

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
Oct 28 2024
S.C. SUPREME COURT

Certiorari to Aiken County

Honorable Brooks P. Goldsmith, Circuit Court Judge

WAYNE HANKINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000048

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

T. CRUISE MITCHELL
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3737

ATTORNEY FOR PETITIONER

J. WILLIAM WEEKS

Solicitor, Second Judicial Circuit
P.O. Box 3368
Aiken, SC 29802
(803) 642-1557

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
INDICTMENTS	1
TRIAL TRANSCRIPT DATED AUGUST 29-31, 2017	5
SENTENCE SHEETS	287
APPLICATION FOR POST-CONVICTION RELIEF	289
RETURN.....	297
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	316
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 5, 2023 ...	318
APPLICANT’S EXHIBIT NO. 1 (VOLUNTARY STATEMENT).....	395
APPLICANT’S EXHIBIT NO. 3 (CALL LOGS).....	397
ORDER OF DISMISSAL.....	401
MOTION FOR A NEW TRIAL	419
ORDER DENYING MOTION FOR A NEW TRIAL	420

**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
APPLICANT’S EXHIBIT NOS. 2 AND 4 (PHOTOGRAPHS)]**

WITNESSES

Aiken County Sheriff

Inv. Stuart Graybeal

Law Enforcement Case #: 16-030204

AAH

ARREST WARRANT NUMBER

2016A0210200842 ID 10 November 2016

Liz Godard
J.C.C.P. & G.S.
Angel Miles am
Deputy Clerk

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: November 10, 2016

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 8/31/17

DOCKET NO. 2016GS0202363

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

WAYNE HANKINSON

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
KIDNAPPING
§ 16-03-0910

At a Court of General Sessions, convened on November 14, 2016, the Grand Jurors of Aiken County present upon their oath:

That **WAYNE HANKINSON** did in Aiken County on or about May 28, 2016, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away **K. J.** without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Inv. Stuart Graybeal

Law Enforcement Case #: 16-030204

AAH

ARREST WARRANT NUMBER

2016A0210200841 ^{FILED} 10 November 2016

Liz Hodard
S.C.C.P. & G.S.

Angel Miles am
Deputy Clerk

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: November 10, 2016

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 8/31/17

DOCKET NO. 2016GS0202362

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

WAYNE HANKINSON

CDR #: 0253

Indictment for

ASSAULT WITH INTENT TO COMMIT
CRIMINAL SEXUAL CONDUCT IN THE
FIRST DEGREE

§ 16-03-0656

J. STROM THURMOND, SOLICITOR

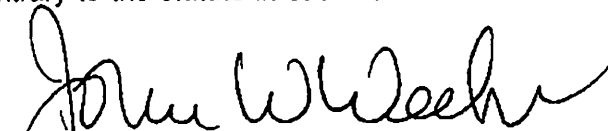
STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	ASSAULT WITH INTENT TO COMMIT
COUNTY OF AIKEN	)	CRIMINAL SEXUAL CONDUCT IN THE FIRST
	)	DEGREE

§ 16-03-0656

At a Court of General Sessions, convened on November 14, 2016, the Grand Jurors of Aiken County present upon their oath:

That **WAYNE HANKINSON** did in Aiken County on or about May 28, 2016, wilfully and unlawfully commit an Assault With Intent To Commit Criminal Sexual Conduct In The First Degree upon **K. J. [REDACTED]**, to wit: Wayne Hankinson did choke the victim, **K. J. [REDACTED]**, with his hands, while attempting to commit a sexual battery. All in violation of Section 16-3-656 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. STROM THURMOND, SOLICITOR

1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3
4 Indictment No.: 2016GS0202362
5 2016GS0202363
6 2016GS0202364

6 State of South Carolina,)
7 Plaintiff,)
8)
9 vs.) Transcript of Record
10 Wayne C. Hankinson,)
11 Defendant.)

12 August 29-31, 2017
13 Aiken, South Carolina

14 B E F O R E:

15 The Honorable Brooks P. Goldsmith, Judge and a jury.
16

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

18 Ashley A. Hammack, Assistant Solicitor
19 Samuel B. Grimes, Assistant Solicitor
20 Attorneys for the State

21 C. David Hayes, Assistant Public Defender
22 Barry L. Thompson, Assistant Public Defender
23 William T. McKellar, Assistant Public Defender
24 Attorneys for the Defendant

25 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

1	<u>I N D E X</u>	
2		<u>Page</u>
3	<u>TUESDAY, AUGUST 29, 2017</u>	
4	Pretrial Motions.....	7
5	Jury Voir Dire.....	13
6	Jury Selection.....	33
7	Opening Remarks by the Court.....	39
8	Opening Statements	
9	By Mr. Grimes.....	42
10	By Mr. Thompson.....	47
11	<u>K. J.</u>	
12	Direct Examination by Ms. Hammack.....	57
13	Cross-Examination by Mr. Hayes.....	91
14	Redirect Examination by Ms. Hammack.....	111
15	David Blanken	
16	Direct Examination by Mr. Grimes.....	115
17	Cross-Examination by Mr. Hayes.....	119
18	Ryan Hall	
19	Direct Examination by Ms. Hammack.....	122
20	Clay Adams	
21	Direct Examination by Mr. Grimes.....	127
22	Cross-Examination by Mr. Hayes.....	124
23	Stuart Graybeal	
24	Direct Examination by Ms. Hammack.....	135
25	Cross-Examination by Mr. Hayes.....	145

	<u>Page</u>
1	
2	Chuck Cain
3	Direct Examination by Mr. Grimes..... 148
4	<u>WEDNESDAY, AUGUST 30, 2017</u>
5	Jennifer Clayton
6	Direct Examination by Ms. Hammack..... 155
7	Cross-Examination by Mr. Thompson..... 165
8	Mid-Trial Motions..... 167
9	Wayne Hankinson
10	Direct Examination by Mr. Hayes..... 171
11	Post-Trial Motions..... 190
12	Jury Charge Conference..... 191
13	Closing Arguments
14	By Mr. Hayes..... 195
15	By Ms. Hammack..... 199
16	Jury Charge..... 218
17	Question by the Jury..... 228
18	Question by the Jury..... 230
19	Replay of Testimony
20	David Blanken..... 233
21	Ryan Hall..... 239
22	Question by the Jury..... 245
23	Note from the Jury..... 247
24	<u>THURSDAY, AUGUST 31, 2017</u>
25	Allen Charge..... 252

1		<u>Page</u>
2	Motion for Mistrial.....	259
3	Verdict.....	266
4	Post-Trial Motions.....	269
5	Sentence.....	270
6	Post-Trial Motion.....	275
7	Certificate of Reporter.....	282
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>		
2	<u>Number</u>	<u>Description</u>	<u>Page</u>
3	S-1	Photograph.....	65
4	S-2	Photograph.....	65
5	S-3	Photograph.....	65
6	S-4	Photograph.....	65
7	S-5	Photograph.....	65
8	S-6	Photograph.....	65
9	S-7	Photograph.....	65
10	S-8	Photograph.....	65
11	S-9	Photograph.....	65
12	S-10	Photograph.....	65
13	S-11	Photograph.....	86
14	S-12	Photograph.....	86
15	S-13	Photograph.....	86
16	S-14	Photograph.....	86
17	S-15	Photograph.....	86
18	S-16	Photograph.....	89
19	S-17	Photograph.....	118
20	S-18	Photograph.....	128
21	S-19	Photograph.....	128
22	S-20	Photograph.....	128
23	S-21	Photograph.....	128
24	S-22	Photograph.....	128
25	S-23	Photograph.....	128

1	<u>E X H I B I T S</u>		
2	<u>Number</u>	<u>Description</u>	<u>Page</u>
3	S-24	Photograph.....	128
4	S-25	Photograph.....	128
5	S-26	Photograph.....	128
6	S-27	Photograph.....	128
7	S-28	Photograph.....	128
8	S-29	Map.....	138
9	S-30	Lineup.....	88
10	S-31	DNA SLED Report.....	112
11	D-1	CD of Library.....	145
12	D-1B	Substitution of CD in D-1.....	258
13	D-2	Photograph.....	185
14	D-3	Text Messages.....	95
15	D-4	Photograph.....	98
16	D-5	Movie Flier.....	109
17	D-6	Wikipedia on Movie.....	110
18	C-1	Jury Request To Charge by the Defendant	
19	C-2	Jury Question.....	228
20	C-3	Jury Question.....	230
21	C-4	Jury Question.....	245
22	C-5	Jury Note.....	247
23			
24			
25			

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

I'll let them make their motion. I just wanted to clarify whether or not you had the indictments up there. Our position is that it's five and five, but we'll address

1 that after they make a motion.

2 THE COURT: All right. I do have the indictment
3 and I have the case of State versus Miller by the
4 solicitor, as well as the statute dealing with the strikes.

5 MR. HAYES: May it please the Court, Judge. I
6 would say under the reading that I'm giving the law is that
7 I ought to be entitled to ten. The statute under 14-7-1110
8 says any person who is arraigned with the crime of murder,
9 manslaughter, burglary, arson, criminal sexual conduct,
10 armed robbery, grand larceny, or breach of trust when it is
11 punishable as to grand larceny and perjury. In that
12 reading, Judge, I would say that the legislature is looking
13 at it and saying we're looking at the punishment.

14 Under the statute, as Mr. Hankinson is charged, it
15 says that the criminal sexual conduct or assault with
16 intent to commit is punishable as the principal. It is the
17 same as criminal sexual conduct, looking at 0 to 30 years.
18 With that, Judge, I would say we are entitled to the same
19 amount of strikes henceforth. The statute did not break
20 out criminal sexual conduct into different degrees. It
21 didn't break it down as into different categories. It says
22 plain old criminal sexual conduct.

23 THE COURT: All right.

24 Solicitor?

25 MS. HAMMACK: Thank you, Your Honor. The statute

1 is very clear as far as which crimes allow the defense to
2 have ten strikes. None of the charges with which the
3 defendant is charged in this case are enumerated in that
4 statute. As such he would be entitled to five. The State
5 v. Miller that I handed up is clear that it is not an
6 enumerated crime within that statute, that the defense is
7 not subject to having ten strikes.

8 With regard to the comment about it -- the intent
9 of the law going to the punishment, the law is very clear
10 that the only crime that it considers the potential
11 punishment for is breach of trust. If it had been the
12 intent of the legislature to look at the potential sentence
13 for all of those crimes, it would have said so. It
14 doesn't.

15 The statute is clear. The law is clear as to how
16 to interpret the statute. He's not charged with any crime
17 that would give him ten strikes.

18 THE COURT: Are you sure you want to win this
19 argument? Well, what I mean is if I agree with you and
20 we're both wrong and you win your trial, we'll be back here
21 trying it again, if we're wrong. If you're wrong and I
22 agree with you, I'm sorry.

23 Anyhow, anything in reply?

24 MR. HAYES: Judge, I would just note that State
25 versus Miller was a 1972 case. Since that time the

1 legislature did change some in 1986 and amended the statute
2 that included armed robbery in those three, I'd say older
3 cases, and the law since then has been changed. That's the
4 only thing that I would add, Judge.

5 THE COURT: Well, the Court agrees with the
6 position of the solicitor and, therefore, it's five and
7 five -- with one alternate? Is one alternate fine?

8 MS. HAMMACK: Yes, sir.

9 MR. HAYES: Yes, sir.

10 THE COURT: Was there another issue y'all are going
11 to need to resolve in this case sooner or later?

12 MR. HAYES: Judge, there was -- I'm stipulating to
13 the chain on the blood and the solicitor and I both are
14 agreeing or stipulating on the authenticity of video from
15 Georgia at the library.

16 The only other issue that I think we would need to
17 take up at this time would be the record. And he has one
18 charge and I would be moving to suppress the use thereof,
19 which is the possession of a firearm or a sawed-off shotgun
20 that he was charged federally on.

21 MS. HAMMACK: And --

22 MR. HAYES: I might need my client, Judge.

23 MS. HAMMACK: Yeah.

24 THE COURT: Oh, I thought that fellow sitting next
25 to you was him.

1 Okay. We'll get him.

2 (The defendant entered the courtroom.)

3 THE COURT: All right, sir. Go ahead.

4 MR. HAYES: Judge, I'm just going to take up where
5 I was leaving off. He has a conviction in federal court
6 for possession of a firearm which was a sawed-off shotgun
7 back in February 3rd of 2009. Judge, I would move to
8 suppress it under 609 and under 404. The statute says that
9 it would generally come in if it's a felony and it carries
10 more than one year. It does in this case.

11 However, Judge, I would say that its probative
12 value is not outweighed by the prejudice here. There is an
13 allegation of a firearm in this case; there is an
14 allegation of the firearm -- or a conviction for a firearm
15 federally. It is not a crime of moral turpitude. It would
16 not be used to show that he was telling the truth or not
17 telling the truth. And I believe under 404, it wouldn't
18 show motive, identity, existence of a common scheme or
19 plan, or the absence of mistake or accident or the intent.
20 I believe -- he had a gun now, you can now conclude he had
21 a gun now. And I would move to suppress it based on those
22 reasons.

23 THE COURT: All right, sir.

24 Let me hear from the State. Solicitor?

25 MS. HAMMACK: Your Honor, just like with any

1 witness, if the defendant chooses to testify, he's subject
2 to impeachment based on his criminal history if there are
3 qualifying convictions. This is one of them. It is a
4 crime that carries over a year, it's within ten years.
5 It's specifically allowed by the statute. We're not going
6 to cross-examine him on the facts of that conviction or
7 anything about that conviction, but if he chooses to
8 testify, he is subject to impeachment based on his criminal
9 record just like any other witness.

10 If Your Honor is concerned about the prejudice
11 because of the exact type of conviction it is and the
12 allegations in this case, we don't have a problem
13 cross-examining him as to the fact that he's been convicted
14 of a crime that carries over a year in the last ten years.

15 THE COURT: I would allow that. To that extent,
16 I'll grant your motion with that caveat.

17 MR. HAYES: Yes, sir.

18 THE COURT: Anything else we need to do?

19 MS. HAMMACK: Not from the State, Your Honor.

20 MR. HAYES: Not from us, Your Honor.

21 THE COURT: All right, we'll be at ease.

22 (The jury venire was qualified for service.)

23 THE COURT: Madame Solicitor, do we have a case to
24 present for the selection of a jury?

25 MS. HAMMACK: Yes, sir, we do.

1 THE COURT: All right.

2 MS. HAMMACK: Your Honor, the first case for trial
3 is State versus Wayne Hankinson. He's charged in
4 Indictment 2016GS022362 with assault with intent to commit
5 criminal sexual conduct in the first degree. He's charged
6 in 2016GS022363 with kidnapping. And Indictment
7 2016GS022364 with possession of a weapon during the
8 commission of a violent crime.

9 THE COURT: All right. And is the defendant ready
10 to proceed with the selection of a jury?

11 MR. HAYES: We are, Your Honor.

12 **JURY VOIR DIRE**

13 THE COURT: As you heard just a few moments ago,
14 ladies and gentlemen, we're about to begin the selection of
15 a jury in this case. A few other facts that -- or
16 allegations that I need to make you aware is that these
17 alleged events occurred on or about May 28th of 2016 and
18 involved one K. J. [REDACTED] who would have been the
19 alleged victim of each of these crimes, alleged crimes.

20 In just a few moments, I'm going to ask you
21 questions about this matter, but before I do that, I'm
22 going to ask the attorneys if they will, the attorneys that
23 are going to be involved in this case, if they will stand
24 and identify themselves to you as well as any other
25 attorneys that will be assisting them; and give you the

1 names of potential witnesses who may be called to testify
2 in the case. And after -- and after that, I'm going to ask
3 you about your relationship with the attorneys, the victim,
4 the defendant, and any potential witnesses. So pay
5 attention to the names that you may hear announced in just
6 a few moments by the attorneys.

7 And we begin with the State. Solicitor?

8 MS. HAMMACK: Thank you. Good morning. My name is
9 Ashley Hammack and I work here in Aiken for our Solicitor's
10 Office.

11 MR. GRIMES: Good morning, I'm Sam Grimes. I work
12 with Ashley.

13 MS. HAMMACK: The names of some potential witnesses
14 you may hear from this week include K. J. [REDACTED]; David
15 Blanken Jr.; Ryan Hall, with the the Aiken County Sheriff's
16 Office; Investigator Chuck Cain, with the Aiken County
17 Sheriff's Office; Austin Lancaster, with the Aiken County
18 Sheriff's Office; Bruce Turner, with the the Aiken County
19 Sheriff's Office; Investigator Stuart Graybeal, with the
20 Aiken County Sheriff's Office; Lieutenant Clay Adams, with
21 the Aiken County Sheriff's Office; Investigator Chris
22 Johnson, with the Aiken County Sheriff's Office;
23 Investigator Mary Frances O'Grady, with the Aiken County
24 Sheriff's Office; Jennifer Clayton, with the State Law
25 Enforcement Division or SLED; Jackie Davis, with SLED,

1 Doris Yarbrough, with SLED; and Kirk Owen, with the Aiken
2 County Solicitor's Office. Thank you

3 THE COURT: Thank you, Solicitor.

4 From the defense.

5 MR. HAYES: Good morning. I'm David Hayes. I'm a
6 public defender here in Aiken County. This is Barry
7 Thompson. He also works in the office in Aiken County.
8 And Will McKellar is also an attorney here in Aiken County
9 Public Defender's Office. And this is Mr. Wayne Hankinson.
10 Another potential witness may be Mr. Robert Anderson, an
11 investigator in my office.

12 THE COURT: Thank you, sir.

13 All right. Ladies and gentlemen, the first
14 question I have for you is this: Has any member of the
15 jury panel ever been related by blood or related by
16 marriage to any of the attorneys involved in the case? to
17 the defendant? to the the victim? or to any of the
18 witnesses that may have been identified to you? If so,
19 please stand. If you've ever been related by blood or
20 marriage to any of those individuals, please stand.

21 (No one stood.)

22 THE COURT: Has any member of the jury panel ever
23 had a close personal or social relationship with any of the
24 attorneys involved in the case? with the defendant? or
25 any of the witnesses whose names have been identified to

1 you? If so, please stand.

2 (Jurors stood.)

3 THE COURT: And let me get your name and number.

4 THE JUROR: Charles Herrick, 81.

5 THE COURT: 81, yes, sir?

6 THE JUROR: Clay Adams, family friend.

7 THE COURT: And how long would you have known Clay
8 Adams?

9 THE JUROR: About ten years.

10 THE COURT: A friend of your family.

11 THE JUROR: Yes, sir.

12 THE COURT: And a friend of yours?

13 THE JUROR: Yes, sir.

14 THE COURT: Does he ever visit in your home?

15 THE JUROR: My mother's home, not my personal home.

16 THE COURT: You ever visit him in his home?

17 THE JUROR: Yes, sir.

18 THE COURT: Do you see each other on other
19 occasions, other than --

20 THE JUROR: Not in the last couple of years.

21 THE COURT: In the last couple of years, how many
22 times would you have had a conversation with him?

23 THE JUROR: Probably once a year the last three or
24 four years. I travel for work, so I'm not in town very
25 often.

1 THE COURT: Well, he may be a witness in this case.
2 Would the fact that he is going -- the fact that he is a
3 witness or may be a witness in the case, would that
4 interfere with your ability to be a fair and impartial
5 juror in this case?

6 THE JUROR: No, sir.

7 THE COURT: You could be fair to both the State and
8 to the defendant?

9 THE JUROR: Yes, sir.

10 THE COURT: No question about it?

11 THE JUROR: No question.

12 THE COURT: Thank you, sir.

13 THE JUROR: Thank you.

14 THE COURT: Yes, ma'am, your name and number?

15 THE JUROR: 192, Carol Willis.

16 THE COURT: 192.

17 THE JUROR: And I believe I know one of the
18 witnesses if it's the person I'm thinking of. I go to
19 church with him.

20 THE COURT: Which witness?

21 THE JUROR: Chris Johnson, unless there's another
22 Chris Johnson.

23 THE COURT: Chris Johnson is with the Aiken County
24 Sheriff's Office.

25 THE JUROR: If that's who I'm thinking of, I go to

1 church with him and his wife and are family friends.

2 THE COURT: But you're not sure you know him.

3 THE JUROR: No, I know Chris Johnson, and I know he
4 works for the police, I mean, I don't know his job title;
5 unless there's another Chris Johnson, that would be him.
6 I'm not sure.

7 THE COURT: Does anybody know Chris Johnson that's
8 with the sheriff's department?

9 MR. GRIMES: I don't know of another Chris Johnson
10 at the sheriff's office.

11 THE COURT: All right. Let me ask you a question.
12 Is it -- are you a friend of his? Is he a friend of your
13 family's? What's the relationship?

14 THE JUROR: So we've gone to church together for 15
15 years. So I'm friends with his wife and his kids are
16 friends with my siblings, so we just know each other well.
17 We're not -- it's not close, but I did want to say that I
18 know him.

19 THE COURT: Have you ever visited his family in his
20 home?

21 THE JUROR: I don't believe so.

22 THE COURT: Have you -- do you ever recall him
23 visiting in your home?

24 THE JUROR: No.

25 THE COURT: Do y'all belong to any civic or social

1 or religious organizations where you would see each other
2 on any kind of regular basis?

3 THE JUROR: Yes, we go to church weekly together.

4 THE COURT: I'm sorry?

5 THE JUROR: Church. We go weekly together.

6 THE COURT: I'm not going to ask you how many times
7 you go to church. You know there's churches and there are
8 churched. Where I come from -- where I grew up there were
9 small churches that had 30 people and then big churches
10 that had 500 people on Sunday. Are you in a 500-people
11 church or what?

12 THE JUROR: It's probably like 200 or 300.

13 THE COURT: The last time that you had a one-on-one
14 conversation with him would have been how long ago?

15 THE JUROR: Maybe a month.

16 THE COURT: Would the fact that he is a witness in
17 this case interfere with your ability to be a fair and
18 impartial juror in this case?

19 THE JUROR: No.

20 THE COURT: You could be fair?

21 THE JUROR: Yes, sir.

22 THE COURT: You could be fair to the State and to
23 the defendant?

24 THE JUROR: Yes, sir.

25 THE COURT: All right. Thank you, ma'am.

1 Is any member of the jury panel or any member of
2 your immediate family ever been represented by any of the
3 attorneys involved in this case? If so, please stand.

4 (No one stood.)

5 THE COURT: I'm going to get some people to stand
6 up in just a minute.

7 Is any member of the jury panel or member of your
8 immediate family ever been the victim of a violent crime?
9 If so, please stand. You or a member of your immediate
10 family ever been the victim of a violent crime.

11 (Jurors stood.)

12 THE COURT: And the gentleman closest to me. Yes,
13 sir, your name and number?

14 THE JUROR: Brad Cockrell, 35

15 THE COURT: 35. Yes, sir?

16 THE JUROR: Last year my father was murdered on
17 Wire Road. He's supposed to be doing the case too.

18 THE COURT: The prosecutor in the case?

19 THE JUROR: (Witness nodded head.)

20 THE COURT: Does that mean you've had interactions
21 with -- the two of y'all have had interactions about the
22 case?

23 THE JUROR: Yes, sir.

24 THE COURT: All right. You think that fact might
25 interfere with your ability to be a fair and impartial

1 juror in this case?

2 THE JUROR: Yes, sir.

3 THE COURT: Yeah, I kind of thought so too. All
4 right. Thank you, sir.

5 Yes, ma'am, your -- no, no, you can't leave.

6 Yes, ma'am, your name and number?

7 THE JUROR: Jennie Beck, Number 13. I'd prefer to
8 speak with you in private.

9 THE COURT: Okay. We'll do that.

10 (The juror started approaching.)

11 THE COURT: In just one minute, I'm sorry.

12 THE JUROR: Oh.

13 THE COURT: Let me -- let me go through the other
14 questions.

15 THE JUROR: Okay.

16 THE COURT: Because I may have a number of people I
17 need to talk to. I don't know.

18 I'm sorry, I didn't see you. Yes, ma'am, your name
19 and number?

20 THE JUROR: Melinda Cato, Number 32. My mother was
21 robbed and pistol whipped. And the Aiken County
22 Solicitor's Office tried that case. And I also worked with
23 David Hayes's father for 10 or 12 years. I know who he is.

24 THE COURT: Would those facts interfere with your
25 ability to be a fair and impartial juror?

1 THE JUROR: I don't think so.

2 THE COURT: Would not? You could be fair to both
3 the State and to the defendant?

4 THE JUROR: Yes, sir.

5 THE COURT: No question about it?

6 THE JUROR: No.

7 THE COURT: All right. Thank you, ma'am.

8 Is any member of the jury panel or member of your
9 immediate family ever been involved in law enforcement,
10 meaning police officer, sheriff's department, anything
11 similar to that -- or military. If so, please stand. If
12 they served.

13 (Jurors stood.)

14 THE COURT: All right. I'm going to try to start
15 on my left and try to speak to the people closest to me and
16 I'm going to end up pointing.

17 The gentleman I'm pointing to up close now. Yes,
18 sir, your name and number?

19 THE JUROR: Don Hamilton, Jury Number 73.

20 THE COURT: Yes, sir.

21 THE JUROR: My daughter is employed in this
22 building in the civil process division.

23 THE COURT: Okay. All right.

24 And, yes, sir?

25 THE JUROR: Nick Rushworth, Number 155. Myself,

1 my father, my sister, and my brother are all military.

2 THE COURT: All what?

3 THE JUROR: Military.

4 THE COURT: Okay. Were you involved in law
5 enforcement within the military.

6 THE JUROR: My brother.

7 THE COURT: Sir?

8 THE JUROR: My brother.

9 THE COURT: Your brother? What's he do?

10 THE JUROR: He's an MP.

11 THE COURT: Where is he an MP.

12 THE JUROR: Charleston.

13 THE COURT: Thank you, sir.

14 Let's see if I can point to the lady there.

15 THE JUROR: Nancy Hudack, Number 88.

16 THE COURT: 88.

17 THE JUROR: Yes, sir. Both my daughter and
18 son-in-law are members of the Georgia State Police in the
19 Drug Intervention Program.

20 THE COURT: All right. Thank you, ma'am.

21 And the lady I'm trying to point to right there.
22 Yes, ma'am?

23 THE JUROR: Juror 123, Wendi Melvin. My brother is
24 also with the South Carolina Highway Patrol in Aiken
25 County. My father and mother are both deputy coroners for

1 this county or former deputy coroners in this county.

2 THE COURT: Thank you, ma'am.

3 And directly behind that lady is another lady.

4 Yes, ma'am, the stripes.

5 THE JUROR: Juror 160, Lisa Shaw, my husband is
6 employed by the Department of Public Safety in North
7 Augusta and an investigator over -- lieutenant over
8 criminal investigation in that division.

9 THE COURT: Okay. Yes, ma'am. And next to you is
10 the lady I'm pointing to.

11 THE JUROR: I'm Number 103, Jenna Lee. My brother,
12 mother --

13 THE COURT: What was your number again? I'm sorry.

14 THE JUROR: Number 103.

15 THE COURT: 103. Now, say it again.

16 THE JUROR: My brother, my mother, my cousin, and
17 his wife -- my brother and my mother used to be
18 correctional officers at SCDC and my cousin and his wife
19 are currently correction officers there.

20 THE COURT: At the department of corrections?

21 THE JUROR: Yes, sir.

22 THE COURT: All right. Thank you, ma'am.

23 And yes, sir?

24 THE JUROR: Yes, Charles Ancrum, Juror Number 7.
25 My uncle and my nephew are both NYPD, New York City.

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

2 And let me start -- point to the lady from the
3 aisle there. Yes, ma'am?

4 THE JUROR: Juror Number 62, Ella Gardner. My
5 brother, my uncle, and my brother served in the military.

6 THE COURT: Thank you. And yes, sir?

7 THE JUROR: John Allensworth, Number 5. My father
8 served in the Army.

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

10 Yes, ma'am.

11 MR. HAYES: I'm sorry, Judge, what was his number.

12 THE COURT: Was that 5?

13 THE CLERK: 5.

14 THE COURT: Yes, ma'am?

15 THE JUROR: Juror 192, my father served in the Air
16 Force for 20 years active duty and he's been retired
17 serving in the Air Force for 15 years, I think. And then
18 my brothers a reserve marine.

19 THE COURT: Thank you, ma'am.

20 And, yes, ma'am?

21 THE JUROR: Juror 126, my father is -- was in the
22 military in the Korean War. And my sister-in-law, my
23 brother's wife, is a nurse at a correctional facility in
24 Columbia, South Carolina.

25 THE COURT: Thank you, ma'am.

1 And at the back of her?

2 THE JUROR: 151, Kathryn Rhinehart, at one time I
3 was an RN at the correctional facility for the State of
4 Iowa. My husband is retired from the Marshall County
5 Sheriffs in the State of Wyoming.

6 THE COURT: Thank you, ma'am.

7 And the gentleman with the long stripes, yes, sir?

8 THE JUROR: Juror 198, my brother is retired
9 military, U.S. Army. He did 30 years.

10 THE COURT: Thank you. And the lady next to you.

11 THE JUROR: Juror 79, my husband was in the Vietnam
12 war in the army. My father was in the Army and my brother
13 was in Korea serving in the Army.

14 THE COURT: Thank you, ma'am.

15 MR. GRIMES: What number, please?

16 THE CLERK: 79.

17 THE COURT: You were a lot closer to her than I
18 was.

19 Yes, ma'am?

20 THE JUROR: Juror Number 8, my name is Susan
21 Angerman. My son-in-law is currently active duty in the
22 Army National Guard.

23 THE COURT: Thank you, ma'am.

24 Yes, sir?

25 THE JUROR: 159, Chris Myers, both my uncle and my

1 father are retired Navy and my grandfather was in the
2 military. My brother-in-law is with the DSC in --

3 THE COURT: Thank you, sir.

4 And to this gentleman.

5 THE JUROR: Jimmy Mitchell, 125. My uncle is a
6 former Marine and retired South Carolina State Trooper.

7 THE COURT: Thank you, sir.

8 And yes, ma'am?

9 THE JUROR: My father was in World War II, a Navy
10 Veteran. I served 23 years as a postal inspector, 8 years
11 before that with the Department of Justice and I served 3
12 years in the Army Reserves.

13 THE COURT: And I've forgotten your number.

14 THE JUROR: Diane Davies, Juror Number 43.

15 THE COURT: Thank you.

16 And the lady closest to me pink.

17 THE JUROR: Juror 193, Cynthia Wilson, my sister
18 was a police officer.

19 THE COURT: Say that again.

20 THE JUROR: My sister was a police officer.

21 THE COURT: Was? Thank you.

22 Yes, ma'am?

23 THE JUROR: Juror 132. My father is a retired
24 South Carolina Highway Patrolman and he is currently a
25 police officer in McCormick County.

1 THE COURT: And your number was what?

2 THE JUROR: 132.

3 THE COURT: Thank you.

4 And yes, ma'am.

5 THE JUROR: Denise Pickens, Juror 143 my brother's
6 retired Navy; my brother-in-law's retired Army; I have a
7 niece who is serving in the Army and a nephew at Annapolis.

8 THE COURT: Thank you, ma'am.

9 And this lady I'm trying to point to. Yes, ma'am?

10 THE JUROR: Destiny Kern, Number 99, my --

11 THE COURT: You'll have to say that again.

12 THE JUROR: Destiny Kern, Number 99.

13 THE COURT: Got you.

14 THE JUROR: My uncle and my granddaddy both served
15 in the Army.

16 THE COURT: Thank you, ma'am.

17 THE JUROR: Melissa Nash-Mullis, Juror 130, my
18 husband's retired Navy.

19 THE COURT: Thank you, ma'am.

20 Yes, sir, I forgot your number.

21 THE JUROR: Juror 186, my uncle is a ward at the
22 corrections facility.

23 THE COURT: Thank you, sir.

24 And is any member of the jury panel read anything
25 or seen anything about this case on TV, newspaper, radio,

1 internet, or has anyone spoken with you about this case?

2 If so, please stand.

3 (No one stood.)

4 THE COURT: Any additional questions not already
5 requested from the State?

6 MS. HAMMACK: None, Your Honor.

7 MR. HAYES: Judge, I would just ask about Number 7
8 on our requested voir dire.

9 THE COURT: Okay. Has any member of the jury panel
10 formed or expressed an opinion about any issue or any
11 matter involved in this case? If so, please stand.

12 (No one stood.)

13 THE COURT: Is any member of the jury panel aware
14 of any bias or prejudice that they may have towards either
15 the State or towards the defendant in the case? If so,
16 please stand.

17 (No one stood.)

18 THE COURT: And I know I've asked this before, but
19 just to be sure, is there any member of this jury panel who
20 was a member of the grand jury that issued the indictment
21 in this case? If so, please stand.

22 (No one stood.)

23 THE COURT: Is there any member of the jury panel
24 who is a member of or a contributor to any group which has
25 as its primary concern promotion of law enforcement or

1 promotion of victim's rights? These groups would include,
2 but not be limited to MADD, SADD, or CAVE or such similar
3 organizations. If so, please stand.

4 (No one stood.)

5 THE COURT: Does any member of the jury panel know
6 of any reason whatsoever why he or she should not serve as
7 a juror in this case with particular emphasis being placed
8 on your ability to be fair and impartial to both the State
9 and to the defendant? If so, please stand.

10 (A juror stood.)

11 THE COURT: And I forgot your number.

12 THE JUROR: 55, Matthew Espolong, can I speak to
13 you in private?

14 THE COURT: 55?

15 THE JUROR: Yes, sir.

16 THE COURT: Okay. Just a second.

17 Any additional questions?

18 MR. HAYES: Your Honor, I think there is one left,
19 Number 8 on our requested voir dire whether or not someone
20 has been approached.

21 THE COURT: I think I asked that as part of another
22 question.

23 MR. HAYES: Thank you, Your Honor.

24 THE COURT: Yes, sir, your name and number?

25 THE JUROR: Yes, sir --

1 THE COURT: What's your number.

2 THE JUROR: I'm 171, Maleek Stevens, I was in -- I
3 was wondering if I can stand up in the corner over there.
4 I'm kind of -- I need to move. It's kind of making me
5 nervous sitting down in these hard chairs.

6 THE COURT: We're going to take a break in just a
7 second.

8 But I need to see those two jurors down front.
9 Both asked to see me in private.

10 We'll take a 10 minute recess if y'all get up and
11 quietly ease out of the building while I -- ease out of the
12 room while I talk to these jurors. We'll take a 10 minute
13 recess, ladies and gentlemen. A quiet recess.

14 Let me get you to come over here. I'm going to try
15 to stand close to you so we can hear.

16 THE JUROR: Okay. I am a rape survivor.

17 THE COURT: And I've forgotten your number.

18 THE JUROR: Number 13.

19 THE COURT: 13. Yes. You think that might have an
20 adverse --

21 THE JUROR: Oh, yeah.

22 THE COURT: Okie doke. Thank you for coming down.
23 I don't think I need to ask you anymore.

24 All right. We're going the excuse Number 13. You
25 got that?

1 MS. HAMMACK: Yes, sir.

2 THE COURT: All right. Number 55?

3 THE JUROR: My brother is actually going through --
4 or he's on probation now, but he's went through something
5 similar to this, like recently. And in my opinion he
6 wasn't, like -- he got in trouble for kidnapping and doing
7 all this stuff and in my opinion he didn't do the stuff
8 because, like, the girl like contacted him after court was
9 done and like after she was supposed to stay away from him,
10 and accused him of all this stuff. And I just don't feel
11 like I can be fair to -- I don't know. I feel like he was
12 treated unfairly here.

13 THE COURT: And you think that might be a problem
14 sitting on the jury.

15 THE JUROR: Yes, sir.

16 THE COURT: Okay. I agree. Thank you. You can't
17 leave though.

18 THE JUROR: Oh, yeah, no problem.

19 MR. HAYES: 55?

20 THE COURT: 55.

21 THE COURT: We've got somebody else who wants to
22 talk to us too.

23 I've forgotten your number.

24 THE JUROR: Carol Willis, 192.

25 THE COURT: 192. Yeah.

1 THE JUROR: I didn't want to stand in front of
2 everybody, but I was sexually abused by one of my adoptive
3 brothers for five years. As well as four of my sibling
4 sisters. So I know that I will not will unbiased in this
5 case. A hundred percent I would not.

6 THE COURT: Well, I won't ask you anymore
7 questions.

8 THE JUROR: Thank you.

9 THE COURT: Thank you.

10 (A brief recess was observed.)

11 THE COURT: Madame Solicitor, is the State ready to
12 select a jury?

13 MS. HAMMACK: Yes, Your Honor.

14 THE COURT: Thank you.

15 Is the defense ready to select a jury?

16 MR. HAYES: Yes, Your Honor.

17 THE COURT: Clerk, please give us a jury.

18 **JURY SELECTION**

19 THE CLERK: As I call your name, please walk down
20 here and stand right in front of where I am, turn around
21 and face that clock.

22 Juror Number 109, Garrett Maroney. (White Male)

23 And if you have any belongings with you, bring them
24 with you, please.

25 What says the State?

1 MS. HAMMACK: Please present Mr. Maroney.
2 THE CLERK: What says the defense?
3 MR. HAYES: Please seat the juror.
4 THE CLERK: Have a seat in the jury box, please,
5 sir.
6 Juror Number 61, Mary Fulton. (White Female)
7 What says the State?
8 MS. HAMMACK: Please present Ms. Fulton.
9 THE CLERK: What says the defense?
10 MR. HAYES: Please seat the juror.
11 THE CLERK: Please have a seat in the jury box.
12 Juror Number 165, Angela Smith. (White Female)
13 What says the State?
14 MS. HAMMACK: Please present Ms. Smith.
15 THE CLERK: What says the defense?
16 MR. HAYES: Please seat the juror.
17 THE CLERK: Please have a seat in the jury box.
18 Juror Number 25, Annie Mae Bush. (Black Female)
19 What says the State?
20 MS. HAMMACK: Please present Ms. Bush.
21 THE CLERK: What says the defense?
22 MR. HAYES: Please seat the juror.
23 THE CLERK: Have a seat in the jury box, please,
24 ma'am.
25 Juror Number 42, Gerald W. Curry. (Black Male)

1 What says the State?

2 MS. HAMMACK: Please excuse Mr. Curry from this

3 case.

4 THE CLERK: Please have a seat back there.

5 Juror number 18, Helen M. Boyd. (White female).

6 What says the State?

7 MS. HAMMACK: Please present Ms. Boyd.

8 THE CLERK: What says the defense?

9 MR. HAYES: Please seat the juror.

10 THE CLERK: Please have a seat in the jury box.

11 Juror Number 5, John S. Allensworth. (White Male).

12 THE CLERK: What says the State?

13 MS. HAMMACK: Please present Mr. Allensworth.

14 THE CLERK: What says the defense?

15 MR. HAYES: Please seat the juror.

16 THE CLERK: Please have a seat in the jury box.

17 Juror number 193, Cynthia A. Wilson. (White

18 female).

19 What says the State?

20 MS. HAMMACK: Please present Ms. Wilson.

21 What says the defense?

22 MR. HAYES: Please excuse this juror.

23 THE CLERK: Return to your seat, ma'am.

24 Juror Number 62, Benjamin W. Gibbs. (White male).

25 What says the State?

1 MS. HAMMACK: Please present Mr. Gibbs.
2 THE CLERK: What says the defense?
3 MR. HAYES: Please seat the juror.
4 THE CLERK: Please have a seat in the jury box.
5 Juror W. 48, Dennis L. Dickey. (White male).
6 What says the State?
7 MS. HAMMACK: Please present Mr. Dickey.
8 THE CLERK: What says the defense?
9 MR. HAYES: Please seat the juror.
10 THE CLERK: Please have a seat in the jury box.
11 Juror Number 24, Paul R. Burket. (White male).
12 What says the State?
13 MS. HAMMACK: Please present Mr. Burket.
14 THE CLERK: What says the defense?
15 MR. HAYES: Please seat the juror.
16 THE CLERK: Please have a seat in the jury box.
17 Juror Number 79, Gail A. Henderson. (While female).
18 What says the State?
19 MS. HAMMACK: Please present Ms. Henderson.
20 THE CLERK: What says the defense?
21 MR. HAYES: Please seat the juror.
22 THE CLERK: Please have a seat in the jury box.
23 Juror number 132, Chiquita C. Ortega. (Black
24 female).
25 What says the State?

1 MS. HAMMACK: Please present Ms. Ortega.
2 THE CLERK: What says the defense?
3 MR. HAYES: Please excuse this juror.
4 THE CLERK: Please return to your seat.
5 Number 49, Nancy J. Dodd. (White female).
6 What says the State?
7 MS. HAMMACK: Please present Ms. Dodd.
8 THE CLERK: What says the defense?
9 MR. HAYES: Please seat the juror.
10 THE CLERK: Please have a seat in the jury box.
11 Juror number 31, Miguel Cano. (Hispanic male).
12 What says the State?
13 MS. HAMMACK: Please present Mr. Cano.
14 THE CLERK: What says the defense?
15 MR. HAYES: Please seat the juror.
16 THE CLERK: Please have a seat in the jury box.
17 That's twelve, Your Honor.
18 THE COURT: All right. We'll pick one alternate,
19 it will be one and two.
20 THE CLERK: Yes, sir.
21 Juror Number 7, Charles N. Ancrum (black male).
22 What says the State?
23 MS. HAMMACK: Please present Mr. Ancrum.
24 THE CLERK: What says the defense?
25 MR. HAYES: Please excuse this juror.

1 THE CLERK: Please return to your seat.
2 Juror number 187, Annie L. Washington. (Black
3 female).
4 What says the State?
5 MS. HAMMACK: Please present Ms. Washington.
6 THE CLERK: What says the defense?
7 MR. HAYES: Please seat the juror.
8 THE CLERK: Please have a seat in the jury box.
9 THE COURT: Any matter of law the Court needs to
10 consider concerning the composition or selection of the
11 jury from the State?
12 MS. HAMMACK: No, Your Honor.
13 THE COURT: From the defense?
14 MR. HAYES: No, Your Honor.
15 THE COURT: Ladies and gentlemen, in just a moment,
16 I'm getting ready to excuse you for the day. We're not
17 certain about your -- whether we're going to need you
18 anymore or not this week. So we're going to ask you, this
19 evening at 6 p.m. or after, call the number that you have.
20 If you don't have it, you can get it from the bailiff
21 before you leave, to receive instructions about what to do
22 next. The instruction could be several different kinds of
23 instructions. It could be come in tomorrow morning. Or it
24 could be please call back the next day at 6 p.m. Or it
25 could be, I guess it could be, thank you for your service,

1 you're no longer needed. But you're still on jury duty
2 until you're either excused by me while you're here or the
3 message on the machine says you're excused, thank you so
4 much for your service.

5 Does anybody have any questions or problems or any
6 issues?

7 Ladies and gentlemen, you're excused.

8 (The jury venire left the courtroom at 12:04 p.m.)

9 THE COURT: Ladies and gentlemen, the first thing
10 we're going to do is to have the clerk to administer to you
11 your oath as jurors. We're going to do it in just a moment
12 or two.

13 (The jury was sworn at 12:07 p.m.)

14 THE CLERK: Please be seated.

15 **OPENING REMARKS BY THE COURT**

16 THE COURT: Ladies and gentlemen, just a few
17 remarks before -- well, actually before we take our lunch
18 break because we've got some other matters we've got to
19 take up and probably are not going to begin the trial of
20 this case, the actual trial with the witnesses taking the
21 witness stand until 2:30.

22 I want to tell you a few things before we get to
23 that point. As you heard, the defendant in this case is
24 charged by way of an indictment with several offenses. One
25 with the offense of kidnapping. The other was assault with

1 intent to commit criminal sexual conduct in the first
2 degree. And finally possession of a firearm while during
3 the commission or attempt to attempt a violent crime.

4 The elements of these offenses will be explained to
5 you at a later date, but I did want to tell you that the
6 indictment is simply the charge or a vehicle that brings
7 the case into the courtroom. The indictment is in no sense
8 evidence for you to consider on the issue of guilt or
9 innocence of the defendant.

10 The State has the burden of proving each of the
11 elements of these offenses to your satisfaction because the
12 defendant has pled not guilty to these charges. The burden
13 then is upon the state to prove guilty to your satisfaction
14 beyond a reasonable doubt. Your purpose as jurors is to
15 find and determine the facts of a case. You are the sole
16 judges of the facts in the case. My job is to preside over
17 the trial, rule on the admissibility of evidence and tell
18 you about the law that applies in the case. The law
19 prohibits me from expressing an opinion about the facts of
20 the case in your presence, because as I've already said,
21 you are the sole judges of the facts of this case.

22 The same law though that makes you the judge of the
23 facts in the case makes me the judge of the law of the
24 case; and you must accept the law as I tell you it is now
25 and during the trial. Even if you disagree with the law,

1 you must accept the law as I tell you or give you it is.
2 Until this case is completely over, and by that I mean the
3 attorneys make their opening statements to you where they
4 try to tell you what they think the evidence is going to
5 show or not show, and then witnesses take the witness
6 stand; there may be evidence introduced into the case,
7 documents or other evidence, all that's done, the attorneys
8 make their closing arguments to you where they try to
9 convince you to see the case the way they see it; then I
10 tell you about the law that applies to the case.

11 Until all of that's done, you can't begin
12 deliberating or even discussing the case among yourselves,
13 not even in the Court -- not even in the jury room, excuse
14 me. And, of course, you can't let anybody talk to you
15 about this case. You can't even talk to anybody about this
16 case. You also can't do any research about this case. You
17 can't go online to see whether there was anything published
18 anywhere or somebody made a comment about this case. The
19 attorneys are going to present what you need to consider in
20 this courtroom. And that's the only thing you can
21 consider. You can't consider what your neighbor tells you
22 they think about this kind of a case or cases like this.

23 So at the end of the day, I'm going to ask you not
24 to even discuss this with your spouse, significant other,
25 or friends because the attorneys have selected you as the

1 fair and impartial jurors. If you start talking to other
2 people about the case, they're likely to tell you either
3 what they think about this case or think about cases like
4 this. We want you to make your decision in this case based
5 on what you find, see and hear in this courtroom.

6 Before we take our lunch break, ladies and
7 gentlemen, we are going to have opening statements from the
8 attorneys beginning with the State.

9 Solicitor?

10 **OPENING STATEMENTS**

11 MR. GRIMES: Thank you, may it please the Court,
12 Mr. Hayes.

13 May 27th, 2016, in the very early morning, the
14 victim in this case was assaulted by the defendant. The
15 defendant is a person that she knew for less than a day.
16 She had met him at a library in Augusta earlier in the day.
17 The victim's name is K. J. [REDACTED] and she's a college
18 student in Augusta. She is not from this area. She's not
19 from Augusta. Her parents don't live there, she lives in
20 Augusta because she's in school in Augusta. And she met
21 the defendant and later that evening agreed with him that
22 they could hang out.

23 And you're going to hear a story from her from that
24 witness stand where she's going to explain to you what
25 happened. I don't want to take those details away from

1 her, but the allegations in this case are that ultimately
2 they ended up back at his house, that he put a movie on.
3 They sat on different couches in the living room. He gave
4 her some marijuana, they talked.

5 Ultimately, he made some advances that were
6 rebuffed by her. She's going to tell you that after that
7 happened, he went into another room. He came back with a
8 pistol and he pointed it at her and told her to take her
9 clothes off.

10 She managed to escape from that and you're going to
11 hear the details of how that happened. She will tell you
12 that she began taking her clothes off, that she pled with
13 him, that she ultimately fought him, that she struggled to
14 get away, that he choked her, that he tried to drag her in
15 the other room and that at some point she was able to grab
16 a knife off the table, that she was able to continue to
17 fight and that at some point that struggle ended and she
18 was able to run from the house.

19 She went down the street with no shirt on in search
20 of help at close to two o'clock in the morning. A stranger
21 was walking down the road and she ran up to him. The
22 defendant came after her in his vehicle, tried to get her
23 back in the car. That stranger took her onto a house where
24 she called the police. The defendant left and didn't come
25 back.

1 I don't want to cover all the details in this case
2 because the evidence you're going to hear is going to come
3 from the testimony in that witness stand, but I want you to
4 know what this case is about. And to do that, you kind of
5 have to understand the allegations and you need to know a
6 little bit about the law that's going to apply in this
7 case.

8 The allegations that you just heard amount to legal
9 allegations that ultimately charged the defendant with
10 three crimes. Those three crimes are assault with intent
11 to commit criminal sexual conduct in the first degree and
12 I'll tell you about that in just a moment. Second charge
13 is kidnapping. And the third charge is possession of a
14 weapon during the commission of a violent crime.

15 When a person is charged with a crime, these crimes
16 amount to what we call elements. In other words, you have
17 all of the elements of that particular crime, then the
18 person is guilty of that crime. The elements to criminal
19 -- to assault with intent commit a criminal sexual conduct
20 in the first degree, and I know that's a mouth full,
21 basically breaks down in two ways. First of all, criminal
22 sexual conduct in the first degree, what is that? It's a
23 sexual battery; and a sexual battery is intercourse
24 fellatio, cunnilingus, any insertion to the genital or anus
25 of another person. And when that is accomplished by use of

1 aggravated force, it can be criminal sexual conduct in the
2 first degree. And aggravated force is, it could be a
3 number of things, but it could include choking or use of a
4 deadly weapon, a pistol to accomplish this sexual battery.

5 Another way you can have criminal sexual conduct in
6 the first degree is when that sexual battery has occurred
7 as a result of the victim submitting because the victim has
8 been forcefully confined or kidnapped. And the defendant
9 is charged with kidnapping and I'll discuss those elements
10 in just a moment.

11 But in this case, there's not an allegation that
12 the sexual battery ever actually occurred. She escaped and
13 so the defendant is charged with assault with intent commit
14 a criminal sexual conduct in the first degree. He confined
15 her, he struggled with her, he pulled her, pointed a pistol
16 at her. That's the assault. The goal of that was to
17 commit criminal sexual conduct in the first degree and
18 because that didn't happen, because she escaped, he's
19 charged with assault with intent commit criminal sexual
20 conduct in the first degree.

21 The second charge is a kidnapping. And a
22 kidnapping, we all kind of have a view of what a kidnapping
23 is and it doesn't necessarily include putting a pillow case
24 over somebody's head and throwing them in a trunk. In
25 South Carolina, kidnapping also includes confinement

1 against a person's will and unlawful seizure. And that's
2 the allegations in this case, that when she tried to leave,
3 when she wanted to leave she was unable to due to the
4 struggle that the defendant is -- had with with her that
5 night.

6 And then the third charge is relatively simple.
7 Possession of a weapon during the commission of a violent
8 crime. So in South Carolina, if you commit a violent crime
9 and you use a weapon or have a weapon when you do that,
10 it's a separate charge in and of itself and he's charged
11 with that as well. So if he is guilty of the principal
12 crime, the violent crime, then he can be guilty of
13 possession of a weapon during the commission of that crime.

14 The reason I wanted you to know that, and the judge
15 is going to explain this law to you in great detail at the
16 end of this case, I wanted you to have an idea of what
17 these elements are because you're going to hear testimony
18 in this case and when you hear that testimony, I want you
19 to kind of know what you're looking for; kind of have a
20 mental checklist. And when you hear facts that -- that
21 prove those elements of those crimes, I want you to hear it
22 and say, okay. I see where this is -- I see where this is
23 going. I see what they're talking about.

24 All of the evidence is going to come from this
25 witness stand and the items that are admitted in this

1 trial, and you will have all of that when you do your
2 deliberations at the end of the case. The judge is going
3 to tell you about the law. You are going to know all the
4 facts. All of them are going to come from the testimony
5 and the evidence. And you're going to determine the facts
6 and you're going to apply them to the law that he gives
7 you.

8 When you do that, you will have all of the evidence
9 you need to find the defendant guilty of these charges.
10 You will be comfortable, you will be confident that the
11 defendant committed these crimes beyond a reasonable doubt.
12 You'll be able to deliver a verdict of guilty in this case.
13 And we'll ask you to do that at the end of this trial.
14 Thank you.

15 THE COURT: Thank you, Solicitor.

16 All right. Defense, Mr. Thompson?

17 MR. THOMPSON: Good morning, Your Honor. Pardon me
18 just a minute.

19 Good afternoon. It's hard to listen to a story
20 when you kind of don't know where the story is going. My
21 son does this to me all the time. He'll start talking
22 about something. Okay. Stop. Where is this going. So
23 I'm going to tell you a little bit about the story and kind
24 of how it develops and where it's going, but before I do
25 that, I want to identify some people first.

1 You heard from Mr. Grimes and he and Ms. Hammack
2 are solicitors that work for the solicitor's office here in
3 the county. They're wonderful people, wonderful lawyers,
4 do a very fine job.

5 I'm Barry Thompson. I work with Mr. Dave Hayes and
6 Mr. Will McKellar in the public defender's office. And
7 this is probably the last time you're going to hear from
8 me. I'm not going to be trying this case. Mr. Hayes is
9 going to be trying this case.

10 The defendant is Mr. Wayne Hankinson and I'm going
11 to call him Wayne for the rest of this. I just -- I think
12 it's kind of dehumanizing to say the defendant, the
13 defendant, the defendant. His name the Wayne Hankinson.
14 In this story, you will hear from Wayne on the witness
15 stand and you'll hear what he has to say.

16 The other person that kind of gets a label, and
17 again, is K. J. [REDACTED]. She's not here right this
18 second. I expect she'll show up here very shortly. She is
19 -- she's not the victim in the case. Only you get to
20 decide whether she's actually a victim or not. She's the
21 alleged victim because she's the one who claims that
22 something happened to her.

23 The other thing I want to talk about briefly is
24 this concept of indictment. I literally one time
25 questioned some jurors afterwards about, so tell me, what

1 -- what helped you make your decision in the case. And
2 they said, well, there was an indictment and we heard that
3 there was a group called the grand jury that already sat
4 and looked at this and we figured if the grand jury had
5 done something with this, you know, who were we to decide
6 something different. And that's not how this process is
7 supposed to work.

8 A grand jury is a great big group of people, there
9 are 18 of them instead of just 12 like today. And they get
10 presented with the allegations in the case. And they're
11 supposed to sit there and they're supposed to decide the --
12 the filter that they look at this case through is they're
13 supposed to assume that all the allegations are true. And
14 they're supposed to -- they're going to ignore this
15 credibility of the witnesses. They're going to ignore any
16 kind of bias and they don't hear from the defense. They
17 don't hear a single thing from the defense. All they do is
18 ask the question, if everything alleged about this guy is
19 true, would that add up to a crime. And, of course, it
20 does. And so they go ahead and they indict people and
21 that's the document that gets us here to the courtroom.

22 But it has nothing to do with whether somebody is
23 guilty or innocent. It has nothing to do with the
24 believability of any of the witnesses. It's just the
25 formal document that gets us here to the courtroom. The --

1 so let me go ahead and unfold this road map for you and
2 tell you where we're going. I've got some good news for
3 you and the good news is, I really don't think this trial
4 is going to be that long because frankly, the beginning of
5 this story and the end of this story, all the witnesses
6 agree about. There's going to be several times where
7 you're going to hear testimony on the witness stand that I
8 expect probably Mr. Hayes is not going to have any
9 questions for them. Because the beginning and the end we
10 agree.

11 And the story starts out like this. At about
12 noontime these people are going to meet each other for the
13 first time about noon, okay? At a library. And then
14 whatever happened in this story is going to happen
15 somewhere, probably around 1:30, one o'clock in the
16 evening. I may be off a little bit on these times, but not
17 much. So they will have met each other for about two
18 minutes or so. I think that meeting is on video. You'll
19 see that. They meet each other for about two minutes and
20 kind of introduce each other and then later that day,
21 K. J. goes out with some friends and she is kind of
22 living her life.

23 And about 11:30 that night, she sends some text
24 messages to Wayne essentially saying, I'd like to get with
25 you, come pick me up. She gives him the address to her

1 house. He drives over -- she lives over in Augusta at the
2 time. He drives over to Augusta and he picks her up. They
3 get to a gas station at about midnight, 12:30, something
4 like that. They get to a gas station in North Augusta and
5 they buy some alcohol and then they go onto Wayne's house,
6 which is in Bath.

7 And that's where the stories start to diverge. I
8 don't mean to be too indelicate and I'm sorry this is just
9 a little bit an earthy case, but Wayne's going to say, I
10 just met this girl for two minutes 12 some odd hours ago.
11 We were hooking up to have sex. That's what he's going to
12 say.

13 I believe K. J. [REDACTED]'s story is going to be a little
14 different. And I want to kind of pause for just a second.
15 The -- I think she's going to say that, Hey, we were just
16 getting together to hang out or maybe watch a movie or
17 something like that. You are not required to abandon all
18 common sense and to just believe anything the people say on
19 the witness stand.

20 You met this guy two or three minutes and you get
21 him to come and pick you up at 12 o'clock at night or
22 something like that. Y'all are going to go over to his
23 house at one o'clock in the morning and y'all were going to
24 just hang out and watch movies. You are the judges of the
25 credibility of some of the testimony that you're going to

1 hear on the witness stand. And I'm going to submit to you
2 that some of the testimony that you're going to hear on the
3 witness stand is not credible. But I don't want to get
4 into too much of that. I'm going to go ahead and let her
5 speak her piece and tell her side of the story.

6 Suffice it to say Wayne's story is going to be
7 very, very, very different from what she says. And the
8 judge will instruct you about the rules for what you are
9 allowed and not allowed -- what you're allowed to believe
10 and you can believe part of what somebody says and part of
11 what somebody else says. That's really -- that's your job
12 as the jury in the case and that's why you're here and
13 we're glad you're here to do that.

14 This central part of the story, though, where
15 there's -- where their stories diverge, this is really the
16 key to this case. Because there's going to be what he says
17 and there's going to be what she says and that's what this
18 case really is. This is a he-said/she-said case.

19 At the the very end, the stories come back
20 together. I think they're both going to say that at the
21 very end of this Wayne's trying to give her a ride home,
22 that things continue to be more than just a little bit
23 crazy and that ultimately at the end of this story, he
24 leaves and she is talking to the police and making
25 allegations that he threatened me and pulled a gun on me

1 and tried to do me harm. I believe that's the story that
2 you're going to hear today.

3 You're also -- there's a witness -- pardon me just
4 a minute.

5 Beg the Court's indulgence.

6 THE COURT: All right, sir.

7 MR. THOMPSON: I believe the State is going to call
8 Ms. K. J. [REDACTED]. And then they've got a witness that's
9 going to talk about the very end of the story. There is a
10 guy there who kind of sees both of them and kind of -- can
11 come and testify about what happens at the very end. And
12 then I think the other twelve -- the other twelve witnesses
13 listed as possible witnesses in this case are all police
14 officers or investigators for the solicitor's office. And
15 they're wonderful people. Mr. Stuart Graybeal is here. I
16 think he's a wonderful police officer. They do a fine job.

17 During the actual event, though, they weren't
18 there. You may hear from a lot of them, but they really
19 don't know what happened. They can talk to you about maybe
20 pictures that they took of the scene and they can -- and I
21 believe there's going to be photographs that you're going
22 to be able to look at. But they really don't know what
23 happened during whatever happened happened. They also -- I
24 don't think that you're going to hear any outcome
25 determinative forensic evidence in this case. There's not

1 some kind of magic bullet or magic fingerprint or something
2 that you're going to say, Aha, that's it. I really don't
3 think you're going to see that today. I think in the end
4 you're going to have what he says and what she says. I
5 think that's what we're going to end up with.

6 And that's really important because in the United
7 States of America people are innocent until proven guilty.
8 They're not innocent until accused of being guilty.
9 They're innocent until they're proven guilty. And you're
10 the ones that are going to evaluate whether or not the
11 State has proved their case.

12 So yeah, Wayne is on trial. But the State's case
13 is on trial too. They have the burden of proof. They have
14 to prove this case beyond a reasonable doubt. And at the
15 end if after you've heard this testimony, if you decide to
16 yourself, I just don't think her story is credible --
17 there's some stuff she says that just, that does not make
18 any sense. If they haven't proven their case and carried
19 their burden of proof, then as jurors, it's your duty to
20 find him not guilty.

21 The other thing is this though -- and that's
22 reasonable doubt. If at the end of this case, you sit back
23 and you think to yourself, well, she had a pretty good
24 story and there wasn't really anything that contradicts her
25 story other than his testimony, but you know, he might be

1 telling the truth too. It's possible he could be telling
2 the truth. That thought, that, is reasonable doubt. If at
3 the end of this case you think to yourself I may or may not
4 like him, but -- Wayne's rough on the edges -- I may or may
5 not like him, but he might be telling the truth, that's
6 reasonable doubt. And again, the rules of this court are
7 going to require you to find him not guilty. The judge is
8 going to instruct you about the law and you should
9 certainly take whatever he says over what I say. But I
10 think he's going to tell you this at the end of this case.
11 And I think it's going to be your duty to find Wayne not
12 guilty. Thank you.

13 THE COURT: Thank you, Mr. Thompson.

14 We're getting ready to take a lunch break until
15 2:30, ladies and gentlemen, longer than we would like to,
16 but that's just the way it is. Now, I'll remind you don't
17 let anybody talk to you about the case. You don't talk to
18 anybody about the case. See you back at 2:30. Thank you
19 so much. The bailiff will show you where to go.

20 (The jury left the courtroom at 12:35 p.m.)

21 THE COURT: Anything we need to take care of during
22 the lunch break?

23 MS. HAMMACK: I don't believe so, Your Honor.

24 MR. HAYES: No, sir.

25 THE COURT: This case is recessed until 2:30.

1 (A recess for lunch was observed.)

2 THE COURT: Apparently all the jurors are present.
3 Is the State ready for the jury?

4 MR. GRIMES: I think we're getting the defendant,
5 Your Honor.

6 (The defendant was brought into the courtroom.)

7 THE COURT: Bring the jury.

8 (The jury entered the courtroom at 2:34 p.m.)

9 THE COURT: Welcome back, ladies and gentlemen. I
10 believe we are ready to begin with the opening statements
11 from the attorneys, beginning with the solicitor.

12 MS. HAMMACK: Your Honor, the State is ready to
13 call their first witness.

14 THE COURT: We've already made the opening
15 statements haven't we.

16 MS. HAMMACK: Yes, sir.

17 THE COURT: We're not going to do it twice.
18 Call your first witness, Solicitor.

19 MS. HAMMACK: State calls K. J. [REDACTED].

20 [REDACTED],

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box. State
23 your full name for the Court, spelling your last.

24 THE WITNESS: My name is K. J. [REDACTED]. My last
25 name is spelled K. J. [REDACTED].

K. J. [REDACTED] - Direct Examination by Ms. Hammack

DIRECT EXAMINATION

1
2 BY MS. HAMMACK:

3 Q And K. J. [REDACTED], I'm going to stand all the way over
4 here so that it makes you talk louder so that everybody as
5 far as here can hear you, okay?

6 A Okay.

7 Q You just told us your name. How old are you,
8 K. J. [REDACTED]?

9 A I am 21, just turned 21.

10 Q And where are you from?

11 A I'm from Rockville, Maryland.

12 Q And what brings you to South Carolina? Or this
13 area rather?

14 A This case. This is the only thing.

15 Q Had you been to this area before?

16 A No.

17 Q Are you here for school purposes?

18 A No.

19 Q Are you going to school in Georgia?

20 A Yes.

21 Q Where are you going to school in Georgia?

22 A I go Paine in Augusta.

23 Q And before you started attending school at Paine
24 College in Augusta, had you ever been to Augusta or South
25 Carolina?

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 A No.

2 Q Now, in May of 2016, were you a student at Paine
3 College?

4 A No. I started in January, yeah -- oh, I'm sorry.

5 Q That's okay.

6 Were you staying in Augusta in May of 2016?

7 A Yes.

8 Q And what were you doing in Augusta that summer?

9 A I was a part of the summer program working with
10 First Pres, which is a Presbyterian church downtown.

11 Q And what was that summer program focused on?

12 A It was focused on helping kids who, like me, help
13 learning how to read better; learning how to, like, do math
14 better. It was basically a tutoring program for the
15 summer.

16 Q And did you have to do anything with that program
17 that required you to go to the library?

18 A Yes.

19 Q And which library would you go to?

20 A It was the biggest library downtown, the public
21 library.

22 Q And when you say downtown, you're talking about
23 Augusta?

24 A Yes, downtown Augusta.

25 Q Now, on May 17th of 2016, did you go to the library

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 in downtown Augusta?

2 A Yes.

3 Q And what were you doing in the library?

4 A Well, for the summer program my job was to help the
5 students learn how to read better, so I was picking up
6 books for them.

7 Q And did you end up meeting anybody while you were
8 at the library that day?

9 A Yes.

10 Q Who did you meet?

11 A Well, I thought his name was Marcus, but from, I
12 guess, the case information, his name is Wayne.

13 Q Okay. And how did you meet him at the library?

14 A I was standing in the -- so the library has like
15 this big open area where it's just like pictures and people
16 put like advertising books and things there. I was
17 standing out there waiting for my ride to come pick me up
18 and he approached me.

19 Q Did you know who he was?

20 A No.

21 Q Had you ever seen him before then?

22 A No.

23 Q And when he approached you, where did he come from
24 when he approached you?

25 A He came from inside the library.

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 Q Okay. And during the course of -- well, let me ask
2 you this: What happened once he approached you?

3 A He just started talking to me. He introduced
4 himself and we just started talking.

5 Q Okay. And how long did y'all talk?

6 A Maybe five minutes. It wasn't that long.

7 Q And during the course of y'all talking, did you
8 ultimately exchange phone numbers with him?

9 A Yes.

10 Q After that did you stay at the library?

11 A No, I was out waiting for my ride so my ride came
12 to get me or came and got me, excuse me.

13 Q What were your plans for the rest of that day?

14 A To look through the books and figure out which ones
15 would be helpful for the kids; to go to the movies and then
16 me and my friends had plans to go downtown.

17 Q Did you end up going to the movies?

18 A Yes.

19 Q Any idea what movie you went to go see?

20 A It was -- what did we -- it was about the mummy --
21 the mummy girl who like -- I can't remember what it's
22 called. But it was about -- it's the newest movie about
23 the mummy girl with tattoos on her face. I don't remember
24 what it was called though.

25 Q Okay. But you did go to the movies?

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 A Yes.

2 Q And after that did you ultimately go downtown with
3 your friends like you planned?

4 A No, we didn't end up going.

5 Q Later that evening, did you come into contact with
6 the defendant again?

7 A Yes.

8 Q And who initiated that contact?

9 A He did.

10 Q And how did he contact you?

11 A Through text message.

12 Q Okay. And when he texted you, what did he say?

13 A What are you doing tonight. Basically, Hey, what
14 are you doing.

15 Q And during the course of y'all texting, did you
16 make any plans with him?

17 A Well, at first I told him that we had planned to go
18 downtown, me and my friends, and that if he wanted he could
19 meet me over there. And then after the plans had got
20 cancelled, I told him that we could hang out.

21 Q Okay. And did you end up seeing him that night?

22 A Yes.

23 Q How did you end up seeing him?

24 A He came to pick me up.

25 Q Okay. Where were you staying that summer?

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 A I was staying with -- so in Augusta, there's
2 another school called AU, which is Augusts University and
3 they took students from Paine and AU to do the program
4 together and the AU students already had a house, so I was
5 staying with them.

6 Q Okay. And you stated that you had planned to go
7 downtown with your friends that night. Again, when you say
8 downtown, downtown where?

9 A Downtown Augusta.

10 Q Okay. When your friends didn't end up going out,
11 you said the defendant came and picked you up?

12 A Yes.

13 Q Did he tell you what y'all were going to do that
14 night?

15 A No.

16 Q When he first arrived at -- to pick you up, did you
17 ask him what the plan was?

18 A No.

19 Q Did he ultimately tell you where y'all were going
20 to go?

21 A After we had rode around for a while he said that
22 his cousin was having a party and that's where we were
23 going.

24 Q Did you know where that cousin's party was at?

25 A No.

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 Q Where did you expect that cousin's party to be?

2 A In Augusta, not too far from where I was staying.

3 Q Did you discuss going out in downtown Augusta with
4 him?

5 A No.

6 Q So when y'all started riding you stated that -- who
7 told you y'all were going to his cousin's party?

8 A The defendant. I don't know what I should call
9 him.

10 Q But not you.

11 A No.

12 Q It was his idea to go to his cousin's party?

13 A Yeah.

14 Q Okay. Where did y'all end up going?

15 A Somewhere out here. I honestly still to this day
16 couldn't tell you where exactly where, but I know it was in
17 South Carolina.

18 Q Before the defendant came and picked you up, had
19 you ever been to South Carolina before?

20 A No.

21 Q Did you know what Aiken looked like?

22 A No.

23 Q Where did you ultimately end up with the defendant?

24 A At a house, like -- I don't even know like how to
25 explain where it was because I'd never been there before,

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 so -- yeah, it was a house in like -- it was like on a dirt
2 road in the back of like some trees and it was like a
3 really old house, yeah.

4 Q And how -- this may be a dumb question, but how did
5 y'all get there?

6 A He drove.

7 Q Did y'all stop anywhere on the way?

8 A We stopped at a gas station to pick up snacks and
9 like beers, but that was it.

10 Q When y'all stopped at the gas station were you
11 still expecting to go to his cousin's party?

12 A No, because I started to realize how far it was.
13 That was something that was like a red flag. I just -- and
14 I even spoke to him and told him like, you know, this is
15 pretty far, like, I don't know, you know, it was just far,
16 so, yeah.

17 Q When you pulled up at the house that he took you
18 to, were there other cars around?

19 A There was a old car, a old like truck in the front
20 yard, but that was pretty much it.

21 Q Were there other people there?

22 A No.

23 Q Was there a party there?

24 A No.

25 Q Was his cousin there?

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 A No.

2 MS. HAMMACK: Give me just a second.

3 (There was a pause in the proceedings.)

4 MS. HAMMACK: Your Honor, permission to approach.

5 THE COURT: Certainly.

6 BY MS. HAMMACK:

7 Q K. J. [REDACTED], I'm going to show you what's been
8 premarked as State's Exhibit 1. Do you recognize that?

9 A Yes.

10 Q What is that?

11 A That is the house that we went to.

12 MS. HAMMACK: Your Honor, at this time we would
13 move State's Exhibit 1 into evidence.

14 MR. HAYES: Judge, I have no objection to any of
15 those photographs. I think it was 1 through 10.

16 THE COURT: One through 10 may be admitted without
17 objection.

18 (State's Exhibit Number 1, Number 2, Number 3,
19 Number 4, Number 5, Number 6, Number 7, Number 8, Number 9,
20 and Number 10 was entered into evidence.)

21 MS. HAMMACK: Thank you, Your Honor.

22 BY MS. HAMMACK:

23 Q K. J. [REDACTED], you stated when y'all pulled up at the
24 house that there were -- there was one old car, but not a
25 bunch of cars; no other people; and no cousin. What did

K. J. ██████████ - Direct Examination by Ms. Hammack

1 y'all do when y'all got to the house?

2 A We went inside and he showed me a picture of his
3 dad, like, in the military and then we went and sat down in
4 the living room.

5 Q And I'm going to show you what's been entered into
6 evidence as State's Exhibit 2. Is -- tell me what room
7 that is?

8 A That is the first room when you walk into the
9 house.

10 Q Okay. And let's do this, so that everybody can see
11 what you're talking about. I'm going to pull these
12 pictures up on this big screen, hopefully. And we'll start
13 with Exhibit 1.

14 (Pulling the screen up.)

15 BY MS. HAMMACK:

16 Q And K. J. ██████████, I think you can see them from this
17 side?

18 A Yeah.

19 Q If you cannot, let me know. That way you don't
20 have to get up.

21 You indicated that this is the house that he took
22 you to?

23 A Yes.

24 Q And moving to State's Exhibit 2, what is that? And
25 I'll give you these pictures -- well, you can see them.

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 What's that a picture of?

2 A That is the room when you walk into the front door,
3 that's the first room.

4 Q Okay. And then State's Exhibit 3? Is that just a
5 picture of that very first room again?

6 A Yes.

7 Q Is that where y'all went to hang out --

8 A No.

9 Q -- once you got to the house?

10 A No.

11 Q Okay. Go to State's Exhibit 4. Where is that in
12 relationship to the room we just saw?

13 A That is the entrance.

14 Q So when you first come in the door, which way do
15 you go to go that direction?

16 A You turned left.

17 Q Okay. And State's Exhibit 5. What's this room?

18 A That is the room that we were hanging out in.

19 Q So when you get to the house, you walk in the house
20 and it's just you and the defendant. Did he tell you what
21 y'all were going to do?

22 A He said we were just going to hang out here, watch
23 a movie and that was it.

24 Q Did he put a movie on?

25 A Yes.

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 Q Do you remember what the movie was?

2 A No. I never seen the movie in my life.

3 Q Do you remember anything about the movie?

4 A I think that it was about like a man who robs banks
5 and he was like a part of a group who robbed banks and
6 that's what they did. They rob banks. I don't know.

7 Q Okay. Now, when you were in this room, where were
8 you sitting? And if you need to step down to show the jury
9 on the picture, you can.

10 (The witness stepped down in front of the jury.)

11 THE WITNESS: I was right here.

12 BY MS. HAMMACK:

13 Q Okay. And where was the defendant sitting?

14 A Over here.

15 Q And can you show the jury where the TV is where
16 y'all were watching the movie?

17 A Right here.

18 Q All right. What -- did y'all do anything while you
19 watched the movie or did just watch the movie in silence?

20 A Well, like I said, we went and got beers and then
21 he had like a small piece of a joint and we kind of like
22 smoked the joint and just talked and just watched the movie
23 and that was pretty much it.

24 Q At some point did y'all leave that room?

25 A No.

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 Q Okay.

2 (The witness returned to the witness stand.)

3 BY MS. HAMMACK:

4 Q While y'all were talking, was there any time where
5 you heard any animals or anything like that?

6 A Yeah. He had a dog in the backyard and we went out
7 and looked at his dog that was like caged up in the back.
8 I believe he had two dogs. One was in a cage and one was
9 just on a chain.

10 Q And how did y'all get to the backyard to look at
11 those dogs?

12 A We walked out the front door and went around the
13 back.

14 Q Okay. I don't know how long this takes to do, but
15 it's in my way so I'm going to move it.

16 (The screen was lowered.)

17 BY MS. HAMMACK:

18 Q When y'all went out to look at the dogs, at this
19 point, had y'all done anything other than talk and watch
20 this movie?

21 A No.

22 Q Had he said anything to you about doing anything
23 else that night?

24 A When we were walking back from where the cages and
25 things were, he kind of wrapped his arms around me and was

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 trying to be like, you know, affectionate, and I just kind
2 of was like, not into that, just trying to hang out, you
3 know. It's not -- it's not why I'm here.

4 Q And where were you when he did that?

5 A Outside on the side of his house walking up, so --
6 I know you seen that truck in the first picture. We were
7 walking between the truck and the house.

8 Q And after that happened, where did you go?

9 A We went back inside into the living room.

10 Q Okay. And let me ask you this real quick. Do you
11 remember what you were wearing that night?

12 A I had on black, like tight kind of yoga pants and I
13 had on a gray shirt.

14 Q So when y'all walked back in, where did you go when
15 you walked back in the house?

16 A Back to the couch that I was sitting at.

17 Q That same couch over to the side?

18 A Yeah.

19 Q Where did the defendant go?

20 A He sat back where he was sitting.

21 Q So he did not sit down next to you?

22 A Huh-huh.

23 Q At any point while y'all were watching -- well, let
24 me ask you this: Did you go back to watching the movie?

25 A Yes.

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 Q At any point while y'all were watching the movie,
2 did he move from that couch?

3 A He came over and sat beside me and tried to like
4 make more advances and I was just like, you know, not into
5 that, not trying to do that. We're just here to hang out
6 and just relax.

7 Q When you say he made more advances, what did he do?

8 A He started rubbing on my leg. He came in, like
9 trying to kiss my neck and was just coming over, like,
10 yeah, leaning over.

11 Q And when you told him no, what did he do?

12 A He got back up and sat on the other side of the --
13 or sat back where he was sitting before on the other couch.

14 Q Okay. Once he moved and went back to that couch,
15 did y'all talk some more?

16 A We talked a little bit about, like, his two
17 daughters and that was it. The conversation was just about
18 his daughters and stuff. Because I was asking him, you
19 know, at that point, you know, like, tell me about
20 yourself. You know, trying to like deescalate it because I
21 know it doesn't feel good to be rejected. So I was trying
22 to move the conversation forward.

23 Q After he got back up and moved back to that first
24 couch, did he stay in the room?

25 A No. After like ten minutes of us talking, he kind

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 of got up and told me he'd be right back.

2 Q Do you know where he went when he said he'd be
3 right back?

4 A No, but I know that when he came out the room, he
5 took a left into the living room.

6 Q Is that the room with the boxes?

7 A Uh-huh.

8 Q Okay. Did he ever come back in the room after he
9 said he'd be right back?

10 A Yes, he did.

11 Q And what happened when he came back in the room?

12 A When he came back in the room, he had a gun with
13 him and he was pointing at me and he told me get up and to
14 take my clothes off.

15 Q When you say he had a gun, describe for the jury
16 what that gun looked like.

17 A It was small. It looked kind of old and rusted.
18 And it was a gun -- the best way I can explain it, it's
19 like a gun you see in cowboy movies, where like they pull
20 the chamber out, they put the bullets in and then they snap
21 it back and kind of like, like push it so it revolves a
22 little bit.

23 Q And you stated that when he came back in the room
24 he had the gun?

25 A Uh-huh.

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 Q What did he do with that gun?

2 A He was pointing it at me.

3 Q And he told you to get up and take your clothes
4 off?

5 A Yes.

6 Q What did you do at that point?

7 A I stood up and I was kind of just like in shock for
8 a second, just trying to figure out, like, is this really
9 happening, is this a joke. I started crying, started
10 panting and then I, like, was trying to figure out some way
11 to bribe him, so I was offering my phone. I offered him
12 like the few dollars I had in my purse. I took off my
13 necklaces and stuff and he still was just like take your
14 clothes off, take your clothes off. And eventually I did
15 take my shirt off.

16 Q Well, let me ask you this: You said you attempted
17 to give him your phone, the few dollars you had, and your
18 jewelry. What was his response to you offering him those
19 things?

20 A There really was no response. He just kept
21 repeating, like, take your clothes off, take your clothes
22 off, like that was it.

23 Q I'm going to pull this back up so you can help the
24 jury understand where all this took place.

25 (The screen was brought up.)

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 BY MS. HAMMACK:

2 Q Now, you stated that he went back out towards the
3 room with the boxes. Can you step down and show the jury
4 which direction that's from?

5 (The witness stepped down in front of the jury.)

6 THE WITNESS: Which direction it was from?

7 BY MS. HAMMACK:

8 Q Like when he left and said I'll be right back,
9 which direction did he go?

10 A So if you were to walk this way, the door would be,
11 like, right there. He walks out and goes this way.

12 Q Okay. Let's move forward to State's Exhibit 8. I
13 apologize, State's 7. So in this picture, tell us kind of
14 where everything is situated?

15 A So this is the bathroom. This is where we were
16 sitting that's like -- this is the couch that's like
17 closest to the door.

18 Q So when he came back in with the gun, where was he
19 in this picture?

20 A He was standing about right here, blocking the
21 entrance.

22 Q He was blocking the doorway back out?

23 A Uh-huh.

24 Q Okay. And you said that you stood up when he told
25 you to stand up and take your clothes off. Where did you

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 stand?

2 A I was standing right here.

3 Q Okay. Now, when you were offering him your jewelry
4 and your phone and your -- the money that you had in your
5 purse, where was he standing when that happened?

6 A Still right here.

7 Q And what was he doing with the gun when you were
8 offering him those things?

9 A He was still pointing it at me.

10 Q Okay. You stated that when you offered him those
11 things, he didn't really do anything?

12 A Huh-huh, no.

13 Q Did it make him drop the gun?

14 A No.

15 Q Did he take those items?

16 A No.

17 Q What did he tell you to do?

18 A To take my clothes off. That was basically it,
19 just take your clothes off. There was really nothing else
20 he was saying more than that.

21 Q And you stated that you ultimately took your shirt
22 off?

23 A Yes.

24 Q Do you remember what you did with your shirt?

25 A I believe it's laying right here.

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 Q Let's move to State's Exhibit 9. That may be a
2 better picture.

3 A That's it right there. You can see my shirt.

4 Q That's your shirt there?

5 THE COURT REPORTER: I can't hear her well.

6 BY MS. HAMMACK:

7 Q Okay. You've got to speak up a little bit louder
8 so she can hear everything you said.

9 Q Now, in State's Exhibit 9, can you -- you were
10 pointing to the gray object on the couch. What is that?

11 A I believe that's my shirt.

12 Q And then State's Exhibit 10. What are those?

13 A Those are my necklaces right here on the couch.

14 Q And those are the necklaces that you offered him --

15 A Yes.

16 Q After you took your shirt off, what did you do?

17 A I was still kind of panicking, just trying to
18 figure out like what was I going to do because I didn't
19 want this to happen, of course. I was asking him, like,
20 you know, think about your daughters. What if somebody was
21 trying to do this to your daughter. You know, he was
22 screaming, like I don't care, I don't care. Like, take
23 your clothes off. And then I grabbed for my phone.

24 Q All right. Let me stop you right there.

25 Let's go back to State's Exhibit 8. Where was your

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 phone?

2 A I believe it was sitting beside me. It was either
3 sitting beside me on the couch or it was on this table.

4 Q And what were you hoping to do when you grabbed for
5 your phone?

6 A I was hoping to run into the bathroom and like call
7 somebody. Call a friend, call 9-1-1, like anybody to kind
8 of just come and help me.

9 Q Were you able to grab your phone?

10 A Yes, I was.

11 Q And what happened when you grabbed your phone?

12 A After I grabbed my phone, he kind of launched at me
13 and threw his arm around my neck and was like pulling me
14 towards the bedroom.

15 Q If we could pull up State's Exhibit 5.

16 Can you show the jury where he was pulling you?

17 A To this room.

18 Q Was he saying anything to you when he had your arm
19 -- his arm around your neck?

20 A He was like get in here, get in here, like I was
21 trying to grab for things like hold onto that he wouldn't
22 pull me back, but he was just like pulling me towards the
23 room.

24 Q Okay. Give me just one second, please?

25 (There was a pause in the proceedings.)

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 BY MS. HAMMACK:

2 Q So when you reached for your phone and he -- tell
3 me this, did he come up facing you or was he behind you or
4 was he behind you when he threw his arm around your neck?

5 A He was behind me.

6 Q And when he was pulling you towards that bedroom,
7 did you ultimately go in the bedroom?

8 A No. We didn't make it into the room.

9 Q When you say we didn't make it, what do you mean?
10 What happened?

11 A He was trying to pull me into the room and I was
12 like grabbing onto things to not get pulled in there.
13 Eventually I got ahold onto the -- the door entrance and
14 was like pulling myself through there, just like, just like
15 -- I don't know how to explain it. Just pulling myself
16 away from him, trying not to get trapped in that room.

17 Q During this fight, did you -- you said you didn't
18 go into the bedroom, did you go into another room?

19 A We went into the first room, the room that you walk
20 into when you come into the house.

21 Q Okay. Let's look at State's Exhibit 4. Is that
22 the direction that y'all came?

23 A Yes.

24 Q When this is happening, does he still have his arm
25 and your neck?

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 A Yes.

2 Q And what happened when y'all came through there
3 back into the room with the boxes?

4 A We fell into a pile of the boxes and all the other
5 stuff that was in there.

6 Q And when y'all fell, did he let go -- when y'all
7 fell, did he let go of you?

8 A I don't think so because when he was pulling me --
9 when we fell into the boxes, I kind of, like, was sitting
10 up and I seen his shadow. I don't know if he still had a
11 gun at that point or if that was his hand, but it looked
12 like he was about to hit me or try to get the gun in my
13 hand or something and that's when I, like -- because I
14 couldn't breathe at that point and I was just tapping his
15 arm, like, you know, like I'm not going to fight anymore.
16 You know, like, you can let go.

17 Q And when you said that you couldn't breathe, what
18 was he doing with his arm?

19 Q I didn't even get a chance to get that out because
20 I was like being strangled that hard. But me tapping his
21 arm indicated, that, like, I couldn't breathe.

22 Q So you couldn't breathe because of his arm on your
23 neck?

24 A Yes.

25 Q And what was he doing with his arm around your

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 neck?

2 A He was squeezing.

3 Q So when you tapped his arm to try to tell him that
4 you couldn't breathe, what did he do?

5 A He let go.

6 Q And when he let go, what did you do?

7 A I lunged. I seen a knife sitting on top of this,
8 like, I don't know if it was a speaker; and I lunged for
9 the knife and kind of swung around trying to defend myself.

10 Q When you grabbed the knife and were trying to
11 defend yourself, what -- what was his reaction to that?

12 A He -- I swung around and I missed him, fell back
13 down and he grabbed the knife out of my hand.

14 Q And when he grabbed the knife out of your hand,
15 what part of the knife did he grab?

16 A The blade.

17 Q Do you remember what that knife looked like?

18 A It was a butter knife, so it was black, it had like
19 three silver things on it and the knife was rigid, like...

20 Q What did he -- did he say anything to you when he
21 took the knife from you?

22 A He was like, Damn, you cut me, like, look what you
23 did. You cut me, like, I'm done, I'm done. You cut me.
24 Just go grab your stuff and, like, I'll take you home.

25 Q During the course of this fight from that room into

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 this room and a knife, did anything happen to you? Other
2 than -- other than him strangling you as you said?

3 A I just fell into the boxes. That was pretty much
4 it.

5 Q Did you get cut as a part of this?

6 A Yes, my hand was cut.

7 Q When he grabbed the knife from you and said that
8 you had cut him, what did he tell you at that point?

9 A He was just like go get your stuff. I'm going to
10 take you home. Go get your stuff.

11 Q Did you go get your stuff?

12 A No.

13 Q Why didn't you go get your stuff?

14 A Because I wasn't going to go back into that room.
15 I was close to the door at this point and I just decided
16 like, I was not going to leave -- to exit out, so, I just
17 told him I wouldn't. He could go get my stuff, but I was
18 not going back in there.

19 Q And what did he do in response to you telling him
20 that?

21 A He went into the room to collect my stuff.

22 Q And when he went into that room to get your stuff,
23 what did you do?

24 A I ran out the front door.

25 Q When you ran out the front door, what were you

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 wearing at that point?

2 A I had on my black yoga pants, my shoes and my bra.

3 That was it.

4 Q Where was your shirt?

5 A Still in the room, in this room.

6 Q Where were your necklaces?

7 A Still in this room.

8 Q Where was your phone?

9 A Still in this room.

10 Q Did you have anything else with you besides the
11 clothes you were wearing?

12 A No.

13 Q Minus your shirt?

14 A No.

15 Q And when you ran out of the house, where did you
16 go?

17 A I stopped in the middle of the street and I turned
18 around and I seen that he was like at the front door. He
19 disappeared into the house and I ran down the street.

20 Q Do you remember what you saw when you were running
21 down the street?

22 A Like I said, it was a back road, so I seen trees
23 and I seen like houses that were kind of hidden behind
24 trees.

25 Q Did you know anybody around there --

K. J. [REDACTED] - Direct Examination by Ms. Hammack

- 1 A No.
- 2 Q -- when you were running?
- 3 A No.
- 4 Q Had you ever been there before?
- 5 A No.
- 6 Q Did you know where you were going when you were
- 7 running?
- 8 A No.
- 9 Q What were you trying to do when you were running
- 10 from his house?
- 11 A Trying to get away. I was trying to find somebody
- 12 to help me because I didn't have my phone, so, yeah, I was
- 13 trying to get away and trying to find help.
- 14 Q Did you ultimately get help?
- 15 A Yes, as I was running down the street, a random guy
- 16 was walking up and I kind of went up to him and was --
- 17 explained to him, screaming at him, like, this guys trying
- 18 to rape me, like help me. Like, do you have a phone? Call
- 19 the cops. Like, I don't have my shirt on, like you help
- 20 me, this guy's trying to like rape me.
- 21 Q And you said this was a random guy. Did you know
- 22 him?
- 23 A No.
- 24 Q Had you met him before?
- 25 A No.

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 Q Did he help you?

2 A As much as he could. He was walking up the street
3 minding his business. I remember the look on his face. He
4 was just like freaked out and scared. He offered me his
5 shirt, but that was pretty much it.

6 Q Did anything happen while you were talking to him?

7 A Yes, I looked up the direction that I ran from and
8 I seen his car coming down the road.

9 Q When you say his car, whose car are you talking
10 about?

11 A The defendant's.

12 Q And what happened when his car was coming up to
13 road?

14 A I started to spaz a little bit more because I was
15 scared. I didn't know what this guy's reaction was going
16 to be. I didn't know if he was just going to be like, I'm
17 not a part of it and walk away. So I kind of just was
18 freaking out a little bit more.

19 Q Did the defendant come up to y'all?

20 A Yes. He pulled up the car between us and he got
21 out to talk to the witness.

22 Q And what did he tell the witness?

23 A I remember hearing him say like, don't get
24 involved; don't get involved. And that's all I remember
25 hearing him say was don't get involved.

K. J. ██████████ - Direct Examination by Ms. Hammack

1 Q Did the defendant stay there where you were?

2 A After he was talking to the guy, I seen another
3 group of people and I kind of ran up to them and I think
4 after he seen that I wasn't getting back in his truck and I
5 wasn't about to like go anywhere else with him, he pulled
6 off.

7 Q When you saw the other group of people -- and you
8 can sit back down, K. J. ██████████ thank you.

9 (Witness returned to the stand.)

10 BY MS. HAMMACK:

11 Q When you saw the other group of people, did they do
12 anything to help you?

13 A There was a lady, a man, and her dog; and the lady
14 took me inside to get a shirt to wrap my hand and to call
15 the cops.

16 MS. HAMMACK: Give me just one second.

17 (There was a pause in the proceedings.)

18 (The attorneys were looking through exhibits.)

19 MR. WILLIAMS: Judge, I have no objections to any
20 of those photographs.

21 MS. HAMMACK: Your Honor -- well --

22 BY MS. HAMMACK:

23 Q K. J. ██████████, let me show you what's been premarked as
24 State's Exhibits 11 through 15. Will you take a look at
25 those for me real quick?

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 A (Looking.)

2 THE COURT: 11 through 15 admitted without
3 objection?

4 MS. HAMMACK: Yes, sir.

5 (State's Exhibit Number 11, Number 12, Number 13,
6 Number 14, and Number 15 was entered into evidence.)

7 BY MS. HAMMACK:

8 Q Do you recognize those?

9 A Yes.

10 Q And what are those pictures of?

11 A Pictures of my hand, my Band-Aid up and down and my
12 arm.

13 Q Now, this shirt that you're wearing in State's
14 Exhibit 11, is that the shirt that you wore to the
15 defendant's house that night?

16 A No.

17 Q Where did you get that shirt?

18 A From the lady that was in front of her house with
19 her husband and her dog.

20 MS. HAMMACK: Your Honor, permission to publish to
21 the jury?

22 THE COURT: You may.

23 BY MS. HAMMACK:

24 Q Now, you stated that the lady and her dog gave you
25 a shirt to wear, called the police. Did the police come?

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 A Yes.

2 Q Did you talk to police out there that night?

3 A Yes.

4 Q How did your hand and your arm get bandaged?

5 A The paramedics, they came and they cleaned and
6 bandaged my hand.

7 Q Did you talk to the police that night about what
8 happened?

9 A Yes.

10 Q How long were you out there with the police that
11 night?

12 A Until the next morning. Until early the next
13 morning. I couldn't give I like a time, but it was
14 overnight.

15 Q All right. Now, at this point, did you know
16 anything more about the defendant other than the name he
17 had given you?

18 A No.

19 Q At some point, did the police come and show you a
20 lineup?

21 A Yes.

22 Q And when they showed you that lineup -- well, let
23 me show you this. What did that lineup look like? Do you
24 remember?

25 A It was pictures of like six different people and it

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 was in color.

2 Q I'm showing what's been premarked as State's
3 Exhibit 30. Do you recognize this?

4 A Yes.

5 Q Is that the lineup that the police showed you?

6 A Yes.

7 Q Do you remember when they showed you that?

8 A This was the same day. The -- not the same day of
9 the incident, but the day after, when they dropped me back
10 home.

11 Q Okay.

12 MS. HAMMACK: Your Honor, at this time, we would
13 move State's Exhibit 30 into evidence.

14 MR. WILLIAMS: No objection, Judge.

15 THE COURT: Without objection Exhibit 30.

16 (State's Exhibit Number 30 was entered into
17 evidence.)

18 BY MS. HAMMACK:

19 Q Now, when they showed you that lineup, did anybody
20 tell you who to pick out of that lineup?

21 A No.

22 Q Were you able to pick one of those pictures as a
23 picture of the person who had done this to you?

24 A Yes.

25 Q Do you have any question about which person you

K. J. █████ - Direct Examination by Ms. Hammack

1 picked?

2 A No.

3 Q Once you picked the person out of that lineup, did
4 you have to sign your name to a paper indicating that you
5 had picked a particular number?

6 A Yes.

7 (Showing the picture to the defense attorney.)

8 MR. WILLIAMS: Again, no objection, Judge.

9 MS. HAMMACK: Your Honor, this would be State's
10 Exhibit 16 we'd be moving into evidence.

11 THE COURT: Admitted without objection.

12 (State's Exhibit Number 16 was entered into
13 evidence.)

14 BY MS. HAMMACK:

15 Q Do you recognize that, K. J. █████?

16 A Yes.

17 Q Is that the paper that you signed indicating which
18 person you picked out of that lineup?

19 A Yes.

20 Q And which number person did you pick out of that
21 lineup?

22 A Two.

23 Q Have you seen the defendant since then?

24 A No.

25 Q You talked to the defendant since then?

K. J. [REDACTED] - Direct Examination by Ms. Hammack

1 A No.

2 Q Have you ever had any dealings with him other than
3 this one night?

4 A No.

5 Q K. J. [REDACTED], do you see the person who took you to that
6 house and choked you and tried to drag you back into that
7 bedroom in the courtroom?

8 A Yes.

9 Q Can you identify him for the Court by describing
10 what he's wearing?

11 A A white shirt, a tie, and glasses.

12 MS. HAMMACK: Your Honor, let the record reflect
13 that the witness has identified the defendant.

14 THE COURT: So noted.

15 BY MS. HAMMACK:

16 Q Chris tin give me just a second?

17 (There was a pause in the proceedings.)

18 BY MS. HAMMACK:

19 Q K. J. [REDACTED], you said that when the defendant first
20 came in and pointed that gun at you that he was standing in
21 the doorway blocking your exit. Did you want to leave at
22 that point?

23 A Yes.

24 Q When you reached for your phone to call for help,
25 did you want to leave at that point?

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 A Yes.

2 Q Were you able to leave when he pointed that gun at
3 you and when he came and grabbed you by the neck?

4 A No.

5 Q I don't have anymore questions for you at this
6 time. Answer any questions the defense attorney has, okay.

7 THE COURT: Cross-examination.

8 **CROSS-EXAMINATION**

9 BY MR. HAYES:

10 Q You said your name is pronounced K. J. [REDACTED]?

11 A K. J. [REDACTED], yes.

12 Q Okay. Because it's K. J. [REDACTED] on a lot of the
13 reports.

14 Where did you say you were from?

15 A I'm from Rockville, Rockville, Maryland.

16 Q Rockville, Maryland. Is that a big city, small
17 city?

18 A I think it's pretty big, yeah.

19 Q Bigger than Aiken, bigger than Augusta?

20 A I would say so, yeah. I'm not sure about Aiken,
21 but I'm sure about Augusta. It's definitely bigger.

22 Q Okay. And you're how old?

23 A 21.

24 Q This would have been 2016, so you would have been
25 20?

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 A Yes.

2 Q You said you were not enrolled at that time at
3 Paine College?

4 A I was on summer break.

5 Q So that would have been May Mester if you were
6 taking a class, so y'all had already finished up for the
7 year and you were on break at this time?

8 A Yes.

9 Q Okay. And you testified that you were in the
10 library and Mr. Hankinson approached you?

11 A Yes.

12 Q And that conversation was probably somewhere
13 between two to five minutes?

14 A Yes.

15 Q And y'all exchanged phone numbers?

16 A Yes.

17 Q Y'all had never met before?

18 A No.

19 Q All right. And you said that you left and went and
20 caught your ride?

21 A Yes, my ride had came to pick me up.

22 Q All right. And at that time, y'all exchanged text
23 messages?

24 A He sent me one text and then another text later on
25 that day.

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

- 1 Q Do you remember what that text was?
- 2 A It was his name.
- 3 Q His name was Wayne?
- 4 A Yes.
- 5 Q And it was sent at 12:42 p.m.?
- 6 A Yes.
- 7 Q And you responded back, Cool.
- 8 A Yes.
- 9 Q 12:59. Y'all then went on in text messages back
10 and forth for about, let's say 20 minutes, 25 minutes?
- 11 A Later that evening, yes.
- 12 Q Well, right then. Y'all text messaged from 12:42
13 with him starting with starting with his name, until 1:07?
- 14 A That was when I was explaining to him that I had
15 plans to go to the movies and then to hang out with my
16 friends downtown.
- 17 Q You did?
- 18 A Yes.
- 19 Q And then he answered back. Okay, you want to hit
20 me up afterwards?
- 21 A He -- I offered for him to meet us down there and
22 he said he would -- or to hit him up afterwards, yes.
- 23 Q Okay. Then later you texted him and said you're
24 headed home from the movies and that was at 9:09?
- 25 A Yes.

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

- 1 Q And he answered back that he was at the hospital
2 and that he could come by and scoop you up later?
- 3 A Yes.
- 4 Q You answered back that you were still planning to
5 go downtown with your friends?
- 6 A Yes.
- 7 Q And that is at 9:51 p.m.?
- 8 A Yes.
- 9 Q And then you would call when you leave there?
- 10 A Excuse me?
- 11 Q That you would call him when you left there?
- 12 A I believe I offered him to meet us down there.
- 13 Q I'm handing you what's going to be marked as
14 Defense Exhibit 1 -- this will be Number 3. Do you
15 recognize it?
- 16 A Yes.
- 17 Q What is it?
- 18 A These are our text messages.
- 19 Q Does it fairly and accurately represent the text
20 messages?
- 21 A Yes.
- 22 MR. HAYES: Judge, at this time I'd move to enter
23 Defense 3 into evidence.
- 24 MS. HAMMACK: Without objection.
- 25 THE COURT: Admitted without objection.

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 (Defendant's Exhibit Number 3 was entered into
2 evidence.)

3 BY MR. HAYES:

4 Q Hang onto that one there. I've got me a copy here.
5 I'm going to go through that with you. Have you had a
6 chance to review it?

7 A Yes.

8 Q In there, was there any text messages from you
9 saying come down and meet us?

10 A Yes.

11 Q Where?

12 A It says me and my friends are going downtown, we
13 could meet up -- or we could meet up.

14 Q Okay. And that was at 9:51?

15 A Yes.

16 Q And then he said I'll call you when I leave here?

17 A Yes.

18 Q And then at eleven o'clock, 11:40, you said the
19 plans for downtown got canceled. You can come scoop me up.
20 Actually it says scope me up, but it's -- I'm assuming it
21 was auto-corrected?

22 A Yes.

23 Q And then after that your next text message is your
24 address?

25 A Yes.

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

- 1 Q In Augusta, Georgia, and that's at 11:45?
- 2 A Yes.
- 3 Q 12:13 a.m., it says come outside?
- 4 A Yes.
- 5 Q And then you sent a message saying I'm going to
- 6 bed, it's late. Hit me up some other time, maybe we can --
- 7 that was at 12:13 -- and then hang out.
- 8 A Yes.
- 9 Q And that was at 12:14. And then you said, excuse
- 10 me -- or excuse the message before, you're here now LOL
- 11 coming out?
- 12 A Yes.
- 13 Q And then you started asking what color the car was
- 14 and he texted back it was a green loud truck with a little
- 15 emoji?
- 16 A Yes.
- 17 Q And then clarification with message out. And he
- 18 actually, the last message said, you just passed me and he
- 19 corrected passed, on May 28th at 12:16 a.m.?
- 20 A Yes.
- 21 Q And that's when he actually picked you up?
- 22 A Yes.
- 23 Q A man that you'd never met before other than two
- 24 minutes in the library in Augusta?
- 25 A Yes.

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 Q After midnight?

2 A Yes.

3 Q And then y'all headed over to South Carolina,
4 across state lines?

5 A Well, he took me to South Carolina. I wouldn't say
6 we headed there together. He took me, because I wasn't
7 sure where I was going.

8 Q Okay. So then y'all stopped at the gas station?

9 A Yes.

10 Q He gets two beers and you get a limeri -- margarita
11 or limearita?

12 A A limerita, uh-huh.

13 Q I believe it's in the State's -- I believe it's
14 State's -- I've zoomed in on it.

15 (Looking for an exhibit.)

16 BY MR. HAYES:

17 Q Okay. Proposed Defendant's Number 4, do you
18 recognize it?

19 A Yes.

20 Q What is it?

21 A That is my limerita.

22 Q Does it fairly and accurately represent the item?

23 A Yes.

24 MR. HAYES: Judge, at this time, I'd move to put
25 Defense 4 into evidence.

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 MR. GRIMES: No objection.

2 THE COURT: Motions granted.

3 (Defendant's Exhibit Number 4 was entered into
4 evidence.)

5 BY MR. HAYES:

6 Q So y'all went into this gas station -- at this time
7 you're now across state lines. You're saying you don't
8 know where you're at; and you go into a gas station and
9 y'all buy some alcohol?

10 A Yes.

11 Q Didn't tell the clerk, Hey, I'm in trouble?

12 A I had a red flag go up as one of my defenses
13 answered, I had like a little voice in my head that was
14 saying, you know, this is pretty far, maybe this isn't
15 something that you should be doing. You really, you know,
16 should probably tell one of the clerks you don't want to go
17 anywhere, but I didn't act on it.

18 Q You didn't do anything about it?

19 A No.

20 Q Y'all got the alcohol and you hopped in the truck
21 and you took on off, right?

22 A Yes.

23 Q Together?

24 A Yes.

25 Q Then you arrived at his house. And y'all, I think

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 you testified to, smoked marijuana, he had a small roach?

2 A Yes.

3 Q Which, Defense four? That's it lying right there
4 by the lighter and your beer?

5 A Yes.

6 Q Smoked some of it and watching movies or a movie?

7 A Yes.

8 Q And then I believe you testified that y'all hung
9 out a little bit and you went outside and was looking at
10 some dogs?

11 A Yes.

12 Q And after looking at the dogs, y'all headed back
13 inside --

14 A Yes.

15 Q And hung out for a few more minutes, I think you
16 said 10.

17 A I'm not sure if I gave a time but we were hanging
18 out after that.

19 Q And then he left the room and that's when you say
20 he came back with the firearm?

21 A Excuse me?

22 Q That's when he -- you say he came back with the
23 gun?

24 A Yes.

25 Q And he started telling you to take off your

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 clothes?

2 A Yes.

3 Q All right. And that time you said you were trying
4 to take off and bribe him with your jewelry?

5 A Yes.

6 Q And that's the jewelry that we saw stacked in the
7 State's pictures, on the couch?

8 A Yes.

9 Q Nice and neat?

10 A Yes.

11 Q And at this time he's got a gun on you?

12 A He has it pointed at me. It's not pointing at him,
13 it's pointed at me.

14 Q He's got the gun pointed at you?

15 A Yes.

16 Q And he's telling you to take your clothes off?

17 A Yes.

18 Q You ultimately ended up taking your shirt off and
19 throwing it over the couch?

20 A I'm not sure what I did when I took my shirt off,
21 but I believe that gray shirt on the couch was my shirt.

22 MR. HAYES: I'd beg the Court's indulgence.

23 (There was a pause in the proceedings.)

24 BY MR. HAYES:

25 Q I'm handing you State's Number 6. And that is a

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

- 1 picture of the couch with the gray shirt in the middle?
- 2 A Yes.
- 3 Q And that's the one that you identified to the jury?
- 4 A Yes.
- 5 Q And you said that he was standing between you and
- 6 the front door?
- 7 A He was standing between me and the door out into
- 8 the first room.
- 9 Q Which is the foyer?
- 10 A Yes.
- 11 Q The first room when you walk in the front door.
- 12 A And then you turn and there's the other room --
- 13 Q The one --
- 14 A -- so he was in between me --
- 15 Q -- with all the boxes in --
- 16 A The one with the boxes at the front door?
- 17 Q Uh-huh.
- 18 A That's like the first area and then when you turn
- 19 left as soon as you walk into the house, there's the living
- 20 room and the couch, where the couch and stuff are.
- 21 Q Okay.
- 22 A Uh-huh.
- 23 Q So you walk in the front door.
- 24 A Yes.
- 25 Q Boxes?

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

- 1 A Yes.
- 2 Q The room that you're talking about right now?
- 3 A Yes.
- 4 Q Okay. And you're saying that when he had the
- 5 gun --
- 6 A Uh-huh.
- 7 Q -- pointed at you, he's standing right here?
- 8 A Yes, between the couch -- or not the couch, the
- 9 little table in the picture and by the bedroom door. So he
- 10 standing about right there.
- 11 Q Okay. All right. And you testified that you ended
- 12 up picking up your phone, but you don't know if it was on
- 13 the couch or the table?
- 14 A Yes.
- 15 Q And then he came over and he put an arm around your
- 16 neck?
- 17 A Yes.
- 18 Q And then y'all struggled?
- 19 A Yes.
- 20 Q And you testified that he then tried to drag you
- 21 back to the bedroom?
- 22 A He did.
- 23 Q And that you were grabbing for things and trying to
- 24 keep him from taking you into that room, right?
- 25 A Yes.

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 Q And some how he ended up being diverted and y'all
2 ended up falling into the foyer?

3 A Yes.

4 Q Falling through that door I was just talking about,
5 into the boxes?

6 A Yes.

7 Q You said you tapped out, kind of the way you
8 described it --

9 A Yes.

10 Q -- right?

11 A Uh-huh.

12 Q You said he just got up and was done?

13 A He -- so his arm was around me and I seen his
14 shadow -- I don't know if he had the gun at that point or
15 if he was going to hit me at that point, but I tapped his
16 arm and he let go and he was still behind me, but I had
17 fled for the knife that was by the opening to the other
18 room. It was on like a speaker -- I'm guessing that's what
19 that was -- I flung for it and turned around while he was
20 still behind me, trying to defend myself.

21 Q And then he just said, I'm done, get your stuff?

22 A No. He grabs the knife out of my hand, pushes me
23 and I fall down to the boxes again. He grabs the knife out
24 of my hand, cuts both of us and then he's like, you know,
25 You cut me; you cut me. And then he's like, Go get your

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 stuff, like, I'm going to take you home, go get your stuff.

2 Q Okay. So he's saying then, I'm done, go get your
3 stuff?

4 A Yes.

5 Q And you say nope, not going to do it?

6 A Yeah, I'm not going back into the other room.

7 Q And you said he went to go get your stuff?

8 A Yes.

9 Q And that's when you decided you wanted to make a
10 break out the door?

11 A Yes.

12 Q Now, you said you met with the investigators and
13 the police and the EMS for hours?

14 A Yes.

15 Q Did you see the sun come up?

16 A Yes.

17 Q During that time you gave a statement, didn't you?

18 A Yes.

19 Q In that statement did you tell the police about the
20 dogs?

21 A I don't remember.

22 Q Would looking at a copy of it refresh your memory?

23 A Yes.

24 (The statement was handed to the witness.)

25 ///

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 BY MR. HAYES:

2 Q Please take a minute and read over it, review it.

3 When you're done, look up and let me know.

4 A (Reading.). Okay. Do you have another copy that I
5 can keep.

6 Q I do not.

7 (Discussion among the attorneys.)

8 BY MR. HAYES:

9 Q All right. Now, you now have had a chance to
10 review this statement that you gave the night this
11 happened?

12 A Yes.

13 Q In that statement is there anything about a mention
14 of dogs?

15 A No.

16 Q Okay. Was there any mention in that statement
17 about not feeling too good about this or red flags when you
18 were in the grocery -- or the gas station?

19 A No.

20 Q Was there any mention about a cousin and a party?

21 A No.

22 Q Matter of fact, the first line says, I met Marcus
23 at the library. We exchanged numbers and later that
24 evening he came to pick me up from my home. When we got to
25 his house, we started to share a marijuana roach he had and

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 he had two beers, two Budlight beers?

2 A Yes.

3 Q No mention of the gas station?

4 A No.

5 Q No mention of the cousin?

6 A No.

7 Q No mention of the dogs?

8 A No.

9 Q You said that in that statement that he made a

10 couple of advances and that you rebuffed him multiple

11 times?

12 A Yes.

13 Q And that you then left out -- he left out of the

14 room and came back with a gun?

15 A Yes.

16 Q And then he told you to take your clothes off?

17 A Yes.

18 Q All right. At that point is when you're saying you

19 were pursuing -- you were trying to persuade him not to

20 rape you?

21 A Yes.

22 Q Or abuse you?

23 A Yes.

24 Q And he refused. He continued to point the gun at

25 you?

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

- 1 A Yes.
- 2 Q And that he was raising his voice?
- 3 A Yes.
- 4 Q All right. And that you were begging him?
- 5 A Yes.
- 6 Q And that you went to grab your phone and that y'all
- 7 started trying to wrestle?
- 8 A Yes.
- 9 Q And that you got ahold of the doorknob?
- 10 A Yes.
- 11 Q What doorknob you talking about?
- 12 A I'm talking about the front door.
- 13 A And that you started to scream, but he put his hand
- 14 over your mouth.
- 15 A Yes.
- 16 Q And that he tried to choke you?
- 17 A With his arm, yes.
- 18 Q Uh-huh. And that you then saw a knife?
- 19 A Yes.
- 20 Q You were trying to defend yourself?
- 21 A Yes.
- 22 Q And that he grabbed that knife from you?
- 23 A Yes.
- 24 Q And at that point, you said he was finished
- 25 wrestling?

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 A Yes.

2 Q And that he started to tell you he was going the
3 take you home?

4 A Yes.

5 Q And that he went to collect your property?

6 A Yes.

7 Q And that's when you tore out the door?

8 A Yes.

9 Q And he -- you didn't put it in the statement, but I
10 believe you testified that he -- Mr. Hankinson then pulled
11 up when you ran into Mr. Blanken?

12 A Yes.

13 Q And he again asked you to, Come on let's go home?

14 A I didn't give him a chance to talk to me. He was
15 talking to the gentleman and was just saying like, Don't
16 get involved; don't get involved. And that's all I
17 remember him saying to the guy.

18 Q Was that in the statement?

19 A No.

20 MR. HAYES: Beg the Court's indulgence.

21 (There was a pause in the proceedings.)

22 BY MR. HAYES:

23 Q All right. You testified earlier that you went to
24 watch a movie about the mummy with the woman who had
25 tattoos on her face?

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 A I believe that was the movie. I really think I
2 might have got it wrong. I believe it was the transformer
3 movie or either that movie, but I go to the movies a lot,
4 so...

5 Q So you're saying it's a different movie?

6 A Possibly, yes.

7 MR. HAYES: Beg the Court's indulgence.

8 BY MR. HAYES:

9 Q All right. This mummy movie you were talking
10 about, Tom Cruise is the main character?

11 A Yes.

12 Q I'm going to hand you a flier. Do you recognize
13 it?

14 A Yes.

15 Q What is it?

16 A This is the advertisement for the movie.

17 Q Does it fairly and accurately represent the fliers
18 for that movie?

19 A Yes.

20 MR. HAYES: Judge, at this time I'd move to enter
21 Defense 5.

22 MS. HAMMACK: I have no objection, Your Honor.

23 THE COURT: Admitted without objection.

24 (Defendant's Exhibit Number 5 was entered into
25 evidence.)

K. J. [REDACTED] - Cross-Examination by Mr. Hayes

1 BY MR. HAYES:

2 Q I'm handing you what would be proposed Exhibit 6.
3 Do you know what it is?

4 A The Wikipedia page for the movie.

5 Q Does it fairly and accurately represent information
6 from Wikipedia about this movie?

7 A Yes.

8 MR. HAYES: Judge, I'd at this time move for
9 Defense 6.

10 MS. HAMMACK: Your Honor, I fail to see the
11 relevance of the substance of the Wikipedia article on a
12 movie. But --

13 THE COURT: Is that an objection?

14 MS. HAMMACK: No, Your Honor. I mean -- no, Your
15 Honor. That's fine.

16 THE COURT: All right. Admitted without objection.
17 (Defendant's Exhibit Number 6 was entered into
18 evidence.)

19 BY MR. HAYES:

20 Q All right. This incident happened on May 27th --
21 on May 27th, 2016, did it not?

22 A It did.

23 Q Into May 28th of 2016. In this, does it not say
24 that this movie was not released until June of 2017?

25 A It does.

K. J. - Redirect Examination by Ms. Hammack

1 Q Thank you.

2 MR. HAYES: Judge, I have nothing further.

3 THE COURT: Redirect?

4 MS. HAMMACK: Yes, Your Honor.

5 **REDIRECT EXAMINATION**

6 BY MS. HAMMACK:

7 Q K. J., when I was asking you questions a minute
8 ago, I asked you if you remembered what movie you saw 458
9 days ago and you said you thought it was the mummy movie.
10 When Mr. Hayes was asking you, you said it may have been
11 transformers. Do you remember what movie you saw 458 days
12 ago?

13 A No, I don't.

14 Q Okay. Mr. Hayes also asked you a whole bunch of
15 questions about this statement that you wrote for law
16 enforcement and asked you about not including seeing the
17 defendant's dogs in that statement. Did you put in that
18 statement that the defendant pulled a gun on you?

19 A Yes.

20 Q Did you put in that statement that he tried to rape
21 you?

22 A Yes.

23 Q Did you put in that statement that when you tried
24 to grab your phone, he started wrestling with you?

25 A Yes.

K. J. ██████ - Redirect Examination by Ms. Hammack

1 Q Did you put in that statement that he put his hands
2 around your neck and tried to choke you?

3 A Yes.

4 Q Did you put in that statement that you tried to get
5 a knife to defend yourself?

6 A Yes.

7 Q Did you put in that statement that you ran out of
8 the front door screaming for help?

9 A Yes.

10 Q Did you put in that statement what you had for
11 lunch that day?

12 A No.

13 Q But did you put in that statement everything that
14 the defendant did to you in that house?

15 A Yes.

16 Q K. J. ██████, I think pretty much every word of your
17 statement has been read out loud already, but is that a
18 copy of your statement?

19 A Yes.

20 MS. HAMMACK: Your Honor, at this time, we would
21 move that into evidence State's Exhibit 31.

22 MR. HAYES: I have no objection.

23 THE COURT: Admitted without objection.

24 (State's Exhibit Number 31 was entered into
25 evidence.)

K. J. - Redirect Examination by Ms. Hammack

1 BY MS. HAMMACK:

2 Q And K. J., I'm going to take this one back from
3 you. When the defendant pulled the gun on you, grabbed you
4 by the neck and was pulling you into his bedroom after
5 telling you to take your clothes off, what did you think he
6 was going to do to you?

7 MR. HAYES: Objection, speculation.

8 THE COURT: Overruled. Go ahead.

9 THE WITNESS: I thought I was going to be raped.

10 MS. HAMMACK: Thank you. No further questions.

11 THE COURT: Any recross?

12 MR. HAYES: No, sir.

13 THE COURT: Thank you, ma'am, you may step down.

14 Ladies and gentlemen, are y'all okay or do you need
15 to take a break?

16 A JUROR: Go to the restroom?

17 THE COURT: Sure. Let's take a five minute recess,
18 ladies and gentlemen.

19 (A juror stops to speak to the Court.)

20 THE JUROR: Could I have a you question?

21 THE COURT: Yes, ma'am.

22 THE JUROR: Tomorrow, I have to pick my
23 grandchildren up from school and my youngest one gets out
24 at 3:10. So will this run over until then?

25 THE COURT: I don't know. We might know a little

1 bit later on, but we're pretty sure we'll be here in the
2 morning. But you need to leave by what time?

3 THE JUROR: I need to leave by two. The youngest
4 one goes to New Ellenton Middle and the other two goes down
5 to Silver Bluff.

6 THE COURT: We'll see what we can do, okay?

7 THE JUROR: Thank you.

8 MR. HAYES: Judge, can we take just a few minutes?

9 THE COURT: Sure.

10 (The jury left the courtroom at 3:48 p.m.)

11 (A brief recess was observed.)

12 (The jury entered the courtroom at four o'clock
13 p.m.)

14 THE COURT: All right. All the jurors are seated.
15 Solicitor, you ready to call your next witness?

16 MR. GRIMES: Yes, Your Honor. The State calls
17 David Blanken.

18 DAVID BLANKEN,
19 after being duly sworn, testified as follows:

20 THE CLERK: Have a seat in the witness box. State
21 your full name for the Court, spelling your last.

22 THE WITNESS: My name is David Blanken. Last name,
23 B-L-A-N-K-E-N.

24 ///

25 ///

David Blanken - Direct Examination by Mr. Grimes

1	DIRECT EXAMINATION	
2	<u>BY MR. GRIMES:</u>	
3	Q	Mr. Blanken, back in May of 2016, where were you
4		living?
5	A	In -- on Cherry Street in Bath.
6	Q	Is that in Aiken County?
7	A	Yes, sir.
8	Q	Okay. And do you remember back in May of 2016, a
9		night when you were walking down the road and somebody
10		approached you, came up to you?
11	A	Yes, sir.
12	Q	And how did that person come up to you?
13	A	She was real hysterical and screaming for help.
14	Q	Well, maybe I skipped a little. I went too far.
15		What were you doing on the the road?
16	A	I was walking back home.
17	Q	Okay.
18	A	From a friend's house.
19	Q	Okay. So this was nighttime?
20	A	Yes, sir.
21	Q	In the dark?
22	A	Yes.
23	Q	And a person ran up to you screaming?
24	A	Yes, sir.
25	Q	Okay. Anything else that you noticed about her?

David Blanken - Direct Examination by Mr. Grimes

1 A Well, she was real hysterical and she didn't have
2 on a shirt.

3 Q Okay. Do you remember what she was talking about?

4 A She said somebody was trying to get her, like, get
5 her to go back or was just harming her or what. She was
6 real hysterical and like yelling for help.

7 Q And when she did that, did somebody else approach
8 you?

9 A Yeah, somebody pulled up in a green Chevrolet
10 truck, I believe it was.

11 Q And what happened when that person got there?

12 A He got out of the car threatening, threatening her,
13 told me to mind my own business and tried to get her to go
14 with him.

15 Q When you say -- if you could speak up just a little
16 bit so I can hear you.

17 A I'm sorry.

18 Q When you say he tried to get her to go with him, do
19 you remember what was said?

20 A I don't know the exact words, like -- I don't -- I
21 just don't know the exact words that he said. He jumped
22 out the truck. I thought he had a gun or something like
23 that. But I didn't see a gun. And he made a couple of
24 threats or something and told me to mind my own business.
25 And I told her to keep walking with me and we would get

David Blanken - Direct Examination by Mr. Grimes

1 help and he got back in the truck and left and I walked her
2 down the driveway and called the paramedics and the police.

3 Q Did he want her to get in the car?

4 A Yeah.

5 Q Or the truck?

6 A Yes, sir.

7 Q And she didn't do that?

8 A No.

9 Q And he told you to mind your own business?

10 A Yeah.

11 Q What house did y'all walk to?

12 A It was right there at Mike Hollis at 1 Cherry
13 Street.

14 Q And that's where y'all lived?

15 A Yes, sir.

16 Q And were there other people there?

17 A Yeah, there was other people at the house.

18 Q Do you remember who it was?

19 A It was Nancy -- Nancy and Mike was there. I don't
20 know her last name. Mike Hall and Nancy something. I
21 don't know her last name.

22 Q But they weren't in the street with you?

23 A Oh, no, sir.

24 Q Okay. They were just in the house?

25 Q And after -- after she didn't get in the truck with

David Blanken - Direct Examination by Mr. Grimes

1 the guy, who was driving, what did he do.

2 A He got back in the the truck and he left.

3 Q Okay. Did you ever see him again after that?

4 A No, sir.

5 Q Okay. Did --

6 I'm going to show you what's been marked as State's

7 Exhibit 17. Is your signature on that document?

8 A Yes, sir.

9 Q Okay. Do you remember, and maybe you don't
10 remember, looking at a lineup?

11 A I think I did.

12 Q You think you did?

13 A The officer brought it.

14 Q Okay. Well, is that your signature on this
15 document that says photo lineup identification?

16 A Yes, sir.

17 Q And does it indicate that you had picked somebody
18 out of a lineup?

19 A Yes, sir.

20 Q Okay.

21 MR. GRIMES: At this time the State would move to
22 introduce State's Exhibit 17 into evidence.

23 MR. HAYES: No objection.

24 THE COURT: Admitted without objection.

25 (State's Exhibit Number 17 was entered into

David Blanken - Cross-Examination by Mr. Hayes

1 evidence.)

2 MR. GRIMES: The State has no further questions for
3 Mr. Blanken.

4 THE COURT: Any cross-examination of the witness?

5 CROSS-EXAMINATION

6 BY MR. HAYES:

7 Q Good morning.

8 A Yes, sir.

9 Q On the night this happened, you gave a statement?

10 A Yes, sir.

11 Q In that statement did you put anything about him
12 threatening you?

13 A Yes, sir, I believe so.

14 MR. HAYES: May I approach?

15 THE COURT: Yes, sir.

16 BY MR. HAYES:

17 Q I hand you your statement and tell me where he was
18 threatening you?

19 A I was walking up the road and heard a girl yelling
20 so I got to her and a green truck pulled up and a man got
21 out and told me to -- in the truck. It doesn't, I don't
22 believe.

23 Q And you've read it?

24 A Yes, sir.

25 Q Does it state that anywhere in there that he

David Blanken - Cross-Examination by Mr. Hayes

1 threatened you?

2 A No, sir.

3 Q Anything about you thinking he had a gun?

4 A No, sir.

5 Q Matter of fact, the only thing it says is you

6 walked up to the fence?

7 A Yes, sir.

8 Q And you saw them? You saw Mr. Hankinson, or a man,

9 and he was asking the woman to get in the truck?

10 A Yeah.

11 Q And that he drove off?

12 A Yes, sir.

13 Q That's it, right?

14 A Uh-huh.

15 MR. HAYES: Judge, I have nothing further.

16 THE COURT: Redirect?

17 MR. GRIMES: No further questions, Your Honor.

18 THE COURT: All right. Thank you sir, you may step

19 down.

20 You may call your next witness.

21 MS. HAMMACK: State calls Officer Ryan Hall.

22 MR. GRIMES: Your Honor, may Mr. Blanken be

23 excused?

24 MR. HAYES: No objection.

25 THE COURT: All right. Thank you, Mr. Blanken, you

David Blanken - Cross-Examination by Mr. Hayes

1 may be excused from your subpoena.

2 MS. HAMMACK: Your Honor, we've sequestered the
3 witnesses, so they're sitting out in another room. They've
4 gone to get Officer Hall.

5 THE COURT: All right.

6 MS. HAMMACK: Your Honor, we had a slight mishap
7 with the elevator this morning. Somebody who shall remain
8 nameless, that's wearing a purple shirt and a black suit,
9 got stuck in the elevator, so we're having to transport
10 people a little differently today.

11 THE COURT: Do you have another witness you could
12 call?

13 MS. HAMMACK: Well, Your Honor. They're all
14 sequestered in the same area.

15 THE COURT: Okay.

16 (There was a pause in the proceedings.)

17 THE COURT: What about the following witness? The
18 witness that you'll call after him.

19 MS. HAMMACK: We are bringing him up to stand right
20 outside the courtroom.

21 THE COURT: All right.

22 RYAN HALL,

23 having been duly sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box. State
25 your full name for the Court, spelling your last.

Ryan Hall - Direct Examination by Ms. Hammack

1 THE WITNESS: My name is Dennis Ryan Hall, last
2 name spelled H-A-L-L.

3 **DIRECT EXAMINATION**

4 BY MS. HAMMACK:

5 Q Deputy Hall, this is a bit of the silly question,
6 but what do you do for a living?

7 A I'm an Aiken County deputy sheriff.

8 Q And how long have you been doing that?

9 A Four years.

10 Q And what do you do every day as a sheriff's deputy?

11 A I work patrol division, so I take calls for service
12 and patrol the county.

13 Q Do you have any particular area that you are
14 assigned to?

15 A I stay mostly in the Midland Valley area.

16 Q Were you working back in may of 2016?

17 A Yes, ma'am.

18 Q And did you have a chance to become involved in
19 this case?

20 A Yes, ma'am.

21 Q How did you first get involved in this case?

22 A On May 28th back in 2016 at around 1:43 in the
23 morning, I was sent to 2 Cherry Street. That's down in
24 Warrenville, in reference to this case about an individual
25 who needed help.

Ryan Hall - Direct Examination by Ms. Hammack

1 Q Now, is Cherry Street here in Aiken County?

2 A Yes, ma'am.

3 Q And can you tell the jury about where in Aiken
4 County is Cherry Street?

5 A It's down in the Bath area. Right around in Bath.

6 Q And when you got dispatched out there, did you head
7 out there?

8 A Yes, ma'am.

9 Q What did you do when you first got out there?

10 A I met with Mr. Blanken and Ms. K. J. , who I
11 believe were standing in the street right around that time.

12 Q Okay. Did you speak with each of them?

13 A Yes, ma'am.

14 Q And let me ask you this: When you -- every time
15 you respond to a call, what is your first priority?

16 A Safety.

17 Q So when you got there, did you take any steps to
18 make sure that everybody was safe?

19 A Absolutely.

20 Q And after you did that did you take a chance to
21 find out who all was there and take statements from them?

22 A Yes, ma'am.

23 Q And you spoke to each, both Ms. K. J. and
24 Mr. Blanken?

25 A I did.

Ryan Hall - Direct Examination by Ms. Hammack

1 Q When you spoke with Ms. K. J. [REDACTED], did you observe
2 any injuries on her?

3 A Yes, ma'am. It was a cut on her left hand and on
4 her lower arm.

5 Q And what did you do after you saw that she had some
6 injuries to her?

7 A We called for EMS to help her.

8 Q Did EMS come out and respond?

9 A They did.

10 Q Did EMS treat her for her injuries?

11 A Yes, ma'am.

12 Q Did you stay out there while that happened?

13 A Yes, ma'am.

14 Q Did you go to the house at 2 [REDACTED] Cherry Street.

15 A Yes, ma'am.

16 Q Was there anybody at that house when you got there?

17 A No, ma'am.

18 Q So what did do when you got to that house and there
19 was no one there?

20 A After we initially -- after I initially notified my
21 immediate supervisor, which was Staff Sergeant Lancaster at
22 the time, we then notified our investigations unit.

23 Q And did you remain out there by the house until
24 they came out there.

25 A Yes, ma'am.

Ryan Hall - Direct Examination by Ms. Hammack

1 Q And why do you do that?

2 A Scene security for evidence.

3 Q And when you say scene security for evidence, why
4 is it important for you to stay at that scene until
5 investigations could come?

6 A So that nothing can be tampered with of any kind.

7 Q When you were there, waiting on investigations to
8 arrive, did anybody go in or out of that house?

9 A No, ma'am.

10 Q What did you do with Ms. K. J. [REDACTED] after EMS treated
11 her?

12 A She stayed with me and she slept, I believe in the
13 back seat of my patrol car, but she was in the front seat
14 for a while. We stayed out there for several hours.

15 Q When investigations arrived, did you turn over the
16 case as it has progressed so far to them for further
17 investigations?

18 A Yes, ma'am.

19 Q Give me just one second Deputy Hall.

20 (There was a pause in the proceedings.)

21 BY MS. HAMMACK:

22 Q And you may have said this, I apologize. [REDACTED]
23 Cherry Street, is that in Aiken County?

24 A Yes, ma'am.

25 Q I don't have anymore questions for you. Please

Ryan Hall - Direct Examination by Ms. Hammack

1 answer any questions that Mr. Hayes has for you.

2 MR. HAYES: Judge, I have no questions for this
3 witness.

4 THE COURT: Thank you, Mr. Hall, you may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: You may call your next witness.

7 MR. GRIMES: The State calls Lieutenant Clay Adams.

8 MS. HAMMACK: And, Your Honor, as he's coming in,
9 may Deputy Hall be excused? He has to work tonight.

10 MR. HAYES: No objection.

11 THE COURT: You may be excused, Deputy Hall.

12 THE WITNESS: Thank you.

13 CLAY ADAMS,

14 having been duly sworn, testified as follows:

15 THE CLERK: Have a seat in the witness box. State
16 your full name for the Court, spelling your last.

17 THE COURT: Do we have the next witness following
18 at the door?

19 MR. GRIMES: I believe so.

20 THE COURT: Thank you.

21 MR. GRIMES: We do.

22 THE COURT: Okay. Thanks.

23 THE WITNESS: Martin Clay Adams, A-D-A-M-S.

24 ///

25 ///

Clay Adams - Direct Examination by Mr. Grimes

DIRECT EXAMINATION

1
2 BY MR. GRIMES:

3 Q Lieutenant Adams, what do you do for the sheriff's
4 office?

5 A I'm a lieutenant of the forensic investigation
6 section for the sheriff.

7 Q So you're in charge of that division?

8 A Yes. I oversee the day-to-day operations of the
9 crime scene unit, the drug laboratory, the processing
10 laboratories and all the evidence.

11 Q Do you recall participating in the investigation
12 back in May of 2016 on Cherry Street?

13 A I do.

14 Q And how did you get -- how do you get notified of
15 something like that?

16 A Typically during the daytime whenever crime scene
17 is needed, dispatch will call me. If I have any
18 investigators that are clear of any calls that they can
19 respond, or I'll go myself.

20 Q But you responded to this incident yourself,
21 correct?

22 A I did.

23 Q Okay. And I'm -- I'm just going to go ahead and
24 show you State's Exhibits 18 through 28.

25 MR. HAYES: Judge, if I can get a quick look, I

Clay Adams - Direct Examination by Mr. Grimes

1 might be able to skip all this part.

2 THE COURT: All right.

3 (There was a pause in the proceedings.)

4 MR. HAYES: Judge, I have no objections for 18 to
5 28.

6 THE COURT: 18 through 28 will be admitted without
7 objection.

8 (State's Exhibit Number 18, Number 19, Number 20,
9 Number 21, Number 22, Number 23, Number 24, Number 25,
10 Number 26, Number 27, and Number 28 was entered into
11 evidence.)

12 BY MR. GRIMES:

13 Q I'll get back to those in just a moment.

14 Actually, if you could take a look at 1 through 10
15 and 18 through 28.

16 A (Looking through the photographs.)

17 Q Are those photographs that you took at this
18 incident location?

19 A Yes.

20 Q Okay. I know we skipped ahead a little bit, but we
21 get that out of the way and we can probably talk about them
22 a little easier when they come up.

23 When you show up at an investigation or a crime
24 scene, generally, do you have the whole story of what
25 happened? Or do you have part of a story that what

Clay Adams - Direct Examination by Mr. Grimes

1 happened? Or...

2 A Typically when we get to a crime scene, we don't
3 have very much of the story at all, only what our dispatch
4 center has given us.

5 Q Okay. And in this case, the victim was there. Did
6 you have an idea of what was said to have occurred in this
7 house?

8 A Just a very brief description of what happened.

9 Q Okay. And was a search warrant executed at the
10 house?

11 A It was.

12 Q And what does that kind of give you permission to
13 do?

14 A The search warrant gives us legal grounds to enter
15 the -- enter this residence to look and collect for
16 physical evidence.

17 Q Was there anybody there at the house when you
18 executed the search warrant?

19 A The -- let's see, the investigator was on scene,
20 the victim was on scene. Those are the only two.

21 Q When you approach a house or an incident
22 location -- I guess a house would probably be different
23 than some others -- what do you do to kind of gather the
24 evidence there?

25 A Well, the first thing we do is we photograph the

Clay Adams - Direct Examination by Mr. Grimes

1 scene and its contents the way we -- the way we find it.

2 Without anything being marked, without anything being moved
3 of disturbed. So as we approach the crime scene, we shoot
4 our photographs working from outside in and as we're going
5 through, we're making mental notes as to what we're seeing
6 as we're taking our pictures, what we think's going to be
7 important in just a little while when we back out and come
8 back in with our markers and such like that.

9 Q So the items in these photographs, would these be
10 items that were photographed undisturbed with the exception
11 of a few of them, and I'll put them up in a minute, have a
12 ruler or tape?

13 A Right, yes.

14 Q With the exception of that, were these items
15 disturbed before they were photographed?

16 A No.

17 Q Okay. And I'm going to have some of these put up
18 on here. I think you'll be able to see it from up there,
19 but if not let me know.

20 We'll start with Number 18. Are you able to see
21 Number 18?

22 A I can, yes.

23 Q Okay. What what is this? Is this the front door
24 to that house or the entryway door?

25 A This is the glass storm door to the front door.

Clay Adams - Direct Examination by Mr. Grimes

1 Q Okay. And Number 19, do you recall where this
2 picture was taken?

3 A This was on the glass of that storm door.

4 Q And what did you believe this to be at the time
5 that you took that picture?

6 A This -- blood.

7 Q And Number 20?

8 A Okay. This is the bottom side to that storm door.
9 Kind of aluminum metal part below the glass.

10 Q And what was the purpose of taking that picture?

11 A The blood.

12 Q Okay. Let me see Number 21. Is this a closer view
13 of that blood droplet?

14 A That's just a closer view, yes, sir.

15 Q Okay. And let's see Number 22?

16 A Okay. This is coming into the door in -- the
17 living room's in front of me. The glass storm door is to
18 my left. I'm coming into the residence.

19 Q All right. And are there things that you noted in
20 this picture? And I may go ahead and skip to Number 23.

21 A A drop of blood on a cardboard box.

22 Q Okay. And Number 24?

23 A That would be a drop of blood on that linoleum
24 floor right inside the doorway.

25 Q Okay. That's right close to the entryway door we

Clay Adams - Direct Examination by Mr. Grimes

1 were just looking at?

2 A Yes, that's -- coming into the door there was a
3 small patch of vinyl linoleum.

4 Q And Number 25?

5 A Another drop of blood.

6 Q In that same area on the linoleum?

7 A Yes.

8 Q Okay. Number 26?

9 A This is the interior doorknob to the main door, not
10 the storm door.

11 Q And is that -- what's significant about that
12 picture?

13 A The blood on the doorknob.

14 Q All right. And do you recall -- and maybe you do,
15 maybe you don't -- but do you recall whether you knew who
16 lived in the house at the time this occurred or at the time
17 you executed the search warrant?

18 A I don't recall.

19 Q Okay. I'm going to show you State's Exhibit 27.
20 Was that located at the house?

21 A Yes. That was located on a coffee table or on a
22 table in the little den area to the left of the front door.

23 Q And State's Exhibit 28?

24 A Another ID that was located, I believe, in the
25 bedroom to the left of this front door.

Clay Adams - Direct Examination by Mr. Grimes

1 Q If I could see State's Exhibit 6 -- actually let's
2 make that State's Exhibit 9. If -- and we've had prior
3 testimony in this case about that shirt that's on that
4 couch. When you took the pictures of this house, would
5 that have been undisturbed prior to you taking these
6 pictures?

7 A That's correct.

8 Q Okay.

9 MR. GRIMES: Beg the Court's indulgence, Your
10 Honor.

11 (There was a pause in the proceedings.)

12 BY MR. GRIMES:

13 Q The blood droplets that we saw in those photographs
14 earlier, did you submit samples -- well, did you take a
15 swab of those samples?

16 A I took swabs of the blood at the scene, yes.

17 Q And what was the purpose of taking those swabs?

18 A For DNA analysis.

19 Q To find out whose blood it was that was actually on
20 that item?

21 A That's correct.

22 Q And did you submit those swabs to the State Law
23 Enforcement Division for DNA analysis?

24 A They were submitted, yes.

25 MR. GRIMES: The State has no further questions for

Clay Adams - Cross-Examination by Mr. Hayes

1 this witness.

2 THE COURT: Cross-examination.

3 MR. HAYES: I have one question.

4 **CROSS-EXAMINATION**

5 BY MR. HAYES:

6 Q Lieutenant Adams, the shirt on that couch, it's
7 inside out; is it not? Can you see from where you're at
8 very well? If you can't --

9 MR. HAYES: Judge, can he step down and take a good
10 look at it.

11 THE COURT: Certainly if you need to.

12 (The witness stepped down in front of the jury.)

13 THE WITNESS: I don't know based off the
14 photograph.

15 MR. HAYES: Judge, I have no questions.

16 THE COURT: Thank you, you may step down.

17 MR. GRIMES: May Lieutenant Adams be excused, Your
18 Honor?

19 THE COURT: He may be.

20 You may call your next witness.

21 MS. HAMMACK: State calls Stuart Graybeal.

22 STUART GRAYBEAL,

23 having been duly sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box. State
25 your full name for the Court, spelling your last.

Stuart Graybeal - Direct Examination by Ms .Hammack

1 THE WITNESS: I'm Investigator Stuart Graybeal.

2 Spelling of the last name is G-R-A-Y-B-E-A-L.

3 **DIRECT EXAMINATION**

4 BY MS. HAMMACK:

5 Q Investigator Graybeal, what do you do for a living?

6 A I'm a criminal investigator employed by the Aiken
7 County Sheriff's Office.

8 Q And how long have you been doing that?

9 A I've been in law enforcement approximately, almost
10 24 years, and I've been an investigator for approximately
11 15. All but two of that's been with Aiken County.

12 Q And did you have a chance to become involved in
13 this case back in May of 2016?

14 A I did.

15 Q How did you first get involved in this case?

16 A I was what's known as a on-call investigator. I'm
17 available for after hours call out when investigations is
18 needed to respond. I was called out to 2 Cherry Street,
19 Bath, South Carolina. I arrived at approximately 4:44,
20 4:45 a.m.

21 Q And when you were called out, were you given any
22 information as to what kind of potential crime that you
23 were investigating?

24 A I was. I was told it was a possible or potential
25 kidnapping, possible sexual assault type case.

Stuart Graybeal - Direct Examination by Ms .Hammack

1 Q And where did you respond to?

2 A The residence located at 2 Cherry Street in Bath
3 which is located in Aiken, South Carolina.

4 Q Investigator Graybeal, I'm showing you what's been
5 entered as State's Exhibit 1. Is that the house you went
6 -- you went to that day.

7 A Yet, it is.

8 Q And when you got to the house that day, who was
9 there?

10 A When I arrived the patrol division had secured the
11 residence and the surrounding area. And the alleged
12 victim, Ms. K. J., was also present.

13 Q Did you have a chance to speak with Ms. K. J.?

14 A Yes, ma'am.

15 Q Did you observe any injuries on her when you spoke
16 with her?

17 A I observed she had two bandages applied to her left
18 arm. The patrol division informed me EMS had treated her
19 for lacerations to her foreman and to her hand and that
20 they had applied those bandages.

21 Q And Investigator Graybeal, I'm showing you what's
22 been entered as 11 through 15. Is that how you observed
23 Ms. K. J. that early morning?

24 A It is.

25 Q And did you take those photographs?

Stuart Graybeal - Direct Examination by Ms .Hammack

1 A I did.

2 Q Now, when you went out to the scene, you indicated

3 that she was there and patrol was there. Was there anybody

4 at that house other than those people?

5 A In the actual scene itself, no, ma'am.

6 Q I'm showing you what's been premarked as State's

7 Exhibit 29. Will you take a look at that for me?

8 A Yes, ma'am.

9 Q What is that?

10 A That appears to be an aerial photograph or

11 satellite photograph of the Cherry Street area.

12 In the lower center, everybody see that okay?

13 In the lower center area, this would be the

14 residence I responded to. There's a number of derelict

15 vehicles parked in and around it. This is Cherry Street

16 here. My initial arrival I was positioned roughly here and

17 connecting everything else on foot.

18 Q Is that a true and accurate depiction of that area?

19 A It is.

20 Q Is that to scale?

21 A By scale --

22 Q Let me direct your attention -- right here to the

23 bottom of the map.

24 A The scale is one inch to 30 feet.

25 MS. HAMMACK: Your Honor, at this time we would

Stuart Graybeal - Direct Examination by Ms .Hammack

1 move State's Exhibit 29 into evidence.

2 MR. HAYES: No objection.

3 THE COURT: Admitted without objection.

4 (State's Exhibit Number 29 was entered into
5 evidence.)

6 BY MS. HAMMACK:

7 Q Now Investigator Graybeal, when you first got to
8 the scene, what's the first thing you do any time you get
9 sent out to a scene?

10 A Usually by the time investigations gets on scene,
11 there are other officers there, usually the patrol
12 division, so I'm briefed by the officers who are already
13 there. In this case it was patrol.

14 Q And you did that in this case?

15 A That's correct.

16 Q And after that, did you speak with the victim?

17 A I did.

18 Q And is that when you photographed her injuries?

19 A That's correct.

20 Q When you first got out on scene, did y'all have a
21 known suspect in this case?

22 A No, we had a general description, general physical
23 description, but we didn't know who he was specifically.

24 Q Did you go in the house when you first got out
25 there?

Stuart Graybeal - Direct Examination by Ms .Hammack

1 A No, ma'am. We didn't have the legal authority and
2 as I recall, the house was actually locked when we arrived.

3 Q Did you take any investigative measures to get
4 access to that house?

5 A Yes, ma'am. After I was briefed by patrol and I
6 spoke with Ms. K. J. , I collected my information, left the
7 scene in the care of the patrol division. I relocated to
8 the sheriff's office and typed up a search warrant which
9 was presented to a county magistrate. He found sufficient
10 probable cause to issue the search warrant. Once the
11 search warrant was in hand permitting us to go into the
12 residence and search for specific items, I returned to the
13 scene with that search warrant in hand.

14 Q And did you execute the search warrant at that
15 time?

16 A No, ma'am, Lieutenant Clay Adams of the forensic
17 section executed the warrant.

18 Q Were you there with him when that happened?

19 A Yes, ma'am.

20 Q And about what time did y'all execute that warrant?
21 Do you remember?

22 A I believe it was a little before 8 a.m.

23 Q On May 28th?

24 A Yes, ma'am, Saturday morning, 45 minutes, an hour
25 after sunrise, early morning.

Stuart Graybeal - Direct Examination by Ms .Hammack

1 Q I'm showing you State's Exhibit 27 and 28. Do you
2 recognize those?

3 A I do. Number 27 is a Georgia driver's license
4 containing a name and photographic likeness of the
5 defendant, Wayne Hankinson.

6 State's Exhibit 28 is a student ID card from
7 Augusta college as the photographic likeness and the name
8 of the defendant, Mr. Hankinson printed on that.

9 Q And where did y'all locate those items?

10 A Those were located inside the residence at 2
11 Cherry Street.

12 Q And those items that y'all found, did that match
13 the description you had of the -- of the suspect in this
14 case?

15 A They do.

16 Q At that time, since you had a name and a
17 description, did you take any action to try to identify who
18 the victim said had done this to her?

19 A Yes, ma'am. I contacted State Law Enforcement
20 Division or SLED. I requested a photographic lineup to be
21 constructed which would include his likeness.

22 Q I'm showing you what's been entered as State's
23 Exhibit 30. Do you recognize that?

24 A I do. That is the photo lineup that was
25 constricted by SLED.

Stuart Graybeal - Direct Examination by Ms .Hammack

1 Q And did they send that lineup to you?

2 A It was sent by e-mail to me, yes.

3 Q And what did you do with that lineup?

4 A I contacted Investigator Chuck Cain, also of the
5 Aiken County Sheriff's Office. Our on call schedule
6 rotates. I was on call Friday night and now we're into
7 Saturday, I believe early afternoon. Investigator Cain was
8 on call and I asked him if he would assist me by showing
9 this lineup to the victim and to the complainant,
10 Mr. Blanken.

11 Q And did you give Investigator Cain that lineup to
12 do that?

13 A I did.

14 Q Now, in addition to those ID's that y'all found in
15 the residence, are you aware if Lieutenant Adams collected
16 any potential physical evidence in this case from the
17 house?

18 A He collected a number of items from there,
19 primarily suspected blood as I recall.

20 Q And for example, I'm going to show you State's
21 Exhibit 23 through 26.

22 A Yes, ma'am. 26 is a quantity of suspected blood.
23 I observed that at the scene. I believe that is the
24 interior front doorknob of the solid door.

25 Q Would you just look through those pictures and tell

Stuart Graybeal - Direct Examination by Ms .Hammack

1 me if they're all pictures of suspected blood found in the
2 residence?

3 A Yes, ma'am.

4 Q And I'm going to ask you to do the same with
5 State's 19 through 21. Are those photographs of suspected
6 blood in the residence?

7 A Yes, ma'am.

8 Q Now, once that blood was recovered, as a result of
9 that did you go back to meet with the victim for anything?

10 A Yes, ma'am.

11 Q Probably an hour, hour-and-a-half later,
12 approximately, I spoke with her outside of the scene and
13 asked her for what we call a buccal swab or some people
14 pronounce it buccal swab; essentially a sterile Q-tip type
15 swab the applied to the inside of the mouth in the cheek
16 area to collect skin cells or tissue cells for DNA
17 comparison. She provided written and verbal consent and I
18 collected those swabs.

19 Q And did you submit that to SLED for DNA analysis
20 with the evidence collected at the scene?

21 A Yes, ma'am, I submitted it for evidence and it was
22 transferred to SLED.

23 Q Did you seek to collect any potential evidence from
24 a location other than the incident location in this case?

25 A Yes, ma'am. I did. We had a description of the

Stuart Graybeal - Direct Examination by Ms .Hammack

1 suspect's vehicle from that night, and of course, we had
2 the suspect's information. That was broadcast to our
3 patrol division and surrounding areas, law enforcement in
4 surrounding areas on -- let me refer to my report, June
5 7th, I believe, 2016.

6 (Looking through notes.)

7 Yes, ma'am, June 7th members of the patrol division
8 located a green 1979 Chevrolet truck in the driveway of
9 that house on Cherry Street. They were unable to locate
10 anyone in or around the vehicle or at the residence. I was
11 notified of this discovery and we had that vehicle towed to
12 the Aiken County Sheriff's Office or placed into the secure
13 impound lot. Based on the similarity and appearance of the
14 vehicle to the one that Ms. K. J. described, there was
15 also an investigation, I sought and obtained a second
16 search warrant for the vehicle itself.

17 That was executed the following morning, June 8th
18 by investigator Chris Johnson of the forensic section. I
19 was present when that search warrant was executed.

20 Q So in addition to the vehicle and in addition to
21 the 2 Cherry Street residence, did you seek evidence from
22 any other locations in the case?

23 A I sought records from cell -- pertaining to a
24 cellar telephone.

25 Q Okay. And whose phone was that?

Stuart Graybeal - Direct Examination by Ms .Hammack

1 A I believe that was Ms. K. J. 's.

2 Q Okay. And did you include in your investigation
3 anything to do with the library in Augusta?

4 A Yes, ma'am. Based on Ms. K. J. 's statements about
5 how and where she met the defendant in Augusta, Georgia, we
6 believed that there would be security video of that
7 encounter available to us at the Richmond County Public
8 Library. On my request, Investigator Cain coordinated with
9 the Richmond County, Georgia Sheriff's Office. He obtained
10 the search warrant for that video documentation from the
11 library. Investigator Cain obtained a series of video
12 recordings from the library which he subsequently turned
13 over to me. Those recordings document the encounter
14 between the defendant and the victim.

15 Q And when he turned that video over to you, did you
16 place that in evidence with the Aiken County Sheriff's
17 Office?

18 A Yes, ma'am.

19 Q Give me just a minute, investigator.

20 (There was a pause in the proceedings.)

21 BY MS. HAMMACK:

22 Q I don't have any further questions for you. Please
23 answer any questions that the the defense attorney has for
24 you.

25 A Certainly.

Stuart Graybeal - Cross-Examination by Mr. Hayes

1	CROSS-EXAMINATION
2	<u>BY MR. HAYES:</u>
3	Q Investigator Graybeal, I just want to kind of start
4	where they left off. You were just speaking of a video?
5	A Yes, sir.
6	Q I hand you what is Defense Exhibit 1, proposed
7	Exhibit 1.
8	A Yes.
9	Q Does that appear to be --
10	A I believe that is a copy of it, yes, sir.
11	Q Have you reviewed the video that you handed over?
12	A Yes, sir.
13	Q Did it fairly and accurately represent it?
14	A Yes, sir.
15	MR. HAYES: Judge, at this time, I would move to
16	enter Defendant's Exhibit 1.
17	MS. HAMMACK: No objection.
18	THE COURT: Admitted without objection.
19	(Defendant's Exhibit Number 1 was entered into
20	evidence.)
21	<u>BY MR. HAYES:</u>
22	Q Investigator Graybeal, you said that once you
23	arrived it was about 4 a.m.
24	A 4:44, 4:45, closer to five.
25	Q Early morning.

Stuart Graybeal - Cross-Examination by Mr. Hayes

- 1 A Yes.
- 2 Q At that time you said you had interviewed
- 3 Ms. K. J. [REDACTED]?
- 4 A I'm sorry?
- 5 Q You interviewed Ms. K. J. [REDACTED] during this time?
- 6 A Yes, sir, subsequent to my arrival.
- 7 Q At that time in your investigation, did she tell
- 8 you about a party with the cousin.
- 9 A That she had been to one or --
- 10 Q Or their plans for going to go be at a party?
- 11 A As I recall it was mentioned in passing, yes. I
- 12 don't have specific --
- 13 Q Did she mention about a dog and going to see this
- 14 dog?
- 15 A A dog? No, sir. Not that I recall.
- 16 Q Investigator Graybeal, did you find a small rusty
- 17 gun?
- 18 A No, sir.
- 19 Q And I believe there was some questions about
- 20 searching the truck. Did you execute a search warrant on
- 21 the vehicle?
- 22 A Yes, sir.
- 23 Q And when you searched that vehicle a knife was
- 24 found?
- 25 A Yes, sir.

Stuart Graybeal - Cross-Examination by Mr. Hayes

1 Q And it was on the floor board of the pick-up truck?

2 A As I recall, yes, sir.

3 MR. HAYES: Beg the Court's indulgence.

4 THE COURT: All right, sir.

5 (There was a pause in the proceedings.)

6 BY MR. HAYES:

7 Q Was the knife that you found a butter knife?

8 A Not as I recall. I would have to review

9 photographs of it to give you a more detailed description

10 of the -- it was a small fixed blade knife is what I

11 recall.

12 Q What we would normally call a boot knife?

13 A Boot knife, hunting knife, small buoy knife, all of

14 that I think would be accurate.

15 Q Okay. Were you present for any of this when it

16 happened?

17 A The alleged assault --

18 Q This incident, this alleged incident?

19 A No, sir. No, sir.

20 Q Okay.

21 MR. HAYES: Judge, I have no more questions at this

22 time.

23 THE COURT: Any redirect?

24 MS. HAMMACK: No, Your Honor.

25 THE COURT: Thank you, sir, you may step down.

Chuck Cain - Direct Examination by Mr. Grimes

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Next witness.

3 MR. GRIMES: Your Honor, State calls Investigator
4 Chuck Cain.

5 CHUCK CAIN,

6 having been duly sworn, testified as follows:

7 THE CLERK: Have a seat in the witness box. State
8 your full name for the Court, spelling your last.

9 THE WITNESS: Investigator Chuck Cain, C-A-I-N.

10 **DIRECT EXAMINATION**

11 BY MR. GRIMES:

12 Q Investigator Cain, are you an investigator at the
13 Aiken County Sheriff's Office?

14 A Yes, sir.

15 Q All right. And did you have, I guess, somewhat
16 limited participation in this investigation?

17 A Yes, sir.

18 Q I put before you State's Exhibit 30. Did you
19 receive a lineup by e-mail from Investigator Graybeal?

20 A Yes, sir.

21 Q And is that the lineup that you received?

22 A Yes, sir.

23 Q Did you show that lineup to two people that were
24 involved in this investigation?

25 A Yes, sir.

Chuck Cain - Direct Examination by Mr. Grimes

1 Q All right. Was one of those persons David Blanken?

2 A I believe, yes, sir.

3 Q And was the other person K. J. [REDACTED]?

4 A Yes, sir, that is correct.

5 Q I'm going to show you State's Exhibit 16 and
6 State's Exhibit 17. Are those forms that y'all use when
7 y'all show somebody a lineup?

8 A Yes, sir.

9 Q And what -- what type of information would be on a
10 form like that?

11 A First of all, the top information would be the
12 sheriff's office letterhead and the badge of the sheriff's
13 office, date and time. It would have the case number, the
14 standard information on who we're showing it to. The
15 letter indicates how many lineups are going to be showed.
16 The number of the photographics chosen by the person
17 reviewing the lineup, the statement provided by the person
18 at the time they reviewed the lineup, their signature, the
19 the investigator or officer's signature that presents the
20 lineup, and the date and time.

21 Q Okay. And what date were those presented?

22 A Both of those were presented on May 28th, 2016.

23 Q Okay. Do you recall if that would have been in the
24 afternoon or --

25 A The times indicate that was the afternoon.

Chuck Cain - Direct Examination by Mr. Grimes

1 Q Okay. And do you remember where you showed
2 Mr. Blanken the lineup?

3 A If I recall it was down in Bath, South Carolina. I
4 drove to the address that was provided to me. I made
5 contact with him and presented the photo lineup.

6 Q Okay. And did -- when you -- I don't know how many
7 lineups you've presented in your career, but have there
8 been quite a few?

9 A I would say countless.

10 Q When you present a lineup to somebody, do you tell
11 them who they need to pick or if the person they're looking
12 for is in that lineup? Or how do you present it?

13 A No, sir. All I do is show them the lineup that I
14 have received and then I step back and I let them make
15 their own independent choice.

16 Q Okay. And did you do that in these instances?

17 A Both times, yes, sir.

18 Q Okay. Did Mr. Blanken sign a form indicating that
19 he had chosen a particular person out of that lineup?

20 A Yes, sir.

21 Q And I think you may recognize the handwriting, what
22 does that indicate?

23 A That is my handwriting that I wrote down the verbal
24 statement --

25 Q Uh-huh.

Chuck Cain - Direct Examination by Mr. Grimes

1 A -- that this witness gave to me at the time of
2 reviewing the lineup.

3 Q Uh-huh.

4 A I write that down. I read that to them. They
5 agree to it, and they sign the statement.

6 Q Okay. And did he do that in this case?

7 A Yes, sir.

8 Q And which person did he choose?

9 A He chose the facial image in Photograph Number 2.

10 Q Okay. Are you familiar with the person that's
11 depicted in Image Number 2 on the lineup?

12 A Right now, yes, sir, I am.

13 Q And who is that?

14 A That is the defendant.

15 Q And did you -- we've been talking about
16 Mr. Blanken's statement on State's Exhibit 17. I'm going
17 to show you State's Exhibit 16. Who -- whose statement is
18 that?

19 A That is the statement of K. J. [REDACTED], the
20 victim in this investigation -- this case.

21 Q All right. And did she similarly pick a person out
22 of the lineup and make a statement?

23 A Yes, sir, she did.

24 Q Okay. And whom did she pick out of the lineup?

25 A She chose the the facial image of Photograph Number

Chuck Cain - Direct Examination by Mr. Grimes

1 2 also.

2 Q Again the defendant?

3 A Yes, sir.

4 Q Do you recall how you showed this to them, whether
5 it was on paper or -- or electronic on the phone?

6 A Based on my memory, it was a weekend, the distance
7 I was from Investigator Graybeal, I believe that it was
8 e-mailed to me and I though showed that to them via my
9 e-mail.

10 Q But that's the lineup set that you showed them?

11 A That is the lineup, yes, sir.

12 Q Okay. I guess a printed version of that lineup?

13 A Yes, sir.

14 MR. GRIMES: No further questions for this witness,
15 Your Honor.

16 MR. HAYES: Judge, I have no questions for this
17 witness.

18 THE COURT: All right. Thank you, sir. You may
19 step down.

20 THE WITNESS: Thank you, sir.

21 MR. HAYES: And I have no objection to him being
22 released.

23 THE COURT: You may be excused.

24 THE WITNESS: Thank you, sir.

25 THE COURT: What do you think?

1 MS. HAMMACK: Your Honor, may we approach very
2 briefly.

3 THE COURT: Y'all want to the stand up and stretch
4 for a minute while I talk with the attorneys.

5 (There was a bench conference out of the hearing of
6 the jury and the Court Reporter.)

7 THE COURT: All right. Ladies and gentlemen, we
8 are going the call it a day. Let me ask you this: Anybody
9 going to have a problem being in the the back at nine
10 o'clock in the morning.

11 THE JURY: No, sir.

12 THE COURT: Ms. Bush, I understand your problem and
13 we're going to work with your problem, okay?

14 THE JUROR: Okay.

15 THE COURT: Okay. Between now and the time you
16 come back, though, you can't talk to anybody about the
17 case, can't let anybody talk to you about the case, can't
18 get on the internet and try to research anything about the
19 case.

20 When y'all come back in the morning, do me a favor,
21 see if you can select a foreperson to the represent the
22 jury. And if you can't, don't worry about it, I don't want
23 y'all to get in a fuss over who ought to be the foreperson.
24 I can appoint one if y'all can't agree.

25 Nine o'clock in the morning, ladies and gentlemen.

1 We anticipate finishing tomorrow. So for planning
2 purposes, everybody's confident we're going to finish this
3 tomorrow. See you in the morning. Thank you so much.

4 (The jury left the courtroom at 4:53 p.m.)

5 THE COURT: Anything we need to take up? Anything
6 we need to do?

7 MS. HAMMACK: Not from the State, Your Honor.

8 MR. HAYES: I can't think of anything right now,
9 Your Honor.

10 THE COURT: Court's adjourned until nine o'clock
11 tomorrow morning.

12 (This case was in recess for the day.)

13 WEDNESDAY, AUGUST 30, 2017

14 (The jury entered the courtroom at 9:04 a.m.)

15 THE COURT: Good morning and welcome, ladies and
16 gentlemen. The bailiff indicated that the the jury
17 selected Juror Number 5; is that right?

18 THE FOREPERSON: Yes.

19 THE COURT: And that would be Mr. Allensworth.

20 THE FOREPERSON: Yes, sir.

21 THE COURT: And that would be you?

22 THE FOREPERSON: Yes, sir.

23 THE COURT: A wise decision the jury made. I
24 appreciate that. Appreciate you serving.

25 THE FOREPERSON: Thank you.

Jennifer Clayton - Direct Examination by Ms. Hammack

1 THE COURT: I believe we're ready to resume with
2 the presentation of evidence by the State. Solicitor?

3 MS. HAMMACK: Thank you, Your Honor. The State
4 calls Jennifer Clayton.

5 JENNIFER CLAYTON,
6 having been duly sworn, testified as follows:

7 THE CLERK: Have a seat in the witness box. State
8 your full name for the Court, spelling your last.

9 THE WITNESS: Jennifer Clayton, C-L-A-Y-T-O-N.

10 **DIRECT EXAMINATION**

11 BY MS. HAMMACK:

12 Q Good morning, Agent Clayton.

13 A Good morning.

14 Q You mind telling the jury, what do you do for a
15 living?

16 A I am a forensic DNA analyst with the South Carolina
17 Law Enforcement Division, which is also known as SLED.

18 Q And when you say that you're a forensic DNA
19 analyst, what does that mean that you do every day?

20 A When evidence is collected from a crime scene that
21 may contain DNA, a DNA analyst attempts to isolate that DNA
22 and develop what's known as a DNA profile. Then that -- if
23 the profile is of suitable quality, that profile can be
24 compared to a profile developed from a known standard to
25 determine if there's a possible match. A known standard is

Jennifer Clayton - Direct Examination by Ms. Hammack

1 a sample that's taken from -- directly from a particular
2 individual, so that it's known the DNA profile developed
3 from that item came from that particular individual.

4 Q And Agent Clayton, in order to be a forensic DNA
5 analyst, did you have to go to school or attain any degrees
6 to prepare you for that?

7 A Yes, I did.

8 Q And what degrees do you hold?

9 A I earned a Bachelor of Science in Biology from the
10 University of North Carolina Chapel Hill.

11 Q Okay. And after that did you have to undergo any
12 training in order to be a DNA analyst?

13 A Yes. I originally hired on with SLED as a forensic
14 technician and I worked as a technician for two years
15 before becoming a DNA analyst and I completed a one year
16 training program under another qualified analyst and I did
17 case work under his supervision before I was allowed to do
18 case work on my own.

19 Q So when you say that you did case work under his
20 supervision, did that mean you that actually did practical
21 work to prepare yourself for doing this?

22 A Yes, that's correct. Initially you use mock
23 samples, which are samples that are designed to be similar
24 to actual case work samples and once you have proven that
25 you are competent to do the DNA analysis and the different

Jennifer Clayton - Direct Examination by Ms. Hammack

1 steps that are necessary, you can then work actual evidence
2 under the supervision of an analyst. And once you've
3 demonstrated competency in that and completed all of the
4 required testing, you can then work case work on your on.

5 Q And you did all that?

6 A Yes, I did.

7 Q And since you've been a forensic DNA analyst, do
8 you keep up to date with training and advances in science?

9 A Yes, we are required to have a minimum of eight
10 course hours a year in the advances in science to make sure
11 that we stay current with the technology.

12 Q And how long have you been a forensic DNA analyst?

13 A Approximately 13 years.

14 Q During that time, have you ever testified in court
15 before?

16 A Yes, I have.

17 Q Any idea how many times you've testified?

18 A It's approximately 50 times.

19 Q And when you testified in court have you ever been
20 certified as an expert before?

21 A Yes, I have been qualified as an expert.

22 Q And about how many times have you been qualified as
23 an expert?

24 A Approximately 50 times.

25 MS. HAMMACK: Your Honor, at this time we would

Jennifer Clayton - Direct Examination by Ms. Hammack

1 offer Agent Clayton as an expert in forensic DNA analysis.

2 MR. HAYES: I have no objection, Judge.

3 THE COURT: The motion the the granted. Let me
4 just briefly tell the jury what we've done.

5 Ladies and gentlemen, we've qualified this witness
6 as an expert. Normally witnesses are not permitted to give
7 their opinions about matters but are restricted to
8 testimony about things they heard, seen, smelled, observed
9 with their senses. An exception, though, is made for
10 individuals, who based on experience, studies, are
11 qualified to give their opinions. And this witness will be
12 permitted to give her opinion within the area of her
13 expertise.

14 MS. HAMMACK: Thank you, Your Honor.

15 BY MS. HAMMACK:

16 Q Now, Agent Clayton, did you have a chance to
17 examine some evidence in this case?

18 A Yes, I did.

19 Q And how does evidence get to you for examination?

20 A It is submitted to our Evidence Control Department
21 and that's where it's stored until I retrieve it from that
22 department and then I take it into my custody and take it
23 up into my lab space to work on it.

24 Q And what items did you examine in this case?

25 A May I refer to my notes?

Jennifer Clayton - Direct Examination by Ms. Hammack

1 Q Absolutely.

2 A I received a swab of blood from a storm door; as
3 well as the floor near a storm door; and I also received --
4 swabs of possible blood; and I also received swabs from a
5 vehicle.

6 Q How, when you receive these swabs, can you just
7 look at those swabs and know what they were?

8 A No, not necessarily.

9 Q So what do you do to determine what these swabs
10 are?

11 A Well, if the sample is noted as having possible
12 blood, I first attempt to test and determine if there's
13 blood present. So I perform what's called a presumptive
14 test, a chemical test. And in the presence of blood,
15 there's a chemical change that causes a color change. So
16 if it turns to pink that's positive and it indicates the
17 presence of blood.

18 In the case of touch DNA samples, which is samples
19 that have been handled -- so as people go throughout the
20 the day, that slough off skin cells and when they handle
21 things, they sometimes leave some of those skin cells
22 behind on the item that they handle. So those samples
23 would go directly to DNA analysis and we have a step that
24 quantitates the DNA to test how much DNA is present. So
25 that would be how we would -- excuse me, would be how we

Jennifer Clayton - Direct Examination by Ms. Hammack

1 determine if DNA is present on those particular swabs.

2 Q Now, in this case, you didn't have any touch DNA
3 evidence that you were examining is that correct?

4 A I actually did. The swabs from the the vehicle, I
5 believe, were touch DNA samples.

6 Q And with those samples were you able to test those
7 for comparison purposes?

8 A I did develop DNA profiles from those items. The
9 one -- we had a profile that was suitable for comparison
10 and the other profile was not suitable for comparison.

11 Q Now, in addition to those touch DNA evidence items,
12 did you have items that were suspected blood?

13 A Yes. The -- there were two sets of swabs from
14 storm door and there was also a swab from the floor inside
15 of the doorway to the right of the door that were suspected
16 blood.

17 Q And did you perform your presumptive test to
18 determine if those items were positive for blood?

19 A Yes, in -- the presumptive testing for blood was
20 positive on all three of those items, so blood was
21 indicated on those items.

22 Q Now, once you were -- you're able to determine that
23 an item is blood, how do you go about comparing that item
24 to determine whose DNA is in that item?

25 A Okay. First I should clarify that it's a

Jennifer Clayton - Direct Examination by Ms. Hammack

1 presumptive test, so it indicates the presence of blood,
2 it's not confirmed so it doesn't confirm the presence of
3 blood. However, since it had the appearance of blood and
4 it gave a presumptive positive test, it was then taken onto
5 DNA analysis. And just like the other test, DNA swabs, I
6 first quantitated how much DNA was there and then took it
7 to the final steps of DNA testing to develop the DNA
8 profile for comparison.

9 Q And you stated with the touch DNA items that one
10 item didn't have a profile suitable for comparison.

11 A Yes.

12 Q What does that mean?

13 A That's correct. There is a certain amount of
14 information that has to be developed and sometimes when a
15 sample is very low level, that meaning it's at the limit of
16 detection for our instrument, it doesn't give, under the
17 circumstances, enough information to be suitable for
18 comparison. So for one of the swabs from the vehicle,
19 there just wasn't enough information present to confidently
20 compare it to another sample or a known standard to make a
21 determination.

22 Q Now, with the blood items that that tested
23 presumptive positive for blood, were those DNA profiles
24 suitable for comparison?

25 A Yes, they were. Complete profiles were developed

Jennifer Clayton - Direct Examination by Ms. Hammack

1 from those items.

2 Q And once you develop a DNA profile that is suitable
3 for comparison, what do you compare it to?

4 A We compare it to known standards. Those are
5 standards taken directly from an individual. And so DNA
6 profiles developed from the known standards after the
7 evidence has been analyzed and then the profiles from the
8 evidence are compared to the profile from the standards to
9 determine if there's a possible match.

10 Q Did you have a known standard in this case to
11 compare with these items?

12 A Yes, I did.

13 Q And who was that known standard of?

14 A It was from K. J. [REDACTED].

15 Q And did you compare that known standard from
16 K. J. [REDACTED] with the DNA profiles you developed from the
17 blood and from the touch DNA?

18 A Yes, I did.

19 Q And were you able to come to any conclusions
20 regarding any of those items?

21 A Yes, I was.

22 Q Specifically, let's go item by item. Item Number 1
23 that you tested, what was that?

24 A The Item Number 1 was swabs from the floor inside
25 of the doorway to the right of the door.

Jennifer Clayton - Direct Examination by Ms. Hammack

1 Q And were you able to compare that item with a known
2 standard of K. J. [REDACTED]?

3 A Yes, I was.

4 Q And what was your conclusion on that?

5 A The DNA profile is from an unidentified male
6 individual, so it does not match the DNA profile of K. J. [REDACTED]
7 [REDACTED].

8 Q What was the second item that you compared?

9 A Swabs from the interior glass of a storm door near
10 a latch.

11 Q And what was the the result of that comparison?

12 A The DNA profile developed from that item matches
13 the DNA profile of K. J. [REDACTED] and the probability of
14 randomly selecting an unrelated individual from the
15 population having a DNA matching this item is approximately
16 1 in 2.9 octillion. What that means is that if you were to
17 go out into the population and just choose one individual
18 at random that's unrelated to the individual that actually
19 left the DNA on the item, that probability that they would
20 just happen by chance to have the same DNA profile as the
21 evidence is approximately 1 in 2.9 octillion. And an
22 octillion, 1 octillion, if you were to multiply a billion
23 times a billion and then multiply that times a billion,
24 that would be an octillion.

25 Q How many people are there on the Earth now, do you

Jennifer Clayton - Direct Examination by Ms. Hammack

1 know?

2 A There are approximately 7 billion people on the
3 earth right now.

4 Q With regards to Item 3 that you tested, what was
5 that?

6 A That was swabs from a kick-plate area of a storm
7 door.

8 Q And were you able to come up with a conclusion
9 regarding that comparison?

10 A Yes. The DNA profile is from an unidentified male
11 individual and does not match K. J. [REDACTED].

12 Q The last two items is touch DNA that you
13 referenced, you stated that one item was not suitable for
14 comparison, the other item, what was it?

15 A The DNA profile is a mixture from at least two
16 individuals. And when a mixture is developed, that means
17 that more than one individual contributed DNA to that item.
18 And in some cases one of the individuals that contributed
19 the mixture contributed more DNA than the other individual
20 or individuals. And that was the case here. The DNA
21 profile of the major contributor is consistent with DNA
22 from an unidentified individual that contributed to the
23 other items of evidence and it does not match the DNA
24 profile of K. J. [REDACTED]. The DNA profile from the minor
25 contributor or contributors was such a limited amount of

Jennifer Clayton - Cross-Examination by Mr. Thompson

1 information that it was not suitable for comparison.

2 Q So Agent Clayton, after testing these six items and
3 comparing them to the known standard that you had, which is
4 that of K. J. [REDACTED], is it your testimony today that
5 the swab from an interior glass of the storm door in this
6 case matched the DNA profile of K. J. [REDACTED]?

7 A That's correct.

8 Q Give me just a second.

9 (There was a pause in the proceedings.)

10 BY MS. HAMMACK:

11 Q Agent Clayton, I don't have any other questions for
12 you. Please answer any questions that the defense attorney
13 has for you.

14 **CROSS-EXAMINATION**

15 BY MR. THOMPSON:

16 Q Good morning, Agent Clayton.

17 A Good morning.

18 Q Very, very briefly, you said that Ms. --
19 essentially Ms. K. J. [REDACTED]'s blood is found in your samples
20 and was in the house, correct?

21 A The DNA profile developed from the -- excuse me,
22 the storm door near the latch match's K. J. [REDACTED].

23 Q Okay. And there's some blood from some other male
24 person that you didn't identify, correct?

25 A That's correct. There is blood indicated on the

Jennifer Clayton - Cross-Examination by Mr. Thompson

1 other items and the profile developed is from an
2 unidentified male individual.

3 Q Okay. So there's blood in the house, but you have
4 no idea how the blood came out or what actually happened in
5 the house, correct?

6 A That's correct. Our DNA testing does not indicate
7 how DNA was deposited on the item, only that it is present.

8 Q So you don't know what happened in the house,
9 correct?

10 A No, I do not.

11 Q Okay.

12 MR. THOMPSON: No further questions.

13 THE COURT: All right.

14 MS. HAMMACK: I have nothing further.

15 THE COURT: Thank you, ma'am, you may step down.

16 MS. HAMMACK: Your Honor, may Agent Clayton be
17 excused?

18 THE COURT: Any objection?

19 MR. WILLIAMS: No objection.

20 THE COURT: Thank you, ma'am, you may be excused
21 from your subpoena.

22 You may call your next witness.

23 MS. HAMMACK: Your Honor, at this time the State
24 rests.

25 THE COURT: The State rests, okay.

1 THE COURT: Any motions the from the defendant?

2 MS. HAMMACK: Your Honor, can we take those up
3 outside the the presence of the the jury.

4 THE COURT: I don't know if there are any motions.

5 MR. HAYES: I will have one, yes, sir.

6 THE COURT: Ladies and gentlemen, I need to ask you
7 to step to the jury room while I discuss a matter of law
8 with the attorneys.

9 (The jury left the courtroom at 9:15 a.m.)

10 THE COURT: Motions.

11 **MID-TRIAL MOTIONS**

12 MR. WILLIAMS: Judge, I would have a directed
13 verdict motion taking the light most favorable to the
14 nonmoving party, that the State has failed to meet its
15 burden of assault with intent to commit a sexual battery,
16 kidnapping, and possession of a weapon during a violent
17 crime.

18 THE COURT: I understand the motion. I understand
19 the grounds for the motion, but believe that there is
20 sufficient evidence for these matters to go before the jury
21 and deny the motion.

22 MR. HAYES: Yes, sir. Judge, we would have one
23 witness. It's going to be Mr. Hankinson.

24 THE COURT: That means I need to discuss with him
25 he has a right to testify. Let me find my script.

1 WAYNE HANKINSON,
2 having been duly sworn, testified as follows:
3 THE CLERK: Your Honor, he's been sworn.
4 THE COURT: Mr. Hankinson, we have now reached the
5 the stage of the proceedings where you have the right to
6 present your defense, but I need to tell you that you also
7 have the right to claim the protections given to you by the
8 Fifth Amendment to the Constitution of the United States,
9 which that amendment states in part as follows: No person
10 shall be compelled in any criminal case to be witness
11 against himself.
12 And this means that you cannot be required to
13 testify. You have the right to testify on your own behalf,
14 however, no one can make you testify. And this is a
15 personal right that you have. No one can waive this right
16 except you.
17 If you decide to testify, you will be subject to
18 the same rules that govern other witnesses and you may be
19 examined and cross-examined on any relevant issue in this
20 case. In addition, if you have any convictions involving
21 dishonesty or false statement or crimes punishable by
22 imprisonment for more than one year and the Court
23 determines that the probative value of admitting this
24 evidence outweighs its prejudicial effect to you, the
25 solicitor would be able to introduce your record to attack

1 your credibility.

2 If you decide to testify, the decision on your
3 part, must be freely, voluntarily, and intelligently made
4 with the knowledge of the protections given to you by the
5 Fifth Amendment and the consequences of your decision to
6 testify.

7 If you decide not to testify, I will instruct those
8 jurors that they cannot give that fact, the fact that you
9 didn't testify, any consideration whatsoever because
10 there's to be no prejudice to you because you did not
11 testify.

12 It is left entirely up to you whether or not you
13 wish to testify. You may talk with your attorney, family,
14 friends, or anyone else, but the final decision must be
15 entirely up to you.

16 Do you understand what I have said so far?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Any questions about what I've said?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you had a chance to discuss this
21 matter with your attorneys?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you made a decision yet?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And your decision is?

1 THE DEFENDANT: I'm ready and willing.

2 THE COURT: You're ready to testify?

3 THE DEFENDANT: Yes, sir.

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

5 Anything else before the jury returns?

6 MS. HAMMACK: Not from the state, Your Honor.

7 MR. HAYES: No, Your Honor.

8 THE COURT: Let's bring the jury in.

9 (The jury entered the courtroom at 9:21 a.m.)

10 THE COURT: Welcome back, ladies and gentlemen, as
11 you saw, the State has rested or has ceased presenting all
12 of the evidence to you from the State's perspective. The
13 the defendant now has an opportunity to present evidence
14 should the defendant decide to do so, although the
15 defendant is not required to produce any evidence.

16 Mr. Hayes.

17 MR. HAYES: Judge, at this time we would call Wayne
18 Hankinson to the stand.

19 THE COURT: All right.

20 WAYNE HANKINSON,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box. State
23 your full name for the Court spelling your last.

24 THE WITNESS: Wayne Hankinson. Last name

25 H-A-N-K-I-N-S-O-N.

Wayne Hankinson - Direct Examination by Mr. Hayes

1	DIRECT EXAMINATION	
2	<u>BY MR. HAYES:</u>	
3	Q	Good morning.
4	A	Good morning.
5	Q	Mr. Hankinson, I'm going to call you Wayne, okay?
6	A	Okay.
7	Q	Wayne, I know you're nervous.
8	A	Yeah.
9	Q	I gave you a little cup of water --
10	A	All right.
11	Q	-- if you need to take a sip. If you can't hear
12		me, you don't understand something, tell me.
13	A	Okay.
14	Q	Wayne, how old are you?
15	A	I'm 30.
16	Q	What do you do for a living?
17	A	I'm a welder.
18	Q	Do you remember May 27, 2016?
19	A	Yes, sir.
20	Q	On May 27, 2016, what were you doing at the library
21		in Georgia?
22	A	I was working on shutdowns and my job was about to
23		end so I was at the library trying to find another gig.
24	Q	Okay. You remember Ms. K. J. [REDACTED]?
25	A	Yes, sir.

Wayne Hankinson - Direct Examination by Mr. Hayes

1 Q Why did you approach her?

2 A Mostly because she looked good in the pants she had
3 on.

4 Q Okay. When you approached her what happened?

5 A I approached her. I introduced myself as Wayne.
6 We talked for maybe two or three minutes and we exchanged
7 numbers and before I left out of the library, I text her my
8 name so she could lock my number in her phone.

9 Q After that where did you go?

10 A I went to my truck and she texted me back by then
11 and I sent her another text and I left.

12 Q Where did you go, where did you --

13 A I went home after that.

14 Q Okay. Later in the afternoon, you ended up at the
15 hospital?

16 A Yes, sir.

17 Q Why were you at the hospital?

18 A Because my girlfriend's mother called me and said
19 she had too many drinks and she couldn't go up there with
20 her.

21 Q Okay. Was that your -- was that a current
22 girlfriend?

23 A Yes.

24 Q Okay. And her mom called you why?

25 A Because she had too many drinks.

Wayne Hankinson - Direct Examination by Mr. Hayes

- 1 Q And she wanted to go where?
- 2 A She wanted -- she couldn't make it to the hospital,
3 so she asked me if I could go up there with her daughter.
- 4 Q So you were her mother's DD?
- 5 A Yes, sir.
- 6 Q How long did you stay at the hospital?
- 7 A I'm not sure.
- 8 Q Okay. After you left the the hospital, where did
9 you go?
- 10 A I went home.
- 11 Q Okay. During this time, you had spoken with or
12 texted with --
- 13 A Yeah, we texted throughout the evening. Me and
14 Ms. K. J. [REDACTED].
- 15 Q And let's be clear, we're talking about
16 Ms. K. J. [REDACTED]?
- 17 A Yes, sir.
- 18 Q Okay. As a result of that, what happened?
- 19 A She let me know that she was able to hang out with
20 me because I texted her earlier and asked if she would be
21 able to hang out and she told me she had plans, but while I
22 was at the hospital, she told me it was cool and I told her
23 once I'd left there I would call her to see what was going
24 on.
- 25 Q Okay. At some point, did you call her?

Wayne Hankinson - Direct Examination by Mr. Hayes

1 A Yes, sir.

2 Q What was the essence of that conversation?

3 A I called her and asked her what she wanted to do
4 because it was kind of late. It was like twelve, eleven,
5 twelve.

6 Q Okay.

7 A And I asked her what she wanted to do because
8 there's really not much to do at this time. And I asked
9 her if she wanted to come back to my place and she was
10 like, sure.

11 Q Okay. Did you tell her anything yourself?

12 A Yeah, I told her, I'm frisky. And she said, I knew
13 you were going to be trouble.

14 Q So you went over and you picked her up?

15 A Yes, sir.

16 Q After you picked -- how did you know where to go?

17 A She texted me -- I told her to text me her address
18 while we were on the phone. Once we hung up, she sent me
19 her address.

20 Q Okay. And you picked her up?

21 A Yeah.

22 Q After you picked her up where did you go?

23 A We -- we were on the way to my house. I stopped
24 by the store and I asked her if she wanted anything. She
25 acted like she couldn't decide, so I told her to get out

Wayne Hankinson - Direct Examination by Mr. Hayes

1 and just come in and get what she wanted.

2 Q All right. What did you get?

3 A I grabbed two Budlight's.

4 Q What did she get?

5 A She grab a rasperita.

6 Q Okay. After y'all got alcohol, where did you go?

7 A We headed to my house.

8 Q What was the conversation like in the truck?

9 A We really didn't talk much because my truck's
10 really, really loud.

11 Q Why is it loud?

12 A Because I have Flowmasters on.

13 Q All right. For those that don't know, what are
14 Flowmasters?

15 A Pipes. My pipes are very, very loud.

16 Q The exhaust?

17 A Yeah.

18 Q Okay. When you got to your house, what did you do?

19 A When we got to my house, we went inside and I put a
20 movie on and handed her the rest of the DVD's and told her
21 if she saw something she wanted to watch, just let me know
22 I'd put it in.

23 Q All right. Where was she sitting at?

24 A She was sitting right --

25 Q All right.

Wayne Hankinson - Direct Examination by Mr. Hayes

1 MR. HAYES: Could you pull up Number 6, please.

2 (The screen was being brought up.)

3 BY MR. HAYES:

4 Q Where was she sitting at?

5 A She was sitting right beside the TV stand.

6 Q Okay.

7 MR. HAYES: Judge, I'm going to ask, can he step
8 down and point to the pictures?

9 THE COURT: Sure.

10 BY MR. HAYES:

11 Q Stand right here and talk loud enough so we can
12 hear you.

13 A Okay. She was sitting right here.

14 Q And that's where the CD's are?

15 A Yes.

16 Q Where were you sitting?

17 A Originally I was sitting here on the other sofa.

18 Q Okay. You said originally?

19 A Yeah.

20 Q What happened.

21 Q She asked me when I handed her the D V D's, she
22 asked me if I had any weed. I went into my bedroom and
23 came back with a joint, well, a piece of a joint and I
24 fired it up and I handed it to her and we started smoking
25 and went to drinking and chilling and watching TV?

Wayne Hankinson - Direct Examination by Mr. Hayes

1 Q Okay. So both of you are smoking weed?

2 A Yeah.

3 Q Both of you are drinking alcohol?

4 A Yes.

5 Q At some point, did you move from sitting there on

6 the floor, or the couch --

7 A Yes, after she finished smoking the joint, I got up

8 and I cut the light off and I sat next to her.

9 Q All right. Where were you sitting then?

10 A Right next to her.

11 Q Okay. You're pointing to where the green pillow

12 is?

13 A Yes.

14 Q Okay. You can sit back down.

15 (The witness returned to the stand and the screen

16 was lowered.)

17 BY MR. HAYES:

18 Q While y'all were sitting next to each other, what

19 happened?

20 A Well, when I sat next to her, I pulled her leg over

21 mine and we just chilled for a minute and we were watching

22 TV.

23 Q Okay. Did it go any where further?

24 A Yes, I started rubbing on her. Eventually I

25 started rubbing on her leg and I was kissing on her neck

Wayne Hankinson - Direct Examination by Mr. Hayes

1 and she never said anything, she never told me to stop or
2 anything like that. And I started rubbing on her breasts
3 and I started sucking on her breasts and I told her to take
4 her shirt off because her bra was over, like over her
5 breasts and it was kind of hard for me to get to them, so I
6 asked her to take her shirt off. She still had on her
7 shirt, her jacket, and all her clothes that she came in.

8 Q Okay.

9 A And she said okay. She got up, took her jacket off
10 and she tried to take her shirt off but she had on her
11 necklaces. So she hit the light to take her necklace off
12 because she couldn't see how to take it off at first. She
13 took her necklace off and --

14 Q Slow down, let's slow down.

15 A Okay.

16 Q Take a deep breath.

17 A After she took her necklace off --

18 Q Hold on, hold on. All right. We're looking at
19 State's Number 6, we're looking at your living room?

20 A Yes. And then --

21 Q You said y'all stopped and she started taking off
22 her clothing?

23 A Yes, sir.

24 Q And did she hit a light? You pointed to the light
25 switch?

Wayne Hankinson - Direct Examination by Mr. Hayes

1 A That's the light switch right there.

2 Q Okay.

3 (Showing the photo to the jury.)

4 MR. HAYES: Can everybody see what we're talking
5 about?

6 BY MR. HAYES:

7 Q All right. So she cuts the light on?

8 A Yes.

9 Q What happened next?

10 A She took off her jewelry and she took her shirt
11 off.

12 Q What did she do with the jewelry?

13 A I'm not for sure. I don't remember.

14 Q Don't remember?

15 A No, sir.

16 Q Once she got that off --

17 A Uh-huh.

18 Q -- she took her shirt off?

19 A Yes.

20 Q And once she got her shirt off, what happened?

21 A She told me to hold on because she had to use the
22 restroom.

23 Q Okay.

24 A She went in the restroom. I was waiting on her. I
25 was just drinking my beer and watching --

Wayne Hankinson - Direct Examination by Mr. Hayes

- 1 Q Hold on. The restroom, now, that's seen in the
2 picture here?
- 3 A In one of them, that one, I believe.
- 4 Q I show you again, State's Number 6.
- 5 A Yes.
- 6 Q Is that the bathroom that you're talking about?
- 7 A Yes, sir.
- 8 Q Okay. So she goes in there.
- 9 A Uh-huh.
- 10 Q And you're still sitting on the couch?
- 11 A Yes.
- 12 Q Happened next?
- 13 A I'm just sitting there drinking my beer waiting on
14 her to come back. When she came back, she sat down and I
15 saw her, I put my beer over in the corner, like it is in
16 the picture so I wouldn't knock it over. And when I turned
17 around, she turned around with the knife in my face like,
18 around at the same time and she said you just -- you just
19 want some pussy don't you.
- 20 Q Hold on. Let's -- where was this knife?
- 21 A It was on the TV stand.
- 22 Q Are we talking about the TV stand where the joint
23 and the beer's at?
- 24 A Yes.
- 25 Q Right underneath the TV?

Wayne Hankinson - Direct Examination by Mr. Hayes

1 A Yes.

2 Q Why was your knife on the TV stand in the living
3 room?

4 A Because I put it there because I was working on my
5 truck earlier, working on my speakers and I cut -- used it
6 to cut the wire because that's the only knife I had. That
7 knife usually is in my truck because I use it at work.

8 Q Okay.

9 A I didn't find one I just used that knife because it
10 was there.

11 Q And how did it get inside?

12 A I went inside with it because I had the wire
13 inside. I cut the wire inside. I measured the wire and
14 cut it inside.

15 Q Okay. All right. So you sat your beer down --

16 A Yes, sir.

17 Q -- and you turn around and she's got the knife.

18 And I believe you already told the jury, what did she say?

19 A She said, You just want some pussy don't you.

20 Q What did you do?

21 A I pushed her hand away and I told her to get the
22 knife out of my face.

23 Q All right. What was her demeanor like at that
24 time?

25 A She was like kind of smirking at me.

Wayne Hankinson - Direct Examination by Mr. Hayes

1 Q What do you mean by smirking?

2 A She had a play full look on her face.

3 Q Okay. What was your demeanor like?

4 A I really -- I just told -- I thought she was

5 playing. I don't play like that. But I told her to get

6 the knife out of my face.

7 Q Why?

8 A Why did I tell her that?

9 Q Uh-huh.

10 A Because I don't play like that.

11 Q Okay.

12 A And my knife is very, very sharp.

13 Q All right. What happened next?

14 A I reached for her again and she did it again. She

15 said, No, you just want some pussy don't you. And I

16 reached for the knife. When I reached for the knife, she

17 swiped and cut my finger.

18 Q All right. Show the jury where you were cut?

19 A It's been over a year and it's still --

20 Q I know it's hard to see.

21 MR. HAYES: Judge, can I have him step down and

22 show them the scar?

23 THE COURT: Certainly.

24 (The defendant was showing the jury the scar.)

25 ///

Wayne Hankinson - Direct Examination by Mr. Hayes

1 BY MR. HAYES:

2 Q So you went to swipe and grab at the knife?

3 A Yes, sir.

4 Q And you got cut?

5 A Yes, sir.

6 Q What happened next?

7 A After she cut me, I took a minute, I felt it, but I
8 didn't know I was cut, so I looked and then I just saw whit
9 meet and it just turned red.

10 Q All right. What did your demeanor go to at this
11 point?

12 A I became angry.

13 Q Speak up.

14 A I became angry.

15 Q All right. You got angry?

16 A Yes, sir.

17 Q What happened next?

18 A After she did it, I grabbed her hand and I kind of
19 twisted it and attempted -- I was going to take the knife
20 out of her hand. But when I did, she like grimaced and she
21 jumped up. When she jumped up, I got up --

22 Q Hold on. At that point --

23 A Uh-huh.

24 Q -- you were mad?

25 A Yes, sir.

Wayne Hankinson - Direct Examination by Mr. Hayes

1 Q What was it like when you grabbed her arm? Were
2 you playful?

3 A Not at all, no, sir.

4 Q What was it like?

5 A Like I said I was angry and I was using force.

6 Q All right. You grinched down?

7 A Yes, sir.

8 Q What happened?

9 A I kind of twisted her hand and she grimaced and
10 jumped up and when she jumped up, I jumped up too and she
11 told me to get the -- she said get the fuck off her. And
12 she snatched her hand away. She tried to pull her arm
13 away, but I still had her hand and when she snatched her
14 hand, I saw the blood go from my hand over by the TV stand
15 and --

16 Q I'm handing you a picture. Do you recognize it?

17 A Yes, sir.

18 Q What is it?

19 A That's the blood --

20 Q What --

21 A -- that I'm speaking of.

22 Q What is it on?

23 A The DVD player.

24 Q Does it fairly and accurately represent what you're
25 telling me?

Wayne Hankinson - Direct Examination by Mr. Hayes

1 A Yes, sir.

2 MR. HAYES: Judge, at this time, I'd move to put in

3 State's -- I'm sorry, Defense proposed Exhibit 2.

4 MS. HAMMACK: No objection.

5 THE COURT: Admitted without objection.

6 (Defendant's Exhibit Number 2 was entered into

7 evidence.)

8 BY MR. HAYES:

9 Q All right. I want you to point it out to the jury.

10 A That's the blood right there.

11 Q All right. So you saw this blood drop go flying?

12 A Yes.

13 Q And land on it?

14 A Yes.

15 Q What happened next?

16 A I told her to give me the knife because if she cut

17 me one more time I was going to mess her up.

18 Q All right. What happened?

19 A She tried to pull her arm away and she didn't get

20 it away. When she couldn't get away, she started twisting

21 the knife like trying to cut my wrist. When she did that I

22 lifted her arm up above her head and tried to pull it back

23 so I could take the knife from her.

24 Q Where were you standing at this point?

25 A I was by the couch. She had her back toward the

Wayne Hankinson - Direct Examination by Mr. Hayes

1 door.

2 Q Okay. And what happened next?

3 A Like I say, I put her arm behind her back. When I
4 did that, she started going backwards. So when she did
5 that, I was trying to get her to fall directly into the
6 little chair next to the doorway.

7 Q You talking about that love seat?

8 A Yes, sir.

9 Q Okay.

10 A But see seen that and she sidestepped, but she
11 tripped over the arm of the chair and we fell into the
12 living room.

13 Q When you say you fell into the living room, you
14 talking about the room with the boxes?

15 A Yes, sir.

16 Q Tell me -- what's up with all the boxes?

17 A I was trying to start a business.

18 Q What kind of business?

19 A Electrical business.

20 Q All right. When y'all fell into the boxes, what
21 happened?

22 A When we fell into the boxes, I jumped up and I
23 snatched her up by the same hand. I never let that hand
24 go. I snatched it up and I wrapped my arm around her neck
25 and I told her to let the knife go. And she didn't let it

Wayne Hankinson - Direct Examination by Mr. Hayes

1 go so I applied pressure. And when I applied pressure, she
2 kind of choked a little bit and she released the knife.

3 Q All right. When she released the knife, what
4 happened?

5 A When she released the knife, I told her to go get
6 her stuff so I could take her home.

7 Q What happened after that?

8 A She said -- she was holding her neck and she was
9 like, You go get it. So I went and grabbed her stuff and
10 when I turned around she was walking, running out the door.

11 Q When you saw her going out to door, what did you
12 do?

13 A When I saw her going out the door and I heard her
14 screaming and I was like, Oh, my God. And I had my keys on
15 me because I got a hook, I keep them on a hook I keep them
16 on me at work, got a hook on my key chain. I went to my
17 truck, threw her stuff that I had in the truck and I went
18 the way she ran.

19 Q And when you got there, what happened?

20 A I leaned over and I rolled the window down and I
21 told her to get in the truck and she told me she ain't
22 going no where with me, she want her stuff. I told her get
23 in the truck to I can take you home, I'll give you the
24 stuff.

25 Q Now, did you see Mr. Blanken?

Wayne Hankinson - Direct Examination by Mr. Hayes

- 1 A I didn't see him -- she saw him before I did. I
2 didn't see him until she -- like I was -- she was right
3 beside me. She stopped and I kept going a little bit and
4 she ran around the back of my truck and right here, like he
5 was on the left side of the road and she ran up to him.
- 6 Q What did you do when you saw Mr. Blanken?
- 7 A I pulled up right beside him. He was walking
8 towards her though and I don't know what they were talking
9 about. Like I said my truck was loud, I don't know what
10 was said between them. But I was getting out of the truck.
11 I was going to tell him what was going on. He acted like
12 he wanted to fight. He was doing -- just like he wanted to
13 fight. I couldn't hear what he was saying, but I could
14 tell what was going on.
- 15 Q And what did you do?
- 16 A I got back in my truck and I left.
- 17 Q Why?
- 18 A Because I was freaked out for one. I was bleeding
19 like crazy and then...
- 20 Q When you left, where did you go?
- 21 A I went to Augusta.
- 22 Q What's in Augusta?
- 23 A My friend's house.
- 24 Q Why?
- 25 A Because I was freaked out.

Wayne Hankinson - Direct Examination by Mr. Hayes

1 Q Okay. After that, at some point you learned the
2 police had came?

3 A Yes.

4 Q Now, you in the past have had a felony

5 A Yes, sir.

6 Q And once you found out the police came, what did
7 you do?

8 A My dad called and told me that the police were
9 going to kick the door in because I tried to rape somebody.

10 Q When you heard that what did you do?

11 A I tried to find me a lawyer and see what I could do
12 about the situation.

13 Q And then what did you do?

14 A I eventually turned myself in.

15 Q Okay. At what point in time did you ever put a gun
16 on Ms. K. J. ?

17 A There was no gun, at all.

18 MR. HAYES: Beg the Court's indulgence.

19 (There was a pause in the proceedings.)

20 BY MR. HAYES:

21 Q I have no more questions at this time, please
22 answer any questions the State might have for you.

23 THE COURT: Cross-examination.

24 MS. HAMMACK: Your Honor, I don't need anything
25 from this witness, thank you.

1 THE COURT: All right, sir. Thank you. You may
2 step down.

3 THE WITNESS: Okay.

4 THE COURT: Call your next witness.

5 MR. HAYES: We will rest, Judge.

6 THE COURT: The defense rests.

7 Anything in reply?

8 MS. HAMMACK: No, Your Honor.

9 THE COURT: Ladies and gentlemen, you have heard
10 all of the evidence that is going to be presented in this
11 case. There won't be anymore testimony, documents. The
12 only thing left to do is for the attorneys to make to you
13 their closing arguments and I need to tell you about the
14 law that applies in the case. Before we can do that, I
15 need to have a short conference with the attorneys to
16 discuss a few matters outside of your presence.

17 I'm going the ask if you would please retire to the
18 jury room. And I remind you, it's too early to begin
19 discussing the case.

20 (The jury left the courtroom at 9:41 a.m.)

21 **POST-TRIAL MOTIONS**

22 THE COURT: Any motions from anybody?

23 MR. HAYES: Judge, I would renew my motion for
24 directed verdict based on the Wofford burden of proof and
25 reasonable doubt. No reasonable jury could find

1 Mr. Hankinson guilty.

2 THE COURT: I understand the motion and the grounds
3 for the motion, but I believe there is sufficient evidence
4 for these matters to be submitted to the jury.

5 **JURY CHARGE CONFERENCE**

6 THE COURT: Any specific requests to charge?

7 MR. HAYES: Judge, I have a request to charge for
8 kidnapping. And I would ask the Court the consider giving
9 self-defense due to the testimony of Mr. Hankinson that he
10 was fighting with her over the knife, that she presented
11 the knife first. I believe that there is sufficient
12 testimony in the record for a self-defense charge.

13 MS. HAMMACK: Your Honor, we would just request
14 your standard charge on kidnapping.

15 THE COURT: Yeah, I have a standard charge on
16 kidnapping, a standard charge on assault with intent to
17 commit criminal sexual conduct in the first degree. And
18 possession of a firearm, standard charge on that.

19 MR. HAYES: Your Honor, if you're not going a give
20 my requested kidnapped, I would like to make a copy a court
21 exhibit for the record.

22 THE COURT: All right.

23 MR. HAYES: And I have a copy here for the court
24 reporter.

25 THE COURT: That may be the same as mine, but we'll

1 mark that as Court's Exhibit Number 1.

2 MR. HAYES: Thank you, Your Honor.

3 THE COURT: Any -- well, let me ask you, Solicitor.
4 The defendant is asking for a self-defense charge?

5 MR. GRIMES: Your Honor, I'm not sure that you can
6 kidnap a person in self-defense. I don't think you can
7 assault with intent to commit CSC with self-defense. Those
8 would obviously be different factual allegations that
9 contradict the State's evidence, but it's not a defense
10 that would justify any actions that he's charged with. It
11 -- in other words, if the jury believed his version of
12 events, he wouldn't have committed an assault with intent
13 to commit CSC or kidnapping. And, of course, he says that
14 he didn't have a firearm, so he just wouldn't have
15 committed the crime if he was acting in some sort of
16 self-defense.

17 MR. HAYES: Judge, I believe that what he testified
18 to, he is acting in self-defense. He does choke her. And
19 he is fighting with her over the knife. If the jury were
20 to be confused that that is actually a part of it,
21 self-defense may explain that he has the right to defend
22 himself.

23 THE COURT: Well, but the charge -- if you're
24 talking about the kidnapping charge that he confined,
25 restricted by false representation or deceitful means, or

1 decoyed or removed against their will, I just don't see
2 that -- it doesn't -- that's the way I feel about it on the
3 kidnapping charge.

4 On the assault with intent to commit, see that
5 requires the -- an intent -- I just don't see that the
6 defense is there for self-defense. Give me another minute
7 to look at the --

8 (There was a pause in the proceedings.)

9 THE COURT: I think I -- by the way, I think that
10 kidnapping charge you're proposing is the same as mine as
11 best I can tell it's the same charge.

12 Are there any lesser-included charges? I guess
13 not.

14 MR. GRIMES: I do not have any, Judge.

15 And I don't know if you've ruled on the
16 self-defense charge or not, but we would just reiterate the
17 point that there is no type of defense that would justify
18 sexual battery. And so because that's an element of the
19 crime, he can't have committed the crime in self-defense or
20 he can't have committed the act in self-defense and
21 that's --

22 THE COURT: I agree.

23 MR. GRIMES: The defendant didn't allege -- if
24 you've ruled, that's fine. I just wanted to make that
25 point.

1 THE COURT: All right. And no request for
2 lesser-included charges; so what I propose then is that I
3 just give to the jury the indictments as to each charge and
4 have them put the verdict of either guilty or not guilty on
5 each one of the indictments as opposed to having separate
6 sentence sheets.

7 Give me one more minute.

8 Y'all need to take a break before we argue, or are
9 y'all ready to go?

10 MR. GRIMES: Your Honor, I think we would like a
11 few minutes to kind of collect our thoughts. But before we
12 do that, we did have one expert in the case. I know it's
13 fairly minor but, generally there's an expert witness
14 charge regarding the opinion testimony.

15 THE COURT: I agree with that.

16 Are we still collecting our thoughts?

17 MR. HAYES: Judge, can I have two minutes for a
18 restroom break?

19 THE COURT: Sure, we'll take five if y'all want to.
20 We'll be in recess for five minutes.

21 (A brief recess was observed.)

22 MR. HAYES: Judge, could we approach for a moment?

23 THE COURT: Sure.

24 (There was a bench conference out of the hearing of
25 the Court Reporter.)

1 THE COURT: All right, Solicitor, is the State
2 ready for the jury?

3 MS. HAMMACK: Yes, sir, Your Honor.

4 THE COURT: Defense?

5 Let's bring the jury in.

6 (The jury entered the courtroom at 10:02 a.m.)

7 THE COURT: Welcome back, ladies and gentlemen, I
8 believe we're now ready to receive closing arguments from
9 the attorneys.

10 **CLOSING ARGUMENTS**

11 MR. HAYES: May it please the Court.

12 I don't know if Mr. Thompson could have painted a
13 better road map in what he told y'all yesterday in the very
14 beginning and telling y'all where we're going with this and
15 what was going to happen. It is a he-said/she-said case,
16 in that, there's two stories that you've got to look at,
17 his and hers.

18 Let's take a minute and look at her story. While
19 she was on the stand, new facts kept coming out. New
20 things we hadn't heard before. The problem is, what is she
21 telling the truth on? What is she not telling the truth
22 on? There was only one fact that I could actually bust her
23 on. And what movie was that that you watched. And y'all
24 saw that. And as soon as I busted her on it, she started
25 back peddling. Oh, oh, oh, well maybe it's another. Maybe

1 it's another movie. She picked a movie that came out this
2 year, in June.

3 I think if this is what happened to me, I would
4 have known exactly what movie I had just watched with my
5 friends. I would know every detail of that night.

6 When I was younger, my grandmother, grandfather and
7 my mother, in teaching me and raising me had a saying: Once
8 you're a liar, your credibility is gone. It's gone. That
9 is something hard to earn back. And nobody's going to
10 believe a word you're going to say afterwards. Kind of
11 like that boy that called wolf.

12 She spent a lot of time on that movie, great
13 detail. The girl with the tattoos. She was proud of that.
14 Probably, the biggest thing is she meets a man in Georgia,
15 and I'm going to play the clip, you heard us talking about
16 it, at a library and only spends minutes with him.

17 (Raising the screen to play the video from
18 Defendant's Exhibit 1 for the jury.)

19 MR. HAYES: That is Ms. K. J. in the bottom
20 left-hand corner.

21 While we're waiting on Mr. Hankinson to come into
22 view, take a note of the time stamp, 12:40.

23 There's Mr. Hankinson in the white-striped shirt,
24 three seconds from 12:41.

25 Right there, I believe he is typing on his cell

1 phone.

2 Take note it's 12:42.

3 She's gone at 12:42:36. And he's still typing.

4 (Putting the screen back down.)

5 MR. HAYES: You're going to have a printout in the
6 back with these text messages because they were entered
7 into evidence for y'all to look at. First text message:
8 Wayne, 12:42. You saw the length of that meeting. And
9 this girl tells you that she met up with him, she came
10 across to South Carolina, Georgia line across the river at
11 12:15 a.m., after having a full night out with her
12 girlfriends, just to watch a movie and hang out with
13 someone she has met for two minutes. Really? Really?

14 That is a booty call. This plan was to have sex.
15 Question is, why did it not go to having sex.

16 And I believe Mr. Hankinson's testimony hits right
17 on the head. It went from being playful and jolly with a
18 knife. Somebody got cut, somebody got mad and then she was
19 in a situation where she got scared. Now, how do I fix
20 this. And she took off.

21 Think about her testimony. He's choking me. He's
22 dragging me into the room, dragging me backwards. She's
23 pulling on furniture and clawing, trying not to go in this
24 bedroom. You got the pictures. It ain't the cleanest
25 house in the world and there's a lot of stuff on them

1 little end tables. The only thing on the ground is a
2 candle.

3 I think that coffee table would have been upside
4 down. I think all of the stuff on it would have been
5 (sound, demonstration) like a bomb through the room. The
6 couch cushions would have been gone, the little chair on
7 the end would have been snatched off. No. It didn't
8 happen, that's why.

9 The jewelry, she said I'm begging, please don't
10 hurt me, please don't rape me. And she's taking off her
11 jewelry with little-itty-bitty clasp. And that she was
12 backing toward the door in her statement. But that's not
13 what she said on the stand. She said he's standing in
14 between her and the door. And that jewelry is nicely
15 stacked on the edge of the couch.

16 I think if I'm begging and somebody's got a gun on
17 me, I'm throwing it at them. Take it. Don't hurt me. If
18 you can even get it off.

19 The shirt. She says that's her shirt on the couch.
20 She's begging and she peels a shirt off over her head.
21 Well, if somebody's begging -- you peeling it off, I'm not
22 laying it up on the back of the couch where it looked like
23 I was necking. I'd probably still have it in my hand,
24 maybe you can throw it at them. It's laid up on the back
25 of the couch where they both said and you can see.

1 As Mr. Thompson told you, we don't disagree with
2 anything in the beginning. We don't disagree with anything
3 at the end. It's just that one little part. Mr.
4 Hankinson's story is most consistent with the evidence that
5 you have.

6 Ladies and gentlemen, you're going to be instructed
7 by the judge as what the law is. Reasonable doubt,
8 Mr. Thompson talked about. You're sitting here and you're
9 saying, she may be telling the truth. Then again on the
10 other hand, he may be telling the truth too. Your duty as
11 a jury under the oath is to find Mr. Hankinson not guilty.

12 MS. HAMMACK: Your Honor, if I may have just a
13 moment.

14 (There was a pause in the proceedings.)

15 MS. HAMMACK: Thank you, Your Honor.

16 Members of the jury, the defense wants you to
17 believe that this was a booty call, that the plan was to to
18 have sex. It was his plan all right. It was his plan from
19 the beginning. But it was never K. J. [REDACTED]'s plan.

20 Now, the statement that the defense keeps going
21 back to is you met this guy for two to three minutes and
22 you text him late at night to just hang out? No way. So
23 apparently according to defense, if you go out after
24 midnight, you have to have sex with somebody. And if you
25 go out after midnight with a boy and you don't have sex

1 with him, then it's okay for him to take it because you
2 went out with him so that means you have to have sex
3 because it's a booty call.

4 Members of the jury, the biggest problem with that
5 statement that you met this guy and you went out with him
6 so you wanted to have sex, is that's not what the evidence
7 shows you at all.

8 Let's take a look at those text messages that they
9 talked about. The defense talked about how she texted him
10 wanting to meet up with him. And you're going to get to
11 see these because he's right, they're in evidence. And
12 let's look at what they say. She doesn't text him first.
13 She doesn't try to initiate contact to meet up with him
14 late at night.

15 He texted her WYD tonight. In kid speak that's,
16 what are you doing tonight.

17 She says I'm going to the movies with a group of my
18 friends. But a little later after that I'll be free. She
19 doesn't say, Oh yeah, come on, I don't have any plans. I'm
20 going to cancel my plans for you. She says I have plans.

21 He says, Well hit me up afterwards. She said okay.

22 She texted him when she's headed home from the
23 movies and he says, okay, I'm at the hospital. Call you
24 when I leave. You going to let me come scoop you up?

25 So when he leaves his girlfriend in the hospital,

1 he wants to come see her. She says me and my friend are
2 going downtown tonight, we could meet up.

3 At this point, she's going downtown with friends,
4 with witnesses, with other people. She says he can meet
5 with her there. She doesn't plan to be alone with him.
6 She plans to see him with her friends.

7 He tells her he'll call when he leaves. And then
8 she says her plans for downtown got canceled. So if he
9 wants to scoop her up, he can. She even tells him that
10 she's going to bed, it's late, because he hadn't shown up
11 yet.

12 But by that time, he's outside the door. There's
13 nothing in those text messages that indicate sexual
14 interest on her part. They want to tell you about some
15 phone call where he says, I'm frisky and she says, Well, I
16 can tell you're trouble. There's nothing in those text
17 messages where she's flirting, where she 's leading him on,
18 where she's making any statement that she's interested in
19 having sex with him at all. But according to the defense,
20 if you go out after dark, you have to have sex with
21 somebody. That's the only reason why you would go out
22 after dark. She didn't show any sexual interest in him in
23 her text messages. She didn't show any sexual interest in
24 him in the way she was dressed that night. And she didn't
25 show any sexual interest in him in the way she sat on the

1 couch at his house.

2 She showed you where everybody was sitting. And
3 the evidence will show you where they were sitting too.
4 She says I was sitting right here on the edge of this
5 couch, which makes sense because there's her drink. She
6 pointed that out. And she said he was sitting on a whole
7 different couch. I wasn't even sitting on the same couch
8 with him, which makes sense because there's his beer she
9 was talking about. None of her behavior ever showed any
10 sexual interest in the defendant.

11 But he had plans for that night. He had plans to
12 have sex. He told you what his intent was from the very
13 beginning. I liked the way she looked in the pants she had
14 on at the library. He had a plan beginning then that he
15 was going to have sex with this girl. Ultimately, it
16 didn't matter whether she wanted to or not.

17 She thought they were going to go downtown. At
18 first she thought they were going the hang out with her
19 friends, with people. She sat on that witness stand and
20 told you that when he picked her up, she thought they were
21 going to downtown Augusta. She's not from around here.
22 She's never even been to South Carolina. For this young
23 college girl, her whole world in this area is Augusta.
24 That's the only place she knows, that's the only place
25 she's been. Is that a little naive, yeah, probably. But

1 when he picked her up, she never imagined that he was going
2 to take her across state lines down in the Valley to Cherry
3 Street, to a place to where she's never been before.

4 In fact, she stated that when they started driving
5 he said, We're going to go to my cousin's house to a party.
6 Hey, other people around. Again, she never thought, she
7 never planned to be alone in a strange house, far away from
8 anybody else, with the defendant. But that was his plan.

9 He didn't want to be downtown with her, with people
10 all around going in and out places. He didn't want to be
11 with her friends where other people could see what he had
12 planned. He didn't -- never had any plans of taking her to
13 a party with his cousin where other people are around. He
14 did exactly what he wanted. He took her away from
15 witnesses. He took her away from help. And he took her
16 away from the only area she knew and was comfortable with.

17 Now, members of the jury, there are three charges
18 that the defendant is charged with today. The first is
19 assault with intent to commit criminal sexual conduct in
20 the first degree. The second is kidnapping. And the third
21 is possession of a weapon during the commission of a
22 violent crime.

23 Mr. Grimes got up yesterday morning and he
24 explained to you a little bit about those crimes and what
25 is required to commit those crimes. I'm going to go

1 through that with you now and the judge is going to explain
2 that to you at the end.

3 But first, let's start with assault with intent to
4 commit criminal sexual conduct in the first degree. The
5 first thing that has to happen is there has to be an
6 assault. Any assault is an attempt or actual causing
7 injury. Now, in this case, some examples of an assault
8 would be pointing a gun at somebody; grabbing someone by
9 the the throat from behind; squeezing someone's throat
10 until they couldn't breathe; until they couldn't speak or
11 in the defendant's own words, until she started choking a
12 little bit.

13 The second element is with intent to commit
14 criminal sexual conduct in the first degree, meaning he
15 assaulted her in order to rape her. Now, he didn't have to
16 actually commit the criminal sexual conduct. And the
17 reason that we're not here because of the criminal sexual
18 conduct is because she escaped and ran away. But he has to
19 try to commit a criminal sexual conduct. He has to commit
20 an assault in order to accomplish that. So in this case,
21 how do we know that he was intending to commit criminal
22 sexual conduct?

23 He told you: The plan was to have sex. I liked
24 the way she looked. I wanted to have her over to the
25 house. I told her I was frisky. That was his plan. He

1 admitted that was his plan. And when they got to the
2 house, he came up from behind, wrapped his arms around her.
3 She said she shrugged it off, told him she wasn't about
4 that. They go back in the house and he makes another
5 advance towards her. He tries again. He gets off -- up
6 off of his couch, she don't go to him -- he comes to her,
7 starts rubbing on her leg, starts trying to kiss on her
8 neck. He admits to that too. But she told you she told
9 him no again.

10 She even tried to start a conversation so that it
11 wouldn't be awkward after she told him no. And at that
12 point, when he got told no the second time, he wasn't
13 taking that for an answer. Because as K. J. [REDACTED] told you,
14 that's when he went and got a gun. If she wasn't going to
15 give it to him, he was going the get it

16 And he pointed that gun in her face. He grabbed
17 her from behind by the neck and tried to drag her into the
18 bedroom. He didn't try to drag her into the kitchen. He
19 didn't try to drag her into the front door to leave. He
20 wasn't dragging her into the bedroom to have tea. He was
21 trying to drag her into that bedroom so he could rape her.

22 Now, for that to be a criminal sexual conduct in
23 the first degree, there has to be aggravated force and
24 there has -- or it has to be during the commission of a
25 kidnapping. And again, he doesn't actually have to get far

1 enough to commit that criminal sexual conduct, but that's
2 why we're talking about a first degree, him trying to
3 commit first degree criminal sexual conduct.

4 The judge is going to tell you aggravated force is
5 physical force or violence of a high and aggravated nature.
6 Things like pointing a deadly weapon at someone. Things
7 like cutting off someone's oxygen so they can't breathe.
8 And this defendant is charged with kidnapping, so this
9 would be during the commission or during the course of a
10 kidnapping.

11 Now, let's talk about that kidnapping for a minute.
12 The judge is going to explain what kidnapping is. And
13 Mr. Grimes talked about that a little bit on Monday. It's
14 not quite the kidnapping that you see on TV. You don't
15 have to tie somebody up and throw them in your trunk or tie
16 them to a chair in a room with a single light bulb. That
17 can be kidnapping, but in South Carolina, kidnapping can be
18 more of that.

19 Kidnapping is forcible confinement, seizing
20 somebody, holding them some place against their will.
21 K. J. [REDACTED] told you she didn't want to be there anymore. When
22 he pulled that gun on her, she wanted to leave. But she
23 said that he was standing in the doorway, blocking the way
24 out.

25 This is the doorway into that room where they were.

1 She stated this is the doorway he came out of, and this is
2 the doorway he came back into with a gun and that he stood
3 in front of that doorway and blocked her exit. She
4 couldn't get away. When she tried to grab her phone to
5 call for help, he came after her from behind, grabbed her
6 by the throat and started pulling towards the bedroom. She
7 didn't want to be there anymore. She wanted to leave. She
8 could not leave because he wouldn't let her. That's
9 kidnapping.

10 It doesn't have to be for three days. For that
11 period of time when she's fighting for her life, pulling at
12 his arm, catching the door jam so she doesn't get pulled
13 into the room and he is keeping her against her will, in
14 South Carolina that is kidnapping.

15 The last charge is possession of a weapon during
16 the commission of a violent crime. Violent crime is a
17 category here in South Carolina. Certain crimes are
18 considered violent. Certain crimes are not considered
19 violent. But it's an actual category. It doesn't mean
20 that somebody has to get murdered, but it's just a
21 category.

22 The the judge will tell you what type of crimes are
23 included in that category, but two of the crimes included
24 in the category of violent crimes are kidnapping and
25 assault with intent to commit criminal sexual conduct. And

1 the law says that if you commit one of those crimes and you
2 have a weapon on you, then you can be charged and convicted
3 of the separate offense of possession of a weapon during
4 the commission of a violent crime.

5 In this case, as K. J. [REDACTED] told you, the defendant
6 put a gun in her face. She's not a gun expert. She
7 couldn't tell you the make and the model and the caliber,
8 but she could tell you what it looked like. She said it
9 was a small gun, it was a handgun. She said that it was
10 old, kind of rusty. She said that she didn't know what it
11 was called but it was like those guns you see cowboys have
12 that have a chamber that comes out and you put the bullets
13 in the back and then you spin it and put it back in. She
14 was describing a revolver. That's the gun that he had.
15 That's the gun he pointed in her face. That gun was in his
16 hands when he assaulted her with intent to rape her, and
17 when he kidnapped her.

18 Now, members of the jury, there's some other things
19 that I want to address that Mr. Hayes and Mr. Thompson
20 said. They want you to believe that the victim is a liar,
21 that you can't believe anything she said. And this is just
22 a he said/she said. There's no evidence. It's just a he
23 said/she said. And they want you to think that just
24 because she said one thing and he said a different thing,
25 that you just have to throw your hands up and go home and

1 just quit. That's not the case at all.

2 The judge is going to tell you that it's your job
3 to determine the credibility of the witnesses, to listen to
4 what they said, to look at the evidence and how that
5 evidence compares to what they said. And it's up to you to
6 determine who's lying and who's telling the truth.

7 Now, in this case, all of the evidence corresponds
8 with what K. J. [REDACTED] told you. And most of the evidence they
9 agreed on. First, these text messages. She absolutely
10 said this, Yeah, I met him at the library. We exchanged
11 phone numbers. He texted me later, not I texted him. And
12 just like the texts show you, he texted her later. She
13 tried to meet up with him downtown, didn't work out. She
14 thought he was going to take her to his cousin's party.
15 That wasn't what he had in mind.

16 But these text messages don't show a girl saying,
17 Oh, I know you're going to be trouble. Let's hook up, I'm
18 ready to have sex. None of that. She stated that he took
19 her to a house, 2 [REDACTED] Cherry Street, on a dark road with lots
20 of trees around. And some houses, but not a lot near where
21 they were.

22 She stated that he took her to some place she'd
23 never been before, so some place that she didn't know where
24 she was. She stated when they got there, there was one old
25 car in the driveway, there was no people. No witnesses.

1 No help.

2 The reason she's the only witness to what happened
3 is because he made sure that there were no other witnesses.
4 He totally agrees that he took her to this house. He
5 didn't take her downtown. He didn't take her around other
6 people. And he agrees that when they went in that house,
7 they sat on separate couches and were watching a movie.

8 Now, the defense wants to pitch a fit because she
9 couldn't remember what movie she saw with her friends
10 earlier that day over a year ago. And when I asked her, I
11 know it's been a while. She said, I think it was that
12 movie with the girl with the tattoos on her face. Why he
13 said she was proud of that, I have no idea. She was trying
14 to remember what movie show saw, she said, you know what,
15 it may have been Transformers. I can't really remember.
16 And he wants you to think that because she can't remember
17 what movie she saw that she's lying.

18 Members of the jury, what movie she saw with her
19 friends earlier that day wasn't exactly the most important
20 thing that happened to her that night. One thing she's
21 very clear on that she was clear on then and that she's
22 clear on now is that when she was at that house with him,
23 that he tried to make advances toward her and when she
24 rejected him, he tried to take it any way.

25 Now, he agrees that they struggled, that they

1 fought. He agrees that he choked her. And he agrees that
2 she ran out in the road with no shirt on, screaming for
3 help. That's not in dispute; that she came out of his
4 house, in the dark, ran down this dark road where there are
5 no street lights, in an area where she has no idea where
6 she is, looking for help.

7 And after running all this way, she finally came
8 across help. She came across David Blanken who was coming
9 home from a friend's house. She stopped him. He told you
10 she was upset. He didn't know her from Adam, but it was a
11 girl with no shirt on, hysterical, asking for help. So he
12 takes her up to his friend's house to get a shirt and call
13 9-1-1. And everybody in this room that sat on that chair
14 and testified, agreed that he came after her in his car.

15 Now, David Blanken tells you that when the car
16 pulled up, that he was told to mind his own business by the
17 defendant. She said he said the same thing. He was trying
18 to get there to catch her before there were witnesses. But
19 he was too late. There's no question that that happened.
20 There's no question that she met him and got to that house
21 with him. But the evidence shows you her blood in the
22 house, the pictures of where everybody was sitting; that
23 shows you what happened.

24 One thing that is important is that the defendant
25 said when he saw her run out the door that he took the

1 stuff I had and got in the truck to go after her. And
2 that's really important because there are certain things
3 that weren't in that house when police got there. That gun
4 was gone; that knife was gone; her jacket was gone; her
5 cell phone was gone. She told you when she ran out that
6 door, all she had were the clothes on her. When he said, I
7 took the stuff I had and got in my truck, he grabbed the
8 most important stuff out of that house, the most important
9 evidence out of that house and he took it with him.

10 He had the things he needed to get her back in that
11 truck. He had the gun and the knife and he had the things
12 he needed to get her back to Augusta and hopeful she'd be
13 quiet. He had her phone and her jacket. He could cover
14 this girl up, get her in his truck away from witnesses,
15 this whole thing will blow over.

16 We don't have those items because they weren't in
17 the house when the police got there. And she's not the one
18 that took them. There were only two people in that house.
19 Now, members of the jury, the defendant told you this story
20 about how they were hanging out, things were going well.
21 They started kissing and touching and then she went crazy
22 and attacked him with a knife. He stated that she cut his
23 finger down to the bone. He got up and showed every single
24 one of y'all. She cut to the white meat and then blood
25 started coming out. This is a serious cut. And so this

1 man, according to him who had done nothing wrong, when she
2 ran out the door and found a witness and found help and
3 called 9-1-1, what did he do? He ran.

4 He didn't go home. He didn't go to the hospital to
5 treat this serious cut that has left a permanent scar on
6 his finger. He ran. He went to a friend's house in
7 Augusta and he hid. And he hid because he said I was
8 freaked out.

9 You dang right he was freaked out because the girl
10 he just tried to rape escaped and got help and the police
11 were coming. And he ran.

12 And y'all, I apologize, there's a whole lot of
13 stuff I want to say because there's a whole lot of stuff
14 that's important in this case.

15 The defendant told you what happened that night.
16 You don't have to just believe her. You don't have to just
17 believe the man who didn't know anything about what was
18 going on and saw this girl screaming, running down the
19 road, and called police. The defendant tells you the same
20 thing. That statement that they keep saying? That was his
21 plan. I'm going to pick this girl up because she looks
22 good, and we're going to have sex. It didn't work out the
23 the way he wanted. He tried, she wasn't into it. But that
24 wasn't good enough. He was going to get it any way. So he
25 uses a gun, he chokes her, he drags her. She still is

1 fighting and eventually she's able to grab a knife, right
2 here, and get him off of her.

3 He grabs the knife out of her hand, tells her to go
4 get her stuff. It ain't worth it anymore. She's fighting
5 back. She wasn't easy to get in that bedroom. So he tells
6 her to go get her stuff and she tells y'all she was not
7 leaving that front door. She was not going back in that
8 room, deeper into that house where there was no help. She
9 was getting out.

10 When he made a move for her stuff, she took off out
11 the door and she ran for her life. The defense attorney
12 wants to say well, there's not anything on the floor or
13 anything like that. The chairs would be flipped, the
14 tables would be flipped. She didn't say they fell over a
15 table or that she flipped a chair. And when y'all see
16 those pictures, with all the stuff in that house, it's kind
17 of hard to tell what went on.

18 But this is a girl that had fear for her life.
19 When you have to the decide who's telling the truth, you
20 get to use your common sense. And Mr. Thompson brought
21 this up yesterday. He said when you come in here, you
22 don't have to abandon your common sense. And he's exactly
23 right. Because when you listen to his story, your common
24 sense tells you that's not reasonable because here's the
25 biggest problem with his story: The defendant tells you

1 this was a booty call. He tells you that when he called
2 K. J. that they were flirting, that she said, Oh, I knew
3 you were trouble, when he told her he was frisky. He said
4 that when they get in that house after watching some movie,
5 he starts rubbing on her leg, pulls her leg over to his,
6 starts kissing on her neck, starts kissing on her breast,
7 tells her to take her shirt off. She's all into it, she
8 takes her shirt off, she's taking her necklaces off. And
9 then she goes to the bathroom and comes back and pulls a
10 knife on him.

11 If this was a booty call and she wanted to have
12 sex, why would she attack him for having sex? If that's
13 what she wanted, they'd had sex, the police would have
14 never been called and we wouldn't be here.

15 Why would she pull a knife on him for trying to do
16 very thing that they want you to believe she was over there
17 for? That makes no sense. That's not reasonable and you
18 know that's not reasonable. She pulled a knife on him when
19 she was fighting for her life and could not breathe because
20 this man was trying to rape her and wouldn't let her out.
21 He got her to this house alone. He assaulted her with the
22 intent to rape her. He kidnapped her and he used a gun to
23 start the the whole thing. Find him guilty

24 THE COURT: Thank you, Solicitor.

25 ///

JURY CHARGE

THE COURT: Ladies and gentlemen, I remind you of the fact that the defendant has been arrested, charged and indicted in this case is not evidence of guilt, nor does that create any inference of guilt. These are simply the the documents that bring the case into the Court.

The defendant has pled not guilty to these indictments and that plea puts the burden upon the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of the law that the defendant in a criminal trial, no matter what the seriousness of the charge may be will always be presumed to be innocent of the crime for which an indictment was issued unless guilt has been proven by evidence that satisfies you, the jury, of that guilt beyond a reasonable doubt. The presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt from the evidence that satisfies you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant which remains with the defendant until it has been stripped from the defendant by evidence that satisfies you of the

1 defendant's guilty beyond a reasonable doubt.

2 The presumption of innocence is not mere legal
3 theory and is not just a legal phrase. It is a substantial
4 right to which every defendant is entitled unless you the
5 jury are satisfied from the evidence of the defendant's
6 guilt beyond a reasonable doubt. A reasonable doubt is the
7 kind of doubt which would cause a reasonable person to
8 hesitate to act.

9 Some of you may have served on juries in civil
10 cases where you were told that it was only necessary to
11 prove that a fact is more likely true than not true, such
12 as by the greater weight or the preponderance of the
13 evidence. But in criminal cases, the State's proof must be
14 more powerful than that. It must be beyond a reasonable
15 doubt.

16 Proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of a defendant's guilt. But,
18 of course, there are very few things in this world that we
19 know of with absolute certainty, and in criminal cases, the
20 law does not require proof that overcomes every reasonable
21 -- every possible doubt. If based on your consideration of
22 the evidence, you are firmly convinced of the crime
23 charged, you must find the defendant guilty.

24 If, on the other hand, you think there's a real
25 possibility that the defendant is not guilty, you must give

1 the defendant the benefit of the doubt and find the
2 defendant not guilty.

3 As I told you earlier, you and I have different
4 responsibilities in this trial. My obligation has been to
5 preside over the trial of the case and make rulings
6 concerning evidence. I also have the additional duty to
7 charge you about the law that applies in the case. As I
8 told you earlier, I am the sole judge of the law of this
9 case and it's your duty as jurors to accept and apply the
10 law as I now state it to you. If you already have any idea
11 of what the law is or what the law ought to be and it does
12 not agree with what I tell you, you must abandon that idea
13 because under your oath, you are sworn to accept the law
14 and apply the law exactly as I state it to you.

15 In every case tried before a Court -- in this Court
16 before a jury, the jury becomes the sole and exclusive
17 judge of the facts in the case. In a trial, the judge,
18 such as myself, cannot state, comment on, or make any
19 statement to a trial jury about the facts of the case
20 because you are the sole judge of the facts of the case.
21 And you are not to infer from anything I may have done or
22 said through the progress of this trial, that I have an
23 opinion about the facts of the case. As I told you
24 earlier, the law does not permit me to have an opinion
25 about the facts of the case because that is a matter solely

1 for you to determine.

2 It is your duty, ladies and gentlemen, to determine
3 the effect, value, the weight an the truth of the evidence
4 presented here in the trial.

5 There are -- typically, there are two types of
6 evidence submitted during a trial, direct evidence and
7 circumstantial evidence. Direct evidence is testimony of a
8 person who claims to have actual knowledge of a fact, such
9 as an eyewitness. It is evidence which immediately
10 establishes the main fact to be proved.

11 Circumstantial evidence is truth of a chain of
12 facts and circumstances indicating the existence of a
13 exact. It is evidence which immediately establishes
14 collateral facts from which the main fact may be inferred.
15 Circumstantial evidence is based on inference and not on
16 personal knowledge or observation.

17 But the law makes no distinction between the weight
18 or the value to be given to either direct of circumstantial
19 evidence. Nor is there a greater degree of certainty
20 required of circumstantial evidence than of direct
21 evidence. You should weigh all of the evidence in this
22 case and after weighing all of the evidence, if you are not
23 convinced of the guilt of the defendant beyond a reasonable
24 doubt, you must find the defendant not guilty.

25 Necessarily, ladies and gentlemen, you must

1 determine the credibility of the witnesses who have
2 testified. This simply means the believability. It
3 becomes your duty as jurors to analyze and to evaluate the
4 evidence and determine which evidence convinces you of its
5 truth.

6 In determining the believability of the witnesses
7 who have testified, you may believe one witness over
8 several witnesses or several witnesses over one witness.
9 You may believe part of the testimony of a witness and
10 reject the remaining part of the testimony of that very
11 same witness. You may believe the testimony of a witness
12 in its entirety or reject the testimony of a witness in its
13 entirety.

14 You may consider whether a witness has exhibited to
15 you any interest, bias, prejudice, or motive in the case.

16 As I told you earlier, the rules of evidence simply
17 do not normally permit witnesses to testify about their
18 opinions. An exception to the that is made for those who
19 we call expert witnesses. You should consider any expert
20 opinion received as evidence in this case and like other
21 evidence give it the weight you think it deserves. If you
22 decide that the opinion of an expert witness is not based
23 on sufficient education and experience, or if you conclude
24 the reasons given in support of the opinion are not sound,
25 or that the opinion is outweighed by other evidence, you

1 may disregard the opinion entirely.

2 An expert witness's testimony is to be given no
3 greater weight than that of other witnesses simply because
4 the witness is an expert. You're actually not even
5 required to accept an expert's opinion, even if it's not
6 contradicted.

7 As you've heard, the defendant is charged with
8 assault with intent first degree criminal sexual conduct.
9 The State must prove beyond a reasonable doubt the
10 defendant committed an assault on the victim with intent to
11 commit first degree criminal sexual conduct.

12 The first element the State must prove beyond a
13 reasonable doubt is that the defendant committed an
14 assault. An assault occurs when a person violently or
15 forcefully attempts to hurt or injure another person and
16 has the present ability to complete the attempted injury.
17 Assault is the intentional creation of fear and immediate
18 bodily harm.

19 Next, the State must prove beyond a reasonable
20 doubt that the intent, or the defendant intended to engage
21 in the sexual battery with the victim. An attempt means
22 intending the result which actual occurs, not accidentally
23 or involuntarily. Intent may be shown by acts and conduct
24 of a defendant and other circumstances for which you may
25 reasonably infer intent.

1 Sexual battery is sexual intercourse, cunnilingus,
2 fellatio, anal intercourse or any other intrusion,
3 however slight, of any part of a person's body or any
4 object into the genital or anal openings of another
5 person's body.

6 The defendant must also prove beyond a reasonable
7 doubt that the defendant intended to use aggravated force
8 to accomplish the sexual battery. Aggravated --

9 MR. HAYES: Judge, I believe you said the defendant
10 must prove. I believe that should be the State.

11 THE COURT: If I said the defendant, then please
12 disregard that statement, ladies and gentlemen.

13 MR. HAYES: Thank you.

14 THE COURT: I certainly meant that the State must
15 prove, not the defendant. The defendant is not obligated
16 to prove anything.

17 The State must prove beyond a reasonable doubt that
18 the defendant intended to use aggravated force to
19 accomplish the sexual battery. Aggravated force means the
20 use of physical force or physical violence of a high and
21 aggravated nature to overcome the victim. And this
22 includes the threat of using a deadly weapon.

23 The State may also be required to prove that the
24 defendant intended for the victim to submit to a sexual
25 battery while the victim was also the force -- the victim

1 of forcible confinement, kidnapping, robbery, burglary or
2 housebreaking, or other similar offense.

3 The defendant is also charged with kidnapping. The
4 defendant must prove beyond a reasonable doubt that the
5 defendant knowingly and lawfully seized, confined,
6 inveigled, decoyed, kidnap, abduct, or carried another
7 person away without authority of law. To do a thing
8 unlawfully is to do it it willfully against the law.
9 Knowingly means with knowledge, consciously, not
10 incidentally. To seize means to take hold of, or
11 forcefully. Confine means to limit, restrict or enclose
12 within bounds, imprison or shut or keep in.

13 The State does not have to prove that the defendant
14 committed all of these things. Instead, if you find beyond
15 a reasonable doubt that the defendant did any of these
16 things, you may find the defendant guilty of kidnapping.
17 Something done without the authority of the law is
18 something which the law does not sanction, permit, allow,
19 condone, or provide justification for. Kidnapping does not
20 have to be for any personal or monetary gain or for any
21 illegal purpose. It may be be for any reason whatsoever.

22 The defendant is also charged with possession of a
23 weapon during the commission of or attempt to commit a
24 violent crime. The State must prove beyond a reasonable
25 doubt that the defendant was in possession of a firearm or

1 visibly displayed what appeared to be a firearm or visibly
2 displayed a knife during the the commission of a violent
3 crime. In order to find the defendant guilty of possession
4 of a weapon during the the commission of a violent crime,
5 you must first find the defendant guilty of either
6 committing a violent crime or attempting to commit a
7 violent crime.

8 And in this case, I tell you that the offense of
9 kidnapping and the offense of assault and battery with
10 intent to commit first degree criminal sexual conduct both
11 constitute violent crimes.

12 The indictments in this case allege different
13 offenses against the defendant. Each indictment charges a
14 separate and distinct offense and you must decide each
15 indictment separately on the evidence and the law
16 applicable to it, uninfluenced by your decision as to any
17 other indictment. The defendant may be convicted or
18 acquitted for -- on any or all of the offenses charged.

19 Ladies and gentlemen, in a few moments, I'm going
20 to ask you to retire to the jury room and begin your
21 deliberations. For there to be a verdict, and, of course,
22 the verdict on each of these charges are either guilty or
23 not guilty, all of you must agree. The verdict must be
24 unanimous. All twelve of you must agree.

25 I'm going to ask our foreperson, Mr. Allensworth,

1 if on behalf of the jury, once the jury reaches a verdict
2 to note on the back of each indictment under the word
3 verdict either guilty or not guilty and sign and date --
4 sign your name and date, presumably today's date. You'll
5 be given each of these and you're required to reach a
6 verdict on each of the cases.

7 I'm going to ask all of you, including our
8 alternate juror, if you would please retire to the jury
9 room, but do not yet begin deliberations until I send to
10 the jury room the indictments, as well as the evidence that
11 has been introduced in the case, the exhibits. Once that's
12 done, I'm going to ask our alternate, if she'll step back
13 in the courtroom and then you may begin your deliberations.

14 And once you've reached a verdict, if you'll please
15 knock on the door, let the bailiff know and we'll receive
16 you back in the courtroom.

17 If you would, ladies and gentlemen, please retire
18 to the jury room.

19 (The jury left the courtroom at 10:57 a.m.)

20 THE COURT: Exceptions from the State?

21 MS. HAMMACK: None from the State, Your Honor.

22 THE COURT: Defense?

23 MR. HAYES: Judge, I would renew my motion for the
24 self-defense, I have two prongs. One is under kidnapping
25 it says that somebody confines without the justification of

1 law. We, admitting that we're confining, that is part of
2 the kidnapping. And the self-defense would allow for that.
3 As well as an assault is an element of the assault and
4 battery with intent to commit an A and B. Self-defense
5 would be a defense to assault which would be one of the
6 elements for the assault to commit a CSC.

7 THE COURT: Solicitor?

8 MR. GRIMES: Your Honor, again, the defense's
9 allegations in the case were not that he confined the
10 victim in this case, so even if the evidence that they put
11 forth in that regard would not support a self-defense
12 charge. And in response to the assault with intent to
13 commit criminal sexual conduct, he can't be found guilty on
14 that charge unless he intended to commit a criminal sexual
15 conduct and he can't intend to do that in self-defense
16 under any set of circumstances that I'm aware of, but
17 certainly not the the circumstances that exist in this
18 case.

19 THE COURT: All right.

20 MR. HAYES: Judge, just quick, I believe that
21 that's -- they actually argued in their closing that we
22 admit to confining her and choking her. That -- I mean
23 that is one of the things that she hammered on for about 25
24 minutes is that he's admitting to coming up behind her and
25 choking her and that's kidnapping and confining her and it

1 doesn't have to be like TV where you throw a bag over
2 somebody and drive them off in a van. She spent a long
3 time hammering on that that it only has to be momentary and
4 choking her.

5 THE COURT: I understand your motion. I'm going to
6 deny the motion.

7 Are y'all ready for the exhibits to be submitted?
8 Have y'all looked at them yet?

9 (The attorneys were going through the exhibits with
10 the court reporter.)

11 MR. GRIMES: Judge, we have 31 State's Exhibits and
12 6 Defense Exhibits here.

13 THE COURT: Everything appears to be in order?

14 MR. HAYES: Yes, sir.

15 THE COURT: All right. If you'll please take those
16 to the jury room and ask our alternate juror to step back
17 in the courtroom.

18 (The exhibits were taken back and deliberations
19 began at 11:10 a.m.)

20 (The alternate juror stepped into the courtroom.)

21 THE COURT: Ms. Watson, I want to thank you for
22 your service. I'm glad you stayed with us to the end. I'm
23 getting ready to let you go if you want to go, but you can
24 stay if you want to.

25 You're going. All right. Thank you so much.

1 MR. HAYES: Judge, just for caution, are you
2 cutting her lose for the week or are you putting her back
3 in the jury pool? Will she be free for questioning, if she
4 wishes to talk to us.

5 THE COURT: Sure, she can talk to you if she wants
6 to. I was cutting her loose.

7 MR. HAYES: I just wanted to make sure we're clear
8 as to she's able to leave for today or --

9 THE COURT: I meant to let her go for the week.

10 MR. HAYES: Thank you.

11 (This case was in recess while the jury was in
12 deliberations.)

13 (It was reported to the Court that there was a
14 question from the jury.)

15 **QUESTION BY THE JURY**

16 THE COURT: All right. I have a note from the
17 jury. Is there a picture of the knife that was found in
18 the truck?

19 Is Ms. K. J. right- or left-handed?

20 And the same thing for the defendant, right- or
21 left-handed.

22 MR. HAYES: Judge, I believe there -- there is a
23 picture, but it was not entered into evidence.

24 I believe I did ask Mr. Hankinson if he was left or
25 right-handed that should be in the record in his testimony,

1 when I was asking him about the cut on his hand.

2 MR. GRIMES: Your Honor, we would just suggest that
3 the Court inform them that they have to find the case on
4 the evidence that's before them. I don't remember any
5 testimony about right- or left-handed, but there certainly
6 isn't any picture in evidence about a knife.

7 THE COURT: Well, I'm inclined to just tell them
8 they're going to have to make this decisions based on the
9 information they already have received by way of testimony
10 and exhibits. Anybody have an objection to that?

11 MR. GRIMES: None from the State.

12 MR. HAYES: Judge, I'm pretty confident I asked him
13 what hand and it is in his testimony.

14 THE COURT: They've got to decide whether they
15 remember it or not, though.

16 MR. HAYES: Yes, sir.

17 THE COURT: I will tell y'all a little story before
18 I bring them back in here.

19 (An off-the-record discussion took place.)

20 THE COURT: Let's bring in the jury? .

21 MS. HAMMACK: Judge, if I may, I think I may have
22 left some files sitting in the jury box, if I can grab
23 them. I mean, they're unrelated, but...

24 (The jury entered the courtroom at 11:46 a.m.)

25 THE COURT: Welcome back, ladies and gentlemen.

1 A JUROR: Good to be back.

2 THE COURT: I have a note from the jury asking --
3 posing three questions. One asking about a photograph of a
4 knife that was found in the truck; the other relating to
5 the right-handedness or left-handedness of the victim and
6 the defendant.

7 I regret to inform you that you're going to have to
8 make your decision based on what you have already received.
9 The rules don't permit me to give you additional
10 information or if there was testimony about any of these
11 things, you have to decide what the testimony was. But
12 the rules don't permit me to answer your questions, at
13 least not these questions.

14 So having said all that, I'm going to ask that you
15 retire to the jury room and resume your deliberations.

16 (The jury left the courtroom at 11:47 a.m.)

17 THE COURT: All right. Anything else?

18 MR. HAYES: No, sir.

19 MS. HAMMACK: No, sir, Your Honor.

20 THE COURT: All right. We'll wait on the jury.

21 (This case was in recess while the jury was in
22 deliberations.)

23 **QUESTION BY THE JURY**

24 THE COURT: More questions.

25 All right. Questions from the jury: Can we get a

1 copy of all police reports?

2 Then, the next line says: Sheriff Deputy Hall
3 testimony.

4 And the next line says, Mr. Blanken's statement and
5 testimony.

6 Our court reporter says she can actually, in not
7 too long a period of time, provide for them the testimony
8 from the Court proceeding.

9 I'll be glad to hear from the State.

10 MR. GRIMES: Your Honor, obviously, with regard to
11 the report and statement that the defendant -- well, he
12 didn't even make a statement, but in regard to that stuff,
13 the answer, I think should be the same as it was for the
14 last questions. But I definitely think they would be
15 entitled to hear the testimony again. And I would -- I
16 don't know if that's just going to be played in here. We
17 would ask that if they hear the testimony of either person
18 that they hear the entire direct and cross-examination of
19 each witness, both Deputy Hall and --

20 THE COURT: Both witnesses?

21 MR. GRIMES: Both Deputy Hall and the defendant --
22 oh, David Blanken, I'm sorry. They requested David
23 Blanken.

24 THE COURT: Blanken and Hall, the best I can tell
25 Blanken was about 10 minutes and Hall was about 10 minutes

1 from my --

2 MR. GRIMES: They're pretty short, yes, Your Honor.

3 THE COURT: What says the the defendant?

4 MR. HAYES: Judge, as long as it's both parts and
5 what I mean by that is direct and cross in full.

6 THE COURT: Let's see what our court reporter can
7 do.

8 (The testimony for both witnesses was located by
9 the court reporter.)

10 (The jury entered the courtroom at 12:15 p.m.)

11 THE COURT: Welcome back, ladies and gentlemen. I
12 have a note from the jury once again asking me for, the way
13 I read it, copies of all police reports, the testimony of
14 Deputy Hall and the testimony of Mr. Blanken and the
15 statement of Mr. Blanken, is that -- am I reading this
16 correctly?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: All right. I regret to inform you I'm
19 not going to be able to give you any statements that you've
20 asked for, for the same reasons we gave you earlier. But I
21 -- we have prepared and are prepared to let you rehear
22 testimony of those two witnesses. And I believe we're
23 ready to go.

24 (The testimony of David Blanken was played for the
25 jury as follows:)

David Blanken - Direct Examination by Mr. Grimes

1 MR. GRIMES: Yes, Your Honor. The State calls
2 David Blanken.

3 DAVID BLANKEN,
4 after being duly sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box. State
6 your full name for the Court, spelling your last.

7 THE WITNESS: My name is David Blanken. Last name,
8 B-L-A-N-K-E-N.

9 **DIRECT EXAMINATION**

10 BY MR. GRIMES:

11 Q Mr. Blanken, back in May of 2016, where were you
12 living?

13 A In -- on Cherry Street in Bath.

14 Q Is that in Aiken County?

15 A Yes, sir.

16 Q Okay. And do you remember back in May of 2016, a
17 night when you were walking down the road and somebody
18 approached you, came up to you?

19 A Yes, sir.

20 Q And how did that person come up to you?

21 A She was real hysterical and screaming for help.

22 Q Well, maybe I skipped a little. I went too far.
23 What were you doing on the the road?

24 A I was walking back home.

25 Q Okay.

David Blanken - Direct Examination by Mr. Grimes

- 1 A From a friend's house.
- 2 Q Okay. So this was nighttime?
- 3 A Yes, sir.
- 4 Q In the dark?
- 5 A Yes.
- 6 Q And a person ran up to you screaming?
- 7 A Yes, sir.
- 8 Q Okay. Anything else that you noticed about her?
- 9 A Well, she was real hysterical and she didn't have
- 10 on a shirt.
- 11 Q Okay. Do you remember what she was talking about?
- 12 A She said somebody was trying to get her, like, get
- 13 her to go back or was just harming her or what. She was
- 14 real hysterical and like yelling for help.
- 15 Q And when she did that, did somebody else approach
- 16 you?
- 17 A Yeah, somebody pulled up in a green Chevrolet
- 18 truck, I believe it was.
- 19 Q And what happened when that person got there?
- 20 A He got out of the car threatening, threatening her,
- 21 told me to mind my own business and tried to get her to go
- 22 with him.
- 23 Q When you say -- if you could speak up just a little
- 24 bit so I can hear you.
- 25 A I'm sorry.

David Blanken - Direct Examination by Mr. Grimes

1 Q When you say he tried to get her to go with him, do
2 you remember what was said?

3 A I don't know the exact words, like -- I don't -- I
4 just don't know the exact words that he said. He jumped
5 out the truck. I thought he had a gun or something like
6 that. But I didn't see a gun. And he made a couple of
7 threats or something and told me to mind my own business.
8 And I told her to keep walking with me and we would get
9 help and he got back in the truck and left and I walked her
10 down the driveway and called the paramedics and the police.

11 Q Did he want her to get in the car?

12 A Yeah.

13 Q Or the truck?

14 A Yes, sir.

15 Q And she didn't do that?

16 A No.

17 Q And he told you to mind your own business?

18 A Yeah.

19 Q What house did y'all walk to?

20 A It was right there at Mike Hollis at 1 Cherry
21 Street.

22 Q And that's where y'all lived?

23 A Yes, sir.

24 Q And were there other people there?

25 A Yeah, there was other people at the house.

David Blanken - Direct Examination by Mr. Grimes

1 Q Do you remember who it was?

2 A It was Nancy -- Nancy and Mike was there. I don't
3 know her last name. Mike Hall and Nancy something. I
4 don't know her last name.

5 Q But they weren't in the street with you?

6 A Oh, no, sir.

7 Q Okay. They were just in the house?

8 Q And after -- after she didn't get in the truck with
9 the guy, who was driving, what did he do.

10 A He got back in the the truck and he left.

11 Q Okay. Did you ever see him again after that?

12 A No, sir.

13 Q Okay. Did --

14 I'm going to show you what's been marked as State's
15 Exhibit 17. Is your signature on that document?

16 A Yes, sir.

17 Q Okay. Do you remember, and maybe you don't
18 remember, looking at a lineup?

19 A I think I did.

20 Q You think you did?

21 A The officer brought it.

22 Q Okay. Well, is that your signature on this
23 document that says photo lineup identification?

24 A Yes, sir.

25 Q And does it indicate that you had picked somebody

David Blanken - Direct Examination by Mr. Grimes

1 out of a lineup?

2 A Yes, sir.

3 Q Okay.

4 MR. GRIMES: At this time the State would move to
5 introduce State's Exhibit 17 into evidence.

6 MR. HAYES: No objection.

7 THE COURT: Admitted without objection.

8 (State's Exhibit Number 17 was entered into
9 evidence.)

10 MR. GRIMES: The State has no further questions for
11 Mr. Blanken.

12 THE COURT: Any cross-examination of the witness?

13 BY MR. HAYES:

14 Q Good morning.

15 A Yes, sir.

16 Q On the night this happened, you gave a statement?

17 A Yes, sir.

18 Q In that statement did you put anything about him
19 threatening you?

20 A Yes, sir, I believe so.

21 MR. HAYES: May I approach?

22 THE COURT: Yes, sir.

23 BY MR. HAYES:

24 Q I hand you your statement and tell me where he was
25 threatening you?

David Blanken - Direct Examination by Mr. Grimes

1 A I was walking up the road and heard a girl yelling
2 so I got to her and a green truck pulled up and a man got
3 out and told me to -- in the truck. It doesn't, I don't
4 believe.

5 Q And you've read it?

6 A Yes, sir.

7 Q Does it state that anywhere in there that he
8 threatened you?

9 A No, sir.

10 Q Anything about you thinking he had a gun?

11 A No, sir.

12 Q Matter of fact, the only thing it says is you
13 walked up to the fence?

14 A Yes, sir.

15 Q And you saw them? You saw Mr. Hankinson, or a man,
16 and he was asking the woman to get in the truck?

17 A Yeah.

18 Q And that he drove off?

19 A Yes, sir.

20 Q That's it, right?

21 A Uh-huh.

22 MR. HAYES: Judge, I have nothing further.

23 THE COURT: Redirect?

24 MR. GRIMES: No further questions, Your Honor.

25 THE COURT: All right. Thank you sir, you may step

Ryan Hall - Direct Examination by Ms. Hammack

1 down.

2 (The testimony of Ryan Hall was played for the jury
3 as follows:)

4 RYAN HALL,
5 having been duly sworn, testified as follows:

6 THE CLERK: Have a seat in the witness box. State
7 your full name for the Court, spelling your last.

8 THE WITNESS: My name is Dennis Ryan Hall, last
9 name spelled H-A-L-L.

10 **DIRECT EXAMINATION**

11 BY MS. HAMMACK:

12 Q Deputy Hall, this is a bit of the silly question,
13 but what do you do for a living?

14 A I'm an Aiken County deputy sheriff.

15 Q And how long have you been doing that?

16 A Four years.

17 Q And what do you do every day as a sheriff's deputy?

18 A I work patrol division, so I take calls for service
19 and patrol the county.

20 Q Do you have any particular area that you are
21 assigned to?

22 A I stay mostly in the Midland Valley area.

23 Q Were you working back in may of 2016?

24 A Yes, ma'am.

25 Q And did you have a chance to become involved in

Ryan Hall - Direct Examination by Ms. Hammack

1 this case?

2 A Yes, ma'am.

3 Q How did you first get involved in this case?

4 A On May 28th back in 2016 at around 1:43 in the
5 morning, I was sent to 2█ Cherry Street. That's down in
6 Warrentville, in reference to this case about an individual
7 who needed help.

8 Q Now, is Cherry Street here in Aiken County?

9 A Yes, ma'am.

10 Q And can you tell the jury about where in Aiken
11 County is Cherry Street?

12 A It's down in the Bath area. Right around in Bath.

13 Q And when you got dispatched out there, did you head
14 out there?

15 A Yes, ma'am.

16 Q What did you do when you first got out there?

17 A I met with Mr. Blanken and Ms. K. J. █, who I
18 believe were standing in the street right around that time.

19 Q Okay. Did you speak with each of them?

20 A Yes, ma'am.

21 Q And let me ask you this: When you -- every time
22 you respond to a call, what is your first priority?

23 A Safety.

24 Q So when you got there, did you take any steps to
25 make sure that everybody was safe?

Ryan Hall - Direct Examination by Ms. Hammack

- 1 A Absolutely.
- 2 Q And after you did that did you take a chance to
- 3 find out who all was there and take statements from them?
- 4 A Yes, ma'am.
- 5 Q And you spoke to each, both Ms. K. J. and
- 6 Mr. Blanken?
- 7 A I did.
- 8 Q When you spoke with Ms. K. J., did you observe
- 9 any injuries on her?
- 10 A Yes, ma'am. It was a cut on her left hand and on
- 11 her lower arm.
- 12 Q And what did you do after you saw that she had some
- 13 injuries to her?
- 14 A We called for EMS to help her.
- 15 Q Did EMS come out and respond?
- 16 A They did.
- 17 Q Did EMS treat her for her injuries?
- 18 A Yes, ma'am.
- 19 Q Did you stay out there while that happened?
- 20 A Yes, ma'am.
- 21 Q Did you go to the house at 2 Cherry Street.
- 22 A Yes, ma'am.
- 23 Q Was there anybody at that house when you got there?
- 24 A No, ma'am.
- 25 Q So what did do when you got to that house and there

Ryan Hall - Direct Examination by Ms. Hammack

1 was no one there?

2 A After we initially -- after I initially notified my
3 immediate supervisor, which was Staff Sergeant Lancaster at
4 the time, we then notified our investigations unit.

5 Q And did you remain out there by the house until
6 they came out there.

7 A Yes, ma'am.

8 Q And why do you do that?

9 A Scene security for evidence.

10 Q And when you say scene security for evidence, why
11 is it important for you to stay at that scene until
12 investigations could come?

13 A So that nothing can be tampered with of any kind.

14 Q When you were there, waiting on investigations to
15 arrive, did anybody go in or out of that house?

16 A No, ma'am.

17 Q What did you do with Ms. K. J. [REDACTED] after EMS treated
18 her?

19 A She stayed with me and she slept, I believe in the
20 back seat of my patrol car, but she was in the front seat
21 for a while. We stayed out there for several hours.

22 Q When investigations arrived, did you turn over the
23 case as it has progressed so far to them for further
24 investigations?

25 A Yes, ma'am.

1 Q Give me just one second Deputy Hall.

2 (There was a pause in the proceedings.)

3 BY MS. HAMMACK:

4 Q And you may have said this, I apologize. 2
5 Cherry Street, is that in Aiken County?

6 A Yes, ma'am.

7 Q I don't have anymore questions for you. Please
8 answer any questions that Mr. Hayes has for you.

9 MR. HAYES: Judge, I have no questions for this
10 witness.

11 THE COURT: Thank you, Mr. Hall, you may step down.

12 THE WITNESS: Thank you, Your Honor.

13 (The replay of the testimony requested was
14 concluded.)

15 THE COURT: Ladies and gentlemen, I hope that
16 answers your questions and resolved the issues and I ask
17 you to please retire to your jury room and continue your
18 deliberations.)

19 (The jury left the courtroom at 12:21 p.m.)

20 THE COURT: The clock is slipping away on us.
21 We've got two issues we need to resolve. One is lunch.
22 And the second is two o'clock, one of our jurors needs to
23 leave.

24 How long will it take to order lunch? Somebody
25 from the clerk's office knows, I'm sure.

1 THE CLERK: The bailiffs can tell us which would be
2 the quickest. It would take 30 to 45 minutes.

3 THE COURT: Have we got a menu?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Is there any objection to me asking the
6 the bailiff to tell the jury that we are inclined to order
7 them lunch and it's going to take about 45 minutes unless
8 they don't want us to.

9 Any objection to that?

10 MR. HAYES: No, sir.

11 MS. HAMMACK: No, sir.

12 THE COURT: Okay.

13 (The bailiff left the courtroom to go confer with
14 the jury.)

15 THE COURT: If the jury doesn't reach a verdict by
16 two o'clock, we've got an issue with our jury.

17 MR. HAYES: Judge, since we've cut the alternate
18 loose, I would just ask that we ask them to stop
19 deliberating and we can resume either tomorrow or she can
20 go handle what she's got to do and come back.

21 THE COURT: That may be what we have to do. We
22 probably need to bring her in and get some more
23 clarification from her on her situation. But, yeah. We
24 may have to do that.

25 MR. GRIMES: We do have a little bit of time.

1 THE COURT: Oh, yeah, two o'clock. We may need to
2 talk to her.

3 MR. HAYES: And if it's just a ride we can
4 accommodate her.

5 THE COURT: If what?

6 MR. HAYES: If it's just that somebody needs a
7 ride, I'm sure we can accommodate her.

8 THE COURT: All right. We'll be at ease.

9 (This case was in recess while the jury was in
10 deliberations.)

11 **QUESTION BY THE JURY**

12 THE COURT: I received another note from the jury,
13 but it really is just telling me that Juror Number 25 needs
14 to leave. I spoke with Juror Number 25 yesterday. She
15 said that she needed to leave at two.

16 Let me ask you this: Does anybody object to me
17 having the bailiff go in and find out whether she needs to
18 leave before two o'clock or not? Any objection?

19 MR. HAYES: No, sir.

20 THE COURT: No objection?

21 MS. HAMMACK: No, sir.

22 THE COURT: Could you ask Juror Number 25 if she
23 needs to leave any earlier than two.

24 THE BAILIFF: Yes, sir.

25 (A bailiff went to the jury room to confer with

1 Juror Number 25.)

2 THE BAILIFF: She's okay to leave at two.

3 THE COURT: Okay.

4 All right. Let me ask y'all another question: I'm
5 thinking about bringing the entire jury in, asking Juror
6 Number 25 in the presence of everyone how long it's going
7 to take her to accomplish her mission. Suppose she says an
8 hour, my plans were to let her go, instruct her not to talk
9 to anybody about the case, or let nobody talk to her; and
10 then let the jurors go for an hour. In other words, they
11 don't have to be sequestered and locked up. Tell them they
12 can't do the same thing and just come back and do it over
13 again.

14 MR. HAYES: I'm okay with that, Judge. I'd just
15 also remind them they can't do any research.

16 MR. GRIMES: Your Honor, if we could remind them
17 not to do any online research, I think that would probably
18 be the most likely effort. Particularly in light of the
19 questions they've asked so far.

20 THE COURT: Okay. We'll give them about ten
21 minutes or so and bring them out.

22 (This case was in recess while the jury was in
23 deliberations.)

24 THE COURT: I think the foreperson has the ability
25 to take shorthand. I have another message.

NOTE FROM THE JURY

THE COURT: This is not a question.

We have come to a decision on kidnapping, but we are deadlocked on the indictment for assault with intent to commit criminal sexual conduct in the first degree.

Solicitor, what's the State's position?

MR. GRIMES: Well, they've been back there about two hours and 20 minutes. I'm not sure that they're actually deadlocked at this point, but...

MR. HAYES: They said they are.

MR. GRIMES: Well, at any rate, I think an Allen Charge would be appropriate prior to them making that decision and I know we're coming up on a time when we're probably going to have to give the jury a break any way, I'm not sure that would be best done before they take a break or if we want to wait until they come back to give an Allen Charge.

THE COURT: Let's see what the defendant says.

MR. HAYES: Judge, I would object to an Allen Charge at this time. I think it might be a little premature. I think we should let them go a little bit longer.

THE COURT: All right. Here's what I think I'm going to do. I considered the position of both sides. I'm going to bring the jury in, give them an Allen Charge, ask

1 Juror Number 25 how long she's going to be, give the jury a
2 break until she comes back. Tell them they can't do
3 anything.

4 Let's bring the jury in.

5 MR. GRIMES: Your Honor, just, if Juror 25
6 indicates it's going to take her longer than an hour or so,
7 I know she's picking up kids, I don't know where they're
8 going or what they're planning to do, but I would ask that
9 we would inquire from her how long they're going to break
10 before possibly giving them an Allen Charge, in the event
11 that she can't come back today, you know, they may start
12 back tomorrow and I would like the Allen Charge to be fresh
13 in their mind just before they start deliberating again.

14 THE COURT: Okay. All right. I understand.

15 Let's bring the jury in.

16 (The jury entered the courtroom at 1:51 p.m.)

17 THE COURT: Welcome back, ladies and gentlemen.
18 Let me ask first, I do have a note from the jury.

19 Let me ask my Juror Number 25, Ms. Bush. You need
20 to leave to go pick up children, I think you told me?

21 THE JUROR: Yes.

22 THE COURT: You need to leave before two or by two.

23 THE JUROR: By two.

24 THE COURT: How long do you think you'll be gone.

25 THE JUROR: All the rest of the day. The rest of

1 the day.

2 THE COURT: You'll be gone for the rest of the day?

3 THE JUROR: Yes, I go down to New Ellenton Middle,
4 then my other two grandchildren get out at 3:30 and then
5 we'll be going to the Sanctuary.

6 THE COURT: Well, ladies and gentlemen, it appears
7 that we will have to come back in the morning to continue
8 deliberations. I did get your note about reaching a
9 decision on the kidnapping and being deadlocked on the
10 others.

11 I can assure you that's not the first time a jury's
12 been in that position, but I don't know what else we can do
13 except come back in the morning. I do have some matters I
14 need to talk to you about before you begin deliberating
15 again.

16 Is anybody going to have a problem being back in
17 the morning at 9 o'clock?

18 (No response.)

19 THE COURT: Same rules apply as I gave you earlier.
20 Don't talk to anybody about the case, don't let anybody
21 talk to you about the case. Don't do any research about
22 the case. Don't get on the internet to look at matters
23 about the case or cases like this or don't look at the law.

24 Does anybody have a problem doing that?

25 (No response.)

1 THE COURT: All right. Ladies and gentlemen, we'll
2 adjourn until nine o'clock tomorrow morning. I ask you to
3 be back in the jury room and I'll need to speak with you
4 before you begin deliberating again. Okay?

5 All right. Thank you so much.

6 (The jury left the courtroom at 1:53 p.m.)

7 THE COURT: I'll grant the State's request to wait
8 until tomorrow to give an Allen Charge.

9 Anything else we need to do?

10 MS. HAMMACK: I can't think of anything, Your
11 Honor.

12 MR. HAYES: No.

13 THE COURT: On this case we'll adjourn until nine
14 o'clock in the morning.

15 (The exhibits were gathered from the jury room and
16 Defense Exhibit Number 1 was missing.)

17 THURSDAY, AUGUST 31, 2018

18 (Mr. Hayes and Mr. Grimes searched the jury room
19 for the missing Defendant's Exhibit Number 1 and were
20 unsuccessful in finding it.)

21 THE COURT: We are awaiting one juror.

22 (The defendant was brought into the courtroom.)

23 THE COURT: All jurors are present now. Is the
24 State ready for the jury?

25 MS. HAMMACK: Yes, Your Honor.

1 THE COURT: Defense ready?

2 MS. ALVES: Yes, Your Honor.

3 (The jury entered the courtroom at 9:20 a.m.)

4 THE COURT: Good morning and welcome, ladies and
5 gentlemen.

6 THE JURY: Good morning, sir.

7 THE COURT: As I told you yesterday, I had a few
8 things to talk to you about after receiving your note
9 concerning the kidnapping and the other matters.

10 But first it appears we're missing the CD that
11 contained the video that was shown to the group. Does
12 anybody happen to have taken that by mistake? We can't
13 find it.

14 A JUROR: It was in there and we watched them meet
15 each other from in the library.

16 THE COURT: Yeah.

17 THE FOREPERSON: And there was a CD in there.

18 THE COURT: Yeah, the attorneys have looked in
19 there and they -- they can't find it.

20 THE FOREPERSON: The DVD definitely came in with
21 the other things in that room. We turned everything in at
22 the end of the day. If we missed it, it should still be in
23 the room.

24 THE COURT: They've been through it with a fine
25 tooth come.

1 THE FOREPERSON: Oh my.

2 THE COURT: Let me ask you then, as far as you know
3 has anything changed since you sent the note yesterday, the
4 note indicating that the jury had reached a decision on the
5 kidnapping but had not -- and were deadlocked on the other
6 issue?

7 THE FOREPERSON: We have not discussed since we
8 sent that note.

9 **ALLEN CHARGE**

10 THE COURT: Well, as I told you, you're not the
11 first jury to be in this situation. As I told you earlier,
12 the verdict must be unanimous.

13 When a matter is in dispute, any kind of a matter,
14 it's always -- it is not always easy that even two people
15 to agree, so when twelve people must agree, it becomes even
16 more difficult.

17 In most cases absolute certainty cannot be reached
18 or expected. However, you have a duty to make every
19 reasonable effort to reach a unanimous verdict.

20 In doing this, you should consult with one another,
21 express your own views, listen to the opinions of your
22 fellow jurors, tell each other how you feel and why you
23 feel the way that you do. Discuss your differences with
24 open minds.

25 Although the verdict of the jury must be unanimous,

1 everyone of you has the right to your own opinion and the
2 verdict you agree upon must be your own verdict, a result
3 of your own convictions and you should not give up your
4 firmly held beliefs merely to be in agreement with your
5 fellow jurors. The majority should consider the minority's
6 position and the minority should consider the majority's
7 position.

8 You should carefully consider and respect the
9 opinions of each other and reevaluate your position for
10 reasonableness, correctness, and impartiality. You must
11 lay aside all outside matters and re-examine the questions
12 before you based on the law and the evidence in this case.

13 If you do not reach, or agree, on a verdict in this
14 case, I must declare a mistrial. In that case, it does not
15 mean that there is anyone wins, it means that at some
16 future time we will try this case with another jury sitting
17 where you sit now. The same participants will come, the
18 same lawyers will ask basically the same questions, getting
19 basically the same answers. We will go through the whole
20 process again.

21 You were selected in the same manner and from the
22 same source as any future jury will be, and there's no
23 reason for me to suppose that this case will ever be
24 submitted to any twelve more intelligent, impartial,
25 conscientious and confident jurors than you, or that more

1 or clearer evidence will be produced on one side or the
2 other.

3 I therefore, ladies and gentlemen, ask you to
4 return to your deliberations with the hope that you can
5 arrive at a verdict within a reasonable time. So if you
6 would, ladies and gentlemen, please retire to your jury
7 room.

8 (The jury left the courtroom at 9:28 a.m.)

9 THE COURT: I forgot to give them the indictments.
10 Mr. Bailiff, if you would tyke the indictments to
11 the jury room. Please take the evidence also.

12 THE BAILIFF: Okay.

13 MR. GRIMES: Your Honor, we had -- we have made a
14 copy, I believe, of the video that was missing. I'm not
15 sure exactly what the Court's plan was, if we're going to
16 supplement that or substitute it or...

17 THE COURT: Well, do y'all have an agreement on it.

18 MR. HAYES: No, sir.

19 THE COURT: And so, you have a copy. Do y'all
20 agree that it is a copy? Somebody said they made a copy,
21 right?

22 MR. GRIMES: Our office made a copy of the disk.
23 We provided them, I believe, it's what they submitted into
24 evidence. I don't believe he's actually seen it yet. We
25 provided it to him this morning.

1 THE COURT: What's the position of the defense.

2 MR. HAYES: Judge, even if it is a copy that I
3 entered, I think that it's authentication issues for the
4 record. I think it makes a mockery of the rules of
5 evidence and it's a slippery slope to start substituting
6 evidence that was once entered and authenticated through
7 the process and it clouds the record on appeal.

8 MR. GRIMES: Your Honor, we stipulated to the
9 authentication of this. There wasn't a proper foundation
10 laid for this video in the first place other than our
11 witness testified that he went to the library and got it.
12 I don't know the authenticity of this have wasn't in
13 question in the trial of this case to begin with.

14 MR. HAYES: I did ask the investigator if he
15 recognized, he had reviewed it and if it was a true and
16 accurate copy. And he did. And then I moved to enter it
17 without objection.

18 THE COURT: Well, let me ask you this: Is there
19 any question on the part of the defense that the Plaintiff
20 has, in fact, produced a copy of what was introduced into
21 evidence.

22 MR. HAYES: I'm sorry, Judge?

23 THE COURT: Does the defense disagree that the
24 plaintiff has has copied -- made a copy of the same thing
25 that was submitted in the trial of the case.

1 MR. HAYES: I know they had a CD. I have not
2 reviewed it yet.

3 THE COURT: Say again?

4 MR. HAYES: They gave me a CD this morning. I have
5 not been able to review it yet to see what it is.

6 THE COURT: Okay. Well, why don't you review it.

7 MR. HAYES: Yes, sir.

8 THE COURT: So we can get past the issue of whether
9 or not --

10 MR. GRIMES: Your Honor, during the time that he
11 reviews this would we ask the jury to pause their
12 deliberations or just wait for the CD or --

13 THE COURT: Well, if they want to see the CD, I
14 guess they'll let us know they want to see the CD. They
15 couldn't see the CD in there, could they.

16 MR. GRIMES: Well, he indicated they watched it.

17 MR. GRIMES: I understand. I understand.

18 MR. HAYES: Judge, the only other thing is,
19 yesterday after we found out it was missing, I combed
20 through the trash, I believe the State's investigator went
21 through the room. Mr. Grimes and I went through the room
22 together as well as the bailiffs. The CD is not in that
23 room.

24 The State and the defense and the court reporter
25 all agreed that as well as the foreman of the jury that the

1 CD was accounted for in evidence. The CD went back into
2 the jury room and it was there when they deliberated.
3 There is no other way that CD disappeared unless somebody
4 took it out of the room, either by mistake or by
5 misconduct, intentionally wanting to take it home and view
6 it. Either one is misconduct from a juror. Either one is,
7 I believe grounds for a mistrial and in doing so they're
8 failing to follow the instructions of the Court and I
9 believe that is an issue as well.

10 MR. GRIMES: Your Honor, these are pretty
11 unsubstantiated allegations. Obviously, the CD went
12 missing and everybody can agree it's not accounted for at
13 the moment and they -- the jury has indicated that it was
14 in the jury room, but they didn't deliver it back to the
15 courtroom, the bailiffs did, and then it was in the
16 courtroom or potentially the courtroom. Possibly it was
17 misplaced or lost in the jury room, maybe it was lost or
18 misplaced on its way back to the courtroom or maybe it was
19 lost or misplaced while it was in the courtroom before we
20 noticed it was missing.

21 So the allegation that it had to be a juror that
22 took this, first of all, is unsubstantiated because there's
23 other possibilities of how it went missing.

24 Additionally all the jurors indicated that they
25 didn't take it, were not aware of it in their possession,

1 so there isn't any reason to believe that one of them did
2 take it, particularly on purpose.

3 THE COURT: All right. Let me start from the top.

4 As I understand it, the State wishes to substitute
5 the CD based on the fact that they have made a new one from
6 the same source; is that right?

7 MR. GRIMES: Your Honor, it's a defense exhibit.
8 I'd be happy to substitute it, but -- yes, yes.

9 THE COURT: Okay.

10 MR. GRIMES: It wasn't a State's exhibit to start
11 with, but --

12 THE COURT: But the State has copied it.

13 MR. GRIMES: That's correct.

14 THE COURT: And the the defense opposes -- opposes
15 that; is that right.

16 MR. HAYES: Yes, sir.

17 THE COURT: All right. So the defense -- you
18 oppose giving it. What else? Suppose we don't give it to
19 them. Suppose I grant and rule in your favor and we do not
20 give it to them and let's suppose they don't ask for it.

21 MR. HAYES: If that's the case you have to declare
22 a mistrial.

23 THE COURT: Okay. I would not be inclined to do
24 that. So if you want to make a motion for a mistrial, you
25 probably need to go ahead and do it.

MOTION FOR MISTRIAL

MR. HAYES: Judge, then, at this time I would move for a mistrial based on the fact that the CD is missing from the evidence as just a minute ago indicated it was accounted for by the State and the defense when we gathered the evidence up. It has been given to the plaintiff and then it was entered into the jury room with the jurors.

The foreman today when questioned about it indicated the CD actually made it there and that they gathered the evidence up when they left. However, yesterday after they left I was informed as well as the State that the CD was missing.

We went into the courtroom, we asked Your Honor for permission to enter the jury room. We together went in and searched the room. The investigators with the solicitor's office, myself and Mr. Grimes for the State. I even went as far as going through all the trash cans. The CD is not present. It's about 30 feet from the court reporter to the jury room and the CD is nowhere in between.

THE COURT: All right. Let me ask you a couple of questions before I rule. Does the defense have a copy of what was submitted?

MR. HAYES: I did not. That was my Rule 5 that I entered. I have a ripped copy on my desk top, but it's not in the form of a CD.

1 THE COURT: Could you put it in the form of a CD if
2 you wanted to?

3 MR. HAYES: I'm not technically capable to do so.
4 Somebody in my office could do it for me, but I was given a
5 copy of a CD of that, that the State provided me this
6 morning. I have just not reviewed it.

7 THE COURT: What is the prejudice to the defense if
8 there is no CD.

9 MR. HAYES: If there is no CD, Judge, I think there
10 are several things. One, the record on appeal would be
11 flawed. Two, if -- if the jury had taken the CD, they're
12 not following the instructions of the Court and if they're
13 not following the instructions of the Court, what other
14 instructions are they not following.

15 And Judge, it's a slippery slope, I think with the
16 rules of evidence and the record for appeal.

17 THE COURT: All right. I will deny the motion
18 based on those grounds. But let me go ahead and ask you
19 the next question and that is: Are you willing to look at
20 the CD that the the State has presented to you this
21 morning?

22 MR. HAYES: I am willing, yes. I just need to grab
23 a laptop.

24 THE COURT: Can you look at it and tell us whether
25 you disagree -- whether you disagree with its accuracy.

1 MR. HAYES: Judge, I just want to make it clear for
2 the record, I'm not casting stones and saying I don't think
3 they gave me a true and accurate copy that they provided me
4 the first time. I just think there's an issue for the
5 record of appeal and the sanctity of the process if we're
6 able to start recreating and adding evidence back into the
7 record after the the trial has rested without --

8 THE COURT: Let me give you a hypothetical. Let's
9 just suppose that there was a photograph introduced into
10 evidence and there may have been and that the photograph is
11 now missing, but that everybody in this courtroom has a
12 copy of that photograph, would there be a harm in
13 substituting that photograph?

14 MR. HAYES: I believe there is.

15 THE COURT: Okay. Well are you -- are you in the
16 position then to say that the copy that the State produced
17 this morning is a true and accurate copy.

18 MR. HAYES: Not at this time. I have not reviewed
19 it.

20 THE COURT: Okay. Well I thought you said a moment
21 ago --

22 MR. HAYES: I'm not casting the blame saying I
23 think they would do something like that. I'm just saying I
24 have not reviewed it and even if it is true and accurate, I
25 still think there's an issue in substituting evidence after

1 the close of the trial.

2 THE COURT: I understand.

3 MR. HAYES: And the jury knows about it.

4 THE COURT: I understand.

5 MR. HAYES: I looked last night for several hours
6 -- I was unable to find any precedence anywhere in the
7 United States. I even went so far as calling Lexis Advance
8 to talk to the research assistants for several -- half an
9 hour or more and doing several searches. There was no other
10 case law on this issue.

11 THE COURT: Well, you indicated you were willing to
12 look at the copy that was given to you this morning by the
13 State, so I would ask if you would, please do that.

14 MR. HAYES: Yes, sir.

15 MR. GRIMES: Your Honor, if I may, just for the
16 record. Mr. Hayes indicated that he made an electronic
17 copy of the disk that he gave to the jury in the trial. He
18 has an electronic copy that he can make on the disk from
19 the same source that he gave to the jury during the trial
20 yesterday. If he's not satisfied with our copy, he can
21 make his own copy. He has the ability to do that. But it
22 sounds like the defense is trying to create their own
23 prejudice to be a grounds for a mistrial when that
24 prejudice doesn't exist.

25 THE COURT: I don't think he said, though, that he

1 thinks your copy is flawed. I think he said he didn't know
2 until he looked at it; isn't that right?

3 MR. HAYES: And Judge, I'm saying whether it is or
4 isn't, I believe there's an issue with entering new
5 evidence after the close. That is my argument.

6 THE COURT: I understand that.

7 MR. HAYES: I'm not arguing whether it's authentic
8 or not or whether it's a true copy.

9 THE COURT: I understand that. The State has
10 proposed to introduce this substitute for the original that
11 would be identical and I guess we are going to wait to see
12 if you agree whether that is a copy or not.

13 MR. HAYES: Yes, sir.

14 THE COURT: All right. We'll be at ease until we
15 hear from the jury or otherwise.

16 (This case was in recess while the jury continued
17 deliberations.)

18 (The attorneys convened with the Court.)

19 MR. HAYES: I don't think I need the client for
20 this. I reviewed the CD and to the best of my knowledge it
21 is what I entered into the evidence. I still feel it
22 becomes a slippery slope in substituting evidence after the
23 close of the trial. I just renew my objection to that.

24 THE COURT: All right.

25 I'm going to grant the State's motion to substitute

1 this for the original.

2 MR. GRIMES: Yes, Your Honor. And the reason for
3 that is simply because it is the record, it's the evidence
4 in the case.

5 I understand the State didn't introduce it, but the
6 State's position is at this point there hasn't been a
7 finding of any jury misconduct, I don't think there's
8 anything to base that issue on. But the defense's motion
9 is that there is and there's subsequent prejudice to the
10 defendant to create that prejudice by opposing the entering
11 their own exhibit or by substituting their own exhibit into
12 evidence is an effort to create prejudice as a basis and I
13 don't think that's appropriate. I would say that this is
14 appropriate. I would say that there were, you know, jurors
15 that had possession of the CD. Apparently that one or more
16 had possession of it.

17 It was here in courtroom near the court reporter
18 and I don't know how many people there were in this area
19 from what I understand that went around there during that
20 time period. I don't think there is a basis to conclude
21 that there was misconduct on behalf of the jury and we
22 would ask for the Court the find that this is not a basis
23 for juror misconduct just to create subsequent potential
24 hearings.

25 MR. HAYES: Judge I think I've said my peace.

1 THE COURT: I don't find any evidence of juror
2 misconduct. I don't find any prejudice in admitting this
3 as a substitute for the missing CD. So how are we --

4 MR. HAYES: Your Honor, would the Court inform the
5 jury that that evidence is available. We generally do that
6 in the courtroom, from time to time we have sent a laptop
7 back.

8 THE COURT: I would prefer if we just held onto it
9 and they can ask to see it. That's where they would
10 normally see it. More often than not we would do it here.

11 (This case was in recess while the jury continued
12 deliberations.)

13 THE COURT: The bailiff indicates he believes the
14 jury has reached a verdict. Is the State ready for the
15 jury?

16 MS. HAMMACK: Your Honor, we are. I seem to have
17 mis-located my co-counsel.

18 THE COURT: Is the defense ready for the the
19 verdict?

20 (Mr. Grimes entered the courtroom.)

21 THE COURT: Let's bring the jury in.

22 (The jury entered the courtroom at 11:06 a.m.)

23 THE COURT: Welcome back, ladies and gentlemen.

24 Mr. Allensworth, the bailiff indicates he believes
25 the jury has reached a verdict; is that correct.

1 THE FOREPERSON: Yes, sir.

2 THE COURT: Was the jury able to reach verdict on
3 each of the indictments?

4 THE FOREPERSON: Yes, sir.

5 THE COURT: Did you write the verdict on the back
6 of the indictments and signed it?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: Would you please pass it forward.

9 (The indictments were handed to the Court.)

10 THE COURT: And Clerk, please publish the verdict.

11 **VERDICT**

12 THE CLERK: Your Honor, we have case 2016GS0202362,
13 the State of South Carolina versus Wayne Hankinson,
14 Indictment for assault with intent to commit criminal
15 sexual conduct in the first degree. The verdict of the
16 petit jury, guilty, signed by the foreperson, John
17 Allensworth, II, dated August 31, 2017.

18 2016GS020263, the State of South Carolina versus
19 Wayne Hankinson, Indictment for kidnapping, the verdict of
20 the petit jury, guilty, signed by the foreperson, John
21 Allensworth, II, Thursday August 31st, 2017.

22 2016GS0202364, the State of South Carolina versus
23 Wayne Hankinson, Indictment for possession of a firearm or
24 knife during the commission of or attempt to commit a
25 violent crime, the verdict of the petit jury, not guilty,

1 signed by John Allensworth, II, the foreperson, Thursday,
2 August 31, 2017.

3 Ladies and gentlemen of the petit jury, if this is
4 your verdict, please indicate by the raising of your right
5 hand.

6 Your Honor, all hands are raised.

7 THE COURT: Thank you.

8 Anything before the jury is discharged from the
9 defendant?

10 MR. HAYES: No, Your Honor.

11 THE COURT: From the State?

12 MS. HAMMACK: No, Your Honor.

13 THE COURT: Ladies and gentlemen, when we selected
14 you and asked you to serve on this jury, we didn't tell you
15 it was going to be an easy job we were asking you to do.
16 We do want to thank you for your service. I previously
17 told you, you couldn't talk to anybody about the case,
18 you're now free to talk to anybody you want to about the
19 case, including not just what happened here, but what
20 happened in the jury room, if you want to. But you have
21 the same right not to talk to somebody about it.

22 I don't have any reason to think anybody's going
23 the bug you or bother you about your verdict, but if they
24 do and you don't want to talk to them, tell them you don't
25 want to. If they really bother you, please report them to

1 the Clerk of Court. One more time, I don't have any reason
2 to think that's going to happen, I just wanted to let you
3 know you have that right.

4 One more thing. I say this no way in a position to
5 disagree with you because only the twelve of you sat there,
6 saw all the evidence, looked at the witnesses, heard the
7 attorneys make their closing arguments and then listened to
8 me tell you what the law was and then went in there and sat
9 around the table and listened to what your fellow jurors
10 said. It is likely that the State -- excuse me, the Court
11 will now impose sentence or at least sometime in the next
12 15 or 20 minutes. You have the right, if you want to, to
13 stay and watch that, or you have the right to leave. It's
14 totally up to you, individually. You don't have to decide
15 as a group.

16 What I'm going to let you do now is exit the
17 courtroom, but if you want to come back in and have a seat
18 here, that's fine, if you want to come around the back and
19 watch, but you don't have to do either one of those. You
20 can go about your business or go home.

21 Anything we can do for anybody? Any problems?

22 (No response.)

23 THE COURT: Ladies and gentlemen, you're excused.
24 I'm going to come down and thank you for your service.

25 (The jury left the courtroom at 11:10 a.m.)

1 THE COURT: Any motions?

2 POST-TRIAL MOTIONS

3 MR. HAYES: Judge, at this time, I would make a
4 motion for a new trial based on my previous objections and
5 arguments, specifically one being that if they were given
6 the instructions for self-defense as to the kidnapping and
7 the assault that the verdict may have been different.

8 THE COURT: Okay. Any other motions?

9 MR. HAYES: I can't think of another motion at this
10 time.

11 THE COURT: Okay.

12 State wish to be heard on that?

13 MS. HAMMACK: No, Your Honor. We would stand on
14 our previous argument.

15 THE COURT: We have previously argued this and, of
16 course, I understand the motion and will deny that motion.

17 Does the State wish to proceed with sentencing at
18 this time?

19 MS. HAMMACK: Your Honor, if we may have just a
20 moment. Our victim had to leave for a school requirement.
21 We would like to contact her and let her know that this has
22 happened. She had previously written a statement for Your
23 Honor, so we may be able the move forward sooner rather
24 than later, but we'd like to at least let her know.

25 THE COURT: Any objection?

1 MR. HAYES: No, sir.

2 THE COURT: All right. We'll be at ease on this
3 case and we'll do sentencing later this morning.

4 MS. HAMMACK: Thank you, Your Honor.

5 (Another matter was heard, followed by sentencing.)

6 MS. HAMMACK: Your Honor, we're actually ready to
7 go forward at this time.

8 **SENTENCE**

9 THE COURT: All right. Solicitor?

10 MS. HAMMACK: As stated a few moments ago, the
11 victim in this case, Ms. K. J. [REDACTED], had to return to school.
12 She's been here all week, wanted to be present, but had
13 obligations that she had to go and be at school for. She
14 did write a statement to Your Honor to read. She wrote it
15 earlier this summer but said she stands by it. She asked
16 that I would supplement it briefly after the trial with the
17 following statements:

18 She wanted Your Honor to know that she is
19 especially grateful for the guilty verdict on the assault
20 with intent commit criminal sexual conduct in the the first
21 degree. She stated she felt that this was an example of
22 the system properly working to support victims of sexual
23 assault. She stated that she hopes that this result will
24 be an encouragement to other victims of sexual assault to
25 come forward and go through the judicial process and she

1 said she felt it was worth it.

2 THE COURT: You've got a copy of the letter?

3 MR. HAYES: Yes, sir, I'm reading it right now.

4 (The Court was reading the victim's letter.)

5 THE COURT: All right. Solicitor.

6 MS. HAMMACK: Thank you, Your Honor. The only
7 other thing that the State would add is the defendant's
8 prior criminal history. He has a conviction for disorderly
9 conduct from 2005; a conviction or carrying a concealed
10 weapon from 2006; a simple battery from 2006; he has a
11 federal conviction for unlawful possession of a firearm
12 from 2009; and a traffic offense from 2016.

13 THE COURT: I'll be glad to hear from you.

14 MR. HAYES: May it please the Court. Judge, as you
15 heard, Mr. Hankinson is 30 years of age. He's a welder by
16 trade since about 2015. He got his high school equivalent
17 in 2010 and then went onto Augusta Tech in 2014, was
18 certified in welding and joint technology and then he
19 certified in advance shield, metal and ark welding. I had
20 to ask him what that meant, but he said that's kind of like
21 galvanized metal.

22 And then he was certified in 2015 for gas metal and
23 ark welding. He has two children, a 9-year-old and an
24 11-year-old. His mother has been here, I believe she's
25 sitting here in court. She's on the second row in the

1 plaid shirt and blue overcoat. Judge, he's been
2 incarcerated for 449 days waiting for this day. I don't
3 think the outcome is what he wanted.

4 There's not very many times I could stand here
5 judge and say that I even question whether the jury got it
6 right or wrong, but this is one of a very few. I don't get
7 to say it, actually, that I believe a client, very often
8 without scepticism or some kind of hesitation. However, we
9 are convicted. I don't understand how they can convict him
10 with those two charges and didn't find that there was a
11 weapon or a firearm being -- that means that the jury
12 believes at least some portion of our statements and they
13 did not believe a very large portion of the victim's
14 statement. However, it is what it is right now.

15 He's been a member -- citizen of Aiken County all
16 of his life and the CSRA. There was a brief period that he
17 lived over in Augusta. He attended LBC Middle School and
18 went to T.W. Josie High School.

19 Judge, he's been incarcerated for 449 days.
20 Normally after the trial, I don't normally ask this, but I
21 know in this situation you got to see the victim, her
22 demeanor. You've seen Mr. Hankinson and his demeanor and
23 listened to both of their testimonies. I would ask the
24 Court in this situation to consider a probationary sentence
25 with a suspended sentence. A very large sentence can be

1 given with a probationary sentence to follow. He's
2 definitely going to have a lot more hurdles in life now as
3 well with having the mandatory register as a sex offender
4 for the assault and battery case. And then whether you
5 feel he needs to or not under the kidnapping and I'd ask
6 the Court to make sure we put a ruling for the kidnapping
7 because that is something I have seen cause issues down the
8 road if it's not done. If you don't believe that what
9 we're asking for is appropriate, we throw ourselves at the
10 mercy of the Court.

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

12 Anything you wanted to tell me or say?

13 THE DEFENDANT: No, sir. Your Honor, I just want
14 to go home to my daughter. I would never do the things
15 that was said. I would never do those things. The victim
16 lied several times. She said I grabbed the knife and I got
17 a cut on the -- she said I cut my hand by grabbing the
18 knife. I got cut on the outside of my hand. She cut me on
19 the outside of my hand. She lied several times. I would
20 never do anything -- I just want to go home with my mamma.
21 My mama's sick and she needs me and I'm an only child. I
22 got two kids. I just want to go home.

23 THE COURT: Solicitor anything else from the State?

24 MS. HAMMACK: No, Your Honor.

25 THE COURT: Does it make any difference as a

1 practical matter whether the Court requires on the
2 kidnapping the registry or not.

3 MS. HAMMACK: My understanding is you just have to
4 make a finding if the facts were of a sexual nature, then I
5 believe it's required that there be a finding for registry
6 on the kidnapping, but it is mandatory on the assault with
7 intent criminal sexual conduct.

8 MR. HAYES: I don't think it would change the
9 result in this case, Judge. He's going to have to register
10 anyway.

11 THE COURT: He's either on or he's not.

12 MS. HAMMACK: Your Honor, it's my understanding
13 that it's presumed unless you make a finding that it's not
14 related.

15 THE COURT: But as a factual matter, it really
16 doesn't make any difference.

17 MS. HAMMACK: I don't think so, I just think you
18 have to make a finding for the record.

19 THE COURT: Mr. Hankinson, as you know you could
20 receive up to 30 years on these charges.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Under the circumstances, I cannot grant
23 your attorney's request to give you a probationary
24 sentence. I feel that an active sentence is required under
25 the circumstances. On each of the charges, I sentence you

1 to 12 years to be concurrent. You'll get credit for time
2 served.

3 MS. HAMMACK: And I apologize, Your Honor, can you
4 make a finding on the registry for the record.

5 THE COURT: I find it's required.

6 MS. HAMMACK: Thank you.

7 (Court was in recess in this case. The following
8 motion was placed on the record later in the day.)

9 **POST-TRIAL MOTION**

10 MR. HAYES: Your Honor, at this time I think I
11 would have to make a motion for a new trial for
12 Mr. Hankinson. After the conclusion of sentencing, I went
13 out and in speaking to jury members, as well as
14 Investigator Graybeal, Investigator Curt Owen, and Derrick
15 Bush from my office, and myself -- during that time, the
16 foreman of the jury indicated that he knew Norwood Bodie
17 from the solicitor's office, that he was a scout leader, I
18 believe. That he had been over to his house several times,
19 swam with him, and shot pool.

20 Judge, I believe when we did the jury voir dire,
21 you asked if anybody knew -- had a close family
22 relationship with anybody within the four walls of the
23 courthouse. At that time, I think he should have indicated
24 that he knew him. If I had known this information, I would
25 have exercised one of my strikes. I had several strikes

1 left at the conclusion of picking the jury.

2 At that time -- also, Mr. Bodie sat at this
3 counsel's table throughout the entire trial. He was
4 helping the solicitors with the video, helping them enter
5 the evidence and was present the entire time.

6 THE COURT: All right. Let me try to just tell you
7 what I recall.

8 MR. HAYES: Yes, sir.

9 THE COURT: In my recollection about the
10 questioning of perspective jurors, is that I asked if any
11 juror was a close personal friend of any of the witnesses
12 -- excuse me, listed witnesses. That's the question I
13 asked.

14 I do not believe I asked if anyone was a friend of
15 anyone within the -- who worked within the walls of the
16 courthouse. That was a question concerned whether they
17 were qualified or not, if anybody worked within the walls
18 of any courthouse.

19 MR. HAYES: Your Honor, and I checked off my number
20 6 on my list which stated, Are you or any of your close
21 friends or relatives police officers, state law enforcement
22 officers, or employed in the solicitor's office of the
23 Second Judicial Circuit, in the Attorney General's Office,
24 or in Federal Law Enforcement Agency or any law enforcement
25 agency or any prosecutor's office.

1 THE COURT: I may have asked that question.

2 MR. HAYES: My number 6 --

3 THE COURT: 6. I believe that that would have -- I
4 don't have that with me. I forgot.

5 MR. HAYES: I have it -- the only copy I have left
6 is here and I'll hand it up. And I checked them off as
7 they were read.

8 THE COURT: You remember, Solicitor? Is that what
9 -- did I read that question out? I just don't recall.

10 MS. GRIMES: Your Honor, I believe you did. You
11 definitely asked if anybody, was a close personal friend of
12 any of the potential witnesses in this case.

13 THE COURT: Right.

14 MR. GRIMES: With regards to some of the comments
15 by defense, Mr. Bodie with our office was not present for
16 jury selection. He was not listed as a potential witness
17 in this case. He has not been involved in preparation of
18 this case for trial other than to present pictures and to
19 operate the video system that both the State and the
20 defense used during trial.

21 With regards to whether or not anything was said in
22 response to Your Honor's questions, the last question Your
23 Honor asked the jury pool was if anybody had any reason
24 that they could not be fair or impartial to either side and
25 nobody answered at that point. It's my understanding that

1 the juror is present here if Your Honor would like to voir
2 dire him, but with regards to whether or not he was
3 responsive to a question about an employee of our office
4 who was not present for jury selection, was not a potential
5 witness and only operated the audio visual, you also asked
6 if he was a close personal friend or family member.

7 I don't know that he qualifies, I can't answer that
8 for him. If it has to do with boy scouts, it's my
9 understanding that Mr. Bodie with our office hasn't been
10 involved with boy scouts for over four years.

11 THE COURT: Well, would you like to see if
12 Mr. Foreperson would like to be voir dired by you.

13 MR. HAYES: Judge, even at this point, if we were
14 voir diring him, if I had known that there was this
15 relationship, I would have struck him.

16 THE COURT: I understand. In other words, you
17 don't think you want to ask him questions.

18 MR. HAYES: No, sir.

19 MR. GRIMES: If Your Honor would prefer, if the
20 Court would like to ask him if he considered the case
21 fairly and impartially. I mean, I don't know if that
22 protects the record, but I think that's the basis in
23 determining if a juror is qualified and able to serve.

24 THE COURT: Well, it's a defense motion.

25 MR. HAYES: Judge, regardless of his answers, if I

1 had known this information, I still had strikes, I would
2 have struck him.

3 MR. GRIMES: Your Honor, as indicated before,
4 Mr. Bodie wasn't in here during the jury qualification.
5 The issue became apparent after that, but it would have
6 been after the point in time where he would have used his
7 strikes.

8 MR. HAYES: Judge, I had strikes left when we
9 finished and sat the jury. I had plenty of strikes to
10 strike anybody from law enforcement or anybody that had a
11 relationship with anybody in this courtroom and one of my
12 general practices in every trial, if they say they know a
13 solicitor, period, or investigator, period, in the
14 solicitor's office, I strike them until I'm out of strikes.

15 THE COURT: Well, let me ask you this: For the
16 record, do we know that that juror knew that this
17 individual is an investigator or was an investigator? I
18 don't know.

19 MR. HAYES: I don't know, but he was at the table
20 to whole trial from that point forward, we could have at
21 least inquired at that time and we had an alternate at that
22 time. I would have been able to move to put the alternate
23 in his place.

24 THE COURT: And you don't want to voir dire him.

25 MR. HAYES: No, sir.

1 THE COURT: All right. I deny your motion.

2 What else?

3 MR. HAYES: I believe that would be it, Your Honor.

4 (The case was adjourned and the following was put
5 on the record concerning the case at a later point in the
6 day.)

7 MR. HAYES: Judge, on Mr. Hankinson's case, I'd
8 like to motion that the Court will allow me to have ten
9 days to revisit my motion with the juror.

10 THE COURT: Any objection?

11 MS. HAMMACK: No objection.

12 THE COURT: All right. I'll grant the motion.

13 MR. HAYES: And just to clarify, in writing? I
14 would send a copy to you and to the solicitor.

15 THE COURT: Preliminarily review of the record from
16 the qualifying of the jury, voir diring of the jury, I
17 might not have asked those questions the way you think they
18 might have been asked.

19 MR. HAYES: I would have to look at the record.

20 THE COURT: Before you spend a lot of time to get
21 investigators to do this and that, you might want to double
22 check.

23 MR. HAYES: Yes, sir.

24 THE COURT: To see if it makes any difference, but
25 the motion is granted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. HAYES: Thank you, Your Honor.

* * * * * END OF TRANSCRIPT * * * * *

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions in and
12 for the State of South Carolina on 29th through the 30th
13 days of August, 2017.

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

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 22nd day of June, 2018.

18

19

20

21

22

23

24

25

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

COUNTY OF Aiken
 STATE VS.
Wayne Hankinson
 AKA:
 Race: Black Sex: M Age: 30
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2016GS0202363A/W#: 2016A0210200842Date of Offense: 5/28/2016S.C. Code §: 16-03-0910CDR Code #: 0095SENTENCE SHEET 0-30yrs.Sex Offender Registry discretionary☒ CONVICTED OF or ☐ PLEADS

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒
 In disposition of the said indictment comes now the Defendant who was
 TO: Kidnapping / Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sherry A. Hammack 80176 Defendant [Signature] 77834 Attorney for Defendant
 Hammack, Ashley Agnew SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 449 Days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

Random Drug/Alcohol testing ☐

§ 14-1-206 (Assessments 107.5 %)

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

§ 14-1-211(A)(1) (Conv. Surcharge)

\$ _____ paid to Public Defender Fund

§ 14-1-211(A)(2) (DUI Surcharge)

Other:

§ 56-5-2995 (DUI Assessment)

50R. Required

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

2139
August 31, 2017

COUNTY 208 Aiken
STATE VS.
Wayne Hankinson
AKA:
Race: Black Sex: M Age: 30
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:
*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒
In disposition of the said indictment comes now the Defendant who was
TO: Sex / Assault with intent to commit criminal sexual conduct - First degree

INDICTMENT/CASE#: 2016GS0202362
A/W#: 2016A0210200841
Date of Offense: 5/28/2016
S.C. Code § : 16-03-0656
CDR Code #: 0253

SENTENCE SHEET 0-30y vs.
Sex Offender Registry mandatory
☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0656 of the S.C. Code of Laws, bearing CDR Code # 0253
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Hammack, Ashley Agnew SC Bar# Defendant
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 449 Days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk
Court Reporter: Brenda Sigwald
SCCA/217 (07/2016)

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: Sex Offender Registry Required

☐ Appointed PD or appointed other counsel.
Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge 2/39
Judge Code:
Sentence Date: August 31, 2017

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Wayne Hankinson (#373802))

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2021CPO201270
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Evans Corr. Inst.
2. Name and location of Court which imposed sentence Aiken County General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016GS0202362 Assault w/ Intent to Commit CSC 1st Deg. 2016A0210200841
 - (b) 2016GS0202363 Kidnapping 2016A0210200842
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 21, 2017, 12 years
 - (b) August 21, 2017, 12 years

FILED June 17 2021 Revised 3/2003
Robert J. White CJP
 C.C.P. & G.S.
Charlea Griffen Plouffe
 Deputy Clerk

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty x
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Nov. 25, 2020
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2020-UP-317
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Trial counsel was constitutionally ineffective when he failed to object, or move to

excuse for cause, or move to strike a juror who was a personal friend of the State's investigator, and this juror was seated on the jury at trial.

(b) Trial counsel was constitutionally ineffective when he failed to call a critical defense witness at trial, and present critical evidence of post-incident contact between the Applicant and the alleged victim.

(c) Trial counsel was constitutionally ineffective when he failed to object to the alleged victim's written statement being admitted as evidence in Applicant's trial.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) A juror who was seated in this case was a personal friend of an Investigator Norwood Bodie of the 2nd Circuit Solicitor's Office. Trial counsel failed to object to this juror being seated, and failed to adequately preserve Applicant's right to challenge this issue on appeal.

(b) After the date of the alleged incident in this case, Applicant spent several days with his girlfriend. She was available to testify that the alleged victim repeatedly attempted to contact Applicant during this time period. Furthermore, Applicant provided his attorney with phone records documenting these contacts. Trial counsel failed to call the witness or present this evidence at trial.

(c) The alleged victim gave a written statement to police who investigated this incident. The written statement was tendered as an exhibit in this trial, without an objection from defense counsel.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) IAC claims are reserved for collateral review
 - (b) IAC claims are reserved for collateral review
 - (c) IAC claims are reserved for collateral review
- 17. Were you represented by an attorney at any time during the course of:
 - (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
- 18. If you answered "yes" to one or more parts of (17), list:
 - (a) the name and address of each attorney who represented you:
 - i. C. David Hayes, Barry L. Thompson, William T. McKellar, Public Defender
 - ii. Robert Dudek, SC Commission on Indigent Defense, Appellate Division
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial & Sentencing
 - ii. Direct appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction and sentence, order a new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

)

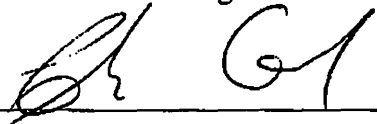
VERIFICATION

)

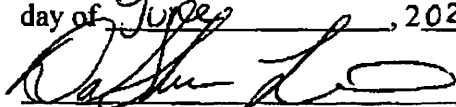
County of Aiken

)

I, Christopher Geel o/b/o Wayne Hankinson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 3rd
day of July, 2021.

 (L.S.)
Notary Public

My Commission Expires: Dec. 3. 2030

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Christopher Geel, o/b/o Wayne Hankinson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
3rd day of June, 2021.



Notary Public

My Commission Expires: Dec. 3, 2030

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
Wayne Hankinson, SCDC #373802,	)	Case No.: 2021-CP-02-01270
Applicant,	)	
	)	
v.	)	RETURN TO THE
State of South Carolina,	)	APPLICATION FOR POST-
	)	CONVICTION RELIEF
Respondent.	)	(Counsel Retained)

Respondent the State of South Carolina, making its amended return to the application for post-conviction relief filed by attorney Christopher R. Geel on behalf of Applicant Wayne Hankinson on June 17, 2021, would respectfully show this Court:

FILED

9-20 2021 4:18 SP

I. PROCEDURAL HISTORY

Applicant is presently confined within the South Carolina Department of Corrections.

During its November 2016 term, the Aiken County Grand Jury indicted Applicant for assault with intent to commit criminal sexual conduct in the first-degree (2016-GS-02-2362), kidnapping (2016-GS-02-2363), and possession of a weapon during the commission of a violent crime (2016-GS-02-2364) stemming from Applicant's assault and attempted rape of a woman he had recently met. He was represented by Assistant Public Defenders C. David Hayes and Barry L. Thompson, II, of the Aiken County Public Defender's Office. The case was prosecuted by Assistant Solicitor's Ashely A. Hammack and Samuel B. Grimes of the Second Circuit Solicitor's Office.

On August 29, 2017, Applicant proceeded to a jury trial before the Honorable Brooks P. Goldsmith, circuit court judge. During the trial, the jury heard testimony from the victim, Applicant, and several other witnesses who encountered the two following the attack at Applicant's home. Following the trial, the jury convicted Applicant as indicted of assault with intent to commit criminal sexual conduct in the first-degree and kidnapping, but acquitted him of

possession of a weapon during the commission of a violent crime. Judge Goldsmith sentenced Applicant to twelve years of imprisonment for each offense, with the sentences to be served concurrently.

Applicant, through trial counsel, filed a motion for a new trial on September 8, 2017. By order filed December 15, 2017, Judge Goldsmith denied the motion for a new trial.

Applicant filed a timely notice of appeal and was represented on appeal by Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who raised the following issues on appeal:

1. Whether the court erred by ruling appellant was not entitled to an instruction on self-defense where appellant testified the complainant attacked him with a knife before what appeared to be a consensual sexual encounter, appellant was defending himself against that armed attack by the complainant and not seeking to sexually assault her, since appellant's testimony was evidence he was acting in self-defense, and not trying to sexually assault or illegally confine the complainant against her will when she attacked him with a knife?
2. Whether the court erred by ruling appellant was not entitled to ten peremptory challenges pursuant to S.C. Code § 14-7-1110, where the statute lists "criminal sexual conduct" as one of the crimes for which a defendant is entitled to ten peremptory challenges, and appellant was indicted for assault with intent to commit criminal sexual conduct which contains the same punishment as the principal and the statute did not break out "criminal sexual conduct" into "different degrees"?

Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Wayne Hankinson, Unpub. Op. No. 2020-UP-317 (Ct. App. filed November 25, 2020). The remittitur was issued on December 15, 2020.

II. SUMMARY OF FACTS GIVING RISE TO THE CONVICTIONS

The victim, a twenty-year-old student from Rockville, Maryland, lived in Augusta, Georgia. (T. 58, R. 28). She attended the summer tutoring program through First Presbyterian before continuing her education at Paine College in Augusta. (T. 58, R. 28). The victim met Applicant when he approached her outside the downtown Augusta library on May 17, 2016. (T.

59, R. 29). The victim and Applicant spoke for about five minutes and exchanged phone numbers while the victim waited for her ride. (T. 60, R. 30).

At trial, the defense introduced the text messages exchanged between the victim and Applicant from the night of the incident. The text messages showed, at 1:02 pm, Applicant asked victim what she was doing that evening. (Def. Ex. 3, R. 227). The victim responded that she and her friends were going to the movies and that she would be free after the movies. (Def. Ex. 3, R. 227). The victim went to the movies with friends later that afternoon. (T. 60, R. 30).

Later that evening, at 9:09 pm, the victim messaged Applicant and told him she was headed home from the movies. (Def. Ex. 3, R. 228). In response, Applicant indicated he was at the hospital and would call the victim when he left and asked if the victim was going to "let me come scoop u up." (Def. Ex. 3, R. 228). The victim informed Applicant she was going downtown with friends and they could meet up. (Def. Ex. 3, R. 228). At 11:40 pm, victim messaged Applicant and informed him they were no longer going downtown, and he could pick her up and she provided her address. (Def. Ex. 3, R. 228). Applicant subsequently picked up the victim.

After being picked up they drove for a while, but because the victim was not familiar with the area, she did not know where they were going. (T. 63, R. 33). Applicant told her they were going to his cousin's party but ended up at Applicant's home "somewhere in SC." (T. 62, R. 32; T. 63, R. 33; T. 64, R. 34). Before going to Applicant's home, they stopped at a gas station to get snacks and beers. (T. 64, R. 34). Applicant then drove to his house, located in Aiken, SC. (T. 64, R. 34).

Once inside the house, the victim and Applicant watched a movie. (T. 67, R. 37). The victim testified she did not know the title of the movie, but it was "about like a man who robs banks" (T. 68, R. 38). While watching the movie, the victim and Applicant smoked a joint

and drank a beer. (T. 69, R. 39). During the movie, Applicant showed her his dogs outside and, when walking back inside, Applicant attempted to wrap his arms around the victim to which she responded "[i]t's not - - it's not why I'm here." (T. 69, R. 39; T. 70, R. 40).

The victim and Applicant went back inside and continued to watch the movie; she sat on the couch, and Applicant sat on the other couch. (T. 70, R. 40). Applicant "came over and sat beside me and tried to like make more advances and I was just like, you know, not into that, not trying to do that. We're just here to hang out and just relax." (T. 71, R. 41). Victim further explained Applicant "started rubbing on my leg. [Applicant] came in, like trying to kiss my neck and was just coming over, like, yeah, leaning over." (T. 71, R. 41). After the victim told the Applicant "no," he went back to his original seat "on the other couch." (T. 71, R. 41).

Attempting to "de-escalate" her rejection of Applicant's advances, the victim talked to Applicant about his "daughters and stuff." (T. 71, R. 41). After about ten minutes of conversation, Applicant got up, told her he would be right back, and left the room. (T. 71, R. 41; T. 72, R. 42).

The victim explained, when Applicant "came back in the room, he had a gun with him, and he was pointing at me and he told me get up and to take my clothes off." (T. 72, R. 42). Victim described the gun: "It was small. It looked kind of old and rusted. And it was a gun -- the best way I can explain it, it's like a gun you see in cowboy movies, where like they pull the chamber out, they put the bullets in and then they snap it back and kind of like, like push it so it revolves a little bit." (T. 72, R. 42).

The victim was "in shock for a second, just trying to figure out, like, is this really happening, is this a joke." (T. 73, R. 43). Victim "started crying, started panting . . . trying to figure out some way to bribe [Applicant], so I was offering my phone . . . [T]he few dollars I had

in my purse . . . I took off my necklaces and stuff and [Applicant] still was just like take your clothes off, take your clothes off. And eventually I did take my shirt off.” (T. 73, R. 43).

After victim removed her shirt and necklace, Applicant continued to point the gun at her and block the exit as she pleaded with him: “I was asking [Applicant], like, you know, think about your daughters. What if somebody was trying to do this to your daughters? You know, he was screaming, like I don't care, I don't care. Like, take your clothes off.” (T. 76, R. 46). At this point, the victim reached for her phone to call 911 and Applicant “kind of launched at me and threw his arm around my neck and was like pulling me towards the bedroom.” (T. 77, R. 47).

As Applicant attempted to pull her into the back bedroom, she fought by grabbing onto things to keep him from pulling her into the bedroom. (T. 77, R. 47). The struggle between the victim and Applicant continued with Applicant's arm around the victim's neck into the first room of the house where they both fell into boxes. Applicant still had his arm wrapped around her neck, preventing her from breathing, after they fell into the boxes. (T. 78, R. 48; T. 79, R. 49). Victim testified she could not speak because Applicant's grip was so tight around her neck, but she was able to “tap” Applicant's arm to indicate she could not breathe, and he let her go. (T. 79, R. 49; T. 80, R. 50).

Upon being let go, the victim “lunged” for a knife on top of a speaker, and “swung around trying to defend myself.” (T. 80, R. 50). The victim described the knife as “black” with “three silver things on it” and that it was “rigid.” (T. 80, R. 50). The victim missed Applicant and fell back down. Applicant “grabbed the knife out of [her] hand” by the blade. (T. 80, R. 50). According to the victim, Applicant stated: “Damn, you cut me, like, look what you did. You cut me, like, I'm done, I'm done. You cut me. Just go grab your stuff and, like, I'll take you home.”

(T. 80, R. 50). The victim's hand was also injured by the knife during the altercation. (T. 81, R. 51).

The victim told Applicant "[h]e could go get [her] stuff, but [she] was not going back in there." (T. 81, R. 51). The Applicant went to collect victim's belongings, and victim ran out the front door in just her pants, shoes, and bra. (T. 81, R. 51; T. 82, R. 52). Upon reaching the "middle" of the street, the victim said she turned to look back, and Applicant was at the "front door" and then he "disappeared into the house and [she] ran down the street." (T. 82, R. 52). The victim was in an unfamiliar location attempting to seek help when she met David Blanken walking down the street. The victim was screaming "this guys trying to rape me, like help me. Like, do you have a phone? Call the cops. Like, I don't have my shirt on, like you help me, this guy's trying to like rape me." (T. 83, R. 53).

Blanken offered victim his shirt, and at this point, Applicant drove up in his truck. (T. 84, R. 54). Blanken testified Applicant pulled up in a "green Chevrolet truck," and "got out of the car threatening, threatening [victim], told [Blanken] to mind [his] own business." (T. 116, R. 86). The victim saw another group of people and ran to them; this group helped victim by giving her a shirt, bandaging her hand, and calling the police. (T. 85, R. 55). After she ran to the other group of people, Applicant pulled off. (T. 85, R. 55). The following day, the victim chose Applicant's photograph in a lineup. (T. 88, R. 58).

In contrast, Applicant described the evening in question differently to the jury. Applicant remembered meeting the victim "mostly because she looked good in the pants she had on." (T. 172, R. 137). Applicant admitted he exchanged phone numbers with the victim at the close of their conversation even though he was dating another woman who was in the hospital when he met victim. (T. 172, R. 137).

For the most part, Applicant's and victim's testimony match up until they were seated on the couch at his house. Applicant maintained he pulled the victim's leg over his and "started rubbing on her leg and I was kissing on her neck and she never said anything, she never told me to stop or anything like that." (T. 177, R. 142; T. 178, R. 143). Applicant further contends he "started rubbing on her breasts and I started sucking on her breasts and I told her to take her shirt off because her bra was over, like over her breasts and it was kind of hard for me to get to them, so I asked her to take her shirt off. She still had on her shirt, her jacket, and all her clothes that she came in." (T. 178, R. 143). Applicant testified the victim went to the restroom after removing her jewelry and shirt. (T. 179, R. 144).

Applicant explained he was seated on the couch "drinking my beer waiting on [the victim] to come back." (T. 180, R. 145). Applicant further testified that when the victim "came back, she sat down and I saw her, I put my beer over in the corner, like it is in the picture so I wouldn't knock it over." He then claimed: "And when I turned around, [the victim] turned around with the knife in my face like, around at the same time and she said you just -- you just want some pussy don't you." (T. 180, R. 145). The following colloquy on the victim's behavior and Applicant's state of mind took place:

Q. What was her demeanor like at that time?

A. She was like kind of smirking at me.

Q. What do you mean by smirking?

A. She had a [playful] look on her face.

Q. Okay. What was your demeanor like?

A. I really - - I just told - - I thought she was playing.

(T. 181, R. 146; T. 182, R. 147).

Applicant testified he pushed victim's hand out of his face once, and then he "reached for her again" and victim responded "[n]o, you just want some pussy." (T. 182, R. 147). Applicant the asserted he reached for the knife and the victim swiped and cut him on his finger. (T. 182, R. 147). He explained he "became angry." (T. 183, R. 148) After Applicant realized victim cut his finger, the following testimony occurred over direct examination:

A: After she did it, I grabbed her hand and I kind of twisted it and attempted -- I was going to take the knife out of her hand. But when I did, she like grimaced and she jumped up. When she jumped up, I got up --

Q: What was it like when you grabbed her arm? Were you playful?

A: Not at all, no, sir.

Q: What was it like?

A: Like I said I **was angry** and I was using force.

Q: What happened?

A: I kind of twisted her hand and she grimaced and jumped up and when she jumped up, I jumped up too and she told me to get the -- she said get the fuck off her. And she snatched her hand away. She tried to pull her arm away, but I still had her hand and when she snatched her hand, I saw the blood go from my hand over by the TV stand and --

(T. 183, R. 148; T. 184, R. 149).

Applicant maintained he told victim "to give me the knife because if she cut me one more time I was going to mess her up." (T. 185, R. 150). Then, Applicant testified he and the victim fell into the boxes as he tried to get the knife from her and it was at that point he "wrapped [his] arm around her neck and [he] told her to let the knife go. And she didn't let it go so [he] applied pressure. And when [he] applied pressure, she kind of choked a little bit and she released the knife." (T. 186, R. 151; T. 187, R. 152).

Upon victim releasing the knife, Applicant testified he told the victim to get her stuff and he would take her home; however, the victim refused to get her stuff, so Applicant went to gather her belongings. (T. 187, R. 152). Applicant testified he saw victim "walking, running out the door." (T. 187, R. 152). Applicant then testified he got into his truck and drove after the victim. When he reached the victim, with David Blanken, Applicant claimed "leaned over and [he] rolled the window down and [he] told [victim] to get in the truck and she told [him] she ain't going nowhere with [him], she want her stuff. [He] told her get in the truck [so he] can take [her] home, [he'll] give [her] the stuff." (T. 187, R. 152). Applicant remembered Blanken was with the victim when he pulled up in his truck. Applicant maintained that he "pulled up right beside [Blanken]. [Blanken] was walking towards [victim] though" and he could not distinguish what they were discussing because of his "loud truck." (T. 188, R. 153). Applicant claimed he was "getting out of the truck. [He] was going to tell [Blanken] what was going on. [Blanken] acted like [Blanken] wanted to fight. [Blanken] was doing -- just like [Blanken] wanted to fight. [He] couldn't hear what [Blanken] was saying, but [he] could tell what was going on. [He] got back in [his] truck and [he] left." (T. 188, R. 153).

Afterward, Applicant "freaked out" and was "bleeding like crazy" and went to a friend's house in Augusta. (T. 188, R. 153). After a call from Applicant's father informing him that the police were looking for him and saying that he "tried to rape someone," Applicant testified he tried to find an attorney and "eventually turned himself in." (T. 189, R. 154).

III. ALLEGATIONS RAISED IN THE APPLICATION FOR POST-CONVICTION RELIEF

In his application for post-conviction relief, Applicant asserts he is entitled to relief on the following grounds of ineffective assistance of trial counsel:

(a) "Trial counsel was constitutionally ineffective when he failed to object, or move to excuse for cause, or move to strike a juror who was a personal friend of the State's investigator, and this jury was seated on the jury at trial.

(i) "A juror who was seated in this case was a personal friend of an Investigator Norwood Bodie of the 2nd Circuit Solicitor's Office. Trial counsel failed to object to this juror being seated, and failed to adequately preserve Applicant's right to challenge this issue on appeal."

(b) "Trial counsel was constitutionally ineffective when he failed to call a critical defense witness at trial, and present critical evidence of post-incident contact between the Applicant and the alleged victim."

(i) After the date of the alleged incident in this case. Applicant spent several days with his girlfriend. She was available to testify that the alleged victim repeatedly attempted to contact Applicant during this time period. Furthermore. Applicant provided his attorney with phone records documenting these contacts. Trial counsel failed to call the witness or present this evidence at trial.

(c) "Trial counsel was constitutionally ineffective when he failed to object to the alleged victim's written statement being admitted as evidence in Applicant's trial."

(i) "The alleged victim gave a written statement to police who investigated this incident. The written statement was tendered as an exhibit in this trial, without an objection from defense counsel."

As requested relief, Applicant states he is seeking to "vacate conviction and sentence, order a new trial."

Attached to this return and incorporated into this response to the application are: the Aiken County Clerk of Court records regarding the general sessions matter, the transcript from Applicant's trial, Applicant's records from the South Carolina Department of Corrections, the entire direct appeal record (including the record on appeal, the final brief of appellant and the final brief of respondent the opinion, and the remittitur), and the current application for relief. Respondent reserves the right to amend this return based upon receipt of additional relevant information.

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Applicant asserts trial counsel was ineffective in his representation of Applicant for failing to object or otherwise strike a juror based on a purported relationship with an investigator, failing to present his girlfriend as a witness to testify about purported communications between Applicant

and the victim after the assault, and failing to object to the admission of a statement by the victim, who testified at trial. Respondent submits the record establishes Applicant will not be able to prove any ineffectiveness of counsel as to these claims.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal

assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of

hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not*

whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial*.” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both

components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

First, Applicant asserts trial counsel failed to move to strike a juror who was a “personal friend” of Investigator Norwood Bodie. The record reflects that trial counsel made a post-trial motion on this very issue based on information from the jury foreperson that he knew Investigator Bodie from Boy Scouts and had socialized with him previously. (Trial Tr. 275- 80). Moreover, the record reflects trial counsel did not know this information until after trial when he spoke to the jury, and, accordingly, it would not have been possible for counsel to have moved to strike or otherwise disqualify this juror during jury qualification and striking, as he could not have ascertained this information at this time when the juror did not disclose this relationship at that time. As soon as this information was revealed, trial counsel timely made a post-trial motion and sought and obtained the trial court’s permission to file a brief on this issue. Accordingly, trial counsel acted in accordance with professional standards in regards to this issue, as he promptly brought it to the court’s attention at the first available opportunity, thereby preserving the issue of appellate review. Counsel was not ineffective as to this issue.

Second, Applicant purports trial counsel was ineffective for failing to present his girlfriend to testify as to Applicant’s interactions with the victim in the days after the attack, or, in the alternative, failing to present these phone records. Respondent notes that Applicant must produce any witness or evidence at an evidentiary hearing in accordance with the Rule of Evidence, SCRE, to meet his burden of proof as to this claim. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807,

809 (1998) ("This Court has repeatedly held a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original); *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); *see also Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records).

Third, Applicant asserts trial counsel was ineffective for failing to object to the introduction of a statement the witness made to law enforcement following the attack. The record shows that trial counsel used the statement for impeachment purposes while the victim testified at trial, which is a proper use of a statement. Trial counsel was not ineffective in how he utilized the victim's statement at trial.

In conclusion, Respondent submits Applicant cannot satisfy either requirement of the *Strickland* test for any of this various claims of ineffective assistance of counsel. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does

not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; *see also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and

oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VI. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. CONCLUSION

WHEREFORE, Respondent respectfully requests this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: s/Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

September 15, 2021

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2021-CP-02-01270

WAYNE HANKINSON, #373802,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

FILED 9-20 2021 4:18 PM
Robert J. Korte
 C.C.P. & G.S.
Shadell Parks
 Deputy Clerk

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher R. Geel, Esquire
 Geel Law Firm, LLC.
 Post Office Box 21771
 Charleston, South Carolina 29413

DATED this the 15th day of September, 2021.

Kaitlyn S. Slice
 Kaitlyn S. Slice, Legal Assistant
 For Respondent

State of South Carolina Aiken County Wayne Hankinson (#373802) v. State of South Carolina	In the Court of Common Pleas For the Second Judicial Circuit Case No(s): 2021-CP-02-01270 FILED <u>11-28-22</u> <u>Robert J. White</u> C.C.P. & G.S. <u>Shadell Parks</u> Deputy Clerk AMENDED PCR APPLICATION

COMES NOW the Applicant, by and through undersigned Counsel, and hereby amends his pending PCR application to include the following grounds for relief. Trial counsel was constitutionally ineffective pursuant to *Strickland v. Washington* as follows:

1. Failure to properly raise and argue Applicant's Motion for New Trial (based on a juror being a personal friend of the State's investigator who sat at counsel's table). Trial counsel moved for a new trial after learning this information, but failed to request a hearing, failed to argue that Applicant was prejudiced by this juror's relationship with the State's investigator, failed to argue that the juror should have been disqualified, and failed to specify whether the State previously disclosed the name of the investigator.
2. Failure to impeach the alleged victim with inconsistencies in her in-court testimony, as well as inconsistencies with prior statements given to law enforcement. Instead, trial counsel improperly introduced a copy of the victim's prior statement as an exhibit.
3. Failure to adequately investigate the case and prepare for trial, to the extent that trial counsel—
 - a. Failed to obtain and present evidence/photographs of the knife found in Applicant's truck;
 - b. Failed to interview potential witness Mykayla Prunell, who was with Applicant in the days that followed the alleged incident.
 - c. Failed to call witness Mykayla Prunell to testify at trial as a defense witness.

- d. Failed to introduce call logs that proved that the alleged victim continued to have contact with Applicant after the alleged incident.
- e. Failed to argue that the wound on Applicant's hand contradicted the alleged victim's version of events.
- f. Failed to argue that the photographs of the alleged crime scene contradicted the alleged victim's version of events.

On this day, November 22, 2022 it is
RESPECTFULLY SUBMITTED,



Christopher R. Geel
Geel Law Firm, LLC
P.O. Box 21771
Charleston, SC 29413
843-277-5080

CERTIFICATE OF SERVICE: I hereby
certify that I have served a copy of this
document upon the Attorney General's Office
via U.S. Mail, on this day, November 22, 2022.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2021-CP-02-01270
	)	
	)	
	)	
	)	
WAYNE HANKINSON,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE,	)	
RESPONDENT.	)	
_____	)	

September 5, 2023
Aiken, South Carolina

B E F O R E:

THE HONORABLE HEATH P. TAYLOR, JUDGE.

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

CHRISTOPHER GEEL, ESQ.
Attorney for the Applicant

CRUISE MITCHELL, ESQ.
Attorney for the Respondent

PENNY M. JOHNSON
Court Reporter III

I N D E X

(AW) - Denotes Plaintiff's Witness

(RW) - Denotes Defense Witness

Page No.(AW) WAYNE HANKINSON:

Direct Examination by Mr. Geel..... 8

(RW) CHARLES DAVID HAYES:

Direct Examination by Mr. Mitchell..... 35

Cross-Examination by Mr. Geel..... 47

Redirect Examination by Mr. Mitchell..... 75

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Applicant's Exhibits)			
1	Voluntary Statement	56	
2	Photographs	18	19
3	Calls Logs	22	25
4	Photographs	30	31

All Exhibits were retained by the Clerk of Court for Aiken County.

P R O C E E D I N G S

THE COURT: Are you ready, counsel?

MR. MITCHELL: Yes, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. MITCHELL: This is the Post-Conviction Relief matter of Wayne Hankinson V. State, case number 2021-CP-02-01270 at Aiken County.

I'm Cruise Mitchell on behalf of the State of South Carolina. The Applicant is present and represented by counsel, Christopher Geel.

Applicant was indicted at the November 2016 term of the Aiken County Grand Jury for assault with intent to commit criminal sexual conduct in the first degree, kidnapping and possession of a weapon during the commission of a violent crime. Applicant was represented by C. David Hayes and Barry L. Thompson. Assistant Solicitor Ashley Hammack and Samuel B. Grimes prosecuted the case.

On August 29th, 2017, Applicant had a jury trial before the Honorable Brooks P. Goldsmith. The jury convicted Applicant of assault and battery with attempt to commit criminal sexual conduct in the first degree and kidnapping, but acquitted him of the weapons charge. Judge Goldsmith sentenced Applicant to 12 years imprisonment for the A&B with intent to commit criminal sexual conduct and the

1 kidnapping with those sentences to be served concurrently.

2 Applicant filed a timely notice of appeal. The appeal
3 was perfected by Chief Appellate Defender Robert M. Dudek.
4 On November 25th, 2020, the South Carolina Court of Appeals
5 confirmed Applicant's convictions and sentences in an
6 unpublished opinion. The remittitur was issued on December
7 15th of 2020. Applicant filed this timely PCR
8 application.

9 THE COURT: Mr. Geel, are we moving forward?

10 MR. GEEL: Yes, Your Honor.

11 THE COURT: With the PCR?

12 MR. GEEL: Yes, Your Honor. If I could prior, I don't
13 know if you want to do any colloquy with my client?

14 THE COURT: Yeah, just briefly.

15 Mr. Hankinson, when you ask for Post-Conviction Relief,
16 there are a few things that can happen. First, if I find
17 you're not entitled to the Post-Conviction Relief, you'll
18 serve the remainder of your sentence. In the event I find
19 you are entitled to Post-Conviction Relief, then you would
20 start over from day one.

21 Now, obviously, you've been acquitted on one of these
22 charges, so you wouldn't go back to trial on that, but as
23 far as the assault and battery with the intent to commit
24 criminal sexual conduct and the kidnapping, you would start
25 from day one and could receive a higher sentence.

1 Do you understand that?

2 THE APPLICANT: I understand, Your Honor.

3 THE COURT: Very good.

4 Do you have anything else you want to add?

5 MR. MITCHELL: No, Your Honor.

6 THE COURT: Ready?

7 MR. GEEL: Yes, Your Honor. Just very briefly, I think
8 it would benefit the Court to give a very brief synopsis.

9 THE COURT: Sure.

10 MR. GEEL: This incident does involve a May 28th, 2016
11 incident. Your Honor, the allegation at trial was that Mr.
12 Hankinson met the alleged victim at a library in Augusta and
13 they exchanged phone numbers. They did not know each other
14 prior to the incident date. They exchanged phone numbers
15 and agreed to get together at some point. Then later on
16 that evening, they agreed to meet up.

17 Mr. Hankinson drove in his car and picked her up and
18 then drove her to his residence. They got to that location.
19 They drank a little bit of beer, smoked some marijuana. And
20 then the accounts, essentially, diverge as to what happened.

21 The alleged victim claimed that Mr. Hankinson made some
22 sexual advances towards her, that she rebuffed and then Mr.
23 Hankinson left the room and returned with a gun and at
24 gunpoint ordered her to remove her clothing. Then there was
25 a physical struggle and she reached for a knife, grabbed the

1 knife and ended up -- Mr. Hankinson grabbed the knife and
2 ended up cutting his own hand. He, essentially, said okay,
3 this is enough, I'll take you home and then she fled the
4 residence.

5 Mr. Hankinson, essentially, told a very different story
6 during his testimony. What he described was, essentially,
7 kind of a consensual encounter whereby the alleged victim,
8 essentially, became, I guess you would say, sort of playful
9 with the knife, kind of teasing him a little bit with the
10 knife. It seemed like or the implication was the cutting of
11 Mr. Hankinson's hand was accidental. Then he became
12 frustrated with her, angry with her and a scuffle ensued
13 over the knife at that point and his hand was cut only at
14 that point. Then she fled the residence.

15 Our PCR application deals with -- by the way, does Your
16 Honor have a copy of the amended application?

17 THE COURT: I do not have the amended one.

18 MR. GEEL: I have one if you'd like me to pass it up.

19 THE COURT: Sure.

20 MR. GEEL: So, Your Honor, our amended contains three
21 broad grounds. The first one just deals with a -- there was
22 a motion for a new trial that was made at the conclusion of
23 the case. That motion was ruled on without a hearing. Our
24 ground deals with counsel's failure to adequately articulate
25 that motion and request a hearing in related matters. So

1 the first issue deals exclusively just with that motion for
2 a new trial, which, again, was after the verdict, obviously.

3 The second ground deals with the failure to properly
4 impeach the victim. One point of clarification, Your Honor,
5 I just want to clarify for the record, in ground two, the
6 final sentence of our allegation says, instead, trial
7 counsel improperly introduced a copy of the victim's prior
8 statement as an exhibit. That is not accurate. That
9 statement was, actually, introduced by the State. So it was
10 not counsel that put it into evidence, it was the State.
11 But, nevertheless, the substance of the issue remains the
12 same.

13 Then, Your Honor, as to ground three, which we will,
14 obviously, dive into in more detail, it just deals with
15 preparation and failure to properly investigate the case and
16 present evidence at trial.

17 So, essentially, that's the 30,000 foot view of the
18 trial itself and our issues. We're ready to proceed with
19 our evidence.

20 THE COURT: Happy to hear from you.

21 MR. GEEL: We would first call the Applicant, Mr. Wayne
22 Hankinson.

23 THE CLERK: Raise your right hand, please.

24 WAYNE HANKINSON,

25 after being duly sworn, testified as follows:

1 THE CLERK: State your full name for the Court.

2 THE APPLICANT: Wayne Hankinson, W-A-Y-N-E,
3 H-A-N-K-I-N-S-O-N.

4 DIRECT EXAMINATION

5 BY MR. GEEL:

6 Q Mr. Hankinson, can you hear me okay from there?

7 A Yes, sir.

8 Q Just make sure to speak loudly and slowly as you can
9 into the microphone so everyone can hear you. If you have
10 any difficulty hearing my questions, just make sure to me
11 know, okay?

12 A Yes, sir.

13 Q Tell the Court, if you could, a little bit of the
14 background as far as your arrest in this case. You were
15 arrested shortly after the incident took place?

16 A Yes, sir, I turned myself in a week later.

17 Q Between the time you were arrested until your trial
18 took place, were you released at any point from the county
19 detention center?

20 A No.

21 Q So you remained in custody the entire time?

22 A Yes.

23 Q How did you come to have your lawyer represent you in
24 this matter?

25 A He took over for someone else. I had another public

1 defender at first and I don't know what happened to him.
2 Something happened, he moved to another city or something
3 and he took over.

4 Q Okay. And understanding that it's been a long time
5 since these events took place, can you ballpark how long
6 your trial attorney represented you prior to trial?

7 A I don't remember.

8 Q Was it more than six months?

9 A Maybe less.

10 Q Was it approximately six months?

11 A Yeah.

12 Q Tell the Court a little bit about the meetings that you
13 had with your attorney. You were in custody, so the
14 meetings, presumably, would have taken place at the
15 detention center?

16 A At the jail, yes, sir.

17 Q And, again, can you estimate, roughly, how many times
18 you met with your lawyer prior to trial?

19 A Three or four.

20 Q And, again, just your best estimate as to how long
21 those meetings were on each occasion?

22 A They were different times. They got longer as we got
23 closer to trial.

24 Q Okay. And tell the Court a little bit about the
25 preparation for trial that took place. I mean, what kind of

1 discussions did you have with your lawyer about trial?

2 A I was making sure that I gathered him as much evidence
3 as I could, phone records and pictures, and making sure that
4 he had everything that the other lawyer had before he went
5 to a different city.

6 Q Was this a case that you wanted to go to trial on from
7 the beginning?

8 A Yes.

9 Q And you conveyed that desire to your attorney and told
10 him about that?

11 A Yes.

12 Q And the discovery materials that you received in your
13 case, the Rule 5 -- do you know what I mean when I say Rule
14 5?

15 A Yes.

16 Q Did you receive your Rule 5 materials?

17 A Yes, sir.

18 Q And did you have the opportunity to review those on
19 your own?

20 A Yes, sir.

21 Q And did you have the opportunity to review those with
22 your trial lawyer?

23 A Yes, sir.

24 Q And without getting into the specifics, are there some
25 items in your discovery materials that you brought to your

1 lawyer's attention?

2 A Yes.

3 Q And were those materials that you wanted him to look
4 into and present at trial?

5 A Yes, sir.

6 Q Were there materials that were not in your discovery,
7 outside matters that you brought to your lawyer's attention
8 that you wanted raised at trial, any witnesses or anything
9 like that?

10 A Yes.

11 Q And, again, we'll get into the specifics of that, but
12 you told your lawyer about investigative matters that you
13 wanted him to look into?

14 A Yes, sir.

15 Q Did you feel like you had enough time to prepare with
16 your lawyer before trial?

17 A Yes.

18 Q Let's jump into these issues. We'll kind of do things
19 a little bit backwards here. At the end of your trial, your
20 lawyer made a motion for a new trial. Do you recall that
21 specifically?

22 A Yes.

23 Q And, again, I know it's been a while, but you've, also,
24 had an opportunity to read your trial transcript, correct?

25 A Yes, sir.

1 Q So your lawyer did make a motion for a new trial after
2 your trial verdict came in, correct?

3 A Yes, sir.

4 Q What, if any, conversations did you have with your
5 lawyer about that motion?

6 A He just told me what he witnessed and what he was about
7 to do.

8 Q Tell the Court a little bit --

9 A It was after the trial. I had been sentenced already.
10 He witnessed what went down between two other people, one
11 was the foreperson of the jury and an investigator, I guess.

12 Q He filed a written motion with the Court as well,
13 correct?

14 A Yes, sir.

15 Q When did -- if you recall, when did you first see this
16 written motion?

17 A I didn't get it until I got my transcripts.

18 Q So during your appeal process; is that fair to say?

19 A Yes.

20 Q So your lawyer didn't give you a copy of it at the time
21 when it was filed --

22 A No, sir.

23 Q -- is that fair to say?

24 A Yeah.

25 Q In the motion, your lawyer said that the jury in this

1 matter was unlikely to be impartial because the jury
2 foreman's relationship with the State's investigator in this
3 matter. Is that consistent with what your lawyer told you
4 at the time?

5 A Yes.

6 Q Okay. Was this the first you had heard about the
7 situation with the jury foreperson?

8 A When he told me that, yeah.

9 Q So during the trial, you did not know that piece of
10 information?

11 A No, no one knew.

12 Q Did your lawyer tell you whether or not he was aware of
13 this information during the trial?

14 A No, no one knew.

15 Q So your lawyer told you he did not know this during the
16 trial?

17 A Not until after.

18 Q If he told you, what did he say about how he learned of
19 this information?

20 A He told me he witnessed them talking and he was about
21 to file a motion. He told me to hold on. I was in the
22 holding cell about to go back to the county jail when he
23 told me about it.

24 Q So he overheard the individuals speaking with one
25 another?

1 A Yes, sir.

2 Q Now, that motion for a new trial was denied, correct?

3 A Yes.

4 Q And the Court entered a written order denying that?

5 A Yes.

6 Q Again, what was the occasion when you, actually, saw
7 that order denying the motion for a new trial?

8 A When I was going through the appeal process.

9 Q Okay. So it was much later; is that fair to say?

10 A Yes.

11 Q So you never, actually, learned what the outcome of
12 that motion for a new trial was until you, actually, got the
13 written order?

14 A Yes.

15 Q And did you say it was years later?

16 A Yes.

17 Q Okay. So did you have communications with your lawyer
18 between the time when your trial ended and --

19 A He was no longer my attorney.

20 Q Okay. Just one last question on that. When you were
21 talking with your lawyer about filing this motion, was it
22 simply just him telling you that it was something he decided
23 to file? Was that the nature of the conversation?

24 A Yes, he said he had overheard a conversation and he was
25 going to file a motion to get a new trial.

1 Q And he wasn't seeking any input from you on anything?
2 He didn't want you to testify to anything?

3 A No.

4 Q And, again, so you only found out about it years later,
5 correct?

6 A Yes.

7 Q Let's jump forward into the -- or backwards, as it
8 were, into the substance of the actual trial. One of the
9 things we got into during our discussion was that your
10 lawyer had failed to adequately challenge the alleged
11 victim's version of events. Is that true?

12 A Yes.

13 Q And, again, I'll kind of get into the details of this
14 with your lawyer, but can you give the Court an idea of what
15 you mean by that allegation?

16 A The victim wrote an original statement that was
17 different from the testimony she gave on the stand. He
18 produced the statement and read it to her. She agreed to
19 it. And as far as the impeachment process, it ended there.
20 He didn't question her on did you say this, did you say
21 that. He didn't do anything like that.

22 Q So the questions that your lawyer asked of the victim
23 to try to bring out inconsistencies in her statement, you
24 didn't feel that they were adequate?

25 A They were inadequate. It was contradictory.

1 Q Was this a subject you and your lawyer had discussed
2 prior to trial?

3 A Yes.

4 Q And what did you tell your lawyer about that, if you
5 recall?

6 A What did I tell him about it?

7 Q Yes.

8 A I told him that she was lying. There was, also, a
9 third statement. There was three statements, the statement
10 she gave to the police officer, the handwritten statement
11 and her testimony. All three of those were different.

12 Q And you had the opportunity to review all those
13 statements in your discovery materials?

14 A Yes.

15 Q And you had discussions with your lawyer about
16 impeaching her and attacking her credibility on the basis --

17 A Yes.

18 Q -- of those inconsistencies?

19 A Yes.

20 Q So during trial when this questioning took place, did
21 you have conversations with your lawyer either during or
22 after that line of questioning about those inconsistencies?

23 A No, sir.

24 Q So after he completed his cross -- he, being your
25 lawyer, completed his cross-examination of the alleged

1 victim, you didn't say anything to him about that
2 cross-examination?

3 A No.

4 Q What was your reaction when you saw the
5 cross-examination itself?

6 A After she admitted to making a different statement, I
7 thought that she would be impeached. I didn't know, like,
8 what part of the trial that would happen, but I just didn't
9 say anything. I just thought he knew what he was doing,
10 that he was going to handle it.

11 Q So were you surprised then?

12 A I was definitely surprised.

13 Q And I know it's been a long time since the trial, but
14 did you expect that those inconsistencies would, perhaps, be
15 brought out at a different time?

16 A Yes, because she perjured herself on the stand.

17 Q Okay. Let's talk a little bit about the actual -- some
18 of the other evidence that came out. One of the things that
19 came out of your trial was there was a knife that was found
20 in your vehicle. Do you recall that evidence and testimony?

21 A Yes, sir.

22 Q Do you recall discussing that piece of evidence with
23 your lawyer prior to trial?

24 A Yes.

25 Q And what did you tell your lawyer about that?

1 A I told him he needed to get a photo of it, make sure he
2 had a photo. I was asking him to give me a photo of it, I
3 wanted one as well. And before trial, he said we wouldn't
4 need it.

5 Q Why did you think that was important?

6 A I have no idea -- why did I think that was important?

7 Q Yes, sir.

8 A Because that's the knife that was used to cut me.

9 Q I'm sorry?

10 A That was the knife that was used to cut me.

11 Q So why did you think that was important to get a
12 picture of it?

13 A Because I wanted to make sure we had it.

14 Q Did you want to present it at trial --

15 A Of course.

16 Q -- or did you just want to see it?

17 A Yes.

18 MR. GEEL: Your Honor, may I approach briefly?

19 THE COURT: Sure.

20 (WHEREUPON, Applicant's Exhibit No. 2 was marked for
21 identification.)

22 MR. GEEL: Your Honor, I'm showing Mr. Hankinson what's
23 marked as Plaintiff's Exhibit 2 for identification.

24 BY MR. GEEL:

25 Q Could you look through those three pages, three

1 photographs?

2 A It's my truck. That's the knife.

3 Q You just mentioned you wanted to get some photographs
4 of the truck and the knife?

5 A Yes, sir.

6 Q Did you end up getting those photographs in discovery?

7 A Yes, I got one picture of the knife.

8 Q So you didn't get all those photographs in your
9 discovery materials?

10 A No, sir.

11 Q The photographs among those that were not in your
12 discovery materials, are those true and accurate
13 representations of the truck and the knife --

14 A Yes, sir.

15 Q -- as you recall it?

16 A Yes, sir.

17 MR. GEEL: Your Honor, we would tender this as
18 Plaintiff's 2.

19 THE COURT: Any objection?

20 MR. MITCHELL: No objection, Your Honor.

21 THE COURT: All right. Admitted as Plaintiff's 2 or
22 Applicant's 2.

23 (WHEREUPON, Applicant's Exhibit No. 2 was admitted into
24 evidence.)

25 BY MR. GEEL:

1 Q And just to be clear, so you -- let's make sure we're
2 clear for the record. You say that you've seen one of these
3 photographs before. Could you identify which one you've
4 seen before?

5 A Just this one, the last one.

6 MR. GEEL: And, Your Honor, that's the third page of
7 this three-page packet for the record.

8 BY MR. GEEL:

9 Q So pages one and two, this photograph which depicts a
10 green truck?

11 A Yes.

12 Q And the second, which is a different photograph. It
13 appears to be the knife, but at a different angle?

14 A Yes, sir.

15 Q You've never seen those photographs before today?

16 A No, sir.

17 Q Now, as far as the knife itself, assuming that these
18 photographs had been presented to you during your testimony
19 at trial, what is it that you would have wanted to tell the
20 jury about that knife in particular?

21 A Well, she lied about the knife. She said the knife
22 was, actually, a butter knife. She tried to downplay the
23 whole situation. And as you see, it's a big hunting knife.

24 Q So visually, this does not appear to be the same as
25 what she was describing?

1 A Yes.

2 Q And you wanted the jury to see the actual knife that
3 she had cut you with?

4 A Yes.

5 Q And, again, did you discuss this with your lawyer
6 before trial?

7 A Yes.

8 Q What about during trial, did you have any discussions
9 with your lawyer about getting that piece of evidence in
10 during trial?

11 A He said he couldn't add it because he had already added
12 evidence or something like that. I don't know how that
13 works, but he had already added evidence. I don't think he
14 could add it at that point in time.

15 Q But you told your lawyer you wanted it put in or, at
16 least, asked why he wasn't putting it in?

17 A Yes.

18 Q Now, there were, also, some phone communications that
19 came in during your trial?

20 A Yes. I gave him text messages of when she was calling
21 me after the incident and he didn't provide that.

22 Q Now, there were some text messages between you and the
23 alleged victim that were admitted at trial, correct?

24 A Yes.

25 Q Just to be clear for the Judge here, you gave your

1 lawyer some additional call records beyond those text
2 messages?

3 A Yes.

4 Q Describe as specifically as you can what those call
5 logs showed.

6 A Her calling me and me ignoring her calls. She said on
7 the stand that she never tried to reach out or never tried
8 to contact me after the incident.

9 MR. GEEL: Court's indulgence for a moment, Your Honor.
10 (Pause.)

11 MR. MITCHELL: Your Honor, I'm going to object to
12 Plaintiff's Exhibit 3 based on lack of authentication.

13 THE COURT: All right.

14 MR. GEEL: Your Honor, bearing in mind the State's
15 objection, if I could finish authenticating it before the
16 Court rules.

17 THE COURT: All right.

18 MR. GEEL: Would that be all right?

19 THE COURT: Sure.

20 MR. GEEL: May I approach?

21 THE COURT: Yes.

22 (WHEREUPON, Applicant's Exhibit No. 3 was marked for
23 identification.)

24 MR. GEEL: Your Honor, I'm showing the witness what's
25 been marked as Plaintiff's Exhibit 3.

1 BY MR. GEEL:

2 Q Mr. Hankinson, can you describe what that document is?

3 A Yes, this is a call that I ignored from the victim at
4 that time.

5 Q Be a little more specific if you would. That is a
6 screen capture of a phone?

7 A Yeah.

8 Q Whose phone?

9 A It's a screen shot of her -- the missed call.

10 Q When have you seen this document before?

11 A I got it sent -- my mom sent it to me. My mom came and
12 got my phone from the county jail and sent the picture to me
13 and I gave it to Mike Routzong when he was my attorney.

14 Q Now, I'm showing you what's been marked as Defendant's
15 Exhibit 3 from your trial. Do you recognize this exhibit
16 from your trial?

17 A Yes, sir.

18 Q Okay. Does this appear to be substantially similar to
19 that in terms of what's shown on the screen?

20 A Yes.

21 Q And what number does that missed call purport to be
22 from? What's the number at the top?

23 A [REDACTED]-2226.

24 Q And the number on the exhibit from trial?

25 A It's the same number.

1 Q Same font?

2 A Yes.

3 Q And is it the same name at the top?

4 A Yes.

5 Q So, again, your testimony this is a call log between
6 you and the alleged victim?

7 A Yes.

8 Q And this was obtained by you how, how did you get this?

9 A My mom came and got my phone from the county jail and
10 sent -- I told her to send me screen shots.

11 Q And is this printout here a true and accurate copy of
12 that document?

13 A Yes, sir, it is.

14 MR. GEEL: Your Honor, we would tender Plaintiff's
15 Exhibit 3. We believe he has sufficiently authenticated it.
16 And if we could, if the Court would be interested in looking
17 at it, just visually matching this to the trial exhibit, I
18 think it might help in the ruling.

19 MR. MITCHELL: Your Honor, the State would renew its
20 objection. These are just screen shot copies of -- there's
21 no -- this isn't an official call log or anything official.
22 It's a black and white screen shot copy that cannot possibly
23 be verified to be accurate. So I'm going to renew my
24 objection at this time.

25 THE COURT: All right. The document will be admitted

1 --

2 MR. MITCHELL: And, Your Honor, I haven't seen this
3 until today as well, so I haven't had an opportunity to look
4 into that further.

5 THE COURT: Okay. The document will be admitted as
6 Applicant's 3. Objection is noted.

7 (WHEREUPON, Applicant's Exhibit No. 3 was admitted into
8 evidence.)

9 BY MR. GEEL:

10 Q Okay. So these call logs, if you could, just as a
11 general matter, tell the Court what you felt was important
12 about these call logs that you wanted them presented at your
13 trial?

14 A After so long, my phone deletes calls after, like, four
15 or five days, but she was calling me throughout the entire
16 time. She kept calling me.

17 Q She being who?

18 A The so-called victim.

19 Q And when was she calling you?

20 A Everyday.

21 Q Everyday when?

22 A It was any time. It could be --

23 Q In relation to the alleged incident?

24 A After the incident, yeah.

25 Q So you felt it was important to show the jury that she

1 called you after the incident?

2 A Yeah.

3 Q Why?

4 A Because why would you call somebody that attempted to
5 rape you? Why would you continue to call?

6 Q Now, did you -- again, did you bring these call logs t
7 your lawyer's attention?

8 A Yes.

9 Q Did you, actually, give him copies?

10 A Yes.

11 Q And what did you say to your lawyer, if you can recall,
12 about these call logs?

13 A What I just told you.

14 Q And did your lawyer say anything in response?

15 A No, sir.

16 Q Was there any indication --

17 A I just compiled all the evidence that I had and I gave
18 it to him.

19 Q Okay. And did your lawyer give you any indication that
20 he was going to introduce these logs at trial? Did he say
21 one way or the other?

22 A He told me he was going to use everything I gave him.

23 Q Now, during and immediately after your trial, did you
24 have any followup discussions with your lawyer about these
25 records?

1 A No.

2 Q So you didn't mention to him afterwards?

3 A No.

4 Q Ask about it or anything like that?

5 A No.

6 Q Now, one of the things that came up in our discussions
7 was a potential witness named Makayla Pernell. Don't say
8 anything that Ms. Pernell said to you, okay, you can't get
9 into anything that's hearsay. Was she present when these
10 calls came in?

11 A Yes.

12 Q Did you show her these call records?

13 A She told me that --

14 Q No, no, no --

15 Sorry, Judge, I didn't mean to cut my own witness off.

16 Q You can't say what Ms. Pernell told you. I'm asking
17 you a specific question. Was she present when these calls
18 came in?

19 A Yes.

20 Q Did you show her these records?

21 A Yes.

22 Q Is that one of the reasons you wanted your lawyer to
23 talk to Ms. Pernell?

24 A Yes, it is.

25 Q We'll leave it there.

1 A All right.

2 Q Another one of the issues that came up during your
3 trial was the fact that your hand had been cut during this
4 incident, correct?

5 A Yes.

6 Q Now, you have a scar on your finger from where you were
7 cut that night, correct?

8 A Yes, sir.

9 Q Now, what, if anything, did you feel was significant
10 about the location of that scar with respect to your trial?

11 A The fact that she's saying I got cut by grabbing the
12 blade of the knife and the cut was on the outside of my
13 hand.

14 Q Okay. And is that scar still present on your hand?

15 A Yes, it is.

16 Q Which hand is it on?

17 A My right.

18 Q And, I guess --

19 MR. GEEL: Your Honor, would it be all right if I had
20 Mr. Hankinson hold his finger up? He has a scar on the
21 right index finger.

22 THE COURT: Yes, sir.

23 BY MR. GEEL:

24 Q If you could just point --

25 (Applicant showed scar to the State).

1 Q Show it to the Court as well.

2 (Applicant showed scar to the Court.)

3 BY MR. GEEL:

4 Q Now, did you -- let me ask the obvious question. Was
5 that scar on your finger while this case was pending?

6 A Huh?

7 Q While this case was pending, did you have that scar on
8 your finger? It's from the incident?

9 A Yes.

10 Q Did you show it to your lawyer?

11 A Yeah.

12 Q And what discussions, if any, did you have with your
13 lawyer about that?

14 A We talked about it. I told him about it. I didn't
15 grab the knife, I was cut.

16 Q Your lawyer did bring up the fact that you had a scar
17 on your finger during your trial, correct? Do you recall
18 that?

19 A Yes.

20 Q What do you think your lawyer should have done
21 differently as far as the scar on your finger?

22 A He should have spoken more about it, questioned her
23 about it.

24 Q Questioned her, being the victim?

25 A Yes.

1 Q So in your view, your lawyer should have asked the
2 alleged victim more questions about the location of the
3 scar?

4 A Yes.

5 Q And Mr. Hankinson, the last thing I would like to get
6 into with you is there was some photographs of the crime
7 scene at your trial, correct?

8 A Yes.

9 Q And you had an opportunity to review, at least, some of
10 them or most of them prior to trial?

11 A Yes.

12 Q There were some of them that you discussed with your
13 lawyer; is that accurate to say?

14 A Yes.

15 Q And what are some of the things that you brought to
16 your lawyer's attention just with respect to the crime scene
17 photos?

18 A How she said that when we were wrestling, I was choking
19 her and pulling her and she was grabbing onto furniture and
20 dragging furniture around, but in the pictures they took,
21 all the furniture was still in the same place. Nothing was
22 ever moved.

23 (WHEREUPON, Applicant's Exhibit No. 4 was marked for
24 identification.)

25 Q I'm showing you Plaintiff's Exhibit 4. Could you

1 describe -- it's two photographs, could you describe them?

2 A This is a picture of the house and this is the room we
3 were in.

4 Q And were those photographs in your discovery materials,
5 your Rule 5 materials?

6 A Yes, sir.

7 Q Okay. So you had those photographs prior to trial; is
8 that fair to say?

9 A Yes, sir.

10 Q And you discussed those photographs with your lawyer?

11 A Yes.

12 MR. GEEL: Your Honor, we'll offer Plaintiff's 4 in
13 evidence.

14 THE COURT: Anything from the State?

15 MR. MITCHELL: No objection, Your Honor.

16 THE COURT: All right. That will be admitted as
17 Applicant's Exhibit 4.

18 (WHEREUPON, Applicant's Exhibit No. 4 was admitted into
19 evidence.)

20 BY MR. GEEL:

21 Q Now, these, Mr. Hankinson, the first page here, this is
22 a photograph of what exactly?

23 A My house.

24 Q And this is where the alleged incident took place?

25 A Yes.

1 Q And now, turning to the second page of this two-page
2 packet, you picked out this particular photo. This is the
3 photograph you had a discussion with your lawyer about?

4 A Yes.

5 Q Now, tell the Judge if you could what about this
6 photograph drew your attention. What is it that you wanted
7 your lawyer to argue?

8 A She said that I was trying to drag her into the room
9 where the door is and that she was grabbing onto furniture.
10 And all the furniture in front of the door right there,
11 nothing is out of place, nothing has been moved. And I just
12 wanted him -- everything that she said was a lie. And it's
13 so much evidence to point against it. It's one word against
14 another. And she had so many lies, I don't see how she won.
15 I don't see how I got convicted.

16 Q Not to belabor the point, but you told your lawyer that
17 that's what -- you pointed out?

18 A Yes.

19 Q And you had a discussion about him presenting these
20 photographs and arguing that at trial?

21 A Yes.

22 Q Did you have any discussions after trial about things
23 your lawyer could have done differently with respect to
24 these photographs?

25 A No.

1 Q No discussion?

2 A No.

3 Q Were you surprised that your lawyer didn't spend a
4 little bit more time on that?

5 A Very surprised.

6 Q But you didn't have any discussions with him about it?

7 A No, sir.

8 Q Mr. Hankinson, that's all I have as far as our grounds.
9 While we're here, is there anything else you'd like to bring
10 to the Judge's attention or anything that I haven't gone
11 over in sufficient detail?

12 A Just that the motion -- the Judge responded to the
13 motion, the motion for a new trial.

14 Q Okay, as to ground one. Go on.

15 A The Judge responded to the motion as to why he didn't
16 grant the motion, because the motion wasn't filed properly.
17 There was cause for the motion being granted. I should have
18 got a new trial because of that, but he didn't file the
19 motion properly. He didn't claim prejudice in the motion
20 and I was prejudiced.

21 Q Okay. So you're saying that the Judge in its order
22 acknowledged the mistake that your attorney made as far as
23 filing?

24 A Yeah, the Judge, actually, said it.

25 Q In your view, it was important that your lawyer do that

1 correctly?

2 A Yes.

3 Q You feel as though you would have prevailed on that
4 motion if it was argued and presented --

5 A A new trial would have been granted and I would have
6 been able to include all the evidence that he didn't show
7 the first time and we didn't put forth because he didn't
8 admit it from the beginning of the trial.

9 Q Anything else you'd like to add as to any of the
10 grounds that we've gone over today?

11 A No, sir.

12 MR. GEEL: Nothing further, Your Honor.

13 THE COURT: Is the order, written order denying the
14 motion for new trial part of the record?

15 MR. GEEL: Yes, sir, it's part of the package you have.

16 THE COURT: Mr. Mitchell, cross-examination?

17 MR. MITCHELL: No questions, Your Honor.

18 THE COURT: Mr. Geel, anything further?

19 MR. GEEL: Your Honor, nothing further from the
20 Applicant at this time.

21 THE COURT: You may step down, sir.

22 Mr. Mitchell.

23 MR. MITCHELL: Your Honor, the State calls Mr. David
24 Hayes.

25 DAVID HAYES,

1 after being duly sworn, testified as follows:

2 THE CLERK: Take a seat and state your full name for
3 the Court.

4 THE WITNESS: Charles David Hayes, H-A-Y-E-S.

5 DIRECT EXAMINATION

6 BY MR. MITCHELL:

7 Q Good afternoon, Mr. Hayes.

8 A How are you doing?

9 Q Mr. Hayes, how long have you been practicing law?

10 A Fourteen years.

11 Q And a lot of your time in practice has been in criminal
12 law?

13 A All of it.

14 Q Were you appointed or retained in this matter?

15 A Appointed.

16 Q And then do you remember when you first met Mr.
17 Hankinson, was there any mention of these call logs, do you
18 remember?

19 A The office was appointed originally. The case went to
20 Nick McCarley. Mr. McCarley went and spoke with Mr.
21 Hankinson and then realized it was involving a sex case. At
22 that time, Mr. Routzong and I were paired off and we did all
23 the sex cases. Mr. Routzong, specifically, and I always sat
24 with him and he always sat with me. We were trial partners.

25 And then Mr. Routzong worked on the case until he

1 transferred and took the job at, I believe, it's Sumter
2 County Public Defender's Office and I inherited it fully.

3 Q And during your -- how many times would you say you met
4 with Mr. Hankinson?

5 A It was five or six. And I don't know if I met with him
6 any time that he was meeting with Mr. Routzong.

7 Q And during your conversations with Mr. Hankinson, did
8 he ever mention the victim contacting him after the
9 incident?

10 A I don't remember that. I do remember getting the text
11 messages that we introduced in court.

12 Q So to your knowledge, you introduced all the text
13 messages between the Applicant and the victim?

14 A I don't know if it was all. I did use some, I do
15 recall that.

16 Q But do you specifically recall any texts that took
17 place after the incident?

18 A No.

19 Q And if you would have seen any missed calls or text
20 messages between the Applicant and the victim that occurred
21 after, would you have introduced those?

22 A I would have cross-examined her on them, at least. And
23 then he, also, testified and I would have directed him on
24 it.

25 Q But to your knowledge, those were never --

1 A I cannot recall.

2 Q And going back to the first allegation addressed, did
3 you make a motion for a new trial?

4 A I did. What happened was after the trial and the
5 sentence was handed down, he was taken back in. And I
6 always go out and try to catch the jury members in the
7 hallway and see if anybody will speak with me about what did
8 we do well, what could we improve on, why did you come to
9 the conclusion that you did? Because there was a question
10 about a consistent verdict because they found him guilty on
11 the CSC and the kidnapping, but not guilty on the knife --
12 or possession of a weapon.

13 So in talking with them, one of the members, I believe
14 it was the foreman turned and started talking to
15 Investigator Norwood Bodie, I believe is who it was, and
16 they started talking about their kids and how they were
17 shooting pool and their friends and they do Cub Scouts or
18 something together.

19 I immediately turned around, went into the courtroom
20 and requested a hearing right then for a motion for a new
21 trial. The judge at that time, I believe, denied it and I
22 filed another application, which I believe -- I don't even
23 remember filing it, but, evidently, I filed one afterwards.

24 Q So the motion was raised --

25 A In court as soon as I had a transcript.

1 Q And you argued --

2 MR. MITCHELL: And, Your Honor, for your reference, the
3 motion for mistrial begins on Page 259 and ends on Page 279,
4 I do believe. So there's a good 20 pages in the trial
5 transcript arguing this motion.

6 BY MR. MITCHELL:

7 Q And when the Judge denied it at the trial -- or after
8 the trial, I should say, he never told you it was
9 (indiscernible)?

10 A No. I believe it, actually, went forward on appeal
11 with that because I remember talking to Bob Dudek about it
12 at appellate defense.

13 The other issue that I was concerned about was that
14 some of the evidence was lost in the jury room at the same
15 time. And we had -- almost came to blows with the solicitor
16 because they were wanting -- not that they were doing
17 anything wrong, but it wasn't -- it was actually introduced
18 in trial.

19 And I remember going through and tearing the jury room
20 apart with rubber gloves and digging through trash. It
21 wasn't just me, it was the solicitor's office as well and
22 the bailiffs. And we never could find the CDs that were
23 missing. And I thought that would be a bigger appellate
24 issue.

25 Ultimately, they were found about five years later,

1 four years later, I think it was last year, when they redid
2 the room. They were underneath the refrigerator. They
3 somehow slid off and hit the floor and slid up underneath
4 the fridge that was in the room.

5 Q Do you recall why you would not have admitted the photo
6 of the knife into evidence?

7 A I think it was already in evidence. The picture of the
8 knife and the truck, they were -- there was 30 something
9 photographs entered from the State and I think I entered
10 several myself. But, specifically, the knife and the truck
11 was already entered into evidence.

12 Q Do you recall --

13 MR. MITCHELL: This is on page 80, Your Honor.

14 Q -- the victim testified that she was stabbed by what
15 she thought was a butter knife. And during your
16 cross-examination of Mr. Graybeal, the investigator who took
17 the photo of the knife --

18 MR. MITCHELL: This is on Page 135, Your Honor.

19 Q -- you asked him on cross whether the knife was a
20 butter knife?

21 A What page?

22 MR. MITCHELL: Beg the Court's indulgence, Your Honor.

23 THE COURT: Yes, sir.

24 (Pause.)

25 BY MR. MITCHELL:

1 Q That was on Page 147, my apologies.

2 A Yeah, I did.

3 Q And furthermore, when Mr. Hankinson testified to this,
4 you examined him about the knife that was allegedly used,
5 according to his version of events, by the victim against
6 him?

7 A I, specifically, asked him what kind of knife was found
8 and I asked him if it was a butter knife. And then we had a
9 discussion about it was a small hunting knife, Bowie knife.
10 All of that would be an accurate description.

11 Q So you were using that to lessen the credibility of the
12 victim because she claimed it was a butter knife when, in
13 fact, it was not?

14 A Yes, sir. She alleged they found a gun and she said it
15 was a butter knife. And I believe I cross-examined that
16 there was no gun found and no butter knife.

17 MR. MITCHELL: Beg the Court's indulgence.

18 (Pause.)

19 BY MR. MITCHELL:

20 Q And Mr. Hayes, I'll direct your attention to Page 182.
21 This is on your direct examination of Mr. Hankinson.

22 A 182?

23 Q Yes, it's on the transcript number, not the record on
24 appeal number, if that makes a difference. Do you see on
25 Line 5 down to 17 where y'all discuss the knife?

1 A Yeah, when he was talking about she was the one that
2 was playing and he don't play like that.

3 Q And how the knife is very, very sharp?

4 A Yes.

5 Q And you see right after that where you, actually,
6 requested the Applicant to show the jury the cut?

7 A I did. Basically --

8 Q Just exactly -- go ahead.

9 A Exactly what he did here.

10 Q And in regard to the photos of the crime scene --

11 MR. MITCHELL: Beg the Court's indulgence, Your Honor.

12 (Pause.)

13 BY MR. MITCHELL:

14 Q And Mr. Hayes, will you turn to Page 197.

15 A (Witness complies.)

16 Q And this is in your closing, starting with Line 21, you
17 describe the incident that occurred the way that Mr.
18 Hankinson alleged, that the victim was choking him, dragging
19 him into the room, pulling on the furniture. And you,
20 actually, mentioned the pictures and then explained how the
21 crime scene would have looked had her events, actually,
22 occurred. And that goes on to 198, where you say in your
23 closing, I think the coffee table would have been upside
24 down. I think all the stuff on it would have been like a
25 bomb in the room.

1 A Yes.

2 Q So you did, in fact, use those crime scene photos?

3 A The State put them in. I didn't introduce them, but
4 yes, I used them. Exactly how he testified in court under
5 oath is exactly what he and I had discussed. That was the
6 story and it is what I believed was more consistent with
7 what the evidence was.

8 She says that he tried to rape her. She's grabbing at,
9 clawing at and pulling furniture. The clothes were folded
10 and neatly stacked jewelry. The furniture wasn't knocked
11 out of place. So yes, I used it in my closing and I believe
12 that's what the evidence was showing.

13 Q And going back to -- you, also, used the photographs
14 during your direct examination of Mr. Hankinson when -- give
15 me one second.

16 (Pause.)

17 Q Then you, also, used the crime scene photos on Page 180
18 in direct examination of Mr. Hankinson when he's describing
19 the incident in question. And it's clear when you asked the
20 question "where was this knife", you were obviously using a
21 crime scene photo?

22 A Yes.

23 Q So, Mr. Hayes, you believe you properly used the crime
24 scene photos in the exact way that the Applicant suggested
25 you should have?

1 A Yes.

2 Q And with regard to the issue of failing to point out
3 the inconsistencies in the victim's statement?

4 A I impeached the stew out of her. He just doesn't
5 understand the definition of impeachment. I caught her in
6 multiple lies, multiple different statements and I used all
7 of that against her in my closing.

8 MR. MITCHELL: And, Your Honor, just for your record,
9 the cross-examination of the victim begins on Page 91.
10 Instead of going through every single thing, I think it best
11 to --

12 BY MR. MITCHELL:

13 Q Well, you bring up multiple inconsistencies, right?

14 A Multiple inconsistencies. She even lied about what
15 movie she had gone to see with her friends. And Mr.
16 Thompson caught that the movie she was referencing hadn't
17 come out yet. It was a year later when that movie came out.
18 So I caught her in a lie on that. Then she started to try
19 to back pedal.

20 There was multiple different statements and I brought
21 out each one where she said this had happened in one
22 statement to the officers and then when she got up on the
23 stand and testified, there were things that were missing.
24 There was new statements -- basically, the testimony in
25 court was a new statement because a lot of it wasn't even

1 consistent with the other prior statements she had given.

2 MR. MITCHELL: And a lot of that is on Page 105, Your
3 Honor, where --

4 THE WITNESS: And I think she admitted a whole lot of
5 it.

6 BY MR. MITCHELL:

7 Q Yes. In that statement, is there anything about a
8 mention of dog, no? Is there any mention in that statement
9 about not feeling too good about this or red flags when you
10 were in the grocery or gas station? No. Is there any
11 mention about a cousin and a party? No.

12 So all of this was new information that you just
13 impeached her on?

14 A Yes.

15 Q And with regard to the movie that she alleged that she
16 saw that day, you, actually, admitted the Wikipedia article
17 as evidence?

18 A I did. Mr. Thompson found it, got it printed out and
19 then I introduced it. And then crossed her on it and
20 pointed out the fact that it came out a year later. Then
21 she back pedaled and said well, it might have been a
22 different movie.

23 Q And, Mr. Hayes, do you know who Makayla Pernell is?

24 A No. I do have notes where she spoke with Mr. Routzong,
25 but I don't have any notes when I went over this case with

1 Mr. Hankinson that she had any vital information.

2 Q So you had no knowledge of Miss Makayla Pernell or
3 anyone else having any sort of exculpatory evidence?

4 A No.

5 Q And had you known of a witness who had exculpatory
6 information, would you have used them at trial?

7 A I would have, at least, investigated it and found out
8 what it was and if it was relevant. In talking with you the
9 other day, the information I was being told is that she had
10 information that was after the incident. I don't know if
11 that would have been relevant because he admitted that she
12 was there, that he had picked her up and they had gone back
13 to the house, basically, for a booty call. And she admitted
14 that she went with him and then he tried to rape her. So
15 that's where the stories diverged. And then after that, the
16 stories came back together that she ran out the house, he
17 went after her. A neighbor down the road stopped her,
18 called the police. He drove up, told her let's go, she
19 didn't want to go and he drove off.

20 Q So the only two witnesses that, actually, saw this
21 incident, the victim and Mr. Hankinson, they both testified
22 at trial?

23 A Yes.

24 Q And they both gave their version of events?

25 A Yes.

1 Q And the jury found Mr. Hankinson guilty?

2 A They did. In talking with the jury afterwards, the
3 answer I got was they didn't believe the photograph of the
4 weapon in the floor of the truck was the weapon -- they
5 wanted a physical knife introduced in court. And then when
6 it came down to the kidnapping and CSC --

7 MR. GEEL: I'm going to object to the hearsay from the
8 jury as to why they rendered their verdict.

9 THE COURT: I'll allow it.

10 Go ahead.

11 THE WITNESS: They said that the answer was if she said
12 no, no means no and that was why they came to their verdict.

13 MR. MITCHELL: Beg the Court's indulgence, Your Honor.

14 THE COURT: Yes, sir.

15 (Pause.)

16 BY MR. MITCHELL:

17 Q Do you believe you adequately represented Mr. Hankinson
18 in this trial?

19 A Yes. This is one of those trials when you got done,
20 you had no regrets. Everything felt good, everything went
21 well. I felt really good about this trial. This is one of
22 the ones that you can go home, you can lay down your head
23 and not have to worry about it and replay it.

24 MR. MITCHELL: Thank you, Mr. Hayes. No further
25 questions.

1 THE COURT: Mr. Geel, cross-examination.

2 MR. GEEL: Your Honor, would it be all right if I
3 remain seated while I do the cross-examination?

4 THE COURT: Yes, sir.

5 MR. GEEL: Appreciate it.

6 CROSS-EXAMINATION

7 BY MR. GEEL:

8 Q Mr. Hayes, can you hear me all right?

9 A Yes, sir.

10 Q Just let me know if you have any difficulty hearing me.
11 Let's start off with the motion for a new trial. You did
12 make a verbal motion for a new trial at the end of this
13 case, correct?

14 A Yes.

15 Q And I believe from your testimony that you don't recall
16 writing a written motion, but you did write one?

17 A I don't. From what I recall, he denied it right there
18 on the spot and then I went and did -- if I did it, I went
19 and did it afterwards, after the fact.

20 Q And the Court did file a written denial of your written
21 motion for a new trial, correct?

22 A If you say so. I don't recall. I assume he had to if
23 they did an appeal.

24 MR. GEEL: Your Honor, may I approach?

25 THE COURT: Yes, sir.

1 MR. GEEL: I'm just showing the witness a copy of the
2 Court's order. This, again, is in the record. It's filed
3 December 15th, 2017.

4 BY MR. GEEL:

5 Q Does this jog your memory? Do you recall having seen
6 this memory before?

7 A I don't recall. I'm not saying I haven't, I just don't
8 recall.

9 Q I understand it's been a few years. I'm sure you've
10 tried a lot of cases since this one as well. Let's go
11 through some of these -- well, actually, let's back up real
12 quick. So you don't have any independent recollection of
13 having been served with this order or seeing it at any
14 point?

15 A It says that I was served at the bottom, I just don't
16 recall it. After I did this trial, I spent one more year in
17 Aiken. And in December of 2018, I was transferred to the
18 Barnwell and Bamberg County office. It could have come in
19 and just got attached to the file and I never, actually,
20 laid eyes on it. I just don't recall.

21 Q It wouldn't be uncommon for you to be served with
22 something and you just have no independent recollection of
23 it; is that fair to say?

24 A No. I mean, if it got put on my desk and got handed to
25 me, I would have read it and seen it. What I'm saying is I

1 wasn't physically in Aiken when this answer came out. I was
2 in the Barnwell office and I've been in the Barnwell office
3 since. So it could have come in and just got attached to
4 the file and I never physically laid eyes on it.

5 Q Oh, I see, okay. I understand.

6 A It got served on the office.

7 Q Understood. All right. Let's go through some of the
8 language in this order just to get your thoughts. Again,
9 understanding that it's been a while and I expect you
10 wouldn't recall the details, but at the bottom, it says,
11 Neither the Defendant -- this is three lines from the bottom
12 of the page on Page 1. Neither the Defendant nor the State
13 submitted any briefs supporting their respective positions,
14 although the attorney for the State advised the Court that
15 the State opposed the motion as was argued at the conclusion
16 of trial.

17 Did you consider filing any sort of briefing or
18 anything like that as a followup to your original motion?

19 A No. In looking at this, my guess would be that I was
20 waiting to see if the Court was going to give me a hearing
21 and have a physical hearing. But when I filed it, the Judge
22 had already ruled prior, I believe, on record or either took
23 it under advisement or something. I did bring the issue up
24 immediately.

25 Q Right. So if I'm understanding you, you were waiting

1 on a --

2 A A hearing date.

3 Q -- hearing date. Right. So there's no need to file a
4 brief if you thought you were going to have a hearing?

5 A Right.

6 Q Understood. The Court then goes on to say in the next
7 line, Neither party requested a hearing on the record and I
8 decided the motion without such hearing.

9 Again, understanding it's been a while, do you recall
10 requesting a hearing, a followup hearing?

11 A I remember marching back into the court and arguing the
12 motion right there on the spot and putting the information
13 that I had before the Court.

14 Q And that was prior to you filing a written motion,
15 correct?

16 A Yes.

17 Q Do you recall requesting a hearing on your written
18 motion?

19 A No.

20 Q You don't?

21 A He ruled and I went ahead and filed for an appeal.

22 MR. MITCHELL: This is on Page 280 for the record.

23 BY MR. GEEL:

24 Q In the next paragraph, it goes on to say -- now, we're
25 reaching the sort of actual substance here. It says,

1 Defendant, apparently, contends that the State was obligated
2 to divulge the name of anyone who might sit at the
3 prosecution table, but no request was made prior to trial.

4 Now, in your defense, that's not what you were arguing;
5 is that fair to say?

6 A No, that's not what I was arguing. Typically, the
7 State -- and I do this always, if you're sitting at the
8 table, I want to ask the Court -- or have the question asked
9 does any member of the jury know any of the State's people,
10 any of the Defense's people.

11 When they did that, Norwood Bodie was not in the
12 courtroom. We picked the jury. And then he, as an
13 investigator for the State, comes up and runs -- we had at
14 the time what was called the Beast, big TV screen that can
15 pop up and is two-sided so the courtroom can see what's
16 going on, the jury can see what's going on and that's how
17 they publish the pictures or videos to the jury.

18 Well, he came in and started running the Beast and they
19 had not asked or nobody questioned whether any member of the
20 jury knew him. Nobody knew it until after the verdict. And
21 after sentencing, I caught them in the hallway having a
22 conversation like they were best buddies. I listened for a
23 second and then I asked some questions and that's when I
24 said we're going back in here and have the hearing right
25 now.

1 Q So it wasn't your position that you're entitled to know
2 anyone who sits at counsel table. What you're interested in
3 is whether any of those individuals have a relationship with
4 the jury?

5 A Yes.

6 Q So this is not a fair characterization of the argument,
7 would you agree? When the Court says the Defendant contest
8 that the State is obligated to divulge the name of anyone
9 who might sit at the prosecution table, what you were really
10 getting at is whether anyone who was on the State's team had
11 a relationship with the jury, correct? I mean, that's the
12 crux of what you were getting at, would you agree?

13 A I wanted to know if anybody in the jury had a
14 relationship, close friends or family relationship with any
15 member of the solicitor's office at the table, specifically,
16 anybody in the solicitor's office.

17 Q Uh-huh.

18 A I wanted to know if any are hanging out and best buds
19 and watching football on Saturday or shooting pool on
20 Fridays, just the same as they want to know if any of the
21 members of the jury is doing the same thing with me. Just
22 so that hey, you know them, well, then I can use a strike or
23 move for cause.

24 Q So it doesn't -- it's fair to say it doesn't have
25 anything to do with sitting at the table, it's the

1 relationship with the solicitor's office?

2 A Right.

3 Q So it could have been someone sitting back here behind
4 counsel's table just as easily?

5 A Yes. But he specifically sat on the end of the counsel
6 table -- like where your laptop is at, if you turned it to
7 the side, he was sitting in a chair sitting on the end of
8 the table running the pictures and screen for his
9 solicitor's office.

10 Q So as you sit here today, do you have an opinion as to
11 whether that warranted correction? It appears that the
12 Court has misunderstood the argument you made, would you
13 agree?

14 A It's not completely incorrect, but it's not
15 specifically what I was arguing.

16 Q Would you have felt the same way if Investigator Bodie
17 was sitting behind counsel? Would you have made the same
18 argument?

19 A I probably would have.

20 Q So it's not --

21 A That was one of the questions I had in my voir dire.

22 Q So, again, as you look back on it, do you have an
23 opinion as to whether that's something that warranted
24 correction, that the Court misunderstood your basis for
25 moving for a new trial?

1 A He ruled on it.

2 Q I'm sorry?

3 A He ruled on it.

4 Q So you don't feel it required correction?

5 A Once it's ruled on, I can't go back on it. And I think
6 I had already, actually, filed an appeal at that point.

7 Q You don't have a mechanism to ask the Court to
8 reconsider a written order?

9 A I don't remember seeing this, so --

10 Q Well --

11 A -- the timeline would have been going.

12 Q Right. So at the time, if you had seen this, would
13 there have been some action you could have taken to --

14 A I could have asked him to reconsider and I could have
15 asked him for a hearing on it or maybe even filed a brief.

16 Q And your testimony is that you didn't see it, so
17 there's no strategic reason for not doing that?

18 A No, I just don't recall putting my eyes on this piece
19 of paper.

20 Q Later on -- and this is about the middle of the same
21 paragraph, it says that no specific prejudice is alleged by
22 the Defendant. Again, is that consistent with your
23 recollection of your argument?

24 A I was arguing that he was friends with him and that
25 there could be bias there and he wasn't questioned on it and

1 I could have struck him if I had known. If I had known, I
2 would have used a strike. If I recall right, I didn't use
3 all my preemptory strikes.

4 Q So do you feel as though you did allege prejudice
5 adequately?

6 A I believe I did.

7 Q And in light of that, do you feel as though this could
8 have used correction at the time contemporaneously, a motion
9 to reconsider or something along those lines?

10 A At this point, I believe I had already filed for the
11 appeal.

12 Q The notice of appeal went in prior to the order denying
13 the motion for a new trial?

14 A I believe so, yeah.

15 Q So the notice of appeal was premature?

16 A Well, I had already made the motion in court and was
17 denied already. Then I went ahead and filed the other. I
18 don't remember filing the other. Evidently, I did, but I
19 just don't recall.

20 Q The last sentence -- or the last substantive sentence
21 of the order says, The Defendant does not argue that the
22 witness was not qualified -- I guess we can surmise when
23 they say witness, the court meant juror, not witness. The
24 Defendant does not argue that the witness was not qualified
25 and was prejudiced or should have been disqualified by the

1 Court for cause. Again, is that consistent with the
2 argument --

3 A No, I argued that I would have used my preemptory --
4 it's not that he wasn't qualified to be a juror. I believe
5 there might have been a relationship there that I would have
6 used a preemptory strike to get rid of him. And I didn't
7 get the ability to use my strike because he didn't divulge
8 that information prior to trial.

9 Q So it wouldn't have been a motion to excuse for cause,
10 it would have just been one of your discretionary strikes?

11 A I believe I didn't use all my strikes. I believe I
12 still had strikes left, so I could have used one of my
13 strikes.

14 Q Okay. Moving forward to our second ground.

15 MR. GEEL: Your Honor, if I could approach the witness?

16 THE COURT: Sure.

17 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
18 identification.)

19 MR. GEEL: Your Honor, I'm showing the witness what's
20 been marked as Applicant's 1.

21 BY MR. GEEL:

22 Q Sir, when you've had a chance to look that over --

23 A This is one of the statements.

24 Q Is that the alleged victim's statement as far as you
25 know?

1 A Appears to be.

2 Q And that came in as a trial exhibit, correct?

3 A It's been five years.

4 Q Understood. Let's talk about the alleged victim's
5 testimony at trial. Is it fair to say -- I mean, you've
6 already said there were a lot of discrepancies in your view
7 between this written statement and her trial testimony; is
8 that fair to say?

9 A Yes.

10 Q So in describing -- I'll jump forward to the portion of
11 her testimony wherein she's describing being in a physical
12 struggle with Mr. Hankinson. On Page 78 of the trial
13 transcript -- do you have the transcript there with you? If
14 you could jump to Page 78.

15 A Okay.

16 Q On Line 17, the question is --

17 MR. GEEL: And this is the alleged victim's testimony
18 for the purposes of the record.

19 Q On Line 17, question, During this fight, did you -- are
20 you with me on that portion --

21 A Yes.

22 Q During this fight, did you -- you said you didn't go
23 into the bedroom. Did you go into another room?

24 Answer, We went into the first room, the room that you
25 walk into when you come in the house.

1 Question, Okay. Let's look at State's Exhibit 4, is
2 that the direction that y'all came?

3 Answer, Yes.

4 Question, When this is happening, does he still have
5 his arm around your neck?

6 And then on the top of the next page, answer is, Yes.

7 Question, And what happened when y'all came through
8 there, back into the room with the boxes?

9 Answer, We fell into a pile of boxes and all the other
10 stuff that was in there.

11 So hearing the victim describe falling into a pile of
12 boxes in Mr. Hankinson's home, you would agree?

13 A Yeah, that's what it says.

14 Q Okay. And in her statement when she says -- you can
15 join me on line one, two, three, four, five, six, seven,
16 eight, nine, ten, 11, 12, the sentence starts in the middle
17 of the line, says, While we were wrestling. Are you with me
18 there?

19 A Uh-huh.

20 Q While we were wrestling, I got ahold of the other --
21 excuse me, the doorknob and started to scream. He put a
22 hand on my mouth trying to quiet me and I managed to get out
23 of the grip. After I tried going to the door again, that's
24 when he put his hand around my neck and tried to choke me.
25 While wrestling, I tried to get away and I seen the knife

1 that was sitting out.

2 So in this portion, she's talking about grabbing the
3 knife. She makes no mention of falling down into a pile of
4 boxes in her written statement, correct?

5 A Yeah.

6 Q Do you agree?

7 A Yeah. There was four different versions or more.
8 Every time she opened her mouth, there was a different
9 version. I crossed her on the majority of it.

10 Q And I understand it's been a long time, do you have any
11 independent recollection of getting into this particular
12 discrepancy with her during trial?

13 A No. There was so many discrepancies that I got into, I
14 don't remember.

15 Q You would agree that these discrepancies are important.
16 Obviously, it's your job to gauge which ones are which, but
17 this is a clear discrepancy in her statement versus her
18 trial testimony, you would agree?

19 A Yes, she had discrepancies.

20 Q And on page 79, moving a little bit further down to
21 Line 8, the question from the prior line is, When y'all
22 fell, did he let go of you?

23 She answers, I don't think so because he was pulling me
24 when we fell in the boxes. I kind of, like, was sitting up
25 and I seen his shadow. I don't know if he still had a gun

1 at that point or if it was in his hand, but it looked like
2 he was about to hit me or try to get the gun in my hand or
3 something. And that's when I -- because I couldn't breathe
4 at that point, I was just tapping his arm, like, you know,
5 like, I'm not going to fight anymore, you know, like, you
6 can let go.

7 So she, essentially, describes when they're on the
8 boxes, he's choking her and she can't breathe and she taps
9 out, correct?

10 A Correct.

11 Q Okay. Now, turning again to her statement, just a few
12 lines down, she says, After I tried going for the door,
13 again, that's when he put his hand around my neck and tried
14 to choke me. While wrestling trying to get away, I seen the
15 knife sitting out and I grabbed the knife to defend myself.

16 Again, she's not describing being on the boxes --

17 A No.

18 Q -- like she is in her trial testimony, correct?

19 A No.

20 Q There's no mention of that in her statement?

21 A No.

22 Q Let's jump forward to where she, actually, grabs the
23 knife. This is on Page 80, if you could jump there.

24 Starting on Line 5 on Page 80, she says, He let go, meaning
25 let go of her neck.

1 Question, And when he let go, what did you do?

2 Answer, I lunged. I seen a knife sitting on top of
3 this, like, I don't know if it was a speaker. I lunged for
4 the knife and kind of swung around trying to defend myself.

5 Question, When you grabbed the knife and were trying to
6 defend yourself, what was his reaction to that?

7 Answer, He -- I swung around and I missed him. I fell
8 back down and he grabbed the knife out of my hand.

9 Question, When he grabbed the knife out of your hand,
10 what part of the knife did he grab?

11 Answer, The blade.

12 Question, Do you remember what the knife looked like?

13 Answer, It was a butter knife, so it was black. It had
14 three silver things on it and the knife was rigid.

15 Question, What did he -- did he say anything when he
16 took the knife from you?

17 Answer, He was like damn, you cut me. Like, look what
18 you did, you cut me. I'm done, I'm done, you cut me. Just
19 grab your stuff and, like, I'll take you home.

20 So she, essentially, describes swinging around and he
21 grabs the knife by the blade with his hand, correct?

22 A Yeah.

23 Q Okay.

24 A And that's what he testified to as well.

25 Q In her statement again, if you'll join me on the second

1 to last line, When I grabbed the knife, he tried taking it
2 from me. At that point, I believe he was finished trying to
3 wrestle. He started to tell me that he was going to take me
4 home and just go get my stuff and take me home.

5 So, again, first of all, we have no mention of him
6 grabbing the knife by the blade, correct, in her statement?

7 A Her statement does not match anything near what she
8 testified to at trial. Is that the point?

9 Q Yeah, I understand, but I think it's important to get
10 into the specifics. I mean, she does not talk about him
11 trying to grab the blade --

12 A No.

13 Q The knife by the blade, correct?

14 A Not in the statement, but she testified to it.

15 Q Right. So that would be a discrepancy between her
16 prior statement and her testimony?

17 A That's one of them, yeah.

18 Q And as the lawyer, it's important to bring out
19 discrepancies between prior statements and current
20 testimony?

21 A Yes.

22 Q And you did not do that with this particular
23 discrepancy or the other ones --

24 A I don't remember what I did. I know I crossed her on
25 multiple of her discrepancies and I closed on it.

1 Q The transcript, of course, will speak for itself, so
2 let's assume for the sake of argument that you did not cross
3 on these particular discrepancies. Is there a strategic
4 reason for passing up these clear discrepancies and not
5 crossing her on these?

6 A Because the ones I was focused on was in this one. I
7 don't know. I was in the middle of trial. Everything she
8 was saying was completely inconsistent with everything she
9 was saying, so I ran with the ones that were glaring at the
10 time.

11 Q Uh-huh.

12 A Why this specific one, I didn't ask a specific question
13 about this one statement, I don't know.

14 Q Okay. So the ones you did catch her on, you're
15 describing the movie and the dog, situations like that?

16 A I don't even remember. I had to look at the
17 transcript. I don't remember.

18 Q And that's fine, but as you sit here today, you can't
19 identify a strategic reason for not bringing out these
20 discrepancies?

21 A I don't remember what I did or didn't bring out is what
22 I'm telling you.

23 Q Right. So the answer to that question is yes?

24 A I brought out enough that I could hopefully argue that
25 she was a liar, which is what I was pointing out --

1 Q Sir, I'm asking you to remark on these particular --

2 A I don't remember.

3 Q So you can't identify a --

4 A No, I can't --

5 Q -- strategic reason --

6 A I don't remember.

7 THE COURT: All right. He's asked and answered that
8 three times.

9 MR. GEEL: Well, I just got the answer here, Judge.
10 I'm sorry.

11 THE COURT: It's asked and answered.

12 BY MR. GEEL:

13 Q So moving forward to -- okay, let's talk about the
14 small knife that was in the truck.

15 A I believe it was a K-bar.

16 Q I'm sorry?

17 A I can look at the pictures again, but I believe it was
18 a K-bar.

19 Q Sure, that's in evidence.

20 A Or a boot knife style, not a K-bar.

21 Q Does that refresh your recollection as to what that
22 knife looked like?

23 A Yes.

24 Q Now, correct me if I misunderstood your testimony, but
25 I believe you said that item was already in evidence at

1 trial?

2 A Yes.

3 Q That was tendered as an exhibit by the State?

4 A By the State, yeah.

5 Q So, obviously, the record will speak for itself as to
6 whether that exhibit was in. Assuming that it was -- let me
7 back up, assuming that it was not tendered as an exhibit,
8 can you identify a strategic reason for not putting that in?

9 A Why would I put evidence in to convict my client of
10 having a weapon during a violent crime.

11 Q Let me ask you this, you brought it out during
12 Graybeal's testimony, correct?

13 A I cross-examined him on the evidence that was already
14 in the record.

15 Q Right.

16 A I would not tender evidence to convict my client of a
17 crime that the State's accusing him of. Why would I, as his
18 defense lawyer, put in evidence showing there was a weapon?

19 Q That was going to be my question, why ask Graybeal
20 about it?

21 A Because it was already in evidence and I cross-examined
22 him on it.

23 Q So you would not have asked these questions had it not
24 already been --

25 A No.

1 Q -- in the State's evidence; is that fair to say?

2 A That's correct.

3 Q Let me ask you this, as far as the description of the
4 knife, we just went over some testimony from the alleged
5 victim describing the knife itself. Is there a reason why
6 you didn't ask her about these photographs?

7 A Because she's a liar and you weren't going to get a
8 straight answer. I got what I needed to be able to do the
9 closing that I wanted to close on, which is she's a liar,
10 you can't believe her. My client's testimony is truthful.
11 The evidence supports my client's testimony. Then I sit
12 down. I don't ask any more questions than I need to. I
13 don't need to.

14 Q So you chose not to -- you considered asking her about
15 the knife itself?

16 A I don't remember what I asked her about the knife other
17 than the fact that it doesn't -- the knife, she -- her story
18 is one version of the knife. He has another. He testified
19 to his version. His version, in my opinion, matches the
20 facts that was put up to trial. The jury didn't buy it. I
21 don't know why. This is one of the ones I think the jury
22 got it wrong, but I can't fix a jury verdict.

23 Q Did you think that if you asked her about the knife she
24 would lie?

25 A She lied about everything.

1 Q And don't you want to elicit lies from a witness?

2 A I got as many as I needed to be able to do my closing.

3 Q So you just chose not to explore this particular item;
4 is that fair to say?

5 MR. MITCHELL: Your Honor, this has been asked and
6 answered already.

7 THE WITNESS: I did the trial with what I had at the
8 time. Monday morning quarterbacking, I couldn't tell you.
9 If I went back and did it again, I probably would do it the
10 same way. But to Monday morning quarterback every little
11 question, every little statement, yes, you might miss one,
12 you might not miss one. That's called practicing law.

13 BY MR. GEEL:

14 Q Did you miss this one?

15 A I don't know. I don't even remember.

16 Q Okay. Let's talk briefly about Makayla Pernell. You
17 didn't know who she was?

18 A No.

19 Q You never talked to her or --

20 A I don't recall ever talking to her. She talked to
21 Michael Routzong according to my notes. He never told me
22 anything about her having any information to give me or I
23 would have had my investigator go talk to her.

24 Q Now, you say it was in the notes. Did you review those
25 notes prior to trial or is that since getting ready for this

1 hearing, do you recall?

2 A Both.

3 Q So you saw notes that were written about her?

4 A There was no information that Makayla had any
5 information to give me. My client never told me anything
6 about Makayla giving me any information.

7 Q You heard Mr. Hankinson testify about that?

8 A Yes. That information, I never heard until the State
9 called me last week and said why didn't you talk to this
10 witness. Well, number one, she was after the fact. She has
11 nothing to offer about who was there. The strategy was I
12 was there, I picked her up. This was a booty call and it
13 went sideways. The victim is lying. This Makayla person
14 was not there, so there's nothing that she would be able to
15 offer as relevant.

16 Q Let's talk about the call logs.

17 MR. GEEL: May I approach again, Your Honor?

18 THE COURT: Yes.

19 Q This is Plaintiff's 3, which has already been admitted.
20 Have you seen those call logs before?

21 A I don't recall.

22 Q Okay.

23 A If I had, I would have crossed him or I would have had
24 him testify on direct. It might be in a file Mr. Routzong
25 had. I don't recall seeing call logs.

1 Q So let's just explore that a little bit. If you had
2 them, you would have brought them into trial?

3 A I don't know what I would have done. One, you've got
4 an issue with authentication, but two, he could have
5 testified to them. And at the time, what he testified to
6 matches exactly what he told me at the jail during our
7 visits. There was no mention of calling after the fact that
8 I recall and it's not in my notes. I would have crossed the
9 victim on that as well, why were you still trying to call.

10 Q So you would have crossed the victim on that fact if
11 you knew about it?

12 A I would have if I had that information.

13 Q So you did not have that information?

14 A If I didn't ask the question, I assume I didn't have
15 it. I don't recall ever seeing this information.

16 Q So just to clarify, if you had that information, you
17 would have crossed the victim on it if she's trying to
18 contact your client?

19 A That would be a question that I would go down that
20 path.

21 Q Right. Strategically, that would be an important fact,
22 you would agree, that the victim is calling your client
23 after the alleged incident?

24 A I don't see how it's relevant other than you're trying
25 to point out she's a liar. And I would try to maybe argue

1 that well, if he really did rape her, why was he [sic] still
2 calling her [sic].

3 Q You don't see how that's relevant?

4 A I don't see how I'm going to get into it in relevance
5 when he's saying that we were there and this Makayla wasn't
6 there.

7 Q I'm not talking about Makayla, sir, I'm talking about
8 the call logs?

9 A The call logs, he could have testified to. I mean, he
10 testified. He got on the stand. I don't have any notes
11 about her still trying to contact him. He could have easily
12 went down that path.

13 Q You would agree that that would have been useful at
14 trial, though, getting into the fact the victim contacted
15 him?

16 A I don't know if we would have been able to get into it.
17 That would have been up to the Court.

18 Q That's a separate question, though, wouldn't you say,
19 relevance versus admissibility?

20 A No. If I can't get into it, is it relevant or if the
21 Judge deems it's not admissible because it's after the fact.

22 Q Then you'd have an issue for appeal, you would agree?

23 A Potentially, yes.

24 Q Whereas, you don't if you don't even try to get the
25 evidence in, correct?

1 A Well, if you don't know about it, you can't put
2 anything in.

3 Q Right. But if you have it --

4 A Then you could have made a judgment call and decide
5 what to do with it.

6 Q Right. Let's talk about the injury to Mr. Hankinson's
7 finger. Bearing in mind that you questioned him about it on
8 the stand, I guess we already covered this, but I'll just
9 ask the same question again, did you consider asking the
10 alleged victim here about the location of the cut on Mr.
11 Hankinson's finger?

12 A Why would I ask the victim about the location of his
13 cut?

14 Q Well, because she testified about cutting him. You
15 said you did not consider doing that?

16 A I don't know.

17 Q Okay.

18 A I don't recall. I don't know.

19 Q So --

20 A But he can get up and he testified about his finger.

21 Q Okay. So you don't know whether you thought about
22 asking her that?

23 A I don't know.

24 Q Okay. So you can't identify a strategic reason for not
25 doing it as you sit here today?

1 A I don't remember.

2 Q Right. So if you don't recall, then that's what it is.
3 And then the photographs of the crime scene, I suppose I'll
4 just ask the same question, did you -- you mentioned that
5 the items in the house did not appear to be consistent with
6 the way she described events. Did you consider showing her
7 these photographs and ask her directly about that?

8 A She had already testified to it and I closed on it.

9 Q Uh-huh.

10 A So I didn't need her to point it to me and tell me
11 again. It was already in the record.

12 Q Now, just as a general principle, you agree that
13 arguments are not evidence, the arguments of --

14 A No, they're not evidence. However, whether the State
15 got her to say it or whether I got her to say it doesn't
16 matter, I get to close on it. It's in the record.

17 Q Uh-huh.

18 A The absence of it, then I can't use it. That's an
19 issue.

20 Q Now, one of the things you said on direct that I wrote
21 down, correct me if I wrote this down wrong, you said you
22 impeached the stew out of her, meaning the victim?

23 A Yeah.

24 Q Just to make sure that I understand, you feel as though
25 you did a thorough job impeaching her?

1 A I did.

2 Q And you closed on a lot of these discrepancies is your
3 testimony as well, correct?

4 A Yes, I did.

5 Q Can you join me on Page 195 of the transcript during
6 your closing argument?

7 A 195?

8 Q Yes, sir.

9 A Okay.

10 Q On Line 18, you say let's take a minute to look at her
11 story. Her being the alleged victim here. While she was on
12 the stand, new facts kept coming out, new things we hadn't
13 heard before. The problem is, what is she telling the truth
14 on? What is she not telling the truth on? There's only one
15 fact that I can actually bust her on, and what movie was
16 that that you watched. Y'all saw that. And as soon as I
17 busted her on it, she started back pedaling.

18 I mean, it appears there in closing argument that
19 you're saying you only really got her on one fact there. Am
20 I misunderstanding what you're saying?

21 A A particular fact, but all of her statements, if you go
22 back through and you look at it, I close on the fact that
23 she tells the jury that she's clawing and pulling at
24 furniture and he's got a gun on her and she's struggling and
25 fighting, but nothing is out of place. The jewelry is all

1 stacked up. The clothes are laid across the table.

2 What she testified to does not match what the pictures
3 that were put in evidence show. She talked about pulling
4 the furniture over. It's not. It's not even moved around.
5 So what she testified doesn't even match the evidence and
6 that's exactly how I closed.

7 Q Bearing that in mind, she was never asked directly
8 about that discrepancy in particular?

9 A Which discrepancy?

10 Q The location of the furniture in these photographs?

11 A She says that she clawed and was pulling furniture and
12 knocking it all over. Then when I went and looked -- we put
13 the evidence -- the State put evidence in, the pictures, and
14 it wasn't done, then I get to cross-examine and say that
15 she's lying and that her story don't even match what the
16 State is putting forward.

17 Q Lastly, let me jump back to the call records if I could
18 very briefly. I just want to solidify this one point. The
19 call logs that are up there on the witness stand with you,
20 you don't know whether those were, actually, provided to you
21 prior to trial?

22 A I don't recall. I got this file from Michael Routzong.
23 I do recall having text messages and I used them. I do not
24 recall having screen shots or photographs.

25 Q Would you have had --

1 A And here's the problem that I have. There's a
2 different time up here and then down here is a date, but
3 there's no date going with the call itself. And there's a
4 line through the bottom. How do we know that date matches
5 that phone call?

6 Q You would have addressed the same struggle with the
7 text messages you got in, though, correct?

8 A I had him testify to them or I had her testify to them
9 to authenticate, but I don't have this -- I don't recall
10 having this specifically.

11 Q Okay. You don't know whether you had those call logs
12 or not?

13 THE COURT: He's already testified to that, at least,
14 five times. Move on.

15 MR. GEEL: Nothing further, Your Honor.

16 THE COURT: Redirect?

17 MR. MITCHELL: Just briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. MITCHELL:

20 Q Mr. Hayes, was Mr. Hankinson convicted of possession of
21 a weapon?

22 A No.

23 MR. MITCHELL: No further questions, Your Honor.

24 THE COURT: Anything on recross?

25 MR. GEEL: No, sir.

1 THE COURT: All right. I'll take it under advisement.

2 MR. GEEL: Thank you, Your Honor.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, South Carolina, on the 5th day of September, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 21, 2024

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

Aiken County Sheriff's Office

VOLUNTARY STATEMENT



One: 02: 49 Date: 05/28/16 Page 1 of 2 pages
 Location where statement was obtained: Cherry St at Wall St. Warren-Ville, South Carolina 29851
 Name: K. J. [REDACTED] Date of Birth: [REDACTED] 1996
 Address: [REDACTED] City: Augusta State: GA Zip: 30906
 I completed the 12th grade in school, and (CAN) CANNOT read and write. (Circle one)

I met Marcus at the library, we exchanged numbers & later that day evening he came to pick me up from my home. When we got to his house we started to share a marijuana roach, he had 2 Budlight beers, I had 2/3 of a Raspberry Limerita. He made advances towards me & I refused to multiple times. He left out of the room then when he came back he pulled the gun out & told me to take my clothes off. I took off my jewelry trying to persuade him to not rape or abuse me. When I refused he still continued to point the gun at me while raising his voice telling me to take my ^{clothes} ~~shirt~~ off. While I took off my jacket & my shirt I was begging him not to rape me while I moved towards the door. I tried to grab my phone & call someone but he told me to put it down. When I went to grab my phone he grabbed me & started wrestling w/ me. While we were wrestling I got a hold of the door knob & started to scream, he put his hand over my mouth trying to quiet me but I managed to get out of his grasp. After I tried going for the door again that's when he put his hands around my neck & tried to choke me. While wrestling trying to get away I seen a knife sitting out, I grabbed the knife to defend myself. When I grabbed the knife he tried taking it from me. At that point I

I have read or have had read to me this statement consisting of 2 page (s). This statement is true. I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will, without promise or reward, without fear or threat of physical harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 03:26 a.m./p.m. on 28th day of MAY, 20 16.

Signature of person giving voluntary statement

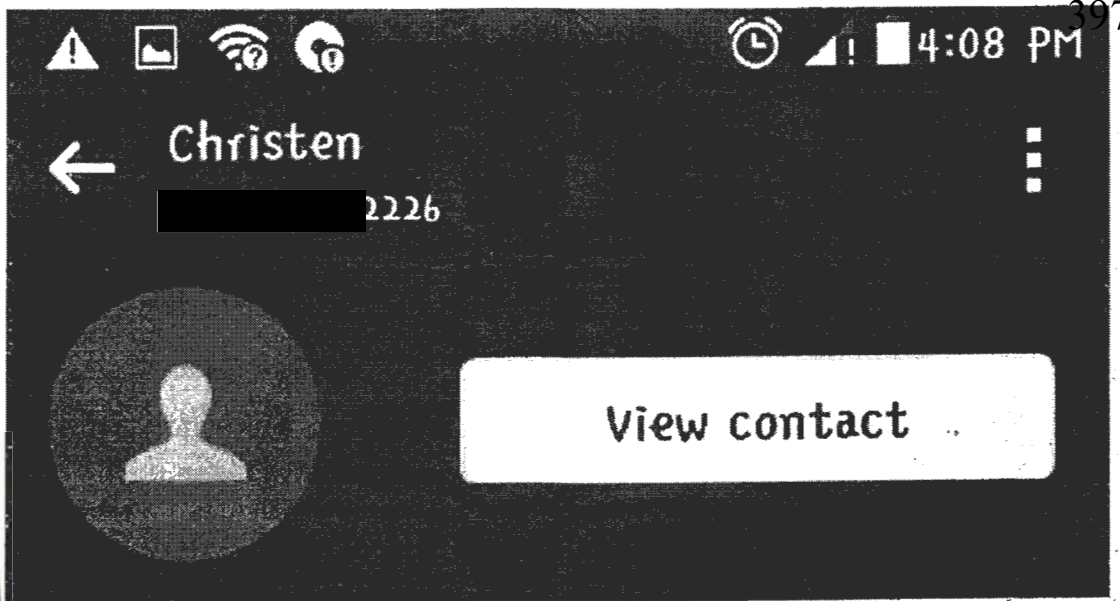
Witness [Signature] USSS

Witness

I have been given a copy of this statement consisting of 2 pages.
 Initials of person making statement. KJ

believe he was finished trying to wrestle. He started to tell me he was going to take me home just to go get my stuff & he'd take me home. I refused & said that if he'd go collect my property himself that I would allow him to take me home. When he turned around to go collect my things I ran out of the front door screaming for help. I ran down the road screaming. I came across a white man & I tried to explain to him what was going on. Then I heard Marcus's ~~car~~^{truck} coming down the road so I started pleading for help. The white male's ~~brother~~^{brother} family came to the front of the driveway, I ran to them, Marcus pulled off. I went inside their home, they gave me a shirt & I asked for a phone to call 911.

①



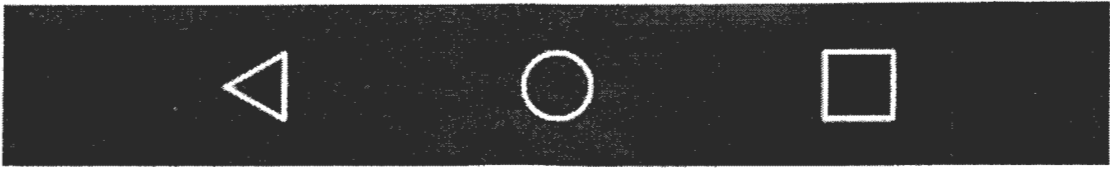
PENGAD 800-531-6989
PLAINTIFF'S
EXHIBIT
NO. 3

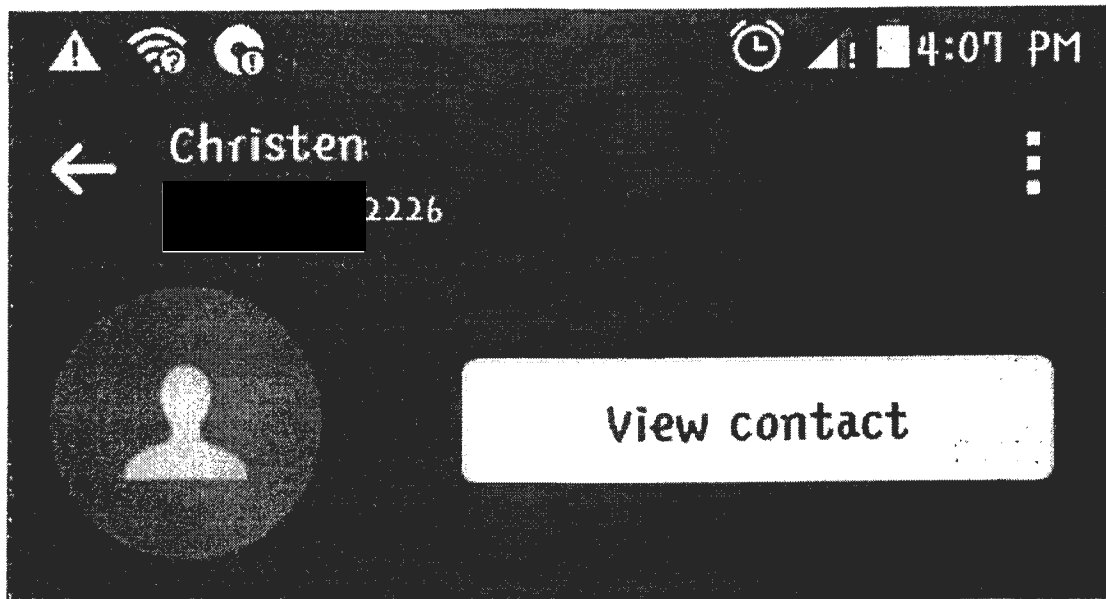
2226

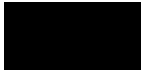
MOBILE



Jun 2 (Thu) 3:04 PM

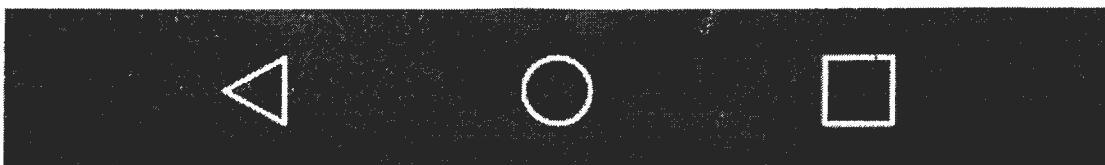




  2226
MOBILE



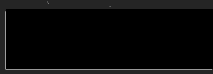
  Jun 8 (Wed) 10:02 AM



①

4:08 PM

Christen

2226

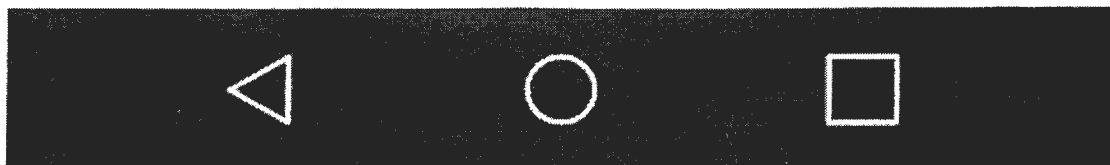


 2226

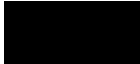
MOBILE



 Jun 2 (Thu) 3:04 PM

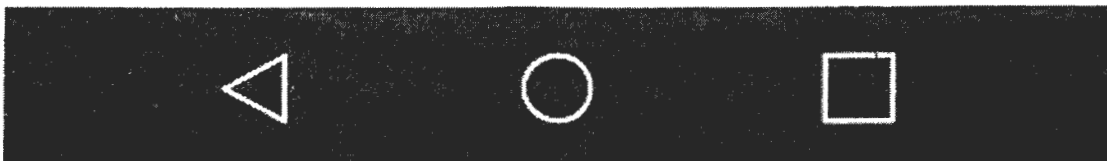




  2226
MOBILE



  Jun 8 (wed) 10:02 AM



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Wayne Hankinson, SCDC #373802,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2021-CP-02-01270

ORDER OF DISMISSAL

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JAN 04 2024

Robert J. Harte
C.C.P. & G., Aiken County, S.C.
Charla Griffi Plouffe
Deputy Clerk

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Wayne Hankinson ("Applicant") on June 17, 2021. On September 5, 2023, a hearing into the matter was convened before the Honorable Heath P. Taylor at the Aiken County Courthouse. Applicant was present and represented by Christopher R. Geel, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. During the hearing, testimony was taken from Applicant and C. David Hayes ("Counsel").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its November 2016 term, the Aiken County Grand Jury indicted Applicant for assault with intent to commit criminal sexual conduct in the first degree (2016-GS-02-02362), kidnapping (2016-GS-02-02363), and possession of a weapon during the commission of a violent crime (2016-GS-02-

FILED

January 4 2024

Robert J. Harte
C.C.P. & G.S.

Charla Griffi Plouffe
Deputy Clerk

02364). Applicant was represented by Second Circuit Public Defender C. David Hayes, Esquire. Assistant Solicitors Ashley A. Hammack and Samuel B. Grimes of the Second Circuit Solicitors Office prosecuted the case.

On August 29, 2017, Applicant proceeded to a jury trial before the Honorable Brooks P. Goldsmith, circuit court judge. During the trial, the jury heard testimony from the victim, Applicant, and several other witnesses who encountered the two following the attack at Applicant's home. Following the trial, the jury convicted Applicant as indicted of assault with intent to commit criminal sexual conduct in the first-degree and kidnapping, but acquitted him of possession of a weapon during the commission of a violent crime. Judge Goldsmith sentenced Applicant to twelve years of imprisonment for each offense, with the sentences to be served concurrently.

Applicant, through trial counsel, filed a motion for a new trial on September 8, 2017. By order filed December 15, 2017, Judge Goldsmith denied the motion for a new trial.

Applicant filed a timely notice of appeal and was represented on appeal by Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who raised the following issues on appeal:

1. Whether the court erred by ruling appellant was not entitled to an instruction on self-defense where appellant testified the complainant attacked him with a knife before what appeared to be a consensual sexual encounter, appellant was defending himself against that armed attack by the complainant and not seeking to sexually assault her, since appellant's testimony was evidence he was acting in self-defense, and not trying to sexually assault or illegally confine the complainant against her will when she attacked him with a knife?
2. Whether the court erred by ruling appellant was not entitled to ten peremptory challenges pursuant to S.C. Code § 14-7-1110, where the statute lists "criminal sexual conduct" as one of the crimes for which a defendant is entitled to ten peremptory challenges, and appellant was indicted for assault with intent to commit criminal sexual conduct which contains the same punishment as the principal and the statute did not break out "criminal sexual conduct" into "different degrees"?

Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Wayne Hankinson, Unpub. Op. No. 2020-UP-317 (Ct. App. filed November 25, 2020). The remittitur was issued on December 15, 2020.

FACTUAL SUMMARY

The victim was a 21-year-old female college student living in Augusta, GA. (Tr. p. 57). The victim and Applicant initially met in a library in downtown Augusta. (Tr. pp. 58–59). They spoke for approximately five minutes before exchanging phone numbers. (Tr. p. 60). The victim went to the movies that day and had planned to go downtown with friends later that night. (Tr. p. 61). However, those plans got cancelled and Applicant texted the victim. (Tr. p. 62). Applicant picked up the victim ostensibly to go to his cousin's house for a party. (Tr. p. 62). They stopped at a gas station where the victim began to feel apprehensive due to how far they had driven. (Tr. p. 64). Instead of going to the cousin's party, Applicant took the victim back to his house. (Tr. p. 64).

They went inside the house and watched a movie together while drinking beer and smoking marijuana. (Tr. p. 68). Eventually Applicant began making advances and rubbing on the victim's leg. (Tr. p. 71). The victim rejected Applicant's advances and Applicant went and sat on the other couch. (Tr. p. 71). Applicant then left the room and came back with a gun which he pointed at the victim. (Tr. p. 72). Applicant told the victim to get up and take off her clothes. (Tr. p. 72). The victim began crying and started offering her phone and jewelry to Applicant. (Tr. p. 73). Ultimately, the victim took off her shirt and threw it on the couch. (Tr. p. 75). The victim then reached for her phone and Applicant lunged at her, grabbed her and began dragging her towards the bedroom. (Tr. p. 77).

The victim resisted and eventually fell into a pile of boxes that was in another room. (Tr. p. 79). The victim grabbed a knife that was sitting atop a speaker and attempted to stab Applicant,

but missed. (Tr. p. 80). Applicant grabbed the knife by the blade, cutting himself. (Tr. p. 80). Applicant told the victim to grab her stuff and he will take her home. (Tr. p. 81). Applicant then ran out the front door, without her shirt on, and approached David Blanken who was walking down the street. (Tr. p. 83). The victim was hysterical and screaming for help. (Tr. p. 115). Applicant then pulled up in his truck threatening Mr. Blanken telling him to mind his own business. (Tr. p. 116). Applicant eventually drove off and Mr. Blanken took the victim to his friend's house. (Tr. p. 117). Law enforcement arrived shortly thereafter. (Tr. p. 118).

CURRENT APPLICATION

Applicant timely commenced this PCR application on June 17, 2021. In his application Applicant alleged he was entitled to relief based on the following grounds:

- (a) "Trial counsel was constitutionally ineffective when he failed to object, or move to excuse for cause, or move to strike a juror who was a personal friend of the State's investigator, and this jury was seated on the jury at trial.
 - (i) "A juror who was seated in this case was a personal friend of an Investigator Norwood Bodie of the 2nd Circuit Solicitor's Office. Trial counsel failed to object to this juror being seated, and failed to adequately preserve Applicant's right to challenge this issue on appeal."
- (b) "Trial counsel was constitutionally ineffective when he failed to call a critical defense witness at trial, and present critical evidence of post-incident contact between the Applicant and the alleged victim."
 - (i) After the date of the alleged incident in this case. Applicant spent several days with his girlfriend. She was available to testify that the alleged victim repeatedly attempted to contact Applicant during this time period. Furthermore. Applicant provided his attorney with phone records documenting these contacts. Trial counsel failed to call the witness or present this evidence at trial.
- (c) "Trial counsel was constitutionally ineffective when he failed to object to the alleged victim's written statement being admitted as evidence in Applicant's trial."
 - (i) "The alleged victim gave a written statement to police who investigated this incident. The written statement was tendered as an exhibit in this trial, without an objection from defense counsel."

On November 22, 2022, Applicant filed an amended application raising the following additional claims of ineffective assistance of counsel:

1. “Failure to properly raise and argue Applicant’s Motion for New Trial (based on juror being a personal friend of the State’s investigator who sat at counsel’s table). Trial counsel moved for a new trial after learning this information, but failed to request a hearing, failed to argue that Applicant was prejudiced by this juror’s relationship with the State’s investigator, failed to argue that the juror should have been disqualified, and failed to specify whether the State previously disclosed the name of the investigator.
2. “Failure to impeach the alleged victim with inconsistencies in her in-court testimony, as well as inconsistencies with prior statements given to law enforcement. Instead, trial counsel improperly introduced a copy of the victim’s prior statements as an exhibit.”
3. “Failure to adequately investigate the case and prepare for trial, to the extent that trial counsel—
 - a. “Failed to obtain and present evidence/photographs of the knife found in Applicant’s truck;”
 - b. “Failed to interview potential witness Mykayla Prunell, who was with Applicant in the days that followed the alleged incident.”
 - c. “Failed to call witness Mykayla Prunell to testify as a defense witness.”
 - d. “Failed to introduce call logs that proved that the alleged victim continued to have contact with Applicant after the alleged incident.”
 - e. “Failed to argue that the wound on Applicant’s hand contradicted the alleged victim’s version of events.”
 - f. “Failed to argue that the photographs of the alleged crime scene contradicted the alleged victim’s version of events.”

During the hearing, Applicant only proceeded on the allegations raised in his amended application.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its

“reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on

the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696–97.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Applicant's allegations of ineffective assistance of counsel are without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Properly Raise and Argue Applicant's Motion for a New Trial

Applicant contends counsel was ineffective for failing to properly raise and argue Applicant's motion for a new trial. Specifically, Applicant alleges Counsel moved for a new trial after learning this information, but failed to request a hearing, failed to argue that Applicant was prejudiced by this juror's relationship with the State's investigator, failed to argue that the juror should have been disqualified, and failed to specify whether the State previously disclosed the name of the investigator. This Court disagrees and finds counsel was not ineffective in this regard.

1. PCR Testimony

Applicant testified Counsel moved for a new trial because one of the jurors knew the State's investigator. Applicant testified Counsel argued in his written motion that the juror was not

impartial because the juror had a relationship with the State's investigator which was not discovered by the defense until after sentencing. Applicant testified the motion was not filed properly because Counsel failed to argue prejudice.

Counsel testified he routinely asks members of the jury about a case after trial. While talking with the jurors, Counsel overheard the foreman talking to the investigator about their children hanging out together. Counsel testified he immediately went back in the courtroom and moved for a new trial.

On cross examination, Counsel testified he did not recall a written motion for a new trial or an order denying the motion. Counsel testified he did not write a brief along with the motion; however, he did move for a new trial immediately and argued it in the courtroom following sentencing. Counsel testified he argued he was unable to question the jury during voir dire regarding any potential relationship a member of the venire had with the investigator because the investigator was not in the room at the time. Counsel testified he would have liked an opportunity to use a remaining strike on this juror due to the juror's relationship with the State's investigator. Counsel testified he argued this in front of the court and received a ruling denying the motion. Counsel explained he filed a notice of appeal afterwards.

2. Discussion

Applicant alleges counsel was ineffective for failing to properly raise and argue Applicant's motion for a new trial. This allegation is without merit. This Court finds counsel properly raised and argued a motion for a new trial, both in court and in a written motion, which was denied by the trial court. Counsel argued, at length, that Applicant should be granted a new trial based on a juror member's undisclosed relationship with the State's investigator. (Tr. pp. 275–280). Counsel further argued he would have used one of his remaining strikes to strike this juror

had he been aware of the relationship. (Tr. p. 279). This motion was denied by the trial court. (Tr. p. 280). Moreover, the record reflects Counsel was not aware of this information until after trial when he spoke to the jury, and, accordingly, Counsel had no earlier opportunity to make this motion. This Court finds Counsel made a timely post-trial motion; thus, preserving the issue for appellate review. Counsel need not have requested another hearing on this matter since the issue had been ruled upon by the trial court following arguments from both Counsel and the Solicitor. Therefore, this Court finds Applicant has failed to prove Counsel was deficient as to this allegation.

Furthermore, as the solicitor argued during the post-trial motions hearing, the State's investigator was not a witness, not present for jury selection, and was not involved with the State's case other than presenting pictures and operating the video system. (Tr. p. 277). Moreover, the trial court asked the jury pool if they knew of any reason why they cannot be fair and impartial in this case and the juror in question did not give an affirmative response. (Tr. p. 30). Therefore, Applicant has failed to prove he was prejudiced by any alleged deficiency.

Accordingly, this Court finds Applicant's allegation counsel was ineffective for failing to properly raise and argue Applicant's Motion for a New Trial is **DENIED**.

Failure to Impeach Alleged Victim

Applicant next contends Counsel was ineffective for failing to impeach the alleged victim with inconsistencies in her in-court testimony, as well as inconsistencies with prior statements given to law enforcement. This Court disagrees, and finds the record from Applicant's trial and the credible testimony of Counsel refutes this allegation.

1. PCR Testimony

Applicant testified Counsel should have challenged the victim's version of events. Applicant testified he believed Counsel's questions on cross-examination of the victim were

inadequate. Counsel testified he impeached the victim on multiple lies during cross-examination. Counsel testified he even admitted into evidence a wikipedia article regarding a movie the victim allegedly watched that same day that had not come out yet. Counsel further explained he used her contradictory statements in his closing argument.

On cross-examination, Counsel testified he did not recall whether he impeached the victim on whether she mentioned to law enforcement in her prior statement that she fell into Applicant's boxes during their altercation. Counsel further testified he did not recall whether he cross-examined the victim regarding her testimony that she lunged for the knife and grabbed the knife by the blade. Counsel testified he crossed her on multiple discrepancies and does not remember the ones he focused on.

2. Discussion

This Court finds this allegation is without merit. During Applicant's trial, Counsel vigorously cross-examined the victim on her inconsistencies with her prior statement. Counsel specifically pointed out various statements made during her in-court testimony that she did not include in her prior statement to law enforcement. The victim testified that, after Applicant picked her up, he told her they were going to his cousin's house for a party. (Tr. p. 62). The victim testified she began to notice red flags when Applicant stopped at a gas station to pick up beer. (Tr. p. 64). The victim further testified that her and Applicant went outside of his house to look at his dogs. (Tr. p. 69). The victim also testified that, after running out of Applicant's house and approaching a witness on the street, Applicant pulled up in his vehicle and told the witness to not get involved. (Tr. p. 84). Counsel cross-examined the victim on each of these statements and was able to elicit testimony that she mentioned none of these events in her prior statement to law enforcement. (Tr. pp. 105–108). Furthermore, Counsel directly impeached the victim by admitting into evidence a

Wikipedia article on the movie the victim testified she saw in theaters earlier that afternoon. (Tr. p. 110). The Wikipedia article indicated the movie was not released until over a year after this incident occurred. (Tr. p. 110).

The transcript of the trial reflects that Counsel thoroughly attacked the victim's credibility by cross-examination and impeachment with her prior statement. This Court finds Counsel impeached the victim on multiple points with her prior statement and was even able to introduce a Wikipedia article which further impeached her testimony. During the evidentiary hearing, Counsel credibly testified to all these points of impeachment. This Court finds Applicant has failed to meet his burden showing Counsel was deficient as to this allegation.

Applicant asserts that Counsel did not cross-examine the victim on every inconsistency, including her testimony that she fell into Applicant's boxes and grabbed Applicant's knife by the blade. However, this Court finds this testimony would have been merely cumulative to the other inconsistencies Counsel impeached the victim with. Applicant testified at his trial presenting his version of events that contradicted the victims. Moreover, the State presented testimony from a witness that saw the victim immediately after the assault. The eyewitness testified the victim was hysterical and screaming for help without a shirt on. (Tr. p. 115–119). The witness further testified that Applicant was threatening the victim and told the witness to mind his own business. (Tr. p. 116). After hearing the testimony from all the witnesses, including the victim and Applicant, the jury found Applicant guilty of assault with intent to commit criminal sexual conduct in the first degree. Therefore, Applicant has failed to prove he was prejudiced as to this allegation.

Accordingly, this Court finds this allegation is **DENIED**.

Failure to Obtain and Present Evidence/Photographs of the Knife Found in Applicant's Truck

Applicant contends counsel was ineffective for failing to obtain and present

evidence/photographs of the knife found in Applicant's truck. This Court finds this allegation is without merit.

1. PCR Testimony

Applicant testified he wanted Counsel to introduce a picture of the knife law enforcement found in his truck to demonstrate victim was lying about the knife used. Applicant testified the victim said it was a butter knife. Counsel testified he questioned the investigator on whether the knife found in Applicant's truck was a butter knife. Counsel testified he was able to elicit testimony that no gun or butter knife was ever found. Counsel testified he did not admit the photograph of a knife because he did not want to put in evidence of the crime Applicant was charged with.

2. Discussion

This Court finds Applicant was not ineffective for failing to introduce evidence of the knife found in Applicant's truck. This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). "[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010).

Counsel credibly testified he did not introduce the photograph of the knife found in Applicant's truck because he did not want to admit inculpatory evidence. Instead, this Court finds Counsel reasonably elicited testimony on cross-examination of the investigator that the knife found in the truck was not a butter knife. (Tr. p. 147). This Court finds Counsel articulated a valid reason for not introducing the photograph of the knife found in Applicant's truck. Therefore, Applicant has not proved Counsel was deficient as to this allegation.

Moreover, Applicant has failed to present sufficient evidence or testimony how the introduction of the photograph of the knife would have led to a different outcome at trial. Thus, Applicant has also failed to meet his burden establishing prejudice as this allegation.

Accordingly, this allegation is **DENIED**.

Failure to Interview/Call as a Witness, Mykayla Prunell and Failure to Introduce Call Logs¹

Applicant next contends Counsel was ineffective for failing to interview witness, Mykayla Prunell, who was with Applicant in the days following the alleged incident. Additionally, Applicant contends Counsel was ineffective for failing to call witness, MKayla Prunell, to testify at trial as a defense witness. Furthermore, Applicant contends Counsel was ineffective for failing to introduce call logs that proved that the alleged victim continued to have contact with Applicant after the alleged incident. This Court finds these allegations are without merit.

1. PCR Testimony

Applicant testified there were call logs showing the victim called him days following the incident. Applicant testified he ignored the calls. Screenshots of the alleged calls were admitted into evidence over the State's objection. Applicant testified he requested Counsel use them at trial but he did not receive a response. Applicant testified he wanted Counsel to call Mykayla Prunell as a witness because she was present when these alleged calls came in.

Counsel testified that Applicant's prior counsel, Michael Routzong, spoke with Mykayla Prunell. However, Counsel never heard from her and she was not present at trial. Counsel testified he has no notes regarding the call logs. Counsel explained that Applicant could have testified about the call logs during his testimony at trial, but he did not.

¹ Allegations 3(b), (c), and (d) will be addressed in this section.

2. Discussion

This Court finds these allegations are without merit. This Court finds the exculpatory value of these calls logs is virtually nonexistent. All that is shown from the call logs is two purported missed calls from the victim to Applicant days following the assault. Applicant has presented no evidence or testimony as to what evidentiary effect these call logs would have had on the outcome of the trial. Any evidentiary value these call logs may have is purely speculative. If Applicant had felt so strongly regarding the value these call logs would have to his defense, then he could have testified to them during trial. He did not. Moreover, Counsel credibly testified he has no recollection of these call logs, never spoke with Mckayla Prunell, and never heard from Mckayla Prunell during the entirety of his representation of Applicant. Therefore, Applicant has failed to prove Counsel was deficient as to this allegation.

Furthermore, Applicant failed to produce Mckayla Prunell as a witness during the evidentiary hearing; thus, Applicant has not met his burden of proof as to this allegation. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (“This Court has repeatedly held a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.”) (emphasis in original); *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would

have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); *see also Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records).

Accordingly, this allegation is **DENIED**.

Failure to Argue Wound on Applicant's Hand Contradicted the Alleged Victim's Version of Events

Applicant contends Counsel was ineffective for failing to argue the wound on Applicant's hand contradicted the alleged victim's version of events. This Court disagrees, and finds that Applicant has failed to meet his burden of proof as to this allegation.

1. PCR Testimony

Applicant testified he has a scar on the outside of his right index finger from a wound he received during this incident. Applicant testified the victim said he received the wound by grabbing the knife. Applicant showed this Court the scar. Applicant testified he wanted Counsel to question the victim about it. Counsel testified that during his direct examination of Applicant, he questioned Applicant regarding the knife. Counsel testified Applicant showed the jury the scar on his finger just like he did during his testimony at the evidentiary hearing.

2. Discussion

This Court finds this allegation is without merit. During direct examination of Applicant, Counsel questioned Applicant at length regarding the sharpness of the knife and the wound on his right hand. (Tr. pp. 180–185). Counsel requested Applicant show the jury the scar on his right hand in almost identical fashion as he showed this Court during the evidentiary hearing. (Tr. p.

182). On cross-examination, Counsel elicited testimony from the victim regarding the knife and how Applicant was wounded. (Tr. p. 103). This Court finds Applicant has failed to prove Counsel was deficient as to this allegation.

Furthermore, Applicant's presentation of his wound to the jury at trial was nearly identical to his presentation of the wound at the evidentiary hearing. Applicant testified as to how he received the wound at trial. Applicant has failed to show sufficient evidence or testimony as to how additional questioning of the victim regarding the wound on Applicant's hand would have led to a different outcome at trial. Thus, Applicant has failed to prove prejudice from any alleged deficiency.

Failure to Argue that the Photographs of the Alleged Crime Scene Contradicted the Alleged Victim's Version of Events

Applicant lastly contends Counsel was ineffective for failing to argue that the photographs of the alleged crime scene contradicted the alleged victim's version of events. This Court disagrees, and finds Counsel's credible testimony and the record from Applicant's trial refutes this allegation.

1. PCR Testimony

Applicant testified Counsel should have used the crime scene photos to question the victim regarding inconsistencies in her testimony. Specifically, Applicant wanted Counsel to use the crime scene photo of the inside of the house to contradict the victim's testimony that he was grabbing her and throwing her around. Applicant testified the victim said he was dragging furniture around, but the crime scene photos shows everything in place. Counsel testified he used the crime scene photos during testimony and closing argument.

2. Discussion

This Court finds this allegation is without merit. Applicant alleges Counsel should have

used the crime scene photos to contradict the victim's testimony that furniture was being dragged around. Although the victim did testify that she fell into boxes, she did not testify at trial that furniture was being dragged around. However, Counsel did use photos of the crime scene several times during the trial, including during his cross-examination of the victim. (Tr. pp. 100–101).

Furthermore, Counsel made the following argument during closing:

Think about her testimony. He's choking me. He's dragging me into the room, dragging me backwards. She's pulling on furniture and clawing, trying not to go in this bedroom. You got the pictures. It ain't the cleanest house in the world and there's a lot of stuff on them little end tables. The only thing on the ground is a candle.

I think that coffee table would have been upside down. I think all of the stuff on it would have been like a bomb through the room. The couch cushions would have been gone, the little chair on the end would have been snatched off. No. It didn't happen, that's why.

(Tr. pp. 197–198).

Counsel effectively argued the orderly nature of the furniture in the crime scene photos contradicted the victim's testimony. Therefore, Counsel was not deficient as to this allegation.

Furthermore, additional questioning of the victim as to the nature of the crime scene would have been merely cumulative to Applicant's testimony and Counsel's argument during closing. Applicant has not presented sufficient evidence or testimony of how further utilization of the crime scene photos would have led to a different outcome at trial. Therefore, Applicant has not met his burden proving prejudice.

Accordingly, this allegation is **DENIED**.

CONCLUSION

Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, the allegations of ineffective assistance of counsel are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application with respect to all other allegations for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 18th day of December, 2023.


 THE HONORABLE HEATH P. TAYLOR
 Presiding Judge
 Second Judicial Circuit

December 18, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
STATE OF SOUTH CAROLINA)
vs.)
Wayne Hankinson,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

Indictment Numbers: 2016GS0202362;
2016GS0202363; &
2016GS0202364

MOTION FOR NEW TRIAL

A NEW TRIAL SHOULD BE GRANTED, SINCE THE DEFENDANT'S RIGHT TO DUE PROCESS WAS DENIED BY THE LATE ADDITION OF INVESTIGATOR NORWOOD BODIE TO THE VISIBLE PROSECUTION TEAM IN THIS MATTER.

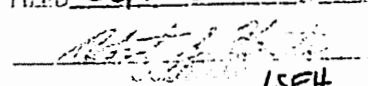
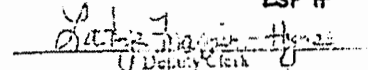
Defendant is entitled to due process of law by the United States Constitution and the Constitution of the State of South Carolina. U.S. Const. am. 5th, 6th, and 14th; S. C. Const. Inherent in due process is the right to a fair and impartial jury. *Smith v. State*, 375 S.C. 507(2007). The jury in this matter was unlikely to be impartial due to the jury foreman's relationship with the State's investigator in this matter. At the conclusion of the case, the jury foreman was overheard commenting on his personal relationship with Investigator Norwood Bodie of the 2nd Circuit Solicitor's Office. These comments were witnessed by attorney Dereck Bush, attorney David Hayes, Investigator Stuart Graybeal of the Aiken County Sheriff's Department, and Investigator Kirk Owen of the 2nd Circuit Solicitor's Office. The foreman was heard to say he knew Investigator Norwood Bodie from being involved in the same Boy Scout Troop with him, and he had both shot pool and swam at Norwood Bodie's house. It would be contrary to human nature for the jury foreman not to be partial towards the prosecution in this matter, since Investigator Norwood Bodie sat at the prosecution's table in court during the trial, not twenty feet away from the jury box and assisted the prosecutors in the handling of evidence during the trial. However, Investigator Bodie was not present during jury selection and was not introduced to the jury during *Voir Dire*. Consequently, even though the Defendant had no relationship between the foreman and the prosecution been known, at the time of jury selection the jury foreman may not have known his friend would be assisting in this trial, and the relationship was not disclosed to the Court. This situation creates a pall of inherent unfairness over the jury process and the court in equity should grant a new trial in this matter.

Respectfully Submitted,


Charles D. Hayes
Attorney for Defendant

September 8, 2017
Aiken, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. [Signature], Clerk of the Court, do hereby certify that the foregoing is a true and correct copy of the original documents which have been filed in my office this 8 day of Sept. 2017.
C.C.P. & U.S. Aiken County, S.C. LSFH
Deputy Clerk

FILED Sept. 8 2017

LSFH

Deputy Clerk

2016A0210200841
2016A0210200842
2016A0210200843

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
Indictment Numbers: 2016GS0202362
2016GS0202363
2016GS0202364

VS.)

Wayne Hankinson,)
Defendant)

This matter comes before the court upon Defendant's Motion For New Trial dated September 8, 2017.

Defendant argues that one juror seated for the trial of his case was a friend of an investigator for the Sheriff's Department who sat at the table of the Solicitor who tried this case and assisted with the handling of evidence. The investigator's name was not given to the jury during voir dire and he was not present during jury selection. The investigator did not testify.

Defendant argues that he would have struck the friend of the investigator had he known of their relationship and thus Defendant was denied his right to a fair and impartial jury.

Neither Defendant nor the State submitted any briefs supporting their respective positions although the attorney for the State advised the court that the State opposed the motion as was argued at the conclusion of the trial. Neither party

1 SOL (Hammack)
1 P.D (Hayes)

FILED DEC. 15 20 17

Robert J. White
CCOP & GS

Thomas Spitzer
Deputy Clerk

2016-65-02-02362

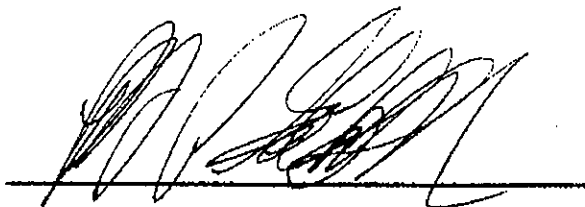
requested a hearing "on the record" and I decide this motion without such hearing.

Defendant apparently contends that the State was obligated to divulge the name of anyone who might sit at the prosecution table but no such request was made prior to trial. Defendant does not argue any inappropriate conduct on the part of the prosecution or that the name of the investigator was not disclosed pursuant to Rule 5 SCRPC. No specific prejudice is alleged by Defendant, only that he would have used one of his strikes to keep the juror from being seated. Defendant does not argue that the witness was not qualified, was prejudiced or should have been disqualified by the court for cause.

Based on the foregoing, I find the Defendant's Motion should be denied.

December 13, 2017

~~October 3, 2017~~

A handwritten signature in black ink, appearing to read 'Brooks P. Goldsmith', written over a horizontal line.

Brooks P. Goldsmith , Circuit Judge

2016-65-02-00362