

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Beaufort County

Honorable J. Derham Cole, Circuit Court Judge

ISAIAH GADSON, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001382

APPENDIX

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25

1 PROCEEDINGS

2 THE BAILIFF: All of the jurors are
3 present, Your Honor.

4 THE COURT: Okay. And, Solicitor, are you
5 prepared to present indictments?

6 MS. SWANSON: Yes, sir, I'm sorry. And
7 Your Honor has the originals, correct? The
8 State calls the case of Isiah Gadson. These
9 indictment numbers are 2016GS071548 for
10 criminal sexual conduct in the first degree.
11 1549 for murder. 1550 for kidnapping. And
12 1551 for armed robbery.

13 THE COURT: And is the defense ready to
14 proceed?

15 MS. CAMPBELL: Yes, sir.

16 THE COURT: Ladies and gentlemen, I'm
17 going to ask the bailiff in the back of the
18 room to let me know whether or not this is
19 working. Can you hear me?

20 THE BAILIFF: Yes, sir, I can hear you.

21 THE COURT: Thank you. As you heard,
22 ladies and gentlemen, we are about to begin the
23 selection of a jury in the trial of the case of
24 the State of South Carolina versus Isiah
25 Gadson. Isiah Gadson as a defendant who is

JURY SELECTION

1 charged with committing these offenses on or
2 about January the 5th of 1980. He is charged
3 with, as you heard, kidnapping and criminal
4 sexual conduct with a minor, armed robbery
5 involving one Lori Ann Krug, K-R-U-G. And --
6 am I correct or do I have the wrong name?

7 That is the wrong name. I am sorry,
8 ladies and gentlemen. I picked up the wrong
9 file. I am sorry. Please forget what I just
10 said, it is of no importance. Those offenses
11 involve one individual known as MINOR [REDACTED],
12 [REDACTED]. He is also charged with the offense
13 of murder involving one David Krulewicz. Am I
14 pronouncing the name correct, Solicitor?

15 MS. SWANSON: That's correct.

16 THE COURT: In just a moment, ladies and
17 gentlemen, I'm going to begin asking you some
18 questions concerning your relationship with the
19 attorneys involved in this case, with the
20 defendant himself, with the victims, the
21 alleged victims of these crimes, and with
22 witnesses that may be identified to you in just
23 a few minutes by the attorneys.

24 Before I do that, I'm going to ask the
25 attorneys who are involved in this case if they

JURY SELECTION

1 will first stand and identify themselves to
2 you, give you the names of any potential
3 witnesses that might be called in the case.
4 And after all of that is done, I'll begin
5 asking you questions once again concerning your
6 relationship with any of these individuals as
7 well as other individuals. And we will begin
8 with the State. Solicitor.

9 MS. SWANSON: Thank you, Your Honor. My
10 name is Hunter Swanson. I am an assistant
11 solicitor here in the 14th circuit. We cover
12 five different counties. I have been working
13 for our elected Solicitor Duffy Stone for the
14 past ten years.

15 Seated with me is Captain Bob Bromage with
16 Beaufort County Sheriff's Office. He is the
17 case officer on the case. The following
18 witnesses are potential witnesses that we are
19 going to call this week. John Barron is with
20 the Ridgeland County DNA lab. Sony Bessinger
21 of Beaufort, South Carolina. Clifford Brown of
22 Beaufort, South Carolina. Rachel Brown of
23 Beaufort, South Carolina. David Caldwell with
24 SLED. That is South Carolina State Law
25 Enforcement Division.

JURY SELECTION

1 Katie Corley with SLED. Dr. John Fontana,
2 retired, Beaufort, South Carolina. Laura Hash,
3 SLED. Lori Ann Krug, formerly of Beaufort,
4 South Carolina. David McClure, retired from
5 SLED. MINOR [REDACTED], formerly [REDACTED] of
6 Beaufort, South Carolina. Selena Nelson,
7 Bluffton PD. Charles Raley, Beaufort Police
8 Department. Patti Ruff, retired from SLED.
9 Chris Sankowski, Beaufort Sheriff's Office.
10 Courtney Thompson of SLED. Dr. Frank Trefny of
11 Kingstree, South Carolina. And Gerry Wagner,
12 who is retired Beaufort County Sheriff's
13 Office.

14 THE COURT: Thank you, Solicitor. And is
15 for the defense.

16 MS. CAMPBELL: May it please the Court.
17 Thank you, Your Honor.

18 THE COURT: Certainly.

19 MS. CAMPBELL: Good morning. My name is
20 Trasi Campbell. I am the public defender who
21 is tasked with going to all five counties in
22 our circuit, which covers Beaufort, Jasper,
23 Hampton, Allendale, and Colleton County and
24 representing citizens in those counties that
25 are charged with these particular types of

JURY SELECTION

1 crimes. I'm very fortunate today to have an
2 assistant public defender from the Beaufort
3 County office, Mr. Benjamin Tripp, who is
4 seated with me and who will be here through the
5 duration of this trial. Did you want me to go
6 into any of the other public defenders in
7 Beaufort County as to whether or not the jury
8 is familiar with those individuals or not?

9 THE COURT: If you would like, certainly.
10 You may.

11 MS. CAMPBELL: So, there are a number of
12 public defenders in Beaufort County, Lauren
13 Carraway, James Bell, Jessica Saxon, Phil Rios,
14 Jeff Stevens. Is that it? Okay. Thank you so
15 much. And did you want me to introduce my
16 client at this time?

17 THE COURT: Yes.

18 MS. CAMPBELL: Please stand. And seated
19 to my left is Mr. Isiah Gadson of Beaufort,
20 South Carolina. Okay.

21 THE COURT: Thank you, Ms. Campbell.

22 MS. CAMPBELL: Oh, and Eric Staggs is an
23 attorney in Beaufort also. Thank you, Judge.

24 THE COURT: Okay. First question that I
25 have, ladies and gentlemen, is this: Is any

JURY SELECTION

1 members of the jury panel ever been related by
2 blood or related by marriage to any of the
3 attorneys involved in this case, or to the
4 defendant himself, or any of the witnesses that
5 have been identified to you, or MINOR or
6 Rob Neal? Have you ever been related by blood
7 or related by marriage to any of those
8 individuals, please stand. And your name and
9 number, please ma'am.

10 JUROR: 29. I am related to Selena
11 Nelson.

12 THE COURT: How are you related to that
13 individual?

14 JUROR: Our grandmothers are sisters.

15 THE COURT: Okay.

16 THE COURT: How often do you see each
17 other?

18 JUROR: About five times a month.

19 THE COURT: You have to speak up. I'm
20 sorry.

21 JUROR: Around five times a month.

22 THE COURT: Oh, you do. Okay. Would the
23 fact that your relative is going to be a
24 witness in this case affect your ability to be
25 a fair and impartial?

JURY SELECTION

1 JUROR: No, sir.

2 THE COURT: You think that you could be
3 fair, regardless?

4 JUROR: Yes, sir.

5 THE COURT: Okay. Thank you, ma'am. Any
6 members of the jury panel ever had a close
7 personal or social relationship with any of the
8 attorneys involved in this case or any of the
9 witnesses that have been identified to you or
10 the defendant himself? If so, would you please
11 stand? If you have ever had a close, personal
12 or social relationship with any of those
13 individuals, please stand and give us your name
14 and juror number. The lady closest to me.
15 Juror number.

16 JUROR: Veronica Neill, Juror 265. I have
17 had social minglings with one of the witnesses.

18 THE COURT: Which one is that?

19 JUROR: Sonny Bessinger.

20 THE COURT: Have you known that
21 individual?

22 JUROR: We go way back to, the Bessingers
23 and Jettzers are related and I used to -- I
24 mean, since this big to this big. So -- I'm
25 also acquainted with MINOR when she was a

JURY SELECTION

1 small child as well.

2 THE COURT: Well, would that fact
3 interfere with your ability to be a fair and
4 impartial juror in this case?

5 JUROR: I'm searching my heart. I believe
6 that I could yes, sir.

7 THE COURT: You think that you could be
8 fair?

9 JUROR: Yes, sir.

10 THE COURT: You could listen to the
11 evidence and be fair to both the State and to
12 the defense?

13 JUROR: I believe so, sir, yes, sir.

14 THE COURT: You believe so. Okay. all
15 right. Thank you, ma'am.

16 JUROR: Yes.

17 THE COURT: And yes, in the blue top.

18 JUROR: Amy Covington, Juror 84. I have
19 had social relationships with Chris Sankowski
20 who is a potential witness, and also
21 Ms. Campbell.

22 THE COURT: Okay. Well, let's talk about
23 it one at a time. The potential witness that
24 you mentioned you have known for how long?

25 JUROR: Twenty-three years.

JURY SELECTION

1 THE COURT: And how often a month would
2 you see that individual?

3 JUROR: I have not seen him in several
4 years.

5 THE COURT: Several years, okay. And just
6 talking about that individual, would the
7 relationship that you just described to us
8 interfere with your ability to be a fair and
9 impartial?

10 JUROR: I'm not sure.

11 THE COURT: You might not be able to
12 listen to the evidence and be fair to both
13 sides?

14 JUROR: I probably could.

15 THE COURT: You probably could be fair.
16 All right. Let me ask you the next question,
17 Ms. Campbell, how long have you known her?

18 JUROR: Ten, maybe ten years.

19 THE COURT: Do y'all belong to any of the
20 same organizations?

21 JUROR: No.

22 THE COURT: The last time that you had a
23 personal conversation with her would have been
24 approximately how long ago?

25 JUROR: Probably about maybe six years

JURY SELECTION

1 ago.

2 THE COURT: Would that relationship
3 interfere with your ability to be a fair and
4 impartial?

5 JUROR: No.

6 THE COURT: The other witness, though, it
7 may interfere?

8 JUROR: I don't think so. I think that I
9 could, but I just don't know what it is all
10 about so I can't say.

11 THE COURT: I'll try again. Are you
12 concerned that you might not be able to be a
13 fair and impartial?

14 JUROR: Yes, I'm concerned.

15 THE COURT: All right. Thank you.

16 JUROR: Am I allowed to go --

17 THE COURT: Remember I told you we have
18 another -- we are going to pick another jury,
19 which I assume will be different witnesses.

20 JUROR: That is true.

21 MS. CAMPBELL: Judge, are you excusing her
22 from this case?

23 THE COURT: Hold on one second.

24 MS. CAMPBELL: May we approach?

25 THE COURT: Sure.

JURY SELECTION

1 (Off-the-record discussion held.).

2 THE COURT: I will excuse you from the
3 trial of this case. But we are going to pick
4 another jury, remember.

5 THE BAILIFF: One more standing, Your
6 Honor.

7 THE COURT: Sorry. Yes, sir. Your name
8 and number.

9 JUROR: 142, Thomas Glynn. Sonny
10 Bessinger, fellow coworker four years ago.

11 THE COURT: How long were you coworkers?

12 JUROR: About two years, a year or two
13 years.

14 THE COURT: The last time that you had a
15 conversation with that individual?

16 JUROR: Probably three or four years ago.

17 THE COURT: Would that fact interfere with
18 your ability to be a fair and impartial juror
19 in this case?

20 JUROR: No.

21 THE COURT: Thank you, sir.

22 Any members of the jury panel ever been
23 represented by any attorneys involved in this
24 case? If so, would you please stand.

25 (No response.)

JURY SELECTION

1 THE COURT: Any members of the jury panel
2 related by blood or related by marriage or are
3 you a close/personal friend of any member -- of
4 any law enforcement agency, or are you related
5 by blood or marriage or a close personal friend
6 of any member of law enforcement? If so, would
7 you please stand. Except for Ms. Covington who
8 doesn't need to stand because you are excused
9 from the trial of this case.

10 And I'll try to do this, I will move
11 across the room this way. I apologize having
12 to point. Let me point to this lady. Yes,
13 ma'am. Name and number.

14 JUROR: 268, Paula Novak. My niece's
15 husband is law enforcement officer in
16 Connecticut.

17 THE COURT: Okay. Thank you, ma'am.

18 JUROR: Kourtney Farmer, Juror 114. I am
19 a daughter of a security officer.

20 THE COURT: Thank you, ma'am. Yes, ma'am.

21 JUROR: Number 327, Nancy Sigmund. My
22 father and grandfather were both police
23 lieutenants in the New York City Police
24 Department for 33 years.

25 JUROR: Chris Patrilla 378 (SIC-278). My

JURY SELECTION

1 uncle was with the Beaufort County Sheriff's
2 Department for ten years approximately.

3 THE COURT: How long ago was he last with
4 the department?

5 JUROR: It would have been 15 years ago.

6 THE COURT: Thank you. Yes, ma'am.

7 JUROR: Holly Snyder, 341. My husband is
8 a Beaufort County sheriff for the past 15
9 years.

10 THE COURT: He still is?

11 JUROR: Yes, he's employed.

12 THE COURT: His name is what?

13 JUROR: Ryan Snyder.

14 THE COURT: All right. Thank you, ma'am.
15 Yes, ma'am.

16 JUROR: 108, Adrea Dye. My husband is a
17 special agent with the FBI since '09.

18 THE COURT: Okay. All right. Thank you
19 ma'am. Yes, sir.

20 JUROR: Juror 142, Thomas Glynn. My
21 mother was employed with the Port Royal Police
22 Department.

23 THE COURT: Which one?

24 JUROR: Port Royal.

25 JUROR: Juror 89, Charles Custer. My

JURY SELECTION

1 father was a policeman in Ohio for 20 years.

2 Retired now.

3 THE COURT: Thank you.

4 JUROR: Mary Schwarz, 325. My son was a
5 public defender and is now in private practice
6 as a defense attorney. My nephew is a
7 detective in (inaudible).

8 THE COURT: Thank you. And yes, ma'am.

9 JUROR: 242, Valerie Meachern. My son
10 works in the Beaufort County jail.

11 THE COURT: Currently?

12 JUROR: Yes, sir.

13 THE COURT: His name is what?

14 JUROR: (inaudible) Meachern.

15 THE COURT: Thank you, ma'am. And in the
16 blue top. Yes, ma'am.

17 JUROR: Maryann Downing, 107. My son has
18 been with the Kissimmee Police Department for
19 11 years. He is a sergeant and SWAT leader.

20 THE COURT: Thank you, ma'am. Yes, sir.

21 JUROR: Anthony Acuri, Juror 9. My
22 daughter is an officer with Beaufort County
23 Sheriff's Department. My son-in-law is an
24 officer with the City of Beaufort Police
25 Department. And my sister is lead detective of

JURY SELECTION

1 the office, (inaudible) county, and FBI liaison
2 with sexual crimes.

3 THE COURT: All right, sir. Thank you.
4 And I have forgot your number and name.

5 JUROR: 265, Veronica Neill. Former
6 brother-in-law, Bill Neill, Chief of Police
7 with Beaufort, the City of Beaufort. And he
8 was involved with Beaufort County Sheriff's
9 Office.

10 THE COURT: All right. Thank you, ma'am.
11 Yes, sir.

12 JUROR: Sean Fitzpatrick, 116. I have a
13 cousin in Orlando who is a police officer.

14 THE COURT: You have to try to speak up.

15 JUROR: A cousin in Orlando who is a
16 police officer. Brian Fitzpatrick.

17 THE COURT: All right. Thank you. And
18 yes, sir.

19 JUROR: Juror 165, Donald Hightower. My
20 cousin is a police chief of Port Royal, Hal
21 Beecham.

22 THE COURT: Thank you, sir. Sorry.

23 JUROR: Malory Medaglia, 249. My uncle
24 works with Beaufort County corrections. 249.
25 He is a corrections officer at the jail.

JURY SELECTION

1 THE COURT: Okay. Thank you, ma'am.

2 JUROR: Yep.

3 THE COURT: Any member of the jury panel
4 ever been employed by any civilian law
5 enforcement agency or military law enforcement
6 agency? Have you ever been employed by any law
7 enforcement agency, civilian or military? If
8 so, would you please stand.

9 JUROR: Juror 142, Thomas Glynn, I was
10 augmented in the Air Force when I was deployed.
11 And I was a security officer.

12 THE COURT: Thank you, sir.

13 JUROR: Donald Huber, 177. I was a
14 special agent with the office of special
15 investigation for the Air Force for three
16 years.

17 THE COURT: The last time would have been
18 approximately how long ago?

19 JUROR: Fifteen years.

20 THE COURT: Thank you, sir.

21 JUROR: Marquis Sanders, 318. I was
22 previously, two years ago, security officer for
23 Port Royal Plantation in Hilton Head for five
24 years.

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

JURY SELECTION

1 Has any members of the jury panel read,
2 seen, or heard anything about the allegations
3 that have been announced to you in this case
4 before today? If so, would you please stand.
5 And I have forgot your name and number.

6 JUROR: Veronica Neill, 265. Yes, sir, I
7 have read lots about this case, yes, sir.

8 THE COURT: Okay. Thank you, ma'am. Has
9 any members of the jury panel ever been a
10 volunteer for or worked in any kind of training
11 capacity with Beaufort County Sheriff's
12 Department, Bluffton Police Department, or any
13 other law enforcement agency? If so, would you
14 please stand. Yes, sir.

15 JUROR: I am a mechanic with Bluffton Fire
16 Department. We contract with Bluffton Police
17 Department to do all of their vehicle services
18 so I help them out, basically, whatever they
19 need.

20 THE COURT: How often do you help them
21 out?

22 JUROR: Daily.

23 THE COURT: Daily?

24 JUROR: Yes, sir.

25 THE CLERK: Your number?

JURY SELECTION

1 JUROR: Sorry, 389.

2 THE COURT: Thank you. Any members of the
3 jury panel or member of your immediate family,
4 you or member of your immediate family, ever
5 been the victim of a violent crime? If so,
6 would you please stand. And I'll start again
7 on my left. And I apologize for pointing, but
8 let me ask the lady in the white top if she
9 will tell us who she is and why she stood.

10 JUROR: Joyce Bruin, number 50. I have a
11 close relative that was charged with sexual
12 assault of a minor.

13 THE COURT: Okay. The charges are
14 pending; is that what you mean?

15 JUROR: No, already. He's out, but he
16 can't be around minors.

17 THE COURT: I see. I see, I see. Okay.
18 Thank you, ma'am. Yes, ma'am.

19 JUROR: Juror number 182, Olyvya Jackson.
20 I am a victim.

21 THE COURT: You were a victim?

22 JUROR: Yes, sir.

23 THE COURT: Yes, sir.

24 JUROR: Tom Reed, Juror 304. I was a
25 victim of an armed robbery.

JURY SELECTION

1 THE COURT: And how long ago?

2 JUROR: Late '90s down in Miami.

3 THE COURT: Were you injured, physically
4 injured?

5 JUROR: I was not. I got away from the
6 guy.

7 THE COURT: Those facts that you just told
8 us about, would they interfere with your
9 ability to be a fair and impartial juror in
10 this case?

11 JUROR: Will it? No, I don't think so.

12 THE COURT: You think that you could
13 listen to evidence, make a decision and it
14 would be fair to both sides?

15 JUROR: Yes.

16 THE COURT: All right. Thank you, sir.
17 Yes, ma'am.

18 JUROR: Adrea Dye, 108. When I was 17 I
19 was robbed at gun point at the shop where I
20 work, so '97.

21 THE COURT: Would that fact interfere with
22 your ability to be fair and impartial?

23 JUROR: No, sir.

24 THE COURT: It would not? You can be
25 fair?

JURY SELECTION

1 JUROR: Yes.

2 THE COURT: Thank you. I guess red shirt.

3 JUROR: David Arthur, number 12. My wife
4 was physically abused in the '80s.

5 THE COURT: Would that fact interfere with
6 your ability to be a fair and impartial juror
7 in this case?

8 JUROR: No, sir.

9 THE COURT: You could be fair?

10 JUROR: Yes, sir.

11 THE COURT: All right. Thank you, sir.
12 I'll go to the very back there, the gentleman
13 in the checked shirt.

14 JUROR: Eddie Pearce, Juror 279. My wife
15 was held at gun point during an armed robbery
16 in her own home when she was 14.

17 THE COURT: Would that fact interfere with
18 your ability to be a fair and impartial?

19 JUROR: No, sir.

20 THE COURT: You could be fair?

21 JUROR: Yes, sir.

22 THE COURT: All right. Thank you, sir.
23 In the blue top, the lady.

24 JUROR: Mary Ann Downing, 107, four years
25 ago I was held at gun point and raped.

JURY SELECTION

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

2 Yes, sir.

3 JUROR: Number 9, my wife's mother was
4 murdered 30 years ago, approximately 30 years
5 ago, in Pennsylvania.

6 THE COURT: Were you married at that time?

7 JUROR: No.

8 THE COURT: Would that fact interfere with
9 your ability to be fair and impartial?

10 JUROR: No, sir.

11 THE COURT: You could be fair?

12 JUROR: Yes.

13 THE COURT: Thank you, sir. Yes, ma'am.

14 JUROR: I am Juror 293, 12 years ago I was
15 attacked and robbed and basically clubbed to
16 death, or left for dead.

17 THE COURT: Would that fact interfere with
18 your ability to be a fair and impartial juror
19 in this case?

20 JUROR: I don't know.

21 THE COURT: You say that you don't know?

22 JUROR: I don't know. It sort of brings
23 back memories, you know.

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

25 Any members of the jury panel formed or

JURY SELECTION

1 expressed an opinion about any issue or matter
2 involved in this case? If so, would you please
3 stand.

4 (No response.)

5 THE COURT: Any members of the jury panel
6 aware of any bias or any prejudice that they
7 may have towards either the State or toward the
8 defendant in this case? If so, would you
9 please stand.

10 THE BAILIFF: One standing, Your Honor.

11 THE COURT: Sorry, I didn't see you.

12 JUROR: You said his name was Gadson. I
13 played football for years, side by side, with
14 Cecil Gadson. I don't know if that's his
15 family or not. Beaufort High School.

16 THE COURT: Sorry, which witness?

17 JUROR: You said that the Defendant's name
18 was Gadson.

19 THE COURT: Oh. The defendant, Isiah.

20 JUROR: I played with probably some of his
21 family, Pete Gadson, for a number of years.

22 THE COURT: How many years would that have
23 been?

24 JUROR: About 25 years ago.

25 THE COURT: Would that fact --

JURY SELECTION

1 JUROR: I hate to convict his family.

2 THE COURT: Do you know it's his family?

3 JUROR: No, I don't. But I'm just trying
4 to be honest with you.

5 MS. SWANSON: May we have a juror number
6 please?

7 JUROR: 165, Hightower.

8 THE COURT: Well, let me ask you this
9 Mr. Hightower. You think that you might have a
10 problem listening to the evidence and being
11 fair?

12 JUROR: Maybe.

13 THE COURT: Thank you. Any member of the
14 Grand Jury who issued the indictment in this
15 case? If so, please stand at this time.

16 (No response.)

17 THE COURT: Any members of the jury panel
18 part of a group that has as its primary concern
19 promotion of victims' rights? Such groups
20 would include, not limited to, MADD, SADD, CAV,
21 and such similar organizations? If so, would
22 you please stand. And your name and number,
23 please, ma'am?

24 JUROR: Mary Ann Downing, 107.

25 THE COURT: You belong to one of those

JURY SELECTION

1 organizations?

2 JUROR: I worked for the Hope Haven for
3 several years as a volunteer in crisis calls.

4 THE COURT: Okay. Thank you, ma'am. And
5 yes, ma'am, your name and number.

6 JUROR: Juror 329. I worked with Hope
7 Horizon.

8 THE COURT: You did or do?

9 JUROR: Do.

10 THE COURT: You do?

11 JUROR: Yes, sir.

12 THE COURT: Thank you, ma'am. And yes,
13 ma'am?

14 JUROR: My son-in-law is a employed by the
15 Attorney General defending sexual trafficking
16 of women and I am a retreat for sexually
17 trafficked women in Hilton Head.

18 THE CLERK: Your number?

19 JUROR: 109.

20 THE COURT: Thank you. Any member of the
21 jury panel know of any reason whatsoever why he
22 or she should not serve as a juror in this case
23 with particular emphasis being placed on your
24 ability to be fair and impartial to both the
25 State and to the defendant? If so, would you

JURY SELECTION

1 please stand.

2 (No response.)

3 THE COURT: May I see the attorneys? You
4 may stand up and stretch and we will be right
5 back with you.

6 (The following colloquy held in private,
7 outside of the presence of the jury panel.)

8 MS. CAMPBELL: I need my list, Judge. I
9 didn't know what we were getting ready to do.
10 Okay.

11 THE COURT: Who have you got that you
12 think we need to question or be concerned about
13 or need to pick off of the list?

14 MS. SWANSON: Well, Neill, N-E-I-L-L,
15 Veronica who said that she had read lots about
16 the case.

17 THE COURT: Say that one more time, which
18 one?

19 MS. SWANSON: 265.

20 THE COURT: What?

21 MS. SWANSON: She said that she read lots
22 about the case and she was not unequivocal when
23 she -- she knows witnesses as well. She
24 probably needs to be stricken.

25 THE COURT: I think that she needs to go

JURY SELECTION

1 myself. 265.

2 MS. CAMPBELL: Do you want to do it by
3 agreement, or do you want to call her up?

4 THE COURT: Do you agree?

5 MS. CAMPBELL: I agree she should not be.
6 265. She should be excused.

7 THE COURT: Yes. Who else do you have?

8 MS. SWANSON: The gentleman that just
9 spoke, Hightower, who said that he would hate
10 to convict his possible family members.

11 THE COURT: Yes he don't want to serve.

12 MS. SWANSON: That is 165.

13 MS. CAMPBELL: Yes, Allen Beech is his
14 cousin or brother, I can't remember what.
15 Allen runs the Port Royal Police Department.
16 Nice folks, you know. The whole family, the
17 Beech family, but maybe he should go. I think
18 maybe he should go.

19 THE COURT: He said that he might not be
20 able to be fair.

21 MS. CAMPBELL: Yeah, yeah. And I think
22 that he's trying to be honest. He must have
23 really liked the guy. Okay.

24 THE COURT: 165 gone.

25 MS. SWANSON: Nobody else jumping out at

JURY SELECTION

1 me right this minute, but I'm sure Ms. Campbell
2 has.

3 MS. CAMPBELL: Who was the first one, 265?

4 THE COURT: What about 107?

5 MS. CAMPBELL: So, 265 is gone.

6 MS. SWANSON: Yes, if Your Honor wants to
7 bring her up and question her a little bit
8 more. I mean, did that -- did that happen
9 here?

10 MS. CAMPBELL: Well, I have three on that
11 question that you didn't ask if they could be
12 fair and impartial. Everybody else you did.
13 So the three that I would say, 182, 107, and
14 293. They were all sounded to be victims of a
15 similar crime.

16 THE COURT: All right. Which numbers now?
17 I have 107.

18 MS. CAMPBELL: 182.

19 THE COURT: Yes.

20 MS. CAMPBELL: 107 and 293.

21 THE COURT: Those all three said that they
22 were victims too?

23 MS. SWANSON: Yes.

24 MS. CAMPBELL: Yes.

25 THE COURT: I don't think that we can put

JURY SELECTION

1 them on.

2 MS. CAMPBELL: No.

3 THE COURT: All right. 107, 182, and 293.

4 Anybody else? I think that's it.

5 MS. CAMPBELL: Well, I'm going to look
6 here.

7 THE COURT: Screaming and hollering?

8 MS. CAMPBELL: Do you have anybody else?

9 MS. SWANSON: No.

10 MS. CAMPBELL: Okay. 265 we have already
11 let her go. She's gone already. 265, yeah.

12 MS. SWANSON: Right. Yes, she is.

13 MS. CAMPBELL: I think that's it. Except
14 for --

15 MS. SWANSON: Oh, the one that currently
16 works for Hopeful Horizons, which I didn't
17 catch in the beginning, which was a little
18 bizarre.

19 MS. CAMPBELL: I know that 107 is already
20 gone. So, this current employment with the
21 victim advocacy location that handles these
22 types of cases is concerning, and maybe she
23 should be questioned as well. Yes, ma'am, 329.

24 THE COURT: Do you want me to question her
25 about what?

JURY SELECTION

1 MS. CAMPBELL: I mean, I would be happy to
2 have her excused based on the employment
3 situation, but that is up to the State.

4 MS. SWANSON: That would be fine with me.
5 I mean, I didn't -- she didn't disclose that
6 she worked for Hopeful Horizon at first, I
7 didn't think.

8 THE CLERK: No, she said hotel.

9 MS. SWANSON: They are actually moving
10 into the building that we own, so I figure some
11 employees are going to have desks in our
12 building.

13 THE COURT: I don't think that we need to
14 ask questions. You don't want to ask anything?

15 MS. CAMPBELL: No.

16 MS. SWANSON: I think that we can just
17 excuse her.

18 MS. CAMPBELL: Yes. Uh-huh. (Indicating
19 affirmatively.) Okay. And I would be okay
20 with this. I don't have anybody else but
21 before we would go back up. Not to interrupt
22 Your Honor in this process, but I do have a
23 motion after we get everything done in
24 reference to the name that was called out. I
25 would put a motion for a mistrial on the

JURY SELECTION

1 record.

2 THE COURT: Yeah, okay.

3 MS. CAMPBELL: At the appropriate time for
4 Your Honor. And like I said, I didn't want to
5 interrupt you and you had just begun and I
6 didn't want to draw any more attention to the
7 situation. When you tell me I will be happy to
8 do that.

9 THE COURT: Don't let me forget.

10 MS. CAMPBELL: I won't. Right.

11 THE BAILIFF: She thinks that she might
12 have gone to school with one of the witnesses
13 named Bessinger years ago.

14 MS. SWANSON: Bessinger, okay. Juror 309.

15 THE COURT: Information that she might
16 have gone to school with somebody, okay.

17 (The off-the-record discussion concluded.
18 Following proceedings held before the jury
19 panel.)

20 THE COURT: Okay. Marlene, are you ready?

21 THE CLERK: Yes, sir. Your Honor, for
22 purposes of the selection of the jury, are you
23 going to use the number to the left or to the
24 right?

25 THE COURT: The number to the right.

JURY SELECTION

1 Sorry. The clerk is now prepared to give
2 us a jury.

3 (Pause.)

4 THE CLERK: Number 374 Derriana Warren.
5 Would you please stand? What says the State?

6 MS. SWANSON: Please present the juror.

7 THE CLERK: What says the defense?

8 THE BAILIFF: Please remain standing,
9 ma'am.

10 MS. CAMPBELL: Please swear the juror in
11 this case.

12 THE COURT: Please come forward, please,
13 to the jury box.

14 THE CLERK: Number 108, Adrea Dye. What
15 says the State?

16 MS. SWANSON: Please present the juror.

17 THE CLERK: What says the defense?

18 MS. CAMPBELL: Please excuse the juror
19 from the trial of this case.

20 THE CLERK: Number 341, Holly Snyder.
21 What says the State?

22 MS. SWANSON: Please present the juror.

23 THE CLERK: What says the defense?

24 MS. CAMPBELL: Please excuse the juror
25 from this trial.

JURY SELECTION

1 THE CLERK: Number 232, Melanie Martin.
2 What says the State?
3 MS. SWANSON: Please present the juror.
4 THE CLERK: What says the defense?
5 MS. CAMPBELL: Please excuse the juror
6 from this trial.
7 THE CLERK: Number 11, Jeffrey Arnold.
8 What says the state?
9 MS. SWANSON: Please present this juror.
10 THE CLERK: What says the defense?
11 MS. CAMPBELL: Please swear the juror.
12 THE BAILIFF: Come forward, sir.
13 THE CLERK: Number 322, Sandra Sargo.
14 What says the State?
15 MS. SWANSON: Please present the juror.
16 THE CLERK: What says the defense?
17 MS. CAMPBELL: Please excuse the juror
18 from this trial.
19 THE CLERK: Brianna Ireland, Juror 181.
20 What says the State?
21 MS. SWANSON: Please present the juror.
22 THE CLERK: What says the defense?
23 MS. CAMPBELL: Please swear the juror.
24 THE BAILIFF: Come forward, ma'am.
25 THE CLERK: Number 136, Eric Gibbs. What

JURY SELECTION

1 says the State?

2 MS. SWANSON: Please present the juror.

3 THE CLERK: What says the defense?

4 MS. CAMPBELL: Please excuse the juror
5 from this trial.

6 THE CLERK: Number 142, Thomas Glynn.
7 What says the State?

8 MS. SWANSON: Please present the juror.

9 THE CLERK: What says the defense?

10 MS. CAMPBELL: Please excuse the juror
11 from this trial.

12 THE CLERK: Juror Number 9, Anthony
13 Arcuri. What says the State?

14 MS. SWANSON: Please present the juror.

15 THE CLERK: What says the defense?

16 MS. CAMPBELL: Please excuse the juror the
17 juror from this trial.

18 THE CLERK: Number 198, Millard Keeler.
19 What says the State?

20 MS. SWANSON: Please present the juror.

21 THE CLERK: What says the defense?

22 MS. CAMPBELL: Please swear the juror.

23 THE CLERK: Number 91 Debra Cyrilla. What
24 says the State?

25 MS. SWANSON: Sorry, which number was

JURY SELECTION

1 that?

2 THE CLERK: Number 91. Please present the
3 juror.

4 THE CLERK: What says the defense?

5 MS. CAMPBELL: Please swear the juror.

6 THE BAILIFF: Come forward, ma'am.

7 THE CLERK: Number 354, Leigh Anne
8 Tempest. What says the State?

9 MS. SWANSON: Please strike this juror.

10 THE CLERK: Number 177, 177, Donald Huber.
11 What says the State?

12 MS. SWANSON: Please present the juror.

13 THE CLERK: What says the defense?

14 MS. CAMPBELL: Please swear the juror.

15 THE CLERK: Juror Number 153, Keri

16 Haars-Sherry. What says the State?

17 MS. SWANSON: Please present the juror.

18 THE CLERK: What says the defense?

19 MS. CAMPBELL: Please excuse the juror
20 from this trial.

21 THE CLERK: Number 383, Richard Welker.
22 What says the State?

23 MS. SWANSON: Please excuse the juror.

24 THE CLERK: Number 123, Mayda Fosnight.
25 What says the State?

JURY SELECTION

1 MS. SWANSON: Please present the juror.

2 THE CLERK: What says the defense?

3 MS. CAMPBELL: Please swear the juror.

4 THE BAILIFF: Come forward, ma'am.

5 THE CLERK: Number 325, Mary Schwarz.

6 What says the State?

7 MS. SWANSON: Please excuse the juror.

8 THE CLERK: Number 266, Leonard Newton.

9 What says the State?

10 MS. SWANSON: Please excuse the juror.

11 THE BAILIFF: Sit down, sir.

12 THE CLERK: Juror 381, Madalyn Wedgeworth.

13 What says the State?

14 MS. SWANSON: What number?

15 THE CLERK: 381.

16 MS. SWANSON: Please present the juror.

17 MS. CAMPBELL: May we approach?

18 (Off-the-record discussion held.)

19 THE COURT: Ms. Wedgeworth, can I ask you
20 a question?

21 JUROR: Yes.

22 THE COURT: If you don't want to answer,
23 you don't have to. Are you close to
24 delivering?

25 JUROR: I'm eight months.

JURY SELECTION

1 THE COURT: The due date?

2 JUROR: July, mid-July.

3 THE COURT: Are you okay with serving?

4 JUROR: Yes.

5 THE COURT: Thank you, ma'am.

6 THE CLERK: What says the State?

7 MS. SWANSON: Please present the juror.

8 THE CLERK: What says the defense?

9 MS. CAMPBELL: Please put her on the jury,

10 Your Honor. Thank you.

11 THE BAILIFF: Come forward, ma'am.

12 THE CLERK: Number 347, Perry Stafford.

13 What says the State?

14 MS. SWANSON: Please present the juror.

15 THE CLERK: What says the defense?

16 MS. CAMPBELL: Please sear the juror.

17 THE BAILIFF: Come forward, sir.

18 THE CLERK: Number 103, Deniz Dogan. What

19 says the State?

20 MS. SWANSON: Please present the juror.

21 THE COURT: What says the defense?

22 MS. CAMPBELL: Please sear the juror.

23 THE COURT: Number 318, Marquis Sanders.

24 What says the State?

25 MS. SWANSON: Please present this juror.

JURY SELECTION

1 THE CLERK: What says the defense?

2 MS. CAMPBELL: Please swear the juror.

3 THE BAILIFF: Come forward, sir.

4 THE CLERK: Number 23, Dennis Beach. What
5 says the State?

6 MS. SWANSON: Please present the juror.

7 THE CLERK: What says the defense?

8 MS. CAMPBELL: Please excuse the juror.

9 THE CLERK: Number 43, Henry Brasington.
10 What says the State?

11 MS. SWANSON: Please present the juror.

12 THE CLERK: What says the defense?

13 MS. CAMPBELL: Please swear the juror.

14 THE BAILIFF: Come forward, sir.

15 THE CLERK: Selecting first alternate.

16 Number 178, Leon Hudson. What says the State?

17 MS. SWANSON: Please excuse this juror.

18 THE CLERK: Number 388, Russell Williams.

19 What says the State?

20 MS. SWANSON: Please present the juror.

21 THE CLERK: What says the defense?

22 MS. CAMPBELL: Please swear the juror.

23 THE BAILIFF: Come forward, sir.

24 THE CLERK: Number 66, Russell Charek.

25 What says the State?

JURY SELECTION

1 MS. SWANSON: Please present the juror.

2 THE CLERK: What says the defense?

3 MS. CAMPBELL: Please swear the juror.

4 THE BAILIFF: Come forward, sir.

5 THE COURT: Any matters that the Court
6 needs to consider concerning the selection or
7 composition of the jury from the State?

8 MS. SWANSON: None from the State, Your
9 Honor.

10 THE COURT: From the defense?

11 MS. CAMPBELL: No, Your Honor.

12 THE COURT: Ladies and gentlemen, as I
13 advised you earlier, we are going to proceed
14 with the selection of a jury in another case
15 after a lunch break, so I'm going to ask you to
16 be back in the room at 2:15 using that clock as
17 a guide. I won't be the Judge, it'll be
18 another Judge in here to select a jury for
19 another case.

20 Anybody have any questions? Anybody have
21 any problems? Anybody not going to be here at
22 2:15? Ladies and gentlemen, you are excused
23 until 2:15.

24 (The jury panel exits the courtroom.)

25 THE COURT: And ladies and gentlemen of

OPENING COMMENTS TO THE JURY

1 the jury, we are also getting ready to take a
2 break until tomorrow morning at 9:30. We have
3 a number of matters that we need to consider
4 outside of your presence, but I need to tell
5 you something, that is the reason that I wanted
6 to keep you here until everyone left the
7 courtroom. And to tell you this: You have
8 been selected as fair and impartial jurors.
9 Both sides believe that you are fair and
10 impartial so I ask you not to go home and talk
11 to your friends, family and loved ones about
12 this case and tell them what you -- of course
13 you don't know much about it, but you know a
14 little bit. You know a little bit about the
15 allegations that have been made in the case.
16 What we don't want you to do is to be
17 influenced by what your friends, family and
18 relatives tell you that they think about this
19 case or some other case, or about these kinds
20 of cases.

21 And I will also tell you, you cannot under
22 any circumstance do any research about this
23 case. You are going to make a decision in this
24 case based on what happens in this courtroom.
25 Witnesses will testify from the witness stand,

OPENING COMMENTS TO THE JURY

1 the evidence may be introduced, documents, I
2 don't know. But you can't get on the Internet,
3 you can't go to the local library, you cannot
4 do that. Everything you read or everything you
5 see on line, as you know, is not necessarily
6 the truth and we don't want you to be
7 influenced by something that you see, read, or
8 hear elsewhere.

9 The attorneys in this case are going to
10 present to you the evidence that they think is
11 necessary in the case. They are going to make
12 the arguments to you that they think is
13 necessary. That is what you are going to be
14 basing your decision on. And, of course, what
15 I tell you about the law that applies in this
16 case. Is anyone going to have a problem, I
17 guess, of following those instructions? If so,
18 let me know. Anyone going to have a problem
19 being back at 9:30 in the morning? The bailiff
20 will show to you the jury room and I will see
21 you back in the morning at 9:30. You are
22 excused until 9:30 in the morning.

23 THE BAILIFF: Follow me please.

24 (The jury exits the courtroom.)

25 THE BAILIFF: The jury is clear, Your

OPENING COMMENTS TO THE JURY

1 Honor.

2 THE COURT: Anything that we need to take
3 up before we return at 2:15?

4 MS. CAMPBELL: Your Honor, at this time
5 this is my first opportunity to make this
6 motion. I would make a motion for a mistrial
7 on behalf of my client, Mr. Gadson. As we
8 began the process of your voir dire of this
9 jury, Your Honor read out an indictment related
10 to a Lori Ann Krug. And this was just coming
11 on the heels of the State of South Carolina
12 listing the full charges against my client.
13 And then Your Honor had to correct yourself and
14 said, Oh, no, this is from another case file
15 and to disregard it.

16 And so, I -- because I would take the
17 position on behalf of my client that the
18 interjection of another name of an alleged
19 victim could leave the entire jury panel with
20 the impression that there are other alleged
21 victims of Mr. Gadson and that he is some sort
22 of serial perpetrator, as Your Honor read out a
23 name that they are not going to hear in this
24 case unless, subsequent to the motion this
25 afternoon for a 404(B) motion, you are allowing

MOTIONS BEFORE THE COURT

1 that into evidence.

2 So, for the purposes of this time and this
3 argument, I would say preserving the record,
4 Your Honor cannot take it back. The jury can't
5 unhear that name, nor the manner in which it
6 was delivered to them. And any attempt by the
7 Court to attempt to cure what has happened
8 would fail and just further prejudice my client
9 by then highlighting it yet again for the jury.
10 And so on that basis we make a motion for a
11 mistrial. Thank you.

12 THE COURT: I understand. Solicitor.

13 MS. SWANSON: Thank you, Your Honor. At
14 this point I do not think that such a statement
15 rises to the level of a mistrial being
16 necessary. Your Honor did take corrective
17 action. And she is listed on the State's
18 potential witness list, and so it's possible,
19 you know, that anyone could have kind of gotten
20 confused at that time. You know, this was
21 prior to the witness list being read. And you
22 know -- I mean, the case has not started at
23 this point, no allegations have been made other
24 than just the bear bones indictment.

25 THE COURT: The Court agrees and denies

MOTIONS BEFORE THE COURT

1 the motion. Anything else before we come back
2 at 2:15?

3 MS. CAMPBELL: Not from the defense.

4 THE COURT: All right.

5 MS. SWANSON: Nothing from the State.

6 THE COURT: All right. We will recess
7 until 2:15.

8 MS. SWANSON: Thank you, Your Honor. And
9 we will be in courtroom three; is that correct?

10 THE COURT: I think that's right. Madam
11 clerk, that's where we are going?

12 THE CLERK: Yes.

13 THE COURT: We recess until 2:15 in
14 courtroom number three.

15 MS. CAMPBELL: Your Honor, we have the
16 spoliation motion. For both the State and the
17 Court, I'm handing up the motion.

18 MS. SWANSON: Okay, thank you.

19 (Lunch recess.)

20 THE COURT: All right. Based on our
21 conference in chambers earlier today, I believe
22 that we agreed to hear defendant's motion
23 first; is that correct?

24 MS. SWANSON: That's correct.

25 MS. CAMPBELL: May it please the Court.

MOTIONS BEFORE THE COURT

1 THE COURT: Yes.

2 MS. CAMPBELL: Your Honor, for the
3 purposes of this particular motion, Mr. Tripp
4 of the Public Defender's Office will be
5 handling the spoliation argument. And with
6 that, I'll turn the motion over to him.

7 MR. TRIPP: Thank you, Your Honor. May it
8 please the Court.

9 THE COURT: Sure.

10 MR. TRIPP: Our arguments proceed in two
11 parts. The first part is explained in our
12 motion there, that under Federal law at this
13 point in time the Supreme Court has stated that
14 the defendant didn't need to show bad faith in
15 order to show a due process violation by way of
16 spoliation. In this case I think the biggest
17 consideration for that part is that Ms --
18 Johnny Weed was never once questioned in the
19 original case in 1980. He was the first person
20 arrested and he was released as soon as --
21 well, I don't think that there's any direct
22 information as to when exactly he was released,
23 but it appears that he was released very
24 quickly. And, again, there is not a single
25 record that shows that he was ever questioned

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1 in this case by investigators.

2 Throughout the years the various sources
3 have indicated an understanding of a widespread
4 belief that Mr. Weed was responsible for this
5 situation and it seems that the Beaufort County
6 Sheriff's Office felt that way as well. And as
7 I said at the very beginning of this, at the
8 very end of the brief, of the memo, this was a
9 generation ago. Times were different back
10 then. And what happened back then doesn't bear
11 on what's -- doesn't reflect on the attitude of
12 the Beaufort County Sheriff's Office today.

13 But it's not fair for Mr. Gadson to have
14 to face trial based on a case where, arguably,
15 over half of the most supporting evidence is
16 gone because sometime back over a decade ago
17 the Sheriff's Office didn't want to investigate
18 this case. That is bad faith when an
19 administrative agency refuses to do its very
20 job, its reason for existing out of some sort
21 of personal connection to a person who might be
22 harmed. I don't think that you can have a
23 category of bad faith more serious than
24 something would fall into.

25 The second argument, as explained in the

MOTIONS BEFORE THE COURT

1 memo, is that the South Carolina Supreme Court,
2 like a number of courts around the country, has
3 not been happy -- take that back, doesn't
4 appear to be satisfied with the rule in
5 Youngblood. It has indicated the willingness
6 to take the issue up if it's properly raised.
7 But I think that under South Carolina law,
8 considering that due process violations have
9 never required a showing of bad faith. Due
10 process violation denying -- resulting by way
11 of denial a fair trial can result when somebody
12 is denied counsel in a critical stage, can
13 result when some kind of deficiency or error
14 pervades the entire case.

15 This is a similar argument that Mr. Gadson
16 will be denied a fair trial under due process
17 because of an error that he has got nothing to
18 do with. And that error is so strong because
19 it pervades the entire case and applies to
20 critical evidence.

21 Again, the evidence that has been lost,
22 the vaginal swabs, would likely show whether
23 his DNA was present inside her vagina at the
24 time -- at the time of the original crime or if
25 she had had sex with him prior to that day or

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1 if some other explanation were provided as to
2 why his DNA came up.

3 The photographs of the crime scene would
4 provide irreplaceable insight into what
5 happened in a situation where it's dark,
6 there's very few -- there's only one witness
7 who has ever been questioned and given a
8 statement as to what happens, and she admits
9 that she didn't exactly see -- she couldn't see
10 all that well what happened.

11 And there's just a lot of pieces of
12 evidence that make this a complicated case that
13 could involve a number of motives, the drug
14 use, the difference in age between [REDACTED] MINOR and
15 Mr. Krulewicz, the involvement of her dad at
16 the scene at the time that the police arrived.
17 Her possession of a very large sum of money at
18 that time for a 15 year old, and all of the
19 inconsistencies in her accounts to the police.
20 You can't have a reliable understanding of what
21 happened that night.

22 When you look at all of this stuff so many
23 questions are just naturally raised and you
24 wonder which of the five or six possible
25 scenarios that pop into your mind could have

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1 been the right one. And there's no way
2 Mr. Gadson could be convicted at this point
3 with a reliable understanding of which one of
4 those scenarios apply. That is a denial of due
5 process, to put him on trial to defend himself
6 in a case where a reliable understanding of
7 what happened just can't be reached and has
8 nothing to do with something that he's done.

9 Your Honor, I believe that I have stated
10 succinctly, as clearly as possible, my
11 arguments in the written brief, written memo.
12 I am attempting to highlight kind of the
13 portions that stick out the most in my mind but
14 I'm happy to answer any questions and respond
15 to anything from the State.

16 THE COURT: Thank you.

17 MS. SWANSON: Thank, Your Honor. First of
18 all I did hand the court State V Breeze, which
19 is a 2009 Court of Appeals case, which sites
20 the Cheeseburg rule by the South Carolina
21 Supreme Court in 2001. Still good law. And
22 the burden is on the defense here to show that
23 the evidence was either destroyed in bad faith
24 or that the evidence would exculpate the
25 defendant.

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1 As you know from my memo, and probably
2 just the conversations about the case, this is
3 an identity case that was resolved. The
4 defendant was ID'd by his semen on our rape
5 victim's underwear and pants, where you would
6 expect to find it.

7 In reading the Defense's motion and memo,
8 it is equivalent to the ramblings of a
9 conspiracy theorist. I mean, I think if you
10 ask Mr. Tripp who shot JFK, I have no idea what
11 he would say, or if we landed on the moon. I
12 mean, the facts are just grossly
13 mischaracterized here. I mean, there was a
14 distraught father, Johnny Weed, MINOR's father,
15 who is now deceased who responded to the scene
16 when MINOR came home and said, Somebody has
17 shot David and I was raped. The scene happened
18 to be down the street from their residence.
19 Her mother was waiting up for her because she
20 was past curfew. And Johnny Weed ran down to
21 see what was going on. He had a shotgun on him
22 because he had just heard that someone shot his
23 daughter's boyfriend.

24 There's no evidence to point to the fact
25 that Johnny Weed did anything besides be a

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1 little out of his mind when he learned that his
2 15 year old daughter had been raped. You know,
3 **MINOR**, when she was 15, was given a polygraph
4 about this and no deceit was indicated. And I
5 only mention that because Mr. Tripp mentioned
6 that in his motion.

7 There's absolutely no evidence that
8 anything was destroyed in bad faith. The two
9 items that we are talking about is the rape kit
10 that remained at SLED, per their protocol at
11 the time, and then crime scene photos.

12 I do not know how crime scene photos could
13 ever exculpate this defendant. Also a rape
14 kit, when there's his semen found on the crouch
15 of her underwear and crouch of her pants, is
16 not going to exculpate him either. I mean, if
17 anything I suppose that it could have been the
18 boyfriend at the time; however, we have the
19 victim's testimony that a rape took place and
20 that the same man that killed her boyfriend at
21 the time raped her. And we have DNA evidence
22 of that. And we have a number of corroborating
23 factors, which we can certainly get into.

24 But I would also like to mention that
25 Mr. Tripp alludes to a pillowcase that was

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1 destroyed, you know, and on it -- Judge, that
2 is in evidence. We have that locked in the
3 closet in the other courtroom. So, his facts
4 are not even correct in his proposed motion.

5 At the time when Captain Bromage started
6 looking at this case in 1999 he questioned SLED
7 about the rape kit and he sent them an email.
8 And I will make this a part of the record. If
9 I could make this a Court's Exhibit and hand it
10 up to Your Honor.

11 MS. SWANSON: He questioned SLED about the
12 vaginal swabs. When they got the hit -- no,
13 no, 2016, you are right. So, I'm sorry, I
14 apologize, so in 2016 Captain Bromage, when
15 there was the DNA hit -- and it is on both
16 sides, Your Honor, if I may pass it up.
17 Captain Bromage inquired --

18 THE COURT: Any objection?

19 MS. SWANSON: No objection.

20 THE COURT: Okay.

21 *(Whereupon, Court's Exhibit No(s). 1*
22 *marked for identification and received in*
23 *evidence.)*

24 MS. CAMPBELL: He inquired as to what may
25 have happened to the rape kit. Apparently at

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1 some point in the '80s or '90s SLED was
2 consolidating evidence. At that time there was
3 no DNA, there was not that technology, so they
4 were shifting things to microfilm. And
5 evidence you know, I guess, of unsolved cases
6 got destroyed. But you do have the response
7 from SLED. It does not indicate and the
8 defense has not shown that this was in any way
9 some sort of coverup or conspiracy to frame
10 Isiah Gadson who walked the streets for 36
11 years.

12 The only evidence that was retained by
13 SLED in 1980 was that rape kit. The other
14 evidence was sent back to the Beaufort County
15 Sheriff's Office, including a number of things,
16 you know, the victim's clothing, the deceased
17 victim's shirt, cigarette butts, the
18 pillowcase. More cigarette butts. Gum. Pubic
19 hair that had been put onto slides but
20 unfortunately because of the adherent that they
21 used to put on the slides nothing could be done
22 with them. A number of other things that were
23 actually tested for possible touch DNA.
24 Unfortunately after 36 years DNA can
25 degenerate. And that is likely what happened.

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1 We didn't get any touch DNA off of those items.
2 However, the item that did have the mixture of
3 bodily fluids from the victim and Isiah Gadson
4 was what was preserved, did not degenerate, and
5 did not change in nature. And our DNA expert
6 will certainly be testifying to that.

7 So you know, I mean a lot of times
8 defendants are charged and can be convicted on
9 a witness' testimony alone with, you know, an
10 eye witness, photo line-up. And the defense
11 says, oh, those are unreliable and this and
12 that. But here we have a victim's testimony,
13 although she cannot identify the victim, he
14 certainly matched the description at the time
15 and his identity is through the DNA hit,
16 through his semen.

17 So I don't think that dismissal is
18 appropriate, obviously. Should the Court wish
19 to hear from Captain Bromage or anyone else, if
20 I need to address anything else, please ask me.

21 THE COURT: All right. Any reply?

22 MR. TRIPP: Yes, Your Honor. Your Honor,
23 may I ask that my motion and memorandum be made
24 a part of the record. If I can have it marked
25 as an exhibit for the Court, I'm happy to do

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1 that.

2 THE COURT: Do you have a clean copy to
3 mark?

4 MR. TRIPP: I do not have a clean copy on
5 me, but I can get one and have it for the court
6 reporter soon after.

7 THE COURT: We can do that later then?

8 MR. TRIPP: Yes, sir. Yes, Your Honor.

9 *(Whereupon, Court's Exhibit No(s). 2*
10 *marked for identification and received in*
11 *evidence.)*

12 MR. TRIPP: And I take responsibility for
13 the statements I made in the brief about the
14 pillowcase. I saw that and just learned that
15 the pillowcase was in evidence. And I have
16 actually got that marked out in my memo, just
17 by way of explanation. This case has been
18 difficult, if you can't tell, following
19 particularly the evidence because it is in
20 disarray. And Ms. Campbell and I and an
21 investigator had the opportunity to go to the
22 Beaufort County Sheriff's Office evidence
23 locker and look at this stuff. It took a while
24 and it was hard to sort through this stuff and
25 make sense of it, so I took insufficient notes

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1 about the pillowcase being there. So, that is
2 my fault.

3 At the same time, I also understand that
4 there were x-rays that were taken in this case
5 at Beaufort Memorial Hospital that are now not
6 here, so not only did I accidentally put
7 something in that wasn't lost but I also left
8 something out that was lost. And, again, it is
9 my mistake, because it has been difficult
10 hatcheting through what evidence is where in
11 this case.

12 I will note too that there's autopsy
13 photos that are missing, which I have explained
14 in my memo how they would be helpful in the
15 case and how they should be analyzed under the
16 rubric of cases.

17 As for the Breeze case, that is prior to
18 2015. I think that it is a Court of Appeals
19 case. The Reeves case that I discussed in my
20 memo would be the latest and the most
21 authoritative law on the issue from the State
22 Supreme Court. And as for any kind of personal
23 attack about me believing that it is a
24 conspiracy theory, as I discussed in brief, you
25 know, David Krulewicz's mom brought this up to

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1 a Beaufort County Sheriff's officer, so I don't
2 know if that means that she's crazy and
3 outrageous too; I don't think so. MINOR
4 was given a polygraph where officers asked her
5 directly twice, "Are you lying about a black
6 man shooting you? Are you lying about anything
7 that happened that night? Are you lying about
8 a black man shooting you? Do you know who the
9 black man is?" To me that says that the
10 Sheriff's officers didn't trust what she was
11 telling them.

12 Your Honor, again, I have distilled
13 everything that I possibly can. I know that
14 there's a lot of evidence that goes with it,
15 but that is just the nature of the situation
16 that we are in. Everything that I could state
17 I put as succinctly and concisely as I can in
18 the brief. I just ask that you take as much
19 time as you need to read that. Nothing I can
20 say here orally will be more polished or better
21 than what I have put in writing. It is a lot
22 of information. And again, that is not Isiah
23 Gadson's fault.

24 And I have had to wade through it and try
25 and interpret it and it's taken a long time.

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1 And, you know, Mark Twain said that it takes
2 longer to write something shorter than it does
3 write longer because you have to put in that
4 much more work to boil stuff down. That is
5 what I have tried to do, but that's not my
6 fault, as scattered as this stuff has been.
7 And it's certainly not Mr. Gadson's fault.

8 THE COURT: Thanks.

9 MS. SWANSON: Briefly, I would like to
10 point out the fact that all of his argument is
11 based on a third-party guilt argument which we
12 had previously discussed in chambers and is not
13 allowed by State V Mansfield. Those facts are
14 just simply not borne out in reports that he
15 attached to his motion, which I would refer the
16 Court to. Because if you review these
17 documents you will see that Johnny Weed was
18 never a suspect and he never should have been a
19 suspect.

20 But anyway, it does make me and cause me
21 some pause because, as I pointed out in
22 chambers, I just wanted to remind the defense
23 about the third party guilt that actually the
24 evidence would have to be more than a mere
25 suspicion, that it would have to tend to

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1 exculpate the defendant, and otherwise that
2 evidence is not coming in. And I was -- we
3 were reassured by the defense that that
4 argument was not going to be made.

5 So, I am a little nervous about the fact
6 that there's, you know, now ten pages of a
7 motion that are relying on a third-party guilt
8 argument at this point. I am not -- I mean, I
9 think that Mr. Tripp was back in chambers when
10 we discussed that.

11 Anyway, I would ask that the -- or submit
12 to the Court that the defense has not met its
13 burden in showing that anything was destroyed
14 in bad faith or that the evidence would tend to
15 exculpate the defendant. And I would further
16 state, based on current case law, that our
17 Supreme Court has recognized on multiple
18 occasions that the State has no absolute duty
19 to safeguard potential useful evidence that
20 might vindicate a defendant. So, you know,
21 this was prior to the evidence preservation act
22 as well as any sort of forensic testing as far
23 as DNA went. So, you know, that was not fully
24 understood at the time. Thank you.

25 THE COURT: Thank you, Solicitor. I

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1 understand your argument. I understand the
2 defense's argument in this case, but the Court
3 agrees with the position and argument of the
4 State. And fleshing it out a little bit more,
5 you know, I find that the failure to properly
6 investigate a case does not in any way show bad
7 faith on the part of law enforcement. There's
8 no evidence that any of this ever -- that the
9 missing evidence would have done anything to
10 exculpate the defendant. For all of those
11 reasons, the motion is denied.

12 Which brings us to which motion?

13 MS. CAMPBELL: The 404(b) motion, Your
14 Honor.

15 THE COURT: 404, okay. And Ms. Swanson, I
16 will be glad to hear from you first on that.

17 MS. CAMPBELL: Thank you, Your Honor. And
18 I have provided everyone with my memo regarding
19 this evidence and regarding the law and the
20 analysis that the Court must take in looking at
21 such evidence.

22 There are a number of similarities between
23 the 1980 incident and sexual assault that
24 Mr. Gadson is on trial for and the 1983 rape of
25 Lori. At the time she was Lori Krug. And so

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1 we are seeking to admit that evidence.

2 Your Honor, at this time I would like to
3 make his certified conviction for ABHAN a part
4 of the record just for pretrial purposes. I
5 have that right here. This would be Court's
6 Exhibit 2.

7 COURT REPORTER: Three.

8 *(Whereupon, Court's Exhibit No(s). 3*
9 *marked for identification and received in*
10 *evidence.)*

11 MS. SWANSON: Back in 1983 he did plea
12 nolle contendere to assault and battery of a
13 high and aggravated nature for assaulting Lori
14 Krug. So, essentially a no contest plea. What
15 would have been proper would have been a guilty
16 plea under Alford, honestly, but that's not
17 what we have here. And so I do want to make
18 this part of the record as far as pretrial and
19 meeting the clear and convincing standard.
20 Because I don't believe that that actual
21 document is allowed under the rules of evidence
22 pursuant to 410(2), but I do think that the
23 conduct underlying the assault is, and for many
24 reasons.

25 The first thing that the Court must do,

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1 obviously, is see if the evidence tends to
2 establish motive, intent, absence of mistake or
3 accident, a common scheme or plan, or identity.
4 I think the main thing that this tends to
5 establish is the common scheme or plan. And
6 there are a number of factors in the Wallace
7 case that I relied on quite a bit in my memo
8 and provided the Court and the defense with in
9 looking at the sexual assaults.

10 So, the first is the age of the victims at
11 the time of the assault. Both were young
12 women. Physically they were tall, slender,
13 young women. Their race was white. The
14 relationship between the victim and the
15 perpetrator, they were strangers. They were
16 either isolated or he made sure that they
17 became isolated. The location where the
18 assault occurred. Both assaults were on dark,
19 dirt roads in the northern Beaufort County in
20 the Burton area.

21 The use of coercion or threats. He used
22 the threat of a gun in both cases. Now, while
23 Lori did not actually see the gun, she did
24 believe him to have a gun. And he was reaching
25 under his seat for what certainly could have

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1 been a weapon of some sort as he's telling her
2 he will blow her brains out if she does not
3 succumb to the rape and take her clothes off.

4 He threatens them at the end and tells
5 them both not to call the police. He also
6 apologizes at the very end as well, which is
7 bizarre. And then another thing that he does,
8 in Lori's instance, he asks her at the time of
9 the rape, does she enjoy it. Well, similarly,
10 **MINOR**, the 1980 victim, gets a call about five
11 months after the fact from a man whose voice
12 she recognizes as Isiah Gadson's who eventually
13 asks her, Are you the one that was raped and
14 did you enjoy it.

15 The type of sexual assault that took
16 place. It began with oral sex, and in each
17 instance he performed oral sex on the women
18 prior to vaginally raping them. I think that
19 there are a number of similarities here, Your
20 Honor, that also help to prove motive, intent,
21 and identity. You know, we have a defendant
22 here who is a predator and obviously was able
23 to, you know, perform under these violent, you
24 know, under -- it is like, I mean, he gets off
25 on violence. He kills David and then he's able

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1 to get an erection immediately and rapes **MINOR**.

2 Both incidents place him in the Burton
3 area in the 1980s. He does give statements in
4 the 1983 case where, you know, he tells law
5 enforcement that he grew up on Glaze Drive
6 which is 1.7 miles from our 1980 incident
7 location which is now a subdivision. But I am
8 prepared to proffer the testimony of Lori at
9 this point, should the Court wish to hear.

10 Lori, if you can come up.

11 Thereupon,

12 LORI ANN KRUG LAWLESS

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q Lori, if you can state your name for the
18 record please?

19 A Lori Ann Lawless.

20 Q And, Lori, back in '83, where were you
21 living?

22 A I was living on Green Pond Park.

23 Q Okay. Is that off of Boundary Street here
24 in Beaufort?

25 A Yes, it is, I believe that it's called

DIRECT EXAMINATION OF LORI ANN KRUG LAWLWSS BY MS.
SWANSON

1 Green Lawn Drive now.

2 Q And it is over by the Bi Lo; is that
3 right?

4 A It is in front of where the old KMart used
5 to be where the liquor store is on the corner.

6 Q Okay. So, just right down the street from
7 here?

8 A Yes. Yes.

9 Q Where were you working at the time?

10 A I was a Marine. I was --

11 MS. SWANSON: May it please the Court.

12 Maybe I just missed it, but was the witness
13 sworn in?

14 THE CLERK: Yes.

15 MS. CAMPBELL: Okay. Thank you.

16 A I was in the Marine Corps. I was
17 stationed on Parris Island when it happened.

18 Q All right. And what were you doing for
19 the Marine Corps?

20 A I worked in the S1 department. I was
21 doing service record books.

22 Q Okay. Tell us about February 24th of
23 1983.

24 A I would walk in the mornings to get to my
25 ride, and that particular morning I had woke up late

DIRECT EXAMINATION OF LORI ANN KRUG LAWLWSS BY MS.
SWANSON

1 so I was already possibly going to miss my ride. I
2 had left my residence and I was walking down
3 Boundary Street towards Highway 280. I had one car
4 had stopped and asked me if I wanted a ride and I
5 turned him down. And then Mr. Gadson stopped and
6 asked if I wanted a ride. And at that point I
7 accepted because, like I said, I was running late
8 and afraid that I would miss my ride. I got in the
9 car and told him where I was going. I was on my way
10 to the corner store on 280 is where I met my ride.
11 And he said that he would take me there, but he
12 didn't.

13 When we got near the store he turned
14 on, I believe it was secondary 73. And I asked him
15 where he was taking me and he said that he had to
16 buy some marijuana from a friend. And I explained
17 that I was going to be late and possibly miss my
18 ride, but it didn't matter he kept driving. He
19 asked me if I smoked and I told him, No. And then
20 at that point he started questioning me as to
21 whether or not I had ever had sex with a black man
22 and I told him, No, that I was married, I had only
23 had sex with my husband and we had been married for
24 five years.

25 He took me down that secondary road.

DIRECT EXAMINATION OF LORI ANN KRUG LAWLWSS BY MS.
SWANSON

1 It was dark. I don't know, probably I am guessing
2 about a mile. And then he took a left-hand turn on
3 to a wired dirt road and then we went past a trailer
4 and then made a right-hand turn and it was desolate.
5 There was a field there. He got out of the car for
6 a moment. I seemed to recall that there was a
7 structure of some sort. I assumed that he was going
8 inside to purchase the marijuana.

9 When he got back in the car he locked
10 the doors and started to force himself on me. And
11 at that point I began to struggle. He told me if I
12 didn't stop he was going to blow my brains out. And
13 I believed him, so I stopped fighting him. He was
14 reaching like under the front driver's seat of his
15 car as if he was going to get something and I felt
16 like when he threatened to blow my brains out there
17 was probably a weapon there.

18 He told me to take my clothes off.
19 He removed his trousers and he said, Take your
20 clothes off or die. Take your pants off or die. So
21 I removed my trousers and he began performing oral
22 sex on me. He -- that lasted a couple of minutes
23 and then he asked if I enjoyed it, did I like it.
24 And then he got on top of me and vaginally
25 penetrated me and raped me. That also lasted a

DIRECT EXAMINATION OF LORI ANN KRUG LAWLWSS BY MS.
SWANSON

1 couple of minutes and he ejaculated inside of me and
2 then he took his -- put his pants on.

3 And at that point I was afraid to
4 move. I asked him if I could get dressed and he
5 said, Yes. He -- he then told me he was sorry, he
6 didn't know why he did that and offered to pay me.
7 I think that it was \$50. I told him that I didn't
8 want his money, that I wasn't a prostitute. And he
9 asked me if I was going to call the police or tell
10 my husband. And at that point I was scared to death
11 if I told him the truth that he would probably shoot
12 me, so I told him, No. He began driving back
13 secondary 73 towards where I wanted to go.

14 So, by then it was getting light and
15 I started trying to pay as much attention to the
16 inside of the car as I could in case I did survive I
17 could identify him and the car. And he dropped me
18 off on the secondary road at a welding shop or
19 somewhere near that area. I truly expected him at
20 that point to shoot me and be done with it but he
21 didn't. He drove away. So I got his license plate
22 and ran to the corner market on 280. It was --
23 where he dropped me wasn't far, so I ran the rest of
24 the way and I called 911.

25 Q Okay. And so, did you meet with police

DIRECT EXAMINATION OF LORI ANN KRUG LAWLWSS BY MS.
SWANSON

1 after that?

2 A Yes, I did.

3 Q And did you provide them with that license
4 plate?

5 A I did.

6 Q Did you provide them with the description
7 of your rapist?

8 A Yes.

9 Q What description did you give them?

10 A I told -- he was a black male in his mid
11 20s, maybe 25, 26. He was about 150 pounds, kind of
12 short afro, long sideburns, moustache, he had
13 scraggily facial hair. He was probably 5'9", 5'10".
14 He was wearing a gold ring on his right-hand. He
15 was wearing dark trousers and a blue wind breaker.

16 Q Do you remember if he was right-handed or
17 left-handed?

18 A I wouldn't really be able to gauge that
19 other than when he was reaching under the driver's
20 seat of the car he was reaching with his right-hand.

21 Q Did you go for a sexual assault kit?

22 A Yes.

23 Q Where did you go?

24 A Beaufort -- the Naval Hospital. Beaufort
25 Naval Hospital.

DIRECT EXAMINATION OF LORI ANN KRUG LAWLWSS BY MS.
SWANSON

1 Q Okay. And you had the swabs taken and
2 everything of that nature?

3 A Yes.

4 Q And while you were at the hospital were
5 they able to -- was police able to locate a suspect?

6 A Yes, they brought in a line-up sheet.

7 Q A photo line-up?

8 A Yes. And I identified Mr. Gadson and I
9 believe that it was on the way home the Sheriff gave
10 me a ride to the hospital. They had taken me by my
11 residence to pick up my husband and change of
12 clothes. And on the way home they told me that they
13 had arrested him.

14 Q Okay. And did you attend the plea or
15 anything when it happened?

16 A Yes, I -- we were doing jury selection and
17 getting prepared for trial when the plea was
18 entered.

19 Q Okay. All right. Thank you, Lori. I
20 don't have anything further at this point okay.

21 MS. CAMPBELL: May it please the Court.

22 THE COURT: Cross examination.

23 CROSS EXAMINATION

24 BY MS. CAMPBELL:

25 Q Good afternoon.

CROSS EXAMINATION OF LORI ANN KRUG LAWLESS BY MS.
CAMPBELL

1 A Good afternoon.

2 Q The Solicitor has called you Lori and you
3 currently go by the last name Krug, or is there a
4 different last name?

5 A It is a different last name.

6 Q What is that last name?

7 A Lawless.

8 Q Lawless?

9 A Yes, ma'am.

10 Q Okay. And that is Mrs. Lawless?

11 A Yes.

12 Q Mrs. Lawless, back on the date that the
13 solicitor was asking you about, the night before you
14 were trying to get to work that morning, you had
15 been out drinking beer and tequila; is that correct?

16 A Yes.

17 Q Okay. And you got home quite late, like
18 maybe a little before midnight?

19 A I don't recall the time.

20 Q Okay. And so, what time would you need to
21 be at the country store to get to work?

22 A I believe 5:30, quarter to 6.

23 Q Okay. And you characterized that you were
24 running late?

25 A I was running late that morning, yes,

CROSS EXAMINATION OF LORI ANN KRUG LAWLESS BY MS.
CAMPBELL

1 ma'am.

2 Q Okay. Now, I was a little surprised when
3 you said that you had been stopped by a car previous
4 to, you are saying that when Mr. Gadson stopped to
5 pick you up, that is information that was not given
6 to law enforcement back in 1983; correct?

7 A I don't recall if I told them or not.

8 Q Okay. And so, would you -- so, one car
9 stops, you turn them down?

10 A Yes, ma'am.

11 Q Another car stops, you take them up on the
12 offer?

13 A Yes, ma'am.

14 Q And do you recall telling the physicians
15 that, or characterizing as what you were doing as
16 hitchhiking?

17 A No, I was not. I was walking, facing
18 forward when both cars stopped.

19 Q Okay. Now, were you working at the Air
20 Station or Parris Island?

21 A Parris Island.

22 Q Okay. What were you doing at Parris
23 Island?

24 A I worked at women recruiting training
25 command, I was part of their S1 shop. I was a

CROSS EXAMINATION OF LORI ANN KRUG LAWLESS BY MS.
CAMPBELL

1 service records clerk.

2 Q Were you in -- were you a Marine?

3 A Yes, ma'am.

4 Q Okay. And your spouse, was he also a
5 Marine?

6 A No, he was not.

7 Q Okay. And your spouse -- at this time you
8 were 21 years old?

9 A Yes.

10 Q And you said that you had been married to
11 your spouse since you were 16?

12 A Seventeen.

13 Q Okay. And your spouse was at home the
14 morning that you left to go?

15 A He was.

16 Q Okay. Now, you never saw a gun, correct?

17 A I did not.

18 Q So, a weapon on you is not something that
19 happened at all, correct?

20 A I did not see a gun. There was not.

21 Q Okay. So, there was no gun to your
22 head --

23 A Correct.

24 Q -- or pointed at your chest or anything of
25 that nature, correct?

CROSS EXAMINATION OF LORI ANN KRUG LAWLESS BY MS.
CAMPBELL

1 A Correct.

2 Q Okay. And you have testified that
3 Mr. Gadson drove down a road to a house, some sort
4 of structure, and got out of the car; correct?

5 A Yes.

6 Q And during the period of time that
7 Mr. Gadson got out of the car you were in the car
8 alone, correct?

9 A Yes.

10 Q Wouldn't it be fair to say that at this
11 point, having gone past the country store, having
12 gone down a dark road that you had begun to fear --

13 A Absolutely.

14 Q -- that you perhaps were going to be
15 assaulted?

16 A I was beginning to wonder what was going
17 to happen to me, yes.

18 Q All right. And so, having that fear at
19 that time, and Mr. Gadson being gone from the car,
20 you did not get out of the car and go back down the
21 road or hide somewhere away from him, correct?

22 A That had entered my mind and then he
23 came -- I -- there wasn't time.

24 Q Okay. And as far as your -- hold on one
25 second. That might be all I have. Was your husband

CROSS EXAMINATION OF LORI ANN KRUG LAWLESS BY MS.
CAMPBELL

1 at the time -- was your husband ever interviewed or
2 talked to by the police that you are aware of?

3 A I'm not sure. I don't recall.

4 Q And so by the time you got back to the
5 general store -- is that what it was called?

6 A I think country store.

7 Q Country store. It was past time for your
8 ride to pick you up?

9 A I believe that they were there waiting on
10 me.

11 Q Oh, okay. Well now -- okay, so, who --
12 so, did you tell them what had just happened?

13 A Yes.

14 Q Okay. And are they the ones that took you
15 to the hospital?

16 A No, we called the police.

17 Q Okay. So, what time did you get back to
18 the general store then, or the country store?

19 A I'm not sure.

20 Q Okay. And do you recall whether or not
21 you informed law enforcement at the time that this
22 ride that you were going to catch was, in fact, at
23 the country store?

24 A They were -- I believe that they all met
25 there together.

CROSS EXAMINATION OF LORI ANN KRUG LAWLESS BY MS.
CAMPBELL

1 Q And the name of the person that was giving
2 you the ride?

3 A I have been trying to remember that
4 myself. It's been 35 years, I'm sorry.

5 Q That is fine. That is all that I have.
6 Thank you, Your Honor.

7 THE COURT: Redirect.

8 MS. SWANSON: No redirect, Your Honor.

9 THE COURT: Thank you, ma'am. You may
10 step down.

11 MS. SWANSON: State next calls Captain Bob
12 Bromage.

13 Thereupon,

14 BOB BROMAGE

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SWANSON:

19 Q Captain Bromage, by way of background,
20 what began the case against Isiah Gadson or this
21 cold case?

22 A In Sheriff Tanner's 1998 election campaign
23 he had promised that we would start looking into
24 cold cases, which unresolved murders and sexual
25 assaults that occurred in Beaufort over a period --

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 I think that the oldest case went back to 1972 at
2 the time.

3 Q Okay.

4 A So, we started working on those when he
5 took office in January. This is one of the first
6 cases that I got involved with and reviewed.

7 Q So, the 1980 case involving the sexual
8 assault against MINOR [REDACTED], at the time, and then
9 the murder of David Krulewicz?

10 A That's correct.

11 Q Okay. And so in conjunction with
12 reviewing that case, did you come across a 1983 case
13 that struck you as similar?

14 A I did. Once there was a national -- a
15 match in the national DNA system called CODIS I got
16 notification of that August 3rd of 2016. And the
17 identity of Isiah Gadson Junior was on that
18 document. And then I began a background
19 investigation to see what else he may have been
20 involved in.

21 Q Okay. So, you started looking at his
22 criminal history?

23 A I did.

24 Q All right. And you began to review a case
25 from 1983 involving him?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A I did. I looked at his criminal record
2 and saw where he had been arrested for different
3 things and pulled all of those files to try to see
4 who we were dealing with at the time.

5 Q Okay. And in your review of that case
6 file, did you review an interview that Isiah Gadson
7 gave to law enforcement?

8 A I did.

9 Q Okay. And was he -- was there a Miranda
10 form that he signed in that packet?

11 A (Pause.)

12 Q And I can help you.

13 A I don't have a copy of that right here,
14 but I do have it in this transcribed interview.

15 MS. SWANSON: May I make this a Court's
16 exhibit, please.

17 *(Whereupon, Court's Exhibit No(s). 4*
18 *marked for identification and received in*
19 *evidence.)*

20 BY MS. SWANSON:

21 Q Okay, I'll show you Court's Exhibit 4. If
22 this is from the 1983 case file, if this is a
23 Miranda form that was signed by Mr. Gadson?

24 A It is.

25 Q Okay. And can you summarize what he told

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 investigators regarding his contact with Lori back
2 in February of 1983?

3 A Just give me one second.

4 Q Sure. Do you remember -- did he tell
5 investigators where he lived?

6 A He did. He did. He gave a P.O. Box 4224
7 in Burton and behind the school bus maintenance shop
8 and they asked specifically where that might be.
9 Which is, again, Burton. And it is Glens Drive is
10 the address.

11 Q Back in 1983, was that a pretty rural
12 area?

13 A It was. It was when I got here in 1990.

14 Q Okay. And did he live close to his
15 parents?

16 A Yes, I believe that most of his family
17 lived on that road, or still do.

18 Q All right. AND where was he working, do
19 you recall?

20 A He said Browns Manufacturing Mobile Homes,
21 which was off of Highway 21 in Beaufort.

22 Q All right. Which is Boundary Street?

23 A That's correct.

24 Q Okay. Which is where he picked Lori up?

25 A Right, Highway 21, correct, Boundary

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 Street.

2 Q Okay. And did he admit to picking her up?

3 A I'm going through it right now.

4 Q You are fine.

5 A There's a lot here.

6 Q I know.

7 A Yes. Said, saw a lady on the side of the
8 road walking, I stopped and asked her if she wanted
9 a ride. She said, yeah. And I asked her where she
10 was going and she said -- and the detective
11 interrupted. Somewhere behind Pizza Hut -- Joy Land
12 or Pizza Hut, somewhere in that area.

13 Q Okay. And then, did he describe the way
14 that she looked a little bit farther down?

15 A I would say she was white, slender, you
16 know, I didn't pay no attention to the way that she
17 looked.

18 Q Okay. And then he asked her -- did he ask
19 her if she wanted a ride?

20 A He had indicated that, stopped and asked
21 her if she wanted a ride.

22 Q All right. Did investigators ask him
23 about having a gun?

24 A They did.

25 Q And what did he say?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A They asked, you got a gun or a knife. I
2 keep a gun in the car, but I don't tote no weapon.
3 And he acknowledged that it was an old .32 which was
4 recovered by the detectives, .32 caliber.

5 Q All right. Regarding -- when asked, Did
6 you try to have sex with her, by investigators, what
7 was his response? And this would be on Page 10
8 about halfway down.

9 A "Did you try to have sex with her? Well,
10 I asked the question. What question did you ask her
11 Isiah? I asked her if she wanted to make some money
12 you know. I put my hand on her you know."

13 Q And where did he say that he put his hand?

14 A Leg, between her legs.

15 Q Okay. In her pubic area?

16 A He acknowledged, right. Yes, pubic area.

17 Q And did he say that he did that over her
18 clothing or underneath her clothing?

19 A Outside -- over the clothing.

20 Q Okay. So, he never admitted to sexually
21 assaulting her?

22 A He did not.

23 Q Investigators asked him a number of times
24 in a number of ways, Did you have intercourse with
25 her, Did you blank her, and he just denied that;

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 right?

2 A Yes. No, sir. He answered, No, sir. Did
3 you take her clothes off? Were her clothes off in
4 the front seat of the car? He said, No, sir.

5 Q All right. Now, did you review the SLED
6 laboratory report from this case?

7 A I looked -- in particular I looked for the
8 .32 caliber to see if it had ever been evaluated at
9 SLED.

10 Q Okay. And tell us about that.

11 A Well, a .32 caliber was identified as
12 being used in the murder of David Krulewicz in 1980,
13 January 5th. David Caldwell, who actually ended up
14 being a profiler at SLED did the analysis as a
15 firearms examiner back in 1983. So, apparently they
16 flagged every gun that was a .32 caliber that was
17 recovered in Beaufort County and sent to SLED for
18 evaluation, and it was determined not to be the gun
19 that killed David Krulewicz.

20 Q All right. So, although it was a similar
21 make and model, it was not the actual murder weapon
22 from the 1980 case?

23 A That is correct.

24 Q What about any chemical lab reports, do
25 you recall looking at any of those?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A I do not recall looking at any of those.
2 You talking about from the original 1983 case, David
3 Krulewicz? I looked at their regular worksheet
4 where they had analyzed the evidence upfront, but
5 any subsequent I have not seen.

6 Q All right.

7 *(Whereupon, Court's Exhibit No(s). 5*
8 *marked for identification and received in*
9 *evidence.)*

10 Q I will hand you the SLED lab report that
11 was conducted by Chemist John Barron from the '83
12 case and just go over a couple of things from that.
13 Was John Barron able to identify any sperm on the
14 victim's clothing?

15 A Pair of panty hose, semen found. Please
16 submit blood and saliva samples from the subject for
17 semen typing and comparison. Nothing was found on
18 the blue jeans. Spermatozoas was found on the
19 medical specimens taken during the sexual assault
20 examination.

21 Q Okay. And were there any pubic hairs that
22 were consistent with those of Isiah Gadson's found
23 in the victim's pubic --

24 MS. CAMPBELL: Your Honor, I object to
25 that. Honestly, the science of that to begin

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 with is none. I mean it's been proven that the
2 comparison of pubic hairs of an
3 African-American man and a standard, you know,
4 it is junk science. So, the fact that the
5 solicitor wants to try to put that evidence in
6 as proof of anything is almost offensive. And
7 so you know, again, I don't mind that that
8 document can be a part of her record but I will
9 object to trying to say that there's some basis
10 in science that a pubic hair that was found,
11 you know, on Lori matches a pubic hair or is
12 similar in characteristic to the pubic hair of
13 this black man. I will object to that. Thank
14 you.

15 MS. SWANSON: Your Honor, this is simply
16 for pretrial purposes for the admissibility and
17 to comply with the clear and convincing
18 standard for the 1983 case. Chemist John
19 Barron is coming to testify for the
20 case-in-chief. You know, if this evidence gets
21 allowed in I suppose that Ms. Campbell can
22 cross-examine him on what junk science that is.
23 But all that it's simply doing is corroborating
24 the fact that Lori was sexually assaulted by a
25 man who claimed that, Oh, no, he just touched

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 her over the pants.

2 And Your Honor, I have to show that
3 there's evidence of this rape in order to offer
4 it. I mean, we have got victim's testimony and
5 corroborating scientific evidence, although
6 they didn't have DNA back then, you know, sperm
7 was found and it was found on her clothing.

8 THE COURT: Right, but what about the
9 hair?

10 MS. SWANSON: Right. And hair that was
11 submitted by Isiah Gadson was consistent with
12 the pubic hair combings from the victim's rape
13 kit. Can't say that it's him, but it's
14 consistent and based on her testimony she was
15 raped by this man. She identified him in a
16 photo line-up. There's no reason that hair
17 consistent with his should be in her pubic
18 area, particularly if he's saying that he only
19 touched her over the clothing.

20 THE COURT: Ms. Campbell, what do you say
21 now?

22 MS. CAMPBELL: Again, Your Honor, I
23 object. There's no scientific foundational
24 basis at this point in 2018 to say that
25 African-American or at that time black pubic

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 hairs are consistent with one another. It is
2 just not science. It is just junk. And
3 there's no scientist that would come in here
4 today and testify that they could look at two
5 pubic hairs purportedly from African-American
6 men and say one of those hairs is consistent
7 with the other one so . . .

8 THE COURT: The witness is saying that
9 this is what the report at the time said.

10 MS. SWANSON: I am sorry?

11 THE COURT: The witness is saying that
12 that was the analysis from the report.

13 MS. SWANSON: Right. That is in SLED's
14 report from 1983, yes, that there were pubic
15 hairs found in the combings that were not hers
16 and were consistent with -- and the language in
17 there is "consistent with" those submitted by
18 Isiah Gadson.

19 Now, how he reached those conclusions, I
20 mean, I can't tell you right this second but he
21 is going to be here to testify. So, you know,
22 if we need to have a hearing regarding that
23 particular testimony or proffer that testimony,
24 we can. But I mean, right now we are just
25 doing the 404(b) analysis and I'm trying to

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 show that there's clear and convincing evidence
2 that the defendant committed this 1983 sexual
3 assault and then point out the similarities.

4 THE COURT: All right. Ms. Campbell, I'll
5 overrule your objection. I'll allow it at this
6 point.

7 MS. SWANSON: Okay, thank you.

8 BY MS. SWANSON:

9 Q So I think that we covered the semen that
10 was found on the victim's clothing?

11 A Correct.

12 Q And pubic hair that was consistent with
13 Isiah Gadson's from the combings from her rape kit.
14 And if you can flip the page over, was there
15 anything found on the car seat?

16 A Car seat was stained, semen found. SA
17 please submit blood semen from victim for fluid type
18 comparison.

19 Q Okay. So, there was semen found on the
20 car seat as well. And was that the car that came
21 back to the license plate number that Lori gave to
22 police?

23 A That's correct.

24 Q Okay. And that car was searched,
25 obviously, and processed?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A It was by detectives, correct.

2 Q All right. So, when you went through this
3 1983 case and you became intimately familiar with
4 the 1980 case, what similarities did you see and
5 note between the two?

6 A In both cases, the subject was identified
7 as an African-American male. Both cases occurred in
8 the Burton area. Within a couple of years of each
9 other. The African-American male performed oral sex
10 on both MINOR in 1980 and Lori Krug in 1983.
11 The subject did not wear a condom, ejaculated in
12 both victims. And was apologetic afterwards, offers
13 them an apology.

14 And the fact that they found in his
15 glove compartment back in '83 was a .32 caliber
16 revolver that we expected to be used in the 1980
17 case. But it was eliminated in the analysis by
18 SLED, but in any case it is a similar type gun.

19 Q What were the instant incident locations
20 in each like?

21 A Remote. Where MINOR was -- where
22 David Krulewicz was murdered, MINOR was
23 sexually assaulted on Old Salem Road on a dirt path
24 going through the woods. And Lori Krug indicated in
25 her testimony and her statement that he drove into a

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 rural area where he would have some privacy, but
2 also indicated some familiarity of the subject with
3 that area.

4 Q Okay. And these incidences, these
5 incidences, they both occurred in the hours of
6 darkness?

7 A They did. One was around midnight with
8 David Krulewicz and MINOR, and the other was
9 5:30/6 in the morning.

10 Q Anything else that the defendant said
11 during or after the sexual assault that you found to
12 be unique?

13 A Well, he asked Lori Krug during the sexual
14 assault whether she liked it. MINOR got a
15 phone call back in May of 1980 and she was asked if
16 she liked it in that report itself. That was -- but
17 it was just enough aggression to coerce them into
18 sexual activity. He gained control and he acted
19 like he was on a date.

20 Q Lori testified that he told her not to
21 call police or tell her husband?

22 A That's correct.

23 Q What did MINOR say he told her about this?

24 A MINOR indicated that he said not to call
25 the police. But he was also talking about a CB

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 being in the van telling her to wait until he left,
2 indicating that he wanted to get out of there before
3 she did anything, so he left.

4 Q Okay. And I believe that you testified
5 already, but the sexual assault began with oral sex
6 and then led to vaginal rape; is that right?

7 A That's correct.

8 Q Okay. All right.

9 MS. SWANSON: I have nothing further, at
10 this time.

11 THE COURT: Cross examination.

12 CROSS EXAMINATION

13 BY MS. CAMPBELL:

14 Q Detective Bromage, the solicitors had you
15 look at the lab report from SLED from 1983. I'm
16 going to have you look at what is Bates stamped Page
17 920 which is part of the record of the 1983 case,
18 the sexual assault exam notes of the physician. And
19 is it not true that the physician notes that there's
20 no trauma noted at all for Lori Krug, correct?

21 A That is correct, no evidence of trauma.
22 Vagina dry.

23 Q Correct. Detective Bromage, you started
24 working on this case, the 1980 case, which is -- I'm
25 going to call them 1980 and 1983 for this hearing.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 You started working on this in '99, correct, the
2 1980 case?

3 A That's correct.

4 Q And you testified to the solicitor that
5 you -- that the first time that you looked at Lori
6 Krug's case from 1983 was in 2016?

7 A That's correct.

8 Q Okay. So, from '99 to 2016 you never
9 looked at similar type crimes in the years around
10 1980, young white women sexually assaulted by young
11 black men. You never looked at the Sheriff's
12 Department files on those types of cases?

13 A Ms. Campbell, those files are separate.
14 Those are in records management in microfilm. I
15 would need to have someone identify it, have some
16 suspicion that there may be something else to go
17 back and find those dates. To throw a big net over
18 every file that we have, no, some of the detectives
19 were dead at the time and we have had a huge issue
20 with that over the years. I interviewed the
21 detective on this case before he died and there was
22 only one suspect really in the report that he was
23 looking at. As far as I know Isiah Gadson was never
24 mentioned.

25 Q Okay. Thank you.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 A You are welcome.

2 Q But the answer to my question is, no, you
3 did not go back and go through the case files
4 surrounding 1980 that dealt with similar type cases,
5 correct?

6 A That's correct.

7 Q That is going to be your testimony; is
8 that right?

9 A I never reviewed cases from 1980 around
10 that time. I was never aware of any, no.

11 Q And the first time that you see the report
12 from the 1983 case that lists Isiah Gadson as a
13 suspect in David Krulewicz's murder, you are
14 testifying that the first time that you saw that
15 document was in 2016; is that correct?

16 A The 1983 case?

17 Q Right.

18 A The first time I saw the 1983 case was in
19 2016 during a background investigation of Isiah
20 Gadson, that is correct.

21 Q All right. And the document to which I'm
22 speaking is, I -- I mean, you -- is the report from
23 SLED that says the gun from Isiah Gadson taken in
24 the '83 case does not match the ballistics from the
25 1980 case, correct?

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 A That is correct. It was excluded, that is
2 exactly right.

3 Q And to be clear, that report and the notes
4 behind it list Isiah Gadson as a suspect in the
5 murder of David Krulewicz, correct?

6 A You are going to have to show me that
7 document.

8 Q Okay.

9 A I never heard Isiah Gadson's name until
10 2016 when we got the CODIS kickback. So, we are for
11 the record on that.

12 Q Okay. Well, let me pull it up and I'll
13 show it to you.

14 A Thank you.

15 Q I am going to approach, Your Honor. All
16 right, I'm going to hand you the document from 1983
17 in the Lori Krug case. Would you tell us who is
18 listed as the suspect in the murder of David
19 Krulewicz in 1983?

20 A That is incorrect, what you are saying.

21 Q Okay.

22 A Right here it says, Subject, Isiah Gadson,
23 victim, Lori Ann Krug. He is a suspect in the
24 sexual assault. He is not a suspect in David
25 Krulewicz. He was never brought up in the

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 investigation, it is clear.

2 Q So the examination that it's requesting is
3 a comparison of the firearm that is taken from the
4 suspect, Isiah Gadson, and you are comparing it to
5 the case of David Krulewicz's murder?

6 A When the prosecutor asked me a question I
7 believe every gun that was a .32 caliber that they
8 recovered in the early '80s was sent up and compared
9 to the projectiles taken from David Krulewicz in
10 autopsy.

11 Q And you believe that because Caldwell told
12 you that?

13 A I certainly do because he told me that,
14 that's right, yes, I do.

15 Q All right. That is your testimony, all
16 right.

17 A Specimen number K18, from what I
18 understand, if that's correct, that was probably the
19 18th gun that was evaluated in this investigation in
20 this case, the David Krulewicz and MINOR case.
21 That is not the first gun.

22 Q Okay. In the investigation of the 1983
23 case, Isiah Gadson clearly is identified, he clearly
24 is questioned by police, correct?

25 A Yes, ma'am.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q Okay. In your review of of that file,
2 he's also clearly listed as being 5 feet 11-inches
3 tall, correct?

4 A Do you have a copy of that right there?

5 Q I have a copy of the entire report. You
6 don't know that?

7 A I mean, mine is kind of out of order right
8 now because I was flipping through it.

9 Q Okay. The page number is 881. I'll be
10 happy to walk it up to you. That is listed as
11 5 feet 11-inches tall, correct?

12 A 5-foot 11, 150 pounds.

13 Q Yes. And the date of birth, do you have
14 that on there?

15 A [REDACTED]-1952.

16 Q I won't make you do the math. How old was
17 he in 1983?

18 A 1983, he would have been 31 years old.

19 Q Thank you. He stands 5'11", almost 6 feet
20 tall?

21 A According to our booking report, but we
22 are not taking a yard stick to him, so I'm not sure
23 exactly how tall he was.

24 Q Okay. On Page 877 the description of the
25 suspect of the man, the black man, from Lori Krug,

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Page 877, is how tall?

2 A 5'10" to 6 feet, 140 to 150.

3 Q All right. And that matches the person
4 that they talked to and interviewed and admitted to
5 picking her up, correct?

6 A By all indications, yes.

7 Q Right. So, 1983, 30 something years old
8 and he's standing, hovering right at 5'11", correct?

9 A According to the report, that is exact.
10 The booking report says 5'11", that is right.

11 Q Okay.

12 MS. CAMPBELL: That is all that I have for
13 you, Officer.

14 REDIRECT EXAMINATION

15 BY MS. SWANSON:

16 Q Just briefly. When did Isiah Gadson
17 become a suspect to you?

18 A August 3rd, 2016.

19 Q And what made him a suspect?

20 A CODIS hit, which is combined DNA in the
21 system to the unknown semen found in 1980 entered in
22 1980 in the murder of the David Krulewicz and sexual
23 assault of MINOR.

24 Q In 1999 when you got the case, what did
25 you ask to be done on it?

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A DNA.

2 Q Were they able to come up with a profile
3 in '99?

4 A No, they were not.

5 Q When did they come up with a profile?

6 A Come up with a profile, 2002 I believe,
7 and entered in 2003. We entered David Krulewicz.
8 The technology changed in 1999, they had a new
9 technology that everyone was excited about in the
10 cold cases.

11 Q You took a swab from **MINOR** to eliminate or
12 separate her DNA from the mixture that was found in
13 the semen, right?

14 A That's correct.

15 Q Okay. And so the profile that is come up
16 with is entered into the DNA database in 2003 and
17 that is how we will refer it to. But -- and it's
18 not until 13 years later, right, that there's a hit?

19 A 2016 Isiah Gadson gave a buccal swab,
20 which is a saliva swab at the jail from his mouth
21 and it went up to SLED and SLED did an examination
22 on it and the analysis matched. When they entered
23 it into the DNA database it matched our unknown
24 profile.

25 Q Then Selena Nelson got a confirmatory

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 buccal swab?

2 A She did.

3 Q That went up to SLED?

4 A They did.

5 Q They analyzed that in 2016?

6 A They did, yes, with the statistical data
7 at that point.

8 Q It was a match?

9 A It was a match.

10 Q Going back to '83 and your conversations
11 with David Caldwell, the gun that was -- or the type
12 of gun that was suspected to kill David Krulewicz
13 was a .32 revolver?

14 A That's correct.

15 Q All right. So, whenever any .32 revolvers
16 would come up, would those be sent off to SLED?

17 A They would. There's not a big record of
18 that other than what SLED might have, but when you
19 start labeling things in conversation with him,
20 Item 20, the 20th pistol that was analyzed against
21 the projectiles that came out of David Krulewicz's
22 body, yes.

23 Q So you confirmed with him that multiple
24 .32 caliber pistols were sent up there for analysis
25 just to see if maybe there was a hit?

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A Absolutely, that is what they were doing.

2 Q Because it was a cold case?

3 A At that point they really didn't have any
4 direction that was clear, yes.

5 Q All right.

6 *(Whereupon, Court's Exhibit No(s). 6*
7 *marked for identification and received in*
8 *evidence.)*

9 BY MS. SWANSON:

10 Q I am gong to hand you what has been marked
11 as Court's Exhibit 6. What is that?

12 A Mug shot of Isiah Gadson when he was
13 booked in the Beaufort County Sheriff's Department
14 in 1983 on February 24th.

15 Q All right. Can you describe his facial
16 hair?

17 A He has got a moustache, fairly trimmed up
18 top hair.

19 Q Okay. All right. Well, it is a Court's
20 exhibit, so we can show the Judge too. Can you hand
21 that up to the Judge?

22 THE COURT: Thanks.

23 MS. SWANSON: All right. That is all that
24 I have at this point. Thank you, Captain.

25 MS. CAMPBELL: I just have one other

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 thing.

2 THE COURT: Recross.

3 RE-CROSS EXAMINATION

4 BY MS. CAMPBELL:

5 Q Just to clarify one thing. Detective
6 Bromage, having worked on this case since '99, do
7 you need to look up in your records or can you
8 independently tell us that, in fact, the height of
9 the assailant in the 1980 case is described as being
10 between 5'5" and 5'7".

11 A That sounds right. I think that it's
12 written in our report. There is various reference
13 to it in our report. Which is actually sitting
14 right there. Yes, it is in that big file over
15 there. But yes, that sounds right. I think so.

16 Q And to be clear, the way that that 5'5" to
17 5'7" is, you know, is a figure in the records is
18 that MINOR reports that her assailant is a few
19 inches shorter than she is, correct?

20 A That sounds accurate.

21 Q Perfect. And in the records of the 1980
22 case -- and we'll find it if we need to, but in the
23 autopsy David is listed as being 6 feet tall,
24 correct?

25 A That sounds accurate.

RE CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q Okay. Perfect. And you obtained and/or
2 the solicitor has obtained a photograph of David and
3 MINOR right before this happened, I guess around
4 Christmas 1979; correct?

5 A That's correct.

6 Q And within the photograph, which I
7 understand that the State intends to introduce
8 later, Your Honor, MINOR is several inches shorter
9 than David; correct?

10 A I'm not going to say correct unless I'm
11 looking at it. I do not have it in front of me.
12 MINOR is very very tall. MINOR is very tall.

13 Q I have been provided a copy of the
14 photograph, I can't put my hands on it right this
15 second. David stands 6 feet tall and MINOR is a
16 couple of inches shorter than he is? You know the
17 picture that I am talking about, don't you?

18 A I know the picture. I do.

19 Q Thank you. And to the best of your
20 recollection she stands a few inches shorter than he
21 is?

22 A She appears to be shorter than David
23 Krulewicz, yes, if that's what you are asking.

24 Q Yes.

25 A Several inches, I couldn't tell you.

RECROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q And her description of her assailant is
2 that her assailant was a couple of inches shorter
3 than she was at the time, correct?

4 A That is my recollection.

5 Q That is how Beaufort County Sheriff's
6 Office comes up with 5'5" to 5'7", right?

7 A Right.

8 MS. CAMPBELL: That is all that I have.

9 MS. SWANSON: Just briefly.

10 REDIRECT EXAMINATION

11 BY MS. SWANSON:

12 Q In your experience with criminal
13 investigations, what is the better indicator of
14 identity, a person who is raped in pitch black dark
15 or a DNA profile established from semen on the
16 crouch of a rape victim's clothing?

17 A I would have to lean towards the semen for
18 sure as being a very strong indicator of identity.

19 Q Okay.

20 A I have seen many bad descriptions from
21 victims that have been way off in my career, so it
22 doesn't impress me either way.

23 Q So, as a law enforcement investigator, how
24 long have you been with the Sheriff's Office?

25 A Twenty-eight years.

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 Q All right. So, through 28 years, once DNA
2 was established, which we are saying happened in
3 about 2002, DNA as we know it, STR. Short tandem
4 repeat. Once that was established it became a tool,
5 right, for you investigators?

6 A Right, DNA changed so much between '99 --
7 I would say 2000 it really started evolving. We
8 sent all of our cases with potential DNA up there,
9 sure. This was one of them.

10 Q You would not use it to point to a suspect
11 but you would use it for elimination, correct?

12 A Yes, we have used it to eliminate
13 suspects, yes, many times.

14 Q In fact. In 1995 -- sorry, in 2016, did
15 you use DNA to exclude Isiah Gadson from a 1995 cold
16 case?

17 A I did.

18 Q Okay. That is all that I have.

19 MS. CAMPBELL: I actually do have just one
20 more. I promise I am done, Judge.

21 THE COURT: One.

22 RE-CROSS EXAMINATION

23 BY MS. CAMPBELL:

24 Q Okay. Before the advent of DNA, isn't it
25 true that there were a number of suspects in this

RECROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 case who were removed as suspects because they were
2 too tall. They fit, but they were too tall and that
3 was not pursued?

4 A Everybody in this case was eliminated by
5 DNA when it identified Isiah Gadson, everybody.
6 There were people calling from all over the
7 community. There was a panic about this case, so
8 there's probably 30 or 40 people listed as persons
9 of interest in this with no real foundation behind
10 it.

11 Q Exactly, so that is my point. There were
12 a number of black men from 1980 to 1983 who were
13 eliminated as suspects because they were too tall,
14 correct?

15 A Again, I don't think that anybody was
16 really eliminated as suspects. They did not have
17 the forensic science that we have today. And quite
18 frankly MINOR was in the middle of the woods at
19 night and couldn't identify her assailant. She has
20 never wavered on that. She has never wavered on
21 that, being able to positively identify the
22 individual. She has never identified anybody in
23 this case. DNA identified Isiah Gadson.

24 Q Again, I'm not talking about DNA. I'm
25 trying to go back to the 1980 case. In the 1980

RE CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 case, all they had was the description and they
2 would get a suspect and if he was too tall he was
3 removed as a suspect? Do I need to find the pages
4 where that occurred?

5 A I think that you should because it's not
6 ringing true to me.

7 MS. CAMPBELL: Then I might need a moment
8 to do that. I certainly apologize but I have
9 to pull it up on the computer. And that is all
10 of the questions that I have then.

11 THE COURT: Unless somebody has it.

12 MS. CAMPBELL: Well, we will keep looking
13 but we found one at least. So, let me
14 approach. And this -- I'm sorry, there's no
15 Bates stamp on this, but it's going to be a
16 supplemental report dated September 1, 1980.
17 And if you will just read that into the record
18 please.

19 A The entire?

20 Q Please. It's just a paragraph, it is like
21 four lines.

22 A That is fine.

23 Q Okay.

24 A "At approximately 1305 on this date this
25 reporting officer received a call from Sergeant

RECROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Coppenger, Joseph Marine Corps recruit depo Parris
2 Island South Carolina who related he had seen a
3 composite drawing of the suspect involved in this
4 case and he believes the drawing to be a likeness of
5 a drill instructor he knows named Sergeant Norfly.
6 Subject is a drill sergeant at PI and although
7 Coppenger states that Sergeant Norfly is taller,
8 5'10" tall, than the suspect in this case, he says
9 that the drawing is a close resemblance.
10 Investigation to continue."

11 Q Okay. And was any investigation continued
12 on that suspect?

13 A I don't believe so. There's a whole lot
14 of them in there like that.

15 Q Thank you. That is the point that I am
16 trying to get to.

17 A Absolutely.

18 Q A lot of individuals to the wayside based
19 on not fitting the height requirement, correct?

20 A I can't say why he was put to the wayside.
21 It says that although he's taller than the suspect,
22 that the investigation continues. There's a lot of
23 those in there.

24 MS. CAMPBELL: That is all that I have,
25 thank you.

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 REDIRECT EXAMINATION

2 BY MS. SWANSON:

3 Q Just one follow-up. Other than -- okay,
4 so, there were a lot of tips that came in from the
5 composite drawing that were released to the media;
6 is that right?

7 A That's correct.

8 Q So, other than vaguely matching a physical
9 description when these names came in, was there
10 other evidence that placed them in this area?

11 A Absolutely not.

12 Q Okay.

13 A At least according to the report. There
14 was one other suspect that they focused in on and
15 that went on for a period of time and that was it.

16 Q Okay. Oneill Banks was one person that
17 you looked at heavily, correct?

18 A He murdered a woman within two years of
19 this rape/sexual assault. He was worth looking at
20 very hard and we did and we eliminated him through
21 DNA.

22 Q Right. And none of those other suspects'
23 DNA produced a CODIS hit?

24 A No.

25 MS. SWANSON: Okay. Thank you.

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 THE COURT: Thank you. You may step down.

2 MS. SWANSON: Thank you. Your Honor, at
3 this time, that concludes the State's
4 presentation for 404(b) purposes. I was not
5 going to have the current victim testify at
6 this time because we are really just talking
7 about the admissibility of the 1983 victim.
8 And so, I would rely on my written and filed
9 memo regarding 404(b) evidence. But I believe
10 that I have also stated the similarities and
11 why it would be relevant, and certainly in an
12 identity case, more probative than prejudicial.
13 Clearly identity is an issue here so the State
14 does seek to admit this in evidence. Thank
15 you.

16 THE COURT: Let me ask you Ms. Campbell.
17 The solicitor is relying in part on her
18 memorandum submitted and filed. What I wanted
19 to ask you is, is there any serious
20 disagreement with the factual assertions made
21 by the State in that memorandum as it relates
22 to the -- to this case?

23 MS. CAMPBELL: Well, I didn't --

24 THE COURT: I haven't seen any, I just
25 didn't know.

COLLOQUY

1 MS. CAMPBELL: I don't want to put a stamp
2 of approval that I don't, you know, that I'm
3 saying that what is stated is, factually, in
4 this memorandum is in fact true.

5 THE COURT: Well, what I'm really talking
6 about -- maybe this will help you. The
7 allegations -- excuse me. The assertions in
8 the memorandum as it relates to the 1980 event.

9 MS. SWANSON: Do we agree with what's in
10 the police report and the victim's statement.

11 THE COURT: Which it looks like it comes
12 from the police report.

13 MS. CAMPBELL: Well, I mean, I guess what
14 you are asking me to agree to is to say that I
15 believe the veracity of what was reported by
16 MINOR in 1980. And I don't see how I can
17 do that and represent Mr. Gadson. I mean, I
18 can't vouch for her and say she's telling the
19 truth.

20 THE COURT: No, no. I just wanted to know
21 if there's any disagreement with these facts?
22 Are the facts stated incorrectly?

23 MS. CAMPBELL: Yes.

24 THE COURT: Is this what was reported, I
25 guess?

COLLOQUY

1 MS. CAMPBELL: To some extent, yes. I
2 mean, I can't --

3 THE COURT: I shouldn't ask you do you
4 agree with it. I guess I should have rephrased
5 it by saying, is this what the victim reported?

6 MS. CAMPBELL: In a general manner, yes.
7 This is what MINOR reported occurred on or
8 about January 5th, 1980. This is what she
9 reported to law enforcement, yes.

10 THE COURT: The reason that I'm asking is
11 that we have been through the '83 statements.

12 MS. CAMPBELL: I understand.

13 THE COURT: And we are talking about
14 similarities now.

15 MS. CAMPBELL: Correct.

16 THE COURT: Anyhow, I'll be glad to hear
17 from you. I stopped you.

18 MS. CAMPBELL: Well, I mean, I know that
19 the burden is on the State and at this point I
20 will look at the Lawless case as well and sort
21 of pinpoint, to be sure that I'm clear, when I
22 first heard the solicitor said that she was
23 using -- trying to put this evidence in for a
24 common scheme or plan and then on the back-end
25 I heard her say that she was also wanting to

COLLOQUY

1 use it for identity, to obtain an identity in
2 the 1980 case or to substantiate identity in
3 the 1980 case. And I would just like for
4 clarification under 404(b) which of the
5 exceptions I'm arguing toward, Your Honor, and
6 then I'll proceed from there.

7 THE COURT: Okay. Solicitor.

8 MS. SWANSON: Your Honor, in my memo I
9 stated that I'm primarily analyzing it under a
10 common scheme or plan, which also goes to
11 motive, intent and identity. And you know,
12 at -- as far as I know, the defense is saying
13 that this is an identity case. You know,
14 certainly, you know, motive and common scheme,
15 anything, you know, that would point to the
16 defendant would be probative in an identity
17 case. So I mean it -- there are -- you can
18 request that the evidence be admitted under a
19 number of, you know, Lyle factors. You know, I
20 suppose that the Court doesn't need to be
21 convinced by all of them. But, you know, only
22 one is what the Court needs to be convinced of.
23 But, you know, identity really goes a little
24 bit more toward my more probative than
25 prejudicial analysis.

COLLOQUY

1 THE COURT: All right. Thank you.

2 Ms. Campbell.

3 MS. CAMPBELL: Thank you. Under the
4 Wallace factors, Your Honor -- and I know the
5 State laid it out in their motion for you, but
6 I would submit to Your Honor that -- and while
7 it's just guidance, the Wallace factors are
8 just guidance, there's other factors that can
9 be considered by the Court as well. But if you
10 just take them in the order that they are given
11 in the Wallace case, you have a 15 year old in
12 1980 -- I'll take it, 1980 and 1983. In 1980
13 you have a 15 year old. In 1983 you have a 21
14 year old. The relationship between the victim
15 and the perpetrator -- and really, to be quite
16 honest, the way that I see these cases is that
17 they are traditionally not really like an
18 identity kind of situation. This is someone
19 who is close to both individuals and had a
20 relationship with the individuals, as in the
21 stepfather situation of the two minor children,
22 things of that nature.

23 So, there's really no relationship
24 coordinate between the parties in this case.
25 So, the factor of relationship between the

COLLOQUY

1 victim and the perpetrator. Well, the manner
2 in which Mr. Gadson comes in contact with
3 Ms. Lori Krug Lawless in 1983 is quite
4 voluntary. There is no aspect of violence,
5 there's no aspect of force, threat, or coercion
6 when the 21 year old woman who is walking down
7 the highway, as she has testified to get to her
8 ride to work, agrees to get into the car with
9 Mr. Gadson.

10 Ultimately, as Your Honor has before you,
11 that case pled out under circumstances that
12 led, I would assume the prosecutors at that
13 point, to determine that that was the best
14 possible scenario to end the matter for all
15 parties and they did. The location being
16 similar. You know, that is where like the
17 stepfather takes the child into the bathroom
18 every time or, you know, takes them to the park
19 each time. So, it is sort of an apples and
20 oranges situation.

21 But if we are going to go down that road,
22 then the location is vastly different. **MINOR**
23 and David were parked at Lover's Lane, which is
24 frequented by many people on the -- in the
25 evenings. And the location that Lori Krug

COLLOQUY

1 Lawless described was quite desolate and
2 secluded. The Lover's Lane would be very
3 different from that. There's no gun at all,
4 seen, used, threatened in Lori Krug Loveless'
5 case. And of course, the allegations that
6 there was a gun used and pointed at MINOR
7 in the 1980 case.

8 The type of sexual battery. Okay, so in
9 1983 then we are going to have to go with just
10 what she's testified to, that the interaction
11 sexually was not consensual because the record
12 is void of evidence, other than her testimony,
13 which was not sufficient in 1983 for the Court
14 to move forward on criminal sexual conduct
15 charges against Mr. Gadson.

16 They changed the charge to ABHAN and he
17 pled, essentially, nolle contendere, no contest,
18 to this. The doctor's report, what you do
19 have, the testimony, is that there was no
20 evidence of sexual trauma or injury at all and
21 the usefulness of the SLED report also is null
22 and void. The fact that semen is found, that
23 could be from anywhere, any time.

24 And the whole thing, issue of the black
25 African-American pubic hair, again, is all

COLLOQUY

1 consistent with consensual interaction. It
2 doesn't absolutely point to a sexual assault.
3 It didn't in 1983 and it shouldn't in 2018,
4 which is what the State is asking you to do, is
5 to make a determination that she's presented
6 clear and convincing evidence to you that Isiah
7 Gadson committed a sexual assault against Lori
8 Krug Lawless and thus use that in the case to
9 prop up her common scheme and plan, and then
10 use it to also point the finger at Isiah as
11 being the individual in the 1980 case, which
12 couldn't get any closer to the use of
13 propensity evidence.

14 I mean, if he was convicted of criminal
15 sexual conduct. I mean, if there was a gun
16 that had been put to her head, you know. But
17 there's not. And with those gaping holes, and
18 especially since there's no evidence that she
19 had any physical trauma at all, to allow the
20 State to take us down this frightening path of
21 allowing propensity evidence into the
22 case-in-chief is just -- well, it is very very
23 troubling. So, of course, we object.

24 Additionally, and I'll close with this,
25 Lori Krug Lawless testified that Isiah Gadson,

COLLOQUY

1 the man that you know, she got -- caught a ride
2 from that day, left her alone in the car while
3 he went up to this house where he was going to
4 pick up some marijuana. And there was a period
5 of time that he was not there. And that
6 doesn't fit with the factual scenario of the
7 Lover's Lane situation where there was never a
8 moment that MINOR was not under the
9 direction and control of an armed -- a black
10 man as she described him.

11 And perhaps most importantly both
12 pretrial, and I can't state -- the State can't
13 be surprised that during the trial that it's
14 paramount importance that Isiah Gadson in 1983,
15 and there are records you know, other records
16 as well, that he's, you know, standing close to
17 6 feet tall, the same height as David. And you
18 know, the individual that is the perpetrator in
19 the 1980 case is clearly and consistently
20 described as being a few inches shorter than
21 MINOR.

22 Lori Krug Lawless consistently described
23 her assailant, the person that she caught the
24 ride with, as being between 5'10" and 6 feet
25 tall. There's a -- you know, there's a lot of

COLLOQUY

1 difference between 5'5" and 5'10" and 5'11".
2 That is a tremendous difference. So, we would
3 take the position that all of those things
4 coupled together simply means the State fails
5 to meet their burden of proof, and respectfully
6 request that Your Honor disallow this evidence.

7 And then, even if -- the second prong, you
8 know, even if you were to allow it, we would
9 say to you, that any probative value is
10 clearly -- the prejudicial effect of this to
11 Mr. Gadson is irreparable. It can't -- it
12 wouldn't serve the purpose of probative, it's
13 so, so prejudicial to him. Thank you, Your
14 Honor.

15 THE COURT: Thank you, Ms. Campbell.
16 Anything in reply?

17 MS. SWANSON: Ms. Campbell talked about
18 the relationship, you know, the fact that, oh,
19 well that can only pertain to an uncle and a
20 niece, there's nothing in the case law that
21 says that. I do think that, you know, a man
22 who prays on, you know, females who are
23 isolated in remote areas, you know, of the same
24 physical makeup is consistent.

25 She also asserted that there were no

COLLOQUY

1 threats or coercion in Ms. Krug's rape,
2 however, you know, he did threaten the use of a
3 gun. What else was he going to use to blow her
4 brains out if she did not take off her
5 clothing?

6 I did present the chemist's report simply
7 to show that Mr. Gadson's rendition of events
8 is not believable. What he told law
9 enforcement, that he simply touched her in the
10 pubic area over the clothing but yet she
11 goes -- you know, she reports to the police
12 immediately. She goes for a rape kit
13 immediately. And semen is found on her, as are
14 pubic hairs that do not match hers. So, you
15 know, I mean, if we are talking about -- and
16 the only real difference that I heard
17 Ms. Campbell point out is this height issue and
18 we are talking about a few inches. Lori
19 actually did say between 5'9" and 5'10" when
20 she was on the stand, or around 5'9" or 5'10".

21 I mean, you know, while height may not be
22 unique, DNA certainly is so, you know, I
23 mean -- DNA matches him. The height reported
24 by each victim may not.

25 THE COURT: I think that I know what I'm

COLLOQUY

1 going to do already, but let me ask this
2 question, do we have more motions or matters to
3 be taken up?

4 MS. CAMPBELL: I believe Judge -- we
5 talked about how to deal with the CODIS hit,
6 and we are going to refer to it as DNA database
7 hit. Is that correct, Ms. Campbell?

8 MS. CAMPBELL: That's correct.

9 MS. SWANSON: Okay. I think that we
10 discussed the investigative hearsay parameters.
11 Rape shield, I believe that we discussed.

12 MS. CAMPBELL: Uh-huh. (Indicating
13 affirmatively.)

14 MS. SWANSON: And then there's no
15 statement that the State is seeking to
16 introduce so we do not need a Denno hearing. I
17 believe that this last 404(b) is going to cover
18 it. I have not decided -- there's one photo in
19 question. I have not decided if I'm going to
20 try and use it. But this was the only one that
21 Ms. Campbell was asserting that she would
22 object to.

23 It is a photo of Mr. Gadson from about
24 1991. We have cropped out the orange jump suit
25 and the cinder block wall in the background.

COLLOQUY

1 But it is the only photo that we have around
2 that time in that case.

3 MS. CAMPBELL: From our perspective, I
4 believe that the solicitor accurately stated
5 what we discussed in chambers, but I would also
6 add that I would certainly appreciate receiving
7 from the State prior to their taking the stand,
8 there's a number of lay witnesses who would be
9 testifying, and I would appreciate a -- copies
10 of any criminal records that those individuals
11 might have. And we have looked at the exhibits
12 together that the State intends to introduce,
13 and obviously, you know, I would look at them
14 again during trial prior to the introduction,
15 but again, for the Court, we seem to be in
16 agreement on all of those except for the ones
17 that the solicitor mentioned, which was the
18 jail house photo of Mr. Gadson from the early
19 '90s, okay.

20 THE COURT: Okay.

21 MS. CAMPBELL: Thank you, Judge.

22 MS. SWANSON: And for the record, there
23 are only two lay witnesses that had anything,
24 as far as a criminal record goes. Nothing that
25 is within the ten years required by Rule 609.

COLLOQUY

1 I will provide copies of those to Ms. Campbell
2 at this time.

3 MS. CAMPBELL: I will say, I did have one
4 other thing. In preparing for this case it was
5 discovered that three, I think it's three,
6 bullets were still at SLED and there was a
7 promise that they were going to be delivered to
8 Beaufort County. And so I would -- I would
9 like, again, access to those. I have seen
10 everything else in evidence. I have not seen
11 those items because they were at SLED. As soon
12 as those items are here, if the State could,
13 you know, give me some time this afternoon
14 maybe to look at those items I would really
15 appreciate that.

16 THE COURT: I see people nodding.

17 MS. SWANSON: Yes, they are here, they are
18 locked up in a closet next door, so we can do
19 that this afternoon.

20 MS. CAMPBELL: Great, thank you.

21 THE COURT: Okay.

22 THE COURT: All right. On the State's
23 motion to introduce this evidence, I'm going to
24 grant the motion, agreeing with the argument
25 made by the State. And part and parcel, I find

COLLOQUY

1 that the ages of the children, of the
2 children -- of the females were 15 and 21.
3 They were white females. As to relationship
4 issue, they were strangers. But I don't see
5 that that is in favor of the State. I do find,
6 though, in favor of the State is the location
7 where the assaults occurred, on secluded dirt
8 roads in the Burton area. And I also find that
9 there was coercion in both cases by way of a
10 gun or threats of a gun. The type of sexual
11 assault is in favor of the State, oral sex
12 followed by vaginal penetration.

13 I further find that additional --
14 additionally apologies being made after both
15 cases and in both cases both asked -- both
16 females were asked if they enjoyed it. All of
17 those, balancing the similarities with the
18 dissimilarities, I find that the similarities
19 far outweigh the dissimilarities. And I
20 realize that it's prejudicial, but I find that
21 the probative value does in fact outweigh its
22 prejudicial effects.

23 Do we know which courtroom we are going to
24 be in?

25 MS. SWANSON: We are going to be in

COLLOQUY

1 courtroom one, yes, sir.

2 THE COURT: Court adjourned until 9:30
3 tomorrow morning.

4 MS. SWANSON: Thank you, Your Honor.

5 MS. CAMPBELL: Thank you, Judge.

6 (Trial adjourned for the day.)

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COLLOQUY

1 5-22-2018 PROCEEDINGS

2 THE COURT: State ready to proceed?

3 MS. SWANSON: Judge, I believe that
4 there's one matter that we need to take up on
5 the record before proceeding.

6 THE COURT: Okay.

7 MS. SWANSON: I had provided Ms. Campbell
8 with criminal history on two of my witnesses,
9 both of which had some criminal history from
10 over ten years ago. Ms. Campbell is seeking to
11 get into a marijuana conviction from about
12 1985.

13 Obviously I have not heard her argument on
14 it, but I would point the Court to Rule 609(b),
15 and the time limit for using such convictions.
16 I would also point out that this is a witness
17 who had nothing to do with the case, simply
18 observed something on the night of the incident
19 and a marijuana conviction has no bearing on
20 credibility of a witness.

21 MS. CAMPBELL: May it please the Court.

22 THE COURT: Certainly.

23 MS. CAMPBELL: 609 is the correct rule,
24 however -- and again, without going into too
25 much detail, the conviction was for the

ARGUMENT BY COUNSEL

1 importation of marijuana in the earlier 1980s.
2 Mr. Bessinger was convicted in what -- it is
3 termed "Operation Jackpot," which was the
4 importation of millions of bails of marijuana
5 from Jamaica into the shores of South Carolina
6 in the '70s and '80s.

7 There are other individuals in this case,
8 and again not to divulge a lot of information
9 about one of the defense's theories in the
10 matter that were tied to Operation Jackpot at
11 this time. And I think that it's relevant and
12 probative to one of the Defense's theories in
13 this case that I be allowed to ask
14 Mr. Bessinger if he was in fact convicted by
15 the Federal government in Operation Jackpot in
16 the early 1980s. And I would leave it at that.

17 And so, you know, I think that it's
18 probative. I don't think that the State is
19 going to suffer any grievous prejudice. And
20 certainly, if I'm not allowed to discuss that
21 with him and briefly go into that with him,
22 then, I -- you know, we are shutting down an
23 avenue that we believe is probative, you know,
24 relative to the guilt or innocence of my client
25 in this case, Your Honor. Thank you.

ARGUMENT BY COUNSEL

1 MS. SWANSON: Your Honor, I feel like we
2 are hearing another one of the defense's
3 conspiracy theories here. I do not know how
4 importation of marijuana in the 1980s would
5 have anything to do with the horrible, brutal
6 murder and rape of two young people. There's
7 simply nothing in the case file that would link
8 this to any importation of marijuana. I'm not
9 sure what witness Ms. Campbell is referring to,
10 since I don't have any witness that has such
11 history on my witness list.

12 MS. CAMPBELL: Again, Your Honor, I'm not
13 offering it for impeachment. And what the
14 solicitor does or doesn't know about
15 information about her witnesses, I can't say.
16 I know the information that I have and the
17 connectivity and how it relates to our defense
18 theory. So thank you, Your Honor.

19 MS. SWANSON: I think that it would be
20 hard for the Judge to -- for Your Honor to rule
21 on relevance when Ms. Campbell is not even
22 telling you why it is relevant. So, it does
23 not sound relevant. It is not probative.

24 Those convictions are for impeachment
25 purposes. And it's outside of the time limit.

ARGUMENT BY COUNSEL

1 And it doesn't have anything to do with
2 credibility. So it should not be allowed. It
3 is inadmissible.

4 MS. CAMPBELL: And, you know, just let me
5 be clear. The conviction itself is one matter.
6 The facts underlying the conviction is another
7 matter. And so it is sort of a dual situation
8 that we are looking at. The facts underlying
9 it are directly related to the defense's theory
10 in this case. And I believe, regardless of
11 whether or not I were to ask him specifically
12 whether or not he was convicted, I'm certainly
13 allowed to go into the interplay of the
14 relationships of all of the parties in this
15 case in 1980, relative to how they were
16 connected relative to the whole Operation
17 Jackpot investigation.

18 And that is relevant. And it is probative
19 of how these individuals are related. Not just
20 Sony Bessinger, but the Larsons and the Sheriff
21 Morgan McCutchin. And so it is probative of
22 our -- part of our defense. Not the entirety
23 of our defense, but one aspect of our defense.
24 Your Honor is already aware that there were
25 multiple items of evidence that have been lost

ARGUMENT BY COUNSEL

1 and/or destroyed. The crime scene photos. The
2 autopsy photos. The Beaufort Memorial autopsy
3 x-rays. There's a reference to two spent shell
4 casings at the scene; they are not in evidence.

5 And so, while attacking the preservation
6 of evidence in this case, yes, I will be
7 talking about Sheriff Morgan McCutchin in 1980
8 and the individuals that he was close to. The
9 reports reflect MINOR indicating to the
10 investigators that her father and Sheriff
11 Morgan McCutchin were extremely close.

12 Now, I'm not talking about third party
13 guilt. I'm not going to be pointing a finger
14 at someone. I'm certainly not going to be
15 doing that. But I do think that I'm allowed to
16 show the connectivity of these individuals and
17 the close-knit fabric of that community in
18 1980. And Sony Bessinger's involvement, heavy
19 involvement, in the importation of marijuana,
20 along with the Larsons and many other
21 individuals. And Mr. Bessinger lived right
22 down the street from the Weed family. So I
23 think that I'm at least allowed to go into
24 those relationships. Thank you, Your Honor.

25 MS. SWANSON: And, Your Honor, if

ARGUMENT BY COUNSEL

1 Ms. Campbell wants to talk about relationships
2 that Sony Bessinger has, I have no problem with
3 it. But character assassination is not allowed
4 under Rule 608. Opinion, reputation, evidence
5 of character. The evidence may refer only to
6 character for truthfulness or untruthfulness.
7 And specific incidences of conduct of witnesses
8 for the purpose of attacking or supporting a
9 witness' credibility, other than a conviction,
10 is not allowed.

11 And the conviction is not allowed because
12 it's outside of the ten-year window. And it
13 has no bearing on credibility. I mean, this
14 is -- this is pretty clear-cut. You can't just
15 start talking about the character of a witness.
16 He had nothing to do with the investigation.
17 Ms. Campbell can get into whatever she wants
18 with law enforcement or who knew who or about
19 Sheriff McCutchin, any of those conspiracy
20 theories, I'm sure that she can cross-examine
21 our witnesses about. But she cannot
22 cross-examine our witness about his involvement
23 in Jackpot from 30 years ago.

24 THE COURT: Tell me again, was it a
25 conviction or a plea?

ARGUMENT BY COUNSEL

1 MS. SWANSON: Yes, it was. It was a
2 conviction.

3 THE COURT: Conviction. And the
4 conviction was for what?

5 MS. SWANSON: Importation of marijuana in
6 the '80s. In Federal court.

7 THE COURT: Ms. Campbell, tell me one more
8 time how you think that the Court can find
9 that, what I take it the law requires, in the
10 interest of justice, that the probative value
11 of this conviction substantially outweighs its
12 prejudicial effect?

13 MS. CAMPBELL: Well, again I am not
14 offering this under 609. I'm not offering it
15 for the purposes of impeachment. I'm offering
16 the evidence to establish a connection between
17 Sony Bessinger's activities in Operation
18 Jackpot and the Larson family, and the Weed
19 family. And the deceased, David, was part of
20 the Larson family. And it lays a foundation
21 for the defense's theory, in part, about the
22 occurrences of January 5th, 1980.

23 I'm not offering it to say that Sony
24 Bessinger is a bad guy or Sony Bessinger is a
25 liar. I'm offering it to establish a, a

ARGUMENT BY COUNSEL

1 cornerstone of the relationships that flow out
2 from Sony Bessinger, the Larson family, and the
3 Weed family. And MINOR [REDACTED] and David
4 Krulewicz are part of the Larson family and the
5 Weed family. And the Bessingers, all together
6 there in that one area, Salem Point on the
7 river.

8 Additionally Sheriff Morgan McCutchin, as
9 reported in the information provided to me from
10 the State, was very close friends with Johnny
11 Weed, MINOR [REDACTED]'s father.

12 Now, again, I'm not going after third
13 party guilt. What I am looking at is an
14 explanation of what may or may not have
15 occurred on January 5th, 1980. And I believe
16 it is probative of an aspect of the Defense's
17 theory and to shut us down and not allow us to
18 establish the connectiveness of these witnesses
19 and these individuals in 1980 would be
20 irreparable harm to Mr. Gadson and to his
21 defense. Not offering it, again, for the
22 purposes of impeachment. Thank you, Your
23 Honor.

24 THE COURT: I don't think that it's
25 admissible.

ARGUMENT BY COUNSEL

1 MS. SWANSON: No. And any relationships
2 that Ms. Campbell wants to establish can be
3 established without, you know, attacking the
4 character of our witness and bringing up prior
5 bad acts that just are not admissible.

6 THE COURT: As I said, I find that it's
7 not admissible. At this point in time it's not
8 being offered for impeachment purposes, so 609
9 is not involved, according to the defense
10 counsel. And I don't -- can't figure out for
11 the life of me what the relevance is, but I'm
12 sure that you will educate me later. Was there
13 another one, another witness issue?

14 MS. SWANSON: Not that I'm aware of,
15 Judge. But just to be clear, Ms. Campbell was
16 trying to get in reputation evidence of
17 character under 608A, and that, because it
18 wasn't going to truthfulness and she didn't
19 want to impeach, you know, that is another
20 reason that it was not allowed, or that's
21 another reason that it's not admissible.

22 THE COURT: All right. Anything else?
23 One thing that I do need to do is supplement
24 the ruling of the Court yesterday on the
25 State's offering of testimony. I ruled that

ARGUMENT BY COUNSEL

1 the State could, in fact, offer that testimony.
2 But in doing that I went through an explanation
3 of why I agreed with the State's position.
4 What I did not do that I think was implicit in
5 what I -- in the conclusion reached by the
6 Court, I do find and just failed to mention
7 that the State had proved that that subsequent
8 bad act was proven by clear and convincing
9 evidence.

10 Ready for the jury? State ready? Defense
11 ready?

12 MS. SWANSON: Yes, Your Honor.

13 MS. CAMPBELL: Yes.

14 (The jury enters the courtroom.)

15 THE COURT: Good morning. Welcome, ladies
16 and gentlemen. Before we actually begin
17 anything this morning, I am going to ask the
18 clerk to administer to you the oath as jurors.

19 THE CLERK: Please stand and raise your
20 right-hand.

21 (Whereupon, the jury was sworn in.)

22 THE COURT: As I told you, ladies and
23 gentlemen, the defendant is charged with
24 several criminal offenses by way of
25 indictments. The elements of these offenses

OPENING REMARKS BY THE COURT

1 will be explained to you at a later time. But
2 I tell you that the indictment is merely the
3 vehicle that brings a case into the court. And
4 the fact that the indictment was issued is not
5 and cannot be considered by you as evidence in
6 this case.

7 The defendant has pled not guilty to each
8 of these indictments, therefore the burden is
9 upon the State to prove each of the elements of
10 these indictments to your satisfaction beyond a
11 reasonable doubt.

12 Your purpose as jurors is to determine the
13 facts of this case. You are the sole judge of
14 the facts of this case. And if I do anything
15 during this trial to cause you to believe that
16 I have an opinion about the facts of the case,
17 you must disregard that. The law does not
18 permit me to express an opinion about the facts
19 of the case in your presence.

20 On the other hand, I am the judge of the
21 law of the case. I rule on the admissibility
22 of evidence. I preside over the trial and tell
23 you about the law that applies in this case.
24 And it is your duty and obligation to accept
25 the law as I tell you it is. And if you have

OPENING REMARKS BY THE COURT

1 any idea that the law is different than I tell
2 you it is or should be different, then you must
3 put that out of your mind. Under your oath you
4 are obligated to accept the law as I tell you
5 it is. You take the facts as you find them to
6 be and apply the law as I tell you it is and
7 reach a verdict in the case.

8 Until the case is completely over, and
9 that means all of the evidence is completed --
10 it means that you have listened and seen the
11 attorneys make their opening statements to you,
12 the witnesses have testified, exhibits have
13 been introduced, the attorneys make their
14 closing arguments to you, then I tell you about
15 the law that applies in the case -- until all
16 of that is done you cannot let anyone discuss
17 this case with you. You can't discuss the case
18 with anyone else. You can't read anything
19 about the case.

20 As I told you yesterday, you can't do any
21 investigation on your own about this case or
22 the individuals involved in this case. Believe
23 it or not, even in the jury room, you can't
24 discuss the case, not until it's completely
25 over and I tell you to begin your

OPENING REMARKS BY THE COURT

1 deliberations.

2 From time to time, ladies and gentlemen,
3 you may see the attorneys ask if they could see
4 me at a sidebar where we whisper things so that
5 your -- the intent is so that you won't hear.
6 The reason that we do that is not just to keep
7 secrets from you or keep facts from you, but
8 it's because most likely the attorneys want to
9 discuss with me a matter of law and in doing
10 that, though, I may be required to discuss with
11 the attorneys the facts of the case. And as I
12 have already told you, I'm prohibited from
13 discussing the facts of the case in your
14 presence. Because, one more time, you, ladies
15 and gentlemen, are the sole judges of the facts
16 of this case.

17 Having said all of that, ladies and
18 gentlemen, we will now have opening statements
19 from the attorneys, beginning with the
20 solicitor.

21 OPENING STATEMENT BY THE STATE

22 MS. SWANSON: Thank you, Your Honor. May
23 it please the Court. MINOR and her
24 boyfriend, David Krulewicz, had no idea what
25 evil lurked in the woods off of Old Salem Road.

OPENING STATEMENT BY THE STATE

1 The man, Isiah Gadson, that shattered her youth
2 and took David's life at 18 years old. Back in
3 1980 the woods off of Old Salem were, you know,
4 studded with flag oaks, draped in moss. It is
5 now two sections of the Battery Point
6 neighborhood, okay. That is where we are
7 talking about. The road has changed. It used
8 to be a dirt road. Not any more. Even the
9 trajectory of the road has changed.

10 Back in 1980 those woods were a place
11 where young adults, teen-agers would ride motor
12 bikes, dirt bikes, horses. It went all the way
13 to the creek's edge. And after dark, after the
14 sunset, couples might go there to have a beer,
15 to listen to music, maybe make out a little.
16 So, not unusual for folks to be out there
17 hanging out.

18 It was that picturesque place that turned
19 ugly the night of January 5th, 1980 when MINOR
20 and David, short time before MINOR's curfew,
21 parked in a spot right off that road. MINOR
22 was just 15 years old when Isiah Gadson shot
23 her boyfriend three times. The shots came
24 through the passenger's side of the van,
25 hitting him in the head, the neck, and the

OPENING STATEMENT BY THE STATE

1 upper right arm. She watched helplessly as
2 David struggled to breath, gurgling up blood
3 and she begged for her life.

4 A black man who she described as in his
5 mid 20s, possibly a mustache, short afro, came
6 to the side of the van and ordered her out at
7 gun point, put the gun to her head. And the
8 first thing he asked her to do is take down her
9 pants. He tells her to get -- he tells her to
10 get on her knees and perform oral sex on him.

11 This goes on for a few minutes and he
12 tells her to get up. And he leads her about a
13 hundred feet in front of the van to go rape her
14 some more. Performs oral sex on her, not for
15 very long, and then vaginally rapes her saying,
16 Oh, that was too quick. He gets her up. Again
17 walk behind her in the pitch black dark. Leads
18 her back to the van. Tells her to get inside,
19 give him the keys, and don't leave until I'm
20 gone.

21 **MINOR** runs home. She's late for curfew.
22 Her mother is in the house waiting up for her,
23 because Lord knows what happened. And they
24 call the police. And she ends up going to the
25 ER, gets a rape kit done, the police come, find

OPENING STATEMENT BY THE STATE

1 David shot three times.

2 A composite sketch of the murderer and
3 rapist is released by the media. And there's a
4 frenzy in the community, all right. I mean,
5 there is a guy on the loose who is raping 15
6 year old women and murdering people. People
7 are scared. The Sheriff's Office fielded a
8 number of calls from people that thought they
9 saw people that looked like the composite that
10 could have fit the description.

11 The police looked at those people. They
12 included them in line-ups for MINOR to look at.
13 MINOR was never able to pick out her rapist.
14 Because guess what? Isiah Gadson wasn't in any
15 of those line-ups. And to their credit, law
16 enforcement did not bow to the pressure in
17 1980. And there was a lot of pressure from the
18 community. This initial investigation went on
19 for about two and a half years. It was pretty
20 steady from 1980 until 1983 with no realistic
21 leads.

22 They didn't make a bad case based on a
23 description of a black man with no other
24 evidence, they waited. And I'm pretty sure
25 that David's family and MINOR believed that

OPENING STATEMENT BY THE STATE

1 this day would never come. And to say that
2 it's been a long time coming is an
3 understatement. Because this case was not
4 solved until 36 years after the fact.

5 Before we get to that, I do want to say
6 that, in prosecuting a 36-year-old case,
7 between law enforcement and the State, we had
8 faced many challenges. A 1980 case file is not
9 exactly like what you would have these days.
10 DNA didn't exist. Things went missing. So,
11 there are challenges that you are going to hear
12 about. But you are also going to hear about
13 what stuck around and what pinpoints Isiah
14 Gadson as the murderer and rapist.

15 The case is reopened in the late '90s with
16 the dawning of the 21st century. And Captain
17 Bob Bromage was assigned from the cold case
18 team to start reviewing cold case murders and
19 rapes. In 1999, DNA was just coming out, okay.
20 There was a thing -- there was an analysis or
21 kit, or what is called RSLP. It is not the DNA
22 that we have today. It requires more material
23 to get a profile. All right. But the
24 technology was improving. And so Captain
25 Bromage was instrumental in getting these items

OPENING STATEMENT BY THE STATE

1 of evidence that had been preserved up to SLED
2 and have them tested. And he had them retested
3 when technology improved.

4 And finally, in 2003, what do we have? We
5 have MINOR's clothing that was taken on the
6 night of her rape by Dr. Fontana at the
7 Beaufort Memorial ER. We have semen stains on
8 the crotch of her underwear, as well as the
9 crotch of her pants. The profile was
10 established and it was a mixture between a
11 female minor contributor and a male major
12 contributor.

13 MINOR's DNA was taken and it was separated
14 from the male DNA because, of course, her
15 bodily fluids were mixed in from that rape.
16 And the male major contributor profile was
17 established. That was in 2003. It was still
18 another 13 years until there was a hit in the
19 DNA database. And swabs were taken from Isiah
20 Gadson, from his mouth. A profile was
21 established. And they matched.

22 Isiah Gadson's semen is on the crotch of
23 MINOR's clothing from 1980. So, when that
24 match came up in 2016, Captain Bromage began to
25 dig even further, dig further into Isiah

OPENING STATEMENT BY THE STATE

1 Gadson's history. And he found a 1983 rape
2 case that had some eerie similarities. You are
3 going to hear from that victim too. Lori was a
4 slim young 21 year old marine who was late for
5 work and trying to -- you know, he offered her
6 a ride and she took it because she was late.
7 She was trying to get to Parris Island. She
8 was walking a long way.

9 Well, he didn't take her to her meet-up
10 spot to her ride, he took her down a dark dirt
11 road that was isolated and he raped her. He
12 began with oral sex and then he raped her
13 vaginally. He threatened to blow her brains
14 out if she did not succumb to him.

15 Now, the burden is on the State to prove
16 this case to you, okay. I bear the burden. I
17 present that testimony through witnesses and
18 evidence that I introduce. And I must prove to
19 you that Isiah Gadson committed the four crimes
20 that he's indicted for beyond a reasonable
21 doubt. And that is murder. Criminal sexual
22 conduct, first degree, which is in layman's
23 term, aggravated rape. Kidnapping, which means
24 restricting someone's movement for any period
25 of time. It is not necessarily being tied up.

OPENING STATEMENT BY THE STATE

1 And armed robbery. A larceny at gun point.

2 Isiah took \$50 from MINOR the night
3 of the crime when he had a gun pointing on her.
4 You may wonder what beyond a reasonable doubt
5 means. That means that the evidence should
6 leave you firmly convinced of the Defendant's
7 guilt, all right. Firmly convinced. And Judge
8 Goldsmith is going to go over all of the law,
9 all of the elements of the law that you have
10 taken an oath to uphold at the end of this
11 case, after we give closing statements.

12 So, what I ask of you as you listen to the
13 testimony, is to please remember that this is
14 no witch hunt, this is not conspiracy theory.
15 If we wanted to get Isiah Gadson, would that
16 not have happened before he walked the streets
17 for 36 years. This is no frame-up, this was
18 him leaving his semen on a rape victim's
19 clothing and finally the technology caught up
20 with him. This case could have been shoved in
21 a closet a long time ago and shut away, but it
22 wasn't.

23 And while justice may be late, it is here.
24 Isiah Gadson is guilty of these heinous crimes.
25 And at the end of the evidence I'm going to ask

OPENING STATEMENT BY THE STATE

1 you to find him guilty and speak the truth and
2 speak the truth of the victims that are here to
3 talk to you today.

4 THE COURT: Thank you, Ms. Swanson.
5 Ms. Campbell.

6 OPENING STATEMENT BY THE DEFENSE

7 MS. CAMPBELL: Good morning. My name is
8 Trasi Campbell. I introduced myself to you
9 yesterday. And we are going to be together for
10 a couple of days. And I can tell you that.
11 There's some things that I won't be able to
12 tell you or to discuss with you and leak to
13 you, because I wouldn't be a very good defense
14 attorney, I wouldn't be doing a very good job
15 if I gave away everything right now. Because I
16 would be telling the State of South Carolina
17 what I'm going to do.

18 So, what I'm going to ask you to do is to
19 stick with me because we are going to get
20 there, witness by witness, piece of evidence by
21 piece of evidence, to the conclusion where you
22 will be able to say, confidently, that the
23 State has failed to meet their burden of proof
24 of guilt beyond a reasonable doubt.

25 Now, you are going to journey back in time

OPENING STATEMENT BY THE DEFENSE

1 to the 1970s in Beaufort County, the
2 Lowcountry, South Carolina. We had in '74 just
3 lost the Vietnam War. We had all just come
4 through Richard Nixon and Watergate. We had
5 had a couple of years of Ford, and then Jimmy
6 Carter. And then in 1980 we ushered in the
7 Ronald Reagan era.

8 In the late 1970s in Beaufort County the
9 sheriff of Beaufort County was a fellow by the
10 name of Morgan McCutchin. High Sheriff of the
11 lowcountry. And it may not be easy for us to
12 get to the truth, but we are going to try.

13 You will find that Morgan McCutchin and
14 the Beaufort County Sheriff's Office basically
15 closed this case in 1983. They lost or
16 destroyed critical pieces of evidence that I
17 need to defend anyone, but today, to defend
18 Isiah Gadson against these charges. I don't
19 have them. You don't have them. This is
20 critical in how you view the State's case.

21 What is missing? Why is it missing? Are
22 questions that you will necessarily have to ask
23 yourselves once you begin to deliberate. I'll
24 tell you the one piece of evidence that has
25 remained unchanged is that MINOR, when she

OPENING STATEMENT BY THE DEFENSE

1 reported in January 1980 that someone had shot
2 out the windows of the van and raped her, that
3 the person who did that was a black man who
4 stood a few inches shorter than she was.

5 The Sheriff's Department put out a BOLO,
6 be on the look out, for a black man standing
7 5 feet 5 to 5 feet 7 inches, based upon her
8 height of about 5'9". You will hear evidence
9 that David was about 6 feet tall. I believe
10 that the State is going to show you a
11 photograph of David and MINOR together.

12 And you will hear evidence that Isiah
13 Gadson, in his 20s, in the 1970s, is standing
14 6 feet tall. Not 5'5", 6 feet tall. You can't
15 make yourself shorter.

16 Now, at some point we are going to hear
17 all of those intricacies of a -- of DNA
18 databases now in our society, of what -- how
19 all of the science is, plugging it into this
20 computer, having it spit out these numbers, and
21 how all of that takes place. But again, those
22 items are changeable, they are fallible. You
23 cannot change how tall you are.

24 And I would say to you, as you journey
25 together, each of you individually and each of

OPENING STATEMENT BY THE DEFENSE

1 you as you hear the witnesses in this case, to
2 remember a couple of things Martin Luther King
3 Junior said, "Injustice anywhere" what? We all
4 ought to know the rest of that statement. "Is
5 a threat to justice everywhere."

6 Shakespeare said, when he was writing
7 Hamlet something about there is something
8 rotten in the State of Denmark. I think that
9 you might, by the end of this case, say that
10 about the state of Beaufort County Sheriff's
11 Office in 1980.

12 Justice will not take the man or the woman
13 who you say is not guilty. She should be
14 blind. You are the individuals selected to
15 find the facts in this case. And so you would
16 say to yourselves, Well, Your Honor, how do I
17 do that? What are the tools that I have? The
18 tools that you need in your tool box are part
19 of your everyday life. Every day you judge the
20 credibility of people. Those individuals you
21 interact with, you say to yourself, what -- can
22 I, do I believe what this person is telling me?
23 Can I -- you judge their mannerisms. You judge
24 their hesitancies. You judge their bias. You
25 judge their prejudice. And you factor all of

OPENING STATEMENT BY THE DEFENSE

1 that in to make a determination about whether
2 or not you can rely on what this individual is
3 telling you as being truthful, essentially.

4 I will tell you also, you will hear from,
5 as best as can be done, the quite elderly but
6 still with us and able to testify, a doctor who
7 performed a sexual assault examination on **MINOR**
8 **██████** in 1980. And in his reports he will tell
9 you that he located 5 to 50 non-motile sperm in
10 the vaginal cavity. And that was within an
11 hour of this alleged sexual assault taking
12 place. And I believe that he will also tell
13 you, as an expert, as a doctor, that if you
14 have ejaculate you are going to have millions
15 of sperm that should be motile.

16 So these are things that can't get lost.
17 These are things that don't change. And these
18 are the factors, again, as we go through each
19 witness, that you will be taking notes on, that
20 you will be factoring in, and how does this
21 piece fit with that piece of the evidence.

22 Now, the State, you know, if your back is
23 against the wall, you know, you are going to
24 try to pull in what we call, oh, propensity
25 evidence. That is what Lori Krug's situation

OPENING STATEMENT BY THE DEFENSE

1 is. They want to tell you that because in
2 1983, Isiah Gadson, a black man accused by a
3 white woman of having unconsensual sexual
4 intercourse. He pled no contest. They pled it
5 down to an assault and battery.

6 They want to tell you because that
7 happened this happened. And I will tell you
8 that what you may find when you listen to Lori
9 Krug testify is that when she returned to the
10 location where she was to be picked up, that is
11 when the allegations came forth, when those
12 individuals were there waiting for her, then
13 she said, I was raped.

14 But again, law enforcement, the
15 Solicitor's office, everyone involved in the
16 case decided, maybe not, maybe not. And the
17 case was resolved. And you cannot use that as
18 the State would have you want to use it. So,
19 at the end of the case, you will ask
20 yourselves, how did Bob Bromage handle this
21 evidence from '99 to 2018? How many times did
22 Bob Bromage handle this evidence? What did he
23 do with this evidence?

24 I believe that you will hear testimony
25 that Bob Bromage has been disciplined by the

OPENING STATEMENT BY THE DEFENSE

1 Sheriff's Department for failing to handle
2 investigations properly in the past. And you
3 will use that to judge his credibility.

4 Remember this as I close, the presumption
5 of innocence in this courtroom, in the
6 rock-solid foundation that we stand on here
7 today for every single man, every single woman,
8 no matter who you are, is the same. It should
9 be the same. I believe that it is the same.
10 And that is, you are presumed innocent.

11 And the Judge may tell you at the close of
12 this case that that presumption of innocence is
13 a cloak, a robe that every person wears. And
14 that cannot be taken off of Isiah Gadson's
15 shoulders or your shoulders or your shoulders,
16 ever. In your mind, in your thoughts, not
17 until, in your deliberation, should you all
18 unanimously in agreement say I'm firmly
19 convinced, I have no hesitation whatsoever, I
20 have no reasonable doubts, therefore I'm going
21 to strip this coat off of this man and find him
22 guilty.

23 This is not just artful language, this is
24 the foundation of our lives, of our country. I
25 depend on it everyday. You may not realize it,

OPENING STATEMENT BY THE DEFENSE

1 but you depend on it every day. And today
2 Isiah Gadson requires the protection. Another
3 day, another man or another woman will require
4 the protection or the presumption of innocence
5 and the proof of guilt beyond a reasonable
6 doubt.

7 Stay with me. We are going to get there.

8 Thank you.

9 THE COURT: Thank you, Ms. Campbell. You
10 may call your first witness.

11 MS. SWANSON: Thank you, Your Honor. The
12 State calls Sonny Bessinger.

13 Thereupon,

14 SONNY BESSINGER

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SWANSON:

19 Q All right. I'm going to call you Sonny,
20 is that all right?

21 A That is fine.

22 Q Okay, let me move this here. (Pause.)

23 Sonny, where were you living in 1980?

24 A What is known as 41 Old Salem Road today.

25 Q Old Salem Road?

DIRECT EXAMINATION OF SONNY BESSINGER BY MS. SWANSON

1 A Yes, ma'am.

2 Q Okay. And whose residence is that?

3 A That belonged to my parents, Janet and
4 Earl Bessinger.

5 Q All right. How old were you back in 1980?

6 A Twenty-five years old.

7 Q And can you tell us about the neighborhood
8 over in Old Salem?

9 A It was just a few people lived on the
10 road, the Cowarts, the Kenleys, the Cooks, the
11 Flowers, (phonetic) and the rest of it was farm
12 land.

13 Q Okay. Was the road dirt or paved?

14 A It was all dirt.

15 Q All right. And what were the woods like
16 over off of Old Salem?

17 A They were like you said, trees, old oak
18 trees, dirt roads, fields, open fields. Kind of
19 Lowcountry-ish.

20 Q Okay. And were there any trails back
21 there?

22 A Many, numerous.

23 Q All right. And what did people do on
24 those trails?

25 A Well, myself and my friends we would ride

DIRECT EXAMINATION OF SONNY BESSINGER BY MS. SWANSON

1 motorcycles. Go back there camping, people camp
2 back there. They take their lovers back there. It
3 was all kinds of things went on back there,
4 drinking, partying.

5 Q All right. I'm going to ask you to speak
6 up just a little.

7 A Okay.

8 Q All right. Thank you, sir. All right.
9 So, it was a place where young people would go?

10 A Well, young, middle-aged.

11 Q Pretty much everyone?

12 A Yes, ma'am.

13 Q Okay. Did you know MINOR ?

14 A No, ma'am, I did not.

15 Q All right. And did you know of the Weeds?

16 A I knew of them. I didn't know them
17 personally.

18 Q Okay. And at the time you were about 10
19 years older than MINOR, right?

20 A I guess. I mean.

21 Q If she was 15 --

22 A Yes, if she was I was ten years older.

23 Q So, you never hung out with them or
24 anything like that?

25 A No, ma'am.

DIRECT EXAMINATION OF SONNY BESSINGER BY MS. SWANSON

1 Q Do you know Isiah Gadson at all?

2 A I do not.

3 Q Okay. And going back to January 5th of
4 1980, what were you doing that night around
5 midnight?

6 A I was coming home from being in town, was
7 headed to my house going home.

8 Q Okay. And I'm going to put up --
9 Ms. Campbell, I'm just going to use this one.

10 I'm going to put up this map from
11 that period of time. And Your Honor I would ask
12 that the witness be allowed to come down.

13 THE COURT: Sure.

14 BY MS. SWANSON:

15 Q Sonny, I will ask you to stand on that
16 side, if you don't mind. Just to get our bearings,
17 can you point out the Salem Point neighborhood?

18 A This is the Salem Point neighborhood here
19 (indicating). It was the only neighborhood at the
20 time.

21 Q Where was your house located?

22 A My house was located down here close to
23 Pasco Road. Carlos lived next door to the
24 Bessingers, Kenley's and then . . .

25 Q Okay. Is this where Battery Point is now?

DIRECT EXAMINATION OF SONNY BESSINGER BY MS. SWANSON

1 A Yes, in this area. It's all Battery Point
2 right now. This over in here is still fields or
3 wooded areas.

4 Q All right. So, this -- if you get farther
5 down, that leads to the creek and marsh; is that
6 right?

7 A Correct. It goes all the way back to
8 whatever creek it is off of Battery Creek.

9 Q All right. So, show us how you were
10 coming down the road, which road you were coming
11 down that night.

12 A I came off of 170, I cut down or came down
13 Salem Point past old Tramere Chevrolet. I come
14 down, it makes a real sharp curve, came around the
15 curve, come down here. All of this was paved down
16 here and then it turned into dirt road. And then I
17 turned there, down to my house here.

18 Q And what did you see that night around
19 midnight? And how did you know that it was around
20 midnight?

21 A Because at that time everything closed at
22 12:00. They had the blue law in effect, everything
23 closed and everyone heads home.

24 Q And you were heading home from the bar at
25 midnight and you know it was midnight?

DIRECT EXAMINATION OF SONNY BESSINGER BY MS. SWANSON

1 A Yes.

2 Q Tell us what you saw.

3 A I saw a van parked in the woods, and just
4 a little ways up it looked like a car. To me it
5 looked like it was backed up in there. I went on
6 home and never thought anything about it.

7 Q All right. You can go have a seat. Did
8 you talk to anyone about what you saw?

9 A Yes, ma'am. The next day I seen a lot of
10 law enforcement cars going up and down the road and
11 sometime that morning the DNR guy stopped by and was
12 asking questions if we heard anything or seen
13 anything. And that is why I mentioned I had seen a
14 van and a car parked up in the woods. And then he
15 told me what had happened before he asked me if I
16 did see anything, he told me what had happened and I
17 didn't know anything about it until he told me that.

18 Q All right. And did you tell the police
19 what you saw?

20 A I went -- I think that was on a Saturday
21 or Sunday he came, and the next day I went and
22 reported it, what I thought I seen.

23 Q All right. And do you remember giving a
24 written statement?

25 A Yes, I do.

DIRECT EXAMINATION OF SONNY BESSINGER BY MS. SWANSON

1 Q Okay. And do you remember whether or not
2 you mentioned the van in that written statement?

3 A I may not have. I didn't apparently when
4 it was done I didn't. But I had seen the van, I was
5 just more concerned with the car I guess. Because
6 when I had left out of there earlier that evening I
7 seen the van parked on the side of the road.

8 Q Okay. When Captain Bromage interviewed
9 you in 2016 do you remember telling him about the
10 van then?

11 A Yes. In fact, we went out there and we
12 tried to figure out about where it was at the time.
13 It had changed. The neighborhood is definitely
14 different now. And I told him where I thought I
15 seen the van and where I thought I seen the car.

16 Q Let me ask you a question. Has that
17 changed at all between then and now?

18 A No.

19 Q From 1980 to now?

20 A Oh, definitely it's changed.

21 Q No, I mean where you saw -- your rendition
22 of where you saw everything?

23 A Oh, no, no, it hasn't changed.

24 Q All right.

25 MS. SWANSON: I have nothing further at

DIRECT EXAMINATION OF SONNY BESSINGER BY MS. SWANSON

1 this time. Sonny, if you will please answer
2 questions that Ms. Campbell may have.

3 THE WITNESS: I'll be glad to.

4 THE COURT: Cross examination.

5 MS. CAMPBELL: May it please the Court.

6 CROSS EXAMINATION

7 BY MS. CAMPBELL:

8 Q Mr. Bessinger, you just testified that the
9 DNR guy came by your house, right?

10 A Yes, ma'am.

11 Q And he had a conversation with you where
12 it was made clear to you what had happened a night
13 or two earlier down the road, correct?

14 A The night -- it was the day after the
15 night it happened.

16 Q Okay. Well, you understood that someone
17 had been killed, correct?

18 A Once he told me, yes, ma'am.

19 Q Perfect, okay. So, understanding that the
20 police are investigating a murder, right?

21 A Yes, ma'am.

22 Q Okay. And the importance of that, right?

23 A Yes, ma'am.

24 Q Okay. They asked you to remember at that
25 time everything you can remember about what you saw

CROSS EXAMINATION OF SONNY BESSINGER BY MS. CAMPBELL

1 that night, right?

2 A They asked me had I seen anything that
3 evening or heard anything.

4 Q Correct. And not only do they ask you
5 that, you tell them what you saw that night, right?

6 A Yes, ma'am.

7 Q Okay. And also you write down what you
8 saw that night, right?

9 A I did.

10 Q Okay. May I approach?

11 THE COURT: Certainly.

12 BY MS. CAMPBELL:

13 Q You recognize the signature at the bottom
14 of that piece of paper?

15 A That is mine.

16 Q That is your signature, correct?

17 A That is my signature.

18 Q Okay. And recognizing that they are
19 investigating a murder, you have been asked to give
20 a written statement?

21 A No, ma'am, I voluntarily went and gave it.

22 Q Perfect, you volunteered to give the
23 statement. Nowhere in your statement at the time do
24 you say, I saw a van parked along the side of the
25 road; right?

CROSS EXAMINATION OF SONNY BESSINGER BY MS. CAMPBELL

1 A Apparently I didn't.

2 Q Right.

3 A I didn't. Not on this statement I didn't.

4 But I did see a van.

5 Q Okay. I'm getting to that. Okay. So,
6 no. In 1980, knowing the importance of this case,
7 that someone is dead, they want to know everything
8 that you saw, you did not put in your statement that
9 you saw a van on the road; correct?

10 A Correct.

11 Q Okay. Now, let's come to 2018, this
12 detective here, Bob Bromage, he comes to you and he
13 says, I'm getting ready for this trial, right?

14 A Yes, ma'am.

15 Q Yeah. And when he does that, he -- y'all
16 talk about the case, correct?

17 A I told him what I knew.

18 Q All right. And then you say, Oh yeah, I
19 saw a van that night back in 1980; changed your
20 story, didn't you?

21 A I don't know that I changed it. I just
22 didn't fill it in completely.

23 Q The van is not in your written statement,
24 right?

25 A Correct.

CROSS EXAMINATION OF SONNY BESSINGER BY MS. CAMPBELL

1 Q Okay. You changed the story, you added
2 the van recently; correct?

3 A Yes, I guess so, if that's what you think.

4 Q Just a second.

5 (Pause.)

6 MS. CAMPBELL: May it please the Court, I
7 do have a matter of law that I would like to
8 take up at this time relative to this witness.

9 THE COURT: Yes, ma'am. Ladies and
10 gentlemen, I'll ask you to step in the jury
11 room if you would for a few minutes. I need to
12 discuss a matter of law with the attorneys.
13 Please do not discuss the case at this time.

14 (The jury exits the courtroom at 10:43
15 a.m.)

16 THE BAILIFF: The jury is clear, Your
17 Honor.

18 THE COURT: Ms. Campbell.

19 MS. CAMPBELL: May it please the Court,
20 I'm going to revisit the issue relative to
21 Mr. Bessinger's prior criminal record at this
22 time.

23 THE COURT: All right.

24 MS. CAMPBELL: Mr. Bessinger -- and I'm
25 directing the Court again to 608(c) at this

ARGUMENT OUTSIDE THE PRESENCE OF THE JURY

1 time. Evidence of bias, motive,
2 misrepresentation. There's no time limit on
3 that. I am using this information for
4 impeachment now. I would also say the fact
5 that he has changed his story from 1980 to 2018
6 to the testimony today allows me to go into his
7 prior conviction. It is a prior inconsistent
8 statement under 1613(a). Excuse me, 613(a).
9 And I believe based upon his testimony the
10 Court's ruling previously would not stand at
11 this time. And we are asking to revisit it
12 based on the inconsistent statements that he's
13 given and allow me to impeach him with that
14 conviction. Thank you, Your Honor.

15 THE COURT: All right. Solicitor.

16 MS. SWANSON: Thank you, Your Honor.

17 Well, if you listen to the testimony, the
18 statements were not inconsistent. When I asked
19 him about writing the statement he fully
20 admitted that he left out the portion of the
21 van, that he did see the van back in 1980. You
22 know, nobody was looking for the van. The
23 suspect was not driving the van because there
24 was a dead man in the van. That van stayed
25 there.

ARGUMENT OUTSIDE THE PRESENCE OF THE JURY

1 So it makes sense that he didn't initially
2 talk about the van in his written statement.
3 Now, he does maintain that he did tell
4 investigators about the van and he told
5 investigators about the van. And he told
6 investigators about the van again in 2016.
7 Evidence of bias still does not include
8 allowing impeachment by the conviction of a
9 crime that is over ten years old and doesn't
10 have anything to do with dishonesty.

11 THE COURT: Ms. Campbell.

12 MS. CAMPBELL: Your Honor, I stand by my
13 argument. I believe that I stated it fully for
14 the record.

15 THE COURT: Okay.

16 MS. CAMPBELL: Thank you.

17 THE COURT: Just so I'm clear, you are now
18 moving under 609?

19 MS. CAMPBELL: Correct and 613, correct,
20 yes, yes. I'm sorry, 608(c), which is the
21 evidence bias, motive, to misrepresent
22 circumstance are always admissible. And,
23 again, impeachment evidence. Thank you, Judge.

24 THE COURT: Let me ask you this,
25 Ms. Campbell: Since it is a remote conviction

ARGUMENT OUTSIDE THE PRESENCE OF THE JURY

1 that you want to bring up, isn't there a
2 presumption against that?

3 MS. CAMPBELL: Again, Your Honor, it is
4 not the conviction, it is the underlying facts
5 relative to, you know, the involvement of
6 Mr. Bessinger in that operation and other
7 individuals that were involved with him. The
8 names of those individuals that were involved
9 with him in the operation of the importation of
10 the marijuana under what commonly came to be
11 known as Operation Jackpot here in Beaufort
12 County.

13 THE COURT: That would be admissible under
14 609?

15 MS. CAMPBELL: 608(b).

16 THE COURT: Not 609?

17 MS. CAMPBELL: No.

18 THE COURT: The reason that you say it is
19 admissible is, one more time? I want to make
20 sure that I understand it.

21 MS. CAMPBELL: Under 608(c), evidence of
22 bias or motive is admissible regardless of any
23 other factors that have been cited and
24 regardless of the length of time from today to
25 when I'm going back to. And, again, like I

ARGUMENT OUTSIDE THE PRESENCE OF THE JURY

1 said, he has given significantly different
2 versions of what he saw. And that in and of
3 itself should allow me under 608(c) to go into
4 evidence that would show the bias, prejudice or
5 motive to misrepresent if it has a legitimate
6 tendency.

7 The case, 2015, the Baker case, to throw
8 some light on whether or not there's
9 truthfulness or sincerity in what Mr. Bessinger
10 is testifying to. The Court said, Any fact may
11 be elicited which tends to show interest, bias,
12 or the partiality of a witness.

13 So, again, the underlying relationship of
14 the parties is what I'm going to be asking him
15 about hopefully.

16 MS. SWANSON: Your Honor, we are still
17 talking about criminal activity and prior bad
18 acts that are extremely prejudicial and do not
19 go to truthfulness under 608(a) and (b).
20 Ms. Campbell wants to ask him about specific
21 incidences of conduct and she just can't. It
22 is the against the rules.

23 THE COURT: Well, let me just do this,
24 tell me exactly what it is that you want to ask
25 him. How is that?

ARGUMENT OUTSIDE THE PRESENCE OF THE JURY

1 MS. CAMPBELL: Well, specifically I would
2 ask him what his relationship, if any, was with
3 the Larson family.

4 THE COURT: All right. And suppose he
5 answers that, then what?

6 MS. CAMPBELL: Well, I would go from there
7 to the next logical question, depending upon
8 how he answers me, you know, and what if any
9 was his relationship with specifically members
10 of the Sheriff's Department under the
11 leadership of Morgan McCutchin at the time. He
12 just testified that the DNR officer stopped by
13 the house.

14 And then, you know, it -- again, I have
15 information. I'm not sure whether
16 Mr. Bessinger is going to give me, you know,
17 truthful testimony for that information to come
18 forward. And if he does, fine. If he doesn't
19 then I, you know, I'll be going into,
20 hopefully, with some other witnesses again to
21 show that he's not been truthful. But I have
22 to start somewhere. And that would be here
23 based upon him changing his story from 1980 to
24 today. And I think that, again, I'm allowed to
25 go --

ARGUMENT OUTSIDE THE PRESENCE OF THE JURY

1 THE COURT: Now the solicitor said that he
2 didn't change his story. He merely added
3 something to the story.

4 MS. CAMPBELL: Well, he's given
5 inconsistent reports about what he saw that
6 night. Critical change in testimony, critical
7 change in information. The State needs to put
8 the van there that night. They needed to put
9 the van there in 1980. Mr. Bessinger testified
10 he knew the significance to the investigation.
11 But he didn't put it in his statement. The
12 logical conclusion is that if he had seen the
13 van in 1980 he would have put it in there. He
14 didn't see the van in 1980 or he would have put
15 it in there. And he didn't put it in there.
16 And now he's putting it in there.

17 MS. SWANSON: Right. I mean,
18 Mr. Bessinger said that he does recall or
19 thinks that he told investigators in 1980 that
20 he saw the van. He neglected to put that in a
21 very short statement that he etched out. That
22 is not inconsistent. And then in 2016 he tells
23 Bob Bromage the same thing. In 2018 here on
24 the stand tells them the same thing. We are
25 not dealing with inconsistent statements.

ARGUMENT OUTSIDE THE PRESENCE OF THE JURY

1 Yes, if Ms. Campbell -- Ms. Campbell has
2 cross-examined him on that, to the extent that
3 she can. And she can certainly argue that to
4 the jury later. But any relationship with the
5 Larson family is irrelevant. Their name is not
6 mentioned at all in any of this investigation
7 and I have no idea how they would be tied to
8 the investigation.

9 MS. CAMPBELL: I believe that they are
10 mentioned in the investigative reports from the
11 1980s. And, again, you know, from the
12 information that I read in the reports David
13 Krulewicz was part of the Larson family. Now,
14 by his stepfather, I believe. And we have
15 people back here -- that is just what I read in
16 the report. If that's not -- you know, if
17 that's not the case, then that is fine. But
18 I'm going off of the original 1980 incident
19 report. And if I can't ask those questions, I
20 understand. I believe that I have made a
21 proper and accurate record for Mr. Gadson on
22 what I believe we should be allowed to do in
23 this case. Thank you.

24 THE COURT: But you don't intend to ask
25 about a conviction?

ARGUMENT OUTSIDE THE PRESENCE OF THE JURY

1 MS. CAMPBELL: I would love to ask about
2 the conviction, but if you are not going to let
3 me ask about the conviction, then I won't.
4 I'll go as far as Your Honor will let me. I
5 think that I should be allowed to do both.
6 But, again, based on his testimony I think
7 right now I'm certainly allowed under 608(b) to
8 ask him about his relationship to these
9 individuals and whether or not, you know, what
10 his relationship was with law enforcement and
11 those individuals at the time.

12 THE COURT: So far I haven't seen any
13 reason for the Court to change its mind on its
14 prior ruling about the conviction of the crime.
15 I guess questions about does he know a Larson
16 or a Smith or a Jones might be relevant if you
17 can tie it in somehow or another. Otherwise it
18 seems to be all irrelevant testimony and I'm
19 just speaking because I don't know where you
20 are headed with it.

21 So, we are back to where we were, I think,
22 before we took a break. The only thing that I
23 know that we have said that you can't do thus
24 far relates to the conviction of a crime. I
25 don't know of any reason, solicitor, why the

ARGUMENT OUTSIDE THE PRESENCE OF THE JURY

1 witness can't be asked about relationship with
2 the Sheriff's Department.

3 MS. SWANSON: No, I don't have a problem
4 with that as long as we are not discussing
5 prior bad acts or stuff that is related to the
6 conviction of the marijuana importation, which
7 is improper.

8 THE COURT: And I agree with that.
9 Anybody need to take a break, or are you ready
10 for the jury?

11 MS. SWANSON: Just maybe a five-minute
12 break.

13 THE COURT: The Court will be in recess
14 for five minutes.

15 (Brief recess.)

16 THE COURT: Bring the jury in.

17 MS. SWANSON: Your Honor, would you like
18 Mr. Bessinger to retake the stand?

19 THE COURT: Yes.

20 (The jury enters the courtroom at 11:15
21 a.m.)

22 THE COURT: Welcome back. Ladies and
23 gentlemen, I believe that we are ready to
24 resume cross examination of the witnesses.

25 MS. CAMPBELL: Briefly, Your Honor.

CROSS EXAMINATION CONTINUED OF SONNY BESSINGER BY
MS. CAMPBELL

1 CROSS EXAMINATION CONTINUED

2 BY MS. CAMPBELL:

3 Q Mr. Bessinger, in 1980 what sort of work
4 were you doing?

5 A I worked with the telephone company here
6 in Beaufort.

7 Q And you lived down the road from what has
8 been called sort of the Lover's Lane area?

9 A Yes, ma'am.

10 Q Okay. And the neighbors that live in the
11 Lover's Lane area, the Weed family also lived in
12 that area; correct?

13 A Not where I was. They were in the
14 subdivision part.

15 Q Okay. So, on the map that the solicitor
16 showed you, where is your house again?

17 A Here (indicating)

18 Q And the Weed family is over here, right?

19 A Yes.

20 Q Right down here?

21 A I guess. They live in Salem Point.

22 Q Right, in the Salem Point neighborhood
23 down here?

24 A Yes.

25 Q In this general area down here, correct?

CROSS EXAMINATION CONTINUED OF SONNY BESSINGER BY
MS. CAMPBELL

1 A Yes.

2 Q And when you testified with the solicitor
3 about being familiar with individuals in the Larson
4 family, can you tell us how you knew the Larson
5 family?

6 A I don't remember saying anything about the
7 Larson family. I never met the Larsons until I was
8 out of my little thing that I had to go to and I was
9 looking for a job.

10 MS. SWANSON: Your Honor, I would object.

11 I did not ask the witness anything about the
12 Larson family. I believe that was something
13 that Ms. Campbell wanted to get into with the
14 witness.

15 THE COURT: Proceed.

16 MS. CAMPBELL: Thank you, Your Honor.

17 BY MS. CAMPBELL:

18 Q And so at some point after whatever little
19 thing that you just testified that you got into, you
20 became familiar with the Larson family at that
21 point; is that what you are saying?

22 A All I did was -- Mr. Larson, they had a
23 moving company and I was looking for a job at the
24 time.

25 Q And that moving company, would that have

CROSS EXAMINATION CONTINUED OF SONNY BESSINGER BY
MS. CAMPBELL

1 been Carolina Moving and Storage?

2 A I think so. I'm not sure what the name of
3 it was.

4 Q And are you aware or were you familiar in
5 the '80s that Carolina Moving and Storage was owned
6 by Johnny Weed, MINOR [REDACTED]'s father?

7 A Not particularly, no, ma'am.

8 MS. CAMPBELL: That is all that I have.

9 REDIRECT EXAMINATION

10 BY MS. SWANSON:

11 Q Sonny, when you talked to law enforcement
12 about the two cars that you saw, were you telling
13 the truth?

14 A I was.

15 Q And are you telling the truth here today?

16 A I am.

17 Q Do you have any reason to want to lie
18 about this?

19 A None whatsoever.

20 Q What kind of car were you driving when you
21 saw the van and the other car?

22 A I drove a 1980 Toyota Celica.

23 Q Was it a large car or a small car?

24 A It was a compact car.

25 Q And then the other car that you saw

CROSS EXAMINATION CONTINUED OF SONNY BESSINGER BY
MS. CAMPBELL

1 besides the van, was that a large or a small car?

2 A It was hard to tell. It looked to me like
3 it was a larger model car.

4 Q Larger than the one that you were driving?

5 A Than I was driving, yes, ma'am.

6 Q When did you start working for the moving
7 company?

8 A I never did work for the moving company.

9 Q Okay. You were just looking for a job?

10 A Yes, ma'am.

11 Q Okay. Got you.

12 MS. SWANSON: All right. Thank you.

13 Nothing further.

14 MS. CAMPBELL: Nothing further.

15 THE COURT: Thank you. You may step down.

16 You may call your next witness.

17 MS. SWANSON: The State calls Gerry

18 Wagner.

19 Thereupon,

20 GERRY WAGNER

21 was called as a witness, having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SWANSON:

25 Q Good morning, Mr. Wagner.

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 A Good morning.

2 Q You go by Gerry, is that right?

3 A Yes, ma'am.

4 Q All right. And, Gerry, tell us where you
5 worked back in 1980?

6 A 1980, I worked for Beaufort County
7 Sheriff's Department. Morgan McCutchin was the
8 Sheriff. And I was in charge of the detective
9 division, then the detective division.

10 Q Okay. And how long did you work for the
11 Beaufort County Sheriff's Office?

12 A From 1966 to 1987.

13 Q Okay. And so back in 1980 you were
14 supervising investigations; right?

15 A Correct.

16 Q Okay. And who all was involved in the
17 investigation into the death of David Krulewicz and
18 the rape of MINOR ?

19 A Everyone within my detective division at
20 that time, which was approximately nine or ten
21 individuals.

22 Q All right. And if you can just move the
23 microphone a little bit closer to you.

24 All right. So, basically, everyone
25 that was under your supervision?

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 A Correct.

2 Q And why was that?

3 A It was a high profile case. It was a high
4 profile case considered at that time. And you had a
5 suspected murder, rape, and robbery all combined at
6 one time.

7 Q Okay. Was the information about the
8 possible suspect given to the media?

9 A Yes.

10 Q Okay. And was there a wanted poster given
11 out, a composite drawing?

12 A To the best of my recollection now, yes.

13 Q I am going to hand you what's been marked
14 as State's Exhibit 1 and ask you if you recognize
15 that as the composite from the 1980 case file?

16 A Yes.

17 MS. SWANSON: State would move 1 into
18 evidence at this time.

19 MS. CAMPBELL: No objection.

20 THE COURT: Motion is granted.

21 MS. SWANSON: All right.

22 *(Whereupon, State's Exhibit No(s). 1*
23 *marked for identification and received in*
24 *evidence.)*

25 BY MS. SWANSON:

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 Q All right. And so, in supervising the
2 investigators you would review their reports, right?

3 A Yes.

4 Q Go out to any major crime scenes?

5 A Yes.

6 Q Also you were dealing with the media,
7 right?

8 A Yes.

9 Q At that time. Okay. And so did you go
10 out to the Old Salem Road crime scene?

11 A I did, but it was not at the time of the
12 incident actually reported. I think that it was
13 later the following day. The incident happened, if
14 I recall, on the 5th of January. I can't remember
15 the exact time, but it was either late at night or
16 in the early morning hours and I went out, probably,
17 later that morning, say 10 or 11ish.

18 Q So, like the following Sunday morning?

19 A Correct.

20 Q When they were processing the scene?

21 A Correct.

22 Q Okay. And that scene, it was off Old
23 Salem Road; right?

24 A Yes.

25 Q Is that within Beaufort County?

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 A Yes, it is. And, yes, it was.

2 Q Do you recall if the van was still there
3 when you got to the crime scene?

4 A I do not.

5 Q Okay. I am going to throw out some names
6 of investigators that worked on this case. DP
7 Courtney?

8 A Yes.

9 Q Faith Hesling?

10 A Yes.

11 Q Floyd Wiley?

12 A Yes.

13 Q RL Houston?

14 A Sergeant, yes.

15 Q Sergeant. Are they still alive, or are
16 they deceased now?

17 A No, ma'am, they are all deceased.

18 Q Okay. And, in fact, Sheriff McCutchin is
19 deceased too; right?

20 A Correct.

21 Q Okay. How long was Sheriff McCutchin the
22 Sheriff?

23 A Eight years. I worked for him for four.

24 Yes, he was re-elected. He was in his second

25 four-year term.

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 Q Okay. Was he the Sheriff when you left
2 Beaufort County?

3 A Yes, ma'am.

4 Q Okay.

5 All right. In your review of those
6 reports, of the people that you supervised who were
7 out at the scene and collecting evidence, did you
8 come across two spent rounds that were collected?
9 Did you come across any mention of two spent rounds
10 that were collected?

11 A At what point?

12 Q From the left side door of the van.

13 A Are you asking whether I was there and
14 collected them?

15 Q No, if in the review of the investigation.

16 A Correct.

17 Q Okay. So, there were two spent rounds
18 that were recovered from door of the van?

19 A Yes.

20 Q Okay.

21 All right. I'm going to hand you
22 what has been marked as State's 2 and ask you if you
23 can identify what these are based on the description
24 that is listed, who recovered it, and from what
25 investigation?

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 A The evidence was found, left side of '76
2 Dodge van of victim. The time and date of recovery
3 was the 6th day of January, 1980, at 10:30 in the
4 morning. The victim was, at that time, Krulewicz
5 and MINOR. The evidence was recovered by Sergeant
6 Houston. Sergeant Houston turned it over to PGJ,
7 which that was Patricia James my evidence custodian
8 secretary, on the 8th of January at 8:20 of '80.
9 And Pat James eventually delivered it to SLED on the
10 9th of January 1980 at 12:15.

11 Q Okay. Thank you.

12 MS. SWANSON: At this time, the State
13 would move 2 into evidence.

14 MS. CAMPBELL: No objection.

15 THE COURT: Motion is granted.

16 *(Whereupon, State's Exhibit No(s). 2*
17 *marked for identification and received in*
18 *evidence.)*

19 BY MS. SWANSON:

20 Q Now, did you do any SLED forensic requests
21 in 1980?

22 A Yes, ma'am.

23 Q Okay. Tell us about those. Do you recall
24 what you were asking to be tested?

25 A Everything that was collected at the crime

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 scene was sent to SLED. And later on, if I'm not
2 mistaken, went to the FBI. Clothing, the firearms.

3 Q Okay. So, the victim's clothing, the rape
4 kit?

5 A Correct.

6 Q Some cigarette butts?

7 A Correct.

8 Q Okay. What kind of cigarette butts were
9 they, do you recall?

10 A Kools.

11 Q Okay. And of course there wasn't DNA
12 testing then, but you were looking for anything that
13 you could get off of them; right?

14 A That's correct. Evidence was just
15 collected.

16 Q Okay. And those were items that were
17 collected from the crime scene and from the victim
18 at the hospital, right?

19 A That is correct.

20 Q Okay. And do you recall the description
21 of the suspect that was released to the media?

22 A Do I recall?

23 Q Yes, sir. I can -- do you have your
24 report up there or no?

25 A No, ma'am.

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 Q Okay. All right. I'm going to hand you
2 your press release as well as the wanted poster. If
3 you can refer to both of those and tell us what
4 information was out there regarding the physical
5 description of the rapist and murderer.

6 A Yes, at that time, the victim, MINOR ,
7 described the subject as a black male, 5'7" to 5'9",
8 approximately 170 pounds. That was released as a
9 press release.

10 Q Any mention about a small afro or other
11 hair, hairstyle?

12 A Not in this report.

13 Q If you can just refer to the bottom.

14 A I am sorry. It was approximately 25 years
15 of age, 6'5", 6'7" height average, small afro.

16 Q Okay. Thank you. Now, there was a little
17 bit of discrepancy in height between these two,
18 right?

19 A Yes.

20 Q So, that may not have been a sure thing,
21 right, the description of height?

22 A No. Based on my experience that would not
23 give you.

24 Q Okay. And you are talking about your
25 experience in speaking with eye witnesses?

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 A As a detective, yes, ma'am.

2 Q Now, in your review of the 1980 case file
3 was MINOR, the victim, ever shown any photo
4 line-ups?

5 A Yes.

6 Q All right. Multiple photo line-ups?

7 A Yes.

8 Q And was she ever able to definitively
9 point to her rapist and David's murderer?

10 A To the best of my knowledge and
11 recollection now, no.

12 Q And was suspect Isaiah Gadson ever a
13 suspect at that time?

14 A I don't recall. But if I may in a
15 question just previous to that one, I think that
16 MINOR did pick out one time, said that this most
17 resembles.

18 Q Right.

19 A There was one layout on a photo line-up
20 where, if my recollection is right, that she did
21 indicate, This most resembles the suspect.

22 Q Right, she could point out people that
23 resembled the suspect or features on them that may
24 resemble the suspect, but she never said, That is
25 him?

DIRECT EXAMINATION OF GERRY WAGNER BY MS. SWANSON

1 A Correct.

2 Q Okay. You worked for Sheriff McCutchin
3 and were you ever aware of evidence that was
4 destroyed on purpose or to hide anything in this
5 case?

6 A No, ma'am, not on my watch.

7 Q Okay. All right. Any conspiracy to frame
8 anyone or cover up an investigation of someone?

9 A No, ma'am.

10 Q All right.

11 MS. SWANSON: I have nothing further at
12 this time.

13 THE COURT: Cross examination.

14 MS. CAMPBELL: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MS. CAMPBELL:

17 Q So Mr. Wagner, the solicitor has gone over
18 some of the reports from 1980 with you. And I'm
19 going to do the same.

20 A Yes, ma'am.

21 Q All right. So, in a report which I'll
22 pass up to you that one of your officers issued on
23 January 23rd, 1981, if you could look at the orange
24 highlighted portion of that report and tell the jury
25 what is reported at that time, the highlighted

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 portion?

2 A The highlighted orange says she picked out
3 number four and stated he looks like the man who
4 assaulted her and shot her boyfriend, David
5 Krulewicz. And then the subject number four was
6 identified as a Manning Tredway or Tredway Manning.

7 Q Correct, thank you. Additionally, if you
8 want to just take a moment to read the yellow
9 highlighted portion to yourself and then I'm going
10 to ask you a question or two about that, okay?

11 A Yes, ma'am.

12 Q All right. Have you had an opportunity to
13 review that?

14 A Yes, ma'am.

15 Q All right. So the suspect that MINOR
16 picked out in 1981, subject number four, was listed
17 as being 6 feet 1 inches tall, correct?

18 A Correct.

19 Q And your investigation held that the
20 suspect that you were looking for was between 5 feet
21 5-inches tall and 5 feet 7 inches tall, correct?

22 A No.

23 Q What the --

24 A 5'5" to 5'9", according to the press
25 release was 5'9".

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 Q I'm aware that, yes, that the two press
2 releases have different heights.

3 A Yes, ma'am.

4 Q This report reflects the height of the
5 suspect as being what?

6 A 5'5" to 5'7".

7 Q Thank you. So, in 1981 5'5" to 5'7" is
8 still being reflected in your reports, correct?

9 A Correct.

10 Q And this individual who MINOR picks
11 out in a photo line-up, number four, is dismissed
12 because he's too tall, correct?

13 A What do you mean "dismissed"?

14 Q He's no longer a suspect, correct?

15 A You are talking about Mr. Manning?

16 Q Right, correct.

17 A Correct, yes, ma'am.

18 Q Thank you.

19 A Yes, ma'am.

20 Q All right. Now, I am going to hand you
21 a -- I believe that the solicitor didn't introduce
22 this, but I want to make sure that you have had an
23 opportunity to review it. This is the Sheriff's
24 Office press release relative to this case, correct?

25 A Yes, ma'am.

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 Q The height indicated there is 5'5" to
2 5'7", correct?

3 A Correct.

4 Q Now, the reason that the height is 5'5" to
5 5'7", or as interpreted on another document, maybe
6 up to 5'9" is because consistently you were given
7 information from MINOR that the suspect in her
8 case was shorter than she was, correct?

9 A Yes, information either to me or
10 detectives I assigned to the case, yes, ma'am.

11 Q Additionally, information from her in her
12 reports, is that the person was, the black male was
13 clean shaven, no mustache, no facial hair, correct?

14 A That's correct.

15 Q All right. Now, you, in your reports, you
16 state that the van, both passenger and driver
17 windows are completely shattered out, correct?

18 A Yes, ma'am.

19 Q Someone took photographs of the shattered
20 out windows, correct?

21 A Yes.

22 Q Those photos have been lost, correct?

23 A I have no knowledge.

24 Q The last time you worked on this case, to
25 your knowledge they existed in 1983, correct?

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 A Correct.

2 Q Right. When you brought in some sort of
3 FBI profiler to help you work on this case, correct?

4 A Correct.

5 Q Okay. And you -- you sought their help
6 and you discussed with them all of the evidence that
7 you had at the time?

8 A Correct.

9 Q So, it is your testimony that after you
10 left this case, if they are not here it has nothing
11 to do with you; right?

12 A Correct.

13 Q Okay. Perfect. Now, these recovered
14 two -- Officer Houston is his name?

15 A Yes, Robert Houston.

16 Q Houston, Robert Houston, reported that he
17 recovered two spent cartridges from the crime scene?

18 A Correct.

19 Q Okay. So let's make sure that we have got
20 all of that correct. So, you have got three
21 recovered, what we would call projectiles?

22 A Correct.

23 Q From the body of David?

24 A Correct, correct.

25 Q Correct?

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 A Correct.

2 Q And then your officers recovered two
3 projectiles from the side of the van, the driver's
4 side of the van; correct?

5 A Correct.

6 Q Okay. And the photographs would also have
7 been taken to show the locations of those
8 projectiles in the side of the van, correct?

9 A Correct.

10 Q All right. And the two spent cartridges
11 would have been photographed as well, correct?

12 A Correct.

13 Q Now, in your experience as a law
14 enforcement officer for many years, the importance
15 of spent cartridges can be quite significant in
16 matching a firearm to a crime scene, correct?

17 A Very much so, yes.

18 Q So, again, just break it down real tight
19 here, but guns can leave a mark on a cartridge, an
20 identified gun matching a cartridge; correct?

21 A Correct.

22 Q Okay. To the best of your knowledge when
23 you left this case the cartridges were still in
24 evidence, correct?

25 A Correct.

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 Q You had nothing to do with the cartridges
2 disappearing, correct?

3 A No, I did not.

4 Q All right. Now, you are also aware that
5 photographs were taken of the autopsy of David,
6 correct?

7 A That's correct.

8 Q You yourself have seen them, correct?

9 A Yes.

10 Q Okay. And the photographs from the
11 autopsy would have depicted the condition of the
12 entrance wounds to his body, correct?

13 A Correct.

14 Q And part of the significance of that,
15 again in your experience as a law enforcement
16 officer, is to be able to determine distance, signs
17 on an entrance wound can help investigators
18 understand and SLED understand how far someone may
19 have been from another person when a shot was fired,
20 correct?

21 A That's correct.

22 Q All right. So, additionally, not just the
23 distance between the individuals but trajectory,
24 whether a shot came from down or from up, front or
25 back; correct?

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 A That's correct.

2 Q Okay. And those pieces of evidence, on
3 your watch, did not disappear; correct?

4 A No.

5 Q All right. Now, you took many, many
6 statements from individuals in the community at the
7 time, right; your officers did?

8 A Yes, ma'am.

9 Q And many of those individuals were
10 reporting that there were a particular black man
11 that seemed to fit the description at the time and
12 they wanted him investigated, correct?

13 A That is correct.

14 Q Okay. And so, in pursuing that you
15 presented a number of photo line-ups to MINOR, [REDACTED],
16 right?

17 A Correct.

18 Q Okay. And in -- and you actually also did
19 an in-person line-up of some individuals at one of
20 the penitentiaries, correct?

21 A That's correct.

22 Q Isn't it true that in the photo line-ups
23 and in the in-person line-up, MINOR [REDACTED] did in fact
24 chose individuals that she felt most resembled the
25 suspect; correct?

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 A That's correct.

2 Q But if the person were too tall, then that
3 person were put to the side; is that correct?

4 A That's correct.

5 Q All right. At some point -- well let me
6 back up a little bit. The night that this happened,
7 you had an officer show up down there at the scene
8 and he wrote a report, correct, the first officer on
9 the scene?

10 A Yes, Deputy Courtney, I believe.

11 Q And Deputy Courtney came upon a van,
12 correct?

13 A Yes.

14 Q A blue car, correct?

15 A Yes.

16 Q Johnny Weed, correct?

17 A Yes.

18 Q And MINOR [REDACTED], correct?

19 A Yes.

20 Q And the deceased, David?

21 A Yes.

22 Q At the time Johnny Weed was armed with a
23 shotgun, correct?

24 A Yes.

25 Q Okay. And your officer had to fight with

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 Johnny to remove the shotgun from his hands,
2 correct?

3 A Yes.

4 Q And Johnny Weed was arrested that night,
5 correct?

6 A Yes.

7 Q He was released later on that night,
8 correct?

9 A Yes, charged with disorderly conduct.

10 Q Right. Did you or any of your officers
11 perform any sort of search at the Weed home to
12 determine the location of any other firearms?

13 A No.

14 Q Okay. At the time you were working for
15 Morgan McCutchin, correct?

16 A Correct.

17 Q He was your Sheriff?

18 A Correct.

19 Q At some point in your investigation one of
20 the citizens who lived in the area found a
21 pillowcase that they believed was -- had blood all
22 over it, correct?

23 A I have no knowledge.

24 Q Okay. If it's in evidence and your
25 officer secured it, could we assume then that it was

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 turned in? Would you like me to locate the report
2 for you?

3 A If you say that it was turned in. Like I
4 say, I have no knowledge.

5 Q Let me see if I can find it for you and
6 then we will make sure that you know what we are
7 talking about.

8 (Pause.)

9 Q On January 9th, 1980, James Durham turned
10 something in to the Sheriff's Department that he
11 found walking down the road in the area of the crime
12 scene, correct?

13 A Correct.

14 Q And that item was?

15 A A pillowcase.

16 Q That appeared to have blood stains all
17 over it, correct?

18 A Appeared to be blood stains, yes.

19 Q To the best of your knowledge has that
20 pillowcase ever been submitted to any law
21 enforcement agency in this case to determine the
22 origin of the blood?

23 A No knowledge unless it was submitted to
24 SLED or the FBI.

25 Q Okay. Now, this investigation

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 essentially -- tell me again when you left the
2 Sheriff's Department.

3 A 1986.

4 Q Essentially this investigation shut down
5 in 1983?

6 A No, ma'am.

7 Q Okay. Do you have a report or some
8 information that you can help me with after 1983
9 that I can reference?

10 A I reference that based upon the policy
11 basically of Sheriff McCutchin and in my profile
12 expertise, especially any time that there is a major
13 felony type case, murder, rape, homicide, that is an
14 ongoing continuing case. And this particular case
15 was such until the day I retired.

16 Q I guess what I'm saying is, if I can't
17 find any reports after 1983, can you tell me there
18 was one issued after 1983?

19 A No, I cannot.

20 Q While you were on watch there?

21 A No, I cannot.

22 Q Okay. Now, was it your policy under
23 Sheriff McCutchin to send every firearm that was
24 located during this period of time up to SLED to try
25 to compare it to items from this case? Do you

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 remember doing that at all?

2 A I do not remember. But if I may, as a
3 policy, any time firearms are recovered from any
4 particular crime scene or turned in by a citizen
5 they were automatically sent to SLED for comparison
6 to any outstanding case involving a firearm.

7 Q All right. Right. Thank you. Do you
8 know -- is there anywhere in your reports from 1980
9 how you and your officers found out that there had
10 been a shooting in this location? I'm looking for a
11 record of the call that came in about this and how
12 it came in. Do you have that, or know where we
13 could find that?

14 A The only information that I have to that
15 is on the original Beaufort County Sheriff's
16 Department incident report.

17 Q So, independently you have no
18 recollection, right?

19 A To my knowledge, no.

20 Q And if I can't refresh your recollection
21 with any reports, then you would have no further
22 recollection at all how you got notified that this
23 was taking place; right?

24 A Unfortunately, no.

25 Q Okay. Now, at some point in your

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 investigation you and your officers feared, perhaps,
2 that you were not getting the truth from MINOR;
3 correct?

4 MS. SWANSON: Your Honor, I would object
5 to this. Can we approach?

6 THE COURT: Certainly. If you would like
7 to stand up, ladies and gentlemen, and stretch
8 while I talk to the attorneys.

9 (Off-the-record discussion held.)

10 BY MS. CAMPBELL:

11 Q Thank you for your patience. Again, at
12 some point in your investigation, you and your
13 officers, did you begin to fear that MINOR was not
14 giving you the truth in this case?

15 A I did not myself, no. As to the
16 independent opinions of the other officers, I have
17 no knowledge.

18 Q Okay. And because if there were doubts
19 that you were getting the truth or having concerns
20 about your investigation, you know, how -- you might
21 have to resolve those doubts for yourself if you had
22 them, correct?

23 A Correct. If rumors or reliable
24 information would have been brought to our
25 attention, we would have certainly went in a

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 different direction or different directions.

2 Q And to say that you were overrun by
3 contradictory information or rumors, that would be a
4 fair statement; correct?

5 A That would be a fair statement, and that
6 would not be unusual.

7 Q Right.

8 (Pause.)

9 BY MS. CAMPBELL:

10 Q Very quickly. At the scene, would you
11 characterize it as a Lover's Lane area frequented by
12 couples seeking some privacy? I mean, was that sort
13 of a known thing back then?

14 A Essentially that particular area, Lover's
15 Lane, crash out, mostly, yes, ma'am.

16 Q So, you might encounter vehicles in that
17 area on any given evening, you know, in Beaufort
18 County in 1980, correct?

19 A Certainly, any given evening, weekend,
20 yes, ma'am.

21 Q Okay. So it wouldn't be unusual to see
22 vehicles in the area at the quote, unquote, Lover's
23 Lane, right?

24 A No.

25 Q Okay. And so in 1980 and in the years

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 that you worked on this case, was there at any point
2 that you took a statement or written statement from
3 MINOR's father?

4 A No, I had spoken to Mr. Weed and
5 Mrs. Weed.

6 Q Did you take a written statement from
7 either one of them?

8 A No, ma'am.

9 MS. CAMPBELL: That is all that I have.

10 REDIRECT EXAMINATION

11 BY MS. SWANSON:

12 Q Gerry, when you spoke to Johnny Weed, did
13 you ever consider him a suspect in this case?

14 A I did not, no.

15 Q And going back to when Ms. Campbell asked
16 you about picking someone out of a line-up who MINOR
17 said looks most like him, and we were talking about
18 Manning Tredway and I believe that she had you read
19 from that report. He actually lived in Sumter,
20 right?

21 A As I recall from the statement, yes,
22 ma'am.

23 Q And she claimed that he had been dismissed
24 because he was too tall, but had there been any
25 corroborating evidence, anything that put him in the

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 area, anything like DNA, would he have been
2 investigated as a --

3 MS. CAMPBELL: Objection. She is leading
4 the witness.

5 THE COURT: Hold on, there's an objection.

6 MS. CAMPBELL: I mean, I have let her go
7 far with this, but she needs to ask a question.
8 She is leading the witness repeatedly.
9 Objection.

10 BY MS. SWANSON:

11 Q If there had been corroborating evidence,
12 would he have been investigated as a suspect?

13 A Correct.

14 Q If anyone had been able to place him in
15 the area, would he have been investigated?

16 MS. CAMPBELL: Objection, again, Your
17 Honor.

18 THE COURT: Overruled, go ahead.

19 BY MS. SWANSON:

20 Q If anyone had been able to place him in
21 the area, would he have been investigated as a
22 suspect?

23 A Correct.

24 Q If any forensics identified him, would he
25 have been investigated as a suspect?

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 A Correct.

2 Q Ms. Campbell also asked you about what she
3 was referring to as cartridges, which I believe came
4 from the Coroner's report. I just want to make sure
5 that we are clear because I think that there were
6 some things that were mischaracterized?

7 MS. CAMPBELL: Objection, Your Honor, you
8 know, the solicitor is just going on and on and
9 on. She needs to ask a question instead of
10 talking about how I asked my questions.

11 THE COURT: Sustained. Go ahead.

12 MS. CAMPBELL: Thank you.

13 BY MS. SWANSON:

14 Q Do you recall sending all of the
15 projectiles to SLED that were found?

16 A To the best of my knowledge all evidence
17 in this case was sent to SLED, yes, ma'am.

18 Q All right. So, I'm going to hand you the
19 request for laboratory analysis that was actually
20 done by you and if you can tell us what date that
21 was done on? It is at the top.

22 A Yes, it was sent to the SLED on the 9th
23 day of January, approximately 12:30, which would be
24 p.m.

25 Q January 9th, and that would have been

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 after the scene was processed, right?

2 A Correct.

3 Q So, items seven and eight, what does that
4 include?

5 A It says, Bag containing one vial
6 containing two spent rounds, maybe 38 caliber.
7 Number eight, one plastic bag containing three vials
8 FA80-2 vial mark number one, number two, number
9 three. Number one from the head, number two from
10 the neck, number three from arm of murder victim
11 Krulewicz.

12 Q Okay. So, there were two sets of
13 projectiles that were turned in?

14 A Correct.

15 Q One of which came from the victim's body?

16 A Correct.

17 Q And one has been entered as State's
18 Exhibit 2?

19 A That's correct.

20 Q All right. And what is the number on the
21 top left corner?

22 A Number seven.

23 Q Okay. And to your knowledge, that is all
24 of the ballistics that were collected in this case
25 and sent off to SLED, right?

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 A Correct.

2 Q Okay. There were -- let me ask you this:
3 In your experience as a law enforcement officer is
4 there a difference between, you know, what a shotgun
5 might leave and what a revolver might leave?

6 A Most definitely.

7 Q Did you all --

8 MS. CAMPBELL: I'm going to object to the
9 solicitor going into ballistics testimony
10 referencing -- this officer, he's certainly not
11 been qualified as a ballistics expert.
12 Objection.

13 MS. SWANSON: Your Honor, I believe -- I
14 don't think that he can definitively say what
15 is what. We are not talking about identifying
16 tool marks, but in his experience in shooting
17 firearms.

18 THE COURT: Overruled. I'll allow it.

19 BY MS. SWANSON:

20 Q And so, in looking at this case did you
21 and the other investigators ever believe that there
22 was evidence of a shotgun?

23 A No.

24 Q What did you believe that there was
25 evidence of?

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 A Small caliber in the area of possibly
2 .25/.32, caliber. Thirty-eight would be a little
3 bit large.

4 Q Okay.

5 MS. SWANSON: Thank you.

6 RECROSS EXAMINATION

7 BY MS. CAMPBELL:

8 Q In reference to the type of weapon that
9 you may have been looking for, what you had on the
10 scene that night was a shotgun, correct?

11 A As a result of disorderly conduct with
12 Mr. Weed and the deputy, yes, ma'am.

13 Q You had a shotgun?

14 A Yes.

15 Q Thank you. Now, you did not look for
16 another weapon that night on Johnny Weed or at his
17 house or anywhere else relating to him, correct?

18 A No.

19 MS. CAMPBELL: That is all that I have.

20 MS. SWANSON: Nothing further.

21 THE COURT: Thank you. You may step down.

22 MS. SWANSON: I would ask that Mr. Wagner
23 to be allowed to be excused if he so wishes.

24 THE COURT: Any objection?

25 (No response.)

CROSS EXAMINATION OF GERRY WAGNER BY MS. CAMPBELL

1 THE COURT: Thank you, sir. You may be
2 excused from your subpoena. Another witness
3 before lunch?

4 MS. SWANSON: Yes, please. The State
5 calls MINOR .

6 Thereupon,

7 MINOR

8 was called as a witness, having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SWANSON:

12 Q MINOR , if you can please state and spell
13 your name for the record?

14 A MINOR , .

15 Q Back in 1980, were you MINOR ?

16 A Yes.

17 Q How old were you in 1980?

18 A Fifteen, about to turn 16.

19 Q All right. Tell us a little bit about
20 what your life was like in 1980. Where did you go
21 to school, your hobbies, who were you dating.

22 A I went to Beaufort Academy, I was in the
23 10th grade and we -- I was involved in horseback
24 riding and dirt bike riding and cheerleading in
25 school. And I dated -- I was dating David Krulewicz

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 then.

2 Q Okay. And how long had you and David been
3 dating?

4 A Probably about October before then, so
5 that would be 1979, October, uh-huh.

6 Q All right. And did you get along with
7 David's family.

8 A Yes.

9 Q And did he get along with yourself?

10 A Yes.

11 Q And your families had met, right? Or he
12 had met your family?

13 A Yes, correct, yeah.

14 Q Okay. And at the time where were you
15 living?

16 A In Salem Point, Plantation Drive in Salem
17 Point.

18 Q All right. And that was with your
19 parents?

20 A Yes, and my sister.

21 Q And how old was your sister?

22 A She is almost four years older.

23 Q So, what grade were you in?

24 A The tenth.

25 Q What grade was your sister in?

DIRECT EXAMINATION OF MINOR [REDACTED] BY MS. SWANSON

1 A Well, she was 19 -- she graduated in '78,
2 so she was already out of school.

3 Q Okay.

4 A Right.

5 Q Was she working?

6 A Yes, she was.

7 Q Okay. Was she working for your parents'
8 company?

9 A Yes, at the moving company, uh-huh.

10 Q All right. Where did David live?

11 A Coosaw Island at the end of Sam's Point
12 Road, way out there in Coosaw Island.

13 Q All right. And what did he do for work?

14 A He worked at Rutlands Heating and Air, I
15 believe. Yes.

16 Q All right. Let's go back to January 5th
17 of 1980, and how did that evening start?

18 A David came by around 7:15 that night to
19 pick me up and we came inside and chatted with my
20 parents for a little while and then we left and
21 drove to the bowling alley and met up with some
22 friends and we shot pool there at the bowling alley.
23 They did, you know, foosball machines and things
24 like that. We were there for maybe an hour or two
25 and then we went to Lady's Island to -- some friends

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 were having a party out there, but really there was
2 only three or four people there but -- and we hung
3 out there for a little while. And then David got
4 sick. He was -- he started like he was going to get
5 sick, so he went outside the house and puked and I
6 went out after him to see if he was okay. And then
7 he got -- he started feeling better and then we left
8 there shortly after that.

9 Q Okay. This was 1980 and you guys were in
10 high school, right, teenagers?

11 A Uh-huh. (Indicating affirmatively.)

12 Q Was anyone smoking marijuana or drinking
13 beer?

14 A No, there was no marijuana at all. That I
15 knew -- you mean at the party?

16 Q Right. At the party, you know, anyone --
17 were they have partaking in that?

18 A No.

19 Q Or drinking beer?

20 A There might have been someone drinking
21 beer, yes.

22 Q Okay. Did you smoke any marijuana that
23 night?

24 A No.

25 Q All right. What did David pick you up in

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 that night?

2 A His van. I don't know what year it was.

3 But it was gray/silvery van.

4 Q Okay. I'll show you what is marked as

5 State's 3B. Can you describe what is in this

6 picture?

7 A This is David's van.

8 Q That is how you remember seeing it?

9 A Uh-huh. (Indicating affirmatively.)

10 Q Okay. Permission to enter into evidence

11 State's 3 and permission to publish?

12 MS. CAMPBELL: No objection.

13 THE COURT: Motion granted.

14 *(Whereupon, State's Exhibit No(s). 3*

15 *marked for identification and received in*

16 *evidence.)*

17 BY MS. SWANSON:

18 Q All right. So, we are looking at David's

19 van here. And that is what he picked you up in that

20 night?

21 A Yes.

22 Q Okay. And MINOR, I'm going to ask for you

23 to tell us what is in these two pictures, State's 4

24 and State's 5. Start with State's 4.

25 A That is a picture of David and I, I think

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 at Christmastime. And then that is my high school
2 senior picture.

3 Q Okay. Thank you. And that is a fair and
4 accurate reflection of how you guys appeared at that
5 time?

6 A Yes. I bought him that sweater.

7 MS. SWANSON: The State would move 4 and 5
8 into evidence and move to publish.

9 THE COURT: Motion granted.

10 *(Whereupon, State's Exhibit No(s). 4*
11 *marked for identification and received in*
12 *evidence.)*

13 *(Whereupon, State's Exhibit No(s). 5*
14 *marked for identification and received in*
15 *evidence.)*

16 MS. SWANSON: Judge, the other monitor is
17 not working.

18 (Pause.)

19 MS. SWANSON: Okay. So, we will cap this
20 and I'll publish to the jury, myself. All
21 right. So, State's 3.

22 BY MS. SWANSON:

23 Q And then State's 4 and 5. And MINOR, you
24 said that the picture taken of you and David was
25 around Christmastime?

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 A Yes, I think so. My mom took the picture.

2 Q Okay. So, he picks you up in his van and
3 y'all end up going to a party on Lady's Island?

4 A Yes.

5 Q What did you do after the party on Lady's
6 Island?

7 A We drove down Highway 21 or Boundary
8 Street and I stopped at Burger King to get something
9 to eat at the drive-through window and we parked in
10 the Burger King parking lot and we both ate
11 something and then David got sick again and he just
12 got out of the van and went in front of the van in
13 the parking lot and just puked again. And then he
14 got back in the car and started feeling okay. And I
15 was mad because he had been puking two or three
16 times recently, beforehand, you know, even that week
17 and he wouldn't go to the doctor being stubborn or
18 whatnot and I was kind of upset about it.

19 Anyway, then we left there and it was
20 probably around 11ish, around that time, and then we
21 started heading -- we were driving around heading in
22 the vicinity of my house. And we turned on to -- we
23 went down Parris Island Gateway, down that way, and
24 was Sky City down there, which is kind of like a
25 KMart is today. We pulled in the parking lot. Of

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 course it was closed being 11:00 at night and we
2 parked in the parking lot and chatted a little bit
3 more about him getting sick and whatnot. And I
4 looked at my watch and it was 11:30 and I told him
5 that we better be heading home, because I had to be
6 home by 12.

7 Q So you had a 12:00 curfew?

8 A Right.

9 Q And you guys started moving closer to
10 where you lived?

11 A Right.

12 Q So where did you end up just a few minutes
13 before your curfew?

14 A Off of Old Salem Road into a little
15 cut-off road. We pulled right off of the edge of
16 Old Salem Road, the dirt road that was near my
17 house.

18 Q Okay. And MINOR, I am going to actually
19 bring you down to take a look at this map, okay?

20 A Okay.

21 Q If you can, stand here and point out for
22 me where you live.

23 A Around in here. Right in here.

24 Q That is the Salem Point neighborhood?

25 A Right.

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 Q What road did you go down to park in the
2 cut?

3 A The dirt road, this.

4 Q Old Salem?

5 A Yes. That is where we parked. And off of
6 that dirt road there was another little, you know,
7 area off of there that we took a right into.

8 Q Right, and the creek and marsh would have
9 been in front of you?

10 A Right. That is all water, uh-huh.

11 Q All right. You can go and take the stand.

12 Now, when you say "a cut," it was not
13 a full dirt road?

14 A No, it was a cleared-off area where, you
15 know, the van barely could pull into. There was
16 thick bushes and trees and it didn't continue onto a
17 road. It just kind of stopped, you know, it didn't
18 go any further. It was just a place where you could
19 pull into and sit with a vehicle.

20 Q All right. I'll show you State's Exhibit
21 6. I know this is old and difficult to see. Can
22 you describe what is in that picture?

23 A That is the area that we turned off of the
24 main dirt road into this little area that didn't
25 have much trees or whatnot, just barely enough to

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 get the van in there and, like I said, there was
2 thick brush and trees on each side.

3 Q So, heavily wooded other than the little
4 area where you could park?

5 A Right.

6 Q Is this an accurate depiction of where you
7 were?

8 A Yes.

9 MS. SWANSON: The State would move Exhibit
10 6 into evidence, and permission to publish?

11 MS. CAMPBELL: No objection.

12 THE COURT: Motion granted.

13 *(Whereupon, State's Exhibit No(s). 6*
14 *marked for identification and received in*
15 *evidence.)*

16 BY MS. SWANSON:

17 Q When you parked there, did you leave the
18 van on; did David turn it off?

19 A He turned the van off and we were just
20 sitting up in the front seat with the dome light on.
21 We probably -- he smoked a cigarette I'm sure and
22 then he -- we went to the back of the van to sit
23 down because he was still feeling nauseous, and we
24 were sitting back there for a little while. And I
25 noticed a car going by in the back windows because

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 in the van he had back windows, had some kind of a
2 picture or something over them so I could look out
3 and see out, no one could see in.

4 And so we were just sitting back
5 there and I just noticed a car going right back, I
6 mean, because like I said, this road that we pulled
7 off onto was only maybe 5 feet off of the main road
8 so when a car went by I could see it when it went
9 by. And I just looked down at my watch and said, We
10 better get going because at that point it was a
11 quarter to 12.

12 Q Okay. When you said that you see the car
13 go by, did you see the highlights or the actual car?

14 A Well, I saw mostly the headlights
15 because -- I wasn't looking for any reason to
16 recognize the car. I mean it was a car with
17 headlights on.

18 Q And how dark was it out there?

19 A It was pitch black dark. It was near
20 midnight so it was pretty dark.

21 Q No street lights or anything like that?

22 A No, there are no street lights on that
23 road until you get down, you know, a half mile the
24 other way where the Bessingers lived.

25 Q And were the headlights to the van on?

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 A No, the only thing that was on was the
2 dome light right where we were sitting in the front
3 seat.

4 Q Okay. So, around 11:45 did you guys move
5 from the back of the van?

6 A Yep. We, like I said, I needed to be home
7 and we were, you know, a couple of minutes from the
8 house so we got up and went back to the front seats
9 and were getting ready to leave and getting ready to
10 go, you know. I think that maybe the radio wasn't
11 on or anything, we didn't have it cranked up. So,
12 we were just sitting there getting ready to go.

13 Q Okay. So when you say that you moved to
14 the front seats, who sat where?

15 A I was in the passenger's seat and he was
16 in the driver's seat.

17 Q Okay. And what is the next thing that you
18 remember happening?

19 A Well, then I heard a loud bang and the
20 glass shattered right beside me here, and I could
21 feel the glass coming on me. ANd then I smelled
22 gunpowder and then, you know, obviously several more
23 shots rang. And then I freaked out and jumped
24 behind my seat in the van realizing what was
25 happening. And then just started screaming and

DIRECT EXAMINATION OF MINOR [REDACTED] BY MS. SWANSON

1 begging him not to shoot me.

2 Q Okay. And when you said you felt the
3 pressure of the glass shattering, was that from the
4 passenger side window?

5 A Yes, yes. It was right there.

6 Q Right.

7 A Right there, you know. And then my seat
8 was moved back a little ways, and his was more
9 forward and mine was more back. So, I guess that
10 just barely left me out of the line of fire and
11 then -- and got David.

12 Q Okay. So, what was David doing at this
13 point?

14 A Well, he was hunched over and, you know,
15 shot. I didn't hear him say anything. He didn't
16 say anything or I didn't hear him say anything, you
17 know, and I was just screaming and begging, you
18 know, not to shoot me.

19 Q What happened after that; did you hear the
20 person?

21 A Not yet. Well, when I was screaming and
22 begging him not to shoot me then I just knew that I
23 was getting ready to get shot. And then at that
24 point I was just thinking, you know, what it was
25 going to feel like to be shot and I could just see,

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 you know, my life flashing before my eyes. And I
2 could just remember myself when I was five or six
3 swinging in my backyard and stuff, and I just knew
4 that I was getting ready to die right then, you
5 know. No question.

6 And so then I kept saying, I'll give
7 you money, whatever, just please don't shoot me.
8 And so he just said, Okay, open the door. And so it
9 is a sliding van -- you know, it had a sliding door
10 on the side of the van and so -- and it had no
11 windows, of course. And I opened it up and he had a
12 gun to my head. And I was still sitting in the van.
13 I gave him the money and just, just kept asking him
14 to please not shoot me.

15 Q And what hand did he have the gun in?

16 A His right hand to my head.

17 Q And how did -- to the back of your head or
18 --

19 A It was more on the side.

20 Q Okay. After he took the money -- and how
21 much money did he take from you?

22 A I had \$50, and the only reason that I
23 remember that was because I had went to Savannah
24 shopping that day. My mother had given me money to
25 go shopping with and I had it folded up in my purse

DIRECT EXAMINATION OF MINOR [REDACTED] BY MS. SWANSON

1 to give it back or what have you, to give it back to
2 her and it was in my purse.

3 Q After he took the money from you, what did
4 he ask you to do?

5 A He asked me to get out of the van and then
6 take my pants off and get on my knees and then he
7 asked me to perform oral sex on him, which I did.
8 And he had the gun to my head then, at the same
9 time. And so I did what he asked to do. And he
10 was -- and I was just, you know, he told me, he
11 said, Don't bite me and then he said -- I asked him,
12 Am I doing okay and then he said, Yes and then he
13 said, No, you are not doing okay right now, don't
14 tempt me or I'll shoot you, I will kill you. And
15 so -- and I did that.

16 And he said, Well, let's go down the
17 van and so he made me walk in front of him. And he
18 told me to go down in front -- walk in front of the
19 van and get on the ground and I was just so afraid
20 that he was going to shoot me. And I kept asking
21 him are you -- please don't shoot me. And I said,
22 Are we -- and he said, Get on the ground. And I
23 said, On the bare ground? And he said, Yes. And he
24 put his jacket on the ground for me and then we laid
25 down -- or I laid down on the ground and he pulled

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 one of my pants legs off and he performed oral sex
2 on me.

3 And then he had intercourse, vaginal
4 intercourse with me and ejaculated. And then he got
5 up and lifted his pants up and so I did the same.
6 And I just kept trying to talk to him and tell him,
7 you know, please don't shoot me, you know and
8 whatnot. And I was just trying to keep calm, remain
9 calm throughout as to not tempt him to shoot me.

10 Q Okay. When he was raping you vaginally,
11 what were you doing?

12 A Playing and just -- I kept staring up at
13 the sky trying to just, you know, hoped that it
14 would be over really soon. And then he said -- he
15 said he came too quickly, he said that he wished
16 that he hadn't done that, cum so quickly or
17 whatever.

18 Q All right. After he ejaculates and pulls
19 his pants back up, what does he do at that point?

20 A Well, I was just trying to, like I say,
21 talk nicely to him so and just be, you know, so he
22 wouldn't get aggravated and try to -- and shoot me.
23 And so I asked him if he had a cigarette and he
24 said, Yes, and he threw me a pack of cigarettes.
25 And then I smoked a cigarette and then he went to

DIRECT EXAMINATION OF MINOR [REDACTED] BY MS. SWANSON

1 light a cigarette and then he stood back and he
2 said, Oh, you have done seen my face now because I
3 guess the lighter or whatever may have lit up his
4 face more but . . .

5 Q Did he ever make any other efforts to
6 conceal his face?

7 A Yes, of course. He walked -- like I said,
8 he made me walk in front of him the whole night or
9 hold his hand in front of his face or turn away and,
10 you know, so I couldn't see him.

11 Q Did he eventually lead you back to the
12 van?

13 A Uh-huh. (Indicating affirmatively.) So,
14 we walked back up to the van and we were walking
15 up -- and the light was still on in the van, David
16 was hunched over and he was jerking. David was like
17 jerking and shaking, you know. And then the guy
18 said, Well, he's not dead. And then he asked if
19 that was my boyfriend and I told him, No, that was
20 not my boyfriend because I feared if I told him the
21 truth that he might kill me. So I said, No, he's
22 not my boyfriend, don't worry about it. And he
23 said, Well, I only had to kill him to get to you.
24 And then, like I said, he asked if David had a CB
25 radio in there because there were antennas up on the

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 sides of the van and I said, I don't think so, no.

2 And then he told me to get inside the van and throw
3 him the keys or -- and then to stay in the van until
4 I left, until he was gone.

5 Q So, he apol -- did he apologize to you for
6 killing David?

7 A He said, I'm sorry what I did to your
8 friend. And then he asked if that was my boyfriend.
9 I said, No. And he said, I'm sorry I did that, I
10 had to do that to get to you.

11 Q Okay. After he appears to have left, what
12 are you trying to do?

13 A Well, I looked at David to see -- I tried
14 to feel for his heart beat to see if he is still
15 alive or -- like I say, he had not made a sound.
16 You know, I hoped that he died immediately, you
17 know, without suffering. So I tried to see if he
18 had a pulse or a heart beat or what have you. I
19 couldn't tell. And his eyes were barely opened,
20 they were slanted. So I don't think that he was
21 dead. They were not obviously, and then I went to
22 the back of the van to look out to see if I could
23 see him around anywhere. From what I could see out
24 there I did not so I went back up to David and I was
25 trying to drag him out of the seat so I could get in

DIRECT EXAMINATION OF MINOR [REDACTED] BY MS. SWANSON

1 the van and drive us home and call the police. And
2 I couldn't drag him out, he was too heavy.

3 So that is when I decided to just
4 start running towards my home. So I got out of the
5 van and started running towards home. But when I
6 got out of the van and started running home there
7 were -- I saw headlights coming -- you know, I was
8 fixing to make the turn, you know, it wasn't -- I
9 could see, you know, obviously lights coming around
10 the curve and so I jumped into the ditch on the side
11 to hide until the car went by. And I didn't look at
12 the car. I kept my head down and hidden. And then
13 continued to run home and ran in the house and mom
14 was waiting up for me. And dad was in the bed and
15 mom was waiting up. And then I started screaming
16 and crying, you know, running inside telling her
17 what happened.

18 Q All right. So, you told your mom -- did
19 you tell your dad what happened as well, at that
20 point?

21 A Yes, I am just -- yes. Everybody freaked
22 out and Deborah my sister was gone at a friend's
23 house that night so it was just mom there and dad in
24 the bed. And when I was late. You know, at that
25 time it must have been 12:15 or so, I was late

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 coming in, so I ran in and started screaming that,
2 you know, that David had been shot and that I was
3 raped. And then, you know, everything went chaotic.
4 Mom and dad -- mom and I stayed there and she was
5 trying to calm me down.

6 And then dad ran out of the house to
7 go see what was going on. He ran to the scene to
8 see if he saw the killer or what, you know, he
9 didn't know if he was still there or what have you.
10 He just -- all he knew is that I came running in
11 screaming and crying. And then mother and I, I
12 guess she must have called the police because I
13 didn't. And then we went down there right after
14 that. Right -- all at the same time.

15 Q Okay. And then after you went down there,
16 did you speak with officers at that point?

17 A I'm sure I did. I told them what
18 happened, you know. I don't remember how many were
19 there or their names or anything, I just remember
20 telling them what happened and then they told me to
21 go to the hospital.

22 Q Did you give them a description of your
23 rapist?

24 A Yes, right then and there I told them that
25 he was a black male, you know, short afro, and that

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 was about it. And then . . .

2 Q About how old do you --

3 A Oh, in his early 20s is what I said, yes.

4 Or somewhere in the mid, you know, mid 20s, from
5 what I could, you know, make out what -- it is kind
6 of hard -- you know, the first thing that comes ut
7 of your mouth, you know, you just try to figure out
8 what he looked like, you know, just to give them any
9 type of description to go find him and what not
10 so --

11 Q Do you remember what kind of cigarettes he
12 was smoking?

13 A Well, yes, the pack that he handed me was
14 a Kool pack of cigarettes. You could -- I mean, I
15 smoked back then. I didn't smoke Kools back then.
16 I think that we smoked Winstons or whatnot. But a
17 Kool brand, I could make that out to see. And the
18 pack. He handed me the pack, you know. It wasn't
19 one cigarette, obviously, it was the whole pack.

20 Q Do you remember at all what the gun looked
21 like; large, small?

22 A I just remember it being like a pistol
23 sized. I don't know that much about guns but, you
24 know, it was held in his right-hand and you know, to
25 my head. So, it had to have been maybe four or

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 5 inches, I'm not sure you know.

2 Q So not a shotgun?

3 A No, not that big.

4 Q Let me ask you this: Did he appear to be
5 alone?

6 A Oh, yes. There was no one else around
7 there that I saw or heard.

8 Q Okay. So, you never heard any other
9 voices?

10 A No.

11 Q Besides the man that raped and murdered
12 David?

13 A Right.

14 Q Raped you and murdered David. Never saw
15 any other movement in the woods?

16 A No, huh-uh.

17 Q Never heard any bushes rustling?

18 A No.

19 Q When you got to the Beaufort Memorial
20 Hospital, did you go to the ER?

21 A Yes.

22 Q And who did you -- what doctor did you
23 see?

24 A Dr. Fontana.

25 Q Okay. And did he perform a rape kit on

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 you?

2 A Yes, he examined me. It was the first
3 time I had ever been examined by a doctor and after
4 all of that to have just happened, you know, of
5 course I'm highly upset and scared and worried and
6 didn't know whether David was dead or alive at that
7 point. And I was crying you know, crying and
8 everything but Dr. Fontana calmed me down and
9 helped, you know, was very nice to me. And he, you
10 know, he did whatever -- you know, whatever he did,
11 you know, down there, get the sample or whatnot of
12 the sperm.

13 Q And do you remember what you were wearing
14 that night, MINOR?

15 A Uh-huh. I do. Some things don't ever
16 leave your mind. But they were light blue corduroy
17 pants and a flannel, I think that it was dark and
18 light blue checkered flannel top.

19 Q Do you remember what your underwear, what
20 color your underwear were?

21 A No.

22 Q Okay. Did you leave all of your clothing,
23 your pants, underwear, at the hospital with
24 Dr. Fontana?

25 A Yes, they made me leave it all there. And

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 then he -- I believe that he gave me a pill to -- so
2 that to prevent pregnancy as well.

3 Q And when you ran home after having been
4 raped, you didn't make any stops between the
5 location and your house?

6 A No, no, I ran as hard as I could.

7 Q Did you change clothes or anything like
8 that at the house when you got there?

9 A No, we like I said, when I ran in I was
10 screaming, carrying on. And then mother and I went
11 straight to the -- back down there, you know, to see
12 what was going on, if the cops were there or what
13 have you.

14 Q Right.

15 A And then they told me to go to the
16 hospital and that is where we went.

17 Q Okay. Do you recall anything unusual
18 happening in May of 1980?

19 A Well, yes, the phone rang. We were up --
20 well, my sister and I were at the house. I'm not
21 sure what time of day it was. I'm sure that the
22 statement says. The phone rang, I answered the
23 phone. I was in my bedroom. And the person said --
24 he asked for my dad and I told him that he was not
25 there. And he said, He's still in Columbia. And I

DIRECT EXAMINATION OF MINOR [REDACTED] BY MS. SWANSON

1 said, No, he should be home anytime. And I started
2 to get scared of who this might be on the phone.
3 And then he asked -- they asked if Buster and Joe
4 still worked at the moving company, and they were
5 long time employees of my dad. Buster is still
6 living, Joe is not. I told him, Yes, they are still
7 employed there. And then he said, Do you -- what do
8 you do. And I said, I don't do anything there. And
9 he said, No, you never did do nothing.

10 And then he asked if I was the one
11 that was raped and I said, Yes, and he said, Well,
12 did you enjoy it. And I said, What in the hell do
13 you mean, and I hung up the phone. And I believe
14 that that phone call was from the same person that
15 raped me.

16 Q Did you recognize the voice?

17 A At first I did not. But at that -- I'm so
18 paranoid of anything, you know, only five months
19 after that, I just knew that he was going to come
20 back and get me and kill me because I was the only
21 witness, so I -- you know, and then as I'm listening
22 on the phone I'm trying real hard to hear, you know,
23 to make out his voice. And there was people
24 screaming on his end and kids or something on the
25 other end and it was hard to make out, but I believe

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 that it was him.

2 Q Did you attend David's funeral?

3 A Yes, of course.

4 Q Who did you sit with?

5 A We sat with the family underneath the
6 family tent that they -- you know how they have the
7 seats there at funerals. And we all sat there and
8 cried together.

9 Q Now, through the course of the
10 investigation, did the police ever show you any
11 line-ups?

12 A Yes, many.

13 Q Many line-ups?

14 A Yes. On paper, and then we went upstate,
15 I believe, somewhere to look at a live line-up.

16 Q So, you were involved in looking at
17 pictures of people that were possible suspects?

18 A Yes, they even came to my school one day
19 and it was urgent that they needed to show me or
20 something, you know, pictures. So, they came to my
21 school and I went to the principal's office and
22 looked at photos there.

23 Q All right. And did you ever see in any of
24 those photos, were you ever able to say, That is the
25 person that murdered David and raped me?

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 A No, I never did.

2 Q Were you able to point out certain
3 characteristics that reminded you of your rapist?

4 A Yes. Of course, I just remember the short
5 afro hair and his body type size or, you know.
6 Nothing really stood out on him that, you know,
7 tattoos or missing teeth or, you know, something
8 like -- of that nature that I would be able to
9 pinpoint down. But none of the pictures. And I
10 would say, Yes, he looks similar to this just to
11 give -- you know, hoping that that would help the
12 police find him if they knew more, you know, if I
13 could bring out similarities or what have you with
14 the people that I saw in those pictures.

15 Q Okay. And the police actually talked to
16 you about the composite, which has been entered as
17 State's 1, and were there certain things that looked
18 a little different to you in the composite? Do you
19 recall telling police --

20 A Well, the close afro, or maybe even the
21 nose was too big or the eyes. I can't remember
22 exactly what I said. Did I write a statement about
23 that somewhere? I mean, that was 38 years ago.

24 Q It is okay MINOR. But did you point out
25 some things that were not similar in the way that he

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 looked to law enforcement?

2 A Yes.

3 Q Okay. Do you recall telling them that
4 this doesn't look like him?

5 A Yes, definitely. But that is the best
6 that they could come up with, you know, when they
7 drew from, from the description that I gave them of
8 him. It was not, you know, I didn't get a perfect
9 look at him at all because he kept, you know, he was
10 either behind me with a gun on me or holding his
11 hands on his face or turning away, you know.

12 Q And so what was life like after the rape?
13 Were you out of school for a while?

14 A Yes, I was. Probably a week or two. I
15 couldn't go out. I didn't want to go out at
16 nighttime. I didn't want to go near a window or in
17 a room that was lit if it was dark outside. I
18 didn't want to drive anywhere. And just in general,
19 you know, just didn't want to -- just was afraid to
20 go anywhere because I was afraid that he was going
21 to be right there somewhere.

22 And we got a Doberman Pinscher
23 that -- it was attack trained and they taught me how
24 to, you know, to be with the dog or if someone tried
25 to get me to tell him to attack, you know, whatnot.

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 Q And did you rely on your big sister for
2 support as well?

3 A Yes. Everybody at the school and
4 everywhere was so supportive. And then, you know,
5 as far as sending me -- my teachers sent me flowers,
6 cards, asking me, you know, welcoming me back
7 whenever I was ready to come back to school. And
8 then the night after we got home from the hospital I
9 took -- about two or three in the morning, and I
10 took a very long hot shower because I felt
11 disgusting. And then I slept with my sister that
12 night and, you know, because I was scared. I mean,
13 everyday, you know, everyday of your life, you know,
14 you think that he's going to come get you.

15 Q And so when did you learn that this case
16 was being reopened?

17 A In 1999 Detective Bromage came to me and
18 said that Sheriff Tanner was opening -- had a team
19 that was especially for all of the cold cases in the
20 county, at that time. So, he said you know, they
21 are reopening them up looking at them all over again
22 and hopefully, you know, we can go somewhere with it
23 and I was like you know, thanking God for that you
24 know.

25 Q So, over the next 20 years, almost, you

DIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 continued to work with Captain Bromage on this
2 investigation?

3 A Uh-huh. (Indicating affirmatively.)

4 Q And cooperated with law enforcement?

5 A Yes, yes.

6 MS. SWANSON: Thank you, MINOR. I have
7 nothing further at this time.

8 MS. CAMPBELL: May we approach?

9 THE COURT: Sure.

10 (Off-the-record discussion held.)

11 THE COURT: Ladies and gentlemen, it is
12 time for lunch. Let's be back at 2:00. I will
13 remind you, don't let anyone talk to you about
14 the case. You don't talk to anyone about the
15 case. See you back at 2:00, ladies and
16 gentlemen.

17 (Lunch recess.)

18 (The jury enters the courtroom at 2:03 p.m.)

19 THE COURT: Welcome back, ladies and
20 gentlemen. We are ready to begin with the
21 cross examination of the witness. Counselor.

22 CROSS EXAMINATION

23 BY MS. CAMPBELL:

24 Q Good afternoon. So, MINOR, I'm just going
25 to start out a little bit here working with you to

CROSS EXAMINATION OF MINOR [REDACTED] BY MS. CAMPBELL

1 try to figure out a good idea of who was living in
2 your home on that -- at that period of time. Okay.

3 A Uh-huh. (Indicating affirmatively.)

4 Q So, your father, who was that?

5 A Johnny Weed.

6 Q All right. And your mother?

7 A Marie Weed.

8 Q And of course you were there?

9 A Uh-huh. (Indicating affirmatively.) Yes.

10 And my sister Deborah.

11 Q And D-E-B-R-A?

12 A D-E-B-O-R-A-H.

13 Q Okay. And in 1980, you said that you were
14 15; and how old was Deborah?

15 A She was 19.

16 Q Okay. Now -- at 19, was Deborah married?

17 A No, huh-uh.

18 Q Okay. Did Deborah eventually marry?

19 A Yes.

20 Q What is her married name?

21 A Deborah Larson.

22 Q Okay. And who is her husband?

23 A Mike Larson.

24 Q Okay. And when did they marry?

25 A In September of that year, 1980.

CROSS EXAMINATION OF MINOR [REDACTED] BY MS. CAMPBELL

1 September 20th, 1980.

2 Q Okay. And David --

3 A Uh-huh. (Indicating affirmatively.)

4 Q -- the David, do you remember his mom's
5 name.

6 A I just remember Ms. McKenzie. No, I don't
7 remember her first name.

8 Q McKenzie would be her first name?

9 A No, I only refer to her as Ms. McKenzie.

10 Q McKenzie was her last name?

11 A Yes, last name.

12 Q So, was there a stepfather then?

13 A I believe so, yes.

14 Q Okay. And so you said that your family
15 lived at Salem Point, right?

16 A Uh-huh. (Indicating affirmatively.)

17 Q And they lived?

18 A At the end of the Sam's Point Road on
19 Lady's Island, Coosaw island.

20 Q Now, Deborah Larson, your sister and her
21 husband Mike, was he ever involved in your father's
22 business, Carolina Moving and Storage?

23 A He started working there probably when he
24 was 16 or 17, so he was -- they were both working
25 there at the time in 1980.

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 Q Okay. You in 1980 were a high school
2 student, right?

3 A Yes.

4 Q And you went went to Beaufort Academy?

5 A Uh-huh. (Indicating affirmatively.)

6 Q That was a private school, correct?

7 A Yes.

8 Q In 1980 the private school, Beaufort
9 Academy, it had a tuition?

10 A Uh-huh. (Indicating affirmatively.)

11 Q So, in other words you had to pay money to
12 go there?

13 A Yes.

14 Q Right. And you weren't on any sort of
15 financial aid, scholarship, or anything like that?

16 A No, huh-uh.

17 MS. SWANSON: Your Honor, I'm going to
18 object to this line of questioning as far as
19 relevance goes. I'm not sure what tuition or
20 what the Weed family had to pay for MINOR to go
21 to school has anything to do with the man who
22 raped her or her rendition of that rape.

23 MS. CAMPBELL: I'm sorry, the solicitor
24 asked her where she went to school. I was just
25 getting some more information about that.

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 I'll be happy to move on. Thank you.

2 THE COURT: All right.

3 BY MS. CAMPBELL:

4 Q So, your home in Salem Point, that was a
5 brick home; correct?

6 A Yep.

7 Q And it was on the water, correct?

8 A Yes, ma'am.

9 Q Okay. And at the time did you have the
10 dock then, in 1980?

11 A We never had a dock.

12 Q You don't have a dock?

13 A Huh-uh.

14 Q Okay. And so in January of 1980 when you
15 were out with David, you went to the bowling alley?

16 A Uh-huh -- sorry, yes.

17 Q So you went to the bowling alley?

18 A Yes.

19 Q You went to a party on Lady's Island,
20 right?

21 A Yes.

22 Q And that would have been -- now, was that
23 a house or a trailer?

24 A It was a trailer I believe.

25 Q Yes, a trailer on Lady's Island?

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 A Uh-huh. (Indicating affirmatively.)

2 Q And in the trailer was Bernadette Jagy and
3 was it Mike Jagy?

4 A No, Mark and Bernadette were brother and
5 sister and that is the only people -- I only knew
6 the Mark fellow. I think that he was at the bowling
7 alley and I think we followed him out there. She
8 was there and then some other person, I do not even
9 know who it was that lived there. I didn't know
10 anybody but the Mark fellow and we followed him out
11 there from the bowling alley.

12 Q Now, there were folks at the trailer that
13 were drinking alcohol, right?

14 A They were.

15 Q Okay.

16 A They had beer and --

17 Q There were folks at the trailer who were
18 smoking marijuana, correct?

19 A I do not remember that.

20 Q Okay. And when you left the trailer on
21 Lady's Island with David in the van, you went to
22 Burger King; is that right?

23 A Yes.

24 Q Okay. And in some of the statements that
25 you have given you said that when you went to Burger

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 King David had to sort of count his pennies to pay
2 for what y'all ate at Burger King?

3 A No, I don't -- I didn't -- I don't
4 remember that.

5 Q All right. David had dropped out of high
6 school, correct?

7 A Correct.

8 Q And I think that you testified that he
9 worked with the HVAC company?

10 A Uh-huh. (Indicating affirmatively.) Yes.

11 Q But he also worked as a shrimper, correct?

12 A I think that's part-time or with his
13 buddies or whatnot but not -- he mainly worked with
14 the Rutland family. The person who owned Rutland
15 Heating and Air Conditioning was his best friend,
16 Paul Rutland, and they were buddies and he went to
17 work with him.

18 Q And you testified that you brought him to
19 meet your family.

20 A Correct, David.

21 Q Yes, and you were sitting in the front
22 passenger seat of David's van on January 5th, 1980,
23 on a dirt road in Beaufort County South Carolina
24 around 11:50 p.m.?

25 A Yes, correct.

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 Q And that dirt road, which is evidenced by
2 the map, if you can see it, is the dirt road close
3 to the water and close to your home, correct?

4 A Yes.

5 Q Okay. And when you were in the van, David
6 was sitting in the driver's seat next to you, right?

7 A Right.

8 Q Ask he cut off the van?

9 A Yes.

10 Q And at that point did he leave the keys in
11 the ignition?

12 A As far as I can remember, yes.

13 Q Now, there's no lights on in the car at
14 that point, correct?

15 A Yes, there are lights on.

16 Q Tell me about that. What light is on?

17 A The light right in the center middle front
18 between he and I.

19 Q So it's a light in the front?

20 A Right.

21 Q But not in the back, correct?

22 A It would be dark in the back, yes.

23 Q And the other radio was on or off?

24 A I don't remember.

25 Q And no street lights?

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 A No. Correct.

2 Q No flashlights?

3 A No.

4 Q Pretty much no lights in the woods at all?

5 A Right.

6 Q Yeah. All right. So, for a few minutes

7 prior to when the two of you were sitting in the

8 front of the van, you had been in the back of the

9 van; correct?

10 A We started in the front, went to the back,

11 and ended in the front.

12 Q Correct. Started in the front, went to

13 the back, came back to the front?

14 A Right.

15 Q In the back of David's van there was a

16 couch, correct?

17 A Yes.

18 Q And you testified in the back of the van

19 that you were talking with David, correct?

20 A Yes, because he had puked twice that night

21 in the last hour, and so we were discussing what was

22 wrong with him. And I was urging him to go to the

23 doctor.

24 Q Do you ever recall telling law enforcement

25 that you may have been kissing with David in the

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 back of the van?

2 A I may have told them that we were talking
3 and snuggling, yes.

4 Q You know, David and your relationship had
5 involved sexual intercourse, correct?

6 A We had.

7 Q Okay. And so, at some point, maybe around
8 11:55 you have testified that someone shot through
9 the passenger side window of the van, right?

10 A Yes.

11 Q And that the -- the window glass
12 completely shattered?

13 A Yes, all on to me. I felt the pressure
14 and the glass falling on me and I smelled the
15 gunpowder.

16 Q And the window glass in the driver's side
17 window completely shattered?

18 A I did not notice that, but that's what the
19 police report said, because obviously when David was
20 over there the bullets must have went straight
21 through his window as well. But I touched -- never
22 went out that door, obviously, or touched it or
23 wasn't --

24 Q When you say that is what the police
25 report said, I'm assuming that you have read the

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 police reports in this case?

2 A I guess not the police reports, but I
3 guess the newspaper reports or what have you. And
4 also his van was parked in the Sheriff's lot
5 afterwards, after they had, you know, gone and
6 brought it back. So, you could see that both of the
7 windows were shot out.

8 Q Completely out?

9 A As far as I can remember.

10 Q Okay. And you had testified that you had
11 had \$50 on you?

12 A Uh-huh. (Indicating affirmatively.) Yes.

13 Q And that was from a shopping trip to
14 Savannah?

15 A Right.

16 Q And that you turned that money over to
17 your assailant, correct?

18 A Yes.

19 Q Okay. As you had a gun to your head,
20 correct?

21 A Yes.

22 Q And that the gun was in the right hand of
23 your assailant, correct?

24 A Yes.

25 Q And you said that he counted out the money

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 in front of you; is that right?

2 A When I handed it to him he looked at it
3 and yes.

4 Q In his left hand?

5 A I'm guessing so, yes, he had the gun in
6 the right hand.

7 Q And I'm just trying to make sure that I
8 understand. So the dome light was on when you were
9 in the front seat when the window shatters?

10 A Right.

11 Q Okay. You are taken out of the van,
12 correct?

13 A He told me to open the door and then he
14 told me to get on my knees, so I did what he said.
15 When you have a gun to your head you pretty much do
16 what someone tells you to do.

17 Q And you are sexually assaulted?

18 A Yes.

19 Q And taken back to the van?

20 A Right.

21 Q And your reported assaulter then tells
22 you, Give me the keys to the van?

23 A Yes.

24 Q And you retrieve the keys from where?

25 A I am guessing out of the ignition because

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 we weren't planning on going anywhere when we sat
2 there and parked so we just left the keys in there,
3 so I'm sure that I grabbed them and gave them to
4 him.

5 Q Then this person left with the keys to the
6 van?

7 A He left with the keys and he said that he
8 would throw them in the dirt, just to wait until he
9 was out of sight and gone before I left or I came
10 out.

11 Q Okay. So, on this dirt road that is off
12 of, essentially, another dirt road; correct?

13 A Yes, about 5 feet off of the main dirt
14 road.

15 Q To go down to the hard surface road?

16 A Yes.

17 Q To then get to your house?

18 A Right.

19 Q The man said that he would drop the keys
20 in the road for you; is that what he said?

21 A I -- yes, that is what he said. He said
22 that he would drop the keys in the road.

23 Q So I guess forgetting that you didn't have
24 the keys you, at that point, went to try to move
25 David and start the van up, right?

CROSS EXAMINATION OF MINOR [REDACTED] BY MS. CAMPBELL

1 A I was going to -- that was my thought
2 process at that time. It's kind of hard to think
3 and absorb what is happening to you. So, yes, I
4 went to try to pull him out quickly thinking that I
5 needed to get home as quick as possible to call for
6 help. So, I tried to pull him out. And then --
7 but, obviously I could not pull him out, like I
8 said, so I just decided just to run. And I saw the
9 keys on the ground right behind the van and I just
10 picked them up and ran with them also.

11 Q Right. So, let me back up just a little
12 bit. So, in trying to move him in your statement
13 out of the driver's seat so that you could drive the
14 van, you became in contact and had a great deal of
15 his blood on you, correct?

16 A I tried to pull him out. But I don't
17 remember a lot of blood like you would imagine, but
18 there was blood there.

19 Q I am sorry. Just so I'm clear, I'm
20 hearing you testify that you found the keys to the
21 van on the ground at the back of the van?

22 A On the ground right -- behind the van on
23 the main dirt road that we were pulled into. The
24 road was perpendicular and we pulled right in and he
25 threw the keys right there on the ground right

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 behind the van. And I just happened to see them
2 when I was running and --

3 Q Okay. And so you take off out of the van
4 because you have realized that you don't have the
5 keys?

6 A No, I realized that I couldn't pull him
7 out of the car to drive or whatnot so then I decided
8 to just make -- to run, to get home as quick as
9 possible.

10 Q I think that we are saying the same thing.

11 A Okay.

12 Q Which is that you gave the keys to this
13 person?

14 A Uh-huh.

15 Q You tried to move David?

16 A Uh-huh. (Indicating affirmatively.)

17 Q You realized that you didn't have the keys
18 and he was heavy, so you made the decision to run
19 home for help?

20 A Right.

21 Q Okay. And while you are running home for
22 help you happen to find the keys to the van in the
23 road?

24 A Right, behind the van.

25 Q On your way home?

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 A Yes.

2 Q Now, you had or had not parked with David
3 at the Lover's Lane before this night?

4 A I feel like we had, but I can't recall any
5 particular time. That is 38 years ago and I -- you
6 know.

7 Q In finding your way home that night from
8 the cut in the road, can you help me understand the
9 way that you went to get to your road down here?

10 A This is where we were parked, and I ran
11 straight this way. It turns into a paved road right
12 there. And I went straight. That is Salem Drive
13 West.

14 Q Okay.

15 A Took a left on Plantation and to my house
16 down on the right.

17 Q And the ditch that you jumped into, where
18 was that?

19 A Rgiht -- as soon as I got out and started
20 running, about right here. But this -- right, yeah,
21 the road curves and dirt, yeah.

22 Q Okay. And you don't recall if you had
23 ever parked there before this night?

24 A Not -- no, I don't -- I cannot remember.
25 I don't remember.

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 Q That is fine. I think that we -- you
2 testified that your father was Johnny Weed?

3 A Yes.

4 Q And that he was the owner of Carolina
5 Moving and Storage Company --

6 A Yes.

7 Q -- in town. And the scenario when you are
8 telling us that you went back to the house, I think
9 that you testified that your mother was awake?

10 A Yes.

11 Q And that your father was asleep in bed, or
12 just in bed?

13 A Yes, I think that he was sleep.

14 Q And help me again now, who -- did your
15 father go down there by himself?

16 A At first, yes, he did. He tore out of the
17 house because I was screaming and carrying on that
18 David had been shot and that I was raped. And then
19 mom stayed there to help me calm down and he tore
20 off out of the house and then mother and I went
21 shortly thereafter.

22 Q So, did your father drive there or run
23 there?

24 A Yes, I am sure that he did.

25 Q What was your father driving?

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 A I could not tell you.

2 Q What kind of car did your father have in

3 January 1980?

4 A He had a pick-up truck.

5 Q A truck?

6 A He always drove a truck. I couldn't tell
7 you what make, model, brand, or anything it was.

8 Q So, when the police officer showed up that
9 night, your father's truck should have been there by
10 the van; correct?

11 A Yes.

12 Q Okay. And this blue car that was there,
13 who -- how did you and your mother get down there?

14 A We drove a car.

15 Q What color was that car?

16 A I could not tell you. I don't know.

17 Q So you rode down there with your mother?

18 A Yes.

19 Q Okay.

20 A Yes.

21 Q And your father left the house in his
22 truck. Did you see him armed at that time?

23 A I don't recall if he was or not.

24 Q And do you remember how you called the
25 police about all of this?

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 A I didn't. I guess -- I'm thinking that my
2 mother must have because back then we didn't have
3 cell phones.

4 Q This is true. So, then how long do you
5 think then that you waited with your mother at the
6 house before --

7 A Before we left?

8 Q -- the two women, yes, left to go back to
9 the van?

10 A I would say within five minutes at the
11 tops.

12 Q And I'm just curious, did and you and your
13 mother discuss that it might not be safe for the two
14 of you to go --

15 A No, you don't.

16 Q -- down there?

17 A No, we were not thinking anything of that
18 nature. We just went out there to get -- to go
19 there and I guess to be with dad to see what he
20 thought. I was scared to go.

21 Q Okay. So, when the police got there, are
22 you telling us that you and your mother and your
23 father were there at the van with David?

24 A Yes.

25 Q Okay. Of course your father wound up in a

CROSS EXAMINATION OF MINOR [REDACTED] BY MS. CAMPBELL

1 little altercation with the officer that night?

2 A Yes, I believe so, that is what -- right.

3 Q They wound up carting him off to jail that
4 night, right?

5 A I believe so, yes.

6 Q And you -- when you went to the hospital
7 you, I guess, didn't really know at that point what
8 was to become of David at that point, you didn't
9 know whether he was alive or dead?

10 A Right. I was upset and crying and all,
11 correct.

12 Q I think that you reported to, perhaps,
13 Officer Bromage, but do you remember talking about
14 the friendship that your father had with Morgan
15 McCutchin, the sheriff?

16 A I don't recall anything, no. I mean, I
17 know that they were friends. I know they -- we
18 didn't socialize with them or have parties with them
19 or I have never been to his house. I don't know, to
20 my knowledge, you know, mom and dad didn't socialize
21 with them. I think that they were just buddies
22 having been in town.

23 Q Do you recall being questioned by Officer
24 Sankowski and Officer Bromage in 1999 about what
25 happened this night?

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 A Yes.

2 Q Okay. And do you recall them asking you
3 about the relationship between your father and
4 Morgan McCutchin or discussing that with them?

5 A I don't remember the conversation.

6 Q Okay. At the request of the Sheriff's
7 Department in 1980 you wrote a statement on
8 January 7th, 1980; correct? I'll be happy to hand
9 them to you as we go through them.

10 A If that's what the date is on there, that
11 is what I wrote.

12 Q Okay. I'm going to approach. If you will
13 just take a look at that and confirm that is the
14 written statement?

15 A This is, yes, my statement.

16 Q That you made in 1980. On January 7th,
17 just a couple of days after this was reported;
18 right?

19 A Yes, uh-huh. (Indicating affirmatively.)

20 Q Okay. I'll take that. And you then were
21 asked to write a statement and did write a statement
22 on January 11th, 1980, and I'll pass that up to you.
23 If you can just confirm that that is your signature.

24 A Yes.

25 Q Okay. And in this particular instance you

CROSS EXAMINATION OF MINOR [REDACTED] BY MS. CAMPBELL

1 are actually writing about looking at photographs of
2 individuals suspected of being the perpetrator?

3 A Yes.

4 Q And you select number eight as having the
5 same profile, correct?

6 A That he resembles him, yes. That is what
7 it says and that is the way that it was.

8 Q You were asked then on January 15th to
9 write another statement about what happened. And
10 I'll flip over and if you can look at your signature
11 there.

12 A Yep, that is correct.

13 Q And then again on May 2nd, 1980, you make
14 a statement with law enforcement. Is that your
15 signature?

16 A Yes, ma'am.

17 Q Okay. And in that statement you are
18 telling the officers that -- who is Diane Larson?

19 A That was David's sister.

20 Q Okay. So, David okay. So, David had a
21 sister named Diane Larson?

22 A Yes.

23 Q Okay. And Diane was waiting for you after
24 school that day, right? Would you like to see your
25 statement?

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 A Yes, I didn't read it.

2 Q Perfect.

3 A Yes, I remember that.

4 Q And when she was waiting for you after
5 school, she was wanting to provide you information
6 on who they thought the shooter was?

7 A That's right.

8 Q Okay. And that information -- who is this
9 Danny that says he knows who it is?

10 A That is his brother.

11 Q David's brother?

12 A Yes.

13 Q So, David's brother and David's sister
14 have a suspected shooter in mind?

15 A And I was like, Great, let's tell the
16 police. So we told the police and that is the last
17 I heard of it.

18 Q Yes. And then again on September 9th you
19 are shown 24 photos, and I'll give you a copy of
20 that statement as well. Is that your signature?

21 A Yes.

22 Q Okay.

23 A Yes.

24 Q And you are indicating that one of them
25 looks the most like the man that attacked you?

CROSS EXAMINATION OF MINOR [REDACTED] BY MS. CAMPBELL

1 A Yes.

2 Q Okay. And you also talk about this
3 composite sketch that law enforcement did, right?

4 A They asked me to describe to the best of
5 my ability of what he looked like, which, you know,
6 it was hard to see on a dark night, and I didn't
7 really look at him.

8 Q Okay. So, if you could just help us out
9 with the problems that you had of the composite
10 sketch that you had given to law enforcement. So,
11 by September what was wrong with the composite
12 sketch?

13 A It resembled the guy. I wrote down his
14 eyes were too big or except for his eyes were too
15 big. And the nostrils at the bottom were too wide
16 and big and the lips were too small. The mouth
17 should be bigger. So --

18 Q Okay. So, most of it was incorrect, about
19 the original composite?

20 A I just --

21 Q Eyes are too big, nostrils are too wide
22 and big and mouth is too small.

23 A I don't think that it was incorrect. At
24 the time that I gave them the description that is
25 all that I could remember at that time. So you try

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 to rack your brain to remember anything that you
2 can.

3 Q On January 23rd, 1981, you did pick out a
4 black man from a six-person photo line-up?

5 A That resembled him, yes. But I didn't
6 day, This is the guy. I never picked anyone out. I
7 said, This guy looks or resembles him so I could
8 give the police maybe a better idea of a profile to
9 look for.

10 Q Do you recall picking out number four at
11 the penitentiary as the black man who attacked you?

12 A No, I do not. I did not.

13 Q Were you ever informed why that individual
14 was excluded as your attacker?

15 A Probably because I said that was not him.

16 Q Okay. And your father passed away in
17 1983, correct?

18 A Yes, January 16th.

19 Q Now, did you take over the business?

20 A No.

21 Q Who took over the business?

22 A My sister, who was out of high school
23 since '78, she had been working there since 1978
24 when she graduated and then she -- so, he was
25 training her to help run the business. And we also

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 had a manager there, her name was Laura Kiyemi, she
2 is Hawaiian, and she was managing the business.
3 Like when my mom and dad would go out of town and
4 things like that, she would stay and be in control
5 becuae Deborah and I, you know, were still in high
6 school when she was there. And then Deborah started
7 working there in '78 and was, you know, dad was
8 helping her train her in the business, to run the
9 business. And then I came along in 1982. And then
10 dad died in '83.

11 Q Right. And in -- jump forward to 1999.

12 A Uh-huh. (Indicating affirmatively.)

13 Q You are informed that the new sheriff at
14 the time is putting together sort of a special unit
15 to go through cold cases; is that a air statement?

16 A Yes, that's exactly what he said pretty
17 much.

18 Q And you talked with Officer Sankowski and
19 Officer Bromage in '99?

20 A Yes.

21 Q Wasn't it Officer Bromage who really asked
22 you the questions in that 1999 interview?

23 A I think so. I mean, I think so. I know
24 that I have just spoken with him so much over the
25 last years, since 1999, since the sold cases were

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 being investigated more thoroughly. And he has
2 always been on this case and, you know, stuck with
3 it and very passionate about finding the killer.

4 Q Okay. And in your conversation and
5 interview by Officer Sankowski and Officer Bromage,
6 you know, you tried to give them information as best
7 you could about what you could remember about this
8 case; is that fair?

9 A Of course.

10 Q It sounds like you respect Officer
11 Bromage, correct?

12 A I do.

13 Q Okay. And could we say the same thing
14 about Officer Sankowski?

15 A Yes. I have no reason not to respect him.

16 Q Okay. And that they would -- they would
17 accurately report what you said to them, right?

18 A I would hope so, yes.

19 Q Yes, okay. And do you have any concern
20 that you, you know, are expressing in '99 fears to
21 these officers by saying, Ask my mom if dad could
22 have done this; what is that about?

23 A I don't -- just because there were rumors
24 going around that dad had something to do with it,
25 which is ridiculous, so I guess that is why I

CROSS EXAMINATION OF MINOR [REDACTED] BY MS. CAMPBELL

1 mentioned that to him.

2 Q So, I could take that to mean, if you are
3 reporting to Officer Sankowski and Officer Bromage
4 that you had this conversation with your mother
5 wondering if dad could have been involved with this,
6 that you actually had that conversation with your
7 mother?

8 A I guess I did. I can't -- if I wrote
9 that. Did I write that? I don't believe that I
10 wrote that in a statement.

11 Q Now, passenger side window shattered out,
12 we have established that; correct?

13 A Yes.

14 Q While you are sitting in it is your
15 testimony?

16 A Yes, and my seat is pushed back a little
17 farther than his, remember.

18 Q And you walk away from this situation and
19 you have no cuts whatsoever --

20 A Correct.

21 Q -- on your face?

22 A That is right.

23 Q At all?

24 A Correct.

25 Q And no cuts on your arms, no damage to you

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 in terms of any abrasions, cuts, anything from this
2 shattering glass, correct?

3 A Right.

4 Q Okay. And I know you recall in your
5 descriptions to law enforcement in 1980 that the
6 person who assaulted you was shorter than you were,
7 correct?

8 A If I -- whatever I said to them was to the
9 best of my ability to give them a description,
10 because you have to remember, when I was sitting in
11 the van he was outside. I was on my knees after I
12 was in the van, which is higher up than, you know,
13 the ground obviously. And then, when I came out of
14 the van I was on my knees and every other time that
15 evening I was in front of him or on the ground being
16 raped. So to the best of my ability I could judge
17 from those instances where I was what his size,
18 shape, and color was.

19 Q So you done your best?

20 A Uh-huh. (Indicating affirmatively.)

21 Q And you knew that your best, at that
22 point, you were aware that they were taking that
23 information as a factor in who the suspect might or
24 may not be, that the height between 5'5" and 5'7",
25 because you were at least 5'8", maybe 5'9", right?

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 A I believe so, yes.

2 Q Was a factor that these officers were
3 going to rely on in weeding through the potential
4 suspects?

5 A Well, I didn't have a measuring stick so I
6 couldn't exactly measure how tall he was, but from
7 my recollection that night, you know, when you can't
8 really understand what is happening to you much less
9 give them the best description that you can.

10 Q I understand that. I'm not saying that
11 you had a measuring stick.

12 A He could have, you know, been 5'4" or
13 5'10", anywhere in that way.

14 Q I respect that it was important to you to
15 get it right. And to the best of your ability you
16 feel like you got it right in what you told law
17 enforcement, right?

18 A I feel like that's my feeling that night
19 what his height was. But I would not be -- I would
20 not tell them, I know for a fact he was 6'7" or 5'6"
21 to 5'8".

22 Q No, because what you said was, He was
23 shorter than I am?

24 A I don't know if I said that. I never
25 stood up beside him. I was never standing beside

CROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 him, so my opinion from how tall he was was from
2 looking up at him on my knees or out of the van or
3 on the ground. That is my opinion where I formed
4 that. I never stood beside him like you would, you
5 know, if you are standing beside someone and want to
6 know how tall they are, you know.

7 Q Okay. Is that it?

8 A Yes, that's it.

9 Q You testified for the solicitor that
10 Dr. Fontana gave you a pill to prevent pregnancy,
11 correct?

12 A I believe so, yes. But I'm sure that he
13 can tell you what his medical records show. I was
14 not in the best state of mind at that point.

15 MS. CAMPBELL: One second, Your Honor, beg
16 the Court's indulgence.

17 THE COURT: Okay.

18 (Pause.)

19 MS. CAMPBELL: That is all that I have.

20 REDIRECT EXAMINATION

21 BY MS. SWANSON:

22 Q MINOR, when we were talking about what you
23 were wearing that night; were you wearing anything
24 over your flannel shirt?

25 A I had on a coat, but I don't know where it

REDIRECT EXAMINATION OF MINOR [REDACTED] BY MS. SWANSON

1 is now. I mean, I don't -- I had a coat that I had
2 on that night. It was a little white coat.

3 Q Okay. So, that white coat, did you have
4 that on when you were moving David?

5 A I'm going to say I don't believe I did.
6 The reason I say that is because when we were --
7 when he had made me go, when he made me go in front
8 of the van where he raped me I didn't have my coat
9 on then because we, remember, had been sitting in
10 the van inside so I didn't have my coat on then.
11 And then when we came back up to the van, you know,
12 he told me to stay in the van until he left and the,
13 you know, the scenario. I must have grabbed it. I
14 know that I got my purse, so I probably did grab my
15 jacket and head out. The point when I tried to move
16 David I don't think that I had it on. I don't know
17 for sure.

18 Q We just don't know what happened to that
19 coat?

20 A I guess I left it at the house when I ran
21 home, you know, when mom and I went to leave to go
22 to the hospital.

23 Q You don't remember wearing it to the ER?

24 A No.

25 Q Did you tell your dad where David had been

REDIRECT EXAMINATION OF MINOR BY MS. SWANSON

1 shot, like the physical location of the van?

2 A I did. I am sure I had to. I don't
3 remember exactly what words I said. I probably told
4 him, Down the dirt road, down there on on the left I
5 am sure.

6 Q How far is that from your house?

7 A Maybe half mile, or maybe a mile at the
8 most.

9 Q Did your father shoot David?

10 A No.

11 MS. CAMPBELL: Objection to the question,
12 Did your father shoot David.

13 MS. SWANSON: She is the only living eye
14 witness. I'm not sure why she wouldn't be able
15 to say that.

16 THE COURT: I'll overrule the objection.

17 BY MS. SWANSON:

18 Q Did your father shoot --

19 A No.

20 Q Did you ever see him out there prior to
21 running home?

22 A No.

23 MS. SWANSON: Thank you MINOR. That is
24 it.

25 RE-CROSS EXAMINATION

RECROSS EXAMINATION OF MINOR BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q Following up to the solicitor's question
3 about did your father shoot David, in 1999 in your
4 mind, in your conversations with your mother, you
5 suspected that your father had been involved because
6 you discussed it with her, do you think dad would
7 have been --

8 A I don't even remember discussing it with
9 her. I remember -- I'm not sure if Detective
10 Bromage asked me or I can't remember what, but I
11 mean it's not like I -- I'm not sure what you are
12 getting at.

13 Q But you do remember talking to your mom
14 and asking your mom, Do you think dad could have
15 been involved in this?

16 A If that's what I told the detectives, then
17 that -- is that what I told the detectives? I mean,
18 I guess I did, you know, I don't have any idea.

19 MS. CAMPBELL: That is all that I have.

20 Thank you.

21 MS. SWANSON: Thank you. And may MINOR
22 be able to go back to the gallery.

23 THE COURT: Please.

24 MS. SWANSON: State calls Frank Trefny.

25 Thereupon,

DIRECT EXAMINATION OF DR. FRANK TREFNY BY MS.
SWANSON

1 DR. FRANK TREFNY

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SWANSON:

6 Q Good afternoon, Dr. Trefny. How are you?

7 A Fine.

8 Q Tell us what you were doing in 1980.

9 A In 1980 I was a pathologist at Colleton
10 Regional Hospital in Walterboro.

11 Q Okay. And tell us briefly about the
12 education and the training that led you to that
13 profession?

14 A I graduated from the Medical College of
15 Virginia in Richmond in 1964. This was followed by
16 rotating internship at the Naval Hospital New Port
17 Rhode Island where I was trained to be a DMO.
18 Subsequently went into pathology with specialty
19 training in forensic pathology later on in my time.

20 Q Okay. And actually did you do some
21 forensic pathology training in New York; is that
22 right?

23 A I had -- my first experience with forensic
24 training was with the chief medical examiner in
25 Virginia when I was in medical center. We were

DIRECT EXAMINATION OF DR. FRANK TREFNY BY MS.
SWANSON

1 required to do forensic pathology. During my
2 pathology rotation at the Naval Hospital St. Alman's
3 was followed by what included two months of rotation
4 with the medical examiner's office of New York City.

5 I came down to Charleston, I don't
6 know, I think that it was 1974 as director of the
7 laboratory in pathology there. And went to the
8 Medical University with Dr. Gordon Hinniger
9 (phonetic) and became a fellow in forensic
10 pathology. And subsequently became board certified
11 in forensic pathology and also board certified in
12 clinical anatomical pathology.

13 Q Opkay. Have you ever testified in the
14 court as an expert in forensic pathologist?

15 A Yes, I have.

16 Q About how many times, if you can even
17 remember?

18 A I have no idea.

19 Q Okay. But multiple times?

20 A Multiple times.

21 MS. SWANSON: At this time the State would
22 offer Dr. Trefny as an expert in forensic
23 pathology.

24 MS. CAMPBELL: No objection.

25 THE COURT: Motion will be granted.

DIRECT EXAMINATION OF DR. FRANK TREFNY BY MS.
SWANSON

1 BY MS. SWANSON:

2 Q Doctor, do you have a copy of your report
3 in front of you?

4 A Yes, I do.

5 Q Okay. Did you have an opportunity to
6 conduct an autopsy on David Krulewicz?

7 A Yes, I did.

8 Q And when did you conduct that autopsy?

9 A That was conducted on January 6, 1980.
10 First we started at I think 11:30 in the morning.
11 It was in the morning in the autopsy room of
12 Beaufort Memorial Hospital.

13 Q All right. And what kind of clothing did
14 he have on?

15 A When I first saw him he had on -- and I'm
16 going to read this.

17 Q Yes, sir.

18 A Shoes, tan shoes of suede composition.
19 Pair of blue socks. Pair of blue jeans with a
20 leather belt. Pair of white Jockey shorts. A
21 yellow shirt and sweater. The yellow shirt and
22 sweater had been cut. There were bullet holes
23 present in the shirt and sweater.

24 Q Okay. Did the yellow shirt have blood on
25 it?

DIRECT EXAMINATION OF DR. FRANK TREFNY BY MS.
SWANSON

1 A I really can't tell you and can't
2 remember. It is not here in the report.

3 Q Sure. Any clothing, would that have been
4 turned over to the Sheriff's Office?

5 A Representatives of the law enforcement.

6 Q What sort of injuries did you find on Mr.
7 Krulewicz?

8 A He had three bullet holes in him. These
9 are arbitrarily numbered starting with most
10 superior. Gunshot wound number one was present in
11 the head. It was present two and a half -- 2 inches
12 from the top of the head. So, 2-inches down and 3½
13 inches to the right of the midline, so in this area
14 here approximately.

15 The gunshot wound showed an abrasion
16 color which is where the bullet went through the
17 skin. There was no powder or stippling around it.
18 The bullet went through the skull causing fracture
19 of the skull at the point of impact. After passing
20 through the skull the bullet separated and a
21 fragment was left in the skull.

22 The larger fragments passed slightly
23 to the right upward ricocheting off of the skull.
24 It was found in the right front lobe. The other
25 fragment went downward and was found in the midline

DIRECT EXAMINATION OF DR. FRANK TREFNY BY MS.
SWANSON

1 part of the brain. These produced hemorrhage,
2 failure of the brain, multiple lacerations and
3 significant bleeding.

4 Gunshot wound two was present in the
5 right neck. Nine and a half inches from the top of
6 the head. Five and a half inches to the right of
7 the midline. It had small abrasions around it that
8 were oval. This produced soft tissue damage and was
9 found in the body against the vertebrae.

10 Gunshot wound number three was
11 present in the right upper arm. This area, just
12 about an inch below the top of the shoulder joint.
13 It measured point 25 inches around, went into the
14 soft tissue of the arm, passed through the arm,
15 exited the arm and into the chest cavity. It
16 produced exsanguination with loss of blood in the
17 chest cavity and was found in the collapsed lung
18 cavity, essentially the base of the spine.

19 Q Okay, thank you. I'm going to hand you
20 what's been marked as State's 7 and ask if these are
21 the projectiles that you removed from David
22 Krulewicz's body?

23 A It is labeled three projectiles. The
24 autopsy number is present on here, which corresponds
25 to the autopsy number on the protocol I just read.

DIRECT EXAMINATION OF DR. FRANK TREFNY BY MS.
SWANSON

1 The date of the autopsy on here and my initials, FT
2 are on here and they are present on all three of the
3 containers.

4 MS. SWANSON: Thank you, Doctor. At this
5 time I move 7 into evidence.

6 MS. CAMPBELL: No objection.

7 THE COURT: Motion granted.

8 *(Whereupon, State's Exhibit No(s). 7*
9 *marked for identification and received in*
10 *evidence.)*

11 BY MS. SWANSON:

12 Q Doctor, have you examined patients with
13 different types of gunshot wounds before?

14 A Yes.

15 Q Shotgun wounds?

16 A Shotgun wounds, rifle wounds, and pistol
17 wounds.

18 Q And are those types of injuries different?

19 A Yes, they are.

20 Q Okay. And in your opinion what sort of
21 gunshot wounds were these?

22 A These were most likely handgun. I
23 measured them as .32, .32 caliber. A rifle, when a
24 rifle is shot it also has a bullet that comes out
25 but usually when that bullet goes in the body it

DIRECT EXAMINATION OF DR. FRANK TREFNY BY MS.
SWANSON

1 produces much more injury because of the velocity.
2 A shotgun wound is different. A shotgun is a group
3 of pellets held in a container with some stuff in
4 there that maintain their position and usually you
5 get different types of patterns. And you can get
6 multiple injuries from the wound where the fragments
7 separate. So it is a distinct type of wound.

8 Q All right. And what cause of death did
9 you come up with in this case?

10 A Medular failure or failure in the brain
11 plus exsanguination. Really he had enough blood in
12 the chest to have bled out. And is he had enough
13 damage to his head to have died from that injury
14 too.

15 Q And the manner of death?

16 A The manner of death is homicide.

17 MS. SWANSON: Thank you.

18 THE COURT: Cross examination.

19 MS. CAMPBELL: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MS. CAMPBELL:

22 Q Dr. Trefny, do you still have your report?

23 A Yes, I do.

24 Q Perfect, thank you. X-rays were taken of
25 David at the hospital, correct?

CROSS EXAMINATION OF DR. FRANK TREFNY BY MS.
CAMPBELL

1 A I have a note that they were.

2 Q You also note that David was 72 inches?

3 A Seventy-two inches. We measured him, yes.

4 And the estimated weight -- my estimate is 160, but
5 that is just an estimate.

6 Q So, I'm going to make you do some math.
7 72 inches is how tall?

8 A 6 feet.

9 Q Thank you. You note that David had small
10 abrasions on his face?

11 A He had several small abrasions on his
12 face, that is correct.

13 Q And that there are three gunshot wounds?

14 A Three gunshot wounds.

15 Q So let me walk you through those wounds.
16 But before I do that, since the solicitor brought it
17 up with you, the gun -- so we have pistols, right?

18 A Handguns.

19 Q Yeah. And we have rifles?

20 A Correct.

21 Q And we have shotguns is usually what you
22 are dealing with; that is what you said to her in
23 her questions, right?

24 A Correct.

25 Q Okay. And you even described for the

CROSS EXAMINATION OF DR. FRANK TREFNY BY MS.
CAMPBELL

1 jury, like, kind of how the different types of
2 mechanisms that are used and loaded into those
3 specific weapons. So, on a shotgun, you can load a
4 shotgun with bird shot, right?

5 A Bird shot, correct.

6 Q Tiny pellets, right?

7 A Tiny pellets.

8 Q You can load a shotgun with buckshot,
9 which is big pellets?

10 A They are bigger depending on the size of
11 the weapon.

12 Q Correct.

13 A Whether it's 12 gauge or 20 gauge.

14 Q Right. Absolutely. So, we have bird
15 shot, buckshot, big pellets, bigger pellets. And
16 those pellets, as you said to the solicitor, would
17 scatter and have different penetration areas,
18 correct?

19 A Generally, correct.

20 Q So, with the buckshot, the big pellets,
21 you could have several of those pellets hit your
22 body?

23 A Correct.

24 Q And several of those pellets hit something
25 next to you or around you, correct?

CROSS EXAMINATION OF DR. FRANK TREFNY BY MS.
CAMPBELL

1 A If they all went -- if they did not all go
2 in, that's correct.

3 Q Okay. Now, as you as you characterize it
4 in your report, GS one, gunshot one, two inches from
5 the top of the head, right ?

6 A Correct.

7 Q An abrasion ring is present, correct?

8 A Correct.

9 Q You sealed the fragments and gave them to
10 the sheriffs department?

11 A Correct.

12 Q Gunshot two is in the right neck, correct?
13 And you talk about an elliptical abrasion, collar,
14 right? And you said that the bullet path is
15 slightly to the left, downward, and to the rear?

16 A Right.

17 Q And that is you trying to get some sort of
18 fix on the path that this bullet is taking and
19 things like distance and where the shot came from,
20 correct?

21 A It is the path in the body. You know,
22 some of that depends on the position of the body
23 when it was shot. And it also depends on the
24 position of the shooter relative to the body when
25 that shooter shoots the body.

CROSS EXAMINATION OF DR. FRANK TREFNY BY MS.
CAMPBELL

1 Q Right. And so at -- at, again, at later
2 points, photographs were taken of these gunshot
3 wounds during your autopsy, correct?

4 A I assume so. I don't have any pictures
5 right now, because I haven't been doing what I'm
6 doing now for a few years.

7 Q I know. It would be the normal practice?

8 A It would be the normal practice.

9 Q Right. For the photographs to be taken?

10 A Right.

11 Q Because the analysis would need to be done
12 for those very reasons, the trajectory, how far
13 apart was the the shooter and the person who was
14 shot, correct?

15 A When I look at a wound, you take and you
16 try to decide contact, near contact or distance. In
17 this particular case, no pattern, no stippling, no
18 fragments. So, normally with a handgun you assume
19 greater than 12 to 18-inches from the body at the
20 time of discharge of the weapon.

21 Q Again, this is not a contact wound?

22 A No.

23 Q This is a bit of a distance, correct?

24 A Correct.

25 Q Gunshot wound three you place in the

CROSS EXAMINATION OF DR. FRANK TREFNY BY MS.
CAMPBELL

1 shoulder area?

2 A Right.

3 Q So, we have got all of these shots closely
4 together, within clearly under a foot of one other,
5 correct?

6 A Relatively so.

7 Q Okay. And you make a notion that you do
8 blood typing?

9 A I did blood typing on --

10 Q For David, and that he's O positive. O
11 positive, I mean that is just like, the old school,
12 right, you are O positive?

13 A B positive, A/B positive, A/B negative,
14 correct. Today that is old school, but that was
15 before my time, you know. So I'm dating myself too.

16 Q Well, okay, I understand. But I thank you
17 for putting this in here. I mean, that is the way
18 that you did it then. O positive, that was
19 important and significant to your findings in this
20 case?

21 A Yes.

22 Q Yes. And so you note as well that David,
23 when he came to you, was still wearing his watch and
24 he was still wearing the gold bracelet on his arm;
25 correct?

CROSS EXAMINATION OF DR. FRANK TREFNY BY MS.
CAMPBELL

1 A Correct.

2 Q Now, are you familiar -- the last thing,
3 Doctor, are you familiar with what we call the H
4 factor or H factoring in blood?

5 A No.

6 MS. CAMPBELL: That is all that I have.

7 THE COURT: Redirect.

8 MS. SWANSON: Just briefly.

9 REDIRECT EXAMINATION

10 BY MS. SWANSON:

11 Q Dr. Trefny, I know that you went through
12 all of the gunshot wounds. Were they primarily
13 on -- what side were they primarily on, right or
14 left?

15 A Right.

16 Q Right side. Thank you.

17 MS. SWANSON: That is it.

18 THE COURT: Thank you, Doctor. You may
19 step down and be excused.

20 Thereupon,

21 DR. JOHN FONTANA

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MS. SWANSON:

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 Q Good afternoon.

2 A Good afternoon.

3 Q Dr. Fontana, please state your full name
4 for the record and spell it for the court reporter.

5 A John Fontana, F-O-N-T-A-N-A.

6 Q And what was your occupation until very
7 recently?

8 A Well, my occupation is still OBG -- weel,
9 gynecologist. I used to be obstetrician
10 gynecologist, and now I'm a gynecologist doing some
11 volunteer work at the Good Neighbor Clinic. And I
12 also assist in surgery a couple of days a week.

13 Q Okay. And can you tell the jury briefly
14 the education and training that led you to that
15 profession?

16 A Well, the routine four years in college.
17 Then went to Georgetown University Medical Center.
18 Did an internship at Syracuse University. Did a
19 residency at the University of Florida and a
20 fellowship in genetics at Johns Hopkins.

21 Q Okay. And how long did you practice here
22 in Beaufort?

23 A I came to Beaufort in 1975 because it had
24 the second highest death rate of mothers and
25 children in this state. And I retired two years

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 ago.

2 Q All right. And did you ever receive any
3 training on how to administer a sexual assault kit?

4 A Yes.

5 Q Or a sexual assault exam?

6 A Yes.

7 Q Okay. And have you ever testified in
8 court before?

9 A Yes, ma'am.

10 Q As an expert?

11 A Yes, ma'am.

12 Q In gynecology?

13 A Yes, ma'am.

14 Q And sexual assault exams?

15 A I don't recall specifically about sexual
16 assault exams.

17 Q But you had a number of them when you were
18 on rotation at Beaufort Memorial ER?

19 A We instituted a process where the
20 gynecologists came in to do the exams because they
21 were being done willy nilly and we didn't feel that
22 it was fair to the patients. So, my two partners
23 and I set up a program where we came in on an
24 alternating basis to do the exams.

25 MS. SWANSON: Okay, thank you. At this

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 time I would offer Dr. Fontana as an expert in
2 both gynecology and sexual assault exams.

3 MS. CAMPBELL: No objection.

4 THE COURT: Motion granted.

5 BY MS. SWANSON:

6 Q All right. Dr. Fontana, do you have a
7 copy of your report in front of you?

8 A No, ma'am, I do not.

9 Q Okay. I'll hand it to you so that you may
10 refer to it.

11 A Thank you.

12 Q Did you have an occasion to perform a
13 sexual assault exam on MINOR ?

14 A Yes, ma'am.

15 Q All right. And when did that happen?

16 A She says the 5th, but I believe that it
17 was after midnight and it was the 6th of January,
18 1980.

19 Q Okay. Does it list a time on there?

20 A It says 1:00 so --

21 Q So, 1 a.m. on January 6?

22 A Yes.

23 Q And where did that take place?

24 A That took place in the emergency room at
25 Beaufort Memorial Hospital.

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 Q And did MINOR describe the assault to you?

2 A Not in the detail that she's described it
3 here, but she went over the event, yes.

4 Q Okay. And you were in here for her
5 testimony. Was it consistent with what she told
6 you?

7 A Yes, ma'am.

8 Q All right. And did she describe who
9 assaulted her to you?

10 A She described an individual.

11 Q Right. And that description is located in
12 the second paragraph.

13 A African-American male in his mid 20s. And
14 at that time she stated that she thought that he was
15 a few inches shorter than she was. Didn't appear to
16 be a Marine. Had a black sport coat on that was
17 silky and shiny with black pants.

18 Q And a tight afro is what the hair is
19 described as further?

20 A Yes.

21 Q Okay. What was her demeanor like when she
22 was being examined?

23 A I think that I noted that she was
24 amazingly in control of her emotions, although she
25 was extremely distraught. She was a child.

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 Q Okay. And did you make any findings in
2 your pelvic exam?

3 A We noted that there were abrasions over
4 the posterior portion of the vagina, that it was
5 reddened, the -- the introitus, excuse me, the
6 introitus of the vagina was normal in appearance,
7 the cervix was normal in appearance, and the uterus
8 felt normal, as did the ovaries.

9 Q Okay. So, when we are talking about the
10 introitus we are talking about the entry of the
11 vagina?

12 A Yes, ma'am.

13 Q All right. And would abrasions be
14 consistent with forced intercourse?

15 A It would be.

16 Q So, you did take specimens, right?

17 A Yes, ma'am.

18 Q Did you take -- where did you take them
19 from?

20 A We took specimens from the vagina and also
21 from the cervical os, which is the opening in the
22 cervix.

23 Q Did you look at those specimens under a
24 microscope?

25 A Yes, ma'am.

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 Q What did you find?

2 A We found sperm that were non-motile in
3 both the vaginal specimen and in the cervical
4 specimen.

5 Q And by non-motile, do you mean sperm that
6 are not moving?

7 A That is what I mean by that. Thank you.

8 Q Okay. And what would be the cause of
9 sperm being non-motile?

10 A In this case I think that the cause was
11 the fact that when we put the specimen on the slide
12 we had to go to the laboratory and get it opened and
13 then look at the micro -- look at the specimen under
14 the microscope. And it doesn't take long for the
15 specimens to dry out, and I think that's why the
16 sperm in this case are non-motile. There are other
17 reasons for sperm being non-motile, the stage of the
18 patient's cycle, where she is in her cycle would be
19 a common one, the health of the ejaculant would be a
20 common one. But I think in this one it was the
21 drying of the specimen on the slides.

22 Q Okay. And for sperm to remain motile,
23 what sort of environment do they need to remain in?

24 A The vagina is a hostile environment to
25 sperm. Sperm will die quite rapidly in the vagina.

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 Once they get into the cervix, if the cervix is
2 pre-ovulatory, the mucous in the cervix is very
3 healthy for the sperm and it provides nutrition to
4 the sperm. And they can live there for days, three,
5 four, five days is not unusual. But they die very
6 rapidly in the vagina.

7 Q Okay. So, basically if you don't have
8 bodily fluids to live in, they dry out and become
9 non-motile?

10 A That is a clearer description maybe, yes.

11 Q Okay. Now, let's say that you have
12 someone who has been ejaculated in and their bodily
13 fluids along with semen comes out onto underwear,
14 would you expect there to be less sperm in the
15 vagina and in the cervix?

16 A Yes, where the individual ejaculates would
17 cause more sperm to be in the vagina or on the
18 perineum, which is the outside of the vagina. Or
19 whether the person has had an orgasm. When you have
20 an orgasm the vagina cups down and kind of saves the
21 sperm. But when you haven't had an orgasm, like
22 when you are raped, the sperm would tend to come
23 out.

24 Q I'm going to show you -- did you
25 collect -- did you collect clothing from MINOR that

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 night?

2 A Yes, ma'am.

3 Q Okay. I'm going to show you what's been
4 marked as State's 8. I am going to show you a bag
5 and an evidence tag. If you can -- this is
6 contained in number eight. If you can tell us if
7 this is the bag that you collected her clothing in
8 and what items of clothing that it contained?

9 A This is a typical kind of bag that we
10 would have had at the emergency room. And it says
11 that I collect -- this tag that we gave, handed over
12 to the police department, says that I collected the
13 clothing so I'm assuming it is correct.

14 Q And what does it say, as far as what was
15 contained in the bag?

16 A It says one bra, beige in color, one pair
17 of light pink panties, one pair of blue corduroy
18 pants and multi-colored pull-over shirt taken from
19 MINOR by myself at 0330, so 3:30 in the morning
20 on the 6th of '80, January 6, '80.

21 Q Okay. And you turned all of that clothing
22 over to who; does it say?

23 A Fran Hesling.

24 Q Officer Hesling with Beaufort County.

25 Thank you.

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 MS. SWANSON: Beg the Court's indulgence.

2 (Pause.)

3 BY MS. SWANSON:

4 Q Okay, I'm going to hand you State's 9.

5 And ask if you can read what is contained in this

6 bag, please?

7 A Victim's corduroy pants.

8 Q Okay. And then State's 10?

9 A Victim's panties.

10 Q Thank you. And those were contained in
11 that bag based on the evidence list and tag that you
12 just read out, correct?

13 A Yes, ma'am.

14 Q Okay, thank you. Did you talk to and
15 remain in contact with MINOR over the years?

16 A Yes.

17 Q Did you continue to see her as a patient?

18 A Yes, I did.

19 Q Through two pregnancies?

20 A (Nods in the affirmative).

21 MS. SWANSON: Thank you, Doctor. Please
22 answer any questions that Ms. Campbell may
23 have.

24 THE WITNESS: Thank you.

25 THE COURT: Cross examination.

DIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 MS. CAMPBELL: Thank you.

2 CROSS EXAMINATION

3 BY MS. CAMPBELL:

4 Q Dr. Fontana, your report that you issued
5 in this case is accurate, right?

6 A I would assume it was what I dictated,
7 yes.

8 Q I am sorry, what?

9 A I would assume that it's what I dictated.

10 Q Yes. So, if it's in your report, you
11 dictated it and it's accurate. Do you want to see
12 your report? Do you have a copy?

13 A I have it.

14 Q Okay. Because the solicitor asked you
15 about some things that you wrote down in your report
16 and you stand by them as being accurate, right?

17 A Yes.

18 Q Okay. Perfect. You indicated that you
19 took a brief statement from MINOR on this particular
20 application, right?

21 A Yes.

22 Q And if you will go down to the bottom of
23 your report, the first page there. And I would be
24 happy to point it out to you. If you would, if you
25 would start right here and read that line for the

CROSS EXAMINATION OF DR. JOHN FONTANA BY MS.
CAMPBELL

1 jury.

2 A She's had two beers in the last 20, 30
3 hours, well developed nourished white female who is
4 obviously distraught over the situation, although
5 under good control of her emotions.

6 Q Okay. So, the first line of that that I
7 asked you to read is that she had reported to you on
8 that night that she had in fact been consuming
9 alcohol, correct?

10 A That is what it says.

11 Q Thank you. And the description of this
12 person who attacked her was a black male, correct?

13 A Yes, ma'am.

14 Q With a tight afro, correct?

15 A Yes, ma'am.

16 Q In his mid 20s, correct?

17 A That is what it says, yes, ma'am.

18 Q And she stated he was a few inches shorter
19 than she was, correct?

20 A That is what I wrote down.

21 Q All right. Now, there was no blood in her
22 vagina, correct?

23 A I didn't note any, that's correct.

24 Q So your report is accurate. Your report
25 doesn't reflect a finding of any blood in the

CROSS EXAMINATION OF DR. JOHN FONTANA BY MS.
CAMPBELL

1 vagina, correct?

2 A That's correct.

3 Q Okay. There were no tears of the vagina,
4 correct?

5 A That's not correct.

6 Q Are you saying that in your report you
7 note that her vagina was torn?

8 A No, I said that the introitus had
9 abrasions.

10 Q I'm familiar with what it says and what
11 you testified to, the word abrasions. What I'm
12 talking about is a tear or a fissure that would
13 cause bleeding. Let me be more specific. None of
14 that correct?

15 A I'm not sure that we are on the same page
16 with our understanding, because the introitus is the
17 opening of the vagina and there were abrasions on
18 the introitus.

19 Q Okay. So, anything during your exam that
20 night or that early morning indicate to you that
21 there was damage to the vagina that needed some
22 medical attention, like a tear that needed to be
23 sewn up or stitched up, or anything that would cause
24 you to have her put in the hospital; yes or no?

25 A Most of the time when you have a patient

CROSS EXAMINATION OF DR. JOHN FONTANA BY MS.
CAMPBELL

1 that has been raped, you don't have vaginal tears,
2 you don't have cervical abrasions, you typically
3 have what she had which were abrasions on the
4 introitus, so I'm not sure where your question is
5 coming from.

6 Q Well, I'll just go back to the very simple
7 question that I asked originally, which is, there
8 was no blood present during your examination,
9 correct?

10 A That's correct. And there rarely is when
11 you have a rape.

12 Q And the purpose of the sexual assault exam
13 and the collection of that evidence is to preserve
14 it, correct, for analysis?

15 A That is correct.

16 Q Okay. And one of the things that you do
17 during that sexual assault exam is that you take a
18 specialized comb and you run it through the pubic
19 area of the person that you are examining, correct?

20 A Yes, ma'am.

21 Q And you observe what we would call the
22 pubic hair combings, correct, for analysis?

23 A Yes, ma'am.

24 Q Okay. And in this case you did that,
25 right?

CROSS EXAMINATION OF DR. JOHN FONTANA BY MS.
CAMPBELL

1 A Yes, ma'am.

2 Q And you handed that over to Beaufort
3 County Sheriff's Office representative Fay Hesling,
4 right?

5 A Yes, ma'am.

6 Q Okay. You yourself did not perform any
7 analysis to determine anything about the pubic hair
8 combings, correct?

9 A That's correct.

10 Q Okay. But what you did do is you did
11 perform an examination on two items. The first
12 being the vaginal secretions and the second being
13 what we would call the -- well, just the vaginal and
14 then the cervical, correct?

15 A Yes, ma'am.

16 Q Two different areas, right?

17 A Yes, ma'am.

18 Q Okay. And you indicated that the vaginal
19 and cervical specimens were observed by you under a
20 microscope?

21 A Yes, ma'am.

22 Q And you had done that procedure many times
23 before, right?

24 A Yes, ma'am.

25 Q Okay. And you indicate the vaginal

CROSS EXAMINATION OF DR. JOHN FONTANA BY MS.
CAMPBELL

1 specimen had 5 to 15 non-motile sperm per high
2 powered field, right?

3 A Yes, ma'am.

4 Q Then you say the cervical specimen which
5 had dried revealed five to ten non-motile sperm per
6 high powered field, correct?

7 A Yes, ma'am.

8 Q Okay. To be clear, when you provide the
9 information about the vaginal specimen, there is no
10 caveat that the vaginal specimen has dried, correct?

11 A That would not -- the reason I didn't
12 specifically say the vaginal specimen has dried is
13 because that is very common. It would be -- it was
14 not common that the -- excuse me. If -- when you
15 take a vaginal specimen, what you do is you take a
16 Q-tip and you put it in the vagina and then you take
17 that Q-tip and you wipe it on a slide. And then you
18 put a cover glass, which is a little thin layer of
19 glass, over that. The vagina doesn't have a lot of
20 fluid in it so the specimen tends to be very dry in
21 its very nature, so the fact that those sperm were
22 not moving is not significant.

23 The fact that the cervical specimen
24 sperm were not moving has some significance because
25 you have some fluid in the cervix that you put on

CROSS EXAMINATION OF DR. JOHN FONTANA BY MS.
CAMPBELL

1 the slide with the specimen. And so when you put
2 that little glass cover on it there's fluid there
3 already so the sperm tend to live longer because
4 there's fluid.

5 Now, the reason her -- MINOR's sperm
6 didn't live longer were two-fold. One, there wasn't
7 enough fluid from the cervix to keep them alive.
8 And two, she was in a stage of her menstrual cycle
9 where there wasn't a lot of fluid to begin with in
10 the cervix to keep them alive. So I noted that the
11 cervical specimen, the specimen from the cervix,
12 those sperm had died. Which is a little unusual.
13 We know why, but it was a little unusual. The fact
14 that the sperm from the vaginal part were dead is
15 not significant at all. Did that explain it to you?

16 Q Oh, thank you.

17 A You are welcome.

18 Q Okay. So, back to what I said, you
19 pointed out in your report a difference between the
20 vaginal specimen and the cervical specimen, very
21 clearly noting that the cervical specimen had dried,
22 correct?

23 A Yes, ma'am.

24 Q Thank you. Now, you are familiar with the
25 woods lamp used in sexual assault exams, are you

CROSS EXAMINATION OF DR. JOHN FONTANA BY MS.
CAMPBELL

1 not?

2 A I haven't used that in years.

3 Q Okay. Well that is not really what I
4 asked you. Are you familiar with what the woods
5 lamp is?

6 A No, not now.

7 Q You are not familiar with it at all?

8 A That's correct.

9 Q Okay. You have never used it?

10 A Not in a sexual assault case.

11 Q Okay. So, in all of your medical
12 training, in the many years that you were educated,
13 in all of the sexual assault exams that you have
14 told us that you have performed, you never once had
15 the advantage to use a woods lamp to determine
16 whether or not semen was on a particular victim;
17 never did that?

18 A It wasn't necessary.

19 Q Okay. Now, studies have shown typical
20 male ejaculant, teaspoon amount, should have
21 millions of sperm; correct?

22 A And they do.

23 Q Correct. And in the millions of sperm, it
24 is possible, again studies have shown, for the sperm
25 to survive many hours, sometimes even up to days for

CROSS EXAMINATION OF DR. JOHN FONTANA BY MS.
CAMPBELL

1 detection in the vaginal area and in the cervical
2 area; correct?

3 A No, that is not correct.

4 Q Okay. So, just in the cervical area, not
5 the vaginal area?

6 A Yes, ma'am.

7 Q Okay, good. So, there is the possibility,
8 days after having sex, okay, that there could be a
9 few, non-motile sperm in the cervical area; correct?

10 A There would be a few non-motile sperm in
11 the cervix, correct. I don't know how that relates
12 to this.

13 MS. CAMPBELL: Your Honor, I would ask
14 that the witness not comment. I did not ask a
15 question.

16 THE COURT: Just respond to the question.

17 THE WITNESS: Thank you.

18 THE COURT: I am sure opposing counsel
19 will follow up with a question.

20 REDIRECT EXAMINATION

21 BY MS. SWANSON:

22 Q Just briefly. Would you expect to find
23 any sperm on vaginal or cervical swabs if
24 intercourse had been had a day or two before with
25 the use of a condom?

REDIRECT EXAMINATION OF DR. JOHN FONTANA BY MS.
SWANSON

1 A No.

2 MS. SWANSON: Thank you.

3 THE COURT: Thank you, Doctor.

4 THE WITNESS: Thank you.

5 THE COURT: You may step down.

6 THE COURT: Is this a good time for an
7 afternoon break?

8 MS. SWANSON: Thank you, yes, sir.

9 THE COURT: Take a short recess, ladies
10 and gentlemen.

11 (Brief recess.)

12 THE COURT: I should have done this a
13 minute ago. Let me see counsel at sidebar.

14 (Off-the-record discussion held.)

15 THE COURT: Are we ready for the jury?

16 MS. SWANSON: Yes, sir.

17 THE BAILIFF: The jury is entering the
18 courtroom, Your Honor.

19 THE COURT: Welcome back, ladies and
20 gentlemen. The State may call your next
21 witness.

22 MS. SWANSON: Thank you. The State calls
23 Patti Ruff.

24 Thereupon,

25 PATTI RUFF

DIRECT EXAMINATION OF PATTI RUFF BY MS. SWANSON

1 was called as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SWANSON:

5 Q And your name is spelled R-U-F-F?

6 A Yes.

7 Q And where are you employed?

8 A I work with South Carolina Law Enforcement
9 Division, commonly known as SLED.

10 Q And what department did you work in?

11 A I worked there for approximately 35 years.
12 For 16 years I worked in evidence processing, and
13 for the last 8 or 9 years I was in intelligence,
14 criminal analysis and Amber alerts.15 Q Okay. And have you testified as an expert
16 in court before?

17 A Yes, I have.

18 Q All right. As an expert in evidence
19 processing?

20 A That's correct.

21 Q How many times?

22 A Approximately 60 times.

23 MS. SWANSON: At this time, I would offer
24 Patti Ruff as an expert in evidence processing.

25 MS. CAMPBELL: No objection.

DIRECT EXAMINATION OF PATTI RUFF BY MS. SWANSON

1 THE COURT: Motion granted.

2 MS. SWANSON: Thank you.

3 BY MS. SWANSON:

4 Q Now, if I can refer you to your report.

5 Did you have an occasion to test items brought to
6 you by Captain Bob Bromage?

7 A Yes, I did.

8 Q Can you tell us what those items were that
9 were submitted?

10 A Light pink pair of panties, blue corduroy
11 pants, and a yellow sweatshirt.

12 Q Okay. I will hand you 9, 10, and 13 and
13 ask you to identify each of these items. All right.
14 State's 9.

15 A I can see on the back my initials and the
16 date they were brought to me.

17 Q And what are they?

18 A The date is May 20th, 1999, and my
19 initials PBR.

20 Q I am sorry, what was the item labeled as?

21 A This is the victim's corduroy pants.

22 Q Okay, great.

23 A Which is my item number two.

24 Q Okay. So, you examined the victim's
25 corduroy pants?

DIRECT EXAMINATION OF PATTI RUFF BY MS. SWANSON

1 A Correct.

2 MS. SWANSON: The State would enter 9 at
3 this time, the pants, not the cuttings.

4 MS. CAMPBELL: I think that the pants --
5 the chain is not established fully on that
6 particular item yet and I would ask that the
7 State establish the chain fully.

8 MS. SWANSON: Okay.

9 MS. CAMPBELL: Thank you.

10 BY MS. SWANSON:

11 Q State's 10, if you can identify these
12 items, this item?

13 A Victim's panties, and once again, has my
14 initials and the date on it and it is listed as my
15 item number one.

16 Q Okay. And so those are the panties that
17 you examined?

18 A Correct. In this package.

19 Q Okay. And that is State's 10.

20 And then State's 13?

21 A Again, it has the lab number and date.
22 May 20th, 1999 and my initials, PBR. And it is
23 listed as my item number three.

24 Q Okay.

25 A And that was a yellow dress shirt.

DIRECT EXAMINATION OF PATTI RUFF BY MS. SWANSON

1 Q Okay. So, what did you do with those
2 three items?

3 A The request for these was for me to look
4 at the panties for any possible body fluids. I do a
5 presumptive test of phenolphthalein, but one of the
6 firsts things that we do is we put the item under a
7 luma light and semen along with other things, like
8 other body fluids, saliva, different things, will
9 fluoresce. So, what we have to do is circle those
10 areas and then once we circle those areas we turn
11 the lights back on and we do a chemical test of
12 phenolphthalein.

13 And what we do with that is we wet a
14 cotton swab and rub one of the cricled areas that we
15 have. And then we put a drop of phenolphthalein on
16 it and if it turns -- I am sorry, not
17 phenolphthalein, see, I am retired, I haven't done
18 this for 10 years -- it is acid phosphinate. And if
19 it comes up kind of a fusc -- kind of a pink color,
20 that means that there is a possibility that it is
21 semen.

22 So what I will do is if that area
23 that I have circled does test positive for
24 presumptive testing, I will make a cutting, I will
25 assign it a number, and then it will be transferred

DIRECT EXAMINATION OF PATTI RUFF BY MS. SWANSON

1 to the DNA department for further testing.

2 Q Okay. And did you perform any of these
3 presumptive tests for semen on any item?

4 A Yes, I did the light pink panties.

5 Q Okay. And what was the luma light result?

6 A It was positive.

7 Q All right. And then --

8 A So, I made one cutting.

9 Q So you made one cutting. And I am going
10 to show you -- now, that is your lab item 1.1?

11 A Correct.

12 Q I am going to show you State's Exhibit 12
13 and ask you if this is the cutting that you made
14 from the panties?

15 A Yes, it is. It has my initials on it.
16 Cutting from the panties and from the crotch area.

17 Q You did the AP, acid phosphate, test on
18 that cutting?

19 A Uh-huh. (Indicating affirmatively.)

20 Q And what was your result?

21 A I got a positive. It was a weak positive
22 but it was positive.

23 Q Presumptive?

24 A Presumptive for semen.

25 Q Semen. And where did this cutting go?

DIRECT EXAMINATION OF PATTI RUFF BY MS. SWANSON

1 A It was transferred to DNA.

2 Q Your item number two, the blue corduroy
3 pants; what was the luma light result on the blue
4 corduroy pants?

5 A Some things fluoresced but they didn't
6 come up anything positive for presumptive testing
7 for semen. There was an area that tested
8 positive -- sorry, from the pants area, in the
9 crotch area of the pants, that we sent to DNA for
10 further testing.

11 Q Okay. So, did you do a cutting from the
12 corduroy pants as well?

13 A Yes, in the same area.

14 Q Crotch area?

15 A Yes.

16 Q I will show you State's 11 and ask if this
17 is the cutting that you made from the corduroy
18 pants?

19 A Yes, it is. It has my initials on the
20 back.

21 Q Okay. And these items that I'm handing
22 you, the cuttings, they are sealed; right?

23 A That is correct.

24 Q Okay. Then the third item, the yellow
25 dress shirt; what were you testing for there?

DIRECT EXAMINATION OF PATTI RUFF BY MS. SWANSON

1 A I was asked to take a cutting of -- for
2 control or for a standard or whatever and to look
3 for a sample of blood, so I did the phenolphthalein
4 test, which we were talking about earlier, testing
5 on a section and made a cutting and sent that to
6 DNA.

7 Q Okay. So, State's 14, I'm going to show
8 you and ask if this is a cutting from the yellow
9 dress shirt from the blood standard?

10 A Yes, it is. My initials are on it.

11 Q All right. Did you have any further
12 involvement in the testing, or did everything just
13 go to DNA at this point?

14 A All of the cuttings went to DNA.

15 MS. SWANSON: I don't have any further
16 questions, thank you.

17 THE COURT: Cross examination.

18 MS. CAMPBELL: May it please the Court.

19 CROSS EXAMINATION

20 BY MS. CAMPBELL:

21 Q Good afternoon.

22 A Good afternoon.

23 Q I will hand you a worksheet and ask you to
24 identify your initials on the worksheet?

25 A I am PBR. We worked in teams. My note

CROSS EXAMINATION OF PATTI RUFF BY MS. CAMPBELL

1 taker was LCJ.

2 Q So those are your notes about what you
3 have been testifying about, correct?

4 A That's correct.

5 Q So, to make sure that I understand what
6 you have said, there is -- you used a special light?

7 A Uh-huh. (Indicating affirmatively.)

8 Q On the panties and the corduroy pants in
9 this case; right?

10 A That's correct.

11 Q Okay. And that special light, has it ever
12 been called a woods light?

13 A This is a luma light, but I think as far
14 as technology maybe years ago that might be what
15 they called it.

16 Q Okay. So this special light can help you
17 identify locations where you may find the substance
18 that you are looking for, correct?

19 A That's correct.

20 Q And in this particular instance you were
21 asked to look and see if you could locate semen on
22 the crotch of the panties or on the corduroy pants,
23 right?

24 A That's correct.

25 Q Okay. And you indicated that you found

CROSS EXAMINATION OF PATTI RUFF BY MS. CAMPBELL

1 some locations -- first, let's talk about the
2 panties.

3 A Uh-huh. (Indicating affirmatively.)

4 Q Where you believed that the light was
5 reflecting sufficiently to say, This may be
6 something?

7 A Correct.

8 Q And I don't see in any notes, and maybe
9 you have them or you recall, how many different
10 locations within the crotch of the panty you thought
11 that you might find something?

12 A I don't recall. I don't have it in my
13 notes, but it's not out of the norm for us to make
14 one big cutting with several circles on it so . . .

15 Q All right. So, in this case do you
16 remember if you just made the big cutting and then
17 sort of circled the areas with like a Sharpie marker
18 that may be of interest?

19 A We try not to use too much of the actual
20 sample, so if we put it under the luma light, then
21 we do a circle around it. When we test it with the
22 swab, we won't necessarily circle it. Sometimes we
23 have maybe in the past, but we make a note in our
24 notes if we did. But a lot of times we send it to
25 DNA and they will do a testing after us. But

CROSS EXAMINATION OF PATTI RUFF BY MS. CAMPBELL

1 usually if I list "cutting from panties, crotch
2 area," it is usually a fairly good size cutting.

3 Q Okay. And you asked --

4 A But I guess that I need to clarify, good
5 sized cutting, and it may have several stains on it.

6 Q I think that is what I am trying to
7 understand.

8 A Okay.

9 Q There was a large piece with several areas
10 of interest for investigation.

11 A Yes, some areas won't be positive and some
12 areas would be positive.

13 Q And you asked something about, get control
14 from cutting?

15 A Right. So, that gives me the -- we would
16 make a large cutting so it would be enough area
17 around the outside that didn't fluoresce where they
18 would be able to get a standard where it would come
19 up negative.

20 Q Okay. So, you note -- again, I am not a
21 scientist so thank you for helping me. Do you have
22 a copy of this?

23 A I do.

24 Q Okay. Perfect then. This, P-H-E-N that
25 you list on 1.1, what is that?

CROSS EXAMINATION OF PATTI RUFF BY MS. CAMPBELL

1 A That is the test that we use for
2 presumptive testing for blood. It is
3 phenolphthalein.

4 Q Okay. Then what is the AP?

5 A Acid phosphate, and that is a test that we
6 do, presumptive testing for semen.

7 Q Then the LL?

8 A Luma light.

9 Q Okay. So, I'll backtrack a little bit. I
10 have got the LL on the light pink panties where
11 there's an indication that there may be something of
12 note, correct?

13 A Uh-huh.

14 Q So you kind of positive that column. And
15 then you note under AP for the cutting that you made
16 for the pink panties, you put a positive sign but
17 you do note, "weak"?

18 A That's correct.

19 Q Okay. And on the blue corduroy pants, the
20 cutting from that area, you actually note under AP,
21 positive, 2.1?

22 A That's correct.

23 Q Okay. And you -- you collect these
24 samples and you send them over to the DNA department
25 for analysis?

CROSS EXAMINATION OF PATTI RUFF BY MS. CAMPBELL

1 A That's correct.

2 Q And that, at the time, would have been
3 David McClure?

4 A We had an area that we shared, a secured
5 area. And we would put them in a certain like a
6 drop box and the person would actually come get them
7 from that drop box. I can look to see exactly if I
8 handed it to him or if I put it in that area.

9 (Pause.)

10 A And I transfered it to the DNA area, I
11 didn't transfer it to him personally.

12 Q You put it in the drop --

13 A Yes, secured area that we have access to
14 and they have access to.

15 Q Okay. And in some of the reports testing
16 for something called an H factor was done; are you
17 familiar with that?

18 A No, I'm not.

19 Q Okay. So, that is not something that you
20 would have done with SLED?

21 A That's correct.

22 Q Okay.

23 MS. CAMPBELL: I think that may be all.

24 THE COURT: Redirect?

25 MS. SWANSON: Just briefly.

REDIRECT EXAMINATION OF PATTI RUFF BY MS. SWANSON

1 REDIRECT EXAMINATION

2 BY MS. SWANSON:

3 Q Patti, when you say that you put them in a
4 drop box, those items were sealed when you put them
5 in the drop box; is that correct?

6 A That's correct.

7 MS. SWANSON: Okay. I have nothing
8 further. The witness may be excused.

9 MS. SWANSON: Yes.

10 THE COURT: Thank you. You may be excused
11 from your subpoena.

12 MS. SWANSON: Thank you. The State calls
13 David McClure.

14 Thereupon,

15 DAVID MCCLURE

16 was called as a witness, having been first duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. SWANSON:

20 Q All right. Good afternoon, David. Can
21 you please spell your name for the court reporter?

22 A Last name is McClure, M-C-C-L-U-R-E.

23 Q All right. And until recently, where did
24 you work?

25 A I retired from the State Law Enforcement

DIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 Division, January 1st of 2013.

2 Q Okay. And when did you start working for
3 SLED; how long did you work there?

4 A I started March 20 of 1990, so 23 years.

5 Q What did you do for SLED?

6 A I worked in the forensic DNA analysis
7 unit.

8 Q Can you tell us a little bit about your
9 educational and training background that led you to
10 that profession?

11 A Sure, I have got a bachelor of science
12 degree in microbiology from Clemson University. I
13 have also attended graduate level classes in
14 molecular biology and genetics at the University of
15 South Carolina. I also went to the FBI DNA analysis
16 school, which is accredited through the University
17 of Virginia.

18 Q Have you ever testified in court before?

19 A On numerous occasions.

20 Q As an expert?

21 A That's correct.

22 Q In DNA analysis?

23 A That's correct.

24 Q Okay. And in conjunction with that, match
25 statistics?

DIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 A That is correct.

2 Q Okay.

3 MS. SWANSON: At this time, I would offer
4 Mr. McClure, agent, former agent, McClure as an
5 expert in DNA analysis and match statistics.

6 MS. CAMPBELL: No objection.

7 THE COURT: Motion is granted.

8 BY MS. SWANSON:

9 Q All right. So, you test DNA?

10 A That's correct.

11 Q All right. And is DNA unique to each
12 individual?

13 A Except for identical twins.

14 Q All right. With the exception of twins.
15 So, did you test evidence for possible DNA in a 1999
16 submission by Captain Bob Bromage?

17 A Yes, I did. I received a cutting from a
18 pair of pink panties, a cutting from a pair of blue
19 pants, and a cutting from a yellow shirt.

20 Q Okay. And I'm going to hand you Items 11,
21 12, and 14 and ask if these are the cuttings that
22 you examined?

23 A Yes, they are. They have my initials on
24 the packages.

25 Q Okay. And what do you do? After you

DIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 examine them, do you seal it back up and initial
2 them?

3 A Well, when we first receive the evidence
4 in we make sure that the pouch that we receive them
5 in is sealed. We will unseal that pouch. And when
6 we do our analysis, we wil initial the packages.
7 When they are ready to be returned to the agency, we
8 will seal them back up in another pouch for return.

9 Q Okay. So, when you received those
10 packages they were sealed, and when you concluded
11 your first testing you resealed them?

12 A That's correct.

13 Q All right. What did you test for in the
14 first testing of 1999?

15 A We did do an acid phosphatase test on that
16 cutting. They were submitted to us for DNA
17 analysis, but we wanted to get to the area where we
18 may find sperm. So, we would do an acid phosphatase
19 test on that portion to see if we can narrow down
20 where the sperm may be. But we also want to make
21 sure that we don't use up too much of that sample so
22 there would be enough for DNA analysis.

23 Q Okay. And in order to conduct that test,
24 what do you do; do you swab the cutting?

25 A For the acid phosphatase, we actually do

DIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 take a little swab from that area and apply acid
2 phosphatase to that swab and it should change
3 colors. We also do a confirmatory test for semen
4 called a P30, which is a phosphate specific protein
5 which is found in semen. For P30 we actually take a
6 small cutting of that sample to do that analysis.

7 Q All right. And then that cutting, does it
8 then get put into a vial?

9 A That small cutting that we take for that
10 analysis is consumed in analysis.

11 Q The fact that it's consumed in analysis,
12 that means that the material is no longer there?

13 A The material -- the material is actually
14 there, but it's discarded in waste. What we
15 actually do is wash the fluids out of that material
16 so there's nothing left in the material to do
17 analysis on, so it's discarded in waste.

18 Q Okay. So, in 1999 what were your results
19 on the items that you took a look at?

20 A The acid phosphatase test and the P30 test
21 for the cutting on the panties and the cutting on
22 the blue pants was negative, so we went ahead and
23 did an extraction for DNA on those.

24 Q Okay. And what type of DNA analysis were
25 you using back in 1999?

DIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 A In 1999 we were using what is called RFLP,
2 which is restriction fragment length polymorphism.
3 It uses a large fragment of DNA to do the analysis.

4 Q All right. So, you have to have more
5 material or more -- yeah, more DNA material in order
6 to establish a profile; is that what you are saying?

7 A That would be correct. You have to have
8 molecule weight DNA and it took a larger sample to
9 get DNA using that technology.

10 Q Okay. Were the items sent back to SLED?

11 A Yes, they were.

12 Q Okay. And when were they sent back to
13 SLED and by whom?

14 A That would have been in 2002.

15 Q All right. And at that point, were they
16 retested?

17 A Yes, they were.

18 Q And what were your findings then?

19 A Again, we did the same acid phosphatase
20 test and P30 test. Or I take that back, we did the
21 P30 test but we didn't do a acid phosphatase test
22 because we didn't want to consume much of the
23 sample. So, we did another P30 test in another area
24 of the panties, and that P30 test was positive.

25 Q Okay. So it was just another area where

DIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 semen was identified from the cuttings?

2 A That's correct.

3 Q Okay. And then what sort of DNA analysis
4 were you using at the time?

5 A In 2002 DNA technology had advanced to the
6 point where we were using what was called STRs, or
7 short tandem repeats. It is a much smaller fragment
8 of DNA that you are actually analyzing for. And the
9 technology moved to a point with RFLP if your DNA
10 degraded your larger fragments are going to degrade
11 much quicker than your smaller fragments would. So,
12 the technology went in the direction where we could
13 look for those much smaller fragments to get DNA
14 from.

15 Q And so in 2002 with the new technology
16 were you able to establish a profile from this semen
17 from the pink panties, the semen from the blue
18 pants, and the cutting from the yellow dress shirt?

19 A We did. And the profile is not actually
20 from the semen, the profile is from the sperm.

21 Q Okay.

22 A So, your DNA is found in the sperm heads.

23 Q All right. So, you are able to conclude
24 that the DNA is actually from sperm?

25 A Semen was identified, so when you have a

DIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 pair of panties or a semen sample that you are
2 trying to extract DNA from you usually have some of
3 the contributor from the female victim, as well as
4 some of the contributor from the male who deposited
5 the sperm there.

6 We do what you call a differential
7 analysis where when you extract it you try to wash
8 off all of the female skin cells of that DNA first
9 and then try to wash the sperm heads off after that.

10 Sperm heads have a disulfide bond on
11 them and it is very difficult to break. So, if we
12 treat that cutting with one set of chemicals, we can
13 break the female skin cells up and wash that DNA
14 off. And then we have to treat it with a special
15 chemical to break those disulfide bonds to open up
16 that sperm head and we can wash the DNA from the
17 sperm heads off.

18 Q Okay. And so that is separating the
19 mixture of male and female bodily fluids, right?

20 A That is correct. But you also need to
21 understand that you still may get a mixture if you
22 do that, because if there is a lot of female DNA
23 there, not all of it will wash off when you wash it
24 the first time. Some of it may stay behind with the
25 sperm cells. And then if you also have sperm cells

DIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 that have already lysed, that DNA is going to wash
2 off with the female cells as well.

3 Q Okay. So, when you got the 2002 results
4 and you were able to establish a profile, did you
5 talk to Captain Bromage about that?

6 A We did. We let him know that we did
7 develop a profile from the cuttings from the
8 panties, the cutting from the blue pants, and the
9 cutting from the shirt. And we requested a blood --
10 or a standard from the female victim.

11 Q Okay. I'm going to hand you what's been
12 marked as State's Exhibit 15 and ask if these are
13 the standards -- and you can open it if you wish --
14 that you examined from the victim, MINOR ?

15 A Yes, this is a standard that was submitted
16 to us from the female victim. It has my initials on
17 the envelope.

18 Q All right. Thank you. All right. So,
19 once you were able to get -- were you able to get a
20 profile of MINOR from this slide of swabs?

21 A Yes, ma'am, we do.

22 Q Then you already had a profile from the
23 cuttings from the pink panties and the blue pants.
24 Did you compare the profile established from the
25 yellow dress shirt, victim David Krulewicz, to the

DIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 semen or the DNA that you established from the pink
2 panties and blue pants?

3 A Yes, ma'am. The DNA profile developed
4 from the semen on items 1.1 and 2.1 did not match
5 the profile from item 3.1, which was the standard
6 submitted for David Krulewicz.

7 Q Okay. And then the remaining profile,
8 there was MINOR, David, and then an unknown male;
9 correct?

10 A That's correct.

11 Q Okay. And that was in 2003?

12 A That is when the report was sent out was
13 in January 2003.

14 MS. SWANSON: Beg the Court's indulgence.

15 (Pause.)

16 MS. SWANSON: I think that's all that I
17 have, thank you.

18 THE COURT: Cross examination.

19 CROSS EXAMINATION

20 BY MS. CAMPBELL:

21 Q Good afternoon. How are you?

22 A Fine, thank you.

23 Q You are aware that these pink panties had
24 been the subject of some analysis at SLED in 1980,
25 right?

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 A Not at the time, no, ma'am.

2 Q Are you aware today?

3 A I'm not sure what was analyzed before. I
4 didn't get any of the cuttings or anything until
5 1999.

6 Q Okay. So, what you received in '99 you
7 got from Bob Bromage?

8 A That was submitted from the Beaufort
9 County Sheriff's Office.

10 Q And what you got again in 2002 you got
11 from Bob Bromage?

12 A From the Sheriff's Office, yes, ma'am.

13 Q All right. And in 1980 you would not have
14 been employed with SLED; is that correct?

15 A That's correct.

16 Q Okay. In the report that you issued from
17 19 -- June 24th, 1999, in your expertise in handling
18 this evidence, you reported, 1.1, no semen detected;
19 correct?

20 A That's correct.

21 Q And in 2.1, no semen detected; correct?

22 A That's correct.

23 Q And then you get a new request from the
24 Sheriff's Department here in Beaufort and to analyze
25 the items again, correct?

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 A That's correct.

2 Q And then when you get the new request,
3 that is when you find semen; correct?

4 A That's correct. And it would have been a
5 cutting from a different area of that material.

6 Q So, the cutting from the crotch of the
7 pink panties, and if I'm hearing you correctly, you
8 are saying that given the area to test for semen in
9 '99, that only one part of it was tested?

10 A That would be correct. We were actually
11 looking for DNA at that point in time. We didn't
12 want to consume much of the sample, because we
13 wanted to leave it for the DNA analysis, so there
14 was probably a very small cutting taken from that
15 area.

16 Q Isn't it true that when put to the
17 question about the problem with not detecting semen
18 in '99, your answer to that previously has been,
19 I've got no good reason for it, I just don't know?

20 A I don't see where there is a problem with
21 not detecting semen in '99.

22 Q Okay. So, you are going to tell me then
23 that you, in 2002, because the evidence didn't stay
24 with you, the panties didn't stay at SLED, right,
25 they went back to the Sheriff's Department; right?

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 A That's correct.

2 Q Okay. So, they traveled back to the
3 Sheriff's Department in Beaufort County and then
4 they get sent back up and you are going to test them
5 again but from a different area on the crotch of the
6 panties; is that what your testimony is?

7 A That would be correct.

8 Q Okay. And then you are going to locate
9 semen at that point?

10 A Semen was identified in those selections.

11 Q Do you feel like it is a problem if you
12 are given a piece of evidence and, you know, things
13 hang in the balance that you don't test enough of
14 the item to get a good clear answer; is that a
15 problem for you?

16 A No, that is not a problem. Because we are
17 actually looking for DNA at that point in time, so
18 we didn't want to consume sample testing for semen,
19 we wanted to consume sample testing for the DNA.

20 Q So, you have been qualified as an expert
21 in this field and you have had plenty of training to
22 testify here all about DNA, right?

23 A Yes, ma'am.

24 Q Okay. And so I'm going to talk about it a
25 little bit more in-depth rather than just, you know,

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 it is a match. So, how about this: A species, like
2 human beings, we share, all of us, 99 percent of the
3 same DNA; right?

4 A Approximately 97 to 98 percent.

5 Q Okay. A lot, right?

6 A That's correct. That is what makes us
7 human beings.

8 Q Right. So, we could agree then that 90,
9 sorry, what was the bottom number that you said, 97?

10 A Ninety-seven.

11 Q So, the bottom number would be 97 percent
12 of everything that makes us who we are as human
13 beings is exactly the same, right?

14 A That's correct.

15 Q Okay. And the human genome, as it's
16 called, that is 23 pairs of chromosomes, right?

17 A That's correct.

18 Q And you get one from your mama and one
19 from your dad, right?

20 A That is correct.

21 Q What you are doing in the DNA analysis is
22 that you are trying to unravel that information and
23 map it, right?

24 A No, we are not mapping.

25 Q All right. But you are looking for and

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 you have found through this process points on the
2 DNA chain that you look for similarities between
3 individuals and particular items, correct?

4 A We are actually, when we do our DNA
5 analysis, we are looking at the two to three percent
6 DNA that is different among individuals. And in
7 that two to three percent we are looking at certain
8 locations on the chromosomes that show differences
9 among individuals.

10 Q So those -- those are called loci,
11 correct?

12 A That's correct.

13 Q And the loci that you were using in '99
14 and 2002, how many loci were you using at that time?

15 A In 1999 we tested for five. In 2002 we
16 were testing for 13.

17 Q Okay. And the recommendation today would
18 be to test for at least 20; would that not be
19 correct?

20 A Not necessarily, no, ma'am.

21 Q Okay. Are you familiar, again, in your
22 training with the problems that occurred in the
23 field in the early 2000s when anomalies occurred in
24 an Arizona lab and it was recommended that the
25 number increase?

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 A I'm not familiar with what you are
2 referring to.

3 Q Are you not familiar with that? Okay.
4 Are you familiar with the FBI database, which is the
5 source that, you know, so much of this science is
6 based on; right?

7 A The statistical analysis is done from the
8 FBI's database.

9 Q Right. So, that statistical database is
10 in fact just a fraction of the population of the
11 world, correct?

12 A That is.

13 Q Okay. And that fraction of the world,
14 some experts have said that it's much too small to
15 be accurate, you need a larger sampling of this
16 population for accuracy. There is that discussion
17 in your field?

18 A There is that discussion, but when you
19 come up with statisticss of one in billions.

20 Q Right. So, sometimes your statisticss
21 will be like, oh, this is a match, it is one in
22 394 billion possibilities, like an astronomical
23 number that doesn't even exist in human beings on
24 the earth, that happens; correct?

25 A That's correct.

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 Q Do you have lab protocols at SLED when you
2 were there, that you would ethically have to report,
3 what I would call "required self reporting" if you
4 yourself came across such anomalies? Was that in
5 place at SLED?

6 A I am not sure what anomalies you are
7 referring to.

8 Q Whenever you might encounter a situation
9 that gives you concern with the accuracy or
10 integrity of the data you are getting?

11 A We don't have any concern with the
12 integrity of the data that we are receiving.

13 Q Okay. Now, there's been research done as
14 well in your field relative to the very close
15 genetic profiles of family members. I'm not talking
16 about identicals, but I am talking about extremely
17 close profiles, correct?

18 A That's correct.

19 Q Particularly in male individuals, correct?

20 A It wouldn't matter whether it was male or
21 female. Family members share loci in common.

22 Q I guess I'm confusing the higher advances
23 with the YSTRs now, which would just be for the
24 males; is that correct?

25 A That's correct.

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 Q Okay. But we are not dealing with the
2 higher calculations that we are dealing with in 2018
3 here, we are dealing with what you used at the time,
4 correct?

5 A That's correct.

6 Q Okay. So, very close family relations can
7 share a very high percentage of their DNA, and that
8 is a fact that we live with; correct?

9 A They can share some percentage of their
10 DNA, or they might share very little percentage of
11 their DNA.

12 Q Factoring in the relatives of an
13 individual in a small geographic area is not what
14 you do, right?

15 A There is not a need to factor in the
16 relatives of individuals.

17 Q That factor is not something that is part
18 of your equation in the computer system, correct?

19 A No, it is not.

20 Q Okay. Now, if I were to say to you,
21 scientifically, the formula that you work with to
22 come with this result is computer generated and that
23 you personally would not be able to do it in your
24 brain; you could not perform the analysis that this
25 computer is performing?

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 A What analysis are you referring to?

2 Q When you put the information from your
3 samples into the computer and it spits out
4 information to you? You have no capability as a
5 human being to do what that machine is doing,
6 correct?

7 Q What information are you referring to?

8 A The information on the loci.

9 A No, the machine, when we do the analysis,
10 it'll provide us with a profile for that sample and
11 you can visually look at that profile and see what
12 it is.

13 Q And if you were to look at full blood
14 brothers, not twins, you may find on the loci, on
15 their genetic profile, the same numbers at the same
16 locations on some of the loci, correct?

17 A On some of them you may. As she said
18 earlier, you do inherit your DNA from your parents,
19 so there's a one in four chance that you are going
20 to get the same allele from both parents. If you
21 look at the second allele there's one in four that
22 you get that same allele from both parents.

23 So, if you are looking at two
24 alleles, that is a one in 16 chance, if you are
25 looking at three alleles, that is a one in 32

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 chance. If you are looking at four alleles that is
2 a one in 64 chance. And then you are not looking at
3 the entire population anymore. That means to have
4 four alleles in common from the same parents you
5 would have to have 16 children in order to get two
6 that had the same profile in common, statistically.

7 Q So what you said to the solicitor in
8 answer to her question, you corrected her, you said
9 that DNA is not in the semen, DNA is in the sperm;
10 correct?

11 A That's correct.

12 Q Okay. So, the presence of semen is not
13 going to necessarily give you what you need to
14 extract DNA, correct?

15 A That's correct.

16 Q Okay. So, you are going to actually have
17 to have sperm to get the DNA?

18 A If we are looking for the sperm from an
19 individual who committed a sexual assault, you would
20 have to have sperm present to get your DNA profile.

21 Q All right. So, the pink panties are going
22 to have to have sperm on them for you to come up
23 with a DNA profile in 2002?

24 A If we are looking for somebody who
25 ejaculated semen on those pair of panties, yes,

CROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 ma'am.

2 Q Well, that is what I'm talking about, in
3 this case. If you are looking to extract and get a
4 DNA profile from those panties and you have already
5 gone through Patti Ruff who is looking for semen,
6 you can't have DNA from semen; right?

7 A That is correct. It is the sperm found
8 within the semen that contain the DNA.

9 MS. CAMPBELL: Okay. Thank you. That is
10 all that I have.

11 THE COURT: Redirect.

12 MS. SWANSON: Thank you. Just very
13 briefly. We have got two more folks that we
14 need to get through.

15 REDIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q 1999 submittal you got from Patti Ruff and
18 the cuttings were sealed?

19 A That's correct.

20 Q All right. They went back to the
21 Sheriff's Office, and when they came back in 2002
22 were the cuttings still sealed?

23 A Yes, ma'am, they were.

24 Q With your initials?

25 A Yes.

REDIRECT EXAMINATION OF DAVID MCCLURE BY MS. SWANSON

1 Q From the last time that you tested them?

2 A That's correct.

3 Q Okay. And in 2002 is when you had better
4 technology?

5 A That is correct.

6 Q And you say close family relations can
7 perhaps share a percentage of their DNA, but would
8 they have a match on all areas of loci that you guys
9 test?

10 A Statistically, no, unless you are
11 identical twins.

12 Q Right. Okay.

13 MS. SWANSON: That is all that I have,
14 thank you.

15 MS. CAMPBELL: Just one question.

16 RE-CROSS EXAMINATION

17 BY MS. CAMPBELL:

18 Q So you say statistically no, that is your
19 answer, statistically no; correct?

20 A Is it possible, yes. Is it probable, no.

21 Q Possible, yes. Probably, no.

22 MS. CAMPBELL: Thank you.

23 THE COURT: All right. Thank you. You
24 may step down and you may be excused from your
25 subpoena. Call your next witness.

RECROSS EXAMINATION OF DAVID MCCLURE BY MS. CAMPBELL

1 MS. SWANSON: Thank you. The State calls
2 Selena Nelson.

3 Thereupon,

4 SELENA NELSON

5 was called as a witness, having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. SWANSON:

9 Q Officer Nelson, were you working for the
10 Beaufort County Sheriff's Office in August of 2016?

11 A Yes, ma'am.

12 Q All right. And did you have opportunity
13 to take buccal swabs from Isaiah Gadson?

14 A Yes, ma'am, I did.

15 Q All right. And did you use gloves when
16 you swabbed him?

17 A Yes, ma'am, I did.

18 Q All right. And buccal swabs, are those
19 like Q-tips?

20 A Yes, ma'am.

21 Q And you swabbed the inside of his mouth?

22 A Yes.

23 Q All right. And I hand you State's 16 and
24 ask if these are the swabs that you took from
25 Mr. Gadson?

DIRECT EXAMINATION OF SELENA NELSON BY MS. SWANSON

1 A Yes, ma'am, they are with my signature and
2 date. 8-25-2016 at 1500 which is 3:00 p.m.

3 Q And you sealed those up?

4 A Yes, ma'am, I did.

5 MS. SWANSON: Thank you. That is all that
6 I have.

7 THE COURT: Any cross examination?

8 MS. CAMPBELL: No, ma'am.

9 THE COURT: Thank you. May step down.

10 MS. SWANSON: Thank you. The State calls
11 Laura Hash.

12 Thereupon,

13 LAURA HASH

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. SWANSON:

18 Q Ms. Hash, where do you work?

19 A I am employed by the South Carolina State
20 Law Enforcement Division, commonly known as SLED.

21 Q All right. And since when?

22 A I have been employed by SLED since
23 September 2004

24 Q And what do you do there?

25 A I am the DNA technical leader. I'm in

DIRECT EXAMINATION OF LAURA HASH BY MS. SWANSON

1 charge of all of the technical operations of the DNA
2 casework and DNA database department.

3 Q Have you ever testified in court as an
4 expert in DNA analysis?

5 A Yes, I have, multiple times.

6 Q And match statisticss?

7 A Yes, I have.

8 Q Okay.

9 MS. SWANSON: At this time I would offer
10 agent Hash as an expert in DNA analysis and
11 match statistics.

12 MS. CAMPBELL: No objection.

13 THE COURT: Motion granted.

14 MS. SWANSON: Thank you.

15 BY MS. SWANSON:

16 Q In 2016, did you have the occasion to test
17 several items given to you or brought to you by Bob
18 Bromage?

19 A Yes, I did.

20 Q Okay. And I'm going to kind of skim over
21 a lot of these items. There were many that you
22 didn't get any results on, right?

23 A That's correct, yes.

24 Q Okay. And what sort of items were those?

25 A They were -- the ones that did not yield a

DIRECT EXAMINATION OF LAURA HASH BY MS. SWANSON

1 useful profile were swabs from an interior, entire
2 exterior of a cigarette pack, a cigarette butt in
3 the road at the scene, several different swabs from
4 additional items, and swabs from wrapping paper near
5 the crime scene.

6 Q Okay. And when we are dealing with
7 possible touch DNA from 1980, would you expect to
8 get a result on anything?

9 A It would depend on how the evidence was
10 handled and how it was stored in that time. If it
11 was stored in an environment that was subjected to
12 any type of heat or humidity I would not expect to
13 get a DNA profile.

14 Q So now, DNA can degrade; right?

15 A Right.

16 Q And that is what we are talking about?

17 A That's correct, yes.

18 Q Does it ever change though?

19 A No, it does not.

20 Q Okay. So, once it's there it is there?

21 A That's correct. I wouldn't expect to
22 develop a DNA profile today and then tomorrow it
23 suddenly changes to a different DNA profile.

24 Q Because it was stored in a different
25 location?

DIRECT EXAMINATION OF LAURA HASH BY MS. SWANSON

1 A That's correct, yes.

2 Q Were you ever -- were you asked to examine
3 some buccal swabs from Isaiah Gadson?

4 A Yes, I was.

5 Q All right. I'm going to hand you what's
6 been marked as State's 16.

7 (Pause.)

8 BY MS. SWANSON:

9 Q I will ask you if you examined these
10 buccal swabs from Isaiah Gadson, State's 16?

11 A Yes, I recognize this because it is the
12 SLED heat-sealed pouch. This yellow label has the
13 case number and item number 28, which corresponds to
14 item 28 on my report which are buccal swabs from
15 Isaiah Gadson, Junior. In the corner you see where
16 my initials and date are, indicating that I sealed
17 this back after I did the analysis.

18 MS. SWANSON: The State would move item 16
19 into evidence at this time.

20 MS. CAMPBELL: No objection.

21 THE COURT: Motion granted.

22 *(Whereupon, State's Exhibit No(s). 16*
23 *marked for identification and received in*
24 *evidence.)*

25 BY MS. SWANSON:

DIRECT EXAMINATION OF LAURA HASH BY MS. SWANSON

1 Q First of all, were you able to establish a
2 DNA profile on these swabs on Isaiah Gadson?

3 A Yes, I was.

4 Q All right. And what were you asked to
5 compare that to?

6 A I was asked to compare it to the DNA
7 profile that David McClure had developed from the
8 panties.

9 Q The panties and the pants?

10 A And item one point -- the pink panties and
11 the blue pants, yes.

12 Q Right. And what were your findings?

13 A The DNA profile developed from the semen
14 on these items matches the DNA profile of Isaiah
15 Gadson, Junior.

16 Q All right. And so let's take them one by
17 one. The pink panties, the cuttings of the pink
18 panties, item 1.1. You come up with a match
19 statistic, right?

20 A Yes.

21 Q And what does that tell you? Does that
22 tell you how strong of a match it is?

23 A It tells us the probability of randomly
24 picking a person from the population that would
25 match this item.

DIRECT EXAMINATION OF LAURA HASH BY MS. SWANSON

1 Q All right. And what was the match
2 statistic that you came up with on the pink panties?

3 A On the pink panties, which was item 1.1,
4 the probability of randomly selecting an unrelated
5 individual having a DNA profile matching the semen
6 on this item is approximately one in 3.7 -- I am
7 sorry, one in 2.1 trillion.

8 Q One in 2.1 trillion?

9 A Yes.

10 Q Do you know how many zeros that is?

11 A I would have to write that out. I don't
12 have a pen.

13 Q You need a pen?

14 A Yes.

15 Q Okay. 2.1 followed by -- 2.1 and then 15
16 zeros?

17 A Yes.

18 Q All right. And then, what was the match
19 statistic on the blue corduroy pants?

20 A The probability of randomly selecting an
21 unrelated individual having a DNA profile matching
22 the semen on this item is approximately one in 3.7
23 quadrillion.

24 Q How many zeros is that?

25 A Three more zeros.

DIRECT EXAMINATION OF LAURA HASH BY MS. SWANSON

1 Q So eighteen zeros?

2 A Yes.

3 Q All right. And do you know about how many
4 people are on this earth?

5 A About seven billion.

6 Q Seven .5 billion?

7 A Approximately.

8 Q How many zeros is that?

9 A Twelve.

10 Q And that is in the whole world?

11 A Correct.

12 Q Okay.

13 MS. SWANSON: Beg the Court's indulgence.

14 (Pause.)

15 MS. SWANSON: All right. That is all I
16 have for you at this time, Lori, thank you.

17 THE COURT: Examination.

18 CROSS EXAMINATION

19 BY MS. CAMPBELL:

20 Q Lori, good afternoon. Do you have your
21 report with you?

22 A Yes, I do.

23 Q Okay, perfect. So, I'm just going to read
24 what you in your capacity as an expert in this case
25 have reported?

CROSS EXAMINATION OF LAURA HASH BY MS. CAMPBELL

1 A And there were two reports that I issued,
2 so if you could just --

3 Q This is Page 2 of 4 that you issued.

4 A Okay.

5 Q On --

6 A September 23rd of 2016.

7 Q That is correct.

8 A Okay.

9 Q And so, under "results," the second
10 paragraph.

11 A Yes.

12 Q The second line. The probability of
13 randomly selecting an unrelated individual having a
14 DNA profile matching the --

15 A Semen.

16 Q -- semen. Not sperm?

17 A No, we report it as semen.

18 Q Semen?

19 A Yes.

20 MS. CAMPBELL: That is all that I have.

21 REDIRECT EXAMINATION

22 BY MS. SWANSON:

23 Q But the DNA profile was developed --

24 MS. CAMPBELL: Your Honor, I object.

25 She's starting out by leading the witness.

REDIRECT EXAMINATION OF LAURA HASH BY MS. SWANSON

1 MS. SWANSON: I am sorry.

2 BY MS. SWANSON:

3 Q Did you develop the DNA profile?

4 A No, I did not.

5 Q All right. And were you in here when
6 David McClure, who did develop the DNA profile,
7 testified?

8 A Yes, I was.

9 Q Okay. And do you recall him testifying
10 that he developed the DNA profile from sperm?

11 MS. CAMPBELL: Objection.

12 THE COURT: Objection overruled.

13 A Yes, I did.

14 Q Okay. So, can you just explain the
15 discrepancy between?

16 A Sure. One component of semen is the
17 spermatovilla or sperm, as we call it, is what we
18 would get the DNA from. The male sperm has the DNA
19 in it that we do the differential extraction
20 procedure on to identify the male profile. We did
21 not visualize the sperm, so we say semen because we
22 have done the chemical test to confirm the presence
23 of semen.

24 MS. SWANSON: Okay, thank you.

25 RE-CROSS EXAMINATION

RE CROSS EXAMINATION OF LAURA HASH BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q And additionally, in your report, you have
3 cigarette butts that you analyzed, right? And you
4 were trying to see if these smoked cigarette butts
5 had any DNA on them, correct?

6 A Correct. There were two.

7 Q Items --

8 A Cigarette butt, item 20 was a cigarette
9 butt from the edge of the road at the scene. And
10 item 21 was a cigarette butt in the road at the
11 scene.

12 Q And cigarette butts, which we put in our
13 mouth, we get our saliva all over them, we are
14 putting our DNA on those cigarette butts every time,
15 correct?

16 A Correct. A lot of people don't deposit a
17 lot of saliva onto the cigarette butts. We have
18 done DNA analysis on cigarette butts and we don't
19 get a profile from them. That is not uncommon.
20 Especially if they were left out on a road where
21 they were exposed to the elements we would not
22 expect to get a profile on them.

23 Q You being an expert, you are familiar also
24 with touch DNA, right?

25 A Yes.

RE CROSS EXAMINATION OF LAURA HASH BY MS. CAMPBELL

1 Q Okay. So touch DNA doesn't even involve
2 body fluids, it just involves my skin cells; right?

3 A Right and then that varies from from
4 person to person. What touch DNA is is DNA left
5 behind when a person touches an object. I may touch
6 an object and leave no skin cells behind and then
7 one of you may touch the item behind me and it is
8 your profile that I would develop and not mine. You
9 can have multiple people leave their DNA profile
10 behind on a particular object and you might develop
11 a profile consisting of all of our profiles.

12 Q And you, again, in your DNA analysis of
13 cigarettes butts, you say that there is no human DNA
14 found on them at all?

15 A Correct. And like I said, it is not
16 uncommon.

17 THE COURT: All right. Thank you, ma'am.
18 You may step down.

19 MS. SWANSON: May she be released please?
20 May Agent Hash be released?

21 THE COURT: Yes, certainly.

22 MS. SWANSON: Thank you.

23 THE COURT: All right. Ladies and
24 gentlemen, we are going to call it a day. I'll
25 ask you to come back at 9:30 in the morning.

RE CROSS EXAMINATION OF LAURA HASH BY MS. CAMPBELL

1 And remind you what I told you yesterday about
2 not letting anybody discuss the case with you,
3 you don't discuss the case with anybody. Don't
4 read about the case, look at the newspaper
5 about the case.

6 You don't get on the Internet about the
7 case. The one thing that I failed to mention
8 to you yesterday that I should have mentioned
9 to you and that is this: If you become aware
10 that another member of the jury is, in fact,
11 violating these rules, I ask you to notify the
12 bailiff who will, in fact, notify me.

13 So, ladies and gentlemen, I'll see you
14 tomorrow morning at 9:30.

15 THE BAILIFF: Please follow me.

16 (The jury exits the courtroom at 4:50
17 p.m.)

18 THE BAILIFF: The jury is clear, Your
19 Honor.

20 THE COURT: Anything that we need to take
21 care of this evening?

22 (No response.)

23 THE COURT: Nothing. What does it look
24 like from a scheduling standpoint?

25 MS. SWANSON: Your Honor, four more

RECROSS EXAMINATION OF LAURA HASH BY MS. CAMPBELL

1 witnesses tomorrow. A lay witness, the second
2 victim, Captain Bromage, and then a chemist DNA
3 expert. So, I mean, one of them may be on the
4 short side, but I think that I will probably
5 rest around lunchtime unless we go as slow as
6 we did this morning. So, I don't know.

7 THE COURT: All right. Let me ask y'all
8 this: Assuming that the case goes to the
9 jury -- I always try to start it out this
10 way -- is there any disagreement or agreement
11 on what law applies and what charges need to be
12 given?

13 MS. CAMPBELL: Well --

14 THE COURT: As to the offenses charged.

15 MS. CAMPBELL: I mean, I can answer that
16 fully in the morning. You mean, specific jury
17 charge requests or just?

18 THE COURT: No, is the law any -- on these
19 charges, is the law different today than it was
20 then? Or does it make any difference?

21 MS. CAMPBELL: It is the same.

22 MS. SWANSON: It is the same.

23 THE COURT: Okay. I didn't know.

24 MS. CAMPBELL: But as far as a jury charge
25 conference, we would need to take that up. I

RE CROSS EXAMINATION OF LAURA HASH BY MS. CAMPBELL

1 do have some very specific requests tomorrow.

2 THE COURT: Okay. All right. Court

3 adjourned until 9:30 tomorrow morning.

4 (Trial is adjourned for the day.)

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RECROSS EXAMINATION OF LAURA HASH BY MS. CAMPBELL

1 5-23-2018 PROCEEDINGS

2 THE COURT: Anything that we need to do
3 before the jury comes in?

4 MS. SWANSON: Nothing from the State.

5 MS. CAMPBELL: No, Your Honor.

6 THE COURT: Let's bring the jury in.

7 (The jury enters to the courtroom at 9:35
8 a.m.)

9 MS. SWANSON: The State calls Clifford
10 Brown.

11 Thereupon,

12 CLIFFORD BROWN

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q Good morning, Mr. Brown. You are a little
18 hard of hearing, right?

19 A Yes.

20 Q So I'm going to speak a little louder than
21 I normally do.

22 A You are good.

23 Q Could you please state your full name for
24 the record?

25 A George Clifford Brown.

DIRECT EXAMINATION OF CLIFFORD BROWN BY MS. SWANSON

1 Q All right. Where did you grow up?

2 A In Burton.

3 Q In Burton? That is here in Beaufort?

4 A Yes, that is in Beaufort.

5 Q Okay. In northern Beaufort County?

6 A Yes, yeah.

7 Q Okay. And what do you do for a living?

8 A Huh?.

9 Q What do you do for a living?

10 A Right now I dig graves for Marshal.

11 Q How do you know Isaiah Gadson?

12 A That is my first cousin.

13 Q All right. So you guys are family?

14 A Right. That is my daddy's sister's son.

15 Q Okay. Can you point out Isaiah Gadson in

16 the courtroom?

17 A That is him right there.

18 Q Okay. And the State subpoenaed you to

19 testify today, right?

20 A Right.

21 Q Okay. You didn't ask to be here, did you?

22 A No.

23 Q You don't particularly want to be here, do

24 you?

25 A I don't want to be here.

DIRECT EXAMINATION OF CLIFFORD BROWN BY MS. SWANSON

1 Q Okay. Where did you live through the '60s
2 and '80s? Did you live in Burton?

3 A I lived in Burton on the corner in the
4 '60s. In the '80s, I lived on Lady's Island.

5 Q Okay. Where did Isaiah Gadson live; where
6 did he grow up?

7 A As far as I know, in Burton. See, I
8 couldn't tell you the first time I met Isaiah, see.
9 I didn't know Isaiah coming up, see. Best in the
10 teens when me and him used to travel back and forth
11 to Sheldon.

12 Q Right. And you guys went to the same high
13 school?

14 A Yes, Robert Smalls.

15 Q And you are close in age?

16 A Yes, I think that I'm maybe a year or two
17 years older than Isaiah.

18 Q All right. What road was it that Isaiah
19 and his family lived on?

20 A Well, they call it Glaze Drive now, but I
21 used to call it the House of Joy Road.

22 Q House of Joy Road. Okay, what is the
23 story with that?

24 A Because it was a club on that road. I
25 can't recall the road ever having a name.

DIRECT EXAMINATION OF CLIFFORD BROWN BY MS. SWANSON

1 Q All right. So, Glaze Drive. And did he
2 live close to his parents?

3 A He lived right across the street.

4 Q All right. And where was he -- where did
5 he work?

6 A I think that he was at Brown's Mobile
7 Home.

8 Q All right. Brown's Manufactured Homes?

9 A Used to be on Boundary Street up there.

10 Q Right. On Highway 21?

11 A Right. Highway 21.

12 Q Okay. And how long did he work there?

13 A I don't know.

14 Q A long time?

15 A I would say so, assume so.

16 Q Okay. Do you remember what sort of cars
17 Isaiah drove?

18 A Gadson had a Firebird, green and white
19 Firebird.

20 Q Okay. Do you remember any other cars that
21 he drove?

22 A A Chevy.

23 Q What kind of Chevy?

24 A He had a '64 Chevy, a '69 Road Runner.

25 Q Did you know him to have guns?

DIRECT EXAMINATION OF CLIFFORD BROWN BY MS. SWANSON

1 A We all had guns then. We all had guns.

2 Q All right. And what kind of guns did
3 Isaiah have?

4 A Isaiah had a 357 and either a .38 or .32,
5 I couldn't tell the difference.

6 Q All right. And do you know where he kept
7 those guns?

8 A Huh?

9 Q Do you know where he kept those guns?

10 A In the Firebird, they usually be sticking
11 in the console.

12 Q All right. Would he have one or two?

13 A He had two.

14 Q Okay. Did he ever keep a gun on him?

15 A I ain't never seen him with a gun. When I
16 see him it be stick there. I ain't never seen him
17 draw a gun on nobody.

18 Q Okay. But you did hear him talk about
19 killing someone, right? What did he tell you?

20 A He never tell me he killed nobody.

21 Q All right. So, what was the thing that he
22 said how he had popped someone before?

23 A Well, you know, you have that, but that
24 was back in the late '60s and early '70s but I know
25 that he couldn't pop nobody because me and him

DIRECT EXAMINATION OF CLIFFORD BROWN BY MS. SWANSON

1 usually be together.

2 Q Okay. And what exactly was it that he
3 said?

4 A He said, I got one and one more won't be
5 nothing. That is only when he get ready to fight
6 somebody.

7 Q Oh, so he was a fighter. Was he a smoker?

8 A Yes, he smoked. I smoke too.

9 Q What kind of cigarettes did y'all smoke?

10 A I smoke Kool.

11 Q What did he smoke?

12 A I don't -- Kool, I don't know.

13 Q Do you remember -- you know, the woods by
14 Old Salem Road and Salem Point?

15 A I know that road pretty good.

16 Q And did your family used to own some of
17 that property?

18 A That is what my daddy was fighting for.
19 His granddaddy had owned it back then.

20 Q Okay. So, did you know the place called
21 Creek's Edge?

22 A Creek Edge, yeah, used to call it Lover's
23 Lane.

24 Q Lover's Lane, okay. Had you ever been
25 down there before?

DIRECT EXAMINATION OF CLIFFORD BROWN BY MS. SWANSON

1 A To Creek Edge?

2 Q Yeah.

3 A Yeah, many nights. Many nights.

4 Q All right, Clifford. Just one minute.

5 Beg the Court's indulgence.

6 THE COURT: Certainly.

7 (Pause.)

8 MS. SWANSON: Thank you, Mr. Brown. That
9 is all that I have for you.

10 THE COURT: Cross examination.

11 MS. SWANSON: That is all of my questions.

12 Please answer any that Ms. Campbell may have.

13 CROSS EXAMINATION

14 BY MS. CAMPBELL:

15 Q Clifford, can you hear me?

16 A Yeah.

17 Q Do you want me to come closer, or can you
18 hear me from here?

19 A Yes, I can hear.

20 Q Your street name -- your street name is
21 Drama?

22 A I hear you but I don't understand you.

23 Q Okay. Well, let me come closer. Your
24 street name as you are known on the street is Drama?

25 A Drama.

CROSS EXAMINATION OF CLIFFORD BROWN BY MS. CAMPBELL

1 Q Clifford Drama Brown, right?

2 A No.

3 Q George Clifford Drama Brown?

4 A No, just Drama on the street.

5 Q Just Drama, okay. And you are first

6 cousins with Isaiah Gadson, right?

7 A Do what?

8 Q He is your first cousin?

9 A He is my first cousin.

10 Q Is your hearing aid on that side?

11 A Yes, ma'am.

12 Q You want to turn it a little bit -- there

13 you go. Is that okay, Your Honor?

14 THE COURT: Members of the Jury, if you

15 have any trouble hearing the witness, please

16 let us know.

17 BY MS. CAMPBELL:

18 Q Now, you got interviewed and questioned by

19 that man right there, Bob Bromage, sitting right

20 there?

21 A In the tie.

22 Q Yeah, in the jacket and the tie. He came

23 to talk to you and question you about this case,

24 right?

25 A Maybe. He don't look the same to me. I

CROSS EXAMINATION OF CLIFFORD BROWN BY MS. CAMPBELL

1 thought that he was gray haired.

2 Q Do you remember telling this officer that
3 the only guns you know Isaiah to ever have was a
4 revolver?

5 A No, I said that he had two guns.

6 Q Small nickel plated revolver, two guns,
7 both revolvers; do you remember telling this officer
8 that?

9 A No, I didn't say nothing about that. I
10 said he had a 357 or a .32 or a .38. I didn't say
11 nothing about revolvers or none of that.

12 Q Uh-huh. And your family, the Gadson
13 family, that family in this community goes back 100
14 years or more, right?

15 A Right.

16 Q And there's hundreds of members of the
17 Gadson family, right?

18 A Right.

19 Q Okay. And your testimony is that you
20 would go and had been to this Lover's Lane back in
21 the day, right?

22 A Back in the days.

23 Q Uh-huh. (Indicating affirmatively.)

24 MS. CAMPBELL: Okay. That is all that I
25 have. Thank you.

CROSS EXAMINATION OF CLIFFORD BROWN BY MS. CAMPBELL

1 THE COURT: Any redirect, solicitor?

2 REDIRECT EXAMINATION

3 BY MS. SWANSON:

4 Q Mr. Brown, you would go to Creeks Edge
5 with a number of people, right?

6 A Bunch of people.

7 Q All right. And you had been down there
8 with Isaiah Gadson, haven't you?

9 A No, I ain't never been down there with
10 Isaiah.

11 Q You didn't tell Captain Bromage that you
12 had been down there?

13 A No, me and him ain't never been down
14 there, no.

15 MS. SWANSON: Your Honor, at this time I
16 have a motion to offer extrinsic evidence since
17 the witness has denied making that statement to
18 Mr. Bromage under 613(b).

19 I really don't have any further questions
20 for this witness, but I could put Captain
21 Bromage on the stand just for that point or
22 wait until his testimony.

23 THE COURT: It is your case.

24 MS. SWANSON: Does Ms. Campbell have any
25 further questions?

REDIRECT EXAMINATION OF CLIFFORD BROWN BY MS.
SWANSON

1 MS. CAMPBELL: (Nods in the negative.)

2 THE COURT: Thank you, sir. You may step
3 down and you may be excused from your subpoena.
4 Any objection to the witness being excused from
5 his subpoena?

6 MS. SWANSON: No, sir.

7 THE COURT: Okay. Thank you for coming.

8 MS. SWANSON: The State calls Captain
9 Bromage.

10 Thereupon,

11 BOB BROMAGE

12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. SWANSON:

16 Q Captain Bromage, did you interview
17 Clifford Brown?

18 A I did.

19 Q When did you interview him?

20 A Give me one second.

21 Q Sure.

22 A August 15th, 2016.

23 Q Okay. And did you ask him if he had ever
24 been out to Creeks Edge with Isaiah Gadson?

25 A When asked about the earlier reference to

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 the Lover's Lane behind Lowe's, he advised Gadson
2 Junior and others called it Creeks Edge. He stated
3 Gadson Junior drove him out there in a blue
4 Chevrolet Impala one night in the 1970s. He advised
5 that it was a well known parking area for couples.
6 Brown stated that Gadson Junior had an
7 African-American female with him on that occasion.
8 He advised they sat in the vehicle for a few minutes
9 on a dirt path under a large oak tree near the edge
10 of the creek.

11 Brown recalled it was so dark in the
12 woods you couldn't see a person if they were right
13 next to you. Brown advised that a male subject on a
14 motorcycle pulled in behind Gadson Junior's Impala
15 blocking him in. Do you want to me to go on, ma'am?

16 MS. SWANSON: I think that that covers the
17 particular trip to Creeks Edge and what he told
18 you about going there with Isaiah Gadson.

19 Thank you very much, Captain.

20 MS. CAMPBELL: Are we going to continue
21 with Officer Bromage or pull him down?

22 MS. SWANSON: No, we are not. This was
23 just the extrinsic evidence offered under
24 603(b).

25 CROSS EXAMINATION

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q So, additionally, from the defendant, with
3 Officer Bromage's report in reference to the
4 inconsistency in testimony and what is in the
5 report, I would ask him briefly: Isn't it true that
6 you referenced no report from George Clifford Drama
7 Brown that Isaiah Gadson owned a 357, correct?

8 A One more time, ma'am?

9 Q Okay. There is no reference in your
10 report that Isaiah Gadson had a 357, correct? Only
11 two revolvers, correct?

12 A 357 is a revolver.

13 Q Okay. What is listed specifically Officer
14 Bromage -- let me find it and I'll have you read it
15 for us.

16 A I'll be able to find it in a second if you
17 give me.

18 Q Uh-huh. (Indicating affirmatively.)

19 A Brown advised Gadson Junior he had two
20 revolvers in those days, one was a 357 magnum,
21 possibly a Taurus, and the other one was a small
22 nickel-plated revolver, either .32 or .38 caliber.

23 Q The small nickel plated revolver, either a
24 .38 or a .32 revolver, correct? Is that correct?

25 A The other one was a smaller nickel-plated

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 revolver, either a .38 or a .32 caliber.

2 Q And the nickel-plated revolver, that would
3 sort of -- that would be like a shiny gun, correct?

4 A It would.

5 MS. CAMPBELL: That is all that I have.

6 MS. SWANSON: All right. Thank you. And
7 if I can ask Captain Bromage to step down.

8 Thereupon,

9 LORI ANN LAWLESS

10 was called as a witness, having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. SWANSON:

14 Q Good morning, Lori.

15 A Good morning.

16 Q Back in 1983, where were you living?

17 A I was living on what was known as Green
18 Lawn Park at the time. It is now known as Green
19 Lawn Drive.

20 Q If you could speak up just a little bit
21 for me. This is a big courtroom and I just want to
22 make sure that the jury can hear you. Now, is that
23 location off of Boundary Street?

24 A Yes, ma'am, it is on the corner where the
25 liquor store is, the road right next to where the

DIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 old KMart is.

2 Q So, that BiLo shopping center area?

3 A Yes, ma'am.

4 Q Just right up the road?

5 A Yes.

6 Q Okay. What were you doing back in 1983;
7 where were you working?

8 A I was in the Marine Corps. I was
9 stationed on Parris Island at women recruit training
10 command.

11 Q Okay. And were you married?

12 A Yes, I was.

13 Q OKay. How long had you been married?

14 A I got married in '78, so approximately
15 five years.

16 Q How old were you?

17 A I was 21, right before my 22nd birthday.

18 Q Were you local to Beaufort?

19 A No, I was not.

20 Q All right. Did you know or meet MINOR

21 [REDACTED] or any of her family back in the '80s?

22 A No, ma'am.

23 Q All right. And did you meet them after
24 that?

25 A No, I had never met them until this court.

DIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 Q Until this week?

2 A Correct.

3 Q Okay. You remember talking on the phone
4 to me?

5 A Yes, ma'am.

6 Q And you weren't sure that you were going
7 to come and testify, right?

8 A That's correct.

9 Q Why is that?

10 A I was afraid.

11 Q Okay. And what were you -- tell us what
12 made you afraid; what happened back in 1983 that
13 made you afraid?

14 A In 1983 I was abducted and raped by
15 Mr. Gadson.

16 Q Okay. Was this February 4th, 1983?

17 A Yes, ma'am.

18 Q Okay. How did you come in contact with
19 Mr. Gadson?

20 A I was walking to meet a ride on my way to
21 work early that morning and I was offered a ride. I
22 was running late that morning and -- would you like
23 me to tell the entire story?

24 Q Yes. First tell me, was it dark outside
25 at the time?

DIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 A It was. It was between 5:30 and 5:45 in
2 the morning.

3 Q Okay. And so, yes, tell us, tell us what
4 happened from there.

5 A Okay. As I said, I was running late.
6 Every morning I walked from my home on Green Lawn
7 Park down Boundary Street, 21, to Highway 280 to the
8 country store where I met my ride and they gave me a
9 ride to Parris Island.

10 And that particular morning I was
11 running late, a car had stopped and offered me a
12 ride. I was not hitchhiking. And the first ride I
13 turned down. And -- but as I said, I was running
14 late so when Mr. Gadson stopped I knew that I wasn't
15 going to meet my ride if I didn't accept a ride, so
16 I -- he offered me a ride and I took it. And I told
17 him where I was going and he said that he would take
18 me there.

19 So, I got in the car. And when he
20 got to where the corner store was, he turned to
21 secondary, down secondary 73. He asked me -- I
22 asked him where he was taking me, that the corner
23 store was right there and he could just let me out.
24 And he said that he was going to buy some marijuana
25 from a friend. And he asked me if I smoked, and I

DIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 told him no. He asked me if I had ever had sex with
2 a black man and I told him no and I explained that I
3 was married.

4 And, again, I was telling him that
5 I'm going to be late, just let me out and he
6 refused. He went about a mile down the road, it
7 seemed like a mile, it was dark. And he turned left
8 on a dirt road, on a wide dirt road and went past a
9 white trailer and then made a right-hand turn down
10 another dirt road towards an open field and parked
11 the car.

12 At that point he got out of the car.
13 It's been a long time. But I seem to remember there
14 was a structure that he went in, but only for a
15 moment. I had just --

16 Q Did you have time to escape?

17 A I didn't. It entered my mind for just a
18 moment, I should run, but he came back. And he got
19 in the car and he locked the doors. And he started
20 putting his weight against me and I began to
21 struggle. And he threatened me. He said to stop
22 struggling or he was going to blow my brains out.

23 Q Did you believe him to have a gun?

24 A Absolutely.

25 Q And what was he doing when he said this to

DIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 you?

2 A At that point he was just forcing himself
3 on me, but then he said it again, and the second
4 time he was reaching under the front seat of the
5 car.

6 Q Which hand was he reaching with?

7 A His right hand. And after the second
8 threat to blow my brains out and the reaching I
9 stopped fighting. He told me to take my clothes off
10 or die. And at that point he removed his trousers.
11 And I took my pants off. And that is when he
12 performed oral sex on me.

13 After that he -- that only lasted
14 like two to three minutes and he asked me if it felt
15 good and if I liked it, did I enjoy it. And then he
16 climbed on top of me and he raped me.

17 Q Vaginally?

18 A Vaginally. That also lasted a couple of
19 minutes. He ejaculated in me and then he got
20 dressed. And I was afraid to move. I asked him if
21 I could get dressed and he said yes. While I was
22 getting dressed he asked if I was going to call the
23 police or tell my husband, and I was afraid to tell
24 the truth for fear he would kill me so I told him
25 no. And then he apologized. He said that he didn't

DIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 know why he had done this and that he was sorry.

2 And he offered to pay me \$50. And I told him that I

3 was not a prostitute and I didn't want his money.

4 He ---

5 Q So, after the sexual assault, what are you

6 doing? Are you -- what did you observe about the

7 car?

8 A Yeah, so at this point I'm thinking, if he

9 lets me live I need to identify everything I can.

10 So it is starting to get light. I notice that

11 there's a red spiral notebook in the dash of the

12 car. And, you know, I'm taking inventory of

13 everything that I can. There's something fuzzy

14 around the mirror of the car. There's deodorizers

15 hanging from the mirror. There's cloth seats. Just

16 everything that I can.

17 Q Did you get a good look at him?

18 A As best as I could, yes. I tried to get a

19 description of him. He starts driving back towards

20 the direction that I wanted to go, back towards 280

21 and dropped me off on 73, secondary 73, near a

22 welding shop. And I truly expected to hear a

23 gunshot. I expected him not to leave me alive, but

24 he did.

25 And I got his license plate and I

DIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 just kept saying it over and over in my head as I
2 ran to meet my ride up at the country store. When I
3 got there I wrote the license plate in the dirt so I
4 wouldn't forget it. And I don't recall if my ride
5 was waiting or if they got there like within
6 minutes, but when they got there we called the
7 police and they waited with me. They called my
8 command to let them know that I was going to go to
9 the hospital.

10 Q Okay. So, did you give police a
11 description of the man that raped you?

12 A Yes, ma'am.

13 Q And how did you describe him?

14 A I described him as a black male in his mid
15 20s, 25, 26 years old, approximately 5'9", 5'10",
16 150 pounds, short afro, moustache, sideburns, just
17 as far as facial hair.

18 Q After you talked to the police, did you
19 immediately go to the hospital?

20 A I asked them if they could run me by my
21 house that was on the way to pick up my husband and
22 get a change of clothes and they did. And we went
23 to Beaufort Naval Hospital.

24 Q All right. So, when you went by your
25 house did you change the clothes that you were in

DIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 during the rape or anything like that?

2 A No, I did not.

3 Q Then you went to Beaufort Naval Hospital?

4 A Yes, I did.

5 Q All right. And did you get a sexual
6 assault exam?

7 A Yes, I did.

8 Q Did you turn your clothes over to police?

9 A Yes, they took everything that I was
10 wearing.

11 Q All right. And while you were at the
12 hospital, did police develop a suspect?

13 A They did. They brought me a photo line-up
14 also while I was there.

15 Q Okay. And did you pick someone out of
16 that photo line-up?

17 A Yes, I picked out Mr. Gadson.

18 Q All right. And then, was he subsequently
19 arrested?

20 A He was. I believe that on the drive home
21 they told me that they had him in custody.

22 Q Okay. All right.

23 Thank you, Lori. Please answer any
24 questions that the defense attorney may have for
25 you.

DIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 THE COURT: Cross examination.

2 MS. CAMPBELL: Your Honor, may we approach
3 briefly?

4 (Off-the-record discussion held.)

5 CROSS EXAMINATION

6 BY MS. CAMPBELL:

7 Q Lori, do you remember testifying
8 previously on these matters on Monday afternoon?

9 A Yes, ma'am.

10 Q Okay. And do you remember testifying on
11 Monday afternoon that when you arrived at the
12 country store in the company of Mr. Gadson, that
13 your ride was already there waiting for you?

14 A I remember saying that I thought that they
15 may have already been there.

16 Q Okay. So, yes, on Monday you said your
17 ride was waiting for you at the country store?

18 A No, ma'am. I could not recall whether
19 they were there or not. I thought that they may
20 have been. That was a very long time ago and I was
21 in shock. The facts are they arrived either just as
22 I was getting there or they may have been waiting,
23 I'm not 100 percent sure.

24 Q Okay. And I understand that you are
25 wavering today. But, again, we have a court

CROSS EXAMINATION OF LORI ANN LAWLESS

1 reporter.

2 A Yes, ma'am. Yes, ma'am.

3 Q And it is taken down.

4 A Yes, ma'am.

5 Q So, we may need to get your testimony from
6 Monday to be clear.

7 A They may have been there, they may have
8 been getting there. I'm not 100 percent sure of the
9 timing.

10 Q We will make sure that we get it from the
11 court reporter.

12 A Yes, ma'am.

13 Q Lori, you reported to law enforcement and
14 to the physician who examined you that the previous
15 night you had been consuming alcohol, correct?

16 A Yes, ma'am.

17 Q Okay. And you also reported that -- well,
18 there's no statement taken from your husband by law
19 enforcement during this investigation, correct?

20 A I don't know.

21 Q Okay. To the best of your knowledge,
22 then, was your husband questioned or did he make a
23 statement in an effort to determine anything about
24 your whereabouts the night before?

25 A I don't know.

CROSS EXAMINATION OF LORI ANN LAWLESS

1 Q Okay. So you and your husband never
2 communicated about whether or not he was being
3 questioned by law enforcement?

4 A Why would he be?

5 Q Okay. Okay. Thank you. You are in the
6 Marine Corps at this time?

7 A Yes, ma'am.

8 Q You are trained to defend yourself,
9 correct?

10 A Yes, ma'am.

11 Q And you are trained in how to handle a
12 weapon, correct?

13 A Yes, ma'am.

14 Q Okay. And what you told law enforcement
15 in 1983 is that you were walking on the highway,
16 right?

17 A Yes, ma'am.

18 Q That you were on your way to the country
19 store, correct?

20 A Yes, ma'am.

21 Q That you were at some point to be picked
22 up at the country store by a ride who would take you
23 to work, right?

24 A Yes, ma'am.

25 Q Okay. And that you -- you -- do you

CROSS EXAMINATION OF LORI ANN LAWLESS

1 recall that you never talked to law enforcement
2 about passing up a ride from another car; do you
3 know that you have added that?

4 A I don't recall, but I didn't -- I wouldn't
5 think that it would be pertinent because it didn't
6 have anything to do with this case.

7 Q So, you are on the highway, this gentleman
8 pulls over and says to you, Do you need a ride;
9 right?

10 A Yes, ma'am.

11 Q This is what you told law enforcement.
12 And you got in the car with him, correct?

13 A Yes, ma'am.

14 Q Okay. And you told law enforcement that
15 he's taking you down to a house, a structure and he
16 gets out of the car for some period of time to get
17 some marijuana, right?

18 A That is what he had said.

19 Q And this is what you told law enforcement?

20 A Yes, ma'am.

21 Q Okay. And at that point, then you say
22 that you are sexually assaulted; correct?

23 A Yes, ma'am.

24 Q And this man who has just threatened your
25 life and sexually assaulted you, does you the

CROSS EXAMINATION OF LORI ANN LAWLESS

1 courtesy of carrying you to the country store,
2 correct?

3 A No, ma'am, he dropped me off on secondary
4 73.

5 Q Okay. And where is that in relation to
6 the country store?

7 A It is a different road. It is a little
8 ways down. He dropped me off and I had to walk the
9 rest of the way.

10 Q And do you recall testifying previously
11 that he took you back to the country store?

12 A No, ma'am.

13 Q Okay. Now, you were taken to a physician
14 who performed a sexual assault exam on you; right?

15 A Yes, ma'am.

16 Q And part of that sexual assault exam was
17 the combing of your pubic hairs to try and extract
18 any African-American pubic hairs from your vaginal
19 area, correct?

20 A I guess. I don't recall.

21 Q Okay. And do you recall that during the
22 sexual assault exam it is determined that you have
23 absolutely no trauma vaginally?

24 A Perhaps. I didn't struggle.

25 Q You worked with investigators in 1983 to

CROSS EXAMINATION OF LORI ANN LAWLESS

1 prepare your case for a trial, correct?

2 A Yes, ma'am.

3 Q I believe you have testified you were
4 actually in court and ready to go to trial, right?

5 A Yes, ma'am.

6 Q And the investigators and the State of
7 South Carolina allowed Mr. Gadson to plead no
8 contest to assault and battery, correct?

9 A Yes, ma'am.

10 Q Okay. And you were not in a position to
11 have to ever testify then in 1983?

12 A That's correct.

13 Q Okay. Do you recall telling investigators
14 at the time that Mr. Gadson was 5'10" to 6 feet
15 tall?

16 A That is what I was told I said.

17 Q Okay. And in your original statements and
18 interviews in this case do you recall -- and in
19 fact, the sexual assault exam itself -- did they
20 tell you that what they were doing was trying to get
21 evidence off of your body? Did you understand that
22 that was what was happening during that exam?

23 A I knew that they were looking for sperm.

24 Q Right, okay. Right.

25 A And semen.

CROSS EXAMINATION OF LORI ANN LAWLESS

1 Q Okay. So, they are taking from you what
2 you have told them is sperm from Isaiah Gadson --

3 A Yes.

4 Q -- in this case?

5 A Yes, ma'am.

6 Q And to the best of your knowledge then,
7 taking that evidence preserving it and holding on to
8 it, correct?

9 A Yes, ma'am.

10 Q Okay.

11 MS. CAMPBELL: Just one second, Your
12 Honor.

13 (Pause.)

14 MS. CAMPBELL: Nothing further.

15 REDIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q Just briefly, Lori. You told Ms. Campbell
18 that you were not 100 percent sure that your ride
19 was at the store when you got there, right?

20 A Yes.

21 Q Are you 100 percent sure that Isaiah
22 Gadson raped you?

23 A I am 100 percent sure.

24 Q The place that he took you to to rape you,
25 was that a remote area?

REDIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 A Yes, I was.

2 Q Over in the Burton area of Beaufort?

3 MS. CAMPBELL: Objection, Your Honor,
4 leading again.

5 BY MS. SWANSON:

6 Q What area of Beaufort County was it in?

7 A It was in Burton. As I testified, it was
8 off of secondary 73, down a dirt road. It was dark.
9 It was near a field. I had never been there before.

10 Q Right. Did you know where you were?

11 A I did not.

12 Q Were you isolated?

13 A Very.

14 Q And Ms. Campbell asked you about when
15 Isaiah pled right before trial. And she said that
16 he pled to assault and battery. Did he plea to
17 assault and battery, or did he plea to assault and
18 battery of a high and aggravated nature?

19 A I honestly don't remember. I was shocked
20 that they pled the case. I had no idea why it
21 didn't go to trial. And I was kind of all out of my
22 ends.

23 MS. SWANSON: All right. Thank you, Lori.

24 MS. CAMPBELL: Nothing further.

25 THE COURT: Thank you. You may step down.

REDIRECT EXAMINATION OF LORI ANN LAWLESS BY MS.
SWANSON

1 Ladies and gentlemen, we need to take a short
2 recess while I discuss with the attorneys a
3 matter of law. If you will retire to the jury
4 room, and I'll remind you that it's too early
5 to begin discussing the case.

6 THE BAILIFF: Please leave your notebooks.

7 (The jury exits the courtroom.)

8 MS. CAMPBELL: May it please the Court,
9 Your Honor, I would ask the Court's permission
10 to have the court reporter pull up the
11 testimony of Ms. Krug from Monday afternoon.
12 In my notes, in my recollection, the testimony
13 was considerably different, in that she was
14 quite emphatic about certain aspects of this
15 that today she's wavering on and doesn't
16 recall. Which, of course, I would like to be
17 able to impeach her with these inconsistent
18 statements.

19 And I'm going to need the court reporter
20 to pull that up and the solicitor and I can
21 both look at that briefly and determine whether
22 or not my recollection is, in fact, correct.
23 And then she would need to come back up and I
24 should be given the opportunity to do that.

25 THE COURT: Solicitor.

COLLOQUY

1 MS. SWANSON: What I recall is that she
2 didn't deny making the statement. I believe to
3 offer extrinsic evidence you would have to deny
4 making a statement. I certainly don't recall
5 it being drastically different, but we can take
6 a look at it.

7 THE COURT: Why don't we find out.

8 MS. SWANSON: Sure.

9 THE COURT: Let's ask the court reporter
10 how difficult that is going to be.

11 THE COURT REPORTER: Not difficult at all.

12 (Attorneys view via real-time audio and
13 text of previous testimony.)

14 MS. CAMPBELL: May it please the Court.

15 THE COURT: Ms. Campbell.

16 MS. CAMPBELL: May it please the Court,
17 the solicitor and I had an opportunity to
18 review your court reporter's record of the
19 testimony Monday afternoon of Ms. Krug. I do
20 believe that the response to the questions
21 about the country store and arriving there
22 would be sufficient for me to impeach her with
23 that statement. Her reply was: I believe they
24 were waiting there for me. There's no
25 equivocation other -- certainly not in the

COLLOQUY

1 manner in which it was today. And it is a
2 fairly straight-forward answer that she gave on
3 Monday afternoon versus today where she says
4 she can't remember. Maybe they were, maybe
5 they weren't.

6 So, again, I would like the opportunity to
7 present that very briefly and close my cross
8 examination of her. Thank you, Your Honor.

9 THE COURT: How do you propose presenting
10 it?

11 MS. CAMPBELL: I would ask that she be
12 recalled. I would ask that that portion be
13 played for the jury to hear and then ask her
14 then if she, herself, you know, recalls that
15 testimony. And she can either say yes or no,
16 and that is it.

17 THE COURT: Solicitor.

18 MS. SWANSON: Well, first of all, I don't
19 think that she ever denied saying that her ride
20 could have been there. So, I don't think
21 offering extrinsic evidence for impeachment is
22 proper under 613(b). A person would have to
23 actually deny making that statement. Also the
24 statement that was made was not unequivocal.
25 She stated, I believe they were waiting for me.

COLLOQUY

1 She thinks that they were waiting for me. She
2 didn't say, They were there waiting for me.

3 That is consistent with what she testified
4 to here today, that she is not 100 percent sure
5 that the ride was there waiting for her.

6 THE COURT: The real question is, what did
7 she say on Monday?

8 MS. CAMPBELL: You know, you can put her
9 back on the stand and I can ask her, verbatim,
10 did you say -- and then read her answer and she
11 can admit it or deny it. And I think that's
12 proper.

13 MS. SWANSON: Well, we know what she said
14 on Monday, and it was -- I believe they were
15 waiting for me. I think they were waiting for
16 me. That is not inconsistent with what she
17 testified to.

18 MS. CAMPBELL: Today she's talking about
19 not remembering one way or the other. It is a
20 completely different situation. And I think
21 that under the rules I'm certainly allowed to
22 ask her, did you say in your prior testimony,
23 and then read her the statement, admit it or
24 deny it, and leave it as that.

25 THE COURT: All right. I'll tell you what

COLLOQUY

1 I'll do, I'll let you have the witness recalled
2 to the stand and let you. I say "you," I'm
3 referring to the defense attorney,
4 Ms. Campbell. Let the defense ask the witness
5 if on Monday she said whatever it was.
6 Whatever it is. And if she says that is what I
7 said, I guess that ends it. If she says other
8 than that is what I said, then I think that you
9 get to impeach her. I think.

10 I think the rule envisions someone saying
11 I don't remember as being equivalent to denying
12 it. So, that is my interpretation of the rule
13 and, therefore, that is the basis for the rule.

14 THE COURT: So now do you want to take a
15 break or are you ready to go? I'm asking.

16 (No audible response.)

17 THE COURT: If you want we will take a
18 break now.

19 MS. CAMPBELL: I'll ask the court
20 reporter, if it's possible to print out just
21 that section of that for me to have so I'll
22 read it without a mistake or can I turn it
23 around towards me? Would you like me to copy
24 it down?

25 (The court reporter provides the previous

COLLOQUY

1 testimony to counsel via email.)

2 MS. SWANSON: Thank you. The State
3 recalls Lori Lawless for the purpose of
4 continued cross examination.

5 Thereupon,

6 LORI ANN KRUG LAWLESS
7 was recalled as a witness, having been first duly sworn,
8 was examined and testified as follows:

9 CROSS EXAMINATION (CONTINUED)

10 BY MS. CAMPBELL:

11 Q Lori, on Monday you were sworn in tell the
12 truth, correct?

13 A Yes, ma'am.

14 Q Placed your hand on the Bible, right?

15 A Yes, ma'am.

16 Q Important for you to be accurate in your
17 testimony, correct?

18 A Yes, ma'am.

19 Q Now, on Monday afternoon.

20 "Question: And so by the time you
21 got back to the general store, that is what it was
22 called?

23 Your answer: I think country store.

24 Question: Country store. It was
25 past time for your ride to pick you up?

CROSS EXAMINATION CONTD OF LORI ANN KRUG LAWLESS BY
MS. CAMPBELL

1 Answer: I believe that they were
2 waiting on me."

3 Do you admit or deny that that was
4 your previously sworn testimony on Monday?

5 A I believe that is what I said, yes, ma'am.

6 Q Thank you.

7 MS. SWANSON: I don't have anything
8 further.

9 THE COURT: Thank you, ma'am. You may
10 step down. Call your next witness.

11 MS. SWANSON: The State calls Captain Bob
12 Bromage.

13 Thereupon,

14 BOB BROMAGE

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SWANSON:

19 Q Good afternoon -- good morning.

20 A Good morning.

21 Q Captain Bromage, how long have you been
22 with the Beaufort County Sheriff's Office?

23 A 28 years.

24 Q And what different positions have you held
25 there?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A I started as a patrolman in 1990.
2 Southern Beaufort County, which is Bluffton and
3 Hilton Head. I was promoted to criminal detective
4 in 1993 and worked criminal investigations until
5 Sheriff Tanner was elected in 1998 and balance of
6 '99. And part of his campaign was we were going to
7 work on cold cases. Cold cases are unresolved
8 homicide cases. And I have retained that position
9 since 1999.

10 I have also been the commander of
11 criminal investigations for Beaufort County. I was
12 the coroner's liaison. I was the solicitor's
13 liaison for the solicitor's office. And my present
14 occupation is public information officer, releases
15 things to the media and puts out proactive releases
16 on behalf of the Sheriff's Office.

17 Q So, how long were you in criminal
18 investigations?

19 A From 1993 or '92 I was on the job
20 detective, so 1992 until 2014.

21 Q Okay. And what changed in 2014?

22 A Unfortunately we had an eight-year-old boy
23 murdered on Hilton Head Island. He was caught in a
24 crossfire between drug dealers and on that
25 particular investigation there was in-car video that

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 was not reviewed in its entirety by my subordinates
2 and I was the captain of criminal investigations and
3 I did take responsibility for the actions of my
4 people. And unfortunately I was transferred and
5 given a year of probation. But, you know, things --
6 you roll with the punches and move on.

7 Q Were you a captain in 2014?

8 A I was.

9 Q You are still a captain today?

10 A Yes, I am.

11 Q About how many people were you supervising
12 at that time involved in that investigation?

13 A Upwards of 35 people at that point. This
14 particular investigation was very complex. There
15 were three suspects. And they were all convicted of
16 murder in court subsequently.

17 Q Okay. Moving on, let's talk about your
18 involvement in the investigation into the rape of
19 MINOR and the murder of David Krulewicz. How
20 did you become familiar and assigned to this file?

21 A Again, when Sheriff Tanner took office in
22 1999 he assigned me to investigate cold cases again,
23 unresolved homicide investigations. This was an
24 unresolved homicide with the act of a sexual assault
25 with a live victim. Obviously it was one of the

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 first cases that I looked at. I had two people
2 working in my group at that point. Now it's just
3 one but that is okay. We have a cold case
4 committee.

5 But ultimately we went through the
6 evidence. That is the first thing that you want to
7 do. We went through to the case file, which you can
8 tell is monstrous. You go through the case file a
9 couple of times and you review the physical
10 evidence. The physical evidence may or may not be
11 maintained. A lot of agencies you are going to find
12 do not maintain old cases, fortunately we did.

13 This particular case there was lab
14 reports from 1980 indicating there was semen found
15 during analysis at the South Carolina Law
16 Enforcement Division. Of course, DNA technology
17 emerged in the '90s. And at that point submitted
18 the victim's clothing, which was done.

19 Q Okay. Well, let's go back for a second,
20 that is okay. Did you interview MINOR?

21 A I did.

22 Q Okay. Who did you interview MINOR with?

23 A At the time it was Sergeant Sankowski, now
24 it is Lieutenant. We interviewed her again at her
25 business in Beaufort.

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 Q Okay. Was that fairly soon after you were
2 assigned the case?

3 A It was. Within a few months, within a few
4 months there was a -- there was several cold cases
5 we were looking at at once, but that was one, yes.

6 Q Okay. So, you have been in the courtroom
7 and you saw her testify?

8 A I did.

9 Q And was her story consistent when she
10 spoke to you guys in '99 with what she testified to
11 here today?

12 A Yes, very consistent.

13 Q And was it consistent with the 1980 case
14 file that you reviewed?

15 A Yes, it was.

16 Q And in that 1980 case file, did she write
17 a number of statements?

18 A A number of statements, yes, ma'am.

19 Q And back when she was 15 in 1980?

20 A Fifteen years old.

21 Q All right. You mentioned looking at the
22 evidence from 1980.

23 A Yes.

24 Q Where was the physical evidence in this
25 case stored?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A The physical evidence in this case was
2 stored in Beaufort, actually at the law enforcement
3 center, which is probably 100 yards from here. We
4 had an evidence locker up there. The office of
5 homicide were stored in individual boxes. We went
6 through this box and found a large bag of clothing
7 that said patient, patient clothing, patient
8 belongings.

9 Q Patient belongings?

10 A Yes, ma'am.

11 Q Okay. I'm going to show you what's been
12 marked as State's Exhibit 8 and ask for you to look
13 in this bag and see -- and tell me if that's the bag
14 that you are referring to?

15 A That is the bag.

16 Q Okay. So, there was clothing contained in
17 that bag?

18 A There was pants, shirt, underwear, and a
19 bra.

20 Q And was there also a tag contained in that
21 bag with a chain of custody?

22 A Yes, there was.

23 Q All right.

24 A Sorry.

25 Q If you look farther in there.

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A Yes, ma'am.

2 Q Okay. And the contents of that bag.

3 A One bra, beige in color, one pair of light
4 pink panties, one pair of blue corduroy pants, and a
5 multi-colored pull-over shirt taken by MINOR by
6 Dr. Fontana.

7 MS. SWANSON: State would move 8 into
8 evidence at this time.

9 MS. CAMPBELL: No objection.

10 THE COURT: Motion granted.

11 *(Whereupon, State's Exhibit No(s). 8*
12 *marked for identification and received in*
13 *evidence.)*

14 BY MS. SWANSON:

15 Q All right. Well get to some of the other
16 evidence in a minute. But in your review of the
17 physical evidence, did you come across any items
18 that were missing?

19 A Yes, I did.

20 Q All right. And what items were those?

21 A Those were the specimens taken during her
22 sexual assault examination.

23 Q And did you ask anyone about those items
24 and why -- where they could possibly be and why they
25 could be missing?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A Yes, ma'am, I did.

2 Q And tell us about that.

3 A I reached out to the South Carolina Law
4 Enforcement Division who had returned the clothing
5 after the initial examination in 1980. And I
6 received an email response regarding how they
7 dispose of evidence throughout the years, of course
8 before DNA and everything else.

9 Q Tell us what the response was that you
10 got.

11 A Just give me one second, please.

12 Q Sure.

13 A The response from SLED, it was Captain
14 Bell who was in charge of the forensic sciences
15 laboratory, which encompasses all forensic sciences.
16 "We have looked into your question regarding the
17 evidence of the 1980 case file. Unfortunately we
18 have learned that the evidence that was located in
19 the SLED case files when these files were
20 microfilmed was subsequently destroyed during the
21 microfilm process. It is unclear if the
22 administration that ordered files to be archived
23 during this time period was aware that there may be
24 evidence located within these files. Obviously,
25 since that time evidence handling procedures has

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 dramatically changed as you are aware, pre-DNA, late
2 '80s. The significance of much of this evidence was
3 not fully understood, nor was there an evidence
4 preservation act in place for long-term storage of
5 evidence in violent crimes."

6 Q All right. Thank you. Was there anything
7 else that you discovered was missing from the case
8 file?

9 A Photographs from the crime scene. And it
10 was -- figured that out in 1999.

11 Q Okay. And so did you make inquiries to
12 anyone about those photos?

13 A I spoke to Lieutenant Wagner who you saw
14 here -- I am sorry, who testified. I reached out to
15 the Federal Bureau of Investigation out of Virginia
16 who controlled the profiles of these cases, and they
17 didn't retain the photographs nor did they have any
18 record of doing a profile.

19 Q Okay. Did you come across any evidence
20 that they had been destroyed by anyone?

21 A No, ma'am.

22 Q Any reason that they went missing?

23 A No.

24 Q Okay. All right. Let's talk about some
25 of the items that went to SLED in 1980 and then were

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 later stored from, when was it, 1980 to when did you
2 take them out next?

3 A 1999 is when I went into evidence to sign
4 these items out to have them analyzed at SLED.

5 Q Okay. So, they were in evidence,
6 basically, after SLED --

7 A Returned them.

8 Q -- returned them until 1999?

9 A That's correct.

10 Q Okay. I'm going to hand you State's
11 Exhibit 9 and ask if you can identify this item.

12 A It is a victim's corduroy pants, and it is
13 a paper bag with a biohazard bag which is plastic.

14 Q All right. And is that an item that you
15 found in evidence in 1999?

16 A Right. We transferred it to the paper bag
17 and separated the clothing and put it in individual
18 biohazard bags to make sure that nothing got in or
19 got out.

20 Q Had that item been at SLED previously?

21 A Yes, ma'am.

22 Q Okay. All right. And I'm going to hand
23 you State's 10 and ask if you can identify that
24 item?

25 A The victim's panties and paper bag, and

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 there's a biohazard bag with it. This is how it was
2 transferred to SLED back in 1999.

3 Q All right. So, that was in evidence in
4 1999 after it had previously been at SLED?

5 A Yes, ma'am.

6 Q Thank you. All right. Can you identify
7 State's Exhibit 13?

8 A Krulewicz yellow dress shirt. Yellow
9 shirt, I'm sorry. Which had blood on it. I
10 actually looked at it with latex gloves to get a
11 standard for David Krulewicz. And then a biohazard
12 bag associated with it. And a paper bag.

13 Q Now, this item didn't go to SLED in 1980,
14 did it?

15 A I don't believe so.

16 Q All right. When did you send this item to
17 SLED?

18 A Give me one second.

19 Q Sure. And it should be in David McClure
20 and Patti Ruff's first reports?

21 A Okay. It went up in 1999, initially.

22 MS. SWANSON: State would move 13 in
23 evidence at this time.

24 MS. CAMPBELL: No objection.

25 THE COURT: Motion granted.

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 *(Whereupon, State's Exhibit No(s). 13*
2 *marked for identification and received in*
3 *evidence.)*

4 BY MS. SWANSON:

5 Q All right. So, in 1999, what all was sent
6 up to SLED; do you have your submission forms?

7 A I do.

8 Q Okay.

9 A Biohazard bag, says bio bag containing
10 victim MINORS's panties. Bio bag containing victim
11 MINORS's corduroy pants. Bio bag containing victim
12 Krulewicz shirt. It says big bag, but I think they
13 meant to say bio bag containing one medical specimen
14 slide. And brown glass bottle containing one
15 cigarette butt. Two evidence bags, each with one
16 cigarette butt in each. Bag containing two clear
17 plastic containers marked number two and three.
18 Evidence bag containing open pack of Newport
19 cigarettes.

20 Q So you tried to send up, basically, any
21 physical evidence that you could possibly get any
22 forensics on?

23 A That is right.

24 Q All right. When you got items back in
25 1999, were there three additional items?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A Yes, there were.

2 Q And were those cuttings from clothing that
3 were prepared by SLED?

4 A Cuttings that came out of evidence
5 processing of DNA back in 1999. They came back
6 individually. They made cuttings and sent them back
7 in sealed envelopes.

8 Q Okay. So, I'll show you State's 11 and
9 ask if this is the cutting from the pants that came
10 back.

11 A Yes, ma'am, cutting from --

12 Q And did it come back sealed?

13 A It did.

14 Q All right. And was it turned into
15 evidence in that same manner?

16 A It was.

17 Q All right. And then state's 12, which is
18 what cutting?

19 A Cutting for panties, 1.1.

20 Q Okay. And was it sealed?

21 A It was.

22 Q And turned into evidence in that manner?

23 A That's correct.

24 Q Okay. And then State's 14 is the cutting
25 from where?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A Cutting from dress shirt, item 3.1.

2 Q Okay. And was it sealed?

3 A It was.

4 Q And turned into evidence?

5 A It was.

6 Q Okay. And did those items remain sealed
7 until they went back up for testing?

8 A Yes. When the DNA technology emerged into
9 what is STR now, the more sensitive DNA, resubmitted
10 in 2002, in November, after talking to David
11 McClure, the analyst that was on the stand
12 yesterday. 1.1, which is a cutting from the pink
13 panties. 2.1, the cutting from the pants. And 3.1,
14 the cutting from the dress shirt for DNA analysis.

15 Q Okay.

16 MS. SWANSON: The State would move 11, 12,
17 and 14 in at that time.

18 MS. CAMPBELL: No objection.

19 THE COURT: Granted.

20 *(Whereupon, State's Exhibit No(s). 11, 12,*
21 *and 14 marked for identification and received*
22 *in evidence.)*

23 BY MS. SWANSON:

24 Q All right. And then in 2002, what did
25 Agent McClure need from you?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A He developed a DNA profile containing both
2 a male and female mixture and requested MINOR's
3 elimination standard, which I obtained from her.

4 Q Okay. I am going to show you State's 15
5 and ask if these are the swabs that you got and
6 obtained from MINOR's mouth?

7 A On December 17, 2002, at 1:40 in the
8 afternoon, right. MINOR. Two oral swabs,
9 which were cotton swabs.

10 Q All right.

11 MS. SWANSON: The State moves 15 into
12 evidence at this time.

13 MS. CAMPBELL: No objection.

14 THE COURT: Granted.

15 *(Whereupon, State's Exhibit No(s). 15*
16 *marked for identification and received in*
17 *evidence.)*

18 BY MS. SWANSON:

19 Q All right. So, when did you send those
20 swabs up to SLED? And it may say on here. I can
21 hand this back to you if you need it.

22 A It was delivered to SLED, it looks like,
23 on December 19th. A few days later.

24 Q Okay. And was a profile able to be
25 established from the male ---

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A Yes.

2 Q -- semen?

3 A Yes, on the panties, cutting from the
4 panties, and cutting from the corduroy pants, the
5 crotch area.

6 Q All right. And when were you informed of
7 that profile?

8 A January 15th of 2003, David McClure issued
9 a report indicating that a profile was developed.

10 Q Okay. And around that time, was there a
11 particular suspect that you were investigating?

12 A There was a person of interest from 1982.
13 He was in the Marine Corps and had been through
14 Beaufort. He actually was arrested in North
15 Carolina in 1982 for murdering a woman and burning
16 her house down. He was in and out of prison. I was
17 able to locate him through associations with other
18 agencies, Indiana State Police, I believe, and also
19 the Ohio BCI, which is their Bureau of Criminal
20 Investigation.

21 He was located in a prison in Ohio.
22 I requested that they obtain some standard from him
23 surreptitiously. They were going to interview him
24 anyways, and oftentimes you can get it off of a
25 styrofoam cup or cigarette butt, especially DNA, and

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 they packaged it and I went to Ohio and picked it
2 up.

3 Q Okay. And did you turn that into SLED for
4 them to test?

5 A I did. On my way back from Ohio, I
6 believe.

7 Q Okay. And what happened with that
8 profile?

9 A His name was Oneill Banks. He was
10 eliminated as the suspect in this case based on DNA.

11 Q Okay. What year was it when you got a DNA
12 database hit on Isaiah Gadson?

13 A 2016, August 3rd, I received a call from
14 the South Carolina State Law Enforcement Division
15 regarding that.

16 MS. CAMPBELL: I'm sorry, objection, Your
17 Honor. I need to approach.

18 (Off-the-record discussion held.)

19 BY MS. SWANSON:

20 Q All right. So, you -- the hit comes in
21 2016?

22 A Correct.

23 Q And how many years was that after the
24 profile was established?

25 A Thirteen years.

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 Q All right. At that point were you able to
2 locate and identify Isiah Gadson?

3 A I was.

4 Q All right. And can you identify him
5 today?

6 A I can.

7 Q All right. Where is he?

8 A Sitting in between Ms. Campbell and the
9 other defense counsel.

10 Q All right. And that is the man that you
11 arrested for murder, armed robbery, rape, and
12 kidnapping?

13 A Yes.

14 Q And that is the man that Selena Nelson
15 took buccal swabs from?

16 A She did.

17 Q Okay. And the point of those buccal swabs
18 was to confirm his DNA profile?

19 A Confirm and derive their statistics for
20 the DNA.

21 Q Okay. Do you know if Isiah Gadson has
22 ever had an identical twin?

23 A I do.

24 Q Okay. And how do you know that?

25 A I was in contact with the South Carolina

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 Law Enforcement Division, who I requested that they
2 get in touch with the Department of Vital
3 Statistics, which is DHEC in South Carolina, to
4 obtain his birth records and they were able to
5 obtain it for me. Single live birth.

6 Q Okay. I'll show you State's Exhibits 17
7 and 18 and ask if these were the documents that you
8 received from DHEC as to live birth?

9 A They are.

10 MS. SWANSON: The State moves 17 and 18 in
11 evidence at this time.

12 MS. CAMPBELL: No objection.

13 THE COURT: Motion granted.

14 *(Whereupon, State's Exhibit No(s). 17-18*
15 *marked for identification and received in*
16 *evidence.)*

17 BY MS. SWANSON:

18 Q All right. And so you had testified
19 earlier that you have been in investigations for a
20 long time. And we talked about Oneill Banks, right?

21 A We did.

22 Q So, through the advent of DNA technology,
23 what has it been used for in regard to
24 investigation?

25 A Nationwide, as is here, we eliminate

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 people as suspects and persons of interest. We
2 eliminate them as suspects, and we are able to match
3 people. So, we are able to actually conclude that
4 it is this individual.

5 Q Okay. So you use it as a tool to solve
6 crimes and eliminate suspects?

7 A Sure.

8 Q And law enforcement feels comfortable
9 relying on it for both?

10 A We do.

11 Q Did you ever use Isaiah Gadson's DNA
12 profile to eliminate him from a case?

13 A Yes, we had an unidentified female murder
14 in 1995 found on the side of the road in Yemassee.
15 Our DNA analysis, our lab here in Beaufort County,
16 developed a profile under her fingernails of a male.
17 So, we submitted Isaiah Gadson's DNA to be compared
18 with that and he was eliminated. So, he is no
19 longer a person of interest whatsoever in that case.

20 Q Okay. Through your observations of the
21 defendant, were you able to note whether or not he's
22 left or right handed?

23 A He's right handed.

24 Q Okay. Have you seen him writing with his
25 right hand?

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A I've seen him write more than once with
2 his right hand, yes, ma'am.

3 Q All right. And going back to your
4 interactions and investigations with MINOR, did you
5 ever visit the incident location with her?

6 A I did.

7 Q All right. And through your
8 investigation, were you able to determine where
9 Isaiah Gadson lived?

10 A Yes, ma'am, I was.

11 Q All right. And where was that?

12 A Isaiah Gadson lived in Burton in 1980 on
13 Glaze Drive, which is less than 2 miles from where
14 this murder/rape occurred in 1980.

15 Q Okay. Did you also review a 1983 case
16 that involved Isaiah Gadson?

17 A I did.

18 Q And why did you review that case?

19 A Doing a background investigation on Isaiah
20 Gadson after the DNA hit to see what other activity
21 he was involved with. I was able to locate this
22 case from 1983 where he had pled to assault and
23 battery of a high and aggravated nature in this
24 courtroom, in this courthouse, I believe.

25 Q Okay.

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 A Or the old courthouse, I'm not sure. It
2 has been a long time.

3 Q Okay. Did you review all of the documents
4 in that case?

5 A I did.

6 Q All right. And was there a transcript of
7 an interview with the defendant?

8 A There is, yes.

9 Q And was there also a signed Miranda rights
10 warning form?

11 A Yes, there was.

12 Q All right.

13 A And is.

14 Q All right. I'm going to refer you to that
15 transcript.

16 MS. CAMPBELL: Your Honor, I am going to
17 ask to approach, if we may.

18 THE COURT: Would you like to stretch,
19 ladies and gentlemen, while I talk to the
20 attorneys at a side bar?

21 (Off-the-record discussion held.)

22 THE COURT: Ladies and gentlemen, I need
23 to ask you to please retire to the jury room
24 for a few minutes while I discuss a matter of
25 law with the attorneys, and remind you that

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 it's too early to discuss the case.

2 THE BAILIFF: Please leave your notebooks.

3 (The jury exits the courtroom at

4 11:25 a.m.)

5 THE BAILIFF: Jury is clear, Your Honor.

6 MS. CAMPBELL: May it please the Court, I
7 believe that the solicitor is attempting to
8 extract from the officer statements that were
9 made by Mr. Gadson during the investigation and
10 questioning by police officers in the 1983 Krug
11 case, and I object to that on a couple of
12 bases. And when I initially approached I said,
13 relative to a Jackson Denno hearing, but that's
14 actually not what I meant.

15 We have a situation here where I would
16 object to it, number one, on relevance. And I
17 would object to it under 403. And, you know,
18 the solicitor said at the side bar that it is
19 an admission of a party opponent, but you know,
20 he is not on trial for this case. We are on
21 trial for the case involving MINOR. We are not
22 on trial for the case involving Lori Krug.

23 And I don't think that it falls under the
24 admission of a party opponent. Again, as I
25 said, I will rely on my objection on 403

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 creating prejudice and confusion and un --
2 actually, extremely unfair prejudice at this
3 point to try to put into the record of the
4 principal case statements that Mr. Gadson made
5 relative to the Krug case.

6 And it is unduly prejudicial and not
7 probative of any fact that the solicitor has to
8 prove in the principal case. If she can make
9 the connectivity of how something that is said
10 here proves one of the elements of the four
11 indictments -- and I don't think that she can
12 do that.

13 THE COURT: Of course I assume that both
14 of you know what we are talking about and I
15 don't, so let's go ahead. Solicitor.

16 MS. SWANSON: Well, actually, it is the
17 same sort of information that was -- it was the
18 same information that was proffered on Monday
19 through Captain Bromage to meet the clear and
20 convincing standard. And I believe that I
21 still have to show the jury through clear and
22 convincing evidence that this prior bad act was
23 committed by Isaiah Gadson.

24 And these statements, which are admissions
25 by a party opponent and are contained within

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 records kept in the regular course of business
2 by the Sheriff's Office, are certainly relevant
3 because he admits to giving Lori a ride on
4 February 24th. And he admits to placing his
5 hand on her vagina, but then he denies having
6 any intercourse with her. And so it places him
7 at the scene of the crime, denying that he had
8 intercourse.

9 And then, of course, later when the
10 chemist John Barron, who is here to testify and
11 who was the chemist in the 1980 and 1983 cases,
12 found semen on her clothing. He also found
13 semen on the Defendant's car seat.

14 THE COURT: All right. So, we are -- in
15 addition to the statements that you are talking
16 about, you are talking about introducing other
17 evidence?

18 MS. SWANSON: Yes, sir, because it is --

19 THE COURT: Of prior?

20 MS. SWANSON: Right, because it's part of
21 the subsequent bad act that has been admitted.
22 And it -- it goes to Lori's credibility, as far
23 as the fact that it really happened. Because,
24 of course, the defense is asserting that didn't
25 really happen. He pled no contest, he pled to

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 assault and battery, even though it was assault
2 and battery of a high and aggravated nature.

3 THE COURT: Ms. Campbell.

4 MS. CAMPBELL: Your Honor, I stand by my
5 argument and objection. And after you make
6 your ruling on that I would like to place my
7 mistrial motion on the record.

8 THE COURT: All right. The Court
9 understands the 403 argument, but I believe
10 that it is admissible. I think that it is
11 relevant. The Court accepts the arguments of
12 the solicitor on this case and deny the motion.
13 And now you want to make a motion for a
14 mistrial that you mentioned at the sidebar
15 earlier?

16 MS. CAMPBELL: I did. Your Honor. I
17 objected timely during the officer's testimony.
18 And he was responding to the solicitor about
19 obtaining Mr. Gadson's DNA from a law
20 enforcement source that would be impermissible.
21 It would violate the Rule 404. And it is the
22 kind of character-type evidence placing
23 Mr. Gadson in law enforcement databases,
24 casting a shadow on him, and putting him in a
25 situation that, you know, that we can't dig out

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 of that hole. We can't repair it by a curative
2 instruction and you can't take back what
3 Officer Bromage said to the jury.

4 And you know, frankly, we have been here
5 before in trials with Mr. Bromage with exactly
6 that type of testimony. He knows better and he
7 did it any way. Thank you. That is all that I
8 have.

9 THE COURT: Okay.

10 MS. SWANSON: Your Honor, my question was:
11 When you did get a DNA database hit on Isaiah
12 Gadson -- or I'm sorry: When did you get a DNA
13 database hit on Isaiah Gadson. That is how we
14 decided to refer to it. Captain Bromage began
15 by saying, In 2016. And he said, I was
16 contacted -- he began to say I was contacted by
17 South Carolina Law Enforcement Division when we
18 pretty much stopped him and approached. He did
19 not mention any offender database, you know.

20 There's been a number of SLED witnesses
21 that have testified. I don't think that the
22 jury is going to assume an offender database.
23 Also, it becomes much less prejudicial when
24 Ms. Campbell in opening statements has already
25 disclosed to the jury that the defendant pled

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1 no contest on the eve of trial in this assault
2 against Lori Krug. So, I mean, even if the
3 jury thought he might be in some sort of law
4 enforcement database, surely they would assume
5 from the time that he plead guilty right before
6 trial, or pled no contest right before trial.

7 So, I mean, criminal history has been
8 referred to at this point in time. So, I do
9 not believe that this rises to the level of a
10 mistrial. I don't think that it was even that
11 noticeable. And I don't think -- I think that
12 probably a curative instruction would call more
13 attention to it, because I certainly moved
14 right on from there.

15 THE COURT: Anything else, Ms. Campbell?

16 MS. CAMPBELL: No, sir.

17 THE COURT: All right. I understand the
18 grounds for the mistrial, but the Court is
19 going to deny that motion, agreeing with the
20 statements made and arguments made by the
21 solicitor. I think that we have already had
22 law enforcement involved as a condition that he
23 entered a plea, which assumes that he was in
24 custody. And I think from there the jury could
25 infer that there was some DNA at some point in

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 time. At any rate, I'm going to deny the
2 motion. What is next?

3 MS. SWANSON: Just the continuation of
4 Captain Bromage's testimony.

5 THE COURT: Okay. Let's bring the jury
6 in.

7 THE BAILIFF: The jury in entering the
8 courtroom, Your Honor.

9 (The jury enters the courtroom at
10 11:35 a.m.)

11 THE BAILIFF: The jury is seated, Your
12 Honor.

13 THE COURT: Good afternoon, ladies and
14 gentlemen, I believe we are ready to return to
15 direct examination of the witness. Solicitor.

16 MS. SWANSON: Thank you, Your Honor.

17 BY MS. SWANSON:

18 Q All right. We were talking about your
19 review of the 1983 case. And that 1983 case
20 contained a transcript, so I'll refer you to the
21 transcript of the Defendant's interview. Did he
22 tell investigators back in 1983 where he was living?

23 A He did.

24 Q All right. Where was that? It should be
25 at the bottom of the -- towards the bottom of the

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1 first page, continuing on to Page 2.

2 A I'm sorry, I have got it right here in
3 front of me. I apologize. They asked, "What is
4 your home address. Post office box 42224, Burton.
5 Where do you live? Burton. Whereabouts in Burton?
6 Behind the school bus maintenance shop."

7 Q All right.

8 A Okay. "You live directly across from your
9 parents? Yes, sir, in a mobile home."

10 Q Okay. Did he tell investigators where he
11 was working?

12 A He did.

13 Q Where was that?

14 A Browns Manufactured Housing.

15 Q Where was that business located?

16 A Highway 21.

17 Q Is that the same road as Boundary?

18 A It is.

19 Q Now, did they talk about what Isaiah had
20 done the night before?

21 A They did.

22 Q All right. And if I can refer you to
23 Page 4. What did he tell investigators?

24 A They wondered what kind of car he had,
25 which was a Buick Limited, 1972. Went home, washed

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 off, changed clothes, ate. I went to a friend's
2 house. Who is the friend? Carolyn Brown.

3 Q Did they go anywhere?

4 A Went to the Image.

5 Q And then --

6 A Identified as the night club on Highway 21
7 across from the Huddle House.

8 Q Okay. And what did they do there?

9 A Sat down and drank a few beers.

10 Q And then on the next page, what did they
11 do after going to club Image?

12 A Went to the Huddle House.

13 Q And what time were they at the Huddle
14 House?

15 A About 4, 4:00.

16 Q In the morning?

17 A Four or 5:00 in the morning.

18 Q All right. And then after the Huddle
19 House, what did Isaiah do? This is on Page 6.

20 A Went to Carolyn's house.

21 Q Where was Carolyn's house located?

22 A Off of Boundary Street.

23 Q All right. And Boundary, we are still
24 talking about Highway 21, right?

25 A Highway 21, I'm sorry.

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1 Q All right. Boundary, Highway 21?

2 A Yes, ma'am.

3 Q Does he end up going back home with

4 Carolyn?

5 A "Carolyn went to my house."

6 Q All right. And then he dropped her back

7 off?

8 A "I took her back home. Talked for a few

9 seconds. We left and I took her back home."

10 Q Okay. Okay. And then what does he tell

11 investigators about a lady that he sees on the

12 street? This is on Page 8.

13 A "Saw a lady on the side of the road

14 walking. I stopped to ask her if she wanted a ride.

15 She said yeah. I asked her where she was going and

16 she said -- " he carries on -- "somewhere between

17 Pizza Hut -- between Pizza Hut -- I don't know

18 exactly where, Joy Land or Pizza Hut, somewhere in

19 the area."

20 Q Okay. And he's talking about where he

21 spotted her?

22 A Yes.

23 Q All right. And then did he describe her

24 at all?

25 A "I would say she was white, slender, you

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 know, I didn't pay no attention to the way she
2 looked."

3 Q All right. And then on Page 9 did they
4 talk about a gun?

5 A They do.

6 Q What does he say about a gun?

7 A The detective asked him, "You got a gun or
8 a knife? I keep a gun in the car, but I don't tote
9 no weapon. What kind of gun do you keep in the car?
10 It is an old .32."

11 Q Okay. Moving on to page ten. Where does
12 he say that he takes her? Does he take her anywhere
13 besides the country store, according to him?

14 A No. No, he didn't.

15 Q All right. Does the investigator ask
16 Isaiah about asking her to have sex or any sort of
17 sexual relations?

18 A "I asked her if she wanted to make some
19 love, you know. I put my hand on her, you know."

20 Q Where did he put his hand?

21 A "Like between her legs."

22 Q All right. On Page 11, did he say that it
23 ever went any further?

24 A No.

25 Q Does he say that anyone ever took off any

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1 clothing?

2 A "I didn't pull them off and she didn't
3 pull them off with me." So, no.

4 Q Did he put his hand down her pants,
5 according to him?

6 A No.

7 Q Did he have sex with her, according to
8 him?

9 A No, according to him.

10 Q All right. Did you reach out to Lori when
11 Isaiah was arrested?

12 A I did.

13 Q Okay. And was Lori's testimony here today
14 that you saw consistent with what you reviewed in
15 1983?

16 A It is.

17 Q And was it consistent with your
18 conversation with her when Isaiah was arrested in
19 2016?

20 A It is.

21 Q All right. I am going to show you what's
22 been marked as State's Exhibit 19 and ask you what
23 this document is?

24 A It is a General Sessions indictment form.

25 Q Does it contain a sentencing sheet as

DIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 well? Does it contain a sentencing sheet as well?

2 A Yes.

3 Q Okay. And what is it an indictment for?

4 A Criminal sexual conduct first degree.

5 Q All right. And --

6 A And aggravated assault and battery.

7 Q And whose name is on the indictment?

8 A Isaiah Gadson, Junior.

9 Q Is that a certified copy?

10 A It is.

11 Q Okay.

12 MS. SWANSON: The State would move 19 into
13 evidence at this time.

14 MS. CAMPBELL: No objection.

15 THE COURT: Motion granted.

16 *(Whereupon, State's Exhibit No(s). 19*
17 *marked for identification and received in*
18 *evidence.)*

19 MS. SWANSON: Thank you. I have nothing
20 further at this time.

21 THE COURT: Cross examination.

22 CROSS EXAMINATION

23 BY MS. CAMPBELL:

24 Q Officer Bromage, you have a criminal
25 justice college degree; do you not?

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 A I do.

2 Q Okay. And you obtained that degree from
3 Park University, right?

4 A I did.

5 Q And in fact I was one of your professors
6 at the University?

7 A You were.

8 Q Yeah. And so you have had many courses in
9 proper criminal investigation techniques, correct?

10 A I have.

11 Q Okay. In the course of those times that
12 you were educated, you took that information and you
13 applied it to how you conducted your investigations,
14 correct?

15 A That is correct.

16 Q Okay. You, in this case, came on to the
17 scene in '99; correct?

18 A That's correct.

19 Q And essentially reopened the 1980 **MINOR**
20 **██████████**/David Krulewicz case?

21 A Essentially, yes, ma'am.

22 Q Working with you at the time was Chris
23 Sankowski, another officer with the Sheriff's
24 Department; correct?

25 A That's correct.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q And Chris Sankowski never handled,
2 personally, any of this evidence, that was all you;
3 right?

4 A Yes, ma'am.

5 Q His name doesn't appear on any of this?

6 A No, ma'am, he didn't handle anything. It
7 was inventoried and --

8 Q It was all you?

9 A Yes, ma'am.

10 Q When you and Chris Sankowski reopened this
11 investigation in 1999, you interviewed Diane Larson;
12 correct?

13 A Let me get a hold of that report, if you
14 don't mind.

15 (Pause.)

16 A Yes, Diane Larson, that is correct.

17 Q Diane Larson being David's sister,
18 correct?

19 A Yes.

20 Q And Diane Larson, in your interview of
21 her, provided you with a suspect; correct? Last --

22 A I'm reading it.

23 Q Yes, last sentence.

24 A As a matter of fact, I was not present for
25 that interview, it doesn't appear. That was Chris

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Sankowski. But, yes, in his report it says that the
2 sergeant was advised by witness that there was a
3 rumor that Johnny Weed killed her son and also
4 stated that someone overheard Weed saying that he
5 was going to kill Krulewicz because he was a
6 worthless being and public scum.

7 Q Thank you for that. And clearly we
8 allowed the solicitor to go into many documents that
9 were not personally yours, so we are going to do the
10 same thing.

11 A That is fine.

12 Q It is a unique situation with a case this
13 old.

14 A I agree.

15 Q Okay. So, you went into an interview with
16 MINOR, you and Chris Sankowski, the two of you
17 together; correct?

18 A Yes.

19 Q And during the course of that interview
20 you had the role of interviewing her, asking her
21 questions; correct?

22 A I took the primary role, that's correct.

23 Q Perfect. Chris Sankowski, and if you need
24 a moment to review his notes, please take your time,
25 but his role was the observer of MINOR,

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 correct?

2 A During most of the interview Sankowski
3 observed the victim, yes. He made some
4 observations.

5 Q So, the observations that he made in his
6 role to observe her is that she was anxious; is that
7 correct?

8 A That's correct.

9 Q Had to stop several times, correct?

10 A Correct.

11 Q Had to, as he notes, swallow her saliva as
12 she spoke; correct?

13 A Correct.

14 Q Okay. You went on during the course of
15 the interview, you and Chris Sankowski, and got some
16 additional information from her or had her retell
17 the story to you; correct?

18 A Yes.

19 Q The reason that you were asking the
20 questions and you had Chris Sankowski there is that
21 you had two different roles in the interview?

22 A Right. And I was more experienced as
23 well. Yes.

24 Q So you relied on him to observe her, take
25 notes?

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 A Take notes.

2 Q Write down what he saw when she was
3 talking about all of this, right?

4 A That is correct.

5 Q Okay. And pretty much after you got the
6 information, retelling of the story, you talked with
7 her about, you know, the talk in town that had
8 been -- that her father had shot David; right?

9 A That's correct.

10 Q Right. Okay. And you have notated
11 through Chris' report that she had discussed with
12 her mother whether or not her father had been
13 involved, correct?

14 A Yes.

15 Q You in 19 -- well, around 2000, right
16 after you opened the cold cases, you were featured
17 on national television in a special called The Paper
18 Route; correct?

19 A That's correct.

20 Q That was the case of Bertha Neiman, right?

21 A Yes, that is the first case that we
22 worked, cold case.

23 Q And you were featured again in the year
24 2010 on a case called Lost Trust on national
25 television, correct?

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 A Yes, that's correct.

2 Q And the 1988 murder of Bertha Neiman,
3 subject of The Paper Route, right, special?

4 A That's right.

5 Q You had developed, in that case, a suspect
6 by the name of Ecker and Frazier; right?

7 A Ecker and Frazier was the original suspect
8 in the case I believe, yes.

9 Q And you went to the penitentiary where
10 they were holding him and you participated in
11 shaking down his cell, right?

12 A The guard shook down his cell and I
13 obtained some evidence from him, that is correct.

14 Q And on that piece of cardboard that --
15 during the shake-down found in Eckert Frazier's cell
16 was a piece of cardboard that had Bertha's Neiman's
17 name on it; right?

18 A It said Bertha '88/'89, that is correct.

19 Q Bertha, the date and actually the location
20 of where the murder had taken place.

21 A There was a string of women on there.

22 Q Yes, it is right there.

23 A To be specific, there was a string of
24 women on there. Yeah, that is right.

25 Q Thank you. And you are currently working

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 on this case with a reporter from the Island Packet,
2 are you not?

3 A That's correct. She has been following
4 the cold case committee, which again is 12
5 volunteers, all volunteers. Yes, that's correct.

6 Q And you brought this person who is working
7 with you when you came to look at the evidence with
8 me and with the prosecutor, correct?

9 A She arranged through the Solicitor's
10 office to shadow the prosecution in the case, that
11 is correct.

12 Q Of course there was an objection and she
13 didn't accompany us into the evidence room, correct?

14 A That's correct. The objection was by you.
15 That's correct.

16 Q But isn't it true, then, that there's this
17 sort of -- there's an expose or a book or something
18 that is going to be written about the cold cases and
19 about you; correct?

20 A Not just about me. It is about the cold
21 case committee and what cases we work in Beaufort
22 County. There's a lot of public interest in cold
23 cases.

24 Q Right. And the solicitor off the bat
25 talked about your discipline with the Sheriff's

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Department. We are going to talk about it a little
2 bit more.

3 A Absolutely.

4 Q You were placed on probation for a year,
5 removed from your position because, let's just take
6 it step by step; you were interviewing a murder
7 suspect, correct?

8 A Aaron Young, Senior, that's correct.

9 Q And in the room with you was a subordinate
10 officer, correct; Evans?

11 A That is correct. He was guarding him
12 while I talked to him, that's correct.

13 Q And Evans made a statement to that suspect
14 about him not facing a murder charge, correct?

15 A He did face a murder charge at that point,
16 yes.

17 Q Right, at that point.

18 A Yes.

19 Q So he's making a statement and you failed
20 to correct him.

21 A I did.

22 Q And that was part of your discipline for
23 failing to correct that erroneous statement,
24 correct?

25 A That's correct.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q The videotape of that interview really was
2 the linchpin in your probation; it was never turned
3 over, correct?

4 A It was turned over. The trial had
5 started. We discovered that it had not been
6 reviewed from start to finish. Which I did not have
7 access to that video system, I want to make that
8 clear.

9 Q So, something to do with the video not
10 fully reviewed, no -- the Solicitor's office didn't
11 know about the extent of it, correct?

12 A None of us knew until that day, that's
13 correct.

14 Q And it was your responsibility to make
15 sure that the full extent would have been available
16 to the prosecution and the defense in that case,
17 correct?

18 A My subordinates were to review it and turn
19 it in. That is part of my responsibility as their
20 manager, that is correct.

21 Q In 1999 you personally began to handle the
22 evidence in this case, correct?

23 A Yes.

24 Q You handled evidence in this case, and
25 specifically the panties and the corduroy pants in

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

- 1 '99?
- 2 A That's correct.
- 3 Q In 2002?
- 4 A That's correct.
- 5 Q In 2003?
- 6 A That's correct.
- 7 Q In 2004?
- 8 A That's correct. Wait wait. 2003?
- 9 Q 2003.
- 10 A I don't know if I did in 2003. 2002, I
- 11 brought it back up to SLED. 1999, I brought it to
- 12 SLED. Signed it out of evidence and brought it to
- 13 SLED myself.
- 14 Q I am sorry, in 2004 you handled the
- 15 evidence when you sent it to G -- Genomics, an
- 16 outside --
- 17 A Biogeographic DNA testing, which we tried
- 18 on this case. Did not end up working. It was not
- 19 big enough a sample.
- 20 Q So in '99, 2002, 2004, you take these
- 21 items, the panties and the corduroy pants, and you
- 22 handle them and you box them up in a FedEx box and
- 23 you send them off to this company called DNA
- 24 Genomics; correct?
- 25 A I will have to pull that report.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q Okay. Would you like to review that?

2 A Sure. Sure.

3 (Pause.)

4 A That is correct.

5 Q And these items wind up in a lab somewhere

6 that is not controlled by the South Carolina Law

7 Enforcement Division, correct?

8 A That's correct.

9 Q And you placed those items there, right?

10 A Yes, I did put them in the envelope and
11 sent them off.

12 Q Then they come back to you and then you
13 put them back in evidence, right?

14 A Yes.

15 Q Again?

16 A That sounds right, yes.

17 Q So, multiple times you are transporting,
18 handling and carrying the panties and the pants;
19 correct?

20 A Those were actually just the cuttings that
21 went up. Yes, I handled the pants and panties
22 initially once when I took them to SLED in 1999.

23 Q Again. In review of the entire file in
24 this case, one of the documents that you received
25 indicated that in 1973 Isaiah Gadson stood 5 feet

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 11 inches tall; correct?

2 A That's correct.

3 Q And isn't it true that in the
4 investigation of Lori Krug's case, just switching
5 over to the other situation, they -- the
6 investigators took Isiah's revolver?

7 A They did.

8 Q And they sent it to SLED in 1983, didn't
9 they?

10 A They did.

11 Q And they asked SLED to compare that
12 revolver to any projectile that SLED had from the
13 MINOR David Krulewicz case, correct?

14 A That's correct.

15 Q Okay. So, Isaiah Gadson's name appears in
16 a document where David Krulewicz is listed as the
17 deceased, correct?

18 A That's correct.

19 Q The findings were that that revolver did
20 not and had not fired those projectiles, correct?

21 A That's correct.

22 Q You are telling us, we have no photos of
23 the crime scene?

24 A Correct.

25 Q We have no photos of the van, in or out?

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 A That's correct.

2 Q From the officers?

3 A Right.

4 Q We have no photos of David's autopsy?

5 A That's correct.

6 Q We have no x-rays from Beaufort Memorial
7 Hospital, right?

8 A X-rays of who?

9 Q David.

10 A No, we don't have any x-rays.

11 Q And isn't it -- didn't SLED in that
12 communicate with you about the missing sexual assault
13 kit? Was there not some possibility in your notes
14 that they could have sent those items back to the
15 Sheriff's Department?

16 A I'm trying to find the report here that
17 you are referring to.

18 Q Okay.

19 A That was in a conversation that I had with
20 John Barron, who was the original serologist in the
21 case that worked with SLED back then. I located no
22 record to indicate that any microfilm items were
23 returned to the Sheriff's Office depository. And
24 copies of the evidence from SLED would be attached
25 to this report.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q But there was some sort of back and forth
2 between you and officer, for lack of a better term,
3 Barron, about actually whether or not they had
4 actually come back or not?

5 A Correct.

6 Q And an inquiry was made?

7 A Correct.

8 Q You have read this file, you have seen the
9 autopsy reports, you know that there's a report from
10 the coroner's inquest from Detective Houston that
11 there were spent cartridges somewhere in evidence.
12 Do you believe that to be true or not?

13 A Can I have a look at that report that you
14 are referring to, please.

15 Q From the autopsy?

16 A This report is 200 some odd pages, so when
17 you refer to something back in 1980, if you can show
18 me what you are talking about that would be very
19 helpful.

20 Q I will be happy to. I mean, I guess my
21 question is, do you think that there were
22 projectiles that they lost as well?

23 A All indications was this was a revolver
24 out there. I was not aware of shell casings being
25 found at the crime scene. Shell casing meaning the

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 brass that is expanded from an automatic pistol or
2 put into a revolver and emptied. I see nothing in
3 this report to refer to that. Coroner Pinckney, I
4 can't testify for him.

5 Q Well, the coroner's inquest is the
6 detective's sworn testimony?

7 A Okay. Again, if I can look at that and
8 see.

9 Q I will have to come back to that, I think,
10 unless I can pull it up, Officer Bromage. Let me
11 see. Here it is. If you could start with the
12 detective's testimony here and just conclude there.

13 A "I did recover two spent cartridges and
14 two spent projectiles in the side of the van."
15 Okay.

16 Q Okay. So, a cartridge is not the same
17 thing as a projectile, right?

18 A That's correct.

19 Q Okay. Cartridges --

20 A Now, whose testimony was that, ma'am, I'm
21 sorry? I was just reading partial.

22 Q That is from Detective Houston at the
23 coroner's inquest about David's death. It is on --
24 it is actually on Page 508 of the discovery.

25 A Okay.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q Now, again, through your education and
2 training, spent cartridges are particularly
3 important in a criminal investigation?

4 A We call them shell casings, yes, or spent
5 cartridges, the brass that accompanies the
6 projectile, yes.

7 Q Because if you were to have a weapon you
8 could compare that weapon, the marks that it makes
9 on the casing, right?

10 A It is extremely helpful. I don't see
11 where there were cartridges or shell casings or
12 whatever you are referring to them as in the
13 Sheriff's Office report. That was the coroner's
14 inquest that you handed to me.

15 Q Yes, it is in the -- it is in the
16 materials that you reviewed and provided to the
17 defense?

18 A Right, right, right.

19 Q Okay. So --

20 A I don't see where they are collected from
21 the crime scene though.

22 Q Okay. Well, here we go. You have
23 testified for the solicitor about the SLED reports
24 from the Krug case on direct examination, correct?

25 A Yes.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q The SLED report back in 1980 from MINOR
2 ██████, if you will just share with the jury, Item No.
3 10 is what?

4 A "Plastic bag containing comb and pubic
5 hairs from MINOR ██████."

6 Q And the combing, the results, number ten
7 is?

8 A "One Caucasian pubic hair found consistent
9 with the pubic hair sample submitted by MINOR ██████."

10 Q And there's no African-American pubic hair
11 found on the sample, correct?

12 MS. SWANSON: Your Honor, I'm going to
13 object to the testifying of test results when I
14 have the chemist testifying next. And
15 Ms. Campbell can certainly go into the person
16 that actually generated that report. I think
17 he would be the proper witness to do that.

18 MS. CAMPBELL: I'll be happy to do that.
19 I just couldn't be sure that he would be
20 called, and he's testified to so much hearsay
21 anyway. I'll be happy to put this aside and
22 have that individual if the State affirms that
23 they are calling them. Thank you.

24 MS. SWANSON: He is in the courtroom right
25 now.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q You -- there's a report in the Krug case
3 that you reviewed, which is on Page 920 of the
4 discovery in your case that you provided to the
5 defense that indicates that the findings in that
6 case were that there was no evidence of trauma when
7 she was examined by a physician, correct?

8 A Right, that is correct.

9 Q Additionally -- I may have to take a
10 moment, Your Honor. There was a pillowcase that was
11 placed in evidence in the 1980 case with MINOR and
12 David, correct?

13 A I'm familiar with it, yes.

14 Q You are familiar with the pillowcase?

15 A Yes, I am.

16 Q And you are familiar with the report that
17 indicates the possibility of blood being on the
18 report, correct? I mean on the pillowcase, correct?

19 A Was it described in an incident report? I
20 believe that it was a few days later they found a
21 pillowcase on the side of the road; is that what you
22 are talking about?

23 Q It was found and it was turned into the
24 Sheriff's Department with suspected blood stains on
25 it. And it is listed that way on the evidence log,

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Officer Bromage.

2 A Yes, ma'am.

3 Q Okay. That pillowcase was never submitted
4 to SLED by any officer in this case, correct?

5 A I don't see where it's relevant to this
6 case.

7 Q Oh?

8 A I would be glad to send that up, but I
9 just don't see where there is a pillowcase involved
10 in this case.

11 Q I understand that you think that it's not
12 relevant, but it is a piece of evidence in this case
13 that law enforcement has chosen since 1980 to just
14 not even touch, correct?

15 A That's correct.

16 Q Okay. And listed in your reports, the
17 original officer taking it in, evidence log,
18 suspected blood, correct, near the crime scene;
19 correct?

20 A Which report are you referring to?
21 Because I would rather reference a report than go
22 off memory.

23 Q Okay. On January 9th, just a few days
24 after this was reported, the pillowcase with
25 suspected blood on it was turned into the Sheriff's

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Department, correct? And here is your report.

2 A The complainant reported he had been
3 walking his dog in front of his house --

4 Q I'm not asking you to read it, Mr.
5 Bromage.

6 A -- and a white pillowcase.

7 MS. CAMPBELL: I object. I didn't ask him
8 to read it.

9 THE COURT: Hold on. She's trying to ask
10 you a question.

11 THE WITNESS: Sorry, sir.

12 BY MS. CAMPBELL:

13 Q You were asking for a case. Here it is.
14 A pillowcase was turned in with suspected blood on
15 it, correct?

16 A It is listed in evidence there that the
17 complainant thought that it might be dried blood on
18 there, yes.

19 Q Yes, that's what I said. Pillowcase with
20 suspected blood on it, correct?

21 A Correct.

22 Q Thank you.

23 MS. CAMPBELL: Your Honor, I need to
24 locate and maybe the solicitor can help,
25 evidence piece 85599. It may be in the box

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 over here.

2 MS. SWANSON: Can you tell me what it is?

3 MS. CAMPBELL: Yes, and maybe --

4 MS. SWANSON: Ms. Campbell, there's not an

5 85599. If you can give me the BCS0 number.

6 That is a property number. The evidence number

7 is different.

8 Q State's Exhibit 10, Officer Bromage, is

9 listed as the victim's panties; correct?

10 A That's correct.

11 Q And this bag is open, correct?

12 A That's correct.

13 Q It's not sealed by SLED?

14 A That's correct.

15 Q No sealing of any kind for evidence,

16 correct?

17 A No, not that I --

18 Q And I can open this bag and get into it.

19 It is not sealed, correct?

20 A That's correct.

21 Q And this is the bag that contains, as

22 listed, the victim's panties; correct?

23 A That's correct.

24 Q From which cuttings were taken, correct?

25 A That's correct.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q And this has never been, to the looks of
2 it, sealed in any way with evidence tape; correct?

3 A By its appearance, by its appearance.

4 Q In fact, the front of the bag appears to
5 have a hole in it, correct?

6 A It does now.

7 Q Yes?

8 A Yes, it has a hole in it. Yes, it does.

9 Q Okay. Are you suggesting that I pushed my
10 finger through this just now?

11 A No, not at all, not at all. No.

12 Q "It does now." Now, are you going to tell
13 this jury that there's no possible way for you to
14 look at cases surrounding 1980, as you are
15 investigating this in '99, and make a determination
16 as to whether or not you can link up any similar
17 cases like criminal sexual conduct cases from around
18 the time of this case; is that what you are going to
19 tell us?

20 A One more time with that, ma'am?

21 Q Are you going to tell this jury that
22 there's no way for you to look back, 1980 case, look
23 around that case, see if there's any other cases in
24 those years that you might look into. No way for
25 you to do that?

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 A There is a way for me to do that. One, to
2 speak to the old detectives which worked here, which
3 I did. Two, to look through microfilm, every page
4 of microfilm, which is located, I believe, off site
5 now where they hold these records from the 1980s. I
6 am unaware of any similar crimes from that era other
7 than the 1983 case. That is in talking to the
8 detectives who are out -- who are deceased now, by
9 the way.

10 Q Okay.

11 A Who actually worked on this case, yes.

12 Q Okay. So, the only similar crime that you
13 can locate is the 1983 case, correct?

14 A That's correct.

15 Q And the items in that case, the evidence
16 items in that case, they would be stored, just like
17 the items in the 1980 case, in what we call the
18 "forever shelf" in the evidence custodian's room;
19 correct?

20 A They would not be stored there. This case
21 was adjudicated in 1983, so that evidence would be
22 destroyed as the normal course of business.

23 Q And do you know that that is, in fact,
24 what occurred?

25 A I don't have any record of where that

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 evidence went from 1983, that's correct.

2 Q Okay. And the records from that would be
3 where?

4 A Records in our evidence repository.

5 Q Okay. And who would handle that?

6 A Now would be Jackie Lagree, Lieutenant
7 Lagree. Prior to that is would be John Dill, who
8 retired from the Sheriff's Office. And prior to
9 that, I'm not quite sure.

10 Q In all of your training and investigations
11 over the years with the Sheriff's Department, one of
12 the things that you might look at in this case is
13 the shattered windows in the van. You might want to
14 know a little bit more about that, right?

15 A If I had the van, I would love to know
16 more about it.

17 Q You might want to know which side, inside
18 or out, how the glass fell; correct?

19 A I would yes, oh, yeah, sure.

20 Q Because, in your training and what you
21 have learned, that is going to give you some
22 information about the direction of the shot coming
23 from the inside of the van or the outside of the
24 van; right?

25 A It would for sure. If the window on the

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 right-hand side of the van in this case was not
2 shattered, sure, sure it would.

3 Q Right. And tempered glass, safety glass,
4 in automobiles, the purpose of that is to keep us
5 from getting killed with shards of glass if
6 something should happen and we should have a crash,
7 correct?

8 A Yes, that's correct.

9 Q Right. So, when you are looking at glass,
10 and again you have learned that if you shoot through
11 the tempered glass it is going to leave a hole,
12 correct? And a hole is going to spider vein out.
13 It is not meant to shatter; isn't that true?

14 A You are talking about five shots to the
15 right-hand side of the van, I think that the window
16 is going to shatter. I don't know, I wasn't there
17 to analyze that.

18 MS. SWANSON: Your Honor, I don't think
19 that there's any basis for Captain Bromage to
20 give that opinion.

21 MS. CAMPBELL: There is a basis. He is 28
22 years law enforcement. He's got a college
23 degree in criminal justice. He's taken classes
24 on criminalistics. He has been trained and
25 studied in this very thing, crime scene

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 analysis. I'm not qualifying him as an expert,
2 but I do think that I can ask him about the
3 windows and how the glass should or shouldn't
4 react to being shot through, and what he would
5 expect to find.

6 THE COURT: I think that you are going to
7 need to lay a better basis before you ask that
8 question.

9 BY MS. CAMPBELL:

10 Q Have you ever had training and courses in
11 criminalistics?

12 A Yes, forensic science, sure I have, of
13 course.

14 Q And part of that training was firearms,
15 ballistics training; correct?

16 A Briefly enough to know my way around it,
17 right.

18 Q Right. Part of that training in
19 criminalistics and forensics dealt with the -- how
20 glass reacts to being shot; correct?

21 A I haven't received any formal training in
22 that, other than what we are talking about a
23 burglary, for example, which side the glass broke in
24 on, I can kind of tell you a little bit about that.
25 But I can't get into how a glass is going to react

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 when a projectile hits it or not.

2 Q So, therefore, if you are not trained in
3 that area, this is something that you would need an
4 expert to analyze; correct?

5 A I would rely on an expert, yes. I would,
6 certainly.

7 Q And in this case, because there are no
8 photographs from the crime scene, there is no way
9 that an expert can be obtained to provide an opinion
10 on what happened to those windows; correct?

11 A That's correct.

12 Q Now, you have the plea sheet from the 1983
13 case, correct?

14 A That's correct.

15 Q You identified it.

16 A I identified it.

17 Q The solicitor put it in evidence.

18 A That's correct.

19 Q Originally Isaiah had been charged with
20 criminal sexual conduct, correct?

21 A That's correct.

22 Q And, you know, that is going to prison,
23 right, 30 years going to prison; right?

24 A That's right.

25 Q And this man decided to plead no contest

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 to assault and battery high and aggravated, correct?

2 A That's correct.

3 Q All right. He received a three-year
4 sentence and probation, right?

5 A I didn't --

6 Q He didn't spend the rest of his life in
7 prison, correct?

8 A I don't know what went on at the plea or
9 anything, so . . .

10 Q According to the documents that you
11 entered --

12 A Clearly.

13 Q David Kessler (phonetic), you remember
14 David?

15 A He died in his office, as a matter of
16 fact, unfortunately. He was a chief deputy when I
17 first got there.

18 Q He was a cop's cop, right?

19 A He was a jovial guy, yeah.

20 Q And he was the one that actually did the
21 interview of Isaiah that you and the solicitor were,
22 you know, cherry-picking through; right?

23 A Right.

24 Q He did that?

25 A Right.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q He is colorful in his language, right?

2 A I would say so, yes.

3 Q Yes. And so, so Kessler and the solicitor
4 at the time, Randolph Murdaugh, they made the
5 decision to not go to trial on Lori Krug's story and
6 he pled to that indictment, to ABHAN; correct?

7 A I wouldn't be involved in making a
8 decision as a police officer. I can't say that. It
9 seems like Buster Murdaugh, the solicitor, the
10 former solicitor in the '80s, agreed to this deal,
11 that is correct. I can't tell you why.

12 MS. CAMPBELL: That may be all I have,
13 Your Honor. Let me check with cocounsel and I
14 will let you know.

15 THE COURT: All right.

16 (Pause.)

17 MS. CAMPBELL: One more thing, Your Honor.

18 BY MS. CAMPBELL:

19 Q I'll ask you to hold that bag for me
20 and -- State's Exhibit 9, which is the corduroy
21 pants; correct?

22 A It says, Corduroy pants. I don't see an
23 exhibit number on it, I am sorry. Is it on the bag
24 right there?

25 Q Yes.

CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 A Yes.

2 Q I'll ask you to take the corduroy pants
3 out of the bag since it is not sealed.

4 A Gloves, please.

5 (Pause.)

6 BY MS. CAMPBELL:

7 Q Take those out and lay it across the desk
8 here. The only cuttings taken from the corduroy
9 pants are from the crotch area, correct?

10 A Stains are identified, but those are the
11 only cuttings, that is correct.

12 Q No other cuttings? Is that it?

13 A Correct.

14 Q Okay.

15 MS. CAMPBELL: Thank. That is all that I
16 have.

17 MS. SWANSON: Thank you, just briefly.

18 REDIRECT EXAMINATION

19 BY MS. SWANSON:

20 Q Were you ever comfortable in eliminating
21 Johnny Weed as a suspect?

22 A I was.

23 Q And when was that?

24 A When we got the DNA results back in 2003
25 and it was concluded that David Krulewicz's DNA

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 didn't match the semen found in MINOR's
2 underwear and corduroy pants, it was concluded that
3 that theory -- he was not a suspect at that point.
4 And we moved on. I informed the victim of it and we
5 moved on to -- that was a rumor for many years, so I
6 just had to put that to rest.

7 Q In 2004 when you sent the cuttings to
8 Print Genomics, you were trying to -- you were
9 trying to figure out where the person may have come
10 from, like, whether or not they were --

11 A Basically it is Ancestry.com. I was
12 trying to figure out ethnicity, whether the person
13 was Sub-Saharan African. We have done it in other
14 cases before, in these cold cases because you want
15 to put a face to the suspect, what he looks like.
16 Yes, that's correct, and we were not able to do that
17 in this case.

18 Q Okay. So, when you sent these cuttings in
19 2004, was that post all forensic testing that we
20 have heard about today?

21 A Yes, it was.

22 Q Okay. So it was after all of the State
23 testing had been done?

24 A That's correct.

25 Q Okay. Those samples weren't in the mail

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 prior to any of the testing or DNA?

2 A They went from our evidence right to SLED.
3 The cuttings came back, they were sent to DNAPrint
4 Genomics in Florida. I spoke with the technical
5 leader there and he said I will give it a try and
6 see if I can help. He was able to develop a DNA
7 profile, but he was not able to give me a composite
8 of the suspect, in other words, or what he might
9 look like.

10 Q Okay. Ms. Campbell asked you about the
11 .32 caliber that was recovered in Isaiah Gadson's
12 car in 1983?

13 A That's correct.

14 Q So, that gun was sent up to SLED?

15 A Yes.

16 Q And compared with the projectiles from
17 this case, five of them; right?

18 A That's correct.

19 Q Were other guns sent up to SLED to be
20 compared with those projectiles?

21 A In speaking with the examiner at SLED,
22 David Caldwell who I have known for almost 20 years,
23 he was a profiler as well, but he was a firearms
24 examiner back in 1983. That was item number 22, or
25 pistol number 22, that had been sent to SLED from

REDIRECT EXAMINATION OF BOB BROMAGE BY MS. SWANSON

1 Beaufort County to be compared to these projectiles.

2 So, any gun that was recovered that was a .32

3 caliber was sent to SLED and none matched, so there

4 was not an identification of any firearm.

5 Q All right. And was that routine in

6 unsolved murder cases?

7 A It still is. It still is, yes, ma'am.

8 Q Okay. And was a murder weapon ever

9 recovered in this case?

10 A No, ma'am.

11 Q Is that uncommon?

12 A No, not at all.

13 Q Any evidence of any statements regarding a

14 pillow case in the 1980 case file, besides the

15 person that found one on the side of the road

16 walking their dog?

17 A That is all that there is.

18 MS. SWANSON: That is all that I have.

19 MS. CAMPBELL: Briefly.

20 RE-CROSS EXAMINATION

21 BY MS. CAMPBELL:

22 Q Just to be clear, the solicitor asked you

23 when was Johnny Weed eliminated as a suspect,

24 correct?

25 A That's correct.

RE CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 Q That's correct. So, naturally at some
2 point he was a suspect; correct? If he had to be
3 eliminated, he was a suspect; correct?

4 A His name came up several times in the
5 investigation through the years. We felt the need
6 to eliminate him. Put that rumor to bed and move on
7 with the investigation, that's correct.

8 Q Thank you, that is correct. Also, this
9 Genomics this Ancestry.com where you sent all of
10 this stuff to in 2004, you said that you needed to
11 put a face on the suspect?

12 A No, we wanted to figure out exactly what
13 they could glean from this DNA. We were doing our
14 job and trying to get all of the information that we
15 could, yes, absolutely.

16 Q Didn't you already have a face of the
17 suspect from MINOR [REDACTED], in the sketch, the
18 composite sketch?

19 A We have a face now.

20 Q To answer my question.

21 A She stated that he was an African-American
22 male subject. Yes, we did have a description of the
23 subject.

24 Q Not only did you have a description of the
25 subject, which was 5'5" to 5'7", you had a composite

RE CROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 sketch in the file that was worked off of for many
2 years; correct?

3 A For the first couple of years, that's
4 correct.

5 Q So, there was a face on the suspect;
6 right?

7 A There was, yes, ma'am.

8 Q Thank you. Heritage, Genomics,
9 Ancestry.com, putting a face on the suspect?

10 A DNAPrint Genomics to see what they can
11 glean from the DNA to assist in the investigation.

12 Q Right. And that is to determine whether
13 or not someone is of Asian, or African-American, or
14 Caucasian descendants; correct?

15 A That's correct.

16 Q Okay.

17 MS. CAMPBELL: That is all that I have.

18 THE COURT: Thank you, sir, you may step
19 down.

20 MS. SWANSON: May we approach?

21 THE COURT: Sure.

22 (Off-the-record discussion held.)

23 THE COURT: Ladies and gentlemen, we are
24 going to take a lunch break. Try to be back at
25 10 until 2:00 and we will begin taking

RECROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

1 testimony again as I understand it. I'll
2 remind you, don't let anybody talk to you about
3 the case and you don't talk to anybody about
4 the case. And don't do any research on the
5 case. See you back in about 70 minutes or so.

6 (The jury exits the courtroom at
7 12:42 p.m.)

8 THE BAILIFF: Jury is clear, Your Honor.

9 THE COURT: Anything that we can take care
10 of during the break?

11 MS. SWANSON: No, sir.

12 MS. CAMPBELL: No.

13 THE COURT: Why don't we try to come back
14 in about an hour. We might -- yeah, let's try
15 to come back in 60 minutes. All right. We
16 will be in recess.

17 MS. SWANSON: Thank you, Your Honor.

18 (Lunch recess.)

19 THE COURT: Ms. Campbell, while we have a
20 moment, we could take this opportunity to
21 discuss with your client his right to testify,
22 or, if you wish, we could wait till later.

23 MS. CAMPBELL: Your Honor, I think it
24 would be appropriate that, when the State
25 rests, he could make an informed decision--

COLLOQUY

1 THE COURT: Okay.

2 MS. CAMPBELL: -- at that time.

3 THE COURT: All right.

4 MS. CAMPBELL: Thanks.

5 THE COURT: I'm informed that all the
6 jurors are present. Is the State ready for the
7 jury?

8 MS. SWANSON: State's ready.

9 THE COURT: Defense ready?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: All right. Let's bring the
12 jurors.

13 THE BAILIFF: All right. The jury is
14 entering the courtroom, Your Honor.

15 (The jury enters the courtroom at 1:48
16 p.m.)

17 THE BAILIFF: The jury is seated, Your
18 Honor.

19 THE COURT: Welcome back, ladies and
20 gentlemen. I believe we are ready to resume
21 with the presentation of the testimony by the
22 State. Solicitor.

23 MS. SWANSON: Thank you, Your Honor. The
24 State calls John Barron.

25 Thereupon,

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 JOHN BARRON

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SWANSON:

6 Q If you can just state your name for the
7 record please.

8 A John Barron. B-A-R-R-O-N.

9 Q Okay. Thank you. And, Mr. Barron, where
10 do you work? I'm gonna move this back so---

11 A Presently at Richland County Sheriff's
12 Department.

13 Q Okay. And in what department or what
14 division of Richland County Sheriff's Department?

15 A In the Forensic Science Lab. Particularly
16 in the DNA Serology Section.

17 Q All right. And where did you work prior
18 to Richland County Sheriff's Department?

19 A South Carolina Law Enforcement Division
20 otherwise known as SLED.

21 Q All right. How long did you work for
22 SLED?

23 A Are you gonna make me do that math?

24 Q Okay.

25 A Since 1975.

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 Q Okay. So, in 1970---

2 A Until 2004.

3 Q Okay. Perfect. That's fine. Can you
4 tell us what sort of education and training you have
5 in your field?

6 A I, I have a Bachelor of Science Degree in
7 Microbiology from Clemson University. I was hired
8 as -- by SLED as a chemist. Although, most
9 everybody there were chemistry majors, I was more
10 focused in the biological field, which is the reason
11 why I went into the serology evidence type of
12 analysis versus, say, analyzing chemical substances
13 for drugs, et cetera.

14 Q Okay. And so what is the study of
15 serology? Does that involve bodily fluids?

16 A Yes, as far as forensics is concerned, as
17 far as law enforcement is concerned, it's involved
18 the -- with the identifying of the body fluid, and,
19 if possible, associate it, as far as possible, with
20 an individual.

21 Q And do you conduct any DNA analysis?

22 A I do now.

23 Q Okay. Did you for SLED?

24 A Yes.

25 Q Okay. And then how long have you been

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 analyzing DNA?

2 A Since the year 2000.

3 Q All right. And when did you go over to
4 the Sheriff's Department?

5 A 2004.

6 Q And you've been doing DNA analysis for
7 them since then?

8 A I have.

9 Q All right. And have you ever testified in
10 court as an expert in serology?

11 A Yes.

12 Q About how many times?

13 A Several hundred.

14 Q Okay. And what about DNA analysis?

15 A About 65 times.

16 Q Okay. At this time, the State would offer
17 John Barron as an expert in both serology and DNA
18 analysis.

19 MS. CAMPBELL: No objection.

20 THE COURT: That motion's granted.

21 BY MS. SWANSON

22 Q All right. So, were you working for SLED
23 in the 1980s?

24 A I was.

25 Q Okay. Can you talk a little bit about the

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 practice of receiving, storing, and returning items
2 at that time?

3 A Yes, ma'am.

4 Q Okay.

5 A We had a, a very small laboratory that had
6 a office area where secretaries were -- greeted the
7 officers that came in with evidence. They would
8 receive the forms, make sure the forms were filled
9 out correctly, assign the case a lab number, and
10 then they would call the person involved to the
11 front to directly receive the evidence from the
12 officer. And then, either that scientist would
13 either begin his analysis or store it in a personal
14 locker for which he had -- only he had the key to,
15 which was stored in a locker room, which only the
16 chemists or the analysts working at SLED at the time
17 had access to. So, there was very strict control of
18 the evidence.

19 Q Okay.

20 A And then, returning it, they -- the
21 officer from -- an officer, usually somebody
22 involved with evidence custodian at a law
23 enforcement agency, would show up with new evidence,
24 and then they would take back with them any old
25 evidence that had been analyzed, and was ready to be

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 returned. And they would sign for that evidence.

2 Q Okay. And did you guys keep track of, of
3 everyone who touched the evidence or was -- at this
4 time, was it just the person that was analyzing it
5 because of your lockers?

6 A Right. We each had a, a locker in which
7 we stored our evidence. And so each analyst then
8 would have his own personal locker, and if, in some
9 case, you know, more than one type of analysis was
10 involved, it would be transferred from one chemist
11 to the other. But, but they would store it in their
12 own personal locker.

13 Q Okay. And what sort of technology was
14 available at the time in the 1980s? Was DNA
15 available?

16 A It was not. It was a vision.

17 Q Okay. And so what were the sorts of tests
18 that you would primarily do on evidence, as far as
19 serology goes?

20 A Well, I began training in serology by
21 attending the Federal Bureau of Investigation for a
22 two week training case in basic serology. And there
23 I was taught how to identify blood, human blood, how
24 to identify -- do presumptive tests for semen in
25 sexual assault cases. And I was also taught to do

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 testing on saliva, and I was taught to do ABO blood
2 grouping. In other words, determine from a stain
3 what your ABO blood group was, and that was pretty
4 much the extent of my initial training in serology.

5 Later I was able to study under some
6 professors at the University of California doing
7 research on further methods of -- better methods of
8 identifying body fluids, and further means of
9 classifying body fluids to narrow down the source.
10 But it wasn't until the late 1990s that DNA came
11 along and gave me the opportunity to actually
12 identify body fluids to an individual.

13 Q So, would you guys do blood type tests in
14 the '80s?

15 A Yes.

16 Q Does anyone do blood type tests now?

17 A No. What we do now is we do screen for
18 the body fluid. So, we want to know if there's
19 blood there. We want to know if there's semen
20 there. And, a lot of times, things may look like
21 blood or semen, but they may not really be. So,
22 first of all, we want to make sure that that's what
23 it is, and then we go directly to DNA analysis.

24 Q And why is that?

25 A Because DNA is so specific and, and so

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 completely identifiable. There's no sense in doing
2 any intermediary type of identification.

3 Q Okay. So, it's a better way to identify
4 someone?

5 A It's very much exact science, yes.

6 Q Okay. It's unique to an individual? Is
7 it --?

8 A It is. If you, if you have enough of the
9 DNA present, then the statistical analysis pretty
10 much confirms with the extreme rarity to the point
11 where it's within reasonable certainty that it, it
12 is belonging to an individual.

13 Q Okay. And, in 1980, did you have the
14 opportunity to conduct some testing on items from a
15 case involving the victims of David Krulewicz and
16 MINOR ?

17 A Yes, I did.

18 Q All right. And do you have your report?

19 A Yes, ma'am.

20 Q Okay. And that's Laboratory Number --
21 File Number L80-0214?

22 A Correct.

23 Q Okay.

24 A That is the laboratory number that it was
25 given when, when it came through the door.

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 Q All right. Can you tell us about the
2 findings on what is labeled as 11B and 11C, panties
3 and blue pants?

4 A Well, the panties and the blue pants were
5 examined. They are spread out on an exam table, and
6 I visually looked for stains that, in a sexual
7 assault case, may be determined to be seminal fluid.
8 And, if I find any, then I do some biochemical tests
9 to see whether or not seminal fluid is indicated on
10 that stain.

11 And I, basically, reported it to --
12 those findings. And I would attempt to identify an
13 ABO blood type from seminal fluid because you could
14 do that on about 80 percent of the population. And
15 then I would have to have known either blood samples
16 or saliva samples from individuals to make that
17 comparison as to whether or not the ABO blood typing
18 was consistent or not or the same.

19 And, for your information, there are
20 four types of ABO blood groups. Type A, Type B,
21 Type O, and Type AB. Most of you may be familiar
22 with that. It becomes very important when you
23 donate your blood.

24 Q Okay. What did you find on -- well,
25 actually let me do this. Let me ask you if you

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1 examined these two items, State's 9 and 10, and I'm
2 gonna hand you some gloves. If you can tell me --
3 these are -- these are two of the items that you
4 examined, what they are, and how you know that you
5 examined those items.

6 A Do you mind if I stand?

7 Q No.

8 A Okay. All right. These are the blue
9 corduroy pants that have been mentioned earlier. I
10 know that I tested these pants because my initials
11 were on the inside of, of the, the pants, which is
12 my practice in the laboratory for later
13 identification.

14 Q Okay. I'll put that up.

15 MS. SWANSON: At this time, Your Honor,
16 State would move 9 into evidence.

17 MS. CAMPBELL: No objection.

18 THE COURT: Motion's granted.

19 *(Whereupon, State's Exhibit No(s). 9*

20 *marked for identification and received in*

21 *evidence.)*

22 A And, again, this is a pair of pink ladies
23 underwear or panties. I can tell that I handled
24 these items previously, and made some cuttings,
25 again, because my initials are present inside the

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1 underwear.

2 Q Okay. At this time, the State would move
3 Exhibit 10 into evidence.

4 THE COURT: Without objection, motion
5 granted.

6 *(Whereupon, State's Exhibit No(s). 10*
7 *marked for identification and received in*
8 *evidence.)*

9 BY MS. SWANSON:

10 Q What did you find on those pants and the
11 panties?

12 A Well, there were -- as far as clothing
13 were concerned, they were five chemical tests in the
14 1980s that were done. The main one was called acid
15 phosphatase. It is an enzyme that is found in human
16 tissue throughout the body, but, in seminal fluid,
17 there's a very, very high concentration of it. And
18 because of the high concentration of it, then it
19 indicates, indicates, excuse me, seminal fluid as
20 opposed to some other body fluid like blood has acid
21 phosphatases in it. But it's a very, very small
22 amount compared to the semen.

23 Q And so did you find characteristics of
24 semen on those items --

25 A Right.

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 Q --In 1980?

2 A Yes. Because of the high level of acid
3 phosphatase, my report stated that there were
4 chemical substances characteristic of semen present.

5 Q All right. And did you also, in your
6 report, did you also note that you had examined some
7 swabs taken from MINOR ?

8 A Yes. Some vaginal swabs you're talking
9 about?

10 Q Correct.

11 A Yes. Again, they contained high levels of
12 acid phosphatase, which is characteristic of seminal
13 fluid.

14 Q Okay. And what was the Blood Factor H
15 that you note in your report?

16 A Okay. Blood Factor H is a biochemical
17 precursor to all blood groups, Blood Group A, Blood
18 Group B, Blood Group AB. And Blood Group O is
19 called O because it in -- does not have A or B. And
20 what it does have is this chemical precursor called
21 Substance H. And why scientist chose to call it
22 that, I don't know, but that's what it is. So, in
23 the absence of A and B, all you have is H, then
24 you're Blood Group O if that makes sense.

25 All right. So, by finding only Blood

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1 Factor H, then what that tells me is that the
2 individual that donated the semen, along with
3 probably the vaginal fluid that may be mixed in from
4 the panties of these garments, was probably also a
5 Blood Group O individual.

6 Q Okay. And do you recall having a
7 conversation with Captain Bromage about evidence
8 that may have been destroyed in the microfilming at
9 SLED?

10 A I had several conversations --

11 Q Okay.

12 A --About the cold cases --

13 Q Okay.

14 A --About what happens to evidence.

15 Generally speaking, the large piece of evidence was
16 returned to the agency. The cutting, that was
17 removed. Initially, if it wasn't all consumed, it
18 was put into like a letter, a letter envelope and
19 labeled, and put back into a case file. And that
20 case file, my understanding, was, instead of
21 returning those envelopes back to the law
22 enforcement agency, that, sometimes, whoever was
23 involved in microfilming, which was beyond my time,
24 discarded those envelopes.

25 I do have pictures of them. They did

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1 take pictures of them before they discarded them,
2 but the cuttings that were in them probably were
3 destroyed. And then the, the picture of the
4 envelope itself, as well as the rest of the
5 paperwork in the case file, was microfilmed for
6 later recovery.

7 Q So, a missing rape kit that remained at
8 SLED would not be unique to this cold case?

9 A Well, you'd have to define a rape kit.

10 Q Vile, pubic hair, the swabs taken from
11 MINOR. Evidence that SLED told Captain Bromage
12 had not been preserved in the microfilming.

13 A Right. So, if these -- what was left of
14 these swabs was still -- would have been put in
15 those envelopes I mentioned. The pubic hair would
16 of been put into those envelopes. In 1980, there
17 was no nice red and white box that you see today
18 that, that we use in law enforcement for sexual
19 assault kits. There was no sexual assault kit per
20 se in 1980. There was evidence from sexual assault
21 cases that were collected at the hospital, and put
22 in whatever devices they could to store them, and
23 then transport them to law enforcement.

24 Q All right. And, at the time, was it
25 unknown how useful this information could be?

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1 A What information?

2 Q That you could get from these sexual
3 assault exams.

4 A Well, we knew at the time what we could
5 get, at present technology. But, like I said, I was
6 aware of future technology that was coming in the
7 future as far as being able to do more than ABO
8 blood grouping. Although, DNA analysis, in 1980,
9 was a theory, it was a long way from being
10 developed, and put into practice.

11 Q Okay. Did you also have the opportunity
12 to test items, in 1983, involving a case against
13 Isaiah Gadson and the victim, Lori Ann Krug?

14 A Yes.

15 Q All right. And did you find any semen on
16 clothing belonging to her?

17 A Yes, I did. Again, the acid phosphatase
18 biochemical test was strongly positive on some
19 pantihose, and, and the vaginal swab, and I believe
20 a cutting from a car seat. And, in that -- in this
21 case, I also received a -- what is called a vaginal
22 smear, and what the nurse does at the hospital,
23 during the examination, is take a swab, a vaginal
24 swab, and smear it onto a slide. And there I could
25 stain the slide, and digitally examine it, and was

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1 able to find the sperm cell itself to confirm that
2 it was semen.

3 Q Okay. So, that was a confirmatory test
4 rather than just a presumptive test?

5 A Right, the identification of the sperm
6 cell itself is confirmatory.

7 Q Okay. And did you find anything between
8 those two cases that was consistent?

9 A You talking about the 2000 --

10 Q I'm sorry. Between the 1980 findings and
11 the 1983, was there anything consistent in, in blood
12 typing or blood factor?

13 A The, the, the attempt to do blood typing
14 on the '83 case was inconclusive as far as my notes.

15 Q Okay.

16 A In doing blood grouping on body fluids, it
17 was known that sometimes there could be substances,
18 unknown to us but we knew they existed, that were
19 not part of the stain itself that could cause a
20 false positive reaction, or either the stain itself
21 had some sort of deterioration to it that caused the
22 results to be inconclusive. So, if we were not
23 certain, we just reported it as we attempted to type
24 the blood, but it was inconclusive.

25 Q Okay. And since doing these chemical

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1 tests back in the '80s at SLED, you've worked on a
2 lot of DNA cases, right?

3 A That's correct.

4 Q And come up with some match statistics?

5 A Yes.

6 Q And can you just explain what a match
7 statistic is?

8 A It's a probability. You know, we know
9 that an independent action has a certain
10 probability. Like if you were to roll a dice and
11 just one through six, they'll be a one in six chance
12 of getting a one.

13 All right. So, in DNA, we know that
14 certain genotypes or types of DNA from individuals
15 at certain locations have a certain probability of
16 being there based upon population studies. And so,
17 since these probabilities are independent of each
18 other, they're not dependent on each other, they can
19 statistically -- the probabilities can be multiplied
20 together. So, if one genotype is 10 percent of the
21 population, and then you go to another location on
22 the DNA molecule, and it's 20 percent of the
23 population, then you have 20 percent of 10 percent,
24 which is a much smaller percentage.

25 And since we do so many different

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1 independent loci, all those percentages can be
2 multiplied together, and that gives you a
3 probability of a, a very large number, a one in --
4 one -- or one quadrillion, which is like ten to the
5 15th power. And, on the planet, we have about,
6 going on 8 billion people, which is a lot less -- a
7 lot smaller number. So, statistically speaking
8 then, the probability of this D -- DNA sequence of
9 genotypes occurring again are so remote that it
10 would be unreasonable to think that it could happen
11 again. So, therefore, that's unique to that
12 individual.

13 Q Okay. So, if I, if I was to give you a
14 couple of match statistics, would you be able to
15 tell me if they are strong matches?

16 A Sure.

17 Q Okay. One in 2.1 trillion?

18 A Yes. Again, 2.1 trillion is, is a much
19 larger number than 8 billion.

20 Q All right. And you mentioned quadrillion,
21 but one in 3.7 quadrillion?

22 A Yes. So, when you get into trillions and
23 quadrillions and higher, it becomes a unique
24 situation. It's a statistical uniqueness that would
25 tell me that it would not occur again, and,

DIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 therefore, that DNA belongs to that person.

2 Q Okay. And even if somebody was like that
3 person's brother, correct?

4 A Right. Even brothers are gonna be
5 different because their parents have differences
6 that they are contributing together, and it would be
7 statistically impossible for brothers to have
8 identical DNA unless they came from the identical
9 egg and sperm, which would be identical twins.

10 Q Okay. Thank you. I have nothing further.

11 THE COURT: Cross-examination.

12 CROSS EXAMINATION

13 BY MS. CAMPBELL:

14 Q The -- good afternoon.

15 A Good afternoon.

16 Q The questions -- the series of questions
17 that the solicitor just went over with you, you've
18 gone over those questions with her before today,
19 haven't you?

20 A Actually no.

21 Q Okay. You, you're -- you were not---

22 A Those are common questions I get from
23 prosecutors every time.

24 Q Your -- you've had no conversations with
25 the solicitor about your testimony today?

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 A I've had some conversations, but we did
2 not go step-by-step over ever single one---

3 Q That---

4 A ---of those questions.

5 Q The general gist of your testimony, you've
6 discussed with the solicitor?

7 A Yes, I had to explain to her about ABO
8 blood grouping because she's young enough not to
9 remember those days.

10 Q That's right. So, right. So, when I saw
11 it, I said, huh, H Factor. And, and so if I've
12 heard you correctly, the H Factor tells you that the
13 source of that fluid is, is not a person who has A
14 type blood, correct?

15 A Right. The, the H Factor, in absence of,
16 of the A and the B, lets you know it's an O. And
17 the O simply means, simply means the absence of A
18 and B. There is no blood factor O. It's just the
19 absence of A and B, which is revealed in the blood
20 substance H.

21 Q So, part of what you do, and part of what
22 you were helping the solicitor with, is you make
23 conclusions as an expert, correct? So---

24 A Yeah, based upon my scientific testing, I
25 can make some conclusions as to what the answer that

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 is being asked.

2 Q And if I hear what you're saying
3 correctly, you could conclude that, if you found, in
4 1980, that the Factor H was present --

5 A Yeah.

6 Q -- that the fluid could not come from a
7 person with type A blood, correct?

8 A No, my conclusion would be that that stain
9 was contributed by a person who's type O.

10 Q Okay. Well, that's kind of like the
11 second part of my questions. So, it's just O. It
12 can't be A. It can't be B.

13 A Correct.

14 Q Okay. Not a trick question. Is -- so,
15 it's a two-part question. It's definitely not
16 someone with A blood type, and definitely not
17 someone with B blood type?

18 A Or AB blood type.

19 Q I was getting ready to say, or a third
20 option, or AB, right?

21 A Right.

22 Q Perfect. Because those are our
23 categories, A?

24 A Four categories.

25 Q B?

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 A Right.

2 Q AB and O?

3 A Yes.

4 Q Okay.

5 A And O just means the absence of A and B,

6 and this substance called H---

7 Q Uh-huh. (Affirmative).

8 A ---is what's left.

9 Q Got it. Thank you. You have both your

10 reports in front of you?

11 A Yes.

12 Q Yeah. Okay. When you provided your

13 report in this case, in the 1980 case, you, you have

14 a worksheet --

15 A Right.

16 Q -- called, called SLED serology, serology

17 worksheet semen analysis. Is that fair to---

18 A Yes.

19 Q ---call it that?

20 A I have a copy of it.

21 Q Perfect. And you have several columns.

22 You list the article that you're examining?

23 A Yes.

24 Q Then you name it, you give it a number,

25 and then you name it, correct?

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 A I describe it, yes.

2 Q Yeah. And you have a description of any
3 stain that you visually see, correct?

4 A Yes, I -- what I do is I note the fact
5 that there's a stain present, and maybe the location
6 of it. In this case, it would of been the criteria
7 of the corduroy pants and the panties.

8 Q All right. And then the next column is
9 called -- it, it, it actually says Florence.

10 A Yeah.

11 Q What does that mean?

12 A That's in the -- when I trained at the FBI
13 Academy, they taught us three methods -- biochemical
14 methods of assuming the presence of semen, and this
15 Florence microcrystalline test was one of them. And
16 so we could choose to use that test if we wanted to,
17 and use it as a presumptive test for semen. But,
18 over time the -- and the acid phosphatase test was
19 also taught.

20 So, we just found, in the laboratory,
21 that the acid phosphatase test was easier, it was
22 just as informative, and the Florence
23 microcrystalline test, which involves some, some
24 microscope slides, and causing a reaction underneath
25 the slide, and looking at it through a microscope

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 was a much more tedious and difficult test. It
2 didn't give us any, any more information then the
3 acid phosphatase test. So, we had a tendency to not
4 do that or it's kind of a duplicative thing. But
5 you were given the option. So, it was on the form.

6 Q And so, in this case, your testimony is
7 that you chose to do the acid phosphatase instead of
8 the Florence?

9 A Correct.

10 Q Correct?

11 A That's correct.

12 Q Great. And the next line, of course, is
13 the acid phosphatase---

14 A Right.

15 Q ---column?

16 A That's correct.

17 Q And you have a further column after that,
18 and that column is sperm?

19 A Sperm.

20 Q Okay.

21 A Yes.

22 Q And, in the 1980 case, L80-0214---

23 A Right.

24 Q ---there -- you have not listed anything
25 in that column?

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 A No.

2 Q Correct?

3 A That column is reserved in -- was reserved
4 for the vaginal smear, because we did look for sperm
5 under the microscope when we had a vaginal smear on
6 a slide that was provided by the hospital. In this
7 particular case, no vaginal smear was submitted.
8 But the other, 1983 case, it was submitted. So,
9 therefore, you used the sperm column.

10 Q And if the doctor who performed the
11 extraction of the evidence created a slide with a
12 vaginal smear --

13 A Uh-huh. (Affirmative).

14 Q -- and you did not receive that slide, you
15 can't analyze what you don't have, correct?

16 A Well, that would be obvious, yes.

17 Q Yes. Thank you. And then, again, coming
18 to, to the report, not your worksheet.

19 A Yes, ma'am.

20 Q On this report, at number ten -- well,
21 let's start with number nine. Number nine was the
22 plastic bag containing the glass vial with eight
23 swabs taken from MINOR, correct?

24 A Right. Evidently they put nine vaginal
25 swabs in there. A little overkill. But two would

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 of been sufficient.

2 Q And, and none of those are around today?

3 That -- that's what's been lost,
4 correct?

5 A I guess it has.

6 Q Or destroyed?

7 A I would assume.

8 Q All the conversations you had with
9 Detective Bromage, the -- we don't have number nine?

10 A Okay. I don't know what happened to
11 number nine.

12 Q You don't know.

13 A But I didn't throw it away.

14 Q I -- no, I'm not saying you did.

15 A Okay.

16 Q Okay. I'm not saying you did. Number ten
17 is the plastic bag containing the comb, and any
18 pubic hairs removed from MINOR from the
19 combing, correct?

20 A Correct. Now, it is the practice, in a
21 sexual assault exam, to comb the pubic area for
22 foreign hair present. Occasionally -- I, I have
23 also done microscopic hair comparisons since the
24 '80s as well, and I've examined a lot of, of sexual
25 assault cases where there are pubic combings

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 collected. And I would guess, roughly about
2 5 percent of the time, there would be an interchange
3 of pubic hair where the assailant's pubic hair may
4 have been left among the pubic hair of the victim.
5 So, it would be combed out, and any hair that fell
6 out would be collected for examination. And, most
7 of the time, that hair fell out was simply some of
8 the victim's own pubic hair.

9 But -- so, I would look at the known
10 hair of the victim, and then I would look at any
11 loose hair from the combings, and determine whether
12 or not it was different from the victim. If it was
13 different from the victim, then I would want to see
14 a known sample from any potential suspects in the
15 case. Sometimes it was very obviously different as
16 say she was a blond and it was dark brown hair, that
17 would be obviously different. Or if it's from a
18 White person versus an African-American person, it
19 would be obviously different. And so, then, I
20 would, in any case, regardless, I would look at the
21 known hair, and compare it to the hair that was
22 loose in the pubic hair combing envelope.

23 Q So, you've testified many times in court,
24 correct? Hundreds of times?

25 A Yes, ma'am.

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 Q Yes. And you work for the State of South
2 Carolina, right?

3 A Right. I even testified in Beaufort
4 before this courthouse was built.

5 Q Right. Yes, and I practiced law in that
6 old courthouse. So, I know what you're talking
7 about.

8 A Exactly.

9 Q So, you, you work for the government,
10 right?

11 A I do.

12 Q Yes. And this 5 percent that you're
13 talking about---

14 A Estimate. That's an estimate.

15 Q Tell, tell us what, what studies you've
16 conducted, scientific studies, in order for you to
17 get a broad swab of cases, and analyze them to --
18 what's the name of that study? How did you conduct
19 it to come up with your 5 percent?

20 A I said that's an approximation based on my
21 experience.

22 Q Okay. So, no studies, no formal
23 scientific studies to get the 5 percent quote,
24 correct?

25 A Yes, that's a---

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 Q Okay.

2 A That is a pure estimate. I did not tally
3 them as I went along through the years.

4 Q All right. Now --.

5 A I'm just trying to say that it wasn't --
6 it didn't happen very often that we found foreign
7 hair.

8 Q Okay. I'm gonna take you to the 1983 case
9 that you analyzed.

10 A Yes.

11 Q 7C. Spermatozoa found, correct?

12 A Yes, that's the---

13 Q And that's on the slide --

14 A That's---

15 Q -- or not?

16 A ---a fancy work for sperm.

17 Q Right.

18 A Right.

19 Q Is that on the slide?

20 A Yes.

21 Q Seven -- are you saying that 7C is a
22 slide?

23 A 7C is -- seven was U.S. Naval Hospital bag
24 containing nine specimens of which I listed on my
25 worksheet.

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 Q Uh-huh. (Indicating affirmatively.)

2 A And 7C is a vaginal smear or a slide. In

3 other words, it's smeared---

4 Q Right.

5 A ---onto a slide.

6 Q Correct. Thank you.

7 A All right.

8 Q 7F. You report, in 1983, two Negroid
9 pubic hairs found, and that is from the combing, the
10 pubic combing, for the 1983 case, correct?

11 A That's correct.

12 Q And you further say that you find, with
13 your science skills in 1983, that the pubic hairs
14 that you're examining are African-American, excuse
15 me, Negroid pubic hairs, and they are consistent
16 with Isaiah Gadson, Junior, right?

17 A That's correct.

18 Q Right. Okay. So, science. Would you be
19 able to testify in court today about the consistency
20 of, of Negroid pubic hairs being consistent with a
21 person of, of African-American descent? Would you
22 be able to do that scientifically?

23 A Yes.

24 Q Okay. And the science that allows you to
25 do that, what, what makes that person so, so

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 distinct for you so that you could say, oh, that's,
2 that's, that's consistent with Isaiah Gadson, that's
3 consistent with this particular black man?

4 A Okay. That was a -- what we call a
5 microscopic hair comparison. So, I would have to
6 have had, and in this case I had submitted later, a
7 sample of Isaiah Gadson, Junior, or Senior, Junior
8 known pubic hair. In other words, they were
9 actually pulled from his pubic region, and I took
10 those hair and put them on a slide, put a
11 representative sample on it, and I took these two
12 hairs, which are obviously different then the
13 victim, and compared them, microscopically, using a
14 comparison microscope.

15 Looking at the areas of the hair,
16 which consisted of the outer layer, which is the
17 cuticle, and then the cortex, which is the major
18 portion of a hair that contains the pubic granules,
19 and then the medulla or the center portion of the
20 hair, which is kind of like a graphite pencil, you
21 know, the cuticle being the yellow paint, and the
22 cortex being the wood, and then the medulla being
23 the graphite center.

24 All right. Now, each of those areas
25 have different characteristics in different people.

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1 Although they're not unique, they are something that
2 can be used to say whether or not it's consistent
3 with. So, like I can describe a car, it, you know,
4 and somebody can say, well, that's consistent with a
5 Nissan Versa or something like that. Okay, so, it's
6 not identifying it individually, but it is saying
7 it's consistent with, and, therefore, could have
8 come from that person.

9 In 1980 -- in the 1980s, with this
10 type of comparison scientifically, it was a -- kind
11 of like a class identification. In other words, I'm
12 eliminating the large class of people, and I'm
13 including a class of people in which Isaiah Gadson,
14 Junior fit. So, his hair did not -- was not
15 extremely or did not contain enough characteristics
16 to exclude it. So, therefore, it's a possibility
17 that it belonged to him.

18 All right. I'm not applying any
19 probability to it, not giving you any quadrillions,
20 or millions, or any type of number because there's
21 no, no way you could do that. All I could do was,
22 based upon my scientific training and my
23 examination, say that they were consistent. And so,
24 since they were consistent, then I couldn't
25 eliminate him as a possible source of this hair.

CROSS EXAMINATION OF JOHN BARRON BY MS. CAMPBELL

1 That's not to say that, if I were to take a sample
2 from a hundred other African-American individuals,
3 that they may fit similar characteristics as well.
4 There's no statistical value that is placed on it.
5 It is merely an observation, a scientific
6 observation, that would include or exclude an
7 individual.

8 Does that answer your question well
9 enough or do you want more?

10 Q Absolutely.

11 A Okay.

12 Q Thank you. So, this is the type of
13 evidence that, that would, would and could be used
14 as a factor in determining guilt or innocence,
15 correct?

16 A Yes, it, it would not stand alone.

17 Q No, but -- I didn't say it would stand
18 alone.

19 A Right.

20 Q I said it would be a factor---

21 A It would be a factor.

22 Q ---that---

23 A It would have to go along with all the
24 other---

25 Q Factors.

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1 A ---you know, evidence brought into the
2 courtroom.

3 Q Exactly. And so the classes that you
4 talked about, isn't it true that the classes that
5 you're distinguishing between are primarily
6 Caucasian, and, as you say here, Negroid? Caucasian
7 and Negroid, correct?

8 A You have to -- all right. Well, you have
9 to understand the terminology in the 1980s. It's
10 not as politically correct, I guess, you might say
11 as it is today. But, anthropologically speaking,
12 there are three general characteristics of human
13 beings. They're the Caucasian human beings, which
14 are primarily of European descent, Middle Eastern
15 descent, and then there's the Orientals. They're
16 Oriental -- they are the people generally from
17 China, Japan, Korea, you know, Far East.

18 And then there's the -- what we call
19 the Sub-Saharan Africans. There's, there's a desert
20 in Africa, kind of the upper middle, and below that
21 desert is where you find your people of darker skin
22 that, you know, are, you know, obviously, to us
23 today, that we refer to as African-Americans.

24 Now, you can be from Egypt and
25 migrate to America, and you would have Caucasian

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1 characteristic hair, but you, but you could
2 technically say you were African-American as well.
3 So, so, we use the word "Negroid," which is the
4 anthropological term used for that type -- those
5 people from that area of the world.

6 Okay. There's nothing derogatory
7 about it. It's just simply a scientific term that's
8 derived from the Latin term which means black.

9 Q Thank you. So, to, to conclude with your
10 analysis in 1980, and your analysis in 1983, in
11 1980, you find no African-American pubic hairs in
12 your report on the 1980 case, correct?

13 A That's correct.

14 Q In 1983, you do find African-American
15 pubic hairs in the 1983 case, correct?

16 A Yes.

17 Q Okay. And you don't know where a
18 substance came from that you're analyzing? You
19 don't know how it got on the item you're looking at,
20 correct?

21 A You'd have to tell me what item, and what
22 circumstances are involved.

23 Q If a pair of panties is submitted to
24 you --

25 A Yes.

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1 Q -- and there are fluids found by you on
2 the panties --

3 A Right.

4 Q -- you were not in the street. You were
5 not there. You don't know how that item got on
6 those panties. Correct?

7 A Well, if it's seminal fluid, it's an
8 ejaculation from a male.

9 Q Okay. You've done this a lot. Okay. So
10 --.

11 A Yes, ma'am, and I know what semen is, and
12 I know where it comes from.

13 Q Yes. Okay. So, I have an item I'm
14 submitting to you. And if were to say to you, well,
15 Scientist Barron, how about tell me where this blood
16 came from on this shirt, can you tell me where that
17 blood came from on that shirt?

18 A I can identify today whose blood it is.

19 Q Right. But you can't tell me where it
20 came from, right?

21 A I would say that it came from that
22 individual who matches that DNA.

23 Q Okay. That's not what I'm asking you.
24 I'm not asking you about DNA or matches. If I ask
25 you to tell me exactly where that blood came from,

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1 you can't do that, can you?

2 A It came from---

3 Q You can analyze it, but you can't say the
4 source of it. Don't talk about DNA. You can't tell
5 me the source of it, correct?

6 A I can tell you that it came from a human
7 being that was bleeding. That's a source.

8 Q Yeah, that is a source.

9 A All right.

10 Q Yeah.

11 A Okay.

12 Q Thank you.

13 A All right.

14 Q Uh-huh. (Indicating affirmatively.) Have
15 a good afternoon.

16 A Okay.

17 REDIRECT EXAMINATION

18 BY MS. SWANSON:

19 Q Just briefly. Do you know when SLED
20 discontinued doing blood factor testing?

21 A ABO blood grouping was dropped when DNA
22 analysis came online.

23 Q Thank you. That's all.

24 THE COURT: Thank you. You may step down.

25 THE WITNESS: Thank you.

REDIRECT EXAMINATION OF JOHN BARRON BY MS. SWANSON

1 THE COURT: And you may be excused from
2 your subpoena.

3 THE WITNESS: I appreciate it.

4 THE COURT: Solicitor, you may call your
5 next witness.

6 MS. SWANSON: Thank you, Your Honor. At
7 this time, the State rests its case.

8 THE COURT: The State rests.

9 Ladies and gentlemen, I'm gonna need you
10 to please retire to the jury room one more
11 time. I'm required now to discuss some matters
12 of law with the attorneys outside of your
13 presence, and I'll remind you it's too early to
14 begin discussing the case.

15 (The jury exits the courtroom at 2:41
16 p.m.)

17 THE COURT: Any motions?

18 MS. CAMPBELL: Yes, Your Honor. May it
19 please the Court. At this time, on behalf of
20 Mr. Gadson, first of all, I would renew my
21 motion for a mistrial on the original mistrial
22 motion wherein, as you were reading the
23 criminal sexual conduct indictment at the start
24 of jury selection, Your Honor read out the name
25 Lori Krug. While I understand that she was

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1 named as a witness in this case, the, the
2 juxtaposition of her name with criminal sexual
3 conduct is the basis of that, of that motion,
4 and remains the basis of that motion. And that
5 introducing a charge, an indictment of criminal
6 sexual conduct against Mr. Gadson for Lori
7 Krug, I know we've been through testimony, and
8 shown that he pled to an ABHAN. But I would
9 say using her name in the criminal sexual
10 conduct indictment really is the kind of error
11 that cannot be cured, and we would ask for a
12 mistrial. Thank you, Your Honor.

13 THE COURT: Okay. I understand the
14 motion -- I understand that motion, and you've
15 argued it previously, and I'll deny the motion.

16 MS. CAMPBELL: And, secondarily, I would
17 renew the motion for mistrial relative to the
18 testimony of Officer Bromage as he testified to
19 retrieving information from a law enforcement
20 database, essentially, relative to my client's
21 DNA. And, and that would be a, a violation of,
22 of the rules regarding statements that relate
23 to my client having a criminal history or, or
24 having some, some background that would
25 characterize him as having conduct that, that

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1 would place him in a, in a criminal light in
2 front of this jury. And so I would renew that
3 motion, and, again, don't believe that that can
4 be cured at this time.

5 THE COURT: It was previously argued. I
6 understand that motion, and, once again, deny
7 it.

8 MS. CAMPBELL: Thank you, Your Honor. And
9 then, finally, at the close of the State's
10 case, it is my responsibility to make a motion
11 for directed verdict on behalf of, of
12 Mr. Gadson at this point. I would say to Your
13 Honor that even, again, having, you know, being
14 quite aware of the standard with which Your
15 Honor has to view this evidence, in the light
16 most favorable to the State, that based upon
17 the testimony in this case, the identifying
18 factor, if you will, the piece of evidence, the
19 testimony that points its finger at Mr. Gadson
20 is science. There isn't -- the case is devoid
21 of, of any other evidence indicating Mr. Gadson
22 would be guilty of this crime.

23 And the problem that I have with
24 scientific evidence, although the State, you
25 know, tried to clean up the DNA situation with

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1 testimony of Mr. Barron, when David McClure
2 testified, his testimony called into question
3 really the validity of, of the science in this,
4 in this, in this case. And I asked him, and
5 I'm looking at my notes, clearly, and he
6 said -- actually, I think the question was in
7 response to what the solicitor said about the
8 match statistics not being correct, and he
9 said, well, it's -- is it possible? Yes. Is
10 it probable? No.

11 So, we never looked towards the -- you
12 know, again, and we went into great detail on
13 the statistics, and, and how the pool was too
14 small, and he admitted that. But it, it's,
15 it's suppose -- it needs to be larger, the
16 number of loci checked need to be more in order
17 to hone this science so that there's not even a
18 possibility that it's wrong. And so, in
19 response to her question, you know, after I had
20 cross-examined him, he said, very clearly, it's
21 a possibility? Yes. Is it probability? No.

22 So, if you have testimony from their
23 expert who says it's a possibility that I'm
24 wrong, that the computer is wrong, that this
25 process is wrong, that possibility, and that