

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Lexington County
Frank R. Addy, Circuit Court Judge

Feb 23 2024
S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

RODNEY JEROME FURTICK,

APPELLANT

APPELLATE CASE NO. 2019-001920

RECORD ON APPEAL

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INDEX

INDEX	i
TRANSCRIPT OF JURY SELECTION HELD NOVEMBER 4, 2019	1
TRANSCRIPT OF TRIAL HELD NOVEMBER 4-6, 2019	14
<u>JACKSON V. DENNO</u> HEARING.....	20
TESTIMONY	
JASON MERRILL (In-Camera)	
Direct Examination by Ms. Patterson	21
Cross Examination by Ms. Fullwood.....	33
Redirect Examination by Ms. Patterson.....	37
CALEB THOMAS (In-Camera)	
Direct Examination by Ms. Patterson	39
Cross Examination by Ms. Fullwood.....	42
ARGUMENT BY MS. FULLWOOD	43
RULING OF THE COURT IN <u>JACKSON V. DENNO</u> HEARING	44
<u>NEIL V. BIGGERS</u> HEARING	45
TESTIMONY	
J. H. (In-Camera)	
Direct Examination by Ms. Patterson	51
Cross Examination by Ms. Fullwood.....	59
Examination by the Court	61
Redirect Examination by Ms. Patterson.....	62
CALEB THOMAS (In-Camera)	
Direct Examination by Ms. Patterson	63
Cross Examination by Ms. Fullwood.....	67
EDWARD HUFFMAN (In-Camera)	
Direct Examination by Ms. Patterson	68
Cross Examination by Ms. Fullwood.....	72
ARGUMENT BY MS. PATTERSON	72

ARGUMENT BY MS. FULLWOOD	75
RULING OF THE COURT IN <u>NEIL V. BIGGERS</u> HEARING.....	76
RAPE SHIELD MOTION	88
TESTIMONY	
RODNEY JEROME FURTICK (Proffer)	
Direct Examination by Ms. Fullwood.....	96
Cross Examination by Ms. Patterson.....	101
J. H. (Proffer)	
Direct Examination by Ms. Patterson	113
APRIL CARTER (Proffer)	
Direct Examination by Ms. Mayes	117
Cross Examination by Ms. Fullwood.....	121
JOHN ROBERT REESE (Proffer)	
Direct Examination by Ms. Mayes	123
Cross Examination by Ms. Fullwood.....	128
Redirect Examination by Ms. Mayes.....	129
Examination by the Court	130
JASON MERRILL (Proffer)	
Direct Examination by Ms. Fullwood.....	133
Cross Examination by Ms. Patterson.....	136
Redirect Examination by Ms. Fullwood	137
RULING OF THE COURT IN RAPE SHIELD MOTION	139
RULE 403 MOTION	144
RULING OF THE COURT	145
OPENING INSTRUCTIONS BY THE COURT	147
OPENING STATEMENT BY MS. MAYES	156
OPENING STATEMENT BY MR. MADSEN.....	163
TESTIMONY	
J. H.	
Direct Examination by Ms. Patterson	166

Cross Examination by Ms. Fullwood.....	195
Redirect Examination by Ms. Patterson.....	203
APRIL CARTER	
Direct Examination by Ms. Mayes	207
Cross Examination by Ms. Fullwood.....	218
JOHN ROBERT REESE	
Direct Examination by Ms. Mayes	220
Cross Examination by Ms. Fullwood.....	236
Redirect Examination by Ms. Mayes.....	238
Re-Cross Examination by Ms. Fullwood.....	239
MARILYN SANCHEZ	
Direct Examination by Ms. Patterson (Proffer)	241
Direct Examination by Ms. Patterson	249
Cross Examination by Ms. Fullwood.....	255
Redirect Examination by Ms. Patterson.....	257
JENNIFER NGUYEN	
Direct Examination by Ms. Mayes	258
Cross Examination by Ms. Fullwood.....	281
Redirect Examination by Ms. Mayes.....	286
JASON MERRILL	
Direct Examination by Ms. Patterson	289
Cross Examination by Ms. Fullwood.....	315
Redirect Examination by Ms. Patterson.....	323
Re-Cross Examination by Ms. Fullwood.....	327
CALEB THOMAS	
Direct Examination by Ms. Patterson	329
Cross Examination by Ms. Fullwood.....	336
DARWIN WEAVER	
Direct Examination by Ms. Mayes	337
Cross Examination by Mr. Madsen	342
JACLYN MCKAY	
Direct Examination by Ms. Patterson	345
Cross Examination by Mr. Madsen	357
SAMUEL ALLEN STEWART	
Direct Examination by Ms. Patterson	359
Cross Examination by Mr. Madsen	371
Redirect Examination by Ms. Patterson.....	373

RENEWS ALL PREVIOUS MOTIONS.....	375
MOTION FOR DIRECTED VERDICT.....	375
RULING OF THE COURT	376
MOTION TO ADMIT PRIOR CONVICTIONS	376
RULING OF THE COURT	385
STATE RESTS	390
TESTIMONY	
RODNEY JEROME FURTICK	
Direct Examination by Ms. Fullwood.....	390
Cross Examination by Ms. Patterson.....	419
DEFENSE RESTS	437
CLOSING ARGUMENT BY MS. PATTERSON.....	452
CLOSING ARGUMENT BY MS. FULLWOOD.....	473
REPLY CLOSING ARGUMENT BY MS. PATTERSON	482
CHARGE ON THE LAW	485
VERDICT	503
SENTENCING	513
CERTIFICATE OF COUNSEL	518

1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions
3 State of South Carolina,) Indictment Nos.: 2017-GS-32-02097
4 Plaintiff,) 02098
5 vs.) Excerpt Transcript of Record
6 Rodney Jerome Furtick,)
7 Defendant.)
_____)

8

9

November 4, 2019

10

Lexington, South Carolina

11

12

BEFORE:

13

The Honorable Frank R. Addy, Junior, Judge

14

15

APPEARANCES:

16

17

Suzanne Mayes, Assistant State Solicitor
Rhonda Patterson, Assistant State Solicitor
Attorneys for the Plaintiff/State

18

19

20

Elizabeth Fullwood, Assistant Public Defender
Robert Madsen, Public Defender
Attorneys for the Defendant

21

22

ALSO PRESENT:

23

Rodney Jerome Furtick

24

25

1	I N D E X		
2			PAGE
3	JURY SELECTION		3
4	Certificate of Reporter		64
5			
6			
7	EXHIBITS		
8	NO. DESCRIPTION	ID	EVDS.
9	NONE		
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
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22			
23			
24			
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1 Thereupon, the following proceedings were had,

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Judge Frank Addy presiding.

4 THE COURT: That was an introduction. All right.
5 Have a seat please. Thank you. I'm not completely deaf,
6 okay? All right. Ladies and gentlemen who were summoned
7 for jury duty this week, good morning. My name is Frank
8 Addy and I am a Circuit Judge and I reside in Greenwood.
9 It's my pleasure to be with you here this week for the
10 term that I'm holding is a General Sessions otherwise
11 known as a criminal term of court, and some of you after
12 we finish qualification and selecting a jury on the
13 criminal case that we have for trial this week, some of
14 you may be selected or will be selected rather for a case
15 that Judge Lee is going to try this week. It's a civil
16 case so we're kind of running a train on two tracks here.
17 Some of you are going to participate in a criminal trial,
18 some of you are gonna participate in a civil trial.

19 Now, our purpose this morning, ladies and gentlemen,
20 is to determine your qualification and eligibility to
21 serve as jurors. Jury qualification is done in several
22 stages. The first which is known as the roll call stage.
23 In a moment the clerk is gonna call the roll of everyone
24 who was summoned for jury duty. When your name is
25 called, I need you to give us some information that's on,

1 I think you have a little card or something like that, a
2 slip of paper, a small slip of paper that requests
3 certain information of you. The information that we're
4 gonna need is when your name is called, just stand up,
5 give us your name again, let us know where it is that you
6 work, what it is that you do for a living. If you are
7 retired, unemployed, or disabled, let us know what your
8 last job was. If you're married, give us your spouse's
9 name as well. Also let us know what it is that they do
10 for a living and if they're retired, unemployed, or
11 disabled, let us know what their last job was, too,
12 please, okay?

13 For example, if I were summoned for jury duty this
14 week, when my name was called, I would stand up. I would
15 say my name is Frank Addy. I'm a Circuit Judge, employed
16 by the Judicial Branch State of the State of South
17 Carolina. I'm married to Kelly Addy. She's a nurse
18 practitioner who works at South Regional Hospital
19 emergency room in Greenwood, okay? So that's essentially
20 the information that we're gonna need from you in just a
21 few moments.

22 Now as part of the qualification process it's
23 necessary that we administer a very brief oath to you, so
24 if you were summoned for jury duty, please just stand
25 where you are, raise your right hand so that the clerk

1 can give you the oath, all right?

2 (Whereupon, the jury venire was duly sworn by the
3 Clerk of Court at 9:40 a.m.)

4 THE CLERK: Is there anyone that wasn't able to take
5 the oath?

6 (No response.)

7 THE COURT: Have a seat, please. Madam Clerk, if
8 you will please call the roll.

9 (Whereupon, the roll call of the jury venire was
10 conducted by the Clerk of Court.)

11 THE CLERK: Is there anyone's name I did not call?

12 (No response.)

13 THE COURT: All right. Ladies and gentlemen, I now
14 have certain questions that I need to ask you and please
15 understand that these questions determine your general
16 eligibility to serve as jurors. In my experience
17 sometimes when I ask these questions the questions touch
18 on something that may be a little bit personal, something
19 a little bit private, something that you don't feel
20 disclosing in open court. The procedure that I use is if
21 I ask a question and that question applies to you and you
22 need to respond and you're comfortable doing so, I'll
23 simply ask that you stand up after I ask the question and
24 give me that response.

25 However, if any question embarrasses you in even the

1 THE COURT: And you're getting a ten month old?

2 JESSICA LASTINGER: Foster. I'm a foster parent.

3 THE COURT: When are you supposed to pick up that
4 child?

5 JESSICA LASTINGER: Thursday afternoon or Friday
6 morning.

7 THE COURT: You've got enough on your hands. Have a
8 good day. Thanks for being a foster parent. 118 is
9 excused.

10 I find the jury panel is qualified. Ladies and
11 gentlemen, I know that many of you have been sitting out
12 there for in excess of an hour. What I'm going to do is
13 take a brief 20 minute break give or take and I'm going
14 to ask that you be back here in the jury room we'll say
15 about, we're gonna make it a 15 minute break. Be here at
16 about 20 minutes of 11 at that point in time we'll move
17 forward with jury selection on the very first case, okay?
18 So be back in here. We're going by that clock back there
19 on the wall. I don't know how accurate it is. We'll
20 call it for about 15 minutes. Be back in here at 20
21 minutes of 11 and we'll move forward with the jury
22 selection at that point in time, okay? So take a comfort
23 break and I'll see you back here in about 15 minutes.
24 Thanks.

25 (Short break.)

1 BAILIFF: All rise.

2 THE COURT: Thank you. Have a seat please. We'll
3 go back on the record. Solicitor, if you'll proceed with
4 calling the first case up for trial.

5 MS. PATTERSON: Thank you, Your Honor. May it
6 please the Court. Indictment 2017-GS-32-02097, The State
7 of South Carolina versus Rodney Jerome Furtick, criminal
8 sexual conduct first degree. Indictment
9 2017-GS-32-02098, The State of South Carolina versus
10 Rodney Jerome Furtick, burglary first degree.

11 THE COURT: All right. Ladies and gentlemen, we are
12 about to begin jury selection in the case of The State of
13 South Carolina versus Rodney Jerome Furtick. I have been
14 handed two indictments that charge Mr. Furtick with the
15 offenses of criminal sexual conduct and burglary. And at
16 the outset, ladies and gentlemen, I want to let you know
17 that the fact that Mr. Furtick was charged and indicted
18 with these offenses is, of course, not proof in any way,
19 shape, or form of any guilt in this case. Of course, Mr.
20 Furtick has pled not guilty to these charges and that
21 plea puts the burden firmly on the State to prove each
22 and every element of these charges beyond a reasonable
23 doubt.

24 Again, these indictments are nothing more than the
25 formal instrument that contain the charges made against

1 Mr. Furtick and are not in any sense of the word proof of
2 any of the allegations contained in the indictments.

3 Now, ladies and gentlemen, I now have certain
4 questions that I'm going to ask of you and we'll use the
5 same procedure that we used before. If a question
6 applies to you, simply stand and give me a response,
7 okay?

8 Now, ladies and gentlemen, the attorneys, I'm gonna
9 introduce them to you or let them introduce themselves to
10 you in a moment and then I'll ask you whether you have
11 any business, social or personal relationships with any
12 of the lawyers involved. The State of South Carolina is
13 being represented by Suzanne Mayes and Rhonda Patterson.
14 Ms. Patterson, do you want to do the introductions?

15 MS. PATTERSON: Sure, Your Honor. Thank you. My
16 name is Rhonda Patterson. I'm a Senior Assistant
17 Solicitor here in the Eleventh Judicial Circuit. I'll be
18 co-counseled by Deputy Solicitor Suzanne Mayes.

19 THE COURT: Thank you. The defendant in this case,
20 Mr. Furtick, is being represented by Ms. Fullwood and
21 Mr. Robert Madsen. Ms. Fullwood, would you care to
22 introduce yourself and your client and co-counsel,
23 please.

24 MS. FULLWOOD: Thank you, Your Honor. Good morning.
25 I'm Beth Fullwood along with Rob Madsen. We're

1 qualified and were on the jury panel and I do believe
2 that all three were called as prospective jurors for
3 potential service on this jury. One black female was
4 seated. I have no explanation as to why it seems that, I
5 guess the black/white ratio in Lexington County must be
6 much more different than in other parts of the State.
7 That's how the cookie crumbles in this case as well as in
8 the last case I tried so before I bring the jury panel
9 in, let's go ahead and let the jury in this case, I'm
10 gonna let them go and then give them instructions and as
11 far as when to report back. Bring the jury back in on
12 this case.

13 (Whereupon, the jury entered the courtroom at 11:50
14 a.m.)

15 THE COURT: Ladies and gentlemen of the jury, what
16 we're going to do, I have two matters that don't involve
17 this case that I have to hear and then I have a few
18 pretrial matters in this case which with any luck will
19 help expedite the presentation of testimony, so I'm gonna
20 go ahead and let you take a lunch break until 3:00. That
21 will give me a chance to do what I've got to do and I
22 hope to have you hearing this case right around 3:00. If
23 we keep you waiting it's because the motions were taking
24 a little bit longer, the pretrial stuff is taking a
25 little bit longer.

1 When we reconvene, two things to remember. First of
2 all, we're going to be in courtroom 3C. That's on the
3 third floor. The bailiff will tell you, show you, give
4 you instructions. Understand we're gonna have another
5 jury that's gonna also be here and we can't get the
6 juries mixed up, all right? So you guys will be going to
7 the third floor. I think the other case is gonna be
8 tried in this courtroom. We've got lawyers here. So the
9 civil case will be tried in this courtroom so you guys be
10 sure to come to the third floor and not to the fourth
11 floor so that we don't get the two of y'all mixed up.

12 The second thing, I do permit note taking during the
13 course of the trial so if you want note pads, just when
14 you come in let the bailiff know, at 3:00 let the bailiff
15 know and we'll provide some pads to you. I'll give you
16 instructions on note taking.

17 Ladies and gentlemen, throughout the trial of the
18 case it's gonna be a common refrain from me that don't
19 discuss the case, don't talk about the case, and that's
20 because you have to wait until all the evidence has been
21 presented and you have received my instructions on the
22 law so if at any moment in time between now and when the
23 case goes to you for your deliberations, it's very
24 important that you not talk about the case with anyone.
25 So if you happen to go to lunch with a friend, family

1 member, whoever, don't discuss the case. Talk about it
2 as much as you want to after it's all over and said and
3 done, but don't talk about the case. That should be very
4 easy right now. You haven't heard the first witness.
5 You know nothing about this case, all right? 3:00, third
6 floor. Please be back at that point in time. Wear those
7 juror badges back. They will help identify you with
8 security downstairs. Enjoy your lunch. Thank you for
9 your patience and attention on this, all right? You're
10 excused until three.

11 (Whereupon, the jury on the Furtick case was excused
12 for lunch at 11:52 a.m.)

13 (Whereupon, the venire entered the courtroom at
14 11:53 a.m.)

15 THE COURT: Ladies and gentlemen of the jury panel,
16 thank you for your patience. I must now take leave of
17 you. I will be resuming the trial of the case that we
18 just picked the jury on this afternoon. Judge Lee will
19 be coming out here in a few moments to begin jury
20 selection on the civil case she is going to be trying. I
21 will not be seeing you guys again in those formal
22 circumstances but I hope to see you around perhaps
23 Lexington on less formal occasion. All right. So please
24 do give Judge Lee your attention. I want to thank you
25 for your patience here this morning. I want to thank you

1 for your willingness to be drafted and come in here and
2 with that we'll adjourn on the criminal case. If y'all
3 want to move on downstairs, we'll reconvene in courtroom
4 3C, ladies and gentlemen of the jury, and I'll have Judge
5 Lee come in momentarily. See you around. Thank y'all
6 for your attention.

7 * * * * *

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 4th day of November, 2019.

11 I FURTHER CERTIFY that the forgoing 63 pages
12 constitute a true and accurate excerpt record of said
13 proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 11th day of February, 2020.

18

19

20

By: s/Steven E. LeBlanc

21

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

22

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24

25

1 State of South Carolina) Court of General Sessions
2 County of Lexington) Eleventh Judicial Circuit

3
4 State of South Carolina,) Transcript of Record
5 vs.) 2017-GS-32-02097
6 Rodney Jerome Furtick,) 2017-GS-32-02098
7 Defendant.)

8

9

10 November 4th-6th, 2019
11 Lexington, South Carolina

12 B E F O R E:

13 The Honorable Frank Addy, Jr., Judge; and a Jury

14

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

16 Laura Suzanne Mayes, Deputy Solicitor
17 Rhonda Wallace Patterson, Senior Assistant Solicitor

18 On behalf of the State of South Carolina

19 Elizabeth C. Fullwood, Esquire
20 Robert M. Madsen, Esquire

21 On behalf of the Defendant

22

23

24 Stacy S. Johnson, RPR
25 Circuit Court Reporter

I N D E X

WITNESS	PAGE
Jury Selection (Reported by Steve LeBlanc)	
Pretrial Motion(s)	6
Jason Merrill (In-Camera)	
Direct Examination by Ms. Patterson	8
Cross-Examination by Fullwood	20
Redirect Examination by Ms. Patterson	24
Caleb Thomas (In-Camera)	
Direct Examination by Ms. Patterson	26
Cross-Examination by Ms. Fullwood	29
J.H. [REDACTED] (In-Camera)	
Direct Examination by Ms. Patterson	38
Cross-Examination by Ms. Fullwood	46
Examination by the Court	48
Redirect Examination by Ms. Patterson	49
Caleb Thomas (In-Camera)	
Direct Examination by Ms. Patterson	50
Cross-Examination by Ms. Fullwood	54
Edward Huffman (In-Camera)	
Direct Examination by Ms. Patterson	55
Cross-Examination by Ms. Fullwood	59
Rodney Jerome Furtick (In-Camera)	
Direct Examination by Ms. Fullwood	83
Cross-Examination by Ms. Patterson	88
J.H. [REDACTED] (In-Camera)	
Direct Examination by Ms. Patterson	100
April Carter (In-Camera)	
Direct Examination by Ms. Mayes	104
Cross-Examination by Ms. Fullwood	108
John Robert Reese (In-Camera)	
Direct Examination by Ms. Mayes	110
Cross-Examination by Ms. Fullwood	115
Redirect Examination by Ms. Mayes	116
Examination by the Court	117
Jason Merrill (In-Camera)	

1	Direct Examination by Ms. Fullwood	120
	Cross-Examination by Ms. Patterson	123
2	Redirect Examination by Ms. Fullwood	124
3	Opening Statement	
	By Ms. Mayes	143
4	By Mr. Madsen	150
5	J.H. [REDACTED]	
	Direct Examination by Ms. Patterson	153
6	Cross-Examination by Ms. Fullwood	182
	Redirect Examination by Ms. Patterson	190
7		
	April Carter	
8	Direct Examination by Ms. Mayes	194
	Cross-Examination by Ms. Fullwood	205
9		
	John Robert Reese	
10	Direct Examination by Ms. Mayes	207
	Cross-Examination by Ms. Fullwood	223
11	Redirect Examination by Ms. Mayes	225
	Recross Examination by Ms. Mayes	226
12		
	Marilyn Sanchez (In-Camera)	
13	Direct Examination by Ms. Patterson	228
14	Marilyn Sanchez	
	Direct Examination by Ms. Patterson	236
15	Cross-Examination by Ms. Fullwood	242
	Redirect Examination by Ms. Patterson	244
16		
	Jennifer Nguyen	
17	Direct Examination by Ms. Mayes	245
	Cross-Examination by Ms. Fullwood	268
18	Redirect Examination by Ms. Mayes	273
19	Jason Merrill	
	Direct Examination by Ms. Patterson	276
20	Cross-Examination by Ms. Fullwood	302
	Redirect Examination by Ms. Patterson	310
21	Recross Examination by Ms. Fullwood	314
22	Caleb Thomas	
	Direct Examination by Ms. Patterson	316
23	Cross-Examination by Ms. Fullwood	323
24		
25	Darwin Weaver	

1	Direct Examination by Ms. Mayes	324
	Cross-Examination by Mr. Madsen	329
2	Jaclyn McKay	
3	Direct Examination by Ms. Patterson	332
	Cross-Examination by Mr. Madsen	344
4	Samuel Allen Stewart	
5	Direct Examination by Ms. Patterson	346
	Cross-Examination by Ms. Mayes	358
6	Redirect by Ms. Patterson	359
7	Rodney Jerome Furtick	
	Direct Examination by Ms. Fullwood	377
8	Cross-Examination by Ms. Patterson	406
9	Closing Argument	
	By Ms. Patterson	439
10	By Ms. Fullwood	460
	By Ms. Patterson	469
11	Charge of the Court	472
12	Verdict of the Jury	490
13	Post-Trial Motion(s)	494
14	Sentence of the Court	499
15	Certificate of Reporter	501
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	C-1	Note	130	
4	S-1	Photograph	6	179
5	S-2	Photograph	6	179
6	S-3	Advisement of Rights	6	290
7	S-4	DMV Record (J.H. [REDACTED])	15	297
8	S-5	DMV Record (Brian Dean)	17	297
9	S-6	Photo Lineup	41	
10	S-7	Photograph	42	
11	S-8	Photo Enlargement	159	160
12	S-9	Diagram	163	164
13	S-10	Pair of Tights	174	174
14	S-11	Photo Enlargement	177	177
15	S-12	Underwear	262	262
16	S-13	Swabs/Sexual Assault Kit	267	267
17	S-14	Baby Wipes	283	284
18	S-15	Baby Wipes	283	284
19	S-16	Photo Blowup	291	291
20	S-17	Defendant's DNA Standard	329	329
21	S-18	Cutting from Underwear	341	343
22				
23				
24				
25				

1 (The following proceedings were held November 4,
2 2019, beginning at 1:30 PM.)

3 (Whereupon, the jury selection was reported by
4 Circuit Court Reporter Steve LeBlanc during the morning
5 session.)

6 (State's Exhibit Number 1, 2 and 3 were marked for
7 identification.)

8 BAILIFF: All rise.

9 THE COURT: Thank you.

10 Okay. We'll go back on the record, if we may, in
11 the case of the State versus Mr. Furtick, and I do
12 understand that there are a number of motions that the
13 Court needs to address before we begin the trial of the
14 case in earnest; a Jackson v. Denno, a Neil v. Biggers,
15 and maybe some excited utterance-type issues.

16 Is everybody ready to proceed?

17 MS. MAYES: Yes, sir. Other than we had
18 indicated that the excited utterance would be proffered
19 contemporaneously with the witness testimony.

20 THE COURT: Okay. When do you anticipate that
21 witness testifying or those witnesses?

22 MS. MAYES: One potentially -- depending on how
23 late we go today, one potentially this afternoon or in
24 the morning and then the others tomorrow.

25 THE COURT: Okay. All right. Let's go ahead

1 and -- do you have that witness here or are they
2 just supposed to be arriving later?

3 MS. MAYES: We have at least one of those
4 witnesses here.

5 THE COURT: We'll figure out how it goes. Do
6 you want to start with Jackson v. Denno?

7 MS. MAYES: Yes, sir.

8 THE COURT: Anything before we begin from the
9 defense?

10 MS. FULLWOOD: Yes, sir. Before they begin, we
11 move to sequester the witnesses other than those that
12 are allowed to remain in the courtroom under the law.

13 THE COURT: Okay. Who do we have here that we --

14 MS. PATTERSON: We'll just ask that the chief
15 officer, Sergeant Merrill, and the victim remain.

16 THE COURT: Certainly. Not a problem.

17 Anyone else who's a witness, if you'd just step
18 outside. Don't go too far, please. I'll need you
19 shortly.

20 All right. Call your first witness.

21 MS. PATTERSON: Thank you, Your Honor.

22 The State calls Sergeant Jason Merrill.

23 THE CLERK: Raise your right hand, please.

24 (Whereupon, Jason Merrill was duly sworn by
25 the Clerk of Court.)

1 THE CLERK: Thank you. If you'll have a seat,
2 please. State your full name and spell your last for
3 the record.

4 THE WITNESS: My name is Jason Merrill. My last
5 name's spelled M-E-R-R-I-L-L.

6 JASON MERRILL,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION (In-Camera)

9 BY MS. PATTERSON:

10 Q. And, Sergeant Merrill, where are you employed?

11 A. I'm currently employed at the Cayce Department of
12 Public Safety.

13 Q. And what is your position at the Cayce Public Safety
14 Department?

15 A. My current position is I'm a lieutenant and I
16 supervise the investigations division, communications
17 division, and I'm in charge of our hiring and promotion
18 process.

19 Q. And what was your position in November of 2015?

20 A. I was an investigator.

21 Q. And were you assigned to a case involving the
22 Defendant, Rodney Furtick?

23 A. Yes, I was.

24 Q. And did you have an opportunity to speak with
25 Mr. Furtick?

1 A. Yes, I did.

2 Q. And do you know -- first of all, what was the incident
3 date surrounding that investigation?

4 A. I believe that was November 18, 2015.

5 Q. And do you remember what day that you spoke to
6 Mr. Furtick?

7 A. Yes, it was December 10th of 2015.

8 Q. Was anyone with you when you spoke to him?

9 A. Yes, Investigator Caleb Thomas was present at the
10 interview.

11 Q. And where did the interview take place?

12 A. At the Cayce Department of Public Safety headquarters'
13 interview room.

14 Q. And at the time you spoke to him, was this still an
15 open investigation?

16 A. Yes, it was.

17 Q. Did you have any warrants on Mr. Furtick?

18 A. No, I did not.

19 Q. Was he under arrest at this time?

20 A. No, he was not.

21 Q. What was your purpose in wanting to speak with him?

22 A. To gather more information as part of this open and
23 active investigation.

24 Q. Was he a person of interest?

25 A. Yes, he was.

1 Q. And at the time that you spoke to him, was he in
2 custody?

3 A. Yes, he was in custody for an unrelated charge.

4 Q. All right. And do you remember what time of the day
5 it was that you met with Mr. Furtick?

6 A. Yes, it was approximately 10:20 in the morning.

7 Q. And I'm gonna show you what's been marked as State's
8 Exhibit Number 3 for ID only right now. Do you recognize
9 what I've just handed up to you?

10 A. Yes, I do.

11 Q. And what is that?

12 A. It is an advice of rights form that the Cayce
13 Department of Public Safety uses.

14 Q. Okay. And who did you use that advice of rights form
15 on?

16 A. I used it during my interview with Mr. Rodney Furtick.

17 Q. And at the top of that form there's some information
18 that's filled out. Who filled out that top portion?

19 A. I did.

20 Q. And who did you get that information from?

21 A. Most of this would have been gotten from the
22 Defendant, Mr. Furtick, or whoever I was interviewing at
23 the time.

24 Q. And what type of information is contained on that
25 form?

1 A. Basic biographical information including name, age,
2 address and the highest level of education that that
3 person's received.

4 Q. And beside his name, how old did Mr. Furtick say he
5 was?

6 A. Forty-seven.

7 Q. And what was the address?

8 A. [REDACTED] Allen Street, Apartment [REDACTED], in Cayce, South
9 Carolina.

10 Q. And what was the latest grade level that he indicated
11 he completed?

12 A. Eleventh grade.

13 Q. Now other than that information, did you provide him
14 his rights?

15 A. Yes, I did.

16 Q. And how was it that you presented his rights to him?

17 A. I read them verbatim off the form.

18 Q. Did you ask him before you read him his rights if he
19 could read or write?

20 A. Yes, I did.

21 Q. And what did he indicate?

22 A. He indicated that he could read and write.

23 Q. And can you read for the Court on the record each
24 right that you provided to Mr. Furtick?

25 A. Certainly. Number one, I have the right to remain

1 silent. That means I do not have to say anything or answer
2 any questions. Two, anything I say can be used against me
3 in a court of law. Three, I have the right to talk to a
4 lawyer and to have a lawyer with me now and to advise me
5 before and during questioning. Four, if I want to have a
6 lawyer with me before and during questioning but cannot
7 afford to pay a lawyer, one will be provided to me at no
8 cost before and while I'm questioned. Five, if I decide to
9 answer questions now without a lawyer here, I still have
10 the right to stop answering questions whenever I want to.
11 Six, I also have the right to stop answering questions
12 until I've talked to a lawyer.

13 Q. And did you ask Mr. Furtick if he understood each
14 right?

15 A. Yes.

16 Q. And did he indicate a -- did he indicate he had any
17 problems understanding each right?

18 A. He did not indicate that he had any problems
19 understanding and didn't have any questions.

20 Q. And on this form beside each right that you read, what
21 are those letters?

22 A. Those are the initials that were marked there by
23 Mr. Furtick.

24 Q. And do you remember at what point you had him mark his
25 initials?

1 A. Yes. After we went through the rights and I read them
2 to him, I asked him to place his initials next to them
3 indicating he understood and didn't have any questions
4 about those rights.

5 Q. And this -- and after the line six is a portion on the
6 form that's labeled waiver of rights. Can you read that to
7 the Court?

8 A. Yes. It says I understand my rights as explained to
9 me by Officer Merrill. I now state that I do wish to
10 answer questions at this time and that I do not wish to
11 have a lawyer here before or during questioning. My
12 decision to answer questions now without a lawyer is made
13 freely and is my own choice. No one has threatened or
14 coerced me in any way or promised me special treatment.
15 To show my decision, I am signing my name in the space
16 below.

17 Q. And was Mr. Furtick able to sign his name in the space
18 below?

19 A. Yes, he was.

20 Q. And also out beside that line what is the time that's
21 indicated?

22 A. 10:21.

23 MS. PATTERSON: And, Your Honor, at this time I
24 move State's Exhibit Number 3 into evidence -- well,
25 for purposes of this hearing.

1 THE COURT: All right. I'll review it for purposes
2 of this hearing, but I'm assuming that -- assuming that
3 the Court finds that the jury should hear about the
4 underlying statement from the Defendant, I think you're
5 probably better off to move it into evidence when the
6 jury is here, so that's where we stand.

7 MS. PATTERSON: Yes, sir.

8 BY MS. PATTERSON:

9 Q. And, Sergeant Merrill, after you read the rights and
10 after Mr. Furtick signed his waiver of rights, did you, in
11 fact, speak to him?

12 A. Yes, I did.

13 Q. And did you force him to speak with you?

14 A. No, I did not.

15 Q. Did you threaten him?

16 A. No.

17 Q. Did you or Mr. -- or Investigator Thomas make any
18 promises to him?

19 A. No, we did not.

20 Q. Now did you inform Mr. Furtick the purpose of your
21 meeting with him?

22 A. Yes, I did.

23 Q. And what did you tell him?

24 A. I told him that we'd like to speak to him about an
25 incident that occurred on November 18, 2015, at [REDACTED] Julius

1 Felder Street.

2 Q. And did you tell him the nature of that incident?

3 A. In general, yes.

4 Q. And what did you tell him?

5 A. I told him that we were investigating a criminal
6 incident that occurred involving a possible trespassing
7 and/or assault.

8 Q. Okay. And did you ask him if he knew the victim,

9 J.H. [REDACTED]

10 A. Yes, I did.

11 Q. And how did you go about asking him if he knew

12 J.H. [REDACTED]

13 A. I showed him a picture of the victim, J.H. [REDACTED] and
14 also referred to her by name.

15 Q. And I apologize. Do you have that picture?

16 (State's Exhibit Number 4 was marked for
17 identification.)

18 BY MS. PATTERSON:

19 Q. And I'm gonna show you what's been marked as State's
20 Exhibit Number 4 for ID only at this point. Do you
21 recognize what I've just handed up to you?

22 A. Yes, I do.

23 Q. And what is that?

24 A. It is a printout from the South Carolina DMV system
25 of a driver record for J.H. [REDACTED] that bears a

1 picture of her, as well as some biographical information.

2 Q. All right. And was that used in your interview with
3 Mr. Furtick?

4 A. Yes, it was.

5 Q. And how did you present that to him?

6 A. I folded it to hide the victim's date of birth, but I
7 still left the name and address visible, and then I handed
8 it to him so he could look at it.

9 Q. Okay. And does it look like it's been changed or
10 altered in any way?

11 A. No, it does not.

12 Q. Okay. And when you presented that picture to him, did
13 you let him hold the picture or did you hold it up? How
14 did that play out?

15 A. I would have let him hold it. Either placed it in
16 front of him and let him pick it up or -- I can't remember
17 if I handed it to him directly or he picked it up off the
18 table, but he did end up holding it and looking at it for
19 several moments.

20 Q. And what, if anything, was his response about knowing
21 her?

22 A. He denied knowing her or recognizing her picture.

23 Q. And did you show him anything else?

24 A. Yes, I also showed him a picture and gave him the
25 name of Brian Dean, who was the victim's husband at the

1 time.

2 Q. And do you have that photograph?

3 A. Yes.

4 (State's Exhibit Number 5 was marked for
5 identification.)

6 BY MS. PATTERSON:

7 Q. I'm gonna show you what's been marked as State's
8 Exhibit Number 5 for ID only. Do you recognize what I
9 handed you?

10 A. Yes, I do.

11 Q. And what is that?

12 A. It is a similar DMV driver record bearing a picture of
13 Brian David Dean, as well as some biographical information
14 from him, from the South Carolina DMV files.

15 Q. Okay. And did you use that in your interview with
16 Mr. Furtick?

17 A. Yes, I did.

18 Q. How would you have presented that to him?

19 A. The same way as Mrs. Dean. Folded it to conceal some
20 of the information and then either placed it down in front
21 of the Defendant or handed it to him. I can't remember
22 which exactly, but...

23 Q. And what, if anything, did he indicate about knowing
24 Mr. Dean?

25 A. He did not recognize Mr. Dean either by name or by

1 sight.

2 Q. And, again, what did you tell him about the alleged
3 incident?

4 A. That it was a criminal investigation that we were
5 conducting that occurred on November 18th of 2015 at
6 [REDACTED] Julius Felder Street in Cayce.

7 Q. Did he seem familiar with that address?

8 A. Yes, he did. And I state that based on he didn't ask
9 any clarifying questions about exactly which house it was
10 or ask us to describe it much further. He -- he seemed to
11 know which house we were talking about.

12 Q. Okay. And did you ask him about his presence in that
13 house?

14 A. Yes, I did.

15 Q. And what did you ask him?

16 A. If there was any reason that his DNA would be found in
17 that house.

18 Q. And what did he -- did he respond to you?

19 A. Yes, he did.

20 Q. And what did he say?

21 A. He responded with an emphatic no.

22 Q. Did he state anything about being in that house
23 previously?

24 A. Yes, he did mention, if I recall correctly, I'll refer
25 to my notes, that he recalls walking past that house in the

1 past, but hasn't been inside of it for at least the past
2 several months.

3 MS. PATTERSON: I beg the Court's indulgence,
4 Your Honor.

5 THE COURT: Yes, ma'am.

6 BY MS. PATTERSON:

7 Q. And when you first started speaking to Mr. Furtick,
8 that address that he gave you as his residence, do you
9 know if that address is in proximity to the incident
10 location?

11 A. Yes, it is. It's actually right around the corner
12 from the incident location.

13 Q. And about -- are you familiar with that residence?
14 What type of residence is that?

15 A. The incident location?

16 Q. The incident location.

17 A. It's a duplex-type residence where there's a left-hand
18 and a right-hand apartment if you're facing it from the
19 street.

20 Q. And do you know if there have been other residents
21 living at that location -- a lot of other residents living
22 at that location previously before this incident?

23 A. I don't have specific information, but based on
24 general knowledge that it seemed -- people seemed to come
25 and go from that residence every so often as people -- it

1 was a rental unit, so people came and went probably every
2 six months to a year as leases got renewed or didn't get
3 renewed.

4 Q. Okay. And were there a lot of duplexes on that
5 street?

6 A. Not on that street, no.

7 Q. Okay. And about how long was your interview with
8 Mr. Furtick?

9 A. Roughly ten to twelve minutes give or take.

10 Q. And who ended the interview?

11 A. Mr. Furtick did.

12 Q. And did you attempt to speak with him after he ended
13 the interview?

14 A. No, I did not.

15 MS. PATTERSON: I beg the Court's indulgence once
16 more.

17 THE COURT: Yes, ma'am.

18 MS. PATTERSON: No further questions, Your Honor.

19 THE COURT: Ms. Fullwood.

20 MS. FULLWOOD: Thank you, Your Honor.

21 CROSS-EXAMINATION (In-Camera)

22 BY MS. FULLWOOD:

23 Q. Good afternoon, Detective Merrill.

24 A. Good afternoon.

25 Q. When you talked to Mr. Furtick, were you wearing a

1 body camera?

2 A. No, I was not.

3 Q. When you talked to him, did you use any video or audio
4 recording device to capture your conversation?

5 A. No, I did not.

6 Q. He was there for a municipal hearing?

7 A. That is my understanding, yes.

8 Q. And do you remember the nature of that municipal
9 hearing?

10 A. I do not.

11 Q. You just knew he was there?

12 A. Yes.

13 Q. Who had let you know?

14 A. I believe in our records management system I was
15 able to look up that he had a court appearance, but I
16 don't remember specifically how I would have got that
17 information.

18 Q. Now you read his rights to him, didn't you?

19 A. Correct.

20 Q. And that was because he told you that he didn't have
21 his glasses and he couldn't see well enough to read the
22 writing, correct?

23 A. Correct. That is one reason why I read it to him.

24 Q. Okay. And when you showed him the pictures of the
25 Deans, he also said I don't have my glasses, so I really

1 can't see the pictures well, didn't he?

2 A. I don't remember him using those exact words. He did
3 make another comment about having reading glasses, but
4 while he was looking at the pictures he seemed to be able
5 to focus on them fine and he -- he never indicated to me
6 that I recall that he said I couldn't see the pictures. He
7 never said those words.

8 Q. Now doesn't your report state that he referred to his
9 glasses while he was looking at the pictures?

10 A. I believe so, which is what I just said. He did make
11 another comment about the glasses, but what I'm saying is I
12 don't recall him stating at any point that he couldn't see
13 the pictures.

14 Q. All right. Now you asked him about the house on
15 Julius Felder -- is it drive?

16 A. Street, I believe.

17 Q. Street. Okay. And that's a residential area, isn't
18 it?

19 A. That is correct.

20 Q. And the houses on that street are relatively small,
21 correct?

22 A. In general, yes.

23 Q. And they're relatively close together, correct?

24 A. Some of them, yes.

25 Q. Yes. Did you ever show him a picture of that house?

1 A. No, I did not.

2 Q. After Mr. Furtick's arrest, you provided the
3 solicitor's office with what we call discovery materials,
4 correct?

5 A. I didn't, no.

6 Q. Somebody did?

7 A. Yes.

8 Q. Okay. And did you have no part in -- in putting that
9 together?

10 A. Actually, no, I did not because at that time I had
11 been reassigned to the patrol division, so the case had
12 been handed off to a different investigator at that time
13 who would have put together the case file.

14 Q. Okay. Have you seen the case file in preparing for --

15 A. Yes.

16 Q. -- the trial of this case?

17 A. Yes.

18 Q. And it's -- the case file is divided into sections,
19 correct?

20 A. Yes.

21 Q. With boldface type dividing and explaining what each
22 following pages are gonna deal with, right?

23 A. I remember seeing those pages you're talking about.
24 I didn't quite follow what they were indicating.

25 Q. Okay. And the page that concerned Mr. Furtick's

1 alleged statement to you states suspect did not give
2 Merrill a statement. Do you remember seeing that?

3 A. Not specifically, but, I mean, if you're saying it's
4 there, I'm not gonna dispute that.

5 Q. Yeah. Okay.

6 MS. FULLWOOD: I beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 BY MS. FULLWOOD:

9 Q. Going back to Julius Felder Drive, there's a lot of
10 foot traffic on that street; is that right?

11 A. That's a fair statement. There's -- at certain points
12 during the day there's some foot traffic.

13 Q. People going back and forth and doing whatever they
14 do; is that correct?

15 A. It would not be unusual to see people out walking.

16 Q. Okay. All right.

17 MS. FULLWOOD: No further questions.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION (In-Camera)

20 BY MS. PATTERSON:

21 Q. Sergeant Merrill, did Mr. Furtick indicate that he
22 walked by that residence a lot?

23 A. Yes, he did. Referring back to my notes, he indicated
24 he walked by it all the time, but had not been inside of
25 that house within at least the past several months is the

1 wording he used.

2 Q. And the notation that Ms. Fullwood would have asked
3 you about, about him not giving a statement, would that
4 have been a written or oral statement?

5 A. That would be -- my presumption is he didn't provide a
6 written statement or there was no video or audio statement,
7 so, therefore, I don't take this to mean that he didn't
8 give any statement at all. It just meant there was nothing
9 written to put in the file to accompany that other than the
10 Miranda form.

11 MS. PATTERSON: Thank you. No further questions.

12 THE COURT: Thank you. You can step down.

13 Would you mind letting me see those exhibits,
14 please.

15 THE WITNESS: (Handing.)

16 (Witness excused.)

17 THE COURT: All right. Any additional witnesses
18 on this issue?

19 MS. PATTERSON: Yes, sir. We're gonna call
20 Investigator Cal Thomas.

21 THE CLERK: Raise your right hand, please.

22 (Whereupon, Caleb Thomas was duly sworn by the
23 Clerk of Court.)

24 THE CLERK: If you'll have a seat and state your
25 name, please, for the record.

1 THE WITNESS: My name's Investigator Cal Thomas
2 with the Cayce Police Department.

3 CALEB THOMAS,
4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION (In-Camera)

6 BY MS. PATTERSON:

7 Q. And, Investigator Thomas, how long have you been
8 employed with the Cayce Police Department?

9 A. A little over eleven years.

10 Q. And what was your position during November of 2015?

11 A. I was an investigator assigned to the investigative
12 unit at the Cayce Police Department.

13 Q. And did you assist Sergeant Merrill in interviewing
14 the Defendant, Rodney Furtick?

15 A. I did.

16 Q. And do you remember what day the interview took
17 place?

18 A. The interview took place on December 10, 2015.

19 Q. And why were you present for the interview?

20 A. I was assisting Sergeant Merrill and it was -- he
21 was the investigator assigned to the case and I would
22 have been in the room as a witness also to assist with
23 the interview.

24 Q. And was that protocol with the Cayce Police Department
25 to have two officers present?

- 1 A. Yes, ma'am.
- 2 Q. And who read -- was Mr. Furtick's rights read to him?
- 3 A. Yes, they were.
- 4 Q. And who would have presented those rights to him?
- 5 A. Sergeant Merrill.
- 6 Q. And did you witness Sergeant Merrill advising
- 7 Mr. Furtick of these rights?
- 8 A. I did.
- 9 Q. Okay. And was it your impression that Mr. Furtick
- 10 understood his rights?
- 11 A. Yes.
- 12 Q. Did he ask you or Sergeant Merrill to clarify any of
- 13 the rights?
- 14 A. No, he did not.
- 15 Q. Did he indicate that he did not understand the rights?
- 16 A. No, he did not.
- 17 Q. Did either of you force Mr. Furtick to speak with you?
- 18 A. No, ma'am.
- 19 Q. Did either of you threaten him to speak with you?
- 20 A. No, we did not.
- 21 Q. Did you-all make any promises or hope of reward for
- 22 him to speak to you?
- 23 A. No, ma'am.
- 24 Q. And after his rights were read to him, did he, in
- 25 fact, speak to you-all?

1 A. He did agree to speak. He waived his rights, also
2 signed the form, and agreed to answer questions.

3 Q. Did you have any problems understanding his speech?

4 A. I did not.

5 Q. Did he appear to be under the influence of any drugs
6 or alcohol?

7 A. No, ma'am.

8 Q. What, if anything, did he say about knowing the
9 victim, J.H. [REDACTED]

10 A. He stated that he didn't know who that was.

11 Q. What, if anything, did he say he knew about the
12 victim's husband, Brian Dean?

13 A. He denied knowing him as well.

14 Q. And what, if anything, did he -- did you-all inform
15 him about the incident location?

16 A. We did.

17 Q. And what do you remember about that description of
18 the incident location?

19 A. It was -- he was given the address and we also gave
20 a description of it because Mr. Furtick's from the area,
21 so we described where it was on Julius Felder Street and
22 we also described it physically. Like the duplex that's
23 down there, the gray cinderblock duplex.

24 Q. And did he seem familiar with that address and that
25 residence?

1 A. Yes, ma'am.

2 Q. Did he ask any other clarifying questions of that
3 residence?

4 A. No, ma'am.

5 Q. And what, if anything, did he say about being in that
6 residence?

7 A. He denied being in the residence.

8 Q. And did either you or Sergeant Merrill force him to
9 speak further with you?

10 A. No, ma'am.

11 MS. PATTERSON: No further questions, Your Honor.

12 THE COURT: Ms. Fullwood.

13 MS. FULLWOOD: Thank you, Your Honor.

14 CROSS-EXAMINATION (In-Camera)

15 BY MS. FULLWOOD:

16 Q. Mr. Thomas, what notes were you looking at to refresh
17 your memory?

18 A. The advice of rights form that was filled out by
19 Sergeant Merrill and witnessed by myself.

20 Q. Did you take any of your own notes during this
21 interview?

22 A. I did not.

23 Q. Did you write your own report concerning this
24 interview?

25 A. I did not.

1 Q. Okay. And this conversation wasn't video recorded
2 or audio recorded, correct?

3 A. Not to my knowledge, no.

4 Q. Okay.

5 MS. FULLWOOD: I beg the Court's indulgence.

6 No further questions.

7 THE COURT: All right, sir. You can step down.

8 Thanks.

9 (Witness excused.)

10 THE COURT: Anything else, Solicitor?

11 MS. PATTERSON: That's all the witnesses the
12 State has.

13 THE COURT: Your position, Ms. Fullwood?

14 MS. FULLWOOD: First of all, nothing that he said
15 was incriminating. Now I understand that they want to
16 put them in evidence to contradict some of the physical
17 evidence that's going to be -- you know, arise at trial
18 and the testimony. I would say though that there's a
19 genuine question of whether or not Mr. Furtick truly
20 understood who he was being asked to identify as to
21 whether or not he knew them due to the fact that he
22 did not have his reading glasses. I know being of
23 a certain age that sometimes you can't see much of
24 anything without using those readers. These pictures
25 that were shown to him were not very large, they're not

1 that defined. They're just highway department pictures,
2 so I think there's a genuine question of whether he
3 could have -- he was physically capable of accurately
4 responding to the questions.

5 A cinderblock duplex on Julius Felder Street is
6 -- again, that's not very specific, so I think there's
7 a genuine question of whether he understood what he was
8 being asked to tell them and in that way the statement
9 couldn't be considered voluntary when he was physically
10 unable to do what he was asked to do.

11 THE COURT: All right.

12 The threshold question for the Court is obviously
13 whether or not his rights were read to him and whether
14 any threats were made or any promises made. From a
15 review of State's 3, it would appear that the Defendant
16 was advised at the very least orally of his rights and
17 he signed next to each of the six items that the officer
18 read off to him as it relates to his rights. I think
19 the Court would note that there do not appear to be any
20 threats or promises of leniency from the officer who
21 was questioning Mr. Furtick.

22 The Court would find that the State has met its
23 burden of demonstrating his rights were read to him.
24 I think that your argument that his lack of reading
25 glasses made a difficulty in identifying the photos or

1 relating to the incident location, that that probably
2 goes more to the weight as opposed to the knowing waiver
3 of his Miranda rights, so the Court will conclude that
4 the State can certainly elicit that testimony regarding
5 the Defendant's statement.

6 So that these don't get misplaced, Solicitor, I'm
7 gonna let you-all -- since they're not back in evidence,
8 I'm gonna let you-all have these back.

9 MS. PATTERSON: Yes, sir. Thank you.

10 THE COURT: Madam Clerk, I'm gonna give you the
11 warrants back, too, so they don't get misplaced.

12 All right. There was a Neil v. Biggers showup in
13 this case? No, it wasn't a showup. It was a photo
14 lineup. Do we need to address that at this point in
15 time or how would you-all like to deal with that?

16 Do you have a preference, Ms. Fullwood?

17 MS. FULLWOOD: Well, I learned just shortly before
18 we went back in session this afternoon that at this
19 point there is a one-photo lineup that has been shown
20 to J.H. [REDACTED] within the past twenty-four hours, I think,
21 and so I guess we should go ahead and get that out of
22 the way.

23 THE COURT: Okay. Do you-all want to speak to
24 that?

25 MS. PATTERSON: Yes, sir.

1 Your Honor, just to give you a little bit of
2 background about the case, the incident did occur
3 November 18, 2015. Shortly thereafter the victim
4 moved away to New York. In preparing for this case,
5 she has -- well, she has since moved to Sheboygan,
6 Wisconsin. So in preparing for this case, we pretty
7 much did it over the phone. So she got in yesterday.
8 We talked about the photo lineup that she had done with
9 law enforcement on the day after the incident, which
10 was a little different -- the pictures were a little
11 different than what she had known the Defendant to
12 look like. The pictures in that photo lineup, the
13 people, they had hair, they had glasses on. She didn't
14 know the Defendant to look like this, but she's always
15 -- in fact, she told law enforcement during that hearing
16 if Number 2 did not have hair, that would be him. She's
17 always maintained she knew him, she knew what he looked
18 like and she would be able to identify him. So when she
19 got here yesterday in preparation of trial prep, I asked,
20 again, would she be able to recognize him without the
21 hair, without the glasses; she indicated she would. I
22 did present her with this photograph which was taken
23 like two or three weeks after the incident and she stated
24 this is what she knew him to look like. She gave law
25 enforcement not only the first name that she knew, but

1 the description of him physically. And this morning
2 when she came into the courtroom for jury selection,
3 Your Honor, she indicated, again, that she knew him and
4 she looked at him and informed my victim's advocate.
5 She said that's Rodney, isn't it? And she said when he
6 walked in and out of the courtroom, she recognized his
7 walk, his mannerisms because she'd repeatedly seen him
8 walking up and down the street and, of course, walking
9 -- I mean, presenting at her house.

10 So those -- the single photo lineup, Your Honor,
11 and this morning during court, those are the other
12 identifications that the victim was presented with.

13 THE COURT: All right. Can I see the six-photo
14 lineup and also the photograph of the Defendant that
15 was taken shortly after he was arrested?

16 MS. PATTERSON: Yes, sir, Your Honor.

17 THE COURT: On the advisement of rights form, I
18 think the Defendant was approximately forty-seven when
19 he was interviewed. Do you know when this photo was
20 taken, Solicitor, just so that I've got some point of
21 reference in terms of how much time had passed?

22 MS. PATTERSON: SLED put that together for the
23 Cayce Public Safety and they didn't indicate when that
24 picture would have been taken. We kind of looked at
25 some pictures and we were trying to guess and it looked

1 -- looked like that was taken years and years ago.

2 THE COURT: Okay. It's obvious that the
3 individuals that are in the six-pack lineup, they're
4 wearing street clothes, so they're not wearing the usual
5 orange or black garb that you would use for a mugshot
6 nowadays. But SLED prepared this?

7 MS. PATTERSON: Yes, sir.

8 THE COURT: Okay. Do you anticipate that SLED
9 agent testifying? Maybe they could --

10 MS. PATTERSON: No, sir, I wasn't gonna call him.

11 THE COURT: Okay.

12 All right. Ms. Fullwood, I assume that you're
13 essentially arguing that the -- showing the Defendant's
14 arrest photo from three or four years ago, that that
15 would taint any in-court identification. Do we need to
16 take testimony from her or do we need to -- how do you
17 wish to proceed?

18 MS. FULLWOOD: Yes, sir. I am not sure we need to
19 take testimony, but, yeah, I mean, that's inherently
20 suggestive, all right? One person in a jail jumpsuit,
21 nobody else to choose from, and it's a picture of a
22 person that was in the original six-pack, even though
23 it's a photo that's taken later in time, and then her
24 seeing him in the courtroom, well, first of all, who
25 else would he be except the person on trial. And, of

1 course, he looks like the man whose picture she just
2 saw the day before, so, again, that in-court -- in the
3 courtroom sort of identification was unduly suggestive.

4 So I'd ask the Court to suppress yesterday's
5 identification with the single photograph and I'd ask
6 the Court to suppress as unduly suggestive also today's
7 in-court identification and then, of course, suppress
8 any in-court identification during the course of the
9 trial.

10 Furthermore, Your Honor, concerning that single
11 photograph, it is inadmissible into evidence because
12 it is a man in a jumpsuit.

13 THE COURT: I agree with you there.

14 MS. PATTERSON: And we were -- we were not gonna
15 admit that picture, Your Honor. We just wanted to let
16 them know that we had presented that picture during
17 trial prep yesterday.

18 THE COURT: All right. Ms. Patterson, do you-all
19 want to call the victim to address this? That could be
20 relevant to the Neil v. Biggers situation. And, again,
21 why wasn't -- maybe I missed it, but why exactly was it
22 that you-all showed her that photograph yesterday? Did
23 you feel a need to show her the photograph?

24 MS. PATTERSON: Well, we just -- we were just
25 trying to clarify. The first -- the initial

1 identification, the six-pack, she -- it's my position
2 she made that identification when she said if he didn't
3 have -- if he didn't have hair, it would be Number 2
4 because that would be the Defendant.

5 THE COURT: So clearly the person who assaulted
6 her was bald is what you're saying?

7 MS. PATTERSON: Yes, sir.

8 THE COURT: Okay.

9 MS. PATTERSON: And she also has indicated -- just
10 in her description to law enforcement and to everybody
11 else who she described the suspect as being, she never
12 indicated -- she never saw him wearing glasses and that
13 person in that photograph also had on glasses.

14 THE COURT: All right. I'm happy to proceed
15 however you want to. If you want to call her, that's
16 fine.

17 MS. PATTERSON: Yeah, I'll call her, Your Honor.

18 THE COURT: Go ahead then.

19 MS. PATTERSON: The State calls J.H. [REDACTED]

20 (Whereupon, J.H. [REDACTED] was duly sworn by
21 the Clerk of Court.)

22 THE CLERK: If you-will have a seat over there.
23 If you'll state your name and spell your last, please.

24 THE WITNESS: My name is J.H. [REDACTED] It was J.H. [REDACTED]
25 [REDACTED] spelled D-E-A-N.

1

J.H.

2

having been duly sworn, testified as follows:

3

DIRECT EXAMINATION (In-Camera)

4

BY MS. PATTERSON:

5

Q. And, J.H. do you remember talking to law enforcement after you were assaulted in -- on November 18th of 2015?

7

8

A. Yes, ma'am.

9

Q. And did you know the person who assaulted you?

10

A. Yes, ma'am.

11

Q. And did you know the full name of the person who assaulted you?

12

13

A. No, ma'am.

14

Q. And did you know any -- any name of the person who assaulted you?

15

16

A. He always changed the name that he introduced himself with.

17

18

Q. And what names did you know him as?

19

A. He would say Todd, once he said Rodney, and then there was another one, he said Rick.

20

21

Q. Now did you know what this person looked like?

22

A. Yes, ma'am.

23

Q. And if you saw the person, would you know him?

24

A. Yes, ma'am.

25

Q. And when did you meet this person?

1 A. When my husband introduced us. My ex-husband
2 introduced us.

3 Q. And about how long had you known him before the
4 assault took place?

5 A. Probably since the beginning of October.

6 Q. And about how often would you see him?

7 A. Once or twice a week. He would come over to the
8 house with my husband, but I always saw him walking around
9 town.

10 Q. So in addition to the times he would come to your
11 house, you also saw him walking?

12 A. He would walk like in a square around town.

13 Q. And prior to the evening when you were assaulted,
14 when was the last time you saw -- saw him?

15 A. That morning.

16 Q. And where did you see him?

17 A. At the front door or back door. At one of the doors
18 to the apartment.

19 Q. And would this have been your apartment?

20 A. Yes.

21 Q. And when you saw him that day, did you have a
22 conversation with him?

23 A. Yes, I did. I told him that he wasn't allowed -- he
24 wasn't wanted in the house.

25 Q. And when you were assaulted by him, where were you?

1 A. In my daughter's room.

2 Q. And when he entered the house, were you able to see
3 him?

4 A. Yes.

5 Q. You recognized him by sight?

6 A. Yes, ma'am.

7 Q. And did -- was anything covering his face or anything?

8 A. No, ma'am.

9 Q. Do you have any doubt who he was?

10 A. No, ma'am.

11 Q. And for the purposes of this hearing I won't ask you
12 the details of your assault, but during the assault was he
13 close to you?

14 A. Yes, ma'am.

15 Q. And do you remember the police officers showing you
16 a photo lineup the day after your assault?

17 A. Yes, ma'am.

18 MS. PATTERSON: Your Honor, may I approach and
19 get that?

20 THE COURT: Certainly.

21 BY MS. PATTERSON:

22 Q. Now were you -- before the photo lineup was shown
23 to you, were you able to give law enforcement a description
24 of this person?

25 A. Yes, ma'am.

1 Q. And what did you describe this person as looking like?

2 A. He was bald with a darker skin tone. He had a
3 muscular build. He was about five-ten. About my husband's
4 height.

5 Q. Okay. And had you ever seen this person with
6 glasses?

7 A. No, ma'am.

8 Q. Had you ever seen this person with hair?

9 A. No, ma'am.

10 (State's Exhibit Number 6 was marked for
11 identification.)

12 BY MS. PATTERSON:

13 Q. And, J.H. [REDACTED] I'm gonna show you what's been marked
14 as State's Exhibit 6 just for ID and ask you to take a
15 look at that. Do you recognize what I just passed up to
16 you?

17 A. Yes, ma'am.

18 Q. And what do you recognize that to be?

19 A. That's the lineup that the policeman showed me the day
20 after.

21 Q. Now when law enforcement showed you that lineup, what,
22 if anything, did you say about any of those people in the
23 lineup?

24 A. I kind of pointed to the second one and said it looks
25 like him, but he didn't have any hair, and I don't remember

1 seeing him with glasses.

2 Q. Okay. And did you make a -- did you circle anybody or
3 anything?

4 A. I -- I can't remember if I did.

5 Q. But you remember pointing that person out in that
6 lineup and saying that statement?

7 A. Yes, ma'am.

8 Q. And you got into town yesterday?

9 A. Yes, ma'am.

10 Q. And you came up to the office and you met with me and
11 my staff?

12 A. Yes, ma'am.

13 Q. And when you got here, were you shown just a picture
14 of someone?

15 A. Not until after we had started talking and I gave you
16 the description again.

17 Q. Okay. And were you still able to remember what that
18 person looked like that assaulted you?

19 A. Yes, ma'am.

20 Q. And --

21 (State's Exhibit Number 7 was marked for
22 identification.)

23 BY MS. PATTERSON:

24 Q. And I'm gonna show you State's Exhibit Number 7, and
25 is that the picture that you saw yesterday?

- 1 A. Yes, ma'am.
- 2 Q. And did you recognize that person?
- 3 A. Right away, ma'am.
- 4 Q. And who did you identify that person to be?
- 5 A. As Rodney, as the man who assaulted me.
- 6 Q. And in that photograph, is that person -- how was the
- 7 hair styled?
- 8 A. Bald. He had no hair.
- 9 Q. And is he wearing glasses?
- 10 A. No, ma'am.
- 11 Q. And is that the way that you remember this Rodney who
- 12 assaulted you to look like?
- 13 A. Yes, ma'am.
- 14 Q. And this morning when you walked into the courtroom,
- 15 you indicated that that was Rodney when you saw him
- 16 upstairs in that other courtroom?
- 17 A. Yes, ma'am.
- 18 Q. And how was that you were able to recognize him?
- 19 A. When -- when he looked towards where I was sitting,
- 20 I just -- it just clicked.
- 21 Q. And what clicked about the way his appearance looked?
- 22 A. It was more of the way that he was sitting and that
- 23 he was just -- it was his mannerisms.
- 24 Q. Okay. And you were familiar with his mannerisms?
- 25 A. Yeah, the way he moved.

1 Q. And you had the opportunity to see him walk in and
2 out of that courtroom upstairs?

3 A. Uh-huh.

4 Q. And were you familiar with the way he walked or
5 anything?

6 A. It was -- it's very distinctive. I remember it from
7 just watching him follow -- walk around -- around the town,
8 around the neighborhood.

9 Q. And so, J.H. despite you seeing a picture of Rodney
10 yesterday and seeing him when you walked into court today,
11 are you still able to recognize what he looked like?

12 A. Yes, ma'am.

13 Q. And you're still able to point him out in the court
14 today?

15 A. Yes, ma'am.

16 Q. And do you see him in this courtroom today?

17 A. Yes, ma'am.

18 Q. And where he is?

19 A. He's over there.

20 Q. And what is he wearing?

21 A. A white shirt.

22 Q. Anything else about his appearance?

23 A. He's got -- he's wearing glasses today and he's got
24 a tie on.

25 Q. And are you certain that that's the person --

1 A. Yes, ma'am.

2 Q. -- that you knew?

3 A. It is.

4 Q. And who attacked you?

5 A. Yes, ma'am.

6 MS. PATTERSON: I beg the Court's indulgence.

7 BY MS. PATTERSON:

8 Q. And prior to the date that he assaulted you, just to
9 clarify it, how many times had you interacted with him?

10 A. It was mostly my husband that interacted with him.
11 I -- like I said, I was introduced to him and he came
12 over to the house and hung out with my husband a couple
13 of times.

14 Q. So you personally would see him at your house?

15 A. Yes.

16 Q. Even though you didn't talk to him, but you saw him?

17 A. I would say like I would be polite -- polite and I
18 would say like good afternoon or how are you, but then I
19 would just continue on what I was doing.

20 Q. And about how many times would you say that would
21 have been?

22 A. About once or twice a week.

23 Q. Since you met him the beginning of October you said?

24 A. Yes, ma'am.

25 MS. PATTERSON: I beg the Court's indulgence.

1 No further questions, Your Honor.

2 CROSS-EXAMINATION (In-Camera)

3 BY MS. FULLWOOD:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. Do you prefer to be called J.H. or Ms. Hall.

7 A. Hall is my maiden name. I switched to it after I got
8 divorced. Ms. Hall would be preferred, please.

9 Q. Alright. I understand that and I will comply.

10 A. Thank you.

11 Q. Ms. Hall, would it be fair to say if you first met
12 Mr. Furtick around the first of October that -- and he
13 came to your house once to two times a week, that he
14 probably had been over there six to ten times before this
15 incident?

16 A. It would be fair to say that, yes.

17 Q. Okay. And had he been inside your house at the same
18 time --

19 A. Yes.

20 Q. -- as you were?

21 A. Yes.

22 Q. Okay. And had he had meals with you and your husband
23 at your house?

24 A. He would bring food over.

25 Q. He would bring food over?

- 1 A. Yes.
- 2 Q. And -- and you would eat it, all of you?
- 3 A. I wouldn't eat it.
- 4 Q. Okay.
- 5 A. He would try to give it to my daughter and then --
- 6 but my husband would eat with him. My ex-husband.
- 7 Q. Okay. And, Ms. Hall, wasn't there a time that
- 8 Mr. Furtick and a female friend had dinner at your house
- 9 with you and your husband?
- 10 A. I don't recall that, ma'am.
- 11 Q. You don't remember that?
- 12 A. No. I probably might have left with my daughter.
- 13 My daughter was attached to the next door neighbor, Miss
- 14 April, and --
- 15 Q. Pardon. She was what to the next door neighbor?
- 16 A. She was attached -- she grew fond -- my daughter grew
- 17 fond of Miss April, so most nights we would walk across
- 18 the street and go to her house.
- 19 Q. Okay. So Miss April was across the street?
- 20 A. Yes.
- 21 Q. Not in the unit next door?
- 22 A. No. I barely knew the people next door.
- 23 Q. You don't know who lived there?
- 24 A. No. I just know it was a couple with three -- two
- 25 to three kids that sometimes played with my daughter on

1 the front lawn.

2 Q. Okay. Had Mr. Furtick spent the night at your house
3 before?

4 A. No, ma'am.

5 Q. He never -- he never spent the night when you --

6 A. No, ma'am. Not that I was aware of.

7 Q. Not that you were aware of. All right.

8 A. Because I did sometimes spend the night at Miss
9 April's house.

10 Q. All right.

11 MS. FULLWOOD: I beg the Court's indulgence.

12 THE COURT: Sure.

13 MS. FULLWOOD: No further questions, Your Honor.

14 EXAMINATION (In-Camera)

15 BY THE COURT:

16 Q. Just a few points of clarification, Ms. Hall.

17 Those occasions where the Defendant would come over
18 to your house, about on average how long would he -- would
19 he stay from time to time?

20 A. He would come in the middle of the afternoon when my
21 husband would get off of dayshift at work and he would stay
22 until it got late, dark out.

23 Q. Okay. So kind of mid afternoon?

24 A. They would watch TV in the living room.

25 Q. All right. Your husband's shift ended at what time,

1 three?

2 A. About three to four in the afternoon if he took a
3 dayshift. He usually worked the nightshift.

4 Q. Okay. So at that time of year it would have been
5 getting dark about, what, 5:30, 6:00, somewhere in there?

6 A. About 7:30, I think.

7 Q. Okay. Yeah, that would be before daylight savings
8 time ended. So on those occasions he would be there for at
9 least a couple of hours?

10 A. He would be there for more than a couple of hours. He
11 would stay really late.

12 THE COURT: All right. Any follow-up based on my
13 questions with the witness?

14 MS. PATTERSON: No. I was just gonna follow-up
15 on one thing about Mr. Furtick's visits over to her
16 house.

17 REDIRECT EXAMINATION (In-Camera)

18 BY MS. PATTERSON:

19 Q. Ms. Fullwood asked you if he would ever come over with
20 a female friend to eat. Do you remember that?

21 A. I only remember meeting one female friend of his and
22 he introduced her as his wife --

23 Q. Okay.

24 A. -- to me and my ex-husband, but I never caught a name.

25 Q. And you don't remember them coming over there to eat?

1 A. If they did, I probably wasn't home.

2 MS. PATTERSON: That's it, Your Honor.

3 THE COURT: Thank you. You can step down.

4 (Witness excused.)

5 THE COURT: Any argument on this issue from either
6 side?

7 MS. PATTERSON: Well, I was gonna call the officers
8 that kind of presented that first lineup to her.

9 THE COURT: Sure.

10 MS. PATTERSON: Investigator Cal Thomas again.

11 THE COURT: All right.

12 Of course, you're still under oath, sir.

13 THE WITNESS: Yes, sir.

14 CALEB THOMAS,

15 having been previously sworn, testified as follows:

16 DIRECT EXAMINATION (In-Camera)

17 BY MS. PATTERSON:

18 Q. Investigator Thomas, were you involved in presenting
19 a photo lineup in this case against Rodney Furtick?

20 A. Yes, ma'am, I was.

21 Q. And do you remember what date this took place?

22 A. It would have been on November 19, 2015.

23 Q. And do you remember where you were when this lineup
24 took place?

25 A. I was at the Cayce Police Department headquarters,

1 #2 Lavern Jumper Road in Cayce.

2 Q. What witnesses were you asked to show a lineup to?

3 A. The victim in the case and her husband, Brian Dean.

4 Q. Did anyone assist you in presenting this lineup?

5 A. An investigator, Ed Huffman, assisted.

6 Q. What, if anything, did you tell the witnesses prior to
7 showing them the lineup?

8 A. I would have explained to them the procedure -- the
9 procedures for viewing the lineup, which is indicated on a
10 standard form that we use at the Cayce Police Department.

11 Q. And could you inform the Court what those -- what
12 those requirements are of the photo lineup?

13 A. Yes, it's a standard form we have that reads you are
14 -- that you are being asked to review a photo lineup.
15 Before you view the lineup, it is important to read and
16 understand the following information. Number one, the
17 perpetrator might or might not be present in the lineup.
18 Number two, you, as the eyewitness, should not feel
19 compelled to make an identification. Number three, it is
20 as important to exclude innocent persons as it is to
21 identify the perpetrator. Number four, the investigation
22 will continue whether or not an identification is made.
23 Number five, keep in mind that things like hairstyles,
24 beards and mustaches can easily be changed and that
25 complexion colors may look slightly different in

1 photographs. And, Number six, because you are involved
2 in an on-going investigation, in order to prevent damaging
3 the investigation you should avoid discussing this
4 identification procedure or its results. And then the
5 person that is viewing the lineup would be asked to sign
6 below acknowledging that they've received the instructions
7 and understand them.

8 Q. Now did you inform both the victim, J.H. [REDACTED] and her
9 husband of these -- of this information?

10 A. I did.

11 Q. And is this policy for the Cayce Police Department for
12 this information to be given to witnesses?

13 A. It's standard procedure. I don't know that it's
14 policy, but it is our standard procedure in the
15 investigative unit.

16 Q. Now I think State's Exhibit Number 6 is still up
17 there. Will you take a look at it?

18 A. (Witness complies.)

19 Q. Do you recognize that?

20 A. Yes, ma'am.

21 Q. And what do you recognize that to be?

22 A. That is the photo lineup that was used in this
23 investigation.

24 Q. Now do you know who put that lineup together?

25 A. I believe it was the South Carolina State Law

1 Enforcement Division.

2 Q. And do you know how they would have come up with the
3 physical descriptions of the people in the photos?

4 A. That would have been provided as part of the
5 investigation.

6 Q. And how were the pictures presented?

7 A. They were presented with no identifying information
8 whatsoever.

9 Q. And would the people in the pictures have similar
10 characteristics?

11 A. Yes, ma'am.

12 Q. And would -- the pictures would have been presented
13 like that in color?

14 A. Yes, ma'am.

15 Q. Now did you or anyone in your presence influence or
16 suggest who the witnesses should pick out, if anything?

17 A. No, ma'am.

18 Q. Were the lineups shown to the witnesses separately or
19 together?

20 A. Separately.

21 Q. And why would you separate them?

22 A. Because we didn't want either the victim or the
23 witness, her ex-husband, to discuss it at all or see the
24 results of each other's identification.

25 Q. Okay. And did you show the lineup to the victim,

1 J.H.

2 A. I did not. I showed it to Mr. Brian Dean.

3 Q. And do you know who showed her the lineup?

4 A. I did not.

5 Q. Do you know who showed her the lineup?

6 A. Oh, do I know -- yes, ma'am. Investigator Huffman
7 would have done that.

8 MS. PATTERSON: Thank you, Investigator Thomas.

9 THE COURT: Ms. Fullwood.

10 CROSS-EXAMINATION (In-Camera)

11 BY MS. FULLWOOD:

12 Q. Investigator Thomas, in light of the fact that
13 Ms. Hall never saw Mr. Furtick wearing glasses, why do
14 you think that all the pictures in the six-pack are men
15 with glasses?

16 A. I can't answer that, ma'am. I was not the one that
17 -- I don't believe I was the one that requested the photo
18 lineup. I just merely assisted in the presentation of the
19 lineup.

20 Q. And that was Mr. Merrill that requested it?

21 A. I -- I don't know who requested the lineup, but I was
22 merely there to assist in presenting the lineup to the
23 witness and the victim.

24 Q. So you don't know how it turned out like that?

25 A. I don't.

1 Q. Okay.

2 MS. FULLWOOD: Nothing further.

3 THE COURT: Thank you, sir. You may step down.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: Anything else from the State on this?

7 MS. PATTERSON: Yes, sir. We have one more witness.

8 (Whereupon, Edward Huffman was duly sworn by the
9 Clerk of Court.)

10 THE CLERK: If you will have a seat over there and
11 state your name and spell your last, please, for the
12 record.

13 THE WITNESS: My name is Edward Huffman,
14 H-U-F-F-M-A-N.

15 EDWARD HUFFMAN,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION (In-Camera)

18 BY MS. PATTERSON:

19 Q. And, Mr. Huffman, where are you currently employed?

20 A. I'm currently employed with the Department of Social
21 Services.

22 Q. And prior to being employed with the Department of
23 Social Services, where were you employed?

24 A. The Cayce Department of Public Safety.

25 Q. And what was your position at the Department of --

1 Cayce Public Safety?

2 A. I was an investigator.

3 Q. And did you have the opportunity to assist
4 Investigator Cal Thomas in providing a photo lineup in the
5 case of State of South Carolina versus Rodney Furtick?

6 A. I did.

7 Q. And who did you provide that photo lineup to?

8 A. I'll have to look at my notes here to see if the
9 name's here. I honestly don't remember the victim's name.

10 J.H. [REDACTED] is that correct?

11 Q. And --

12 A. J.H. [REDACTED] I'm sorry.

13 Q. In State's Exhibit Number 6 that's still up there,
14 will you take a look at that?

15 A. Yes, ma'am.

16 Q. And are you familiar with that?

17 A. I'm familiar with the black and white version.

18 Q. Okay. And that one's different because it's --

19 A. Just that it was in black and white. This one is
20 color.

21 Q. Okay. And which -- which one would you have presented
22 to J.H. [REDACTED]

23 A. I believe I presented a black and white version.

24 Q. You think you presented a black and white version?

25 A. I believe so. It's been a long time.

1 Q. Okay.

2 MS. PATTERSON: I beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 BY MS. PATTERSON:

5 Q. Had you participated in showing photograph lineups to
6 witnesses or victims before?

7 A. Yes.

8 Q. And would -- the people in the photographs, would they
9 have displayed similar characteristics? Would they have
10 looked similar?

11 A. Yes.

12 Q. And how would you have presented that photo lineup to

13 J.H. [REDACTED]

14 A. On the day when I presented this to J.H. [REDACTED]
15 Detective Thomas and I met with her and her husband.
16 Detective Thomas explained how the photo lineup works. He
17 took Mr. Dean into one room and I stayed in the common area
18 of the substation with J.H. [REDACTED] and I just presented her
19 with the photo lineup, asked her to look at the photographs
20 and see if the suspect was in the photo lineup.

21 Q. Okay. And did you rush her selection or anything?

22 A. No, ma'am.

23 Q. Do you remember how long -- did she make some type of
24 identification?

25 A. She -- she looked it over and she indicated that --

1 she said that the photograph in Number 2 would look like
2 the suspect if he were bald.

3 Q. And since J.H. [REDACTED] said that -- gave that caveat if
4 he was bald, would that have been considered a positive
5 identification --

6 A. No, ma'am.

7 Q. -- for purposes of your investigation?

8 A. No, ma'am, it would not.

9 Q. And why not?

10 A. Well, because she didn't say that's -- that's the
11 suspect. She said that if he were bald, he would look like
12 the suspect.

13 Q. Uh-huh. And after she made that indication, did you
14 have any more involvement in this case?

15 A. No, ma'am.

16 MS. PATTERSON: I beg the Court's indulgence.

17 BY MS. PATTERSON:

18 Q. Now although you said that, you know, you believe you
19 presented her with a black and white photograph, could it
20 have been in color that day when law enforcement presented
21 it?

22 A. It's possible. This was, what, 2015, I think. I
23 mean, it's possible.

24 Q. But either way, she was able to make that
25 identification?

1 A. Yes. Well --

2 Q. She was able to make a identification?

3 A. (Nods head.)

4 MS. PATTERSON: No further questions.

5 CROSS-EXAMINATION (In-Camera)

6 BY MS. FULLWOOD:

7 Q. Was she able to make an identification or was she not
8 able to make an identification?

9 A. She indicated Photo Number 2 and said if he were bald,
10 that would look like the suspect.

11 Q. And is that or is that not an identification?

12 A. It's not a 100 percent identification.

13 MS. FULLWOOD: All right. No further questions.

14 THE COURT: All right.

15 MS. PATTERSON: That's all we have for this hearing.

16 THE COURT: You can step down.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: All right. Do you-all want to argue
20 this issue?

21 MS. PATTERSON: Your Honor, it's the State's
22 position that, first of, all we don't think it was
23 even necessary to have a Biggers hearing. She knew
24 the Defendant. She had many interactions with him
25 prior to the assault, Your Honor. She stated he came

1 to the house once or twice a week since the beginning
2 of October. Yes, he had mainly -- a lot of -- more
3 interaction with her husband, but she was polite to him,
4 she spoke to him. Even the day of the incident, Your
5 Honor, she saw him that morning. She would also see him
6 walk up and down the street a lot. She knew the way he
7 walked, she knew his mannerisms. When he came in that
8 evening to assault her, she knew right away who it was.
9 They had conversations, Your Honor. She was able to
10 give a description to law enforcement. You heard the
11 description that she gave him. She didn't know him as
12 being someone who wore glasses or who had hair. He was
13 always bald, that he was dark complexion, muscular build,
14 about the same height as her husband, five-ten. She was
15 able to give this description. In fact, that when
16 she was presented that photo lineup the day after, Your
17 Honor, even though it wasn't what law enforcement
18 considered a positive identification for purposes of
19 going to get a warrant for this person, she was able
20 to give the caveat if he were bald this would be
21 him.

22 She has never said she would not be able to
23 identify him. She's always maintained in my
24 conversations with her over the phone and in our meeting
25 yesterday that she would know this person. When she

1 saw him this morning -- and going back to yesterday,
2 the picture that was presented that we don't intend to
3 admit into evidence, it was just similar based on what
4 she described and that picture was like three weeks
5 after the assault. And this morning when she saw him,
6 she knew right away it was him; especially, when he
7 walked in and out of the courtroom. Again, she was
8 familiar with his mannerisms.

9 The factors to consider, Your Honor, even if Your
10 Honor would think that the manner in which she saw these
11 photographs was suggestive, the factors to consider,
12 Your Honor, is the totality of the circumstances. She
13 had opportunity to view him at the time of the crime.
14 We didn't talk about the facts, but, of course, this
15 was a sexual assault. He was right up on her. She'd
16 seen him multiple times, even hours before the assault,
17 during the assault. Of course, she was paying
18 attention to who was assaulting her. Your Honor will
19 learn later that her daughter was there, so she really
20 was paying attention to what was happening to her.
21 Again, her description right after the assault to law
22 enforcement, it was dead on. That six-pack that was
23 generated through SLED was based on -- probably on
24 driver's license photographs based on his name because
25 they had a name and they had two suspects.

1 THE COURT: And obviously the other photographs
2 in there, whoever drew it up from SLED, not knowing
3 the particulars of this incident, they pulled it up
4 from a driver's license photograph showing the Defendant
5 having hair and wearing glasses and so obviously the
6 other five photographs are gonna depict something
7 similar, an African American male with glasses and hair
8 because that's the photograph that they had, that's
9 what they were working with because he was already a
10 suspect at that point in time.

11 MS. PATTERSON: Correct, Your Honor. And just
12 our common knowledge of driver's license pictures, that
13 could have been ten years old, we only take them every
14 ten years, so that picture could have been dated, but
15 the person she knew, she's always maintained, again,
16 Your Honor, that it was the person she knew as Rodney
17 or Todd because he would give several names, but
18 she certainly was able to recognize him by sight.

19 THE COURT: Okay. Ms. Fullwood.

20 MS. FULLWOOD: Your Honor, I think the six-pack
21 should stay out because the pictures selected just
22 don't meet the description of -- that Ms. Hall gave
23 the police. I understand what you said, and I agree
24 that's probably how it happened, but what they -- what
25 they gave Cayce just wasn't accurate, you know, as far

1 as meeting the description of their suspect and who else
2 they put in the six-pack.

3 As far as -- I understand that they're not gonna
4 put the single photo in evidence, but I would move
5 that she not be able to give any testimony as to that
6 because she -- she identified -- it's -- it's unduly
7 suggestive and while -- and it's made with somebody
8 she wasn't able to pick out of the six-pack four years
9 ago.

10 And then as far as the courtroom identification,
11 it is both tainted by yesterday's unduly suggestive
12 procedure and it's unduly suggestive because in walks
13 the Defendant in the case and -- and who else is she
14 supposed to identify?

15 So, again, I would ask that she not be able to
16 give any type of in-court identification.

17 THE COURT: I appreciate your point, Ms. Fullwood.
18 This is a situation where based upon the testimony of
19 the witness, if she came to know this gentleman in
20 early October, this incident takes place around the
21 18th of November and he visited once or twice per week,
22 that means that there were seven to fourteen potentially
23 -- maybe eight to fourteen -- eight to sixteen times
24 that she could -- could have been around the Defendant,
25 as she put it, for hours on end. And I'm inclined to

1 agree with Ms. Patterson that this really is not a
2 Neil v. Biggers sort of a situation because she knew
3 the Defendant, had been introduced to the Defendant and
4 spent a good bit of time with the Defendant in her
5 household. I understand her interaction with him was
6 not as extensive as that of her husband at the time, but
7 at the same time she had a much better opportunity to
8 come to know the Defendant's appearance than simply
9 someone who is randomly attacked by a stranger on the
10 street.

11 Based upon that, I don't think that the showing
12 of the photograph to her yesterday so prejudiced her
13 identification or so tainted it as to warrant denying
14 her -- or denying the State the opportunity to identify
15 the Defendant in court.

16 The reason for the six-pack -- you know, turning
17 to the six-pack question, I guess at this point the
18 only photo that the DMV must have had of the Defendant
19 was of a gentleman wearing glasses with hair.
20 Ms. Patterson's point that these photographs from the
21 DMV can be quite dated is a valid one. I assume either
22 the Defendant lost his hair or began shaving his head
23 sometime after his DMV photograph was taken. I respect
24 your point that it was not a dead on identification,
25 but the only question is whether the -- for the benefit

1 of the Court or for the benefit of the jury, whether
2 there's any relevant evidence that could be gathered
3 from the introduction of the six-pack lineup. She says
4 that Number 2 without hair would have been the person
5 who assaulted her.

6 I think that lineup probably cuts both ways.
7 There's something for you to use, Ms. Fullwood, and
8 there's something for the State to use. But, again,
9 this is a situation where the -- Ms. Hall was able to
10 know the Defendant extensively prior to this incident
11 taking place, so I'll allow the testimony.

12 Obviously we're not gonna get into -- Ms. Patterson,
13 we're not gonna get into any photograph that she would
14 have been shown yesterday, so don't even elicit that
15 tomorrow.

16 MS. PATTERSON: No, sir.

17 THE COURT: So that's what my ruling's gonna be on
18 that.

19 Just so I have a feel for the case, and maybe this
20 is an issue that I should have asked about earlier, I
21 know that we've got to deal with the question of the
22 DNA and the database. Ms. Mayes brought that up
23 earlier.

24 What DNA was recovered from the scene?

25 MS. MAYES: Yes, sir, Your Honor.

1 She was taken onto the emergency room that night
2 immediately following the rape. This was a fresh report,
3 so she makes it to the hospital within thirty minutes of
4 the sexual assault. They did the standard rape kit and
5 also collected her underwear. From the rape kit were
6 vaginal swabs, rectal swabs and then what's called body
7 swabs that are also from the genital region. All three
8 of those were positive for semen and are a match to the
9 Defendant's DNA in terms of the latter DNA.

10 In addition to that, there was also a cutting from
11 the underwear and I believe some other swabs from other
12 locations around the body that also were either positive
13 for semen or saliva and some type of match has been made,
14 but the strongest match, I believe, is about one in
15 seventeen quintillion and --

16 THE COURT: That's enough information. What I was
17 asking -- the reason I was asking that is when I looked
18 at the arrest warrants a few moments ago that I'd, of
19 course, not been privy to, I got the impression that --
20 I got the impression that the testimony was going to be
21 that perhaps the Defendant did not -- or the assailant
22 did not ejaculate at the time of the assault and that
23 maybe what you were referring to was just DNA hairs or
24 whatever that they found somewhere at the scene,
25 somewhere in the house, as opposed to the specific items

1 that you mentioned a few moments ago. So I just wanted
2 clarification on that in my own mind, so I got you now.

3 MS. MAYES: And that rape kit went to SLED and the
4 first step that they took was to eventually develop a
5 DNA profile and then enter it into the database. They
6 did that and Katie Corley, who is here, Your Honor, at
7 the courthouse, she actually is the one that sent the
8 letter saying that we've entered this into the database
9 and Rodney Furtick has a DNA of a similar type and
10 following that they then got a search warrant for the
11 swabs and those were the confirmation samples. And that
12 took some period of time, Your Honor, so the actual
13 arrest was not until March 7th of 2017.

14 THE COURT: Okay. Which is a great way to segue
15 into the question about reference to the database. I
16 know that you've had -- handed up State versus Patterson,
17 which is, of course, fresh off the presses with the
18 Court of Appeals. Let me approach this before we get
19 into that argument.

20 Is the defense challenging either the results of
21 the DNA analysis or any chain of custody between the
22 time that the swab was taken, the second -- I'm talking
23 about the second swab.

24 MS. MAYES: Confirmation.

25 THE COURT: Is there any challenge to that or do

1 you-all agree that it was -- that the DNA was basically
2 his and that it was -- the chain was proper? Because if
3 that's the case, I tend to think that there's no real
4 reason to go into the database.

5 MS. FULLWOOD: We aren't -- we aren't challenging
6 either, Your Honor.

7 THE COURT: Okay.

8 I'm happy to hear you, Ms. Mayes. The key on
9 Patterson as I see it -- and, again, it's not final
10 law because the Supremes haven't had a chance to do
11 whatever voodoo it is that they do with Patterson. And
12 in Patterson because there was apparently a challenge
13 to the chain or to the manner in which the DNA was
14 delivered down there and in light of State v. Hill that
15 found reference to a CODIS database irrelevant and
16 inadmissible and just found that it wasn't reversible
17 error, I really think that maybe the better course of
18 action for the State is -- obviously you're gonna develop
19 testimony that Ms. Hall knew the Defendant, based on your
20 theory, knew him well, had seen him several times,
21 positively identifies him and then, of course, his DNA
22 comes back in her underwear, it would seem better for
23 the -- at least more prudent perhaps if -- if you simply
24 make reference to the DNA that was gathered after the
25 CODIS hit instead of going into the database information,

1 but if you want to try and argue that somehow that
2 database information is absolutely essential to your
3 case, I'm all ears, but you know where I'm leaning.

4 MS. MAYES: And I understand the Court's concern.
5 Our concern, Your Honor, is potential prejudice to the
6 State if the defense then uses -- let's say the -- any
7 reference to the database is suppressed, so there's
8 gonna be no information provided to the jury about
9 what's taking place in the latter part of 2015 through
10 2016 when that kit and all those swabs are at SLED and
11 they're fervently working to develop a DNA profile and
12 then it goes into CODIS and then after the CODIS hit,
13 then they go and get the swabs, I'm concerned about
14 potential prejudice to the State if there's testimony
15 elicited by the defense and then ultimately an argument
16 by the defense that they didn't even get his swabs until
17 the date that they got those, and I believe that was
18 late 2016. And, of course, that's because once that
19 CODIS hit comes about, that is the probable cause for
20 them to then get the search warrant and obtain his
21 sample. And I don't believe they would have had
22 probable cause before then necessarily, but they did
23 once they got the CODIS hit. So we want to make sure
24 that there's no argument made at any stage in this trial,
25 including closing argument, that the State did not even

1 get his DNA until December of 2016, that they waited a
2 year, and that's because that evidence was at SLED and
3 they needed that CODIS hit in order to follow through
4 with the search warrant for his swabs.

5 THE COURT: I'm hearing, Ms. Fullwood, that you're
6 not challenging the chain, you're not challenging the
7 DNA, so I'm assuming that you're not intending to make
8 that argument.

9 MS. FULLWOOD: Well, Judge, here's the thing. I
10 mean, these hearings this afternoon have established
11 that he was a suspect as early as December of 2015.

12 THE COURT: Okay.

13 MS. FULLWOOD: And I think they certainly can let
14 the people at SLED and people at Cayce talk about the
15 delay, the backlog, if they want to explain it that way,
16 but I don't want to be boxed into a corner that I can't
17 argue the -- the quality of the investigation or the
18 enthusiasm about the investigation and then that way
19 have to run the risk that all of a sudden CODIS is
20 relevant. I mean -- and it was two years before they
21 got -- it's still two years from when SLED confirms
22 the DNA profile.

23 THE COURT: Okay. Well, what I was saying,
24 Ms. Fullwood, I'll just put it out there, I got the
25 impression that maybe your defense was gonna be consent

1 and if -- maybe you don't intend to offer a defense, I
2 don't know, I'm learning about this case today. If
3 that's gonna be the argument or if you think that that
4 potentially may be something that you intend to argue,
5 I don't know, maybe I would allow some passing reference
6 to the database, but I'm still more inclined to simply
7 say perhaps to the State that, you know, present the
8 testimony as okay, yes, we interviewed him, we talked to
9 him, the investigation was open and on-going, and then
10 subsequently we got a sample of his DNA, we sent it down
11 to SLED and it came back positive as matching him.

12 MS. MAYES: And we would be prepared to do that,
13 Your Honor. The issue though is that they got the
14 sample from him pursuant to that search warrant in
15 2016 after the CODIS hit. The CODIS hit letter came in
16 December of 2016 and it was that same month that they
17 then got his -- got the search warrant and obtained his
18 DNA.

19 THE COURT: I'm not really hearing that there's
20 any challenge to the results, the chain, and let me add
21 the search warrant, there's no challenge to the search
22 warrant, so I realize that we're to some degree
23 sanitizing the case, but I'd really rather send it up
24 clean, especially with Patterson not being final yet.

25 MS. MAYES: We want to comply with -- with however

1 the Court thinks is the best way to try the case, but we
2 also don't want to be hamstring'd where the jury is now
3 led to believe falsely that they took no action in this
4 case to pursue him as a suspect until December as if it
5 was just sitting there. They took the proper action
6 when the CODIS hit came about, and the reason they were
7 waiting on the CODIS hit is as the Court will hear during
8 the course of the testimony, there were two potential
9 suspects in the beginning. There was a Rodney Robinson
10 and a Rodney Furtick. Those were the two suspects from
11 the outset. They didn't feel like they had probable
12 cause to make an arrest because she couldn't make that
13 100 percent positive ID from that photo lineup, so they
14 wanted that database information to take the next step
15 forward --

16 THE COURT: I'm not terribly --

17 MS. MAYES: -- and so that explains the delay.
18 And I'm good with not getting into the database as long
19 as the implication isn't made that law enforcement sat
20 on this case until December of '16.

21 THE COURT: Let's handle it this way. Let me see
22 how Ms. Fullwood -- or what -- what happens in the way
23 of the cross as relates to the DNA stuff. We know --
24 we've seen the State newspaper, we've seen the articles,
25 they're backed up like all get out down there, which

1 is why in Spartanburg they use their own analysts for
2 these kind of things, but let me see how the testimony
3 progresses. I don't want to -- I'm not at the beginning
4 of the trial gonna dictate how Ms. Fullwood does her
5 closing and obviously if the defense of consent is not
6 being offered up, well, we are where we are and it is
7 what it is, so I'm gonna leave that. We'll just put a
8 pin in that and we'll address it as the testimony comes
9 out.

10 All right. We're a quarter after three. I'm
11 assuming that the jury is here. I need a brief break
12 myself and so we're gonna take a break. You genuinely
13 believe that -- that res gestae witness, the neighbor
14 that you were talking about, is that the April girl who
15 was living across the street that you referenced?

16 MS. MAYES: It is. It is April Carter, Your Honor.
17 If we do openings and have the victim testify, we may
18 not be reaching her until the morning anyway. We could
19 proffer that as part of her testimony in the morning.
20 Whatever the Court deems appropriate.

21 THE COURT: So that I'm mulling it over, what do
22 you expect her to say, April?

23 MS. MAYES: So minutes after the assault the
24 victim comes and says that she's been raped, that he
25 came in through the back door, and she's able to give

1 a description to her of who did it and she says it's
2 the guy that they had talked about previously. So
3 we're not gonna allude to that in opening argument,
4 but it is something that will need to be addressed.

5 THE COURT: Okay.

6 MS. MAYES: There is also potential testimony of
7 the same nature from the officer, who arrived within
8 minutes, and the EMS worker, who arrived within minutes.
9 And, of course, she's telling them that he came in
10 through the back door. She's telling them -- or at
11 least the initial officer that his name was Rodney.

12 THE COURT: Okay. Well, I'll be thinking about
13 that.

14 We'll be at ease for about -- we'll start back
15 here about 3:30, okay, with everything with the jury
16 and taking from there.

17 Are you opening for the State, are you opening for the
18 State?

19 MS. MAYES: I am, Your Honor.

20 THE COURT: And you are?

21 MR. MADSEN: (Indicating.)

22 THE COURT: Okay. Good enough.

23 Thank you-all. We'll be back on the record in
24 about ten to fifteen minutes.

25 (Recess taken at 3:17 PM.)

1 (Back on the record at 3:29 PM.)

2 BAILIFF: All rise. Please come to order. Court's
3 now in session.

4 THE COURT: Thanks. Have a seat, please.

5 We'll go back on the record. The jury is here.

6 Anything before I bring them in and we get rolling with
7 openings, et cetera?

8 MS. MAYES: The State has filed a rape shield motion,
9 Your Honor, in this case and we don't expect there to be
10 any evidence or testimony to contradict this rape shield
11 law, but we just want to make sure that's on the record.

12 THE COURT: Okay. Do you think that's an issue?

13 MS. FULLWOOD: It shouldn't be. We filed a motion
14 last week. I don't think we really needed to. There
15 could be testimony that Ms. Hall has previously had sex
16 with Mr. Furtick, but that's --

17 MS. MAYES: We didn't -- we didn't get that and
18 we checked with the clerk's office as recently as Friday
19 and there were no new motions filed. We haven't received
20 that motion. This is the first we've heard of any of
21 this, Judge.

22 THE COURT: Okay. What do you think might be that
23 you wanted to elicit?

24 MS. FULLWOOD: That he had -- that Ms. Hall and
25 Mr. Furtick had previously had sex. That is not

1 inadmissible under the rape shield law. It also
2 wouldn't be inadmissible because -- because it
3 constitutes an act of adultery.

4 MS. MAYES: There must be a proffer and it must
5 be filed, Your Honor, pursuant to that statute. It's
6 16-3-659, Subsection 2. It requires notice to the
7 State. That's why we filed a motion. We didn't get
8 it. And, in fact, we actually sent an e-mail on Friday
9 covering what pre-trial issues would be brought up.
10 This was never mentioned. And not only is the proffer
11 and the notice to the State required, but there must be
12 an in-camera hearing held by the Court to determine the
13 admissibility of that. And as I say, this is the first
14 we've heard of any of this, and we would request a copy
15 of this proffer -- or this filed motion, wherever it
16 may be.

17 THE COURT: I didn't check the warrants. If it
18 was filed last week, maybe it simply hasn't made it to
19 the clerk's office.

20 MS. MAYES: Our paralegal checked with the clerk's
21 office to see if anything new had been filed and that
22 was Friday.

23 THE COURT: All right. I'm looking at Subsection 1
24 and there are kind of two different things here. If the
25 defense were looking to simply use prior acts between

1 Ms. Hall and the Defendant as evidence of adultery for
2 impeachment value, it says that that may not be excluded.
3 Impeachment is different though obviously from the
4 suggestion that there was a prior interlude between the
5 Defendant and Ms. Hall for purposes of showing consent.
6 If we're talking about the consent aspect of the section,
7 then clearly there has to be a proffer. I did not see
8 in the file that was passed up anything in the way of a
9 motion either from the State or anything from the defense,
10 so I don't know what you guys filed. All I have was a
11 Rule 5, Brady and the warrants in the clerk's file.
12 There was no specific motion on behalf of the State and
13 there was nothing on behalf of the defense, so.

14 MS. FULLWOOD: I have Ms. Williams checking on
15 that. She tells me she filed it late Friday afternoon.
16 I don't know how late. It was served on someone, I
17 believe, named Delia at the solicitor's office. She's
18 in the process of getting a clocked-in copy, along with
19 a proof of service.

20 THE COURT: Okay.

21 MS. FULLWOOD: And I'd also direct the Court's
22 attention to State v. Tennant and it -- it basically
23 says that that Section 16-3-659.1 doesn't bar evidence
24 of a victim's sexual conduct with the Defendant if the
25 evidence is otherwise admissible.

1 THE COURT: Right. And if it's your theory that
2 this was consensual sex -- or the Defendant's defense,
3 again, that this was consensual sex, I could see where
4 clearly 16-3-659.1 allows that. My point is that the
5 second section does require a proffer and requires the
6 Court to do certain things, so.

7 MS. MAYES: I'm gonna pass up the State's motion,
8 which was filed October 24th, so some two weeks ago.
9 That's when ours was filed with the clerk, but we also
10 e-mailed that to the defense the day we filed it, so
11 they had specific notice of that motion. We didn't
12 just file it with the clerk. We -- we served it upon
13 them immediately by -- by e-mail. And, again, we're
14 just getting caught off guard because we did have
15 communications via e-mail about any type of pre-trial
16 matters and this wasn't brought up and it wasn't brought
17 up earlier today in chambers, so we need a chance to see
18 this written proffer, wherever it may be.

19 MS. FULLWOOD: It's being brought up, Your Honor.

20 THE COURT: Okay. Apparently it was filed. Your
21 motion, Ms. Mayes, is not even in the clerk's file. I
22 mean, it may have been filed and it's file-stamped
23 October 24th, but it is not in the clerk's file.

24 MS. MAYES: And, again, Your Honor, that's one of
25 the reasons we went ahead and served it via e-mail in

1 addition to just trying to rely on it being filed with
2 the clerk. We made sure they did get a copy of it in
3 advance. My understanding from the clerk's office,
4 Your Honor, is that our motion was indexed.

5 THE COURT: Okay. It didn't make it to the file.

6 (Pause in proceedings.)

7 THE COURT: All right. Well, this was the --
8 Ms. Fullwood's motion to produce evidence under the
9 section that we've been talking about. It's signed
10 Thursday, October 31st, and it was clerked in at 3:37
11 on November the 1st. And you-all say that you have
12 proof that it was delivered to them last Friday?

13 MS. FULLWOOD: Yes, sir. It's supposed to be
14 coming over.

15 THE COURT: Okay.

16 MS. PATTERSON: Can we have -- can we read that
17 motion, Your Honor?

18 THE COURT: Sure.

19 MS. PATTERSON: And we also sent an e-mail about
20 pre-trial motions, Your Honor, and, again, it wasn't
21 mentioned this morning, so this has taken us completely
22 off guard.

23 THE COURT: What we may very well do is -- because
24 at the very least regardless of how I rule on this, a
25 proffer has to be made of some kind. The clock is

1 a-ticking as they say and we have a jury in the back.

2 How long would a proffer take?

3 MS. FULLWOOD: Not long, Your Honor. Fifteen
4 minutes maybe.

5 THE COURT: Okay.

6 Is that one of you-all's people?

7 (Discussion off the record.)

8 THE COURT: The clerk just told me that there --
9 she recalls specifically something coming over late in
10 the afternoon relating to this case. They can't find
11 it downstairs.

12 MR. MADSEN: Well, we've got Ms. Williams who
13 served it at the solicitor's office.

14 THE COURT: Okay. What is she telling you?

15 MR. MADSEN: That she served it on the solicitor's
16 office. We just can't find the -- or they just can't
17 find the affidavit --

18 MS. FULLWOOD: That she filed it, of course.

19 THE COURT: When did she -- when did she serve it?
20 Sometime in the afternoon?

21 MS. FULLWOOD: Yes, sir.

22 MS. WILLIAMS: I'm sorry. Do I need to talk? I
23 did it Friday afternoon and how I know -- how I know
24 specifically that I did it, I came over here to bring
25 some items.

1 THE COURT: Came over to what?

2 MS. WILLIAMS: I came over here to bring some
3 items --

4 THE COURT: Okay.

5 MS. WILLIAMS: -- and I came over Friday afternoon.
6 And it wasn't in the back. I didn't come in the back,
7 Myra. I didn't file it in the back. I filed it at the
8 window. I filed it at the window.

9 THE CLERK: No, it was in the drawer.

10 MS. WILLIAMS: And I want to think that Delia was
11 at the front and Dana was not there Friday afternoon.
12 I want to say it was Delia that was there, but I'll
13 either have to leave and go back to the office -- and
14 our legal assistant or paralegal, she remembers me coming
15 in the door saying please notarize this for me, I just
16 served this for the trial and I need you to like sign it
17 right now. And I just called and said do you remember
18 me telling you that on Friday afternoon and she said
19 yeah, I do, and she's like okay, now what do you -- we
20 need to do with it and I said -- I either went and put it
21 in Ms. Fullwood's box or either on her desk, one of the
22 two.

23 MS. MAYES: I guess our concern, Your Honor, is it
24 never made its way to us despite our attempt to discuss
25 pre-trial matters via e-mail with defense counsel and,

1 again, this morning in chambers. We would ask to let
2 the jury go until we resume in the morning, Your Honor,
3 because even if there's a proffer from the defense the
4 State would have a right to rebut that and, again, we're
5 not really sure what we're dealing with at this point.

6 THE COURT: Well, as far as the timing for this,
7 I mean, I'm just reading the way the section has it
8 written out. If the Defendant proposes to offer evidence
9 described in Subsection 1, the Defendant prior to
10 presenting his defense shall file a written motion and
11 offer of proof. The Court shall order an in-camera
12 hearing to determine whether the proposed evidence is
13 admissible. If new evidence is discovered, bla, bla,
14 bla, the judge can then order an in-camera hearing
15 during the course of the trial to determine whether
16 it's admissible under Subsection 1.

17 So for whatever reason, the timing of the statute
18 merely requires that the evidence be presented prior
19 to the Defendant presenting their defense.

20 You-all didn't receive this Friday afternoon?
21 You-all were here, I assume. I mean --

22 MS. MAYES: We were here Friday afternoon after
23 five and -- and Sunday, but, no, we did not receive it.
24 I'm not -- I don't know whether it was filed on the
25 third floor or not. But, Judge, our concern is, of

1 course, that would be for actually offering the
2 testimony that they may offer during the defense's
3 portion of the case, but if it's going to be mentioned
4 in opening or if it's going to be mentioned during the
5 cross-examination of the victim, then it still has to be
6 -- there has to be an in-camera hearing prior to even
7 going there, and that's what our motion said. Our motion
8 was to prevent any inquiry by the defense during testimony
9 or examination of witnesses, as well as any reference
10 during opening or closing arguments.

11 THE COURT: I understand your position. Why don't
12 you go ahead and proceed with your proffer.

13 MS. FULLWOOD: All right, Your Honor.

14 I call Rodney Furtick.

15 THE CLERK: Raise your right hand, please.

16 (Whereupon, Rodney Jerome Furtick was duly sworn
17 by the Clerk of Court.)

18 THE CLERK: Thank you. If you'll have a seat,
19 please. State your name and spell your last for the
20 record.

21 THE WITNESS: My name is Rodney Jerome Furtick.

22 RODNEY JEROME FURTICK,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION (In-Camera)

25 BY MS. FULLWOOD:

1 Q. Mr. Furtick, let's direct your attention to
2 November of 2015.

3 A. Yes, ma'am.

4 Q. All right. Did you know Brian and J.H. [REDACTED]

5 A. Yes, ma'am.

6 Q. All right. And how did you know them?

7 A. I met them early part of October.

8 Q. All right. And how did you meet them?

9 A. Passing the house I met Brian.

10 Q. Uh-huh. Okay. Did you develop a relationship or a
11 friendship with the Deans?

12 A. Yes.

13 Q. Okay. Were you friendly with Mr. Dean?

14 A. Yes.

15 Q. Were you friendly with J.H. [REDACTED]

16 A. Yes.

17 Q. All right. Did you have occasion to be at their home?

18 A. Yes, ma'am.

19 Q. Okay. Did you -- you heard Ms. Hall testify earlier
20 this afternoon, correct?

21 A. Yes, ma'am.

22 Q. And would one to two times a week be accurate as far
23 as how often you would see the Deans?

24 A. Yes, ma'am.

25 Q. Okay. When you went over to their house, were they

1 both always there?

2 A. Yes, ma'am.

3 Q. All right. Were you always there with both of
4 them at the same time being there or was there ever an
5 occasion where you were alone in the house with either
6 Mr. or J.H. [REDACTED]

7 A. Yes, there was a time I was alone with just one of
8 them there.

9 Q. Okay. Had there ever been an occasion when you were
10 alone in the house with J.H. [REDACTED] now Ms. Hall, and the
11 two of you had intercourse?

12 A. Yes, ma'am.

13 Q. Okay. Do you remember when this occurred?

14 A. Yes, ma'am.

15 Q. Do you know the exact date?

16 A. No, ma'am, but it was early October.

17 Q. You think it was early October?

18 A. Yes, ma'am.

19 Q. Can you briefly describe for the Court what happened
20 between you and J.H. [REDACTED] if anything, on that occasion?

21 A. Yes, ma'am. We was looking at some photo albums.

22 Q. Well, first of all, who was there?

23 A. Me and J.H. [REDACTED]

24 Q. Okay. Where was Mr. Dean?

25 A. Well, let me go back.

1 Q. Okay.

2 A. When I came over, it was early afternoon and we was
3 sitting there enjoying the afternoon. Mr. Dean had to
4 go to work, so he left and went to work. I stayed there
5 with J.H. [REDACTED] and we continued to talk and just look at
6 pictures and stuff. She showed me her wedding -- wedding
7 album.

8 Q. Uh-huh.

9 A. And by then it had got late.

10 Q. About how late do you think it was?

11 A. Around seven, eight o'clock.

12 Q. Okay. Was the sun still out?

13 A. No. It was late.

14 Q. Okay.

15 A. It was dark.

16 Q. Okay.

17 A. We continued to look through that photo album and I
18 asked her did she want to go slip on something more
19 comfortable. Now I don't remember what she had on, but I
20 know I asked her that.

21 Q. Uh-huh.

22 A. She did. She came back. We was -- looked at some
23 more pictures, me, her and her little girl, in the living
24 room. One thing led to another, we had intercourse.

25 Q. Okay. What do you mean one thing led to another?

1 A. We had sex.

2 Q. Okay. And about how long did that portion of your
3 visit last? I mean, how long did you have sex more or
4 less?

5 A. I stayed there 'til -- until about ten-thirty.

6 Q. Okay.

7 A. Yeah, it was about ten-thirty.

8 Q. And up until then you-all were being intimate in one
9 way or another?

10 A. Yes, ma'am.

11 Q. All right. Was this voluntary intercourse?

12 A. Yes, ma'am.

13 Q. Was J.H. [REDACTED] angry with you about --

14 A. No, ma'am.

15 Q. -- having sex? Did you see her again on later
16 occasions?

17 A. Yes, ma'am.

18 Q. Was she unhappy with you then as far as --

19 A. No.

20 Q. Okay.

21 MS. FULLWOOD: I beg the Court's indulgence.

22 No further questions, Your Honor.

23 THE COURT: Cross?

24 MS. PATTERSON: I beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

CROSS-EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. So, Mr. Furtick, it's your position today that you had an adulterous relationship with J.H. [REDACTED]

A. Yes, ma'am.

Q. And isn't it true that you had the opportunity to speak with law enforcement about this case?

A. Yes, ma'am.

Q. And isn't it true that they asked you if you knew J.H. [REDACTED] didn't they?

A. Yes, ma'am.

Q. And they even showed you a picture of her, correct?

A. Excuse me. I couldn't see the picture, ma'am.

Q. And you -- but you never told law enforcement you had any problems seeing the picture, didn't you?

A. Yes, ma'am.

Q. You did tell them that?

A. Yes, ma'am.

Q. But you told them that you didn't know her, correct?

A. I couldn't see the picture.

Q. But that's -- okay.

A. That's what they asked me about. They pointed at the picture and asked me did I know her.

Q. And you told them you didn't know her, correct?

A. Yes, ma'am. I looked at the picture.

- 1 Q. And you said you didn't know her?
- 2 A. Yes, ma'am.
- 3 Q. And they even told you her name, J.H. [REDACTED] correct?
- 4 A. They may have.
- 5 Q. And you, again, told them you didn't know her, right?
- 6 A. Yes.
- 7 Q. And they showed you a picture of her husband, Brian,
- 8 didn't they?
- 9 A. Yes.
- 10 Q. And, again, you told them that you did not know that
- 11 person, didn't you?
- 12 A. Yes.
- 13 Q. And they even told you about where J.H. [REDACTED] and Brian
- 14 lived. They gave you the address, correct?
- 15 A. Yes.
- 16 Q. And they told you it was the cinderblock house located
- 17 at [REDACTED] Julius Felder Street in Cayce, correct?
- 18 A. Yes, ma'am.
- 19 Q. And you were familiar with that house, right?
- 20 A. Yes, ma'am.
- 21 Q. Because you walked by it all the time, didn't you?
- 22 A. Yes, ma'am.
- 23 Q. And you told them that you had not been in that house
- 24 for months, didn't you?
- 25 A. I don't remember telling them that, no.

1 Q. And they asked you if your DNA should be in that
2 house, didn't they?

3 A. I can't remember. I know I stopped the interview
4 because I didn't have -- I was trying to get some reading
5 glasses out of the detective and once he wouldn't give me
6 the reading glasses, I ended the interview. I wasn't
7 really paying much attention to them because I couldn't see
8 and I plainly told them I couldn't see.

9 Q. And, Mr. Furtick --

10 A. Yes, ma'am.

11 Q. -- you've had experience in the criminal justice
12 system, haven't you?

13 A. Yes, ma'am.

14 Q. And you've had your rights read to you over and over
15 again, haven't you?

16 A. Yes, ma'am.

17 Q. So you understood those rights even though Sergeant
18 Merrill was nice enough to read you those rights, didn't
19 you?

20 A. Yes, ma'am.

21 Q. And you didn't have any problem indicating that you
22 understood each right because you initialled outside of
23 each line, didn't you?

24 A. I wanted some reading glasses. It sounds bizarre, but
25 I was incarcerated and I don't get funds, so I was trying

1 to get some reading glasses while I was in Cayce.

2 Q. But you never told them you had problems seeing that
3 picture, did you?

4 A. Yes, ma'am.

5 Q. You never told them you didn't know which address they
6 were talking about, did you?

7 A. Ma'am?

8 Q. You never told them that you had any problems knowing
9 which address it was they were asking you about, did you?

10 A. I know the house. I don't know the address.

11 Q. Okay. But you -- but you knew which house they were
12 talking about, didn't you?

13 A. Yes, ma'am.

14 Q. And even if you was having problems seeing that
15 picture of J.H. [REDACTED] they told you her name, didn't
16 they?

17 A. I don't know. I ended the interview.

18 Q. Didn't they tell you who was making the allegations?
19 Didn't they say J.H. [REDACTED] and showed you the picture of
20 her?

21 A. Yeah, they said something, trespassing or something.
22 I can't remember.

23 Q. And they gave you the name J.H. [REDACTED] didn't they?

24 A. Yes, ma'am.

25 Q. So it's your testimony today that somebody that you've

1 had sexual intercourse with a few times that you didn't
2 recognize her name?

3 A. One time. One time.

4 Q. Just one time?

5 A. Yes, ma'am.

6 Q. And you're saying you didn't recognize her name? Even
7 if you couldn't see her picture, you didn't recognize her
8 name?

9 A. Did I recognize her name? Yes, ma'am.

10 Q. But you told law enforcement you didn't know a J.H.
11 [REDACTED] didn't you?

12 A. I wanted some reading glasses, ma'am.

13 Q. But they told you the name J.H. [REDACTED] didn't they?

14 A. Yes, ma'am.

15 Q. And isn't it true you have some prior -- you had a
16 prior 2012 petit larceny charge?

17 A. Yes, ma'am.

18 Q. And I think you had a 2010 burglary second degree
19 charge, correct?

20 A. Yes, ma'am.

21 Q. That's a conviction, I mean. 2015 you had another
22 property crime conviction, didn't you?

23 A. Yes, ma'am.

24 Q. And in 2012 you had two counts of assault and battery
25 second degree, correct?

1 A. Yes, ma'am.

2 Q. And that you're saying that the day that you and
3 J.H. [REDACTED] had sex Mr. Dean was there at the house and you
4 say he was --

5 A. Earlier in the afternoon, yes, ma'am.

6 Q. And you're saying that he left you in the house with
7 his wife and his baby girl --

8 A. Yes, ma'am.

9 Q. -- while he went to work?

10 A. Yes, ma'am.

11 Q. And you're saying that J.H. [REDACTED] agreed to have sex
12 with you while her little girl was in that house?

13 A. Yes, ma'am.

14 MS. PATTERSON: I beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 BY MS. PATTERSON:

17 Q. And you testified you knew this house, you were
18 familiar with this house, correct?

19 A. Yes, ma'am.

20 Q. But yet you told law enforcement that you had not been
21 in that house for months, didn't you?

22 A. Yeah, I told them that.

23 Q. Isn't it true that you're only changing your story
24 because you knew your DNA was found on J.H. [REDACTED]

25 A. No, ma'am.

1 MS. PATTERSON: No further questions.

2 THE COURT: Anything on redirect?

3 MS. FULLWOOD: No, Your Honor.

4 THE COURT: All right, sir. You can step down.

5 (Witness excused.)

6 THE COURT: The clerk has provided me with the
7 original, it appears, affidavit of service that they
8 did locate downstairs and it would appear that Ms. Lisa
9 Williams, who spoke on the record a few moments ago, did
10 serve this on the solicitor on November 1st. And, again,
11 I'm referencing the Defendant's motion.

12 MR. MADSEN: Judge, that is our copy.

13 THE COURT: This is your copy?

14 MR. MADSEN: Right. That's the affidavit of service
15 that we had in our office and if you look on the back,
16 it's -- while it's stamped, it's our copy, not -- not
17 coming from the clerk. They had asked the timeframe
18 and we told them between 3:30 and 4:00. They kept on
19 bringing up the State's motion.

20 THE COURT: Right. Well, obviously if it was filed
21 at 3:37, you couldn't have served it prior to that, so I
22 presume it was served after it was clocked in so it would
23 have been served sometime after 3:37 this past Friday.

24 Solicitor, here's kind of where I am. I'm with you
25 that I do prefer that we get this kind of information

1 sooner rather than later and I am, however, looking at --
2 at your motion, and I'm just quoting from it, bla, bla,
3 bla, which mandate limited admissibility of opinion
4 evidence, reputation evidence or specific instances of
5 sexual activity by the victim comma J.H. [REDACTED] comma with
6 persons other than the Defendant. That's what you're
7 seeking to limit.

8 And then the second paragraph, first sentence,
9 please take notice that the State moves to prohibit any
10 reference or line of inquiry by counsel regarding prior
11 sexual activity concerning the victim comma with any
12 person other than the Defendant.

13 If I read your motion inside the four corners,
14 you're really moving to exclude any testimony of
15 Ms. Hall's sexual activity with individuals other than
16 the Defendant and perhaps the Defendant does not --
17 well, by the plain wording in the motion, he doesn't
18 come within the purview of your motion.

19 And, again, for whatever reason the code section
20 involved in this case specifically says that so long as
21 this issue is raised prior to the Defendant's presenting
22 of his defense, then it is timely.

23 So the code section seems to contemplate, despite
24 the fact that me and every other trial judge I think
25 prefers that these matters get flushed out pre-trial, it

1 appears that it contemplates that so long as the motion
2 is filed prior to the Defendant presenting his defense,
3 it's timely.

4 They did respond this past Friday. And I can't
5 speak to why the secretary with the solicitor's office
6 didn't get this to you guys sooner rather than later
7 or where it might be in your office, but the evidence
8 indicates it was filed.

9 So if you wish to offer something by way of a
10 proffer, that's perfectly fine. I'm beginning to think
11 though that you're correct and maybe we need to kick
12 the jury out and just start at 9:30 tomorrow morning
13 and then we can deal with any proffer that you may want
14 to offer this evening or this afternoon, and that's
15 actually what I'm gonna do.

16 Because even if we were to do openings and the
17 Court's instruction, we would be 6:30 or so before
18 we finish with the first witness, who I presume is
19 Ms. Hall. Am I right?

20 MS. PATTERSON: Yes, sir.

21 THE COURT: Let's have the jury, please.

22 BAILIFF: You said bring the jury in?

23 THE COURT: Please.

24 (Whereupon, the jury returns to the courtroom at
25 4:07 PM.)

1 THE COURT: Ladies and gentlemen, any chair will
2 do. I'm not going to keep you very long, okay?

3 All right. Ladies and gentlemen of the jury, here's
4 where we are. I know that you were here at 3:00 and I
5 want to assure you that we have been working on this
6 case, but I told you there were some pre-trial motions
7 that I needed to address before we began the case in
8 earnest. And, again, the reason I'm doing it now is
9 it's better to do it in the front end than try to break
10 up the testimony piecemeal and let you cool your heels
11 once the case gets going. We're still involved in that.
12 And there's a running joke that lawyers just can't tell
13 time and I think it goes doubly for judges.

14 So I apologize that my estimation of the amount of
15 time it was gonna take to deal with this stuff pre-trial
16 was erroneous. Because I'm still involved in that, if
17 we were to even begin with arguments and my initial
18 instructions to you, et cetera, and then start calling
19 witnesses, it would put us here -- put you guys here
20 pretty late.

21 So I'm gonna go ahead and release you-all for the
22 night and I'm gonna ask that you be back in the jury
23 room, please, tomorrow morning at 9:30. I'm sorry for
24 having you come back, but it had been my intention and
25 desire to get rolling on this this afternoon in the

1 hopes that we could finish it sooner rather than later.
2 I do anticipate or hope that perhaps we can still get
3 this case to you probably by Thursday at some point in
4 time and have it done by then, okay? So that's my game
5 plan and that's what I intend to strive for.

6 So if you would -- you know what, I'm gonna ask
7 that you be back in the jury room at 9:00, so we're
8 gonna push it up a little bit. So at 9:00 be back in
9 the jury room, please. I'll leave Greenwood a little
10 bit earlier, so be back in the jury room at 9:00.

11 Now, ladies and gentlemen, please, tonight when
12 you go home, and I'll give you more detailed instructions
13 on this, but the oath that you're gonna take tomorrow
14 contemplates that you judge this case only on the evidence
15 and on the law. Along those lines, understand that if
16 you were to go home tonight and perform any kind of
17 independent research, drive by the location where this
18 allegedly happened or start Googling people's names,
19 understand that that would be a violation of your oath
20 as jurors. And the reason I'm telling you this is I
21 don't want you getting curious tonight. I don't want
22 you going online and trying to find stuff out because,
23 candidly, ladies and gentlemen, as you well know,
24 everything or a lot of the stuff that's online simply
25 isn't true. The rules of evidence are designed to give

1 you the best information possible, the most reliable and
2 truthful information as possible, and people, as you well
3 know, can put whatever they like on Facebook or wherever,
4 and not a bit of it is true. So, please, no independent
5 research, and that goes for throughout the trial.

6 I'll tell you that some judges have been faced with
7 situations where jurors have disregarded this and it came
8 to the Court's attention that jurors did, in fact, do
9 independent research on the Internet or otherwise. I've
10 never been faced with that situation. Other judges who
11 were faced with it were not at all happy with that juror;
12 bad things happened to that juror. I don't want to be
13 put in that position, I guarantee you don't want to be
14 in that possession either, so let's not do it, all right?

15 With that, have a great evening. Again, sorry for
16 bringing you back. It is my fault. Don't blame the
17 parties. Wear the juror badges back tomorrow and please
18 be in the jury room at 9:00 and we'll get rolling then,
19 okay?

20 Thank you for your patience.

21 (Whereupon, the jury was excused for the day at
22 4:11 PM.)

23 THE COURT: The jury is out.

24 Ms. Fullwood, was there anything else that the
25 defense intended to offer in order to corroborate the

1 proffer that's been made so far?

2 MS. FULLWOOD: No, Your Honor.

3 THE COURT: Okay. Does the State wish to offer
4 anything or do you want to consider that on a five or
5 ten minute break and then tell me?

6 MS. PATTERSON: I'm just gonna call Ms. Hall.

7 THE COURT: All right. Then call her on up.

8 MS. PATTERSON: J.H. [REDACTED]

9 THE COURT: Ma'am, you're still under oath, please.

10 J.H. [REDACTED]

11 having been previously sworn, testified as follows:

12 DIRECT EXAMINATION (In-Camera)

13 BY MS. PATTERSON:

14 Q. Ms. Hall, you just heard Mr. Furtick testify that you
15 two had sex, didn't you?

16 A. Yes, ma'am.

17 Q. Is that true?

18 A. No, that's not.

19 Q. Other than the incident when he assaulted you, had you
20 ever had sex with Rodney Furtick?

21 A. No, ma'am. I was faithful to my husband.

22 MS. PATTERSON: Thank you.

23 THE COURT: Any questions, Ms. Fullwood?

24 MS. FULLWOOD: I beg the Court's indulgence.

25 No questions.

1 THE COURT: Ms. Hall, thank you. You can step
2 down.

3 (Witness excused.)

4 THE COURT: Nothing further from the State?

5 MS. PATTERSON: No, sir.

6 THE COURT: Any additional argument from anybody?
7 Go ahead.

8 MS. MAYES: Yes, sir, Your Honor.

9 We heard the Defendant's testimony during the
10 proffer. Until or unless he were to offer that as
11 evidence in front of the jury, Your Honor, the State
12 would move that any reference by counsel during opening
13 argument should be excluded. I mean, that would not be
14 evidence. He is the only person who could offer this
15 as evidence and so for counsel to make the argument
16 that they've had sex before and that there was a prior
17 occasion, Your Honor, there would be no evidence in the
18 record to support that and he's the only one that can,
19 so that's my first motion, Your Honor, or segment of
20 this motion would be to exclude that.

21 And then, secondly, the State concedes that they
22 can ask Ms. Hall during her testimony if they had engaged
23 in intercourse in the past, and we expect her testimony
24 will be exactly what -- what we just heard, and then that
25 ends it and there's nothing further that can be pursued

1 at any point until or unless the Defendant testifies in
2 this case.

3 THE COURT: Okay.

4 MR. MADSEN: Judge, quite honestly, on the opening
5 there's no evidence in the record from either side at
6 that point in time, so under their logic they shouldn't
7 be able to say anything about the facts of the case.
8 Certainly that's not appropriate. Both sides have the
9 ability in front of a jury to outline where they intend
10 to go. I'm sure if the testimony doesn't come out from
11 Mr. Furtick, that we would hear about it loudly and
12 strongly in closing from the State, but we do believe
13 that we are allowed to go into that. I mean, that is
14 our defense.

15 THE COURT: I sort of expected as much, at least
16 that consent would be the defense based upon the
17 evidence, and I'm expecting that that's not a surprise
18 to the defense, so very good.

19 Of course, you can go into it on opening and
20 obviously if that evidence is not produced from the
21 Defendant at some point in time, I'm sure the jury will
22 hold it against you. Based on the proffer, I'm limited
23 to what the law requires and the standard here is whether
24 it's relevant -- and the question is yeah, again, whether
25 it's relevant to a material fact at issue in the case

1 and that its inflammatory or prejudicial nature does not
2 outweigh its probative value. So clearly the question of
3 whether or not it was consensual or not, the testimony
4 or evidence that they may have engaged in relations
5 previously, that's certainly relevant to the issue of
6 whether on November the 18th this was a consensual or a
7 nonconsensual encounter and so clearly under the law the
8 Court must allow the defense to admit it, and that's my
9 ruling on that.

10 While we still have some time, the res gestae
11 statement to the neighbor, EMS and the responding
12 officer, it's obviously going beyond time and place.
13 I'm assuming the defense does object to that. Am I
14 right?

15 MS. FULLWOOD: We do, Your Honor.

16 THE COURT: Okay. Let me hear more from the State
17 then on why you wish the Court to go into that. That
18 may be more relevant now obviously or -- than perhaps
19 it would have been earlier, but go ahead.

20 MS. MAYES: And, Your Honor, that's -- that's
21 really the essence of it. The victim's state of mind,
22 her condition when she presented to them, and this is
23 just moments after the assault and she comes over, she's
24 barefoot, she's holding her child, and she is in need
25 of assistance and one neighbor calls 9-1-1. The first

1 officer to arrive is Sergeant Reese and she's able to
2 report that his name is Rodney, and we're prepared to
3 proffer both of those witnesses at this time. It
4 shouldn't be too lengthy, Your Honor. I would expect
5 we can get all of this done before five.

6 THE COURT: Keep going.

7 MS. MAYES: The State calls April Carter.

8 (Whereupon, April Carter was duly sworn by the
9 Clerk of Court.)

10 THE CLERK: If you will have a seat over there,
11 please, and if you will state your name and spell your
12 last, please.

13 THE WITNESS: You say state my name and spell my
14 name?

15 MS. MAYES: Yes, please.

16 THE WITNESS: April Carter, C-A-R-T-E-R.

17 APRIL CARTER,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION (In-Camera)

20 BY MS. MAYES:

21 Q. All right. And, Ms. Carter, where do you reside?

22 A. Right now I'm at [REDACTED] Charlotte Street in Cayce.

23 Q. All right. And was there a previous time when you
24 were residing on Julius Felder Street?

25 A. Yes, ma'am.

1 Q. All right. And I believe you've seen a map before,
2 but I'm gonna show you for purposes of this hearing, do
3 you recognize what's depicted in this photograph?

4 A. Yes, ma'am.

5 Q. All right. Do you see your house on the photograph
6 or your former house on that photograph?

7 A. Yes, ma'am.

8 Q. Now right across the street from you, can you tell us
9 whether or not there's a duplex?

10 A. Yes, it is.

11 Q. Were you residing there on Julius Felder Street in
12 2015?

13 A. Yes, across the street.

14 Q. Specifically in November of 2015?

15 A. Yes, ma'am.

16 Q. During your time there, had you had an opportunity to
17 meet your neighbors across the street who were living in
18 that duplex?

19 A. Yes. Uh-huh.

20 Q. And do you remember the female who lived there?

21 A. Yes. J.H. [REDACTED]

22 Q. And you knew her as J.H. [REDACTED]

23 A. Yes.

24 Q. And, Ms. Carter, had you actually met her and had
25 occasion to spend time with her prior to November 18th of

1 2015?

2 A. Yes, like every day.

3 Q. How often -- you would see her almost every day?

4 A. Yes.

5 Q. What kind of things or conversations do you remember
6 having at that time? Where would those take place?

7 A. On my mother's porch.

8 Q. And what kind of things would you-all do together
9 during your conversations?

10 A. Talk, laugh, play with the babies.

11 Q. All right. And did you have a grandchild about the
12 same age as her child?

13 A. Yes. Uh-huh.

14 Q. And so you had met her toddler and I believe she was
15 a one-year-old?

16 A. Yes, ma'am.

17 Q. So you had been around J.H. on previous occasions?

18 A. Yes.

19 Q. So on the night of November 18, 2015, what do you
20 recall about that night?

21 A. Sitting on the porch, J.H. running over with the baby
22 in her hands crying, shaking, telling me the boy just raped
23 her.

24 Q. All right. And when you said he raped her, is that --
25 were those the words that she used?

1 A. Yes, it was. Uh-huh.

2 Q. And you described that she was crying and shaking?

3 A. Uh-huh.

4 Q. Was that the same or different than the other
5 occasions you had met and been around J.H. [REDACTED]

6 A. I never saw her like that before, never crying, never
7 shaking. Just that night.

8 Q. This was the only night you'd seen her that way?

9 A. Yes. Uh-huh.

10 Q. And when she said he raped me, did she tell you how
11 he, the person, got in the home?

12 A. Yes. Yes, she did.

13 Q. What did she say about that?

14 A. He come through the back door.

15 Q. Okay. And what did you do after she comes to you and
16 -- and makes this report?

17 A. I took the baby, we sat down and I called the police.
18 She was shaking. She was scared.

19 Q. And when you called -- you say you called the police.
20 Do you remember what number you called?

21 A. 9-1-1.

22 Q. You called 9-1-1?

23 A. Uh-huh.

24 Q. And were you still there when that first officer
25 arrived at the scene?

1 A. Yes, I was. Uh-huh.

2 Q. Were you still there when the ambulance arrived at the
3 scene?

4 A. Yes, I was. Uh-huh.

5 Q. And was J.H. still in that same state --

6 A. Yes.

7 Q. -- that you just described to us?

8 A. Uh-huh.

9 Q. You'd never seen her like that before?

10 A. Never.

11 MS. MAYES: Your Honor, that's the extent of the
12 testimony from Ms. Carter on this issue.

13 THE COURT: Any cross?

14 MS. FULLWOOD: Yes, sir, Your Honor.

15 CROSS-EXAMINATION (In-Camera)

16 BY MS. FULLWOOD:

17 Q. Ms. Hall, do you remember -- I'm sorry, Ms. Carter.

18 A. Yes.

19 Q. Do you remember about what time Ms. Hall got to your
20 house?

21 A. It had to be like eight something.

22 Q. About eight something?

23 A. Uh-huh.

24 Q. Okay. And how long was she on your porch before you
25 called the police?

1 A. At that time, oh, not long. Maybe about five, ten
2 minutes.

3 Q. Okay. And it didn't take long for the police to get
4 there?

5 A. No. Unh-unh. Not at all.

6 Q. Okay. So -- so she got to your house at eight
7 something?

8 A. Eight something.

9 Q. And you called the police pretty quick?

10 A. Basically, yeah.

11 Q. Yeah. And so if the time records said you called at
12 about 8:54, would that sound about right to you?

13 A. About that, yes.

14 Q. Because it was already dark?

15 A. Yes.

16 Q. Okay.

17 MS. FULLWOOD: I beg the Court's indulgence.

18 BY MS. FULLWOOD:

19 Q. While -- while you were on your porch that evening,
20 did you see Rodney leave Ms. Hall's house?

21 A. No, I didn't see him leave. No.

22 MS. FULLWOOD: No further questions.

23 THE COURT: All right, ma'am. You can step down.

24 Thank you.

25 (Witness excused.)

1 MS. MAYES: The State calls Sergeant John Reese.

2 (Whereupon, John Robert Reese was duly sworn by
3 the Clerk of Court.)

4 THE CLERK: Thank you. If you'll have a seat over
5 there, please. State your name and spell your last for
6 the record.

7 THE WITNESS: John Robert Reese.

8 JOHN ROBERT REESE,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION (In-Camera)

11 BY MS. MAYES:

12 Q. All right. And, Sergeant Reese, can you tell us
13 what type of work you were doing for the Cayce Department
14 of Public Safety back in 2015?

15 A. I was a patrol sergeant.

16 Q. And as a patrol sergeant, do you have the opportunity
17 to respond to calls as they happen?

18 A. Yes, ma'am. I was in charge of a shift of five
19 officers as a supervisor. I had a corporal and three
20 officers also assigned to the shift and I would respond
21 with officers or if other officers were busy, I would
22 respond to the call.

23 Q. Okay. I'm gonna ask you specifically about a call on
24 Julius Felder Street on the night of November 18, 2015.
25 Are you familiar with that call?

- 1 A. Yes, ma'am.
- 2 Q. And do you have with you your actual record or report
3 that reflects the time that that call came in?
- 4 A. Yes, ma'am.
- 5 Q. You heard it on the radio?
- 6 A. Yes, ma'am.
- 7 Q. What time was the call dispatched?
- 8 A. The call was dispatched at -- I believe it was 2053.
- 9 Q. 8:53 PM?
- 10 A. 8:53 PM. Yes, ma'am.
- 11 Q. And what was the time of your arrival on the scene?
- 12 A. I arrived at 2100 hours, which is 9:00 PM.
- 13 Q. And were you the first officer at the scene?
- 14 A. Yes, ma'am.
- 15 Q. And did you beat the ambulance there?
- 16 A. Yes, ma'am.
- 17 Q. So if it's dispatched at 8:53 and you arrive at 9:00
18 PM, that's a seven minute arrival time?
- 19 A. Yes, ma'am.
- 20 Q. And so tell us what you observed about your initial
21 arrival there at the scene.
- 22 A. So when I arrived at the scene, I parked along the
23 roadway at the residence at [REDACTED] Julius Felder.
- 24 Q. Across the street?
- 25 A. Across the street from the incident location. I met

1 with J.H. [REDACTED] and she told me what happened.

2 Q. And do you remember if she was outside or inside the
3 residence of April Carter there at [REDACTED]?

4 A. She was outside the residence on the front porch.

5 Q. Okay. What, if anything, did you observe about her
6 physical state?

7 A. I just observed that she was upset, she was crying,
8 you know, obviously distraught.

9 Q. Okay. And given that set of circumstances, are you
10 gonna attempt to do a full interview at that point in
11 time?

12 A. No, ma'am. Ms. Carter was on the front porch. There
13 was also a small child. I got the initial information and
14 because what she had told me was a sexual assault, you
15 know, I -- I took the initial information and then I made
16 sure the ambulance was on the way so that she could be
17 interviewed by someone who has better training than I do in
18 reviewing -- or, you know, talking to people who have been
19 assaulted.

20 Q. You mean you were making a referral onto the hospital
21 for her?

22 A. Correct, to a SANE nurse.

23 Q. Okay. And so there at the scene at 9:00 PM, can you
24 tell us whether it was light or dark outside?

25 A. It was dark.

1 Q. Okay. And you have described the victim's emotional
2 condition. Did you note whether or not there was injury on
3 your report?

4 A. I did note that there were injuries -- possible minor
5 injuries.

6 Q. What did you mean by that?

7 A. Well, I mean, due to her mental state, you know, that
8 kind of thing, she was disheveled, so her clothes were kind
9 of out of sorts, that kind of thing, so obviously, you
10 know, something had taken place, so that was an apparent
11 minor injury in my -- in my opinion.

12 Q. All right. So when you noted apparent minor injury,
13 you were referring to her emotional state?

14 A. Yes.

15 Q. And then do you recall whether or not she had on
16 shoes?

17 A. I do not recall.

18 Q. And you mentioned that her clothing appeared
19 disheveled?

20 A. Yes, ma'am.

21 Q. During that time that you were initially on the
22 scene, how long do you think it took for the ambulance to
23 arrive?

24 A. It was less than fifteen minutes. I can look at the
25 CAD report and -- and give you an exact timeframe.

1 Q. Okay.

2 A. It looks like the ambulance arrived at 2115, which
3 is 9:15 PM.

4 Q. All right. So during that time that you arrive at
5 nine up until when EMS actually arrives and gets to see the
6 patient at 9:15, did you have an opportunity to get some
7 basic information from her?

8 A. Yes, ma'am. I just asked her what happened and she
9 gave me some details of what happened.

10 Q. So let me ask you. Did she tell you whether or not a
11 sexual assault had occurred?

12 A. She did.

13 Q. Did she tell you where it had occurred?

14 A. She did.

15 Q. Where was that?

16 A. Across the street at [REDACTED] Julius Felder.

17 Q. All right. And did she give an indication as to the
18 perpetrator.

19 A. She did describe a black male. She believed his name
20 to be Rodney or Todd.

21 Q. And that's noted in your report?

22 A. Yes, ma'am.

23 Q. And then did she describe how he gained entry to her
24 residence?

25 A. Yes, ma'am. Basically he kind of just walked in the

1 back door.

2 Q. And that was through the back door of that residence
3 that you just told us about?

4 A. Yes, ma'am. [REDACTED] Julius Felder.

5 Q. And did she report where within the home the sexual
6 assault occurred?

7 A. I believe she stated it was in a bedroom. I can --

8 Q. You can refer directly to your report.

9 A. It was in the daughter's room.

10 Q. Okay. And specifically did she state where within the
11 daughter's room?

12 A. He pushed her down on the floor.

13 Q. And based upon your communications with her, did she
14 give an indication of when this had occurred?

15 A. It was within the -- the last short period of time.
16 Like it -- it had just occurred. When he walked outside,
17 she ran across the street and made contact with her
18 neighbor.

19 MS. MAYES: That is all from the State, Your Honor,
20 regarding the res gestae and excited utterance, the
21 proffer regarding Sergeant Reese.

22 THE COURT: Ms. Fullwood.

23 CROSS-EXAMINATION (In-Camera)

24 BY MS. FULLWOOD:

25 Q. Mr. Reese, the report -- you wrote an incident report,

1 correct?

2 A. Yes, ma'am.

3 Q. And in your report, you did not write that Ms. Hall
4 was upset, crying or distraught, did you?

5 A. No, ma'am.

6 Q. And in your report, you did not note or write that she
7 was disheveled, did you?

8 A. No, ma'am, I did not.

9 Q. No. You just wrote that you talked to her and what
10 she told you?

11 A. Yes, ma'am.

12 MS. FULLWOOD: Nothing further.

13 REDIRECT EXAMINATION (In-Camera)

14 BY MS. MAYES:

15 Q. Did you note whether or not she appeared to have
16 injury?

17 A. I did. I did note apparent minor injury.

18 Q. And you are referring to a particular injury or some
19 other --

20 MS. FULLWOOD: Objection. Leading.

21 THE COURT: Overruled. We're doing -- we're doing
22 this --

23 MS. FULLWOOD: Yes, sir.

24 THE COURT: -- out of the presence of the jury, so
25 go ahead.

1 THE WITNESS: I did. You know, I knew that she was
2 upset, crying. I mean, there was obviously some form of
3 injury there.

4 MS. MAYES: Nothing further.

5 THE COURT: Okay. Thank you, sir. You can --
6 well, let me -- can I ask this?

7 EXAMINATION (In-Camera)

8 BY THE COURT:

9 Q. You said it was fifteen minutes between the time you
10 got there and the time the ambulance arrived; is that
11 right?

12 A. According to the report, fifteen minutes. Yes, sir.

13 Q. Did she -- was her demeanor pretty much the same the
14 entire time you were there or did it change or did she ever
15 calm down or --

16 A. It was the same through the duration.

17 Q. Okay.

18 THE COURT: Thank you, sir. You can step down.

19 (Witness excused.)

20 THE COURT: The next witness is the ambulance EMT?

21 MS. MAYES: She is actually not here, Your Honor.

22 She will be here in the morning.

23 THE COURT: Okay. You've spoken to her though?

24 MS. MAYES: Ms. Patterson and I have both have.

25 Yes, sir, Your Honor, and --

1 THE COURT: Do you anticipate her testimony being
2 similar to what's been proffered thus far?

3 MS. MAYES: Yes, sir, Your Honor. We actually
4 provided a summary to -- to the defense, and I'm going
5 off memory now, but my understanding of our conversation
6 is he pushed his way in through the door -- or through
7 the back door, he pushed his way in, and raped me.

8 THE COURT: Okay. She was taking to Lexington
9 Medical or to Richland or --

10 MS. MAYES: Palmetto Health Richland.

11 THE COURT: Okay.

12 MS. MAYES: But that conversation with the EMS
13 worker, Your Honor, took place at the scene. This would
14 have been prior to her being transported to the hospital.

15 THE COURT: Okay. So this took place while she was
16 being loaded into the ambulance?

17 MS. MAYES: Yes, sir, Your Honor. I believe it was
18 just before or while she was being loaded, and that was
19 at the scene on Julius Felder Street.

20 And to clarify, Your Honor, we passed up previously
21 the case of State versus Dennis. That deals actually
22 with an emergency room nurse who is treating someone
23 after they've arrived by ambulance. We're only offering
24 pursuant to the SANE nurse what would be relevant to
25 medical diagnosis and treatment from the SANE nurse. So

1 we're not offering excited utterance or res gestae
2 testimony from the SANE nurse, only the portions of her
3 protocol exam that would be relevant to medical diagnosis
4 and treatment as to where she took the swabs and -- and
5 why, and so this would be the extent of the excited
6 utterance and res gestae evidence, Your Honor. That's
7 what these people heard at the scene just minutes after
8 it occurred.

9 So State versus Dennis is directly on point;
10 although in Dennis those conversations took place later
11 even at a hospital with a nurse after she had been
12 transported, so these are much fresher. We believe
13 that she would have been treated at the scene and made
14 it to the hospital all within a time period of about
15 thirty minutes or at least left the scene all within a
16 time period of thirty minutes, so we're talking a very
17 small window of time.

18 And, Your Honor, now that we -- the State has been
19 apprised of this line of defense regarding consent, it
20 is absolutely relevant and probative to the State's case,
21 Your Honor, her state of mind, her condition and the fact
22 that she reported what she did; he came in through the
23 back door, he raped me.

24 THE COURT: Would the defense like to argue this
25 point? And the way I want to handle -- the way we can

1 handle the EMS person is I assume that they're gonna
2 testify sometime obviously after -- correct me if I'm
3 wrong, Ms. Hall will probably testify first, then the
4 neighbor, then the officer and then the EMS person?

5 MS. PATTERSON: Yes, sir.

6 MS. MAYES: The fourth witness.

7 THE COURT: Fourth witness. Okay. Yeah, that's
8 probably how I would do it, too. Any -- what we'll do
9 is we'll get her proffer on the record at a break, but
10 you wanted to argue something, Ms. Fullwood?

11 MS. FULLWOOD: Actually I wanted to call a witness.

12 THE COURT: Oh, okay. Go right ahead.

13 MS. FULLWOOD: Jason Merrill.

14 THE COURT: You're still under oath, all right?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Go ahead.

17 JASON MERRILL,

18 having been previously sworn, testified as follows:

19 DIRECT EXAMINATION (In-Camera)

20 BY MS. FULLWOOD:

21 Q. Hello, again, Officer Merrill.

22 A. Hello.

23 Q. Do you have with you your investigative notes?

24 A. Yes, I do.

25 Q. All right. And I'm looking at the one with the date

1 of November 19, 2015.

2 A. Yes.

3 Q. Okay. In -- in your report, you write that J.H. [REDACTED]
4 told you that Mr. Furtick got to her house the final time
5 at 6:30, correct?

6 A. Are you referring to the -- what would be the second
7 paragraph down?

8 Q. Well, I have it as the third, but it begins Dean
9 stated.

10 A. Dean stated that this incident began earlier in the
11 day when the suspect, whom she only knows by Rodney or
12 Todd, came to her back door a couple of times asking to
13 come in.

14 Q. I didn't ask you to read it. I'm just going down to
15 the -- the third sentence there is the suspect returned at
16 1830 hours, correct?

17 A. Yes, that's what she indicated. Approximately
18 1830 hours.

19 Q. And that's 6:30?

20 A. Yes.

21 Q. PM?

22 A. Yes.

23 Q. And you noted that she remembered the timeframe
24 because her husband had ordered some Chinese food at about
25 6:00 and the restaurant told him it would be twenty minutes

1 and the food had just been delivered before Mr. Furtick
2 came, correct?

3 A. Yes. According to my notes, that was what she used as
4 a time reference, was the delivery of the Chinese food.

5 Q. Okay. And she said that when he came back he came in
6 the house and he had a plate of food?

7 A. That was my understanding, yes.

8 Q. All right. And then basically she goes on to tell you
9 that he sexually assaulted her, correct?

10 A. I believe there's some stuff in between that, but,
11 yeah, ultimately, yeah, I believe she did state something
12 to that effect.

13 Q. Right. All right. And she didn't tell you that he
14 had been at her house for several hours, correct?

15 A. No.

16 Q. This was probably about a thirty minute encounter?

17 A. I don't know that we ever attached a specific
18 timeframe to it, but it was sometime about 6:30.

19 Q. No, she said he came back about 6:30, right?

20 A. The Chinese delivery food time is what I understood
21 to be kind of -- I know it was after that. She seemed to
22 recall that it wasn't too long after that.

23 Q. And according to your report, he came back at eight --
24 I mean, 6:30?

25 A. Approximately 6:30, yes.

1 Q. And did you ever deal with the SANE nurse in this
2 case?

3 A. In this case, no.

4 Q. All right.

5 MS. FULLWOOD: No further questions.

6 THE COURT: No questions, Solicitor?

7 CROSS-EXAMINATION (In-Camera)

8 BY MS. PATTERSON:

9 Q. Sergeant Merrill, what time did you get to the
10 hospital to speak to J.H. [REDACTED]

11 A. About 10:15 PM.

12 Q. And what time had you been notified of the -- of the
13 assault?

14 A. Approximately 9:00 PM. I think it was -- 9:02 was the
15 exact time.

16 Q. And in speaking with J.H. [REDACTED] did she -- was she
17 actually able to tell you what time she was assaulted?

18 A. No, not that I recall.

19 Q. And did you speak to her prior to her having the
20 medical exam done?

21 A. Yes, I did.

22 MS. PATTERSON: I beg the Court's indulgence,
23 Your Honor.

24 BY MS. PATTERSON:

25 Q. So the time in your report, would that be an

1 approximate time or a definite time?

2 A. That would be an approximate time.

3 Q. And I think in your report you actually indicate
4 approximately, correct?

5 A. Yes, I used that exact word. Suspect returned at
6 approximately 1830 hours.

7 MS. PATTERSON: Thank you.

8 MS. FULLWOOD: Just briefly.

9 REDIRECT EXAMINATION (In-Camera)

10 BY MS. FULLWOOD:

11 Q. But the point -- the source of your information was
12 J.H. [REDACTED] correct?

13 A. Yes, that is correct, at a time when she was very
14 upset and her judgment of time may not have been absolutely
15 spot on.

16 Q. Well, now wait a minute. Didn't you also talk to her
17 -- you got this information after she had been at Palmetto
18 Richland Hospital, right?

19 A. Yes, after a traumatic event had occurred to her.

20 Q. All right. Thank you for the editorializing, but --
21 so there was quite some time had -- some time had passed
22 between the time of the alleged assault and the time you
23 talked to her, right?

24 A. Yes.

25 Q. All right.

1 A. There was a time gap between those two things.

2 Q. Right. And there's nothing in your investigative
3 notes that talk about her frame of mind and how she's
4 upset, anxious, mad or anything. You don't say anything
5 about her mental status when she was talking to you that
6 could have affected the accuracy of the information she was
7 giving to you, is there?

8 A. No, I don't believe I captured any of that in my
9 notes.

10 MS. FULLWOOD: Nothing further.

11 THE COURT: All right, sir. You can step down.
12 Thank you.

13 (Witness excused.)

14 THE COURT: All right. Does the defense want to
15 point the Court to any law or offer any argument on
16 this -- on this question?

17 MS. FULLWOOD: Your Honor, I do not know if this
18 witness is here, but one person whose testimony or
19 information we would like to get in is that of Jennifer
20 Nguyen, the SANE nurse, who was told that the time of the
21 assault was 7:00 PM.

22 THE COURT: Okay. Is she present now or --

23 MS. MAYES: She is not, Your Honor. She will not
24 be called until later tomorrow. It looks more like
25 midday tomorrow. Again, we're dealing with a situation

1 where time is being estimated. Nobody is alleging an
2 exact time. What -- what the offer of testimony is, is
3 that victim went to the neighbor's home shortly after
4 the assault.

5 THE COURT: All right. Ms. Fullwood.

6 MS. FULLWOOD: Nothing else, Your Honor. I think
7 it is relevant to whether it's res gestae. If there was
8 a lapse of time between the assault and the reporting of
9 up to two hours, that's not in -- under the influence of
10 a situation. The declarant has had time to reflect,
11 decide how they want to present information and stage
12 it if they care to. These incident reports of the
13 police don't say anything about her mental state being
14 distraught or fragile or an altered mental state; just
15 this idea that she was making an excited utterance isn't
16 corroborated by any concrete reports that we have.

17 I beg the Court's indulgence.

18 And it's hearsay and anything that she said about
19 the alleged assault should be limited to simply time
20 and place.

21 THE COURT: Based on what is being -- or based
22 upon the testimony that's been presented, I understand
23 the defense's argument that the testimony of Ms. Carter
24 and perhaps Sergeant Reese, et cetera, was not reflected
25 in the incident report, but I don't know that that's

1 necessarily germane to this analysis. The question is
2 whether the declarant, Ms. Hall, was under the influence
3 of the event which had just occurred.

4 The Court finds under the totality of the
5 circumstances that at the very least the testimony of
6 Ms. Carter and Mr. Reese because it was so close in
7 time to the assault, it was either within -- I take the
8 testimony to be essentially that even assuming that the
9 nurse's notes reflect that she was told that the assault
10 took place at approximately 7:00, if Ms. Hall was not
11 in a position to leave the house due to fear or what
12 have you until just before 9:00, clearly she was still
13 under the effects of the events and so the testimony of
14 Ms. Carter and Sergeant Reese based upon the time that
15 they observed her, Ms. Hall, that the Court would find
16 their testimony would satisfy the excited utterance
17 exceptions. And should the EMS person's testimony be
18 similar, I may very well rule the same way.

19 But I do find that that testimony is not gonna be
20 limited to simply time and place and that they can go
21 into slightly more detail than would otherwise be
22 permitted.

23 Anything further before we call it a night?

24 MS. MAYES: Nothing from the State at this time,
25 Your Honor.

1 THE COURT: Anything that you-all can think of?

2 MS. FULLWOOD: No, Your Honor.

3 THE COURT: In the for what it's worth category,
4 I got a note, it's written on a little piece of paper,
5 and apparently one of the jurors wrote it. I haven't
6 appointed a foreperson, so it was handed to the -- to
7 the deputy over here and it says I think that female
8 defense attorney knows one of the jurors.

9 So I -- I don't know where this is coming from.
10 One of the jurors just handed you this note, I guess,
11 or gave it to -- she's nods yes.

12 All right. You-all mull that over. And Ms. --

13 MS. FULLWOOD: I'll try to search the depths of my
14 memory.

15 THE COURT: -- maybe you can search the depths of
16 your memory.

17 There was no other information other than this note
18 just being handed to you and -- was it a male or a female
19 juror that handed it to you?

20 THE DEPUTY: Female.

21 THE COURT: Female. Okay. I think there's only
22 one African American. Was it a Caucasian or an African
23 American female?

24 THE DEPUTY: Caucasian.

25 THE COURT: Caucasian. Okay. Well, that narrows

1 it down none. Good enough.

2 We'll mark this as Court's 1 or something and
3 you-all figure out if we need to do something about
4 that, all right?

5 We'll be at ease until tomorrow morning at 9:00.
6 My intention and just -- I think I've already told --
7 told you-all this, but I have a social engagement at
8 6:30, so I do need to be out of here at 5:00 tomorrow,
9 and I apologize for that, but it's one of those things
10 involving my wife's work and if I don't go, it's not
11 gonna look right and so --

12 MS. MAYES: No problem. No problem, Your Honor.
13 We'll be prepared to stop whenever -- whenever you
14 wish.

15 THE COURT: Okay. And my intention is to give
16 Jimmy Johns another try tomorrow so that maybe we can
17 make up a little bit of lost time today.

18 THE CLERK: Okay.

19 THE COURT: So, Mr. Madsen, if you need to get
20 takeout for your client or whatever tomorrow, I'm gonna
21 order Jimmy Johns for the jury, okay?

22 MS. FULLWOOD: Will law enforcement let us do that
23 for him?

24 THE COURT: I don't know. Whatever their rules
25 are is what we'll go with.

1 MS. FULLWOOD: Yes, sir.

2 THE COURT: We'll be at ease.

3 (Court's Exhibit Number 1 was marked for
4 identification.)

5 (Whereupon, the proceedings were concluded for
6 November 4, 2019, at 4:53 PM.)

7 (The following proceedings were held November 5, 2019,
8 beginning at 9:01 AM.)

9 BAILIFF: All rise. Court is now in session.

10 THE COURT: Everybody be seated, please. I think
11 the jury is here. My clerk was telling me that the note
12 -- well, we need your client.

13 MS. FULLWOOD: They're getting him dressed, I think.

14 (Pause in proceedings.)

15 (Back on the record at 9:06 AM.)

16 (Whereupon, the Defendant enters the courtroom.)

17 THE COURT: All right. We'll go back on the record
18 in the State versus Mr. Furtick. My clerk informed me
19 this morning when I came in that apparently the note was
20 merely from the officer, it wasn't from one of the jurors,
21 of course, and apparently the officer had simply noticed
22 Ms. Fullwood making eye contact with one of the jurors,
23 and I think there's nothing wrong with that, so we'll
24 just move on.

25 The jury is here. Let us go ahead and have the

1 jury in, please.

2 MS. FULLWOOD: Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. FULLWOOD: May I raise a matter beforehand?

5 THE COURT: Sure. Go ahead.

6 MS. FULLWOOD: I understand the Court has ruled,
7 but concerning the excited utterances, we'd ask the
8 Court to exclude them because any possible relevance
9 they might have to the State's case would be outweighed
10 by the fact that the crux of this testimony is to bolster
11 the testimony of Ms. Hall and we think that in that way
12 allowing that testimony in would be unduly prejudicial.

13 THE COURT: Okay. Can you cite me to any authority
14 along those lines?

15 MS. FULLWOOD: Your Honor --

16 THE COURT: This isn't really a Kromah situation I
17 think where you have someone being a human lie detector
18 and saying that we found her credible or anything. This
19 is more simply her relating that it was a rape and that
20 the Defendant committed it. I don't know that it's --

21 MS. FULLWOOD: Well, I'm making the motion under
22 Rule 403.

23 THE COURT: Okay.

24 All right. Do you-all want to respond?

25 MS. MAYES: Your Honor, it is a recognized exception

1 to hearsay, a longstanding exception to hearsay, and this
2 is the most ideal thing that I can imagine for the excited
3 utterance exception to hearsay.

4 THE COURT: It's become clear that the defense is
5 consent, so there are credibility issues which are
6 central to this case and I do believe based upon the
7 timing of everything that Ms. Hall was operating
8 under the influence of the events when she made those
9 statements to the officer and to her neighbor, and based
10 on everything that was presented yesterday by way of
11 testimony the Court will conclude that the statements
12 made were excited utterances and outside of the hearsay
13 exception as relates to 403.

14 Again, credibility is central in this case and the
15 probative value of those statements I believe far
16 outweighs any prejudice to the Defendant.

17 And your objection is noted, Ms. Fullwood, and you
18 do not need to renew that objection when those witnesses
19 testify. You are protected for the record, okay?

20 MS. FULLWOOD: Judge --

21 THE COURT: Yes, ma'am.

22 MS. FULLWOOD: And would that also carry over to
23 any in-court identification and any so-called statements
24 or non-statements that they're putting in about
25 Mr. Furtick?

1 THE COURT: Yes, the in-court identification you
2 have an objection preserved for that. Again, I don't
3 think this was a Neil v. Biggers kind of a situation. I
4 believe the State is correct on that point. Ms. Hall
5 knew the Defendant, knew him well, and so to the extent
6 that there is an objection, it's noted and you don't
7 have to renew.

8 As far as the Jackson v. Denno issue, you probably
9 do need to renew that objection at the time that that
10 testimony is elicited, okay?

11 MS. FULLWOOD: Yes, sir.

12 THE COURT: But you'll have a continuing objection
13 once it's made.

14 MS. FULLWOOD: Thank you, Your Honor.

15 THE COURT: No problem.

16 Let us have the jury, please.

17 MR. MADSEN: Judge, could we potentially --

18 THE COURT: Oh, let us not have the jury.

19 Yes, sir.

20 MR. MADSEN: This is normally our plea courtroom
21 obviously. We've had three or four people -- may we put
22 a note on the door?

23 THE COURT: Oh, okay.

24 MR. MADSEN: Because we've got just folks -- if
25 you've noticed, we've had three or four folks -- I

1 mentioned it to the solicitor's office. I don't think
2 they want to get interrupted either.

3 THE COURT: Sure. Where does it need to go, the
4 note? On that door?

5 MR. MADSEN: I mean, because people keep opening
6 it up. I think they think it's plea court because it's
7 very unusual to have it down in 3A.

8 THE COURT: Okay.

9 MR. MADSEN: And, like I said, I don't think that
10 they want to have someone peeking in.

11 (Pause in proceedings.)

12 THE COURT: Are we ready for the jury now?

13 MS. PATTERSON: Yes, sir.

14 THE COURT: Let's have them, please.

15 (Whereupon, the jury enters the courtroom at
16 9:13 AM.)

17 THE COURT: All right. The record will reflect
18 that the jury is back and seated.

19 Ladies and gentlemen, again, thank you for being
20 here and thank you for being here this morning on time.
21 The first order of business for the Court is to appoint
22 a foreperson of the jury and -- who is Ms. Krust?
23 Ms. Krust?

24 Ms. Krust, I'm gonna make you the foreperson,
25 okay? This is not a terribly -- terribly taxing job.

1 Your primary responsibility is to preside over the jury
2 deliberations once the case is submitted to you guys and
3 sign the verdict form. Your primary job really is to
4 let everybody have their fair say once the case is
5 submitted to the jury for its deliberations, okay? So
6 you'll be the foreperson of the jury. When we resume,
7 if you'll take the seat of the lady wearing the black
8 jacket. Yes. The rest of you can feel free to move
9 around as you want to or need to. The acoustics in this
10 courtroom are actually pretty good, but if at any point
11 in time anyone has any difficulty hearing what's being
12 said, I simply want you to raise your hand, you know,
13 waive at me or, get, my clerk's attention or the lawyers'
14 attention and we'll ask the witness to speak up a little
15 bit, okay? So if you can't hear, your hand goes up,
16 we'll tell them to speak up. Similarly, if you need a
17 comfort break at any time during the course of the trial,
18 just wave at me, let me know, get my attention or
19 somebody's attention, and we'll take a brief break, all
20 right?

21 Now, ladies and gentlemen, we're about to begin
22 the case of the State of South Carolina versus Rodney
23 Furtick. And before we begin the trial and before I
24 have the clerk administer your oath to you, I want to
25 let you know that, of course, this trial is gonna be a

1 lot different from what you've seen from watching trials
2 depicted on TV or in the movies. From what we see in
3 popular culture, we often get the impression that trials
4 are filled with a lot of intense drama, a lot of ah-ha
5 moments, and sometimes that happens, sometimes that's
6 the case, but obviously, ladies and gentlemen, this trial
7 is not for anyone's entertainment like movies or stuff on
8 TV. This is real life. Real life is not as exciting as
9 the movies as you can imagine. I want to tell you that,
10 of course, this case is very important to all parties
11 concerned. Certainly it's very important to the State
12 and definitely very important to Mr. Furtick.

13 I want to thank you for your willingness to come in
14 here. I know none of you volunteered for this, but I
15 want to thank you for your -- your coming in here and
16 your deciding this case because I assure you this is the
17 only way this case can be resolved, this is the only way
18 that the dispute between the State and Mr. Furtick could
19 be resolved is to put fourteen individuals in the jury
20 box and to try the case. So going forward, I just want
21 to tell you, you have my appreciation and my thanks.

22 With that I'm gonna ask that you stand where you
23 are and raise your right hand so the clerk can administer
24 your oath, please.

25 THE CLERK: If you'll raise your right hand, please.

1 (Whereupon, the jury was duly sworn by the Clerk
2 of Court.)

3 THE CLERK: Please respond by saying I do or I
4 affirm.

5 (Whereupon, the jury responds.)

6 THE CLERK: Thank you.

7 THE COURT: Thank you. Have a seat.

8 Now, ladies and gentlemen, what I now say to you is
9 intended to serve as just an introduction to the trial of
10 this case and these remarks are not an instruction on the
11 law. I'll instruct you on the law at the conclusion of
12 the trial before you begin your deliberations. Again,
13 this is just an overview of the procedure that we're
14 gonna use going forward so that you can better understand
15 what to expect.

16 Now as I explained yesterday -- I notice several
17 of you have notepads and, you know, some people are
18 note-takers, some people are not. I'm a note-taker.
19 Just a few rules about taking notes. First, if you do
20 take notes, please be sure that you don't allow the
21 taking of notes to distract you from the testimony of
22 the witnesses. Secondly, those notes are essentially
23 your personal private property. At any time when we
24 take a break, we'll collect those notes. The bailiffs
25 will secure them in an area where nobody can see them

1 and when the case is concluded, if you'll take any
2 notes, just rip those out of the tablet, and take those
3 with you back home and do with them what you will, all
4 right?

5 Now, ladies and gentlemen, the Defendant in this
6 case, Mr. Furtick, is charged by indictments filed with
7 this court with the offenses of burglary first degree
8 and criminal sexual conduct in the first degree. I'll
9 explain the elements of these charges to you at a later
10 point in time. Again, ladies and gentlemen, these
11 indictments are merely the formal instruments that
12 contain the charges made against Mr. Furtick. They're
13 not in any sense of the word evidence of any of the
14 allegations contained in the indictments.

15 In this case, Mr. Furtick has pled not guilty to
16 these charges. That plea puts the burden firmly on the
17 State to prove his guilt beyond a reasonable doubt. It
18 will be up to you to determine whether the State has met
19 this burden.

20 Now your purpose as jurors is to find and determine
21 the facts in this case. Understand that you're the sole
22 judges of the facts, so if at any time I make any comment
23 concerning the facts, you have to disregard that comment.
24 Understand that you're to determine the facts from the
25 testimony that you hear and the other exhibits which are

1 introduced during the course of the trial. It's up to
2 you to determine what inferences you feel can properly
3 be drawn from the evidence presented.

4 Now it's especially important that you perform
5 your duty of determining the facts diligently and
6 conscientiously because ordinarily there is no way to
7 correct an erroneous determination of facts by a trial
8 jury.

9 Understand that the same law that makes you the
10 judges of the facts makes me the judge of the law. The
11 law as given by the Court is only law that you can
12 consider. You'll have to accept and apply the law as I
13 state it to you. Understand that if you already have
14 some idea as to what the law is or what the law should be
15 and it disagrees with what I tell you the law is, you'll
16 have to abandon that idea because, again, you're sworn to
17 accept and apply the law as I state it to you. Now after
18 that doing that, you'll apply the facts to the law and
19 render your verdicts under the oath that you have just
20 taken as jurors.

21 Now, again, until you begin your deliberations,
22 please don't discuss this case with anyone; not friends,
23 family members, you can't even discuss it among your
24 fellow jurors until it is submitted to you. Understand
25 that the parties have been told to stay clear of you

1 while the case is going on, so coming or going from the
2 courthouse if you happen to see one of the lawyers or
3 somebody involved in this case and they don't even say
4 good morning or hello to you, understand they're not
5 being rude, they're just following my instructions to
6 have nothing to do with you while the case is going on.
7 I'm sure you can appreciate the reason for this rule.
8 If the other side were to see you conversing even
9 innocently about the weather with one of the lawyers,
10 that could easily be misinterpreted as an effort at
11 jury tampering, so the way to keep that issue from coming
12 up is just to say the jurors are off limits while the
13 case is going on.

14 Now, ladies and gentlemen, please keep an open mind
15 in this case. Do not decide any issue until you've heard
16 all the evidence, the parties have made their closing
17 arguments and you've been instructed on the law.
18 Understand that it's your solemn responsibility to
19 determine the guilt or the innocence of the Defendant
20 and your verdict has to be based only on the evidence
21 presented and the law as I instruct you.

22 Now in a moment the attorneys will make their
23 opening statements to you in which they'll tell you what
24 the issues are. They'll give you an overview of what
25 they intend to prove or assert will not be proven.

1 Understand that what the lawyers say during their
2 opening and closing statements, of course, is not
3 evidence. You'll get the evidence from the testimony
4 that you hear from this witness stand. Even though it's
5 not evidence, you should, of course, pay attention to
6 the attorneys' openings and closings because it will be
7 kind of an overview of what they anticipate this trial
8 being like.

9 Now, ladies and gentlemen, from time to time during
10 most of the trials that I -- that I have, it's necessary
11 that we take a brief break and I'll take up an issue of
12 law with the attorneys and during those breaks it may be
13 necessary that I ask that you leave the courtroom. The
14 reason that I'm asking that you leave the courtroom is
15 that often in deciding an issue of law or ruling on a
16 legal issue, I have to comment on what testimony has
17 been presented. Because you're the sole judges of the
18 facts I don't want anything that I say about the
19 testimony or about the facts to have any effect on what
20 you ultimately find those facts to be. That's why I ask
21 that you to leave the courtroom so that we can have a
22 candid discussion out here on the record about that
23 legal issue and I can be sure that what I say about the
24 facts doesn't influence your ultimate finding of facts.

25 In determining what the true facts are in this case,

1 you'll have to decide whether or not the testimony of
2 witnesses is believable or not. Understand that it's
3 my job to rule on whether certain testimony is admitted.
4 Once it's admitted whether you believe it or not is
5 solely up to you. In deciding whether to believe a
6 witness, you can consider the interest of the witness,
7 the bias of any witness or prejudice of that witness, the
8 opportunity for the witness to have seen and heard the
9 things about which they testify. You can also consider
10 the way they act while on the witness stand. You can
11 consider anything that's in the record in this case which
12 will help you evaluate the testimony of the witnesses.
13 That means it's your duty to pay close attention to them,
14 listen to them, observe them, pay close attention to the
15 attorneys and the Court. If you do that, I assure you
16 at the conclusion of the trial you'll be in as best a
17 position possible to determine what the true facts are
18 and render your verdict under the oath that you have just
19 taken.

20 Now in a moment we'll begin with opening arguments,
21 but I'll give the parties a chance to object to anything
22 that I've said to you during these opening remarks and
23 then we'll proceed with the trial.

24 Any objections from the State?

25 MS. MAYES: None from the State, Your Honor.

1 THE COURT: From the defense?

2 MS. FULLWOOD: No, Your Honor.

3 THE COURT: Solicitor, you're acknowledged for
4 your opening, ma'am.

5 MS. MAYES: May it please the Court?

6 THE COURT: Yes, ma'am.

7 MS. MAYES: Good morning.

8 On the night of November 18, 2015, JH. [REDACTED]
9 JH. [REDACTED] was alone at her house located at [REDACTED] Felder
10 Street in the Cayce area of Lexington County. You'll
11 hear that earlier that day her husband Brian had left out
12 of the home on foot to walk to a store nearby. That left
13 JH. [REDACTED] alone in the house with just her one-year-old
14 daughter RD. [REDACTED]. And on this night being a young mom she's
15 preoccupied with all the things that a mom has on her
16 mind. Getting RD. [REDACTED] ready for bed, working on the laundry
17 and emptying the trash.

18 And that night it's dark outside. Her husband's
19 already gone and she steps out the back door to empty
20 that trash and then she hurries right back in to RD. [REDACTED],
21 but in that moment, that single moment stepping outside
22 and emptying the trash, she forgot to lock the back door
23 when she came back in. Shortly thereafter an intruder
24 pushes his way into the home before she can close the
25 door. She recognizes that man right away. It's a man

1 she's met before, it's the man who lives just two blocks
2 away in that neighborhood, a man she knows as Rodney.

3 And you'll hear from J.H. in this case. You'll
4 hear exactly what happened when it he comes in. He
5 comes in with a container of food, and I submit to you
6 it's a ruse, it's trickery to keep her from panicking
7 right away, to keep her from turning around and running
8 out the front door, which she can't do. She's not gonna
9 leave her baby behind. But quickly his tone and his
10 demeanor changes to one of anger and he starts making
11 demands. His actions are threatening. He sexually
12 assaults her. He rapes her.

13 You'll hear that under our law in this state when
14 an intruder comes into the home without consent, that's
15 a burglary. It doesn't require forced entry, it doesn't
16 require a broken window. If your door's unlocked and
17 someone comes in without consent and commits a sexual
18 assault, that's a crime, it's burglary, and it's what we
19 call criminal sexual conduct in the first degree, and
20 those are the charges in this case involving this
21 defendant, Rodney Furtick.

22 So you'll hear that after he rapes J.H. he flees
23 the scene. He's nowhere to be found. You'll hear that
24 her only concern from start to finish was her daughter
25 R.D., keeping her safe. There's no requirement under

1 our law for someone to physically fight an intruder,
2 someone stab an intruder. The only responsibility of a
3 victim of sexual assault is to stay alive and to stay
4 safe and in this case the primary and greatest concern
5 of J.H. was her daughter R.D. and keeping her safe
6 throughout this ordeal.

7 So he fled the scene. You'll hear that J.H.
8 once it's safe runs across the street to her neighbor.
9 You'll hear from her, Ms. April Carter, a neighbor she's
10 known and trusted in just the three short months that she
11 and her husband Brian have lived there on Felder Street
12 in Cayce. She's just twenty years old, only married a
13 short period of time. Moved down from New York to start
14 a life here in Lexington County. But in just that three
15 months she's met and befriended her neighbor, April
16 Carter, and that's who she runs to for help. You'll hear
17 that J.H. didn't have a phone, she didn't even have a
18 car, but April is able to call 9-1-1 and get help to her
19 immediately.

20 So what happens after a fresh sexual assault?
21 You'll hear all of the details of exactly what occurs
22 and what's the protocol in a case like this. J.H. is
23 able to talk at least to the initial officer at the
24 scene and you'll hear that she's able to tell him right
25 away it's Rodney and give that description. You'll hear

1 that she's been transported to an emergency room here
2 at a local hospital where they do what's called a sexual
3 assault evidence collection kit, and the purpose of that
4 kit is to collect any type of body swabs from the genital
5 area, as well as other locations on the body, for the
6 purpose of potentially getting DNA evidence.

7 So you'll hear that as this investigation progressed
8 one of the things that occurred was that this detective
9 here, Investigator Jason Merrill with the Cayce Department
10 of Public Safety, he follows up with this defendant,
11 Rodney Furtick, because she's told them that it's Rodney.
12 You'll hear that he, along with another seasoned
13 investigator, Caleb Thomas, they meet with Rodney, they
14 advise him of his Miranda rights, also known as his
15 Miranda warnings. He waives those rights. He makes a
16 voluntary statement to these officers.

17 Well, what does he say? You'll hear exactly what
18 he stated to them. I don't know who you're talking about
19 when they ask about J.H. [REDACTED] He says he doesn't
20 recognize the name. They show him a photograph, a color
21 photograph. He says he doesn't know her. They show him
22 a color photograph of her husband. He doesn't recognize
23 him by face or name. He denies knowing either one of
24 them at all. Then they ask him about that duplex there
25 on Felder Street where this young couple resided. He

1 lives just two blocks away.

2 You'll hear testimony that he's in that area all
3 the time. He knows exactly the house they're talking
4 about. You'll hear he says he's never been in there
5 anywhere near the timeframe of this incident. There's
6 no reason his DNA would be in this house. He doesn't
7 know this couple and he hasn't been inside that house
8 in months. He just walks by there. So that's the
9 statement this defendant makes to Investigator Merrill
10 and to Investigator Caleb Thomas. It's a straight
11 denial. It's not me. It's not me. So if there's a
12 crime and someone's been assaulted, then it's someone
13 else. It's not me.

14 So as this investigation progresses, and I mentioned
15 before that those swabs were taken at the hospital, those
16 swabs end up at the state crime lab at the State Law
17 Enforcement Division, also known as SLED. What does
18 SLED find when they go through those swabs that were
19 collected from J.H. [REDACTED] body that night? Her vaginal
20 swabs, positive for semen. Other swabs from her body,
21 positive for semen, positive for saliva. Well, guess
22 whose DNA it turns out to be? And you're gonna hear
23 that testimony. You're gonna hear from those experts
24 from the State crime lab, that serologist and that DNA
25 analyst who worked this case. You're going to hear

1 from Sam Stewart, the DNA analyst at SLED, it's Rodney
2 Furtick's DNA. You're gonna hear that it's a match, and
3 I submit when we talk about a match it's not just similar
4 DNA, it's an astronomical match. One in 17 quintillion.

5 So part of what occurs in a case like this is the
6 State has the burden of proof. The State calls the
7 witnesses, the State presents the evidence, the State
8 presents the testimony. And defense counsel, they don't
9 even have to ask any questions to the witnesses that are
10 called by the State, but I submit if they do, if you do
11 hear a line of questioning, what's the implication going
12 to be now?

13 See, the good thing about being jurors is you still
14 get to rely on the same common sense and life experience
15 that you use every single day in your ordinary lives and
16 that common sense will guide you. The evidence lights
17 the path and leads the way. And so when you think about
18 relying on that common sense, what's that line of inquiry
19 gonna be now? Is it gonna be oh, well, maybe that DNA's
20 wrong, maybe there's some scientific mistake and it's not
21 actually Rodney's DNA, even though, as I said, that match
22 is absolutely undeniable. Or is it gonna be now that
23 he's been caught red-handed after denying it to the
24 police, denying knowing her, denying even being in the
25 house, is the line of inquiry or the implication now

1 gonna be oh, well, maybe it was consensual? What else
2 can he say? What else can they argue? What else is
3 out there? Because he's been caught red-handed with
4 that DNA. So keep those ideas in mind if there is a
5 line of questioning from defense counsel during the
6 course of this case.

7 Now as I said, the charges here are burglary first
8 degree. That's burglary of a home in the nighttime.
9 That does not require forced entry, as I said before.
10 It's any intrusion into a home without consent and in
11 this case you'll hear testimony from J.H. [REDACTED] that he
12 did not have consent to be in her residence.

13 Secondly, the charge is criminal sexual conduct
14 first degree. That's a sexual battery. Any intrusion
15 of the genital opening is a sexual battery. And in this
16 case, it's what we call criminal sexual conduct first
17 degree because it occurs during the course of a burglary.
18 Under state law, that would always be criminal sexual
19 conduct first degree.

20 After all is said and done, I submit the State will
21 meet its burden of proof abundantly and that is proof
22 that Rodney Furtick is guilty of burglary in the first
23 degree and guilty of criminal sexual conduct in the
24 first degree.

25 Thank you.

1 THE COURT: Thank you, Ms. Mayes.

2 Mr. Madsen, you're recognized.

3 MR. MADSEN: You can't have a rape during a
4 consensual sexual encounter. You can't have a rape
5 during a consensual sexual encounter. On November 18,
6 2015, a little under four years ago, Rodney Furtick did
7 not commit a burglary and he did not commit a rape of
8 J.H. [REDACTED] now Hall. But they did have consensual sex.

9 You will not hear from anyone during this trial that
10 he ever hit her, kicked her or punched J.H. [REDACTED] You
11 will not hear from anyone during this trial that he used
12 any type of weapon to coerce or to force her to have sex.
13 You're not gonna hear anyone from that stand that says
14 that they saw or that they photographed any marks, any
15 bruises, any cuts to her because that's not what happened.
16 That's because this was a consensual sexual encounter
17 between two consenting adults, and it wasn't the first
18 time that they had had sex.

19 So it's interesting when the State gets up on their
20 opening they don't mention to you that, see, Rodney had
21 met J.H. [REDACTED] ex-husband Brian a little over a month before
22 and that he would frequently come over to the house one
23 to two times a week over a five or six-week period. That
24 he was over there frequently. You didn't hear that in
25 the opening. At the end you'll make the decision why.

1 Maybe it doesn't fit with what their story is.

2 But he had been going over to that house. They had
3 become friends. He would stay over there. He even
4 stayed the night over there. And during one of those
5 visits when the ex-husband wasn't there, Rodney and J.H.
6 had consensual sex.

7 Now you jump forward to November 18th of 2015.
8 Rodney had been over to J.H. house multiple times that
9 day. At some point in time they kind of started talking
10 about hey, J.H. says, you know, I could use some money,
11 I've got some extra baby food that I don't need anymore,
12 do you think that maybe you could take it and go find
13 someplace and maybe try to sell it and we can maybe
14 divvy up the money, and so Rodney took it, he left, and
15 he tried to do that.

16 You know, there's not a great market for unused baby
17 food. He wasn't able to find anyone who was willing to
18 buy it, so he comes back. Does he bring a knife? Does
19 he bring a gun? Does he bring rope? Does he bring any
20 kind of tape? No. What's he bring back? He brings back
21 a plate of food for J.H. little girl because, see, he
22 had brought food in the past when he had come and the
23 little girl really liked it, so he brings back food
24 that day. He's there for a little period of time and
25 they have a consensual sexual encounter again. When

1 they're done, he leaves, but he leaves the food for the
2 little girl. Does that sound like burglary and rape?
3 Let into a house? Absolutely not because it was a
4 consensual sexual encounter between two consenting
5 adults.

6 Now in this case, as in every criminal case, the
7 State has the sole burden of proof to prove each and
8 every element of any crime that an individual is charged
9 with. And as the judge kind of told you, he will tell
10 you at the end of the case, he will charge you on the
11 law, and he will give you all of the elements of burglary
12 in the first degree and all of the elements of criminal
13 sexual conduct in the first degree. And if the State
14 fails to meet just one of those elements, the law requires
15 that you find Rodney not guilty.

16 Being invited into a house is not burglary. Having
17 consensual sex with someone is not criminal sexual conduct
18 in the first degree. On November 18th of 2015 Rodney had
19 been to that house multiple times that day. He was let
20 into that house and he and J.H. had consensual sex and
21 we are confident that after you hear all of the evidence
22 and have a chance to evaluate it and hear all of the
23 testimony that you will find Rodney not guilty of
24 burglary in the first degree and not guilty of criminal
25 sexual conduct in the first degree because he is not

1 guilty. He's absolutely not guilty.

2 THE COURT: Thank you, Mr. Madsen.

3 Solicitor, if you'll call your first witness,
4 please.

5 MS. PATTERSON: Thank you, Your Honor. May it
6 please the Court?

7 THE COURT: Yes, ma'am.

8 MS. PATTERSON: The State calls J.H. [REDACTED]

9 THE CLERK: Raise your right hand, please.

10 (Whereupon, J.H. [REDACTED] was duly sworn by
11 the Clerk of Court.)

12 THE CLERK: If you'll have a seat over there,
13 please. If you will state your name and spell your
14 last for the record.

15 THE WITNESS: My name is J.H. [REDACTED] formerly Dean,
16 D-E-A-N H-A-L-L.

17 J.H. [REDACTED]

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. PATTERSON:

21 Q. And, Ms. Hall, I'm gonna pull the microphone to you so
22 the jury can hear you. And may I call you J.H. [REDACTED]

23 A. Yes.

24 Q. And, J.H. [REDACTED] how old are you?

25 A. Twenty-four.

- 1 Q. And, J.H. where do you currently live?
- 2 A. I live in Sheboygan, Wisconsin.
- 3 Q. And do you work?
- 4 A. Yes, ma'am.
- 5 Q. And what kind of work do you do?
- 6 A. I'm an assistant -- I'm a nursing assistant.
- 7 Q. And, J.H. do you have children?
- 8 A. Yes, ma'am. I have two.
- 9 Q. And what are their names and ages?
- 10 A. I have a five-year-old named R.D. and then I
- 11 have a nine-month-old little boy named J.B.
- 12 Q. And are you currently married?
- 13 A. No, ma'am.
- 14 Q. Have you ever been married?
- 15 A. Yes, ma'am.
- 16 Q. And who was your husband?
- 17 A. His name was Brian Dean.
- 18 Q. And where does Brian live?
- 19 A. He still lives in New York.
- 20 Q. And have you ever lived in Cayce, South Carolina?
- 21 A. Yes, ma'am.
- 22 Q. Do you remember when you moved to Cayce?
- 23 A. Two weeks before my daughter's first birthday.
- 24 Q. And so that would have been?
- 25 A. End of August. She was born .

1 THE COURT: I'm having some difficulty hearing.
2 Ms. Hall, would you move that microphone a little bit
3 more closer and speak up.

4 I'm sorry, Ms. Patterson. Go ahead, please.

5 BY MS. PATTERSON:

6 Q. Do you remember when you moved to Cayce?

7 A. I don't remember the date, no. I just remember it was
8 two weeks before her first birthday.

9 Q. And that would have been, again, August --

10 A. Late August. Her birthday is [REDACTED]

11 Q. Of what year?

12 A. [REDACTED].

13 Q. Would it have been 2015?

14 A. I moved in 2015, yes.

15 Q. 2015?

16 A. Her birthday is [REDACTED].

17 Q. And then when you moved to Cayce, do you remember
18 where you lived?

19 A. Julius Felder. [REDACTED].

20 Q. And what type of residence was this?

21 A. It was a concrete duplex.

22 Q. And who lived in that house with you?

23 A. My daughter and my husband at the time.

24 Q. And how long had you and Brian been married at that
25 time?

1 A. We got married in June of 2015.

2 Q. And when you moved to Cayce, were you working?

3 A. No, ma'am.

4 Q. Was Brian working?

5 A. Yes, ma'am.

6 Q. And what shift did Brian work?

7 A. He usually worked the night shift, but he did pick up
8 a couple of day shifts.

9 Q. And did you know many people in Cayce?

10 A. Not in the beginning, no.

11 Q. Did you ever befriend any -- anybody?

12 A. I befriended our neighbor across the street; April and
13 her mother.

14 Q. Did you and Brian have a vehicle?

15 A. No, ma'am.

16 Q. Did you-all have a home phone?

17 A. No, ma'am.

18 Q. How did Brian get to work every day?

19 A. He walked. It was just a 15-minute walk.

20 Q. And what would you and R.D. do when Brian went to
21 work?

22 A. We would walk around town. I would put her in her
23 stroller and take her for walks.

24 Q. Did you hang out with anybody?

25 A. Mostly April. I was at her house almost every day.

1 My daughter adored her.

2 Q. Now let's go back to the evening of November 18, 2015.

3 Do you remember earlier that day if Brian was home with
4 you?

5 A. Yes, he was.

6 Q. And did anybody come over to your house that day?

7 A. Rodney tried to. He tried to come inside.

8 Q. Now do you remember when you were introduced to
9 Rodney?

10 A. Yes, ma'am.

11 Q. And who introduced you?

12 A. My husband.

13 Q. Had you known him very long?

14 A. No, ma'am.

15 Q. And when you met him, did you -- how often did he come
16 to your house?

17 A. Once or twice a week after I met him.

18 Q. And did he ever come to your house when Brian wasn't
19 there?

20 A. I specifically said that he couldn't be at my house
21 when my husband wasn't home.

22 Q. And why did you say that?

23 A. He made me uncomfortable.

24 Q. Did you ever tell Brian or anybody how you felt about
25 Rodney?

1 A. I talked to April about it and then I did open up
2 to my husband about it, that he was just -- I was
3 uncomfortable around him.

4 Q. And after you told Brian that, was Rodney allowed over
5 at the house?

6 A. He was only allowed over at the house when my husband
7 was home.

8 Q. And did -- was Rodney told this by you or your
9 husband?

10 A. Multiple times.

11 Q. Now going back to that evening, did your husband leave
12 and go somewhere?

13 A. Yes, he went to a hobby shop.

14 Q. And how did he get to the hobby shop?

15 A. He walked. He left out the back door.

16 Q. Do you remember about what time it was when he --

17 A. He didn't like walking in the dark, so he would leave
18 before it got dark. He would always walk home with one
19 of the guys from the shop because they lived on the same
20 street.

21 Q. And when he left, did -- did he take the cell phone?

22 A. Yes, ma'am.

23 Q. And what did you and R.D. do when he left, after
24 Brian left?

25 A. I made her dinner. She wanted mac and cheese and then

1 I started getting her ready for bed.

2 Q. Were you doing any other household chores or anything?

3 A. Most -- I was doing dishes and laundry and cleaning up
4 the living room from the day's play.

5 Q. And as you're getting your daughter ready for bed,
6 does anything happen?

7 A. The back door starts opening. Well, first I hear a
8 knock and I don't answer it because I'm in the middle of
9 getting my daughter ready for bed. I thought it was my
10 husband because he -- he -- I would get frightened easily
11 if someone just walked in, so he would knock before he
12 entered.

13 Q. Okay. And let me ask you this. Before you heard the
14 knock on the back door, had you been outside?

15 A. Yes, ma'am. I had taken the garbage out.

16 Q. And let me just show you something.

17 (State's Exhibit Number 8 was marked for
18 identification.)

19 BY MS. PATTERSON:

20 Q. J.H. [REDACTED] I'm gonna show you what's been marked as
21 State's Exhibit Number 8 and ask you to take a look at
22 this. Do you recognize what's depicted in this poster?

23 A. Yes, ma'am. It's the street I lived on with my -- the
24 property I was living on.

25 Q. Okay. Does it fairly and accurately represent the way

1 that your -- the property looked when you lived on Julius
2 Felder Street?

3 A. Yes, ma'am.

4 Q. Does it look like it's been changed or altered in any
5 way?

6 A. No, ma'am.

7 MS. PATTERSON: Your Honor, at this time we move
8 State's Exhibit 8 into evidence.

9 THE COURT: Without objection?

10 MS. FULLWOOD: No objection.

11 THE COURT: Without objection, it is in evidence.

12 (State's Exhibit Number 8, a photo enlargement,
13 was admitted into evidence.)

14 BY MS. PATTERSON:

15 Q. J.H. I'm gonna move this up here, so if you can keep
16 your voice up. This is a pointer with the red there so you
17 can kind of point while you're talking. Can you identify
18 for the jury where's your house?

19 A. Right there, ma'am.

20 Q. So you lived on --

21 A. Right on this side of the house.

22 Q. And where did April live?

23 A. She lived right here.

24 Q. And where did you -- can you see the back door in that
25 picture?

- 1 A. Right there.
- 2 Q. And where did you keep your trash can?
- 3 A. I kept it right on the edge here.
- 4 Q. And you said as you're getting your daughter ready for
5 bed you hear a knock at the back door?
- 6 A. Yes, ma'am.
- 7 Q. And did you make it to the door?
- 8 A. Partially.
- 9 Q. What happens before you reach the door?
- 10 A. It starts to open.
- 11 Q. And what did you see?
- 12 A. I saw someone trying to -- I didn't see the face yet,
13 so I saw someone trying to come in. I get to the door and
14 I tried pushing it closed and saying that I didn't want
15 anyone in the house because I was trying to get my daughter
16 ready for bed because she's hyper. If there's more than
17 just me around, she wouldn't go to bed.
- 18 Q. Okay. And do you succeed in pushing the door closed
19 on the person?
- 20 A. No, ma'am.
- 21 Q. Does the person enter your house?
- 22 A. Yes, ma'am.
- 23 Q. And who is it that comes inside your house?
- 24 A. It was Rodney, ma'am.
- 25 Q. Now did you know Rodney's last name or anything?

1 A. No, ma'am, I did not.

2 Q. Did you know him by any other names than Rodney?

3 A. He introduced himself with multiple different names.

4 I was told Todd once, Rick, Rodney. Mostly things that
5 started with an R.

6 Q. And when he comes into your house, what is your
7 reaction?

8 A. I verbally asked him to leave.

9 Q. And does he leave?

10 A. No, ma'am.

11 Q. And when he comes inside, does he have anything in his
12 hand?

13 A. He has a plate of food.

14 Q. And do you know what kind of food this was?

15 A. No, ma'am. It was covered.

16 Q. And what kind of container was the food in?

17 A. It was like in a to-go contain -- container that you
18 get from a restaurant.

19 Q. Now, J.H. did you need or want Rodney to bring over
20 food for you or anybody in your house?

21 A. No, ma'am, I did not.

22 Q. And so does he come all the way inside your house?

23 A. Yes, ma'am, and he closes the door.

24 Q. And, again, did you say anything to him?

25 A. I told him to leave, that I was trying to get my

1 daughter ready for bed, and that I did not want anyone here
2 when my husband wasn't home.

3 Q. And how were you feeling at this time?

4 A. I was a little -- a little scared because he had
5 always made me uncomfortable.

6 Q. And, J.H. [REDACTED] had you ever had consensual sex with
7 Rodney?

8 A. No, ma'am, I did not.

9 Q. And at this time where is R.D. [REDACTED] at?

10 A. She is -- she was supposed to be laying in her bed,
11 but she had gotten up and was behind me a few steps.

12 Q. Let me show you something else.

13 (State's Exhibit Number 9 was marked for
14 identification.)

15 BY MS. PATTERSON:

16 Q. And, J.H. [REDACTED] I'm gonna show you State's Exhibit
17 Number 9 and ask you to look at this. Do you see what's
18 depicted in this exhibit?

19 A. Yes, ma'am. It's a diagram of the house I lived in
20 that I drew for you.

21 Q. And you drew this to help me to formulate this diagram
22 of your house?

23 A. Yes, ma'am.

24 Q. And does it fairly and accurately represent the layout
25 of your house?

1 A. Yes, ma'am it, does.

2 MS. PATTERSON: Your Honor, at this time we move
3 State's Exhibit 9 into evidence.

4 MS. FULLWOOD: No objection.

5 THE COURT: Without objection, State 9's in evidence.

6 (State's Exhibit Number 9, a diagram, was admitted
7 into evidence.)

8 BY MS. PATTERSON:

9 Q. And, again, J.H. this is a duplex?

10 A. Yes, ma'am.

11 Q. Okay. Can you kind of point out to there jury where's
12 the back door?

13 A. The back door's right here.

14 Q. And where are you when you first hear the knock on the
15 door?

16 A. I am in my daughter's room, which is right here.

17 Q. And that looks like an area rug, but what was in your
18 daughter's room?

19 A. It is a foam puzzle piece play mat. The carpet wasn't
20 forgiving, it was rough, so we put a foam mat down so she
21 wouldn't hurt herself because she had just started walking.

22 Q. And can you identify the other parts of your house?

23 A. This was mine and my husband's room and this was the
24 living room. There was a door here and we would close it
25 during the night and this was -- this is the front door

1 here.

2 Q. And where did you have your kitchen?

3 A. The kitchen is up here along with the bathroom and the
4 place for the washer and dryer.

5 Q. Okay. And how far do you get before you see someone
6 trying to --

7 A. I get about here right past the washer.

8 Q. And when Rodney comes in, where is he?

9 A. He is about right there.

10 Q. And where's R.D. [REDACTED]?

11 A. She had started coming up, so she was about here.

12 Q. And when you see R.D. [REDACTED] coming towards Rodney, what
13 do you do?

14 A. I start backing towards her and I tell her to go lay
15 in my bed. She was always more comfortable sleeping in my
16 bed than she was her own.

17 Q. Okay. And does Rodney say anything to you?

18 A. Not that I can remember. I can't remember what he
19 said before. It's -- he just looked angry, like I was
20 angry at something.

21 Q. Did he do anything?

22 A. He set the plate of food down somewhere in the kitchen
23 or on the dryer and started walking towards me after he
24 closed the door.

25 Q. Okay. And when he walks towards you, does he say or

1 do anything to you?

2 A. Not to me, no. My daughter had gotten in front of me.
3 She didn't listen when I told her to go lay down and he had
4 pushed her against one of the corners here. She had a red
5 mark on her back from it.

6 Q. And after he pushes your daughter, what do you do?

7 A. I had picked her up and calmed her down because she
8 had started crying and then I told her go lay down in
9 momma's bed and cuddle up with my body pillow because it
10 was the same body pillow I had when I was pregnant and she
11 -- and she always loved it.

12 Q. Now does Rodney -- do you say anything to Rodney about
13 pushing your daughter?

14 A. I -- I don't remember if I said anything to him about
15 pushing her. I was more focussed on my daughter.

16 Q. Okay. And what's going on in your mind?

17 A. I was getting more scared.

18 Q. And did he threaten you or your daughter?

19 A. He -- he told -- he -- at that point he said if you
20 don't do what I say, I am gonna hurt your daughter.

21 Q. And did you take that threat seriously?

22 A. Yes, ma'am.

23 Q. And how did it make you feel?

24 A. More scared for her than me.

25 Q. And so did you want him to leave, J.H.

1 A. Yes.

2 Q. And in your mind what did you have to do to get him to
3 leave?

4 A. Do what he wanted.

5 Q. And what do you do?

6 A. He started pushing me towards my daughter's room --

7 Q. Uh-huh.

8 A. -- like kind of was walking towards me, so I would
9 back up, and he didn't say anything, and he told -- I --
10 I kind of blanked out mentally because I was more -- I was
11 scared. I was scared for her because she started crying
12 and screaming.

13 Q. Okay. And did you make it to your daughter's room?

14 A. Yes, ma'am.

15 Q. And when you got there, did Rodney say anything to
16 you?

17 A. I don't remember if he said anything, but I do
18 remember that he -- he tried pushing -- he tried pushing
19 me onto the floor and then at that point I remember he said
20 I told you to lay down.

21 Q. Okay. And did you lay down?

22 A. Yes, ma'am.

23 Q. And why did you lay down, J.H. [REDACTED]

24 A. I was -- I was scared because he had -- he had looked
25 towards my daughter again because my daughter was still

1 crying.

2 Q. Now did you try to run away with your daughter?

3 A. No, ma'am.

4 Q. Why not?

5 A. It -- it didn't cross my mind. I --

6 Q. Speak up just a little bit. I'm sorry.

7 A. I'm -- I'm a bit clumsy at times and when I'm
8 overemotional, I -- I knew I didn't have the -- I guess
9 you could say the energy or anything to pick up my daughter
10 and run without hurting both of us more.

11 Q. And so tell us again how you got down to the floor?

12 A. My daughter had a basket of toys right here. Like I
13 said, I was in the middle of cleaning up, so I hadn't put
14 the basket away. I had tripped backwards a little bit on
15 the toys when I was walking backwards and he had pushed me
16 further -- he had pushed me to lay on the floor.

17 Q. So he pushed you down on the floor further?

18 A. Yes.

19 Q. And do you remember what you were wearing?

20 A. I was wearing a red tank top, a black skirt, a black
21 pair of tights. I don't remember the color of the
22 underwear though.

23 Q. And when you get down on the floor, what happens?

24 A. He -- he tries kissing me and -- and trying -- I'm
25 just -- I'm just laying here.

- 1 Q. Are you kissing him back?
- 2 A. No, ma'am.
- 3 Q. Okay. And what happens next?
- 4 A. He tries pulling off my tights.
- 5 Q. And how does he try to pull them off?
- 6 A. He first tries to pull them off by the bottom where
- 7 the -- where my legs -- my feet are and I believe one of
- 8 the legs ripped and he was getting frustrated, so he tried
- 9 pulling them off a little further up and he -- and that
- 10 wasn't working, so he just grabbed them by the waist and
- 11 pulled them completely off.
- 12 Q. And when he pulls your tights off, does your underwear
- 13 come off, too?
- 14 A. Yes, ma'am.
- 15 Q. And what happens next J.H. [REDACTED]
- 16 A. He performed oral sex on me by licking and -- and he
- 17 would move -- he moved my shirt up so he could have access
- 18 to my chest.
- 19 Q. And what are you doing when he's doing this to your
- 20 body?
- 21 A. I'm just -- I'm laying there because -- I'm actually
- 22 staring at my daughter because she's just crying. Like I
- 23 can't talk to her.
- 24 Q. Are you trying to fight him off you?
- 25 A. No, ma'am.

1 Q. And why not, J.H.

2 A. Because he -- he kept turning to glare at my daughter
3 and the glare that he was giving her was scaring me. I
4 didn't want her to get hurt.

5 Q. And during the assault do you remember anything about
6 his appearance or anything?

7 A. He kept his shirt on. It was a gray shirt.

8 Q. And was he asking you or telling you to do anything?

9 A. No, he would just grab my hand because I had them
10 laying by my side and he -- and he tried to get me to touch
11 him.

12 Q. And did you touch him?

13 A. Not without him forcing me.

14 Q. And what was his attitude during this assault?

15 A. He was annoyed because my daughter was crying. He
16 kept getting annoyed by it.

17 Q. And, J.H. again, did you consent to this?

18 A. No, ma'am.

19 Q. Do you remember something about some wipes?

20 A. Yes. He had grabbed my daughter's baby wipes before
21 and had wiped -- I had felt something cold, so I believe he
22 had wiped me down and then after he had cleaned himself off
23 and then attempted to clean me off.

24 Q. And you said this was after?

25 A. Yes, ma'am.

1 Q. J.H. what was your main focus during this whole
2 time?

3 A. My daughter. She's everything to me.

4 Q. And what happened after he left? How did he leave
5 your house?

6 A. He walked back out the back door.

7 Q. And what did you do?

8 A. I took a few moments to calm down even though it
9 really didn't work. I got dressed as best as I could,
10 grabbed my daughter, I didn't even bother putting shoes on,
11 and I ran out the front door to April's.

12 Q. Before Rodney left, did he say anything to you?

13 A. He said that if -- he said that if I said anything he
14 would tell his friends that my house was free game.

15 Q. And did you take this as a threat?

16 A. Yes, ma'am.

17 Q. Did you take it seriously?

18 A. Yes, ma'am. But I knew I had to tell. I couldn't let
19 -- I couldn't let my daughter live like that, scared.

20 Q. Now when you go over to April's house, where was
21 April?

22 A. She was sitting on her front -- on her momma's front
23 porch smoking a cigarette like she usually does.

24 Q. And did you tell her what happened to you?

25 A. Yes, ma'am.

1 Q. Did you tell her who did this to you?

2 A. I told her -- I believe my exact words were he raped
3 me and when she asked who, I was like the man that you
4 warned me about and she said Rodney and I'm like yes. She
5 knew who he was because we had previous conversation --

6 MS. FULLWOOD: Objection, Your Honor.

7 THE COURT: Sustained as to hearsay.

8 MS. PATTERSON: Okay. We'll leave it at that.

9 BY MS. PATTERSON:

10 Q. And so what did April do after you told her what
11 happened and who did this to you?

12 A. She called 9-1-1 after making sure that my daughter
13 was okay.

14 Q. And did you use another phone at April's house to call
15 anybody?

16 A. I used her mother's phone to call my husband.

17 Q. And you told your husband what happened to you?

18 A. Yes.

19 Q. Now do you remember a police officer coming to April's
20 house?

21 A. Yes, ma'am.

22 Q. And were you able to talk to him?

23 A. I -- I -- I did speak to him, yes. I wasn't -- I
24 can't remember if I was coherent enough for him to
25 understand me though.

- 1 Q. But you told him -- did you tell him what happened?
- 2 A. Yes, ma'am.
- 3 Q. Did you tell him who it was?
- 4 A. Yes, ma'am.
- 5 Q. Do you remember going to the hospital?
- 6 A. Yes, ma'am.
- 7 Q. And how did you get to the hospital?
- 8 A. By ambulance.
- 9 Q. And did you really want to go to the hospital at
- 10 first?
- 11 A. I -- I just wanted the night to be over. I wanted --
- 12 I wanted my husband's comfort.
- 13 Q. Were you worried about leaving your daughter?
- 14 A. Yes.
- 15 Q. And why?
- 16 A. Because I was -- because I was still scared. My
- 17 daughter was everything -- is everything to me. She --
- 18 she was still crying.
- 19 Q. And when you get to the hospital, did you have an
- 20 exam?
- 21 A. Yes, ma'am.
- 22 Q. Did they take your clothing?
- 23 A. Yes, ma'am.
- 24 Q. And did you tell the nurse what happened to you?
- 25 A. Yes, ma'am.

1 Q. And what did you go home wearing?

2 A. I wore -- I went home wearing a nurse's scrubs.

3 Q. Now did they keep you at the hospital that night?

4 A. I don't believe so, no, but I do remember it was late.

5 Q. And, J.H. how did you get home from the hospital
6 that night?

7 A. I can't remember. I think a policeman gave us a ride
8 home.

9 Q. And when you got to the house, do you remember the
10 policeman come into your house?

11 A. Yes, he wanted to see where it happened.

12 Q. Did you let him in?

13 A. Yes, ma'am.

14 MS. PATTERSON: I beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. FULLWOOD: No objection, Your Honor.

17 (State's Exhibit Number 10 was marked for
18 identification.)

19 THE COURT: State's what?

20 THE COURT REPORTER: 10.

21 THE COURT: State's 10 is in evidence without
22 objection.

23 (State's Exhibit Number 10, a pair of tights, was
24 admitted into evidence.)

25 BY MS. PATTERSON:

1 Q. And, J.H. [REDACTED] I'm gonna show you what's been entered as
2 State's Exhibit Number 10. Do you recognize this?

3 A. Yes, ma'am. Those are the -- my tights that I was
4 wearing.

5 Q. Now you stated to the jury that he tried to take them
6 off at the bottom?

7 A. Yes, ma'am.

8 Q. Were your tights -- were they in this condition when
9 you first had them on?

10 A. No, ma'am.

11 Q. And this is just one side of the tights that's ripped?

12 A. Yes, ma'am.

13 Q. And J.H. [REDACTED] these tights are inside out. Would you have
14 worn them inside out?

15 A. No, ma'am. They were my favorite pair.

16 Q. And do you remember law enforcement taking these from
17 your house?

18 A. Yes, ma'am.

19 Q. Do you remember which room they were in when they took
20 them?

21 A. They were laying on the play mat in my daughter's
22 room.

23 Q. J.H. [REDACTED] did you observe any type of smell on this
24 person as he was doing this to you?

25 A. He smelled faintly of alcohol.

1 Q. Did you see the person -- did you see Rodney again
2 after this assault?

3 A. No, ma'am, I did not.

4 Q. Did you stay in South Carolina much longer after the
5 assault?

6 A. I stayed until after Christmas.

7 Q. And J.H. was running out that door an option for you?

8 A. No, ma'am, it was not.

9 Q. And why not?

10 A. My daughter. I could not leave her at all. She -- it
11 was not an option.

12 Q. And -- and you didn't try to fight him off?

13 A. No, ma'am.

14 Q. What, if anything, were you afraid of if you tried to
15 fight him?

16 A. The same thing happening to my daughter.

17 MS. PATTERSON: I beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 BY MS. PATTERSON:

20 Q. And, J.H. do you see the man in the courtroom that
21 assaulted you on November 18, 2015?

22 A. Yes, ma'am.

23 Q. That broke in your house?

24 A. Yes, ma'am.

25 Q. Where is he sitting?

1 A. He's sitting over there with the blue shirt.

2 THE COURT: The record will reflect that the witness
3 has identified the Defendant.

4 BY MS. PATTERSON:

5 Q. Let me go back. When you talked to the officers, were
6 you able to give them a description of Rodney?

7 A. Yes, ma'am, I was.

8 Q. What description did you give them?

9 A. I said he was bald, five-ten, about my husband's
10 height, he was wearing a gray shirt, dark pants, I couldn't
11 remember the shoes, and that he was muscular and that he
12 was of a dark skin color.

13 Q. And had you ever known him to wear glasses or
14 anything?

15 A. No, ma'am, I did not.

16 Q. And besides the times he came over to your house, had
17 you seen Rodney in the neighborhood?

18 A. Yes, ma'am, I did.

19 MS. FULLWOOD: No objection.

20 THE COURT: State's 11?

21 State's 11 in evidence.

22 (State's Exhibit Number 11, a photograph, was
23 marked and admitted into evidence.)

24 BY MS. PATTERSON:

25 Q. And can you point out your house in this picture?

1 A. It's right there.

2 Q. And, again, where's April's house?

3 A. Right there.

4 Q. And in this picture, does it show the front of your
5 house or the back?

6 A. It shows the front of my house.

7 Q. And where did you see Rodney walking a lot in the
8 neighborhood?

9 A. He would walk up and down the street here and then you
10 would see him walk back here and then he would walk along
11 this treeline here and then he would always pop up through
12 people's driveways just out of nowhere.

13 Q. And where would you be when you'd see Rodney?

14 A. I would be sitting on my front porch watching my
15 daughter playing with her toys on the front lawn.

16 Q. Would you ever be at April's?

17 A. Sometimes I would be over at April's, too, because she
18 had a grand -- a grandchild that was around my daughter's
19 age.

20 MS. FULLWOOD: No objection.

21 THE COURT: 12 and 13 or where are we at? I'm
22 sorry.

23 THE COURT REPORTER: 1 and 2 actually.

24 THE COURT: What are they?

25 MS. PATTERSON: Pictures of her.

1 THE COURT REPORTER: State's 1 and 2.

2 THE COURT: I'm sorry.

3 State's 1 and 2 are in evidence.

4 (State's Exhibit Number 1 and 2, photographs, were
5 admitted into evidence.)

6 BY MS. PATTERSON:

7 Q. I'm gonna show you what's been entered as State's
8 Exhibit 1 and 2 and ask you to take a look at that. Do you
9 recognize what's in that photograph?

10 A. Yes, that's me the night it happened at the hospital.

11 THE COURT: Do you want to --

12 MS. PATTERSON: I'll just pass them around. We
13 tried. I'll just walk around.

14 THE COURT: One moment. Try that one. That's it.
15 That's got it. Now kill those -- we'll go with that.
16 No, that's too much. You may just need to walk them
17 around. I'm sorry.

18 MS. PATTERSON: I'll walk around with them.

19 THE COURT: I'm sorry. I don't think we're going
20 to be able to get a good projection.

21 MS. PATTERSON: Yes, sir. That's fine.

22 THE COURT: I'm sorry.

23 BY MS. PATTERSON:

24 Q. And, J.H. [REDACTED] do you remember someone taking these
25 pictures with you?

1 A. It was the nurse, I believe.

2 Q. And, again, J.H. is this the way you presented to
3 the hospital?

4 A. Yes, ma'am.

5 Q. Sleeveless?

6 A. Yes, ma'am.

7 Q. Your tights off?

8 MS. FULLWOOD: Objection to the leading, Your
9 Honor.

10 BY MS. PATTERSON:

11 Q. Were you wearing your tights?

12 A. No, ma'am.

13 Q. Were you wearing any shoes?

14 A. No, ma'am, I was not.

15 Q. And is this the way that you ran over to April's
16 house?

17 A. Yes, ma'am, it was.

18 Q. J.H. had you been upset?

19 A. Uh-huh.

20 Q. Crying?

21 A. Yes. I was -- I was incoherent.

22 Q. And before you left your house, did you put on -- put
23 your underwear back on?

24 A. Yes, ma'am.

25 Q. Did they take those when you got to the hospital?

1 A. They took everything.

2 MS. FULLWOOD: Your Honor, can we get this turned
3 off? There's a bad glare.

4 THE COURT: Yeah, if we're not gonna use that,
5 let's go ahead and shut it down, please.

6 MS. PATTERSON: You can turn the light off.

7 BY MS. PATTERSON:

8 Q. Now, J.H. [REDACTED] you -- I just need to be clear. You
9 described to -- to us what Rodney did to your body --

10 A. Yes, ma'am.

11 Q. -- when you were on the floor in your daughter's room?

12 A. Yes, ma'am.

13 Q. Again, can you tell us what he did to you?

14 A. He -- after he got my tights and underwear off, he
15 started to perform oral sex on my lower area and then he
16 moved my shirt up and my bra up so he could have access to
17 my chest. When he was finished performing oral, he then
18 raped me.

19 Q. And did he do anything to your chest?

20 A. He was sucking on a nipple.

21 Q. And when you say he raped you, what did he do?

22 A. He entered me.

23 Q. How did he enter you?

24 A. I -- I don't understand.

25 Q. What did he do to you? What did he put inside of you?

1 A. His -- his penis.

2 Q. Now, J.H. you said he smelled like alcohol. Had you
3 been drinking?

4 A. No, ma'am.

5 Q. Had you been using any drugs?

6 A. No, ma'am. Never.

7 Q. And, again, J.H. was anything that happened on this
8 day consensual?

9 A. No, ma'am.

10 Q. Did you have any other prior sexual -- consensual
11 sexual contact with the Defendant, Rodney Furtick?

12 A. No, ma'am, I did not. I was faithful to my husband.

13 MS. PATTERSON: Thank you, J.H.

14 THE COURT: Cross.

15 MS. FULLWOOD: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. FULLWOOD:

18 Q. Ms. Hall, in November of 2015 you -- you were on
19 citalopram, correct?

20 A. Yes, ma'am.

21 Q. Okay.

22 A. But I had been on citalopram since I was ten.

23 Q. Okay. And that's a depression medication?

24 A. Yes, ma'am.

25 Q. Okay. And Rodney has socialized with you and your

1 husband at your house several times, correct?

2 A. Socialized with my husband.

3 Q. Never you?

4 A. I would never stay in the room. I would always go and
5 do something else or leave the house.

6 Q. Well, on October 26th of 2015, didn't you call the
7 police and report to them that Rodney and a white woman,
8 who you described as his girlfriend, came over to your
9 house and had dinner with you and your husband?

10 A. I don't remember the dinner, ma'am.

11 Q. You didn't report to the police that you had dinner
12 with Mr. Furtick and his girlfriend?

13 A. No, ma'am. I don't remember reporting to the police
14 about that.

15 Q. Do you remember that at that same time you reported to
16 the police that either Rodney or his friend must have
17 stolen your EBT cards?

18 A. I'm sorry, I don't remember reporting that at all. I
19 mean, if you have it, I probably did, but I was basically
20 a single mother. My husband didn't do anything for my
21 daughter. I was more focussed on my daughter than anything
22 else.

23 Q. Well, EBT cards are like debit cards that you use to
24 -- to buy food at grocery stores, right?

25 A. I know, yes.

1 Q. So if you were using those cards, wouldn't that be an
2 important source of basically money for you to be able to
3 feed your daughter?

4 A. Not necessarily. We only got approved for the EBT
5 card because my husband's income wasn't sufficient enough
6 to pay the bills and put food in the house.

7 Q. Okay. So that meant that money was sometimes short in
8 your house?

9 A. Sometimes.

10 Q. Okay. And despite the fact that the EBT cards were a
11 source of income for you, maybe not your main one, but a
12 source --

13 A. It was just my EBT card that was stolen. My husband
14 had one because we had requested to have two with the
15 account.

16 Q. So yours was stolen?

17 A. Yes.

18 Q. Okay. So you remember that?

19 A. I remember mine was stolen, yes. I do not remember,
20 however, filing a police report.

21 Q. You don't remember that?

22 A. No, ma'am, I do not.

23 Q. Is there any reason you wouldn't remember?

24 A. There was a lot of stuff going on. I mean, my
25 daughter had just passed the year mark, we were getting

1 ready for Thanksgiving, I think, or winding down from an
2 early Thanksgiving and it was just hectic. I don't
3 remember that.

4 Q. Well, you guys were having some pretty serious money
5 problems with making those ends meet, right, at that time?

6 A. Not serious, no.

7 Q. Well --

8 A. We were able to make ends meet. It was just a little
9 -- the money was just a little short.

10 Q. Well --

11 A. We couldn't spoil our daughter the way we were used to
12 spoiling her.

13 Q. Okay. Well, in September of that year didn't your
14 landlord serve a rule to vacate on you and your ex-husband
15 to evict you from the apartment for not paying the rent?

16 A. No, not that I remember. We didn't get evicted until
17 after September.

18 Q. All right. Well, didn't your landlord late -- later
19 in November, on the 20th, serve you with another rule to
20 vacate? Do you remember that?

21 A. No, ma'am, I do not. It was -- the 20th was still
22 very emotional.

23 Q. Okay. But didn't you just tell us that you weren't
24 evicted?

25 A. We weren't evicted until early December.

1 Q. Until early December. So they had to have served
2 some sort of paperwork at some time on you before early
3 December, correct?

4 A. If they did, they gave it to my husband and my husband
5 didn't tell me.

6 Q. Okay. Now you talked to Detective Merrill after he
7 gave you and your ex-husband a ride home from the hospital,
8 right?

9 A. I believe so, yes.

10 Q. All right. And you told him, didn't you, that when
11 Mr. Furtick supposedly grabbed your child he said to you if
12 you don't do what I want, I will tell the hood that your
13 house is open for business?

14 A. Yes, I did say that.

15 Q. Okay. So at that time immediately after the fact, you
16 told the police that that's what Mr. Furtick said when he
17 grabbed your child, correct?

18 A. I believe so, yes.

19 Q. Okay. And you didn't tell him anything about the
20 child screaming or crying, did you?

21 A. Ma'am, I was still emotional. She was screaming and
22 crying and I may not have mentioned it at the time.

23 Q. Okay. So you may not have mentioned it to the
24 detective?

25 A. At the time, no.

1 Q. Okay. And you told Detective Merrill on that night
2 that R.D. [REDACTED] interrupted the sexual activity a couple of
3 times by coming in and sort of crawling over Mr. Furtick
4 or you, correct?

5 A. Yes, he was getting -- that's why he was getting
6 annoyed --

7 Q. Right.

8 A. -- and she was also crying.

9 Q. Okay. But you didn't tell Detective Merrill that, did
10 you?

11 A. That she was crying?

12 Q. Uh-huh.

13 A. No, I didn't say that she was crying.

14 Q. Okay. And like you testified, you told Detective
15 Merrill that Mr. Furtick came to your house several times
16 that day, correct?

17 A. Yes.

18 Q. And you told him that your husband had left about six,
19 right?

20 A. About six, six-thirty, yes.

21 Q. Okay. And that you also told him that right before he
22 left he ordered you some Chinese food; is that correct?

23 A. Yes.

24 Q. And that was a delivery?

25 A. Yes, ma'am.

1 Q. Was that the Teacup or --

2 A. I don't remember the name.

3 Q. Okay. And you told him that it came, the food?

4 A. Yes, ma'am.

5 Q. And that was shortly before Rodney came to your house?

6 A. Yes, I believe so.

7 Q. Okay. And you said that he was there, what, about
8 ten minutes or so with the food that he brought telling you
9 you needed to feed your child or something like that?

10 A. Yes, and I had asked him to leave.

11 Q. Okay. And can you tell us approximately how long the
12 sexual encounter took place?

13 A. I can't give you an exact timeframe.

14 Q. Okay.

15 A. I just know that it was dark.

16 Q. Okay. And you told the nurse at the hospital that
17 after that you waited for five minutes to --

18 A. I needed to try and calm down before I picked up my
19 daughter.

20 Q. All right.

21 A. Like I said previously, I am clumsy when I'm
22 overemotional and I didn't want to hurt her.

23 Q. Okay. And I know you say you don't remember, but do
24 you remember telling law enforcement that somebody named
25 Rodney took your EBT card?

1 A. I don't remember at all if -- talking to the policeman
2 that day, ma'am.

3 MS. FULLWOOD: I beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 BY MS. FULLWOOD:

6 Q. When you talked to the SANE nurse, didn't you tell her
7 that that five minutes you waited were on the back porch
8 while you watched him walk away?

9 A. I don't remember stating that I was on the back porch
10 as he walked away.

11 Q. You don't remember. Okay. And you said that you're
12 so upset you were afraid to be -- that you were afraid that
13 you would be clumsy?

14 A. Yes.

15 Q. Okay. So you waited about five minutes before you
16 went to your daughter?

17 A. No, I had my daughter in my hands. I waited five
18 minutes before I went to -- ran to April's. I was sitting
19 on the floor holding my daughter because she was upset and
20 crying.

21 Q. Okay. But you never told the police the part about
22 your child being upset, did you?

23 A. I don't know if I mentioned it or not to anybody, but
24 it was obvious that she was upset.

25 Q. Or the -- or the nurse at the hospital, did you?

1 A. She never asked if my daughter was upset. April was
2 watching my daughter while I was at -- while I was doing
3 the exam.

4 Q. Okay. Did your daughter ride with you in the
5 ambulance?

6 A. She did, but April and her mother came and picked her
7 up so she could go to sleep.

8 Q. Okay.

9 MS. FULLWOOD: No further questions.

10 THE COURT: Anything?

11 MS. PATTERSON: I beg the Court's indulgence.

12 THE COURT: Yes, ma'am.

13 REDIRECT EXAMINATION

14 BY MS. PATTERSON:

15 Q. J.H. do you remember having a Batman wallet?

16 A. Yes, ma'am.

17 Q. And was that stolen from your house?

18 A. Yes, ma'am, it was.

19 Q. Okay. And do you remember -- you didn't remember
20 reporting that to law enforcement?

21 A. No, I don't remember reporting it. Like I said, it
22 was a busy time of year. I was trying to get stuff
23 together for one of our first holidays in our new place and
24 it was busy.

25 Q. But your wallet was stolen?

1 A. Yes.

2 Q. Do you -- do you know who you thought stole your
3 wallet?

4 A. I only had a handful of people at the house and I had
5 already asked April if I had left it at her house and the
6 only other option was the two people that left quickly and
7 that was Rodney and his girlfriend.

8 Q. And his girlfriend?

9 A. Who -- well, he introduced her as his wife, but then
10 he kept changing how he introduced her.

11 Q. But you do remember Rodney coming over with a female?

12 A. I remember meeting a female, yes.

13 Q. But did they stay for dinner?

14 A. I don't remember if they stayed for dinner because I
15 had dinner plans with April at that time.

16 Q. And I think you stated -- how many EBT cards did you
17 and your husband have?

18 A. We had two. He had one for him that was hooked to the
19 same account and I had one.

20 Q. So they both were connected to the same account?

21 A. Yes, ma'am.

22 Q. So did you need assistance from Rodney or anybody to
23 give you food?

24 A. No, ma'am, I did not.

25 Q. And on this day, did you -- you had Chinese food

1 ordered for you?

2 A. And my daughter, yes.

3 Q. Did you cook for your daughter that day?

4 A. I cooked some mac and choose for her, but she -- she
5 likes to drink egg drop soup, she's always liked to drink
6 it, so I let her have a couple of sips of that.

7 Q. And, J.H. during the time that you're getting
8 assaulted, are you looking at a clock?

9 A. We had no clocks hanging in the house.

10 Q. Are you really focussed on what time it is?

11 A. No, ma'am. I was more focussed on my daughter.

12 Q. But you remember it being dark?

13 A. Yes, ma'am.

14 Q. And immediately after this happened, what was your
15 state of mind?

16 A. It was chaotic. I was -- I had -- as soon as I heard
17 the back door close, I had just laid there for a couple
18 of seconds trying to not freak out and scare my daughter
19 more. That didn't really work out because I started
20 hyperventilating, which is why I had -- was sitting there
21 holding my daughter trying to calm her down and holding her
22 calmed me down enough that I was able to get up and go to
23 April's.

24 Q. And do you remember how much time that took before you
25 went over to April's?

1 A. About five minutes.

2 MS. PATTERSON: Thank you, J.H. [REDACTED]

3 THE COURT: Thank you, Ms. Hall. You can step
4 down.

5 (Witness excused.)

6 THE COURT: All right. Ladies and gentlemen, we
7 probably have reached a good spot for a mid morning
8 break. I could use one. So we're gonna be at ease
9 for about ten to fifteen minutes or so. Feel free to
10 freshen up, refresh yourself, whatever the case may be,
11 but don't talk about the case. I'll have you back in
12 here in about ten or fifteen minutes, all right?

13 Thank you.

14 (Whereupon, the jury retires to the jury room at
15 10:42 AM.)

16 THE COURT: We'll be at ease for a few moments.

17 (Recess taken at 10:43 AM.)

18 (Back on the record at 10:58 AM.)

19 BAILIFF: Come back to order, please.

20 THE COURT: You can keep your seats. Everyone is
21 here. Let's go ahead and get the jury moving, please.

22 (Whereupon, the jury returns to the courtroom at
23 11:00 AM.)

24 THE COURT: All right. The jury is back and is
25 seated.

1 Solicitor, if you'll call your next witness,
2 please.

3 MS. MAYES: The State calls April Carter.

4 (Whereupon, April Carter was duly sworn by the
5 Clerk of Court.)

6 THE CLERK: If you'll have a seat over there,
7 please. State your name and spell your last for the
8 record.

9 THE WITNESS: April Carter, C-A-R-T-E-R.

10 APRIL CARTER,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MAYES:

14 Q. All right. And, Ms. Carter, I'm gonna pull this just
15 a little bit closer to you, if that's okay.

16 Now, Ms. Carter, where do you currently reside?

17 A. [REDACTED] Charlotte Street in Cayce.

18 Q. All right. How long have you lived in the Cayce area,
19 Ms. Carter?

20 A. Off and on since 2015.

21 Q. All right. And I'm gonna ask you specifically about
22 the area of Julius Felder Street in Cayce.

23 A. Okay.

24 Q. Are you familiar with that area?

25 A. Yes. Uh-huh.

1 Q. Who has a home in that area?

2 A. My mother.

3 Q. All right. And what is your mother's name?

4 A. Harriet Carter.

5 Q. And how long has your mom Harriet Carter had that
6 residence there on Julius Felder Street in Cayce?

7 A. Ten years.

8 Q. All right. Now when your mom was living there, was
9 there an occasion that you lived there with her also?

10 A. Yes. Uh-huh.

11 Q. And I want to take you back specifically to the fall
12 of 2015. Do you recall whether you were living there at
13 your mom's home on Julius Felder Street at that point in
14 time?

15 A. Yes, I was.

16 Q. Now who all do you recall living there at that
17 residence, Ms. Carter?

18 A. At her residence?

19 Q. Yes.

20 A. Myself at the time and I think my daughter was at the
21 time.

22 Q. And your daughter, tell us a little bit about her.
23 How old is she now?

24 A. She's twenty-four now. She has a daughter.

25 Q. And how old is her daughter now?

1 A. Three.

2 Q. All right. And did you have any -- are you a
3 grandmother?

4 A. Yes. Uh-huh.

5 Q. Did you have any grandchildren who were around and
6 present in that home in the fall of 2015?

7 A. Yes, there was. Uh-huh.

8 Q. What grandchildren do you recall?

9 A. It was my grandson, Aaron.

10 Q. Okay. And can you tell us whether or not you had the
11 occasion to meet the couple across the street?

12 A. Yes, I did. Uh-huh. Every day.

13 Q. And when you say every day, how often would you see
14 them?

15 A. In the morning on the way to the store, afternoon,
16 evening. All day.

17 Q. All right. And specifically I'm gonna ask you about
18 J.H. That would be J.H. Do you know her?

19 A. Yes. Uh-huh.

20 Q. And what do you recall about how you-all first got to
21 meet one another and spend time together?

22 A. I think with her daughter. I saw them across the
23 street, I went over like I do and talked -- started talking
24 to her.

25 Q. All right. And when you say her daughter, you're

1 referring to her daughter **R.D.**?

2 A. Yes. Uh-huh.

3 Q. About how old was **R.D.** at that point in time? Was she
4 walking yet?

5 A. I don't think she was one yet. I'm not sure.

6 Q. Okay. And can you tell us about -- I'm gonna go ahead
7 and show you a photograph. This is State's 11. Are you
8 able to see this photograph from where you are?

9 A. Yes. Uh-huh.

10 Q. And you've seen this aerial map before?

11 A. Yes. Uh-huh.

12 Q. All right. And I'm gonna turn it around this way.
13 And specifically I want to ask, Ms. Carter, about this
14 residence right here.

15 A. Yes, that's my mother's.

16 Q. Okay. Is that the residence that you were referring
17 to that you were staying at the time in the fall of 2015?

18 A. Yes, ma'am. Uh-huh.

19 Q. And what, if anything, do you recall about this area
20 here across the street?

21 A. That's where **J.H.** lived.

22 Q. Okay. And what type of home is that?

23 A. It's like a duplex.

24 Q. Okay. And with that being a duplex, do you recall
25 whether or not there had been other residents in and out

1 that home before J.H. and her husband moved in?

2 A. Yes. Uh-huh.

3 Q. All right. And so had you also had occasion to know
4 other people living in that home?

5 A. Yes. Uh-huh.

6 Q. Prior to them living there?

7 A. Yes.

8 Q. Now what did you usually do in the evenings there in
9 the fall of 2015, Ms. Carter?

10 A. Sit on the porch.

11 Q. All right. I see you've got a porch there at your
12 mom's house.

13 A. Yes.

14 Q. How frequent was that for you to sit out on that front
15 porch?

16 A. Mostly from morning until night.

17 Q. Okay. And, again, you were a grandmother at the time?

18 A. Yeah. Uh-huh.

19 Q. I want to take you specifically to the date of
20 November 18, 2015. What do you recall about that date,
21 Ms. Carter?

22 A. I just -- I was sitting on the porch, it was dark. I
23 saw J.H. coming over with the baby, crying, almost
24 hysterical, and I asked her what's going on --

25 Q. All right.

1 A. -- and she told me the guy came through her back door
2 and raped her.

3 Q. All right. I want to ask you a little bit more about
4 that. Now you had met J.H. and spent time with her before
5 this night?

6 A. Yeah. Uh-huh.

7 Q. You had the occasion to be around her and observe her
8 behavior?

9 A. Yeah.

10 Q. Had you ever seen her in this condition before?

11 A. Never.

12 Q. What do you recall about that night as -- as she came
13 over specifically? What was she doing with her hands?

14 A. She was -- she had the baby. She was kind of
15 fidgeting, she was shaking, she was upset.

16 Q. Can you show us what you mean by that?

17 A. Well, she had the baby and she told me like -- I asked
18 what's going on and she said take the baby, the boy came
19 through the back door.

20 Q. And you observed her hands?

21 A. Her hands. Her whole body.

22 Q. Her whole body was shaking?

23 A. Yeah. She was upset.

24 Q. When she asked you to take the baby, did you do that?

25 A. Yeah, I did, and we sat on the chairs on the porch.

1 Q. Okay. And you said that she made a statement about
2 what happened to her?

3 A. Yeah.

4 Q. And she said he raped me?

5 A. Uh-huh.

6 Q. And did she tell you how he had gotten in?

7 A. She said he came through the back door.

8 Q. Now earlier that night, Ms. Carter, were you on your
9 porch?

10 A. Yeah. Uh-huh.

11 Q. And earlier into the evening that night, what, if
12 anything, unusual had you observed there in that
13 neighborhood?

14 A. Just a fella just lurking around the neighborhood.

15 Q. And when you say a fellow lurking around, you having
16 lived in this neighborhood, did you know who that person
17 was?

18 A. By -- yeah, kind of.

19 Q. Okay. You recognized his --

20 A. Yeah.

21 Q. You recognize that person when you see him?

22 A. Yes, I do.

23 Q. And had you ever spoken with J.H. before about this
24 person?

25 A. Yes, I did.

1 Q. Do you recall what you said to J.H. in the past?

2 MS. FULLWOOD: Objection, Your Honor.

3 THE COURT: All right. You-all approach.

4 (Proceedings held at the bench; not reported.)

5 THE COURT: Sustained.

6 BY MS. MAYES:

7 Q. Is the person that you saw in the area that night --

8 I'm not asking you what was said, but is that the same

9 person that you had spoken to in the past to J.H. about?

10 A. Yes. Uh-huh.

11 Q. Ms. Carter, do you see that person in the courtroom

12 today?

13 A. Yes, I do.

14 Q. Where's he seated?

15 A. Over there.

16 Q. What color shirt is he wearing?

17 A. Blue.

18 THE COURT: The record will reflect Ms. Carter has
19 identified the Defendant.

20 BY MS. MAYES:

21 Q. That night before J.H. came running over to the baby

22 -- running over with the baby --

23 A. Uh-huh.

24 Q. -- had you seen this person that you've identified in
25 the courtroom?

1 A. Yes. Uh-huh.

2 Q. Can you show us -- I'm gonna ask you to step down, if
3 you can, Ms. Carter.

4 A. (Witness complies.)

5 Q. If you could press this button here. Now with this
6 being your mom's residence and your front porch, where do
7 you recall seeing that individual earlier that night?

8 A. Okay. I seen him here on the corner, here, I seen him
9 here, up in here, here.

10 Q. And what, if anything, did you observe about him?
11 What was he doing?

12 A. Just looking. Just like -- he was just wandering
13 around like. I'd seen him before, but never at a steady
14 time like that, the whole period.

15 Q. What do you mean by a steady time like that?

16 A. I mean, he would come and go.

17 Q. In the past?

18 A. Yeah, but this time he was lurking around the area.

19 Q. Okay. And when you say are lurking around, did he
20 appear to be going in either direction?

21 A. Yeah. Well, back and forth. Back and forth. I seen
22 him go over there, around there, and I sit here.

23 Q. All right. And having observed him in your words
24 lurking around, did that appear unusual to you?

25 A. Yeah, kind of.

- 1 Q. Thank you, Ms. Carter. You may return to your seat.
- 2 A. Up here?
- 3 Q. Uh-huh.
- 4 A. (Witness complies.)
- 5 Q. When JH came over with the baby and reported to you
- 6 what had occurred, do you recall whether it was light or
- 7 dark outside?
- 8 A. It was dark.
- 9 Q. Okay.
- 10 A. Dark.
- 11 Q. And what do you recall about it being dark?
- 12 A. It was just late. It was dark.
- 13 Q. And do you ordinarily have a light -- any kind of
- 14 light around your mom's house there?
- 15 A. Sometimes, yeah.
- 16 Q. Where's that light located?
- 17 A. On the porch mostly, yeah.
- 18 Q. And when JH came over, did she have a phone with
- 19 her?
- 20 A. No.
- 21 Q. And at any point in time did you lend a phone to her?
- 22 A. Yes.
- 23 Q. And do you recall whether or not JH and her husband
- 24 Brian had a vehicle of their own there at their residence?
- 25 A. No, they didn't.

1 Q. And when you saw them in the neighborhood, how did you
2 ordinarily see them getting around?

3 A. Walking.

4 Q. On foot?

5 A. Yeah. Sometimes my daughter took them places.

6 Q. And so as she came to you and -- and made this report,
7 what action did you take, Ms. Carter?

8 A. I called 9-1-1.

9 Q. And when you say you called 9-1-1, you -- how long did
10 you wait to do that?

11 A. After she told me. Basically as fast as she told me,
12 I called.

13 Q. All right. And you were there when the police officer
14 -- first police officer arrived there at the scene?

15 A. Yes.

16 Q. Were you also there when EMS or the ambulance arrived
17 at the scene?

18 A. Yes.

19 Q. That same way that you've described J.H. [REDACTED] hysterical,
20 shaking, can you tell us whether or not she remained in
21 that condition during the entire time?

22 A. She did while she was with me, yeah.

23 Q. Even while EMS was there?

24 A. Yeah.

25 Q. And when she told you who did it, did you understand

1 the person she was talking about?

2 A. Yeah.

3 Q. And can you tell us whether or not that's the same
4 person you saw in the area earlier that night?

5 A. Yes, it is.

6 Q. Do you recall whether or not J.H. [REDACTED] baby went in the
7 ambulance with her to the hospital?

8 A. Yes, she did.

9 Q. And do you recall whether or not she and her husband
10 left the area of Lexington County sometime after this
11 event?

12 A. Yes. Uh-huh.

13 Q. And do you remember approximately how long they had
14 lived in there in that duplex before this event happened,
15 Ms. Carter?

16 A. Maybe less than a year.

17 Q. Okay. Would a couple of months sound right to you?

18 A. Pretty much. They wasn't there that long.

19 MS. MAYES: Thank you, Ms. Carter.

20 THE COURT: Cross.

21 MS. FULLWOOD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. FULLWOOD:

24 Q. Ms. Carter, do you remember seeing J.H. [REDACTED] on the
25 porch of her house -- the front porch of her house for

1 about five minutes before she came over to your house that
2 night?

3 A. No, I seen her -- seen her walk out the house and come
4 straight over. That's all I saw.

5 Q. Okay. You saw her walk out of the house?

6 A. Uh-huh.

7 Q. And you -- you recall that once you found out what had
8 happened you called 9-1-1?

9 A. Yeah.

10 Q. Right away?

11 A. Yes.

12 Q. Okay.

13 MS. FULLWOOD: I beg the Court's indulgence.

14 No further questions, Mr. Carter.

15 THE COURT: Thank you, ma'am. You can step down.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 THE COURT: Call your next witness, please.

19 MS. MAYES: The State calls Sergeant John Reese.

20 THE COURT: Any objection to excusing this witness?

21 MS. FULLWOOD: No, Your Honor.

22 THE COURT: You're free to leave if you wish,
23 Ms. Carter, or you can stay.

24 THE CLERK: Raise your right hand, please.

25 (Whereupon, John Robert Reese was sworn by the

1 Clerk of Court.)

2 THE CLERK: Thank you. If you'll have a seat,
3 please. State your name and spell your last for the
4 record, please.

5 THE WITNESS: It's John Reese. Last name spelled
6 R-E-E-S-E.

7 JOHN ROBERT REESE,
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MAYES:

11 Q. All right. And, Sergeant Reese, tell us a little bit
12 about yourself and your career in law enforcement.

13 A. Yes, ma'am. So I started my career in -- way back
14 in 1996 where I worked security. I left the hospital,
15 Lexington Hospital, started at Lexington County Detention
16 Center. I worked there for ten years, decided I wanted
17 to go out on patrol, so I went to West Columbia for
18 three years and I retired from the City of Cayce in 2017.

19 Q. All right. And when you say you retired from the City
20 of Cayce, have you left law enforcement altogether?

21 A. No, ma'am. I'm still, I guess you could say, law
22 enforcement. I'm an ops manager for Allied Universal
23 Security Services where I have about three hundred
24 employees and about fifty sites spread out across South
25 Carolina.

1 Q. All right. Now when you say that you worked patrol
2 for the Cayce Department of Public Safety, give us an
3 overview of what a patrol sergeant does on a typical night.

4 A. So normally the patrol sergeant comes in, gets a
5 briefing from the off-going sergeant, then briefs his
6 employees and then -- so at the time of this incident, I
7 was in charge of five employees; one would be myself, my
8 corporal and then three patrol officers. We would respond
9 to calls for service. We're also -- we're also public
10 safety, so we do fires, so we would respond to fire calls
11 if that would come up, but generally on a general day I
12 would just answer calls and supervise my staff.

13 Q. And can you tell us whether or not you were involved
14 in a report on Julius Felder Street back on November 18th
15 of 2015?

16 A. Yes, ma'am.

17 Q. And do you have with you today a copy of that report?

18 A. Yes, ma'am.

19 Q. Is that actually your report that you prepared
20 yourself?

21 A. Yes, ma'am, it is.

22 Q. On what date -- or what time was it that you initially
23 were dispatched to a call, Sergeant Reese?

24 A. The time of the call was dispatched out at 2053 and
25 that's 8:53 PM.

1 Q. All right. So 8:53 PM is when the call is dispatched?

2 A. Yes, ma'am.

3 Q. Now when you say dispatched, are you at a location
4 where you can hear it over the radio?

5 A. Yes, ma'am.

6 Q. And how did you go about making the decision that
7 night as the sergeant to respond to that call yourself?

8 A. The call was initially dispatched out as a sexual
9 assault, so being that I'm the supervisor I know that's a
10 serious call for service, so I responded.

11 Q. And what was your time of arrival there at Julius
12 Felder Street?

13 A. I arrived on-scene at 2100 hours or 9:00 PM.

14 Q. Okay. So you arrived at 9:00 PM. That's a 7-minute
15 arrival time?

16 A. Yes, ma'am.

17 Q. All right. And looking here at this map that is
18 State's Exhibit 11, I'm gonna ask you specifically whether
19 or not you're familiar with a duplex located here on Julius
20 Felder?

21 A. Yes, ma'am.

22 Q. And I'm also gonna ask you if you're familiar with a
23 residence located here?

24 A. Yes, ma'am. Directly across the street.

25 Q. All right. And which residence did you respond to?

1 A. I responded to this residence here, which is [REDACTED]
2 Julius Felder.

3 Q. All right. And who resided at that residence?

4 A. April Carter resided at the residence at that time.

5 Q. Okay. Sergeant Reese, what, if anything, did you
6 observe upon your arrival?

7 A. So when I arrived, I parked along the roadway right
8 here. There's a fence in front of the yard, so I parked
9 along the roadway and I responded to the front porch where
10 I met with J.H. [REDACTED]

11 Q. All right. And can you tell us whether or not it was
12 dark outside at this point in time?

13 A. It was dark. Yes, ma'am.

14 Q. What do you recall about that?

15 A. I remember there being the porch light on. It was
16 fairly well lit, you know, it wasn't a very bright light,
17 but I remember being able to see, you know, the people that
18 were on the porch.

19 Q. Was anyone else near J.H. [REDACTED] J.H. [REDACTED]

20 A. Yes, ma'am, her daughter was there, I believe that's
21 R.D. [REDACTED], and then Ms. Carter was also on the front
22 porch at that time.

23 Q. Okay. And when you say her daughter, you're referring
24 to her toddler daughter?

25 A. Yes, ma'am.

1 Q. You observed her yourself?

2 A. Yes, ma'am.

3 Q. What, if anything, did you observe about J.H. [REDACTED]
4 condition?

5 A. I just remember her being upset, she was crying, her
6 clothing appeared to be disheveled and, you know, when she
7 told me what happened, you know, I kind of understood what
8 kind of what was going on.

9 Q. All right. And you were able to observe her emotional
10 condition as well?

11 A. Yes, ma'am.

12 Q. Is there a place on your report where you note any
13 type of injuries?

14 A. Yes, ma'am. There's a -- there's a subsection in the
15 incident reporting form where you can notate injuries.
16 They're -- they're kind of broad subject matter, so you
17 have like apparent minor injuries, you have major injuries,
18 you have fractures, you have different things listed, but
19 you go from no injury to apparent injury and then it kind
20 of gets more serious like fractures and things like that,
21 so each one of them, you know, you have to kind of figure
22 out where they fall in that category.

23 Q. All right. And can you tell us whether or not you
24 noted any apparent injuries?

25 A. I did. Apparent minor injuries.

1 Q. All right. And did you note whether or not they were
2 visible to you?

3 A. I mean, that's my observations.

4 Q. And what were you referring to, Sergeant Reese?

5 A. Mostly her -- her mental state. Obviously because
6 it's a sexual assault in nature, I'm not able to see -- I
7 mean, she was clothed, so I wasn't able to see any injuries
8 to her private parts I guess you would say.

9 Q. But you were referring to what when you noted that?

10 A. To her mental state.

11 Q. What step did you take next?

12 A. So I basically interviewed her, a short interview,
13 because the child and, like I said, Ms. Carter was on the
14 porch with her, so I didn't want to like go into great
15 detail, so I got the initial information and then I
16 referred her to EMS to go talk to a professional.

17 Q. All right. And so just to clarify further, given the
18 circumstances is this ordinarily where you would conduct
19 any type of detailed interview with -- with a victim of a
20 crime?

21 A. No, ma'am. Normally, like I said, if -- if I'm in
22 an interview room, then we would get, you know, more
23 technical about what's going on, but with their being --
24 obviously the child was there, you know, Ms. Carter was
25 there, so I didn't want to get into like great detail as to

1 what was going on.

2 Q. All right. But in that contact with J.H. [REDACTED] that
3 night, were you able to determine whether or not -- did you
4 ask her whether or not a sexual assault occurred?

5 A. Yes, ma'am.

6 Q. All right. And was she able to give you a response?

7 A. Yes, ma'am. If I can read from my report I kind of
8 wrote?

9 Q. All right.

10 A. She advised that she answered a knock at her back door
11 and the subject, who she described as a black male named
12 Rodney or Todd, walked inside the residence. The subject
13 forced her down on the ground -- or, I'm sorry, on the
14 floor in her daughter's room, subject performed oral sex
15 on her. The victim said that the subject penetrated her
16 vagina with his penis, although she doesn't believe that he
17 had ejaculated. The victim stated that during the assault
18 her daughter R.D. [REDACTED], who was fifteen months old at
19 the time came in the room several times and the subject
20 pushed her away. When the subject stopped the assault, he
21 told the victim that if she told anyone that he would hurt
22 her daughter.

23 Q. And you noted all of that based on your conversation
24 with J.H. [REDACTED] right there under those circumstances?

25 A. Yes, ma'am.

1 Q. The condition that you've described her in, did she
2 remain in that condition throughout your contact with her
3 there at the scene?

4 A. Yes, ma'am.

5 Q. Were you also there when EMS arrived?

6 A. Yes, ma'am.

7 Q. You mentioned that you arrived there within seven
8 minutes of getting the dispatch. Were you the first
9 officer at the scene?

10 A. Yes, ma'am.

11 Q. Can you tell us whether you arrived even before EMS?

12 A. Yes, ma'am. I believe EMS arrived fifteen minutes
13 after I did.

14 Q. Now she had indicated that this was a black male and
15 the name was Rodney or Todd?

16 A. That's correct.

17 Q. You are the patrol sergeant, but what, if any, action
18 did you take in developing a suspect or passing that
19 information along to investigators?

20 A. So the police department actually has a substation
21 that's located fairly close to where this incident
22 occurred. As a matter of fact, it's not far off of this
23 photograph to the right, and being that I grew up in Cayce
24 I know a lot of the people in Cayce, went to school in
25 Cayce, I still live in Cayce, I know a lot of the foot

1 traffic in that area, and based off the information that
2 she gave to me, I believed the suspect to be either Rodney
3 Robinson or Rodney Furtick.

4 Q. And did you note those two possible suspects in your
5 report?

6 A. Yes, ma'am. I did a supplemental report. So any
7 time that I have information that I believe may be
8 pertinent to the case that I don't want to put like in
9 the original narrative, I'll put a note in there, and I
10 did an investigative note which would be given to the
11 investigator who was assigned the case once it was assigned
12 out for someone to investigate, and I noted based on the
13 information that was described by the victim I believed the
14 subject to either be Rodney Robinson or Rodney Furtick.
15 She advised that the subject had a bald head and a dark
16 complexion with the street name of Black.

17 Q. Okay. And you passed that information along to
18 investigators?

19 A. Yes, ma'am. I actually typed up an investigative
20 note.

21 Q. Now you're there at the scene while the victim's being
22 treated. What, if anything, did you observe about the
23 area? Did you see anyone matching that description in the
24 area?

25 A. No, ma'am. Actually after the victim was transported,

1 I did ride around to see if I saw anyone in the area, but I
2 did not locate anyone.

3 Q. Was there any indication that the suspect was still at
4 the scene or in the area?

5 A. No, ma'am.

6 Q. And do you recall whether or not J.H. [REDACTED] had a phone
7 of her own there at the scene?

8 A. No, ma'am. To the best of my recollection, I believe
9 that her family had one phone and that her husband had left
10 with that phone and that's why she went across the street
11 to make the phone call.

12 Q. All right. And do you recall whether or not she had a
13 vehicle at that residence?

14 A. I don't recall there being a vehicle there, no, ma'am.

15 Q. Now in terms of actual evidence collection from the
16 scene, is that your job as the patrol sergeant?

17 A. No, ma'am. We actually referred the evidence
18 collection part -- now if it's like something that happens
19 out in the open, you know, and there's maybe like a knife
20 laying somewhere, we would collect the knife because it
21 would be there and, you know, readily available for
22 somebody to pick it up. Because this happened inside a
23 residence that we believed to be secure, we would let
24 investigations respond out and collect any evidence that
25 was at the scene.

1 Q. Okay. And do you know whether or not there was an
2 investigator assigned to the case for the purpose of
3 evidence collection?

4 A. Yes, ma'am. Detective Merrill actually responded to
5 the hospital and then eventually responded to the scene to
6 process the crime scene.

7 Q. All right. Now following your involvement that night
8 and your notation of the possible suspect being a Rodney
9 Furtick or a Rodney Robinson -- you had worked patrol in
10 Cayce for how long?

11 A. I had been there since April of 2007, so around -- I
12 guess that would be around nine years.

13 Q. Okay. All right. So after you noted that information
14 in your report, can you tell us whether or not you also
15 were involved later in this case as the investigator?

16 A. Yes, ma'am. I was actually promoted to the lieutenant
17 over investigations. I'll have to give you a timeframe.
18 Well, I apologize. August 11, 2016, I was promoted to --
19 or around that date I was promoted to the lieutenant of
20 investigations. Detective Merrill was promoted to replace
21 me on the patrol division and this case was passed back off
22 to me as I took over investigations.

23 Q. Okay.

24 A. Still active -- still an active investigation.

25 Q. All right. I want to talk about that a little bit

1 more when you say active investigation. So as of the
2 report that was made that night, were you aware as to
3 whether J.H. was being transported by EMS and for what
4 purpose?

5 A. Yes, ma'am. So it's standard protocol for the City of
6 Cayce to -- anytime we have a sexual assault we transport
7 our victims to Richland Hospital, I guess it's Prisma
8 Health Richland now, because they have a SANE nurse program
9 there and they're very good at collecting evidence and, you
10 know, they also treat some mental stuff that may be going
11 on with our victim at the time.

12 Q. All right. And you're referring to her emotional
13 condition?

14 A. Yes, ma'am.

15 Q. Now as the eventual investigator still involved in
16 this case with it being an active investigation, were you
17 aware of whether or not a sexual assault kit had been
18 obtained that night from the hospital?

19 A. Yes, ma'am.

20 Q. And are you aware of whether or not that evidence was
21 sent to the State Law Enforcement Division for analysis?

22 A. Yes, ma'am, it was sent to SLED.

23 Q. And are you aware as to whether or not SLED was able
24 to find DNA or develop a DNA profile from that sexual
25 assault kit?

1 A. Yes, ma'am.

2 Q. Including the vaginal swabs?

3 A. Yes, ma'am.

4 Q. Once you learned -- or once this information became
5 known, Sergeant Reese, what, if any, action did you take
6 to follow up and potentially get DNA from the suspect
7 Rodney Furtick?

8 A. Because of the information that came back from SLED,
9 we were able to obtain a search warrant to collect a DNA
10 standard from Mr. Furtick. Basically that collection
11 consists of what are called buccal swabs or basically we
12 take a sterile cotton swab, allow the -- the subject to
13 wipe the inside of his mouth. Basically it collects cells
14 of skin. We do the right side and then they do the left
15 side and then they place that container -- they place it
16 into a container and then that container is sealed in their
17 presence.

18 Q. And were you the person who actually obtained the
19 search warrant in this case for the swabs from the suspect,
20 Rodney Furtick?

21 A. Yes, ma'am.

22 Q. Were you present when those swabs were taken?

23 A. Yes, ma'am.

24 Q. Who else was present that you recall?

25 A. Detective Weaver was our evidence custodian at the

1 time and he was also a crime scene technician, so I took
2 him with me to effect the search warrant or to serve the
3 search warrant on Mr. Furtick. He did all of the stuff
4 that I just described with the cotton swabs and stuff like
5 that because he's the evidence person. We don't want to
6 like him hand it to me and then hand it to someone else,
7 so he handed the swabs to Mr. Furtick, he did all of the
8 collection inside of his mouth and then handed them back
9 to Sergeant Weaver at the time and then, you know, it was
10 placed into a container and, like I said, it was sealed in
11 his presence.

12 Q. Okay. And do you remember when those swabs were
13 collected from Mr. Furtick who actually put that Q-tip or
14 the swabs into Mr. Furtick's mouth?

15 A. Mr. Furtick did.

16 Q. He was given the swabs to collect the sample in the
17 presence of yourself and Officer Weaver?

18 A. Yes, ma'am.

19 Q. And did you observe whether or not that evidence was
20 properly sealed after that occurred?

21 A. Yes, ma'am. So the way the evidence is collected,
22 it's put into a little cardboard container. The cardboard
23 container holds one swab and normally that box -- it's a
24 flat piece of cardboard that folds down onto itself and
25 encloses the swab and then we take red crime scene tape,

1 seal up the box and then it's initialled off as to what's
2 inside the box and what the date and time is.

3 Q. I'm gonna show you what is State's 1 and State's 2 and
4 ask you if you recognize who is depicted in these photos?

5 A. Yes, ma'am. That's the victim, J.H. [REDACTED]

6 Q. All right. And can you tell us whether or not this is
7 how she appeared as she was transported to EMS?

8 A. It was.

9 Q. Was she wearing any shoes?

10 A. No, ma'am.

11 Q. Having worked patrol in that area, can you tell us
12 whether or not there on Julius Felder Street you'd seen
13 persons in the past with containers of food?

14 A. Yes, ma'am. So I'm sure there's someone down there
15 that's a very good cook because there's -- I believe
16 it's on James Street. There's someone who cooks up like
17 quantities of food and you see people walking all the
18 time with food trays and, you know, there's -- you can
19 go any time of the day or night and see people walking
20 around with these food trays. On the times that I've
21 stopped people, you know, at odd hours, like it would be
22 like 2:00 in the morning, they've got a food tray, and I
23 know there's nowhere that serves food like that time of
24 night, you know, I stop them and say where are you coming
25 from and they were always coming from the James Street

1 area, which is -- basically it's -- on this map, it's
2 actually this street back here is James Street. There's
3 a couple of cuts that cut through from James Street over
4 to Julius Felder and I believe they were utilizing those
5 cuts to kind of, you know, come back over to their side of
6 the street or whatever.

7 Q. And, Sergeant Reese, you indicated that you did a
8 visual search of the area after this report by J.H. [REDACTED] and
9 you did not observe anyone in the area?

10 A. That's correct.

11 Q. Did you also have the opportunity to speak with any
12 neighbors about anything unusual they may have observed in
13 the neighborhood earlier that evening prior to the assault?

14 A. Yes, ma'am.

15 Q. And you can't say what she said to you, but I'm gonna
16 ask you whether or not you did inquire on that matter?

17 A. Yes.

18 Q. And who was it that you spoke with?

19 A. I spoke with Ms. Carter, which is -- which is her
20 residence where we -- that was where she was living. I
21 spoke to her actually on the front porch. I believe it
22 was right after J.H. [REDACTED] was transported.

23 Q. Okay. And what was the purpose of you questioning
24 April Carter on that matter?

25 A. To see if she knew who the suspect was.

1 Q. And did you note in your report anything she reported
2 to you about observations earlier that evening? Can you
3 just tell us whether or not that's noted in your report?

4 A. It is.

5 MS. MAYES: Nothing further, Your Honor.

6 THE COURT: Cross.

7 MS. FULLWOOD: Thank you.

8 CROSS-EXAMINATION

9 BY MS. FULLWOOD:

10 Q. Sergeant Reese, good morning. It's still morning?

11 A. Yes, ma'am.

12 Q. All right. Mr. -- Detective Reese, in your report
13 that you prepared, you stated that J.H. [REDACTED] told you -- or
14 rather Ms. Hall told you that she answered a knock at her
15 door, correct?

16 A. Yes, ma'am.

17 Q. And so she didn't tell you that someone tried to force
18 their way into her house, did she?

19 A. I believe there was an indication of that, but if she
20 would have told me that they forced their way in, I would
21 have -- I would have documented it.

22 Q. Okay. Because you try to get -- make your reports as
23 accurate as possible, correct?

24 A. Yes, ma'am.

25 Q. All right. And was it your understanding that this

1 alleged assault had been fairly recent?

2 A. Yes, ma'am.

3 Q. Okay. And she did give you a description of who you
4 were looking for, right?

5 A. Yes, ma'am.

6 Q. Did you try to get in touch with a K-9-unit to see if
7 you could develop a trail and track anybody down?

8 A. No, ma'am.

9 Q. You have already referred to one supplemental report
10 that you prepared?

11 A. Yes, ma'am.

12 Q. And you prepared another one dated November 19th of
13 2015, and in that report didn't you write that the victim,
14 that would be Ms. Hall, advised that the subject has been
15 over to her house in the past and that she had recently
16 filed a report on him for larceny of a wallet?

17 A. Yes, ma'am, I did file that.

18 Q. Okay. And you -- you went back in the records of
19 Cayce, right?

20 A. Yes, ma'am.

21 Q. And you did find an incident report confirming that
22 that had taken place?

23 A. Yes, ma'am. I indicated that on my supplemental.

24 Q. Okay. Thank you. You gave a case number, didn't you?

25 A. Yes, ma'am.

1 MS. FULLWOOD: Thank you, sir.

2 REDIRECT EXAMINATION

3 BY MS. MAYES:

4 Q. Sergeant Reese, Ms. Fullwood was asking about whether
5 or not the victim reported that he forced his way into the
6 residence. Who obtained the warrant in this case for
7 burglary?

8 A. I did.

9 Q. And the warrant for criminal sexual conduct first
10 degree?

11 A. I did.

12 Q. And can you tell us whether or not your understanding
13 as the investigator as to whether this was entry with or
14 without consent?

15 A. It was my understanding it was without consent.

16 Q. And that was made clear to you that night?

17 A. Yes, ma'am.

18 Q. And regarding the wallet, did you note that in your
19 report that J.H. [REDACTED] was able to tell you that that night?

20 A. I did notate that she told me that.

21 Q. Okay. And that was related to when she's describing
22 the person being Rodney?

23 A. She identified him as the subject, so the same person.

24 Q. Okay. So the same person that committed this offense
25 she reported is the same person relating to the Batman

1 wallet?

2 A. I don't know about the Batman. I just know that it
3 was a wallet.

4 Q. Okay. And you were able to then note that on your
5 report and go back and find that previous filed report?

6 A. So basically what I did was just cross-referenced the
7 address to see if there was a report of a larceny of a
8 wallet and that's how I came up with that case number.

9 Q. Okay. And had there been a report of the larceny of
10 a wallet?

11 A. Yes, ma'am.

12 Q. And who was named as the suspect in that case?

13 A. I don't -- I don't have that case in front of me, so
14 I don't -- I don't know what that report said. I just know
15 that I found the larceny. I don't know that it actually
16 had a name on it, so I don't -- I don't have that to refer
17 to.

18 Q. All right. And that was all information that J.H. [REDACTED]
19 gave you that night in trying to develop the suspect?

20 A. Yes, ma'am.

21 MS. MAYES: Nothing further.

22 RECROSS EXAMINATION

23 BY MS. FULLWOOD:

24 Q. Investigator, if it was clear that night that this was
25 forced entry, why didn't you include that on your report?

1 A. I mean, I -- you know, from my understanding, and I
2 remember asking her I believe specifically if he forced his
3 way in, and she said he pushed his way in. So, I mean -- I
4 don't know that he pushed her down or, you know, whatever,
5 but I do remember asking, you know, did he just walk in or,
6 you know, what happened and I believe that she stated he
7 pushed his way in. I did not notate that in here, so
8 that's just recollection.

9 Q. Well -- just regulation?

10 A. Recollection. Recall.

11 Q. What you remember. Okay. But your report clearly
12 states that someone knocked on the door and she answered
13 the door?

14 A. Correct.

15 Q. And has nothing about any -- any forced entry or
16 barging, you know, in?

17 A. I don't believe he kicked the door in, no, ma'am.

18 Q. Well, it doesn't even say pushed their way in, does
19 it?

20 A. No, it said he walked in was what I -- what I wrote.

21 MS. FULLWOOD: All right. Nothing further.

22 THE COURT: All right, sir. Thank you. You can
23 step down.

24 (Witness excused.)

25 THE COURT: Your next witness is the one that we

1 still need to do something on?

2 MS. PATTERSON: Yes, sir.

3 THE COURT: Ladies and gentlemen of the jury,
4 adjourn to the back. I need to address just one quick
5 thing with the next witness. I'll have you back here in
6 about ten or fifteen minutes, okay?

7 Thank you.

8 (Whereupon, the jury retires to the jury room at
9 11:42 AM.)

10 THE COURT: The next witness must be the EMS medic,
11 so she's coming in? She is coming in.

12 MS. PATTERSON: Yes, Your Honor.

13 Marilyn Sanchez.

14 (Whereupon, Marilyn Sanchez was duly sworn by the
15 Clerk of Court.)

16 THE CLERK: If you'll have a seat over there,
17 please. If you will state your name and spell your
18 last for the record.

19 THE WITNESS: My name is Marilyn Sanchez. Last
20 name is S-A-N-C-H-E-Z.

21 MARILYN SANCHEZ,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION (In-Camera)

24 BY MS. PATTERSON:

25 Q. And, Ms. Sanchez, where are you employed?

- 1 A. Lexington County EMS.
- 2 Q. And what's your job title?
- 3 A. Currently it's a paramedic.
- 4 Q. And how long have you been employed with the Lexington
- 5 County EMS?
- 6 A. A total of five years.
- 7 Q. So were you employed there back on November 18, 2015?
- 8 A. Yes.
- 9 Q. And were you on duty that night?
- 10 A. Yes.
- 11 Q. And did you have a -- did you have a partner that
- 12 night?
- 13 A. Yes.
- 14 Q. And who was your partner?
- 15 A. Robert Paulauskas.
- 16 Q. And does Robert still work with you-all?
- 17 A. No, ma'am.
- 18 Q. And were you and Robert dispatched to [REDACTED] Julius
- 19 Felder Street in Cayce?
- 20 A. Yes.
- 21 Q. What time did you receive that call?
- 22 A. We were dispatched at 2056.
- 23 Q. And what time is that?
- 24 A. That is 8:56.
- 25 Q. And what type of call did you respond to?

1 A. It was called a Signal 11, which is for a rape assault
2 victim.

3 Q. And what time did you arrive?

4 A. We arrived on-scene at 2113, so 9:13 PM.

5 Q. And when you arrived at that location, were you able
6 to identify the patient?

7 A. The patient was walking out the front door.

8 Q. And who did you identify her as being?

9 A. I believe her name was J.H. [REDACTED]

10 Q. Now what do you remember about her appearance and
11 demeanor when you saw her?

12 A. She seemed very nervous, kind of scared, frantic,
13 kept looking around like she was looking for someone or
14 something, very worried about her toddler that was with
15 her.

16 Q. Did you have to calm her down or anything?

17 A. I did. Initially she didn't want to go to the
18 hospital with us. I had to kind of persuade her that that
19 would be the best for her to get checked out. Whether she
20 wanted to go fully with the rape kit or not, I think that
21 being evaluated by a physician is the best thing to do.

22 Q. And was she able to tell you when the assault may have
23 occurred?

24 A. Not that I recall. I know it was in the nighttime.
25 That's when we respond to the call.

1 Q. Now is there anything in your report to indicate when
2 she may have reported the time of the assault?

3 A. I can look. I wasn't primary on this call, my partner
4 was, and in our narrative it says it was approximately
5 thirty minutes prior to our arrival on-scene.

6 Q. And is it important for to you get the information
7 from the patient about what happened to her?

8 A. Yes, to -- to take care of her medically, we need to
9 know if there were any injuries as in bleeding, any cuts
10 that we can bandage, how we're gonna do or go about our
11 medical treatment while en route to the hospital, if she
12 had any vaginal bleeding from the assault or any battery
13 injuries that needed to be controlled. We have -- it's
14 an eight by seven abdominal pad that's our thickest pad
15 and we could have gave it to her to cover any bleeding
16 that she had.

17 MS. FULLWOOD: If it please the Court, Your Honor,
18 I'm gonna object to this witness testifying from a report
19 that somebody else made. She was the driver and another
20 individual actually took the information from Ms. Hall
21 and that would be the person who should provide the jury
22 with the information that's contained in the -- in the
23 report because he was the one who took it, not this
24 witness.

25 BY MS. PATTERSON:

1 Q. Were you present -- can you explain to the Court, and
2 this might help you, Judge, can you explain to the Court
3 the process that Lexington County EMS used when preparing
4 the patient care reports?

5 A. Okay. Well, for a unit you have to have two people to
6 staff a unit, so this particular unit we were two EMTs, and
7 at that time before we completed our PCR's, which is our
8 computer work and our reports, we would sign the call
9 acknowledging that we agree with what was written in the
10 call, what was documented and that we both are saying that
11 everything that's written is true and with our signature
12 it documents that we agree with what was written into the
13 report.

14 Q. Okay. So this was a report that you would have signed
15 off on as being accurate information that you and/or your
16 partner took that night on-scene?

17 A. Yes, we both had patient contact.

18 Q. And under any circumstances do both people make
19 separate reports?

20 A. No, we don't make separate reports. It's one report
21 for each call.

22 THE COURT: Let's handle it this way. Is there
23 anything in that report that you did not personally
24 observe or hear?

25 THE WITNESS: No.

1 THE COURT: Okay. That fixes it.

2 BY MS. PATTERSON:

3 Q. And in addition to the information in the report, do
4 you remember additional -- other information about the call
5 that night?

6 A. A few, yes. When I was trying to calm her down and
7 get her to be transported to the hospital to get evaluated
8 by a physician, she -- when she was looking around, I asked
9 her why she was so nervous, why she was so scared. What I
10 remember her telling me was that he told her that he would
11 return, he would come back, and then I asked who and she
12 wouldn't tell me who.

13 Q. And so did she tell you any information about the
14 details of the assault?

15 A. What I remember is that she was going to the back door
16 to close it or lock it and before she can do either he came
17 through the back door is what I remember.

18 Q. And about how many assault cases have you responded to
19 in your career?

20 A. About three.

21 Q. Would that include this one?

22 A. Yes, ma'am.

23 Q. So are you able to remember details of these cases?

24 A. Yes, ma'am.

25 Q. Even if it's not in the narrative that you signed off

1 on?

2 A. Yes, because they are so rare.

3 MS. PATTERSON: And, Your Honor, that's the kind
4 of information I'd be getting out.

5 THE COURT: Okay. I didn't hear -- I mean, I
6 didn't hear anything unduly prejudicial in my opinion.

7 Is there anything that you find particularly
8 objectionable, Ms. Fullwood.

9 MS. FULLWOOD: I think Adam Ahent printed this
10 report and I'm having -- it's very small print and I'm
11 having problems looking where they have the time of the
12 incident.

13 MS. PATTERSON: It's in the narrative portion. I
14 think it's the last page. Second to the last page, I'm
15 sorry, of the narrative.

16 MS. FULLWOOD: Okay. I see it now.

17 THE COURT: Okay. Any additional objections to
18 this witness's testimony?

19 MS. FULLWOOD: None other than the arguments I
20 made yesterday.

21 THE COURT: Okay.

22 All right. Very good. The same ruling as before
23 as with the two previous witnesses. I think that her
24 testimony about the -- Ms. Hall's demeanor is certainly
25 relevant and it was close enough in time that clearly

1 Ms. Hall was acting under the stress of the events which
2 she experienced.

3 But let's take five or ten minutes for ourselves
4 and we will keep rolling.

5 All right. Ma'am, you can step down. You can
6 stay in the courtroom though. Just we'll call you back
7 in a minute and you'll be re-sworn when the jury is
8 here, okay?

9 THE WITNESS: Okay.

10 THE COURT: Don't talk about your testimony though.
11 (Witness excused.)

12 THE COURT: We'll be at ease for a few moments.

13 (Recess taken at 11:53 PM.)

14 (Back on the record at 12:03 PM.)

15 BAILIFF: Please come to order. Court's now in
16 session.

17 THE COURT: Have a seat, please.

18 Okay. We'll go back on the record. Go ahead and
19 get the jury moving, please.

20 MS. MAYES: Can we approach?

21 THE COURT: Yeah.

22 (Proceedings held at the bench; not reported.)

23 (Whereupon, the jury returns to the courtroom at
24 12:05 PM.)

25 THE COURT: The jury is back and seated.

1 Solicitor, if you will call your next witness,
2 please.

3 MS. PATTERSON: The State calls Marilyn Sanchez.

4 (Whereupon, Marilyn Sanchez was duly sworn by the
5 Clerk of Court.)

6 THE CLERK: If you'll have a seat, please, over
7 there. State your name and spell your last for the
8 record.

9 THE WITNESS: My name is Marilyn Sanchez. Last
10 name is S-A-N-C-H-E-Z.

11 MARILYN SANCHEZ,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. PATTERSON:

15 Q. Ms. Sanchez, where are you employed?

16 A. Lexington County EMS.

17 Q. And how long have you been employed with the Lexington
18 County EMS?

19 A. Five years.

20 Q. And what is your job title?

21 A. A paramedic.

22 Q. And prior to you being a paramedic, what was your job
23 title?

24 A. An EMT.

25 Q. And what are some of your job duties as a paramedic?

1 A. As a paramedic, we administer advanced life support,
2 which is ALS, patient care. We can give medication,
3 cardiac medication, manually interpret cardiac monitors.
4 We assist BLS, which are EMT's in our service, with any
5 issues on pain management with medication, IV starting.

6 Q. And as an EMT, what were some of your duties?

7 A. EMT is basic life support, so we monitor vitals. We
8 do more of the non-advanced calls, transport people for
9 minor injuries.

10 Q. And were you on duty on the night of November 18,
11 2015?

12 A. Yes.

13 Q. Did you have a -- were you by yourself or did you have
14 a partner?

15 A. I had a partner.

16 Q. And who was that partner?

17 A. His name was Robert Paulauskas.

18 Q. And does he still work with Lexington County EMS?

19 A. No.

20 Q. Were you dispatched to [REDACTED] Julius Felder Street in
21 Cayce?

22 A. Yes.

23 Q. And what time did you receive that call?

24 A. At 2056.

25 Q. Which is what time?

- 1 A. 8:56 PM.
- 2 Q. And what type of call did you respond to?
- 3 A. It was for a rape assault.
- 4 Q. And what time did you arrive on-scene?
- 5 A. We arrived on-scene at 2113, which is 9:13 PM.
- 6 Q. Was it dark when you got outside --
- 7 A. Yes.
- 8 Q. -- or when you arrived?
- 9 A. Yes.
- 10 Q. Were you able to identify the patient when you arrived
- 11 on-scene?
- 12 A. Yes.
- 13 Q. And who did you identify the patient as being?
- 14 A. JH. [REDACTED]
- 15 Q. Did JH. [REDACTED] have a last name?
- 16 A. Dean.
- 17 Q. Okay. And where was JH. [REDACTED] when you first got
- 18 there?
- 19 A. She was ambulating out of the front door.
- 20 Q. And what, if anything, did you notice about her
- 21 appearance and demeanor?
- 22 A. She seemed very anxious, nervous, paranoid, looking
- 23 around like she was looking for someone or something.
- 24 Q. And can you demonstrate how she was looking around?
- 25 A. She just kept looking behind herself, to the side, in

1 the front, behind us. She would make eye contact with me
2 and my partner and then she would start looking again and
3 she just couldn't stay focussed on us only.

4 Q. And based on what you observed about J.H. [REDACTED] what
5 did you do?

6 A. I tried to calm her down. I was coaching her. I was
7 talking to her trying to figure out what was going on, why
8 was she looking around, and the last thing I remember her
9 telling me was that he told her that he will be back.

10 Q. And in order for you to administer proper treatment or
11 what to do next, is it important for to you find out what
12 the details of the assault were?

13 A. Yes.

14 Q. And was J.H. [REDACTED] able to tell you what happened to her?

15 A. Yes, she told us that she had unwanted trauma to her
16 vaginal area.

17 Q. Was she able to tell you when this occurred?

18 A. About thirty minutes prior to our arrival on-scene.

19 Q. And did she tell you how the person came into the
20 house?

21 A. She said that she was going to the back door, she was
22 either trying to close it or lock it and before she was
23 able to do that he bust through the back door and came
24 through.

25 Q. And did you-all do an assessment on J.H. [REDACTED]

1 A. Yes, and her toddler.

2 Q. Okay. And what was your role in that assessment of
3 J.H. [REDACTED]

4 A. Well, initially when we have any type of calls like
5 this and it involves a female, we try to have a female
6 assess that patient just to have a mutual understanding
7 that if a guy attacked a female, then usually females
8 don't want to talk to another guy, which would be my
9 partner, so if we have a truck that's staffed with a
10 female and a male, we try to let any calls like this if
11 it involves a female, the female partner to talk to the
12 patient and then the male partner to talk to a male, but
13 I asked J.H. [REDACTED] if she was okay with talking to my partner
14 and him transporting her in the back and she agreed that
15 she was okay with him transporting, so I helped with
16 vitals, putting on a blood pressure cuff, a pulse ox,
17 making sure she was as comfortable as possible.

18 Q. And did you do anything with her daughter?

19 A. Yes, I put her -- we have a child restraint built
20 into our captain's chair, which sits directly behind the
21 stretcher, cot, and I restrained her daughter, and she was
22 -- her daughter seemed like she was looking for her mom,
23 she kept looking around me to try to go in front of the
24 cot where her mom was sitting, and I noticed like some
25 bruising on her legs, but I'm not sure if that was from

1 what occurred or if it was prior and her mom -- or, excuse
2 me, J.H. [REDACTED] was in no way for me to ask all that right
3 now.

4 Q. Okay. And at this point were you inside the
5 ambulance?

6 A. Yes.

7 Q. Okay. And based on your assessment of J.H. [REDACTED] and
8 what she told you happened to her, what was the next course
9 of treatment for her?

10 A. Well, initially J.H. [REDACTED] didn't want to go to the
11 hospital with us, she just seemed really concerned about
12 her toddler and like she was looking around, so I'm
13 guessing that she was just worried about her surroundings
14 you could say, so we got her into the truck. Once we do
15 our vitals, obtain patient information, any complaints that
16 they have and get them secured on the stretcher for proper
17 transport, then we start transporting to the hospital. We
18 notify our dispatch that we're leaving that current scene
19 and en route to the hospital.

20 Q. Okay. And about how long did it take to get J.H. [REDACTED]
21 to agree to go to the hospital?

22 A. I would approximate maybe ten -- ten minutes. Ten,
23 fifteen minutes, I guess.

24 MS. PATTERSON: I beg the Court's indulgence.

25 Thank you, Ms. Sanchez. Please answer any questions

1 the defense may have.

2 CROSS-EXAMINATION

3 BY MS. FULLWOOD:

4 Q. Ms. Sanchez, your primary role that night was to be
5 the driver, right?

6 A. No.

7 Q. Well, doesn't your report indicate that that was your
8 primary role?

9 A. My primary role on this call, I was transporting my
10 partner, yes, but there's no primary driver.

11 Q. Okay. That was your primary role then?

12 A. On this call, yes.

13 Q. Okay. And you didn't individually take notes that
14 night, did you?

15 A. What do you mean?

16 Q. Well, it was Mr. Paulauskas that filled in the report;
17 is that right?

18 A. Yes.

19 Q. All right. And then you signed off on it?

20 A. After checking it, yes.

21 Q. All right. And there were no scratches on Ms. Hall,
22 were there?

23 A. Not that I recall.

24 Q. There were no bruises on her, were there?

25 A. Not that I recall.

1 Q. There were no cuts on her, were there?

2 A. Not that I recall.

3 Q. There were no scrapes on her, were there?

4 A. No.

5 Q. And these bruises that you mentioned on the toddler,
6 they are not documented in your report, are they?

7 A. No.

8 Q. All right. Do you remember what day of the week this
9 happened?

10 A. No.

11 Q. All right. And either in your report or in a
12 supplement to your report that you gave to the solicitor's
13 office, isn't what Ms. Hall told you and your partner that
14 he said was I'll be back Friday?

15 A. That he'll be back Friday, is that what you said?

16 Q. Yeah.

17 A. No, he said he would come back is what I remember. He
18 will be back.

19 MS. FULLWOOD: I beg the Court's indulgence.

20 MR. MADSEN: Is that what you're looking for?

21 MS. FULLWOOD: Thank you.

22 BY MS. FULLWOOD:

23 Q. Didn't you tell the solicitor's office last week that
24 you remembered Ms. Hall saying that the suspect threatened
25 I will be back on Friday?

1 A. No.

2 Q. You did not?

3 A. No.

4 Q. About how many calls do you go on per month?

5 A. It varies.

6 Q. An estimate or an average.

7 A. Well, an average per day is about five to seven on a
8 good day and if it's my long week, then I work five days
9 out of that week, so it's kind of hard to average how many
10 calls I run a month.

11 Q. Okay.

12 MS. FULLWOOD: Your Honor, I have a matter of law.

13 THE COURT: Can you approach and talk to me about
14 it up here real quick? Solicitor?

15 (Proceedings held at the bench; not reported.)

16 MS. FULLWOOD: No further questions, Your Honor.

17 THE COURT: Redirect, Ms. Patterson.

18 REDIRECT EXAMINATION

19 BY MS. PATTERSON:

20 Q. Ms. Sanchez, about how -- oh, I think I asked you that
21 already. I'm sorry. When we spoke on the phone last week,
22 could you have possibly said that Ms. Hall told you that
23 the Defendant said he'll be back on Friday?

24 A. Not that I recall, but I was also on shift when I was
25 talking to you guys.

1 Q. Okay. So it could have -- could have happened?

2 A. Uh-huh.

3 Q. But you remember her telling you that he said he would
4 be back?

5 A. Yes.

6 THE COURT: Thank you, ma'am. You can step down
7 and you're free to go.

8 (Witness excused.)

9 THE COURT: Solicitor, call your next witness,
10 please.

11 (Proceedings held at the bench; not reported.)

12 MS. MAYES: The State calls Jennifer Nguyen.

13 THE CLERK: Raise your right hand, please.

14 (Whereupon, Jennifer Nguyen was duly sworn by
15 the Clerk of Court.)

16 THE CLERK: If you'll have a seat over there,
17 please, and state your name and spell your last for the
18 record.

19 THE WITNESS: My name is Jennifer Nguyen. Last
20 name is spelled N-G-U-Y-E-N.

21 JENNIFER NGUYEN,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. MAYES:

25 Q. All right. Tell us a little bit about yourself,

1 Ms. Nguyen. Where are you currently employed?

2 A. With Prisma Health.

3 Q. All right. And I'll need you to speak up a little bit
4 more and maybe pull that microphone a little bit closer to
5 you.

6 A. (Witness complies.)

7 Q. All right. And what type of work do you do for the
8 hospital?

9 A. I'm a forensic nurse examiner.

10 Q. I'm still gonna need you to pull it a little bit
11 closer and maybe speak louder.

12 A. I'm a forensic nurse examiner.

13 Q. And when you say Prisma Health, what's the hospital we
14 know that to be?

15 A. Richland or Palmetto Health.

16 Q. Palmetto Heath Richland?

17 A. Correct.

18 Q. And can you tell us how long you have worked there for
19 that hospital?

20 A. I have been with Prisma Health since 2011.

21 Q. Now tell us about your educational training,
22 certification and background.

23 A. I have my bachelor's degree in nursing science. I
24 started my career at the hospital in 2011 working in the
25 Baptist ER. In 2014, I began working as a forensic nurse

1 examiner.

2 Q. All right. Now when you say forensic nurse examiner,
3 what do you mean by that?

4 A. So I am a specialized nurse that got training to
5 specifically work with patients who have been victims of
6 crimes. You have to be a nurse and you also have to
7 complete additional educational hours to be certified and
8 things like that.

9 Q. During your career, how many such victims of sexual
10 assault would you estimate you have examined there in the
11 emergency room?

12 A. Over two hundred and fifty patients.

13 Q. And you have specialized training in that field?

14 A. Yes, ma'am.

15 Q. And were you working in that capacity in the fall of
16 2015?

17 A. Yes, ma'am.

18 Q. Can you tell us, Ms. Nguyen, again, you are a
19 registered nurse, but you're also a forensic nurse
20 examiner?

21 A. Yes, ma'am.

22 Q. Were you able to treat a patient on the night of
23 November 18, 2015?

24 A. Yes, ma'am.

25 Q. And is there a specialized form or document that

1 you and other forensic nurse examiners use when you are
2 treating a patient for the purpose of a sexual assault
3 examination?

4 A. We do an acute forensic exam.

5 Q. All right. And is there a particular protocol that
6 goes with that?

7 A. Yes, ma'am.

8 Q. And do you have with you a copy of the written
9 protocol that you would have followed that night in your
10 treatment of this patient?

11 A. Yes, ma'am.

12 Q. I'm gonna ask you to refer directly to that report.
13 What time did the patient arrive to you there at Palmetto
14 Health Richland?

15 A. She arrived at 10:00 that night.

16 Q. All right. And do you recall by what means she was
17 transported?

18 A. She was -- she came by EMS.

19 Q. All right. Now when it's a sexual assault, how does
20 that differ from another type of patient? In other words,
21 what is the specialized type of evidence collection that's
22 conducted in these type of cases?

23 A. We do a sexual assault evidence collection kit on
24 these patients.

25 Q. And the purpose of the kit is what, Ms. Nguyen?

1 A. The purpose of the kit is to collect evidence for --
2 from a crime such as a sexual assault that has happened to
3 the patient.

4 Q. Now you mentioned you have a copy of your protocol
5 form with you. I'm gonna ask you a few questions about
6 that.

7 A. Yes, ma'am.

8 Q. The patient's name that night was what?

9 A. Her name is J.H. [REDACTED]

10 Q. All right. And what time did you actually see her to
11 begin your treatment of her?

12 A. She came to the hospital at 10:00, but I arrived at
13 11:00 to see the patient.

14 Q. All right. So she was already there awaiting your
15 arrival?

16 A. Yes, ma'am.

17 Q. And so they had to page you to actually come treat
18 this patient --

19 A. Yes, ma'am.

20 Q. -- for the purpose of this evidence collection?

21 All right. So I'm gonna put here patient arrived at
22 what time?

23 A. 10:00 PM.

24 Q. Now as part of the evidence collection process and the
25 overall treatment of the patient, is it necessary for you

1 to determine whether or not the patient reports that a
2 sexual assault occurred?

3 A. Yes, ma'am.

4 Q. Can you tell us for purposes of medical diagnosis and
5 treatment whether it's necessary to determine what type of
6 contact may occur -- or may have occurred?

7 A. Yes, ma'am.

8 Q. And by that, specifically, I mean, like what areas of
9 her body may have had contact with the alleged perpetrator?

10 A. Yes, ma'am.

11 Q. And whether or not the patient was exposed to any
12 bodily fluids such as ejaculation?

13 A. Yes, ma'am.

14 Q. Or saliva?

15 A. Yes, ma'am.

16 Q. Why is that necessary for medical diagnosis and
17 treatment?

18 A. It guides her plan of care and what I decide in what
19 type of testing. If I need to do like sexually transmitted
20 disease testing for her and what type of medications to
21 treat her with.

22 Q. All right. And in this particular case, can you tell
23 us in reference to that protocol form whether or not J.H.
24 [REDACTED] reported that a sexual assault occurred?

25 A. Yes, ma'am, she did.

1 Q. And you mentioned that one purpose of this examination
2 is to actually collect medical evidence?

3 A. Correct.

4 Q. Collect evidence of a sexual assault?

5 A. Yes, ma'am.

6 Q. Would that include bodily fluids such as semen?

7 A. Yes, ma'am.

8 Q. And so for that reason is it necessary to know whether
9 or not the patient may have engaged in sexual relations
10 with a spouse, for example, prior to the assault by the
11 perpetrator?

12 A. Yes, ma'am.

13 Q. All right. And is that part of your protocol form?

14 A. Yes, ma'am.

15 Q. I'm gonna refer you to that part of the protocol form,
16 please.

17 A. Okay.

18 Q. And can you tell us what, if anything, you questioned
19 JH [REDACTED] about as to whether she had engaged in consensual
20 intercourse with her husband within the last seven days?

21 A. Yes, ma'am.

22 Q. And what was her indication of that?

23 A. That she had sexual intercourse with her husband
24 within the last seven days.

25 Q. All right. And then is it also necessary for you to

1 determine whether the patient may have used alcohol or
2 drugs within the timeframe prior to the examination?

3 A. Yes, ma'am.

4 Q. And what was indicated there?

5 A. That she had not used any drugs or alcohol.

6 Q. Now as part of your examination, are you fairly close
7 to a patient, close enough to smell them?

8 A. Yes, ma'am.

9 Q. Their hair --

10 A. Yes.

11 Q. -- their clothing, things of that nature?

12 A. Yes, ma'am.

13 Q. Was there any indication to you whatsoever that

14 J.H. [REDACTED] had used alcohol or drugs such as marijuana or
15 anything of that nature that you would be able to smell on
16 her?

17 A. No, there was no indication.

18 Q. If there had been an indication of that, what action
19 would you have taken?

20 A. I would have drawn blood and urine from her.

21 Q. But your observations of J.H. [REDACTED] indicated nothing
22 of that sort?

23 A. Correct.

24 Q. Now do you also have a portion of the exam that
25 questions whether or not they changed clothing and things

1 of that nature?

2 A. Yes, ma'am.

3 Q. Tell us a little bit about that portion of the exam
4 and what its purpose is.

5 A. So when the patients come in, we ask them what
6 happened after the assault, so some of the questions that
7 we ask is have they urinated, have they had a bowel
8 movement, have they wiped off their genitals or body with
9 any types of wipes, have they douched, have they removed a
10 tampon or a diaphragm, have they brushed their teeth, have
11 they used any mouthwash, have they bathed, showered or
12 washed, have they ate or drank anything, have they changed
13 clothes or have they smoked.

14 Q. And why is that type of information important to you
15 as the evidence collection nurse?

16 A. It lets me -- gives me an idea like if they ate or
17 drank anything or if they've changed their clothes, then
18 maybe their clothes may be at home, and just what I need to
19 collect.

20 Q. All right. And in this particular case, you indicated
21 that J.H. [REDACTED] had arrived there at the hospital at ten?

22 A. Yes, ma'am.

23 Q. And during that course and time, she had to wait on
24 you to arrive?

25 A. Yes, ma'am.

1 Q. Okay. And what time was it ultimately that you
2 arrived?

3 A. I arrived at 11:00.

4 Q. All right. And while the patient is there in the
5 emergency room waiting on your arrival, can you tell us
6 whether or not they are allowed to use the bathroom if
7 they need to use the bathroom?

8 A. They are allowed to use the bathroom.

9 Q. Are they allowed to eat or drink anything if they need
10 to?

11 A. It's not recommended that they do, but if the patient
12 requests that, they can.

13 Q. All right. Now can you tell us whether or not she
14 indicated that she had changed clothing?

15 A. She did change clothes. No, I'm sorry. I misspoke.
16 She did not change clothes.

17 Q. All right. And can you tell us whether or not it is
18 indicated that she had bathed or showered or washed?

19 A. She had not bathed or showered.

20 Q. Can you tell us whether or not it's indicated if she
21 had brushed her teeth?

22 A. She did not brush her teeth.

23 Q. What's the next step in your examination after you
24 obtain this information?

25 A. Once I've obtained this information, then we move

1 forward to an assault history where the patient tells me
2 in detail what happened during the assault.

3 Q. All right. And regarding the time and place of that
4 assault, can you tell us whether or not she indicated a
5 time or timeframe?

6 A. She said it was about 7:00 PM.

7 Q. And can you tell us whether or not she indicated a
8 place or location that it occurred?

9 A. She identified [REDACTED] Julius Felder Street in Cayce,
10 South Carolina.

11 Q. All right. Now when you're conducting the interviews,
12 are you necessarily expecting exact times from a victim of
13 sexual assault?

14 A. No, ma'am.

15 Q. Are you demanding an exact time from them?

16 A. No, ma'am.

17 Q. Are you working off of an estimation?

18 A. It's a estimation.

19 Q. What's the next step?

20 A. So then we ask if there were any witnesses to the
21 assault and then the patient will provide the actual
22 history for me.

23 Q. All right. Is there a place where it's indicated
24 whether or not the -- whether or not the perpetrator had
25 actual contact with the body?

1 A. Yes, ma'am.

2 Q. I'm gonna refer you to that portion of the -- of the
3 examination.

4 A. Okay.

5 Q. Do you consider this information necessary for your
6 medical diagnosis and treatment?

7 A. Yes, ma'am.

8 Q. Can you -- can you tell us in referring to your
9 protocol form whether or not she reported any vaginal
10 contact during the assault?

11 A. She did report vaginal contact.

12 Q. By what part or parts of the assailant's body?

13 A. She reported vaginal contact via penetration by his
14 penis, his finger, and he also performed oral sex on her
15 as well, and he attempted to bite her vagina as well.

16 Q. Now regarding any type of contact by the perpetrator's
17 mouth, how does that -- why is that necessary for the type
18 of evidence collection that you may conduct?

19 A. Referring to his mouth, we would collect a suspected
20 saliva swab for evidence collection.

21 Q. And did you determine whether or not the suspect or
22 assailant had made contact with J.H. [REDACTED] by the mouth?

23 A. I'm sorry, could you repeat that?

24 Q. Did you -- did your protocol form note whether or not
25 there was contact by the assailment's mouth?

1 A. Yes, ma'am, it does.

2 Q. How so?

3 A. He performed oral sex on her and he attempted to bite
4 her in the vaginal area.

5 Q. And what, if anything, else was noted?

6 A. Are you referring to the vaginal area?

7 Q. Or anything else by using the mouth.

8 A. He also licked her left breast and the right side of
9 her cheek.

10 Q. And then the actual evidence collection process, how
11 is that done?

12 A. So with the evidence collection kit, we open up an
13 sexual assault evidence collection kit and there's multiple
14 envelopes in there with purposes of specific areas that
15 you would collect DNA and based on what her history was,
16 I collected the envelopes needed in correlation to her
17 assault history.

18 Q. Okay. And is there also a portion of the exam where
19 you describe the general physical appearance of the victim?

20 A. Yes, ma'am.

21 Q. What, if anything, did you note about her?

22 A. When she came in, she was disheveled, she was wearing
23 a red shirt, a black skirt and she did not have any shoes
24 on when she came in.

25 Q. Now as part of your examination, do you also take

1 photographs as the nurse examiner?

2 A. Yes, ma'am.

3 Q. I'm gonna show you what is State's 2 and what is
4 State's 1 and ask you who took these photographs?

5 A. I took these photographs.

6 Q. Can you tell us whether or not that accurately depicts
7 J.H. [REDACTED] as you noted in your protocol form wearing no
8 shoes?

9 A. Yes, ma'am.

10 Q. And what, if anything, did you note about her general
11 demeanor?

12 A. She was quiet. When I asked her questions, she
13 responded fairly briefly. She did maintain good eye
14 contact with me and she was able to recall the events of
15 the assault.

16 Q. So you noted that her responses to her questions were
17 brief?

18 A. Yes, ma'am.

19 Q. That's also something you actually physically noted on
20 your form?

21 A. Yes, ma'am.

22 Q. Again, under these circumstances are you necessarily
23 trying to elicit every detail of the assault?

24 A. No, ma'am.

25 Q. I'm gonna ask you, if you could, Ms. Nguyen, go ahead

1 and step down and I want to take you through some of these
2 evidence items.

3 A. (Witness complies.)

4 Q. First I'm gonna ask you about the patient's underwear
5 and ask you whether or not during the course of your --
6 your exam you have any measures to acquire the patient's
7 underwear.

8 A. Yes.

9 Q. And why is that done?

10 A. We collect evidence of the underwear if the patient
11 reported a vaginal assault and if there was any type of
12 ejaculation that occurred within the patient, then there
13 would be some type of residue that would be left on the
14 underwear, so we do collect the underwear as well.

15 Q. Okay. Now I want you to start by explaining what the
16 sexual assault kit is and before we take a look at those,
17 I'm gonna show you something and ask you whether or not you
18 recognize it.

19 A. Yes, this is her sexual assault evidence kit that I
20 performed on her that day.

21 Q. All right. And how is it that you recognize this,
22 Ms. Nguyen?

23 A. Because her name and my name is also on it.

24 Q. All right. So noted right here is your name?

25 A. Yes, ma'am.

1 Q. And her name is right there?

2 A. Correct.

3 Q. All right. Now what is this red tape that we're
4 looking at on the kit itself?

5 A. That's the evidence tape that we seal the box with to
6 make sure that everything is sealed properly within the
7 kit.

8 Q. All right. Now what is actually contained inside of
9 the sexual assault kit once you open it up?

10 A. There's multiple envelopes in there. There's a
11 toxicology envelop where you would collect blood, there's
12 also another envelope that contains multiple envelopes in
13 it that would have like a buccal swab. A buccal swab is a
14 swab that I would swab the patient for and that would be
15 for her DNA so that we would be able to differentiate from
16 her DNA versus somebody else's DNA that's on -- on her
17 body. There is vaginal swabs, rectal swabs, suspected
18 saliva swabs, fingernail clippings, pubic hair combings, as
19 well as a miscellaneous envelope in case there's anything
20 else that based on her assault history or based off of
21 something that I may find on her body that will also be
22 collected as well.

23 Q. I'm gonna start here with the underwear. And, again,
24 it's got the red tape on it and who would have placed the
25 red tape on this item?

1 A. That would be -- that would be me.

2 Q. And that would have been after the collection process?

3 A. Yes, ma'am.

4 Q. And are you taking the underwear directly off the
5 patient's body?

6 A. The patient takes the underwear off.

7 Q. And you actually observe that occur?

8 A. I don't believe I watched her take her underwear off,
9 but I collected it when she gives it to me once she's done.

10 Q. And then you're able to give the patient new clothing?

11 A. Correct.

12 Q. I'm gonna show you this item and ask you how is it
13 that you know this is the item that you collected from
14 J.H. [REDACTED] on that night, the night of November 18, 2015,
15 into the early morning hours of the 19th?

16 A. Because it was sealed by me, I collected it and I
17 also documented it into my forensic report with the seal.
18 It has my initials on here with my name, as well as my
19 signature -- my initials, I'm sorry, on the tape.

20 Q. All right.

21 MS. MAYES: Your Honor, the underwear in this case
22 would be State's exhibit for evidence. I believe this
23 would be 12.

24 MS. FULLWOOD: No objection.

25 THE COURT: With no objection, State's 12 is in

1 evidence.

2 (State's Exhibit Number 12, underwear, was marked
3 and admitted into evidence.)

4 BY MS. MAYES:

5 Q. Next I want to ask you about vaginal swabs. Why are
6 vaginal swabs collected?

7 A. Vaginal swabs are collected to see if there's any body
8 fluids that may be in the vaginal area.

9 MS. MAYES: And, Your Honor, if there's no objection,
10 I'll go ahead and cut the seal at this time.

11 MS. FULLWOOD: No objection, Your Honor.

12 THE COURT: Go ahead, please.

13 BY MS. MAYES:

14 Q. I'll ask you to look through this package here. Do
15 you see the vaginal swabs that were collected?

16 A. I'm sorry?

17 Q. Do you see the vaginal swabs that were collected?

18 A. Yes, ma'am.

19 MS. MAYES: And then, Your Honor, we'll probably
20 package all of these together in this one -- this one
21 item.

22 BY MS. MAYES:

23 Q. I'm gonna ask you also whether or not you see rectal
24 swabs that were collected?

25 A. There is a rectal swab.

1 Q. Then if you could tell us whether or not there are
2 swabs for an area known as miscellaneous swabs?

3 A. Yes.

4 Q. Okay. I want to ask you a little bit more about that.
5 And now if you could refer to your protocol form and tell
6 us exactly what you swabbed for the items known as the
7 miscellaneous collection.

8 A. The miscellaneous envelope was an envelope for touch
9 DNA to her left lower arm and her -- and bilateral, meaning
10 both, of her breasts.

11 Q. You said that would indicate both breasts were
12 swabbed?

13 A. Correct.

14 Q. Okay. And that notation that you just mentioned, is
15 it also noted here on the outside of your envelope?

16 A. Yes, ma'am.

17 Q. Now I want to ask you about whether or not there is
18 an opportunity for to you collect suspected saliva swabs;
19 meaning if the perpetrator may have placed his mouth on the
20 victim?

21 A. Yes, ma'am.

22 Q. Okay. Do you recognize this item?

23 A. Yes, ma'am.

24 Q. Okay. Can you tell us whether or not that was done in
25 this case?

1 A. Yes. So I collected suspected saliva from her left
2 breast and her right cheek.

3 Q. All right. Now I also want to ask you whether there
4 was any other opportunity to collect suspected bodily
5 fluids that may be around the body following the sexual
6 assault?

7 A. I did. I collected a suspected body fluid swab and
8 that was to the bilateral, which is both sides, of the
9 labia majora and the labia minora, which is in the vaginal
10 area.

11 Q. I'll ask you a little bit more about that. You said
12 labia majora?

13 A. Yes, ma'am.

14 Q. Labia minora?

15 A. Yes, ma'am.

16 Q. And what are you looking for or attempting to recover
17 when you're swabbing this area of the vagina?

18 A. Suspected body fluids.

19 Q. Potentially from a perpetrator?

20 A. Correct.

21 Q. All right. And when you do these swabs, I want you
22 to explain the process that you're using as you do each
23 of these.

24 A. Okay. So with the suspected body fluid swabs, there's
25 two swabs that come in the envelope and they're both

1 sterile, they look like long Q-tips, if you will, and so
2 one is moistened with some sterile water and one is dry, so
3 I collect it using a double swab technique; meaning, when I
4 go in with a patient one swab is slightly moistened and the
5 other one's dry and I go in and I swab the labia area to
6 collect it.

7 Q. Okay. And as you are collecting these items, I think
8 you've already taken us through the process of actually
9 sealing the envelopes, can you tell us whether or not each
10 of these envelopes were properly sealed prior to being
11 placed into the kit?

12 A. Yes. Each envelope is taped and then placed into the
13 larger envelope, this red one right here, and then that is
14 sealed with evidence tape as well.

15 Q. And all of these items were sealed by yourself that
16 night?

17 A. Yes, ma'am.

18 Q. Okay. I'm gonna ask you also about whether you had
19 an opportunity to collect J.H. DNA?

20 A. I did.

21 Q. And why did you collect her DNA?

22 A. Because that -- that's the buccal swab as I mentioned
23 earlier that -- the purpose of that is to swab for her own
24 DNA so that we would be able to differentiate between her
25 DNA versus someone else's DNA that's on her body.

1 Q. Okay. And that's part of the standard protocol as
2 well?

3 A. Yes, ma'am.

4 MS. MAYES: So, Your Honor, at this time we would
5 offer as a joint exhibit the victim's known buccal
6 swabs.

7 BY MS. MAYES:

8 Q. Were there vaginal smears done as well?

9 A. No smears were done.

10 Q. The miscellaneous body swabs and the rectal swabs,
11 let me ask you about that real quick. On what area -- or
12 what location are you actually swabbing in addition to the
13 rectal area?

14 A. So in the rectal area, we're swabbing around the
15 outer, and this is the outer rectal area, for DNA.

16 Q. And why that is that?

17 A. The purpose of that is the patient reported a vaginal
18 assault and if there's ejaculation that occurs, then even
19 though she may not have been rectally assaulted, pooling
20 from any type of ejaculation just by gravity would pool
21 in that rectal area, so I collect in that area as well.

22 Q. And that's part of your routine training?

23 A. Yes, ma'am.

24 Q. All right. The vaginal swabs, the suspected saliva
25 that you mentioned from the breast and the cheek and then

1 the suspected bodily fluids from the labia majora and
2 labia minora, were all of these collected by you,
3 Ms. Nguyen?

4 A. Yes, ma'am.

5 MS. MAYES: And, Your Honor, this would be State's
6 Exhibit -- I believe this would be 13 for evidence.

7 MS. FULLWOOD: No objection, Your Honor.

8 THE COURT: With no objection, State's 13 is in
9 evidence.

10 (State's Exhibit Number 13, swabs from sexual
11 assault kit, was marked and admitted into evidence.)

12 BY MS. MAYES:

13 Q. Now do you also do collection such as pubic hair
14 combings and debris collection, things of that nature?

15 A. Yes, ma'am.

16 Q. That's all part of the routine kit as well?

17 A. Yes, ma'am.

18 Q. Thank you, Ms. Nguyen. You may return to your seat.

19 A. (Witness complies.)

20 Q. Now once those items are collected and sealed by
21 yourself, Ms. Nguyen, ultimately are they provided to law
22 enforcement?

23 A. Yes, ma'am.

24 Q. Through your training and experience, Ms. Nguyen, do
25 you always observe physical injury following a sexual

1 assault?

2 A. No, ma'am.

3 MS. MAYES: Nothing further, Your Honor.

4 THE COURT: Ms. Fullwood.

5 MS. FULLWOOD: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. FULLWOOD:

8 Q. Good afternoon, Ms. Nguyen.

9 A. Hello.

10 Q. I believe -- I believe all of my questions are going
11 to concern your SANE report, so I know you have it in front
12 of you. Ms. Hall, J.H. [REDACTED] to you, denied that she had any
13 pain or injury, correct?

14 A. She denied to me, but she did mention to the -- the
15 doctor who she saw in the ER that she did have a headache.

16 Q. Okay. And the form you use does ask for the pertinent
17 sexual history, correct?

18 A. Yes, ma'am.

19 Q. Okay. And basically you're -- you're limited -- well,
20 you've got several categories that you can choose from and
21 you ask them did this or that occur, correct?

22 A. Yes, ma'am.

23 Q. And in this case she told you that she had consensual
24 intercourse with her husband within the past seven days?

25 A. Yes, ma'am.

1 Q. And your protocol doesn't require you to narrow it
2 down any further than that, correct?

3 A. Yes, ma'am.

4 Q. Now in the history you took, the approximate time of
5 the assault was 7:00 PM, correct?

6 A. Yes, ma'am.

7 Q. And according to your report and the form you use and
8 the protocol you use, Ms. Hall reported that she was not
9 threatened, right? I'm on page 4.

10 A. She was verbally threatened.

11 Q. Well, in the methods employed, this assault section,
12 you have checked no -- oh, okay. She was not threatened
13 with a weapon, correct?

14 A. Correct.

15 Q. All right. She did not receive physical blows,
16 correct?

17 A. Correct.

18 Q. There was no use of physical restraints?

19 A. Correct.

20 Q. There was no strangulation?

21 A. That's correct.

22 Q. And there are no burns?

23 A. That's correct.

24 Q. So it was only a verbal threat?

25 A. Yes, ma'am. And he grabbed her.

1 Q. And he -- and he grabbed her. By the left lower arm,
2 correct?

3 A. Yes, ma'am.

4 Q. And the verbal threat was if I didn't be quiet he
5 would tell the neighborhood my house was open for business
6 and he'd tell all his friends?

7 A. Yes, ma'am.

8 Q. All right. And she reported that she had inflicted
9 injuries on the assailant?

10 A. I indicated that she did say that.

11 Q. But there's no note as to what type of injury she
12 inflicted?

13 A. I did not elaborate on that.

14 Q. All right. Did you take her fingernail clippings?

15 A. I did not.

16 Q. Is that something that occasionally you do?

17 A. We would.

18 Q. All right. Now on page 6 of your report, there's a
19 section where you're asked to describe your patient's
20 general demeanor, correct?

21 A. Yes, ma'am.

22 Q. And in Ms. Hall's case, you reported that she was
23 quiet, correct?

24 A. Yes, ma'am.

25 Q. And you had the option of noting whether or not your

1 patient is tearful, correct?

2 A. Yes, ma'am.

3 Q. You did not check that in this case, did you?

4 A. No, ma'am.

5 Q. You have the option of checking whether or not your
6 patient is trembling, right?

7 A. Correct.

8 Q. You did not check that in this case?

9 A. No, ma'am.

10 Q. You have the option of providing the information that
11 your patient is anxious, right?

12 A. Correct.

13 Q. You did not check that in this case?

14 A. No, ma'am.

15 Q. You have the option of providing information that your
16 patient is sobbing, correct?

17 A. Correct.

18 Q. You did not check that in this case?

19 A. Yes, ma'am.

20 Q. You had the option of giving the information that your
21 patient is tense, right?

22 A. Correct.

23 Q. You did not provide that information in this case,
24 did you?

25 A. Correct.

1 Q. And you reported that she responded to questions
2 briefly, correct?

3 A. Yes, ma'am.

4 Q. And made good eye contact with you, correct?

5 A. Yes, ma'am.

6 Q. Now in addition to collecting the swabs that are in
7 evidence and the underwear that's in evidence, you
8 collected clothing she was wearing, right?

9 A. Yes, ma'am. That's correct.

10 Q. And you gave that to law enforcement, correct?

11 A. It was submitted to law enforcement. I didn't
12 actually turn over the kit to law enforcement.

13 Q. Someone from the hospital did?

14 A. Yes, ma'am.

15 Q. Okay. And that's per the hospital's protocol?

16 A. Yes, ma'am.

17 MS. FULLWOOD: I beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 BY MS. FULLWOOD:

20 Q. And one more question, Ms. Nguyen. Was it reported
21 to you that Ms. Hall waited five minutes on the front porch
22 watching the assailment walk away? And that would be on
23 page 3 of your report.

24 A. She did indicate that to me.

25 MS. FULLWOOD: No further questions.

REDIRECT EXAMINATION

BY MS. MAYES:

Q. And based on your observations, do you always see sexual assault patients have the exact same demeanor?

A. No, ma'am.

Q. One thing that Ms. Fullwood was asking you about was whether or not you noted verbal threats of harm.

A. Yes, ma'am.

Q. Where is that noted on your report? What page is that?

A. That's on page 4 of 12.

Q. All right. Is there a specific -- specific part of the protocol that indicates whether there had been verbal threats of harm?

A. Yes, ma'am.

Q. And what did you check for that; yes or no?

A. Yes.

Q. And then in addition to what you described as a verbal threat of harm to herself, I want to ask you about the portion Ms. Fullwood was just asking you about on page 3.

A. Yes, ma'am.

Q. In addition to a verbal threat of harm to herself, can you tell us whether or not the patient indicated there was a verbal threat of harm to another person?

1 A. Yes, she indicated that --

2 Q. And without saying what she said, did she indicate
3 whether there was a threat to another person?

4 A. Yes.

5 Q. And did you report who that person was?

6 A. Yes. It was her daughter.

7 Q. All right. Now considering the verbal threats that
8 you've noted in your report, can you tell us based on your
9 observations whether you always expect physical injury?

10 A. No.

11 MS. MAYES: Nothing further.

12 THE COURT: Nothing on recross?

13 MS. FULLWOOD: Nothing further, Your Honor.

14 THE COURT: Ma'am, thank you very much for coming.
15 You're free to go. Take care of yourself.

16 (Witness excused.)

17 THE COURT: Ladies and gentlemen, we're gonna go
18 ahead and take our lunch break. Your sandwiches are
19 back there. When you get finished eating, just knock
20 on the door when you're ready to come back in here and
21 we'll try and get everybody back in here and get rolling
22 again.

23 Again, don't discuss the case over lunch. You can
24 talk about anything else, just not the case. If
25 anybody needs to pop downstairs after lunch to have

1 a cigarette, just let the bailiff know and they'll
2 take you down, okay?

3 We'll be at ease for lunch. See you-all in a few
4 moments.

5 (Whereupon, the jury is excused for lunch at
6 1:04 PM.)

7 MS. MAYES: And, Your Honor, for the record,
8 Item 12 contains only the underwear, Item 13 is a group
9 container which contains the various swabs that were
10 noted by the nurse, as well as the victim's known DNA
11 swabs.

12 THE COURT: Got it. Both of those are in evidence
13 according to my notes.

14 All right. We'll be at ease.

15 (Whereupon, a luncheon recess was taken at
16 1:05 PM.)

17 (Back on the record at 1:49 PM.)

18 BAILIFF: All rise. Court is now in session.

19 THE COURT: Thank you. Have a seat, please.

20 If we may, we'll go back on the record. The record
21 will reflect the Defendant is present with counsel and
22 the State's next witness is going to be one of the SLED
23 agents or --

24 MS. PATTERSON: No, it's gonna be Lieutenant
25 Merrill.

1 THE COURT: Okay. Very good.

2 Let's have the jury, please.

3 BAILIFF: Bring them in?

4 THE COURT: Please.

5 (Whereupon, the jury returns to the courtroom at
6 1:51 PM.)

7 THE COURT: The record will reflect that the jury
8 is back and seated. We're still, of course, involved in
9 the State's case in chief.

10 So, Solicitor, if you'll call your next witness,
11 please.

12 MS. PATTERSON: Thank you, Your Honor.

13 The State calls Lieutenant Jason Merrill.

14 (Whereupon, Jason Merrill was duly sworn by
15 the Clerk of Court.)

16 THE CLERK: Thank you. If you'll have a seat,
17 please, over there. State your name and spell your
18 last for the record.

19 THE WITNESS: Jason Merrill. Last name's spelled
20 M-E-R-R-I-L-L.

21 JASON MERRILL,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. PATTERSON:

25 Q. And I apologize. I think we've been calling you

1 Sergeant. Lieutenant Merrill, how long have you been
2 employed with the Cayce Public Safety?

3 A. I've been in law enforcement since 2001 and I've been
4 employed by the Cayce Department of Public Safety since
5 2004, so approximately fifteen years.

6 Q. And currently you're a lieutenant over investigations?

7 A. Correct.

8 Q. And what was your position during November of 2015?

9 A. I was an investigator.

10 Q. And in between that time has your position changed
11 any?

12 A. Yes. In 2016, I was promoted to a patrol sergeant
13 position, in which I left investigations to be a patrol
14 sergeant for approximately a year, then I returned in 2017
15 to investigations as a sergeant and then earlier this year
16 I was promoted to lieutenant.

17 Q. Okay. And when you were in investigations in 2015,
18 were you assigned to a case involving the Defendant, Rodney
19 Furtick?

20 A. Yes, I was.

21 Q. And when did you get notified about this incident?

22 A. On the night of November 18, 2015, was when I was
23 notified, at approximately 9:00 PM.

24 Q. And what did -- what was the first thing you did after
25 receiving notification of the incident?

1 A. Based on the notification I received, I responded to
2 Richland Hospital to meet with the victim in this case.

3 Q. And what time did you arrive at the hospital?

4 A. According to my notes, approximately 10:15 PM.

5 Q. Who did you identify the victim to be?

6 A. J.H. [REDACTED] what was her name at the time. I
7 understand it's changed now.

8 Q. Who was present at the hospital with J.H. [REDACTED]

9 A. Her then husband at the time, Brian Dean, and I
10 believe her daughter was with her as well, the toddler.

11 Q. And what did you do after identifying J.H. [REDACTED]

12 A. I asked to speak with her so I could get an
13 understanding of what had occurred earlier in the night.

14 Q. Okay. And at this time do you remember anything about
15 her demeanor and physical appearance?

16 A. Not specifically other than, you know, I didn't have a
17 basis which to gauge whether her behavior was normal or not
18 or a baseline, but to me she did seem kind of reserved like
19 she had been subjected to a traumatic event.

20 Q. And did she agree to speak to you about what happened
21 to her?

22 A. Yes, she did.

23 Q. And was she able to tell you what happened?

24 A. Yes, she was able to provide details of the incident,
25 as well as a description of the person that committed the

1 incident -- committed the crime.

2 Q. Was she able to give you a name of that person who
3 assaulted her?

4 A. Yes, she was able to provide two names actually.
5 Rodney or Todd were the two names that she was able to give
6 me, but she was referring to the same person with both
7 those names. She knew him by two different names. I just
8 wanted to clarify that.

9 Q. What information was she able to give you regarding --
10 was she able to give you a height description of the
11 person?

12 A. Yes, she was able to give me a height, weight,
13 complexion, body build, and even clothing, if I recall
14 correctly.

15 Q. And what information did she give you regarding
16 height?

17 A. She described the height as about the same as her
18 husband and she related to me that her husband was
19 approximately five-ten.

20 Q. Okay. What about complexion?

21 A. She described him as dark complected.

22 Q. What type of build?

23 A. Athletic or muscular build. I think muscular was the
24 word that she used.

25 Q. What type of hairstyle?

1 A. Bald.

2 Q. Besides describing what happened to her and who did
3 this to her, was she able to tell you an approximate time
4 that this occurred?

5 A. Somewhat. She -- she kind of bracketed the incident
6 between the time that some Chinese food was delivered to
7 the house, she kind of used that as a starting point, and
8 according to my notes she stated that the assault happened
9 after that food was delivered and she was able to put a
10 time on that delivery of the food as approximately 6:30 PM.

11 Q. And, again, this is an approximate time?

12 A. Yes, that's how I took it.

13 Q. And is it usual for you when you're speaking to
14 victims to be able to give an exact time of an incident?

15 A. Yes, it is not unusual for victims to be able to
16 provide an exact time. Usually they -- if there is a
17 specific event that they can tie to a time, that's what
18 they'll use, but we're not lucky enough to have that in
19 every case.

20 Q. So after you spoke with J.H. [REDACTED] at the hospital, what
21 did you do next?

22 A. I waited. I think I may have gone back to the office
23 and started preparing some notes and preparing some stuff,
24 but basically I was waiting for the SANE nurse examiner to
25 finish what she was doing at the hospital.

1 Q. And did you receive information about the victim
2 completing her examination at the hospital?

3 A. Yes. At approximately 2 AM I was notified that the
4 victim and her family were -- were done and ready to be
5 picked up from the hospital, so I went and picked them up
6 and gave them a ride back to their house on Julius Felder
7 Street.

8 Q. And about what time did you get to the hospital?

9 A. According to my notes, it was about 2:40 AM.

10 Q. And so would this have been the wee hours of the
11 morning?

12 A. Yes.

13 Q. And where did you take the victim and her family?

14 A. Back to their house at [REDACTED] Julius Felder Street in
15 Cayce.

16 Q. Now based on the information that she provided to you,
17 where did she tell you the assault occurred?

18 A. At that location or at that house specifically in what
19 she described as the child's bedroom.

20 Q. And is that address in Lexington County?

21 A. Yes, it is.

22 Q. And did you go inside this -- the house?

23 A. Yes, with consent, of course. I asked the victim if
24 she would be okay with me coming in and taking a look. I
25 wanted to see where the crime had happened and see if there

1 was any evidence that we could gather.

2 Q. I'm gonna ask you to take a look at what's been
3 entered as State's Exhibit Number 9. Are you familiar with
4 that diagram?

5 A. Yes, I am.

6 Q. And is that how you remember the layout of [REDACTED] Julius
7 Felder Street? Do you remember that being the layout of
8 that house?

9 A. Yes, that's consistent with the essential recollection
10 that I have of the layout.

11 Q. And based on what J.H. [REDACTED] told you happened during the
12 assault, did anything of interest -- did you see anything
13 of interest in your investigation?

14 A. Yes, in the bedroom that was described as the child's
15 bedroom, and appeared to me to be a child's bedroom area,
16 I did locate several items of evidentiary value that I
17 collected.

18 Q. Can you kind of point out where you remember the
19 child's bedroom being?

20 A. Yes. This area right here. This was a multicolored
21 foam mat that was on the floor with a bed and there was a
22 chair, but I don't exactly recall exactly which wall the
23 chair was on.

24 Q. And based on what she told you, what items interested
25 you as a part of this investigation?

1 A. Based on what she described to me as what happened
2 during the assault, what was noteworthy of me was there was
3 crumpled baby wipes on the arm of the chair in the child's
4 bedroom area. There was wipes that appeared to have been
5 removed from a package. The reason I say that they
6 appeared to have been removed from a package is because
7 they were still folded in a group that came out, it was
8 like a chunk. And then I also located the black tights
9 that were reported to be worn by the victim during the
10 assault all in the child's bedroom.

11 Q. And all of those items were in the same approximate
12 area?

13 A. Yes, they were all located within that room.

14 (State's Exhibit Number 14 and 15 were marked for
15 identification.)

16 BY MS. PATTERSON:

17 Q. Lieutenant Merrill, I'm show gonna you what's been
18 marked as State's Exhibit 14 and 15 and ask you to take a
19 look at it. Do you recognize what I just passed up to you?

20 A. Yes, I do.

21 Q. And what do those -- what is labeled -- how is that
22 envelope labeled?

23 A. It's labeled with the case number, a description of
24 baby wipes with an item number, and an evidence tape slash
25 seal with my signature and the date on it that it was

1 packaged.

2 Q. And are both envelopes labeled in that manner?

3 A. Yes.

4 Q. And does it look like it's been opened or tampered
5 with in any way?

6 A. No, it does not.

7 MS. PATTERSON: Your Honor, at this time we move
8 State's Exhibit 14 and 15 into evidence.

9 MS. FULLWOOD: No objection.

10 THE COURT: State's 14 and 15 are in evidence.

11 (State's Exhibit Number 14, baby wipes, and 15,
12 baby wipes, were admitted into evidence.)

13 BY MS. PATTERSON:

14 Q. We'll start with 14. Do you recognize what's in 14?

15 A. Yes.

16 Q. And what is this again?

17 A. That appears to be the crumpled up wipes that were
18 recovered from the arm of the chair that was located in the
19 child's room.

20 Q. And based on what J.H. told you happened to her, this
21 interested you as a part of your investigation?

22 A. Yes, absolutely.

23 Q. And let's look at 15. And this is the way that these
24 wipes appeared when you saw them in the room that looked
25 like it was a child's room?

1 A. Yes.

2 Q. Did these look like these had been used?

3 A. No, not particularly. It looked like they had came
4 out of a bag as part of a larger group and they had not
5 been used.

6 Q. And, again, where did you locate these?

7 A. In the child's bedroom area.

8 Q. And where at within that area, if you remember?

9 A. I know the crumpled ones that we previously looked at
10 were on the arm of the chair. I did not note a particular
11 location for the wipes that were still folded.

12 Q. And I think this has already been entered as State's
13 in evidence 10 and ask you to take a look at this. Do you
14 recognize what I just passed up to you?

15 A. Yes, I do.

16 Q. And did you collect those when you went into J.H. [REDACTED]
17 house?

18 A. Yes, I did.

19 Q. And where do you remember seeing those tights?

20 A. They were in the child's bedroom area as well on the
21 floor, if I recall correctly.

22 Q. And when you collected them, would they have been in
23 this same condition?

24 A. Essentially, yes. I think they've been folded or
25 unfolded a couple of times in preparation for court and

1 during the court proceeding obviously, but they were inside
2 out when they were found. There was also a defect to one
3 of the lower leg areas.

4 Q. And you would not have put them inside out?

5 A. Correct. I didn't alter that in any way. All I did
6 was basically lift them off the ground and put them in an
7 envelope and sealed the envelope.

8 Q. And these look like footless tights, but one of them
9 looks torn.

10 MS. FULLWOOD: Objection to the leading, Your
11 Honor.

12 THE COURT: Sustained. You can ask it a different
13 way.

14 BY MS. PATTERSON:

15 Q. Does it -- does these tights appear to have feet in
16 them?

17 A. I'm not quite sure what you mean by feet. Like a full
18 foot?

19 Q. Yes.

20 A. No, they appear to be collared.

21 Q. Okay. And what condition did they appear to be in?

22 A. One of them appears to have a defect. And when I say
23 defect, that's a term that we use to describe -- it could
24 be damage, it could be something that happened to the
25 material since its manufacture or since it was new.

1 Q. And this would have been the condition that you found
2 the tights in?

3 A. Correct.

4 Q. Did you check -- did you check the back door -- the
5 condition of the back door in the home?

6 A. Yes, I would have at least given it a look over just
7 to examine it and see if there was any damage or not.

8 Q. But based on what J.H. told you, did you expect to
9 see any damage?

10 A. No, I did not.

11 Q. And based on your experience, would that necessarily
12 be the case in all burglary cases?

13 A. No, it's not unusual to have a burglary without forced
14 entry. People -- people are human, they forget to lock
15 their doors sometimes. There's other methods to gain entry
16 into houses to defeat locking mechanisms and that sort of
17 thing.

18 Q. Now during your investigation, was a possible suspect
19 developed?

20 A. Yes.

21 Q. And was this based on the description that J.H. gave
22 you?

23 A. Yes, absolutely.

24 Q. And who were the suspects that were developed?

25 A. Rodney Furtick, the Defendant, and there was another

1 name, Rodney Robinson, that came up early in the
2 investigation and that -- those two names came up basically
3 at the start of the investigation because the victim only
4 knew the name of Rodney and that was two people that we
5 knew of in that area that had the first name of Rodney.

6 Q. And did you have an opportunity to speak with the
7 Defendant, Rodney Furtick?

8 A. Yes, I did.

9 Q. And when was that?

10 A. That was on December 10th of 2015.

11 Q. Which would have been?

12 A. Approximately two and a half, three weeks after the
13 incident.

14 Q. Was anyone with you when you spoke to Rodney?

15 A. Yes, a coworker of mine, Investigator Cal Thomas, was
16 with me.

17 Q. And where were you when you spoke with Rodney?

18 A. At the Cayce Department of Public Service
19 headquarters.

20 MS. FULLWOOD: Your Honor, at this point I renew
21 my motions that I made yesterday.

22 THE COURT: Very good. This testimony is subject
23 to those motions. The objection is noted. Same rulings
24 as before.

25 Please proceed.

1 BY MS. PATTERSON:

2 Q. What time was it when you spoke to him?

3 A. Approximately 10:20 in the morning.

4 Q. And at the time you spoke to him, was this still an
5 open investigation?

6 A. Yes, very much so.

7 Q. Did you have any warrants or anything on him at this
8 time?

9 A. No, I did not.

10 Q. And what was your purpose for wanting to speak to him?

11 A. Just to further the investigation and gather more
12 information.

13 Q. Now before you spoke to him, did you ask him anything
14 about if he could read or write?

15 A. Yes, I did.

16 Q. And what did he indicate?

17 A. He indicated that he could read and write okay.

18 Q. Did you provide him his Miranda rights?

19 A. Yes, I did.

20 Q. And how was those provided to Mr. Furtick?

21 A. In writing and verbally.

22 MS. FULLWOOD: Subject to my prior objection.

23 THE COURT: Subject to all prior and previous
24 objections.

25 BY MS. PATTERSON:

1 Q. I'll show you what's been marked as State's Exhibit
2 Number 3 and ask you to take a look at that. Do you -- do
3 you recall that document?

4 A. Yes, I do.

5 Q. And what does it look like?

6 A. It looks like the advice of rights form that I used
7 when I interviewed Mr. Furtick.

8 Q. Well, is it, in fact, the advisement of rights form
9 that you used with him?

10 A. Yes.

11 Q. Does it look like it's been changed or altered in any
12 way?

13 A. No, it does not.

14 MS. PATTERSON: Your Honor, at this time we'd
15 move State's Exhibit Number 3 into evidence.

16 THE COURT: Subject to all prior ruling rulings
17 and objections, it is in evidence.

18 (State's Exhibit Number 3, Advisement of Rights
19 form, was admitted into evidence.)

20 MS. PATTERSON: I'll just hand you a copy to
21 reference.

22 I beg the Court's indulgence. We're gonna see if
23 we can get this visible.

24 THE COURT: Sure.

25 BY MS. PATTERSON:

1 Q. Now on the top of the advisement of rights form, what
2 is this information that I'm pointing to?

3 A. That would be some basic identifying information for
4 the person that we're interviewing.

5 Q. And who would you have gotten that information from?

6 A. Much of the information I would have gotten from the
7 person we were interviewing. In this case, the Defendant.

8 Q. And how old did Rodney indicate he was?

9 A. Forty-seven years old.

10 Q. And what address did he indicate he lived?

11 A. [REDACTED] Allen Street, Apartment [REDACTED], in Cayce.

12 Q. And what grade did he indicate he had completed?

13 A. The eleventh grade.

14 Q. And with regard to that residence that he stated he
15 lived in, are you familiar with that area?

16 A. Yes, I am.

17 MS. FULLWOOD: No objection, Your Honor.

18 THE COURT: State's Exhibit 16 is in evidence
19 without objection.

20 (State's Exhibit Number 16, photo enlargement,
21 was marked and admitted into evidence.)

22 BY MS. PATTERSON:

23 Q. Will you point out to the jury on that aerial map
24 where that location would have been -- or that address
25 would have been that Mr. Furtick gave you as his?

1 A. It would have been this building right here. This is
2 Allen Street. It runs perpendicular to Julius Felder. In
3 this building here, there's three units in that building,
4 A, B and C. C would be the one farthest from Allen Street,
5 so this far end here.

6 Q. And on this aerial map, can you indicate where the
7 victim's residence was?

8 A. Yeah, I believe it was -- it looks like this one right
9 here.

10 Q. And about how far away are the two residences?

11 A. Not far. I mean, as the crow flies it looks like
12 maybe a diagonal city block, but within a football field or
13 two in length if you're walking along the sidewalk.

14 Q. And can you let -- can you inform the jury which --
15 how did you read the rights to Mr. Furtick and which rights
16 did you read to him?

17 A. Yeah. Because Mr. Furtick indicated that he normally
18 wore reading glasses, I read each right to him verbatim as
19 it appears on the form, including the bottom section right
20 below the six enumerated rights where it says waiver of
21 rights.

22 Q. And what were the rights that you read to him?

23 A. Do you want me to read them verbatim?

24 Q. Yes, please.

25 A. I have the right to remain silent. That means that

1 I do not have to say anything or answer any questions.
2 Anything I say can be used against me in a court of law.
3 I have the right to talk to a lawyer and to have a lawyer
4 with me now and to advise me before and during questioning.
5 If I want to have a lawyer with me before and during
6 questioning but cannot afford to pay a lawyer, one will
7 be provided to me at no cost before and while I am
8 questioned. If I decide to answer questions now without
9 a lawyer here, I still have the right to stop answering
10 questions whenever I want to. I also have the right to
11 stop answering questions until I have talked to a lawyer.

12 Q. And did you ask Mr. Furtick if he understood each of
13 these rights?

14 A. Yes, I did.

15 Q. And what is this outside of each line?

16 A. That is where I asked the Defendant, Mr. Furtick, to
17 initial next to each one indicating that he understood each
18 right as I read to him.

19 Q. And did he have any questions about any of his rights?

20 A. No, he did not.

21 Q. Did he have any problems initialling out beside each
22 line?

23 A. No, he did not.

24 Q. And after this, this section is labeled waiver of
25 rights, can you read to the jury what that states?

1 A. Certainly. It says I understand my rights as
2 explained to me by Officer Merrill. I now state that I
3 do wish to answer questions at this time and that I do not
4 wish to have a lawyer here before or during questioning.
5 My decision to answer questions now without a lawyer is
6 made freely and is my own choice. No one as threatened or
7 coerced me in any way or promised me special treatment. To
8 show my decision, I am signing my name in the space below.

9 Q. And who signed this name?

10 A. The Defendant, Mr. Furtick.

11 Q. Okay. Did he have any problems writing his name?

12 A. No, he did not.

13 Q. And who -- who was with you again?

14 A. Investigator Cal Thomas.

15 Q. And is this his witness signature?

16 A. Yes, it is.

17 Q. So at any point did you-all threaten him to speak to
18 you?

19 A. No, we did not.

20 Q. Did you make him any promises?

21 A. No, we did not.

22 Q. And did Mr. Furtick, in fact, agree to speak to you?

23 A. Yes, he did.

24 Q. And in speaking with you, did you -- did you ask him
25 if he knew the victim, J.H. [REDACTED]

1 A. Yes, I did.

2 Q. And how did you ask him about knowing J.H. [REDACTED]

3 A. I actually showed him a picture that had her name on
4 it and I verbally provided him the name.

5 MS. FULLWOOD: Subject to our prior motions.

6 THE COURT: You have a continuing objection on
7 this line of questioning then.

8 MS. FULLWOOD: Yes, sir.

9 BY MS. PATTERSON:

10 Q. I'm gonna show you what's been marked as State's
11 Exhibit Number 4 and ask you to take a look at that. Do
12 you recognize that document?

13 A. Yes, I do.

14 Q. And what is that document?

15 A. That's the picture that I showed Rodney Furtick during
16 our interview.

17 Q. And where did you get that photograph?

18 A. From J.H. [REDACTED] South Carolina driving history.
19 We have computerized access to driver records, including
20 drivers license photos.

21 Q. And how would you have presented this to Mr. Furtick?

22 A. I would have folded it so just her name and address
23 was visible and either put it in front of him or handed it
24 to him, I don't remember which, but I do recall that he
25 ended up picking it up and looking at it for several

1 moments.

2 Q. Okay. And so her picture, her face and her name would
3 have been visible?

4 A. Yes.

5 Q. And what, if anything, did Mr. Furtick indicate about
6 knowing J.H. [REDACTED]

7 A. He indicated that he didn't recognize the person in
8 the photo and -- and didn't know the name.

9 Q. So he said he didn't know the name?

10 A. Yeah, in summary he basically said I don't recognize
11 this person, I don't know this person.

12 Q. And I'm gonna show you what's been marked as State's
13 Exhibit 5. Do you recognize that document?

14 A. Yes, I do.

15 Q. And what is that document?

16 A. That is a drivers license photo and printout from
17 J.H. [REDACTED] husband at the time, Brian Dean.

18 Q. And did you show Mr. Furtick this photograph?

19 A. Yes. Yes, I did.

20 Q. Is this the one that you showed him?

21 A. Yes, it is.

22 Q. And does it look like it's been changed or altered in
23 any way?

24 A. No, it does not.

25 MS. PATTERSON: Your Honor, at this time we move

1 State's Exhibit Number 5 into evidence.

2 THE COURT: Subject to all previous objections,
3 4 and 5 are in evidence.

4 (State's Exhibit Number 4, DMV photo, and
5 State's Exhibit Number 5, DMV photo, were admitted
6 into evidence.)

7 BY MS. PATTERSON:

8 Q. Do you have a date of issuance on that driving record?

9 A. As far as issuance from the DMV?

10 Q. Yes.

11 A. Yeah, it appears there is one on here.

12 Q. And what is that date?

13 A. May 28th of 2000 -- I'm sorry, I'm looking at the
14 previous beginners permit. The issue date for the drivers
15 license appears to be August 5th of 2015.

16 Q. Okay. August 5, 2015?

17 A. (Nods head.)

18 Q. And so did you show Mr. Furtick this picture the same
19 way that you showed J.H. [REDACTED]

20 A. Yes.

21 Q. So was he able to hold this?

22 A. Yes.

23 Q. And look at it?

24 A. Yes.

25 Q. And did he, in fact, look at it?

1 A. Yes.

2 Q. For several moments?

3 A. Yes.

4 Q. And, again, is Mr. Dean's address on here?

5 A. Yes, it is.

6 Q. And what, if anything, did he indicate about knowing
7 Mr. Dean?

8 A. He denied knowing Mr. Dean as well by sight or name.

9 Q. Now before you start interviewing Mr. Furtick, did you
10 tell him the reason that you wanted to speak to him?

11 A. Yes, I did.

12 Q. Did you let him know about the incident that you were
13 investigating?

14 A. Not in complete detail, but I did give him an idea of
15 what we wanted to talk to him about.

16 Q. And what you did tell him you wanted to talk to him
17 about?

18 A. That we were investigating a criminal incident that
19 occurred at [REDACTED] Julius Felder Street on November 18th of
20 2015. And, in fact, I even gave him the day of the week to
21 help, you know, because two or three weeks had gone by. I
22 recalled that it was a Wednesday and it was the Wednesday
23 before the Thanksgiving week to kind of put his mind in the
24 right place as far as recollection.

25 Q. So you told him it was a criminal investigation and

1 the day of the week and the date?

2 A. Yes.

3 Q. And what, if anything, did you tell him about the
4 incident location?

5 A. The address. I may or may not have used the word
6 "duplex", I don't recall that specifically and I don't have
7 that indicated in my notes, but he seemed to recognize the
8 address. He didn't ask any clarifying questions that I
9 recall.

10 Q. He did not?

11 A. He did not.

12 Q. And what did he say, if anything, about that
13 residence?

14 A. One moment. I'd like to locate my notes, I'm sorry --

15 Q. Sure.

16 A. -- so I don't make a mistake on that. He indicated
17 that he walked by it all the time, but had not been inside
18 of that house within at least the past several months.

19 Q. And did you ask him anything about the possibility of
20 his DNA being in the -- in the residence?

21 A. Yes, I did. That was one question I asked him in
22 addition; was if there was any reason his DNA would be
23 found inside the house.

24 Q. And what was his response?

25 A. No.

1 Q. And did you discuss anything further about this
2 incident with Mr. Furtick?

3 A. No.

4 Q. And about how long was the interview?

5 A. Estimating, maybe ten to twelve minutes give or take.
6 It wasn't a very long interview.

7 Q. And as the investigator in this case at that time, did
8 you have information of any other evidence that may have
9 been collected in this case?

10 A. Yes, besides what I'd collected from the scene, I
11 knew at some point we would come into possession of the
12 sexual assault protocol kit that the SANE nurse would have
13 collected at the hospital.

14 Q. And did you have any information if that had been sent
15 off for testing?

16 A. At that time, no, but since that time, yes, I
17 requested that it was sent out to the State Law Enforcement
18 Division for testing.

19 Q. You requested it?

20 A. I don't remember specifically if I requested it or
21 if it had already -- that was already in motion and I
22 just confirmed it, but as part of our investigation we
23 make sure that that gets sent to the State Law Enforcement
24 Division. Our evidence custodian's pretty good about
25 making sure that that happens without me specifically

1 requesting it usually.

2 Q. And that's just protocol of the Cayce Public Safety
3 Department?

4 A. Correct.

5 Q. And did you ever receive final DNA results regarding
6 this case?

7 A. Yes, I did.

8 Q. And do you know what date you received that
9 confirmation?

10 A. It would have been on or about February 17th of 2017.

11 Q. And by that time were you still in investigations?

12 A. No, I was not. I was a patrol supervisor at that
13 time assigned to the patrol division.

14 MS. PATTERSON: I beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 BY MS. PATTERSON:

17 Q. And after those final DNA results were received, at
18 that time was -- do you know if Mr. Furtick was arrested?

19 A. Yes, he was shortly after that.

20 MS. PATTERSON: I beg the Court's indulgence,
21 Your Honor.

22 THE COURT: Yes, ma'am.

23 MS. PATTERSON: No further questions at this time.

24 THE COURT: Cross.

25 MS. FULLWOOD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. FULLWOOD:

Q. Lieutenant Merrill, you told us that the day of the week that this happened was a Wednesday?

A. I believe so. I can verify that in my notes. I think I indicated it there. That's what I have in my notes. 11-18-2015, a Wednesday night, the week prior to Thanksgiving.

Q. All right. And in your report you state that Ms. Hall told you that the last time Mr. Furtick came by her house was about 6:30; is that correct?

A. I believe so, yes.

Q. And you went on to say that she remembered the timeframe because her husband had ordered Chinese food at about six and it would be about twenty minutes before it got there, right?

A. Yes, that's my understanding.

Q. And the -- the food had come right before Mr. Furtick came, correct?

A. Yes, I believe that's what she indicated. The food had arrived prior to Mr. Furtick coming to the house.

Q. And your report also indicates you were able to verify the time the food was ordered by Mr. Dean's call log on his phone, right?

A. Yes, that's correct.

1 Q. All right. You did not take a written statement from
2 J.H. [REDACTED] did you?

3 A. No, I did not.

4 Q. You did not take a written statement from Brian Dean,
5 did you?

6 A. No, I did not.

7 Q. You did not take a written statement from April
8 Carter, did you?

9 A. No, I did not.

10 Q. You took pictures of the interior of the house, didn't
11 you?

12 A. I attempted to, yes.

13 Q. Well, you did take pictures, right?

14 A. No, they ended up not coming out.

15 Q. Well, the reason they didn't come out is because you
16 hadn't inserted the memory card of your camera; is that
17 right?

18 A. Correct.

19 Q. So you took pictures, but there was anything to save
20 them on?

21 A. Yes. I thought I was taking pictures at the time, but
22 I didn't realize there was no memory card in the camera
23 until well after the fact.

24 Q. Okay. So we have nothing as far as pictures to
25 document what you saw in the house that night?

1 A. Correct.

2 Q. You didn't process the rear doorknob of that -- of the
3 backdoor of that house either outside of the doorknob or
4 inside the doorknob for fingerprints or for touch DNA, did
5 you?

6 A. No, I did not.

7 Q. Now your report indicates that you saw the plate of
8 food that Mr. Furtick supposedly brought over and a pink
9 fork on the kitchen floor by the trash can; is that right?

10 A. That's correct, yes.

11 Q. Okay. And you collected the pink fork?

12 A. Yes.

13 Q. Did you collect the food?

14 A. No, I didn't collect the food.

15 Q. Okay. Well, that's understandable, but you did
16 collect the fork?

17 A. Yes.

18 Q. Did you swab it for touch DNA?

19 A. No, I did not.

20 Q. Did you take it into evidence?

21 A. Yes.

22 Q. Where is it?

23 A. It's here today.

24 Q. It's here today? All right. Were the used wipes that
25 are now in evidence sent to SLED for processing?

1 A. No, they were not.

2 Q. Now when you were talking to Ms. Hall that night, she
3 told you that Mr. Furtick had been inside her house before
4 and had been a guest there and had spent at least one night
5 with them, right?

6 A. I recall her telling me that he'd been in the house
7 before.

8 Q. I'm looking at --

9 A. If you could refer me where you're looking at, I'd be
10 happy to confirm that.

11 Q. I think -- I think it is the first page of your
12 investigative notes and it would be the paragraph that's
13 third from the bottom.

14 A. Yes, that is correct.

15 Q. Okay. And she also told you that she thought that
16 Mr. Furtick had stolen their EBT card and that they had
17 filed a police report with Cayce Public Safety, right?

18 A. Yes, that's what was relayed to me.

19 Q. And you were able to verify that that was, in fact,
20 correct, right?

21 A. Yes, we did locate a report that fit what she was
22 describing.

23 Q. All right. Now I want to talk a little bit about your
24 conversation with Mr. Furtick in December 2015. You did
25 not document your conversation with him with videotape, did

1 you?

2 A. Correct. No, I did not.

3 Q. And you did not document the conversation with audio,
4 did you?

5 A. No, I did not.

6 Q. And Mr. Furtick told you when you started to -- when
7 you brought out the advice of rights form, he told you that
8 he was gonna have trouble reading it because he didn't have
9 his reading glasses, right?

10 A. Yes, he indicated that he normally wore reading
11 glasses.

12 Q. And that's why you read the rights to him?

13 A. That is one reason why, yes.

14 Q. Well, he said he could read and write, correct?

15 A. Correct, but it wouldn't be unusual for me to read
16 them anyway to people.

17 Q. Okay. And after he was given the picture of Ms. Hall,
18 he looked at it and then he told you I don't have my
19 reading glasses, correct?

20 A. He made another comment about reading glasses, yes.

21 Q. All right. And did you ever provide him with any
22 reading glasses to use?

23 A. No, we didn't have any to provide.

24 Q. Okay. And we don't have here in court today any kind
25 of a picture that shows what Brian Dean looked like on

1 November the 18th, do we?

2 A. I don't believe so, no.

3 Q. All right. And in her drivers license photo, J.H. [REDACTED]

4 [REDACTED] hair is sort of slicked back, isn't it?

5 A. I don't have it in front of me. I don't recall --

6 Q. It might be under this. Let me check. There we go.

7 A. Yes, it does appear so.

8 Q. Okay. And in the photo of her from the 28th, she's
9 wearing her hair in a different style; is that right?

10 A. I believe so, yes.

11 Q. All right. You met the Deans over at Palmetto
12 Richland, correct?

13 A. Correct.

14 Q. And you drove them home?

15 A. Yes.

16 Q. And this was your case at that time; is that right?

17 A. Yes.

18 Q. All right. And before you took them home, you had
19 them meet with a victims advocate officer for Cayce Public
20 Safety, correct?

21 A. The timing of what you're describing seems a little
22 off to me, but, yes, at some point the victim advocate from
23 our police department did go up to the hospital to meet
24 with them as well.

25 Q. And part of what they do is explain about something

1 called SOVA, right?

2 A. Yes.

3 Q. That's -- that's a fund that would pay, say, for a
4 rape protocol or any incidental expenses might arise as a
5 result of being the victim of a crime, right?

6 A. That's essentially what it is or my understanding of
7 what it is, yes.

8 Q. All right. And weren't the Deans offered -- made an
9 offer to be put up for the weekend due to the fact that
10 Ms. Hall said that Mr. Furtick had told her I'll be back
11 Friday?

12 A. I -- I don't remember hearing that, but I'm not gonna
13 say that that didn't happen. I wasn't -- I didn't listen
14 in on a lot of what the victim advocate was discussing and
15 I think the victim advocate, if I remember correctly, got
16 there before I did so that may have been a conversation
17 that occurred before I arrived.

18 Q. Well --

19 MS. PATTERSON: And, Your Honor, I'm gonna
20 object that that would hearsay. That's something
21 -- conversation they may have had with the victim
22 advocate.

23 THE COURT: Agreed, but she's not here so we
24 can't testify about it, so continue, please.

25 BY MS. FULLWOOD:

1 Q. Okay. Do you know whether or not the Deans were put
2 up by the City of West Columbia over that next weekend?

3 A. I don't believe so, but I don't -- I don't know a firm
4 answer on that.

5 Q. All right. What is the date that you got your final
6 DNA results from SLED?

7 A. On or about February 17, 2017, and that's based on the
8 date on the final report.

9 Q. Okay. And when did you take out arrest warrants for
10 Mr. Furtick?

11 A. I didn't take out arrest warrants for Mr. Furtick.

12 Q. Well, when were they taken out?

13 A. They were signed by a magistrate on March 7, 2017.

14 Q. Lieutenant, have you ever heard of a man lying about
15 having a sexual relationship with another man's hus -- with
16 another man's wife?

17 MS. PATTERSON: Objection, Your Honor. It calls
18 for speculation.

19 THE COURT: Overruled. I think it's some --
20 somewhat of a rhetorical question, but I'll let her
21 ask it.

22 Go ahead.

23 THE WITNESS: In my time on this earth, yes, of
24 course, I have.

25 MS. FULLWOOD: All right. No further questions.

1 THE COURT: Redirect.

2 REDIRECT EXAMINATION

3 BY MS. PATTERSON:

4 Q. And, Lieutenant Merrill, once again, during your
5 interview with Mr. Furtick, did you give him the name

6 J.H. [REDACTED]

7 A. Yes, I did.

8 Q. And what was his response to knowing her?

9 A. He gave me no indications at all that he knew her and,
10 in fact, denied knowing her by sight or name.

11 Q. So he saw the picture and you gave him the name, but
12 he denied knowing her?

13 A. Correct.

14 Q. And Ms. Fullwood asked you was this interview recorded
15 and at that time was Cayce Police Department recording
16 interviews?

17 A. Somewhat. Our interview room at the time had limited
18 capability to audio record at the time and video record;
19 however, at that time if I recall correctly it was not
20 functioning correctly, it was inoperable. So there are
21 some interviews around that time that there may be some
22 audio or video, but not this one.

23 Q. And so you documented what Mr. Furtick told you in
24 that interview in your report?

25 A. Correct.

1 Q. And that's how you give us the information today?

2 A. Correct.

3 Q. And when you went back to the house to take the
4 pictures, again, what time was it?

5 A. About 2:40 AM.

6 Q. And the camera that you used that you thought you
7 were taking pictures with, did you use that in other
8 investigations as well?

9 A. Yes, many times.

10 Q. And explain to the jury when you take the pictures,
11 the card that's in the camera, what do you do with that
12 card?

13 A. When it operates normally or when it --

14 Q. Yes.

15 A. After you take the pictures at some point, either
16 the next day or sometimes it might be a day or two later,
17 we come back and upload those pictures into our secure
18 evidence server.

19 Q. Okay. And this particular time the card didn't get
20 back installed in the camera?

21 MS. FULLWOOD: Objection to leading.

22 THE COURT: Okay. I think we've established that
23 the card was not in the camera, so perhaps if you want
24 to ask why to his recollection, if he can recall, that
25 would be fine, but -- or you can just move on.

1 BY MS. PATTERSON:

2 Q. Do you know why the card wasn't in the camera?

3 A. Yes. Most likely the last time I uploaded pictures I
4 failed to take it out of my computer or the card reader and
5 put it back into the camera.

6 Q. And why didn't you take a written statement from

7 J.H. [REDACTED]

8 A. I didn't feel it was necessary. I got a pretty good
9 understanding of -- of what happened and I was able to take
10 notes and transfer those notes into this written record
11 pretty quickly after the incident. I didn't feel it was
12 necessary to subject her to more questioning that wasn't
13 necessary or put her through that extra step.

14 Q. And did you know if she had been interviewed by
15 anybody else?

16 A. Yes, by that time my understanding was that Sergeant
17 Reese had already asked her some questions about what
18 happened, the EMS crew probably asked her some questions
19 about what had happened, getting checked in at the hospital
20 somebody either -- the SANE nurse at least asked her what
21 had happened, if not more personnel from the hospital, so
22 by the time I -- I talked to her I may have been the fourth
23 or fifth person to starting asking her what happened and I
24 take that into consideration.

25 Q. And is it customary to keep asking -- why wouldn't you

1 want to keep asking a victim questions about an incident?

2 A. In my experience it re-victimizes the victim.

3 MS. FULLWOOD: Objection, Your Honor. That is
4 an opinion he really isn't qualified to give.

5 THE COURT: All right. I think we have an
6 understanding of why this officer felt like it was
7 not necessary, so sustained.

8 BY MS. PATTERSON:

9 Q. And when you spoke to Mr. Furtick, even though he told
10 you he needed some reading glasses, did he indicate he had
11 any problem looking at this form that you gave him to
12 initial?

13 A. No, he did not.

14 Q. Did he indicate to you he had any problem signing his
15 signature?

16 A. No, he did not.

17 Q. And Ms. Fullwood asked you about JH. [REDACTED] stating that
18 Rodney may have spent the night at her house. Can you go
19 back to that part of your report?

20 A. Yes.

21 Q. And what does your report indicate and why did he need
22 to spend the night there?

23 A. According to my notes, she indicated that her husband
24 had initially met him several weeks ago and was becoming
25 friendly with him. She stated that he had been inside of

1 the house as a guest and stayed at least one night with
2 them when he needed a place to sleep.

3 MS. PATTERSON: I beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 BY MS. PATTERSON:

6 Q. And, Lieutenant Merrill, why didn't you take a
7 statement from April?

8 A. I knew Sergeant Reese had already talked to her and
9 gotten the information that she had in this case that she
10 had to offer.

11 Q. And, again, when you interviewed the Defendant,
12 Rodney Furtick, did you indicate this was a criminal
13 investigation?

14 A. Yes, I did.

15 MS. PATTERSON: No further questions.

16 THE COURT: Recross briefly?

17 MS. FULLWOOD: Briefly, yes.

18 RECROSS EXAMINATION

19 BY MS. FULLWOOD:

20 Q. Lieutenant, it's not unusual in law enforcement for
21 you to ask a witness to come down and give you a statement
22 in the days after the incident itself, is it?

23 A. No, that would not be unusual.

24 MS. FULLWOOD: No further questions.

25 THE COURT: All right, sir. Thank you. You can

1 step down.

2 (Witness excused.)

3 THE COURT: Solicitor, have you got -- we're gonna
4 take ten minutes. I'm gonna figure out how much more
5 we've got for the day. During the break don't talk about
6 the case. We'll have you back out here ASAP.

7 (Whereupon, the jury retires to the jury room at
8 2:51 PM.)

9 THE COURT: Okay. We'll take a break for ourselves.
10 Suzanne, you've got three, four?

11 MS. MAYES: We have four at least, yeah.

12 THE COURT: All right.

13 (Recess taken at 2:52 PM.)

14 (Back on the record at 3:09 PM.)

15 BAILIFF: Please come to order. Court's now in
16 session.

17 THE COURT: Thank you. Have a seat and go ahead
18 and get the jury back in, please.

19 (Whereupon, the jury returns to the courtroom
20 at 3:11 PM.)

21 THE COURT: All right. The jury is back and
22 seated.

23 Solicitor, if you would, please, call your next
24 witness.

25 MS. PATTERSON: The State calls Sergeant Caleb

1 Thomas.

2 (Whereupon, Caleb Thomas was duly sworn by the
3 Clerk of Court.)

4 THE CLERK: If you'll have a seat and state your
5 name, spelling your last for the record.

6 THE WITNESS: My name is Cal Thomas. I'm a
7 sergeant with the Cayce Police Department.

8 CALEB THOMAS,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. PATTERSON:

12 Q. And, Sergeant Thomas, how long have you been employed
13 with the Cayce Public Safety Police Department?

14 A. I've been back at the Cayce Police Department for
15 eleven years.

16 Q. And what is your current position?

17 A. I am currently a sergeant who supervises the
18 investigative division.

19 Q. And what was your position during November of 2015?

20 A. I was an investigator assigned to the investigative
21 division.

22 Q. And did you assist Lieutenant Merrill in interviewing
23 the Defendant, Rodney Furtick?

24 A. I did.

25 Q. And do you remember what day this interview took

1 place?

2 A. Yes, ma'am. It was December 10, 2015.

3 Q. All right. And during the interview, were you present
4 when Mr. Furtick was read his rights by Lieutenant Merrill?

5 A. Yes, ma'am.

6 Q. And did he seem -- did he understand -- indicate that
7 he understood his rights?

8 A. He did.

9 Q. And did you or Lieutenant Merrill inform Mr. Furtick
10 the purpose of the interview?

11 A. Yes, ma'am.

12 Q. And what did you inform him it was in regards to?

13 A. My recollection is Mr. Furtick was there on another
14 matter and Sergeant Merrill -- Sergeant Merrill at the time
15 informed him that we wanted to discuss an incident that
16 happened -- an assault that happened on Julius Felder
17 Street.

18 Q. So he was informed it was an assault?

19 A. A sexual assault.

20 Q. Okay. And were you present when Sergeant Merrill
21 asked him if he knew the victim, J.H. [REDACTED]

22 A. Yes, I was.

23 Q. And what, if anything -- and was he shown a picture of
24 J.H. [REDACTED]

25 A. He was.

1 Q. Was he also given her name?

2 A. No, ma'am.

3 Q. Was he given this? Is her name on that form?

4 A. Her name is on this form, but I believe it was -- it
5 was folded over so that Mr. Furtick couldn't see her name.

6 Q. Does that look like its folded?

7 A. Oh, yes, ma'am.

8 Q. Okay.

9 A. He may have been able to see the name on the bottom
10 because that's how he was handed the form.

11 Q. Okay. And did he say he knew J.H. [REDACTED] by the way she
12 looked?

13 A. No, ma'am.

14 Q. Did he indicate he knew her by her name?

15 A. No, ma'am.

16 Q. And was he also shown a picture of J.H. [REDACTED] husband?

17 A. He was.

18 Q. And would it have been presented the same way?

19 A. Yes, ma'am.

20 Q. And what, if anything, did he indicate about Mr. Dean?

21 A. He also indicated that he did not know Mr. Dean.

22 Q. Okay. By his picture or his name?

23 A. By his picture or his name.

24 Q. And was he given information about the address of the
25 incident location?

1 A. He was.

2 Q. And did you take it a step further and describe the
3 residence, what type of residence it was?

4 A. I did. I was familiar with the residence in question,
5 so I described it as a cement block duplex that sits on
6 Julius Felder Street.

7 Q. And are you familiar with Julius Felder Street?

8 A. Yes, ma'am.

9 Q. And can you orient yourself and step down and find the
10 location?

11 A. Yes, ma'am. It's that residence right there. It has
12 two doors on the back indicating that it's a duplex.

13 Q. Okay. And do you know if there's any other duplexes
14 on that street?

15 A. Not that I'm aware of.

16 Q. And do you know if Mr. Furtick was given the exact
17 date of the crime?

18 A. He was.

19 Q. Okay. And what did he say about that duplex?

20 A. If I recall correctly, he advised Sergeant Merrill
21 that he had walked past it because he walked down Julius
22 Felder occasionally.

23 Q. And were you present when he made that statement?

24 A. Yes, ma'am.

25 THE COURT: And just so it's clear, all of this

1 is being elicited over the Defendant's Jackson v. Denno
2 objections from yesterday.

3 MS. FULLWOOD: It was my understanding that the
4 objections, they were continuing.

5 THE COURT: Okay. Very good. Because with the
6 last one I just wanted to make sure that the record
7 reflects that it's subject to this witness's testimony
8 as well.

9 Sorry to interrupt you, Ms. Patterson.

10 MS. PATTERSON: That's okay.

11 BY MS. PATTERSON:

12 Q. And, I'm sorry, he indicated that he walked by that
13 residence all the time?

14 A. Yes, ma'am.

15 Q. And what did he say, if anything, about going in that
16 house during the timeframe that you-all gave him that the
17 incident occurred?

18 A. He denied being inside the residence at all.

19 Q. And are you familiar with the address that he gave to
20 Lieutenant Merrill?

21 A. Yes, ma'am. [REDACTED] Allen Street, Apartment [REDACTED], I believe
22 it is.

23 Q. And can you point out that residence in that aerial
24 map? And, again, you can step down.

25 A. (Witness complies.) It's one of these apartments on

1 this row right here.

2 Q. And would you say that was far away from the incident
3 location?

4 A. No, ma'am. It's right around the corner. Up Allen
5 Street and then over to Julius Felder.

6 MS. PATTERSON: I beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 BY MS. PATTERSON:

9 Q. And did you-all ask him anything further about his DNA
10 being present in that house?

11 A. I don't -- no, ma'am. I don't believe -- I don't
12 recall whether or not that question was asked.

13 Q. Have you seen Lieutenant Merrill's report?

14 MS. FULLWOOD: Your Honor, I object to them
15 refreshing a witness's recollection with a report
16 he didn't prepare. He has his own report.

17 THE COURT: All right. If you want to lay a
18 foundation that if they've discussed this case, if
19 they've exchanged notes in this case, then perhaps it
20 would be proper to look on the report, but perhaps not
21 at this point in time. If you want to lay foundation,
22 that's fine.

23 BY MS. PATTERSON:

24 Q. Did you discuss this case further with Lieutenant
25 Merrill after the interview with Rodney Furtick?

1 A. I did.

2 Q. Okay. Did you write a report?

3 A. I did not write a report on that interview per se, but
4 on the other activity that I assisted with I did.

5 Q. Do you know if Lieutenant Merrill wrote a report?

6 A. He did.

7 Q. Of that interview -- documenting that interview?

8 A. Yes, ma'am.

9 Q. And you were present during that interview?

10 A. Yes, ma'am.

11 MS. FULLWOOD: Your Honor, the question's been
12 asked and answered and, you know, to try to make him
13 change his testimony based upon what somebody else
14 wrote --

15 THE COURT: I understand your position. I'm
16 hearing that they were co-investigators in this
17 matter. I'll allow him to look at the report subject
18 to your objection. I understand.

19 You can read it, but don't quote from it, please.

20 THE WITNESS: Yes, sir.

21 BY MS. PATTERSON:

22 Q. And if you will just take a look at that report and
23 it's just about that DNA question.

24 A. Yes, ma'am.

25 Q. Does that help refresh your memory?

1 A. It does. It indicates that we were on the way -- we
2 were about to conclude the interview when Sergeant Merrill
3 or Lieutenant Merrill asked that question. I didn't recall
4 that until I read his notes on it, but I do remember the
5 interview being very brief and that Mr. Furtick didn't have
6 a lot to say and that just about every answer he gave was a
7 denial of anything.

8 Q. So then are you able to recall Lieutenant Merrill
9 asking about the DNA being present in the residence?

10 A. Yes, ma'am.

11 Q. And what was Mr. Furtick's response?

12 A. He stated that there -- no, was all he said.

13 MS. PATTERSON: Thank you. Please answer any
14 questions Ms. Fullwood has.

15 CROSS-EXAMINATION

16 BY MS. FULLWOOD:

17 Q. Until you saw Mr. Merrill's report, you didn't
18 remember any questions about the DNA, did you?

19 A. No, ma'am, but I do remember him talking to him as we
20 exited the interview room.

21 Q. Okay. So now that you've looked at the report, now
22 you remember it, right?

23 A. Yes, ma'am.

24 Q. If we had some sort of recording of the interview you
25 had with Mr. Furtick, we'd all know for sure what was said

1 and when, right?

2 A. That's correct.

3 MS. FULLWOOD: Thank you.

4 THE COURT: All right, sir. Thank you. You can
5 step down.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 THE COURT: Call your next witness.

9 MS. MAYES: The State calls Sergeant Darwin
10 Weaver.

11 (Whereupon, Darwin Weaver was duly sworn by the
12 Clerk of Court.)

13 THE CLERK: If you'll have a seat over there,
14 please, and state your name, spelling your last for
15 the record.

16 THE WITNESS: My name is Darwin Weaver. Last
17 name is spelled W-E-A-V-E-R.

18 DARWIN WEAVER,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. All right. And where are you currently employed?

23 A. City of Cayce.

24 Q. All right. And what type of work do you do currently
25 for Cayce?

1 A. Currently I'm the school resource officer at an
2 elementary school.

3 Q. Which school?

4 A. Cayce Elementary School.

5 Q. All right. And prior to your work as a school
6 resource officer -- are you retired now?

7 A. Yes, ma'am, I did retire back in 2017.

8 Q. Okay. Prior to your retirement, were you a full-time
9 officer with the Cayce Department of Public Safety?

10 A. Yes, I was.

11 Q. What type of work were you doing for Cayce?

12 A. I was the crime scene officer and evidence custodian.

13 Q. All right. Now when you say evidence custodian, tell
14 us generally what your responsibilities were.

15 A. Basically my responsibilities were to maintain and
16 upkeep any evidence that was brought into the department,
17 storing it, taking it to where it needed to be tested,
18 logging it out and logging it in, and just keeping track
19 of all of it.

20 Q. All right. And during the course your career as an
21 evidence custodian, are you familiar with the sealed sexual
22 assault kits?

23 A. Yes, sir, I am.

24 Q. And do you -- what do you typically do with them once
25 they're recovered from a nurse at a hospital?

1 A. I pick it up from the nurse at the hospital, she signs
2 it over to me, I take it back to my department, log it into
3 our evidence and then at the time that I'm available or
4 when it needs to go, then I take it from our evidence and
5 transfer it to SLED for testing.

6 Q. All right. I'm gonna show you this item in this case
7 and ask you whether or not it bears your initials on that
8 chain of custody form?

9 A. Yes, it does.

10 Q. All right. And on what date did you receive that
11 item?

12 A. December 15, 2015.

13 Q. Now at the time that you received it, can you tell
14 us the condition that it would have been in, sealed or
15 unsealed?

16 A. It would have been sealed.

17 Q. All right. And where did you deliver that item,
18 Sergeant Weaver?

19 A. Originally when I first got it, I delivered it to our
20 evidence.

21 Q. And then ultimately did it go to the State crime lab?

22 A. Yes, it did.

23 Q. And do you have the date that it was logged in at the
24 State Law Enforcement Division?

25 A. It was taken to SLED on December 30, 2015.

1 Q. All right. And are you part of that login process
2 at SLED, are you present for that?

3 A. Yes.

4 Q. And do they -- do you know whether or not the items
5 are removed from the kit?

6 A. Yes, they check the seal to make sure that it is
7 sealed when I bring it in. If not, they note it for
8 whatever reason, and then they open it and take the
9 individual items out and seal it in their evidence bags
10 and the stuff that's in there is sealed as well.

11 Q. Items such as vaginal swabs, underwear, things of
12 that nature?

13 A. Correct.

14 Q. And in this case, were all those items sealed by the
15 State Law Enforcement Division in your presence?

16 A. Yes.

17 Q. Now after the delivery of the sexual assault kit
18 to the State Law Enforcement Division, can you tell us
19 whether or not you were present after Sergeant Reese
20 obtained a search warrant for known DNA standards from
21 the Defendant, Rodney Furtick?

22 A. Yes, I was.

23 Q. All right. And you were present for the collection
24 of those?

25 A. Yes, I was.

1 Q. I'm gonna shown you what is unmarked at this time,
2 but ask you whether or not you recognize these two items
3 and, if so, how?

4 A. Yes, those are the buccal swabs that contain my
5 initials and my handwriting on each one.

6 Q. All right. And who actually obtained those swabs
7 from Mr. Furtick?

8 A. I received them from him, but the way it went is when
9 we get the buccal swabs I open the swabs in front of him
10 and hand them to him and let him do the swabbing and then
11 he handed them back to me and I sealed them up.

12 Q. Okay. And he swabbed where in his body?

13 A. The inside of the cheek.

14 Q. All right. And then did you seal them once you
15 received them back from Mr. Furtick?

16 A. Right. Correct. And -- and then that's when I note
17 everything on there, the time and date they were taken,
18 and whether it was right cheek, left cheek.

19 Q. Okay. And what date was this?

20 A. This was December 9, 2016.

21 Q. All right. And can you tell us whether or not they
22 remained sealed once you delivered them to the State Law
23 Enforcement Division?

24 A. Yes.

25 MS. MAYES: Your Honor, at this time the State

1 would offer the known suspect's standards in this
2 case as State's Exhibit -- I believe this would
3 be 16.

4 THE COURT REPORTER: No, 17.

5 THE COURT: 17.

6 MR. MADSEN: No objection.

7 THE COURT: 17's in evidence.

8 (State's Exhibit Number 17, Defendant's DNA
9 standard, was marked and admitted into evidence.)

10 BY MS. MAYES:

11 Q. And at any point in time, Sergeant Weaver, did there
12 ever appear to be any type of tampering with any of these
13 items that you observed, being the sexual assault kit or
14 known DNA standards from the suspect, Rodney Furtick?

15 A. No.

16 MS. MAYES: Nothing further, Your Honor.

17 THE COURT: Any questions?

18 MR. MADSEN: Just a few.

19 THE COURT: Go ahead.

20 CROSS-EXAMINATION

21 BY MR. MADSEN:

22 Q. Officer Weaver, so I think you said you did evidence
23 back then and also crime scene, correct?

24 A. That's correct.

25 Q. And so as a crime scene officer, if you were

1 requested on that day to come out to a scene and process,
2 say, the outside of a doorknob for touch DNA or
3 fingerprints, you've been trained to do that, correct?

4 A. Correct.

5 Q. And being trained to do that, that could -- if you
6 tested the outside of a doorknob and the inside of a
7 doorknob, you could kind of see maybe who opened that
8 doorknob or who put their hand on that, correct?

9 A. Possibly, correct.

10 Q. But you weren't requested in this case to do that?

11 A. No. No.

12 Q. And then I think that not only did you receive that
13 sexual assault kit, but you received Ms. Hall's clothing
14 also at that same time?

15 A. Right, I believe so. That's correct, yeah.

16 Q. And both of those were logged into evidence?

17 A. Yes, sir.

18 Q. Any idea whatever happened to her clothing? They
19 can't find it.

20 A. No, that -- that stuff there was logged into the
21 refrigerator at the department.

22 Q. Well, I'm talking about the clothing. Any idea where
23 the clothing went that was logged in also?

24 A. I just have on here on the form here where when I
25 took the sexual assault kit out, they were together, and

1 it shows that I took those out and separated them and then
2 the clothes went back to the refrigerator and this went
3 to SLED.

4 Q. And so they shouldn't -- clothing shouldn't be lost,
5 should it?

6 A. Not to my knowledge, no.

7 Q. And then when you asked Rodney about the swabs, I
8 mean, he just complied and he did that himself, gave them
9 right back to you?

10 A. Yeah, that's correct.

11 MR. MADSEN: That's all the questions I have.

12 THE COURT: All right, sir. Thank you very much
13 for coming. You can step down. You're free to go.

14 THE WITNESS: Okay. Thank you.

15 (Witness excused.)

16 THE COURT: Call your next witness, please.

17 MS. MAYES: The State calls Jaclyn McKay.

18 THE CLERK: Raise your right hand, please.

19 (Whereupon, Jaclyn McKay was duly sworn by the
20 Clerk of Court.)

21 THE CLERK: If you'll have a seat over there,
22 please, and state your full name and spell your last
23 for the record.

24 THE WITNESS: My name is Jaclyn McKay. Last name
25 spelled M-C capital K-A-Y.

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JACLYN MCKAY,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PATTERSON:

Q. Ms. McKay, where are you employed?

A. I'm currently employed at the South Carolina Law Enforcement Division, commonly referred to as SLED.

Q. How long have you been employed at SLED?

A. I've been employed at SLED approximately five years.

Q. What is your current job title?

A. Currently I work in the crime scene department in the lab as a special agent.

Q. And how long have you been assigned to the crime scene lab?

A. I've been assigned to the crime scene department for the last three years.

Q. And prior to that, what was your position?

A. Prior to working in the crime scene department, I was a forensic serologist in the DNA casework department.

Q. And what is your educational background?

A. I have a bachelor's of science from the Virginia Commonwealth University in forensic science with a concentration in forensic biology and minors in both chemistry and biology.

Q. Okay. And what kind of training have you received in

1 the field of serology?

2 A. When I was employed at SLED, I participated in their
3 in-house training program under court-qualified forensic
4 serologists. This took about seven months. During this
5 training program, I learned the labs policies and
6 procedures, I performed analyses on training samples and
7 supervised casework, and this culminated in a competency
8 test that I took that assessed my knowledge in the field
9 of forensic serology and once I passed that I was deemed
10 capable of doing independent casework.

11 Q. And, Ms. McKay, can you kind of explain to the jury
12 what is serology?

13 A. Serology is the study of identifying biological fluids
14 on items of evidence, and biological fluids such as blood,
15 semen and saliva.

16 Q. And as a forensic serologist, what were some of your
17 duties and responsibilities?

18 A. As a forensic serologist, I analyzed items of evidence
19 that were submitted to the forensics lab for biological
20 fluid such as blood, semen and saliva and if those fluids
21 were found, cuttings were made and forwarded to the DNA
22 section for further analysis.

23 Q. And how many cases have you performed serological
24 analyses or testing on?

25 A. Approximately three hundred.

1 Q. And does SLED perform forensic testing for the entire
2 state of South Carolina?

3 A. Yes, they do.

4 Q. And have you testified as an expert in serology
5 analysis before?

6 A. Yes, I have.

7 Q. How many times?

8 A. Approximately five times.

9 MS. PATTERSON: And, Your Honor, at this time
10 we would ask that Ms. McKay be deemed an expert in
11 serology analysis.

12 MR. MADSEN: No voir dire. No objection.

13 THE COURT: All right. Ladies and gentlemen, in
14 this case the parties agree that Ms. McKay is an expert
15 in the field of serology analysis and normally when
16 witnesses testify they're not allowed to give opinion
17 testimony, they can only talk about things that they
18 personally observed. This rule doesn't apply, however,
19 to experts. And, again, in this case the parties agree
20 that Ms. McKay's an expert in the field of serology, so
21 she can give opinion testimony that you can use as you
22 deem appropriate.

23 Please continue, Ms. Patterson.

24 MS. PATTERSON: Thank you, Your Honor.

25 BY MS. PATTERSON:

1 Q. Ms. McKay, can you tell us if you performed an
2 analysis on evidence submitted under Lab Number L15-16955?

3 A. Yes, I did.

4 Q. And can you tell us the date that you received that
5 submission?

6 THE WITNESS: Your Honor, may I look at my
7 paperwork?

8 THE COURT: Please.

9 THE WITNESS: The evidence was submitted to the
10 SLED forensic services laboratory on December 30th of
11 2015 and I took the evidence into my custody September
12 16th of 2016.

13 BY MS. PATTERSON:

14 Q. So there was a little time lapse between the time that
15 it came into SLED and the time that you got it into your
16 lab?

17 A. Yes, there was a time lapse between when the evidence
18 was submitted and when I took the evidence into my custody.

19 Q. And is that normal being that SLED analyzes for the
20 entire state?

21 A. Yes, that's normal.

22 Q. Now I'm gonna show you what's been entered as State's
23 Exhibit 13 -- 12 and 13, but we'll start with actually 13.
24 Are you familiar with that item?

25 A. Yes, I am. This item has the unique lab number that

1 was assigned to this case, as well as the unique item
2 number assigned to State's Exhibit 13, my initials and the
3 date that I opened the package.

4 Q. Okay. And can you take a look in Item 13 --

5 THE COURT: Does she need gloves or is she --

6 MS. PATTERSON: Do you need gloves?

7 THE WITNESS: I have some here.

8 BY MS. PATTERSON:

9 Q. And can you tell us if those items were submitted to
10 you within that submission?

11 A. Yes. Yes, these items were submitted to me within the
12 sexual assault evidence collection kit and I know -- I know
13 that based on these envelopes have a label that is attached
14 to them that also has the lab number, item number, my
15 initials and the date in which I opened the package. I
16 believe the only item that was also submitted with the kit
17 were the pubic hair combings.

18 Q. Okay. And when items are submitted to you for
19 analysis, do you examine each of the items?

20 A. So when the -- the kit is given to me or when I get
21 the kit into my custody, it is broken down into all of the
22 items that are contained within the kit, and in this case
23 I examined all of the items that were submitted except for
24 the smears, the debris collection and the buccal swabs.

25 Q. And how -- of the items did you have any -- did you

1 have any concern in the way the items were packaged when
2 they came into your custody?

3 A. I did not. They all were packaged appropriately and
4 per the lab's standard.

5 Q. And what would have happened if it appeared that the
6 items had been tampered with or didn't meet SLED's
7 protocol?

8 A. If the items weren't sealed properly upon submission,
9 they would have not been analyzed and would have been
10 returned to the submitting agency or the condition of the
11 evidence would have been documented in our notes and
12 reported out with our reports. If it appeared to me that
13 evidence looked like it was tampered with, I would not have
14 analyzed it, I would have documented it and I would have
15 notified my chain of command.

16 Q. And do you know which agency submitted these items?

17 A. Cayce Department of Public Safety.

18 Q. And within the sexual assault kit, again, how many
19 items were present in this one kit?

20 A. So contained within the sexual assault kit there were
21 nine items of evidence contained within.

22 Q. Okay. And what is the purpose of these items being
23 first submitted in the serology department?

24 A. So the forensic serology department just analyzes
25 items of evidence to see if there's any biological fluid

1 there, so we kind of tell you the what and then it goes on
2 to DNA for further analysis and they try to attribute the
3 fluids to a person so they can -- they attempt to tell you
4 the who.

5 Q. And before you do any of this testing, do you get
6 any information from law enforcement regarding the case
7 scenario?

8 A. I do.

9 Q. And why is this information important for you to know?

10 A. The information regarding the case scenario is
11 important for me to know in order to properly test the
12 evidence that is submitted.

13 Q. And based on the information that you had, what type
14 of presumptive testing did you do?

15 A. In this case, I performed presumptive testing for
16 semen and saliva.

17 Q. And are these testing -- is the testing for semen and
18 saliva conducted the same way?

19 A. They are not conducted the same way, however, the
20 processing is similar.

21 Q. And what day did you analyze these items?

22 A. I believe I had the items of evidence within my
23 custody from September 16th to October 4th of 2016 and I
24 specifically performed the presumptive testing for semen
25 and saliva on September 21st of 2016.

1 Q. And did you generate a report regarding your findings?

2 A. Yes, I did.

3 Q. And can we just kind of go through it with regard to
4 the items that you tested from the sexual assault evidence
5 collection kit?

6 A. So Item Number 1 was the sexual assault evidence
7 collect kit from J.H. Ann Dean and upon receiving that
8 in my custody, I broke that down into all the items that
9 were contained within it. So Item 1.1 were smears, vaginal
10 and rectal, and no analysis was performed on those due to
11 the other results that I obtained in this case and our
12 standard operating procedures. That's why no analysis was
13 performed. Item 1.2 is the vaginal swabs. The vaginal
14 swabs were positive for both p30 and spermatozoa, which are
15 two components of semen, therefore, semen was identified on
16 the vaginal swabs, and this item was forwarded to the DNA
17 section for further analysis.

18 Q. Okay.

19 A. Item 1.3 is the rectal swabs. I got the same result
20 for the rectal swabs as the vaginal swabs. It was positive
21 for p30 and spermatozoa. DNA was identified and it was
22 forwarded to the DNA section for further analysis.

23 Q. Let me just catch up with you. And what else did you
24 test further?

25 A. For Item 1.4 we have the pubic hair combings. I

1 looked at the pubic hair combings for any hair. No
2 hair suitable for STR-PCR DNA analysis was my result and
3 all that means is that there was no hair that had root
4 material on it, therefore, the DNA testing that we do at
5 SLED couldn't do anything with the hair that was found.

6 Q. Okay.

7 A. Item 1.5 is miscellaneous collection swabs from the
8 left lower arm and bilateral breasts. I tested these for
9 saliva. So the presumptive testing for saliva was positive
10 and these swabs were forwarded to the DNA section.

11 Item 1.6 was the victim's buccal swabs. I did not
12 perform any serology on this. These were just cut and
13 forwarded to the DNA section.

14 Q. And is that standard for the victim's buccal swabs to
15 just be forwarded to the DNA department?

16 A. Yes, that's standard. There's no need to test those
17 to see if a biological fluid is present. Those are simply
18 cut and forwarded for the DNA analysis.

19 Q. And what did you test next?

20 A. The next item was Item 1.7, which is suspected
21 saliva swabs from the left breast and right cheek. The
22 presumptive testing for saliva was positive and those
23 items were forwarded to the DNA section.

24 Q. And positive for what?

25 A. Presumptive testing for saliva was positive.

1 Item 1.8, suspected body fluid swabs, bilateral
2 labia majora and bilateral labia minora. Examination for
3 components of semen, p30 and spermatozoa, were positive.
4 Semen was identified and the item was forwarded to the DNA
5 section for further analysis.

6 The next item is 1.9, which is debris collection. No
7 analysis was performed on this item and that is due to the
8 standard operating procedures of the serology unit, as well
9 as the other results I obtained in this case.

10 (State's Exhibit Number 18 was marked for
11 identification.)

12 BY MS. PATTERSON:

13 Q. Okay. Ms. McKay, I'm gonna show you what's been
14 admitted as State's Exhibit Number 12 and ask you to take
15 a look at that.

16 A. I recognize State's Exhibit Number 12 as the underwear
17 that was submitted in this case. It has the unique lab
18 number, item number, my initials and date in which I opened
19 the package.

20 Q. Okay. And when you -- how do you examine the
21 underwear for presumptive testing?

22 A. So with the underwear, we visually look at it to see
23 if we see any areas of interest and then we look at it
24 under an alternative light source to see if there's any
25 areas that would fluoresce. From there we have another

1 test that we use for semen to look to see if there's
2 another component present and from that point if that's
3 positive, we take a cutting of the area and take that
4 and do the same testing we did with the swabs on the
5 cutting.

6 Q. I'm gonna show you what's been marked as State's
7 Exhibit 18 and ask you to look at that.

8 A. State's Exhibit 18 has the SLED lab number, the item
9 number, my initials and the date I sealed the package,
10 and then inside there's an envelope that has the same lab
11 number, item number and my initials and date for when I
12 sealed the envelope inside the heat-sealed pouch, and this
13 is the cutting I took from the underwear.

14 Q. Okay. And so you made that cutting on the underwear
15 that was submitted to you?

16 A. That's correct.

17 Q. And does it look like it's been changed or altered in
18 any way from when you sealed it?

19 A. No, it just has been opened by the DNA analyst, but it
20 doesn't appear to have been altered.

21 MS. PATTERSON: Your Honor, at this time we move
22 State's Exhibit Number 18 into evidence.

23 MR. MADSEN: No objection.

24 THE COURT: Without objection, State's 18 is in
25 evidence.

1 (State's Exhibit Number 18, underwear cutting,
2 was admitted into evidence.)

3 BY MS. PATTERSON:

4 Q. And these would have been the underwear that was
5 submitted for analysis?

6 A. That is correct.

7 Q. And what are all these -- what are all these markings
8 on it?

9 A. So when we look at the underwear under an alternative
10 light source, we circle the areas that fluoresced and then
11 we test those areas with a test such as a simple chemical
12 test that we have to see if a component of semen is
13 present. So these would have been all the areas that
14 appeared to have fluoresced under the alternative light
15 source and right -- so where I have positive APS, that
16 means it was positive for our presumptive semen test, and
17 then the cutting -- the cutting was taken from the crotch
18 area of the underwear. So this would be the cutting that
19 I took from the underwear and then the small hole that's
20 missing is where I would have cut the cutting to perform
21 more serology analysis on it, and that is also where I took
22 a small portion to then forward to the DNA section for
23 further analysis.

24 Q. And, again, what were the results of that presumptive
25 testing?

1 A. The cutting from the crotch of the underwear was
2 positive for acid phosphatase, p30 and spermatozoa, semen
3 was identified, and the item was forwarded to the DNA
4 section for further analysis.

5 Q. And the underwear, what number was that?

6 A. The underwear was Item 2 and the cutting was 2.1.

7 Q. And, again, did you have -- did you get any positive
8 results from the underwear or just --

9 A. So with our -- so our standard operating procedure is
10 if we get any positive presumptive testing we will report
11 that out on the cutting versus the underwear as a whole
12 because the cutting is then what gets forwarded to the DNA
13 section and the rest of the underwear would then get sent
14 back to the agency that submitted it.

15 MS. PATTERSON: Thank you, Ms. McKay. Please
16 answer any questions the defense may have.

17 THE COURT: Mr. Madsen.

18 CROSS-EXAMINATION

19 BY MR. MADSEN:

20 Q. So with all this serology stuff that you did in that,
21 nothing that you found if someone lied about a relationship
22 would necessarily be inconsistent with a consensual sexual
23 encounter, would it?

24 A. So I can only speak on what was there. Serology can't
25 say whether or not it was consensual or not.

1 Q. And I would imagine in your job at SLED you handle a
2 lot of cases?

3 A. That is correct.

4 Q. Do you remember actually doing the specific testing
5 on this case years ago?

6 A. I don't specifically remember this case just because
7 it was so many years ago, but all of the identifying
8 markers are there and it would have been done to our
9 protocols and procedures.

10 Q. And if you would have noted that evidence had got
11 lost, you would have documented that, correct?

12 A. That is correct.

13 Q. Because with any evidence department or any law
14 enforcement, if evidence is lost, that's a big no-no; isn't
15 it?

16 A. That's correct.

17 Q. And a lot of times when they bring these kits to you,
18 you can also get like fingernail scrapings or things along
19 those lines?

20 A. Yes, fingernail scrapings is another item that can be
21 collected with a sexual assault evidence collection kit.

22 Q. And that's not unusual in a rape case, is it?

23 A. That's correct.

24 MR. MADSEN: That's all the questions I have.

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

1 appreciate you coming. You're free to go.

2 (Witness excused.)

3 THE COURT: Call your next witness.

4 MS. PATTERSON: The State calls Samuel Stewart.

5 (Whereupon, Samuel Stewart was duly sworn by
6 the Clerk of Court.)

7 THE CLERK: If you'll have a seat over there,
8 please. State and spell your last name.

9 THE WITNESS: Samuel Allen Stewart, S-T-E-W-A-R-T.

10 SAMUEL ALLEN STEWART,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. PATTERSON:

14 Q. Mr. Stewart, where are you employed?

15 A. I work for the South Carolina Law Enforcement
16 Division, commonly known as SLED.

17 Q. And what is your current job title?

18 A. I am a forensic scientist assigned to the DNA casework
19 department.

20 Q. And what is your educational background?

21 A. I received my bachelor's degree in biology from
22 Francis Marion University. I also received in-house SLED
23 training under other court-qualified analysts for over a
24 year and a half where I had to successfully complete a
25 written exam, an oral exam, a competency test and mock

1 trial before I was deemed competent as a DNA analyst.

2 Q. And what are some of your duties and responsibilities
3 as a DNA analyst?

4 A. As a DNA analyst, it's my responsibility to process
5 any unknown standards and evidence for DNA. My purpose
6 is to try to determine whether or not the DNA profile from
7 those known individuals can be included or excluded as a
8 possible contributor of the DNA from the evidence. I'm
9 also responsible for reviewing the work of my peers and
10 eight hours of continuing education every year.

11 Q. And about how many cases have you performed DNA
12 testing on?

13 A. I would say hundreds.

14 Q. And have you testified in court before?

15 A. Yes, I have.

16 Q. About how many times?

17 A. Thirty-one.

18 Q. And are you required to keep up with that?

19 A. Yes, I am.

20 Q. And have you been qualified as an expert before?

21 A. Yes, I have.

22 Q. In what field?

23 A. DNA analysis.

24 MS. PATTERSON: Your Honor, at this time we ask
25 that Mr. Stewart be qualified as an expert in DNA

1 analysis.

2 MR. MADSEN: No voir dire. No objection.

3 THE COURT: Again, ladies and gentlemen, the
4 parties agree that Mr. Stewart is an expert in the
5 field of DNA analysis, so he can give expert opinion
6 in that area that you may use as you deem appropriate.

7 Go ahead, please, Ms. Patterson.

8 MS. PATTERSON: Thank you.

9 BY MS. PATTERSON:

10 Q. Mr. Stewart, what's DNA?

11 A. DNA stands for deoxyribonucleic acid. It is the
12 genetic material that's found in every individual and it's
13 responsible for certain traits such as our eye and our hair
14 color. DNA is packaged on chromosomes which are found in
15 every cell in the human body except for red blood cells.
16 We receive half of our chromosomes from our mother and the
17 other half from our father. On those chromosomes we target
18 a certain location known as STR's, and that stands for
19 short tandem repeats, and we look at twenty-one of those
20 STR locations that are found on the various chromosomes and
21 develop what is known as a DNA profile and then we can use
22 that DNA profile to identify one individual from another
23 except for identical twins.

24 Q. And, Mr. Stewart, is the use of DNA analysis a
25 recognized scientific methodology?

1 A. Yes, it is.

2 Q. What are some of the purposes, again, that DNA is used
3 in the scientific community?

4 A. It can help to identify, I guess, DNA profiles that
5 may be found or left at a crime scene.

6 Q. And do you know if DNA analysis is used in other state
7 laboratories or the FBI laboratory?

8 A. Yes, it is. It's used worldwide.

9 Q. And is it subjected to peer review?

10 A. Yes, it is.

11 Q. And why is it necessary to subject the testing to a
12 peer review?

13 A. This is just to make sure that the work that we put
14 out is accurate and correct. And at SLED, in our
15 department, our work goes through a two-tier review
16 process. My work is reviewed by a fellow court-qualified
17 analyst and then it's -- there's a final review by a senior
18 analyst before the report is given to the submitting
19 agency.

20 Q. And if you are provided or submitted a sufficient
21 profile, can you tell whether the person is a male or a
22 female?

23 A. Yes, I can. Yes.

24 Q. And I'm gonna show you State's Exhibit Number 13. Do
25 you recognize what I just passed up to you?

1 A. It appears to be the CSC kit that was submitted for
2 analysis, our Item 1. I believe the case number is
3 L15-16955.

4 Q. Okay. And State's Exhibit Number 18, do you recognize
5 that?

6 A. Yes, this is Item 2.1 from this case. I recognize it
7 because it also has the unique SLED number L15-16955, Item
8 2.1, which is a cutting from the crotch of the underwear
9 that was submitted and it also has my initials and my date
10 when I entered and exited out of the heat-sealed pouch.

11 Q. And what department did you receive those items from?

12 A. It was from our serology department.

13 Q. And once you receive items from the serology
14 department, what do you do?

15 A. Once those items are submitted to me, then I perform
16 the DNA analysis on the items that she tested.

17 Q. And did you conduct the analysis with those items?

18 A. Yes. The Item 1.6 was the buccal swab from J.H.
19 [REDACTED] 1.2 the vaginal swabs, 1.3 the rectal swabs, 1.5 was
20 the miscellaneous swabs from lower left arm and bilateral
21 breasts, 1.7 was the suspected saliva from the left breast
22 and right cheek, 1.8 were the suspected body fluid swabs,
23 and those were collected from the bilateral labia majora
24 and the bilateral labia minora, and Item 2.1 was a cutting
25 from the crotch of the underwear.

1 Q. And did you prepare a report in regards to these items
2 analyzed?

3 A. Yes, I did.

4 Q. And do you have it up there with you?

5 A. Yes, I do.

6 Q. And what's the date on that report?

7 A. This report is dated December 22, 2016.

8 Q. And after you examined or analyzed those items, were
9 you able to come up with some type of profile?

10 A. Yes, I was.

11 Q. And, again, if you have a sufficient profile, can you
12 tell whether or not it is a male or a female?

13 A. Yes, I can.

14 Q. And what were the results of this examination?

15 A. Okay. For the DNA profile developed from semen on
16 items 1.2, 1.3 and 1.8 it's from an unidentified male
17 individual.

18 Q. What about 1.5?

19 A. The DNA profile developed from Item 1.5 is a mixture
20 of at least two individuals. The DNA profile of the major
21 contributor is attributable to J.H. Ann Dean, and the
22 partial DNA profile of the minor contributor is suitable
23 for comparison. And if I can explain. When we have a
24 mixture, a mixture is when we have two individuals
25 contributing their DNA to an item and occasionally

1 sometimes we'll have it where if someone is contributing
2 significantly more DNA to that item, we'll consider that
3 individual the major contributor and if someone contributed
4 less DNA to that item, we consider that individual the
5 minor contributor.

6 Q. Okay.

7 A. The DNA --

8 Q. Go ahead. What about 1.7?

9 A. The DNA profile developed from Item 1.7 is a mixture
10 of at least two individuals. The DNA profile of the major
11 contributor is attributable to J.H. Ann Dean and due to
12 the inability to perform a statistical interpretation, no
13 further comparisons will be offered regarding the partial
14 DNA profile of the minor contributor. And what that
15 statement means is that sometimes we just don't have enough
16 genetic information to put statistics to that part of the
17 profile, I should say, and that just happens because we
18 have a set of criteria that we set forth whenever we put
19 statistics to a profile and that's just because we don't
20 ever give any kind of interpretation on something without
21 statistics. We want to be able to attach a weight to that
22 -- to that match or to that inclusion to a mixture and if
23 we cannot, then we won't do any kind of interpretations on
24 it.

25 Q. And let me show you what's been entered as State's

1 Exhibit Number 18. Did you receive that item for
2 submission?

3 A. Yeah, this is the item 2.1, the cutting from the --
4 the cutting from the crotch of the underwear.

5 Q. Okay. And did you analyze that item?

6 A. Yes, I did.

7 Q. And were you able to develop a DNA profile?

8 A. Yes, I did.

9 Q. And what was the results of that?

10 A. The DNA profile developed from the non-sperm fraction
11 of Item 2.1 is a mixture of at least two individuals.
12 The partial DNA profile of the major contributor is
13 attributable to J.H. Ann Dean. The partial DNA profile
14 of the minor contributor is suitable for comparison. The
15 DNA profile developed from the sperm fraction of Item 2.1
16 is a mixture of at least two individuals and J.H. Ann Dean
17 is excluded as a contributor to this mixture. And if I can
18 explain this one, occasionally we have an item submitted to
19 us that has the potential to have semen on it. What we do
20 is we call it a differential extraction and what we do is
21 we split that item into two different fractions; one called
22 the sperm fraction where we hope to capture the majority
23 of the male DNA that's present in that semen, and the
24 non-sperm fraction which we hope to separate any other DNA
25 that might be potentially on that item.

1 Q. Okay. And I'm gonna show you what's been entered as
2 State's Exhibit 17. Now did you ever receive a DNA sample
3 from Cayce Police Department for someone identified as
4 Rodney Furtick?

5 A. I believe -- yes, this was Item 3 that was submitted
6 to SLED for analysis. It was buccal swabs from Rodney
7 Furtick.

8 Q. And do you know what date you received that buccal
9 swab?

10 A. I took this item into my custody January 17, 2017.

11 Q. Were you able to compare that item of evidence with
12 the items analyzed previously?

13 A. Yes, I did.

14 Q. And were you able to develop a DNA profile from the
15 sample that was submitted to you from the Cayce Police
16 Department?

17 A. The buccal swabs from Rodney Furtick?

18 Q. Yes.

19 A. Yes, I did.

20 Q. And what was the DNA profile developed from Item 1.2?

21 A. You mean the comparison to the buccal swabs?

22 Q. Yes.

23 A. The DNA profile developed from the semen on items
24 1.2, 1.3 and 1.8 matches the DNA profile of Rodney
25 Furtick and the probability of randomly selecting an

1 unrelated individual matching the semen on these item is
2 approximately 1 in 17 quintillion. And what that statement
3 means is that if I took a random person's DNA profile and
4 I compared it to the semen on items 1.2, 1.3 and 1.8, there
5 would be a 1 in 17 quintillion chance that that random
6 person's DNA profile would match those items.

7 Q. Okay. And so Rodney Furtick's DNA profile matched up
8 to Item 1.2 being --

9 A. The vaginal swabs.

10 Q. And 1.3?

11 A. Yes, the rectal swabs. And 1.8.

12 Q. And what was that probability?

13 A. One in 17 quintillion.

14 Q. And 1.8, which would have been what?

15 A. That was the suspected body fluid swabs from the
16 bilateral labia majora and the bilateral labia minora.

17 Q. Was the DNA profile from Rodney Furtick attributed to
18 any of these other items that you tested?

19 A. Yes. For Item 1.5 Rodney Furtick cannot be excluded
20 as a minor contributor to this mixture. The probability of
21 randomly selecting an unrelated individual who could have
22 contributed to this is 1 in 14 and for the non-sperm
23 fraction of Item 1.2 Rodney Furtick is excluded as a
24 possible minor contributor, but for the sperm fraction of
25 1.2 Rodney Furtick cannot be excluded as a contributor to

1 this mixture and the probability of randomly selecting an
2 unrelated individual who could have contributed to this
3 mixture is 1 in 110 million.

4 Q. Okay. And let's go back to the 1.5, which was the
5 miscellaneous swabs that were taken from the left lower arm
6 and bilateral breasts that was positive for saliva. Again,
7 what was his probability?

8 A. 1 in 14.

9 Q. Why is that number so different from the 1 in 17
10 quintillion?

11 A. Well, it was not a full profile of that minor
12 contributor and, once again, I had to use the locations
13 that fit the criteria so because of those not having a
14 full profile and some not meeting the criteria, that would
15 lessen the statistic to that minor contributor.

16 Q. Okay. And in the 1.7 that was positive for saliva,
17 what were your results?

18 A. That one did not change because I couldn't do anything
19 partially with the minor contributor. I couldn't compare
20 his DNA to that minor contributor on 1.7.

21 Q. And that was just because he was a minor contributor?

22 A. Well, no, because -- because of how low the minor
23 contributor was for 1.7, I couldn't do any kind of
24 statistical calculation for it, so no comparisons would be
25 done for that minor contributor for 1.7.

1 Q. And did you test the underwear -- the cuttings from
2 the underwear?

3 A. Yes, ma'am, I did.

4 Q. And was a DNA profile developed for Rodney Furtick on
5 the underwear?

6 A. From the non-sperm fraction he was excluded as the
7 minor contributor, but for the sperm fraction he could not
8 be excluded as a contributor for that mixture from the
9 sperm fraction for 2.1 and the probability of selecting an
10 unrelated individual who could have contributed to this
11 mixture is 1 in 110 million.

12 Q. Mr. Stewart, how big is a quintillion?

13 A. It's seventeen -- I mean, eighteen zeros.

14 Q. Eighteen zeros?

15 A. Uh-huh.

16 Q. So that was Mr. Furtick's match in items 1.2, 1.3 and
17 1.8?

18 A. That is correct.

19 Q. Do you know what the current population of the world
20 is?

21 A. It's approximately 7.6 billion.

22 Q. Would a quintillion be more than 7.6 billion?

23 A. It's significantly higher than 7.6 billion.

24 MS. PATTERSON: I beg the Court's indulgence,
25 Your Honor.

1 THE COURT: Yes, ma'am.

2 MS. PATTERSON: No further questions, Mr. Stewart.

3 THE COURT: Mr. Madsen.

4 CROSS-EXAMINATION

5 BY MR. MADSEN:

6 Q. Mr. Stewart, just a few questions.

7 A. Yes, sir.

8 Q. So on items 1.5 and 1.7 and, I believe, 2.1, there's
9 some DNA that doesn't come back to J.H. [REDACTED] doesn't
10 come back to Rodney Furtick, but comes from someone else,
11 correct?

12 A. No, the non-sperm fraction for 2.1, I would say that
13 is correct. On 1.5 I think he's a minor contributor. It's
14 just that I didn't have much genetic information for that
15 one. And for 1.7 I couldn't do any kind of statistical
16 calculation. I'm not sure who that individual would be.

17 Q. Well, on 1.5 at -- at the loci D3S1358, you've got
18 little bit of an allele there that's a 17.

19 A. Which location?

20 Q. So let's go to 1.5 and then let's go to the D3S1358.

21 A. Okay.

22 Q. And J.H. [REDACTED] at that location, her DNA is a 1515.

23 A. Uh-huh.

24 Q. And Rodney's DNA at that same spot is a 1516, correct?

25 A. That is correct.

1 Q. And you find at that spot a 1516 and a 17, neither of
2 them can contribute the 17, can they?

3 A. That's correct.

4 Q. So that's someone else's DNA -- I mean, that's a third
5 person's DNA at that spot, correct?

6 A. It is possible, yes.

7 Q. The same thing for 1.7, right below it, that same
8 area. That's a 17, too, so that's -- at that same area.
9 That's --

10 A. That is possible, too. As I said, for 1.7 I didn't do
11 any --

12 Q. Sure. But, I mean, that has to be someone else. They
13 can't be either of them, correct?

14 A. It's possible.

15 Q. And then you said at 2.1 that's a -- there's someone
16 else's DNA in the cutting of the crotch also that's not
17 JH. [REDACTED] the sperm fraction.

18 A. The non-sperm fraction?

19 Q. Yes.

20 A. The non-sperm fraction, that's correct.

21 MR. MADSEN: That's all the questions I have.

22 MS. PATTERSON: Just briefly.

23 THE COURT: Go ahead.

24 REDIRECT EXAMINATION

25 BY MS. PATTERSON:

1 Q. Mr. Stewart, what are the two samples that were
2 submitted to you for testing?

3 A. The two samples? You mean the --

4 Q. Whose DNA samples did you have for comparison?

5 A. J.H. Ann Dean and Rodney Furtick.

6 Q. You did not receive a DNA sample from a Brian Dean to
7 test, did you?

8 A. No, I did not.

9 MS. PATTERSON: Thank you. No further questions.

10 THE COURT: All right, sir. Thank you very much
11 for coming. You're free to go.

12 (Witness excused.)

13 THE COURT: Any additional witnesses?

14 MS. PATTERSON: Can I have like two minutes?

15 THE COURT: Sure.

16 Ladies and gentlemen, we'll be at ease for about
17 -- I'll probably give you five minutes, Ms. Patterson.

18 So we'll be at ease for about five minutes or so.
19 Return to the back and we'll see where things stand as
20 far as today is concerned. I'll have you back out as
21 soon as possible.

22 (Whereupon, the jury retires to the jury room at
23 4:22 PM.)

24 (Recess taken at 4:22 PM.)

25 (Back on the record at 4:29 PM.)

1 BAILIFF: Please come to order. Court's now in
2 session.

3 THE COURT: Thank you. Take your seats, please.

4 All right. We'll go back on the record, if we may.

5 Ms. Patterson, Ms. Mayes, any additional witnesses?

6 MS. PATTERSON: Your Honor, I think the State is
7 gonna rest.

8 THE COURT: Okay. Very good.

9 Obviously we're not going to launch into the
10 Defendant's case, so we'll bring the jury out and I'll
11 release them. Do you want to rest tonight or do you
12 want to rest in the morning or --

13 MS. PATTERSON: We can rest in the morning, Your
14 Honor. And I do want to put on the record that if the
15 Defendant intends to testify there is some impeachment.

16 THE COURT: Right. I figured we'd go through that.
17 Let's do it this way. For all intents and purposes the
18 State has rested and we'll deal with motions afterwards
19 and that way I can simply reference the motions that
20 you make tomorrow morning assuming the State doesn't
21 change its mind.

22 Let's have the jury.

23 (Whereupon, the jury returns to the courtroom at
24 4:30 PM.)

25 THE COURT: Ladies and gentlemen, in talking to

1 the attorneys, we've probably reached a good stopping
2 point in the trial and thanks to your attention and
3 diligence today we've been able to make up the lost
4 time that we missed yesterday afternoon, so thank you
5 for your continued patience. I think we're little bit
6 perhaps ahead of schedule here.

7 So we're gonna go ahead and break for the evening.
8 If you would, please, do be back in the jury room
9 tomorrow morning at 9:30. At that point in time we'll
10 resume with this trial, okay? Again, please don't talk
11 to anyone overnight about the case. You'll be at liberty
12 to do so once the case is concluded.

13 So have a lovely evening. You can leave your
14 notebooks if you wish in the chairs and the bailiffs
15 will be more than happy to collect them, okay? So
16 with that, have a great night and we'll see you back
17 tomorrow morning at 9:30. Thank you.

18 (Whereupon, the jury is excused for the day at
19 4:32 PM.)

20 THE COURT: All right. The jury is out. As I
21 said a moment ago, the State has rested. I assume
22 that the defense, of course, renews all previous
23 motions, objections and moves for a directed verdict;
24 is that correct?

25 MS. FULLWOOD: That's correct.

1 THE COURT: The same rulings as before on the
2 prior motions and the Court does find that there is
3 sufficient direct and circumstantial evidence to
4 warrant allowing this case to proceed further.

5 Before I have the colloquy with Mr. Furtick,
6 you indicated that there were some prior convictions?
7 I jotted them down yesterday, but I'm not sure I got
8 all the ones that you intend to impeach him with.

9 MS. PATTERSON: Your Honor, in July of 2010, he
10 was convicted of a burglary third offense. In April
11 of 2012, he had a petit larceny. In December of 2012,
12 he had an assault and battery second degree, two counts.
13 And August 11th of 2015 he was convicted of a property
14 crime, third or greater.

15 THE COURT: All right. What's the defense's
16 position with regard to those? Obviously the petit
17 larceny and the property crime would be crimes
18 involving dishonesty.

19 MS. FULLWOOD: Yes, sir. Although I think --
20 I would ask that it not be referred to as a third
21 or subsequent offense.

22 MR. MADSEN: It was a petit larceny initially
23 and then enhanced up.

24 THE COURT: Can we refer to that as another petit
25 larceny then? Would that be okay?

1 MS. PATTERSON: As another petit larceny?

2 THE COURT: Yes, the one from 2015. Simply refer
3 to that as a petit larceny.

4 MS. PATTERSON: Can we just say a larceny?

5 THE COURT: Larceny works, petit larceny. It can
6 be clarified on cross, but either way.

7 MS. FULLWOOD: Your Honor, our position concerning
8 the -- is it all right if I remain seated?

9 THE COURT: Sure.

10 MS. FULLWOOD: Our position concerning the third
11 degree burglary and the assault and battery second
12 degree is both are very similar in nature to the crime
13 he's on trial for and that any probative value that
14 they might have would be outweighed by the -- would be
15 outweighed by the prejudicial effects to him because
16 this is a case where credibility -- basically it boils
17 down to a swearing contest and so credibility is very
18 important and, again, due to the similarities between
19 the prior convictions and these offenses, the Court
20 should keep it out under Rule 609(a)(1).

21 THE COURT: Do you want to respond to that?

22 MS. PATTERSON: Yes, sir, Your Honor.

23 I think the fact that they have brought up the
24 victim's credibility over and over again makes it even
25 more relevant in this case, Your Honor. With regards

1 to the assault, those are assault and battery second
2 degree. He's charged with criminal sexual conduct in
3 this case. And, again, with the burglary, Your Honor,
4 it supports -- they brought, again, into issue the
5 victim's credibility and I think the burglary should
6 be allowed and it is a crime of dishonesty.

7 THE COURT: Well, you've got State versus Bryant
8 that holds that a conviction for burglary is not
9 probative of truthfulness.

10 MS. PATTERSON: But it does carry more than a
11 year.

12 THE COURT: I would agree, but then you've got
13 the problem with State versus Howard with the similarity
14 of prior convictions.

15 The Court has an obligation to undergo a balancing
16 test under 403 based on the Colf factors, C-O-L-F, and
17 the case. The Court is very familiar with, of course --
18 we're all familiar with that line of cases that say
19 crimes that are of a similar nature, the prejudicial
20 effect is heightened when the prior conviction is for
21 a crime that's essentially similar or the same as what
22 the person is on trial for. That's what Howard -- I
23 think it was Howard. I think that's what Howard
24 essentially held.

25 And I do agree that the issue of credibility is

1 quite important in this case, but based upon the similar
2 nature of a burglary third, burglary first, it's really
3 just a matter of degree and the structure usually that
4 was invaded or means by which it was invaded, my initial
5 impression is to decline to allow the State to go into
6 or to specifically say a burglary.

7 I will allow you to ask if he was convicted of a
8 crime punishable by more than a year in 2010, however,
9 but the -- by referring to it as a burglary I think that
10 heightens the prejudice and think it's probably wise
11 that we simply leave it that. So that will be my ruling
12 on that. You may reference the 2010 conviction, but
13 simply refer to it -- I know they do it in different
14 ways in different places. In Greenwood they'll allow
15 them to say felony that carries more than a year.

16 Is that how you-all have done it here?

17 MS. PATTERSON: Yes, sir.

18 THE COURT: Okay. So that would be acceptable.
19 Just stay away from burglary if you could, please.

20 The assault charges I don't think -- you're saying
21 that they did involve a sexual-type nature, those
22 assault convictions, but you're not planning on getting
23 into that, it simply would be pled as an assault and
24 battery second?

25 MS. PATTERSON: Yes, sir. I will not get into

1 any details of the convictions, just the fact that he
2 had those two convictions.

3 THE COURT: Okay. Those are fair game. The
4 assault seconds are fair game. They're not so similar
5 as to warrant exclusion and they do carry, of course,
6 more than a year and certainly since it is a swearing
7 contest as Ms. Fullwood said, the issue of credibility
8 as you-all rightly point out is pretty central to this
9 case and so that makes the use of those convictions all
10 the more valuable to the State.

11 MS. FULLWOOD: Can we refer to those as
12 misdemeanors that carry more than a year?

13 MS. PATTERSON: They're not misdemeanors.

14 MR. MADSEN: Assault and battery seconds are.

15 THE COURT: I think they are misdemeanors, yeah.
16 Assault and battery second is a misdemeanor.

17 MS. PATTERSON: They are, they're second degree,
18 and carry more than a year.

19 THE COURT: Yeah. Those aren't so similar. An
20 assault and battery is different from an attempted rape
21 or a CSC, so -- or do you want to --

22 MR. MADSEN: Just the question that we have is
23 even though they carry over a year, the Court is finding
24 that -- and what their argument was is kind of apples
25 and oranges. Hey, we need these because we're doing the

1 credibility that they cast on the victim, which I don't
2 think plays at all into the analysis on whether they
3 get to impeach him on his testimony, so an assault and
4 battery has absolutely nothing to do with truthfulness
5 whatsoever. And, like I said, I understand what they're
6 saying about it, but I don't think that that plays into
7 the analysis on the impeachment of crimes for him and so
8 under a 403 analysis is the Court saying that because he
9 has these convictions that that somehow is more probative
10 than prejudicial because they don't have to do with any
11 type of truthfulness, perjury, lying, larceny or anything
12 like that?

13 So we don't think that those -- and the fact that
14 they're -- this has been described by the State's
15 witnesses as an assault, so you have that whole problem.
16 But, like I said, under a 403 analysis that doesn't have
17 anything to do with truthfulness. I mean, they certainly
18 understand that this can't be kind of habit or anything
19 like that. It's just for the truthfulness, the ability
20 to impeach his current testimony, and we don't think
21 under 403 that the assault or assault and battery that
22 those -- that there's just no way that those are more
23 probative than prejudicial.

24 MS. PATTERSON: Your Honor, that's not the reason
25 we're asking that they be allowed for impeachment.

1 They're allowed simply under the rule because they
2 carry more than a year.

3 MR. MADSEN: But it does say that Your Honor has
4 to make a -- the Court determines that the probative
5 value of admitting this evidence outweighs its
6 prejudicial effect to the accused. So, I mean, it
7 does have to do with the one year, but then you've
8 got the second part of the analysis.

9 MS. PATTERSON: But it's not similar.

10 THE COURT: You -- I'm sorry. You wanted to say
11 something else?

12 MS. PATTERSON: I'm sorry. But assault and battery
13 second, if we can't get into details, so it's not similar
14 to the criminal sexual conduct, which is what he's on
15 trial for.

16 THE COURT: I agree. Here's what I'll do, and I'm
17 looking at the factors right now that I have to consider.
18 There's a recent case that came out either this spring
19 or last year that went into this in-depth and it was
20 one of the ones that -- that we talked about at the
21 presentation in August or September that a number of
22 us judges did. Let me take a second and look at that
23 case and I'll tell you in the morning how I intend to
24 allow it to be handled, but I do realize -- and in that
25 case there was language that basically said that the

1 courts have been doing it wrong; where you have a
2 swearing contest between two people the impeachment
3 value of the crime is all the more important as opposed
4 to less important. I'm not putting that as eloquently
5 as the opinion did, but it's basically where credibility
6 is a central issue, which clearly it sounds like it's
7 gonna be in this case, the fact that someone is impeached
8 for their prior crimes or conduct or what have you, that
9 becomes all the more relevant and probative. And I'm
10 trying to remember the name of the case, but I will find
11 it somewhere in my memory banks on the way home.

12 I assume, Ms. Fullwood, that you and Mr. Madsen,
13 of course, have talked to Mr. Furtick extensively about
14 his right to testify, et cetera?

15 MS. FULLWOOD: We have. Although at this point
16 we're gonna consult with him more. I don't want him to
17 make a final decision until tomorrow.

18 THE COURT: Okay. Do you want me to go ahead
19 and engage in the colloquy with him or are you-all
20 comfortable handling it yourselves or --

21 MR. MADSEN: I'm comfortable.

22 MS. FULLWOOD: I'm comfortable doing it myself.

23 THE COURT: Okay. Good enough. I'll just leave
24 it -- I'll just leave it with you and we'll see where
25 things go tomorrow morning.

1 MS. FULLWOOD: Yes, sir.

2 THE COURT: You didn't have any witnesses other
3 than potentially the Defendant in this case?

4 MS. FULLWOOD: That's correct.

5 THE COURT: I assume that you're not intending to
6 call any of the other witnesses that were listed on the
7 State's list, correct?

8 MS. FULLWOOD: I don't believe so.

9 THE COURT: It would just be your client?

10 MS. FULLWOOD: Yes, sir. Yes, sir.

11 THE COURT: Good enough.

12 All right. Then we'll be at ease until tomorrow
13 morning around 9:30. My law clerk has already done,
14 I think, some of the instructions or got a good bit
15 of them done. I haven't seen them, they're rough
16 draft. We can go ahead and send them out, but you've
17 seen them all before so you'll know what to expect,
18 okay?

19 See you-all in the morning.

20 MS. PATTERSON: Thank you.

21 MR. MADSEN: 9:30?

22 THE COURT: 9:30, yes. Thank you.

23 (Whereupon, the proceedings were concluded for
24 November 5, 2019, at 4:48 PM.)

25 (The following proceedings were held November 6,

1 2019, beginning at 9:38 AM.)

2 BAILIFF: All rise. Court's now in session. The
3 Honorable Frank Addy presiding.

4 THE COURT: Thank you. Please have a seat.

5 All right. We'll go back on the record, if we
6 may. Just a few housekeeping matters. I know that my
7 law clerk -- there's been some discussion about the
8 instructions that were sent yesterday. We'll discuss
9 those in greater detail once this case is -- once all
10 the evidence has been received.

11 I gave some further reflection on the question
12 of how to treat the assault charges or the assault
13 convictions and after reviewing the caselaw, the Court
14 has to conclude in order to allow those specific
15 convictions to come in as assault and battery seconds
16 that legally the Court would have to conclude that the
17 probative value of that impeachment substantially
18 outweighs any undue prejudice.

19 And I've looked at the five factors, I've
20 considered it. Doing a 403 balancing analysis, I
21 think that the impeachment value mostly outweighs but
22 I cannot say it substantially outweighs the danger of
23 unfair prejudice and the key to this -- or the key to
24 my reasoning is that by allowing the jury to hear that
25 he was convicted of assault and battery second degree

1 is tantamount to basically suggesting improperly to
2 the jury that the Defendant has a propensity towards
3 violence, a propensity to assault people, and, of
4 course, sexual assault is one of the charges that he's
5 facing.

6 So I'll ask the State to simply limit your inquiry
7 of the Defendant as it relates to that conviction; that
8 he was convicted in 2012 of two misdemeanor offenses
9 that carry more than a year in prison, and so that's
10 how we'll have to deal with that.

11 Has the Defendant decided if he's gonna testify?

12 MS. FULLWOOD: Yes, Your Honor.

13 THE COURT: All right. You-all don't feel the
14 need for me to review with him his --

15 MS. FULLWOOD: (Shakes head.)

16 THE COURT: Okay. Very good.

17 MR. MADSEN: Judge?

18 THE COURT: Yes, sir.

19 MR. MADSEN: If we might on the impeachments,
20 just to make sure that we're clear, what Your Honor
21 is intending to allow the State, and obviously
22 Ms. Fullwood's gonna bring that out -- bring it out
23 in testimony --

24 THE COURT: Correct.

25 MR. MADSEN: -- which is kind of odd because

1 we certainly want to preserve our objections with that,
2 but a 2010 crime punishable by more than one year,
3 a 2012 petit larceny, 2012, two convictions of a
4 misdemeanor, and a 2015 larceny.

5 THE COURT: Right. The way -- the way that I would
6 allow the State to go into this, and it's how it's done
7 in other parts in order to -- parts of the state in order
8 to sanitize the conviction, but the burglary third from
9 2010 I will allow the State to characterize that as a
10 felony punishable by greater than a year, a petit larceny
11 from 2012. The 2012 assault convictions may be referred
12 to as two counts -- two misdemeanors carrying more than
13 a year, and then the 2015 larceny. So that's how that
14 can be elicited.

15 MR. MADSEN: And, Judge, just for the record,
16 and I can't find any cases that address this, but our
17 objection at the end for the burglary and the assault
18 and battery, and Your Honor used the word that I saw in
19 some of the court cases, and I've seen it before, the
20 word "sanitize", our position would be if the rules
21 don't allow it, if you can't fit a square box into a
22 round hole, then why should we sand off the corners of
23 the square box and now push it through the hole? I
24 didn't see anything where that was addressed in any of
25 the caselaw and so our position would be if the rules

1 don't allow it, then it just shouldn't come in, it
2 shouldn't be, quote unquote, sanitized. In other
3 words, hey, let's do the State a solid and even though
4 it doesn't comply to the rules, let's let them do
5 something that the rules don't necessarily allow them
6 to do, and so that's just kind of our objection. Like
7 I said, I saw the word "sanitize".

8 The case I think Your Honor was talking about
9 yesterday was State versus Stephon Robinson that kind
10 of go through the Colf factors --

11 THE COURT: That's right.

12 MR. MADSEN: -- and all that and then talk back
13 also about Bryant that basically says, you know, robbery,
14 burglary, theft, drugs and even -- are just not probative
15 of truthfulness, and so that is ultimately our objection
16 with that and we just wanted to make sure that the Court
17 was aware of that because, as I said, I can't find any
18 cases that talk about this whole hey, sanitizing it is
19 okay, but I've seen it in this circuit and I've seen it
20 in some other circuits, I've just not seen it challenged.

21 THE COURT: I understand your position and you do
22 have a running objection. My -- my opinion is that the
23 prejudice flows from the similar nature of the crime, so
24 calling something a burglary when you're on trial for
25 burglary or calling something a rape when you're on

1 trial for rape is what creates the prejudice if they
2 have that prior conviction for that similar type
3 offense and the prejudice is substantially lessened
4 if you're simply allowed to inquire as to a nameless
5 felony or a nameless misdemeanor, and so that's --
6 that's the reasoning that this Court is employing it
7 and I think other judges has employed routinely.

8 But your objection is noted and I understand
9 you're taking the position that the State should not
10 be able to make any such inquiry.

11 MR. MADSEN: Thank you, Your Honor.

12 THE COURT: All right. When the jury comes back
13 in, the State will rest. All motions automatically are
14 renewed that you made yesterday that were addressed in
15 front of the jury and then go into the Defendant's case,
16 okay?

17 MS. PATTERSON: Yes, sir.

18 THE COURT: Let's have the jury, please.

19 (Whereupon, the jury enters the courtroom at
20 9:45 AM.)

21 THE COURT: Okay. The record will reflect that
22 all jurors are present and seated.

23 Ladies and gentlemen, welcome back. Of course,
24 we're still involved with the case of the State versus
25 Mr. Furtick.

1 At this point in time, Solicitor, anything further
2 from the State?

3 MS. PATTERSON: Your Honor, at this time the State
4 rests.

5 THE COURT: Very good. All motions renewed.
6 Ms. Fullwood, your case.

7 MS. FULLWOOD: Thank you, Your Honor.

8 The defense calls Rodney Furtick.

9 THE CLERK: Raise your right hand.

10 (Whereupon, Rodney Furtick was duly sworn by the
11 Clerk of Court.)

12 THE CLERK: If you'll have a seat over there,
13 please. State your name and spell your last for the
14 record.

15 THE WITNESS: My name is Rodney Furtick. Last
16 name is spelled F-U-R-T-I-C-K.

17 RODNEY JEROME FURTICK,
18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. FULLWOOD:

21 Q. Mr. Furtick, where did you grow up?

22 A. In Cayce.

23 Q. Okay. And, Mr. Furtick, you've had trouble with the
24 law in the past; is that correct?

25 A. Yes, ma'am.

1 Q. In 2010, were you convicted of a felony that carried
2 a possible punishment of more than a year?

3 A. Yes, ma'am.

4 Q. And in 2012, were you convicted of petit larceny?

5 A. Yes, ma'am.

6 Q. And in 2012, were you convicted of two misdemeanors
7 that carried a possible punishment of more than a year?

8 A. Yes.

9 Q. And in 2015, were you convicted of larceny?

10 A. Yes.

11 Q. Now directing your attention to November of 2015, all
12 right --

13 A. Yes, ma'am.

14 Q. -- where did you live at that time?

15 A. [REDACTED] Allen Street, Apartment [REDACTED].

16 Q. And is that the apartment building that was -- has
17 been pointed out in this courtroom on the maps?

18 A. Yes, ma'am.

19 Q. All right. And who did you live with?

20 A. My mother.

21 Q. Can you tell the jury how you met the Deans?

22 A. Yes, I could.

23 Q. About when do you think you first met them?

24 A. Sometime early October.

25 Q. Okay. And how did you meet them?

1 A. I was walking down Frink Street -- excuse me, Julius
2 Felder and passed they house.

3 Q. Okay. And how did that lead to you meeting this
4 couple?

5 A. I'd seen Brian outside smoking a cigarette and I asked
6 him for a light.

7 Q. All right.

8 A. And he volunteered to give me the -- the lighter
9 because he was going to the store.

10 Q. Uh-huh. And was that the only contact you had with
11 him that day?

12 A. No, ma'am.

13 Q. Well, after you lit your cigarette, what -- what
14 happened?

15 A. We walked to the store.

16 Q. Okay. And what store is that?

17 A. One Love 2 on Frink Street.

18 Q. Okay. And did you have some sort of business there?

19 A. Yes, ma'am.

20 Q. Okay. What kind of -- what kind of store is that?

21 A. It's a convenience store.

22 Q. All right. Once you went to the convenience store,
23 what did the two of you do?

24 A. I think he bought a pack of cigarettes and I purchased
25 something out the store.

1 Q. All right. And then once you were finished buying the
2 stuff, what happened?

3 A. We walked back up Julius Felder Street back towards
4 Brian's house.

5 Q. Okay. And what happened -- what happened next?

6 A. We stayed in the yard talking.

7 Q. Whose yard?

8 A. Brian's yard.

9 Q. Okay. Do you remember about how long you stayed out
10 there talking?

11 A. Yes, ma'am.

12 Q. Well, about how long?

13 A. All afternoon.

14 Q. You stood outside all afternoon?

15 A. No, ma'am.

16 Q. Okay. Well --

17 A. J.H. [REDACTED] and the baby came out. We was just
18 conversating. It was getting late. We went inside. They
19 invited me inside. I went inside.

20 Q. Okay. And who all went inside?

21 A. Me, J.H. [REDACTED] Brian and the baby.

22 Q. Okay. And what did you do inside?

23 A. We was just talking.

24 Q. Okay. And about how long did that last?

25 A. Until the time Brian started getting dressed to go to

1 work.

2 Q. Okay. And about what time of the day was that, do you
3 remember?

4 A. No. I remember he had to be to work at three.

5 Q. Uh-huh. Okay.

6 A. So I guess maybe 2:00.

7 Q. All right. And did he eventually leave the house?

8 A. Yes, ma'am.

9 Q. Did you leave the house with him?

10 A. No, ma'am.

11 Q. Okay. So you stayed at the house with JH. [REDACTED]

12 A. Yes.

13 Q. All right. And what -- what did you and JH. [REDACTED] do
14 at that point?

15 A. We was looking at a photo album book.

16 Q. Okay. And what -- what kind of photo album book?

17 A. Her marriage. She was showing me pictures of her and
18 Brian when they got married.

19 Q. All right. And where was the baby then?

20 A. The baby was in the house with us.

21 Q. Okay.

22 A. We was in the living room at this time.

23 Q. Okay. And about how long did you look at those
24 pictures?

25 A. Quite a while.

1 Q. Okay.

2 A. We was just -- we was just meeting, so she -- we was
3 excited, just -- she was showing me pictures.

4 Q. Okay. Okay. Were you comfortable being around

5 J.H. [REDACTED]

6 A. Yes.

7 Q. Did she appear to be comfortable being around you?

8 A. Yes.

9 Q. All right. So what happened as -- as the day
10 progressed as far as after looking at pictures and all?

11 A. We became more comfortable. The little girl was
12 running around and playing and just having a nice
13 afternoon.

14 Q. All right. And did you stay in the living room or
15 what -- what happened? Did you just continue for the rest
16 of the visit just staying in the living room?

17 A. Yes, ma'am.

18 Q. For the entire visit?

19 A. Yes, ma'am.

20 Q. So are you saying you stayed in the living room and
21 then went home or did something else happen?

22 A. Something else happened.

23 Q. Okay. Okay. Well, can you explain to the jury how it
24 came to be that something else happened?

25 A. Yes, ma'am. Me and J.H. [REDACTED] became fond of one

1 another.

2 Q. Uh-huh. And what do you mean by that?

3 A. She was a very beautiful woman --

4 Q. Okay.

5 A. -- and, you know, I was attracted to her.

6 Q. Uh-huh.

7 A. And she was attracted to me at the time.

8 Q. Uh-huh. Okay. And so what was going on that made you
9 feel like you were attracted to each other?

10 A. We was giggling and laughing and enjoying our company.

11 Q. Okay.

12 A. And I told her she was beautiful several times --

13 Q. Uh-huh.

14 A. -- and she said thank you and we was just getting to
15 know each other.

16 Q. Okay. Did you just continue giggling or and laughing
17 or did your activities change?

18 A. Giggling. We was laughing at Brian jumping over the
19 broom at they wedding and just -- just communicating.

20 Q. Okay. Okay. And did -- did the way you relate to
21 each other change after that giggling and laughing and
22 getting to know each other phase?

23 A. Yes, ma'am.

24 Q. Okay. How? How did it change?

25 A. I got interested in her.

- 1 Q. Okay.
- 2 A. I wanted to be with her.
- 3 Q. Okay. So what did you do or what did she do?
- 4 A. I asked her --
- 5 Q. Uh-huh.
- 6 A. It's been a while. I asked her to go into the next
- 7 room.
- 8 Q. And which room would have been the next room?
- 9 A. Her -- her bedroom.
- 10 Q. Okay. And what did she say to that?
- 11 A. She came in.
- 12 Q. All right. And what happened there?
- 13 A. I touched her face and talked to her, brush her hair
- 14 -- excuse me -- brushed her hair and --
- 15 Q. With a brush?
- 16 A. No, with my hands. Just played in her hair. We
- 17 continued.
- 18 Q. Continued what?
- 19 A. Until we had intercourse. We had sex.
- 20 Q. Okay. So did she object to you brushing her hair?
- 21 A. No.
- 22 Q. Were you-all kissing each other?
- 23 A. Yes.
- 24 Q. Did she kiss you back?
- 25 A. Yes.

- 1 Q. Did she object to you kissing her?
- 2 A. No.
- 3 Q. How did you -- where did you have sex?
- 4 A. On top of her bed.
- 5 Q. All right. And how did it work out that -- that
- 6 you-all went from standing in the room to being on the bed?
- 7 A. I called her in the room.
- 8 Q. Well, I under --
- 9 A. I went to the restroom and on the way back, I called
- 10 her to the room --
- 11 Q. Okay.
- 12 A. -- and I asked her to come in and she came.
- 13 Q. Okay. How did she get from being in the room to on
- 14 the bed? How does both of you get from being in the room
- 15 to on the bed?
- 16 A. We walked to the bed.
- 17 Q. Okay. Okay. Were you fully clothed at that time?
- 18 A. Uh-huh. Yes, ma'am.
- 19 Q. Okay. And did -- did you get under the covers of the
- 20 bed?
- 21 A. No.
- 22 Q. Just on top of the bed?
- 23 A. Yes, ma'am.
- 24 Q. With your -- with your clothes on?
- 25 A. We started taking our clothes off. I just took my

1 pants off.

2 Q. Uh-huh.

3 A. J.H. had on a skirt, a miniskirt, so she removed
4 the skirt.

5 Q. Okay. Okay. And what type of sexual activity
6 occurred at that time?

7 A. We had sex. I penetrated her vagina. We had sex.

8 Q. Just sort of -- just sort of garden variety sex?

9 A. Yes, ma'am.

10 Q. All right. About how long do you think that lasted?

11 A. Ten to twelve minutes.

12 Q. All right. And what happened after that?

13 A. By this time, it was late. She said she was tired and
14 she was gonna wait for Brian to get home, so I stayed a few
15 minutes and talked to her and I left.

16 Q. Where was the baby while you-all were having sex?

17 A. The baby was asleep.

18 Q. Okay. Now did you see the Deans between that first
19 day you met them and had sex with J.H. and November
20 the 18th of 2015?

21 A. Yes, ma'am.

22 Q. All right. How did Brian act towards you?

23 A. He was friendly.

24 Q. All right. How did J.H. act towards you?

25 A. She was friendly, too. A little withdrawn, but

1 friendly.

2 Q. All right. Now did a situation ever arise about
3 Brian's EBT card?

4 A. Yes, ma'am.

5 Q. And tell the jury what happened with that.

6 A. Yes, ma'am. Brian -- I was over at the house. We
7 was just communicating, me and Brian was talking. I don't
8 remember where JH was. I think she was in the other
9 room. Well, Brian didn't have any cigarettes and I think
10 I asked -- I asked for something to drink, so they told
11 me to go in the refrigerator. I went and looked. The
12 refrigerator was full and I commented on the refrigerator
13 being full of food. Some kind of way the -- the EBT card
14 came up, so I volunteered that I could sell the EBT card
15 for them to get them a few dollars.

16 Q. Uh-huh.

17 A. Brian gave me the card and the PIN number.

18 Q. Okay.

19 A. Yes, ma'am. I took the card and left sometime later
20 on.

21 Q. Uh-huh.

22 A. The next day came by, I stopped by. I didn't have the
23 card. Brian asked me for the card. I came over again that
24 same afternoon, Brian asked me about the card, so I went
25 and got the card, brought him the card back, but I didn't

1 give him the money until the next day.

2 Q. Uh-huh. Okay. Now where were you when Brian gave you
3 the EBT card?

4 A. In the living room.

5 Q. Of their house?

6 A. Yes, ma'am.

7 Q. Was anyone else in the living room and witnessed that
8 happen?

9 A. No.

10 Q. Okay. So J.H. [REDACTED] wasn't in the room?

11 A. She was in the other room.

12 Q. All right.

13 A. J.H. [REDACTED] was in the other room.

14 Q. And, of course, the baby wasn't in the room, the
15 toddler?

16 A. No, ma'am, she wasn't there.

17 Q. All right. Did you continue to socialize with Brian
18 and J.H. [REDACTED] after that?

19 A. Yes, ma'am.

20 Q. All right. And what kind of contact did you have with
21 them?

22 A. I would stop by occasionally. Me and Brian would
23 talk.

24 Q. All right.

25 A. We -- I would even walk him as far as Taylor's to

1 work, halfway to work, and then I would just go on my way.

2 Q. Okay. Did you ever spend the night in their house?

3 A. Yes, I did.

4 Q. On how many occasions?

5 A. Just once.

6 Q. All right. And were both of the -- were both halves
7 of the couple there at that time?

8 A. Yes, ma'am.

9 Q. All right. Did you ever eat food over there?

10 A. No. I ate some chips or something one time.

11 Q. Okay. All right. Well, let me direct your attention
12 to November 18th, all right?

13 A. Yes, ma'am.

14 Q. How did you come to be in contact with either J.H. or
15 Brian that day?

16 A. I had left my sister's house on James Street. That's
17 a block behind Julius Felder.

18 Q. Uh-huh.

19 A. And I was walking home and I remembered that we had
20 previously discussed some baby food.

21 Q. Uh-huh.

22 A. So I -- I didn't have any funds at that time and I
23 said well, I'm gonna go by J.H. and get the baby food
24 and try to sell it --

25 Q. All right.

1 A. -- so I walked right around the corner.

2 Q. Let me ask you this. Why did you think J.H. would
3 want to sell her baby food?

4 A. She said the baby didn't eat it anymore. The jars of
5 baby food, she had outgrown it, she didn't want to eat it.

6 Q. Okay. So you thought you could do what with the baby
7 food?

8 A. Sell it.

9 Q. Okay. So if you were thinking about selling that baby
10 food, what did you do?

11 A. I went by J.H. I went --

12 Q. Okay. Did you knock on the door?

13 A. Yes, ma'am. On the back door. I knocked.

14 Q. Who let you in?

15 A. J.H.

16 Q. Okay. Did you talk about selling the baby food?

17 A. We talked for a few minutes and then I asked her about
18 the food. She was excited. She said yeah. She even had
19 some small Pampers up there and I asked her did she want to
20 sell them and she said no, her neighbor that was next door,
21 she was gonna give the Pampers to the neighbor.

22 Q. Okay.

23 A. So we sat on the floor -- not sat on the floor, but
24 we got two Food Lion plastic bags and put the jars of baby
25 food in.

- 1 Q. Uh-huh. Okay. And what did you do with the bags of
2 baby food?
- 3 A. I'm walking down -- I leave with the baby food.
- 4 Q. Uh-huh.
- 5 A. I'm walking down Julius Felder with two bags of baby
6 food taking it to One Love 2.
- 7 Q. Okay. The convenience store?
- 8 A. Yes, ma'am.
- 9 Q. Okay. Did you think you would be able to sell it
10 there?
- 11 A. Yes, ma'am.
- 12 Q. Okay.
- 13 A. I'm familiar with Pete that owned the store, but
14 unfortunately he said he couldn't use it.
- 15 Q. Okay.
- 16 A. Yes, ma'am.
- 17 Q. And so then what did you do with the bags of baby
18 food?
- 19 A. I left out of the store. Bright idea. My niece was
20 pregnant at the time on James Street, so I walked around
21 James Street, asked my niece did she want to buy baby food.
22 She said not right now, I get a voucher for that, so I
23 left. I talked -- talked to my niece for a while and then
24 I left.
- 25 Q. Okay. And you still had the baby food?

- 1 A. Yes, ma'am.
- 2 Q. And where did you go with the baby food?
- 3 A. I went back to J.H. [REDACTED] with the baby food.
- 4 Q. Okay. And what door did you go to; front or back?
- 5 A. I went to the back door.
- 6 Q. Okay. And how did you get into the house?
- 7 A. I knocked.
- 8 Q. Okay. And who let you in?
- 9 A. J.H. [REDACTED]
- 10 Q. Did she say don't come in?
- 11 A. No, ma'am.
- 12 Q. Did she say go away, leave me alone?
- 13 A. No.
- 14 Q. About what time of day was it?
- 15 A. I can't remember.
- 16 Q. Okay. Can you give us a general idea?
- 17 A. It was early afternoon -- excuse me, late afternoon,
- 18 getting into the evening time. It was --
- 19 Q. Okay. Was it light outside or dark outside or
- 20 something else?
- 21 A. It was light outside.
- 22 Q. Okay. And what happened once you got into the house?
- 23 A. I knocked, she answered the door. I told her I
- 24 couldn't sell the baby food. We talked for a while. I
- 25 asked her did she eat.

1 Q. Uh-huh.

2 A. She said no.

3 Q. Uh-huh.

4 A. So I say -- I told her that my mom probably cooked,
5 I'll go -- I'll be back, I'll go see.

6 Q. All right.

7 A. I left out, went around the house, went maybe a block
8 and made a right, went on Allen Street to my mom's house,
9 [REDACTED] -- Apartment [REDACTED]. My mom had cooked, so I fixed a
10 plate of food.

11 Q. All right. And what kind of -- what was in that plate
12 of food?

13 A. Rice, gravy, hamburger or either steak --

14 Q. Steak?

15 A. -- but it was smothered in gravy. Cube steak.

16 Q. Okay. Cube steak or hamburger with gravy?

17 A. Yes, ma'am. And some sweet peas or something like
18 that.

19 Q. All right. And did you take any utensils over?

20 A. Yes. My mother have a lot of grand kids, so I looked
21 in the drawer and got a pink fork --

22 Q. Uh-huh.

23 A. -- or a colored fork --

24 Q. Yeah. Okay.

25 A. -- or a spoon. I can't -- I said a fork, but a baby,

1 it probably was a spoon.

2 Q. Okay.

3 A. Yes, ma'am.

4 Q. So once you -- and what did you put the food in?

5 A. Aluminum foil I'm pretty sure.

6 Q. Okay.

7 A. Yes, ma'am.

8 Q. And once you had the food, where did you go, if
9 anywhere?

10 A. I went back around to JH

11 Q. All right. And once you got there, what happened?

12 A. I went back to the back door and knocked again.

13 Q. Uh-huh. Okay. And did somebody let you in?

14 A. JH.

15 Q. Okay. Did she say go away?

16 A. No, ma'am.

17 Q. Did she say don't come in?

18 A. No, ma'am.

19 Q. All right. So you went in?

20 A. Yes, ma'am.

21 Q. And what happened then?

22 A. I gave her the food.

23 Q. All right. And then what happened?

24 A. We sat and talked for a while. She didn't feed the
25 baby, I didn't feed the baby. We just talked for a minute.

- 1 Q. Did -- did she eat any of the food?
- 2 A. No, ma'am.
- 3 Q. Did you?
- 4 A. No.
- 5 Q. Okay. So where were -- where were you in the house
- 6 when you were talking?
- 7 A. In the kitchen between the baby's room, in between.
- 8 Q. Okay. And then what happened next?
- 9 A. We talked some more. I told her she looked good
- 10 today.
- 11 Q. Uh-huh.
- 12 A. I touched her face, hair.
- 13 Q. Did she seem uncomfortable with you coming into the
- 14 house?
- 15 A. No.
- 16 Q. Did she seem scared that you were there?
- 17 A. No, ma'am.
- 18 Q. Was she aloof or friendly to you?
- 19 A. She was friendly.
- 20 Q. Okay. What was her reaction to you touching her hair
- 21 and telling her how pretty she is?
- 22 A. She was just standing there.
- 23 Q. Okay. Did she say anything to you?
- 24 A. No.
- 25 Q. Okay. Now what happened next?

1 A. I asked her about having sex, you know.

2 Q. And what was her response?

3 A. She say yes.

4 Q. Okay. So what did you do next?

5 A. I removed her tights.

6 Q. Okay.

7 A. I took my pants off.

8 Q. Where was she when -- when you took off her tights?

9 A. Standing by that mat in the baby's room.

10 Q. All right. And how did you remove her tights?

11 A. From the waist.

12 Q. All right. Did she say don't do that?

13 A. No, ma'am.

14 Q. Did she say stop?

15 A. No, ma'am.

16 Q. Did you threaten her to make her let you do it?

17 A. No, ma'am.

18 Q. Did you say that you would hurt her child?

19 A. No.

20 MS. PATTERSON: Objection, Your Honor. She's
21 leading.

22 THE COURT: Sustained.

23 MS. FULLWOOD: All right.

24 BY MS. FULLWOOD:

25 Q. Did she object to you pulling off her tights?

- 1 A. No, ma'am.
- 2 Q. All right. Where was the toddler?
- 3 A. She was in the -- in her room just moving around.
- 4 Q. The same room that you-all were about to have sex in?
- 5 A. Yes, ma'am.
- 6 Q. All right. Once you took her tights off, what -- what
- 7 happened?
- 8 A. We started kissing.
- 9 Q. Uh-huh.
- 10 A. It was a chair in the room.
- 11 Q. Okay.
- 12 A. We started on the chair and --
- 13 Q. Uh-huh. Well, when you're in the chair --
- 14 A. Yes, ma'am.
- 15 Q. -- how did you get to the chair?
- 16 A. We walked.
- 17 Q. You walked?
- 18 A. Yes, ma'am.
- 19 Q. Did you force her over there?
- 20 A. No, ma'am.
- 21 Q. Did she resist going to the chair?
- 22 A. No, ma'am.
- 23 Q. While you were going over to the chair, did you have
- 24 all of your clothes on?
- 25 A. Yes, ma'am.

1 Q. So what exactly did you do in the chair?

2 A. I had oral sex.

3 Q. Okay.

4 A. We had oral sex.

5 Q. Okay. And did she tell you not to do that?

6 A. No, ma'am.

7 Q. Did she try to stop you from doing that?

8 A. No, ma'am.

9 Q. Did she act scared while you were doing that?

10 MS. PATTERSON: Objection, Your Honor.

11 THE WITNESS: No, ma'am.

12 MS. PATTERSON: Again, leading.

13 THE COURT: Sustained. You can ask him generally
14 how she behaved.

15 MS. FULLWOOD: Okay. Yes, sir.

16 BY MS. FULLWOOD:

17 Q. What happened after you had oral sex on the chair?

18 A. I took my pants off.

19 Q. All right. And what happened from there?

20 A. We moved to the -- I want to say it was a bed in
21 there, but I'm not sure. We wasn't on the mat, so I think
22 it was a bed in there.

23 Q. Okay.

24 A. Yes, ma'am.

25 Q. And what -- at this point she has her tights off,

- 1 right?
- 2 A. Yes, ma'am.
- 3 Q. Does she have anything else on?
- 4 A. No, ma'am. Well, her top was on.
- 5 Q. Okay.
- 6 A. Yeah.
- 7 Q. How did it get off? Who took it off; you or her?
- 8 A. Her top wasn't off.
- 9 Q. Pardon?
- 10 A. Her top wasn't off.
- 11 Q. Oh, it wasn't off?
- 12 A. No, ma'am. Her top wasn't off.
- 13 Q. Okay. Okay. What about you? What was your state of
- 14 dress?
- 15 A. At this time when we moved to the -- to the bed, I'm
- 16 gonna -- bed, I had took my pants off.
- 17 Q. Okay. And what happened then?
- 18 A. We had sex.
- 19 Q. All right. And are you referring to penile
- 20 penetration of the vagina?
- 21 A. Yes, ma'am.
- 22 Q. All right. Did she act in any way that lead -- would
- 23 lead you to believe that she did not want you to do that?
- 24 A. No, ma'am.
- 25 Q. All right. And where was the baby at this time?

1 A. The baby had came and got up on the bed -- the bed
2 now --

3 Q. Uh-huh.

4 A. -- and just was trying to get to J.H.

5 Q. Uh-huh.

6 A. And she just was on the bed --

7 Q. Okay.

8 A. -- just back and forth. Right from the wall to the
9 bed.

10 Q. Okay. And did you push the baby in any way?

11 A. No.

12 Q. Did you do any -- do anything to harm the baby?

13 A. No, ma'am.

14 Q. Did you speak harshly to the baby?

15 A. I might have set the baby -- I set the baby down on
16 the floor one time. I picked the baby up. I'm -- yes.

17 Q. Did you fuss at the baby?

18 A. No. Never.

19 Q. Okay. Were you -- did you have this intercourse to
20 the point of ejaculation?

21 A. Could you explain that?

22 Q. Did you finish having the sexual intercourse?

23 A. No, ma'am.

24 Q. What happened with that?

25 A. The baby kept interfering, so I just got up.

- 1 Q. Okay. And what -- how was the baby acting?
- 2 A. She was a little agitated.
- 3 Q. And what do you mean by that?
- 4 A. She just was -- she wasn't whining and screaming, but
- 5 she was just a little -- she wanted to be with J.H. [REDACTED]
- 6 Q. Okay.
- 7 A. She wanted her mother.
- 8 Q. Okay. So you said the baby kept interrupting?
- 9 A. Yes, ma'am.
- 10 Q. So what, if anything, did you do?
- 11 A. I just got up, continued to masturbate.
- 12 Q. Okay. And so did you ejaculate?
- 13 A. Yes, ma'am.
- 14 Q. Was it inside J.H. [REDACTED]
- 15 A. No. No.
- 16 Q. Where did you ejaculate?
- 17 A. On the floor.
- 18 Q. All right. Did you and J.H. [REDACTED] say anything to each
- 19 other while you were having these sexual encounters in the
- 20 baby's room?
- 21 A. No, ma'am.
- 22 Q. Okay. Once you ejaculated, what happened?
- 23 A. I got up, put my pants on.
- 24 Q. All right. And what did J.H. [REDACTED] do?
- 25 A. She got dressed, too.

1 Q. All right. Did you talk to each other anymore?

2 A. Yes, ma'am.

3 Q. All right. And do you remember what you talked about?

4 A. No, ma'am.

5 Q. All right. About how much longer did you remain at
6 her house?

7 A. It wasn't long. Maybe about five, ten minutes.

8 Q. Did she kick you out?

9 A. Ma'am?

10 Q. Did she kick you out?

11 A. Oh, no, ma'am. No, ma'am.

12 Q. Okay. And while you were there, at any time did you
13 see J.H. very tearful, shaking, agitated, extremely upset?

14 A. No.

15 MS. PATTERSON: Objection, Your Honor. Again,
16 leading.

17 THE COURT: I think that one was fair game. You
18 can answer that.

19 THE WITNESS: No, ma'am.

20 BY MS. FULLWOOD:

21 Q. All right. What, if anything, did you observe about
22 her behavior while you were in the process of leaving her
23 house?

24 A. She was just trying to get the baby comfortable, to
25 calm down.

1 Q. All right.

2 A. I was talking to her. I went towards the back door
3 and I told her I'd talk to her later. No, as a matter of
4 fact, I told her I would see her on Friday.

5 Q. Uh-huh.

6 A. I asked her could I come by on Friday.

7 Q. Okay.

8 A. I don't remember what she said, but I -- I told her I
9 would be back on Friday. I'd stop by and check on her on
10 Friday.

11 Q. Okay.

12 A. Yes, ma'am.

13 Q. And what day of the week was that? I mean, the -- the
14 -- on the 18th, was that a Wednesday?

15 A. Yes. Yes, ma'am.

16 Q. All right. And did -- how did you leave the house?
17 What door did you use?

18 A. Out the back door.

19 Q. Okay. Do you know what time it was when you left?

20 A. No, ma'am.

21 Q. All right. Now let's talk about December the 10th of
22 2015. Do you remember talking to the officers at Cayce
23 Public Safety?

24 A. Yes, ma'am.

25 Q. All right. And how old were you then?

1 A. Forty-seven.

2 Q. Forty-seven. And I notice you're wearing glasses
3 right now.

4 A. Yes, ma'am.

5 Q. When you were forty-seven years old, could you read or
6 look at small things without using glasses?

7 A. No, ma'am.

8 Q. Okay. Can you explain to the jury what kind of
9 glasses you needed at that point in time?

10 A. These are 125's, but to see far away I have to have
11 125's. I'm supposed to have glasses, but to see up close I
12 need 325's now, but probably at that time four years ago I
13 had maybe 225's or something. My eyes have gotten really
14 bad lately.

15 Q. Okay. And do you remember the officers asking you if
16 you knew Brian or J.H. [REDACTED]

17 A. Yes, ma'am.

18 Q. Do you remember them giving you your advice of rights
19 that we saw yesterday?

20 A. Yes, ma'am.

21 Q. Okay. What, if anything, did you tell them about that
22 form?

23 A. I couldn't see it.

24 Q. Okay.

25 A. I couldn't see it.

1 Q. All right. And what did you tell them about whether
2 or not you knew the Deans?

3 A. Ma'am?

4 Q. What did you tell them about whether or not you knew
5 the Deans?

6 A. I told them I couldn't see them.

7 Q. All right.

8 A. Yes, ma'am.

9 Q. All right. And they showed you pictures?

10 A. Yes, ma'am.

11 Q. All right. And did you have glasses to see the
12 pictures?

13 A. No, ma'am.

14 Q. Did they ever get you glasses?

15 A. Yes, ma'am.

16 Q. Okay. Where did they get them from to your knowledge?

17 A. From the secretary.

18 Q. Okay. And did you identify either of them, the Deans,
19 for the officers?

20 A. No, ma'am.

21 Q. Was there a reason you didn't want to?

22 A. Yeah, I wanted to keep the glasses and he -- he --
23 the detective said I couldn't have them, so I ended the
24 interview.

25 Q. Okay. So, what, did it make you mad you couldn't keep

1 the glasses and you just didn't want to talk anymore?

2 A. Not mad. I just -- yes, ma'am.

3 Q. Okay. Mr. Furtick --

4 A. Yes, ma'am.

5 Q. -- on November 18, 2015, did you go into Brian and

6 J.H. [REDACTED] house without their permission?

7 A. No, ma'am.

8 Q. Did you have anything other than consensual sexual
9 intercourse and activity with J.H. [REDACTED] on that day?

10 A. No, ma'am.

11 Q. Did you threaten, force or coerce J.H. [REDACTED] on that
12 day to have sex with you?

13 A. No, ma'am.

14 Q. Did you injure her or her child in any way to get her
15 to have sex?

16 A. No, ma'am. No, ma'am.

17 Q. Did you make threats against them in any way?

18 A. No, ma'am.

19 MS. FULLWOOD: No further questions.

20 THE COURT: Ms. Patterson, cross.

21 MS. PATTERSON: Yes, sir. Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. PATTERSON:

24 Q. Mr. Furtick, once again, let's go over your prior
25 convictions that you've had. You've had some experience

1 in the system, haven't you?

2 A. Yes, ma'am.

3 Q. And, once again, on July 28, 2010, you were convicted
4 of a felony that was punishable by more than a year,
5 correct?

6 A. Yes.

7 Q. And on May 10, 2012, you were convicted of a larceny,
8 correct?

9 A. Yes.

10 Q. And that's a theft, right?

11 A. Yes.

12 Q. And on December 18, 2012, you were convicted again on
13 two separate crimes that were punishable by more than a
14 year, correct?

15 A. Yes.

16 Q. And on August 11, 2015, you have another conviction
17 for larceny, correct?

18 A. Yes.

19 Q. And on Monday you testified in a hearing related to
20 this case, didn't you?

21 A. Yes, ma'am.

22 MS. PATTERSON: Your Honor, permission to approach
23 the witness?

24 THE COURT: You may.

25 BY MS. PATTERSON:

1 Q. And you got your glasses on, so you can read that,
2 correct?

3 A. I have to change, ma'am.

4 Q. Before we go to that transcript, let me ask you this.
5 So you want this jury to believe that in early October you
6 met Brian Dean and on that same day you went to his house
7 with he, his wife and his little girl and he left and went
8 to work and left you alone with his wife and little girl?

9 A. Yes, ma'am.

10 Q. And you want this jury to believe on that same day you
11 and J.H. had sex?

12 A. Yes, ma'am, we did.

13 Q. And you stated today that you had sex in the bedroom,
14 correct?

15 A. Yes.

16 Q. Now let's turn to that transcript that I just handed
17 you up from Monday of this week related to this case and
18 let me focus your attention to page 6, line 10.

19 And isn't it a fact that statement reads: She came
20 back, we looked at some more pictures, me, her and her
21 little girl, in the living room. One thing led to another
22 and we had intercourse.

23 A. Yes, ma'am.

24 Q. Is that what that statement says from Monday of this
25 week?

1 A. Yes, ma'am.

2 Q. But today you said that you had sex with J.H. in her
3 bedroom, didn't you?

4 A. Yes, ma'am.

5 Q. So what is it, Mr. Furtick? Did you have sex on that
6 early October afternoon the first day you met Brian and
7 J.H. in the living room or was it her bedroom?

8 A. No, on the 18th it was in the little girl's room. On
9 this date, the first date, it was in the -- in her room.

10 Q. Okay.

11 A. Yes, ma'am.

12 Q. But that's not what you testified to on Monday, did
13 you, what I just read? You said it happened in the living
14 room. One thing led to another. We had intercourse,
15 correct?

16 A. Yes.

17 Q. So, again --

18 A. I didn't state in the -- in the living room. We -- we
19 went to her room the first day.

20 Q. Okay.

21 A. Yes, ma'am.

22 Q. So -- and today you stated that on that first day that
23 you met J.H. and you-all had sex, she had on a skirt.

24 A. Yes, ma'am.

25 Q. That's what you're saying today, correct?

1 A. Yes.

2 Q. And, again, I bring your attention to that same
3 page, 6 --

4 A. Yes.

5 Q. -- line 7. On Monday of this week you said, I don't
6 remember what she had on, didn't you?

7 A. No. What line you said, ma'am?

8 Q. Line 7. What does that say?

9 A. Okay. I said in line 6, we continued to look through
10 that photo album and I asked her did she want to go slip on
11 something more comfortable, and I don't remember what she
12 had on, but I know I asked her that.

13 Q. So Monday this week you didn't remember what she had
14 on, but today you're stating that she had on a skirt?

15 A. At the time she changed, I didn't know what she
16 had on, but she went and slipped on a skirt, ma'am --
17 Ms. Patterson. At the time she changed, I didn't know what
18 -- I can't remember what she had on, but she went and put
19 on a skirt.

20 Q. Okay. And you had an opportunity to speak with law
21 enforcement about this case, didn't you?

22 A. Yes, ma'am.

23 Q. And at the time you were forty-seven years old,
24 correct?

25 A. Yes.

1 Q. Were you working anywhere, Mr. Furtick?

2 A. No, I was not.

3 Q. Did you have -- you didn't have a car either, did you?

4 A. No, ma'am.

5 Q. In fact, you just kind of wandered the neighborhood a
6 lot, didn't you?

7 A. No, ma'am.

8 Q. And you stated today that you offered to engage into
9 some illegal activity with Brian Dean by selling his EBT
10 card for money, didn't you?

11 A. I offered to help him.

12 Q. And on December 10, 2015, you spoke to law enforcement
13 about this case and Lieutenant Merrill read you your
14 rights, didn't he?

15 A. Yes, ma'am.

16 Q. And at no point did you say you didn't understand
17 these rights, did you?

18 A. I told him I couldn't see them.

19 Q. But you never said you didn't understand these rights,
20 did you?

21 A. No, I never said I couldn't -- didn't understand them,
22 no.

23 Q. Because, after all, you've had some experience in the
24 system, hadn't you?

25 A. Yes, ma'am.

1 Q. And you've had those rights read to you over and over,
2 hadn't you?

3 A. Yes.

4 Q. And you know that you have the right to remain silent,
5 don't you?

6 A. Yes.

7 Q. And that means that you didn't have to say anything
8 or answer any questions, didn't it?

9 A. No.

10 Q. And you knew that any response that you gave could be
11 used against you in a court of law, didn't you?

12 A. Yes.

13 Q. But yet you chose to speak to law enforcement, didn't
14 you?

15 A. Yes, ma'am.

16 Q. And law enforcement told you the purpose of the
17 investigation was due to a criminal investigation, didn't
18 they?

19 A. No, ma'am.

20 Q. They didn't tell you this was related to a criminal
21 investigation?

22 A. No, ma'am.

23 Q. They didn't tell you this --

24 A. They didn't use the word "criminal", ma'am.

25 Q. Okay. But they told you it was related to an assault,

1 didn't they?

2 A. Assault and trespassing.

3 Q. And a trespass, didn't they?

4 A. Yes, ma'am.

5 Q. And based on your experiences, you know those are
6 criminal activities, didn't you?

7 A. Yes.

8 Q. And isn't it true that even though you didn't have
9 your glasses, they told you J.H. [REDACTED] name, didn't they?

10 A. Yes.

11 Q. Okay. And you say you didn't know her, didn't you?

12 A. I told them I didn't have any glasses.

13 Q. And you told them you didn't know J.H. [REDACTED] didn't you?

14 A. I told them I didn't have any glasses.

15 Q. Okay. Well, let's turn to page 8 of that transcript
16 that I gave you.

17 A. Page 8?

18 Q. Yes. And let me begin reading on line 14, and I
19 asked you on Monday, and you said you didn't know her and
20 your response, line 15, was yes, ma'am. And I asked you
21 even though they told you her name and you said they may
22 have, so isn't it true they gave you J.H. [REDACTED] name?

23 A. You say that's line 15 -- you started at 14?

24 Q. Yes, sir.

25 A. Okay. If you go back to 13, I said yes, ma'am, I

1 looked at the pictures, and then 14, and you said you
2 didn't know her. I'm saying about the pictures because I
3 couldn't see them.

4 Q. And then line 16 --

5 A. Yes, ma'am.

6 Q. -- isn't it true I asked you, and they told you her
7 name, J.H. [REDACTED] correct?

8 A. They may have.

9 Q. And, again, you told them you didn't know her, didn't
10 you?

11 A. Yes.

12 Q. So even if you couldn't see that picture because you
13 didn't have your glasses, they told you J.H. [REDACTED] name
14 and you said you didn't know her, right?

15 A. Yes. I said I wanted some glasses.

16 Q. But, again, you stated you didn't know her, right?

17 A. I told them I needed some glasses.

18 Q. Did you need your glasses to admit you knew somebody
19 named J.H. [REDACTED]

20 A. I only answered the question because I wanted some
21 glasses, ma'am.

22 Q. And then you said today they gave you some glasses,
23 correct?

24 A. Yes, ma'am.

25 Q. And so, again, after they gave you the glasses, isn't

1 it true you still told them you didn't know J.H. [REDACTED]
2 the woman that you are sitting up here saying you had
3 consensual sex with, correct?

4 A. I asked Officer Merrill could I keep the glasses.
5 He said the secretary wanted them back and I ended the
6 interview.

7 Q. But before the interview was over, you wouldn't admit
8 to knowing J.H. [REDACTED] right?

9 A. I -- I didn't admit to knowing no one. I couldn't
10 see them, ma'am.

11 Q. But you could hear, couldn't you?

12 A. They -- I couldn't see.

13 Q. You but could hear, couldn't you?

14 A. I can hear real good. Yes, ma'am.

15 Q. And they also showed you a picture of Brian Dean,
16 didn't they?

17 A. Yes, ma'am.

18 Q. And they told you his name, didn't they?

19 A. I couldn't see, ma'am. That's what I kept telling
20 the detective, I couldn't see. I wanted the glasses. You
21 don't know how it is walking around when you can't see.

22 Q. And go back to -- go to line 23 on page 8 of the
23 transcript from Monday of this week.

24 A. Yes, ma'am.

25 Q. And I asked you, again, you told them that you did

1 not know that person, being Brian Dean, didn't you, and
2 your response was yes.

3 A. Yeah, they showed me a picture of him and I said I
4 didn't know him because I couldn't see him.

5 Q. But you could hear his name, correct?

6 A. Yes.

7 Q. And they even told you where J.H. and Brian lived,
8 didn't they?

9 A. Yes, ma'am.

10 Q. And you were familiar with that house, wasn't you?

11 A. I'm familiar with the house.

12 Q. Okay. Because you walk by it all the time, don't
13 you?

14 A. Sometimes.

15 Q. And based on what you're saying today, you've been
16 all over that house because you've been having sex with
17 J.H. all through that house, right?

18 A. No, only twice, ma'am.

19 Q. But you know the house, correct?

20 A. (No verbal response.)

21 Q. And, again, you told law enforcement -- because they
22 didn't show you a picture of that house, did they?

23 A. I pass it all the time walking. No, they did not show
24 me a picture of it.

25 Q. And you told them that you had not been in that house

1 for months, didn't you?

2 A. Yes, ma'am.

3 Q. And now you want this jury to believe that on
4 November 18, 2015, that you went to J.H. [REDACTED] house just to
5 give her some food?

6 A. No, ma'am. That ain't what I said, ma'am.

7 Q. Okay. You went to sell -- help her sell some baby
8 food.

9 A. Yes, ma'am.

10 Q. Is that what you said?

11 A. Yes, ma'am. There you go.

12 Q. And then you came back with some food from your
13 momma's house, correct?

14 A. Yes.

15 Q. And you admitted that you did lay hands on the baby,
16 didn't you?

17 A. No, never.

18 Q. Didn't you say you sat the baby down on the floor?

19 A. That's not laying on hands, ma'am.

20 Q. Well, how did you set the baby on the floor if you
21 didn't use your hands?

22 A. I just picked her up and set her down.

23 Q. And you will admit that the baby kept coming in and
24 out of the room, correct?

25 A. Could you repeat the question, please?

1 Q. And you said the baby kept interfering, didn't you?

2 A. Yes, ma'am.

3 Q. So you got up, correct?

4 A. Yes.

5 Q. And you agree the baby was very agitated, wasn't she?

6 A. Yeah, she wanted her mother.

7 Q. And you will admit that you told J.H. you would be
8 back on Friday, didn't you?

9 A. Yes, ma'am. I didn't tell her. I -- I more or less
10 asked. It was a statement, ma'am.

11 Q. And isn't it true you like to go by a lot of different
12 names?

13 A. No, ma'am.

14 Q. So you never go by Todd?

15 A. No, ma'am.

16 Q. You only go by Rodney?

17 A. Yes, ma'am. I have a nickname, but it's not Todd,
18 ma'am.

19 Q. And what is your nickname?

20 A. Sawdust.

21 Q. And isn't it true that you knew that Brian and J.H.
22 had moved away, didn't you?

23 A. No.

24 Q. I'm sorry?

25 A. No, ma'am.

1 Q. You didn't know that they had moved away?

2 A. No, ma'am.

3 Q. But you walked that Julius Felder Street all the time,
4 correct?

5 A. Yes.

6 Q. You walk by that time all the time, correct?

7 A. Yes.

8 Q. And you didn't never wonder what happened to your
9 friend Brian, who you were sleeping with his wife?

10 A. No, ma'am.

11 Q. You never wondered?

12 A. No.

13 Q. You never wondered what happened to J.H. this woman
14 that you were supposedly having a consensual relationship
15 with, you never wondered what happened to her?

16 A. No.

17 Q. Okay.

18 MS. PATTERSON: I beg the Court's indulgence,
19 Your Honor.

20 THE COURT: Yes, ma'am.

21 BY MS. PATTERSON:

22 Q. And turn to page 11 of that transcript and go to
23 line 21. Excuse me, start at line 18.

24 A. Yes, ma'am.

25 Q. Where I asked you if you're saying -- and you're

1 saying that you didn't recognize her name. Even if you
2 couldn't see the picture, you didn't recognize her name,
3 and your response was did I recognize her name? Yes,
4 ma'am. Isn't that correct?

5 A. Yes.

6 Q. And line 22 I asked, because you told law enforcement
7 you didn't know J.H. [REDACTED] didn't you? And you stated you
8 needed some reading glasses, correct?

9 A. Yes, ma'am.

10 Q. But, again, on line 25 I asked you again, but they
11 told you the name J.H. [REDACTED] and your response on the next
12 page was what, sir?

13 A. You say 25 at the bottom of page 11?

14 Q. The bottom of page 11, 25, I just reiterated to you
15 but they told you the name J.H. [REDACTED] and on page 12 what
16 was your response?

17 A. Yes, ma'am.

18 Q. So even if you didn't have your glasses, you could
19 hear the name, but you wouldn't admit on December 10, 2015,
20 three weeks after this incident that you even knew J.H. [REDACTED]
21 did you?

22 A. I kept telling the detective I needed some reading
23 glasses.

24 Q. But wouldn't admit to even knowing her after hearing
25 her name, would you?

1 A. I kept telling them I wanted some reading glasses.

2 Q. You wouldn't admit to knowing her husband even after
3 hearing his name, would you?

4 A. I wanted some reading glasses.

5 Q. And you wouldn't admit to being in that house even
6 after knowing that address, would you?

7 A. Excuse me?

8 Q. And you wouldn't admit to being in that house on that
9 date even after hearing that address, would you?

10 A. I was in that house on -- on the date -- what date,
11 ma'am? I don't understand.

12 Q. On November 18th.

13 A. Yes, I was in the house.

14 Q. But would not admit that to law enforcement when they
15 interviewed you on December 10th of 2015, would you?

16 A. They didn't ask me that.

17 Q. They never asked you if you were in that house?

18 A. They asked me about DNA or something. I -- I'm
19 getting confused, ma'am. I don't know. It's been so long.
20 It's been four years ago. You're confusing me.

21 Q. Law enforcement told you that it was a criminal
22 investigation regarding -- that took place at the duplex
23 cinderblock house located on [REDACTED] Julius Felder Street in
24 Cayce.

25 A. Could you start over, ma'am? You -- lost me. I'm --

1 Q. Law enforcement told you they wanted to talk to you
2 about something that happened at the duplex on Julius
3 Felder Street, correct?

4 A. I don't remember.

5 Q. Okay. You can't remember. Turn to page 9 of the
6 transcript from this week, line 4. And I asked you, and
7 they told you it was a cinderblock house located at [REDACTED]
8 Julius Felder Street in Cayce, correct?

9 A. Yes, ma'am.

10 Q. And your response was yes, ma'am?

11 A. Yes, ma'am.

12 Q. So they told you that address and they told you a
13 description of that house, didn't they?

14 A. Yes, ma'am. I -- I know the house.

15 Q. But you didn't tell them you were in that house on
16 that day, did you?

17 A. No.

18 Q. But yet you want the jury to believe not only were
19 you in that house that day, but you were having consensual
20 sex with J.H. [REDACTED]

21 A. The only time he asked me about that house was about
22 the DNA and I had ended the interview because I didn't have
23 reading glasses.

24 Q. Isn't it a fact that you -- when he asked you about
25 this DNA, you said no, your DNA would not be in that house,

1 didn't you?

2 A. I didn't answer the question. I told him about
3 reading glasses, ma'am.

4 Q. So if Lieutenant Merrill got that in his report, his
5 report is wrong?

6 A. Yes, ma'am.

7 Q. Because you -- you didn't say that your DNA would not
8 be in that house?

9 A. I told him about reading glasses, ma'am. At the
10 time --

11 MS. FULLWOOD: Your Honor, I object. She's pitting
12 witnesses at this point.

13 THE WITNESS: Repeat the question.

14 THE COURT: What was the question, Ms. Patterson?
15 I'm sorry.

16 MS. PATTERSON: I asked him did he tell Lieutenant
17 Merrill that his DNA would not be in that house and then
18 I said if it was in the report, it would be wrong.

19 THE COURT: Overruled.

20 MS. PATTERSON: I beg the Court's indulgence,
21 Your Honor.

22 THE COURT: Yes, ma'am.

23 BY MS. PATTERSON:

24 Q. Mr. Furtick, isn't it true that you're just making up
25 this whole story because you became aware of those DNA

1 results, correct?

2 A. No, ma'am.

3 Q. Isn't it true you never had consensual sex with J.H. [REDACTED]

4 [REDACTED]

5 A. Twice.

6 MS. PATTERSON: No further questions, Your Honor.

7 THE COURT: Redirect.

8 MS. FULLWOOD: Nothing further, Your Honor.

9 THE COURT: Thank you. You can step down.

10 (Witness excused.)

11 THE COURT: Any additional witnesses?

12 MS. FULLWOOD: No, Your Honor. The defense rests.

13 THE COURT: Does the State anticipate calling any
14 reply testimony?

15 MS. PATTERSON: I beg the Court's indulgence for
16 a second, Your Honor.

17 THE COURT: Yes, ma'am.

18 MS. PATTERSON: No reply, Your Honor.

19 THE COURT: All right.

20 Well, ladies and gentlemen, we've now finished that
21 portion of this trial where you've received all of the
22 evidence that you're gonna have to deliberate on this
23 case and now I have the obligation to have what's known
24 as a charge conference with the attorneys that concerns
25 the law that I'm gonna instruct you on, and I anticipate

1 this will take probably about fifteen, twenty, thirty
2 minutes, somewhere in there. So I've already shared
3 with them the rough draft of the instructions that my
4 law clerk had worked up last night and we made some
5 revisions earlier this morning, so I'm gonna let you
6 adjourn to the jury room until such time as I can bring
7 you out here and then we'll proceed further with the
8 trial. I may talk to the clerk about perhaps getting
9 you-all some lunch today. Again, it may be the same as
10 yesterday, but we will see.

11 But adjourn to the back. Don't start talking
12 about the case and I'll have you back out here as soon
13 as possible, okay?

14 (Whereupon, the jury retires to the jury room
15 at 10:45 AM.)

16 THE COURT: My law clerk has gone to print
17 off the revised instructions and I have made several
18 revisions to them.

19 Did you want -- you wanted to renew all motions
20 or --

21 MS. FULLWOOD: I do.

22 THE COURT: Okay. Go ahead.

23 MS. FULLWOOD: And I just wanted to talk about a
24 scheduling matter also.

25 THE COURT: Sure.

1 MS. FULLWOOD: I would ask the Court for about
2 twenty to thirty minutes to collect my thoughts. May
3 I have that, please, sir?

4 THE COURT: Yeah, by all means. Is it okay if
5 Mr. Madsen looked at the instructions and you can take
6 a walk, have a cigarette, whatever you want to do or
7 how do you want to --

8 MS. FULLWOOD: I don't --

9 THE COURT: Or do you want to take a -- let's do
10 this. I'm gonna take a break. He's making copies of
11 the instructions.

12 MS. FULLWOOD: Okay.

13 THE COURT: You guys take a look at them --

14 MS. MAYES: We will, Your Honor.

15 THE COURT: -- take a walk around the block and
16 we'll see where we are, okay?

17 MS. FULLWOOD: Okay.

18 THE COURT: Thanks.

19 And the revisions have been substantial. I did
20 add -- I did add CSC third degree. The case that's very
21 similar, the Burroughs case from the Court of Appeals,
22 328 South Carolina 489, where the appellate court found
23 that a CSC third instruction was appropriate. Factually
24 that's a very similar case in some respects as to what
25 we may have here, but if you want to take a look. I

1 know the State objects to that.

2 MS. MAYES: We do object, Your Honor, because
3 there's been no evidence in the record. His -- his
4 testimony was every action was consensual. The victim's
5 testimony was that it occurred during the burglary,
6 which would make it a CSC first, but if the jury found
7 insufficient evidence of the burglary, she has testified
8 that there were verbal threats and coercion.

9 THE COURT: I understand.

10 MS. MAYES: There's been no testimony whatsoever
11 to support the absence of force or coercion.

12 THE COURT: Check out the Burroughs case and --
13 and if you care to distinguish that once we return from
14 the break, I'll be happy to hear from you then, but it's
15 at 328 South Carolina 489. If you need me to print you
16 a copy, I can probably find a printer.

17 MS. MAYES: We'll -- we'll get it, Your Honor.

18 THE COURT: Okay.

19 MR. MADSEN: Judge, we had some requested charges.
20 Do you want those now or --

21 THE COURT: Sure.

22 MR. MADSEN: And I will tell you the -- the basis
23 of this is basically twofold. First of all -- and
24 we've attached a copy of their indictment. Their
25 indictment on the CSC first specifically says that by

1 the use of aggravated force to accomplish the battery
2 and the victim submitted to the sexual battery under
3 circumstances of forcible confinement, kidnapping,
4 robbery, extortion, burglary or other similar offense.

5 We've also attached a copy of the Ledford case,
6 which is a case by Judge Griffith who was the trial
7 judge I believe out of your home circuit. In that
8 case, the State had placed in the indictment language
9 of willful, there was a request to charge, so our
10 request to charge is on the criminal sexual conduct that
11 Your Honor charged that if the actor engages in sexual
12 battery with the victim and the following circumstances
13 are proven since that is what the State has true billed
14 and alleged in their indictment. And, like I said, I
15 have a copy of that Ledford case.

16 And then obviously the second part, which might be
17 in your revisions, Your Honor did not have the definition
18 of aggravated force --

19 THE COURT: That's in there.

20 MR. MADSEN: -- and so I just copied that and I've
21 given the State a copy of those.

22 MS. MAYES: And, Your Honor, there's plenty of
23 caselaw that the indictment is a notice document only.
24 The statute controls and the statute is force.

25 THE COURT: I've added aggravated force, so we're

1 good on that.

2 MR. MADSEN: Okay. Like I said, that was kind
3 of a --

4 THE COURT: That was a typo on my part. I'm
5 sorry. Or my clerk's part. I think he had some
6 different versions of the stock instructions than
7 what I use. I understand your position. I'll reread
8 Ledford. I'm very familiar with it because it became
9 a nightmare in the Eighth.

10 MR. MADSEN: I think it's still going on.

11 THE COURT: It's still a nightmare.

12 MS. MAYES: In this situation, Your Honor, the
13 word "and" as opposed to "or" is simply a -- a typo.
14 That would be a stenographer's error.

15 THE COURT: I understand.

16 MS. MAYES: That's -- that's a preposition.
17 We're not required to prove both, only one. It's a
18 notice document. That's not the statute and the
19 statute controls.

20 MR. MADSEN: And that was the argument in Ledford
21 as far as the willful language also. I don't think
22 the Court of Appeals or Supreme Court reached that
23 because the issue ended up being the immediate
24 appealability. But, I mean, that is the notice
25 document that we received. That is what's been true

1 billed. We're at the end of the case. We've tailored,
2 you know, a large portion from the beginning to the end
3 those questions and that is what the State has placed in
4 their indictment.

5 MS. MAYES: No, that is not required. The State
6 only needs to prove one of those elements and we will
7 concede on the record we are not alleging aggravated
8 force. Throughout this case we have not alleged
9 aggravated force. Our only requirement is to meet
10 the element of commission during a burglary. That is
11 all that the State alleges, so we want the record to be
12 clear on that.

13 THE COURT: Okay.

14 MR. MADSEN: Then with the "and" in there, then
15 we're asking for that charge to be dismissed then if
16 the State's conceding that they can't meet their burden
17 of proof that they placed in their indictment.

18 MS. MAYES: The indictment does not control, the
19 statute controls.

20 THE COURT: I understand your positions, everyone.
21 Give me two seconds, please.

22 Okay. So the State -- and I understand your
23 position. So the State is saying that you do not feel
24 it's aggravated force, so it would not be necessary for
25 me to charge that portion of CSC first, correct?

1 MS. MAYES: That's correct, Your Honor.

2 THE COURT: Okay.

3 As a threshold matter -- my clerk's gonna pass
4 out the instructions. You-all take a look at them
5 and we'll address this all in a moment, okay? So smoke
6 them if you've got them. We'll be at ease. And we're
7 gonna pull the aggravated force from the CSC first part,
8 too, so I won't instruct that.

9 (Recess taken at 10:53 AM.)

10 (Back on the record at 11:19 AM.)

11 BAILIFF: All rise. Please come to order. Court
12 is now in session.

13 THE COURT: Thanks. Have a seat, please.

14 All right. We'll go back on the record. As it
15 relates to the Defendant's request to instruct basically
16 verbatim what was stated in the indictment, the Court's
17 gonna decline to do that for -- for two reasons. The
18 State's point that the indictment is a notice document
19 is well taken. The purpose of the indictment is to
20 apprise the Defendant of the charges that he has to
21 answer for and, too, secondly, affix double jeopardy
22 for any subsequent prosecutions.

23 The primary reason, however, and I have read the
24 case that was handed up with the instructions -- or
25 requested instructions by the defense, the Ledford

1 case, and, yeah, that case didn't reach -- reach the
2 ultimate question, but the primary responsibility of
3 this Court is to charge the law as it exists and I
4 would be remiss if I were to charge law that simply
5 does not exist and to the extent an indictment might
6 contain a typo, which apparently this one does by using
7 a conjunctive "and" as opposed to the disjunctive "or".
8 The Court has an obligation to tell the jury what the
9 law truly is as opposed to what the solicitor says it
10 is.

11 So being the final judge of the law I'm not gonna
12 -- I'm not inclined to instruct the jury on something
13 that is it not legally accurate. It would be similar
14 to if the State -- if the State sought to prove some
15 fact or some element which was not necessary and wanted
16 that language included in the Court's instruction, the
17 Court would decline to charge that language, and so I
18 do not intend to mislead the jury by giving a verbatim
19 charge from the indictment, which is not and does not
20 comport with the law. I understand your objection to
21 that and obviously that issue is preserved.

22 On the CSC third, Ms. Mayes, we were talking about
23 that. Did you want to speak further on that? I assume
24 you've had a chance to review Burroughs.

25 MS. MAYES: I have, Your Honor. Of course, in the

1 Burroughs case, there was not the underlying action
2 of a burglary that coincided --

3 THE COURT: Right.

4 MS. MAYES: -- so the State's primary position
5 is that this occurred and testimony would be that it
6 occurred during the burglary, which would support the
7 CSC first degree, and then the victim and other evidence
8 supported that there was aggravated coercion with use
9 of the verbal threats towards both the victim and her
10 daughter. There would be no evidence in the record to
11 support the use of force or coercion that was not
12 aggravated and the Defendant's testimony was that every
13 action was consensual.

14 THE COURT: All right. Did you-all want to
15 respond?

16 MR. MADSEN: Judge, we just believe that it is
17 appropriate; that the jury can believe a little bit,
18 can believe a lot, it can believe parts or not, so we
19 do think that it is supported by the evidence for the
20 CSC third as a lesser included.

21 THE COURT: I'm gonna instruct it. It's a matter
22 of degree. I understand the State's position and, of
23 course, your -- your primary position is that there was
24 a burglary and, therefore, the Defendant, assuming that
25 they believe that the sex was nonconsensual, he's guilty

1 of CSC first. They could very well conclude that there
2 was no burglary. That eliminates CSC first degree as
3 a possibility leaving the State only with CSC second
4 and third degree and I instruct the jury -- all judges
5 instruct the jury that they can believe a part of the
6 testimony of a witness and reject the remaining portion,
7 et cetera, so I will be instructing on CSC third.

8 But I do appreciate the State's point. It is a
9 valid point. I just feel that Burroughs is very, very
10 close and that did include an instruction on CSC third.
11 And if the State is correct, the jury will convict on
12 CSC first or second and not even get to third.

13 Do you have something else, Mr. Madsen?

14 MR. MADSEN: And, Judge, the only other thing with
15 the -- or an objection that we have with the charge is
16 Mr. Furtick's testimony was that when he got to the
17 house that it was light, so we would ask for a burglary
18 second as a lesser included because they're dealing with
19 nighttime hours.

20 THE COURT: Solicitor?

21 MS. MAYES: Your Honor, the testimony was he was
22 very unsure about that for one thing and then said that
23 he arrived back at light, the statute is remains.
24 There's been no testimony that he didn't remain past
25 dark. The only testimony in the record is that it was

1 dark when he left.

2 Also we would have a situation where there's
3 testimony in the record that when he arrived the
4 husband wasn't there. The testimony is the husband
5 left somewhere around six or 6:30, which is clearly
6 dark in November.

7 THE COURT: This took place on November the 18th,
8 so it would be after daylight savings time ends.

9 MS. MAYES: It's already 6:00 when we leave this
10 courthouse every night --

11 THE COURT: Right.

12 MS. MAYES: -- and it's dark.

13 MR. MADSEN: Well, I thought his was, you know,
14 when you take the baby food, coming back, that he was
15 there at an earlier timeframe was his testimony. I
16 don't recall anything about the husband leaving at
17 6:00 at night or 6:30. There was some testimony about
18 him calling in a food order, but I don't know -- but
19 in any event, I think it's a factual issue and,
20 therefore, burglary second would be appropriate as a
21 lesser included also.

22 MS. MAYES: His testimony is that the husband was
23 not there when he arrived back. He was unsure as to
24 whether it was light or dark and then after much
25 prompting said he arrived at light and then by his own

1 testimony he's in the home for some period of time.
2 There is testimony on the record that the husband
3 left after six, which would be dark, so the State's
4 position is it was dark when he entered, but at the
5 very least he remains in the residence while it's dark,
6 which is burglary first under the statute.

7 MR. MADSEN: I mean, in her own recitation of the
8 facts, she admits that Mr. Furtick said that he -- he
9 went there when it was light and so we think it fits
10 the -- in the evidence standard and, therefore, should
11 be charged.

12 MS. MAYES: There's no evidence that it was light
13 when he left, which is what the statute would require.
14 You cannot remain in darkness.

15 THE COURT: Okay. Well, as it relates to the
16 burglary charge, this is not one where there's a matter
17 of degree like the CSC-type charge. It either is or is
18 not a burglary, and you can't be a little bit pregnant,
19 so the jury will either conclude that he entered the
20 home with force or he did not enter the home with force.
21 He either entered it forcibly or he was invited in and
22 the only conflicting versions of that are between
23 Ms. Hall and the Defendant. So if they were to conclude
24 that there was a forcible entry, they would by definition
25 have to conclude that Ms. Hall is correct and that it

1 occurred during the nighttime when it was dark.

2 Because I doubt that the defense is gonna argue
3 that, ladies and gentlemen, he didn't burglarize the
4 home and even if he did burglarize the home it took
5 place during the daylight hours and so we want you to
6 find him guilty of burglary second. I'm assuming that
7 the defense is going to be that this was consensual and
8 that there was no burglary, and I don't see how they
9 could decide yes, there was a forcible entry, but it
10 did take place during daylight hours. It's an either
11 or proposition as relates to that charge.

12 So the Court will decline to charge burglary
13 second.

14 MS. FULLWOOD: If Your Honor please?

15 THE COURT: Yes, ma'am.

16 MS. FULLWOOD: It's my understanding that in
17 light of the fact that we have put up a case, the law
18 concerning closings is that we can require the State
19 to open in full, then we argue and then they have a
20 chance to do a rebuttal argument, and we would ask to
21 follow that procedure.

22 MS. PATTERSON: And, Your Honor, that's what I
23 intend to do.

24 THE COURT: I figured as much.

25 We'll be at ease for a few more moments while we

1 get the jury's lunch order, okay? So sorry. We'll be
2 back on the record in about five minutes.

3 (Recess taken at 11:34 AM.)

4 (Back on the record at 11:43 AM.)

5 BAILIFF: All rise. Come to order. Court's now
6 in session.

7 THE COURT: Thank you. Sit, please. Everyone
8 is present. I think we're ready to proceed, so let us
9 have the jury.

10 (Whereupon, the jury returns to the courtroom at
11 11:44 AM.)

12 THE COURT: All right. The jury is back and
13 seated. Ladies and gentlemen of the jury, thank you
14 for your continued attention and continued patience.
15 At this point in time we're going to hear the closing
16 arguments of the attorneys and the order that we'll
17 proceed in is that the State will go first followed by
18 the defense and the State will have a chance to reply
19 to anything that the defense brought up in their closing.

20 I'll remind you, of course, what the lawyers say
21 during this closing arguments is not evidence. It is
22 customary to, of course, reference testimony and evidence
23 which has been presented during the course of the trial,
24 but if at any time the lawyers say something about the
25 testimony or the evidence and what they say differs from

1 what you recall the evidence being or the testimony being,
2 of course, go with your recollection because you are the
3 judges of the facts in this case and not the lawyers, all
4 right?

5 With that, Solicitor, you're acknowledged for your
6 closing. Ms. Patterson.

7 MS. PATTERSON: Thank you, Your Honor. May it
8 please the Court?

9 THE COURT: Yes, ma'am.

10 MS. PATTERSON: Good afternoon.

11 Ladies and gentlemen, make no mistake that on the
12 evening of November 18, 2015, J.H. [REDACTED] had something
13 taken away from her. She had something taken away from
14 her by force. She had something taken away from her
15 without her consent because she was afraid what would
16 happen to her and her daughter at the hands of the
17 Defendant, Rodney Furtick. Make no mistake that she did
18 what she had to do to protect herself and to protect her
19 daughter. Make no mistake this was not consensual. This
20 was rape.

21 The judge will instruct you as to the law later on,
22 but this is my opportunity to go over the law in South
23 Carolina as it relates to South Carolina and burglary
24 and as it relates to this case. Now the judge will also
25 instruct you that it is the State's burden of proof to

1 prove the elements of these offenses beyond a reasonable
2 doubt. And what reasonable doubt means is not beyond all
3 doubt because there are few things that we know beyond all
4 doubt. The law requires that you -- that the proof that
5 overcomes -- the law doesn't require that proof becomes --
6 overcomes every possible doubt. You just must be firmly
7 convinced that the Defendant, Rodney Furtick, committed
8 the offenses of burglary first and criminal sexual conduct
9 first degree.

10 Now let's talk about the elements of burglary.
11 Burglary first degree as defined in South Carolina Code
12 Section 16-11-311, it is unlawful for a person to enter a
13 dwelling without consent and with the intent to commit a
14 crime in the dwelling. And either when effecting entry,
15 or while in the dwelling, or in immediate flight he is
16 armed with a deadly weapon, or causes physical injury to
17 a person who is not a participant in the crime, or who
18 uses or threatens the use of a dangerous instrument, or
19 displays what is or appears to be a knife, pistol revolver,
20 rifle, shotgun, machine gun or other firearm, or if the
21 entering or remaining occurs in the nighttime.

22 I submit to you we have proven beyond a reasonable
23 doubt the first element; that Rodney Furtick entered the
24 home of J.H. [REDACTED] and Brian Dean without consent. You don't
25 even really have to consider this. I submit we've also

1 proved to you that the entering or remaining occurred
2 in the nighttime.

3 And let's just talk about the testimony that you
4 heard from this stand which supports those two elements
5 of the crime of burglary first degree. You heard from
6 J.H. [REDACTED] Rodney Furtick had been told over and over
7 again he was not allowed in the house when her husband
8 was not there. He made her feel uncomfortable. She
9 didn't trust him. She told this to her husband and they
10 both at times had told him over and over do not come to
11 the house when Brian wasn't there.

12 But Rodney came in anyway. He came in through an
13 unlocked back door. You heard her say she tried to close
14 that door and he came on in. And not only did J.H. [REDACTED]
15 state this, but she had told this to several people.
16 She told it to Sergeant Reese, she told it to April
17 Carter, she told it to Marilyn Sanchez and she told it
18 to the SANE nurse, Jennifer Nguyen. And you also heard
19 J.H. [REDACTED] say that when he entered that unlocked back door
20 she told him to leave at least twice, but he wouldn't
21 listen. He didn't have consent to be in that house and
22 if someone forgets to lock their door, that still doesn't
23 give a person the right to enter into an unlocked door.
24 Now there doesn't have to be a door knocked down or a
25 window doesn't have to be busted out for a burglary to

1 occur under the law in South Carolina. The person just
2 must enter without consent and commit a crime within.

3 Next we have to prove to you that it occurred in
4 the nighttime or that it remained -- the person remained
5 in the nighttime. Witness after witness have told you
6 that this occurred in the nighttime. J.H. reported she
7 was in the process of doing some end of the day chores,
8 getting her baby girl ready for bed, when this occurred.
9 She waited about five minutes after the assault and ran
10 over to April Carter's house right across the street.
11 April stated it was dark when she saw J.H. leave her
12 front door and come straight across into her yard.
13 Sergeant Reese arrived at 9:00. It was dark. Marilyn
14 Sanchez stated it was dark when she arrived at 9:13,
15 which was just thirty minutes after the assault was
16 reported. It was in the middle of November, November
17 18th. It's common knowledge that at that time of the
18 evening it is dark, it is nighttime. And that's all we
19 need to prove with burglary first degree.

20 Now next the Defendant is charged with -- and
21 remember this is "or". We don't have to prove this,
22 just that it occurred in the nighttime.

23 Now the next thing the Defendant, Rodney Furtick,
24 is charged with is criminal sexual conduct in the first
25 degree. It is defined as a sexual battery with a person

1 during forceful -- forcible confinement, kidnapping,
2 robbery, extortion, burglary or any other similar
3 offenses.

4 Now a sexual battery is defined as any intrusion,
5 however slight, of any part of a person's body, or any
6 object into the genital openings of another person's
7 body. Now you heard J.H. testify that the Defendant
8 performed oral sex on her and he also put his penis
9 inside her vagina. And you heard the SANE nurse testify
10 that she took samples -- or she took swabs from this area
11 in J.H. I submit to you that we have a sexual battery
12 and if you find that that sexual battery occurred during
13 a burglary, which we just discussed, then you have a
14 criminal sexual conduct in the first degree under South
15 Carolina law.

16 Now the judge is also gonna instruct you on some
17 lesser included offenses. The first one he will instruct
18 you on, criminal sexual conduct in the second degree, and
19 that is defined as if the actor uses aggravated coercion
20 to accomplish the battery. And aggravated coercion means
21 that the actor threatens to use force or violence of a
22 high and aggravated nature to overcome the victim or
23 another person, if the victim reasonably believes that
24 the actor has the present ability to carry out the threat,
25 or threatens to retaliate in the future by the infliction

1 of physical harm, kidnapping or extortion under the
2 circumstances of aggravation against the victim or other
3 persons.

4 You heard J.H. [REDACTED] testimony. There was aggravated
5 coercion here. He made threats to her, he told her she
6 must do what he wants or he will hurt her daughter, he
7 grabbed her daughter. She said he became angry. He even
8 told her at the conclusion of assaulting her that he would
9 be back on Friday and he admitted today that he told her
10 that and that he put hands on her daughter.

11 What else is a young 20-year-old mother to think
12 except that this was aggravated force or coercion and
13 that these threats were real, and that's the way she
14 perceived them. She told you that. So if you don't
15 believe that the criminal sexual conduct occurred during
16 a burglary, you also have the option of criminal sexual
17 conduct second degree, but I submit to you that this
18 criminal sexual conduct occurred during a burglary.

19 Now the judge is also gonna instruct you on
20 criminal sexual conduct in the third degree. And a
21 person is guilty of that if the actor engages in sexual
22 battery with the victim and if one or more of the
23 following circumstances are proven, and that is the
24 actor uses force or coercion to accomplish the battery
25 in the absence of aggravating circumstances. And, again,

1 I present to you the aggravating circumstances at the
2 least existed in this case based on these facts from the
3 testimony that you heard.

4 Now I want to thank all of you for your undivided
5 attention, and I know this has been a long three days
6 for you and I know you've been listening to the witnesses
7 and some of you have been taking notes, and I thank you
8 on behalf of the State of South Carolina. But I just ask
9 that you indulge me just a little while longer because
10 this is my opportunity. This is my opportunity to
11 present to you the facts, testimony, evidence that we
12 must prove beyond a reasonable doubt as the carrier of
13 the burden of proof. And remember what we say, what I
14 say and what Ms. Fullwood say, is not evidence. The only
15 evidence you receive is from the witnesses, from the
16 evidence that you will have an opportunity to take back
17 to the jury room with you.

18 You heard from our witnesses and the first witness
19 you heard from was J.H. [REDACTED] who now goes by J.H. [REDACTED]
20 [REDACTED] J.H. [REDACTED] was clear. This was not a consensual
21 sexual relationship between her and the Defendant, and
22 I submit to you that the argument is an outrage and an
23 insult to a rape victim for someone to now turn and say
24 this is consensual.

25 Now one of the things the judge will also instruct

1 you is that you have the ability to judge the credibility
2 of a witness. Do they have anything to gain or lose
3 by their testimony? Do they have an interest in the
4 outcome of this trial? I submit to you that none of our
5 witnesses have credibility issues. And you can also
6 consider prior convictions in evaluating witnesses.

7 J.H. had no prior convictions. The Defendant, on the
8 other hand, had multiple convictions for crimes of
9 larceny, multiple convictions for two misdemeanor crimes
10 that carry more than a year, and a felony that carries
11 more than a year, all within the last ten years.

12 Now let's go over his testimony first to get that
13 out of the way. And remember credibility is the key. Is
14 anything he said, does it make sense? He would have you
15 believe that on the very first day he meets Brian Dean,
16 Brian invites him over with his newly wedded wife, his
17 15-year-old -- 15-month-old daughter, and trusts to leave
18 him in the house alone with them while he goes to work.
19 Does that make sense? Does it make sense for J.H.
20 to share her wedding photos with the Defendant, and she
21 hadn't been married very long, and then all of a sudden
22 want to just have consensual sex with him? Does that
23 make sense? While her daughter's there? Does it even
24 make sense for a recently married 20-year-old woman who
25 just relocated to Cayce with a young child to want to

1 have sex with someone over twice her age, who at times
2 had no place to sleep, no money, no car. All he seems
3 to do is wander the streets of Cayce. Does that make
4 sense? She didn't even know his real name. She didn't
5 even know his last name. You know why? Because there
6 was no consensual relationship. And then I asked him,
7 I said did you know that J.H. and Brian moved away?
8 No. Someone he supposedly befriended, another person he
9 supposedly had a consensual relationship with, he didn't
10 even notice that they moved away. Again, it makes no
11 sense.

12 And then on December 10, 2015, about three weeks
13 after the alleged incident, he had the opportunity to
14 speak with Lieutenant Merrill and Sergeant Thomas about
15 the case. Now he gets up here and he talks about his
16 glasses over and over and not having his glasses, but he
17 admitted nothing was wrong with his ears and he heard the
18 name J.H. he heard the name Brian Dean. He was
19 familiar with the residence because he walked by it all
20 the time. He knew exactly what they were referring to.
21 And what did he say? I don't know them. I ain't been
22 in that house in months. My DNA is not there. He was
23 shown pictures in color, given the opportunity to hold
24 them. Even without his glasses if he couldn't see the
25 pictures, he knew the names, he knew the residence, he

1 had been there time and time again. Who else did he
2 think Lieutenant Merrill was talking about? J.H. and
3 Brian Dean. See, what he was thinking was J.H. wasn't
4 gonna report this or maybe he knew that they had already
5 left because she said they left in December. Maybe he
6 thought he had cleaned up his evidence with those baby
7 wipes. He denied knowing them. He denied being in that
8 house.

9 He had been in the system before. He knew that this
10 was the opportunity to tell law enforcement his side of
11 the story. He knew it was a criminal investigation. Why
12 not tell them yeah, I know her, we were having an affair?
13 This would have been the perfect opportunity for him to
14 tell this story that he told today. It's not a crime to
15 sleep with a married woman, but he knew it was a criminal
16 investigation. No, it wasn't until he was confronted
17 with those DNA results that he needed to make his story
18 fit the evidence.

19 And let's talk about those DNA results as it relates
20 to something he said today. First of all, he wants you
21 to believe that on November 18, 2015, J.H. invited him
22 over and they had sex in her child's room. Who wants to
23 have sex in their child's room? There's other rooms in
24 the house. That doesn't make sense. He admitted the
25 child got agitated. She got agitated because she saw

1 what was happening to her momma. And he wants to have
2 you believe that he just picked the child up, that he
3 laid hands on someone else's child, and J.H. told you
4 he pushed her child and she was scared, she was afraid.
5 And then he said he didn't finish ejaculating, so he
6 masturbated on the child's play mat. Well, you heard
7 the DNA analyst say that the DNA profile developed from
8 the vaginal swabs, the rectal swabs and bodily fluids
9 taken from J.H. was 1 in 17 quintillion related
10 back to the Defendant, Rodney Furtick. He didn't
11 ejaculate on that floor mat. He ejaculated inside of
12 her just like the evidence presented. That doesn't even
13 make sense. This is a -- this story that he gave is the
14 very definition of desperation and coverup. When you're
15 caught in 1 in 17 quintillion, you've got to make your
16 story fit the evidence.

17 And then the defense attorney in her line of
18 questioning to J.H. she didn't even ask her anything
19 about consent. Nothing. Not a thing. You know why?
20 Because it didn't happen.

21 Now let's talk about the credibility of the State's
22 witnesses and I submit to you they have no reason to lie.
23 No one has credibility issues. Now on the onset of trial
24 you learned a little bit about J.H. was a
25 young mother recently married to Brian Dean. They just

1 had moved to Cayce with their little baby girl in August
2 of 2015. She didn't know many people, but she befriended
3 April Carter, who lived right across the street. April
4 lived right across the street. She loved being a mom to
5 R.D. And at some point the Defendant did start coming
6 around, but she didn't trust him. She didn't like being
7 around him. She said she didn't have much interaction
8 with him. This was Brian's associate. She would
9 sometimes even go over to April's.

10 And now J.H. and Brian, they've divorced. Brian
11 lives in New York and J.H. lives in Sheboygan, Wisconsin
12 with her two children, a long way off from here. What in
13 the world does she have to gain by falsely claiming the
14 Defendant raped her? What does she have to gain about
15 coming back here testifying, telling you-all about all
16 these embarrassing things? Even when it happened, what
17 did she have to gain to lie? Nothing. She ran over to
18 April's house. She had to subject herself to a sexual
19 assault examination. She had to tell people over and
20 over again what happened. Nothing to gain.

21 She was at home doing end of the day household
22 chores. If you're a parent, you understand those.
23 Getting her baby ready for bed and she hears a knock on
24 the door. Before she could get the door shut, the
25 Defendant walks in. She's shocked, a little scared, and

1 it becomes more and more apparent that he wanted
2 something. She got more afraid. After he grabbed R.D.,
3 J.H. said she knew she had to do what he wanted to get
4 him out that house and to protect her daughter who she
5 said means everything to her. She asked him to leave.
6 He wouldn't. The only way in her mind to get him out of
7 that house was to submit. She said she didn't kiss him.
8 She didn't want to touch him. Only when he made her.

9 And don't let the defense fool you if they get up
10 here and say well, she didn't run, she didn't fight, she
11 didn't tell you no. Even if these are things that you
12 may see on TV, a person may not automatically do these
13 things. That's not always the case. You even heard from
14 the SANE nurse, Ms. Nguyen, victims react differently.
15 Yes, some of them may flee, they may run, but J.H. said
16 that wasn't an option. She couldn't get out of that house
17 without her daughter. Yes, some victims might fight, but
18 J.H. said she couldn't. She just froze. She couldn't
19 move. And some just freeze and they do what they have to
20 do to say safe, to keep their child safe, and I submit to
21 you that's exactly what J.H. did.

22 And what did he do? Told her to get on the floor
23 and she was gonna get on the floor. She said she's a
24 little clumsy. She's frozen. Her legs, they're not
25 moving. She's on the floor, but she -- she don't get

1 there fast enough, so he pushes her down. And then he
2 tries to get off her tights. And you see these tights.
3 And she says he starts at the end, couldn't get them
4 from the feet, so he pulled them down from the waist.
5 And she said these are her favorite tights and I see why.
6 They're a little bedazzled. And he gets these off her
7 and he performs oral sex on her while her daughter is
8 walking around that house. And it's not a very big
9 house. It's not a very big house. R.D.'s room is back
10 here close to the kitchen and the back door where he
11 entered without consent, and on this mat he sexually
12 assaults her. And at some point R.D. is coming in
13 and out the front room and it frustrates him and she can
14 tell he's just getting angry and at some point he pulls
15 up her shirt and her bra and licks her breast, and the
16 DNA evidence prove that is exactly what happened. And
17 then he puts his penis inside of her and he ejaculates
18 as the evidence supports, not what he says. And then he
19 used those wipes. Don't forget those wipes that he tried
20 to use. And Lieutenant Merrill tells you he saw two sets;
21 one that looked like it had been used and the other set
22 likely just had been pulled out maybe to use at a later
23 time. He did this, not J.H. She wouldn't waste baby
24 wipes. Too expensive.

25 Rodney walked those streets all the time. He saw

1 J.H. with her baby. He came over there, visited Brian
2 at times. He saw J.H. with her baby. He knew she
3 would be an easy target for him. She would do anything
4 to protect her baby. You heard her on this stand. She's
5 twenty-four now. That's still young. She was twenty at
6 the time. Kind of soft-spoken, timid. She don't have
7 much street smarts. He knew that. An easy target.

8 And don't let the defense distract you with things.
9 They talked a lot about time and J.H. may have told
10 somebody it happened this time and that time. When
11 you're being sexually assaulted, are you even concerned
12 about time? Are you looking at a clock? What she told
13 you is that it happened right before she ran across the
14 street to April's house. And the dispatch time was 8:53.
15 Sergeant Reese arrived at 9:00 and EMS I think about 9:14.
16 Whatever that time was, it probably felt like a lifetime
17 to J.H.

18 And they talked about this EBT card and J.H. and
19 she didn't remember making that police report, but she
20 remembers something about her wallet being missing. Now
21 after she went through this traumatic experience, moves
22 to another state, do you expect her to remember all the
23 details of a petit larceny? Again, a distraction.

24 And let's talk about friend and good neighbor, April
25 Carter. She saw J.H. walk right out of that door across

1 the street to her. She knew something was wrong. She
2 said she's seen J.H. every day and she never seen her
3 like that. She was distraught, she was crying. She
4 immediately said what happened and J.H. said he raped
5 me. April knew who she was talking about. April
6 identified Rodney in court. She said right before the
7 assault, right before J.H. ran over, she had seen him
8 lurking around the neighborhood. She had seen him like
9 two doors down from J.H. house lurking in this area.
10 That's what she described. So she knew exactly who
11 J.H. was talking about. They had discussions about
12 him before. She described him as wandering, walking
13 back and forth.

14 J.H. emotions were raw, they were real when April
15 saw her. She ran over there in this condition in the
16 middle of November, sleeveless, nothing on her legs, even
17 no shoes on. April said it took a few minutes and she
18 calmed J.H. down, she took the baby. She described
19 J.H. as shaking. Then she called for help. April and
20 J.H. were close and they wanted to bring up some stuff
21 as if, you know, he was bringing her food. If she needed
22 some food, which he said her refrigerator was full, she
23 was close to April, April's mom, she could have went over
24 there and got food. She didn't need food.

25 I submit to you, too, based on what April said she

1 saw, if the Defendant was lurking around this area, he
2 had the opportunity to see Brian leave on foot. He knew
3 Brian was gone. Perfect opportunity. He was in a
4 position to see J.H. taking that trash out in the
5 backyard. He was in the position to see this perfect
6 opportunity.

7 And then Sergeant Reese, he got there about 9:00.
8 He reported J.H. as being disheveled, crying, upset.
9 He did a short interview with her. And they don't get
10 into detailed interviews with sexual assault victims.
11 They leave that to the professionals, the SANE nurses.
12 But based on what J.H. told him, she gave him a
13 description of the person and based on what she told
14 him, two people of interest were identified; a Rodney
15 Robinson and a Rodney Furtick. And there was some switch
16 around between Sergeant Reese and Lieutenant Merrill,
17 they switched positions, and so they kind of worked on
18 it, stopped and then was back on it. So Sergeant Reese
19 responded that night and later he got reassigned to the
20 case when he turned back to investigations. He got the
21 search warrants for Rodney's DNA and once those results
22 were in, he got the arrest warrants.

23 Now Marilyn Sanchez who works for EMS, she got
24 there about 9:30. She described J.H. as still being
25 upset, distraught, had to calm her down. And what did

1 she say? She did mention that J.H. said that he said
2 he would be back. And she couldn't remember if it was
3 Friday or when, but she remembered that. But she also
4 remembered J.H. being very paranoid and looking around.
5 Remember that? Because he had told her he was coming
6 back and she knew he was in the area, but she didn't
7 know how far he had gotten because he'd probably just
8 left her house. Well, he did just leave her house. And
9 she remembers having to get J.H. in the ambulance to
10 calm her down, J.H. not wanting to go because she was
11 concerned about R.D., and after Marilyn was able to
12 ensure her that R.D. could go to the hospital, then
13 that is when J.H. agreed to go.

14 And you heard from the SANE nurse, Jennifer Nguyen.
15 She got the call. She arrived about an hour after the
16 call. Because they questioned her about J.H. demeanor,
17 but remember at this time she -- she didn't get there for
18 another whole hour. I think she got there about eleven.
19 It's important for her to find out what happened so she
20 can determine the course of treatment for J.H. so she
21 could know what evidence to try to collect to send on
22 for further analysis. She had no indication of drugs
23 or alcohol with J.H. And, again, she said she wasn't
24 tearful at this point, but she don't expect all the same
25 demeanor from her victims. And no, J.H. as the defense

1 said in their opening, you won't see marks, bruises or
2 cuts, but why would you? J.H. didn't report anything
3 of that happening. And Ms. Nguyen said you don't always
4 expect physical injuries in sexual assault victims. So
5 please leave any perceptions you have from TV, leave it
6 outside. She did report verbal threats and based on what
7 she knew about the offense, Ms. Nguyen collected swabs
8 from the vaginal and rectal area of J.H. miscellaneous
9 swabs from J.H. left arm, both breasts, right check,
10 and she also collected her underwear. Turned that over
11 to law enforcement.

12 Lieutenant Merrill gets assigned to the case, talks
13 to J.H. talks to her husband, goes back to the house,
14 sees things of interest based on what J.H. told him,
15 collected those tights, collected those wipes. He knew
16 other things were gonna be sent off to SLED, so these
17 things weren't sent out, they were kept in evidence.
18 And he told you about the condition. These are the
19 conditions he found them in and he found all of this
20 stuff in the child's room just as J.H. reported.

21 Now, again, we talked about the interview with
22 Rodney. He informed him of his rights. He just wanted
23 to talk to him to see what his side of the story was.
24 And, I submit, Lieutenant Merrill, he did what a good
25 investigator would do because at this point he had

1 J.H. report and he had the Defendant's outright
2 denial, so he left it open. Left the investigation open
3 because he knew these things were gonna be sent to SLED
4 and he knew -- remember the two suspects, so he wanted
5 to make sure he had the right person. And, yes, those
6 results took some time and you heard from SLED. They do
7 testing statewide and Cayce Police Department submitted
8 those things to SLED I think on December 30th of 2015.
9 And you heard from Jacquelin McKay, she didn't get to
10 test them until September 21st of 2016. And then Sam
11 Stewart didn't get to conduct his testing until January
12 17th -- 26th of '17 when he got the Defendant's DNA
13 sample. And when the final confirmation was done and
14 sent to Cayce Public Safety, that's when they got the
15 arrest warrants.

16 And, again, remember they do testing all over the
17 State and they have a backlog, but by this time the
18 results -- the results were so strong Rodney had to
19 change his story. He had to change his story to
20 fit the evidence. Because when you get these kind of
21 results, the cutting from the underwear, Rodney Furtick,
22 1 in 110 million. The vaginal swabs, the rectal swabs,
23 positive for semen, positive for semen, 1 in 17
24 quintillion. The miscellaneous swabs, which included
25 the left lower arm and both breasts, positive for saliva,

1 1 in 14. And Mr. Stewart said that these numbers was
2 just because of the sample that he had to test. And the
3 1.7 suspected saliva swabs, left breast, right cheek,
4 it was positive for saliva, but, again, it was a lower
5 amount to test. And, once again, suspected bodily fluid
6 from the vaginal area, positive for semen, Rodney Furtick,
7 1 in 17 quintillion. At this point he couldn't do
8 anything but change his story. When you see a number
9 like this in the grand scheme of things, you can only
10 change your story to fit the evidence.

11 Now I will have the opportunity after Mr. Fullwood
12 gets up here to reply to her closing, but what I would
13 just ask you right now is just to stay focussed and don't
14 get distracted, don't get distracted by the little things
15 that she will try to bring up. J.H. not yelling, not
16 fighting back, not trying to run, not saying no, that was
17 not consent. It was a survival skill. A survival skill
18 that J.H. used to keep she and her baby safe. Safe when
19 the Defendant entered her home without consent committing
20 a burglary, safe when he sexually assaulted her in her
21 little girl's room. It was a survival skill. It was not
22 consent.

23 THE COURT: Thank you, Ms. Patterson.

24 Ms. Fullwood, you're recognized for your closing,
25 ma'am.

1 MS. FULLWOOD: Thank you, Your Honor.

2 Good afternoon, ladies and gentlemen of the jury.

3 First off, I want to tell you that what I intend to talk
4 to you about this afternoon aren't what I consider little
5 things or distracting things. What I want to talk to
6 you about are the many reasons that you should have a
7 reasonable doubt as to -- as to Rodney Furtick's guilt in
8 this case.

9 Now one thing Ms. Patterson and I do agree on, the
10 gist of this case is a question of was there consent
11 because Mr. Furtick admits he was there, he admits that
12 he's had sex. The only question is whether it was
13 consensual. Ms. Patterson asked well, why in the world
14 would a young 20-year-old mother sleep with a middle-aged
15 man? That -- that just wouldn't happen. But I think we
16 know that sometimes it does and I think that there's
17 evidence in the record that suggests and can lead to an
18 inference that it did happen in this case. What -- what
19 do we know about her marriage? What did she just out
20 of the blue voluntarily tell us? She was unhappy in the
21 marriage. She had gotten married and I'm sure like most
22 people getting married dreamed of settling down with a
23 husband and a child and they work hard together and they
24 build a life together, but that's not what she got with
25 Brian Dean. She testified that he often left her at home

1 so he could go out with his friends. She testified that
2 there was very little money in the house. She said they
3 had a hard time getting ends to meet. In fact, she told
4 you her marriage was such that it was more like she was a
5 single mom rather than a life partner to that man.

6 So a man comes along, pays attention to her, laughs
7 with her, pays attention to her child, will look at her
8 pictures, calls her beautiful. Maybe she would welcome
9 that kind of companionship from a male because it
10 certainly sounds like Mr. Dean wasn't what she expected
11 in a husband. And maybe she just wanted to teach Brian
12 Dean a lesson. He works at marginal pay, he leaves her
13 home with a child, takes the phone, off with his friends.
14 Maybe after she had sex with Rodney Furtick she thought
15 this is my chance to teach him a lesson. I'll tell him
16 that while he was gone I got raped and maybe then he'll
17 become the kind of husband I need. Because remember what
18 she said -- excuse me -- about what she really wanted
19 when she went over to April Carter's house? First she
20 didn't want 9-1-1 called. What did she say? I just
21 wanted my husband's comfort. That's what she wanted.

22 She wanted the kind of attention that she deserved
23 from her husband but wasn't getting, but she got in over
24 her head because April did call law enforcement and she
25 did repeat that story, and once that happened there was

1 no turning back. It's a felony to falsely report a
2 crime to the police. You can get into a lot of trouble
3 if you come off the story, so keep that in mind when
4 you're thinking about the credibility of what she had
5 to say.

6 The State wants you to ask yourself why did he lie
7 and they want to say that anything I offer to you about
8 that is just a distraction. No, ma'am, no, sir, it's
9 not distraction. These are major problems with their
10 case that they don't want you to look at.

11 There's the timeline. She told different stories
12 as to when it happened. When she was in court this week,
13 she wanted you to think that he came in, he had sex with
14 her against her will and left, then she waited five
15 minutes or so to make sure the coast was clear and then
16 ran over to April Carter's, but there's a different
17 timeline that's documented in the police reports and in
18 the hospital records, and that is not a distraction
19 because that's much better documented than the timeline
20 that was presented in the courtroom that was full of
21 gaps, full of I don't know, full of amnesia.

22 She and her husband talked to Lieutenant Merrill
23 after she got back from the hospital in their home. And
24 remember at the hospital she was calm, she wasn't in
25 this hysterical state that witnesses described on the

1 porch of Ms. Carter's house. She said that her husband
2 had ordered her Chinese food at about 6:00 and it was
3 gonna be there in about twenty minutes and in Detective
4 Merrill's report that that was verified using the time
5 log of her husband's phone. So we know that. She said
6 he came shortly after the Chinese food arrived, so that
7 would put it at about 6:30.

8 She told the SANE nurse, the people at the hospital,
9 that the sexual assault occurred at 7:00. Now if it was
10 a sexual assault the way she said, that didn't seem like
11 it took that much time and so say, what, ten, fifteen
12 minutes, then another five or ten to wait, we're not
13 even at 7:30 yet. But we know she didn't go over to
14 Ms. Carter's house until sometime that was close to 9:00.

15 Now why is that important? That means she had time,
16 possibly up to an hour and a half, to sit in her house,
17 think about what she wanted to do about the adultery she
18 just committed, maybe she was afraid her husband would
19 find out, maybe she was just mad at her husband and
20 trying to think of a thing to do to get him back, but
21 she had time enough to work herself into that state of
22 hysteria rather than it being the result of -- of
23 something that had recently happened.

24 As far as Ms. Hall's credibility, also think about
25 her testimony or lack thereof about the EBT card. Now

1 Ms. Patterson said that's just a tiny detail, anybody
2 would forget that. No, they wouldn't. No, they wouldn't
3 if according to what they tell the police on the night
4 that this horrible sexual assault occurred the perpetrator
5 of the alleged assault took the EBT card and she recently
6 filed a report. She told the police that that night --
7 and it's almost like not -- not that she doesn't remember,
8 she just has amnesia and, you know, she gets questioned
9 about how often she saw Rodney or how many times he was
10 at their house, whether or not he ever spent the night
11 there, which apparently according to her he did, and
12 whether or not he ate dinner there, she doesn't really
13 remember, and she just pushes it off on her ex-husband.
14 That just had more to do with him, that just had more to
15 do with him. Well, how can that be if -- if it's all
16 tied up to some sort of general trauma? Is it that or
17 is it she made up a story and now just doesn't want to
18 -- doesn't want to get caught up in the details.

19 The State made a lot in its argument about her
20 emotional response at Ms. Carter's house, but the
21 hospital, they have a checklist and all that was checked
22 is that she was quiet. She wasn't tearful, she wasn't
23 anxious, she wasn't crying, she wasn't tense. She was
24 just quiet. And when you are considering Ms. Hall's
25 credibility and when you're thinking about the strength

1 of the State's case and whether they have proven every
2 element of the offenses charged and whether or not their
3 witnesses are worthy of you believing them, ask yourself
4 these questions. A woman calls the police and says I
5 was raped, so that's a serious crime. My house was
6 burglarized and I was raped. So why in the world didn't
7 the police process that back doorknob and outside for
8 the suspect's fingerprints or trace DNA? The CSI officer
9 who testified yesterday said that certainly could be
10 done, that it would certainly be possible to do, but they
11 didn't do it. Why didn't the police think enough of this
12 case to do something like that? Why didn't they get
13 written statements from the witnesses? Even Officer
14 Merrill had to admit that was uncommon. They wanted to
15 say oh, well, maybe she didn't tell it right because
16 she's so upset that night. Well, maybe that's so if it
17 happened, but in the interest of being thorough, in the
18 interest of uncovering every stone, in the interest of
19 getting all of the factual information from your
20 witnesses, do you just go on -- on the scene in almost
21 casual conversations while EMS is there and while people
22 are excited or do you let them go calm themselves and
23 then bring them back in to get thorough and complete
24 written statements? Lieutenant Merrill said they do
25 that. They didn't do it here. Why not?

1 According to the State's case, this is sort of an
2 outcry situation, a woman's assaulted and she runs and
3 immediately reports it pretty much right after the fact,
4 so I think -- in her argument, Ms. Patterson referred to
5 a fresh crime. Well, if there was a crime, it was. So
6 why didn't they get a K-9 unit out there? Because they
7 -- Lieutenant Merrill testified they did not. Well, why
8 not? Somebody who lived in the area, that could have
9 been settled pretty quick, couldn't it? Why didn't they
10 do that?

11 Why didn't Lieutenant Merrill think enough about the
12 seriousness of the situation to make sure he had a memory
13 chip in his camera because then we would have photographic
14 evidence to either corroborate or dispute -- disprove some
15 of the testimony that's been put before you one way or
16 another. How in the world were some items of her clothes
17 lost? How does that happen? Where's that little colored
18 fork or spoon or whatever it is? Why wasn't -- we were
19 told it was in the courtroom, but they never showed it to
20 you. Why not? What don't they want you to see? Does it
21 corroborate what Mr. Furtick has to say? I guess so
22 because it's still in its package.

23 And ask yourself this. A lot of what Ms. Hall
24 testified to could be corroborated by her ex-husband,
25 Mr. Dean, because she's like oh, he knew that, well,

1 that's information from him or he knew more about that,
2 he was the one that knew about the EBT. She kept
3 deflecting when she didn't want to provide information.
4 If it wasn't amnesia, if it wasn't I don't remember, it
5 was oh, Brian knows that. Where's Brian? They brought
6 her out from Wisconsin. We know he's in New York. We
7 know that according to her they have a coparenting
8 relationship, which I think you could take to mean that
9 they at least get along, so you would think if he could
10 give information that would fill in the gaps in their
11 case they would have done the same thing with him that
12 they did with J.H. Go through the procedure for
13 subpoenaing someone out of state, bring him into this
14 courtroom and let him help out the mother of his child.
15 I guess they didn't do that because what he has to say
16 doesn't help their case.

17 J.H. was a reluctant witness. I know she -- she
18 comes off as someone who has a sort of shy personality,
19 and I can sympathize with that, but she just -- did she
20 really want to look anybody the eye and tell what happened
21 or did she kind of have her eyes downcast because she
22 wasn't that confident about what she had to say? Why --
23 why in the world does she have the amnesia and the
24 inability to remember what you would think if it's true
25 would be the most traumatic incident of her life. And as

1 I just discussed, where's the corroboration? She did
2 have a motive to lie and she has a motive to act to keep
3 it up or she could be charged with a crime.

4 On the other hand is Rodney, and I tell you what,
5 I think the judge is gonna tell you this, a person charged
6 with a crime never, ever under any circumstances has to
7 testify. They do not at all. And if they don't testify,
8 you can't even take that into consideration while you're
9 deliberating in reaching your verdict, but he -- he
10 decided to do the hard thing, the tough thing. He decided
11 to get on the stand, look you twelve men and women in the
12 eye and tell you the truth about what happened.

13 And, yeah, he has some prior criminal convictions and
14 he knew that you would hear about that, but nevertheless
15 he decided to put himself through the humiliation of
16 having that brought up, through the scary and confusing
17 process of being cross-examined by a skilled attorney to
18 tell you the truth. You've looked him in the eye. You've
19 seen at least a snapshot of the type of man he is. He
20 was telling you folks the truth. J.H. [REDACTED] answered
21 the door and let him into her house. J.H. [REDACTED]
22 had consensual sexual intercourse with him as she had had
23 with him on a previous occasion. He is not guilty and
24 under the evidence in your case that's got to be your
25 verdict.

1 Thank you very much.

2 THE COURT: Ms. Fullwood, thank you.

3 Ms. Patterson, you're recognized for your reply.

4 MS. PATTERSON: Thank you.

5 Again, distractions. Now it's my opportunity to
6 redirect you back to the pertinent evidence in this
7 case. Ms. Fullwood got up here and talked about J.H. [REDACTED]
8 demeanor on this stand. I don't know in her mind what
9 she expects a victim of a sexual assault to act like,
10 but J.H. [REDACTED] twenty-four years old, a young mom, had to
11 come in here and face her rapist, the man who sexually
12 assaulted her in front of her daughter. Yeah, her eyes
13 are gonna look down. Yeah, she's gonna be a little timid
14 and shy and reluctant to say certain things. She's got
15 to look at you twelve, fourteen people and tell what
16 embarrassing things happened to her.

17 And Sergeant Reese, if you remember when he was
18 questioned, he talked about he noted an apparent injury
19 in his report because of J.H. [REDACTED] mental state. Again,
20 April demonstrating how J.H. [REDACTED] was shaking. Those were
21 real emotions, those were raw, those were not fabricated
22 because she was trying to hide an adulterous relationship
23 with Rodney Furtick.

24 She talked about Brian. Brian now lives in New
25 York. They're divorced. But that night he ordered her

1 food. It sounds like a concerned husband. He came to
2 her aid right away when he was called. That sounds like
3 a concerned husband. They had had sex at least seven
4 days prior to her going to the -- going to the hospital.
5 She reported that to the SANE nurse. Yeah, they may have
6 had problems. They're a young couple. They were real
7 young, but it wasn't to the point where J.H. would have
8 an affair with Rodney Furtick.

9 And the timeline. Again, if you've been sexually
10 assaulted, you don't concentrate about what time it is.
11 She knew it was late, around her daughter's bedtime. She
12 had end of the day chores. She probably got distracted.
13 She said it happened right before she went to April's
14 house and that time is documented and I submit to you
15 that is the time range that this sexual assault occurred.

16 Again, don't get distracted. They're talking about
17 fingerprints and the door being processed, but now he's
18 saying he -- he came in, so what does that matter? Again,
19 distraction. The officers, they testified they didn't
20 question her over and over to get a statement. They had
21 information to go off on, they left that to Ms. Nguyen,
22 the sexual assault nurse.

23 Lieutenant Merrill, he did care about this case.
24 He cared about it so much he didn't rush to judgment. He
25 waited for the evidence to come. And he thought he had

1 taken those pictures. He had collected that evidence,
2 so he couldn't go back and take the pictures because he
3 already had the evidence of where he found them. He
4 cared about this case.

5 Again, it is the ultimate insult for a sexual
6 assault victim for now -- to now claim that it is consent.
7 This was not consensual. This was anything but consent.

8 Now one of the hardest things it is for me to do as
9 a prosecutor is to take my seat because I don't have the
10 opportunity to speak to you again. These were my
11 opportunities. And I know as soon as I sit down I'm
12 gonna remember something I should have said, but I just
13 ask you to remember one thing. Just stay focussed on
14 the main points, the testimony. Remember the rawness,
15 remember the realness of J.H. Remember what people
16 testified about to support what she reported. April
17 had nothing to gain to say that J.H. came to her door
18 looking like that. Sergeant Reese had nothing to gain.
19 Marilyn Sanchez had nothing to gain.

20 The judge will tell you to use your common sense,
21 that's something you get to use in that jury deliberation
22 room, and I just ask that you use your common sense,
23 don't get distracted, and remember what Ms. Mayes said at
24 the beginning. She told you from the onset the evidence
25 lights the path that leads to truth. J.H. has been

1 waiting a long time for this and that's why she came.
2 She came to get justice and we just ask that you find the
3 Defendant --

4 MS. FULLWOOD: Your Honor, objection to a Golden
5 Rule-type of argument.

6 THE COURT: Okay. I don't think she stepped over
7 the line. But, ladies and gentlemen of the jury,
8 understand I'm gonna instruct you on the law and part
9 of what I'm gonna instruct you on is that you have no
10 friends to reward, you have no enemies to punish. To
11 the extent that the Solicitor may have suggested
12 otherwise, I'm instructing you to disregard her
13 comments, okay? Your job will be to apply the facts
14 -- or the law to the facts as I will instruct you
15 momentarily.

16 Ms. Patterson, do please continue though.

17 MS. PATTERSON: Thank you, Your Honor.

18 It's been a long road for J.H. and we just ask
19 that you use your common sense, don't get distracted and
20 find the Defendant, Rodney Furtick, guilty of criminal
21 sexual conduct first degree and burglary in the first
22 degree.

23 Thank you.

24 THE COURT: Thank you, Ms. Patterson.

25 All right. Now, ladies and gentlemen, it now

1 becomes my responsibility to instruct you on the law
2 that applies in this particular case and I will let you
3 know that the way that this was done, and is still being
4 done by some judges, but the way a lot of judges did it
5 when I first started practicing law in '93 is that the
6 judge would sit up here, read you basically sixteen pages
7 taken from the law books and the jury was supposed to sit
8 there and hear it over the course of fifteen minutes and
9 basically apply it and not get it wrong, and I've always
10 found that a little unreasonable to expect you guys to
11 learn in fifteen minutes what it took me three years to
12 learn.

13 So what I'm telling you, ladies and gentlemen, is
14 that I'll give you a copy of these instructions you can
15 refer to during the course of your deliberations. Please,
16 of course, pay attention to the instructions as a whole
17 and not one portion to the detriment of some other portion
18 of the instructions and do, of course, please return these
19 to me once your verdict is returned.

20 Madam Forelady, if you have any question about -- or
21 any member of the jury has any question about the law that
22 applies in this case, I'll simply ask that you write a
23 note telling me what it is that you're struggling with;
24 however, if you have any sort of factual question or
25 factual issue and you send me a note asking about the

1 facts, odds are I'm not gonna be able to assist you
2 because at this point in time the record is closed, it's
3 not possible to recall witnesses or present additional
4 testimony or evidence, okay? So legal questions I can
5 help you with, factual questions probably not, all right?

6 Now, ladies and gentlemen, again, in this case the
7 indictments charge the Defendant, Mr. Furtick, with the
8 offenses of burglary first degree and criminal sexual
9 conduct in the first degree. I'll remind you that the
10 fact that the Defendant was indicted in this case is not
11 evidence and cannot be considered by you as evidence of
12 guilt, nor do these indictments create any inference or
13 presumption of guilt. Again, these documents are merely
14 the legal instruments which contain the charges made
15 against the Defendant. They're the formal means by which
16 this case is brought into court.

17 Now the indictments charge two different offenses;
18 namely, burglary first degree and criminal sexual conduct
19 in the first degree. Each indictment, again, charges a
20 separate and distinct offense, so you have to decide
21 each indictment separately on the evidence and the law
22 applicable to it uninfluenced by your decision as to the
23 other indictment. The Defendant may be convicted or
24 acquitted of any or all of the offenses charged and you'll
25 be asked to write a separate verdict of guilty or not

1 guilty for each indictment.

2 Now the Defendant has pled not guilty to these
3 charges. Of course, that plea puts burden on the State
4 to prove his guilt. I instruct you that a person charged
5 with committing a criminal offense is never required to
6 prove his innocence. It's an important rule of law that
7 the defendant in a criminal trial no matter what the
8 seriousness of the charge may be will always be presumed
9 to be innocent of the crimes for which the indictments
10 were issued unless the guilt has been proven by evidence
11 satisfying you of that guilt beyond a reasonable doubt.

12 Ladies and gentlemen, the presumption of innocence
13 does not end when you begin your deliberations. Rather,
14 it accompanies the Defendant throughout the trial until
15 you reach a verdict of guilt based on evidence satisfying
16 you of that guilt beyond a reasonable doubt.

17 The presumption of innocence is sometimes described
18 as being like a robe of righteous that's placed about the
19 Defendant's shoulders and remains with him until it's
20 stripped from him by evidence satisfying you of his guilt
21 beyond a reasonable doubt. The presumption of innocence
22 is not merely a legal theory, it's not just a legal
23 phrase, but it's a substantial right to which everyone
24 is entitled unless you, the jury, are satisfied from the
25 evidence of his guilt beyond a reasonable doubt.

1 Well, what is a reasonable doubt in the law? A
2 reasonable doubt is the kind of doubt that would cause
3 a reasonable person to hesitate to act. The State has
4 the burden of proving the Defendant guilty beyond a
5 reasonable doubt and some of you may have sat as jurors
6 in civil cases where you were told that it's only
7 necessary to prove that a fact is more likely true than
8 not true, such as by the greater weight or preponderance
9 of the evidence. In criminal cases, the State's proof
10 must be more powerful than that, it must be proof beyond
11 a reasonable doubt. Proof beyond a reasonable doubt is
12 proof that leaves you firmly convinced of the Defendant's
13 guilt.

14 Now there are very few things that we know in this
15 world with absolute certainty and in criminal cases the
16 law does not require proof that overcomes every possible
17 doubt. If based on consideration of the evidence you're
18 firmly convinced that the Defendant is guilty of the
19 crimes charged, you should find him guilty. If, on the
20 other hand, you think there's a real possibility that the
21 Defendant is not guilty, you should give him the benefit
22 of the doubt and find him not guilty.

23 Now, again, ladies and gentlemen, during this trial
24 you and I have had certain duties to perform. It's been
25 my job to preside over the trial of this case and rule on

1 the admissibility of evidence. Understand that you're
2 to consider only the competent evidence before you, so
3 any testimony stricken you'll have to disregard that
4 testimony because you're to consider only the testimony
5 presented from the witness stand, as well as the exhibits
6 which have been made a part of the record in this case.

7 I also have the obligation to charge the law and
8 as the presiding judge, I'm the sole judge of the law.
9 Understand that it's your duty to accept and apply the
10 law as I state it to you now, so if you already have
11 some idea as to what the law is or what the law should
12 be and this idea does not agree with what I tell you
13 the law is, you have to abandon that idea because you're
14 sworn to accept and apply the law exactly as I state it
15 to you now.

16 Again, you are the sole and exclusive judges of the
17 facts in this case. Understand that a trial judge cannot
18 intimate, state, comment on or make any statement to a
19 trial jury about the facts in a case. Since you, the
20 jury, are the sole judges of the facts, you're not to
21 infer from what I've said during the progress of this
22 trial in ruling upon the admissibility of evidence or
23 otherwise or anything that I say to you know that I have
24 any opinion about the facts. The law does not permit me
25 to have any opinion about the facts in this case. This

1 is a matter solely for you to determine. As jurors,
2 it's your duty to determine the effect, value, weight
3 and truth of the evidence presented during this trial.

4 Now, ladies and gentlemen, typically there are
5 two types of evidence presented during trials, direct
6 evidence and circumstantial evidence. Direct evidence
7 directly proves the existence of a fact and does not
8 require deduction, such as testimony by an eyewitness.
9 It's evidence which immediately establishes the main
10 fact to be proven. Circumstantial evidence is proof
11 of a chain of facts and circumstances indicating the
12 existence of a fact. I instruct you that crimes may be
13 proven by circumstantial evidence. The law makes no
14 distinction between the weight or value to be given to
15 either direct or circumstantial evidence, however, to
16 the extent that the State relies on circumstantial
17 evidence all the circumstances must be consistent with
18 each other and when taken together point conclusively to
19 the guilt of the accused beyond a reasonable doubt. If
20 these circumstances merely portray the Defendant's
21 behavior as suspicious, then the proof has failed.
22 Again, the State has burden of proving the Defendant's
23 guilt beyond a reasonable doubt and this burden rests
24 with the State regardless of whether the State relies
25 on direct evidence, circumstantial evidence or some

1 combination of the two.

2 Now necessarily, ladies and gentlemen, in this
3 case you must determine the credibility of witnesses
4 who have testified and you are the sole and only judges
5 of credibility in this case. Again, credibility simply
6 means believability. It becomes your duty as jurors to
7 analyze and to evaluate the evidence and determine which
8 evidence convinces you of its truth.

9 In determining the believability of witnesses,
10 you can believe one witness over several witnesses or
11 several over one witness. You may believe a part of the
12 testimony of a witness and reject the remaining part of
13 the testimony of that same witness. You may believe the
14 testimony of a witness in its entirety or reject it in
15 its entirety. You may consider whether any witness has
16 exhibited to you any interest, bias, prejudice or other
17 motive in this case. You may also consider the
18 appearance and manner of a witness while they're on the
19 witness stand.

20 Now in this case, ladies and gentlemen, you've
21 heard evidence that the Defendant has previously been
22 convicted of criminal offenses. You may consider
23 that evidence only as it may affect the Defendant's
24 believability as a witness. You may not consider a
25 prior conviction or any prior convictions as evidence

1 of guilt of the crime for which the Defendant is now
2 on trial.

3 Now as I explained briefly yesterday, ladies and
4 gentlemen, as it relates to expert witnesses, normally
5 the rules do not permit witnesses to testify as to
6 opinions or conclusions, but an exception to this rule
7 exists for expert witnesses. A witness who by education
8 or experience has become an expert in some science, art,
9 profession or calling may state an opinion as to relevant
10 and material matters in which the witness claims to be
11 an expert and they may also give the reasons for their
12 opinion. You should consider any expert opinions
13 received in evidence in this case and like any other
14 evidence give it the weight you think it deserves. If
15 you decide that the opinion of an expert witness is not
16 based on sufficient education or experience or if you
17 conclude that the reasons given in support of their
18 opinion are not sound or that the opinion's outweighed
19 by other evidence, you may disregard the opinion
20 entirely. An expert witness's testimony is to be given
21 no greater weight than that of any other witness simply
22 because the witness is an expert. Further, you're not
23 required to accept an expert's opinion even though it's
24 not contradicted.

25 Now in this case, ladies and gentlemen, the first

1 charge for your consideration is burglary first degree.
2 Again, the Defendant is charged with the offense of
3 burglary first degree. The State must first prove beyond
4 a reasonable doubt that the Defendant entered a dwelling
5 without consent. A dwelling is defined as any building
6 or portion of a building in which a person ordinarily
7 would sleep.

8 In order to prove that the Defendant entered the
9 -- the dwelling, the State does not have to show that
10 the Defendant's entire body entered the dwelling. The
11 smallest entry is sufficient. It could be any part of
12 the body such as a hand or foot or even an instrument
13 like a hook or any other such instrument. In addition,
14 the State does not have to prove that force was used to
15 gain entry.

16 Next the State must prove beyond a reasonable doubt
17 that the Defendant intended to commit a crime, either a
18 felony or misdemeanor, at the time of the entry. The
19 mere entry into a dwelling without consent is not
20 burglary. If the intent to commit a crime is formed
21 after entry, it is not burglary. On the other hand, if
22 the Defendant intended to commit a crime at the time of
23 the entry, it is a burglary even if the intent was
24 abandoned after entry. It does not matter that the
25 intended crime may not have been accomplished. Intent

1 may be shown by acts and conduct of the Defendant and
2 other circumstances from which you may naturally and
3 reasonably infer intent.

4 Finally, the State must prove beyond a reasonable
5 doubt that either when entering, while in the dwelling
6 or when fleeing the Defendant caused physical injury to
7 anyone not participating in the crime or the Defendant
8 entered or remained in the dwelling in the nighttime.
9 Nighttime is defined as the period between sunset and
10 sunrise during which there's not enough daylight to
11 recognize a person's face except by artificial light or
12 perhaps moonlight.

13 Next, ladies and gentlemen, the Defendant is charged
14 with the offense of criminal sexual conduct in the first
15 degree. The first element which the State must prove
16 beyond a reasonable doubt is that the Defendant engaged
17 in a sexual battery with the victim. A sexual battery
18 is sexual intercourse, cunnilingus, fellatio, anal
19 intercourse or any intrusion, however slight, of any part
20 of a person's body or of any object into the genital or
21 anal openings of another person's body.

22 If you find that the State has not shown beyond a
23 reasonable doubt that a sexual battery occurred, stop
24 deliberating and, of course, your verdict would be not
25 guilty on that charge. If, however, you find that a

1 sexual battery did occur, you must then decide whether
2 the State has proven beyond a reasonable that the victim
3 submitted to sexual battery while the victim was also
4 the victim of forcible confinement, kidnapping, robbery,
5 extortion, burglary, housebreaking or any other similar
6 offense.

7 Pardon me one moment.

8 Ladies and gentlemen, the crime of criminal sexual
9 conduct first degree also includes the lesser crime of
10 criminal sexual conduct second degree. If you find that
11 the State has not met its burden of proving the Defendant
12 guilty of CSC first degree, you may consider whether the
13 State has proven the Defendant guilty of CSC second
14 degree.

15 A person is guilty of criminal sexual conduct in
16 the second degree if the actor uses aggravated coercion
17 to accomplish the sexual battery. Aggravated coercion
18 means that the actor threatens to use force or violence
19 of a high and aggravated nature to overcome the victim
20 or another person, if the victim reasonably believes
21 that the actor has the present ability to carry out the
22 threat or threatens to retaliate in the future by the
23 infliction of physical harm, kidnapping or extortion,
24 under circumstances of aggravation, against the victim
25 or any other person.

1 Now, finally, ladies and gentlemen, if you were to
2 find that the Defendant -- or that the State has failed
3 to meet its burden of proving the Defendant's guilt as
4 relates to CSC second degree, you may then consider
5 whether the State has proven that the Defendant is
6 guilty of the lesser included offense of CSC third
7 degree. I instruct you that a person is guilty of CSC
8 third degree if the actor engages in sexual battery with
9 the victim and the actor uses force or coercion to
10 accomplish the sexual battery in the absence of any
11 aggravating circumstances.

12 Bear with me for just one moment, ladies and
13 gentlemen.

14 Would you-all approach, please?

15 (Proceedings held at the bench; not reported.)

16 THE COURT: Bear with me. I left something out.
17 I apologize. I thought I had put it in there, but I
18 did not.

19 Now, ladies and gentlemen, in this case the
20 Defendant has raised the defense that the victim
21 voluntarily consented to the sexual intercourse. The
22 Defendant does not have to prove that the victim
23 consented. Instead the State must prove beyond a
24 reasonable doubt that the victim did not consent. If
25 you find that the victim consented to the sexual

1 intercourse, you must find the Defendant not guilty.

2 Now, ladies and gentlemen, there are several
3 possible verdicts which you may find in this case and,
4 Madam Forelady, I've prepared this verdict sheet to help
5 guide your deliberations and return your verdict, okay?
6 And this is about as -- I mean, you're not stupid or
7 anything, you can follow this, but the law still makes
8 me explain it to you, all right?

9 The first charge says -- or statement rather says
10 we, the jury, in the above-captioned case on the charge
11 of burglary first degree unanimously find Rodney Jerome
12 Furtick, and there are two mutually exclusive options;
13 not guilty and guilty, okay? If you find the State has
14 failed to meet its burden of proving the Defendant's
15 guilt beyond a reasonable doubt and all twelve of you
16 agree, you would initial next to not guilty and then go
17 down to Question Number 2.

18 If, however, you find that the State has met its
19 burden of proving the Defendant's guilt beyond a
20 reasonable doubt, and all twelve of you agree, you
21 would initial next to guilty, and then go to Number 2,
22 okay?

23 Well, correction. If you find the Defendant not
24 guilty on the burglary charge, you would go to Number 3,
25 all right, and I'll correct that on here. So if you

1 find him guilty on the burglary first degree though,
2 you would then proceed to Question Number 2. That
3 says we, the jury, in the above-captioned case on the
4 charge of criminal sexual conduct in the first degree
5 unanimously find the Defendant, then, again, two
6 mutually exclusive options. If you find that the State
7 has not met its burden of proving the Defendant's guilt
8 beyond a reasonable doubt, and all twelve of you agree,
9 you would initial not guilty and then go down to
10 Question Number 3.

11 If all of you find that the State has met its
12 burden of proving the Defendant's guilt beyond a
13 reasonable doubt, and all twelve of you agree, you would
14 initial guilty, knock on the door and let the bailiff
15 know and we'll receive you back here in the courtroom,
16 okay?

17 So basically that's how this flows. And I'm sure
18 that you'll understand it as -- as it goes on.

19 Now, ladies and gentlemen, I'll remind you again
20 that you have been chosen as fair and impartial
21 individuals. Again, that means that you have no friends
22 to reward, you have no enemies to punish in this
23 particular case. Your verdict must be based solely on
24 the facts and the law as I have instructed to you.

25 Now in a moment I'm gonna ask that you return to

1 the jury room, but please don't begin your deliberations
2 yet. Your cue to begin your deliberations will be my
3 asking the two alternates to step out and your receipt
4 of all the evidence and my instructions back there and
5 this verdict form back in the jury room, so that will be
6 the cue to begin your deliberations.

7 If at any time, Madam Forelady, you find it
8 necessary to communicate with the Court, again, just
9 write me a note and let me know what it is that you're
10 struggling with and I'll try to help you, but please
11 at no time should you ever disclose to the Court any
12 kind of numerical division between the jury. That's
13 information I do not need, that's information I should
14 not have, so I do not want to know if you're deliberating
15 and the vote is currently 7-5 one way, 11-1, you know,
16 10-2. That's information I don't need, so just don't
17 inform me about it, okay?

18 With that, adjourn to the back. Your food should
19 be here. We'll try and go ahead and pass out whatever
20 it is that you ordered while we get everything assembled
21 out here, okay?

22 Thank you, but don't begin your deliberations yet.

23 (Whereupon, the jury retires to the jury room at
24 1:16 PM.)

25 THE COURT: With the exception of the Court