Rules of Evidence,
25 Rule 801(d)(1)(d) limits corroborative testimony in

1 criminal sexual conduct cases to the time and place
2 of the assault and cannot include any details or
3 particulars of the assault.

4 So what I see in the actual testimony, you
5 know -- the Solicitor's leading questions elicited
6 an affirmative response that corroborated the
7 victim's testimony going beyond the set limitations
8 provided for 801(d)(1)(d).

9 Pursuant to South Carolina Code of Laws,
10 Subsection 16-3-657, criminal sexual conduct victim
11 testimony deemed not to be corroborated. So given
12 the foregoing facts, the defense attorney's lack of
13 objection was clearly deficient, and that is what I
14 believe.

15 Furthermore, the defense was prejudiced by
16 the cumulative effect of the improper corroboration
17 that -- the improper corroboration, and I would
18 acknowledge *Jolly versus State* where it says
19 improper corroborative testimony that is merely
20 cumulative to the victim's testimony in CSC cases
21 cannot be harmless because it is precisely this
22 cumulative effect that enhances the devastating
23 impact of improper corroboration. That is just the
24 first issue.

25 If I can continue?

1 **Q** That is all you have to say as far as Ground
2 1?

3 **A** Yes, sir. Yes, sir.

4 **Q** So moving on to Ground 3 of the application,
5 we're going to talk about the remarks of the
6 prosecutor in closing argument.

7 Let me start off by just touching briefly on
8 the same discussion we just had. At the time of
9 your trial, did you have any understanding what
10 sorts of objections could be made by your attorney
11 during opening or closing argument?

12 **A** No, sir.

13 **Q** And have you now come to learn a little more
14 about those types of things?

15 **A** Yes, sir.

16 **Q** And you have some concerns about remarks made
17 by the prosecutor in your case?

18 **A** Yes, sir.

19 **Q** Let's touch on that a little bit. Can we
20 jump to Page 330 and 331.

21 **A** I'm there.

22 **Q** Mr. Welch, this is during prosecution's
23 closing argument. At the end of Line 1, it says,
24 "I would like to think that if someone comes at me
25 with a gun, I would be that person that would react

1 quickly, snatch the gun from his hand, maybe
2 scream, maybe run, maybe take the appropriate
3 action. I've never been a 22-year-old female faced
4 with that situation."

5 Pausing there, do you have any specific
6 concerns about that remark by the prosecutor?

7 **A** No, sir.

8 **Q** Okay. Going down to Lines 18 and 19, "I'm
9 not a 22-year-old female. I've never been put in
10 that situation."

11 Any concerns about that remark.

12 **A** No, sir.

13 **Q** Jumping to Line 23, "The comments by how
14 could she have done this or done that, what she
15 should have said, what she would have acted,
16 possibly, does that change the facts of this case?
17 No. I've never been raped before, but I would like
18 to think that I would be strong, I would be
19 courageous, I would stand up and tell what
20 happened. I know as a prosecutor that doesn't
21 happen."

22 Is there anything about that that concerns
23 you?

24 **A** No, sir.

25 **Q** So you have the remainder of the closing

1 argument there through Page 333. Can you identify
2 for the Court what portions of that closing
3 argument you have concerns about as far as the
4 prosecutor's remarks?

5 **A** Yes. Give me one second, please.

6 (A brief pause in the proceedings.)

7 **A** Right here the prosecutor says --

8 **Q** (MR. GEEL) Cite the page and line number for
9 the Court, please.

10 **A** Page 331, starts on Line 5, and I'll work my
11 way down. The prosecutor states by saying, "Let's
12 go through what have been called inconsistencies
13 and what have been called lies. But I will submit
14 to you our consistent statements furthering the
15 truth, furthering facts of the truth, more
16 forthcoming as the story develops."

17 Then the prosecutor starts talking about the
18 911 call, "At 8:32 p.m., gun, silver, my phone, my
19 purse was stolen at gunpoint, white male, 19 to 20
20 to 21. She gave a clothing description, some type
21 of khaki jeans."

22 He basically goes and talks about what are
23 consistent with all three stories, and he tries to
24 twist it in a way to make it seem like the elements
25 of events within all three stories did not change.

1 Yes, the only thing that stayed consistent with all
2 three stories is that a gun was used, but
3 everything else changed. For him to sit here and
4 say let's go through what have been called lies,
5 what have been called inconsistencies, and then he
6 submits there are further statements of the truth,
7 furthering the truth, more forthcoming as the story
8 develops, that's just not how it went.

9 Q Let me ask you this, and I don't want to put
10 words in your mouth: Are you saying he's
11 misrepresenting the facts from the trial?

12 A I mean, yeah, in a way.

13 Q Now, did you have any discussions with
14 Mr. Wilson at the time about objecting to that?
15 Were you expecting that testimony to come out? Is
16 there anything you can recall from that moment in
17 trial?

18 A No, sir.

19 Q At the time, would you -- at the time, would
20 you have been aware of any basis to object or to
21 tell Mr. Wilson to object?

22 A No, sir.

23 Q So your concerns with this portion of
24 testimony deal with things you have learned since
25 your trial; is that true?

1 **A** Yes, sir.

2 **Q** Is there anything else with respect to the
3 closing argument that you would like to discuss
4 with the Court?

5 **A** Yes, sir.

6 **Q** Okay.

7 **A** Let me find the page. Do you have a copy of
8 the transcript?

9 **Q** I do. Do you want to look at it?

10 **A** It should be the last page.

11 **Q** Of the closing argument?

12 **A** Yes, sir.

13 Page 335, my issue would be -- starts at
14 Line 1. The prosecutor says, "I understand the
15 want and the need to say, yeah, but at first she
16 just said that she was at Burger King and she was
17 robbed. That's armed robbery. Okay. I'm not
18 satisfied with it because this young lady was raped
19 at gunpoint by the defendant at the Town Square
20 Apartments. She took the action she took. She did
21 what she did, and I pass no judgment, but I'm
22 asking you, as triers of fact in this case, to pass
23 judgment on the defendant. He committed the act of
24 criminal sexual conduct in the first degree. He
25 committed the act of armed robbery. He committed

1 the act of kidnapping when he led her by gunpoint
2 from the Burger King down to the Town Square
3 Apartments and possessed a gun while committing
4 these violent crimes."

5 Now, I have two issues --

6 Q Is this you talking now? You are finished
7 reading?

8 A Yeah. Yeah. I'll need it later. Okay. I
9 have two issues with something he says. The first
10 thing he says here is that -- he's saying that he's
11 not satisfied with just the armed robbery. He
12 says --

13 THE COURT: You do understand that this is a
14 closing argument from the State, right?

15 THE WITNESS: Yes, ma'am, I do.

16 THE COURT: And you do understand this is not
17 evidence?

18 THE WITNESS: Yes, ma'am, of course.

19 THE COURT: Okay. Go ahead.

20 A So my point is when he says that she just
21 claimed that it is armed robbery, but he's not
22 satisfied with that, that's the point I'm trying to
23 make. He's not satisfied with it.

24 I would go further to state that he says I'm
25 not satisfied with it because this young lady was

1 raped at gunpoint by the defendant at the Town
2 Square Apartments. I mean, it sounds, to me, as if
3 -- I mean, she claimed an armed robbery in one of
4 the stories. She gave three different --

5 THE COURT: I got it. I got what you are
6 saying, but I want you to understand this is what
7 you are reading to me is a prosecutor's closing.
8 It is his job to prosecute you. He's not going to
9 agree with what you believe, by no means.

10 THE WITNESS: Of course.

11 THE COURT: In fact, he's on the other side.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: So I'm trying to figure out what
14 you are trying to tell me or trying -- are you
15 trying to tell me that the Solicitor is not
16 entitled to an opinion? What is it that you are
17 trying to tell me?

18 THE WITNESS: No, ma'am. I'll get to the
19 point.

20 So right down here he says, "He committed the
21 act of kidnapping when he led the victim from Point
22 A to Point B, Burger King to the Town Square
23 Apartments."

24 Nowhere in the transcript, nowhere in
25 testimony, nowhere at all in the case did she ever

1 say he led me from Burger King to the Town Square
2 Apartments at gunpoint. So, I mean, to me,
3 it is --

4 THE COURT: So you are telling me that he's
5 gone outside in his closing argument of the facts
6 that were stated during the trial?

7 THE WITNESS: Yes, ma'am, outside of the
8 record.

9 THE COURT: I'll make sure that I hear a
10 response to that instead of me digging through the
11 transcript. I will, but I want a response to that,
12 okay.

13 Go ahead.

14 Q (MR. GEEL) Mr. Welch, anything further as to
15 Ground 3?

16 A No, sir.

17 Q Is there anything else you would like to tell
18 the judge about any of these issues you haven't
19 covered yet?

20 A Well, honestly, I'm dealing with a lot of
21 emotions. I'm dealing with a lot of nerves. So I
22 have a lot of things written down and --

23 THE COURT: Today is your day, and I'm here.
24 I will hear them because you don't get another
25 chance. So, by all means, I want to hear all of

1 the grounds you have. I have plenty of time.

2 THE WITNESS: Okay. All right.

3 THE COURT: Hit me. Go. I'm ready to take
4 notes.

5 THE WITNESS: Can you bring me the folder?

6 MR. GEEL: This one?

7 THE WITNESS: Yes.

8 MR. GEEL: Your Honor, can I approach? It
9 looks just like some paperwork he brought with him.

10 THE COURT: Sure.

11 I would assume, Mr. Geel, that these
12 additional things are not in your PCR application?

13 MR. GEEL: I anticipate that everything
14 Mr. Welch is going to say is covered in our
15 amendment, but I'm not quite sure.

16 THE COURT: All right. I just wanted to make
17 sure. I have my law clerk taking notes to make
18 sure I have it all.

19 MR. GEEL: I'll do the same, Judge, in case
20 there is anything that doesn't come up that we've
21 raised.

22 THE WITNESS: I'll touch on the closing
23 argument, because he was -- I couldn't really get
24 it out, so I'll read what I have written down about
25 what I want you to understand.

1 THE COURT: Sure. Go ahead.

2 THE WITNESS: So on Page 335 the prosecutor
3 made a statement of opinion concerning the guilt of
4 the defendant that was not based on evidence within
5 the record.

6 Now, starting on Page 334 onto Page 335, the
7 prosecutor discusses a 911 call made by the victim,
8 wherein the victim claimed to have been at Burger
9 King, that she claimed that she was just robbed at
10 gunpoint with no mention of being sexually
11 assaulted.

12 The prosecutor goes on to say that he
13 understands the want and the need to say that at
14 first the victim claimed she was robbed and that
15 the allegation alone is armed robbery. Directly
16 after the statement, the prosecutor voices to the
17 jury that he's not satisfied with it because the
18 victim was raped by the defendant at the Town
19 Square Apartments.

20 Now, acknowledging *Tappeiner versus State*, a
21 Solicitor must confine their closing arguments to
22 the record and the reasonable inferences that may
23 be drawn thereof -- or therefrom.

24 So with that being said, I'll continue.

25 So the prosecutor does not voice why he's not

1 satisfied with the evidence of the victim's initial
2 allegation of armed robbery based on any evidence
3 within the record, but he instead voices his
4 personal opinion concerning the guilt of the
5 defendant.

6 Now, acknowledging *State versus Jernigan*, we
7 see that counsel has a right and an argument to the
8 jury to state conclusions based on evidence as to
9 the defendant's guilt. Given the foregoing facts,
10 I find it is improper for a prosecutor that holds
11 the prestige of the government to voice a personal
12 opinion, which is not based on any evidence within
13 the record, that exclusively points to the
14 defendant's guilt.

15 I also find that the defense attorney's lack
16 of objection to such a statement was a deficient
17 performance because such statement tends to mislead
18 the jury on the presumption of innocence and
19 intrudes upon the jury's exclusive function of
20 evaluating evidence and witness creditability.

21 In addition to this, I find that the defense
22 attorney's lack of objection caused prejudice to
23 the defense in light of the fact that there was not
24 an overwhelming evidence to support the defendant's
25 guilt, and because there was not an overwhelming

1 amount of evidence, there is not reasonable
2 probability sufficient to undermine the confidence
3 of the outcome of the trial absent of defense
4 attorney's deficient performance.

5 That is what I would like to state about the
6 closing argument.

7 I'm going to talk about failing to object and
8 improper bolstering on Page 240.

9 THE COURT: I think your attorney went over
10 that transcript, Page 240, Line 1, all the way down
11 to Line 17. And then we went to Page 241 from Line
12 5 down. Then we went 247 and Page 248. We also
13 covered Page 257 all the way down the Line 19, and
14 also Page 259. All of this was with Detective
15 Beam. I have notes on that. If you have something
16 different, I'll be glad to hear it, but your
17 attorney covered it.

18 THE WITNESS: Right. I do.

19 THE COURT: Okay.

20 THE WITNESS: With respect to everything that
21 my lawyer will raise about these issues, we have
22 different points, and I just want to be heard.

23 THE COURT: Okay. I want to hear you. Go
24 ahead.

25 THE WITNESS: So on Page 240, the elicited

1 testimony provided by lead Detective Beam tended to
2 bolster the victim's credibility wherein Detective
3 Beam states, "We do our very best to vet complaints
4 of sexual assault to make sure it appears to be
5 credible and that it's true."

6 Now, acknowledging *Chappell versus State*,
7 "Improper bolstering occurs when a witness
8 testifies for the purpose of informing the jury
9 that the witness believes the victim or where there
10 is no other way to interpret the testimony other
11 than to mean that the victim is telling the truth."

12 So given the testimony, the jury may easily
13 believe that Detective Beam found the alleged
14 victim to be credible and also found her complaint
15 of sexual assault to be true resulting in my
16 arrest, which resulted in a jury trial.

17 Because there is no other way to interpret
18 this testimony, other than to mean that this
19 witness found the victim to be credible and also
20 found the victim's complaints of sexual assault to
21 be true, defense attorney's failure to object to
22 such testimony, I believe, would be a -- is a
23 deficient performance, and I believe because there
24 is not an overwhelming amount of evidence to
25 support defendant's guilt, and the fact that the

1 State had to rely on victim testimony and
2 creditability, I believe that it ended in
3 prejudice. And I believe because credibility was
4 crucial to the State's case, the defense attorney's
5 failure to object to testimony that bolstered the
6 victim's creditability resulted in prejudice to the
7 defense.

8 THE COURT: Okay.

9 THE WITNESS: Now, I'll move for failure to
10 object to improper corroboration on Page 257.

11 Page 257, Detective Beam's testimony
12 improperly corroborates the victim's testimony that
13 states she's a victim of sexual assault, so she's a
14 trauma victim, so there's reason for her state of
15 mind.

16 Now, I've already went over this. I went
17 over this one already. My apologies.

18 THE COURT: It's all right.

19 THE WITNESS: This would be an issue of
20 failure to object to improper corroboration on Page
21 264 through 265.

22 Pages 264 through 265, the prosecutor
23 elicited testimony from Detective Beam in which
24 disclosed details of the victim's allegations of
25 sexual assault that intended to improperly

1 corroborate the victim's testimony.

2 Now, South Carolina Code of Laws, Subsection
3 16-3-657, criminal sexual conduct testimony need
4 not be corroborated. The prosecutor asked
5 Detective Beam if the defendant used the gun in
6 which Detective Beam gave an affirmative response.

7 Furthermore, Detective Beam was asked did the
8 defendant force the victim to have sex at gunpoint,
9 in which Detective Beam gave another affirmative
10 response.

11 Now, per the Rules of Evidence, the rule
12 against hearsay allows limited corroborative
13 testimony in CSC cases and which are restricted to
14 the time and place of the assault and cannot
15 include any details or particulars of the assault.
16 That is pursuant to Rule 801(d)(1)(d).

17 Given the foregoing facts, I find the defense
18 attorney's failure to object to such improper
19 corroboration was a deficient performance, which
20 must be established to support a claim of
21 ineffective assistance of counsel.

22 I would like to acknowledge *Jolly versus*
23 *State* for the prejudice prong wherein improper
24 corroborative testimony that is merely cumulative
25 to the victim's testimony in CSC cases cannot be

1 harmless, because it is precisely this cumulative
2 effect that enhances the devastating impact of
3 improper corroboration. Because improper
4 corroborative testimony in CSC cases that are
5 merely cumulative to the victim's testimony are, in
6 fact, deemed not harmless, I find defense
7 attorney's lack of objection to such improper
8 corroboration prejudiced the defense, and because
9 there was not an overwhelming amount of evidence to
10 support the defendant's guilt, State had to rely on
11 witness testimony, and there is reasonable
12 probability sufficient to undermine the confidence
13 of the outcome of the trial absent of deficient --
14 I think I messed up on a line right there, but
15 that's it.

16 MR. GEEL: Anything else?

17 THE WITNESS: No, sir.

18 MR. GEEL: Nothing further. Thank you.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: You are welcome.

21 I'll hear from you, Ms. Marto.

22 **CROSS EXAMINATION**

23 **BY MS. MARTO:**

24 Q Is your main grievance about the discovery;
25 not that you didn't see it, but you weren't

1 provided a personal copy?

2 A I'm sorry, I didn't know you were going to
3 question me. I'm sorry. Can you say again?

4 Q Is your issue on discovery not that you
5 didn't see it, but rather you weren't given a
6 personal copy?

7 A Well, it is my issue because I wanted to go
8 over the case with my attorney prior to trial, and
9 I really couldn't do so when I didn't have it. I
10 wanted to talk about specific things.

11 Q But you saw the discovery in this case,
12 correct?

13 A I did.

14 Q And Mr. Wilson was your second lawyer?

15 A Yes, ma'am.

16 Q And you stated you received discovery from
17 your first lawyer as well?

18 A Yes, ma'am.

19 Q You talked about evidence with Mr. Wilson,
20 correct?

21 A I did.

22 Q You had a Jackson v. Denno hearing?

23 A We did.

24 Q That was concerning that statement, correct?

25 A Yes, ma'am. The interview from Detective

1 Beam; that is what you are referring to?

2 Q Yes, sir.

3 A Yes, ma'am.

4 Q Now, did you ever talk to Mr. Wilson about
5 these issues in the transcript that you are saying
6 constituted improper bolstering?

7 A Did I ever talk to Wilson about it? No,
8 ma'am. No, ma'am.

9 Q Some of the passages you highlighted were
10 based upon questions that Mr. Wilson himself asked,
11 correct?

12 A What do you mean?

13 Q The issue -- the passages in Mr. Beam's
14 testimony you pinpointed, you pinpointed some of
15 the questions Mr. Holford asked, but also some of
16 the questions that Mr. Wilson himself asked,
17 correct?

18 A Yes, ma'am.

19 Q And you wanted counsel to object to his own
20 question?

21 A No, I didn't. No. I just didn't know that
22 the question was -- I believe the response to the
23 question was the problem, honestly. I don't
24 believe that -- I mean, you can answer a question
25 however you want to answer it, but the response, I

1 don't think it was proper. I think that was the
2 problem, and he didn't call to get it stricken or
3 anything like that. I believe it wasn't proper for
4 the jury to hear.

5 Q Can you fathom another reason why Mr. Holford
6 would have asked such a question?

7 A Well, I mean, I'm not in his mind, you know.
8 I can't really give an answer to that. I guess it
9 is to find me guilty or get the truth across. I
10 don't know.

11 Q Your primary issue with the State's closing
12 argument is that he, basically, said that you are
13 guilty and highlighted the evidence that showed
14 that; is that fair to say?

15 A Say that again.

16 Q Is it fair to say that your primary issue
17 with Mr. Holford's closing is that he said you were
18 guilty to the jury and chose evidence to support
19 that, correct?

20 A No. No. I believe he used his personal
21 opinion, because when he goes to talk about
22 evidence, he's talking about actual evidence. He's
23 talking about the actual stories that were given to
24 the police, you know. He talks about the first
25 allegation, and he talks about it just being an

1 armed robbery.

2 The personal opinion comes in when he sits
3 there and says, You know what, she did say that,
4 but you know what else, I ain't going for it. I
5 don't believe it. I believe that the real story is
6 that she was raped, and she was kidnapped by this
7 man.

8 He goes on to say something that is not in
9 evidence at all. She never says that he pointed a
10 gun at me at Burger King and made me drive here.
11 That is completely fabricated.

12 Then, his personal opinion should not be for
13 the jury's ears because he's a prosecutor. He
14 holds the prestige of the government behind him.
15 So it is easy for a jury -- easy for a jury member
16 or anyone that is a law-abiding citizen or someone
17 that has respect for someone like that to sit there
18 and hear his opinion. It holds weight. That is,
19 basically, the problem. So he's giving a personal
20 opinion, and I don't think it was right for the
21 jury to hear his personal opinion at all.

22 He can talk about the evidence and do
23 whatever he wants as far as in that realm, but
24 giving your personal opinion to say, well, you know
25 what, I don't think he did no armed robbery, but I

1 think he did this rape. I think he did that. But
2 he doesn't give a reason why he thinks that I did
3 that, and he doesn't base it off of evidence. So
4 it is a personal opinion, and it points to the
5 guilt of me. It points -- it is not -- it's
6 improper; that is my problem with it.

7 Q You know you were on trial for CSC and
8 kidnapping, correct?

9 A Yes.

10 Q So you knew the State was trying to say you
11 were guilty of CSC and kidnapping?

12 A Of course.

13 Q And the victim testified at your trial?

14 A Yes, ma'am.

15 Q And she stated that you pointed a gun at her,
16 correct?

17 A Yes, ma'am.

18 Q And that you raped her, correct?

19 A Yes, ma'am.

20 Q So what he is saying is based upon the
21 testimony from that victim, correct?

22 A No, ma'am. You want me to explain it again?

23 Q No, sir.

24 What you are saying is Mr. Holford stated you
25 weren't guilty of armed robbery, correct?

1 **A** I don't believe he said I'm not guilty. I
2 don't believe he said that, because following the
3 last statements he gave in the closing arguments,
4 he said that he is guilty of CSC, he is guilty of
5 armed robbery, kidnapping, so on.

6 So I don't believe he was saying that I
7 wasn't guilty. I believe he was voicing his
8 personal opinion letting the jury know, hey, I
9 believe he's guilty. I believe he's guilty of
10 raping this woman at gunpoint. That is what I
11 believe.

12 **Q** What do you think that -- so you are saying
13 that he said that as part of his personal opinion?
14 What do you think the State's opinion would have
15 been?

16 **A** The State's opinion?

17 **Q** Because the State was charging you with all
18 of the charges, correct?

19 **A** Correct.

20 **Q** So do you think the State was trying to show
21 that you were guilty of all of those charges?

22 **A** If the State wants to show I'm guilty, if the
23 State wants to do what they are supposed to do,
24 they stay inside the record. They show the
25 evidence, bring witnesses, and they do it like

1 that.

2 You don't bring in anything personal into
3 this case. Because I'll say this right here:
4 There is no other way you can take this statement
5 right here from Mr. Holford -- there is no other
6 way to interpret it, because when he says, I'm not
7 going for this armed robbery. Why? Because he
8 raped this woman at gunpoint.

9 So he doesn't give a reason why he's not okay
10 with the armed robbery allegation. He doesn't give
11 a reason why. So he just jumps from that to say,
12 hey, but I see he's guilty, though. He's guilty of
13 the rape, and he says it with confidence. He
14 doesn't break it down or say any evidence, This is
15 why I'm not good with the armed robbery. He
16 doesn't break it down.

17 If there was a way he could have, he didn't.
18 The only thing that the jury heard is, well, I'm
19 not okay with this armed robbery, but I'm okay with
20 this rape. He did this rape. That's his personal
21 opinion. He didn't back it up with any evidence,
22 so that's the problem. He went outside of the
23 record. If he wanted to prove me guilty or do
24 anything, bring evidence, bring witnesses, do it
25 the right way.

1 **Q** Are you saying the victim's testimony
2 shouldn't be considered evidence?

3 **A** Say it again.

4 **Q** Are you saying that the victim's testimony
5 shouldn't be considered evidence?

6 **A** Not at all. That's not what I'm saying.

7 **Q** Again, you have no concerns about him saying,
8 you know, he's not a 22-year-old woman, so he
9 doesn't know how he would react in that position?

10 **A** Me, personally, I don't know if it is an
11 actual issue when he says that. I don't have a
12 problem with it. I don't know if it is an actual
13 issue. If it is, then it is, but I don't know. I
14 don't have a problem with that.

15 **Q** But you're personally not seeking to raise
16 that issue today; is that what you are saying?

17 **A** I'm raising it because my attorney, he
18 believes that is an issue.

19 Like I say, we have different views with
20 certain things, but that doesn't mean he doesn't
21 know what he's talking about, and that doesn't mean
22 I don't know what I'm talking about. I'm putting
23 my faith in him and putting my faith in myself,
24 putting my faith in God, and we're just going to do
25 it the way we're going to do it.

1 MS. MARTO: No further questions.

2 THE COURT: Thank you.

3 Any redirect?

4 MR. GEEL: No, Your Honor.

5 THE COURT: You can step down to the counsel
6 table.

7 You have another witness?

8 MR. GEEL: Yes, trial counsel, Mr. Ralph
9 Wilson.

10 MR. WILSON: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 (Whereupon, RALPH WILSON was duly sworn and
13 testified as follows.)

14 THE WITNESS: Ralph Wilson, W-I-L-S-O-N.

15 **DIRECT EXAMINATION**

16 **BY MR. GEEL:**

17 **Q** Good afternoon, Mr. Wilson. Let me know if
18 you have any issues hearing my questions.

19 **A** Yes, sir. Yes, sir.

20 **Q** Let's -- you heard all of what Mr. Welch
21 testimony's was? You've been present this
22 afternoon?

23 **A** Yes, sir.

24 **Q** I guess we'll assume you have an overview
25 into the issues, so we'll dive into it. You heard

1 Mr. Welch's testimony that he invoked his right to
2 counsel well prior to his interviewing? Did you
3 hear his testimony regarding those facts?

4 A I did.

5 Q Were you able to hear the audio of his
6 statement with Beam that we went over?

7 A I heard most of it, but I remember it from
8 trial. I think it was like six minutes, maybe a
9 little more.

10 Q Do you need me to play it again, or you have
11 an independent recollection?

12 A No, I'm good.

13 Q Let's get to the portion of that audio where
14 he says something to the effect of, I asked you
15 about it last night and they didn't tell me about
16 the charges, or something to the effect.
17 Obviously, the exhibit speaks for itself?

18 A Yes.

19 Q Do you have any independent recollection when
20 you reviewed that, if you had any thoughts what he
21 meant by that?

22 A I don't recall having any recollection of
23 actually -- a conversation we had about it. I
24 recall the recording, and I actually played it in
25 my office when I was getting ready for this

1 particular hearing, so I know what he said.

2 I do not recall any conversation we had about
3 something that wasn't recorded. Under the law,
4 with Miranda anyway, it doesn't matter if they
5 weren't using it at trial, so it is not an issue.

6 Now, if he had gone into the interrogation
7 room under, obviously, circumstances where they are
8 recording him and they use it at trial, and then
9 they issue Miranda, if he had said at that point in
10 time, hey, I'm not going -- I don't want to talk to
11 you guys, get me a lawyer, then that would be an
12 issue for me.

13 Q Let me clarify one point. I believe I
14 understand what you are saying. To make sure, in
15 your view, if Mr. Welch -- when he was initially
16 booked -- had told the detention officer, I'm not
17 making any statements unless I talk to a lawyer, or
18 I want a phone call and I want a lawyer, something
19 like that, in your view, would that impact the
20 admissibility a few hours later?

21 A You are asking if I believe the day before
22 when he had a conversation with the detention
23 officers?

24 Q Right.

25 A No. No.

1 **Q** In your view, that would not be grounds to
2 challenge the admissibility to his statement to
3 Beam?

4 **A** No.

5 **Q** If he told the detention officer that he
6 doesn't want to talk to anyone, he wants a lawyer?

7 **A** If he is in the detention custodian area and
8 he's actually telling someone, look, I don't want
9 to talk to anyone, and then he goes and has another
10 meeting with another officer, who is not aware of
11 his prior conversation, as he says on the tape, and
12 then he says, hey, look, I'm going to read you your
13 Miranda rights, well, he is engaging in it at that
14 point in time.

15 During the actual interview, he asked him, Do
16 you want to sign? He initially says, no, which, as
17 a defense lawyer, I enjoy that part. I thought he
18 wasn't going to sign, but when I watched the rest
19 of the video, he actually signed the Miranda
20 warning and proceeds to talk to him.

21 Again, at the end of the conversation, I
22 think he says, I want a lawyer now. But the
23 officer clearly says on the audio, If you don't
24 sign this, you can't talk to me.

25 Now, the day before, I don't know if Beam was

1 there. I didn't hear any testimony about Beam
2 being there or aware of him saying I want a lawyer
3 or invoking his right.

4 Q Let me ask a 30,000-foot-view question.
5 There wouldn't be any strategic reason to not move
6 to exclude a harmful statement if you thought you
7 could; is that fair to say?

8 A I would say that's true. I mean, again, you
9 know, with his statement, I'll be honest with you,
10 I wasn't so worried about his statement as a
11 lawyer.

12 Q Could you go on about that?

13 A Absolutely. When he was talking with the
14 police officers, he was denying, you know, I don't
15 know what is going on, why are you charging me.

16 Again, you know, having a discussion with
17 your client about that tape -- and we discussed
18 this tape, and we did a Jackson v. Denno. So,
19 obviously, I filed the motion.

20 But, again, I didn't have a problem with what
21 he said. He was denying it. He said, look, I
22 didn't do this. I don't know why you are charging
23 me with this. For me, that's good, because if I
24 know at the end of the case -- and, again, this is
25 going to be a trial situation. We knew that going

1 into this when I talked with his former lawyer. I
2 knew also in talking with him that this is not a
3 situation where we would plead him out. I was
4 happy, actually, that he got on there with the
5 officers and saying, hey, look, I didn't do this.
6 Absolutely.

7 Q And, obviously, the exhibit will speak for
8 itself, so if you don't have a clear recollection,
9 there's no reason to fuss about the details, but
10 he, essentially, flatly denies everything; is that
11 fair to say?

12 A Yes.

13 Q He denies ever meeting with Ms. Nelson at
14 all?

15 A He does.

16 Q Now, do you have an opinion whether that is
17 consistent with the defense you raised at trial?

18 A I think that if I'm looking at him saying,
19 hey, look, I never met her, and if he's
20 concerned -- and, again, this is trial. This is
21 not, you know, us talking about the case at trial.
22 Obviously, I know the jury is going to hear him
23 say, hey, look, you know, I didn't know her. I
24 never met with her. I'm not concerned with that.
25 Most juries are savvy, and they understand people

1 will get in these situations and not going to say
2 completely everything that happened.

3 Him saying, I don't know what happened, I'm
4 not sure who she is, again, at the time, I wasn't
5 concerned when I first heard this, that he knew who
6 she was at the time.

7 When we got to trial, when we did the Jackson
8 v. Denno, we want the statement out, if we can.
9 But, again, it was not a concern for me at all at
10 trial.

11 Q If it were up to you, would you have chosen
12 to exclude it?

13 A All things being equal, yes. Yes.

14 Q So, again, circling back, if you felt there
15 was a basis which you could exclude it, that would
16 have been your choice?

17 A If I could have, yes. If they gave me a
18 decision.

19 Q Setting aside whether you think the grounds
20 for excluding it are valid or not, if you could
21 have kept it out, you would have?

22 A That is true, yes. Yep.

23 Q You said you simply disagree that that was --
24 him making a statement to the detention center
25 officer was grounds to challenge it?

1 **A** Not the next day, no. Because, again, if an
2 individual, defendant, is approached by an officer
3 to talk about a case, and if Beam wants to talk to
4 him, he has a choice at that point in time. Once
5 in custody, he can stay, I don't want to talk, and
6 that is what I tell my clients to do.

7 But this happens all the time where law
8 enforcement goes back and says, hey, can I talk to
9 you? Can you talk to me? And if they agree --
10 they can agree at any point in time. But the right
11 to remain silent belongs to the defendant, not to
12 the officer. So he engages him, and then he signs
13 the Miranda warning.

14 **Q** And a final point on that, would you agree
15 that Mr. Welch was in custody from the moment he
16 was cuffed at his home?

17 **A** I would agree, absolutely. Yes. Yes.

18 **Q** Let's move to the other ground of the
19 testimony, which deals with the transcript.

20 MR. GEEL: May I approach?

21 THE COURT: You may.

22 MR. GEEL: If you need to see any portions of
23 the transcript to answer my questions, let me know,
24 and we can get you any additional pages, but I
25 think you'll have everything you need there.

1 **Q** Before we dive into Detective Beam's
2 testimony, you heard Mr. Welch's statements about
3 what he feels are vouching, bolstering, these types
4 of remarks from Detective Beam. What is your
5 understanding of those concepts, generally, if you
6 wouldn't mind?

7 **A** So bolstering with -- in a criminal case is
8 done when a witness attempts to try to offer some
9 form of, you know, credit or credence to the actual
10 testimony of another individual. That's basically
11 what it is.

12 **Q** Offering their personal opinion is an example
13 of that, whether they're telling the truth?

14 **A** Not necessarily whether they are telling the
15 truth. Again, if I'm on a witness stand and I say,
16 you know, that -- hypothetically, that the witness
17 is absolutely positively -- you know, she was a
18 hundred percent raped or absolutely positively
19 telling the truth, and we absolutely know that for
20 sure, I think that gets close to bolstering.

21 Again, there are reasons why -- and I think
22 that counsel pointed out why I did what I did. I
23 was going to ask the same questions. Again, the
24 strategy behind this -- and I know that your client
25 said we didn't meet and discuss this stuff, but we

1 had a long meeting. In fact, we prepared two weeks
2 before trial for this case. The reason we did is
3 because we were concerned about the credibility and
4 tearing apart the credibility of not just Beam, but
5 also the credibility of the alleged victim in this
6 case, which we did.

7 We did private work online developing
8 information regarding her. We also, obviously,
9 tore apart the interview with Beam, and we also
10 wanted to get the Facebook messages, which started
11 a lot of the meeting between the two people.

12 So we were preparing for this case for,
13 again -- I think my last week is when I really went
14 to see him and prep him to testify, and we even did
15 a mock trial at the jailhouse.

16 Q Okay. So I don't want to put words in your
17 mouth, but credibility of the victim was a major
18 concern or point of attack?

19 A It was the centerpiece of this case, yes.

20 Q Okay. So let's jump to the transcript, Page
21 240, and I won't belabor this, because I know we
22 went through this, but at the top of Page 240.

23 "Question: I'm sure this is going to come
24 up. I brought it up a little bit with Jerica" --

25 Jerica is the victim; is that your

1 recollection?

2 **A** That is my recollection.

3 **Q** "You were pretty tough on her that night,
4 weren't you?

5 "Answer: I was. I try to be thorough and
6 make sure I ask the right questions, make sure that
7 I go over the story. I typically do that in all
8 interviews and make sure they were not just, you
9 know, doing it half way. I wanted to make sure that
10 I was thorough.

11 "Question: In your job, could you even give
12 a ballpark how many complaints of sexual assault you
13 get?

14 "Answer: We get a lot. Unfortunately, we
15 are a tourist town, spring break, college. It's a
16 lot.

17 "Question: Are you trained to vet these
18 complaints?

19 "Answer: We have to vet them just like any
20 other case, so, yes, sir. We do our very best to
21 try and vet it and make sure it appears credible and
22 that it's true."

23 Let me pause there. Bearing in mind the
24 discussion we just had about bolstering, do you have
25 any concerns as you sit here reading this testimony?

1 **A** No, I don't. And let me explain this, also.
2 Again, when Beam -- I knew what Beam was going to
3 testify to. We knew what he was going to say. We
4 wanted to attach his wagon, so to speak, to the
5 actual alleged victim. We wanted to discredit Beam
6 and the investigation, so a lot of this stuff I
7 allowed in intentionally, because I knew I would
8 cross examine him about it.

9 So, again, that was the strategy. It worked,
10 to a certain extent, because we got the jury to not
11 believe that he was guilty of possession of a
12 weapon or guilty of the armed robbery. So that is
13 why the strategy was employed.

14 I was going to ask the questions anyway on
15 cross examination, and then to question him -- and
16 I did -- question him harshly about whether or not
17 he told the truth and whether or not he was being
18 honest about this girl and her testimony. I
19 impeached him, yes.

20 **Q** So to make sure I understand, do you have an
21 opinion as to whether there is a basis to object to
22 this testimony, or whether or not you exercised
23 that right?

24 **A** No. I don't think there is a basis to it,
25 not under the strategy. And if I'm looking at this

1 in totality, that particular statement, no, I don't
2 believe that is bolstering.

3 Q You said under the strategy, so let me parse
4 those two things out. Understanding you had a
5 trial strategy in a vacuum, do you feel --

6 A Two separate issues, okay. Obviously, my
7 trial strategy I'm going to say, no. Legal opinion
8 is, no.

9 Q So you don't feel there's a basis to object
10 irrespective of trial strategy?

11 A No. No. No. No.

12 Q Okay. Turning to Line 17.

13 "Question: And did you -- do you sometimes
14 threaten them, telling them they are facing a felony
15 if they are filing a false police report?

16 "Answer: Sometimes. I personally try not
17 to. Not often, especially for sexual assault. I'm
18 not a big fan of that, but sometimes there is a time
19 and place where you have to let them know that if
20 there is a false report, there are consequences."

21 I'll ask the same questions. Do you have a
22 different answer with respect to this portion?

23 A I do not.

24 Q So same strategic considerations, same legal
25 opinion?

1 **A** Strategy aside, legally, in my opinion, no.

2 **Q** Not objectionable?

3 **A** No. I don't want you to say that for the
4 record. I didn't say not objectionable. The
5 question is whether I would find it objectionable.
6 You can object to anything, all right. But I don't
7 engage in frivolous objections, and the reason is
8 you don't want the jury to think you're afraid of a
9 witness, and that is something that I believe in.

10 Again, the strategy mostly worked. Cross
11 examining him was important. So, in my opinion,
12 no. This is not bolstering, in my opinion.

13 **Q** Fair enough. That is a good clarification.

14 Let me say, when I say "not objectionable,"
15 let's assume I mean a valid objection and not
16 something frivolous.

17 **A** That's correct.

18 **Q** An objection that might be sustained or
19 should be sustained?

20 **A** That's fair enough.

21 **Q** All right. Jump to Page 241, Line 5. Are
22 you with me there?

23 **A** Yes, sir.

24 **Q** The question was, "Even when questioned hard
25 by you, a trained detective, did she deny her

1 story?

2 "Answer: She never denied it. The story
3 didn't really change."

4 Same question with respect to that.

5 **A** No. And let me add this: Did I think the
6 statement was false? Yes. But I don't object to a
7 false statement. I mean, if that was the case, I
8 would be objecting a lot. So I didn't find the
9 statement to be bolstering, but I did find it to be
10 false.

11 Obviously, my job on cross examination is to
12 bring that out.

13 **Q** Understood.

14 If you would jump to Page 247.

15 **A** Yes, sir.

16 **Q** On the bottom, Line 21.

17 "Question: This picture we've seen, 17,
18 State's 17, did you pull that up on Facebook?

19 "Answer: I did, yes, sir.

20 "Question: And under what name did you pull
21 that up?

22 "Answer: It was under "David Royal."

23 Now, on top of Page 248.

24 "Question: Okay. And then the victim told
25 you that this was the person who assaulted her and

1 had stolen her stuff?

2 "Answer: That is correct.

3 "Question: Did she ever change that story?

4 "Answer: No, sir.

5 "Question: She stuck to that to this day?

6 "Answer: She did."

7 Same question.

8 **A** Same thing, I think it is a false statement,
9 but I don't think it is bolstering.

10 **Q** If you could, flip to Page 257, Line 2, "My
11 question to you is this: Please tell the jury
12 whether or not her story changed, whether or not
13 she omitted things when she first called 911?

14 "Answer: Yeah. Initially she did not tell
15 about the sexual assault.

16 "Question: Okay. Let me ask you a
17 question: Are omissions lies, in your book?

18 "Answer: Omissions, it depends on the
19 context, situational-based.

20 "Question: I've known you for a long time.
21 You are a good detective.

22 "Answer: Uh-huh (in an affirmative
23 response).

24 "Question: And you are very seasoned, so if
25 you go and talk to anyone, a victim, or you talk to

1 someone who did something wrong, and they leave
2 something out, and it is pertinent to the case,
3 would you consider it to be a lie? Yes or no?

4 "Answer: I think it depends on the intent,
5 and also she's a victim of sexual assault. I mean,
6 she's a trauma victim, so there's explanations for
7 her state of mind.

8 "Question: Okay. And so the explanation
9 for her state of mind here, in your opinion, is
10 what?

11 "Answer: She's been a victim of sexual
12 assault and that, you know -- we were speaking and
13 continued to ask questions and gather details."

14 I know that is a lot of testimony I just
15 read, but do you have a differing opinion of that
16 portion?

17 **A** The only thing I'll say about that, and I
18 remember this line from the trial, what I say about
19 this is that this is the first time that the
20 officer begins to deviate from what he originally
21 said, which is what I wanted. He began to say,
22 yes, she may have lied or omitted something, which
23 is, again, what I wanted in the record. It was
24 important for me to get him on the record saying
25 these things because we wanted to show that he