

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

TERRY DUNOVANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001536

APPENDIX

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1 AS TO WHAT A PERSON'S BLOOD ALCOHOL CONCENTRATION WAS AT
2 A TIME EARLIER TO WHEN THAT BLOOD SAMPLE WAS TAKEN? ARE
3 YOU CAPABLE OF DOING THAT YOURSELF?

4 A YES, SIR.

5 Q LOOKING AT YOUR REPORT WHERE IT INDICATES MS. HILL'S
6 BLOOD ALCOHOL CONCENTRATION LEVEL AS .042, CAN YOU
7 DETERMINE WHAT HER BLOOD ALCOHOL --- ALCOHOL CONCENTRATION
8 WAS AT APPROXIMATELY FIVE THIRTY A.M.?

9 A YOU CAN, BUT YOU'VE GOT TO REMEMBER IT'S AN
10 ESTIMATION. THE ONLY NUMBER WE KNOW FOR SURE IS THE ONE
11 THAT WE MEASURE, BUT IT'S AN ESTIMATION THAT CAN --- THAT
12 HAS TO BE BASED ON A COUPLE OF THINGS. NUMBER ONE, THE
13 SUBJECT HAS TO BE OR THE PERSON HAS TO BE IN THE
14 ELIMINATION PHASE. REMEMBER, WE HAD ABSORPTION,
15 DISTRIBUTION, METABOLISM, ELIMINATION. THEY'VE GOT TO BE
16 IN THE ELIMINATION PHASE SO THAT WE KNOW THAT BY
17 DEFINITION AT ANY GIVEN TIME THERE'S LESS AND LESS GOING
18 TO BE IN THE BODY. IF THEY'RE IN ELIMINATION PHASE, THEN
19 YOU CAN DO RETROGRADE EXTRAPOLATION. IF THAT'S TRUE,
20 THEY'RE NOT ABSORBING ANY FRESH ALCOHOL. THAT MEANS THEY
21 DIDN'T DRINK ANYTHING FROM SOME TIME AFTER FIVE THIRTY,
22 HAVE ANY ADDITIONAL ALCOHOL PUT INTO THEIR SYSTEM, THEN
23 YOU CAN BACK CALCULATE USING 0.015 PERCENT PER HOUR FOR
24 SEVEN HOURS, AND THAT'S GOING TO BE APPROXIMATELY .15.
25 IT'S REALLY GOING TO BE ABOUT A .147 IF YOU JUST DO THE

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1 MATH EXACTLY LIKE THAT, BUT IT IS AN ESTIMATION, SOMEWHERE
2 AROUND A .15 PERCENT.

3 Q SO ASSUMING THAT MISTI HILL IS AN AVERAGE FEMALE AND
4 ASSUMING THAT THAT STANDARD RATE OF ELIMINATION APPLIES,
5 IT'S YOUR TESTIMONY THAT HER BLOOD ALCOHOL CONCENTRATION
6 WAS APPROXIMATELY .147?

7 A AT 5:30 IN THE MORNING, YES.

8 Q OKAY. I WANT TO SWITCH TOPICS JUST A LITTLE BIT.

9 A OKAY.

10 Q I WANT TO TALK ABOUT CRACK COCAINE.

11 A ALL RIGHT.

12 Q CAN YOU TELL THE JURY WHAT CRACK COCAINE IS?

13 A WELL, CRACK COCAINE IS ACTUALLY THE BASE FORM OF
14 COCAINE. COCAINE IS A DRUG BASICALLY THAT'S DERIVED FROM
15 A PLANT THAT'S PRIMARILY GROWN IN SOUTH AMERICA, BUT IT'S
16 A VERY PSYCHO ACTIVE DRUG. IT'S USED --- IT'S USED
17 ACTUALLY MEDICINALLY. IT'S A PRETTY NEAT DRUG. IT'S NOT
18 USED A LOT ANYMORE, BECAUSE IT HAS A HIGH ABUSE POTENTIAL.
19 THAT IS, PEOPLE WILL TAKE IT AND ABUSE IT TO GET HIGH OR
20 WHATEVER REASON OTHER THAN THE MEDICINAL USES OF IT.
21 CRACK COCAINE IS THE BASE FORM OF THAT, AND WHAT'S
22 IMPORTANT ABOUT THE BASE FORM OR THE CRACK FORM IS THAT
23 THE REGULAR COCAINE YOU CAN'T SMOKE. IF YOU TRY TO HEAT
24 IT UP, THE MOLECULE ITSELF WILL BREAK APART AND IT WON'T
25 DO YOU ANY GOOD, BUT THE BASE FORM OF IT WILL ACTUALLY

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1 VAPORIZE AND YOU CAN INHALE THE VAPORS FROM THE COCAINE
2 AND THAT'S IMPORTANT BECAUSE ANYTHING THAT YOU CAN GET IN
3 THROUGH YOUR LUNGS YOU GET --- YOUR LUNGS IT GOES DIRECTLY
4 TO YOUR BLOOD AND IT GETS ABSORBS DIRECTLY INTO YOUR
5 BLOODSTREAM, PUMPED TO YOUR HEART AND BOOM, STRAIGHT TO
6 YOUR BRAIN, SO YOU GET REALLY REALLY GOOD ABSORPTION, AND
7 WITH CRACK COCAINE WITH INHALING THE VAPORS OF IT YOU GET
8 A REALLY, REALLY GOOD CONCENTRATION IN THE BRAIN VERY
9 QUICKLY, AND THAT GIVES YOU THAT BIG ORGASMIC HIGH THAT
10 PEOPLE WHO ARE SMOKING IT ARE LOOKING FOR. IF YOU'RE TO
11 SNORT IT OR TAKE AND EAT IT OR HOWEVER OTHER WAY YOU WANT
12 TO DO IT EXCEPT FOR SHOOTING IN YOUR VEIN, IT'S GOT TO GO
13 THROUGH YOUR LIVER FIRST AND THE LIVER IS THE SIGHT OF
14 METABOLISM, SO THE BODY WILL ACTUALLY TAKE A GOOD DOSE OF
15 THAT AND CHANGE IT INTO SOMETHING THAT HAS NO ACTIVITY AND
16 SO YOU DON'T GET AS GOOD OF A HIGH FROM TAKING IT ANOTHER
17 WAY, SO THE CRACK WAY IS A REALLY, REALLY GOOD WAY TO GET
18 A REALLY GOOD HIGH AND THAT'S WHY PEOPLE USE IT AND ABUSE
19 IT.

20 Q WELL, WOULD A COMMON LAY PERSON NOT FAMILIAR WITH
21 CRACK COCAINE BE ABLE TO IDENTIFY A PERSON THAT'S
22 CURRENTLY INTOXICATED WITH CRACK COCAINE?

23 A MAYBE, MAYBE NOT. PROBABLY NOT. IT JUST DEPENDS ON
24 HOW INTOXICATED THEY WERE. THE EFFECTS OF IT ARE GOING TO
25 BE --- YOU KNOW, IF YOU RECOGNIZE THAT SOMEBODY WASN'T

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1 ACTING RIGHT --- THAT'S NOT VERY SCIENTIFIC --- BUT IF
2 THEY WERE --- YOU KNOW, IT'S GOING TO AFFECT YOUR BRAIN
3 AND YOUR MIND AND HOW YOU THINK AND THINGS LIKE THAT, BUT
4 REALLY THE REASON YOU'RE TAKING IT IS TO GET THIS HIGH AND
5 IT'S --- WHICH IS EUPHORIA WHICH MAKES YOU FEEL GOOD AND
6 THAT --- THERE'S LOTS OF CHEMICAL REASONS WHY THAT'S
7 POSITIVELY REINFORCED IN YOUR BRAIN, BUT JUST LOOKING AT
8 SOMEBODY YOU MAY OR MAY NOT BE ABLE TO TELL THAT. REALLY
9 COCAINE IS GOING TO HAVE AN EFFECT. IT'S GOING TO CAUSE
10 YOUR PUPILS TO DILATE, BUT GENERALLY WHEN YOU LOOK AT
11 SOMEBODY YOU'RE NOT GENERALLY GOING TO PAY ATTENTION TO
12 THEIR PUPILS UNLESS YOU'RE LOOKING AT THEM REALLY, REALLY
13 CLOSE AND YOU JUST HAPPEN TO NOTICE THEY'RE HUGE. YOU MAY
14 SEE SOME GLAZED OVER GLASSY EYES OR SOMETHING LIKE THAT
15 AND YOU MAY SAY THAT, WELL, THEY BE UNDER SOMETHING, BUT
16 REALLY IT'S GOING TO BE DIFFICULT TO TELL WHEN PEOPLE ARE
17 UNDER THE INFLUENCE OF DRUGS. THAT'S ONE OF THE PROBLEMS
18 WITH IT. IT'S NOT REAL EASY TO TELL SOMETIMES.

19 Q WHAT ABOUT A TRAINED MEDICAL PROFESSIONAL? WOULD A
20 TRAINED MEDICAL PROFESSIONAL, FOR EXAMPLE, A NURSE OR A
21 DOCTOR BE MORE LIKELY TO DETERMINE WHETHER OR NOT
22 SOMEBODY'S INTOXICATED BY CRACK COCAINE?

23 A WELL, THEY COULD BE ABLE --- THEY WOULD BE MORE
24 LIKELY TO TELL THAT SOMEONE WAS INTOXICATED. THEY MAY OR
25 MAY NOT BE ABLE TO TELL IT'S CRACK COCAINE, BECAUSE

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1 THERE'S A NUMBER OF OTHER DRUGS THAT WOULD HAVE SIMILAR
2 TYPE SYMPTOMS, BUT THEY SHOULD BE ABLE TO TELL BECAUSE ONE
3 OF THE THINGS THAT THEY'RE GOING TO DO IS CERTAIN TYPES OF
4 EXAMS, AND ONE OF THE THINGS THEY'RE GOING TO DO IS THE
5 NEUROLOGIC EXAM WHERE THEY LOOK AND --- I DON'T KNOW IF
6 YOU EVER LOOKED AT A MEDICAL RECORD OR WHATEVER, IT'LL SAY
7 SOMETHING LIKE ALERT AND ORIENTED TIMES THREE. THAT'S ONE
8 OF THE THINGS THAT IN TALKING WITH YOU, THEY SEE IF YOU
9 KNOW WHERE YOU ARE, WHEN YOU ARE AND, YOU KNOW, WHO YOU
10 ARE BASICALLY. THAT'S --- IF YOU CAN TELL THOSE THINGS,
11 THAT TELLS YOU THAT YOUR MIND'S FUNCTIONING PROPERLY
12 BECAUSE THOSE ARE THINGS YOU SHOULD KNOW, WHEREAS IF
13 YOU'VE GOT SOME PROBLEMS NEUROLOGICALLY, EITHER FROM SOME
14 PATHOLOGICAL ILLNESS OR SOME DAMAGE OR FROM DRUGS, BEING
15 UNDER THE INFLUENCE OF DRUGS, YOU ARE NOT GOING TO BE ABLE
16 TO FUNCTION QUITE AS WELL AS YOU WOULD, AND SO, YES, A
17 MEDICAL PROFESSIONAL SHOULD BE ABLE TO TELL THAT THEY WERE
18 UNDER THE INFLUENCE OF SOMETHING. THEY PROBABLY COULDN'T
19 BE ABLE TO TELL SPECIFICALLY THAT IT WAS CRACK COCAINE.

20 Q OKAY. AND GOING TO THIS CASE SPECIFICALLY, DID
21 HEATHER DALEY TEST THE BLOOD SAMPLE TAKEN FROM MISTI HILL
22 FOR THE PRESENCE OF COCAINE METABOLITE? AND JUST BRIEFLY
23 EXPLAIN WHAT COCAINE METABOLITE IS.

24 A OKAY. WELL, YES. WE TESTED FOR COCAINE.
25 SPECIFICALLY IT'S COCAINE METABOLITE. AND IT'S LIKE ---

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1 JUST LIKE WITH THE ALCOHOL IN YOUR BODY, THE COCAINE
2 REALLY DOESN'T HANG AROUND VERY LONG. IN FACT, THE HALF
3 LIFE FOR COCAINE IS ABOUT THIRTY MINUTES. THAT IS, WHEN
4 YOU TAKE A DOSE OF COCAINE, IN THIRTY MINUTES HALF OF WHAT
5 YOU HAVE IN YOUR BODY IS GONE. OKAY? IN ANOTHER THIRTY
6 MINUTES HALF OF THAT'S GONE. SO THAT'S WHAT WE HAVE A
7 HALF LIFE. AND THAT'S A FAIRLY SHORT HALF LIFE. IT MEANS
8 THAT WITHIN ABOUT FOUR OR FIVE, MAYBE SIX HOURS THAT
9 COCAINE HAS BEEN ELIMINATED FROM YOUR SYSTEM OR FROM YOUR
10 BLOOD ANYWAY. THE PRIMARY METABOLITE OF COCAINE IS A
11 COMPOUND CALLED BENZOYLECGONINE AND BENZOYLECGONINE.
12 DOESN'T REALLY HAVE ANY ACTIVITY ITSELF, BUT IT HAS A
13 LONGER HALF LIFE. IT STAYS AROUND YOUR BLOOD A LITTLE
14 LONGER THAN COCAINE DOES. IT STAYS AROUND FROM AN HOUR
15 AND A HALF TO THREE HOURS IS ITS HALF LIFE, SO IT STAYS
16 AROUND A GOOD BIT LONGER, SO YOU CAN DETECT IT AT A MUCH
17 LONGER TIME, SO MOST OF THE SCREENS THAT PEOPLE USE IN
18 FORENSIC TOXICOLOGY ACTUALLY ARE LOOKING FOR THE COCAINE
19 METABOLITE VERSUS --- INSTEAD OF THE COCAINE PARENT ITSELF
20 OR THE COCAINE DRUG ITSELF. SO THAT'S WHAT THE SCREEN
21 ACTUALLY IS, IS LOOKING FOR THE METABOLITE BECAUSE IT
22 GIVES YOU A LITTLE LONGER WINDOW OF DETECTION, AND THAT'S
23 WHAT WE DID IN THIS CASE AND SHE RAN THE COCAINE SCREEN
24 AND IT WAS NEGATIVE.

25 Q SO SHE HAD NO COCAINE METABOLITE IN HER --- IN HER

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1 BLOOD? CAN YOU TELL BASED ON THAT HOW LONG AGO --- I'M
2 SORRY, GO AHEAD.

3 A WELL, ---

4 Q CAN YOU TELL BASED ON THE RESULT THAT THERE WAS NO
5 PRESENCE OF COCAINE METABOLITE IN HER BLOOD SYSTEM WHEN
6 THE EARLIEST TIME SHE COULD'VE CONSUMED CRACK COCAINE?

7 A GIVEN THIS RESULT SHE --- THE RESULT IS THAT SHE
8 PROBABLY HAD NOT CONSUMED CRACK COCAINE WITHIN THE LAST
9 TWELVE HOURS.

10 Q DOCTOR, I KNOW I TALKED ABOUT THE BLOOD ALCOHOL
11 CONCENTRATION EARLIER, BUT I WANT TO GO BACK JUST A
12 SECOND. CAN YOU PLEASE TELL THE JURY HOW A BLOOD ALCOHOL
13 CONCENTRATION OF APPROXIMATELY .147 WOULD AFFECT A PERSON,
14 HOW WOULD THEY ACT, HOW WOULD THEY INTERACT WITH OTHER
15 PEOPLE?

16 A OKAY, WELL, IT'S A LITTLE BIT VARIABLE, BUT THERE'S -
17 -- THERE'S NO DOUBT THAT A PERSON WITH A .147 WOULD BE
18 IMPAIRED. AND USUALLY ALL OF THE STUDIES FOR IMPAIRMENT
19 AND EVERYTHING FOR ALCOHOL ARE BASED ON DRIVING, AND
20 CERTAINLY THERE'S NO ONE THAT CAN SAFELY OPERATE A MOTOR
21 VEHICLE AT A .15, BUT WHAT'S GOING TO HAPPEN IS JUDGMENT'S
22 GOING TO BE IMPAIRED. THE WAY ALCOHOL WORKS IS IT'S
23 CALLED THE CENTRAL NERVOUS SYSTEM DEPRESSANT AND WHAT THAT
24 MEANS IS IT BASICALLY STOPS YOUR BRAIN FROM FUNCTIONING
25 AND IT --- THE INTERESTING THING IS THAT THE AREA THAT IT

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1 STARTS --- THAT IT AFFECTS FIRST IS THE FRONTAL PART OF
2 YOUR BRAIN WHICH IS YOUR CEREBRAL CORTEX. IT'S THE MOST
3 HIGHLY DEVELOPED PART OF YOUR BRAIN. IT'S THE PART WHERE
4 WE DO ALL OUR THOUGHT PROCESSES AND OUR JUDGMENT CENTERS
5 ARE LOCATED IN THIS PART OF THE BRAIN, AND THEN AS YOUR
6 BLOOD ALCOHOL LEVEL INCREASES, IT STARTS TO AFFECT OTHER
7 MORE PRIMITIVE PARTS OF YOUR BRAIN UNTIL EVENTUALLY YOU
8 GET A HIGH ENOUGH LEVEL AND IT'S GOING TO AFFECT THE PART
9 OF YOUR BRAIN CALLED YOUR MEDULLA WHICH HAS YOUR
10 RESPIRATORY CENTER, THE CENTER THAT TELLS YOU TO BREATHE
11 AND TELLS YOUR HEART TO BEAT AND STUFF LIKE THAT. YOU CAN
12 ACTUALLY GET IT HIGH ENOUGH TO WHERE YOU'RE GOING TO
13 DEPRESS THAT RESPIRATORY CENTER AND YOU'LL DIE FROM IT, SO
14 PEOPLE DO DIE FROM ALCOHOL OVERDOSES. SPECIFICALLY, AT A
15 .15 YOU WOULD TYPICALLY SEE SOMEBODY PROBABLY UNSTEADY ON
16 THEIR FEET; THEY MAY HAVE SLURRED SPEECH; THEIR EYES WILL
17 PROBABLY BE GLASSY, MAYBE BLOODSHOT. THEIR JUDGMENT WOULD
18 DEFINITELY BE IMPAIRED, BUT IT'S HARD TO TELL PEOPLE'S
19 JUDGMENT UNLESS YOU KNOW THEM AND YOU TALK TO THEM AND,
20 YOU KNOW, YOU SEE THEM BEHAVING A LITTLE BIT DIFFERENTLY,
21 BUT THAT'S --- THAT'S PROBABLY --- YOU COULD SEE ANYTHING
22 FROM JUST MILD UNSTEADY GAIT, MILD SLURRED SPEECH TO I'VE
23 SEEN PEOPLE TO HAVE REALLY, REALLY MORE EFFECTS. MOSTLY
24 DEPENDS ON YOUR EXPERIENCE AS A DRINKER. IF YOU'RE NOT AN
25 EXPERIENCED DRINKER, IT'S GOING TO HAVE A LITTLE HIGHER

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1 EFFECT ON YOU. IT'S GOING TO BE MORE OBVIOUS, MAYBE
2 SLOPPY, MAYBE FALLING DOWN DRUNK. PEOPLE MAY BE THROWING
3 UP AT THAT LEVEL. IF YOU'RE A LITTLE MORE EXPERIENCED
4 DRINKER, IT DOESN'T MEAN THAT THE IMPAIRMENT'S NOT THERE,
5 IT JUST MEANS THAT THOSE PARTICULAR EFFECTS AREN'T AS
6 PRONOUNCED AT THAT PARTICULAR LEVEL, SO IT COULD BE
7 ANYWHERE FROM SLIGHTLY UNSTEADY ON THEIR FEET, THEY'LL
8 PROBABLY BE TALKATIVE, MAYBE BOISTEROUS, MAYBE THEY WOULD
9 BE QUIET AND WITHDRAWN. IT DEPENDS ON YOUR --- THE WAY --
10 - HOW ALCOHOL TYPICALLY AFFECTS YOUR MOOD. SO IT WOULD BE
11 DIFFICULT TO TELL OR IT COULD BE DIFFICULT TO TELL EXACTLY
12 HOW SOMEBODY'S GOING TO REACT AT A .15, BUT IT'S
13 DEFINITELY GOING TO CAUSE IMPAIRMENT.

14 MR. MAINES - THANK YOU. PLEASE ANSWER ANY
15 QUESTIONS THAT MR. LEMEL HAS.

16 CROSS EXAMINATION

17 BY MR. LEMEL -

18 Q GOOD AFTERNOON, DR. EAGERTON.

19 A GOOD AFTERNOON.

20 Q WE SPOKE ON THE PHONE LAST WEEK. I DON'T KNOW IF YOU
21 REMEMBER THAT.

22 A YES, SIR, I REMEMBER.

23 Q OKAY. I WANT TO TALK TO YOU A LITTLE BIT ABOUT, YOU
24 TALKED A LITTLE BIT ABOUT SORT OF THE PHARMACOLOGY OF
25 COCAINE AS A DRUG.

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1 A YES, SIR.

2 Q YOU INDICATED THAT ONE OF THE REASONS WHY IT'S NOT
3 USED MEDICINALLY IS BECAUSE OF THE POTENTIAL FOR ABUSE.

4 A THAT'S CORRECT.

5 Q AND IS THAT BECAUSE COCAINE AS A DRUG IS A HIGHLY
6 ADDICTIVE SUBSTANCE?

7 A YES, IT IS.

8 Q IT'S EASY FOR A PERSON ONCE THEY START TAKING IT TO
9 SEEK IT OUT AGAIN AND AGAIN BECAUSE OF THAT EUPHORIC HIGH.

10 A YES, SIR, AND ALSO BECAUSE IT'S FAIRLY TOXIC, TOO.
11 YOU GET ABOVE A FAIRLY HIGH LEVEL AND CAN START TO HAVE
12 VERY DETRIMENTAL EFFECTS VERY QUICKLY.

13 Q SURE. AND FROM A LAY PERSON'S STANDPOINT WE ALWAYS
14 HEAR THAT SORT OF THE FIRST HIGH WITH COCAINE IS USUALLY
15 THE BIGGEST HIGH. RIGHT?

16 A THAT'S WHAT THEY SAY. I DON'T KNOW.

17 Q THAT'S --- I MEAN YOU'RE FAMILIAR WITH THAT LANGUAGE.

18 A YES, I AM.

19 Q OKAY. AND THAT BASICALLY ONE OF THE REASONS FOR THE
20 ADDICTIVE BEHAVIOR IS A CONSTANT STRIVE TO TRY TO GET BACK
21 TO THAT LEVEL OF EUPHORIA THAT THE FIRST OR BEST
22 EXPERIENCE WAS.

23 A THAT'S CORRECT.

24 Q OKAY. BUT AS YOU SAID THAT CRACK COCAINE IN
25 PARTICULAR IS A --- BASICALLY A DELIVERY METHOD FOR

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1 COCAINE.

2 A YES, IT IS.

3 Q THAT'S THE IMPORTANCE OF IT.

4 A RIGHT, BECAUSE YOU CAN GET A GOOD CONCENTRATION TO
5 YOUR BRAIN AND REALLY, REALLY GET THAT EUPHORIA THAT YOU
6 CAN'T GET WITH ANY --- THE ONLY THING THAT COULD COME
7 CLOSE TO THAT IS IF YOU TAKE IT AND PUT IT IN A --- MIX IT
8 IN SOLUTION AND PUT IT IN A SYRINGE AND INJECT IT DIRECTLY
9 INTO YOUR VEIN. THE ADVANTAGE OF SMOKING IS A LOT OF
10 PEOPLE DON'T LIKE NEEDLES AND THEY'RE CERTAINLY DISEASES
11 THAT CAN BE SPREAD WITH NEEDLES AND DOING I.V., SO PEOPLE
12 THAT SMOKING SOMETHING'S GOING TO BE SAFER AND IT MAY OR
13 MAY NOT BE.

14 Q WHICH IS BASICALLY TO SAY THAT WHEN YOU SMOKE IT,
15 BECAUSE IT GOES INTO THE LUNG AND THERE'S --- RELATIVELY
16 RAPID ABSORPTION THROUGH THE LUNGS INTO THE BLOODSTREAM,
17 THAT IMPACT IS MORE IMMEDIATE.

18 A RIGHT, YOU GET IT IN YOUR BLOOD, IT'S GOING TO GO TO
19 YOUR BRAIN AND THAT'S WHERE IT'S SITE OF ACTION IS.

20 Q AND IT'S GOING TO BE MORE CONCENTRATED AT THAT POINT
21 IN TIME. THERE'S NOT GOING TO BE A SLOW ABSORPTION INTO
22 THE ---

23 A THAT'S RIGHT. YOU'RE LOOKING FOR A BIG PEAK, GET IT
24 IN THERE FAST.

25 Q RIGHT. AND TO SORT OF DESCRIBE IT --- AGAIN, YOU

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1 TELL ME IF I'M WRONG --- IF REGULAR COCAINE SORT OF
2 ABSORBS IN A SORT OF A SIGN WAVE CYCLE, YOU TAKE IT IN AND
3 IT ABSORBS IS OVER A PERIOD OF TIME THEN THERE'S A DIP.
4 FOR CRACK COCAINE WHEN YOU'RE MORE OF A SPIKE.

5 A A MUCH SHARPER SPIKE, YES.

6 Q OKAY. AND AS YOU SAID, THAT BASICALLY DELIVERS A
7 REALLY GOOD HIGH.

8 A THAT'S CORRECT.

9 Q FOR A RELATIVELY SHORT PERIOD OF TIME COMPARED TO
10 OTHER POTENTIAL DRUGS FOR EXAMPLE.

11 A YES, FOR A RELATIVELY SHORT PERIOD OF TIME.

12 Q BECAUSE IT IS PROCESSED OUT OF THE SYSTEM RELATIVELY
13 QUICK.

14 A YES.

15 Q AS YOU SAID, I THINK YOU SAID HALF LIFE OF IT WAS
16 JUST THIRTY MINUTES.

17 A RIGHT.

18 Q AFTER THIRTY MINUTES WHATEVER WAS IN THE SYSTEM WOULD
19 --- AND IT'S WHAT'S IN THE SYSTEM THAT MATTERS. I MEAN
20 THAT'S WHAT'S AFFECTING THE BRAIN AND THINGS LIKE THAT.

21 A WHAT'S IN THE BLOOD IS GOING TO THE BRAIN, WHAT'S IN
22 THE BRAIN --- COCAINE HAS AFFECTS IN YOUR PERIPHERAL, BUT
23 WHAT WE'RE CONCERNED ABOUT IS THE ACTION ON THE BRAIN
24 BECAUSE THAT'S THE ACTION THAT PEOPLE ARE AFTER, THE HIGH
25 AND THINGS LIKE THAT.

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1 Q AND THIRTY MINUTES AFTER THEY SMOKE, THAT LEVEL'S CUT
2 IN HALF.

3 A THAT'S RIGHT.

4 Q IF THEY'RE FIFTY PERCENT, AND THEN THIRTY MINUTES
5 AFTER THAT, AGAIN WITH THE HALF LIFE, THEY'RE DOWN TO
6 TWENTY-FIVE PERCENT.

7 A THAT'S RIGHT.

8 Q OKAY. AND IS THAT ONE OF THE REASONS WHY IN TERMS OF
9 CRACK COCAINE ABUSE THERE TENDS TO BE THIS --- SORT OF
10 THIS GREATER SEEKING OF IT THAT THEY TAKE A HIT, BUT
11 ALMOST IMMEDIATELY THEY'RE LOOKING FOR ANOTHER HIT OF IT,
12 THAT SORT OF BEHAVIOR?

13 A THAT'S PART --- THAT'S PART OF THE REASON. WHEN
14 YOU'RE ADDICTED TO IT, AND APPARENTLY IT'S REALLY, REALLY
15 EASY TO BE ADDICTED TO THIS, WHEN --- THE DEFINITION OF
16 ADDICTION IS THAT YOU WOULD CHOOSE THE BEHAVIOR OF TAKING
17 THAT DRUG OVER OTHER BEHAVIORS WHICH YOU WOULD NORMALLY
18 ASSIGN A HIGHER PRIORITY, SUCH AS EATING, SLEEPING, EVEN
19 SEX, THINGS LIKE THAT. WHENEVER YOU WOULD RATHER HAVE THE
20 DRUG THAN DO OTHER THINGS THAT NORMAL PEOPLE WOULD
21 CONSIDER DESIRABLE OR PLEASURABLE, THEN THAT'S A ---
22 THAT'S PRETTY MUCH THE DEFINITION OF ADDICTION. AND SO
23 ALLS YOU WANT IS --- YOU'RE ALWAYS LOOKING FOR YOUR NEXT
24 HIT OR YOUR NEXT HIGH, AND SO AS SOON AS YOU START TO COME
25 DOWN --- PLUS, THE OTHER THING IS, COCAINE, IT ALSO HAS

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1 SOME STIMULANT EFFECTS. IT GIVES YOU ENERGY AND MAKES YOU
2 FEEL GOOD IN A LOT OF REASONS. WHEN YOU START --- WHEN
3 THAT LEVEL STARTS DIPPING IN YOUR BLOOD AND IN YOUR BRAIN,
4 YOU START TO GET WHAT WE CALL A DOWN --- A DOWN EFFECT.
5 OKAY? AND THAT --- OR CRASH. AND THAT CRASH OR THAT DOWN
6 EFFECT IS THE OPPOSITE OF THE EUPHOR --- EUPHORIA MEANS
7 FEEL GOOD. THE WAY WE DESCRIBE THIS, CRASH OR DOWNSIDE IS
8 DYSPORHIA, WHICH MEANS FEELS BAD, AND SO THAT ALSO
9 INTENSIFIES THE CRAVING TO WANT TO FEEL GOOD AGAIN. NOT
10 ONLY DOES IT FEEL GOOD AND THEN YOU DON'T COME BACK DOWN
11 TO NORMAL LIKE YOU FEEL NOW, YOU FEEL WORSE, AND SO THAT
12 IN ITSELF IS OTHER REASONS FOR PSYCHOLOGICALLY AND
13 PHYSIOLOGICALLY WANTING TO GET THAT HIT AND GET THAT HIGH
14 AGAIN.

15 Q SO TO GO BACK TO MY ANALOGY WHEN WE TALKED ABOUT THE
16 PEAK THAT CRACK COCAINE GIVES YOU AS OPPOSED TO COCAINE,
17 NOT ONLY IS THE PEAK HIGHER BUT THE VALLEY FOLLOWING THE
18 PEAK IS ACTUALLY LOWER WITH SOMETHING LIKE CRACK COCAINE
19 THAN IT WOULD BE ON THE SIGN WAVE OF REGULAR COCAINE.

20 A WELL, IF YOU'RE --- IF YOU'RE LOOKING AT --- IT COULD
21 BE, BUT YOU'RE NOT JUST LOOKING AT DRUG LEVELS ARE NOT ---
22 JUST THE DRUG LEVELS ARE NOT GOING TO TELL YOU THE CRASH.
23 IT'S THE EFFECT OF THE HIGH AND THEN COMING BACK OUT ---

24 Q RIGHT.

25 A AND IF YOU LOOKED AT THE EFFECT, EUPHORIA YOU'D SEE

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1 A PICK AND THE DYSPHORIA, YOU MAY GO LOWER THAN YOU WOULD
2 REGULAR COCAINE ---

3 Q OKAY.

4 A --- BUT THEN AGAIN IT DEPENDS ON HOW MUCH AND HOW
5 OFTEN YOU DID REGULAR COCAINE.

6 Q OKAY. BUT AGAIN, WHAT YOU SEE THEN IS WITHIN THIS
7 TIME-FRAME OF COCAINE'S EFFECT AND THEN IT WEARS OFF, YOU
8 SEE BASICALLY A EUPHORIC STAGE ---

9 A RIGHT.

10 Q --- AND I THINK YOU SAID THE WORD IS DYSPHORIA?

11 A DYSPHORIA.

12 Q BASICALLY A DEPRESSIVE PHASE.

13 A RIGHT.

14 Q WHERE PEOPLE ARE GOING TO FEEL A LOT WORSE.

15 A THAT'S CORRECT.

16 Q OKAY. NOW, YOU ALSO SAID THAT COCAINE HAD SORT OF
17 MEDICINAL PROPERTIES IN TERMS OF IT CAN ACT AS A PAIN
18 SUPPRESSANT?

19 A NOT REALLY AS A --- WELL, IT'S ACTUALLY THE VERY
20 FIRST LOCAL ANESTHETIC. IT'S NOT REALLY A PAIN
21 SUPPRESSANT. IT'S A LITTLE DIFFERENT MECHANISM. LOCAL
22 ANESTHETICS LIKE WHEN YOU GO TO THE DENTIST AND THEY SHOOT
23 YOU UP WITH --- PEOPLE USED TO SAY NOVOCAINE, THAT'S WHAT
24 THEY USED TO USE, NOW EVERYBODY USES LIDOCAINE OR
25 SOMETHING LIKE IT --- IT'S A CAINE. IT'S BASED

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1 ESSENTIALLY FROM THE EFFECT LIKE FROM WHAT THEY FOUND OUT
2 THAT COCAINE DOES. IT'S A LOCAL ANESTHETIC. IT'LL NUMB
3 YOU UP IN THAT AREA, BASICALLY BLOCKS THE NERVES FROM
4 FUNCTIONING IN THAT AREA WHERE IT IS AND THAT'S --- IT'S
5 THE FIRST OF ITS KIND THAT ACTUALLY REVOLUTIONIZED
6 MEDICINE BACK IN THE 1800'S WHENEVER THEY DISCOVERED THAT
7 IT COULD DO THAT. THE DOWNSIDE EFFECT IS THAT IT ALSO
8 SHUTS OFF BLOOD FLOW TO THAT AREA AND SO IF YOU KEEP USING
9 IT YOU'RE GOING TO ACTUALLY --- AS YOU SHUT OFF BLOOD FLOW
10 YOU'RE GOING TO KILL YOUR TISSUE DOWNSTREAM FROM THAT
11 BECAUSE YOU'VE GOT TO HAVE BLOOD AND OXYGEN FOR YOUR
12 TISSUE, SO IT WAS --- COULD BE VERY NECROTIC, PLUS THE
13 FACT THAT IF YOU GET ANY GOOD SYSTEMIC ABSORPTION, YOU SEE
14 A LOT OF PEOPLE HAVING --- IT'S GOING TO RAISE YOUR BLOOD
15 PRESSURE, RAISE YOUR HEART RATE, AND IF YOU'RE SUSCEPTIBLE
16 TO THAT, YOU COULD HAVE STROKES AND HEART ATTACKS AND
17 THINGS LIKE THAT, SO IT'S NOT REALLY GOOD MEDICINALLY IF
18 YOUR PATIENTS START DYING FROM THE DRUGS THAT YOU'VE
19 GIVING THEM TO NUMB THEM UP, SO --- IT WASN'T --- IT WAS
20 GOOD FOR A WHILE UNTIL THEY STARTED REALIZING WHAT WAS
21 GOING ON, THEN THEY DEVELOPED THINGS LIKE NOVOCAINE AND
22 LIDOCAINE WHICH DON'T HAVE THE SYSTEMIC STIMULANT EFFECTS
23 THAT COCAINE HAVE. THEY JUST DO THE LOCAL ANESTHETIC
24 THINGS.

25 Q AND I UNDERSTAND COCAINE IN ITSELF HAS A LOCAL

DAVID EAGERTON - CROSS BY MR. LEMEL

514

1 ANESTHETIC PRODUCT, BUT I'M TALKING MORE ABOUT THE EFFECT
2 OF HAVING CRACK COCAINE IN YOUR SYSTEM. YOU SMOKE SOME
3 CRACK COCAINE BECAUSE OF THIS EUPHORIA PAIN YOU FEEL IS --
4 - AND I DON'T KNOW IF ANESTHETIC IS THE PROPER WORD, BUT
5 YOU'RE NOT GOING TO FEEL AS MUCH PAIN AND YOU'RE NOT GOING
6 TO MIND THE PAIN NECESSARILY ---

7 A YOU'LL FEEL THE PAIN. IT'S NOT REALLY AN ANALGESIC
8 WHICH IS THE PHARMALOGICAL TERM FOR STOPPING THE PAIN.
9 IT'S A DIFFERENT MECHANISM, BUT YOU PROBABLY WON'T CARE
10 THAT YOU FEEL IT.

11 Q OKAY. SO IT DOESN'T NUMB THE PAIN; IT JUST MAKES IT
12 IRRELEVANT ESSENTIALLY.

13 A RIGHT.

14 Q OKAY. ALL RIGHT. NOW, IN THE CASE OF THE ALCOHOL IN
15 THIS PARTICULAR SITUATION, THE TESTS FROM 12:30 REVEALED
16 THE PRESENCE OF A .042 LEVEL. CORRECT?

17 A THAT'S CORRECT.

18 Q AND YOUR THRESHOLD LEVEL IS, OF COURSE, .01.

19 A THAT'S CORRECT.

20 Q AND YOU THROUGH THE STANDARD PRACTICES DID THAT
21 RETROGRADE --- WHAT'S THE LAST WORD?

22 A EXTRAPOLATION.

23 Q EXTRAPOLATION. THANK YOU. TO DETERMINE WHAT SAY
24 BACK AT ABOUT FIVE THIRTY WOULD BE.

25 A THAT'S CORRECT.

DAVID EAGERTON - CROSS BY MR. LEMEL

515

1 Q AND THAT'S WHERE YOU CAME UP WITH THE NUMBER OF .147
2 WHICH WE ROUNDED TO . --- IS IT 01 ---

3 A .15.

4 Q .15. AND IN YOUR EXPERIENCE OF TESTIFYING AND DOING
5 THIS, DO YOU OFTEN TESTIFY IN TERMS OF DRIVING UNDER THE
6 INFLUENCE TYPE CASES AND THINGS OF THAT NATURE?

7 A WELL, THAT'S TYPICALLY THE TYPES OF CASES THAT ARE
8 REQUESTED, YES.

9 Q OKAY. AND SO YOU ARE FAMILIAR THEN WITH SORT OF THE
10 NUMBERS THAT ARE THROWN AROUND IN A DUI TYPE SITUATION IN
11 DETERMINING WHETHER SOMEBODY'S UNDER THE INFLUENCE TO THE
12 POINT WHERE THEY CAN'T OPERATE THEIR MOTOR VEHICLE.

13 A THAT'S CORRECT.

14 Q AND IN SOUTH CAROLINA AT THIS POINT IN TIME A LEVEL
15 OF .08 THEN WOULD BE A BLOOD ALCOHOL CONTENT THAT THERE IS
16 AN INFERENCE THAT THEY'RE UNDER THE INFLUENCE OF ALCOHOL.

17 A THAT'S CORRECT.

18 Q AND IN THIS SITUATION THE BLOOD ALCOHOL CONTENT AS
19 YOU EXTRAPOLATE IT BACK IS NOT QUITE TWICE THAT LEVEL OF
20 .15.

21 A THAT'S CORRECT.

22 Q OKAY. AND THAT WOULD'VE BEEN A 5:30?

23 A YES, SIR.

24 Q OKAY. AND AS YOU SAID, THE EFFECT OF THE ALCOHOL
25 THERE IS ON THE FRONTAL PART OF THE BRAIN.

DAVID EAGERTON - CROSS BY MR. LEMEL

516

1 A WELL, IT'S --- THAT'S HIGH ENOUGH IT'S ACTUALLY
2 AFFECTING OTHER PARTS OF THE BRIAN, BUT THAT'S --- THE
3 SIGNIFICANT EFFECT IS ON THE FRONT.

4 Q AND THE FRONTAL PART OF THE BRAIN IS WHERE WE HAVE
5 OUR JUDGMENT.

6 A THAT'S CORRECT.

7 Q IT SORT OF CONTROLS OUR BEHAVIOR.

8 A ABSOLUTELY.

9 Q AND PEOPLE WHO HAVE ALCOHOL IN THEIR SYSTEM AT LEVEL
10 MAY DO ACTS THAT THEY MIGHT NORMALLY NOT DO IF THEY DIDN'T
11 HAVE THE ALCOHOL IN THEIR SYSTEM.

12 A THAT'S RIGHT.

13 Q IT'S GOING TO REALLY CHANGE THEIR BEHAVIOR IN SOME
14 CIRCUMSTANCES.

15 A IF --- I DON'T KNOW ABOUT REALLY CHANGING IT. IT
16 WILL CHANGE IT. IT DEPENDS.

17 Q DEPENDS ON EACH INDIVIDUAL.

18 A TO A CERTAIN EXTENT. UNFORTUNATELY, IT'S NOT, AT
19 THIS LEVEL YOU'RE GOING TO SEE THIS EFFECT AND AT THIS
20 LEVEL YOU'RE GOING TO SEE THIS EFFECT. IT'S MORE OF A
21 RANGE AND SO THAT'S WHY IT'S REALLY HARD TO SAY AT THAT
22 LEVEL EXACTLY WHAT SOMEBODY'S GOING TO BE DOING. IT'S
23 REALLY --- THERE'S A RANGE OF THINGS THAT ARE GOING TO BE
24 HAPPENING, AND YOU CAN'T SAY SPECIFICALLY AT A GIVEN TIME
25 WHAT THAT INDIVIDUAL'S GOING TO BE DOING, BUT YOU CAN SAY

DAVID EAGERTON - CROSS BY MR. LEMEL

517

1 WITHOUT A DOUBT THAT THE JUDGMENT'S GOING TO BE IMPAIRED
2 AT MUCH, MUCH LOWER LEVELS THAN THAT.

3 Q OKAY. I WANT TO MAKE SURE I UNDERSTAND. WHEN YOU'RE
4 SAYING THAT JUDGMENT WILL BE IMPAIRED AT LEVELS MUCH LOWER
5 THAN A .15.

6 A THAT'S RIGHT.

7 Q OKAY. SO NO DOUBT IN YOUR MIND AS AN EXPERT THAT AT
8 .15 THERE'S IMPAIRMENT GOING ON.

9 A THAT'S CORRECT.

10 Q OKAY. LET'S TALK A LITTLE BIT ABOUT THE COCAINE
11 ANALYSIS. BASICALLY YOU HAVE A THRESHOLD FOR THE COCAINE
12 METABOLITES.

13 A THAT'S RIGHT.

14 Q AND THERE ARE DIFFERENT COCAINE METABOLITES THAT ARE
15 FORMED UP BASED UPON CERTAIN THINGS. RIGHT? THERE'S MORE
16 THAN JUST THE ONE YOU REFERENCE.

17 A THERE ARE SEVERAL OTHERS, BUT THE PRIMARY ONE IS
18 BENZOYLECGONINE. THERE'S --- IT CAN HAVE METHYLECGONINE
19 AND BOTH OF THOSE CAN BE METABOLIZED TO ECGONINE
20 THEMSELVES AND YOU CAN HAVE NORCOCAINE WHICH IS
21 INDESMYTHEL COCAINE. THOSE ARE THE PRIMARILY THE THREE
22 THAT YOU SEE. THERE MAY BE SOME SMALLER ONES, BUT THEIR
23 PRESENT IN SUCH SMALL QUANTITIES THAT THEY'RE USUALLY NOT
24 MEASURABLE.

25 Q IS THERE ALSO ONE THAT --- AND YOU HAVE MENTIONED ON

DAVID EAGERTON - CROSS BY MR. LEMEL

518

1 THE END --- IN TERMS OF ONE THAT MAY POTENTIALLY IF
2 THERE'S --- IF IT'S BEING METABOLIZED IN THE PRESENCE OF
3 ALCOHOL?

4 A RIGHT. YOU CAN FORM --- YOU CAN FORM A TOTALLY NEW
5 COMPOUND WHICH IS CALLED COCAETHYLENE OR ETHALCOCAINE.

6 Q IS THAT GOING TO BE PICKED UP IN YOUR SCREENING? OR DO
7 YOU KNOW?

8 A IT'S NEVER THERE BY ITSELF, SO IF IT'S GOING TO BE
9 PICKED UP --- THE SCREENING IS PRIMARILY BENZOYLECGONINE
10 AND SO IT COULD IF IT WERE THERE IN HIGH ENOUGH QUANTITY
11 BE PICKED UP. IF WE WERE --- IF WE WOULD'VE GOTTEN A
12 POSITIVE SCREEN AND DONE A CONFIRMATORY TEST WE WOULD'VE
13 SEEN ETHELCOCAINE ALL IN METABOLITES.

14 Q OKAY. NOW, THE QUESTION --- AND WE DISCUSSED THIS
15 LAST WEEK. LET'S ASSUME A SITUATION WHERE SOMEONE HAS
16 ADMITTED SMOKING CRACK COCAINE IN A TIME-FRAME OF 4:30
17 A.M. ROUGHLY.

18 A OKAY.

19 Q AND THE BLOOD IS DRAWN ROUGHLY EIGHT HOURS LATER AT
20 12:30.

21 A RIGHT.

22 Q IS IT POSSIBLE BASED UPON YOUR TESTS THAT THAT BLOOD
23 TEST WOULD BE NEGATIVE FOR THE PRESENCE OF THESE
24 COMPOUNDS, OF THESE METABOLITES?

25 A YES, IT'S POSSIBLE.

DAVID EAGERTON - CROSS BY MR. LEMEL

519

1 Q OKAY. SO THAT DOESN'T MEAN THAT SOMEBODY WASN'T
2 SMOKING AT 4:30 THAT MORNING.

3 A WELL, NOT NECESSARILY. WHAT I SAID EARLIER WAS, YOU
4 KNOW, FOR BASICALLY A TWELVE-HOUR WINDOW YOU COULD SAY
5 THAT THEY HAVEN'T SMOKED COCAINE, AND BASICALLY I GUESS
6 THE MORE CORRECT TERM WOULD BE THEY HAVEN'T SMOKE AN
7 APPRECIABLE AMOUNT OF COCAINE. YOU COULD ACTUALLY HAVE
8 TAKEN MAYBE A PUFF OR A HIT AND MAYBE YOU DIDN'T GET GOOD
9 ABSORPTION. IT JUST DEPENDS ON --- THE ABSORPTION IS
10 STILL VARIABLE. WE HAVE NO WAY TO UNDERSTAND --- YOU
11 KNOW, IT'S NOT LIKE YOU'RE TAKING A FIVE MILLIGRAM TABLET
12 AND YOU KNOW YOU'RE GOING TO GET FIVE MILLIGRAMS. YOU
13 DON'T KNOW WHENEVER YOU'RE SMOKING IT. YOU DON'T KNOW HOW
14 MUCH THEY'RE ACTUALLY BREATHING IT INTO YOUR LUNGS, AND
15 THE DEEPER YOU GET IT INTO YOUR LUNGS, THE BETTER YOUR
16 ABSORPTION IS. IF YOU JUST --- JUST PUFF IT BUT DON'T
17 INHALE, AS MAYBE ONE OF OUR FORMER PRESIDENTS MAY OR MAY
18 NOT HAVE DONE, YOU'RE NOT GOING TO GET ANY APPRECIABLE
19 ABSORPTION INTO YOUR SYSTEM. SO IT'S POSSIBLE YOU
20 COULD'VE SMOKED AND NOT REALLY --- AND NOT HAD A WHOLE
21 LOT, BUT THE LIKELIHOOD OF SMOKING AN APPRECIABLE AMOUNT
22 AT 4:30 IS NOT VERY LIKELY.

23 Q EVEN IF SOMEBODY ADMITS THAT THEY HAVE DONE THAT YOUR
24 TESTS COULD STILL SHOW A NEGATIVE? JUST ---

25 A WELL, HOW MUCH DID THEY DO?

DAVID EAGERTON - RE-DIRECT BY MR. MAINES

520

1 Q THAT'S A GOOD QUESTION. AND THAT'S HOW IT COULD BE.

2 A YES.

3 Q DOESN'T MEAN THEY DIDN'T SMOKE. JUST MEANS THAT BY
4 THE TIME THEY --- WHATEVER THEY DID GET INTO THEIR SYSTEM,
5 BY THE TIME IT WAS TAKEN AT 12:30 WAS OUT OF THEIR SYSTEM.

6 A YES.

7 MR. LEMEL - OKAY. ALL RIGHT. I DON'T HAVE ANY
8 OTHER QUESTIONS, YOUR HONOR.

9 RE-DIRECT EXAMINATION

10 BY MR. MAINES -

11 Q WHEN MR. LEMEL WAS ASKING YOU IF A PERSON CAN SMOKE
12 COCAINE AND ADMITS SMOKING COCAINE AND STILL TEST NEGATIVE
13 FOR ANY TRACE EVIDENCE OF COCAINE, WHICH IS WHAT HAPPENED
14 IN THIS CASE. CORRECT?

15 A THAT'S CORRECT.

16 Q THERE WAS ---

17 A WELL, THEY WERE NEGATIVE. I DON'T KNOW ABOUT THE ---

18 Q OKAY. WHEN YOU SAY THERE WAS NO SIGNIFICANT COCAINE
19 PRESENT, IN YOUR EXPERT OPINION, DOES THAT MEAN THAT IT
20 DID NOT HAVE EFFECT OR AN APPRECIABLE EFFECT ON THAT
21 PERSON?

22 A IT WOULD NOT HAVE HAD AN APPRECIABLE EFFECT BECAUSE
23 AS YOU GET INSIDE THE TWELVE HOURS, AT SOME POINT, YOU
24 KNOW, GIVEN THE HALF LIFE THAT WITHIN THREE HOURS HALF OF
25 IT'S GOING TO BE GONE, IF YOU START OUT AT A REALLY HIGH

DAVID EAGERTON - RE-DIRECT BY MR. MAINES

521

1 NUMBER IT'S --- IT HAS TO DO WITH NOT ONLY HOW FAST IT
2 CLEARS FROM YOUR BODY, BUT YOU'RE SENSITIVITY OF YOUR
3 INSTRUMENTS TO DETECT IT. IF YOU START OUT WITH A REALLY
4 HIGH LEVEL, THEN YOU KNOW --- AND HALF OF THAT IS STILL A
5 REALLY HIGH LEVEL AND THEN THE QUARTER, YOU KNOW, HALF OF
6 THAT AGAIN IS STILL A HIGH LEVEL AND THEN YOU CAN ACTUALLY
7 GET DOWN TO FURTHER --- MORE HALF LIVES AND YOU CAN STILL
8 HAVE A DETECTIBLE AMOUNT. WHEREAS, IF YOU START OUT WITH
9 A REALLY, REALLY LOW LEVEL, EVEN THOUGH THE HALF LIFE OF
10 THIS COMPOUND IS, YOU KNOW, THREE HOURS AND YOU CAN SEE IF
11 FOR UP TO TWELVE, BUT IF YOU HAVE VERY LITTLE THERE, MAYBE
12 EVEN AFTER ONE OR TWO HALF LIVES IT MAY BE BELOW OUR LIMIT
13 OF DETECTION FOR OUR INSTRUMENTS. AND THAT'S --- THAT'S
14 SOMETHING YOU ALWAYS HAVE TO KEEP IN MIND, IS YOUR
15 INSTRUMENTS ARE NEVER ABSOLUTE. THERE'S ALWAYS A LIMIT TO
16 AT WHICH BELOW THIS THE RESULTS ARE JUST NOT RELIABLE
17 ENOUGH TO REPORT BECAUSE IT COULD BE --- A LOT OF
18 TECHNICAL, SCIENTIFIC REASONS WHY, BUT THAT'S WHY WE SET
19 THESE CUT-OFFS AND THESE LIMITS. AND THE LIMIT OF THIS
20 PARTICULAR TEST IS .1 MILLIGRAMS PER LITER.

21 Q SO IS IT YOUR TESTIMONY THAT BASED ON THAT TEST
22 RESULT THAT THE INDIVIDUAL WHO'S BLOOD THAT WAS DID NOT
23 HAVE AN APPRECIABLE AMOUNT OF CRACK COCAINE IN THEIR
24 SYSTEM AT FIVE THIRTY A.M.?

25 A IT'S NOT LIKELY THAT THEY DID.

EAGERTON - RE-CROSS/LEMEL -GALLMAN -DIRECT/MAINES 522

1 MR. MAINES - THANK YOU.

2 RE-CROSS EXAMINATION

3 BY MR. LEMEL -

4 Q NOT LIKELY.

5 A RIGHT.

6 Q YOU CAN'T SAY FOR SURE.

7 A NOT WITH A HUNDRED PERCENT ABSOLUTE SURE.

8 THE COURT - YOU CAN STEP DOWN AND BE EXCUSED.

9 WE APPRECIATE YOUR TIME.

10 DR. EAGERTON - THANK YOU, SIR.

11 THE COURT - THANK YOU. CALL YOUR NEXT WITNESS.

12 MR. MAINES - YOUR HONOR, THE STATE CALLS LILLY
13 GALLMAN.

14 LILLY GALLMAN, AFTER BEING FIRST DULY SWORN.

15 TESTIFIES AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. MAINES -

18 Q GOOD AFTERNOON, MS. GALLMAN. CAN YOU PLEASE GIVE THE
19 JURY AND THE COURT YOUR FULL NAME?

20 A IT'S LILLY SMALLS GALLMAN.

21 Q AND WHERE ARE YOU EMPLOYED?

22 A WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

23 Q AND WHAT DO YOU DO FOR SLED?

24 A I'M A FORENSIC DNA ANALYST.

25 Q AND CAN YOU PLEASE DESCRIBE YOUR EDUCATIONAL

EAGERTON - RE-CROSS/LEMEL -GALLMAN -DIRECT/MAINES 523

1 BACKGROUND?

2 A I HAVE A DEGREE IN BIOLOGY FROM THE UNIVERSITY OF
3 SOUTH CAROLINA. ONCE I RECEIVED MY DEGREE I CONTINUED
4 WORKING THERE IN THE AREA OF MOLECULAR GENETICS. I BEGAN
5 WORKING WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION
6 IN JANUARY OF 1990 AS A FORENSIC DNA ANALYST. SINCE THAT
7 TIME I'VE BEEN TRAINED IN THE AREA OF SEROLOGY WHICH MEANS
8 THAT I'VE BEEN TRAINED TO BE ABLE TO IDENTIFY BODY FLUIDS.
9 I'VE ALSO ATTENDED FBI DNA TYPING SCHOOLS. I'VE TAKEN
10 ADVANCED GENETICS CLASSES AND STATISTIC CLASSES TO ENABLE
11 ME TO BE ABLE TO DO THE JOB THAT I HAVE.

12 Q AND HAVE YOU EVER TESTIFIED IN COURT BEFORE AS AN
13 EXPERT IN DNA?

14 A YES, I HAVE.

15 Q DNA TESTING?

16 A YES, I HAVE.

17 Q AND, APPROXIMATELY, HOW MANY TIMES?

18 A APPROXIMATELY SIXTY.

19 MR. MAINES - YOUR HONOR, THE STATE REQUEST THAT
20 MS. LILLY GALLMAN BE RECOGNIZED AS AN EXPERT OF DNA
21 TESTING IDENTIFICATION.

22 THE COURT - ANY VOIR DIRE?

23 MS. JOHNSON - NO OBJECTION, YOUR HONOR.

24 THE COURT - I FIND SHE'S QUALIFIED.

25 Q MS. GALLMAN, WOULD YOU MIND EXPLAINING TO THE JURY

EAGERTON - RE-CROSS/LEMEL -GALLMAN -DIRECT/MAINES 524

1 WHAT EXACTLY DNA IS?

2 A DNA STANDS FOR DEOXYRIBONUCLEIC ACID. IT'S
3 CONSIDERED TO BE THE BLUEPRINT OF YOUR BODY. YOU GET PART
4 OF YOUR DNA FROM YOUR MOTHER AND PART FROM YOUR FATHER.
5 EVERYONE'S DNA IS UNIQUE EXCEPT FOR IDENTICAL TWINS. THEY
6 HAVE THE SAME DNA SEQUENCES. SINCE EVERYONE'S DNA IS
7 UNIQUE, WE'RE ABLE TO TAKE A PIECE OF EVIDENCE AND DEVELOP
8 A DNA PROFILE FROM THAT AND COMPARE IT TO A KNOWN DNA
9 STANDARD, BE IT FROM THE SUBJECT OR THE VICTIM AND AFTER
10 WE'RE ABLE TO COMPARE IT WE CAN TELL WHETHER IT MATCHES OR
11 IT DOES NOT MATCH.

12 Q AND WHAT IS SOME OF THE DIFFERENT METHODS THAT YOU
13 USE TO DETERMINE AN INDIVIDUAL'S DNA?

14 A WE UTILIZE WHAT'S TERMED PCR WHICH IS PRELIMINARY'S
15 CHAIN REACTION AND THE NEXT STEP WOULD BE TO USE STR'S
16 WHICH IS SHORT TANDEM REPEATS WHERE YOU'RE LOOKING AT DNA
17 THAT'S REPEATED WITHIN THE SAME AREA AND HOW MANY REPEATS
18 YOU HAVE IS DETERMINED BY YOUR MOTHER OR YOUR FATHER.

19 Q NOW, MS. GALLMAN DID YOU RECEIVE A RAPE KIT OR A
20 SEXUAL ASSAULT KIT FROM THE YORK COUNTY SHERIFF'S
21 DEPARTMENT IN THIS CASE?

22 A YES, I DID.

23 Q I'M HANDING YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
24 1. WOULD YOU MIND TELLING THE JURY WHAT YOU'RE LOOKING
25 AT?

EAGERTON - RE-CROSS/LEMEL -GALLMAN -DIRECT/MAINES 525

1 A WHEN A SEXUAL ASSAULT KIT IS BROUGHT INTO SLED IT
2 CONTAINS EVIDENCE FOR AT LEAST THREE DEPARTMENTS, ONE FOR
3 THE DNA SEROLOGY DEPARTMENT AND EVIDENCE FOR THE TRACE
4 DEPARTMENT WHERE A POOL LOOKS AT HAIRS OR FIBERS AND ALSO
5 FOR THE TOXICOLOGY DEPARTMENT. WHEN EVIDENCE IS LOGGED
6 IN, THOSE --- THAT EVIDENCE IS SEPARATED FOR THE DIFFERENT
7 DEPARTMENTS. WHAT I HAVE HERE IS THE EVIDENCE FOR THE DNA
8 SEROLOGY DEPARTMENT AND ALSO THE EVIDENCE FOR THE TRACE
9 DEPARTMENT, SO YOU ALSO LOOK AT HAIRS IN THE DNA
10 DEPARTMENT.

11 Q AND I WANT TO HAND UP ONE MORE EXHIBIT FOR YOU. YOU
12 CAN GO AHEAD AND SET THAT DOWN. I'M HANDING YOU STATE'S
13 EXHIBIT 15. CAN YOU PLEASE TELL THE JURY WHAT THAT IS AS
14 WELL?

15 A THIS IS SLED ITEM NUMBER 2 WHICH CONTAINS THE BOUCLE
16 SWAB OR ORAL SWAB FROM MR. DUNOVANT.

17 Q OKAY. AND DID YOU TEST THE DNA IN ITEM 1.5 IN
18 STATE'S EXHIBIT 1?

19 A YES, I DID. ITEM --- OUR ITEM NUMBER 1.5 CONTAINS
20 THE VAGINAL SWABS THAT WERE TAKEN FROM THE SEXUAL ASSAULT
21 KIT. I COMPARED THAT TO OUR ITEM NUMBER 2 WHICH IS THE
22 ORAL SWABS FROM THE SUBJECT IN THIS CASE TO DETERMINE
23 WHETHER THERE WAS A MATCH BETWEEN THE SEMEN THAT WAS FOUND
24 ON THE VAGINAL SWAB AND THE ORAL SWABS FROM THE SUBJECT.

25 Q JUST SO THAT WE CAN MAKE IT CLEAR FOR THE RECORD,

EAGERTON - RE-CROSS/LEMEL -GALLMAN -DIRECT/MAINES 526

1 WHEN YOU SAY YOUR ITEM NUMBER 2, YOU'RE REFERRING TO
2 STATE'S EXHIBIT NUMBER 15?

3 A THAT'S CORRECT.

4 Q AND THE --- YOU'RE SAYING THAT THE DNA IN THE SEXUAL
5 ASSAULT KIT FROM STATE'S EXHIBIT NUMBER 1 MATCHED THE DNA
6 FROM STATE'S EXHIBIT NUMBER 15?

7 A THAT'S CORRECT.

8 Q AND DO YOU REMEMBER WHAT SPECIFIC TEST YOU USED?

9 A WE UTILIZED PCR STR DNA TESTING.

10 Q OKAY. AND CAN YOU TELL US WHAT THE RESULTS WERE FROM
11 YOUR TEST?

12 A OKAY. I'M READING FROM MY REPORT UNDER THE RESULT
13 SECTION. IT SAYS THAT THE DNA PROFILE DEVELOPED FROM THE
14 SEMEN FOUND ON ITEM 1.5 WHICH CAME FROM STATE EXHIBIT ITEM
15 NUMBER 1 MATCHES THE DNA PROFILE OF TERRY A. DUNOVANT
16 WHICH IS OUR ITEM NUMBER 2 BUT STATE EXHIBIT NUMBER 15.
17 AND THE PROBABILITY OF RANDOMLY SELECTING AN UNRELATED
18 INDIVIDUAL HAVING A DNA PROFILE MATCHING THE SEMEN FOUND
19 ON THIS ITEM IS APPROXIMATELY ONE IN TWO HUNDRED AND
20 TWENTY QUADRILLION.

21 MR. MAINES - YOUR HONOR, THE STATE REQUEST TO
22 PLACE STATE'S EXHIBIT 1 AND STATE'S EXHIBIT 15 INTO
23 EVIDENCE.

24 MS. JOHNSON - NO OBJECTION, YOUR HONOR.

25 THE COURT - WITHOUT OBJECTION

LILLY GALLMAN - CROSS BY MS. JOHNSON

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1 (DOCUMENTS MARKED INTO EVIDENCE AS STATE'S
2 EXHIBITS NUMBERS 1 AND 15.)

3 MS. MAINES - THANK YOU. MS. GALLMAN. PLEASE
4 ANSWER ANY QUESTIONS MS. JOHNSON HAS FOR YOU.

5 CROSS EXAMINATION

6 BY MS. JOHNSON -

7 Q MS. GALLMAN, I JUST HAVE A FEW SHORT QUESTIONS FOR
8 YOU. NOW, WHEN YOU GO TO TEST AN OBJECT, THAT OBJECT
9 COMES TO YOU PRESUMABLY FROM AN INVESTIGATION. CORRECT?

10 A NORMALLY THE KIT IS --- THE SAMPLES ARE TAKEN AT A
11 HOSPITAL SETTING, AND THAT EVIDENCE IS BROUGHT TO US BY
12 THE SUBMITTING AGENCY.

13 Q OKAY. BUT IT'S NOT LIKE YOU GO AND GET THE EVIDENCE
14 YOURSELF. RIGHT?

15 A NO, I DO NOT.

16 Q OKAY. AND IF THE EVIDENCE COME --- OR WHEN THE
17 EVIDENCE COMES TO YOU, YOU BASICALLY TEST THE EVIDENCE
18 THAT COMES TO YOU IN ITS ENTIRETY. CORRECT?

19 A YES, I DO.

20 Q OKAY. SO, FOR EXAMPLE, IF YOU HAD FIVE OBJECTS IN A
21 KIT, YOU WOULDN'T JUST SORT OF CHOOSE TO TEST ONLY THREE
22 OF THEM. YOU WOULD CHOOSE TO TEST HOWEVER MANY YOU TESTED
23 IN THAT KIT.

24 A WHAT WE DO IS WE WORK FROM THE INSIDE OUT, SO WE
25 START WITH SAY THE VAGINAL SWAB, THE ORAL SWAB AND THE

LILLY GALLMAN - CROSS BY MS. JOHNSON

528

1 RECTAL SWABS WHICH ARE COMING FROM THE INSIDE OF THE
2 VICTIM'S BODY AND CHECK AND SEE IF THERE'S ANY EVIDENCE
3 THERE TO BE ABLE TO WORK WITH. IF NOT, WE MOVE TO THE
4 NEXT STEP, BE IT FINGERNAIL SCRAPINGS OR PUBIC HAIRS.

5 Q OKAY. BUT BASICALLY EVERY OBJECT IN THAT KIT GETS
6 EVALUATED TO SEE WHETHER YOU CAN TEST IT FOR DNA. RIGHT?

7 A YES.

8 Q OKAY. AND IF YOU CAN TEST IT FOR DNA, IF THERE'S
9 PRESUMABLY SOME DNA THERE, THEN YOU WOULD. RIGHT?

10 A YES.

11 Q SO, I GUESS, WHAT I'M ASKING, YOU DON'T SORT OF MAKE
12 A CHOICE, I'M NOT GOING TO TEST AN ORAL SWAB EVEN THOUGH
13 IT'S IN A KIT. RIGHT?

14 A NO.

15 Q OKAY. IN THIS CASE CAN YOU TELL ME SPECIFICALLY WHAT
16 YOU HAVE THAT YOU TESTED?

17 A OKAY, ONCE I OPEN THE KIT THE ITEMS THAT WERE
18 SUBMITTED WERE THE --- A BLOOD STANDARD FROM THE VICTIM,
19 SMEARS, THE VAGINAL AND RECTAL SMEARS, VAGINAL SWABS, ORAL
20 SWABS, RECTAL SWABS AND ALSO MISCELLANEOUS BODY FLUID
21 SAMPLE THAT WAS COLLECTED FROM THE VICTIM'S NECK AREA AND
22 FINGERNAIL SCRAPINGS.

23 Q OKAY. AND SO THAT IS THE WHOLE KIT AS YOU RECEIVED
24 IT. RIGHT?

25 A THOSE ARE THE ITEMS THAT WERE COLLECTED IN THIS

LILLY GALLMAN - CROSS BY MS. JOHNSON

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1 PARTICULAR KIT.

2 Q IN THIS PARTICULAR KIT. OKAY. SO IT'S NOT LIKE YOU
3 LEFT SOME ITEMS OUT THAT DIDN'T GET TESTED. YOU SORT OF
4 HAVE TOLD US EVERYTHING YOU KNOW OF THAT CAME IN THAT KIT.
5 RIGHT?

6 A THAT'S ALL THE EVIDENCE THAT WAS COLLECTED IN THIS
7 PARTICULAR KIT.

8 Q ALL RIGHT. SO WE KNOW FOR CERTAIN THEN THAT YOU DID
9 NOT TEST A PAIR OF PANTIES. CORRECT?

10 A NO, I DID NOT.

11 Q OKAY. AND WE ALSO KNOW FOR CERTAIN THAT YOU DID NOT
12 TEST A PINK BANDANNA, DID YOU?

13 A NO, I DID NOT.

14 Q BUT IF THEY HAD COME TO YOU, YOU WOULD'VE AT LEAST
15 EVALUATED THEM TO SEE IF THEY PERHAPS HAD SOME DNA ON
16 THEM. CORRECT?

17 A LIKE I SAID, WHAT WE DO IS HE WORK FROM THE INSIDE
18 OUT FROM --- AND THEN USE THAT EVIDENCE IF --- IF THERE'S
19 ANYTHING THERE. IF THERE'S NOT ANYTHING THERE --- LET'S
20 SAY THE VAGINAL SWAB WAS NEGATIVE FOR SEMEN, WE WOULD MOVE
21 TO THE NEXT STEP, NEXT EVIDENCE STEP WAS SUBMITTED, BUT WE
22 ALWAYS START FROM THE INSIDE OUT.

23 Q OKAY. BUT ULTIMATELY IF YOU HAD RECEIVED A PAIR OF
24 PANTIES IN THIS RAPE KIT, OKAY, OR SOME SORT OF EVIDENCE,
25 YOU WOULD'VE LOOKED AT IT AND SEEN WHETHER YOU COULD TEST

LILLY GALLMAN - CROSS BY MS. JOHNSON

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1 IT TO SEE IF THERE WOULD BE ANY DNA. PRESENT.

2 A I WOULD'VE DONE THAT IF THERE WAS NOT ANY SEMEN ON
3 THE VAGINAL SWAB.

4 Q OKAY. AND IN THIS CASE WE KNOW YOU DIDN'T GET THE
5 PANTIES. RIGHT?

6 A THAT'S CORRECT.

7 Q OKAY. AND YOU WOULD'VE DONE THE VERY SAME THING HAD
8 A BANDANNA COME IN THE PACKAGE. RIGHT?

9 A THAT'S CORRECT.

10 Q OKAY. BUT IN THIS CASE WE KNOW YOU DIDN'T GET IT.
11 RIGHT?

12 A THAT'S RIGHT.

13 Q AND CORRECT ME IF I'M WRONG, BUT YOUR DNA HAS THE
14 ABILITY TO TELL YOU SPECIFICALLY OR SORT OF TO POINT IN A
15 DIRECTION OF WHETHER THIS PARTICULAR SPECIMEN IS MATCHED
16 UP WITH A PERSON? DOES THAT MAKE ANY SENSE TO YOU, THAT
17 QUESTION?

18 A ONCE WE DEVELOP A DNA PROFILE ---

19 Q YES, MA'AM.

20 A --- I COMPARE IT TO A KNOWN STANDARD AND THEN SEE IF
21 I HAVE A MATCH OR WHETHER I DO NOT HAVE A MATCH.

22 Q OKAY. AND ISN'T IT ALSO TRUE THAT YOU COULD PERHAPS
23 HAVE SEVERAL MATCHES OF DNA FROM A PARTICULAR SPECIMEN?

24 A I DON'T ---

25 Q SHOULD I --- I'LL REPHRASE FOR YOU.

LILLY GALLMAN - RE-DIRECT BY MR. MAINES

531

1 A OKAY.

2 Q LET'S SAY, FOR EXAMPLE, YOU HAD GOTTEN A PAIR OF
3 PANTIES AND IT HAD TWO DIFFERENT SPECIMENS ON THERE. IS
4 IT POSSIBLE THAT IT COULD THEN POINT TO TWO DIFFERENT
5 PEOPLE DNA-WISE?

6 A WHAT I'M GATHERING THAT YOU'RE SAYING IS THAT IF YOU
7 HAVE A PAIR OF PANTIES AND THERE ARE TWO SEMEN STAINS
8 THERE, AND YOU HAVE A MIXTURE AND SO YOU'RE SAYING WHETHER
9 I COULD INCLUDE OR EXCLUDE CERTAIN INDIVIDUALS WITHIN THAT
10 MIXTURE.

11 Q (INDICATING YES)

12 A THAT'S SO.

13 Q SO POSSIBLY ---

14 A IF YOU WERE TO HAVE DIFFERENT SEMEN STAINS AND THEY
15 COULD BE A MIXTURE THERE. THAT'S TRUE.

16 MS. JOHNSON - I HAVE NO FURTHER QUESTIONS, YOUR
17 HONOR.

18 RE-DIRECT EXAMINATION

19 BY MR. MAINES -

20 Q MS. GALLMAN, I JUST WANT TO FOLLOW-UP. YOU REFERRED
21 TO INSIDE OUT. IS THE INSIDE OUT POLICY REFERRING
22 SPECIFICALLY TO TAKING A SAMPLE FROM THE VAGINAL SWAB
23 FIRST?

24 A THAT'S CORRECT. WHEN I MENTION INSIDE OUT, I'M
25 TALKING --- I'M TALKING ABOUT STARTING WITH THE INSIDE OF

LILLY GALLMAN - RE-DIRECT BY MR. MAINES

532

1 THE BODY AND WORKING YOUR WAY OUT, BECAUSE IF THERE'S
2 SEMEN DEPOSIT INSIDE THE BODY, THEN THAT'S WHAT WE START
3 WITH, AND THEN IF THERE'S NONE THERE, THEN WE GO TO THE
4 NEXT SAMPLE.

5 Q . OKAY. AND I'M GOING TO BRING YOU UP ANOTHER COPY OF
6 THE TEST RESULTS FROM YOUR ANALYSIS. DOES IT INDICATE
7 WHETHER OR NOT YOU PERFORMED AN ANALYSIS ON ANYTHING OTHER
8 THAN THE VAGINAL SWAB?

9 A I CHECKED THE VAGINAL SWAB, THE ORAL SWAB, THE RECTAL
10 SWAB AND ALSO THE SAMPLE THAT WAS COLLECTED FROM THE
11 VICTIM'S NECK AREA FOR THE PRESENCE OF SEMEN.

12 Q AND DID YOU ANALYZE ANY DNA FOUND ON ANY OF THAT?

13 A THE ONLY PLACE THAT SEMEN WAS FOUND ON WAS THE
14 VAGINAL SWABS.

15 Q SO THERE WOULD'VE BEEN NOTHING TO TEST ON THE OTHER
16 ITEMS?

17 A IF --- WHEN I ANALYZE AN ITEM AND THERE'S NO SEMEN
18 PRESENT ON THOSE ITEMS, WE STOP THE ANALYSIS THERE.

19 Q OKAY. IS THAT STANDARD SLED PROCEDURE?

20 A YES, IT IS.

21 MS. JOHNSON - WE HAVE NO FURTHER QUESTIONS.

22 MS. LIPINSKI - WE'RE NOT FINISHED.

23 MS. JOHNSON - I'M SORRY.

24 MR. MAINES - I WAS GOING TO ASK ONE MORE
25 QUESTION.

LILLY GALLMAN - RE-DIRECT BY MR. MAINES

533

1 THE COURT - GO AHEAD.

2 Q WHY DIDN'T YOU DO ANY FINGERNAIL SCRAPINGS?

3 A AS I SAID, WE WORK FROM THE INSIDE OUT. I STARTED --
4 - WHEN THE VAGINAL SWAB SHOWED ME THAT I HAD SEMEN THERE,
5 I WENT ON TO DEVELOP A DNA PROFILE FROM THAT SEMEN.

6 MS. MAINES - THAT'S ALL THE QUESTIONS I HAVE.

7 THE COURT - YOU CAN STEP DOWN AND BE EXCUSED.
8 WE APPRECIATE YOUR TIME. THANK YOU VERY MUCH. CALL YOUR
9 NEXT WITNESS.

10 MS. LIPINSKI - YOUR HONOR, IF WE COULD APPROACH
11 JUST BRIEFLY.

12 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
13 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
14 REPORTED.)

15 THE COURT - ALL RIGHT, WE'LL GO AHEAD AND TAKE
16 A SHORT REFRESHER BREAK BEFORE WE DO OUR NEXT WITNESS.

17 (JURY EXITS THE COURTROOM)

18 (RECESS TAKEN)

19 THE COURT - STATE READY?

20 MS. LIPINSKI - YES, YOUR HONOR.

21 THE COURT - DEFENSE READY?

22 MR. LEMEL - NO, SIR. WAITING ON THE DEFENDANT -

23 ---

24 (MR. DUNOVANT ENTERS THE COURTROOM)

25 THE COURT - STATE READY?

MISTI HILL - DIRECT BY MS. LIPINSKI

534

1 MS. LIPINSKI - YES, YOUR HONOR.

2 THE COURT - DEFENSE READY?

3 MR. LEMEL - YES, SIR.

4 THE COURT - ALL RIGHT, BRING IN THE JURY.

5 (JURY ENTERS THE COURTROOM)

6 THE COURT - CALL YOUR NEXT WITNESS.

7 MS. LIPINSKI - THANK YOU, YOUR HONOR. THE STATE

8 CALLS MISTI HILL TO THE STAND.

9 THE COURT - PLEASE COME UP AND BE SWORN.

10 MISTI HILL, AFTER BEING FIRST DULY SWORN,

11 TESTIFIES AS FOLLOWS -

12 DIRECT EXAMINATION

13 BY MS. LIPINSKI -

14 Q MS. HILL, I ASK YOU JUST TO TALK IN THE DIRECTION OF
15 THAT MICROPHONE AND TRY AND SPEAK LOUDLY SO THESE LAST
16 JURORS CAN HEAR YOU. I'M GOING TO MOVE BACK HERE SO THAT
17 I KNOW IF I CAN HEAR YOU BACK HERE, THEY CAN HEAR YOU.
18 ALL RIGHT?

19 A ALL RIGHT.

20 Q IF YOU COULD, PLEASE STATE YOUR FULL NAME FOR THE
21 RECORD.

22 A MISTI LASHON HILL.

23 Q AND HOW OLD ARE YOU?

24 A I'M 33.

25 Q AND WHERE DO YOU LIVE? GENERALLY, WHAT CITY DO YOU

MISTI HILL - DIRECT BY MS. LIPINSKI

535

- 1 LIVE IN?
- 2 A I LIVE IN GASTONIA.
- 3 Q AND DO YOU STILL LIVE IN THE FORBES ROAD AREA?
- 4 A YES, I DO.
- 5 Q AND DID YOU GROW UP IN GASTONIA?
- 6 A YES, I DID.
- 7 Q DID YOU GRADUATE FROM HIGH SCHOOL?
- 8 A I DID.
- 9 Q WHERE FROM?
- 10 A FROM HUNTER HUSK HIGH SCHOOL.
- 11 Q AND DID YOU GO TO COLLEGE OR ANYTHING LIKE THAT?
- 12 A YES, I HAVE --- MY PROFESSION IS COSMETOLOGY.
- 13 Q SO NOT COLLEGE BUT YOU WENT TO BEAUTY SCHOOL, SO-TO-
- 14 SPEAK.
- 15 A I HAVE TWO YEARS BUSINESS.
- 16 Q AND COSMETOLOGY SCHOOL OR IN LIEU OF?
- 17 A TWO YEARS --- BEAR WITH ME, PLEASE. TWO YEARS OF
- 18 BUSINESS --- A TWO-YEAR BUSINESS DEGREE IN COLLEGE AND I
- 19 ALSO HAVE A COSMETOLOGY DEGREE.
- 20 Q AND HAVE YOU EVER WORKED AS A COSMETOLOGIST?
- 21 A YES, I HAVE.
- 22 Q AND WHAT KIND OF JOBS HAVE YOU HELD IN THE PAST?
- 23 A I'VE HAD A COSMETOLOGY JOB DOING HAIR AND I'VE ALSO
- 24 WORKED AT A LITTLE FEED STORE WHERE THEY SELL FEED,
- 25 SADDLES, HORSE MISCELLANEOUS.

MISTI HILL - DIRECT BY MS. LIPINSKI

536

- 1 Q DO YOU REMEMBER THE NAME OF THE STORE?
- 2 A YES. LEWIS ---
- 3 Q WHAT IS IT?
- 4 A LEWIS FEED AND TAC.
- 5 Q AND WHERE IS THAT LOCATED?
- 6 A ON 321.
- 7 Q AND IS THAT WHERE YOU WERE WORKING AT THE TIME THAT
- 8 THIS INCIDENT OCCURRED?
- 9 A YES, IT WAS.
- 10 Q AND WHAT AS YOUR JOB THERE?
- 11 A JUST CUSTOMER SERVICE.
- 12 Q KIND OF CASHIER, THAT TYPE THING?
- 13 A YES.
- 14 Q YOU WEREN'T OUT BACK THROWING BIG FEED BAGS AROUND?
- 15 A NO, I WAS NOT.
- 16 Q AND WITH WHOM DO YOU LIVE IN GASTONIA? DO YOU LIVE
- 17 WITH YOUR PARENTS?
- 18 A I DO. I LIVE WITH MY MOTHER AND MY FATHER.
- 19 Q AND DOES YOUR GRANDMOTHER ALSO LIVE THERE?
- 20 A NO, SHE DOES NOT.
- 21 Q WHERE DOES SHE LIVE?
- 22 A SHE LIVES IN GASTONIA, ALSO.
- 23 Q BUT JUST NOT ON FORBES ROAD. NOT WITH YOU, BUT SHE
- 24 ALSO LIVES IN THE GASTONIA AREA.
- 25 A EXACTLY, YES.

MISTI HILL - DIRECT BY MS. LIPINSKI

537

- 1 Q AND IS YOUR MOM HERE TODAY?
- 2 A YES, SHE IS.
- 3 Q AND IS SHE THE BLONDE LADY, BLUE SHIRT?
- 4 A YES, SHE IS.
- 5 Q AND THAT'S YOUR GRANDMOTHER NEXT TO HER?
- 6 A YES, IT IS.
- 7 Q AND HOW LONG HAD YOU BEEN WORKING AT THE FEED AND
- 8 SEED BACK THEN WHEN THIS HAPPENED? DO YOU RECALL?
- 9 A AROUND SIX MONTHS.
- 10 Q SO HAD YOU WORKED THERE THE CHRISTMAS OF THE
- 11 PRECEDING YEAR THROUGH THE RETAIL, KIND OF HOLIDAY SEASON?
- 12 A I DID.
- 13 Q AND DO YOU HAVE ANY EXPERIENCE WITH HORSES OR
- 14 ANYTHING LIKE THAT OR WAS THAT JUST A CONVENIENT PLACE FOR
- 15 YOU TO WORK?
- 16 A I HAD A FRIEND THAT WORKED THERE, AND I WAS
- 17 INTERESTED IN HORSES.
- 18 Q AND WAS YOUR FRIEND SHAVONE OR WAS THAT A FRIEND YOU
- 19 MET WHILE WORKING THERE?
- 20 A THAT IS A FRIEND THAT I MET WORKING THERE.
- 21 Q AND ARE --- AM I PRONOUNCING HER NAME RIGHT?
- 22 SHAVONE?
- 23 A YES, SHAVONE.
- 24 Q AND WHO WAS YOUR FRIEND THAT WORKED THERE THAT YOU
- 25 KNEW BEFORE YOU GOT THE JOB?

MISTI HILL - DIRECT BY MS. LIPINSKI

538

- 1 A HER NAME WAS JENNIFER.
- 2 Q AND DO YOU RECALL WHAT SHIFT YOU WORKED THAT DAY?
- 3 A I WORKED FIRST SHIFT, 9:00 TO 5:00.
- 4 Q WAS THAT THEIR HOURS? WERE THEY OPEN AT NIGHT, AS
- 5 WELL?
- 6 A EXCUSE ME. IT WAS 9:00 TO 6:00. YES, THAT WAS THEIR
- 7 HOURS.
- 8 Q SO THEY DIDN'T RECALL HAVE A SECOND AND A THIRD SHIFT
- 9 KIND OF THING. FOR THE MOST PART, THEY'RE A RETAIL STORE.
- 10 A YES.
- 11 Q AND YOU GOT OFF WHEN IN ESSENCE THE STORE CLOSED.
- 12 A I DID, 6:00 O'CLOCK.
- 13 Q AND WHEN --- WHY DID YOU QUIT DOING HAIR AND START
- 14 WORKING THERE? DO YOU RECALL?
- 15 A I JUST THOUGHT THAT HAIR WAS SOMETHING THAT I WANTED
- 16 TO DO AND I HAD STARTED BARBER SCHOOL EARLIER WHEN I FIRST
- 17 GOT OUT OF HIGH SCHOOL AND I DIDN'T FINISH, SO I THOUGHT,
- 18 YOU KNOW, THIS WAS SOMETHING I WANT TO COMPLETE, SO I WENT
- 19 BACK TO COSMETOLOGY SCHOOL AND I COMPLETED IT AND THEN
- 20 WHEN I COMPLETED IT IT ENDED UP THAT THAT WAS NOT WHAT I
- 21 WANTED TO DO.
- 22 Q AND SO YOU SAID THAT YOU'RE HOW OLD NOW?
- 23 A 33.
- 24 Q AND IS YOUR BIRTHDAY BEEN THIS YEAR OR WILL YOU TURN
- 25 34 THIS YEAR?

MISTI HILL - DIRECT BY MS. LIPINSKI

539

1 A I WILL TURN 34 THIS YEAR.

2 Q AND SO IN 1999 HOW OLD WERE YOU? WHEN YOU WERE ABOUT
3 TEN YEARS AGO, WOULD YOU BE ABLE 23 TURNING 24.

4 A RIGHT.

5 Q AND DID YOU GET INTO ANY TROUBLE THAT YEAR IN 1999?

6 A I'M NOT SURE EXACTLY WHAT YOU'RE ---

7 Q WERE YOU CONVICTED OF ANY CRIMES THAT YEAR? DO YOU
8 RECALL?

9 A I DON'T RECALL WHAT YEAR.

10 Q YOU DON'T RECALL WHAT YEAR, BUT AT SOME POINT AROUND
11 THAT TIME, DID YOU GET A CONVICTION FOR CREDIT CARD FRAUD?

12 A YES, I DID.

13 Q AND WERE YOU PUT ON PROBATION FOR THAT?

14 A YES, I WAS.

15 Q AND DID YOU COMPLETE THAT PROBATION?

16 A I DID.

17 Q BUT THAT WAS ABOUT TEN YEARS PRIOR TO THIS YEAR RIGHT
18 NOW?

19 A CORRECT, IT WAS.

20 Q AND NONETHELESS YOU WERE STILL ABLE TO GET A JOB AS
21 A CASHIER AT THIS FEED AND SEED STORE.

22 A OH, YES.

23 Q AND YOU WORKED THERE YOU SAID FOR APPROXIMATELY SIX
24 MONTHS WHEN THIS INCIDENT HAPPENED.

25 A CORRECT.

MISTI HILL - DIRECT BY MS. LIPINSKI

540

1 Q AND YOU SAID YOU GOT OFF AT 6:00 O'CLOCK THAT NIGHT.

2 A I DID.

3 Q AND WERE YOU DRIVING AT THAT PARTICULAR TIME? DID
4 YOU HAVE A CAR AVAILABLE TO YOU?

5 A I DO HAVE A CAR AND I HAD A CAR AT THAT TIME, BUT THE
6 ALTERNATOR WAS MESSED UP, SO MY MOTHER HAD TAKEN ME TO
7 WORK THAT MORNING AND SHAVONE WAS GOING TO TAKE ME HOME AT
8 6:00 O'CLOCK THAT EVENING.

9 Q HOW FAR AWAY FROM WHERE YOU LIVE ON FORBES ROAD WAS
10 THAT FEED AND SEED STORE?

11 A SEVEN MINUTES.

12 Q AND WAS THAT NORTH? LIKE IF YOU WENT OUT --- FORBES
13 ROAD RUNS OFF OF HIGHWAY 321. CORRECT?

14 A (INDICATING YES)

15 Q SO IF YOU WENT OUT TO 321, WOULD YOU TURN SOUTH
16 TOWARDS CLOVER OR NORTH MORE TOWARDS 85 TO GET TO THE FEED
17 AND SEED STORE?

18 A FROM FORBES YOU WOULD TURN NORTH.

19 Q SO IT WAS HEADING INTO KIND OF BESSEMER CITY HEADING
20 UP TOWARDS THE CITY OF DOWNTOWN GASTONIA THAT WAY?

21 A CORRECT. CORRECT.

22 Q AND YOU SAID IT'S APPROXIMATELY SEVEN MINUTES FROM
23 YOUR HOUSE. TOOK YOU ABOUT TEN MINUTES TO GET TO WORK.

24 A CORRECT.

25 Q AND THE ARRANGEMENT THAT DAY WAS WHILE YOUR MOM

MISTI HILL - DIRECT BY MS. LIPINSKI

541

1 DROPPED YOU OFF, YOUR FRIEND SHAVONE WOULD TAKE YOU HOME.

2 A RIGHT.

3 Q AND DID SHE TAKE YOU DIRECTLY HOME THAT DAY?

4 A NO, SHE DID NOT. WE HAD MADE PRIOR PLANS.

5 Q AND WHAT WERE YOU THOSE PLANS?

6 A WE WERE GOING TO GO TO HER BARN AND RIDE THE HORSES,
7 YOU KNOW, DO THE UPKEEP, BRUSH AND BATHE AND FEED.

8 Q AND DID YOU DO THAT?

9 A YES, WE DID.

10 Q AND DID SHE LIVE NEAR THE FEED AND SEED STORE OR DID
11 SHE LIVE --- WHERE APPROXIMATELY DID SHE LIVE IF YOU
12 RECALL?

13 A SHE LIVES IN GASTONIA, BUT SHE LIVES NORTH, ALSO. I
14 MEAN SHE LEAVES NORTH; I LIVE SOUTH. BUT THE BARN IS
15 SOUTH BUT WE WERE HEADED NORTH AFTER THE BARN.

16 Q SO YOU DO ORIGINALLY GO SOMEWHAT SOUTH FROM THE
17 DIRECTION OF THE HOUSE TO THE BARN, BUT THEN YOU ALL WENT
18 SOMEWHERE AFTER?

19 A CORRECT.

20 Q DO YOU REMEMBER ABOUT WHAT TIME YOU GET DONE AT THE
21 BARN?

22 A IT WAS --- IT WAS AROUND 9:00 O'CLOCK.

23 Q WAS IT STILL DAYLIGHT?

24 A NO.

25 Q IT HAD GOTTEN DARK.

MISTI HILL - DIRECT BY MS. LIPINSKI

542

- 1 A IT WAS DUSK.
- 2 Q AROUND DUSK THAT NIGHT.
- 3 A YES.
- 4 Q AND WHERE DID YOU ALL PLAN TO GO AFTER THE BARN?
- 5 A TO GOOD TIME CHARLIES.
- 6 Q AND WHAT IS GOOD TIME CHARLIES?
- 7 A IT'S A PRIVATE BAR.
- 8 Q AND DO THEY SERVE FOOD THERE?
- 9 A THEY DO.
- 10 Q AND WHEN YOU GOT THERE --- DO YOU REMEMBER THIS DAY?
- 11 WAS IT A MONDAY, A TUESDAY, A FRIDAY? DO YOU RECALL EVEN?
- 12 A I BELIEVE IT WAS A WEDNESDAY.
- 13 Q SO YOU GOT THERE WEDNESDAY NIGHT YOU BELIEVE ABOUT
- 14 9:00 O'CLOCK.
- 15 A YES.
- 16 Q AND DID SHAVONE JUST DROP YOU OFF THERE OR DID SHE GO
- 17 INTO GOOD TIME CHARLIES WITH YOU?
- 18 A SHE DROPPED ME OFF. YOU HAVE TO BE A MEMBER THERE
- 19 AND I ACTUALLY MET ANOTHER FRIEND THERE NAMED LYNN RABIE.
- 20 SHE'S A MEMBER, AND SO SHE WOULD HAVE TO SIGN ME IN.
- 21 Q AND DID SHE DO THAT?
- 22 A SHE DID.
- 23 Q WAS LYNN THERE THAT NIGHT?
- 24 A YES, SHE WAS.
- 25 Q AND YOU SAY YOU GOT THERE AROUND 9:00 O'CLOCK TO THE

MISTI HILL - DIRECT BY MS. LIPINSKI

543

1 BEST OF YOUR RECOLLECTION?

2 A YES.

3 Q AND ARE OTHER PEOPLE THERE?

4 A YES.

5 Q AND WAS THAT THE PLAN? DID YOU GO BY THERE AND
6 HAPPEN TO SEE LYNN'S CAR OR HAD YOU CALLED HER EARLIER AND
7 ARRANGED TO MEET HER THERE THAT NIGHT?

8 A I HAD CALLED HER EARLIER AND TOLD HER THAT, YOU KNOW,
9 WE WOULD GET TOGETHER LATER THAT NIGHT AND TO MEET --- AND
10 WE WOULD MEET UP THERE.

11 Q AND HAD YOU FORMULATED A PLAN ABOUT HOW YOU WERE
12 GOING TO GET HOME FROM GOOD TIME CHARLIES OR YOU JUST
13 ASSUMED YOU'D CATCH A RIDE FROM A FRIEND OR WHAT WAS THE
14 PLAN?

15 A RIGHT. NO, I DIDN'T HAVE A PLAN AT THAT TIME. I
16 DIDN'T KNOW IF LYNN WOULD TAKE ME HOME OR I KNOW --- I
17 MEAN GASTONIA'S PRETTY SMALL, SO I KNOW.

18 Q WAS THIS A BAR YOU HAD BEEN TO IN THE PAST?

19 A YES.

20 Q WAS IT YOUR FIRST TIME THERE?

21 A NO.

22 Q IN ADDITION TO LYNN, DID YOU KNOW OTHER PEOPLE WHO
23 HUNG OUT AT THIS BAR?

24 A YES, I DID.

25 Q SO IF LYNN COULDN'T TAKE YOU HOME, DID YOU BELIEVE

MISTI HILL - DIRECT BY MS. LIPINSKI

544

1 THAT THERE MIGHT BE SOMEBODY ELSE THERE WHO COULD'VE TAKEN
2 YOU HOME THAT NIGHT?

3 A RIGHT..

4 Q WERE YOU WORKING THE NEXT DAY?

5 A YES.

6 Q AND WHILE YOU WERE AT GOOD TIME CHARLIES, DID YOU EAT
7 ANYTHING? DID YOU DRINK ANYTHING?

8 A I DIDN'T EAT ANYTHING, BUT I HAD A FEW DRINKS.

9 Q HAD YOU EATEN EARLIER IN THE NIGHT? HAD YOU EATEN
10 WITH SHAVONE EARLIER IN THE DAY OR ---

11 A WE ATE AT WORK.

12 Q AT WORK. SO YOU GET OFF --- YOU GET TO GOOD TIME
13 CHARLIES AND YOU SAY YOU HAD A FEW DRINKS. HOW LONG DO
14 YOU STAY AT GOOD TIME CHARLIES?

15 A UNTIL AROUND 12:00 AND THEN BEHIND GOOD TIME CHARLIES
16 IS ANOTHER PRIVATE BAR CALLED HAPPY DAYS AND THEY WERE
17 HAVING KARAOKE SO WE WALK OVER --- IT'S WITHIN WALKING
18 DISTANCE IN THE SAME PARKING LOT, SO WE WALK OVER THERE.

19 Q WHEN YOU SAY WE, IS THAT JUST YOU AND LYNN OR OTHER
20 PEOPLE YOU ARE WITH THAT NIGHT?

21 A LYNN AND I AND THEN THE OTHERS COME LATER.

22 Q AND DID GOOD TIME CHARLIES CLOSE AT 12:00 OR DID YOU
23 GO OVER TO HAPPY DAYS FOR THE KARAOKE?

24 A WE WENT OVER TO HAPPY DAYS FOR THE KARAOKE.

25 Q AND DO YOU GET THERE --- DO YOU GET THERE AROUND

MISTI HILL -- DIRECT BY MS. LIPINSKI

545

- 1 MIDNIGHT? IS THAT ABOUT WHAT TIME?
- 2 A YES, MA'AM.
- 3 Q AND ABOUT HOW LONG DO YOU STAY AT --- IS IT HAPPY
- 4 DAYS?
- 5 A YES.
- 6 Q HOW LONG DO YOU STAY THERE?
- 7 A UNTIL AROUND 3:30, BUT LYNN DID NOT STAY THE WHOLE
- 8 TIME.
- 9 Q SO LYNN LEAVES AND GOES HOME.
- 10 A RIGHT.
- 11 Q AND YOU STAY THERE TALKING TO OTHER PEOPLE?
- 12 A YES, I DO.
- 13 Q AND AT WHAT POINT IF AT ALL DO YOU LEAVE HAPPY DAYS?
- 14 A I LEAVE HAPPY DAYS AROUND 3:30.
- 15 Q AND HOW DO YOU LEAVE HAPPY DAYS, BECAUSE OBVIOUSLY AT
- 16 THAT POINT LYNN, THAT RIDE, THAT'S GONE? WHO DO YOU LEAVE
- 17 WITH?
- 18 A THIS LADY THAT I WAS --- I JUST KNOW HER FROM THE
- 19 BARS.
- 20 Q OKAY. YOU MET HER A FEW TIMES BEFORE?
- 21 A RIGHT.
- 22 Q DID SHE AGREE TO GIVE YOU A RIDE HOME?
- 23 A YES, SHE DID.
- 24 Q AND HAD YOU EVER BEEN TO HER HOUSE?
- 25 A NO.

MISTI HILL - DIRECT BY MS. LIPINSKI

546

- 1 Q DO YOU KNOW WHERE SHE LIVED?
- 2 A SHE TOLD ME THAT SHE LIVED IN BESSEMER CITY.
- 3 Q AND THE PLAN WAS SHE WAS GOING TO GIVE YOU A RIDE
- 4 HOME. DID SHE HAVE A CAR THERE THAT NIGHT?
- 5 A NO, HER SON WAS GOING TO COME PICK HER UP AND SHE WAS
- 6 GOING TO TAKE HIM HOME AND THEN SHE WAS GOING TO COME BACK
- 7 AND TAKE ME HOME. I MEAN WE WERE TOGETHER AND THEN HER
- 8 SON COMES, THEN WE'RE TAKING HER SON HOME AND THEN SHE'S
- 9 GOING TO TAKE ME HOME.
- 10 Q HOW CLOSE DID SHE LIVE TO THE BAR? DID YOU KNOW?
- 11 A I DON'T KNOW, BECAUSE I JUST ---
- 12 Q DID YOU EVER GET TO HER HOUSE?
- 13 A NO.
- 14 Q HAD YOU EVER BEEN TO HER HOUSE BEFORE?
- 15 A I HAVE NOT.
- 16 Q AND WHILE YOU WERE AT HAPPY DAYS, DO YOU HAVE
- 17 ANYTHING ELSE TO DRINK?
- 18 A YES.
- 19 Q AND WHAT ARE YOU DRINKING THAT NIGHT? DRINKING BEER?
- 20 YOU DRINKING A COCKTAIL? DO YOU RECALL?
- 21 A I HAD BEER.
- 22 Q AND DO YOU RECALL ABOUT HOW MANY BEERS YOU HAD WHILE
- 23 YOU WERE AT HAPPY DAYS?
- 24 A I'M NOT SURE AT HAPPY DAYS.
- 25 Q YOU LEAVE HAPPY DAYS AND DO YOU RECALL THIS WOMAN'S

MISTI HILL - DIRECT BY MS. LIPINSKI

547

1 NAME?

2 A I DO NOT.

3 Q BUT YOU LEAVE WITH HER AND HER SON BRINGS HER THE
4 CAR.

5 A RIGHT.

6 Q AND YOU ALL LEAVE.

7 A YES.

8 Q WHO'S DRIVING? DO YOU REMEMBER THAT?

9 A THEY TRADE --- SHE STARTS DRIVING AND HE GETS IN THE
10 BACK SEAT AND I GET IN THE FRONT SEAT.

11 Q AND WHERE DO YOU ALL GO FROM THERE? DO YOU RECALL?

12 A WE ARE HEADED TO TAKE HIM HOME.

13 Q OKAY, AND DO YOU GET THERE?

14 A NO.

15 Q WHY NOT?

16 A BECAUSE SHE IS DRIVING ERRATIC AND THEY'RE LOOKING
17 FOR DRUGS AND I SEE THAT SHE HAS HAD WAY FAR TOO MUCH TO
18 DRINK TO BE DRIVING, SO WE'RE PASSING THE GAS STATION AND
19 I ASKED HER TO JUST LET ME OUT AND I WOULD CALL A CAB.

20 Q DID YOU KNOW WHAT KIND OF DRUGS THEY WERE LOOKING
21 FOR?

22 A YES, CRACK.

23 Q AND HAD YOU EVER SMOKED CRACK YOURSELF IN THE PAST?

24 A YES.

25 Q PRIOR TO THAT NIGHT, WHEN WAS THE LAST TIME YOU HAD

MISTI HILL - DIRECT BY MS. LIPINSKI

548

1 SMOKED CRACK?

2 A PRIOR TO THAT NIGHT WAS TWO YEARS.

3 Q AND SO TWO YEARS PRIOR TO THAT WOULD YOU SAY YOU WERE
4 ADDICTED AT THAT POINT?

5 A UM ---

6 Q TWO YEARS PRIOR TO THAT WERE ---

7 A YES. I HAD BEEN CLEAN FOR TWO YEARS.

8 Q AND WHAT HAPPENED THAT YOU GOT CLEAN?

9 A I JUST SAW WHERE I WAS GOING.

10 Q AND IS THAT WHEN YOU WENT BACK TO LIVING WITH YOUR
11 PARENTS?

12 A YES, IT IS.

13 Q AND DID YOU GO THROUGH ANY TYPE OF REHAB OR ANY TYPE
14 OF NA OR ANYTHING LIKE THAT?

15 A I DID. I WENT TO REHAB.

16 Q AND THAT NIGHT THAT THIS HAPPENED, YOU SAID FROM THAT
17 NIGHT PREVIOUSLY WAS APPROXIMATELY TWO YEARS BEFORE YOU
18 HAD SINCE SMOKED CRACK.

19 A YES.

20 Q AND THEN YOU GET OUT OF THE CAR AT THE GAS STATION.

21 A CORRECT.

22 Q HAD YOU EVER BEEN TO THAT GAS STATION BEFORE? YOU
23 FAMILIAR WITH IT GROWING UP IN GASTONIA?

24 A UM, I HAD BEEN THERE MAYBE ONCE OR TWICE BEFORE. MY
25 MOTHER WORKED ON BESSEMER CITY HIGHWAY ALL MY LIFE.

MISTI HILL - DIRECT BY MS. LIPINSKI

549

1 Q WHAT DID SHE DO?

2 A SHE IS A REALTOR.

3 Q SO HER AGENCY WAS SOMEWHERE ON THAT ROAD?

4 A CORRECT.

5 Q SO FREQUENTLY GROWING UP YOU MIGHT'VE HAD THE
6 OCCASION TO STOP AT THAT GAS STATION.

7 A CORRECT.

8 Q AND WHEN YOU GET TO THAT GAS STATION DO YOU CALL YOUR
9 MOM AND SAY COME GET ME?

10 A NO, I HAVE MORE RESPECT FOR MY PARENTS TO CALL THEM
11 AT THAT TIME OF THE MORNING.

12 Q WOULD THEY HAVE BEEN HAPPY IF YOU'D CALLED AT THAT
13 TIME?

14 A NO.

15 Q SO HOW DO YOU PLAN TO GET FROM THE GAS STATION BACK
16 HOME?

17 A TO CALL A CAB.

18 Q AND DO YOU CALL A CAB?

19 A I DO CALL A CAB.

20 Q WHAT PHONE DO YOU USE TO CALL A CAB?

21 A THE PHONE ON THE WALL ABOVE WHERE I WAS STANDING.

22 Q ON THE OUTSIDE.

23 A YES.

24 Q THERE'S ACTUALLY STILL A PAY PHONE OUT THERE.

25 A YES.

MISTI HILL - DIRECT BY MS. LIPINSKI

550

1 Q AND YOU SAY YOU CALLED A CAB FROM THERE. DO YOU
2 REMEMBER WHAT CAB COMPANY YOU CALLED?

3 A WELL, ACTUALLY THEY'RE ALL THE SAME. I MEAN THEY ALL
4 HAVE DIFFERENT NAMES, BUT THEY'RE ALL ONE. IT WAS ---

5 Q THEY ALL HAVE THE SAME ---

6 A --- TRIPLE A.

7 Q --- DISPATCHER.

8 A YES. THEY ALL HAVE THE SAME DISPATCHER. IT'S REALLY
9 WHO'S NEAR AND WHO'S AVAILABLE.

10 Q AND HAD YOU EVER CALLED A CAB AND GOTTEN A CAB RIDE
11 HOME BEFORE?

12 A YES.

13 Q SO ---

14 A LIKE TWO YEARS AGO.

15 Q AND DID YOU HAVE ENOUGH MONEY TO PAY FOR A CAB THAT
16 NIGHT?

17 A NO. I WAS GOING TO PAY WHEN I GOT HOME.

18 Q AND HAD YOU EVER DONE THAT BEFORE?

19 A YES.

20 Q AND WHO WOULD'VE HAD THAT --- DID YOU HAVE THAT MONEY
21 IN YOUR ROOM AT HOME OR WERE YOU GOING TO GET THAT MONEY
22 FROM YOUR MOM OR YOUR DAD?

23 A I HAD THAT MONEY AT HOME IN MY ROOM.

24 Q SO YOU WERE JUST GOING TO GO IN AND PAY THE CAB AND
25 COME BACK OUT.

MISTI HILL - DIRECT BY MS. LIPINSKI

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- 1 A CORRECT.
- 2 Q AND DID THE CAB EVER ARRIVE?
- 3 A NO.
- 4 Q AND ABOUT ---
- 5 A NOT WHILE I WAS THERE.
- 6 Q ABOUT HOW LONG DID YOU WAIT IN THE CAB? WAS IT A
- 7 WHILE?
- 8 A I WOULD SAY ABOUT THIRTY, FORTY-FIVE MINUTES.
- 9 Q DID THEY GIVE YOU A TIME WHEN IT WOULD BE THERE, THE
- 10 CAB DRIVER?
- 11 A NO, MA'AM.
- 12 Q AND DID YOU EVER ATTEMPT TO GET A RIDE FROM ANYBODY
- 13 ELSE THAT NIGHT, OTHER THAN THE CAB COMPANY?
- 14 A WELL, I WAS OFFERED A RIDE.
- 15 Q YOU WERE OFFERED A RIDE.
- 16 A (INDICATING YES)
- 17 Q BY SOMEONE YOU TALKED TO IN THE VIDEO OR WHO?
- 18 A THE DEFENDANT.
- 19 Q THE DEFENDANT. DID YOU HAVE A CONVERSATION THOUGH
- 20 WITH OTHER PEOPLE OUT THERE THAT NIGHT? DID YOU TALK TO
- 21 OTHER PEOPLE WHILE YOU WERE AT THE GAS STATION?
- 22 A YES, I --- ONE MALE ---
- 23 Q WHAT DID YOU TALK TO THEM ABOUT?
- 24 A ONE MALE I SAW WAS FROM HIGH SCHOOL; THE OTHER MALE
- 25 I ASKED, YOU KNOW, REALLY WHERE AM I AT, WHAT DIRECTION AM

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1 I. THAT'S WHY HE WAS GOING LIKE THIS WITH HIS HAND
2 TELLING ME WHAT'S HERE AND WHAT'S THERE.

3 Q WHEN YOU SAY WHAT DIRECTION ARE YOU AT, YOU JUST SAID
4 THAT YOU'D BEEN TO THIS GAS STATION BEFORE, YOU GREW UP ON
5 THIS ROAD, WHAT DO YOU MEAN BY WHERE EXACTLY ARE YOU AT?

6 A RIGHT. BECAUSE --- I GUESS BECAUSE I HAD BEEN
7 DRINKING AND I NEEDED CLARITY OF WHAT ---

8 Q WHICH WAY WAS NORTH OR SOUTH?

9 A --- DIRECTION WAS ---

10 Q WERE YOU GOING TO WALK HOME?

11 A NO.

12 Q LET'S SAY THE CAB NEVER ARRIVES, WHAT WAS THE PLAN?
13 YOU'RE WAITING AN HOUR AND THE CAB DOESN'T SHOW UP.

14 A NO, IF IT NEVER CAME THEN I WOULD BREAK DOWN AND CALL
15 MY MOM AND DAD.

16 Q OTHER THAN THE DEFENDANT, DO YOU EVER HAVE A
17 DISCUSSION WITH ANYONE ELSE YOU TALKED TO OUT THERE THAT
18 NIGHT ABOUT THEM TAKING YOU HOME?

19 A NO.

20 Q DO YOU EVER ASK ANY OF THE OTHER PEOPLE YOU TALKED TO
21 THAT NIGHT FOR DRUGS OR ALCOHOL?

22 A NO.

23 Q DO YOU ASK THEM FOR MONEY TO HELP YOU PAY FOR THE
24 CAB?

25 A NO.

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1 Q AND DO YOU REMEMBER ENCOUNTERING THE DEFENDANT THAT
2 NIGHT AT THE GAS STATION?

3 A YES.

4 Q AND HAD YOU MET HIM PREVIOUSLY? DID YOU KNOW HIM?

5 A AT THAT TIME I WOULD SAY NO, UNTIL WE GOT IN THE CAR
6 AND HE'S TALKING AND THEN IT BECOMES MORE FAMILIAR AND
7 THEN I REALIZE HE'S AN ACQUAINTANCE.

8 Q AND SO YOU DON'T IMMEDIATELY RECOGNIZE HIM BUT ONCE
9 YOU TWO START TALKING YOU REALIZE YOU HAVE MET HIM IN THE
10 PAST.

11 A CORRECT.

12 Q AND WHAT NAME DID YOU KNOW HIM BY OR WHAT NAME DID HE
13 INTRODUCE HIMSELF TO YOU AS THAT NIGHT?

14 A TONY.

15 Q AND DID YOU EVER KNOW HIS LAST NAME?

16 A NO, MA'AM.

17 Q AND HOW DO YOU HAPPEN TO GET IN THE CAR WITH TONY?

18 A HE ASKED WHICH WAY ARE YOU HEADED AND I SAID SOUTH
19 GASTONIA, AND HE SAYS, WELL, THAT'S THE WAY I'M HEADED,
20 TOO, SO YOU KNOW, I SAID WILL YOU GIVE ME A RIDE AND YES
21 HE GIVE ME A RIDE AND I TOLD HIM THAT I WOULD PAY HIM
22 MONEY WHEN I GOT HOME, THAT I DIDN'T HAVE ANY MONEY ON ME,
23 THAT I WOULD PAY HIM THE MONEY WHEN I GOT TO MY HOUSE.

24 Q AND WAS THERE A SET AGREEMENT, I'LL GIVE YOU TWENTY
25 DOLLARS TO TAKE ME HOME, I'LL GIVE YOU TEN DOLLARS TO TAKE

MISTI HILL - DIRECT BY MS. LIPINSKI

554

1 ME HOME?

2 A NO.

3 Q PRIOR TO YOU GETTING IN THE CAR WITH HIM, WAS THERE
4 ANY DISCUSSION ABOUT DRUGS?

5 A NO.

6 Q AND SO YOU GET IN THE CAR WITH HIM AND --- AND THIS
7 GAS STATION IS NORTH OF 85.

8 A (NO RESPONSE)

9 Q HAD YOU BEEN THERE BEFORE WHEN YOU TRAVELLED TO YOUR
10 MOM'S WORK ---

11 THE COURT - SHE'S GOT TO GIVE AN ANSWER. I
12 DON'T THINK SHE GAVE AN ANSWER BEFORE YOU WENT INTO THE
13 NEXT QUESTION. WHAT WAS THE ANSWER?

14 A I DON'T KNOW.

15 MS. LIPINSKI - JUST TRYING TO CLARIFY, YOUR
16 HONOR. I APOLOGIZE.

17 THE COURT - I KNOW, BUT YOU ASKED HER A
18 QUESTION. LET'S LET HER ANSWER.

19 A I DON'T KNOW NORTH OR SOUTH LIKE ON THAT HIGHWAY.

20 Q TO GET FROM THE GAS STATION TO YOUR HOUSE, DO YOU
21 KNOW WHETHER OR NOT YOU WOULD HAVE TO CROSS 85 TO GET
22 THERE?

23 A (NO RESPONSE)

24 Q DON'T KNOW, THAT'S FINE.

25 A I DON'T KNOW.

MISTI HILL - DIRECT BY MS. LIPINSKI

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- 1 Q ARE YOU GIVING HIM DIRECTIONS?
- 2 A YES.
- 3 Q DID YOU TELL HIM WHAT ROAD YOU LIVED ON?
- 4 A YES.
- 5 Q AND WHAT ROAD DID YOU TELL HIM?
- 6 A FORBES.
- 7 Q RIGHT. BUT DO YOU TELL ---
- 8 A OH, OFF 321. HE KNEW SOUTH GASTONIA. 321. SO WE'RE
- 9 GOING DOWN 321.
- 10 Q AND WHAT DO YOU TWO START TALKING ABOUT?
- 11 A UM ---
- 12 Q INITIALLY.
- 13 A I CAN'T REALLY REMEMBER THE CONVERSATION, BUT I KNOW
- 14 WE TOOK ONE HIT OF CRACK ON THE ---
- 15 Q YOU SAY WE ---
- 16 A I TOOK A HIT AND HE TOOK A HIT.
- 17 Q AND WHAT DO YOU MEAN BY A HIT?
- 18 A ONE PUFF.
- 19 Q OF A PIPE?
- 20 A OFF OF A GLASS PIPE.
- 21 Q AND WAS THAT YOUR GLASS PIPE?
- 22 A NO.
- 23 Q WAS IT HIS OR DO YOU KNOW WHERE IT CAME FROM?
- 24 A I DON'T --- IT WAS HIS I ASSUME. HE PULLED IT OUT.
- 25 Q AND YOU ALSO ---

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1 A AND HE TOOK A HIT AND THEN HE PASSED IT TO ME AND I
2 TOOK A HIT AND THEN AFTER THAT HE SAID I NEED SOME LOVIN'
3 AND I --- HE GOT ON THE SUBJECT THAT HE NEEDS SOME LOVIN'
4 AND I SAID I THINK YOU HAVE THE WRONG IDEA AND YOU HAVE
5 THE WRONG PERSON AND HE JUST ---

6 Q DID HE TELL YOU WHAT LOVIN' MEANS? DO YOU ASK?

7 A WELL, I JUST ASSUMED THAT HE MEANT SEX OR ---

8 Q AND WAS THE AGREEMENT THAT IF YOU SHARE HIS --- THE
9 CRACK WITH HIM THAT YOU WOULD EXCHANGE SEX FOR THAT CRACK?

10 A NO, THAT WAS NEVER EVER BROUGHT UP.

11 Q DID YOU AGREE TO PAY HIM FOR IT WHEN YOU GOT TO THE
12 HOUSE SIMILAR TO THE RIDE?

13 A NO, NOT THE CRACK, NOTHING. IT WAS LIKE ONE PUFF;
14 YOU GAVE ME A RIDE; I'M GOING TO PAY YOU FOR GIVING ME A
15 RIDE AND THEN YOU START TALKING ABOUT I NEED SOME LOVIN'
16 AND --- AND I SAID I THINK YOU HAVE THE WRONG PERSON. IT
17 JUST --- I DON'T KNOW WHERE IT ---

18 Q PRIOR TO MEETING UP WITH TERRY DUNOVANT THAT NIGHT,
19 BECAUSE YOU NOW KNOW HIS NAME'S TERRY DUNOVANT. YOU'VE
20 LEARNED THAT FROM LAW ENFORCEMENT.

21 A NOW.

22 Q AND THE INDIVIDUAL THAT PICKED YOU UP THAT NIGHT, IS
23 HE PRESENT IN THE COURTROOM?

24 A YES.

25 Q AND HE'S --- IS HE THE GENTLEMAN SITTING IN THE

MISTI HILL - DIRECT BY MS. LIPINSKI

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1 MIDDLE AT DEFENSE TABLE?

2 A YES.

3 Q AND DO YOU RECOGNIZE HIM?

4 A YES.

5 Q AND PRIOR TO MEETING UP WITH HIM DID YOU SMOKE CRACK

6 WITH ANYONE ELSE PRIOR TO THAT ON THAT PARTICULAR EVENING?

7 A NO.

8 Q DID YOU EVER ENGAGE IN ANY ACTS OF PROSTITUTION PRIOR

9 TO MEETING UP WITH MR. DUNOVANT?

10 A NO.

11 Q DID YOU HAVE SEX WITH ANYONE AT THE BAR JUST AS A

12 FRIEND OR ROMANTIC RELATIONSHIP?

13 A NO.

14 Q AND SO YOU'RE IN THE CAR WITH MR. DUNOVANT AND YOU

15 TAKE THIS ONE HIT OF CRACK YOU STATED AND HE SMOKED SOME

16 CRACK, AS WELL. AND ARE DOING THIS AS YOU'RE DRIVING DOWN

17 THE ROAD OR DID YOU PULL OFF SOMEWHERE?

18 A YES, NO, WE'RE DRIVING DOWN THE ROAD.

19 Q AND ---

20 A DRIVING DOWN 321.

21 Q DRIVING DOWN 321. AND DO YOU GO TO YOUR HOUSE AT

22 FORBES ROAD?

23 A NO.

24 Q WHAT HAPPENS?

25 A WE GO DOWN 321 AND MY ROAD IS TO THE LEFT AND I SAID

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1 --- THE LIGHT WAS GREEN AND I SAID THERE'S MY ROAD,
2 THERE'S MY ROAD, AND HE JUST SAID SHUT UP AND SIT OVER
3 THERE OR I'LL KILL YOU AND --- AND I KEPT SAYING THAT'S MY
4 ROAD, THAT'S MY ROAD, AND HE JUST SAID SHUT UP AND SIT
5 OVER THERE AND (SIC) I'LL KILL YOU AND I DON'T KNOW IF HE
6 HIT ME THEN OR NOT, BUT I JUST KNEW I NEED --- I BETTER
7 SHUT UP AND SIT OVER THERE AND ---

8 Q AND WHERE DO YOU GO FROM THERE?

9 A WE JUST KEEP GOING DOWN 321 INTO BOLING GREEN AND HE
10 TURNS AROUND REALLY FAST OVER IN A BUSINESS AND COMES BACK
11 UP 321 AND TURNS UP INTO THE WEEPING MARY CHURCH.

12 Q AND YOU SAY THE NAME. HAVE YOU EVER BEEN TO THE
13 WEEPING MARY CHURCH?

14 A NO.

15 Q DID YOU KNOW THAT WAS THE NAME?

16 A NO.

17 Q HOW DO YOU KNOW THAT TO BE THE NAME NOW?

18 A BECAUSE I PASSED THERE.

19 Q BECAUSE YOU DROVE PASSED THERE?

20 A (INDICATING YES)

21 Q HAD YOU EVER ATTENDED SERVICE --- YOU OKAY? YOU NEED
22 SOME WATER? DO YOU NEED SOME KLEENEX?

23 A (NO RESPONSE)

24 Q HAD YOU EVER ATTENDED SERVICES AT THAT CHURCH?

25 A NO, MA'AM.

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1 Q HAD YOU EVER BEEN TO A FUNERAL THERE OR A WEDDING
2 THERE, ANYTHING?

3 A I DIDN'T EVEN KNOW THAT CHURCH WAS THERE.

4 Q ARE YOU FAMILIAR WITH THAT AREA?

5 A YES.

6 Q VERY FAMILIAR, PASS THROUGH IT ON YOUR WAY SOUTH.

7 A NO, JUST PASSING THROUGH THERE.

8 MS. LIPINSKI - MAY I APPROACH THE WITNESS, YOUR
9 HONOR?

10 THE COURT - (INDICATING YES)

11 Q DID YOU AND YOUR MOTHER HAVE THE OCCASION TO GO OUT
12 THERE AND TAKE SOME PICTURES?

13 A YES, WE DID.

14 Q AND WHY DID YOU GO TAKE THOSE PICTURES VERSUS JUST
15 BEING ABLE TO DESCRIBE THOSE THINGS TO THE JURY? DID YOU
16 HAVE A VERY SPECIFIC RECOLLECTION OF THAT AREA?

17 A YES, AND THE WAY THE DEFENDANT BACKED IN THROUGH THE
18 GRAVE STONES, I HAD FELT THAT HE HAD BEEN THERE BEFORE.

19 Q HAD YOU EVER BEEN THERE BEFORE?

20 A NO.

21 Q OKAY. AND WHO WAS DRIVING?

22 A HE WAS DRIVING.

23 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
24 EXHIBIT NUMBER 19(D) AND 19(E) AND ASK YOU IF THESE ARE
25 THE TWO OF THE PHOTOGRAPHS THAT YOU AND YOUR MOTHER TOOK

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1 OUT THERE IN FEBRUARY OF THIS YEAR?

2 A YES.

3 Q AND DO THEY ACCURATELY DEPICT HOW THE DIXIE DINER
4 SITS IN RELATION TO THE CHURCH AND THE SIGN OF THE CHURCH
5 OF THE WEEPING MARY BAPTIST CHURCH?

6 A YES.

7 MS. LIPINSKI - YOUR HONOR, AT THIS TIME WE WOULD
8 MOVE STATE'S 19(D) AND (E) INTO EVIDENCE.

9 MR. LEMEL - WITHOUT OBJECTION, YOUR HONOR.

10 THE COURT - IN WITHOUT OBJECTION.

11 (PHOTOS MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 19(D) AND 19(E).)

13 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
14 EXHIBIT NUMBER 19(E), AND IS THAT THE SIGN FOR WEEPING
15 MARY BAPTIST CHURCH IN THAT PHOTOGRAPH?

16 A YES.

17 Q AND IS THAT A BIG SIGN?

18 A NO.

19 Q IS THERE ANY OTHER SIGN WHERE THIS MAY BE ONE SIGN
20 BUT THERE'S A BIGGER SIGN FOR THE CHURCH UP THE ROAD?

21 A NO.

22 Q AND THERE'S A BUSINESS ACROSS THE STREET. DO YOU
23 RECALL WHETHER OR NOT THAT'S WHERE THE DEFENDANT TURNED
24 AROUND OR WAS IT FARTHER DOWN FROM THERE?

25 A IT WAS RIGHT THERE.

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1 Q SO JUST BECAUSE THE JURY DIDN'T SEE WHERE RIGHT THERE
2 WAS ---

3 A RIGHT ---

4 Q --- THERE'S A GREEN BUILDING AND IT'S GOT ALMOST A
5 BRICK OR A ORANGE SIDE. AND WOULD IT BE FAIR TO SAY YOU
6 POINTED TO SOMEWHERE DOWN THIS --- THIS ORANGE SIDE OF THE
7 BUILDING?

8 A (INDICATING YES)

9 THE COURT - YOU'VE GOT TO ANSWER ---

10 Q YOU HAVE TO ANSWER YES OR NO. YOU CAN'T JUST ---

11 A YES.

12 Q --- NOD YOUR HEAD. I'M SORRY. AND THEN I'M GOING TO
13 SHOW YOU WHAT'S BEEN MARKED AS 19(B) AND THERE'S A PURPLE
14 BUILDING IN IT. CORRECT?

15 A YES.

16 Q AND THAT'S THE DIXIE DINER?

17 A YES.

18 Q AND THERE IS A BRICK BUILDING BEHIND THIS TREE BEHIND
19 THE DIXIE DINER.

20 A YES.

21 Q AND IS THAT THE CHURCH THAT YOU CAN SEE SOMEWHAT?

22 A YES.

23 MS. LIPINSKI - YOUR HONOR, AT THIS TIME WE'D
24 LIKE TO PUBLISH THESE EXHIBITS TO THE JURY.

25 THE COURT - ALL RIGHT.

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- 1 Q HAD YOU EVER BEEN TO THE DIXIE DINER BEFORE ---
- 2 A I HAVE ---
- 3 Q --- THE MORNING OF MAY 3RD, 2007? HAD YOU EVER BEEN
- 4 THERE BEFORE?
- 5 A I HAVE ONE MORNING WITH MY FAMILY TO HAVE BREAKFAST.
- 6 Q AND, APPROXIMATELY, IF YOU KNOW, HOW FAR IS THE DIXIE
- 7 DINER FROM YOUR HOUSE?
- 8 A ABOUT THIRTEEN MILES. WE CALCULATED IT.
- 9 Q YOU DROVE IT ONE DAY.
- 10 A YES, MA'AM.
- 11 Q BUT NOT JUST AT THE END OF FORBES ROAD WHERE FORBES
- 12 TURNS OFF 321.
- 13 A RIGHT.
- 14 Q YOU GO A FAIR A BIT FARTHER SOUTH.
- 15 A RIGHT.
- 16 Q WHEN YOU TURN ONTO FORBES ROAD, IS THERE ANYTHING
- 17 RIGHT THERE? YOU SAID THERE'S A RED LIGHT, OBVIOUSLY.
- 18 ARE THERE RESTAURANTS OR BUSINESSES IN THAT AREA?
- 19 A YES, MA'AM.
- 20 Q WHAT TYPE OF BUSINESSES? DO YOU RECALL?
- 21 A ASK ME THAT AGAIN.
- 22 Q I'M SORRY. I DON'T MEAN TO CONFUSE YOU. I KNOW I'M
- 23 JUMPING OVER THE MAP A LITTLE, BUT AROUND WHERE --- WHEN
- 24 YOU COME DOWN 321, YOU GO NORTH ON 321 AND YOU'RE GOING TO
- 25 TURN ONTO YOUR STREET FORBES, AT THAT INTERSECTION YOU

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1 SAID THERE'S SOME BUSINESSES.

2 A CORRECT.

3 Q ARE THEY RESTAURANTS, GAS STATIONS, OR ARE THEY LIKE
4 COMMERCIALS, FACTORIES?

5 A INDUSTRIAL.

6 Q INDUSTRIAL. AND YOU STATE THE DEFENDANT DROVE PAST
7 FORBES ROAD, DROVE ACTUALLY PAST THE DIXIE DINER AND THEN
8 TURNS AROUND AND COMES BACK UP INTO THE CHURCH.

9 A CORRECT.

10 Q AND ARE YOU HAVING ANYMORE DISCUSSIONS WITH HIM
11 DURING THIS PART OF THE ROUTE?

12 A NO, MA'AM.

13 Q AND WHAT HAPPENS WHEN YOU GET TO THE CHURCH?

14 A HE PULLS UP IN THERE AND THEN HE BACKS UP, BACKS DOWN
15 IN BETWEEN THE TOMB STONES AND BACKS DOWN WHERE THEY'VE
16 THROWN LIKE DISCARDED FLOWERS OFF OF THE GRAVES, AND HE
17 TELLS ME TO GET OUT OF THE CAR AND I SAID NO, AND WE HAD
18 A SCUFFLE AND I ---

19 Q LET ME STOP YOU RIGHT THERE. I'M GOING TO SHOW YOU
20 SOME PHOTOS. I'M GOING TO SHOW YOU WHAT'S BEEN PREVIOUSLY
21 MARKED AND IS ADMITTED AS 9(C) AND 9(D) AND IS THE AREA
22 THAT HE BACKED UP IN DISPLAYED IN THESE PHOTOS?

23 A YES.

24 Q IN ONE PARTICULAR MORE THAN THE OTHER?

25 A RIGHT THERE.

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1 Q RIGHT THERE?

2 THE COURT - WHICH EXHIBIT WAS THAT?

3 MS. LIPINSKI - THAT WAS 19 (SIC) (D). I'M GOING
4 TO GET HER TO MARK IT WITH A PEN, YOUR HONOR, WHAT SHE
5 POINTED TO.

6 Q YOU SAID YOU WERE ABLE TO MARK IT HERE ON STATE'S
7 EXHIBIT 9 (D).

8 A YES.

9 Q IF YOU COULD, I'M GOING TO GIVE YOU THIS RED PEN AND
10 IF YOU COULD JUST GENERALLY PUT AN X IN THE AREA YOU
11 RECALL PARKING THAT NIGHT.

12 A (WITNESS COMPLIES)

13 Q AND YOU STATED HE BACKED UP INTO THE --- INTO THAT
14 GRASSY AREA OFF TO THE SIDE.

15 A YES.

16 Q AND DO YOU ALL STAY IN THE CAR OR DO YOU GET OUT OF
17 THE CAR?

18 A HE TELLS ME TO GET OUT OF THE CAR AND I SAID NO AND
19 WE HAD A SCUFFLE AND I REMEMBER SAYING I DON'T KNOW WHO
20 YOU THINK YOU ARE AND THEN HE GRABBED MY HAIR AND PULLED
21 ME OUT BY THE HAIR OF MY HEAD (SIC) ON THE DRIVER'S SIDE
22 AND PULLED ME AROUND TO THE BACK OF THE CAR AND HE HAD HIS
23 PANTS UNZIPPED AND HE PULLED HIS PENIS OUT AND HE WAS
24 SAYING SUCK MY DICK, SUCK MY DICK, AND --- AND I WAS ---
25 WASN'T DOING IT AND SO HE WAS HITTING ME IN THE SIDE OF

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1 THE HEAD WITH A CLOSED FIST AND --- AND THEN SO I DID AND
2 THEN ---

3 Q YOU DID WHAT?

4 A I DID SUCK ON HIS PENIS AND THEN --- AND HE WAS STILL
5 --

6 Q OKAY, TAKE A DEEP BREATH, BECAUSE WE'RE HAVING A HARD
7 TIME UNDERSTANDING YOU. TAKE A DEEP BREATH.

8 A HE WAS STILL HITTING ME WITH A CLOSED FIST ON THE
9 SIDES OF MY HEAD AND THEN HE LOST HIS ERECTION AND --- AND
10 I DON'T KNOW WHAT HE DID AND THEN HE MADE ME DO IT AGAIN
11 AND --- AND THEN WE GOT BACK INTO THE CAR AND ---

12 Q DID YOU GET INTO THE FRONT SEAT OF THE CAR?

13 A NO, WE GOT INTO THE BACK SEAT OF THE CAR.

14 Q AND DID YOU JUST GO GET IN THE BACK SEAT OF THE CAR?
15 HOW DID YOU END UP BACK THERE WITH HIM?

16 A I ---

17 Q DO YOU REMEMBER?

18 A I DON'T RECALL. I DON'T --- I DON'T REMEMBER HOW THE
19 BACK SEAT OF THE CAR.

20 Q DO YOU GET IN FIRST OR DOES HE?

21 A CAME ABOUT --- I DID.

22 Q AND WHAT HAPPENS IN THE BACK OF THE CAR?

23 A I WAS LAYING DOWN IN THE BACK OF THE CAR AND THEN HE
24 GOT IN ON TOP OF ME AND --- AND HE COULDN'T HAVE
25 INTERCOURSE BECAUSE OF HOW I WAS LAYING OR BEING OR

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1 FIGHTING, I DON'T REMEMBER AND THEN SO HE WAS CHOKING ME
2 AND THEN HE PULLED ME OUT AGAIN BY MY LEGS.

3 Q OUT OF THE CAR?

4 A OUT OF THE CAR. HE PULLED ME OUT BY MY LEGS.

5 Q AND DID YOU STILL --- ARE YOU STILL WEARING YOUR
6 CLOTHES, YOUR T-SHIRT AND YOUR JEANS?

7 A YES. AND THEN SO WE GO TO THE BACK OF THE CAR AND HE
8 --- SO HE TOLD ME TO STAND UP BEHIND THE BACK OF THE CAR.
9 SOMETIME DURING THIS TIME HE TOLD ME THAT HE WOULD CUT ME.

10 I NEVER SAW A KNIFE, BUT I WAS SCARED. I MEAN HE WAS
11 BEATING ME AND HE KICKED ME IN MY SIDE AND ---

12 Q WHEN DID HE KICK YOU IN YOUR SIDE? DO YOU RECALL?

13 A BETWEEN THE TWO TIMES THAT HE TOLD ME TO SUCK ON HIS
14 PENIS. AND THEN HE TOLD ME TO GO TO THE BACK OF THE CAR
15 AFTER HE HAD PULLED ME OUT AND THE --- THEN --- SO I WAS
16 STANDING ON THE BACK --- STANDING AT THE BACK OF THE CAR
17 AND THAT'S WHEN HE --- HE RAPED ME. THAT'S WHEN --- WHEN
18 HE HAD INTERCOURSE WITH ME. I WAS FACING THE CAR. I HAD
19 MY HANDS UP ON THE HOOD.

20 Q AND YOU SAID HOOD. YOU SAID BEFORE ---

21 A I MEAN THE TRUNK.

22 Q THE TRUNK. AND DO YOU RECALL, DO YOU TAKE YOUR PANTS
23 DOWN OR DOES HE? DO YOU REMEMBER?

24 A I DON'T REMEMBER, BUT HE NEVER TOOK HIS PANTS DOWN.
25 HE JUST UNZIPPED HIS ZIPPER.

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1 Q AND HOW DO YOU KNOW THAT? BECAUSE IF HE'S STANDING
2 BEHIND YOU, HOW DO YOU KNOW WHAT HE'S DOING?

3 A BEFORE WHEN I --- WHEN I HAD TO DO ORAL SEX.

4 Q SO WHEN HE'S STANDING BEHIND YOU HAVING SEX, DO YOU
5 KNOW WHETHER HE TOOK HIS PANTS DOWN OR NOT?

6 A HE DIDN'T, BECAUSE I HAD ZIPPER SCRAPES ON MY BACK.

7 Q AND DID YOU HAVE THAT BEFORE YOU HAD THIS ENCOUNTER
8 WITH TERRY DUNOVANT? DID YOU HAVE THOSE ---

9 A NO.

10 Q --- SCRAPES BEFORE?

11 A NO.

12 Q YOU FOUND THOSE AFTERWARDS.

13 A (NO RESPONSE)

14 THE COURT - ALL RIGHT, WE'VE GOT TO HAVE AN
15 ANSWER.

16 MS. LIPINSKI - I'M SORRY.

17 Q DO YOU FIND THOSE AFTERWARDS?

18 A YES.

19 MS. LIPINSKI - I APOLOGIZE.

20 Q AND HE HAS --- YOU SAID INTERCOURSE WITH YOU FROM
21 BEHIND.

22 A YES.

23 Q AND DOES HE EJACULATE?

24 A YES.

25 Q DOES HE EJACULATE INSIDE YOU? DO YOU KNOW?

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1 A YES. YES.

2 Q DO YOU NEED SOME MORE KLEENEX? I BELIEVE THE COURT
3 REPORTER THERE IN FRONT OF YOU HAS SOME.

4 A THANK YOU.

5 Q AND WHAT HAPPENS AFTER HE FINISHES?

6 A MY BANDANNA WAS LAYING ON THE GROUND WHERE HE HAD HIT
7 ME AND IT CAME OFF AND HE TOOK MY BANDANNA AND CLEANED HIS
8 SELF UP AND THREW IT DOWN.

9 Q AND YOU WATCHED HIM DO THIS?

10 A YES.

11 Q AND ARE YOU SAYING ANYTHING TO HIM?

12 A NO.

13 Q DOES HE SAY ANYTHING TO YOU?

14 A NO.

15 Q AND THEN WHAT HAPPENED?

16 A SO I'M LAYING ON THE GROUND AND THEN IT'S GETTING
17 DAYLIGHT.

18 Q HOW DO YOU GET TO BE LAYING ON THE GROUND?

19 A BECAUSE OF WHERE HE KICKED ME. I WAS JUST IN PAIN
20 AND BOTH OF MY EAR DRUMS WERE BUSTED AND MY HEAD WAS JUST
21 LIKE WHA-WHA-WHA (PHONETIC). I MEAN I COULDN'T ---
22 BECAUSE I'D BEEN BEAT.

23 Q SO YOU --- YOU LAID DOWN OR DID HE THROW YOU DOWN?

24 A I DON'T REMEMBER. I JUST KNOW I WAS ON THE GROUND.

25 Q AND WHAT --- DOES HE LEAVE YOU THERE?

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1 A YES.

2 Q DID YOU ASK TO BE LEFT THERE?

3 A NO.

4 Q AND WHERE ---

5 A THERE WAS NO CONVERSATION.

6 Q WHERE WAS YOUR PURSE AT THE TIME HE LEFT?

7 A IN HIS FRONT FLOORBOARD.

8 Q HE DRIVES OFF.

9 A YES.

10 Q AND YOU STATED IT GOT TO BE DAYLIGHT.

11 A IT WAS GETTING TO BE DAYLIGHT.

12 Q BEGAN TO BE DAYLIGHT, AND WHERE DO YOU GO? DO YOU
13 STAY AT THE CHURCH OR DO YOU GO SOMEWHERE?

14 A I RAN DOWN A RAVINE TO THAT DIXIE DINER.

15 Q AND ARE THEY OPEN?

16 A YES.

17 Q AND YOU GO INSIDE. ARE THERE PEOPLE THERE?

18 A YES.

19 MS. LIPINSKI - YOU'VE GOT TO LET HER ANSWER.

20 A SORRY. YES. YES.

21 Q AND WHAT HAPPENS AT THE DIXIE DINER?

22 A I PEEKED AND GOT THE TAG NUMBER WHEN HE WAS DRIVING
23 OFF AND I WAS JUST REPEATING THAT TAG NUMBER THE WHOLE
24 TIME THAT I WAS RUNNING DOWN THAT RAVINE AND WHEN I GOT TO
25 THE DIXIE DINER I WAS STILL REPEATING THAT TAG NUMBER AND

MISTI HILL - DIRECT BY MS. LIPINSKI

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1 THE COOK WROTE IT DOWN AND THEN AFTER HE WROTE IT DOWN I
2 TOLD HIM THAT I'D BEEN RAPED AND I NEEDED TO CALL 9-1-1
3 AND I CALLED 9-1-1.

4 Q AND YOU SAID YOU SAW THE TAG NUMBER AS HE WAS DRIVING
5 OFF. AS HE'S DRIVING OFF FROM THE DIXIE DINER OR AS HE'S
6 DRIVING OFF FROM THE CHURCH?

7 A NO, AS HE'S DRIVING OFF FROM THE CHURCH.

8 Q AND DOES EMS AND THE SHERIFF'S OFFICE RESPOND TO YOU
9 THERE AT THE DIXIE DINER?

10 A YES.

11 Q AND DID THEY TRANSPORT YOU TO THE EMERGENCY ROOM?

12 A THEY --- THEY GO BACK BEHIND THE CHURCH AND THEY TAKE
13 ME IN THE AMBULANCE BEHIND THE CHURCH SO I CAN SHOW THEM
14 WHAT AREA THAT IT HAPPENED IN.

15 Q AND WERE YOU WEARING ANY JEWELRY THAT NIGHT?

16 A YES.

17 Q AND LET ME SHOW YOU WHAT'S BEEN MARKED AND ADMITTED
18 AS STATE'S EXHIBIT NUMBER 6 AND ASK YOU IF YOU RECOGNIZE
19 THAT CHARM?

20 A YES, THAT'S MY CHARM.

21 Q AND WHAT'S ON THE CHARM?

22 A HARLEY DAVIDSON.

23 Q AND WAS THAT YOURS?

24 A YES.

25 Q AND DID YOU LEAVE IT ON THE GROUND OUT THERE THAT

MISTI HILL - DIRECT BY MS. LIPINSKI

571

1 NIGHT?

2 A NO, IT WAS JERKED OFF OF ---

3 Q AND WHAT KIND OF CHAIN WAS IT ON? DO YOU RECALL?

4 A IT WAS ON A BEADED ---

5 Q BEADED CHAIN?

6 A --- BRACELET.

7 Q A BRACELET. IT WASN'T ON A NECKLACE. IT WAS ON A
8 BRACELET.

9 A CORRECT.

10 Q LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AND
11 ADMITTED AS STATE'S EXHIBIT NUMBER 7 AND ASK YOU WAS THAT
12 THE BRACELET IT WAS ON?

13 A YES.

14 Q AND IF YOU COULD, LOOK AT THAT. IS THAT --- IS THE
15 CLASP JUST OPEN ON THAT OR IS THAT BROKEN? CAN YOU TELL?

16 A IT'S BROKEN.

17 Q AND ALSO AN EARRING CONTAINED IN STATE'S EXHIBIT
18 NUMBER 7. IS THAT ONE OF YOUR EARRINGS?

19 A YES, IT IS.

20 Q IN FACT, IT LOOKS LIKE ONE OF THE EARRINGS YOU HAVE
21 ON.

22 A YES.

23 Q DO YOU HAVE THE OTHER ONE ON?

24 A YES, I DO.

25 Q SO THAT'S ANOTHER SET?

MISTI HILL - DIRECT BY MS. LIPINSKI

572

1 A YES.

2 Q THEY DON'T COME IN PACKS OF THREE. JUST SIMILAR TO
3 WHAT YOU HAD ON THAT NIGHT.

4 A (INDICATING YES)

5 Q LET ME SHOW YOU WHAT'S BEEN MARKED IN A GROUP AS
6 STATE'S EXHIBIT 4(A) THROUGH 4(V). THESE ARE PHOTOGRAPHS
7 OF YOU IN THE HOSPITAL. CORRECT?

8 A YES, MA'AM.

9 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER 4(B). WHAT
10 PART OF YOUR BODY IS IN THAT PICTURE?

11 A MY FACE.

12 Q AND WAS THERE ANY INJURY TO THIS SIDE OF YOUR FACE
13 AFTER ---

14 A YES.

15 Q --- THE ASSAULT? WHAT INJURY DID YOU HAVE?

16 A MY WHOLE CHEEK AND MY EYE, MY NOSE.

17 Q AND WHAT INJURY? WAS THERE BRUISING, REDNESS,
18 SCRATCHES?

19 A BRUISING, SWELLING.

20 Q AND IS STATE'S 4(C) JUST A CLOSE-UP OF THAT SAME EYE?

21 A (INDICATING YES)

22 THE COURT - YOU'VE GOT TO ANSWER.

23 A YES.

24 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 4(D) AND 4(E)
25 AND ASK YOU IF THOSE --- DO YOU SEE WHAT'S DEPICTED IN

MISTI HILL - DIRECT BY MS. LIPINSKI

573

1 THESE PHOTOGRAPHS?

2 A WHERE I WAS BEING CHOKED.

3 Q AND DID YOU HAVE THOSE ---

4 A MY NECK.

5 Q --- BRUISES EARLIER IN THE EVENING?

6 A NO, I DID NOT.

7 Q LET ME SHOW YOU 4(F). IS THAT YOUR EAR?

8 A YES.

9 Q IN THE BOTTOM CORNER HERE, WHAT IS THAT INJURY?

10 A THAT'S MY NECK.

11 Q AND WHAT WAS WRONG WITH YOUR EAR?

12 A I HAD BEEN BOXED WITH A CLOSED FIST.

13 Q DID IT HURT?

14 A YES, IT HURT. I HAD A BUSTED EARDRUM.

15 Q IN STATE'S 4(G) AND (H), DID YOU HAVE ANY BRUISING OF
16 ANY KIND TO YOUR CHEST?

17 A YES.

18 Q 4(I) WAS THERE ANY INJURY TO YOUR INNER ELBOW?

19 A YES.

20 Q WAS THAT THERE BEFORE THIS NIGHT?

21 A NO.

22 Q AGAIN, 4(J) WOULD BE A CLOSE-UP OF THAT ELBOW.

23 A (INDICATING YES)

24 THE COURT - YOU'VE GOT TO ANSWER.

25 A YES. SORRY, YOUR HONOR.

MISTI HILL - DIRECT BY MS. LIPINSKI

574

- 1 Q 4 (L) AND 4 (M) ARE THESE PICTURES OF YOUR ELBOW?
- 2 A YES.
- 3 Q AND WERE THOSE INJURIES THAT YOU GOT THAT NIGHT OR
- 4 FROM BEFORE THAT NIGHT?
- 5 A THAT NIGHT.
- 6 Q 4 (N) AND (O) PICTURES OF YOUR KNEES?
- 7 A (INDICATING YES)
- 8 Q AGAIN, WAS THAT BRUISING THERE ---
- 9 A YES.
- 10 Q --- THAT NIGHT?
- 11 A YES. NO. I MEANT IT'S FROM THAT NIGHT.
- 12 Q FROM THAT NIGHT, NOT FROM BEFORE?
- 13 A NO.
- 14 Q IS THERE A SCRAPE HERE?
- 15 A YES.
- 16 Q DID YOU GET THAT THAT NIGHT?
- 17 A YES.
- 18 Q YOUR OTHER ELBOW ALSO HAD SOME?
- 19 A YES.
- 20 Q AND IN THIS PICTURE, 4 (R), YOU STILL HAVE SOME
- 21 BRACELET ON.
- 22 A YES.
- 23 Q AND SIMILAR TO THE BRACELET THAT BROKE OUT THAT
- 24 NIGHT.
- 25 A YES.

MISTI HILL - DIRECT BY MS. LIPINSKI

575

- 1 Q IN 4(S), WHAT BODY PART IS DEPICTED IN 4(S) AND (T)?
2 A MY BACK.
3 Q AND ---
4 A AND THE ZIPPER SCRATCHES.
5 Q THERE'S A SCRATCH? IS THAT KIND OF IN THE MIDDLE OF
6 YOUR BACK?
7 A TO THE LEFT.
8 Q TO THE LEFT.
9 A I MEAN TO RIGHT.
10 Q SO THE --- SOMEONE HAS A LITTLE RULER HERE NEAR THE
11 WOUND.
12 A RIGHT.
13 Q I'M SHOWING YOU 4(S). WHERE IS THIS MARK ON YOUR
14 BODY?
15 A THAT IS RIGHT ABOVE MY BUTTOCKS.
16 THE COURT - YOU NEED TO KEEP YOUR VOICE UP, TOO,
17 SO THEY CAN HEAR YOU.
18 A THAT IS RIGHT ABOVE MY BOTTOM.
19 Q YOU SEE THAT AGAIN IN 4(U)?
20 A YES. THAT IS ZIPPER SCRATCHES.
21 Q IN 4(B) WOULD THAT BE SOME BRUISING OF THE OTHER SIDE
22 OF YOUR BUTTOCKS?
23 A YES.
24 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S 19(A),
25 (B) AND (C) AND ASK YOU IF YOU RECOGNIZE THESE PHOTOGRAPHS

MISTI HILL - DIRECT BY MS. LIPINSKI

576

1 AND ARE YOU DEPICTED IN THE PHOTOGRAPHS?

2 A YES.

3 Q AND DID LAW ENFORCEMENT TAKE THESE PHOTOGRAPHS OR DID
4 SOMEONE ELSE?

5 A SOMEONE ELSE.

6 Q DID YOUR MOM?

7 A YES.

8 Q AND WHEN WERE THEY TAKEN IN RELATION TO WHEN THIS
9 EVENT OCCURRED?

10 A THE VERY NEXT DAY.

11 Q AND IS THERE A DATE ON THE BACK?

12 A YES.

13 Q DID YOU PUT THAT DATE THERE OR DID YOUR MOM?

14 A MY MOTHER.

15 Q AND DO THEY ACCURATELY DEPICT SOME OF THE INJURIES
16 THAT SHOWED UP THE NEXT DAY?

17 A YES.

18 MS. LIPINSKI - YOUR HONOR, AT THIS TIME WE WOULD
19 MOVE 19(A), (B) AND (C) INTO EVIDENCE.

20 MR. LEMEL - WITHOUT OBJECTION, YOUR HONOR.

21 THE COURT - IN.

22 (PHOTOS MARKED INTO EVIDENCE AS STATE'S EXHIBITS
23 19(A), 19(B) AND 19(C).)

24 Q IN LOOKING AT 19(C) THERE APPEARS TO BE SOMETHING
25 GREEN IN YOUR EAR, SOMETHING OF A CERTAIN COLOR. IS THAT

MISTI HILL - DIRECT BY MS. LIPINSKI

577

1 AN EARRING OR WHAT IS THAT?

2 A THAT IS MEDICINE FROM THE DOCTOR.

3 Q AND 19(A) IS A PICTURE OF YOUR CHEST.

4 A RIGHT.

5 Q AND IS THERE BRUISING ANYWHERE ON THIS PICTURE?

6 A ALL OVER.

7 Q AND THE SAME WITH 19(B).

8 A CORRECT ALL --- I MEAN YOU CAN VISUALLY SEE THE
9 BRUISING.

10 MS. LIPINSKI - YOUR HONOR, AT THIS TIME WE WOULD
11 PUBLISH 19(A), (B) AND (C) TO THE JURY.

12 Q THESE INJURIES THAT WE'VE GONE THROUGH, HOW WERE YOU
13 FEELING WHEN YOU WERE AT THE DIXIE DINER? WERE YOU IN ANY
14 PAIN OR DISCOMFORT? WHEN YOU GET THERE AND YOU CALL 9-1-1
15 ---

16 A WHEN I GOT TO --- WHEN I GOT TO THE DIXIE DINER I
17 JUST FELL APART AND I --- I WAS HURT AND ---

18 Q WHERE DID YOU HURT?

19 A MY LOWER BACK AND MY HEAD JUST FELT LIKE A BIG BALL,
20 LIKE IT WAS A PUNCHING BAG, I MEAN LIKE SOMEBODY JUST
21 BOXED ME, AND I COULDN'T HEAR.

22 Q AND WHEN THEY DISCHARGED YOU FROM THE HOSPITAL THEY
23 TOLD YOU TO FOLLOW-UP WITH SOME OTHER DOCTORS.

24 A CORRECT.

25 Q AND WHAT TYPE OF DOCTORS DID YOU HAVE TO FOLLOW-UP

MISTI HILL - DIRECT BY MS. LIPINSKI

578

1 WITH?

2 A EYE, EAR, NOSE AND THROAT.

3 Q WAS THAT FOR ONE EAR OR BOTH EARS?

4 A BOTH EARS.

5 Q AND WHAT TYPE OF TREATMENT DID YOU RECEIVE AFTER
6 THAT?

7 A I HAD TO KEEP HAVING HEARING TESTS, BECAUSE BOTH EAR
8 DRUMS WERE BUSTED. I HAD TO FOLLOW-UP ON MY LIVER. IT
9 WAS LACERATED, AND STILL I FOLLOW-UP WITH MY LIVER AND IT
10 IS STILL ENLARGED ALONG WITH MY SPLEEN IS STILL ENLARGED.

11 Q AND THE RIB INJURIES, DID YOU CONTINUE TO FEEL THAT
12 AFTER YOU LEFT THE HOSPITAL?

13 A YES, I STILL FEEL THOSE TODAY. IF I WANTED TO GO
14 BACK TO MY PROFESSION AS COSMETOLOGY, COSMETOLOGIST, I
15 WOULD HAVE TROUBLE STANDING ALL DAY BECAUSE OF MY RIBS.
16 THE ---

17 Q IMMEDIATELY AFTER IT, WHAT TYPE OF EFFECTS DID YOU
18 FEEL? WERE YOU ABLE TO SIT COMFORTABLY? WERE YOU ABLE --
19 -

20 A OH, NO. I WAS IN TERRIBLE PAIN BECAUSE OF THE NERVES
21 THAT RUN ON YOUR RIBS AND IT --- I --- IT'S ALMOST
22 UNDESCRIBABLE JUST TO BE BEAT LIKE THAT.

23 Q THE INJURIES THAT WE SAW IN THOSE PHOTOGRAPHS, THEY
24 WERE NOT FROM EARLIER IN THE NIGHT? YOU DIDN'T GET THEM
25 BEFORE YOU MET ---

MISTI HILL - DIRECT BY MS. LIPINSKI

579

1 A NO.

2 Q --- WITH MR. DUNOVANT? DID YOU EVER AGREE TO
3 EXCHANGE SEX FOR DRUGS WITH MR. DUNOVANT?

4 A NO.

5 Q DID YOU EVER AGREE TO TRADE SEX FOR A RIDE HOME WITH
6 MR. DUNOVANT?

7 A NO.

8 MS. LIPINSKI - COURT'S INDULGENCE ONE MOMENT.

9 Q AND DO YOU REMEMBER ANYTHING IN PARTICULAR ABOUT THE
10 DEFENDANT'S PENIS?

11 A YES, IT HAD BUMPS ON IT.

12 Q AND WERE YOU ABLE TO DISCERN WHAT TYPE OF BUMPS OR
13 WHAT CAUSED THOSE BUMPS ON HIS PENIS?

14 A I JUST --- IT WAS DARK AND THEY JUST --- I JUST ---
15 THEY --- I DON'T KNOW WHO --- I TALKED TO SO MANY PEOPLE.
16 THEY JUST ASKED ME IF THERE WAS ANYTHING DIFFERENT OR
17 NOTICEABLE ABOUT HIS PENIS, AND I JUST SAID IT HAD BUMPS
18 ON THE SHAFT PART OF IT.

19 Q AND WAS THAT SOMETHING YOU SAW OR SOMETHING YOU FELT?

20 A SOMETHING I FELT.

21 MS. LIPINSKI - THAT'S ALL WE HAVE OF THIS
22 WITNESS, YOUR HONOR.

23 THE COURT - ALL RIGHT, WE'LL TAKE A SHORT
24 REFRESHER BREAK BEFORE WE MOVE INTO CROSS EXAMINATION.

25 (JURY EXITS THE COURTROOM)

MISTI HILL - CROSS BY MR. LEMEL

580

1 THE COURT - ALL RIGHT, WE'LL TAKE A SHORT BREAK.

2 (RECESS TAKEN)

3 THE COURT - THANK YOU. TAKE YOUR SEATS. LET'S

4 GET THE DEFENDANT IN.

5 (MR. DUNOVANT ENTERS THE COURTROOM)

6 THE COURT - STATE READY?

7 MS. LIPINSKI - YES, YOUR HONOR.

8 THE COURT - DEFENSE?

9 MR. LEMEL - YES, YOUR HONOR.

10 THE COURT - ALL RIGHT, BRING IN THE JURY.

11 (JURY RETURNS TO THE COURTROOM)

12 THE COURT - MR. LEMEL.

13 CROSS EXAMINATION

14 BY MR. LEMEL -

15 Q MS. HILL, YOU SPOKE WITH THE POLICE AT PIEDMONT
16 MEDICAL CENTER.

17 A CORRECT.

18 Q YOU SPOKE WITH DETECTIVE BOMAR?

19 A CORRECT.

20 Q YOU SPOKE WITH DETECTIVE TOLSON.

21 A CORRECT.

22 Q AND I'M GOING TO ASK YOU ---

23 THE COURT - MAKE SURE YOU KEEP YOUR VOICE UP.

24 MAKE SURE YOU SPEAK LOUD ENOUGH FOR EVERYONE TO HEAR YOU.

25 A YES, SIR.

MISTI HILL - CROSS BY MR. LEMEL

581

1 Q OKAY. AND YOU TOLD THEM WHAT HAPPENED THAT NIGHT.

2 A UM, AFTER YOU'VE BEEN BOXED IN THE HEAD, IT'S ---
3 COULD NOT ALL BE EXACTLY WHAT HAPPENED.

4 Q YOU TOLD THEM WHAT HAPPENED THAT NIGHT OR NOT?

5 A PLEASE ACCEPT MY ANSWER.

6 Q OKAY. I'M GOING TO ASK THAT YOU ANSWER MY QUESTIONS.

7 OKAY? SO YOU TOLD THEM WHAT HAPPENED THAT NIGHT OR NOT?

8 A POSSIBLY.

9 Q OKAY. AND YOU HAD TO TELL THEM WHAT HAPPENED
10 BECAUSE, OF COURSE, NEITHER OF THEM WAS BEHIND THE WEEPING
11 MARY BAPTIST CHURCH AT ABOUT 6:00 O'CLOCK THAT MORNING.

12 A CORRECT.

13 Q SO YOU HAD TO TELL THEM WHAT HAPPENED.

14 A CORRECT.

15 Q YOU HAD TO TELL THEM WHEN IT HAPPENED.

16 A YES, SIR.

17 Q YOU HAD TO TELL THEM HOW IT HAPPENED.

18 A YES, SIR.

19 Q YOU HAD TO TELL THEM WHO WAS INVOLVED.

20 A YES, SIR.

21 Q AND THEY ASKED YOU LOTS OF QUESTIONS.

22 A YES, SIR.

23 Q YOU HAD TO GIVE THEM LOTS OF ANSWERS.

24 A YES, SIR.

25 Q AND THEY WANTED TO KNOW EVERYTHING.

MISTI HILL - CROSS BY MR. LEMEL

582

- 1 A YES, SIR.
- 2 Q AND YOU TOLD THEM EVERYTHING YOU COULD.
- 3 A UM, --- I DON'T RECALL.
- 4 Q YOU WANTED TO HELP THEM?
- 5 A I TRIED TO HELP THEM.
- 6 Q YOU WANTED TO GIVE THEM AS MUCH AS POSSIBLE.
- 7 A YES, SIR.
- 8 Q AND WHEN YOU WERE TALKING WITH THE POLICE OFFICERS
- 9 THEY WERE NICE TO YOU.
- 10 A YES, SIR.
- 11 Q THEY WERE POLITE TO YOU.
- 12 A YES, SIR.
- 13 Q THEY PAID ATTENTION TO YOU.
- 14 A YES, SIR.
- 15 Q DIDN'T PUT ANY PRESSURE ON YOU AT ALL.
- 16 A NO, SIR.
- 17 Q DIDN'T TRY TO COERCE YOU AT ALL.
- 18 A NO, SIR.
- 19 Q AND ALSO WHILE YOU WERE AT THE HOSPITAL YOU SPOKE
- 20 WITH DR. RIMMER.
- 21 A UH, VERY SHORTLY.
- 22 Q AND HE WAS POLITE TO YOU.
- 23 A YES, SIR.
- 24 Q AND HE PAID ATTENTION TO YOU.
- 25 A YES, SIR.

MISTI HILL - CROSS BY MR. LEMEL

583

- 1 Q AND HE ASKED YOU QUESTIONS.
- 2 A YES, SIR.
- 3 Q AND YOU GAVE HIM ANSWERS.
- 4 A YES, SIR.
- 5 Q AND YOU GAVE HIM THOSE ANSWERS SO THAT YOU COULD GET
- 6 MEDICAL TREATMENT.
- 7 A CORRECT.
- 8 Q AND SO YOU WERE TRYING TO COOPERATE WITH HIM DURING
- 9 THAT PERIOD OF TIME.
- 10 A CORRECT.
- 11 Q OKAY. ALSO WHILE AT THE HOSPITAL YOU SPOKE WITH THE
- 12 NURSES.
- 13 A YES, SIR.
- 14 Q AND, AGAIN, THEY WERE POLITE TO YOU.
- 15 A YES, SIR.
- 16 Q THEY PAID ATTENTION TO YOU.
- 17 A YES, SIR.
- 18 Q THEY ASKED YOU QUESTIONS.
- 19 A YES, SIR.
- 20 Q AND YOU WANTED TO ANSWER THEIR QUESTIONS.
- 21 A YES, SIR.
- 22 Q SO YOU COULD ASSIST THEM WITH THEIR EXAMINATION.
- 23 A YES, SIR.
- 24 Q EVEN BEFORE YOU GOT TO THE HOSPITAL YOU SPOKE WITH
- 25 DEPUTY CHILDERS.

MISTI HILL - CROSS BY MR. LEMEL

584

- 1 A YES, SIR.
- 2 Q THAT WAS THE DEPUTY WHO TESTIFIED FIRST?
- 3 A CORRECT.
- 4 Q AND THAT WAS THE VERY FIRST POLICE OFFICER YOU SAW
- 5 THAT DAY.
- 6 A CORRECT, AT THE DIXIE DINER.
- 7 Q AND THAT WAS RIGHT AFTER THIS HAPPENED.
- 8 A YES, SIR.
- 9 Q AND HE WAS NICE TO YOU?
- 10 A YES, SIR.
- 11 Q AND YOU WERE LOOKING TO HIM FOR HELP.
- 12 A CORRECT.
- 13 Q AND HE WAS TRYING TO GIVE YOU HELP.
- 14 A CORRECT.
- 15 Q AND HE WAS TRYING TO HELP YOU TRACK DOWN THE PERSON
- 16 YOU SAID RAPED YOU.
- 17 A CORRECT.
- 18 Q AND HE ASKED YOU QUESTIONS.
- 19 A YES, SIR.
- 20 Q AND YOU GAVE HIM ANSWERS.
- 21 A YES, SIR.
- 22 Q RIGHT AFTER THIS HAPPENED.
- 23 A CORRECT.
- 24 Q AND YOU WERE TRYING TO WORK WITH HIM AS HARD AS YOU
- 25 COULD.

MISTI HILL - CROSS BY MR. LEMEL

585

- 1 A YES, WHILE HURTING.
- 2 Q AND HE ASKED YOU ABOUT YOUR PROPERTY.
- 3 A YES, SIR.
- 4 Q AND YOU TOLD HIM ABOUT A PURSE.
- 5 A YES, SIR.
- 6 Q AND YOU TOLD HIM IT WAS LEFT IN THE CAR.
- 7 A YES, SIR.
- 8 Q ONE OF THE THINGS THAT YOU ASKED DEPUTY CHILDERS
- 9 ABOUT OR DEPUTY CHILDERS ASKED YOU ABOUT WAS WHO DID THIS.
- 10 A YES, SIR.
- 11 Q AND DO YOU REMEMBER TELLING HIM I DON'T KNOW?
- 12 A UM, I DON'T RECALL MY ANSWER.
- 13 Q ONE OF THE THINGS THAT DR. RIMMER ASKED YOU WAS ABOUT
- 14 THE PERSON THAT DID THIS DO YOU.
- 15 A YES, SIR.
- 16 Q AND YOU TOLD HIM THAT IT WAS A DRUG DEALER.
- 17 A YES, SIR.
- 18 Q YOU TOLD HIM THAT IT WAS A DRUG DEALER THAT YOU HAD
- 19 BOUGHT DRUGS FROM EARLIER THAT DAY.
- 20 A NO, SIR.
- 21 Q AND THE OFFICERS ASKED YOU TO IDENTIFY WHO DID THIS
- 22 TO YOU.
- 23 A YES, SIR.
- 24 Q AND YOU TOLD THEM IT WAS SOMEONE YOU RECOGNIZED FROM
- 25 YOUR PAST.

MISTI HILL - CROSS BY MR. LEMEL

586

- 1 A CORRECT.
- 2 Q AND THE NURSES ASKED YOU WHO DID THIS TO YOU.
- 3 A CORRECT.
- 4 Q AND YOU TOLD THIS WAS AN ACQUAINTANCE.
- 5 A CORRECT.
- 6 Q BUT AT THE POINT IN TIME WHEN YOU WALKED FROM WHERE
- 7 YOU WERE BY THE ICE MACHINE OVER TO THE PUMPS WHERE HE WAS
- 8 STANDING YOU DIDN'T RECOGNIZE WHO HE WAS.
- 9 A CORRECT.
- 10 Q IT WAS ONLY AFTER YOU SAY YOU GOT IN THE CAR THAT YOU
- 11 RECOGNIZED HIM.
- 12 A WITH THE VOICE.
- 13 Q AND, MS. HILL, THIS IS NOT THE FIRST TIME THAT YOU'VE
- 14 BEEN IN COURT.
- 15 A NO.
- 16 Q AND IN 1999 AS INDICATED YOU WERE CONVICTED OF A
- 17 FELONY.
- 18 A YES.
- 19 Q AND THAT WAS FOR FINANCIAL TRANSACTION CARD FRAUD.
- 20 A YES.
- 21 Q LET'S TALK ABOUT THAT NIGHT AND THE DAY BEFORE. YOU
- 22 GOT OFF WORK AT 6:00 O'CLOCK ---
- 23 A CORRECT.
- 24 Q --- AT THE FEED STORE.
- 25 A CORRECT.

MISTI HILL - CROSS BY MR. LEMEL

587

1 Q THAT WAS A FULL-TIME JOB.

2 A PART-TIME.

3 Q OKAY. BUT YOU WORKED 9:00 TO 6:00?

4 A THAT DAY.

5 Q AND YOU WERE SCHEDULED TO WORK ON FRIDAY, TOO, OR
6 THURSDAY, EXCUSE ME, THE NEXT DAY.

7 A YES.

8 Q OKAY. AND THAT NIGHT AS THE NIGHT WENT ON ABOUT 9:00
9 O'CLOCK YOU WENT TO YOUR FIRST BAR.

10 A I DID.

11 Q YOU WERE --- AND THIS WAS MORE TRANSITIONING FROM
12 WEDNESDAY NIGHT INTO THURSDAY MORNING. CORRECT? FROM MAY
13 2ND TO MAY 3RD?

14 A CORRECT.

15 Q ALL RIGHT. AND YOU WENT TO THE BAR WITH FRIENDS.

16 A CORRECT.

17 Q BUT THOSE FRIENDS LEFT YOU.

18 A PER SE. I MEAN THEY DIDN'T LEAVE ME. IT WAS A
19 MUTUAL GOOD-BYE.

20 Q OKAY. SO YOU FOUND SOME OTHER FRIENDS.

21 A RIGHT. IT'S A PRIVATE BAR, SO YOU KNOW PEOPLE.

22 Q AND YOU SAY THAT FRIEND'S NAME AS I UNDERSTAND IT IS
23 A LADY BY THE NAME OF LYNN RABIE.

24 A CORRECT.

25 Q AND YOU DIDN'T GIVE THAT NAME TO THE OFFICERS THAT

MISTI HILL - CROSS BY MR. LEMEL

588

- 1 NIGHT.
- 2 A NO.
- 3 Q AND YOU DIDN'T GIVE IT TO THEM ANY OTHER TIME THAT
- 4 YOU SPOKE WITH THEM.
- 5 A NO.
- 6 Q AND YOU GAVE THEM SHAVONDA'S (SIC) NAME.
- 7 A SHAVONE'S.
- 8 Q BUT YOU DIDN'T GIVE THEM SHAVONE'S LAST NAME.
- 9 A I DIDN'T FEEL THE NEED.
- 10 Q OKAY. SO YOU GO FROM THE FIRST BAR WHERE YOU'D BEEN
- 11 DRINKING.
- 12 A CORRECT.
- 13 Q TO THE SECOND BAR.
- 14 A YES.
- 15 Q WHERE THEY'RE SINGING KARAOKE.
- 16 A YES.
- 17 Q EVERYBODY'S HAVING A GOOD TIME.
- 18 A YES.
- 19 Q AND YOU'RE DRINKING MORE.
- 20 A YES.
- 21 Q AND THE FRIEND THAT TOOK YOU FROM --- INTO THE FIRST
- 22 CLUB, SHE LEFT TOO.
- 23 A YES.
- 24 Q AND AT THAT POINT IN TIME YOU DECIDED YOU WERE GOING
- 25 TO GET A RIDE FROM SOME OTHER FRIENDS.

MISTI HILL - CROSS BY MR. LEMEL

589

- 1 A CORRECT.
- 2 Q A LADY WHO YOU'D SEEN OUT.
- 3 A CORRECT.
- 4 Q BUT YOU DIDN'T KNOW HER NAME.
- 5 A CORRECT.
- 6 Q YOU DIDN'T KNOW WHERE SHE LIVED.
- 7 A I KNEW SHE LIVED IN BESSEMER CITY.
- 8 Q BUT WHERE IN BESSEMER CITY YOU DID NOT KNOW.
- 9 A CORRECT.
- 10 Q AND SO HER SON ARRIVES.
- 11 A CORRECT.
- 12 Q WHO YOU DO NOT KNOW.
- 13 A CORRECT.
- 14 Q AND YOU GOT IN THE CAR WITH THIS MOTHER AND SON.
- 15 A YES.
- 16 Q AND DROVE AWAY WITH THESE PEOPLE YOU DID NOT KNOW.
- 17 A I KNEW THE LADY.
- 18 Q BUT YOU DIDN'T KNOW HER NAME.
- 19 A THE LADY WAS AN ACQUAINTANCE.
- 20 Q OKAY. WHICH MEANS YOU DIDN'T KNOW HER NAME.
- 21 A CORRECT.
- 22 Q DIDN'T KNOW WHERE SHE LIVES.
- 23 A SHE LIVES IN BESSEMER CITY.
- 24 Q BUT EXACTLY WHERE IN BESSEMER CITY YOU DON'T KNOW.
- 25 A CORRECT.

MISTI HILL - CROSS BY MR. LEMEL

590

1 Q AND OVER THE COURSE OF THAT DRIVE HOME YOU THOUGHT
2 THEY WERE GOING TO GO BUY DRUGS.

3 A THAT'S WHAT WAS MENTIONED IN THE CAR.

4 Q AND YOU --- THAT'S WHAT YOU TOLD THE OFFICERS, THAT
5 THEY WERE GOING TO GO BUY DRUGS.

6 A YES.

7 Q BUT TODAY WHEN YOU TESTIFIED YOU INDICATED THAT YOU
8 WERE SCARED BECAUSE SHE WAS TOO INTOXICATED TO DRIVE.

9 A AND IT WAS ALSO MENTIONED ---

10 Q ABOUT THE DRUGS?

11 A --- I SAID --- YES.

12 Q AND YOU DIDN'T WANT TO BE AROUND PEOPLE WITH DRUGS.

13 A CORRECT. BEEN CLEAN FOR TWO YEARS AT THAT TIME.

14 Q SO YOU ASKED THEM TO DROP YOU OFF.

15 A YES.

16 Q AT THIS STORE.

17 A YES.

18 Q AT 4:30 IN THE MORNING.

19 A YES.

20 Q AND WHILE THERE YOU SAID YOU CALLED A CAB.

21 A YES.

22 Q AND WERE WAITING ON THE CAB FOR THIRTY OR FORTY
23 MINUTES.

24 A CORRECT.

25 Q BUT NO CAB EVER CAME IN.

MISTI HILL - CROSS BY MR. LEMEL

591

- 1 A CORRECT.
- 2 Q AND YOU NEVER WENT INSIDE THE STORE.
- 3 A NO.
- 4 Q AND YOU DIDN'T CALL YOUR MOTHER.
- 5 A NO. I HAVE MORE RESPECT.
- 6 Q OKAY. AND YOU LIVE WITH YOUR MOTHER.
- 7 A YES, I DO. I LIVE WITH MY MOTHER AND MY FATHER.
- 8 Q AND AS I UNDERSTAND IT, THEY LET YOU MOVE BACK IN
- 9 ABOUT TWO YEARS AGO ---
- 10 A UM, YES.
- 11 Q --- WHEN YOU GOT CLEANED UP.
- 12 A CORRECT.
- 13 Q AND YOU SAID THAT TWO YEARS AGO YOU HAD A PROBLEM
- 14 WITH CRACK COCAINE.
- 15 A YES.
- 16 Q AND YOU WERE USING A SIGNIFICANT AMOUNT OF CRACK
- 17 COCAINE AT THAT POINT IN TIME?
- 18 A NOT EVERYDAY USE, WEEKENDS.
- 19 Q AND THE HIGH THAT YOU GOT FROM CRACK COCAINE WAS VERY
- 20 POWERFUL.
- 21 A NO.
- 22 Q NO? YOU DIDN'T GET A BIG HIGH FROM USING CRACK
- 23 COCAINE?
- 24 A NO, I DID NOT.
- 25 Q CRACK COCAINE YOU DIDN'T FIND YOURSELF GROWING

MISTI HILL - CROSS BY MR. LEMEL

592

- 1 ADDICTED TO IT?
- 2 A NOT WHEN I LOOK BACK ON IT.
- 3 Q OKAY.
- 4 A I NEVER STOLE OR, YOU KNOW, ANYTHING LIKE THAT FOR
- 5 IT. AND CERTAINLY NEVER STOLE OR TRADED MY BODY FOR IT.
- 6 Q BECAUSE CRACK COCAINE TO YOU WASN'T AN ADDICTION.
- 7 A RIGHT. ALCOHOL WAS MORE OF AN ADDICTION TO ME.
- 8 Q WELL, WE'RE TALKING ABOUT YOUR CRACK COCAINE PROBLEM
- 9 RIGHT NOW. SO YOU SAID THAT CRACK COCAINE WASN'T AN
- 10 ADDICTION TO YOU.
- 11 A I LIKED IT, BUT IT WAS NOT AN EVERYDAY ADDICTION.
- 12 Q SO --- BECAUSE YOU DIDN'T USE IT EVERYDAY IT WASN'T
- 13 AN ADDICTION FOR YOU.
- 14 A CORRECT.
- 15 Q YOU WERE JUST USING IT ON THE WEEKENDS.
- 16 A AND NOT EVERY WEEKEND.
- 17 Q BUT A LOT OF WEEKENDS.
- 18 A BUT IT WAS A PROBLEM.
- 19 Q BUT IT DIDN'T HAVE THAT MUCH OF AN EFFECT ON YOU.
- 20 A IT BEGAN TO. THAT'S WHY I WENT TO REHAB.
- 21 Q YOU DIDN'T GET THAT HIGH FROM IT.
- 22 A UM, YES.
- 23 Q OKAY. NOW, WHILE YOU'RE THERE AT THE STORE, YOU WERE
- 24 STANDING OVER BY THE ICE MAKER.
- 25 A CORRECT.

MISTI HILL - CROSS BY MR. LEMEL

593

1 Q TERRY WAS AT THE GAS PUMP WHEN HE CAME OUT OF THE
2 STORE.

3 A NO, WE TALKED BEFORE HE GOT TO THE GAS PUMP.

4 Q YOU LEFT WHERE YOU WERE STANDING.

5 A NO.

6 Q YOU DIDN'T?

7 A (NO RESPONSE)

8 Q YOU NEVER WALKED OVER TOWARDS THE GAS PUMP?

9 A NO.

10 Q OKAY.. DID HE PULL HIS CAR AROUND TO THE CORNER BY
11 WHERE YOU WERE STANDING?

12 A NO.

13 Q SO YOU WOULD'VE HAD TO WALK OVER TO THE GAS PUMP TO
14 GET INTO HIS CAR.

15 A NO. WHEN HE CAME OUT THE DOOR AND I WAS STANDING
16 OVER HERE, WE TALKED.

17 Q AND YOU NEVER WENT TOWARDS THE GAS PUMP?

18 A AFTER HE SAID HE WOULD GIVE ME A RIDE.

19 Q SO YOU'RE SAYING THAT WHILE HE'S WALKING ACROSS
20 YOU'RE HAVING A CONVERSATION WHERE HE JUST OFFERS YOU A
21 RIDE?

22 A HE STOPS AFTER HE COMES OUT OF THE STORE.

23 Q OKAY. AND AT THAT POINT IN TIME YOU SAY HE OFFERED
24 YOU A RIDE HOME.

25 A CORRECT.

MISTI HILL - CROSS BY MR. LEMEL

594

1 Q BUT HE DIDN'T TAKE YOU HOME.

2 A CORRECT.

3 Q SO THIS WAS THE SECOND PERSON THAT YOU WERE RIDING
4 WITH THAT NIGHT THAT DIDN'T TAKE YOU HOME.

5 A ONE I REQUESTED NOT TO TAKE HOME. ONE TOOK IT UPON
6 HIMSELF NOT TO TAKE ME HOME.

7 Q THE SECOND PERSON IN ONE NIGHT WHO WOULDN'T TAKE YOU
8 HOME.

9 A YES.

10 Q YOU TOLD THE PEOPLE AT THE HOSPITAL THAT YOU WERE
11 BIPOLAR.

12 A YES.

13 Q YOU TOLD THE PEOPLE AT THE HOSPITAL THAT YOU WERE ON
14 EFFEXOR.

15 A (INDICATING YES) YES.

16 Q AND I APPRECIATE YOUR ANSWERING THAT VERBALLY FOR ME.
17 YOU TOLD THE ---

18 MS. LIPINSKI - YOUR HONOR, I'M GOING TO OBJECT
19 TO HIM COMMENTING ON HER ANSWER. I UNDERSTAND HE'S TRYING
20 TO DO IT, BUT I APPRECIATE THAT ANSWER VERSUS OTHER SEEMS
21 TO BE AN EDITORIALIZING ON THE COMMENT.

22 MR. LEMEL - RIGHT. A LITTLE DISCRETION THERE.

23 Q YOU TOLD THEM YOU WERE ON SEROQUEL.

24 A YES.

25 Q YOU WERE ACTUALLY ON BOTH THOSE MEDICATIONS AT THIS

MISTI HILL - CROSS BY MR. LEMEL

595

- 1 TIME.
- 2 A YES, I WAS..
- 3 Q AND YOU WERE TAKING BOTH OF THOSE MEDICATIONS AT THIS
- 4 TIME.
- 5 A YES, I WAS.
- 6 Q AND YOU'D TAKEN YOUR MEDICATION ON MAY 2ND, THAT WAS
- 7 WEDNESDAY..
- 8 A YES.
- 9 Q BUT YOU HAD NOT YET TAKEN IT ON MAY 3RD.
- 10 A I TAKE MY MEDICINE AT NIGHT.
- 11 Q SO YOU HAD TAKEN --- DO YOU USUALLY HAVE TO GO HOME
- 12 TO TAKE YOUR MEDICINE?
- 13 A NO, I HAVE IT WITH ME.
- 14 Q OKAY. SO YOU TOOK IT ON MAY 2ND.
- 15 A CORRECT.
- 16 Q BUT YOU HADN'T TAKEN IT YET ON MAY 3RD BECAUSE IT
- 17 WASN'T AT NIGHT.
- 18 A YES.
- 19 Q OKAY.
- 20 A IT WAS NIGHTTIME.
- 21 Q WELL, IT WAS ACTUALLY EARLY MORNING ON MAY 3RD.
- 22 A WHEN DID --- GO AHEAD.
- 23 Q I WANT TO MAKE SURE WE'RE ON THE SAME PAGE... YOU GOT
- 24 OFF WORK FROM MAY 2ND. RIGHT? AND YOU WENT OUT THAT
- 25 NIGHT.

MISTI HILL - CROSS BY MR. LEMEL

596

- 1 A OKAY, SO I TOOK --- YES. YES.
- 2 Q OKAY. AND THAT ---
- 3 A I TOOK IT MAY 2ND. YES.
- 4 Q FROM MAY 2ND INTO THE MORNING OF MAY 3RD.
- 5 A RIGHT.
- 6 Q OKAY. ALL RIGHT. NOW, YOU KNOW THAT YOU'RE NOT
- 7 SUPPOSED TO DRINK ALCOHOL WHEN YOU TAKE EFFEXOR.
- 8 A RIGHT. YOU'RE NOT SUPPOSED TO DRINK ALCOHOL WITH
- 9 LOTS OF MEDICATIONS.
- 10 Q BUT ONE OF THOSE MEDICATIONS IS A MEDICATION YOU WERE
- 11 ON, EFFEXOR.
- 12 A CORRECT.
- 13 Q AND YOU KNOW YOU'RE NOT SUPPOSED TO DRINK ALCOHOL
- 14 WHEN YOU TAKE SEROQUEL.
- 15 A CORRECT.
- 16 Q AND YOU KNOW THAT YOU'RE NOT SUPPOSED TO DRINK
- 17 ALCOHOL WHEN YOU SUFFER FROM BIPOLAR DISORDER.
- 18 A CORRECT.
- 19 Q AND YOU ADMIT SMOKING CRACK COCAINE THAT NIGHT.
- 20 A ONE HIT.
- 21 Q WHILE YOU WERE IN THE CAR ---
- 22 A YES.
- 23 Q --- WITH TERRY.
- 24 A HE SAID HE WAS TONY.
- 25 Q YOU STATED TO THE HOSPITAL THAT YOU DON'T NORMALLY DO

MISTI HILL - CROSS BY MR. LEMEL

597

1 DRUGS.

2 A AND I DON'T.

3 Q BUT ON THIS PARTICULAR NIGHT YOU DECIDED TO SMOKE
4 CRACK COCAINE.

5 A YES. LIKE YOU SAID, YOU'RE NOT SUPPOSED TO DRINK ON
6 EFFEXOR OR SEROQUEL, SO MY JUDGMENT TO SMOKE CRACK WAS
7 IMPAIRED.

8 Q OKAY. AND WHEN YOUR JUDGMENT'S IMPAIRED, YOU
9 SOMETIMES DO THINGS YOU REGRET.

10 A NOT --- NOT UM --- CAN'T FIND THE WORDS I'M LOOKING
11 FOR. NOT ---

12 Q TAKE YOUR TIME.

13 A --- NOT ANYTHING VERY SIGNIFICANT.

14 Q OKAY. YOU WOULDN'T HAVE CALLED SMOKING CRACK COCAINE
15 SIGNIFICANT?

16 A NOT ONE HIT.

17 Q OKAY. SO ONE HIT OF CRACK COCAINE'S NOT A BIG DEAL
18 TO YOU?

19 A NO, NOT THAT I'D BEEN DRINKING AND RELAPSED TO ONE
20 HIT, NO.

21 Q AND RELAPSING ISN'T A BIG DEAL TO YOU?

22 A YES, I WOULD BE UPSET THE NEXT DAY, BUT I DIDN'T SIT
23 THERE AND SMOKE TONS AND TWO AND THREE HUNDRED DOLLARS.

24 Q OKAY, IF YOU WERE ---

25 A SO NO.

MISTI HILL - CROSS BY MR. LEMEL

598

1 Q --- SMOKING TWO AND THREE HUNDRED DOLLARS, THAT WOULD
2 BE A BIG DEAL.

3 A YES, THAT WOULD.

4 Q OKAY. AND THAT WOULD CERTAINLY GET YOU UPSET THE
5 NEXT DAY THAT YOU HAD RELAPSED.

6 A RIGHT.

7 Q YOU LIVE OFF OF HIGHWAY 321.

8 A I DO.

9 Q JUST OVER THE BORDER INTO NORTH CAROLINA.

10 A YES, SIR.

11 Q AND THE WEEPING MARY BAPTIST CHURCH IS OFF OF 321 AS
12 WE'VE DISCUSSED.

13 A YES, SIR.

14 Q AND IT'S ROUGHLY FOUR MILES FROM YOUR HOUSE DOWN THE
15 ROAD TO WEEPING MARY BAPTIST CHURCH.

16 A (INDICATING NO)

17 Q I'M SORRY, YOU NEED TO ANSWER YES OR NO.

18 A NO. THIRTEEN.

19 Q WE HEARD OFFICER MCSWAIN FROM GASTON COUNTY --- I'M
20 NOT SURE IF YOU CAN SEE THIS MAP. CAN YOU SEE THIS MAP
21 FROM WHERE YOU ARE?

22 A I HAVE SEEN IT.

23 Q OKAY. CLOCKED IT FROM WHERE THIS 1721 BESSEMER CITY
24 ROAD IS DOWN TO WEEPING MARY BAPTIST CHURCH IS ABOUT TEN
25 OR FIFTEEN MILES, THEN ALL THE WAY DOWN 321. DO YOU

MISTI HILL - CROSS BY MR. LEMEL

599

1 . REMEMBER THAT?

2 A YES.

3 MS. LIPINSKI - YOUR HONOR, I'M GOING TO OBJECT
4 AT THIS POINT. HE'S PITTING ONE WITNESS AGAINST THE OTHER
5 AS TO WHAT HER KNOWLEDGE IS.

6 THE COURT - I DON'T THINK HE'S TRYING TO PIT
7 HER. I THINK HE'S JUST TRYING TO ESTABLISH A DISTANCE.
8 IF IT GETS TO THAT I'LL STOP IT.

9 Q AND YOU WOULD AGREE THAT FORBES ROAD IT DOES COME OFF
10 321. THERE'S PROBABLY ABOUT A MILE THERE. RIGHT?

11 A RIGHT.

12 Q BUT IT'S ROUGHLY A THIRD TO A QUARTERS OF THE WAY
13 CLOSER. WELL, STRIKE --- IT'S ROUGHLY TWO-THIRDS TO THREE
14 QUARTERS OF THE WAY DOWN 321 TOWARDS WHERE WEEPING MARY
15 BAPTIST CHURCH IS. YOU'D AGREE WITH ME ON THAT.

16 A I DON'T KNOW LIKE TWO-THIRDS AND ALL THIS. YOU'D
17 HAVE TO GO MILES OR ----

18 Q OKAY, WELL, LET'S ASSUME FOR A SECOND IT'S FIFTEEN
19 MILES.

20 A OKAY.

21 Q AND JUST LOOKING AT THE MAP --- WOULD IT HELP YOU TO
22 COME LOOK AT THE MAP?

23 A NO.

24 Q OKAY. IF YOU DIVIDE THIS INTO SEGMENTS ---

25 A RIGHT.

MISTI HILL - CROSS BY MR. LEMEL

600

1 Q --- YOU KNOW WHAT A HALF IS. RIGHT?

2 A YES.

3 Q WELL, IT'S --- YOUR HOUSE IS MORE THAN HALF-WAY TO
4 WEEPING MARY BAPTIST CHURCH. IF YOU START THERE ---

5 A YES.

6 Q --- IT'S MORE THAN HALF-WAY, SOMEWHERE IN BETWEEN A
7 HALF AND SAY A QUARTER --- DO YOU KNOW WHAT A QUARTER OF
8 THE WAY?

9 A YES.

10 Q OKAY, SO YOU'D AGREE IT'S SOMEWHERE BETWEEN A HALF
11 AND A QUARTER OF THE WAY DOWN.

12 A RIGHT.

13 Q OKAY. AND A FEW MINUTES FURTHER SOUTH IF WE WERE TO
14 TAKE THAT MAP DOWN A COUPLE OF MILES IS THE CITY OF
15 CLOVER.

16 A CORRECT.

17 Q AND YOU'VE BEEN FROM YOUR HOUSE TO THE CITY OF CLOVER
18 BEFORE.

19 A YES, SIR.

20 Q BASICALLY IN ORDER TO GET THERE YOU WOULD DRIVE RIGHT
21 BY WHERE WEEPING MARY BAPTIST CHURCH IS.

22 A I'VE NEVER NOTICED IT.

23 Q OKAY. YOU ACTUALLY ADMIT THAT YOU HAD BREAKFAST ONE
24 DAY AT THE DIXIE DINER WHICH IS RIGHT THERE NEXT TO THE
25 WEEPING MARY BAPTIST CHURCH.

MISTI HILL - CROSS BY MR. LEMEL

601

1 A CORRECT.

2 Q OKAY. AND ---

3 A BUT THE CHURCH IS NOT RIGHT BESIDE THE DIXIE DINER.

4 YOU HAVE TO GO BACK OUT ON 321 TO GET TO THE CHURCH.

5 Q I UNDERSTAND THAT, BUT THEY'RE RELATIVELY CLOSE

6 PROXIMITY.

7 A RIGHT. I GUESS IF YOU'RE LOOKING FOR THE CHURCH THEN

8 YOU WOULD KNOW IT WAS THERE.

9 Q SURE. AND THE CHURCH ITSELF DOES NOT SIT DIRECTLY ON

10 321.

11 A CORRECT.

12 Q IT'S OFFSET BACK FROM THE MAIN ROAD.

13 A YES, SIR.

14 Q COUPLE HUNDRED FEET UP A DRIVEWAY.

15 A YES, SIR.

16 Q OKAY. NOW, WE DISCUSSED EARLIER THAT YOUR PARENTS

17 LET YOU MOVE IN ABOUT TWO YEARS BACK.

18 A YES, SIR.

19 Q AS YOU WERE GOING THROUGH REHAB FOR YOUR CRACK

20 COCAINE.

21 A YES, SIR.

22 Q AND YOU WENT THROUGH REHAB.

23 A YES, SIR.

24 Q AND YOU WENT THROUGH NARCOTICS ANONYMOUS.

25 A NO, I JUST WENT THROUGH REHAB FOR TWO DAYS.

MISTI HILL - CROSS BY MR. LEMEL

602

1 Q JUST TWO DAYS REHAB. DID YOU GO THROUGH NARCOTICS
2 ANONYMOUS?

3 A DID NOT.

4 Q SO THE EXTENT OF YOUR TREATMENT FOR YOUR CRACK
5 COCAINE ADDICTION WAS TWO DAYS OF TREATMENT?

6 A CORRECT.

7 Q AND YOU TOLD THEM AT THAT POINT IN TIME THAT YOU'D
8 KICKED YOUR CRACK COCAINE HABIT?

9 A CORRECT.

10 Q AND THEY BELIEVED THAT YOU HAD KICKED YOUR CRACK
11 COCAINE HABIT.

12 A I BELIEVED AND I DID.

13 Q WHEN YOU WERE GOING THROUGH REHAB, DID THEY EVER TELL
14 YOU THAT YOU SHOULDN'T BE DRINKING ALCOHOL?

15 A I DON'T RECALL.

16 Q YOU THINK IT'S A GOOD IDEA FOR YOU AS AN ADDICT TO BE
17 DRINKING ALCOHOL?

18 A THAT WOULD BE BASED UPON MY DECISION AND ---

19 Q OKAY.

20 A --- THE TIME OR THE PLACE.

21 Q OKAY. WHAT ABOUT DRINKING ALCOHOL AT TWO BARS AT
22 NIGHT UNTIL 3:30, 4:30 IN THE MORNING? IS THAT A GOOD
23 IDEA AS AN ADDICT?

24 A NO.

25 Q OKAY. AND YOU SAID YOU HAD TOO MUCH RESPECT FOR YOUR

MISTI HILL - CROSS BY MR. LEMEL

603

1 PARENTS TO CALL THEM AT 4:30 IN THE MORNING AFTER YOU'D
2 BEEN OUT AT THE BARS ALL THAT TIME.

3 A RIGHT.

4 Q BECAUSE THEY WOULD BE VERY DISAPPOINTED IN YOU
5 DISPLAYING THAT BEHAVIOR, WOULDN'T THEY?

6 A CORRECT.

7 Q AND IT WOULD BE VERY DISAPPOINTING TO THEM FOR THEM
8 TO FIND OUT THAT YOU HADN'T BEATEN THE CRACK COCAINE
9 ADDICTION, THAT YOU, IN FACT, SMOKED --- STILL SMOKING
10 CRACK COCAINE, WOULDN'T IT?

11 A WELL, AT THAT TIME I HAD NOT.

12 Q BUT YOU DID THAT NIGHT.

13 A WELL, AT THE TIME THAT YOU'RE TALKING ABOUT ME
14 CALLING THEN I HAD ONT SMOKED ANYTHING.

15 Q BUT YOU HADN'T CALLED. RIGHT?

16 A RIGHT, I CALLED A CAB.

17 Q BECAUSE YOU DIDN'T WANT THEM TO KNOW YOU'D BEEN OUT
18 ALL NIGHT DRINKING.

19 A CORRECT.

20 Q AND IT WOULD'VE BEEN EVEN WORSE FOR YOU TO TELL THEM
21 THAT NOT ONLY HAD YOU BEEN DRINKING ALL NIGHT, THAT YOU
22 ALSO HAD BEEN SMOKING CRACK COCAINE.

23 A BUT I HAD NOT SMOKED ANYTHING AT THAT TIME.

24 Q BUT LATER ON YOU DID. AT THE END OF THAT NIGHT YOU
25 HAD SMOKED CRACK COCAINE. RIGHT?

MISTI HILL - CROSS BY MR. LEMEL

604

1 A YES.

2 Q AND THAT NIGHT YOU HAD GOTTEN DRUNK.

3 A DRUNK AND RAPED.

4 Q MY QUESTION TO YOU IS, YOU HAD GOTTEN DRUNK.

5 A WHAT'S YOUR POINT?

6 THE COURT - JUST ANSWER HIS QUESTIONS.

7 A YES. NO, I WAS NOT DRUNK.

8 Q OKAY. YOU'D BEEN DRINKING.

9 A YES.

10 Q YOU'D BEEN SMOKING CRACK.

11 A NO, I'D NOT BEEN SMOKING. I TOOK A HIT.

12 Q OKAY. SO YOU'D BEEN DRINKING AND TAKING A HIT OF
13 CRACK, IT WOULD'VE BEEN VERY DIFFICULT FOR YOU TO TELL
14 YOUR PARENTS THAT YOU'D BEEN DOING THAT THAT NIGHT,
15 WOULDN'T IT?

16 A YOU'RE NOT UNDERSTANDING WHAT I'M SAYING THAT AT THE
17 TIME THAT I WOULD'VE CALLED MY PARENTS THERE WOULD HAVE
18 BEEN NO SMOKING CRACK.

19 Q I'M NOT TALKING ABOUT THE TIME YOU WOULD'VE CALLED
20 YOUR PARENTS. I'M TALKING ABOUT AFTER YOU DID.

21 A NO, BECAUSE I WOULD NOT HAVE CALLED THEM.

22 Q YOU WOULDN'T HAVE TOLD THEM THAT YOU WERE DOING THAT?

23 A NO.

24 MR. LEMEL - NOTHING FURTHER.

25 THE COURT - ALL RIGHT, RE-DIRECT?

MISTI HILL - RE-DIRECT BY MS. LIPINSKI

605

1 MS. LIPINSKI - YES, YOUR HONOR.

2 RE-DIRECT EXAMINATION

3 BY MS. LIPINSKI -

4 Q AT WHAT POINT, IF ANY, ON THE MORNING OF MAY 3RD,
5 2007, EITHER AT THE DIXIE DINER OR AT THE HOSPITAL, DID
6 SOMEONE CALL YOUR MOTHER?

7 A AT THE DIXIE DINER AS SOON AS I HUNG UP WITH 9-1-1 I
8 CALLED MY MOTHER.

9 Q AND DID SHE COME TO THE DIXIE DINER?

10 A YES.

11 Q AND DOES SHE COME TO THE HOSPITAL WITH YOU?

12 A SHE FOLLOWS THE AMBULANCE BACK WITH ME TO THE CHURCH
13 AND COMES BACK AROUND AND FOLLOWS US TO PIEDMONT.

14 Q SO SHE COMES TO THE HOSPITAL.

15 A YES, SHE DOES.

16 Q DOES SHE COME BACK IN YOUR EXAM ROOM?

17 A YES, SHE DOES.

18 Q IS SHE THERE WHILE YOU'RE SPEAKING WITH THE DOCTOR?

19 A YES, SHE IS. SHE'S THERE THROUGH THE WHOLE THING.

20 Q THERE WHEN YOU SPEAK WITH THE NURSE?

21 A YES.

22 Q THERE FOR THE SEXUAL ASSAULT KIT EXAM?

23 A YES.

24 Q WAS SHE THERE WHEN YOU TALKED TO LIEUTENANT TOLSON
25 AND LIEUTENANT BOMAR?

MISTI HILL - RE-DIRECT BY MS. LIPINSKI

606

1 A YES.

2 Q AND DO YOU TELL DR. RIMMER THAT YOU HAD SMOKED CRACK
3 THAT NIGHT?

4 A YES.

5 Q SO YOU DO THAT IN FRONT OF YOUR MOTHER?

6 A YES, I DO.

7 Q AND YOU TELL THE NURSE THE SAME THING.

8 A YES, I DO.

9 Q ALSO IN FRONT OF YOUR MOTHER.

10 A YES.

11 Q AND YOU TELL THE DETECTIVES THAT.

12 A YES.

13 Q IN FRONT OF YOUR MOTHER, AS WELL.

14 A YES.

15 Q AND THE TOXICOLOGY REPORT THAT YOU HEARD ABOUT TODAY,
16 DO THEY DO ONE OF THOSE WITH YOU AT THE HOSPITAL?

17 A THEY DID SO MANY TESTS, I DON'T --- I'M NOT SURE IF
18 THEY DID OR NOT.

19 Q BUT THEY DON'T COME BACK AND DISCUSS THOSE RESULTS
20 WITH YOU.

21 A RIGHT.

22 Q AND SO MR. LEMEL ASKED YOU THE QUESTIONS ABOUT IT
23 WOULD'VE BEEN DIFFICULT TO TELL YOUR PARENTS THAT YOU HAD
24 BEEN OUT DRINKING THAT NIGHT.

25 A YES.

MISTI HILL - RE-DIRECT BY MS. LIPINSKI

607

1 Q IS THAT BEHAVIOR THEY APPROVED OF AND CONDONED?

2 A NO.

3 Q WAS THAT BEHAVIOR THAT WAS GOING TO GET YOU KICKED
4 OUT OF THE HOUSE?

5 A NO. IT WOULD JUST BE VERY UPSETTING THAT --- THAT I
6 WENT BACK TO SAY DRINKING WHICH LED TO --- IF I WOULDN'T
7 HAVE BEEN DRINKING THEN I WOULD'VE HAD A STRAIGHT HEAD AND
8 I WOULDN'T HAVE TOOK A HIT OF CRACK. WELL, I WOULDN'T
9 EVEN GOT IN THE CAR IN THE FIRST PLACE.

10 Q WOULD IT BE MORE DIFFICULT FOR YOU TO TELL YOUR
11 MOTHER --- TO CALL YOUR MOTHER AND TELL HER THAT YOU'D
12 BEEN OUT THAT NIGHT DRINKING OR WOULD IT BE MORE DIFFICULT
13 FOR YOU TO AGREE TO TRADE SEX FOR CRACK TO THE DEFENDANT?
14 WHICH WOULD BE MORE DIFFICULT FOR YOU? DO YOU UNDERSTAND
15 MY QUESTION?

16 A (NO RESPONSE)

17 Q IF YOU DON'T, THAT'S FINE. I CAN REPHRASE IT.

18 A REPHRASE IT.

19 Q YOU'RE OUT THERE THAT NIGHT.

20 A RIGHT.

21 Q CALLED A CAB, CAB HASN'T COME. YOUR ALTERNATIVES
22 ARE, CALL YOUR MOM ---

23 A RIGHT.

24 Q --- OR GET A RIDE FROM THE DEFENDANT.

25 A OKAY.

MISTI HILL - RE-DIRECT BY MS. LIPINSKI

608

1 Q IF YOU HAD KNOWN AS YOU STATE WHEN YOU GET IN THE CAR
2 WITH THE DEFENDANT AT THAT TIME THE AGREEMENT IS NOT TO
3 TRADE DRUGS FOR CRACK, IF YOU HAD KNOWN THAT WAS YOUR
4 OPTION TO MAKE THAT DEAL OR TO CALL YOUR MOM, WHICH
5 WOULD'VE BEEN MORE DIFFICULT FOR YOU? WOULD IT BE EASIER
6 TO CALL YOUR MOM OR WOULD IT BE EASIER FOR YOU TO GO, YOU
7 KNOW WHAT, I'LL TRADE SEX FOR CRACK?

8 A OH, THAT WAS NEVER AN OPTION. I DIDN'T EVEN KNOW
9 THAT HE HAD CRACK.

10 Q OKAY. ASSUMING THAT YOU DID KNOW, FOR YOU AT THAT
11 TIME, WHICH WOULD'VE BEEN EASIER FOR YOU?

12 A OH, I WOULD'VE CALLED MY MOM. I NEVER --- I WOULD
13 NEVER TRADE MYSELF FOR CRACK. THAT'S JUST SOMETHING YOU
14 DON'T DO.

15 Q AND YOU SAID THAT YOU'D BEEN CLEAN FOR TWO YEARS.

16 A YES.

17 Q HAVE YOU BEEN CLEAN FROM BOTH ALCOHOL AND CRACK OR
18 JUST ALCOHOL ---

19 A YES.

20 Q --- OR JUST CRACK.

21 A BOTH AND THAT WAS ANOTHER SHAME FACTOR.

22 Q DID --- WHEN THE NURSES INTERVIEWED YOU, DID THEY
23 EVER SHOW YOU THEIR NOTES AND ASK YOU IF THEY MADE ANY
24 MISTAKES?

25 A NO, THEY DID NOT.

MISTI HILL - RE-DIRECT BY MS. LIPINSKI

609

1 Q DID DR. RIMMER EVER DO THAT?

2 A NO, HE DID NOT.

3 Q DID DETECTIVE BOMAR AND TOLSON EVER DO THAT?

4 A NO, THEY DID NOT.

5 Q AND DID THE RESPONDING OFFICER CHILDS (SIC), DID HE
6 ASK YOU WHICH BOX TO CHECK STRANGER, ACQUAINTANCE,
7 BOYFRIEND, THAT TYPE THING?

8 A NO.

9 Q WAS THAT YOUR WORD, HE'S A STRANGER TO ME? DO YOU
10 RECALL USING THAT WORD?

11 A I DON'T RECALL. IT WAS THE FIRST PERSON OF --- IT
12 WAS THE FIRST PERSON OF SOMEBODY WITH AUTHORITY THAT COULD
13 HELP ME, SO I DON'T --- YOU KNOW, I DON'T EVEN REALLY KNOW
14 WHAT I SAID TO HIM.

15 Q DO YOU RECALL TELLING HIM YOU KNEW HIM BY TONY?

16 A RIGHT.

17 Q DO YOU RECALL TELLING HIM YOU DIDN'T KNOW HIS LAST
18 NAME?

19 A EXACTLY.

20 Q AND THE NURSE, DID SHE --- WHEN SHE WAS CHECKING OFF
21 THOSE FORMS, WAS SHE GOING OVER THOSE WITH YOU OR ARE YOU
22 JUST ANSWERING HER QUESTIONS?

23 A I'M JUST ANSWERING HER QUESTIONS.

24 Q MR. LEMEL ASKED YOU ABOUT WHY YOU DIDN'T TELL THE
25 DETECTIVES ABOUT LYNN RABIE. DID THEY EVER ASK YOU WHO

MISTI HILL - RE-DIRECT BY MS. LIPINSKI

610

1 YOU WERE WITH AT THESE TWO BARS?

2 A NO.

3 Q AND ARE YOU STILL FRIENDS WITH LYNN?

4 A YES.

5 Q DOES SHE KNOW ABOUT THE RAPE?

6 A SHE DOES NOW.

7 Q BUT AT THAT --- THAT NIGHT DID SHE KNOW IMMEDIATELY
8 THEREAFTER?

9 A NO.

10 Q ABOUT HOW LONG HAS IT BEEN SINCE SHE DID KNOW?

11 A IT'S ONLY BEEN LIKE TWO WEEKS.

12 Q WHAT ABOUT SHAVONE?

13 A SHAVONE KNEW THE NEXT DAY.

14 Q AND YOU TOLD THE OFFICERS HER NAME.

15 A (INDICATING YES)

16 Q DID YOU KNOW HER LAST NAME?

17 A I DID. I DON'T THINK ---

18 Q DID YOU WITHHOLD THAT INFORMATION TO DETECTIVES OR
19 DID YOU JUST NOT SHARE THAT WITH THEM?

20 A I MEAN I THINK I PROBABLY JUST SAID SHAVONE AND I
21 WENT TO THE BARN OR --- I DON'T THINK THAT THEY WERE LIKE
22 --- WHAT'S SHAVONE'S LAST NAME.

23 Q HAD THEY ASKED YOU WOULD YOU HAVE TOLD THEM?

24 A YES.

25 Q AND MR. LEMEL ASKED YOU ABOUT THAT THERE WERE TWO

MISTI HILL - RE-DIRECT BY MS. LIPINSKI

611

1 PEOPLE THAT WOULDN'T TAKE YOU HOME THAT NIGHT. IF YOU HAD
2 ASKED LYNN RABIE FOR A RIDE AND WERE READY TO LEAVE WHEN
3 SHE WAS, WOULD SHE HAVE TAKEN YOU HOME THAT NIGHT?

4 A YES, SHE OFFERED.

5 Q YOU JUST WEREN'T READY TO GO HOME.

6 A CORRECT.

7 MS. LIPINSKI - COURT'S INDULGENCE ONE MOMENT,
8 YOUR HONOR. NOTHING FURTHER, YOUR HONOR.

9 THE COURT - ALL RIGHT, RE-CROSS?

10 MR. LEMEL - I DON'T HAVE ANYTHING IN REPLY.

11 THE COURT - YOU CAN STEP DOWN. THANK YOU. CAN
12 I SEE COUNSEL UP HERE JUST A MINUTE?

13 MS. LIPINSKI - CERTAINLY, YOUR HONOR.

14 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
15 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
16 REPORTED.)

17 THE COURT - ALL RIGHT, MEMBERS OF THE JURY
18 PANEL, WE'RE GOING TO STOP FOR THE DAY AND WE'LL START
19 BACK AT 9:30. YOU'RE STILL NOT IN A POSITION TO MAKE UP
20 YOUR MIND. THE CASE HASN'T GOTTEN TO THAT POINT. WE'RE
21 NOT IN A POSITION TO LET ANYBODY DISCUSS THE CASE OR DO
22 ANY OF THOSE OTHER THINGS I ADMONISHED YOU ABOUT EARLIER.
23 HAVE A PLEASANT EVENING AND WE'LL SEE YOU AT 9:30 IN THE
24 MORNING.

25 (JURY EXITS THE COURTROOM)

612

1 THE COURT - ANYBODY HAS ANY REQUESTS TO CHARGE,
2 IF YOU'LL HAVE THEM TO ME BY 9:30 IN THE MORNING SO I CAN
3 LOOK AT THEM.

4 MS. LIPINSKI - THANK YOU, YOUR HONOR.

5 THE COURT - OTHERWISE, WE'LL SEE YOU AT THAT
6 TIME.

7 MS. LIPINSKI - THANK YOU, YOUR HONOR.

8 (COURT IN RECESS AT 5:40 P.M.)

9 * * * * *

10 (COURT RESUMES ON APRIL 2ND, 2009 AT 9:30 A.M.)

11 THE COURT - THANK YOU. TAKE YOUR SEATS. ALL
12 RIGHT GET MR. DUNOVANT IN.

13 (MR. DUNOVANT ENTERS THE COURTROOM)

14 THE COURT - ALL RIGHT, DEFENDANT'S PRESENT.
15 STATE READY?

16 MS. LIPINSKI - YES, YOUR HONOR. MR. LEMEL AND
17 I WERE TRYING TO RESOLVE THE CERTIFIED CONVICTIONS AND
18 I'LL TRY TO DO THAT JUST AS QUICKLY AS I CAN. I LOOKED UP
19 THE WRONG ONE LAST TIME. I THOUGHT THE FORGERY WAS IN
20 QUESTION, NOT POSSESSION OF STOLEN GOODS, BUT THE STATE
21 INTENDS TO REST IN FRONT OF THE JURY. WE HAVE LIEUTENANT
22 TOLSON HERE. I DIDN'T WANT THE COURT TO THINK I MISLED
23 THEM ABOUT WHY THE COURT EXTENDED, BUT I JUST SPOKE WITH
24 HER LAST NIGHT BECAUSE WE WERE ABLE TO GET THE EVIDENCE IN
25 THROUGH THE OFFICERS FOR NORTH CAROLINA, BECAUSE I DIDN'T

1 THINK THERE WAS A SIGNIFICANT ISSUE OF CONSISTENCY WITH
2 THE VICTIM YESTERDAY BETWEEN WHAT SHE TOLD LIEUTENANT
3 TOLSON AND WHAT SHE TESTIFIED TO, THE STATE JUST FELT THAT
4 LIEUTENANT TOLSON'S TESTIMONY WOULD BE REDUNDANT TO THAT,
5 THAT THE STATE'S ALREADY PRESENTED.

6 THE COURT - ALL RIGHT, SO THE STATE WILL REST ON
7 THE RECORD, SO I'LL GO AHEAD AND LET THAT OCCUR, BUT FOR
8 PURPOSES OF PROCEDURE AND NOT BRINGING THE JURY IN FOR TWO
9 SECONDS AND SEND THEM BACK OUT, I'LL HEAR MOTIONS AND
10 SPEAK WITH MR. DUNOVANT.

11 MR. LEMEL - YOUR HONOR, I'D JUST AT THIS TIME
12 FOR THE RECORD WE WOULD MAKE A MOTION FOR A DIRECTED
13 VERDICT.

14 THE COURT - ALL RIGHT, THAT MOTION'S DENIED. I
15 THINK THIS IS --- THIS IS NOT A CIRCUMSTANTIAL EVIDENCE,
16 SO I DON'T HAVE TO EXAMINE WHETHER THERE IS SUBSTANTIAL
17 CIRCUMSTANTIAL EVIDENCE, BUT I DO FIND THAT THERE IS
18 DIRECT EVIDENCE FROM WHICH THE JURY COULD CONCLUDE THAT
19 THE STATE COULD CONCLUDE THAT THE ALLEGATIONS LODGED BY
20 THE STATE DID, IN FACT, OCCUR AND THE JURY COULD CONCLUDE
21 UPON THE EVIDENCE THAT MR. DUNOVANT WAS THE PERPETRATOR OF
22 THESE EVENTS SO I DENY THAT MOTION. MR. DUNOVANT, CAN YOU
23 HEAR ME?

24 MR. DUNOVANT - YES, SIR.

25 THE COURT - WE'VE REACHED THE POINT OF THE TRIAL

614

1 WHERE YOU HAVE A RIGHT TO PRESENT A DEFENSE IF YOU WISH.
2 YOU DON'T HAVE TO, BECAUSE YOU'RE PRESUMED INNOCENT OF THE
3 CHARGES AND YOU DO NOT HAVE TO PROVE YOUR INNOCENCE. THE
4 STATE HAS TO PROVE YOUR GUILT BEYOND A REASONABLE DOUBT.
5 HOWEVER, YOU CAN CALL WITNESSES IF YOU WISH TO TESTIFY ON
6 YOUR BEHALF. YOU HAVE A RIGHT TO TESTIFY. YOU ALSO HAVE
7 A RIGHT TO REMAIN SILENT. IF YOU TESTIFY YOU WILL BE
8 UNDER OATH AND HAVE TO ANSWER QUESTIONS THAT ARE POSED BY,
9 OF COURSE, YOUR ATTORNEY AND THE STATE, AND THE STATE
10 COULD CALL TO THE JURY'S ATTENTION THE FACT THAT YOU HAVE
11 SOME PRIOR RECORD. I THINK THE ATTORNEYS WERE DISCUSSING
12 THAT, EXACTLY WHAT THAT IS. WHATEVER IT IS I WILL TELL
13 THE JURY THAT THEY COULD CONSIDER YOUR PRIOR RECORD ONLY
14 REGARDING YOUR BELIEVABILITY, THAT IS YOUR CREDIBILITY,
15 BUT THEY CANNOT USE OR INFER FROM THE FACT THAT YOU HAVE
16 A RECORD THAT YOU COMMITTED THIS OFFENSE. THAT IS, THEY
17 COULD NOT USE THAT IN DETERMINING WHETHER OR NOT YOU'RE
18 GUILTY AT THIS POINT, BUT ONLY IN DETERMINING WHETHER TO
19 BELIEVE YOU ABOUT WHAT YOU SAY ABOUT THIS OFFENSE IN YOUR
20 TESTIMONY, AND I WILL TELL THE JURY THEY CANNOT DISCUSS IN
21 THE JURY ROOM THE FACT THAT YOU EXERCISE YOUR RIGHT TO
22 REMAIN SILENT IF YOU DO. I WILL AGAIN REMIND THEM IF YOU
23 REMAIN SILENT THAT YOU DO NOT HAVE TO PROVE YOUR GUILT.
24 THE STATE HAS TO PROVE YOUR GUILT BEYOND A REASONABLE
25 DOUBT AND THAT YOU ARE PRESUMED INNOCENT. NOW, IF YOU

1 PRESENT EVIDENCE --- IF YOU DON'T PRESENT EVIDENCE YOUR
2 ATTORNEY HAS THE RIGHT TO MAKE CLOSING ARGUMENT TO THE
3 ATTORNEY, THAT IS, THE LAST APPEARANCE BEFORE THE JURY ---
4 I DON'T THINK I SAID JURY, BUT JURY AND --- YOU UNDERSTAND
5 ALL THAT?

6 MR. DUNOVANT - YES, SIR.

7 THE COURT - DO YOU HAVE ANY QUESTIONS ABOUT ANY
8 OF IT?

9 MR. DUNOVANT - NO, SIR.

10 THE COURT - HAVE YOU EXPLAINED THAT TO HIM, MR.
11 LEMEL?

12 MR. LEMEL - YES, SIR, YOUR HONOR.

13 THE COURT - YOU BELIEVE HE UNDERSTANDS IT?

14 MR. LEMEL - I DO.

15 THE COURT - ALL RIGHT, YOU INTEND TO PRESENT ANY
16 EVIDENCE?

17 MR. LEMEL - YES, SIR.

18 THE COURT - OKAY. ALL RIGHT, WELL, WE'LL BRING
19 IN THE JURY. I WILL TELL THEM THE STATE HAS RESTED OR THE
20 STATE WILL REST AND I'LL TURN IT OVER TO YOU.

21 MR. LEMEL - JUDGE, PRIOR TO US BRINGING THE JURY
22 IN, CAN YOU GET THE ISSUE RESOLVED ABOUT THE IMPEACHABLE
23 OFFENSES.

24 THE COURT - PLEASE. I WISH YOU WOULD. YES.

25 (DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS

616

1 NOT REPORTED.)

2 THE COURT - I'M READY WHENEVER Y'ALL ARE.

3 MS. LIPINSKI - YOUR HONOR, JUST FOR THE RECORD
4 HE WAS CONVICTED OF --- THE TRIAL DATE WAS '05, MAY 27TH
5 OF 2005 POSSESSION OF STOLEN GOODS UNDER NORTH CAROLINA
6 LAW. THAT WOULD BE A FELONY AND IT WOULD CARRY UP TO A
7 YEAR, THEREFORE, THE STATE FEELS THAT WOULD BE A PROPERLY
8 IMPEACHABLE EVIDENCE. HE ALSO WAS ORIGINALLY CHARGED WITH
9 UTTERING A FORGED INSTRUMENT, THE TRIAL DATE OF JUNE 4TH,
10 1999 AND ORIGINALLY A FORGERY OF AN INSTRUMENT ON JUNE
11 4TH. THE CONVICTION OFFENSE WAS OBTAINING PROPERTY BY A
12 WORTHLESS CHECK. IT SEEMS CONSISTENT WITH OUR FRAUDULENT
13 CHECK STATUTE. WHEN WE PULLED UP THE PUNISHMENT FOR THAT
14 WHICH WOULD BE SIXTY DAYS TO SIX MONTHS WHICH DOESN'T
15 CARRY THE ONE YEAR OFFENSE, BUT THE STATE WOULD SUBMIT
16 THAT PURSUANT TO OUR CASE LAW THAT SAYS FRAUDULENT CHECK
17 IS NONETHELESS A CRIME OF DISHONESTY, THAT IT WOULD STILL
18 BE PROPERLY IMPEACHABLE EVIDENCE OF THE DEFENDANT.

19 THE COURT - ALL RIGHT, RUN THAT BY ME AGAIN.
20 NOW, THE SECOND WAS A ---

21 MS. LIPINSKI - HE BASICALLY HAS TWO FRAUD CHECKS
22 AND ONE OBTAINING GOODS BY FALSE --- OR POSSESSION OF
23 STOLEN GOODS.

24 THE COURT - ALL RIGHT.

25 MR. LEMEL - YOUR HONOR, AND IT'S --- I'M GOING -

1 -- MS. HERVEY --- I UNDERSTAND THE STOLEN GOODS CHARGE
2 CARRIES UP TO ONE YEAR?

3 MS. LIPINSKI - IT'S CLASS --- CARRIES ONE TO
4 FIVE, I BELIEVE.

5 MR. LEMEL - AND THAT WAS --- THAT WAS THE
6 QUESTION.

7 (DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS
8 NOT REPORTED.)

9 THE COURT - WELL, REGARDLESS OF WHAT IT CARRIES,
10 DO YOU CONTEST IT? DO YOU CONTEST THAT THOSE ARE CRIMES
11 OF DISHONESTY, REGARDLESS OF WHETHER THEY CARRY FIVE
12 MINUTES OR FIVE YEARS?

13 MS. LIPINSKI - YES, YOUR HONOR, I SUBMIT THAT --
14 -

15 THE COURT - I WAS LOOKING AT MR. LEMEL.

16 MS. LIPINSKI - I'M SORRY, YOUR HONOR. I
17 APOLOGIZE.

18 MR. LEMEL - YOUR HONOR, WITH REGARD TO THE OLDER
19 CHARGES, THE 1995, BASICALLY THE WORTHLESS CHECK CHARGES,
20 I WOULD CHALLENGE THAT THOSE ARE INHERENTLY CRIMES OF
21 DISHONESTY. THEY ARE A NUMBER OF DIFFERENT SITUATIONS,
22 BUT NONE OF WHICH THAT CAN ARISE, SO, YES, SIR, I WOULD
23 CHALLENGE WHETHER THOSE GIVEN THEIR --- GIVEN THE TIME-
24 FRAME WE'RE TALKING ABOUT, TALKING ABOUT THAT THERE ARE
25 JUST SHY OF TEN YEARS OLD, WOULD CHALLENGE THAT AS A BASIS

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1 TO THOSE TWO CONVICTIONS THERE.

2 THE COURT - WHAT ARE THEY LISTED AS? WHAT ---
3 WHAT WERE THE CONVICTIONS?

4 MS. LIPINSKI - TWO CONVICTIONS FOR UTTER ---
5 OBTAINING GOODS --- I'M SORRY --- OBTAINING PROPERTY BY
6 WORTHLESS CHECK, SO BASICALLY PASSING A FRAUDULENT CHECK.

7 THE COURT - ALL RIGHT, I FIND THAT INVOLVES
8 DISHONESTY. I KNOW THERE ARE A LOT OF REASONS FOR
9 WORTHLESS CHECKS, INSUFFICIENT FUNDS AND THINGS SUCH AS
10 THAT.

11 MR. LEMEL - I WOULD ASK, HOWEVER, THAT IN THAT
12 SITUATION THAT WITH REGARD IT NOT BE CALLED FRAUDULENT
13 CHECK SINCE THAT'S NOT WHAT HE ACTUALLY ---

14 THE COURT - NO, I THINK HE HAS TO BE ASKED IF HE
15 WAS --- IF HE HAD THAT --- THE --- I THINK IT HAS TO BE
16 ASKED AS SET FORTH ON THE RECORD.

17 MS. LIPINSKI - WE'LL CERTAINLY DO THAT, YOUR
18 HONOR.

19 THE COURT - YES. AND UNDER 609(A)(2) THIS DOES
20 NOT REQUIRE THE BALANCING BETWEEN PREJUDICIAL AND
21 IMPEACHMENT VALUE AND THIS, TOO, SAYS EVIDENCE THAT ANY
22 WITNESS HAS BEEN CONVICTED OF A CRIME SHALL BE ADMITTED IF
23 IT INVOLVED DISHONESTY OR FALSE STATEMENT REGARDLESS OF
24 THE PUNISHMENT. ALL RIGHT, ANYTHING ELSE?

25 MR. LEMEL - NO, SIR.

1 THE COURT - NOW, I DID ASK YESTERDAY IF ANYBODY
2 HAD AN REQUESTS TO CHARGE THAT THEY'D BE PLACED IN OUR
3 HANDS FIRST THING. ANY REQUESTS TO CHARGE FROM THE STATE?

4 MS. LIPINSKI - WE HAVE NO FORMAL REQUESTS TO
5 CHARGE, YOUR HONOR, HOWEVER, WE WOULD INQUIRE AS TO
6 WHETHER OR NOT THE COURT IS INCLINED TO CHARGE ANY LESS
7 INCLUDED OFFENSES?

8 THE COURT - WELL, WE --- I WAS GOING TO SEE IF
9 THERE'S ANY SUGGESTION TO THAT. I HADN'T PLANNED TO
10 BECAUSE I DON'T KNOW THAT THEY'RE ANY LESSER INCLUDED.
11 THIS --- WELL, I DON'T WANT TO COMMENT TOO MUCH ON THE
12 FACTS, BUT I'LL HEAR FROM MR. LEMEL, BUT IT APPEARS TO ME
13 THAT --- NOW, WE'VE GOT ELEMENTS OF A DIFFERENT OFFENSE
14 THAT'S NOT CHARGED, ASSAULT AND BATTERY OF A HIGH AND
15 AGGRAVATED NATURE, PERHAPS, BUT I DON'T KNOW THAT THAT'S
16 A LESSER INCLUDED OF CRIMINAL SEXUAL BATTERY, BUT I'LL BE
17 GLAD TO HEAR FROM DEFENSE.

18 MR. LEMEL - YOUR HONOR, WE'RE NOT REQUESTING ANY
19 LESSER INCLUDED. WE HAVE NO FORMAL REQUESTS TO CHARGE.

20 THE COURT - ALL RIGHT, BRING IN THE JURY.

21 MS. LIPINSKI - YOUR ---

22 THE COURT - OKAY DON'T BRING IN THE JURY.

23 MS. LIPINSKI - THE STATE DOES TAKE THE POSITION
24 THAT ABHAN IS A LESSER INCLUDED OFFENSE OF CRIMINAL SEXUAL
25 CONDUCT IN THE FIRST DEGREE, AND I'VE PULLED UP THE CASE

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1 LAW AS TO WHAT THAT ---

2 THE COURT - ALL RIGHT, ---

3 MS. LIPINKSI - IT'S NOT A LESSER OF CSC FIRST
4 BUT I THINK IT IS A LESSER OF CSC WITH A MINOR. I THINK
5 IT IS.

6 THE COURT - START OVER AGAIN, MS. --- JUST PULL
7 UP THE CASE AND SHOW IT TO ME. WE'LL HAVE TIME. YOU'LL
8 PULL THAT CASE AND SHOW IT TO ME AND MR. LEMEL AND MS.
9 JOHNSON --- DON'T WANT TO EXCLUDE HER. WE'LL TAKE A LOOK
10 AT IT, BUT --- ALL RIGHT, LET'S BRING IN THE JURY.
11 (PAUSE) AND I DID NOT DIRECTLY ASK, BUT, MR. DUNOVANT, --
12 - I DIDN'T DIRECTLY ASK, BUT I --- THE IMPLICATION FROM
13 YOUR ATTORNEY IS, MR. DUNOVANT, THAT YOU INTEND TO
14 TESTIFY.

15 MR. DUNOVANT - YES, SIR.

16 THE COURT - OKAY.

17 (JURY RETURNS TO THE COURTROOM)

18 THE COURT - GOOD MORNING. ALL RIGHT, MS.
19 LIPINSKI?

20 MS. LIPINSKI - MAY IT PLEASE THE COURT, YOUR
21 HONOR. WHILE LIEUTENANT TOLSON IS SEATED IN THE FRONT
22 ROW, THE STATE OPTS NOW TO CALL HER AS OUR FINAL WITNESS
23 THIS MORNING, AND WE REST.

24 THE COURT - ALL RIGHT, MEMBERS OF THE JURY
25 PANEL, THE STATE IS RESTING. THAT IS THE STATE IS TELLING

TERRY DUNOVANT - DIRECT BY MR. LEMEL

621

1 US ITS PRESENTED ITS EVIDENCE. AT THIS TIME THE DEFENSE
2 HAS A RIGHT BUT NO OBLIGATION TO CALL WITNESSES AND
3 PRESENT A CASE IF HE WISHES, SO I'M GOING TO TURN IT OVER
4 TO MR. LEMEL AND MS. JOHNSON AND THE DEFENDANT.

5 MR. LEMEL - MAY IT PLEASE THE COURT, YOUR HONOR.

6 THE COURT - YES, SIR.

7 MR. LEMEL - CALL TERRY DUNOVANT.

8 THE COURT - ALL RIGHT, MR. DUNOVANT, COME UP AND
9 BE SWORN.

10 TERRY ARNAIL DUNOVANT, AFTER BEING FIRST DULY
11 SWORN, TESTIFIES AS FOLLOWS: -

12 DIRECT EXAMINATION

13 BY MR. LEMEL -

14 Q TERRY, STATE YOUR FULL NAME, PLEASE.

15 A MY NAME IS TERRY DUNOVANT.

16 Q OKAY. AND IF YOU WILL, TERRY, JUST TAKE A SECOND TO
17 INTRODUCE YOURSELF TO THE JURY.

18 A YES, AGAIN, MY NAME IS TERRY DUNOVANT. I'M FROM
19 GASTONIA, NORTH CAROLINA. I HAVE TWO SONS. I'M ACTUALLY
20 45 YEARS OF AGE. ALSO EMPLOYED AT WALMART JUST RECENT.
21 I WORKED THERE FOR A YEAR, AND I ALSO HAVE A PART-TIME JOB
22 AS A SHIPPING AND RECEIVING.

23 Q AND --- THAT --- THOSE JOBS THAT YOU HAVE, YOU
24 TALKING ABOUT AT WALMART AND THE HARDWARE STORE, THAT WAS
25 BACK IN MARCH OF ---

TERRY DUNOVANT - DIRECT BY MR. LEMEL

622

- 1 A MARCH OF 2000 ---
- 2 Q --- 2007. THAT'S WHERE YOU WORKED AT THAT POINT.
- 3 YOU SAID YOU HAVE TWO SONS?
- 4 A YES, I HAVE TWO SONS.
- 5 Q HOW OLD ARE THEY?
- 6 A I HAVE A SON WHO'S 23 AND ONE IS 20.
- 7 Q AND WHERE WERE YOU RAISED?
- 8 A IN GASTONIA, NORTH CAROLINA.
- 9 Q WHAT PART OF GASTONIA ARE YOU FROM?
- 10 A ACTUALLY THE NORTH SIDE.
- 11 Q OKAY. I --- HAVE YOU LIVED IN GASTONIA YOUR WHOLE
- 12 LIFE?
- 13 A ALL MY LIFE.
- 14 Q ARE YOU FAIRLY FAMILIAR WITH THE GASTONIA AREA?
- 15 A YES.
- 16 Q HAVE YOU LIVED IN ANY OTHER PARTS OF GASTONIA?
- 17 A YES. I LIVED IN THE MYRTLE SCHOOL AREA.
- 18 Q THE MYRTLE SCHOOL AREA?
- 19 A YES, OFF OF BESSEMER CITY ROAD.
- 20 Q THAT'S IN BESSEMER CITY.
- 21 A NO, IT'S NOT IN BESSEMER CITY, OFF OF BESSEMER CITY
- 22 ROAD.
- 23 Q OKAY. AND AT THIS POINT IN TIME YOU SAID YOU WERE
- 24 WORKING AT WALMART BACK IN ---
- 25 A 2007.

TERRY DUNOVANT - DIRECT BY MR. LEMEL

623.

1 Q --- 2007. WHAT WERE YOU DOING FOR THEM?

2 A SHIPPING AND RECEIVING.

3 Q WAS THAT A FULL-TIME JOB?

4 A THIS WAS A PART-TIME JOB.

5 Q WHAT WAS YOUR SCHEDULE LIKE?

6 A I WORKED LIKE A COUPLE OF DAYS DURING THE WEEK,
7 SOMETIMES AT NIGHT. IT VARIES BACK AND FORTH.

8 Q OKAY. AND ALSO YOU WERE WORKING A JOB ---

9 A PART-TIME FOR A --- IT'S MORE LIKE A WAREHOUSE,
10 SOMETHING LIKE --- SOMETHING LIKE --- I'M TRYING TO GET IT
11 OUT, UH --- PLUMBING. THEY DO HOUSING, THINGS LIKE THAT,
12 VENTIL (SIC) --- VENTIL (SIC) WORK, LUMBER, DIFFERENT
13 THINGS LIKE THAT, PULLED ORDERS FOR THEM.

14 Q A SUPPLY STORE BASICALLY?

15 A YES.

16 Q OKAY, WHAT DID YOU DO FOR THEM?

17 A PULLED ORDERS FOR THEM, ALSO.

18 Q OKAY. BASICALLY BACK IN THE WAREHOUSE.

19 A YES.

20 Q WHEN YOU WOULD GO TO WORK, WHAT SORT OF CLOTHES WOULD
21 YOU GO TO WORK IN?

22 A KHAKIS, JEANS, T-SHIRT, BALL CAP, BOOTS.

23 Q WAS IT CASUAL WEAR THEN?

24 A CASUAL WEAR, JEAN, T-SHIRTS, SUCH THINGS.

25 Q ON THIS PARTICULAR DAY BACK ON MAY 2ND, DO YOU --- OF

TERRY DUNOVANT - DIRECT BY MR. LEMEL

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1 2007, DO YOU REMEMBER WHETHER YOU WENT TO EITHER ONE OF
2 YOUR TWO JOBS?

3 A YES, I WENT TO THE WAREHOUSE JOB.

4 Q THE ONE AT THE SUPPLY STORE, THE HARDWARE ---

5 A YES, SUPPLY STORE.

6 Q AND WHAT DID YOU WEAR TO WORK THAT DAY?

7 A I WORE A PAIR OF KHAKI PANTS. IT HAD A COUPLE OF
8 RIPS IN IT, BECAUSE IT USUALLY BE HOT IN THE WAREHOUSE, A
9 BLACK T-SHIRT WITH THE CUT SLEEVES, A PAIR OF TIMBERLAND
10 BROWN BOOTS AND A BLACK BALL CAP.

11 Q IS THAT WHAT YOU WORE ALL DAY THAT DAY?

12 A YES.

13 Q DID YOUR EMPLOYER CARE IF YOU CAME TO WORK IN A PAIR
14 OF RIPPED PANTS?

15 A NOT AS LONG AS WE CAME TO WORK AND JUST DONE A GOOD
16 JOB.

17 Q OKAY: DO YOU REMEMBER ABOUT WHAT TIME YOU GOT OFF
18 WORK THAT DAY?

19 A GOT OFF AT 4:30 THAT AFTERNOON.

20 Q WHEN YOU GOT OFF WORK, WHERE DID YOU GO?

21 A I WENT STRAIGHT HOME FROM WORK.

22 Q WHAT'D YOU DO AT HOME?

23 A SUCH A NICE DAY THAT DAY --- IT WAS A SPRING-LIKE
24 DAY. IT WAS LIKE 70, 75 DEGREES. I DECIDED TO CLEAN MY
25 YARD. I CUT MY GRASS, WEED-EAT, PULLED WEEDS, JUST

TERRY DUNOVANT - DIRECT BY MR. LEMEL

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1 BASICALLY CLEANED UP THE WHOLE YARD, CLEANED THE FLOWER
2 BED AND JUST CLEANED MY WHOLE YARD UP, FRONT AND BACK.

3 Q ABOUT HOW LONG DID IT TAKE YOU TO DO ALL THAT?

4 A I GOT HOME AGAIN, LIKE I SAID, 4:30, I'D SAY BETWEEN
5 AND 8:00 AND 8:30.

6 Q OKAY. SO ABOUT FOUR HOURS DOING THAT?

7 A YES, ABOUT DAWN, ABOUT DAWN.

8 Q OKAY. WHAT HAPPENED AT ABOUT 8:00, 8:30 THEN?

9 A I HAD A GOOD FRIEND COME OVER. WE USUALLY SHOOT BALL
10 TOGETHER. WE SET AND TALKED FOR A WHILE AND HE ASKED ME
11 DID I WANT TO DRINK A FEW BEERS AND I TOLD HIM YES.

12 Q SO WHAT DID YOU DO WHEN HE SAID THAT?

13 A WE WENT TO A LOCAL STORE FROM MY HOUSE ABOUT, MAYBE,
14 TWO BLOCKS AWAY. I PURCHASED A TWELVE-PACK OF MICHELOB
15 BEER, A PACK OF NEWPORTS AND WE CAME BACK TO MY HOUSE.

16 Q OKAY. WHAT'D YOU DO AT YOUR HOUSE?

17 A WE SAT THERE AND TALKED ABOUT THE GAMES, THE
18 FOOTBALL, BASKETBALL. MOTHER'S DAY WAS RIGHT AROUND THE
19 CORNER. WE ALSO TALKED ABOUT THAT, TOO, AND MY MOTHER'S
20 BIRTHDAY AND WE JUST KICKED IT AND TALKED ABOUT OLD TIMES.

21 Q WERE YOU DRINKING?

22 A YES, WE WERE.

23 Q HOW MUCH DID YOU --- WOULD YOU SAY OF THAT TWELVE-
24 PACK OF MICHELOB YOU HAD TO DRINK?

25 A OH, I'D SAY A GOOD FIVE OR SIX BEERS AT LEAST.

TERRY DUNOVANT - DIRECT BY MR. LEMEL

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1 Q OKAY. AND OVER WHAT SORT OF TIME-FRAME OR TIME
2 PERIOD DID Y'ALL DO THIS?

3 A WHAT, TO GO GET THE BEER OR WHAT?

4 Q WELL, THE WHOLE --- YOU SAY HE CAME OVER ABOUT WHAT
5 TIME?

6 A HE CAME OVER AROUND ABOUT 8:30, SOMETHING TO 9:00 AND
7 WE WENT TO THE STORE RIGHT AFTER THAT.

8 Q OKAY. AND HOW ABOUT LONG IS HE THERE FOR AFTER YOU
9 WENT ---

10 A HE LEFT I'D SAY PROBABLY 11:00, 11:30 THAT NIGHT.

11 Q OKAY. SO IT WAS WELL INTO THE DARK THEN?

12 A YES, IT WAS DEFINITELY DARK.

13 Q DID YOU HAVE TO WORK THE NEXT DAY?

14 A NO, I DIDN'T.

15 Q OKAY, WAS OFF FROM BOTH JOBS?

16 A YES.

17 Q WHAT'D YOU DECIDE TO DO AT THAT POINT?

18 A I DECIDED TO GO AHEAD AND TAKE A LITTLE RIDE. I RODE
19 AROUND FOR A LITTLE BIT AND I DECIDED TO GO AHEAD AND
20 PURCHASE SOME CRACK COCAINE.

21 Q OKAY. NOW, DO YOU FEEL LIKE YOU HAVE AN ADDICTION TO
22 CRACK COCAINE?

23 A YES, I DO.

24 Q HOW LONG HAD YOU BEEN USING CRACK COCAINE?

25 A TEN TO --- TEN TO TWELVE YEARS.

TERRY DUNOVANT - DIRECT BY MR. LEMEL

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1 Q AND WAS IT AN UNUSUAL THING FOR YOU LATE AT NIGHT TO
2 GO OUT AND BUY CRACK COCAINE?

3 A NO, IT WASN'T.

4 Q DID YOU HAVE A REGULAR CONTACT THAT YOU SOUGHT OUT
5 FOR ANY CRACK COCAINE?

6 A YES, I DID.

7 Q AND WHO WAS THAT PERSON?

8 A IT'S A GUY WE CALL IN THE NEIGHBORHOOD, HIS NAME IS
9 BONE.

10 Q DO YOU KNOW HIM MORE THAN BY ANYTHING OTHER THAN ---

11 A NO, ONLY THING I KNOW HE'S A LOCAL DRUG DEALER IN THE
12 NEIGHBORHOOD.

13 Q OKAY. AND HOW LONG HAVE YOU BEEN BUYING DRUGS FROM
14 BONE?

15 A UH, I GUESS, MAYBE A COUPLE OF YEARS.

16 Q SO WHAT DID YOU DO THAT NIGHT ONCE YOU MADE THAT
17 DECISION, MADE UP YOUR MIND YOU WERE ACTUALLY GOING TO GO
18 OUT AND BUY SOME CRACK COCAINE?

19 A I DEFINITELY GOT IN CONTACT WITH HIM. I HAD TOLD HIM
20 I WANTED TO BUY A EIGHT BALL. A EIGHT BALL IS SOLID. I
21 WANTED A SOLID PIECE OF CRACK COCAINE.

22 Q AND AN EIGHT BALL, WHAT --- NOW, YOU SAID IT'S SOLID.
23 WHAT DO YOU --- ABOUT HOW MUCH IS AN EIGHT BALL.

24 A EIGHT BALL IS ABOUT A HUNDRED AND TWENTY DOLLARS. IT
25 VARIES FROM A HUNDRED AND TWENTY TO ABOUT A HUNDRED AND

TERRY DUNOVANT - DIRECT BY MR. LEMEL

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1 FORTY DOLLARS.

2 Q OKAY, AND IS THAT A TYPICAL AMOUNT FOR YOU TO BUY?

3 A YES. I DON'T LIKE TO WASTE MY MONEY. I'M --- I ---

4 Q AND, OBVIOUSLY, BUYING CRACK COCAINE DO YOU --- IS IT
5 SORT OF LIKE ANYTHING ELSE, THE MORE --- IF YOU BUY IT IN
6 BULK, YOU GET IT AT A CHEAPER PRICE?

7 A YES. YES, YOU DO.

8 Q SO WHEN YOU WENT TO PURCHASE THIS EIGHT BALL FROM
9 BONE, HOW MUCH MONEY DID YOU HAVE WITH YOU?

10 A I HAD APPROXIMATELY ABOUT A HUNDRED AND FORTY, MAYBE
11 HUNDRED AND FIFTY DOLLARS.

12 Q AND HOW MUCH WAS HE GOING TO CHARGE YOU FOR THAT
13 EIGHT BALL?

14 A A HUNDRED AND TWENTY DOLLARS.

15 Q NOW, WHAT HAPPENED WHEN YOU ACTUALLY MET UP WITH BONE
16 THAT NIGHT?

17 A I GOT THE DOPE FROM HIM. I EXCHANGED THE MONEY AND
18 HE GAVE ME THE DOPE, AND I NOTICED THAT IT WASN'T SOLID,
19 WHAT I ASKED FOR.

20 Q NOW, WHEN YOU SAY SOLID, WHEN YOU'RE --- IS AN EIGHT
21 BALL LIKE ONE BIG CHUNK OF CRACK COCAINE?

22 A YES, IT'S ABOUT AS BIG AS A FIFTY CENT PIECE ALMOST.
23 NOT AS QUITE, BUT ROUND AND KIND OF THICK.

24 Q OKAY. AND INSTEAD WHAT DID YOU GET?

25 A I GOT TWENTIES, TWENTY DOLLAR ROCKS AND DIME PIECE

TERRY DUNOVANT - DIRECT BY MR. LEMBL

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1 ROCKS.

2 Q IN OTHER WORDS, IT WAS ALL BROKEN UP INSTEAD OF ONE
3 BIG CHUNK?

4 A YES, BROKEN UP.

5 Q AND WHAT ELSE DID YOU KNOW ABOUT THAT, BESIDES IT NOT
6 BEING IN ONE SOLID PIECE?

7 A IT WASN'T --- LIKE I SAY IT WASN'T --- IT WAS ALL ---
8 IT WAS LIKE SEVEN OR MAYBE EIGHT TO NINE PIECES --- IN
9 PIECES.

10 Q OKAY. ON A TYPICAL EIGHT BALL, HOW MANY NORMAL
11 PIECES WOULD YOU BE ABLE TO GET THAT INTO?

12 A UH, IT ALL DEPEND ON HOW YOU CUT IT. YOU CAN GET
13 TWELVE TO FOURTEEN NICE SIZE ROCKS OUT OF IT, TWENTY PIECE
14 ROCKS.

15 Q SO INSTEAD OF GETTING TWELVE TO FOURTEEN, YOU WERE
16 GETTING THE SEVEN, EIGHT OR NINE?

17 A YES, I GOT LIKE EIGHT OR NINE ROCKS, MAYBE FIVE OR
18 SIX DIME PIECES AND A COUPLE OF TWENTY PIECES.

19 Q SIGNIFICANTLY LESS THAN WHAT YOU WERE EXPECTING?

20 A YES, VERY MUCH SO.

21 Q WHAT --- WHAT DID YOU DO WHEN YOU SAW WHAT HE'D
22 ACTUALLY GIVEN YOU THAT NIGHT?

23 A I TOLD HIM HE HAD GYPPED ME ON MY WEIGHT AND I WANTED
24 MY MONEY BACK.

25 Q WHAT DID HE SAY?

TERRY DUNOVANT - DIRECT BY MR. LEMEL

630

1 A HE TOLD ME HE WASN'T GOING TO GIVE ME MY MONEY BACK.
2 HE TOLD ME I WOULD HAVE TO TAKE IT WITH MY MUSCLES.

3 Q WHEN HE SAID YOU'D HAVE TO TAKE IT WITH YOUR MUSCLES,
4 WHAT DID YOU ---

5 A THAT MEANS I'D HAVE TO FIGHT HIM IN ORDER TO GET MY
6 MONEY BACK.

7 Q AND WHAT DID YOU DO?

8 A I PROCEEDED. WE FOUGHT.

9 Q TELL US WHAT HAPPENED IN THAT FIGHT?

10 A UH, WE STARTED FIGHTING BACK AND FORTH AND WE WIND UP
11 ON THE GROUND AND IT WAS A COUPLE OF GUYS AROUND US ALSO.
12 WE PASSED LICKS BACK AND FORTH AND THEY BROKE IT UP. THEY
13 SAID THE POLICE WAS COMING. HE WENT HIS WAY AND I WENT MY
14 WAY. I GOT IN MY CAR ---

15 Q NOW, YOU SAID YOU HEARD THEM SAY WHAT TO YOU?

16 A TOLD ME THE POLICE WAS ON THEIR WAY.

17 Q OKAY. AND WHEN THE POLICE ARE COMING, YOU'RE
18 BASICALLY INVOLVED IN A FIGHT OVER DRUGS ---

19 A YES.

20 Q --- WHAT DO YOU DO AT THAT POINT?

21 A I GO AHEAD AND GET ON UP OUT OF THERE. I LEAVE.

22 Q AND AT ANY POINT IN TIME DID YOU NOTICE ANYTHING
23 HAPPEN TO YOU DURING THE FIGHT?

24 A YES, I GOT IN MY CAR AND I NOTICED I HAD SPLIT MY
25 KNUCKLE. I HAD A BUSTED KNUCKLE.

TERRY DUNOVANT - DIRECT BY MR. LEMEL

631

1 Q OKAY, HOW BAD WAS THAT SPLIT?

2 A IT WAS PRETTY BAD. IT WAS THROBBING AND I WAS
3 CUSSING. I WAS MAD. IT WAS --- IT WAS THROBBING.

4 Q WAS IT BLEEDING?

5 A YES, NOT SEVERELY, BUT IT WAS BLEEDING BAD ENOUGH,
6 YES.

7 Q OKAY. SO AT THIS POINT IN TIME DO YOU HAVE ANY CRACK
8 COCAINE WITH YOU?

9 A YES, I DO.

10 Q WHAT DID YOU HAVE WITH YOU?

11 A I HAD ABOUT FOUR OR FIVE TEN DOLLAR ROCKS AND ABOUT
12 THREE TWENTY ROCKS PIECES.

13 Q BASICALLY THE STUFF THAT HE HAD SOLD YOU.

14 A YES.

15 Q YOU DIDN'T GIVE THAT BACK TO HIM DURING THE COURSE OF
16 ---

17 A NO, I DID NOT.

18 Q DID YOU GET YOUR MONEY BACK?

19 A NO, I DIDN'T.

20 Q OKAY. WELL, AT THIS POINT IN TIME WHERE DO YOU
21 DECIDE TO GO BECAUSE THE COPS COME?

22 A I WAS MAD. I RODE AROUND FOR A WHILE AND JUST RODE
23 FOR A LITTLE BIT AND I SAID FUCK IT, I'M JUST BEING
24 HONEST. I SAID FUCK IT AND UH, I DECIDED TO GO OVER A
25 FRIENDS --- SOME FRIENDS THAT I USUALLY SMOKE MY CRACK

TERRY DUNOVANT - DIRECT BY MR. LEMEL

632

1 WITH.

2 Q WHAT PART OF TOWN DID THEY LIVE IN?

3 A IN MYRTLE SCHOOL.

4 Q NOW, WHAT'S AROUND THE MYRTLE SCHOOL --- WHAT IS
5 MYRTLE SCHOOL?

6 A MYRTLE SCHOOL IS A COMMUNITY THAT'S OFF BESSEMER CITY
7 ROAD. YOU GOT HOUSING DEVELOPMENTS. YOU ALSO GOT
8 APARTMENTS THERE IN THE MYRTLE SCHOOL AREA.

9 Q IS THAT WHERE YOU SAID YOU GREW UP?

10 A I GREW --- WELL, MY MOTHER USED TO OWN A HOME THERE
11 YEARS AGO. I PARTIALLY GREW UP THERE, YES.

12 Q SO YOU'RE FAMILIAR WITH THAT COMMUNITY?

13 A VERY WELL.

14 Q WHAT OTHER SORTS OF ROADS ARE AROUND THERE?

15 A YOU GOT CRESCENT LANE; YOU GOT SHANNON BRADLEY; YOU
16 GOT THE BESSEMER CITY ROAD.

17 Q IS THAT THE SAME AREA WHERE EVENTUALLY LATER ON THAT
18 DAY YOU GET STOPPED BY THE POLICE?

19 A YES, IT IS.

20 Q OKAY. SO WHY'D YOU GO THERE TO SMOKE CRACK COCAINE?

21 A THAT'S WHERE I USUALLY GO. IT'S A HANG-OUT WHERE
22 PEOPLE GO AND SMOKE THEIR CRACK, DRINK BEER, SMOKE WEED.
23 IT'S A HANG-OUT.

24 Q IS THERE A PARTICULAR PLACE YOU WERE GOING TO DO
25 THAT?

TERRY DUNOVANT - DIRECT BY MR. LEMEL

633

1 A YES, IT'S SOME BUDDIES JUST TO THERE, HANG AND SMOKE.

2 Q OKAY. WOULD YOU CALL YOURSELF GOOD FRIENDS WITH
3 PEOPLE THAT YOU HANG OUT WITH THERE?

4 A A SOCIAL. WE --- ON A BASIS, LIKE I SAY, WE SMOKE
5 CRACK, IT'S A CRACK BASIS.

6 Q AND THAT'S WHY PEOPLE GO TO THAT HOUSE.

7 A YES, TO SMOKE, TO GET HIGH.

8 Q SO WHAT HAPPENED THERE AT THE HOUSE WHEN YOU GOT
9 THERE?

10 A WE --- I SMOKED CRACK. THEY SMOKED --- WE TOOK TURNS
11 KIND OF LIKE. I WOULD SMOKE A TWENTY PIECE. WE SAT AND
12 TALK FOR A LITTLE BIT, DRANK A BEER OR TWO. THEY WOULD
13 SMOKE A --- IT'S LIKE BACK AND FORTH.

14 Q NOW, WERE YOU GIVING THEM YOUR CRACK TO SMOKE.

15 A OH, OH, NO. I SMOKED MY CRACK; THEY SMOKED THEIR
16 CRACK. EVERYBODY HAD THEIR OWN CRACK.

17 Q OKAY. AND ROUGHLY HOW LONG WOULD YOU SAY YOU STAYED
18 THERE?

19 A I CAN'T REALLY SAY. IT WAS LATE.

20 Q OKAY. AT SOME POINT IN TIME DID YOU DECIDE TO LEAVE?

21 A YES, I DID.

22 Q OKAY. ABOUT --- ABOUT HOW MUCH CRACK WOULD YOU SAY
23 YOU'D SMOKED BEFORE YOU LEFT?

24 A TWO TO THREE ROCKS I WOULD SAY.

25 Q WHERE DID YOU GO AT THAT POINT IN TIME WHEN YOU

TERRY DUNOVANT - DIRECT BY MR. LEMEL

634

1 DECIDED TO LEAVE?

2 A I GOT IN MY CAR AND I NOTICED I HAD LIKE A QUARTER OF
3 TANK OF GAS AND I KNOW BY LIVING IN THAT AREA IT'S A STORE
4 NEARBY, SO I DECIDED TO GO TO A LOCAL STORE.

5 Q TO DO WHAT?

6 A TO PURCHASE GAS.

7 Q AND IS THAT THE STORE THAT WE SAW YOU WALKING INTO?

8 A YES, SIR.

9 Q OKAY. AT THAT POINT IN TIME WERE YOU STILL WEARING
10 YOUR WORK CLOTHES?

11 A YES, I WAS.

12 Q OKAY. THE TORN KHAKI PANTS AND BLACK SHIRT WE SEE
13 THERE.

14 A YES, SIR.

15 Q AND AS YOU PULL UP TO THE PUMPS, DO YOU NOTICE
16 ANYTHING?

17 A YES, I DO. I NOTICE A WHITE FEMALE STANDING BETWEEN
18 THE ICE MACHINE AND THE NEWSPAPER MACHINE.

19 Q DO YOU APPROACH HER AT THAT POINT IN TIME?

20 A UH, NO, I DO NOT.

21 Q WHERE DO YOU GO?

22 A I GO INTO THE STORE BUT AS I WAS GOING INTO THE STORE
23 I NOTICE SOMEONE'S MAKING LIKE CAT CALLS, LIKE PSST, LIKE
24 TRYING TO GET MY ATTENTION.

25 Q LIKE A WHISTLE TO GET YOUR ATTENTION, PSST, SOMETHING

TERRY DUNOVANT - DIRECT BY MR. LEMEL

635

1 LIKE THAT?

2 A YES.

3 Q OKAY. AND HOW LONG WERE YOU IN THE STORE FOR?

4 A BRIEFLY I GUESS COUPLE --- NOT EVEN A MINUTE OR TWO,
5 COUPLE SECONDS. JUST ENOUGH TO PAY FOR THE GAS AND RIGHT
6 BACK OUT.

7 Q OKAY. HOW MUCH MONEY DID YOU HAND TO ---

8 A FIFTEEN DOLLARS IN GAS.

9 Q OKAY. AND WHEN YOU CAME OUT, WHERE WERE YOU WALKING
10 TOWARDS?

11 A I WAS WALKING STRAIGHT TO THE PUMP TO MY CAR.

12 Q AS YOU WERE WALKING TO THE PUMP TO YOUR CAR, WHAT
13 HAPPENED?

14 A I WAS PUMPING MY GAS AND I TURNED AROUND AND A WHITE
15 FEMALE APPROACHED ME.

16 Q OKAY, SHE CAME UP TO YOU.

17 A YES.

18 Q DID YOU CALL OUT TO HER OVER THE LENGTH ---

19 MS. LIPINSKI - YOUR HONOR, I'M GOING TO OBJECT
20 AS TO LEADING AT THIS POINT.

21 THE COURT - REPHRASE YOUR QUESTION.

22 Q WHAT, IF ANYTHING, DID YOU SAY TO HER AS YOU WERE
23 WALKING FROM THE GAS STATION TO THE PUMPS?

24 A NOTHING.

25 Q WAS THERE ANY CONVERSATION OVER THE LENGTH OF THAT

TERRY DUNOVANT - DIRECT BY MR. LEMEL

636

1 PARKING LOT?

2 A NO, IT WAS NOT.

3 Q OKAY. HOW CLOSE WAS SHE WHEN Y'ALL DECIDED OR WHEN

4 SHE --- THE CONVERSATION STARTED ---

5 A SHE WAS RIGHT AT MY CAR, RIGHT IN FRONT OF ME.

6 Q OKAY. WHAT DID SHE SAY TO YOU?

7 A SHE ASKED ME WAS I LOOKING FOR A DATE OR WAS I

8 LOOKING FOR A GOOD TIME, UH, SHE CAN ---

9 Q ALL RIGHT, I WANT TO STOP YOU REAL QUICK. WHEN SHE

10 ASKED YOU, ARE YOU LOOKING FOR A GOOD DATE (SIC), ARE YOU

11 LOOKING FOR GOOD TIME, WHAT DOES THAT INDICATE TO YOU?

12 A SHE'S A PROSTITUTE.

13 Q OKAY. HAVE YOU EVER BEEN WITH A PROSTITUTE BEFORE?

14 A YES.

15 Q ARE YOU FAMILIAR WITH THE LANGUAGE THEY USE WHEN THEY

16 ARE LOOKING FOR A CLIENT, A CUSTOMER?

17 A YES.

18 Q AND WHAT SORT OF LANGUAGE DO THEY TYP --- WHAT SORT

19 OF THINGS DO THEY TYPICALLY SAY?

20 A THEY SAY LIKE I'M LOOKING FOR, YOU KNOW, SUGAR DADDY,

21 LOOKING FOR SOMEBODY TO GET HIGH, YOU KNOW ANYBODY, YOU

22 KNOW, GET DOWN LIKE THAT, TRICKS, JUST VERY CERTAIN (SIC)

23 THINGS, YOU KNOW.

24 Q WELL, DOES ONE OF THOSE THINGS, ARE YOU LOOKING FOR

25 A DATE OR A GOOD TIME?

TERRY DUNOVANT - DIRECT BY MR. LEMEL

637

1 A YES.

2 Q SO INITIALLY YOU TOOK HER TO BE WHAT?

3 A TO ---

4 Q WHEN SHE CAME UP AND ASKED YOU, ARE YOU LOOKING FOR

5 A DATE ---

6 A YES.

7 Q --- WHAT DID YOU TAKE HER FOR?

8 A I TOOK HER AS A --- LIKE I SAY, A PROSTITUTE AND

9 THAT'S --- THAT'S BASICALLY IT. I MEAN, YOU KNOW, SHE WAS

10 ---

11 Q DID YOU NOTICE ANYTHING ABOUT HER AT THAT POINT IN

12 TIME?

13 A YES. SHE HAD A BRUISE ON HER NECK. SHE ALSO HAD A

14 SPLIT LIP OR A BUSTED LIP OR SOMETHING OF THAT NATURE.

15 AND SHE ALSO HAD BRUISING ON HER CHEST AREA.

16 Q OKAY. AND WHAT WAS YOUR INITIAL REACTION WHEN SHE

17 ASKED YOU BASICALLY OR PROPOSITIONED YOU AT THAT POINT IN

18 TIME?

19 A I FIGURED SHE WAS TRYING TO GET, YOU KNOW, TRYING TO

20 MAKE SOME MONEY.

21 Q BUT WHAT WAS --- WHAT WAS YOUR REACTION BACK TO HER?

22 WHAT DID YOU TELL HER WHEN SHE ASKED YOU THAT?

23 A I WASN'T REALLY --- I WASN'T TRYING TO FEEL THAT. I

24 WASN'T REALLY DOWN WITH THAT.

25 Q WHAT DOES THAT --- WASN'T REALLY DOWN --- DOES THAT

TERRY DUNOVANT - DIRECT BY MR. LEMEL

638

1 MEAN YOU TOLD HER NO?

2 A I TOLD HER I WASN'T --- I WASN'T FOR THAT, YOU KNOW,
3 I DIDN'T WANT TO --- ANYTHING TO DO WITH IT.

4 Q OKAY. WHEN YOU TURNED HER DOWN INITIALLY, WHAT DID
5 SHE THEN DO?

6 A SHE TOLD ME A SAD STORY, THAT SHE WAS AT A MICRO
7 HOTEL --- IT'S A HOTEL NEAR WHERE WE WAS AT. IT'S A HOTEL
8 --- SHE TOLD ME SHE WAS HANGING OUT WITH SOME PEOPLE
9 SMOKING CRACK, HAVING ORAL SEX, DRINKING AND JUST PARTYING
10 AND THEY THREW HER OUT; THEY BEAT HER UP AND THEY PUT HER
11 OUT OF THE HOTEL AND THAT'S WHY SHE WAS AT THE STORE.

12 Q OKAY. ONCE SHE SORT OF TOLD YOU THAT --- THAT STORY,
13 WHAT DID YOU DO?

14 A I FEEL SYMPATHY FOR HER. I OFFERED HER A RIDE.

15 Q OKAY. AND ALSO AS PART OF THAT RIDE, DID YOU EXPECT
16 TO TAKE HER UP ON HER OFFER AT THAT POINT IN TIME?

17 A YES.

18 Q ARE YOU PROUD OF THE FACT THAT YOU DECIDED TO GO WITH
19 A PROSTITUTE ---

20 MS. LIPINSKI - OBJECT TO THE LEADING.

21 THE COURT - I SUSTAIN THE OBJECTION. JUST ASK -
22 -- DON'T LEAD.

23 MR. LEMEL - ALL RIGHT.

24 Q SO AT THAT POINT IN TIME WHAT DID YOU TELL HER?

25 A I TOLD HER OF --- I WASN'T PROUD OR NOTHING, BUT I

TERRY DUNOVANT - DIRECT BY MR. LEMEL

639

1 TOLD HER YES, I WOULD ---

2 Q DID --- WHERE DID SHE GO? WHERE DID ---

3 A WHERE DID WE GO?

4 Q WELL, YOU'RE STANDING THERE BY THE CAR. WHAT DID YOU
5 DO NEXT?

6 A I OFFERED HER INTO THE CAR AND SHE GETS IN.

7 Q OKAY. DID YOU HAVE TO FORCE HER INTO THE CAR?

8 A NO, I DID NOT.

9 Q AND WHO WAS DRIVING?

10 A I WAS DRIVING.

11 Q WHERE WAS SHE SEATED?

12 A ON THE PASSENGER'S SIDE.

13 Q WHAT HAPPENED AS YOU PULL AWAY FROM THE GAS PUMPS?

14 A SHE ZIPPED BY ZIPPER DOWN AND STARTED TO PERFORM ORAL
15 SEX.

16 Q OKAY. SO WHILE YOU'RE DRIVING DOWN THE ROAD AT THAT
17 POINT IN TIME SHE'S PERFORMING ORAL SEX ON YOU.

18 A YES, BEFORE WE LEFT THE PARKING LOT, SHE WAS STARTING
19 TO PERFORM ORAL SEX ON ME, YES.

20 Q OKAY. NOW, DID YOU KNOW WHERE YOU WERE GOING AT THAT
21 POINT IN TIME?

22 A NO, I DIDN'T. SHE DIRECTED THE WAY.

23 Q OKAY. WHAT DID SHE SAY TO YOU AS YOU WERE DRIVING
24 OUT OF THE PARKING LOT?

25 A AS I WAS COMING OUT OF THE PARKING LOT, SHE TOLD ME

TERRY DUNOVANT - DIRECT BY MR. LEMEL

640

1 TO TAKE A RIGHT ON BESSEMER CITY ROAD.

2 Q OKAY. AND DID YOU DO THAT?

3 A YES, I DID.

4 Q WHERE DID YOU GO AT THAT POINT IN TIME?

5 A SHE TOLD ME TO CONTINUE, KEEP STRAIGHT AND SHE WAS
6 DOING ME ORAL SEX OFF AND ON.

7 Q WAS IT A CONSTANT THING OR ---

8 A NO, IT WASN'T A CONSTANT THING. SHE WOULD --- YOU
9 KNOW, DO A LITTLE SOME, THEN SHE WOULD STOP AND JUST
10 CONTINUE TO TELL ME WHAT, YOU KNOW, DIRECT ME THE WAY TO
11 GO.

12 Q OKAY. WHILE YOU'RE IN THE CAR, ARE YOU DOING
13 ANYTHING ELSE?

14 A YES, WE DEFINITELY SMOKING CRACK COCAINE ALSO.

15 Q OKAY. OVER THE COURSE --- AND I DON'T --- BUT OVER
16 THE COURSE OF THE CAR RIDE, ROUGHLY HOW MUCH CRACK WOULD
17 YOU SAY YOU SMOKED?

18 A FOUR ROCKS.

19 Q OKAY. DID YOU SMOKE ALL FOUR ROCKS?

20 A NO, I DIDN'T --- DID SMOKE ALL FOUR BY MYSELF OR DID
21 WE ---

22 Q YES, DID YOU SMOKE ALL FOUR BY YOURSELF?

23 A NO.

24 Q DID SHE SMOKE ALL FOUR BY HERSELF?

25 A NO.

TERRY DUNOVANT - DIRECT BY MR. LEMEL

641

1 Q HOW DID Y'ALL SPLIT THAT UP?

2 A WE SMOKED IT TOGETHER.

3 Q OKAY. WHOSE CRACK PIPE DID Y'ALL USE?

4 A SHE HAD THE CRACK PIPE; I HAD THE CRACK.

5 Q SHE DIDN'T PROVIDE THE CRACK.

6 A NO.

7 Q AS WELL DID Y'ALL TALK ABOUT ANYTHING AS YOU'RE
8 DRIVING DOWN THE DOWN?

9 A YES, I TOLD HER I USUALLY HANG OUT IN THE MYRTLE
10 SCHOOL AREA. LIKE I SAID, I HAD SOME ASSOCIATE FRIENDS
11 THAT I DO SMOKE CRACK THERE AND I HANG OUT THERE. THAT'S
12 WHERE I DO MY DRUGS.

13 Q WAS THIS JUST PART OF SORT OF THE CONVERSATION, YOU
14 TALKED ABOUT DRUGS ---

15 A YES.

16 Q OKAY. AND EVENTUALLY DID SHE CONTINUE TO GUIDE YOU
17 ANYWHERE?

18 A YES, CONTINUE TO KEEP GUIDING ME DOWN 321 SOUTH.

19 Q OKAY. WHAT HAPPENED AS YOU GOT SORT OF CLOSE TO THE
20 NORTH CAROLINA BORDER? DID SHE TELL YOU TO TURN OFF
21 ANYWHERE?

22 A NO, SHE DID NOT.

23 Q DID SHE INDICATE WHERE HER HOUSE WAS?

24 A NO, SHE DID NOT.

25 Q OKAY. WHERE DID SHE INDICATE FOR YOU TO GO?

TERRY DU NOVANT - DIRECT BY MR. LEMEL

642

- 1 A SHE TOLD ME TO KEEP STRAIGHT AND I NOTICED WE CAME
2 INTO SOUTH CAROLINA.
3 Q OKAY. HOW FAR IN SOUTH CAROLINA DID YOU GO?
4 A HOW FAR DID WE GO IN?
5 Q YES.
6 A TO THE YORK COUNTY AREA.
7 Q OKAY. I UNDERSTAND YOU GO INTO YORK COUNTY, BUT HOW
8 MUCH DISTANCE INTO YORK COUNTY DID YOU GO?
9 A HALF-WAY, QUARTER WAY, I MEAN ---
10 Q A QUARTER WAY TO WHAT?
11 A TO --- TO WEEPING MARY CHURCH, I MEAN ---
12 Q OKAY. IS IT A LONG DISTANCE BETWEEN THE BORDER AND
13 WEEPING MARY BAPTIST CHURCH?
14 A NO, IT'S NOT.
15 Q OKAY. HAD YOU EVER BEEN TO WEEPING MARY BAPTIST?
16 A NO, I HAVE NOT.
17 Q ARE YOU FAMILIAR WITH THAT AREA?
18 A NO.
19 Q DO YOU REGULARLY DRIVE FROM GASTONIA DOWN TO CLOVER?
20 A NO, I DO NOT.
21 Q OKAY. HAD YOU EVER BEEN TO THAT SITE BEFORE?
22 A NO.
23 Q WHO TOLD YOU WHERE TO DO?
24 A MISTI HILL.
25 Q OKAY. HOW DID SHE TELL YOU WHERE TO GO?

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643

1 A SHE DIRECTED ME FROM 321 SOUTH TO KEEP GOING AND I
2 MADE A RIGHT TURN AT WEEPING MARY CHURCH.

3 Q OKAY. NOW, DESCRIBE THE DRIVEWAY GOING UP TO WEEPING
4 MARY CHURCH?

5 A IT'S SORT OF LIKE A PAVEMENT ROAD. ONCE YOU --- IT'S
6 LIKE A LITTLE HILL, NOT A STEEP HILL, BUT IT'S A MEDIUM
7 SIZE HILL AS YOU GO UP.

8 Q OKAY. ABOUT HOW FAR UP OFF 321 IS IT?

9 A YES, IT'S OFF OF 321.

10 Q ABOUT HOW FAR?

11 A MAYBE --- NOT EVEN A --- I'D SAY ABOUT A HALF A MILE.
12 NOT EVEN REALLY HALF A MILE I'D SAY.

13 Q BUT A LITTLE BIT OF ONE. JUST --- IT DOESN'T SIT
14 RIGHT DOWN ON ---

15 A NO, IT SITS BACK OFF.

16 Q WHEN YOU GOT UP CLOSE TO THE CHURCH, WHERE DID YOU GO
17 FROM THERE?

18 A SHE DIRECTED ME TO MAKE A LEFT OUT IN A WOODED AND
19 FIELD AREA.

20 Q SO OUT OF THE DRIVEWAY YOU SORT OF --- YOU WENT LEFT.

21 A YES.

22 Q AND THEN WHERE DID YOU GO?

23 A WENT TO A FIELD AREA AND SHE TOLD ME TO GO DOWN PAST
24 A COUPLE OF STONES, HEAD STONES WERE LAYING DOWN OR
25 SOMETHING LIKE THAT AND I WENT DOWN --- IT WAS LIKE

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644

- 1 NOWHERE TO TURN AROUND SO I JUST BACKED UP AND PARKED.
- 2 Q OKAY. NOW, AT THAT POINT IN TIME WHAT WAS YOUR
- 3 BELIEF ABOUT WHAT WAS GOING TO HAPPEN?
- 4 A THAT WE WAS GOING TO HAVE SEX.
- 5 Q OKAY. AND WHAT HAPPENED WHEN YOU WERE SITTING THERE
- 6 AND PARKED THERE?
- 7 A WE SAT THERE AND TALKED A LITTLE BIT, SMOKED CRACK
- 8 AND UM, SHE ASKED ME DID I HAVE A CONDOM.
- 9 Q OKAY. DID YOU HAVE ONE?
- 10 A NO, I DID NOT.
- 11 Q WHAT DID YOU TELL HER?
- 12 A I TOLD HER I DID NOT HAVE A CONDOM.
- 13 Q WHAT WAS HER RESPONSE TO THAT?
- 14 A SHE SAID THAT WAS OKAY.
- 15 Q OKAY. WHAT HAPPENED NEXT?
- 16 A THEN AFTER THAT SHE GOT OUT OF THE VEHICLE.
- 17 Q WHAT SIDE OF THE VEHICLE ---
- 18 A SHE GOT OUT ON THE PASSENGER'S SIDE.
- 19 Q WHAT SIDE DID YOU GET OUT OF?
- 20 A ON THE DRIVER'S SIDE.
- 21 Q AND WHERE DID YOU MEET?
- 22 A WE WENT TO THE BACK OF THE CAR.
- 23 Q OKAY. AND NOT TO GET TOO GRAPHIC, BUT WHAT HAPPENED
- 24 NEXT IN THE BACK OF THE CAR?
- 25 A ONCE WE GOT TO THE BACK OF THE CAR, SHE LEANED ON THE

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645

1 TRUNK OF THE CAR IN THE BACK. SHE TOOK DOWN HER PANTS AND
2 WE HAD SEX.

3 Q SHE PUT HER --- YOU SAID --- YOU'D MADE A MOTION.
4 WHERE EXACTLY DID SHE PUT HER HANDS?

5 A SHE PUT HER HANDS ON THE TRUNK AND DID A WINDOW ---
6 THE WINDOW, THE BACK WINDOW.

7 Q ON THE --- ON THE HOOD OF THE TRUNK; ON THE BASE OF
8 THE TRUNK OR WHERE ON THE --- WHERE ON THE TRUNK DID SHE -
9 -- DO YOU REMEMBER?

10 A I DON'T RECALL. ONLY THING I KNOW WAS ON THE TRUNK.
11 I CAN'T RECALL BECAUSE I WAS IN THE BACK.

12 Q OKAY. YOU WERE BEHIND HER.

13 A YES.

14 Q AND AT THAT POINT IN TIME DID Y'ALL HAVE SEX?

15 A YES, WE DID.

16 Q WHO --- DO YOU REMEMBER WHAT CLOTHES SHE WAS WEARING?

17 A DO I REMEMBER WHAT CLOTHES SHE WAS WEARING? YES.
18 SOME TYPE OF BLUE JEAN AND A PINK SHIRT, LIKE A BLOUSE
19 WITH THE BREAST --- YOU COULD SEE THE BREASTS AND
20 BASICALLY THAT WAS ABOUT IT AND ---

21 Q OKAY. WHO TOOK OFF HER JEANS?

22 A SHE DIDN'T TAKE THEM OFF. SHE PULLED THEM DOWN.

23 Q OKAY. DID SHE PULL THEM DOWN ALL THE WAY?

24 A YES, HALF --- PAST HER KNEES.

25 Q OKAY. WERE HER LEGS STILL IN THEM TOUGH?

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646

- 1 A YES.
- 2 Q THEY WERE NOT COMPLETELY OFF OF HER?
- 3 A NO, THEY WASN'T.
- 4 Q OKAY. AND AT THAT POINT IN TIME DID YOU HAVE SEX?
- 5 A YES.
- 6 Q OKAY. AT THE END OF Y'ALL HAVING SEX, AT ANY POINT
- 7 IN TIME DID SHE SAY NO?
- 8 A NO, SHE DIDN'T.
- 9 Q DID SHE SAY STOP?
- 10 A NO.
- 11 Q DID SHE SCREAM?
- 12 A NO.
- 13 Q OKAY. AT THE END OF THAT WHAT HAPPENED?
- 14 A SHE HAD A BANDANNA ON HER HEAD. SHE TOOK THE
- 15 BANDANNA OFF AND TOLD ME TO WIPE MYSELF OFF AND I DID
- 16 REACH THE BANDANNA TO HER AND SHE WIPED HERSELF OFF.
- 17 Q OKAY. AND AT THAT POINT IN TIME AFTER YOU'RE DONE,
- 18 WHAT HAPPENED?
- 19 A WE GOT BACK IN THE VEHICLE. WE TALKED FOR A LITTLE
- 20 BIT. WE DONE ANOTHER HIT OF CRACK AND SHE ASKED ME FOR
- 21 TWENTY DOLLARS.
- 22 Q OKAY. DID YOU HAVE TWENTY DOLLARS?
- 23 A YES, I DID.
- 24 Q WHAT DID YOU GIVE HER?
- 25 A I GAVE HER TWENTY DOLLARS.

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647

1 Q OKAY. WHAT DID SHE SAY ONCE YOU GAVE HER THE TWENTY
2 DOLLARS?

3 A SHE SAID SHE USUALLY GET MORE THAN TWENTY DOLLARS AND
4 BASICALLY THAT WAS ABOUT IT.

5 Q DID YOU GIVE HER ANY MORE MONEY?

6 A NO, I DID NOT.

7 Q OKAY, WHERE DID YOU DRIVE HER AT THAT POINT?

8 A WE LEFT THE GRAVE SITE AND I DROPPED HER OFF AT A HOT
9 SPOT OR A STORE, HOT SPOT STORE.

10 Q DO YOU REMEMBER EXACTLY WHAT STORE IT WAS?

11 A ONLY THING I KNEW WAS --- I REMEMBER SEEING A HOT
12 SPOT STORE AND THAT WAS BASICALLY IT.

13 Q WHERE IN RELATIONSHIP TO THE CHURCH WAS THAT STORE?

14 A HOW FAR WAS IT?

15 Q YES.

16 A PROBABLY RIGHT --- RIGHT UP THE ROAD. NOT TOO FAR.

17 IT'S LIKE A SIDE DINER THING OR SOMETHING LIKE THAT. NOT
18 TOO FAR FROM THERE.

19 Q OKAY. AGAIN, WAS THAT AN AREA THAT YOU WERE FAMILIAR
20 WITH?

21 A NO, I WAS NOT.

22 Q WAS THAT AN AREA YOU'D NEVER BEEN TO BEFORE?

23 A NO..

24 Q ONCE YOU DROP HER OFF, WHERE DO YOU GO?

25 A I GO BACK TO GASTONIA, NORTH CAROLINA.

TERRY DUNOVANT - DIRECT BY MR. LEMEL

648

1 Q DO YOU THINK ANYMORE ABOUT THE ENCOUNTER AT THAT
2 POINT IN TIME?

3 A NO, I DO NOT.

4 Q WHERE IN GASTONIA DO YOU DECIDE TO GO?

5 A I RODE AROUND FOR A WHILE AND I STOPPED BY SOME MORE
6 FRIENDS AND JUST ---

7 Q MORE FRIENDS WHERE?

8 A OVER IN THE MYRTLE SCHOOL AREA.

9 Q OKAY. FOR WHAT PURPOSE?

10 A TO SMOKE CRACK.

11 Q DO YOU STILL HAVE SOME CRACK LEFT OVER?

12 A YES, I DID.

13 Q OKAY. HOW MUCH CRACK DO YOU HAVE LEFT AT THAT POINT
14 IN TIME?

15 A ABOUT --- I'D SAY ABOUT THREE OR FOUR MORE ROCKS,
16 MAYBE THREE AND A HALF ROCKS.

17 Q OKAY. ABOUT HOW LONG WOULD YOU SAY YOU WERE IN THAT
18 AREA?

19 A UM, FOR --- FOR A WHILE. I MEAN NOT LONG, JUST HUNG
20 OUT FOR A WHILE.

21 Q OKAY. WHEN YOU WERE LEAVING THAT AREA, WHAT
22 HAPPENED?

23 A I GOT ON THE BESSEMER CITY ROAD. I WAS MAKING A LEFT
24 TURN ONTO SHANNON BRADLEY.

25 Q WHAT HAPPENED?

TERRY DUNOVANT - DIRECT BY MR. LEMEL

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1 A I WENT ACROSS 85 AND I NOTICE A CAR FOLLOWING ME,
2 THEN I MADE A LEFT ON CRESCENT LANE. IT WAS A POLICE CAR.

3 Q OKAY. AND AT SOME POINT IN TIME DID THAT POLICE CAR
4 DO ANYTHING?

5 A YES, THEY STOPPED ME.

6 Q THEY ACTIVATED THEIR BLUE LIGHTS.

7 A YES.

8 Q WHAT DID YOU DO WHEN THEY TURNED ON THEIR BLUE
9 LIGHTS?

10 A I IMMEDIATELY STOPPED.

11 Q NOW, WHAT WAS YOUR THOUGHT --- WHAT WAS GOING THROUGH
12 YOUR HEAD WHEN YOU SAW THOSE BLUE LIGHTS?

13 A I SAID, OH, GOD, THEY DONE CAUGHT ME. MY LICENSE ARE
14 SUSPENDED.

15 Q OKAY. AND IS THAT SORT OF WHAT YOU THOUGHT WAS THE
16 ISSUE AT THAT POINT IN TIME?

17 A YES.

18 Q OKAY. ANY CLUE IN YOUR MIND AT THAT POINT IN TIME
19 THAT YOU MIGHT'VE BEEN REPORTED FOR A RAPE?

20 A NO, SIR.

21 Q OKAY. SO WHAT HAPPENED WHEN THE POLICE OFFICER
22 APPROACHED THE FRONT OF THE VEHICLE?

23 A THEY APPROACHED THE VEHICLE. HE ASKED ME MY NAME.

24 Q WHAT NAME DID YOU GIVE THEM?

25 A I GAVE THEM MY BROTHER'S NAME, MARK DUNOVANT.

TERRY DUNOVANT - DIRECT BY MR. LEMEL

650

1 Q WHY'D YOU DO THAT?

2 A BECAUSE LIKE I SAID, I --- MY LICENSE ARE SUSPENDED
3 AND, YOU KNOW, I JUST DIDN'T WANT TO GO TO JAIL. MY
4 LICENSE WAS SUSPENDED.

5 Q OKAY. AND WHAT WAS HIS RESPONSE WHEN YOU TOLD HIM
6 THAT YOUR NAME WAS MARK DUNOVANT?

7 A HE TOLD ME THAT HE KNEW MARK DUNOVANT AND HE DIDN'T
8 BELIEVE ME AND HE SAID THAT UM --- ASKED ME --- ASKED ME
9 AGAIN WHAT IS YOUR NAME.

10 Q OKAY. AND ABOUT HOW LONG WAS IT BEFORE YOU TOLD HIM
11 WHAT YOUR NAME REALLY WAS?

12 A AFTER A COUPLE OF MINUTES I WENT AHEAD AND TOLD HIM
13 MY REAL NAME.

14 Q OKAY. AND WHAT DID HE DO AT THAT POINT IN TIME?

15 A HE TOLD ME TO GET OUT OF THE CAR.

16 Q OKAY. DID HE PUT YOU IN HAND-CUFFS?

17 A YES, HE DID.

18 Q AND DID HE JUST STAND THERE ALONE OR DID ANYBODY ELSE
19 COME TO THE SCENE?

20 A NO, RIGHT --- NOT RIGHT THEN. HE TOLD ME HAVE A SEAT
21 AND THEN HE GOT ON THE PHONE AND THEN ANOTHER OFFICER
22 ARRIVED ON THE SCENE.

23 Q OKAY. DO YOU REMEMBER WHAT OFFICER THAT WAS?

24 A OFFICER --- IT WAS A FEMALE OFFICER AND A GENTLEMAN.

25 Q ALL RIGHT. DO YOU SEE ANY OF THOSE PEOPLE IN THE

TERRY DUNOVANT - DIRECT BY MR. LEMEL

651

- 1 COURTROOM HERE?
- 2 A YES.
- 3 Q OKAY. DO YOU ---
- 4 A THE GENTLEMAN WITH THE SHIRT ON WITH THE STAR WITH
- 5 THE GLASSES ON THE END.
- 6 Q DETECTIVE BOMAR?
- 7 A YES.
- 8 Q OKAY. DID YOU KNOW HIM BEFORE THEN?
- 9 A NO, I DO NOT.
- 10 Q OKAY. AND WHO ELSE CAME?
- 11 A I THINK IT'S THE YOUNG LADY IN THE MIDDLE. I'M NOT -
- 12 --
- 13 Q THE LADY SITTING NEXT TO HIM.
- 14 A YES.
- 15 Q OKAY, DETECTIVE TOLSON.
- 16 A YES.
- 17 Q OKAY. AGAIN, DID YOU KNOW --- EVER HAD ANY CONTACT
- 18 WITH THESE PEOPLE?
- 19 A NO, I HAVE NOT.
- 20 Q OKAY. SO TO START --- GOT THERE AT THE SCENE OF YOUR
- 21 CAR. WHAT HAPPENED?
- 22 A AS SOON AS THEY ARRIVED, THE OFFICER, THE GENTLEMAN,
- 23 HE STARTED TAKING PICTURES OF MY CAR. AND THEN HE STARTED
- 24 TAKING PICTURES OF ME AND LIKE I SAID, I HAD A CUT ON MY
- 25 RIGHT HAND AND HE ASKED ME WHERE DID I GET THE CUT, AND I

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652

1 TOLD HIM I HAD GOT IN A FIGHT EARLIER THAT NIGHT, AND HE
2 CONTINUED TO TAKE PICTURES AND HE TOOK A PICTURE OF MY
3 KNEE, PLUS I ALSO HAD BLOOD ON MY KNEE.

4 Q OKAY. WHERE DID YOU GO FROM OUT THERE ON THE SCENE?

5 A UH, THEY TOOK ME IMMEDIATELY TO THE GASTON COUNTY
6 JAIL, NOT THE JAIL, TO THE --- TO BE --- THE JAIL, UH --

7 Q POLICE DEPARTMENT?

8 A THE POLICE DEPARTMENT, YES.

9 Q OKAY. AT THE POLICE DEPARTMENT WHO DID YOU TALK
10 WITH?

11 A ANOTHER OFFICER. I CAN'T THINK OF HIS NAME. IT WAS
12 A CAPTAIN OR A SERGEANT.

13 Q OKAY.

14 A I CAN'T THINK OF HIS NAME, BUT IT WAS CAPTAIN OR A
15 SERGEANT.

16 Q OKAY, IS HE HERE IN THE COURTROOM TODAY?

17 A NO, I --- I DON'T SEE HIM, NO.

18 Q OKAY.

19 A NO.

20 Q AT SOME POINT IN TIME DID THEY TAKE YOU INTO A LITTLE
21 INTERVIEW ROOM?

22 A YES, THEY DO.

23 Q OKAY. WHO ALL WAS IN THERE WITH YOU FOR THAT?

24 A IT WAS DETECTIVE --- THE FEMALE DETECTIVE ---

25 Q DETECTIVE TOLSON.

TERRY DUNOVANT - DIRECT BY MR. LEMEL

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1 A YES, AND ALSO IT WAS BOTH OF THEM MATTER OF FACT. HE
2 WAS IN THERE ALSO.

3 Q OKAY.

4 A BOTH THOSE DETECTIVES.

5 Q WAS HE IN THERE THE WHOLE TIME? DO YOU REMEMBER
6 WHETHER HE ---

7 A NO, HE WAS IN AND OUT.

8 Q OKAY.

9 A IN AND OUT.

10 Q WHAT WAS SORT OF THE NATURE OF THE CONVERSATION YOU
11 HAD WITH DETECTIVE TOLSON?

12 A IT WAS --- IT WAS --- SHE WAS TRYING TO LIKE MAKE ME
13 CONFESS TO SOMETHING THAT I DIDN'T DO. SHE WAS TELLING ME
14 LIKE, YOU KNOW WHAT YOU BEEN ARRESTED FOR, UH, WE GOING TO
15 TAKE IT EASY ON YOU; YOU MIGHT AS WELL TELL THE TRUTH; WE
16 GOT YOUR TAG NUMBER; WE'VE GOT YOUR CAR; WE'VE --- AGAIN,
17 I DIDN'T KNOW WHAT SHE WAS TALKING ABOUT.

18 Q NOW, AT SOME POINT IN TIME SOMEBODY INDICATED TO YOU
19 WHAT SOMEBODY WAS SAYING ABOUT YOU. RIGHT?

20 A YES.

21 Q OKAY. NOW, WAS IT YOUR --- WHAT WAS YOUR BELIEF THAT
22 DETECTIVE TOLSON WAS TRYING TO GET YOU TO ADMIT TO?

23 A SHE WAS TRYING TO GET ME TO CONFESS TO SOMETHING I
24 DIDN'T DO TO HER. I MEAN ---

25 Q OKAY. AND ULTIMATELY DID THE OTHER --- DID ONE OF

TERRY DUNOVANT - DIRECT BY MR. LEMEL

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1 THE DETECTIVES FROM GASTON COUNTY COME IN, DETECTIVE WEST
2 COME IN AND SAY SOMETHING ---

3 A YES.

4 Q --- TO YOU?

5 A YES, ANOTHER DETECTIVE FROM THE GASTONIA DEPARTMENT
6 CAME IN AND HE TOLD ME, MR. DUNOVANT, I --- HE ADVISED ME
7 TO GO AHEAD AND JUST KIND OF GO ALONG AND I WOULD WANT TO
8 TELL MY STORY ALSO IF I HAD TO COME TO COURT.

9 Q OKAY. AND SO AT THAT POINT IN TIME AFTER HE TOLD YOU
10 THAT, YOU DECIDED TO GO AHEAD AND GIVE THEM A STATEMENT?

11 A YES, BECAUSE --- YES, I FEEL --- YES, I --- ONCE HE
12 TALKED WITH ME, I FELT A LITTLE BIT MORE COMFORTABLE.
13 YES. (INDICATING YES)

14 Q NOW, THIS STATEMENT, DID YOU WRITE THE STATEMENT OUT
15 YOURSELF?

16 A NO, I DID NOT.

17 Q WHY NOT?

18 A MY SPELLING IS NOT THAT GOOD, SO I --- SHE TOLD ME I
19 WOULD WRITE IT OUT FOR YOU.

20 Q OKAY. AND WHEN YOU SAY SHE, YOU STILL REFERRING TO
21 DETECTIVE TOLSON.

22 A DETECTIVE BOWMAN (SIC), YES.

23 Q TOLSON.

24 A TOLSON.

25 Q THE FEMALE DETECTIVE.

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655

1 A THE FEMALE DETECTIVE.

2 Q OKAY. UM, AND DID Y'ALL TALK FOR A WHILE?

3 A YES.

4 Q HOW LONG WOULD YOU SAY YOU TALKED FOR?

5 A I --- I DON'T KNOW. ONLY THING I COULD SAY I WAS
6 THERE PROBABLY A HOUR OR SO. I MEAN I'M NOT FOR SURE. I
7 CAN'T REALLY BASE THE TIME.

8 Q OKAY. AND DID YOU ANSWER HER QUESTIONS?

9 A YES.

10 Q AND DID YOU TELL THEM ABOUT WHERE YOU'D BEEN THAT
11 NIGHT?

12 A YES, I DID.

13 Q WELL, DID YOU TELL HIM ABOUT BUYING CRACK COCAINE?

14 A YES.

15 Q DID YOU TELL THEM ABOUT IT?

16 A YES, I DID.

17 Q OKAY. WELL, DID YOU TELL THEM ABOUT HAVING SEX WITH
18 MS. HILL?

19 A YES, I DID.

20 Q OKAY, WHAT --- WHAT DID YOU TELL THEM ABOUT IT?

21 A I TOLD THEM WE WAS SMOKING CRACK COCAINE; WE TRADED
22 SEX FOR CRACK; I GAVE HER MONEY, YES.

23 Q OKAY. TRY TO HIDE THAT IN ANY WAY?

24 A NO, I DID NOT.

25 Q AND EVENTUALLY THE STUFF IN THE INTERROGATION ROOM,

TERRY DUNOVANT - DIRECT BY MR. LEMEL

656

1 IN THAT LITTLE ROOM IS OVER. RIGHT?

2 A YES.

3 Q OKAY. AND AT SOME POINT IN TIME THAT AFTERNOON YOU
4 GET SERVED WITH A COUPLE OF WARRANTS ---

5 A YES.

6 Q --- FOR RAPE?

7 A YES. YES, THEY TOOK ME DOWN TO THE POLICE DEPARTMENT
8 AND THEY SERVED ME WITH A WARRANT FOR RAPE.

9 Q AND HOW DID YOU FEEL AT THAT POINT?

10 A I FELT TERRIBLE. I MEAN --- SERVED A WARRANT FOR ---

11 Q AT ANY POINT IN TIME OVER THE COURSE OF THAT EVENING
12 DID YOU HIT MISTI HILL?

13 A NO, I DID NOT.

14 Q AT ANY POINT IN TIME OVER THE COURSE OF THAT EVENING
15 DID YOU KICK MISTI HILL?

16 A NO, I DID NOT.

17 Q PUNCH HER?

18 A NO, I DID NOT.

19 Q STRANGLE HER?

20 A NO, I DID NOT.

21 Q DID YOU FORCE HER INTO YOUR CAR?

22 A NO, I DID NOT.

23 Q DID YOU FORCE HER OUT OF YOUR CAR?

24 A NO, I DID NOT.

25 Q DID YOU FORCE HER TO HAVE SEX?

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 A NO, I DID NOT.

2 Q DID YOU FORCE HER TO HAVE ORAL SEX ON YOU?

3 A NO, I DID NOT.

4 Q DID YOU HURT HER IN ANY WAY?

5 A NO, I DID NOT.

6 Q ARE YOU GUILTY OF RAPING HER?

7 A NO, I'M NOT.

8 MS. LIPINSKI - YOUR HONOR, OBJECT TO THE
9 QUESTION OF GUILTY. I DON'T THINK THAT'S A PROPER
10 QUESTION FOR THIS DEFENDANT.

11 THE COURT - REPHRASE YOUR QUESTION.

12 Q DID YOU RAPE HER?

13 A NO.

14 Q DID YOU KIDNAP HER?

15 A NO.

16 MR. LEMEL - PLEASE ANSWER ANY QUESTIONS MS.
17 HERVEY MAY HAVE.

18 CROSS EXAMINATION

19 BY MS. LIPINSKI -

20 Q MR. DUNOVANT IN 2005 WERE YOU CONVICTED OF POSSESSION
21 OF STOLEN GOODS?

22 A YES, I WAS.

23 Q IN 1999 WERE YOU CONVICTED OF TWO COUNTS OF OBTAINING
24 PROPERTY BY WORTHLESS CHECK?

25 A YES.

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

658

1 MS. LIPINSKI - COURT'S INDULGENCE ONE MOMENT,
2 YOUR HONOR.

3 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
4 NUMBER 18, ASK YOU IF YOU RECOGNIZE THAT DOCUMENT?

5 A YES, I DO.

6 Q AND DOES IT BEAR YOUR SIGNATURE IN TWO PLACES, BOTH
7 IN THE MIDDLE OF THE PAPER AND AT THE BOTTOM?

8 A YES, THEY DO.

9 Q AND DID YOU SIGN THIS?

10 A YES.

11 Q YOU REMEMBER GOING OVER YOUR RIGHTS WITH LIEUTENANT
12 TOLSON?

13 A YES.

14 Q DID YOU UNDERSTAND THEM WHEN SHE REVIEWED THEM WITH
15 YOU?

16 A YES.

17 Q SO DESPITE THE CONSUMPTION OF CRACK COCAINE THE NIGHT
18 BEFORE AND ALCOHOL, YOU UNDERSTOOD THAT YOU HAD THE RIGHT
19 TO REMAIN SILENT AND YOU DIDN'T HAVE TO TALK TO HER.

20 A YES.

21 Q LET ME SHOW YOU WHAT'S BEEN MARKED AND ADMITTED AS
22 STATE'S EXHIBIT NUMBER 17 AND ASK YOU IF YOUR SIGNATURE'S
23 AT THE BOTTOM OF THE FIRST OF THIS PAGE?

24 A YES.

25 Q AND THE BOTTOM OF THE SECOND PAGE.

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

659

1 A YES.

2 Q AND IS THAT THE STATEMENT YOU SAID THAT LIEUTENANT
3 TOLSON WROTE FOR YOU BECAUSE YOUR SPELLING WAS NOT TOO
4 GOOD?

5 A THAT'S CORRECT.

6 Q AND YOU SIGNED THAT DOCUMENT.

7 A YES, I DID.

8 Q SIGNED IT FREELY AND VOLUNTARILY.

9 A YES, I DID.

10 Q DID YOU HAVE THE OPPORTUNITY TO REVIEW IT AND READ IT
11 BEFORE YOU SIGNED IT?

12 A NOT REALLY. I MEAN I LOOKED OVER IT. LIKE I SAID,
13 AGAIN, MY SPELLING IS NOT THAT GOOD.

14 Q BUT CERTAINLY IF LIEUTENANT TOLSON HAD GOTTEN
15 SOMETHING WRONG, YOU HAD THE OPPORTUNITY TO CORRECT IT IF
16 YOU WANTED TO?

17 A I GUESS, YES.

18 Q AND I LEFT THAT STATEMENT IN FRONT OF YOU. COULD YOU
19 PUT IT IN YOUR HANDS AND WE GO THROUGH IT TOGETHER?

20 A YES.

21 Q THANK YOU. YOU STATED THAT AROUND 2:30 TO 3:00
22 O'CLOCK IN THE MORNING YOU WENT TO THE GAS STATION.
23 CORRECT?

24 A YES.

25 Q YOU ACTUALLY GOT THERE MUCH LATER, APPROXIMATELY 5:30

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

660

1 IN THE MORNING.

2 A YES.

3 Q AND YOU STATED THAT YOU WENT THERE TO GET GAS AND
4 THAT'S WHEN YOU SAW A YOUNG LADY WAS STANDING OUTSIDE WHEN
5 YOU CAME OUT.

6 A YES.

7 Q AND THAT SHE ASKED YOU FOR A RIDE..

8 A YES.

9 Q AND THEN ASKED YOU FOR A DATE.

10 A YES.

11 Q AND ALSO ASKED YOU FOR A CRACK ROCK.

12 A YES.

13 Q AND YOU HAD BOUGHT SOME CRACK EARLIER IN THE EVENING
14 AND YOU HAD SOME WITH YOU.

15 A YES, I DID.

16 Q BUT YOU STATED THAT SHE LOOKED LIKE SHE'D BEEN IN A
17 FIGHT.

18 A YES.

19 Q SHE HAD SOME SCRATCHES ON HER ARMS.

20 A YES.

21 Q SCRATCHES ON HER FACE.

22 A YES.

23 Q AND A KNOT ON HER HEAD.

24 A YES. I DIDN'T SAY NOTHING ABOUT A KNOT ON HER HEAD.

25 SHE HAD A KNOT --- SCRATCHES ON HER FACE, ON HER --- SHE

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 HAD --- SCRATCHES ON HER NECK, A BRUISE OR SOMETHING ON
2 HER NECK, BUSTED LIP, SOME SCRATCHES ON HER CHEST OR
3 WHATEVER AND LOOKED LIKE SHE HAD A KNOT OR SOMETHING ON
4 HER HEAD. I'M NOT FOR SURE.

5 Q BUT IN YOUR STATEMENT BACK ON MAY 3RD OF 2007, LINES
6 6, 7 AND 8, YOUR STATEMENT AT THAT TIME WAS SHE LOOKS LIKE
7 SHE HAD BEEN IN A FIGHT; SHE HAD SCRATCHES ON HER ARM, A
8 SCRATCH ON HER FACE AND A KNOT ON HER HEAD.

9 A YES. YES. LIKE I SAID, I SAW A BUMP OR A BRUISE OR
10 SOMETHING. I'M NOT FOR SURE.

11 Q THE INJURIES TODAY THAT YOU DESCRIBED ARE THAT SHE
12 HAD A BRUISE ON HER NECK.

13 A YES.

14 Q BUT THAT'S NOT IN YOUR STATEMENT ON MAY 3RD.

15 A CORRECT.

16 Q THAT SHE HAD A SPLIT LIP.

17 A SPLIT BUSTED LIP OR SOMETHING LIKE THAT.

18 Q THAT'S WHAT YOUR TESTIMONY HERE TODAY.

19 A YES.

20 Q BUT NOT IN YOUR STATEMENT BACK THEN.

21 A OKAY. YES.

22 Q AND THAT SHE HAD BRUISES ON HER CHEST AREA.

23 A YES, IN THE CHEST AREA, UP IN THE CHEST.

24 Q AGAIN, NOT IN YOUR STATEMENT BACK THEN, BUT THAT'S
25 YOUR TESTIMONY TODAY.

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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- 1 A YES.
- 2 Q AND YOU'D BEEN HERE FOR THE TRIAL.
- 3 A YES.
- 4 Q AND LISTENED TO THE EVIDENCE THAT'S BEEN PRESENTED.
- 5 A YES.
- 6 Q TOLD YOU THAT SHE WAS A PROSTITUTE AND THAT SHE'D
- 7 BEEN AT A MICRO HOTEL BEHIND BOJANGLES.
- 8 A YES.
- 9 Q WITH A FRIEND GIRL AND SOME DUDES SMOKING CRACK AND
- 10 TURNING TRICKS.
- 11 A YES.
- 12 Q AND YOU KNEW WHAT THAT MEANT.
- 13 A OF COURSE.
- 14 Q AND SHE SAID THAT SHE HAD BEEN GIVING ORAL SEX.
- 15 A ORAL SEX. (INDICATING YES)
- 16 Q YOU DON'T PUT IN THE STATEMENT THE STORY ABOUT SHE
- 17 HAD BEEN KICKED OUT.
- 18 A NO, I DIDN'T.
- 19 Q AND YOU --- YOU STATE THAT SHE DIRECTED YOU TO A
- 20 FIELD NEAR A CHURCH OFF 321.
- 21 A YES.
- 22 Q AND YOU SMOKED THE CRACK AND SMOKED FOUR TWENTY
- 23 DOLLAR ROCKS.
- 24 A WE SMOKED CRACK COCAINE, YES. FOUR ---
- 25 Q BUT BETWEEN THE TWO OF YOU YOU WOULD'VE SMOKED EIGHTY

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

663

1 DOLLARS IN CRACK THAT NIGHT.

2 A NO, NOT NO EIGHTY DOLLARS. LIKE I SAID, I HAD TWENTY
3 DOLLARS IN CRACK ROCK, ALSO TEN DOLLAR PIECES. IT VARIES.
4 IT MIGHT'VE BEEN A TEN DOLLAR PIECE I PUT ON; IT MIGHT'VE
5 BEEN A TWENTY DOLLAR PIECE I PUT ON THE PIPE.

6 Q LOOKING AT PAGE --- LINE 14 OF YOUR STATEMENT YOU
7 HAVE WRITTEN WE SMOKED FOUR ROCKS, FOUR TWENTY DOLLAR
8 ROCKS.

9 A YES, BUT LIKE I SAID, COULD'VE BEEN FOUR TWENTY
10 DOLLAR ROCKS.

11 Q SO YOU COULD'VE SMOKED UPWARDS OF EIGHTY AND AS
12 LITTLE AS FORTY.

13 A NO, I WOULDN'T SAY AS LITTLE AS FORTY. MAYBE LIKE
14 SAY MAYBE FIFTY OR SIXTY, SOMEWHERE AROUND THERE.

15 Q SO BETWEEN FIFTY AND EIGHTY DOLLARS OF CRACK THE TWO
16 OF YOU CONSUMED TOGETHER THAT NIGHT.

17 A YES, WE DID.

18 Q AND YOU STATE OUT OF HER GLASS PIPE.

19 A YES.

20 Q BUT YOU HAD SMOKED CRACK EARLIER AT THIS HOUSE IN THE
21 MYRTLE SCHOOL AREA.

22 A THAT'S RIGHT.

23 Q AND YOU --- DID YOU HAVE A CRACK PIPE THEN?

24 A NO, I DID NOT.

25 Q YOU JUST DON'T CARRY ONE AROUND?

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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- 1 A NO, I DON'T CARRY CRACK PIPES ON ME, NO, I DON'T.
- 2 Q YOU CARRY CRACK ON YOU BUT NOT CRACK PIPES.
- 3 A DEFINITELY. I DO NOT CARRY CRACK PIPES.
- 4 Q WHY NOT?
- 5 A BECAUSE LIKE I SAID, THAT'S A DRUG PARAPHERNALIA.
- 6 DOPE YOU CAN GET AWAY WITH, PARA --- YOU CAN JUST THROW
- 7 THAT, TOSS IT OR WHATEVER. YOU DON'T WANT TO CARRY A
- 8 STEM. THAT'S WHAT WE CALL IT OR A GLASS PIPE. NO, I DO
- 9 NOT CARRY DRUG PARAPHERNALIA WITH ME.
- 10 Q AND IN YOUR STATEMENT STARTING ON LINE 15, WE GOT OUT
- 11 OF THE CAR AND SHE GAVE ME ORAL SEX.
- 12 A YES.
- 13 Q BUT YOUR TESTIMONY HERE TODAY IS SHE ACTUALLY STARTED
- 14 GIVING YOU ORAL SEX BEFORE YOU LEAVE THE GAS STATION.
- 15 A YES, SHE GAVE ME ORAL SEX DOWN THE HIGHWAY AND ON ---
- 16 AND IN THE GRAVE YARD ALSO.
- 17 Q AND DO YOU KNOW APPROXIMATELY HOW FAR YOU WENT THAT
- 18 NIGHT?
- 19 A FROM ---
- 20 Q FROM THE GAS STATION TO THE CHURCH.
- 21 A NO, I DO NOT.
- 22 Q LONG WAY.
- 23 A DO I KNOW HOW FAR?
- 24 Q IT WAS A LONG WAY.
- 25 A YES, IT --- YES, IT WAS A LONG WAY. IT WAS A GOOD

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

665

1 DISTANCE, YES.

2 Q NOT AROUND THE CORNER.

3 A NO, IT WAS NOT.

4 Q NOT STILL IN THE MYRTLE SCHOOL AREA.

5 A NO.

6 Q BUT SHE OFF AND ON GIVES YOU ORAL SEX DURING THIS
7 TRIP.

8 A NO, OFF AND ON. NOT CONTINUOUSLY, BUT LIKE SAY SHE
9 HIT THE CRACK PIPE; WE TALK A LITTLE BIT; SHE'LL GIVE ME
10 ORAL SEX AND THAT WAS IT.

11 Q AND YOU SAID ALSO RANDOMLY SHE WOULD STOP TO LOOK UP
12 AND GIVE YOU DIRECTIONS.

13 A YES, WHILE SHE WAS HITTING THE CRACK PIPE.

14 Q AND THEN YOU SAY AND ALSO SHE GAVE YOU MORE ORAL SEX
15 ONCE YOU GET OUT OF THE CAR.

16 A YES.

17 Q AND THEN YOU ALSO HAD VAGINAL INTERCOURSE.

18 A YES.

19 Q AND YOU STATED IN YOUR STATEMENT LOOKING AT PAGE ---
20 LINES 17 AND 18, SHE HAD HER ELBOWS ON THE DRIVER'S SIDE
21 OF THE HOOD ON THAT SIDE.

22 A NO, THAT'S INCORRECT.

23 Q SO LIEUTENANT TOLSON GOT THAT WRONG.

24 A YES. I DIDN'T SAY THAT WRONG. LIKE I SAID, YES,
25 THAT WAS WRONG. WE WAS IN THE BACK OF THE VEHICLE, ON THE

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

666

1 TRUNK OF THE CAR.

2 Q BECAUSE YOU'VE HEARD THE TESTIMONY DURING THE TRIAL
3 THAT HER FINGERPRINTS ARE ON THE TRUNK.

4 A ON THE TRUNK? I THOUGHT IT WAS ON THE WINDOW. I
5 MEAN LIKE I SAID, WE WENT TO THE BACK OF THE VEHICLE AND
6 SHE PUT HER HANDS ON THE BACK OF THE TRUNK OF THE CAR.

7 Q YOU STATED THAT YOU DID TRADE DRUGS AND MONEY FOR SEX
8 THAT NIGHT?

9 A YES, WE DID.

10 Q AND YOU ADMITTED THAT YOU'D DONE THAT IN THE PAST.

11 A YES.

12 Q NOT THE FIRST TIME.

13 A YES, I HAVE BEEN WITH A PROSTITUTE.

14 Q AND HAD YOU EVER SOLD DRUGS BEFORE?

15 A NO, I'M NOT A DRUG DEALER.

16 Q YOU JUST TRADE FOR SEX?

17 A I'M NOT A DRUG DEALER, NO. YES, I TRADE FOR SEX,
18 YES.

19 Q YOUR SECOND PAGE OF YOUR STATEMENT YOU --- WELL, FROM
20 THE LAST PAGE, YOU HAD ON THE SAME PANTS THAT YOU HAVE ON
21 NOW.

22 A YES.

23 Q AND YOU TOLD HER YOU HAD ON A WHITE WIFE BEATER T-
24 SHIRT.

25 A NO, LIKE I SAID, WE CALL IT A WHITE BEATER (SIC) T-

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 SHIRT. IT CAN BE A CUT-OFF SHIRT. THAT'S JUST WHAT WE
2 CALL IT. DON'T HAVE TO NECESSARILY BE A WHITE BEATER.
3 (SIC) A WHITE BEATER (SIC) IS A TANK TOP SHIRT.

4 Q ALL RIGHT, BUT IF YOU COULD, TURN TO PAGE 2 OF YOUR
5 STATEMENT, THE FIRST LINE. ON THE STATEMENT IT SAYS I HAD
6 ON A WHITE WIFE-BEATER T-SHIRT.

7 A YES.

8 Q SO DID LIBUTENANT TOLSON GET THAT WRONG, TOO?

9 A YES, SHE GOT THAT WRONG, TOO. LIKE I SAID, I DIDN'T
10 HAVE ON A WHITE BEATER (SIC) T-SHIRT.

11 Q AND YOU DIDN'T, ONCE YOU SIGNED IT, CROSS OUT WHITE
12 AND PUT BLACK OR WHATEVER COLOR SHIRT THAT WAS?

13 A LIKE I SAID, I DIDN'T HAVE ON A WHITE BEATER (SIC)
14 SHIRT.

15 Q SHE TOLD YOU THAT SHE USUALLY GOT MORE THAN TWENTY
16 DOLLARS FOR A TRICK.

17 A YES.

18 Q IS IT TYPICAL FOR A PROSTITUTE TO GET MONEY AND DRUGS
19 FOR SEX?

20 A YES, A PROSTITUTE TRADE FOR DRUGS AND MONEY.
21 SOMETIME THEY JUST TRADE FOR JUST MONEY. SOMETIMES THEY
22 JUST TRADE FOR DRUGS..

23 Q BUT ON TOP OF THE FIFTY TO EIGHTY DOLLARS IN CRACK
24 YOU CONSUMED WITH HER, YOU GAVE HER ANOTHER TWENTY
25 DOLLARS.

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 A YES, BECAUSE LIKE I SAID WE BOTH SMOKED THE CRACK.
2 IT AIN'T LIKE I GAVE HER TWENTY LIKE --- A ROCK, A ROCK --
3 - FOUR ROCKS AND TWENTY DOLLARS. NO, WE BOTH SMOKED THE
4 CRACK TOGETHER AND THEN I GAVE HER TWENTY DOLLARS.

5 Q GAVE MONEY TO HER OR WAS THAT A TIP?

6 MR. LEMEL - OBJECTION, YOUR HONOR.

7 THE COURT - YES, I --- I SUSTAIN THE OBJECTION.

8 Q DID YOU FEEL THAT THAT WAS A FAIR DEAL?

9 A I MEAN LIKE I SAY, I GAVE HER WHAT SHE ASKED FOR,
10 TWENTY DOLLARS.

11 Q BUT EARLIER IN THE NIGHT WHEN YOU DON'T GET WHAT YOU
12 ASK FOR, YOU DON'T GET ENOUGH DRUGS FOR THE MONEY THAT WAS
13 PAID, AT THAT POINT YOU GET IN A FIGHT WITH SOMEONE.

14 A YES.

15 Q SO IF YOU DIDN'T FEEL THAT YOU WERE GETTING A FAIR
16 DEAL WITH MS. HILL, YOU ALSO YOU KNEW YOU DIDN'T HAVE TO
17 PAY HER.

18 A YES, LIKE I SAID I GOT A FAIR DEAL. I DIDN'T THINK
19 IT WAS --- IT WAS GREAT. I MEAN LIKE I SAY AGAIN IT WAS -
20 -- THAT WHAT YOU USUALLY ASKED FOR, TWENTY DOLLARS.

21 Q STATED AFTER WE FINISHED YOU DROPPED HER OFF AT THE
22 HOT SPOT.

23 A YES.

24 Q AND YOU KNOW THAT BECAUSE YOU PASSED IT ON YOUR WAY
25 BACK NORTH.

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669

1 A YES.

2 Q AND YOU STATED, I THINK SHE GOT MAD BECAUSE I DIDN'T
3 GIVE HER ANY MORE MONEY OR DOPE.

4 A YES, BECAUSE LIKE I SAID IT'S USUALLY LIKE I SAID SHE
5 ASKED AT THE GRAVEYARD THAT SHE USUALLY GET MORE THAN
6 TWENTY DOLLARS FOR A TRICK, SO I ---

7 Q YOU USUALLY PAY MORE THAN TWENTY DOLLARS FOR A TRICK?

8 A NO, I DO NOT.

9 Q SO THAT WAS WHAT YOU FELT WAS A FAIR PRICE.

10 A YES, AND I --- THAT'S WHAT THE PROSTITUTES USUALLY
11 ASK AS A FAIR PRICE.

12 Q DO YOU TYPICALLY SMOKE FIFTY TO EIGHTY DOLLARS WORTH
13 A CRACK WITH A PROSTITUTE IN ADDITION TO PAYING THAT?

14 A YES, AND LIKE I SAY --- YES.

15 Q SO THE TOTAL THAT NIGHT YOU PAID HER BETWEEN SEVENTY
16 AND A HUNDRED DOLLARS.

17 A YES, THAT'S --- YES.

18 Q AND YOU STATED YOU WERE BOTH UNDER THE INFLUENCE OF
19 CRACK COCAINE.

20 A YES.

21 Q BUT YOU HAD NOT ONLY SMOKED THIS FIFTY TO EIGHTY
22 DOLLARS WITH HER, YOU HAD SMOKED SOME BACK AT THE HOUSE
23 BEFORE YOU EVEN GET TO THE GAS STATION.

24 A EXACTLY, YES.

25 Q YOU HAD DRANK BEERS EARLIER IN THE NIGHT.

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 A YES.

2 Q AND EVEN AFTER DROPPING HER OFF YOU SMOKED MORE CRACK
3 COCAINE.

4 A YES.

5 Q SO FAIR TO SAY AT LEAST YOU HAD HAD QUITE A BIT OF
6 CRACK THAT NIGHT.

7 A YES, THAT'S NOT UNUSUAL, BECAUSE LIKE I SAY I SMOKE
8 EIGHT BALLS. THAT'S NOT UNUSUAL.

9 Q SO FOR THE MOST PART YOU'RE GOING TO CONSUME WHATEVER
10 YOU GET PRETTY QUICKLY.

11 A YES, I MEAN YOU CAN SAY THAT. LIKE I SAY, I SMOKE
12 CRACK. AGAIN, I SMOKED CRACK FOR TEN TO TWELVE YEARS.

13 Q BUT YOU'RE NOT GETTING AN EIGHT BALL TO LAST YOU THE
14 WHOLE WEEK. YOU PRETTY MUCH DOING THAT ---

15 A NO --- NO, LIKE I SAID, I USUALLY BUY MINE IN
16 QUANTITY. I'D SAY AN EIGHT BALL WILL LAST ME FOR A DAY OR
17 TWO AND I GET SOME MORE THE NEXT COUPLE OF DAYS.

18 Q ALL RIGHT. YOU STATED THAT YOU GOT INTO A SCUFFLE
19 WITH SOMEONE LAST NIGHT A LITTLE AFTER TWELVE O'CLOCK,
20 THAT HE GYPED YOU ON SOME WEIGHT ON A CRACK PURCHASE.

21 A YES.

22 Q AND THAT'S HOW YOU HURT YOUR HAND.

23 A EXACTLY, YES.

24 MS. LIPINSKI - COURT'S INDULGENCE, YOUR HONOR.

25 Q LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AND

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 ADMITTED AS STATE'S 13 (A) (B) AND (C). THESE ARE
2 PICTURES OF YOUR HANDS.

3 A YES, IT IS.

4 Q AND THIS INJURY ON THE TOP OF YOUR KNUCKLE YOU STATE
5 YOU GOT APPROXIMATELY MIDNIGHT THE NIGHT BEFORE.

6 A YES, LIKE I SAY IT WAS A LITTLE BIT AFTER MIDNIGHT.
7 YES.

8 Q AND THEN WAS THERE ALSO SOME INJURY TO YOUR KNEE?

9 A NO, IT WAS NOT.

10 Q THAT WAS JUST MAYBE SOME BLOOD ON YOUR JEANS YOU GOT
11 ---

12 A THAT'S THE BLOOD CAME FROM MY HAND. IT WAS ON MY
13 PANTS, YES.

14 Q AND DO YOU EVER RECEIVE TREATMENT FOR THIS INJURY?

15 A YES.

16 Q YOU ACTUALLY GET SOME TYPE OF ACE BANDAGE OR SPLINT -
17 --

18 A YES, I GOT A ACE BANDAGE PUT ON IT, YES.

19 Q SO, IT WAS HURT PRETTY BAD, NOT JUST A CUT.

20 A YES, A --- LIKE I SAY IT SWOLLED (SIC) UP A LITTLE
21 BIT. IT WAS ON MY RIGHT HAND. I'M RIGHT-HANDED.

22 Q TOLD THE OFFICERS THAT SHE TOLD YOU THAT HER NAME WAS
23 MISTI.

24 A TO WHAT --- EXCUSE ME ---

25 Q I'M SORRY. LINE 10 OF YOUR STATEMENT. I DON'T MEAN

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 TO JUMP ALL OVER. YOU TOLD THE OFFICERS THAT SHE TOLD YOU
2 HER NAME WAS MISTI.

3 A YES.

4 Q AND THAT THEY CALLED HER SOMETHING ELSE ALSO.

5 A YES. THEY SAY THEY CALLED HER SOMETHING ELSE. I'M
6 NOT FOR SURE. SAID THEY CALLED --- SAY HER NAME WAS
7 MISTI.

8 Q SHE TOLD ME THAT SHE WAS OUTSIDE THE STORE
9 PROSTITUTING THAT NIGHT.

10 A YES.

11 Q AND THAT'S THE REASON SHE WAS THERE.

12 A YES.

13 Q I DID NOT FORCE HER IN ANY KIND OF WAY.

14 A CORRECT.

15 Q SHE WALKED ON HER OWN TO MY CAR; SHE APPROACHED ME.

16 A YES.

17 Q I DIDN'T HARM HER IN ANY WAY --- IN ANY WAY.

18 A YES.

19 Q SHE GOT INTO MY CAR ON HER OWN FREE WILL.

20 A CORRECT.

21 Q SHE WANTED TO GET HIGH AND MAKE SOME MONEY.

22 A YES.

23 Q THAT YOU DO NOT HAVE YOUR PENIS PIERCED.

24 A NO, I DO NOT.

25 Q DO YOU HAVE BUMPS ON YOUR PENIS?

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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- 1 A NO, I DO NOT.
- 2 Q ARE YOU CIRCUMCISED?
- 3 A YES.
- 4 Q YOU STATED THAT YOU WORKED AT YOUR HOUSE THAT DAY ---
- 5 A YES.
- 6 Q --- THE DAY BEFORE.
- 7 A YES.
- 8 Q AND THAT A FRIEND COMES OVER AND YOU DRINK SOME BEER.
- 9 A YES, A TWELVE PACK OF MICHELOB BEER.
- 10 Q BUT OF THAT YOU ONLY HAVE ABOUT FIVE OR SIX.
- 11 A YES, FIVE OR SIX. WE SPLIT THE BEER IN HALF. I
- 12 DRUNK ABOUT FIVE OR SIX MICHELOBS; HE DRUNK ABOUT FIVE OR
- 13 SIX.
- 14 Q AND AT ABOUT ELEVEN THIRTY YOU DECIDE TO GO GET SOME
- 15 CRACK.
- 16 A YES, A LITTLE ABOUT SOMETHING TO TWELVE, YES.
- 17 Q WERE YOU GOING TO WORK THE NEXT DAY?
- 18 A NO, I WAS NOT. I WAS OFF FROM WORK. LIKE I SAID, I
- 19 WORK A PART-TIME JOB.
- 20 Q WHY DIDN'T YOU GO HOME AND SMOKE THE CRACK?
- 21 A EXCUSE ME?
- 22 Q WHY DID YOU NOT GO HOME AND ---
- 23 A I DON'T SMOKE CRACK AT MY HOME; LIKE I SAID I GO TO
- 24 A --- I GOT PEOPLE THAT I DO MY DRUGS WITH. I DON'T SMOKE
- 25 AT MY HOME.

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1 Q WHY NOT?

2 A BECAUSE I DON'T. I GO AND SMOKE WITH OTHER SMOKERS.

3 Q BECAUSE YOU DON'T HAVE A PIPE OF YOUR OWN.

4 A NO, IT'S NOT THAT. I JUST DON'T SMOKE IN MY HOME.

5 I GO AROUND AND SMOKE WITH OTHER PEOPLE THAT SMOKE CRACK.

6 Q BUT YOU STATED THAT IN THE PAST TEN TO TWELVE YEARS

7 DESPITE BEING A CRACK ADDICT MOST OF THAT TIME, YOU'VE

8 NEVER SOLD CRACK TO ANYONE ELSE, YOU'VE JUST TRADED IT FOR

9 SEX.

10 A IT'S NOT ONLY TRADE FOR SEX. I'VE TRADED FOR

11 CLOTHING. I MEAN, YOU KNOW, BUT NOT JUST SEX. I HAVE

12 BOUGHT THINGS WITH CRACK, BUT I'M NOT A CRACK DEALER. I'M

13 AN ADDICT. I USE CRACK.

14 Q BUT HAVE YOU EVER GIVEN IT TO SOMEBODY THAT --- YOU

15 KNOW, HAVE A LITTLE EXTRA, THEY NEEDED A LITTLE, YOU GIVE

16 THEM TWENTY DOLLARS?

17 A NO.

18 Q YOU DON'T SHARE.

19 A NO. NO, I DON'T SHARE.

20 Q AND SO WHEN YOU GO TO BUY THE EIGHT BALL FROM BONE,

21 YOU REALIZE THAT THERE'S NOT ENOUGH ROCKS THERE?

22 A LIKE I SAID, AGAIN, WHEN YOU BUY A HUNDRED AND TWENTY

23 DOLLAR WORTH OF DOPE, A EIGHT BALL IT'S A SOLID PIECE, NOT

24 IN PIECES. PIECES IS LIKE I SAY, TWENTY DOLLAR PIECES,

25 TEN DOLLAR PIECES. THAT'S IN PIECES. WHEN YOU BUY A

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1 QUANTITY OF DOPE YOU GET IT IN A SOLID PIECE.

2 Q BUT YOU THEN BREAK IT UP YOURSELF.

3 A EXCUSE ME?

4 Q YOU CAN THEN BREAK IT UP YOURSELF ---

5 A YES, YOU BREAK IT UP. THAT'S THE REASON WHY YOU
6 PURCHASE A SOLID PIECE OF CRACK OR A EIGHT BALL SO YOU CAN
7 CUT IT YOURSELF AND YOU GET TWELVE TO FOURTEEN ROCKS OUT
8 OF A EIGHT BALL. YES.

9 Q BUT CRACK DOESN'T --- IT DOESN'T BREAK APART LIKE
10 DIAMONDS. IT'S NOT VERY SCIENTIFIC ---

11 A NO, NO.

12 Q YOU CAN GET BIG ROCKS, LITTLE ROCKS.

13 A YOU CAN GET BIG ROCKS. THAT'S WHY YOU USE A RAZOR.
14 YOU CAN CUT BIG ROCKS; YOU CAN CUT SMALL ROCKS. IT ALL
15 DEPENDS ON HOW YOU CUT IT WITH A RAZOR.

16 Q DEPENDS ON HOW BIG THE STEM IS YOU HAVE OR HOWEVER
17 YOU'RE GOING TO SMOKE IT.

18 A EXCUSE ME?

19 Q COULD DEPEND ON HOW BIG THE STEM IS, THE CRACK PIPE
20 THAT YOU ---

21 A NO, THE --- THE CRACK PIPE DOESN'T HAVE NOTHING TO DO
22 WITH IT. I MEAN YOU CAN PUT A SMALL PIECE; YOU CAN PUT A
23 BIG PIECE ON IT, A SMALLER STEM OR A BIG STEM. IT DOESN'T
24 REALLY MATTER. IT'S GOING TO MELT. IT'S CRACK COCAINE.

25 Q BUT YOU CAN IMMEDIATELY DISCERN FROM THE WEIGHT OF IT

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 THAT YOU DON'T HAVE ENOUGH?

2 A EXACTLY. YOU CAN SEE. YOU --- IF --- I BEEN USING
3 CRACK FOR TEN TO TWELVE YEARS. I KNOW MY WEIGHT IN CRACK
4 COCAINE. I KNOW WHAT A EIGHT BALL LOOK LIKE AND I KNOW
5 WHAT IT DOESN'T LOOK LIKE.

6 Q YOU DIDN'T HAVE DIGITAL SCALES ON YOU ---

7 A NO, I DID NOT.

8 Q YOU DIDN'T NEED TO WEIGH IT.

9 A NO.

10 Q YOU STATED WHEN YOU REALIZED THAT YOU DIDN'T GET YOUR
11 MONEY'S WORTH THAT WHEN YOU GOT IN A FIGHT WITH THEM?

12 A YES, HE TOLD ME TO --- WASN'T GOING TO GIVE ME MY
13 MONEY BACK, TOLD ME TO TAKE IT WITH MY MUSCLE. WHAT THAT
14 MEAN IS ON THE STREET THAT YOU HAVE TO FIGHT IN OTHER
15 WORDS. YOU TAKE IT WITH YOUR MUSCLE, SO WE FOUGHT. AND
16 LIKE I SAID, WE WIND UP ON THE GROUND. WE THROW BLOWS
17 BACK AND FORTH. SOME OF THE GUYS STANDING AROUND WATCHED
18 IT, THEY TOLD US TO BREAK IT UP, THE POLICE WAS COMING.

19 Q SO DID YOU EVER GET YOUR MONEY BACK?

20 A NO, I DID NOT.

21 Q DID YOU GET MORE CRACK?

22 A NO, I DID NOT.

23 Q WERE YOU HAPPY ABOUT THAT?

24 A NO, I WAS NOT.

25 Q AND --- BUT YOU RODE AROUND AND SMOKED SOME MORE

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 CRACK.

2 A YES.

3 Q AND HAD YOU SMOKED CRACK BEFORE YOU GO MEET BONE?
4 DID YOU HAVE ANY LEFT BEFORE YOU GO OR THAT WAS WHAT YOU
5 WERE GOING TO GET FOR THAT NIGHT?

6 A NO, I DIDN'T SMOKE ANY CRACK TO GO MEET BONE, UH, NO.

7 Q SO THAT NIGHT, WORKING OUT IN THE YARD, AT THAT POINT
8 YOU DON'T HAVE ANY CRACK. YOU BASICALLY HAVE TO GO TO
9 BONE TO GET SOME.

10 A EXACTLY. LIKE I SAY HE'S A WELL-KNOWN DRUG DEALER IN
11 THE AREA.

12 Q SO YOU STATED THAT YOU GO TO THE GAS STATION TO GET
13 SOME GAS BECAUSE YOU REALIZE AFTER YOU SMOKED SOME CRACK
14 YOU'RE RUNNING LOW.

15 A YES. EXCUSE ME, YES, I HAD A QUARTER OF A TANK OF
16 GAS, YES.

17 Q AND THAT'S WHEN THIS WHITE FEMALE ---

18 A STANDING BETWEEN A ICE MACHINE AND A NEWSPAPER
19 MACHINE, YES.

20 Q CALLS OUT TO YOU.

21 A YES. SHE WAS MAKE LIKE CAT CALLS, LIKE PSST, TRYING
22 TO GET MY ATTENTION.

23 Q AND YOUR TESTIMONY IS THAT YOU NOTED BRUISING ON HER
24 NECK.

25 A BRUISING ON THE NECK.

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- 1 Q SPLIT LIP.
- 2 A SPLIT LIP. SHE WAS SWOLLEN LIKE SHE HAD BEEN IN A
- 3 FIGHT. YOU CAN TELL WHEN SOMEONE'S BEEN IN A FIGHT, YES.
- 4 Q AND FAIR TO SAY YOU WERE FAMILIAR WITH THIS AREA.
- 5 A YES.. LIKE I SAID I WAS --- I WAS RAISED UP IN THAT
- 6 AREA. I'M FAMILIAR WITH THE MYRTLE SCHOOL AREA, YES.
- 7 Q AND DO YOU AGREE WITH WHAT SERGEANT WEST SAID THAT
- 8 THERE --- THERE ARE OTHER PROSTITUTES IN THIS AREA TRADING
- 9 SEX FOR ---
- 10 A YES, IT'S A WELL --- LIKE I SAY, YOU GOT PROSTITUTES
- 11 ALL OVER THE GASTONIA AREA. NOT ONLY IN THAT AREA. YOU
- 12 HAVE PROSTITUTES ALL IN THE GASTONIA AREA.
- 13 Q SO IF YOU WERE LOOKING FOR A PROSTITUTE THAT NIGHT,
- 14 SHE WASN'T YOUR ONLY OPTION.
- 15 A EXCUSE ME? I WASN'T LOOKING FOR A PROSTITUTE.
- 16 Q BUT IF YOU WERE.
- 17 A I WAS NOT LOOKING FOR A PROSTITUTE THAT NIGHT.
- 18 Q SHE JUST CHANCED UPON YOU.
- 19 A YES, SHE APPROACHED ME, AGAIN.
- 20 Q BUT YOU COULD'VE TURNED HER DOWN AND FOUND SOMEONE
- 21 ELSE?
- 22 A YES, IF --- IF THAT'S WHAT I CHOOSE TO, YES.
- 23 Q BUT YOU FELT SORRY FOR HER.
- 24 A YES, I FEEL PASSION FOR THE YOUNG LADY, YES.
- 25 Q AND SO YOU AGREE TO GIVE HER A RIDE HOME.

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 A YES, I DID.

2 Q BUT YOU ALSO AGREE TO TRADE SEX FOR CRACK.

3 A YES, SHE AGREED TO TRADE SEX FOR CRACK.

4 Q BUT YOU AGREED AS WELL.

5 A YES, I --- YES..

6 Q YOU DIDN'T SAY, NO, I'LL JUST GIVE YOU A RIDE HOME.

7 A WE BOTH AGREED. LIKE I SAY, IT WAS CONSENSUAL. WE

8 BOTH AGREED.

9 Q AND THE SEX STARTS EVEN BEFORE YOU GET OUT OF THE GAS
10 STATION.

11 A YES, LIKE I SAID, SHE GAVE ME ORAL SEX. SHE ZIPPED
12 MY ZIPPER DOWN BEFORE WE EVEN LEFT THE PARKING LOT AND
13 START TO PERFORM ORAL SEX ON ME.

14 Q BUT OCCASIONALLY SHE WOULD RAISE HER HEAD UP OUT OF
15 YOUR LAP AND TELL YOU WHICH WAY TO TURN.

16 A TO TURN --- NO, WE DID NOT TURN. WE WENT STRAIGHT
17 DOWN BESSEMER CITY ROAD ACROSS I-85.

18 Q AND ---

19 A AND CONTINUED TO KEEP STRAIGHT. WE CAME TO FRANKLIN
20 BOULEVARD, KEEP STRAIGHT AND GO INTO GARRISON BOULEVARD.

21 YOU GO SO FAR DOWN GARRISON --- I CAN'T --- I DON'T KNOW
22 EXACT MILES, THEN WE MADE A RIGHT-HAND TURN ONTO 321
23 SOUTH.

24 Q DID YOU MAKE THE DECISION TO TURN ONTO 321 SOUTH OR
25 DID SHE TELL YOU?

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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- 1 A SHE DID.
- 2 Q SO THERE ARE AREAS AROUND THERE THAT YOU COULD'VE HAD
- 3 SEX FOR CRACK WITHOUT HAVING TO GIVE HER A RIDE HOME.
- 4 A YES.
- 5 Q BECAUSE YOU'RE DOING IT IN THE CAR, SO IT'S NOT LIKE
- 6 ---
- 7 A YES, I MEAN ---
- 8 Q AND YOU STATE THAT --- DID SHE TELL YOU WHERE SHE
- 9 LIVED APPROXIMATELY?
- 10 A NO, SHE DID NOT.
- 11 Q YOU WERE JUST GIVING HER A RIDE WHEREVER SHE LIVED
- 12 EVEN IF THAT MEANT COLUMBIA, SOUTH CAROLINA?
- 13 A NO.
- 14 Q ALL RIGHT. SO --- WAS THERE SOME ACKNOWLEDGEMENT
- 15 THAT SHE ACTUALLY LIVED IN NORTH CAROLINA?
- 16 A DO WHAT NOW?
- 17 Q DID SHE TELL YOU SHE AT LEAST LIVED IN GASTONIA?
- 18 A YES, SHE SAID SHE LIVED IN THE GASTONIA AREA BUT SHE
- 19 DIDN'T SAY WHERE IN GASTONIA.
- 20 Q BUT YOU KNOW YOU'RE HEADING SOUTH, SOUTH GASTONIA?
- 21 A YES, SOUTH, GASTONIA, SOUTH.
- 22 Q BUT THE AGREEMENT WAS NOT TO TAKE HER TO SOUTH
- 23 CAROLINA.
- 24 A SHE DIDN'T SAY ANYTHING. ONLY THING SHE SAID, SHE
- 25 JUST WANTED TO GET HIGH. SHE JUST TOLD ME TO KEEP

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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1 STRAIGHT DRIVING.

2 Q BUT YOU COULD'VE SAID, YOU KNOW WHAT, THIS IS TOO
3 FAR, I DIDN'T AGREE TO THIS, THIS IS ---

4 A NO, I DIDN'T AGREE TO ANYTHING. I JUST KEPT DRIVING.

5 Q BECAUSE YOU WERE GOING TO DO --- GO WHEREVER SHE TOLD
6 YOU.

7 A YES. SHE WAS THE ONE LEADING THE WAY. SHE THE ONE
8 TOLD ME TO --- WHERE TO GO.

9 Q BUT YOU KNOW FOR THE MOST PART THE SOLE PURPOSE OF
10 YOUR RIDE IS TO TAKE HER HOME. RIGHT?

11 A EXCUSE ME?

12 Q THE WHOLE REASON YOU'RE HEADING SOUTH, RIGHT, IS TO
13 TAKE HER HOME.

14 A TAKE HER HOME, SHE --- SHE NEVER SAID NOTHING ABOUT
15 GOING HOME. SHE WANTED TO GET HIGH. SHE NEVER SAID
16 ANYTHING ABOUT GOING HOME.

17 Q SHE WANTED A RIDE.

18 A SHE WANTED A RIDE. SHE TOLD ME SHE WAS LOOKING FOR
19 A DATE TO HAVE A GOOD TIME.

20 Q BUT THE FOURTH LINE OF YOUR STATEMENT YOU STATE SHE
21 ASKED YOU FOR A RIDE.

22 A SHE CAME TO MY CAR AND ASKED FOR A RIDE. SHE WANTED
23 A RIDE TO GET --- TO HAVE FUN, SMOKE CRACK.

24 Q DO YOU NORMALLY RIDE ALL OVER THE GREATER GASTONIA
25 AREA WHILE ---

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1 A NO, SHE'S THE ONE TOLD ME WHERE TO DRIVE TO, LIKE I
2 SAID. I WAS JUST OUT RIDING.

3 Q BUT IT'S YOUR GAS.

4 A YES, I PAID FOR IT.

5 Q AND YOU DIDN'T HAVE TO GO VERY FAR TO DO WHAT YOU TWO
6 WANTED TO DO.

7 A LIKE I SAID, AGAIN, SHE THE ONE TOLD ME WHERE TO
8 DRIVE TO. YES, I COULD'VE WENT ANYWHERE I GUESS, YOU
9 KNOW.

10 Q YOU COULD'VE SAID, NO, I DON'T WANT TO GO THIS FAR.

11 A YES, I COULD'VE SAID THAT ALSO.

12 Q BUT SHE DIRECTS YOU TO THE WEEPING MARY BAPTIST
13 CHURCH.

14 A YES, SHE DID.

15 Q WHICH YOU CLAIM YOU'D NEVER BEEN TO BEFORE.

16 A CORRECT.

17 Q AND UP INTO THE GRAVEYARD.

18 A YES.

19 MS. LIPINSKI - COURT'S INDULGENCE ONE MOMENT,
20 YOUR HONOR.

21 Q LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS AN
22 EXHIBIT AS STATE'S EXHIBIT NUMBER 9(B) (M) (L) AND (K).
23 ARE THOSE PICTURES THE GRAVEYARD?

24 A YES.

25 Q DO YOU REMEMBER THAT?

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- 1 A YES.
- 2 Q BUT IT WAS DARK THAT NIGHT.
- 3 A YES.
- 4 Q AND THERE'S CLEARLY A PARKING FOR THE CHURCH.
- 5 A YES.
- 6 Q PARKING LOT THERE.
- 7 A YES.
- 8 Q BUT INSTEAD OF STOPPING IN THE PARKING LOT, YOU EVEN
- 9 GO FURTHER OFF TO THE SIDE OF THE GRAVEYARD?
- 10 A FARTHER IN A PARKING LOT? NO, SHE DIRECT ME. SHE
- 11 TOLD ME TO MAKE A LEFT TURN OFF IN A FIELD AREA IN SOME
- 12 TREES THERE. LIKE I SAID, I WASN'T FAMILIAR WITH IT.
- 13 Q BUT THIS CHURCH DOESN'T SIT RIGHT ON 321.
- 14 A NO, IT DOES NOT. IT SET BACK OFF 321.
- 15 Q SO THERE'S NOT A LOT OF TRAFFIC AT FIVE THIRTY ON A
- 16 THURSDAY MORNING.
- 17 A NO, IT'S NOT.
- 18 Q SO WHAT WAS THE REASON TO PULL OFF TOWARDS THE
- 19 GRAVEYARD AS OPPOSED TO JUST STOP IN THE PARKING LOT?
- 20 A BECAUSE SHE TOLD ME --- THAT'S WHERE SHE DIRECTED ME
- 21 TO GO. I MEAN THAT'S WHAT I'M SAYING, I --- SHE TOLD ME
- 22 WHERE TO GO SO ---
- 23 Q BUT YOU COULD'VE SAID, YOU KNOW WHAT, I DON'T LIKE
- 24 HAVING SEX IN GRAVEYARDS, LET'S JUST STAY IN THE PARKING
- 25 LOT.

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1 A IT DOESN'T MATTER. LIKE I SAID, DON'T MATTER WHERE
2 YOU HAVE SEX AT, I MEAN --- YOU CAN HAVE IT AT A
3 GRAVEYARD; YOU CAN HAVE IT IN THE BACK OF A PARK. IT
4 DOESN'T MATTER. LIKE I SAY, SHE THE ONE DIRECTED ME WHERE
5 TO GO.

6 Q BUT YOU DIDN'T HAVE TO GO ALL THE WAY TO THAT
7 GRAVEYARD TO HAVE SEX WITH HER.

8 A NO, I DID NOT.

9 Q YOU STATED THAT SHE ASKED YOU FOR A CONDOM?

10 A YES.

11 Q AND YOU TOLD HER YOU DIDN'T HAVE ONE.

12 A TOLD HER I DIDN'T HAVE A CONDOM.

13 Q DID YOU EVER TELL THE POLICE ABOUT HER ASKING YOU FOR

14 A CONDOM?

15 A NO, I DID NOT.

16 Q BUT SHE TOLD YOU THAT DIDN'T MATTER TO HER.

17 A EXACTLY.

18 Q AND, IN FACT, YOU KNEW YOU DIDN'T NEED A CONDOM THAT
19 NIGHT.

20 A EXCUSE ME?

21 Q YOU KNEW THAT YOU DIDN'T USE A CONDOM THAT ---

22 A NO, LIKE I SAID, I DIDN'T HAVE A CONDOM.

23 Q AND SO WHEN THE POLICE ASKED YOU ABOUT HAVING SEX
24 WITH MISTI HILL, YOU KNEW YOU EJACULATED INSIDE HER.

25 A LIKE I SAID, AGAIN, I DIDN'T HAVE A CONDOM.

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1 Q SO YOU WERE AWARE OF THAT, YES.

2 A YES, LIKE I SAID I DIDN'T HAVE A CONDOM. SHE TOLD
3 ME, LIKE I SAID, I DIDN'T NEED A CONDOM.

4 Q AND THE STATEMENT DESPITE SAYING THAT THE SEX
5 OCCURRED ON THE DRIVER'S SIDE OF THE CAR YOU NOW SAY IT
6 OCCURRED ON THE BACK.

7 A YES, IT --- WE WENT TO THE BACK OF THE VEHICLE. SHE
8 PLACED HER HANDS ON THE TRUNK OF THE VEHICLE, THE BACK OF
9 THE VEHICLE.

10 Q AND YOU STATED WHEN THEY GOT DONE THAT SHE HANDED YOU
11 HER BANDANNA ---

12 A YES, SHE DID. SHE TOOK HER BANDANNA OFF HER
13 FOREHEAD, REACHED ME THE BANDANNA; I CLEANED MYSELF; SHE
14 CLEANED HERSELF AND I DON'T KNOW WHERE SHE DUMPED THE
15 BANDANNA AT. I HAVE NO IDEA.

16 Q VERY CONSIDERATE PROSTITUTE, WASN'T IT?

17 A I GUESS, WHATEVER YOU WANT TO CALL IT, YES.

18 Q DIDN'T HAVE A WET WIPE, BUT AT LEAST HAD A BANDANNA
19 FOR YOU.

20 A IF THAT'S WHAT YOU SAY, YES.

21 MR. LEMEL - YOUR HONOR, OBJECTION. THAT'S
22 ARGUMENTATIVE.

23 A (WITNESS LAUGHING)

24 MS. LIPINSKI - I THINK IT'S A VALID POINT, YOUR
25 HONOR, BUT ---

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

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- 1 THE COURT - GO AHEAD. IT'S CROSS EXAMINATION.
- 2 A YES, IF THAT'S WHAT YOU --- YES.
- 3 Q AND THAT YOU GAVE HER TWENTY DOLLARS.
- 4 A YES.
- 5 Q AND THAT YOU DROPPED HER OFF AT THE HOT SPOT.
- 6 A YES.
- 7 Q WHAT HAPPENED TO HER PURSE?
- 8 A EXCUSE ME?
- 9 Q WHAT HAPPENED TO HER PURSE?
- 10 A I DON'T KNOW. I DON'T EVEN KNOW ANYTHING ABOUT A
- 11 PURSE.
- 12 Q SHE DIDN'T LEAVE IT IN THE CAR?
- 13 A DON'T KNOW ANYTHING ABOUT A PURSE.
- 14 Q DID SHE LEAVE IT IN THE CAR?
- 15 A I DON'T KNOW ANYTHING. THERE WAS NO PURSE IN THE
- 16 CAR. I DON'T KNOW ANYTHING ABOUT A PURSE.
- 17 Q DO YOU REMEMBER IF SHE HAD A PURSE ON HER THAT NIGHT?
- 18 A NO.
- 19 Q YOU DON'T RECALL THAT?
- 20 A NO, I DON'T RECALL A PURSE.
- 21 Q DO YOU RECALL HER PINK T-SHIRT?
- 22 A YES.
- 23 Q HER BLUE JEANS.
- 24 A YES.
- 25 Q HER BANDANNA.

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1 A YES.

2 Q BUT YOU MISSED THE PURSE.

3 A LIKE I SAID, I DON'T RECALL A PURSE.

4 Q AND THEN YOU RECALL BEING ARRESTED.

5 A YES.

6 Q AND YOU STATED THAT THE REASON YOU GAVE THEM THE NAME
7 OF MARK WAS BECAUSE YOU DIDN'T HAVE A LICENSE.

8 A BECAUSE I DIDN'T HAVE A VALID DRIVER'S LICENSE, YES,
9 THAT'S CORRECT.

10 Q DIDN'T HAVE ANYTHING TO DO WITH THE FACT THAT YOU
11 WERE SMOKING CRACK ALL NIGHT.

12 A NO, IT DID NOT. ONLY THING, LIKE I SAID, I KNEW I
13 DIDN'T HAVE A VALID DRIVER'S LICENSE AND LIKE I SAY, I
14 GAVE MY BROTHER'S NAME.

15 Q AND IS IT LEGAL IN NORTH CAROLINA TO DRIVE A CAR
16 UNDER THE INFLUENCE OF CRACK COCAINE?

17 A OF COURSE IT'S NOT. I MEAN IT'S AGAINST THE LAW.

18 Q AND YOU HAD SMOKED A CONSIDERABLE AMOUNT THE NIGHT
19 BEFORE.

20 A YES.

21 Q SO YOU WEREN'T WORRIED ABOUT THAT. YOU WERE JUST
22 WORRIED ABOUT YOUR LICENSE.

23 A NOT WHEN THEY --- LIKE I SAID, AGAIN --- LIKE I SAID,
24 I USUALLY SMOKE CRACK. LIKE I SAY, IT HAPPEN LIKE THAT.

25 AND LIKE I SAY, THEY --- I WASN'T WORRIED ABOUT THAT,

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

688

1 BECAUSE LIKE I SAY, USUALLY HAVE CRACK ON ME, AND NO, I
2 WAS NOT WORRIED ABOUT THAT, NO.

3 Q BUT YOU GAVE THEM YOUR BROTHER'S NAME.

4 A YES, I DID.

5 Q DID YOUR BROTHER HAVE A VALID DRIVER'S LICENSE?

6 A NO, HE DIDN'T.

7 Q SO YOU WERE GOING TO GET YOUR BROTHER IN TROUBLE.

8 A LIKE I SAID, AGAIN, I RECANTED MY STORY. I TOLD
9 THEM, LIKE I SAID, I WAS WORRIED ABOUT GOING TO JAIL AND
10 I JUST WENT AHEAD AND TOLD THEM MY NAME, MY REAL NAME.

11 Q RIGHT, BUT AFTER THEY TOLD YOU THEY KNEW YOU WEREN'T
12 MARK.

13 A YES, UH --- AGAIN, LIKE I SAID, I TOLD THEM MY REAL
14 NAME.

15 Q NOT TWENTY MINUTES LATER WHEN YOU DECIDE NO, I DON'T
16 WANT TO GET MY BROTHER IN TROUBLE ONCE THEY TELL YOU THEY
17 KNOW YOU'RE NOT, THAT'S WHEN YOU COME CLEAN.

18 A AGAIN --- NO, THAT'S NOT AFTER I COME CLEAN. LIKE I
19 SAID, AGAIN, I TOLD THEM THAT MY NAME WAS TERRY DUNOVANT.

20 Q HAD THEY TOLD --- NEVER TOLD YOU THAT THEY KNEW YOU
21 WEREN'T MARK, WERE YOU EVER GOING TO GIVE THEM YOUR NAME?

22 A YES.

23 Q AT WHAT POINT?

24 A I WAS GOING TO GIVE THEM MY NAME PERIOD. LIKE I SAID
25 --- AGAIN, LIKE I SAID, I HAD LOST MY LICENSE AND I --- I

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

689

1 JUST DIDN'T WANT TO --- THE CAR --- MY FRIEND GIRL CAR TO
2 BE TOWED OR ANYTHING LIKE THIS, SO THAT'S WHY I GAVE MY
3 BROTHER'S NAME, THEN I TURNED AROUND IMMEDIATELY AND SAID,
4 OKAY, MY NAME'S TERRY DUNOVANT.

5 Q AND YOU STATED THE REASON THAT YOU'RE SO DIFFICULT
6 WITH LIEUTENANT TOLSON IS BECAUSE YOU FELT SHE WAS TRYING
7 TO TRICK YOU?

8 A NO, I FEEL LIKE SHE WAS TRYING --- EXCUSE ME? TRYING
9 TO --- TRICK ME INTO WHAT? I MEAN ---

10 Q I BELIEVE YOUR WORDS WERE CONFESSED TO SOMETHING YOU
11 DIDN'T ---

12 A NO, SHE WAS TRYING TO LIKE MAKE ME CONFESS, LIKE I
13 KNOW YOU DONE IT; TELL ME THE TRUTH OR WE'LL TAKE IT EASY
14 ON YOU, UH, WE GOT YOUR TAG NUMBER; WE KNOW WHAT COLOR THE
15 CAR IS, UH, UH, JUST TELL US WHAT'S GOING ON; TELL US AND
16 --- AND THE OTHER GENTLEMEN, THE OTHER DETECTIVE WAS RIGHT
17 ALONG WITH HER, UH, GO AHEAD TELL US THE TRUTH, WE'LL TAKE
18 IT ON YOU (SIC); Y'ALL GOT A LITTLE HIGH, YOU GOT A LITTLE
19 THIS AND --- I --- LIKE I SAY, AGAIN, I FELT A LITTLE
20 NERVOUS ABOUT THAT.

21 Q DO YOU RECALL MISTI HILL HAVING ANY BLEEDING COMING
22 OUT OF HER EAR?

23 A MA'AM?

24 Q DO YOU RECALL MISTI HILL HAVING ANY BLOOD ---

25 A NO.

TERRY DUNOVANT - CROSS BY MS. LIPINSKI

690

- 1 Q --- COMING OUT OF HER EAR?
- 2 A NO.
- 3 Q DO YOU RECALL HER HAVING ANY BRUISES OR ABRASIONS TO
- 4 HER ELBOWS?
- 5 A NO.
- 6 Q TO HER ARMS?
- 7 A NO.
- 8 Q TO HER KNEES?
- 9 A NO.
- 10 Q TO HER BACK?
- 11 A NO.
- 12 Q DO YOU RECALL WHETHER OR NOT SHE ACTED LIKE SHE HAD
- 13 THREE CRACK RIBS AT THE TIME THAT YOU HAD SEX WITH HER?
- 14 A NO.
- 15 Q SO SHE DIDN'T IN ANY WAY SHOW YOU ANY DISCOMFORT?
- 16 A NO, SHE DID NOT.
- 17 Q SO DID SHE GET THOSE INJURIES WHEN SHE WAS WITH YOU?
- 18 A NO, SHE DID NOT.
- 19 Q YOU DON'T KNOW WHERE SHE GOT THOSE INJURIES.
- 20 A I HAVE NO IDEA.
- 21 Q BUT FAIR TO SAY FROM THE VIDEO YOU DO DROP HER OFF AT
- 22 APPROXIMATELY FIVE THIRTY?
- 23 A FIVE THIRTY?
- 24 Q YOU PICK HER UP AT ABOUT FIVE THIRTY AT THE GAS
- 25 STATION.

TERRY DUNOVANT - RE-DIRECT BY MR. LEMEL

691

1 A YES.

2 Q NOT TWO THIRTY LIKE YOU SAID.

3 A LIKE I SAID, AGAIN, I DON'T KNOW WHAT TIME IT WAS
4 WHEN I --- LIKE I SAID I JUST THREW THAT IN THERE. I
5 DON'T KNOW EXACTLY WHAT TIME IT WAS WHEN I GOT TO THE
6 STORE, BUT THE VIDEO CLEARLY SAID IT WAS LIKE FIVE
7 SOMETHING, FIVE TWENTY, FIVE TWENTY-FIVE.

8 Q AND SHORTLY THEREAFTER YOU HEARD THE TESTIMONY, SHE
9 DOES CALL 9-1-1.

10 A EXCUSE ME?

11 Q SHORTLY THEREAFTER SHE CALLS 9-1-1.

12 A CALLS 9-1-1, BUT ---

13 Q FROM THE DIXIE DINER.

14 A YES.

15 Q SO NOT WAIT HOURS LATER THAT SHE COMES UP WITH THESE
16 INJURIES.

17 A IT'S LIKE I SAY SHE CALLED 9-1-1. AGAIN, I ---

18 MS. LIPINSKI - COURT'S INDULGENCE ONE MOMENT,
19 YOUR HONOR. (PAUSE) THAT'S ALL WE HAVE OF MR. DUNOVANT,
20 YOUR HONOR.

21 RE-DIRECT EXAMINATION

22 BY MR. LEMEL -

23 Q TERRY, ---

24 A YES.

25 Q --- MS. HERVEY ASKED YOU A LOT OF STUFF ABOUT BRUISES

TERRY DUNOVANT - RE-DIRECT BY MR. LEMEL

692

1 ON VARIOUS PARTS OF MS. HILL'S BODY JUST NOW. DO YOU
2 REMEMBER THAT?

3 A YES.

4 Q DID YOU INSPECT HER BODY?

5 A NO, I DID NOT.

6 Q BASIC --- DID YOU HAVE A CHANCE TO REALLY LOOK AT
7 HER, FOR EXAMPLE, HER KNEES AND THINGS LIKE THAT UNDER
8 LIGHTS?

9 A NO, I DID NOT.

10 Q OKAY. THE STATE --- YOU STILL GOT THE STATEMENT
11 THERE?

12 A YES.

13 Q ABOUT WHAT TIME DID YOU SIGN THAT STATEMENT? YOU
14 REMEMBER? OR WHAT TIME?

15 A WHAT TIME DID I SIGN IT?

16 Q DO YOU REMEMBER?

17 A NO, I DON'T.

18 Q IT WAS LATE IN THE AFTERNOON?

19 A THINK IT WAS ABOUT ONE, ONE THIRTY, TWO --- I --- I'M
20 NOT FOR SURE.

21 Q I'M SHOWING YOU THE RIGHTS FORM AND IS THERE ANY TIME
22 INDICATED ON THERE AS LIKE WHEN YOU GOT STARTED?

23 A YES, TWELVE --- I THINK IT'S TWELVE TWENTY.

24 Q OKAY. AND YOU SAID YOU WERE IN THERE FOR ABOUT AN
25 HOUR WITH THEM?

TERRY DUNOVANT - RE-DIRECT BY MR. LEMEL

693

1 A YES, I --- LIKE I SAY --- I THINK ABOUT ---
2 APPROXIMATELY --- LIKE I SAY, AGAIN, I DIDN'T HAVE A CLOCK
3 OR A WATCH OR ANYTHING, BETWEEN FORTY-FIVE MINUTES TO A
4 HOUR.

5 Q OKAY. AND ONE OF THE THINGS IF YOU HAVE THE
6 STATEMENT THERE, IF YOU CAN READ IT, THAT SHE FOCUSED ON
7 WAS ABOUT BEING OUT OF THE CAR AND REFERRING TO THE
8 DRIVER'S SIDE HOOD.

9 A (INDICATING YES)

10 Q REMEMBER THAT?

11 A YES.

12 Q THAT'S ON LINE 17. SHE HAD HER ELBOWS ON THE
13 DRIVER'S SIDE OF HOOD.

14 A YES.

15 Q OKAY. THE DRIVER'S SIDE --- LET'S FOCUS ON THAT
16 FIRST.

17 A OKAY.

18 Q WHAT DOES THE DRIVER'S SIDE MEAN?

19 A DRIVER'S SIDE IS THE DRIVE --- WHERE YOU DRIVE, THE
20 DRIVER.

21 Q OKAY. SO THAT JUST MEANS AS YOU'RE GETTING OUT OF
22 THE CAR IT'S THE LEFT-HAND SIDE OF THE CAR.

23 A YES.

24 Q OKAY. YOU WEREN'T UP AGAINST THE DRIVER'S DOOR OR
25 ANYTHING LIKE THAT?

TERRY DUNOVANT - RE-DIRECT BY MR. LEMEL

694

1 A NO.

2 Q AND I THINK YOU WERE --- THE COMMENT THERE IS OF THE
3 HOOD IS WHAT'S WRITTEN DOWN THERE?

4 A YES.

5 Q DOES THAT MEAN THE HOOD OF THE ENGINE, THE HOOD OF
6 THE TRUNK?

7 A IT'S THE HOOD OF THE TRUNK IN THE BACK OF THE
8 VEHICLE.

9 Q OKAY. AND, IN FACT, AS YOU HEARD MS. HILL REFER TO
10 IT AT ONE POINT IN TIME ---

11 A YES.

12 Q --- IN HER TESTIMONY AS THE HOOD?

13 A YES, EXACTLY.

14 Q OKAY. IS THAT WHAT YOU WERE REFERRING TO THEN?

15 A YES.

16 Q YOU NEVER SAID THAT YOU WERE UP FRONT OF THE CAR?

17 A NO, I NEVER SAID UP FRONT. IN THE BACK OF THE
18 VEHICLE, THE TRUNK.

19 Q OR THE SIDE OF THE CAR.

20 A YES.

21 MR. LEMEL - NOTHING FURTHER.

22 THE COURT - RE-CROSS?

23 MS. LIPINSKI - NO, YOUR HONOR.

24 THE COURT - ALL RIGHT, YOU CAN STEP DOWN. THANK

25 YOU.

1 MR. DUNOVANT - WOULD YOU LIKE THESE BACK, MA'AM?

2 MS. LIPINSKI - JUST LEAVE THEM RIGHT THERE.

3 THANK YOU.

4 THE COURT - CALL YOUR NEXT WITNESS.

5 MR. LEMEL - YOUR HONOR, THAT WOULD BE THE CASE
6 FOR THE DEFENSE.

7 THE COURT - ANYTHING IN REPLY?

8 MS. LIPINSKI - YOUR HONOR, IF I COULD HAVE A
9 BRIEF MOMENT TO TALK TO THE DETECTIVES AND I'LL MAKE THAT
10 DECISION IN JUST BRIEFLY.

11 THE COURT - ALL RIGHT. MEMBERS OF THE JURY, THE
12 DEFENSE IS NOW RESTING AND THE STATE HAS A RIGHT UNDER
13 CERTAIN CIRCUMSTANCES TO PRESENT REPLY TESTIMONY AND WE
14 WILL GIVE THE STATE A CHANCE TO DO THAT. WHEN YOU COME
15 BACK IT MAY BE THAT THERE IS MORE TESTIMONY OR IT MAY BE
16 THAT WE'RE IN A POSITION TO GO FORWARD WITH ARGUMENTS AND
17 CHARGE, DEPENDING ON WHAT THE STATE DECIDES. YOU'RE NOT
18 YET IN A POSITION TO MAKE UP YOUR MIND OR DISCUSS THE
19 CASE. THAT WILL COME IN THE NOT TOO DISTANT FUTURE, BUT
20 WHEN YOU COME BACK WE'LL EITHER HAVE A SHORT WITNESS AND
21 THEN WE'LL HAVE TO TAKE A BREAK IF WE DO. IF NOT, WE'LL
22 GO STRAIGHT INTO THE ARGUMENTS OF THE ATTORNEYS AND MY
23 CHARGE ON THE LAW, SO WE'LL TAKE ABOUT A TEN MINUTE BREAK
24 AND GET REFRESHED AND BE READY TO COME IN FOR A GOOD WHILE
25 PERHAPS.

696

1 (JURY EXITS THE COURTROOM)

2 THE COURT - WE'LL BE AT EASE FOR ABOUT TEN
3 MINUTES.

4 MS. LIPINSKI - THANK YOU, YOUR HONOR.

5 THE COURT - AND I HAVE FOUND THE CASES ABOUT THE
6 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE BEING
7 THE LESSER INCLUDED, MAGAZINE VS. STATE, STATE VS.
8 ELLIOTT, SO I WILL CHARGE THAT AS A LESSER INCLUDED AND WE
9 WILL DO A VERDICT FORM.

10 MS. LIPINSKI - THANK YOU, YOUR HONOR.

11 (RECESS TAKEN)

12 THE COURT - THANK YOU. TAKE YOUR SEATS. WHERE
13 DO WE STAND, MS. HERVEY?

14 MS. LIPINSKI - NO REPLY.

15 THE COURT - STATE OPENING OR WAIVE OPENING OR --

16 -

17 MS. LIPINSKI - WE'D WAIVE OPENING, YOUR HONOR.

18 THE COURT - ALL RIGHT. BRING IN THE JURY.

19 MR. LEMEL - YOUR HONOR, ---

20 THE COURT - OH, I'M SORRY. ANY MOTIONS?

21 MR. LEMEL - IF I COULD SIMPLY RENEW PREVIOUS
22 MOTIONS.

23 THE COURT - MOTIONS DENIED AGAIN. I THINK THE
24 EVIDENCE IS SUFFICIENT TO SUPPORT A CASE GOING TO THE JURY
25 BASED ON DIRECT EVIDENCE. ALL RIGHT, BRING IN THE JURY.

CLOSING STATEMENTS

697

1 (JURY RETURNS TO THE COURTROOM)

2 THE COURT - ALL RIGHT, MEMBERS OF THE JURY PANEL
3 THERE WILL BE NO FURTHER TESTIMONY, SO WE'LL NOW HAVE THE
4 ARGUMENTS OF THE ATTORNEYS, CLOSING STATEMENTS, CLOSING
5 ARGUMENTS, THEN I WILL CHARGE YOU THE LAW WHICH YOU ARE TO
6 APPLY TO THE FACTS AS YOU DETERMINE THEM TO BE. MR.
7 LEMEL?

8 MR. LEMEL - THANK YOU, YOUR HONOR, MAY IT PLEASE
9 THE COURT.

10 THE COURT - YES, SIR.

11 CLOSING STATEMENTS

12 MR. LEMEL - WHEN I GOT UP BEFORE YOU EARLIER
13 THIS WEEK I TOLD YOU THAT YOUR JOB IN THIS PARTICULAR CASE
14 WILL BE TO FIND OUT WHAT THE FACTS OF THE CASE ARE, AND AT
15 THAT POINT IN TIME I INDICATED TO YOU JUST HOW DIFFICULT
16 A JOB THAT WAS IN A COURTROOM LIKE THIS, AND I THINK NOW
17 YOU PROBABLY HAVE A PRETTY GOOD APPRECIATION OF EXACTLY
18 WHY YOUR JOB AS JURORS IS THE HARDEST ONE IN THIS
19 COURTROOM. THIS DETERMINATION OF FACTS IN A CASE LIKE
20 THIS WHERE YOU HAVE TWO EXTRAORDINARILY CONTRASTING
21 STORIES IS EVEN MORE DIFFICULT. AND ONE OF THE PROBLEMS
22 IN A SITUATION LIKE THAT IS OFTEN OUT IN THE COMMUNITY
23 HEAR PEOPLE REFER TO THIS KIND OF CASE AS WELL AS A HE-
24 SAID/SHE-SAID KIND OF CASE. THE PROBLEM WITH DOING THAT
25 IN A CASE LIKE THIS IS THAT'S NOT WHAT YOU'RE MEASURING IN

CLOSING STATEMENTS

698

1 THIS CASE. IF IT'S A HE-SAID/SHE-SAID KIND OF CASE, THAT
2 MEANS YOU'RE PUTTING BOTH SIDES ON THE SET OF SCALES AND
3 YOU'RE WEIGHING ONE SIDE AGAINST THE OTHER. THAT'S NOT
4 WHAT YOU DO IN A CRIMINAL CASE AND THERE IS A VERY
5 SIGNIFICANT REASON FOR THAT. IN A CRIMINAL CASE UNLIKE A
6 CIVIL CASE YOU ARE TALKING ABOUT SOMEONE'S LIFE AND
7 LIBERTY AND BRANDING THEM AS A RAPIST IN THIS PARTICULAR
8 CASE AS A CRIMINAL FOR THE REST OF THEIR LIVES, SO THERE
9 IS A REASON WHY OUR LAW IS VERY SPECIFIC ABOUT THAT. THIS
10 IS NOT A MATTER OF WHETHER YOU BELIEVE MS. HILL MORE THAN
11 YOU BELIEVE TERRY OR TERRY MORE THAN YOU BELIEVE MS. HILL.
12 THIS CASE IS SOLELY ABOUT WHETHER YOU BELIEVE HER SO MUCH
13 THAT IT TAKES YOU BEYOND THE POINT WHERE YOU WOULD
14 HESITATE TO ACT BECAUSE IN EVERY CRUCIAL AREA, EVERY
15 CRUCIAL AREA THEY ARE COMPLETELY AND ENTIRELY DEPENDENT
16 UPON THE STATEMENTS OF MS. HILL BECAUSE THEY HAVE NO OTHER
17 CORROBORATION OR BACKING. AND SO YOU MUST NOT JUST SIMPLY
18 BELIEVE HER, BUT BELIEVE HER TO THE POINT WHERE YOU GO
19 BEYOND A REASONABLE DOUBT, BEYOND THE POINT WHERE YOU
20 WOULD EVEN HESITATE TO ACT. AND KNOWING WHAT YOU KNOW
21 ABOUT HER AS A PERSON WITH A CONVICTION FOR FRAUD ON HER
22 RECORD AND WHAT YOU HAVE SEEN FROM HER ON THE STAND, IF
23 SHE --- IF THIS WAS A SITUATION WHERE YOU HAD A BILL THAT
24 HAD TO BE PAID, AND YOU ONLY HAD CASH TO PAY IT WITH AND
25 IT WAS CRITICAL THAT THAT BILL BE PAID, WOULD YOU TRUST

CLOSING STATEMENTS

699

1 MS. HILL WITH A THOUSAND DOLLARS? WHAT ABOUT A HUNDRED
2 THOUSAND DOLLARS TO GO PAY THAT FOR YOU? WHAT ABOUT A
3 MILLION DOLLARS? BECAUSE WE'RE TALKING ABOUT A LIFE HERE
4 AND HOW MUCH IS A HUMAN LIFE WORTH.

5 MS. LIPINSKI - YOUR HONOR, I'M GOING TO OBJECT
6 TO THE COMMENTS ABOUT HUMAN LIFE. SIMPLY THAT IS NOT THE
7 PUNISHMENT ---

8 THE COURT - NO, I SUSTAIN THE OBJECTION. THAT'S
9 JUST --- THE QUESTION IS WHETHER OR NOT HE COMMENTED THIS
10 OFFENSE OR NOT.

11 MS. LIPINSKI - AND I'D ASK THE JURY TO DIS-
12 CONSIDER THIS POINT.

13 THE COURT - DISREGARD THAT PART OF THE ARGUMENT.
14 THE QUESTION IS WHETHER OR NOT THE STATE CAN AND HAS
15 PROVEN TO YOUR SATISFACTION THIS PERSON, THIS DEFENDANT,
16 GUILTY BEYOND A REASONABLE DOUBT OF THE OFFENSES THAT HE'S
17 CHARGED.

18 MR. LEMEL - AND IT MAKES --- I'M NOT TALKING
19 ABOUT PUNISHMENT HERE. WHAT I AM TALKING ABOUT IS THEY'RE
20 --- WHEN YOU ACCUSE SOMEBODY OF A CRIME, YOU'RE TALKING
21 ABOUT TAKING AWAY THEIR LIBERTY, TAKING AWAY THEIR RIGHTS,
22 CONVICTING THEM OF A CRIME AND IN THIS CASE BRANDING THEM
23 AS A RAPIST. THAT'S WHAT I MEAN WHEN I TALK ABOUT A
24 PERSON'S LIFE. JUST TO MAKE THAT VERY CLEAR. I'M NOT
25 TALKING ABOUT PUNISHMENT. AND IT IS VERY IMPORTANT THAT

CLOSING STATEMENTS

700

1 YOU UNDERSTAND THAT, BECAUSE THAT'S WHAT THE STATE IS
2 ASKING YOU TO DO BASED UPON HER WORD. SO WHAT DO WE KNOW
3 ABOUT MS. HILL AT THIS POINT IN TIME? WELL, WE KNOW SHE
4 IS A WOMAN WHO WILL VERY QUICKLY MINIMIZE HER OWN ISSUES.
5 SHE WILL MINIMIZE HER OWN ISSUES UP THERE ON THE STAND.
6 SHE SAYS THINGS LIKE, I USE CRACK BUT I'M NOT AN ADDICT
7 BECAUSE I ONLY USED IT ON THE WEEKENDS. SHE SAYS THINGS
8 LIKE, I USE CRACK, BUT IT REALLY DOESN'T HAVE A BIG IMPACT
9 ON ME. I DON'T GET A BIG EFFECT FROM USING CRACK COCAINE.
10 SHE SAYS, IT'S NOT A BIG DEAL TO SMOKE CRACK IF IT'S ONLY
11 ONE HIT AND IT'S NOT A BIG DEAL TO RELAPSE --- OH, IT
12 WOULD BE A BIG DEAL IF I WERE SMOKING TWO OR THREE HUNDRED
13 DOLLARS WORTH OF CRACK BUT JUST SMOKING A LITTLE BIT OF
14 CRACK ISN'T THAT BIG A DEAL. AND WE KNOW THAT SHE'S A
15 WOMAN WHO WILL MINIMIZE HER BEHAVIOR IN THE REAL WORLD IN
16 HER REAL LIFE. THAT, DESPITE THE FACT THAT SHE HAS BEEN
17 DIAGNOSED WITH BIPOLAR, DESPITE THE FACT THAT SHE IS
18 TAKING MEDICATIONS WHICH SHE KNOWS SHE'S NOT SUPPOSED TO
19 BE DRINKING FOR. SHE GOES OUT AND DOES THAT ANYWAY,
20 BECAUSE REALLY IT'S OKAY, SHE CAN DRINK EVEN THOUGH SHE'S
21 BIPOLAR, AND SHE CAN DRINK TO THE POINT WHERE AS THE
22 DOCTOR SAYS, HER BLOOD ALCOHOL LEVEL WOULD BE ROUGHLY A
23 .15, ROUGHLY TWICE THE INFERENCE LEVEL FOR DRIVING UNDER
24 THE INFLUENCE OF A .08, OF A LEVEL THAT HE CLEARLY SAYS
25 WOULD BE IMPAIRED. WE KNOW THAT SHE SAYS THAT TWO YEARS

CLOSING STATEMENTS

701

1 AGO SHE WAS CURED OF HER CRACK ADDICTION BY TWO DAYS OF
2 TREATMENT AND NO FOLLOW-UP, NO N/A, NOTHING LIKE THAT.
3 AND CLEARLY THAT CURE DIDN'T TAKE, BECAUSE SHE WENT OUT
4 AND SHE SMOKED CRACK AGAIN, BUT THAT'S NOT A BIG DEAL. WE
5 KNOW THAT SHE'S A PERSON THAT WILL CHANGE HER STORY TO
6 SUIT HER NEEDS. THERE ARE NUMEROUS EXAMPLES OF THIS
7 THROUGHOUT THIS CASE STARTING WITH HOW MUCH SHE HAD TO
8 DRINK THAT NIGHT. SHE TOLD THE NURSE EXAMINER THAT SHE
9 ONLY HAD FOUR BEERS STARTING AT ABOUT TWO A.M. AND MS.
10 HERVEY WENT THROUGH A GREAT DEAL OF EFFORT WITH ALMOST
11 EVERY WITNESS TO ASK WAS SHE --- DID SHE APPEAR TO BE
12 UNDER THE INFLUENCE TO YOU. SHE ASKED THE EMS DRIVER WAS
13 SHE UNDER THE INFLUENCE. SHE ASKED THE DEPUTY CHILDERS,
14 WAS SHE UNDER THE INFLUENCE. SHE ASKED THE NURSE
15 EXAMINERS DID SHE APPEAR TO BE UNDER THE INFLUENCE. THEY
16 BUILT UP THIS WHOLE BIG THING ABOUT SHE WASN'T UNDER THE
17 INFLUENCE DESPITE THE FACT THAT THEIR OWN WITNESS SAYS SHE
18 WOULD'VE HAD A .15 AT THE TIME WE WATCHED HER ON THE
19 VIDEO. BUT THEN WHEN CONFRONTED WITH SOMETHING, WHAT DID
20 MS. HILL SAY? REMEMBER SHE WAS TALKING ABOUT THE
21 GENTLEMAN WITH THE TIE-DYE THAT THEY HAD A CONVERSATION
22 AND SHE SAID, OH, THE REASON WHY HE WAS POINTING IS THAT
23 I --- I LACKED SUCH CLARITY --- SHE USED THE WORD CLARITY
24 --- I WAS SO UNDER THE INFLUENCE THAT I NEEDED HIM TO TELL
25 ME WHICH DIRECTION WAS NORTH AND SOUTH. THINK ABOUT THAT

CLOSING STATEMENTS

702

1 FOR A SECOND. AT ONE HAND SHE'S SAYING SHE'S PERFECTLY
2 FINE, BUT THEN A PERSON WHO'S GROWN UP IN THIS AREA, HAS
3 LIVED IN THIS AREA, SAYS THAT SHE WAS SO FAR GONE THAT SHE
4 COULDN'T TELL WHICH DIRECTION SHE WAS EVEN SUPPOSED TO GO.
5 WELL, I THINK THAT'S TRUE NOW. I THINK THAT IS JUST
6 ANOTHER EXAMPLE OF HER BEING WILLING TO CHANGE HER STORY
7 WHEN IT SUITS HER NEEDS. AND REGARDLESS YOU CAN SEE THAT
8 ABOUT THE ISSUE OF ALCOHOL SHE SIMPLY WASN'T TRUTHFUL WHEN
9 THE MATTER CAME UP. SHE CLAIMS SHE HAD FOUR BEERS ABOUT
10 TWO A.M. AND YOU ASK YOURSELF, HOW IS THAT POSSIBLE IF AT
11 FIVE THIRTY, ACCORDING TO THEIR EXPERT, SHE HAD A BLOOD
12 ALCOHOL CONTENT OF .15? DOES THAT SEEM LOGICAL TO YOU?
13 DOES THAT MAKE ANY SENSE? NO. BECAUSE SHE HAD A LOT MORE
14 TO DRINK THAN FOUR BEERS. SHE HAD A LOT MORE IN HER
15 SYSTEM BECAUSE SHE HAD A LOT MORE THAN FOUR BEERS, IT GOES
16 BACK TO THAT FIRST ONE. SHE'S GOING TO MINIMIZE ANYTHING
17 THAT MAKES HER LOOK BAD IN FRONT OF OTHER PEOPLE. SHE
18 CHANGED HER STORY, GOING BACK TO THE SECOND POINT, ABOUT
19 HER IDENTIFICATION OF TERRY. TO DEPUTY CHILDERS --- AND
20 YOU REMEMBER HIS TESTIMONY ON THE STAND, HE WAS VERY, VERY
21 SPECIFIC. HE SAID NOT JUST ONCE, BUT TWICE, SHE SAID SHE
22 DID NOT KNOW WHO DID THIS. SHE SAID SHE DID NOT KNOW HIM,
23 AND THAT'S WHY HE MARKED STRANGER, A VERY CLEAR STATEMENT
24 FROM HIM OF WHAT SHE SAID. TO DR. RIMMER SHE COMES UP
25 WITH A COMPLETELY DIFFERENT STORY. THIS IS SOMETHING HE'S

CLOSING STATEMENTS

703

1 DOCUMENTING AS HE'S TAKING IT AS SHE'S SAYING IT. SHE
2 COMES UP WITH A STORY THAT THIS IS A DRUG DEALER THAT SHE
3 KNOWS FROM THE PAST THAT SHE HAD BOUGHT DRUGS FROM THAT
4 DAY? WHERE DID THAT COME FROM? YOU CERTAINLY NEVER HEARD
5 IT AGAIN ON THE STAND WHEN SHE TESTIFIED TO IT. THAT'S
6 WHAT SHE TOLD THE DOCTOR THAT DAY. AGAIN THAT STORY
7 DIDN'T QUITE WORK, SO THEN A COUPLE HOURS LATER WHEN SHE'S
8 TALKING WITH THE NURSE EXAMINERS, SHE JUST SAYS IT'S AN
9 ACQUAINTANCE AND TO DETECTIVES SHE SAYS IT'S SOMEBODY SHE
10 KNOWS FROM THE PAST. FOUR COMPLETELY DIFFERENT STORES,
11 NONE OF WHICH ARE ACTUALLY ACCURATE, BUT SHE HAS TO COME
12 UP WITH SOME REASON WHY SHE WOULD BE GETTING IN THE CAR
13 WITH THIS PERSON, BECAUSE GETTING IN A CAR WITH A COMPLETE
14 STRANGER DOESN'T MAKE A WHOLE LOT OF SENSE EITHER. SHE
15 EVEN CHANGED HER STORY WHEN IT CAME WITH REGARD TO WHAT
16 SEX ACTS SHE SAID AND WHERE THOSE OCCURRED. TO THE
17 OFFICERS ON THE STAND SHE TALKED A LOT ABOUT ORAL SEX, BUT
18 NOT ONCE, NOT TWICE, BUT IN THREE DIFFERENT QUESTIONS THE
19 NURSE EXAMINER ASKED HER ABOUT EXACTLY THAT FACT. TELL ME
20 WHAT HAPPENED. AND SHE SAID THAT HE ATTEMPTED TO HAVE
21 ORAL SEX WITH ME BUT I REFUSED. THEN THEY ASKED HER DID
22 HIS PENIS PENETRATE YOUR MOUTH. NO. AND DID YOU EVER
23 HAVE TO PERFORM ORAL COPULATION, ORAL SEX ON HIM. NO.
24 THE STORY KEPT CHANGING AND EVOLVING. AND IT KEPT
25 CHANGING AND EVOLVING EVEN TO THE MOMENT THAT SHE GOT ON

CLOSING STATEMENTS

704

1 THE STAND, BECAUSE FOR THE FIRST TIME ANYWHERE ON THE
2 STAND SHE SUDDENLY COMES FORWARD AND SAYS, OH, WE TRIED TO
3 HAVE SEX INSIDE THE CAR IN THE BACK-SEAT. THAT WAS
4 NOWHERE ELSE IN ANY OF HER STATEMENTS. NEVER SAID THAT TO
5 ANYONE. EVERYTHING SHE SAID BEFORE WAS EVERYTHING
6 HAPPENED OUTSIDE THE CAR. AND, AGAIN, WHY IS THIS
7 IMPORTANT? THIS COMES TO THINGS LIKE WHEN THEY'RE
8 EXAMINING THE CAR AND LOOKING FOR THINGS IN THE CAR. IF
9 THERE'S SEXUAL ACTIVITY GOING ON IN THE CAR THAT COULD
10 LEAVE DNA, AND CERTAINLY BLOOD, NONE OF WHICH WERE FOUND,
11 NONE OF WHICH WAS CONSISTENT WITH HER STORY, WHICH IS JUST
12 ONE INCONSISTENCY IN THAT PART OF THE STATEMENT. WE KNOW
13 THIRDLY THAT MS. HILL WILL MAKE CLAIMS THAT REALLY MAKE NO
14 SENSE. SHE TOLD YOU THAT SHE CALLED A CAB, THAT ALL THE
15 DISPATCHERS WERE THE SAME, AND THAT SHE WAITED THERE FOR
16 THIRTY OR FORTY-FIVE MINUTES FOR THAT CAB, AND IT NEVER
17 SHOWED UP. SO LET'S THINK ABOUT THIS. IT'S GASTON COUNTY
18 AT FOUR THIRTY IN THE MORNING. HOW MUCH CALLS FOR SERVICE
19 CAN A CAB COMPANY HAVE AT GASTON COUNTY AT FOUR THIRTY IN
20 THE MORNING THAT IT WOULD TAKE THIRTY OR FORTY MINUTES FOR
21 A CAB TO GET THERE? AND, OH, BY THE WAY, SHE DIDN'T EVEN
22 REALLY HAVE ANY MONEY FOR THE CAB, BUT SHE THOUGHT THE CAB
23 WAS GOING --- THE CAB DRIVER WAS GOING TO BE NICE AND TAKE
24 HER OUT TO HER HOUSE AND LET HER PAY AFTER SHE GOT TO THE
25 HOUSE. THINK ABOUT WHEN YOU THINK ABOUT CAB DRIVERS.

CLOSING STATEMENTS.

705

1 DOES THAT SEEM TO MAKE A WHOLE LOT OF SENSE ABOUT THE WAY
2 CAB DRIVERS OPERATE? FOUR THIRTY IN THE MORNING PICKING
3 SOMEBODY UP AT THE TRUCK STOP. THEY'RE GOING TO WANT
4 THEIR MONEY AHEAD OF TIME. LET'S TALK ABOUT CLOTHING.
5 SHE EVEN SAYS THAT AT ONE POINT IN TIME IN THE BACK-SEAT
6 HER JEANS ARE OFF, THEN SUDDENLY THEY'RE BACK ON FOR WHEN
7 SHE'S GETTING OUT OF THE CAR; THEY DON'T COME TOTALLY OFF
8 WHEN THEY'RE HAVING SEX AT THE BACK WHICH ISN'T WHAT TERRY
9 SAYS, THAT THE PANTS WERE ALL THE WAY OFF. BUT HOW IS
10 THIS EVEN POSSIBLE? IF HER PANTS AREN'T OFF IN THE BACK-
11 SEAT OF THE CAR, THERE IS NO PHYSICAL WAY THAT SOMEBODY
12 CAN HAVE SEX IN THAT POSITION WITH THEIR PANTS IN THIS
13 PART OF THE LEGS, A FEMALE. IT'S SIMPLY NOT POSSIBLE.
14 THERE'S NO WAY THAT HER LEGS WOULD SPREAD FAR ENOUGH
15 APART, AND THE STORY MAKES NO SENSE. AND, AGAIN, IT'S
16 SOMETHING THAT DOESN'T EVEN COME UP UNTIL SHE'S HERE ON
17 THE STAND. SHE TELLS THE DETECTIVE WHO'S TAKING HER
18 STATEMENT THAT SHE ENDS UP AT THE GAS STATION BECAUSE THE
19 PEOPLE WHO WERE GIVING HER A RIDE HOME, WHOSE NAME SHE
20 DOES NOT KNOW, WANTED TO GO BUY DRUGS. NOW, ON THE STAND
21 SHE SAYS, OH, BY THE WAY, THEY WERE DRUNK, TOO, BUT SHE
22 TOLD HIM THAT SHE DIDN'T WANT TO BE AROUND THEM BECAUSE
23 THEY WERE GOING TO BUY DRUGS. YET, THE NEXT THING SHE
24 DOES IS HOP IN A CAR WITH SOMEBODY THAT SHE THINKS --- AT
25 LEAST WHEN SHE HOPS INTO THE CAR, ACCORDING TO HER

CLOSING STATEMENTS

706

1 STATEMENT --- IS A COMPLETE STRANGER. AND WHAT
2 IMMEDIATELY DOES SHE DO WITH THAT PERSON? STARTS SMOKING
3 DRUGS. SO SHE DID THIS WHOLE THING OF GETTING AWAY FROM
4 DRUGS THEN IMMEDIATELY STARTS SMOKING DRUGS. NOW, LET'S
5 THINK ABOUT THIS LOGICALLY FOR A SECOND. IF YOU'RE GOING
6 TO GET IN THE CAR WITH SOME PREDISPOSITION, SOME PRE-
7 KNOWLEDGE OF WHAT'S GOING ON, THIS ISN'T JUST, HEY, I'LL
8 GIVE YOU A RIDE HOME, RIDING HOME, HEY, YOU WANT TO SMOKE
9 SOME CRACK? SURE, LET'S SMOKE SOME CRACK. DOESN'T HAPPEN
10 THAT WAY. DOES NOT HAPPEN THAT WAY. TWO PEOPLE WHO ARE
11 COMPLETE STRANGERS DON'T JUST DECIDE, OOP, I'M GOING TO
12 VOLUNTEER THAT I SMOKE CRACK. THAT'S NOT HOW IT HAPPENS.
13 AND THAT'S NOT HOW IT HAPPENED OUT THERE THAT NIGHT. THERE
14 WERE DISCUSSIONS BEFORE THEY EVER GET IN THE CAR. EACH
15 SIDE KNEW WHAT THE OTHER WAS DOING, WHAT THEY WERE LOOKING
16 FOR. SHE TELLS YOU THAT SHE HAS A FULL-TIME JOB WHICH SHE
17 WORKS FROM EIGHT TO SIX, THAT SHE WAS SUPPOSED TO WORK
18 FROM EIGHT TO SIX ON THURSDAY. SO WHAT WE KNOW ABOUT HER
19 IS THAT AT FIVE THIRTY SHE'S THERE THE SAME DAY, THAT
20 MORNING, AND AT THAT POINT IN TIME SHE HAS A .15 IN HER
21 SYSTEM, AND THAT SHE LACKS SUCH CLARITY SHE DOESN'T EVEN
22 KNOW WHICH DIRECTION IS NORTH AND SOUTH AND SHE'S SUPPOSED
23 TO GET UP IN LESS THAN THREE HOURS AND BE AT WORK AT THAT
24 POINT IN TIME. DOES THAT MAKE ANY SENSE? SHE TELLS YOU
25 THAT SHE'S BEEN CLEAN FOR TWO YEARS, THAT SHE STAYED AWAY

CLOSING STATEMENTS

707

1. FROM THE BAD STUFF, THAT SHE GOES TO TWO DIFFERENT CLUBS
2 THAT, YOU KNOW, SHE WAS CLEAN, SHE HADN'T BEEN IN IN A
3 COUPLE YEARS, HAD FRIENDS WHO IMMEDIATELY TOOK HER INSIDE
4 THESE CLUBS AND RECOGNIZED ENOUGH PEOPLE INSIDE THESE
5 CLUBS THAT EVEN WHEN THOSE OTHER FRIENDS LEFT, SHE FELT
6 SHE WAS FINE GETTING A RIDE WITH THESE OTHER PEOPLE. NO.
7 SHE HADN'T BEEN CLEAN FOR TWO YEARS. SHE HADN'T BEEN
8 STAYING AWAY FROM THE CLUBS FOR TWO YEARS. SHE HADN'T
9 BEEN CONTROLLING HER BIPOLAR LIKE SHE WAS SUPPOSED TO BY
10 NOT DRINKING ALCOHOL. AND ONE OF THE MOST SIGNIFICANT
11 ONES CAME SORT OF AT THE END WHEN SHE WAS TALKING ABOUT
12 THE INJURIES SHE RECEIVED, AND UNFORTUNATELY, THERE'S NO
13 WAY TO DO THIS WITHOUT BEING, QUITE FRANKLY, A LITTLE BIT
14 GRAPHIC FOR YOU. SHE CLAIMED THAT WHEN THEY WERE HAVING
15 SEX AT THE BACK OF THE CAR THAT SHE WAS BENT OVER AT THE
16 WAIST WITH HER HANDS ON THE HOOD AND THAT HE WAS BEHIND
17 HER AND THAT HE DID NOT HAVE HIS PANTS UNZIPPED OR HE
18 DIDN'T HAVE HIS PANTS DOWN, THEY WERE SIMPLY UNZIPPED, AND
19 WHAT SHE SAID WAS, HIS ZIPPER WAS SCRAPING MY BACK. AND
20 YOU WILL SEE WHERE THE INJURIES ARE ON HER BACK. IT'S IN
21 THIS LOWER PART OF HER BACK, THESE SCRAPES THAT SHE
22 CLAIMS. PHYSIOLOGICALLY THAT IS SIMPLY NOT POSSIBLE, IF
23 YOU THINK ABOUT IT. IF SHE IS BENT OVER AND HIS GENITALIA
24 IS HITTING HER GENITALIA FROM THE REAR, HIS ZIPPER IS
25 GOING TO BE HITTING IN THE AREA OF HER BUTTOCKS. THERE IS

CLOSING STATEMENTS

708

1 NO WAY IF SHE IS BENT OVER THAT THE ZIPPER CAN HIT UP
2 HERE. IT IS NOT POSSIBLE. AND THAT'S GRAPHIC, BUT THAT
3 WAS HER CLAIM. SHE WAS THE ONE WHO CAME UP AND SAID THESE
4 THINGS. NOT HIM. NOT A DOCTOR. HER. WE ALSO KNOW
5 FINALLY THAT MS. HILL GETS VERY DEFENSIVE WHEN SHE GETS
6 CHALLENGED. SHE USES CERTAIN DEFENSE MECHANISMS. SHE
7 WILL SUDDENLY CLAIM SHE SIMPLY CAN'T REMEMBER WHEN SHE
8 REALIZES THAT THERE'S SOMETHING THAT DOESN'T MAKE ANY
9 SENSE. SHE CLAIMS SHE SIMPLY CAN'T REMEMBER TALKING TO
10 THE DEPUTY AND TELLING HIM WHAT HE SAID. SHE CLAIMS SHE
11 CAN'T REMEMBER HOW SHE GOT INTO THE BACK-SEAT. I SUBMIT
12 TO YOU THE REASON WHY SHE CAN'T REMEMBER HOW SHE GOT INTO
13 THE BACK-SEAT IS SHE WAS NEVER ACTUALLY IN THE BACK-SEAT
14 THAT DAY. I DON'T KNOW WHERE THE SEX IN THE BACK-SEAT
15 CAME IN, BUT MAYBE THAT WAS ANOTHER INDIVIDUAL SHE WAS
16 WITH. MAYBE SHE'S GETTING CONFUSED, BUT FOR THAT TO
17 APPEAR FOR THE FIRST TIME TODAY, THAT'S THE REASON WHY SHE
18 CAN'T REMEMBER IT, BECAUSE IT WASN'T PART OF THE SAME
19 INCIDENT. BUT JUST AS QUICKLY AS THE DEFENSE MECHANISM,
20 SHE WAS WILLING TO PUT THE BLAME ON OTHER PEOPLE. WHEN I
21 ASKED HER ABOUT GIVING THE NAMES OF ALL THESE FRIENDS THAT
22 SHE WAS SUPPOSEDLY AROUND THAT NIGHT TO THE POLICE, BUT
23 SHE NEVER DID, OH, IT'S THEIR FAULT. THEY NEVER ASKED ME
24 FOR THE NAMES. IT'S THE DOCTOR'S FAULT FOR WRITING DOWN
25 THAT I BOUGHT DRUGS FROM HIM EARLIER THAT DAY. IT IS THE

CLOSING STATEMENTS

709

1 NURSE'S FAULT FOR NOT ASKING ME TO SIGN OFF ON THEIR
2 EXAMINATION. I CERTAINLY COULDN'T HAVE SAID ANY OF THESE
3 THINGS. IT'S SOMEBODY ELSE'S FAULT. AND YOU MUST LOOK AT
4 ALL THESE THINGS WHEN YOU'RE EXAMINING WHETHER YOU WILL
5 BELIEVE HER BEYOND A REASONABLE DOUBT. AND ALL OF THESE
6 THINGS ARE WHAT CAUSE YOU TO HESITATE TO BELIEVE HER IN A
7 MATTER OF THIS MAGNITUDE. AND IT BECAME VERY TROUBLING IN
8 A SITUATION LIKE THIS, BECAUSE EVERYTHING DEPENDS ON HER.
9 AND THE REASON WHY ULTIMATELY EVERYTHING DEPENDS ON HER IS
10 THIS INVESTIGATION WAS REALLY INCOMPLETE. I DON'T
11 DISPARAGE POLICE OFFICERS LIGHTLY, AND I'M NOT DOING THAT
12 IN THIS PARTICULAR CASE, BUT THIS INVESTIGATION LACKED
13 SOMETHING. IT WAS ALL NICE AND NEAT AND WRAPPED UP IN
14 JUST SEVEN HOURS. THINK ABOUT THE TIME-FRAME HERE. THEY
15 FIRST MEET MS. HILL AT EIGHT A.M. THAT MORNING. BY THREE
16 O'CLOCK ROUGHLY THAT AFTERNOON THEY HAD ISSUED WARRANTS
17 FOR TERRY'S ARREST. SEVEN HOURS IS THE EXTENT OF THIS
18 INVESTIGATION, WHICH BASICALLY MEANT THEY TOOK HER
19 STATEMENT; THEY TOOK HIS STATEMENT AND THEY GOT THE
20 WARRANTS. THEY HAD ALL OF THIS EVIDENCE THAT THEY TOOK
21 IN, OTHER OFFICERS WORKING DURING THAT SAME PERIOD OF TIME
22 AND NOTHING WAS DONE WITH IT. IT SAT DOWN IN THE
23 SHERIFF'S DEPARTMENT EVIDENCE ROOM FOR ALMOST TWO YEARS
24 WITHOUT THE SLIGHTEST BIT OF PROCESSING TO CHECK ON THESE
25 THINGS. DETECTIVE BOMAR DID SAY THAT HE WENT AND WATCHED

CLOSING STATEMENTS

710

1 THE VIDEO. AND YOU WATCHED THE VIDEO. AND WHEN YOU SEE
2 THE VIDEO, YOU SEE THERE ARE PROBLEMS WITH HER STATEMENT.
3 YOU SEE VERY CLEARLY THAT HER BEHAVIOR THAT SHE TALKED
4 ABOUT WITH THE OFFICERS DOESN'T MATCH UP WITH WHAT IS
5 ACTUALLY ON THE VIDEO, BUT HE DID NOT REACT TO THAT AT
6 ALL. HE DIDN'T FOLLOW-UP ON THAT AT ALL. AND IT WOULD'VE
7 BEEN SO SIMPLE. THERE WERE SO MANY BASIC THINGS THAT
8 COULD HAVE BEEN DONE TO FOLLOW-UP, TO CONFIRM ANYTHING
9 THAT SHE WAS SAYING. THEY COULD'VE GONE BACK AND SAID,
10 HEY, YOU GAVE US SHAVONE'S NAME, WHAT IS SHAVONE'S NAME?
11 CAN WE TALK WITH HER? DO YOU KNOW THE NAMES OF ANY PEOPLE
12 WHO CAN CONFIRM YOU WERE AT THE CLUB? WHAT ABOUT THE
13 INDIVIDUALS THAT WE SEE HER TALKING TO? THEY DIDN'T EVEN
14 TRY TO IDENTIFY THEM. NOT THERE WAS A WHOLE BUNCH OF
15 INFORMATION, BUT YOU SHOULD AT LEAST GO BACK TO THE STORE
16 AFTER YOU WATCH THE TAPE AND SAID, THIS GUY WHO WALKED IN
17 AT THIS POINT IN TIME, DID HE PAY WITH CASH, DID HE PAY
18 WITH A CREDIT CARD? DID HE USE THE PUMPS WITH HIS CREDIT
19 CARD? CAN WE IDENTIFY HIS NAME TO GO TALK TO HIM TO SEE
20 WHAT THEY TALKED ABOUT? WE DON'T KNOW IF IT WOULD'VE BEEN
21 SUCCESSFUL OR NOT, BECAUSE THEY NEVER EVEN TRIED. YOU
22 DON'T ASK DETECTIVE BOMAR ABOUT THIS, ASK HIM, FOR
23 EXAMPLE, IF YOU HAD FOUND ANOTHER PERSON'S DNA WITHIN MS.
24 HILL'S PANTIES, WITHIN HER UNDERWEAR, WOULD THAT HAVE HAD
25 AN IMPACT ON YOUR CASE, AND HIS RESPONSE WAS NO. DOES

CLOSING STATEMENTS

711

1 THAT SHOCK ANYBODY ELSE? THE FACT THAT ANOTHER PERSON'S
2 SEMEN MIGHT'VE BEEN IN THOSE PANTIES? AND WE WILL NEVER
3 KNOW, BECAUSE THEY JUST DIDN'T BOTHER TO CHECK. IT JUST
4 SAT THERE. AND EVEN IF IT HAD BEEN FOUND, IT WOULDN'T
5 HAVE IMPACTED HIS CASE, ANOTHER PERSON'S DNA RIGHT THERE?
6 WHAT WOULD TEND TO SHOW? THAT SHE'D BEEN WITH ANOTHER MAN
7 AT SOME POINT IN TIME THAT EVENING? THAT WOULDN'T AFFECT
8 YOUR CASE AT ALL? AND I THINK IT'S AN INTERESTING VIEW,
9 IF YOU SORT OF LOOK AT ALL THE WITNESSES THAT WE'VE HAD UP
10 ON THE STAND --- WE HAVE HAD WITNESSES WHO HAVE COME IN
11 AND BASICALLY TAKEN THE POSITION OF I'M JUST HERE TO RELAY
12 INFORMATION AND I'M NOT REALLY TRYING TO PUT A SPIN ON
13 ANYTHING. DR. RIMMER CLEARLY DID NOT HAVE A DOG IN THE
14 FIGHT. JUST CAME IN AND RELAYED INFORMATION AS BEST HE
15 COULD. NURSE CARRINGER, SAME THING, CAME IN AND RELAYED
16 INFORMATION. EVEN DEPUTY CHILDERS CAME IN AND HE WAS VERY
17 CONFIDENT AND RELAYED EVERY PIECE OF INFORMATION HE COULD
18 AS HE REMEMBERED IT AND HE HAD VERY SPECIFIC MEMORY AS TO
19 ABOUT WHAT HAPPENED. THEN HE HAD SOME WITNESSES WHO CAME
20 IN WORKED FOR THE SHERIFF'S DEPARTMENT WHO LIKE PUT A
21 LITTLE BIT OF A SPIN ON THINGS. THEY WERE SORT OF
22 ADVOCATING THEIR POSITION MORE. AND WE SAW THAT WITH
23 DETECTIVE BOMAR SAYING THINGS LIKE, WELL, I'VE BEEN IN
24 THIS BUSINESS THIRTEEN YEARS, BUT I DON'T KNOW ANYTHING
25 ABOUT PROSTITUTION, AND I DON'T KNOW WHAT THAT OBJECT IS

CLOSING STATEMENTS

712

1 UP IN THE UPPER LEFT-HAND QUADRANT OF THE VIDEO TAPE.
2 REALLY. IS THAT GIVING YOU A POSITION THAT IS UNBIASED,
3 IS JUST TRYING TO RELAY INFORMATION, OR ARE YOU TRYING TO
4 BE AN ADVOCATE A PARTICULAR WAY? AND THAT'S A PROBLEM,
5 BECAUSE OFFICERS ARE SUPPOSED TO BE INVESTIGATION (SIC)
6 AND THEY'RE SUPPOSED TO BE LOOKING FOR FACTS. IN THIS
7 PARTICULAR CASE THEY STOPPED THAT SEARCH SEVEN HOURS AFTER
8 IT STARTED. WHEN THEY TOOK OUT THE WARRANTS THEY STOPPED,
9 AND MAYBE THAT WRAPS IT UP IN A NICE LITTLE NEAT PACKAGE.
10 IF YOU'LL ONLY LOOK AT SEVEN HOURS WORTH OF WORK --- BUT
11 THE REALITY IS THIS CASE IS A LOT MORE COMPLICATED, AND
12 THEY SHOULD'VE KNOWN THAT THE SECOND THEY STARTED WATCHING
13 THE TAPE, AND THEY SIMPLY DIDN'T REACT. AND WHOSE --- WHO
14 DOES THAT COME DOWN ON? WELL, THE PERSON THAT REALLY
15 COMES DOWN ON IS TERRY, BECAUSE HE'S GOT THE RIGHT TO HAVE
16 AN INVESTIGATION DONE THAT'S PROPER, NOT TO SIMPLY SETTLE
17 ON A NICE, NEAT LITTLE PACKAGE. AND IT COMES DOWN ON
18 Y'ALL, BECAUSE YOU AS JURORS DESERVE MORE. YOU DESERVE A
19 COMPLETE INVESTIGATION OF WHAT HAPPENED, AN INVESTIGATION
20 THAT WILL CONVINCED YOU BEYOND A REASONABLE DOUBT, AND IT
21 SIMPLY WAS NOT DONE IN THIS CASE. IN THE LACK OF THAT
22 IDENTIFICATION WE HAVE THE --- THE PROSECUTION ATTEMPT TO
23 MAKE SEVERAL SPINS, ONE OF WHICH WAS DETECTIVE BOMAR'S
24 DEFINITION OF WHAT A STRANGER WAS. YOU REMEMBER THAT? HE
25 LOOKED AT ME AND HE SAID BASED UPON MY KNOWLEDGE I COULD

CLOSING STATEMENTS

713

1 CALL MR. LEMEL A STRANGER; I COULD CALL MR. LEMEL AN
2 ACQUAINTANCE, TRYING TO SPIN WHAT ANOTHER OFFICER HAD
3 DONE. DON'T LET THAT SPIN FOOL YOU. REMEMBER EXACTLY
4 WHAT DEPUTY CHILDERS SAID. THIS WAS NOT A CLOSE CALL FOR
5 HIM, ABOUT WHETHER IT WAS A STRANGER OR AN ACQUAINTANCE.
6 HE SAID IT TWICE. I --- SHE SAID, I DON'T KNOW WHO IT
7 WAS; SHE DID NOT KNOW WHO IT WAS. THAT'S NOT CLOSE.
8 THAT'S NOT ALMOST AN ACQUAINTANCE. THAT'S NOT SOMEBODY
9 MAYBE I'VE SEEN BEFORE AND I JUST DON'T KNOW THE NAME.
10 IT'S SIMPLY I DON'T KNOW. STRANGER. HE CHOSE STRANGER.
11 HE WAS VERY CLEAR ABOUT THIS, BECAUSE SHE TOLD HIM IT WAS
12 A STRANGER. BUT IN ORDER TO TRY TO COVER UP THAT GAP,
13 THEY HAVE GOT TO SPIN IT, AND THAT'S WHAT THEY HAD
14 DETECTIVE BOMAR DO, AND THERE IS A DIFFERENCE BETWEEN A
15 STRANGER AND A DIFFERENCE BETWEEN A STRANGER AND AN
16 ACQUAINTANCE AND THERE'S CERTAINLY A DIFFERENCE BETWEEN A
17 STRANGER AND A DRUG DEALER THAT YOU'D BOUGHT DRUGS FROM
18 BEFORE AND EARLIER THAT DAY. THEY PUT SPINS EVEN WHEN
19 THEY PUT THE EXAMINER THAT WORKS FOR THE SHERIFF'S
20 DEPARTMENT ON WITH REGARD TO FINDING INJURY. NURSE
21 CARRINGER WAS VERY CLEAR. SHE DID THIS UNDER CLOSE
22 SUPERVISION. SHE'S NOT COMPLETELY UNFAMILIAR WITH IT.
23 SHE DOESN'T HAVE A LOT OF TRAINING, BUT SHE'S DONE IT
24 BEFORE. SHE KNOWS WHAT SHE'S LOOKING FOR. SHE'S FAMILIAR
25 WITH THE TERMINOLOGY. THEY COULD'VE FOUND BRUISES

CLOSING STATEMENTS

714

1 ANYWHERE INTERNALLY ON HER, BRUISES OF THE TYPE YOU WOULD
2 EXPECT TO SEE I WOULD SUBMIT TO YOU IN A CASE THAT
3 SUPPOSEDLY A VIOLENT RAPE. THERE WERE NONE. COULD'VE
4 FOUND ABRASIONS. THEY FOUND NONE, BUT THEN IN ORDER TO
5 SPIN THAT, WELL, WE'LL BRING NURSE EXAMINER IN AND SAY,
6 YOU KNOW, SOMETIMES THOSE ABRASIONS I CAN'T SEE THEM AND
7 WE COULDN'T USE THE DYE, SO THOSE ABRASIONS COULD'VE BEEN
8 THERE, WE JUST DIDN'T FIND THEM. THEY COULD'VE BEEN
9 THERE. IS THAT ENOUGH? NO. THEY --- THAT'S THE WORST
10 KIND OF SPECULATION. THE ABSENCE OF EVIDENCE, BUT IT
11 MIGHT'VE BEEN THERE AND WE JUST DIDN'T FIND IT. THAT'S
12 NOT ACCEPTABLE. THAT SHOULD NOT BE ACCEPTABLE TO YOU AS
13 JURORS TO SIMPLY TAKE THAT AND INSTEAD OF REAL HARD
14 EVIDENCE, IT'S JUST NOT ENOUGH. THEY LOOK FOR TEARING;
15 THEY FOUND NONE; THEY LOOKED FOR SWELLING; THEY FOUND NONE
16 IN ELEVEN DIFFERENT AREAS OF THE FEMALE ANATOMY. THE ONLY
17 THING THEY COULD FIND WAS REDNESS WHICH NURSE CARRINGER
18 WAS VERY BASIC ABOUT. SHE SAYS THAT INDICATES SEX.
19 DOESN'T MEAN IT WAS FORCIBLE, DOESN'T MEAN IT WAS
20 CONSENSUAL. IT JUST INDICATES THAT THERE WAS SEX. BUT
21 THE NURSE EXAMINER CAME IN AND SHE TRIED TO SAY THAT SEX
22 BETWEEN A LOVING COUPLE WOULD NOT NECESSARILY CAUSE
23 REDNESS. IT MIGHT. IT MIGHT. BUT WOULDN'T NECESSARILY
24 CAUSE THAT REDNESS. AND I ASKED HER A BASIC QUESTION.
25 REMEMBER WHAT IT WAS? DO PROSTITUTES HAVE SEX FOR LOVE?

CLOSING STATEMENTS

715

1 AND THEY DON'T. AND THERE WAS NEVER EVER EVER ANY
2 ALLEGATION IN THIS CASE THAT THERE WAS ANY SEXUAL CONTACT
3 FOR LOVE IN THIS CASE. LOVE PLAYED NO ROLE IN THIS SEX.
4 IT WAS DIRTY. IT WAS TAINTED. BUT IT WASN'T RAPE. BUT
5 YOU CAN'T COMPARE A SITUATION WHERE SOMEBODY MIGHT BE
6 WILLING BECAUSE THEY FEEL FEELINGS OF LOVE TO A SITUATION
7 WHERE SOMEBODY MIGHT BE WILLING BECAUSE THEY ARE GETTING
8 PAID. THAT'S THE SPIN THEY TRIED TO PUT ON IT, AND IT IS
9 A SPIN BECAUSE IT COMPLETELY LACKS EVIDENCE. THE ACTUAL
10 EXAMINATION DOES NOT BACK UP WHAT MS. HILL SAYS. YOU SAW
11 THE SPIN I REFERENCED EARLIER ABOUT BEHAVIOR OF THE
12 INTOXICATION. THEY SPENT EXTENDED AMOUNT OF TIMES TRYING
13 TO SAY, OH, SHE WASN'T INTOXICATED; SHE DIDN'T APPEAR
14 INTOXICATED TO YOU, DID SHE? SHE WASN'T STAGGERING; SHE
15 WASN'T STUMBLING. IRONICALLY, THE ONE PERSON WHO TOOK OUT
16 THAT ENTIRE LINE OF QUESTIONING WAS, IN FACT, MS. HILL,
17 WHO INDICATED THAT AT THE TIME SHE WAS THERE SHE WAS SO
18 INTOXIC --- THE EXCUSE IS, I WAS SO INTOXICATED THAT I HAD
19 TO ASK WHETHER IT WAS NORTH OR SOUTH. NOW, WE KNOW THAT
20 SHE HAD A .15. WE KNOW THAT AT SOME POINT IN TIME AFTER
21 THAT SHE SMOKED CRACK. OKAY. BUT BY THE TIME THEY TOOK
22 THE TEST AT TWELVE THIRTY IT WAS OUT OF HER SYSTEM AND AS
23 HE SAID, THE PEAKS AND DIALAYS FOR CRACK COCAINE ARE VERY
24 RAPID, UP AND DOWN, AND THAT COCAINE WOULD'VE BEEN OUT OF
25 HER SYSTEM BY THE TIME THEY'RE TAKING THAT TEST. THAT'S

CLOSING STATEMENTS

716

1 FINE. THE REALITY IS IS THAT SHE ONLY SAID THAT BECAUSE
2 IT --- SHE HAS TO COME UP WITH SOME EXCUSE FOR WHY SHE'S
3 BEHAVING THE WAY SHE IS, AND THAT WAS THE SPIN THAT SHE
4 TRIED TO PUT ON HER BEHAVIOR OUT THERE, THE SPIN OF, OH,
5 THE ONE GENTLEMAN --- OH, THAT WAS A PERSON I HAD
6 GRADUATED WITH. DID IT LOOK LIKE THAT WAS THE SORT OF
7 CONVERSATION THEY WERE HAVING WHEN IT --- YOU KNOW, YOU
8 HAVE TO BECKON SOMEBODY OVER --- AND YOU LOOK AND YOU SEE
9 THE VIDEO AND YOU INTERPRET IT AS --- WE CERTAINLY SEE THE
10 HAND GO UP, AND I SUBMIT YOU CAN SEE --- AND THERE ARE
11 PIXEL THAT REPRESENTS A FINGER --- CALLING SOMEBODY OVER.
12 LIKE WHAT TERRY SAID HAPPENED. SORT OF AS YOU'RE WALKING
13 UP PSST, PSST, COME OVER HERE. AND IF THAT PERSON WAS
14 SOMEBODY THAT SHE KNEW, GRADUATED WITH, WHY DIDN'T SHE ASK
15 THAT PERSON FOR A RIDE HOME? THAT WOULD MAKE A LOT OF
16 SENSE RATHER THAN TO GET IN THE CAR WITH A STRANGER,
17 WOULDN'T IT? BUT THAT'S NOT WHAT SHE WAS DOING THAT
18 NIGHT. THAT'S NOT WHAT SHE WAS DOING WITH THE MAN IN THE
19 TIE-DYE SHIRT EITHER. AND THAT'S NOT THE REASON WHY SHE
20 WAS SITTING OUTSIDE THE STORE. AND I CALL IT A TRUCK
21 STOP. THIS KIND OF GOES BACK TO WHAT DETECTIVE BOMAR
22 SAYS. WE SHOW ON THE VIDEO WHERE THERE'S BIG PUMPS WHERE
23 THE TRUCKS PULL UP FROM THE STORE. GOES KIND OF BACK TO
24 DETECTIVE BOMAR, YOU KNOW, WITH HE TRYING TO BE AN
25 ADVOCATE. WHAT WAS HIS RESPONSE? WELL, I DON'T KNOW. I

CLOSING STATEMENTS

717

1 DON'T KNOW WHAT STORE THOSE BELONG TO. REALLY? LOOK,
2 IT'S THE CAMERAS FROM THE SAME STORE. ARE THEY GOING TO
3 FOCUS THEIR CAMERAS ON ANOTHER STORE'S PUMPS? NO. OF
4 COURSE NOT. BUT IT'S AN EXAMPLE OF THE TYPE OF SPIN
5 THAT'S BEEN PUT ON THROUGHOUT THIS CASE, AND THAT SPIN IS
6 NO SUBSTITUTE FOR EVIDENCE, LADIES AND GENTLEMEN. I FULLY
7 EXPECT THAT MS. HERVEY IS GOING TO COME UP HERE AND SHE'S
8 GOING TO PUT MORE SPIN ON IT. SHE'S GOING TO TRY TO
9 EXPLAIN THESE THINGS AWAY. WHEN THAT HAPPENS, JUST THINK
10 TO YOURSELF, THAT'S NOT ENOUGH. SPECULATION AND SPIN IS
11 NOT ENOUGH TO DO WHAT YOU'RE SUPPOSED TO DO. AND
12 REMEMBER, IT'S HER JOB. THEY HAVE THE BURDEN OF DOING
13 THESE THINGS, AND SHE SIMPLY IS NOT DOING IT IN THIS CASE.
14 DON'T LET YOURSELF BE PULLED IN MY THE SPIN. THAT'S THEIR
15 JOB. DON'T SETTLE FOR LESS. YOU DESERVE THAT.
16 ULTIMATELY, THEY'RE GOING TO COME DOWN AND TALK A LOT I
17 THINK ABOUT SOME PHYSICAL EVIDENCE AS PART OF THAT SPIN.
18 THEY'RE GOING TO TALK ABOUT THE BRUISES. AND, YES, SHE'S
19 ALL BRUISED UP. BUT THE ONLY PERSON WHO GIVES YOU ANY
20 INFORMATION ABOUT HOW THOSE BRUISES OCCURRED IS MS. HILL
21 HERSELF. THEY NEVER WENT TO ONE PERSON WHO WAS WITH HER
22 EARLIER THAT DAY, EVEN THOUGH THERE ARE NUMEROUS PEOPLE
23 THAT THEY COULD LOOK FOR TO SAY WAS SHE HURT THAT DAY; DO
24 YOU KNOW DID SHE GET IN A FIGHT THAT DAY? BUT WHAT WE DO
25 HAVE IS THE TESTIMONY OF DR. RIMMER THAT BRUISES CHANGE

CLOSING STATEMENTS

718

1 COLOR AS THEY AGE, RED, BLACK, YELLOW, THINGS LIKE THAT
2 OVER TIME. YOU WILL SEE THE PICTURES OF THE BRUISES.
3 THOSE WERE INTRODUCED. AND YOU WILL SEE THEY ARE ALL
4 DIFFERENT COLORS, RED AND BLACK AND YELLOW. THEY WILL
5 TALK ABOUT THE INJURY TO HER RIBS. AND THE MOST
6 SIGNIFICANT THERE I THINK ALSO COMES FROM DR. RIMMER.
7 REMEMBER WHAT DR. RIMMER SAID? HE SAID WHEN THAT INJURY
8 IS EMERGENT, WHEN IT FIRST HAPPENS, IT'S GOING TO
9 BASICALLY INCAPACITATE YOU. THEY CLAIM THAT IT HAPPENED
10 RIGHT THEN. BUT SHE BY HER OWN TESTIMONY RAN, NOT WALKED,
11 BUT RAN DOWN THE FIELD, THE GULLY, TO THE NEXT STORE.
12 SUGGEST THAT THAT WAS NOT EMERGENT AT THAT POINT IN TIME.
13 WHY WOULDN'T SEE --- YOU KNOW, SHE --- COULD SHE FELT IT
14 (SIC) --- HAPPENED BEFORE AND IT NOT IMPACTED HER. WELL,
15 HOW IS THAT POSSIBLE? ALCOHOL NUMBING THE PAIN? SURE.
16 COCAINE MAKING IT SO THAT SHE DIDN'T CARE ABOUT THE PAIN
17 IN ORDER TO GET THE COCAINE? SURE. BUT ALSO LET'S THINK
18 ABOUT WHAT SHE SAID ABOUT THESE TWO CRACKED RIBS WHICH
19 WERE, ACCORDING TO DR. RIMMER, COULD NOT EVEN BEE SEEN ON
20 THE X-RAY BECAUSE THEY WEREN'T DISPLACED, WASN'T THAT
21 SERIOUS. THEY HAD TO DO AN MRI TO FIND THEM. SHE NOW
22 SAYS THAT TWO YEARS LATER THAT CRACKED RIB STILL PREVENTS
23 HER FROM DOING HER JOB. A CRACKED RIB. REALLY? OR IS
24 THAT JUST ANOTHER EXAGGERATION? THEY'RE GOING TO TALK
25 ABOUT THE JEWELRY, AND THIS WAS ANOTHER INTERESTING SPIN.

CLOSING STATEMENTS

719

1 THEY SHOW HER ALL THIS JEWELRY. SHE NEVER MENTIONS
2 JEWELRY TO ANYONE BEFOREHAND. SHE WAS ASKED ABOUT
3 PROPERTY. SHE TALKS ABOUT PROPERTY, THE PURSE. IN THE
4 HOURS AND HOURS THAT SHE SPENDS GETTING INTERVIEWED, NEVER
5 ONCE DOES SHE SAY, HEY, AND BY THE WAY, I LOST A BRACELET,
6 HAD A CHARM ON IT; I LOST AN EARRING. THEY BRING HER IN
7 AND THEY SAY, WE FOUND THESE THINGS; ARE THEY YOURS?
8 SURE, THEY'RE MINE. HOW HARD IS THAT? AND WHEN THEY
9 ASKED HER ABOUT THE EARRING, WHAT DID SHE SAY? YOU'RE
10 WEARING A SIMILAR PAIR OF EARRINGS. SIMILAR PAIR OF
11 EARRINGS? SHE WENT OUT AND BOUGHT A PAIR OF EARRINGS THAT
12 LOOK SIMILAR? THAT DOESN'T PROVE THAT THOSE EARRINGS WERE
13 HERS. NOW, HOW SIMPLE WOULD IT HAVE BEEN TO SHOW THAT THE
14 EARRING WAS HERS? I LOST AN EARRING; HERE'S THE OTHER
15 ONE. IS THAT SOMETHING THAT YOU THINK A DETECTIVE
16 SHOULD'VE ASKED WHEN THEY SAY, HEY, WE FOUND AN EARRING
17 THERE? DOES SHE HAVE A MATCHING EARRING? DO WE SEE A
18 MATCHING EARRING? NO, BUT THEIR SPIN IS, OH, I SEE YOU'RE
19 WEARING SIMILAR EARRINGS TO THAT. THAT'S NOT THE SAME
20 EARRING, AND THERE IS NOTHING THAT THEY DID TO CONFIRM
21 THAT AT ALL EXCEPT TO SAY, HEY, IS THIS YOUR STUFF? OF
22 COURSE SHE'S GOING TO SAY YES AT THAT POINT IN TIME. IT'S
23 PART OF THE STORY. THE LAST THING THAT IS INTERESTING ON
24 THE SPIN IS THE LOCATION OF THE ASSAULT. YOU WILL HAVE
25 THIS MAP TO TAKE A LOOK AT, WHICH I BELIEVE IS STATE'S

CLOSING STATEMENTS

720

1 EXHIBIT 20 IF I'M KEEPING TRACK PROPERLY. AND IT HAS ON
2 THERE WE'VE IDENTIFIED WHERE EVERYTHING STARTED UP IN
3 BESSEMER CITY AT THE TOP AND WHERE EVERYTHING ENDED DOWN
4 AT THE BOTTOM RIGHT THERE BY THE STATE LINE. NOW, OFFICER
5 MCSWAIN WHO'S IN THIS AREA SAYS IT'S ABOUT TEN TO FIFTEEN
6 MILES BETWEEN THESE TWO. SHE SAYS THAT IT'S FOURTEEN
7 MILES FROM THAT SPOT ON FORBES ROAD TO THAT SPOT ON
8 HIGHWAY 321. WHO'S THAT CLOSE BY? IF YOU'RE GOING TO
9 CLOVER, AND YOU LIVE OFF FORBES ROAD, YOU DRIVE RIGHT PAST
10 THAT ALL THE TIME. WHO'S GOING TO BE MORE FAMILIAR WITH
11 THAT AREA? WHO HAS EATEN FOOD AT THE DIXIE DINER RIGHT
12 THERE? IF YOU ARE SOMEONE WHO DOES THIS, AND YOU ARE
13 LOOKING FOR A PLACE TO BE PRIVATE AND YOU'RE LOOKING FOR
14 A PLACE WHERE YOU CAN CONDUCT ACTS LIKE PROSTITUTION, YOU
15 WOULD KNOW THAT YOU CAN GET THERE GOING UP A NON-DESCRIPT
16 ROAD AND BE BEHIND THE CHURCH, NOT IN THE PARKING LOT
17 WHERE ANYBODY DRIVING BY, SAY A POLICE OFFICER DRIVING BY
18 CAN SEE YOU --- SEE A CAR SITTING IN A PARKING LOT IN A
19 CHURCH AT FOUR THIRTY, WHICH WOULD CLEARLY BE UNUSUAL AND
20 BE SUBJECT TO INVESTIGATION, BUT DRIVES ALL THE WAY TO AN
21 AREA WHERE IT'S BASICALLY HIDDEN FROM THE ROAD. WHO'S
22 GOING TO KNOW IT'S THERE? THE PERSON WHO LIVES ABOUT FOUR
23 MILES AWAY? YOU DO IT BASED OFF OF WHAT OFFICER MCSWAIN
24 SAYS THE DISTANCE WAS OR THE PERSON WHO'S --- YOU KNOW
25 DOESN'T LIVE ANYWHERE NEAR THAT, LIVES UP IN THE NORTHERN

CLOSING STATEMENTS

721

1 PART OF GASTON COUNTY? I SUBMIT TO YOU SHE KNEW EXACTLY
2 WHAT WAS GOING ON AT THAT CHURCH AND WHY SHE WENT THERE AS
3 OPPOSED TO HANGING OUT AT GASTON COUNTY. WELL, BECAUSE IT
4 WAS SAFE. THAT WAS A PLACE THAT SHE COULD GO THAT SHE
5 KNEW NEAR HER HOME THAT SHE KNEW THAT THERE WAS NO WAY
6 THAT ANY POLICE OFFICERS WERE GOING TO DRIVE BY LIKE
7 OFFICER WEST SAID THAT POLICE OFFICERS TEND TO DRIVE BY
8 THESE BAD AREAS IN GASTONIA LOOKING FOR THIS KIND OF
9 CONDUCT, SO SHE GETS AWAY FROM THAT, NOT TOO FAR. IF IT'S
10 REALLY FOURTEEN MILES FROM THE GAS STOP TO WHERE THE
11 CHURCH IS, FIFTEEN --- FIFTEEN MINUTES, THAT SOUNDS ABOUT
12 RIGHT. IF IT'S NOT FOURTEEN MILES, IF IT'S ONLY FOURTEEN
13 --- IF IT'S FOURTEEN MILES FROM FORBES ROAD DOWN TO THE
14 CHURCH, THAT'S A --- THEY'RE TALKING --- THIS IS FORTY-
15 FIVE MILES AWAY. AND THERE'S NO WAY EVEN IF YOU'RE GOING
16 SIXTY MILES AN HOUR, THAT'S STILL FORTY-FIVE MINUTES ---
17 THEY LEFT AT FIVE FIFTEEN, FIVE TWENTY FROM THE PLACE ---
18 THEY WOULDN'T HAVE GOTTEN THERE UNTIL SIX O'CLOCK, YET AT
19 SIX O'CLOCK SHE MAKES THE APPEARANCE AT THE DINER. SO
20 THERE'S NO WAY THAT HER NUMBERS ARE RIGHT HERE. BUT IT'S
21 JUST ANOTHER EXAMPLE OF SOMETHING SHE'S WILLING TO GET UP
22 THERE AND SAY, OH, I DROVE THIS; IT WAS FOURTEEN MILES.
23 DOESN'T MAKE A WHOLE LOT OF SENSE. ULTIMATELY IN THIS
24 SITUATION, YOU NEED TO JUDGE HER BASED UPON THE BEHAVIOR
25 OF WHAT CAN BE CONFIRMED, WHAT WAS CONFIRMED. AND

CLOSING STATEMENTS

722

1 UNFORTUNATELY, BECAUSE OF THE LACK OF INVESTIGATION IN
2 THIS CASE, THE ONLY CONFIRMED BEHAVIOR WE HAVE GOTTEN IS
3 WHAT SHE DID THERE AT THE TRUCK STOP, AND SHE PICKED MEN
4 TO APPROACH. SHE PICKED MEN THAT WERE DRESSED SORT OF
5 SCRUFFLY IN SHORTS AND TIE-DYE SHIRTS AND TORN PANTS. IF
6 YOU'RE LOOKING FOR HELP, IF YOU'RE LOOKING FOR A WAY HOME,
7 YOU'RE A WOMAN, IT'S FOUR THIRTY AT NIGHT AT A --- I'M
8 GOING TO CALL IT A TRUCK STOP BECAUSE THERE WERE TRUCKS
9 THERE --- YOU CAN CALL IT WHATEVER YOU WANT --- WHO ARE
10 YOU GOING TO APPROACH? HOW ABOUT THE NICE WOMAN WHO
11 DRIVES UP WITHIN A COUPLE OF FEET OF YOU AND IS GETTING
12 THE PAPER. NEVER WENT AND TRIED TO TALK WITH HER. HOW
13 ABOUT THE NICE OLDER GENTLEMAN WHO CLEARLY LOOKS LIKE HE'S
14 GOING INTO WORK EARLY IN THE MORNING DRESSED IN A WORK
15 OUTFIT? UNFORTUNATELY, HE PARKS RIGHT UP BY THE DOOR AND
16 SHE DOESN'T WANT TO BE SEEN HANGING OUT BY THE DOOR, SO
17 CAN'T APPROACH HIM, BUT I'M GOING TO APPROACH THE GUY IN
18 THE TIE-DYE. I'M GOING TO APPROACH THE YOUNGER GUY IN THE
19 SHORTS AND THE BASEBALL CAP AND THE T-SHIRT. I'M GOING TO
20 HAVE A CONVERSATION WITH THEM AND I'M GOING TO APPROACH
21 THE GUY WITH THE TORN PANTS. AND YOU SAW THAT VIDEO. SHE
22 CLAIMED THAT HE APPROACHED HER. WE KNOW THAT FACT IS NOT
23 TRUE. SHE WAS STANDING OVER BY THE ICE MACHINES; HE
24 WALKS; THE NEXT FRAME IS IDENTIFIED; WHAT DO YOU SEE? THE
25 FIGURE OF THE BOTTOM OF A LEG BENT LIKE THAT WALKING

CLOSING STATEMENTS

723

1 TOWARDS THE GAS PUMPS, A LEG IN DARK PANTS. AND, OH,
2 COINCIDENTALLY, SHE'S NO LONGER IN THAT UPPER LEFT
3 QUADRANT; THAT FIGURE OF MYSTERY IS NO LONGER THERE. WHY?
4 BECAUSE SHE WALKED OVER TO HIM. IF SHE IS WILLING TO BE
5 DECEPTIVE ABOUT THE VERY FIRST PART OF THE ENCOUNTER, WHO
6 APPROACHED WHOM, YOU CANNOT BELIEVE ANYTHING ELSE SHE SAYS
7 AFTER THAT, BECAUSE THAT INITIAL ENCOUNTER SETS THE BASIS
8 FOR EVERYTHING THAT HAPPENS BETWEEN THESE PARTIES. SHE
9 TRIES TO SAY, OH, THEY HAD SOME SORT OF CONVERSATION IN
10 THE MIDDLE OF THE PARKING LOT? NO. THAT'S NOT WHAT THE
11 VIDEO SHOWS EITHER. SHE CAME UP TO HIM AT THE GAS PUMPS.
12 SO WHEN YOU HAVE SOMEBODY WHOSE ACTIONS CANNOT BE
13 CONFIRMED YOU HAVE TO JUDGE WHETHER THEY ARE FORTHRIGHT.
14 BY FORTHRIGHT THAT SIMPLY MEANS ARE THEY WILLING TO ADMIT
15 THE BAD STUFF OR ARE THEY ALWAYS TRYING TO PUT A SPIN ON
16 SOMETHING TO MAKE THEMSELVES LOOK GOOD. IT'S INTERESTING
17 THAT TERRY'S STOPPED JUST A FEW HOURS AFTER THEY FIRST
18 MEET WITH MS. HILL ABOUT TEN OR ELEVEN --- ABOUT ELEVEN
19 O'CLOCK I THINK IS WHAT --- WHEN THEY FOUND HIM. AND HE
20 DIDN'T TRY TO RUN AWAY. HE DIDN'T TRY TO FLEE. YES, HE
21 GAVE THEM THE WRONG NAME AND THERE'S A REASON FOR THAT AS
22 THE DETECTIVES TOLD YOU FROM GASTONIA; IT HAPPENS ALL THE
23 TIME. SOMEBODY'S DRIVING WITHOUT A LICENSE, THEY DON'T
24 HAVE THEIR LICENSE PRIVILEGES, THEY GIVE SOMEBODY ELSE'S
25 NAME. NOT THAT UNCOMMON. BUT THINK ABOUT WHAT HE TELLS

CLOSING STATEMENTS

724

1 THE DETECTIVES. HE DOESN'T KNOW WHAT EVIDENCE THEY GOT.
2 HE DOESN'T KNOW WHAT'S ON THE VIDEO-TAPE; THEY DON'T KNOW
3 WHAT'S ON THE VIDEO-TAPE AT THAT POINT IN TIME. OKAY? HE
4 DOESN'T --- NOBODY KNOWS WHAT DNA EVIDENCE OR ANYTHING
5 LIKE THAT. NOBODY KNOWS WHAT EVIDENCE THERE'S ---
6 PARTICULARLY NOT TERRY. HE JUST KNOWS HE'S BEING TOLD
7 THAT YOU COMMITTED A RAPE, AND SO HE TELLS THEM ABOUT
8 WHERE THEY GOT TOGETHER. WELL, HE TOLD THAT. HE TELLS
9 THEM THAT SHE APPROACHED HIM. THAT IS CERTAINLY
10 CONSISTENT WITH WHAT'S ON THE VIDEO TAPE. SHE TELLS ---
11 HE TELLS THEM WHERE THEY WENT, WHICH IS CONSISTENT. TELLS
12 THEM WHAT HAPPENED, AND HIS STORY MAKES A LOT MORE SENSE.
13 MS. HERVEY ASKED HIM ABOUT THE HOOD THAT YOU SAID WAS ON
14 THE DRIVER'S SIDE HOOD, AND I ALSO THOUGHT IT WAS IRONIC
15 THAT MS. HILL AND HER TESTIMONY WHEN SHE FIRST SAID WHERE
16 SHE WENT SHE SAID OVER THE HOOD. NOW, THEY'RE GOING TO
17 TRY TO SAY THAT HE SAID HOOD OF THE FRONT OF THE CAR, BUT
18 IT WAS THE HOOD OF THE TRUNK JUST LIKE MS. HILL SAID HOOD
19 OF THE TRUNK. AND HE TALKED ABOUT WHAT HAPPENED, AND HE
20 DIDN'T DENY USING THE BANDANNA EVEN. EVERYTHING THAT HE
21 SAID IS CONSISTENT WITH THE OUTSIDE FACTS. AND HE DID
22 THIS IN A STATEMENT THAT OCCURRED FIVE HOURS AFTERWARDS?
23 NOT LIKE HE HAD WEEKS OR YEARS TO COME UP WITH THE STORY.
24 HE JUST TALKED. AND IT WAS IRONIC WHAT DETECTIVE WEST
25 SAID THAT WHEN YOU GO TO COURT YOU DON'T WANT IT JUST TO

CLOSING STATEMENTS

725

1 BE ONE PERSON'S STATEMENT AGAINST YOURS. BUT THAT'S WHAT
2 HE'S IN COURT FOR RIGHT NOW, BECAUSE OF THE INCOMPLETENESS
3 OF THE INVESTIGATION, BECAUSE OF THE INCONSISTENCIES AND
4 THE SPIN THAT HAS HAD TO GO ON WITH THIS CASE. THAT'S
5 ULTIMATELY WHAT IT COMES DOWN TO IN THIS CASE. AND IF YOU
6 WERE CHARGED WITH SOMETHING LIKE THIS IN THIS SORT OF
7 SCENARIO AND YOU ADMIT I DID THINGS, I SMOKED CRACK,
8 DOESN'T TRY TO HOLD BACK WITH WHAT --- HOW MUCH HE WAS
9 SMOKING, ADMITS HOW MUCH HE HAD TO DRINK, ADMITS THAT HE
10 BOUGHT CRACK, GOT IN A FIGHT ABOUT IT, TRADED CRACK AND
11 MONEY FOR SEX, DOESN'T TRY TO HOLD BACK, DOESN'T TRY TO
12 HIDE THAT, DOESN'T TRY TO SAY THIS WAS SOME LOVE MATCH,
13 BUT HIS STORY MAKES SENSE WHEN YOU COMPARE IT TO WHAT'S ON
14 THE VIDEO AND THE HARD FACTS OF THIS CASE. THE PERSON
15 WHOSE STORY DOESN'T MAKE SENSE WHEN YOU COMPARE IT TO
16 THOSE THINGS IS MS. HILL'S, BECAUSE SHE EITHER CHOSE THAT
17 DAY TO GET IN THE CAR WITH A COMPLETE STRANGER THAT JUST
18 HAPPENED TO SMOKE CRACK WITH HER, OR SHE HAPPENED TO GET
19 IN THE CAR WITH A DRUG DEALER THAT SHE RECOGNIZED FROM
20 EARLIER THAT DAY. EITHER WAY IT DOESN'T MAKE ANY SENSE
21 THAT SHE WOULD JUST GET IN THE CAR WITH THE EXPECTATION OF
22 I'M ONLY GETTING A RIDE HOME. AND SHE EVEN SAID, HE
23 OFFERED ME A RIDE HOME, BUT I WAS STILL GOING TO PAY HIM
24 TWENTY DOLLARS WHEN WE GOT TO MY HOUSE. NOW, IF
25 SOMEBODY'S OFFERING YOU A RIDE HOME, YOU'RE NOT THINKING

CLOSING STATEMENTS

726

1 YOU'RE GOING TO PAY HIM TWENTY DOLLARS. THAT DOESN'T MAKE
2 ANY SENSE EITHER. AND WHY WOULD YOU OFFER HIM TWENTY
3 DOLLARS IF YOU RECOGNIZED HIM AND KNEW HIM. IT'S ALL
4 THESE LITTLE INCONSISTENCIES THAT CAUSE THE PROBLEM.
5 ULTIMATELY IN THE CASE, LADIES AND GENTLEMEN, THERE COMES
6 A TIME WHEN I HAVE TO SIT DOWN, AND AT THAT POINT IN TIME
7 THE SOLICITOR WILL HAVE THE OPPORTUNITY TO GET UP AND
8 SPEAK AND THERE WILL BE A LOT OF STUFF THAT SHE'S GOING TO
9 SAY THAT I'M PROBABLY AM GOING TO WANT TO RESPOND TO, BUT
10 I WILL NOT HAVE THE CHANCE TO DO THAT. THERE ARE CERTAIN
11 THINGS THAT I WOULD LIKE TO TAKE WITH YOU, THAT IF YOU
12 COULD TAKE BACK WITH YOU IN THE COURTROOM (SIC). TAKE
13 WITH YOU, ONE, THOSE BASIC PRINCIPLES THAT THE JUDGE IS
14 GOING TO TALK TO YOU ABOUT WHO HAS THE BURDEN OF PROOF,
15 THAT THIS IS NOT A HE-SAID/SHE-SAID CASE, BUT IT IS A CASE
16 OF DOES THE STATE PROVE THEIR CASE. TAKE WITH YOU WHAT WE
17 KNOW ABOUT MS. HILL AND HER WILLINGNESS AND ABILITY TO
18 CHANGE THE SPIN OF HER STORY. TAKE WITH YOU THAT DEMAND
19 TO NOT HAVE THIS BE SPUN BY THE STATE. DEMAND FROM THEM
20 HARD EVIDENCE, NOT SUBJECT TO INTERPRETATION, NOT SUBJECT
21 TO POSSIBLY OR MAYBE IT WAS THERE AND WE JUST DIDN'T FIND
22 IT, BECAUSE THOSE ARE ALL JUST EXCUSES, MORE EXCUSES.
23 TAKE WITH YOU THAT DEMAND. AND IF YOU DO THOSE THINGS,
24 YOUR CONCLUSION WILL BE CLEAR, BECAUSE IT IS THE STATE'S
25 JOB TO PROVE THEIR CASE, TO PROVE THEIR CASE BEYOND A

CLOSING STATEMENTS

727

1 REASONABLE DOUBT. AND WHEN THE STATE DOESN'T DO ITS JOB,
2 IT IS TIME FOR YOU AS JURORS TO DO YOURS. AND IT'S NOT
3 ABOUT SENDING A MESSAGE. IT'S NOT ABOUT HELPING ANYONE OR
4 CRITICIZING ANYONE OR ANYTHING LIKE THAT. IT IS SIMPLY A
5 BASIC JOB OF HAS THE STATE DONE ITS DUTY. AND WHEN THE
6 STATE DOESN'T DO ITS DUTY, IT'S TIME FOR YOU TO DO YOURS.
7 AND YOUR DUTY IN THIS CASE IS TO RETURN A VERDICT OF NOT
8 GUILTY.

9 THE COURT - MS. HERVEY.

10 MS. LIPINSKI - YES, YOUR HONOR. COURT'S
11 INDULGENCE WHILE I GET SOME EVIDENCE. (PAUSE)

12 MAY IT PLEASE THE COURT AND LADIES AND GENTLEMEN
13 OF THE JURY, I THINK MR. LEMEL IS CORRECT, THAT WHEN ALL
14 OF US HEAR ABOUT SERVING ON JURY DUTY MOST OF US GO, OH,
15 PLEASE, PLEASE, DON'T SELECT ME. WE SEE JURORS COME UP
16 FRONT, THEY'RE LIKE, OH, PLEASE, PLEASE, DON'T LIKE ME;
17 I'LL DO ANYTHING, PLEASE. BECAUSE IT IS --- WE KNOW WE
18 HAVE TAKEN YOU AWAY FROM YOUR JOBS, YOUR FAMILY, YOUR
19 LIVES, THAT YOU PROBABLY HAD BILLS TO PAY, THINGS TO DO,
20 ERRANDS TO RUN THIS WEEK INSTEAD OF SITTING HERE AND
21 PERFORMING THIS. BUT I THINK WHAT YOU NOW APPRECIATE IS
22 THERE REALLY IS NO OTHER WAY TO RESOLVE THESE TYPE OF
23 ISSUES, THAT THE BEST AND ONLY WAY FOR YOU TO DO YOUR DUTY
24 IS TO LISTEN TO THE EVIDENCE WHICH YOU ALL HAVE. YOU'VE
25 BEEN A VERY ATTENTIVE JURY. I KNOW THAT MR. LEMEL AND I

CLOSING STATEMENTS

728

1 BACKED UP THAT VIDEO THIRTEEN DIFFERENT WAYS FROM SUNDAY
2 (SIC) UNTIL WHERE YOU ALL WERE PROBABLY, ENOUGH, WE'VE
3 SEEN THE VIDEO; WE'VE SEEN THE BLUR, WE'VE SEEN THIS, BUT
4 THAT IS YOUR ROLE TO CAREFULLY EXAMINE IT. AND IT'S HARD
5 FOR MR. LEMEL AND I UP HERE TO REALIZE AT WHAT POINT YOU
6 ALL UNDERSTAND THE POINT WE'RE TRYING TO MAKE. MR. LEMEL
7 ENDED WITH THE FACT THAT IT IS YOUR DUTY WHEN I DON'T DO
8 MY JOB TO DO YOUR DUTY TO FIND HIM NOT GUILTY. THAT'S A
9 LITTLE BIT OF SPIN ON MR. LEMEL'S PART. THE JUDGE IS
10 GOING TO TELL YOU IT IS YOUR DUTY TO GO BACK THERE AND TO
11 DELIBERATE, TO TALK WITH THE OTHER JURORS, TO LOOK AT THE
12 PHYSICAL EVIDENCE, TO ASK TO HEAR TESTIMONY IF YOU NEED
13 TO, BECAUSE WHILE MR. LEMEL AND I WILL TELL YOU WHAT THE
14 TESTIMONY WAS, WE'RE DOING ABOUT TEN OTHER THINGS IN THIS
15 TRIAL. WE'RE THINKING OF THE NEXT WITNESS AND THE NEXT
16 QUESTION AND HOW IT RELATED TO THE DOCUMENTS THAT WE MAY
17 HAVE AND WE AREN'T WITNESSES AND WE DO ON OCCASION
18 COMPLETELY INADVERTENT REMEMBER THINGS INCORRECTLY. SO IF
19 YOU ULTIMATELY HAVE A QUESTION ABOUT WHAT SOMEONE SAID,
20 THE REASON WE HAVE SHIRLEY SITTING THEIR TALKING INTO THE
21 MASK THE WHOLE TRIAL IS SO THAT THERE IS A DOCUMENT OF
22 WHAT WAS REALLY SAID. AND IT IS NOT YOUR DUTY IF I DON'T
23 DO MY JOB TO DO YOUR JOB. IT IS YOUR JOB TO DO YOUR JOB
24 NO MATTER WHAT, TO LISTEN TO THE EVIDENCE, WHATEVER IT MAY
25 BE AND TO LET IT LEAD YOU TO THE CONCLUSION WHATEVER IT

CLOSING STATEMENTS

729

1 MAY BE. GUILTY OR NOT GUILTY. IT IS YOUR JOB TO
2 DELIBERATE, BECAUSE YOU MUST RENDER A VERDICT THE JUDGE IS
3 GOING TO TELL YOU THAT IS UNANIMOUS, THAT ALL TWELVE OF
4 YOU MUST AGREE. YOU MUST UNANIMOUSLY AGREE THAT HE IS NOT
5 GUILTY OR YOU MUST UNANIMOUSLY AGREE THAT HE IS GUILTY.
6 AND OFTEN TIMES WE FIND THAT WHEN JURORS GET BACK THERE
7 THEY DON'T ALWAYS DISAGREE, BUT THEY DO FIND THAT ONCE
8 THEY TALK TO ONE ANOTHER AND THEY DEPEND ON EACH OTHER'S
9 COMMON LIFE EXPERIENCES THAT THEY ULTIMATELY CAN REACH A
10 CONCLUSION. THAT IS YOUR JOB. MR. LEMEL AND DEFENSE
11 ATTORNEYS LIKE TO INVOKE THE DEFINITION OF A REASONABLE
12 DOUBT IS DOUBT WHICH WOULD CAUSE A PERSON TO HESITATE TO
13 ACT. THAT DOES NOT MEAN YOUR HESITATION TO CONVICT
14 SOMEONE OF A CRIME, YOUR HESITATION THAT THAT CRIME MAY
15 DEPRIVE THEM OF THEIR LIBERTY, BECAUSE YOU DON'T KNOW WHAT
16 THE PUNISHMENT FOR THESE OFFENSES ARE. THAT DISCRETION
17 DOES NOT REST WITH YOU. WE DON'T EVEN TELL YOU WHAT IT
18 IS, BECAUSE WE DON'T WANT THAT TO INVADE YOUR DECISION-
19 MAKING AUTHORITY. WE WANT YOU TO FOCUS SOLELY ON THE
20 FACTS, WHAT OCCURRED AT THE WEEPING MARY BAPTIST CHURCH ON
21 THE MORNING OF MAY 3RD, 2007, AND THAT IS YOUR ROLE, NOT
22 IF YOU HESITATE WHEN YOU GO BACK IN THERE, NOT IF YOU
23 HESITATE, BECAUSE THIS IS AN EXTRAORDINARY TASK WE ARE
24 ASKING YOU TO DO. BUT IF YOU HESITATE AFTER LOOKING AT
25 THE EVIDENCE, SEEING WHAT IS REASONABLE, SEEING WHAT IS

CLOSING STATEMENTS

730

1 CONSISTENT, SEEING WHAT IS COHERENT AND THEN MAKING THAT
2 DECISION, BECAUSE THAT IS WHAT A REASONABLE PERSON DOES.
3 NO DOUBT ABOUT IT MR. DUNOVANT OR MISTI HILL WERE NOT
4 REASONABLE PEOPLE ON THE MORNING OF MAY 3RD, 2007. MR.
5 LEMEL STARTED OFF THIS TRIAL GOING NOTHING GOOD HAPPENS AT
6 FOUR O'CLOCK AT A TRUCK STOP. MY DADDY USED TO SAY
7 NOTHING HAPPENS GOOD AFTER MIDNIGHT AND THAT'S WHY MY
8 CURFEW WAS TWELVE NOT FOUR, BUT NONETHELESS YOU'RE NOT
9 HERE TO PASS JUDGMENT ON WHETHER OR NOT YOU WOULD INVITE
10 MISTI HILL OR TERRY DUNOVANT OUT TO DINNER, WHETHER YOU
11 WANT THEM TO DATE YOUR CHILD, WHETHER OR NOT YOU WANT TO
12 HIRE THEM AS AN EMPLOYEE. THIS IS NOT A POPULARITY
13 CONTEST AND THIS IS NOT A DECISION ABOUT WHO WAS WISER
14 THAT NIGHT OR WHO WAS UNWISER THAT NIGHT. THAT IS NOT
15 YOUR ROLE. YOU HAVE NO FRIENDS TO REWARD AND NO ENEMIES
16 TO PUNISH. YOUR ROLE IS TO LISTEN TO THE EVIDENCE AND TO
17 RENDER AN OPINION. WE TOLD YOU IN SOME WAYS YOUR ROLE IS
18 MADE A LITTLE BIT EASIER IN THIS CASE IN THAT WE AGREED ON
19 ABOUT EIGHTY PERCENT OF WHAT HAPPENED. NO DOUBT ABOUT IT
20 WHERE THEY WENT, NO DOUBT ABOUT IT THAT THEY HAD SEX. NO
21 DOUBT ABOUT IT THAT THEY HAD ORAL SEX. NO DOUBT ABOUT IT
22 THAT IT'S HIM. THE DNA RESULTS SAY THAT IT'S HIM TO THE
23 ODDS OF ONE IN TWO HUNDRED AND TWENTY QUADRILLION BASED ON
24 THE VAGINAL SWABS. NOT A WHO-DONE-IT. IT IS A WHAT
25 HAPPENED. AND IN SOME RESPECTS THAT MAKES YOUR JOB EVEN

CLOSING STATEMENTS

731

1 MORE DIFFICULT BECAUSE YOU'RE NOW GOING ON WANT ONE OF
2 THEM WHO-DONE-IT'S, I'VE RATHER SERVE ON THIS JURY RATHER
3 THAN MINE, THIS IS REALLY DIFFICULT, BECAUSE IT IS ON THE
4 SUBTLE NUANCES OF THE EVIDENCE. THERE'S NO SMOKING GUN,
5 NONE OF THAT. AND EVEN IF THERE IS, THE DNA, IT DOESN'T
6 REALLY HELP YOU RESOLVE ULTIMATELY WHAT HAPPENED THAT
7 NIGHT. THE JUDGE IS GOING TO TELL THAT THERE'S TWO TYPES
8 OF EVIDENCE. THERE'S DIRECT EVIDENCE AND CIRCUMSTANTIAL
9 EVIDENCE. DIRECT EVIDENCE IS THE EVIDENCE THAT SOMEBODY
10 HEARS, SEES, FEELS WITH THEIR OWN BODY. CIRCUMSTANTIAL
11 EVIDENCE IS AS MOST OF PROBABLY GOT UP THIS MORNING,
12 LOOKED OUTSIDE AND SAW THAT IT WAS RAINING AND WHEN WE
13 WALKED OUTSIDE BASED ON HOW SOGGY THE GROUND WAS, REALIZED
14 IT DIDN'T START RAINING FIVE MINUTES AGO, IT'S PROBABLY
15 BEEN RAINING A WHILE. THAT'S CIRCUMSTANTIAL EVIDENCE.
16 IT'S EVIDENCE THAT YOU DEDUCE BASED ON THOSE TYPE OF
17 INFERENCES, AND THE JUDGE IS GOING TO TELL YOU THAT THAT
18 EVIDENCE IS JUST AS COMPELLING FOR YOUR CONSIDERATION AS
19 DIRECT EVIDENCE. AND THE STATE SUBMITS TO YOU THAT WHEN
20 YOU LOOK AT THE CIRCUMSTANTIAL EVIDENCE AND YOU LOOK AT
21 THE STORY OF MISTI HILL AND YOU LOOK AT THE STORY OF TERRY
22 DUNOVANT, YOU WILL BE CONVINCED THAT HER STORY IS
23 REASONABLE; HER STORY IS CONSISTENT AND HER STORY IS
24 COHERENT. NOW, LET ME BE FRANK WHEN I SAY REASONABLE. I
25 DO NOT MEAN THAT GETTING IN A CAR WITH A MAN WHO IS EITHER

CLOSING STATEMENTS

732

1 A DRUG DEALER OR KNOWN TO YOU FROM YOUR DAYS OF DOING
2 CRACK IS A REASONABLE THING TO DO. THERE IS NO DOUBT
3 ABOUT IT THAT THAT WAS A STUPID DECISION ON HER PART, THAT
4 SHE SHOULD'VE BUCKED UP HER PRIDE AND CALLED HER MOTHER OR
5 CALLED SOMEONE ELSE. NO DOUBT ABOUT IT. BUT THAT
6 DECISION TO GET IN THAT CAR WAS NOT A LICENSE FOR TERRY
7 DUNOVANT TO RAPE HER AND BEAT HER AND KIDNAP HER, BECAUSE
8 THAT'S WHAT YOU HAVE TO KEEP YOUR EYE ON THE BALL FOR. WE
9 KNOW IN EVERY RAPE CASE I'VE TRIED AND I'VE BEEN DOING
10 THIS TEN YEARS AND MR. LEMEL'S BEEN DOING THIS TEN YEARS,
11 QUITE COMPETENT AT OUR JOBS HERE, ANY RAPE CASE IS
12 ASSASSINATE THE POLICE AND ASSASSINATE THE VICTIM, TEAR
13 THEM APART. THAT'S HOW YOU'RE GOING TO BEAT A RAPE
14 CHARGE. AND HERE'S THE OTHER THING TO CONSIDER. A
15 REASONABLE WOMAN LIKE OURSELVES WOULD NOT BE STANDING OUT
16 AS A GAS STATION AT FIVE THIRTY IN THE MORNING, BUT YOU
17 KNOW WHAT, THAT'S WHY WE DON'T GET RAPED, BECAUSE WE DON'T
18 PUT OURSELVES IN THAT KIND OF VULNERABLE POSITION. BUT
19 WHAT THE LAW SAYS IS DESPITE THAT FACT THE LAW STILL
20 PROTECTS THOSE PEOPLE, THAT YOU CAN RAPE, EVEN ASSUMING
21 SHE'S A PROSTITUTE --- IF THE DEFENSE THE CREDENCE OF THAT
22 ARGUMENT THAT SHE WAS OUT THERE TURNING TRICKS THAT NIGHT,
23 IT DOES NOT MEAN SHE DESERVED TO GET RAPED. IT DOES NOT
24 MEAN SHE CONSENTED TO GET RAPED, AND IT DOES NOT MEAN SHE
25 DOES STILL NOT HAVE THE RIGHT TO TELL HIM NO AND TO FIGHT

CLOSING STATEMENTS

733

1 HIM. IT DOESN'T MEAN ANY OF THOSE THINGS, BUT IT ALSO
2 DOESN'T MEAN IT DIDN'T HAPPEN. THE JUDGE IS GOING TO TELL
3 YOU THAT YOU CAN CONVICT TERRY DUNOVANT OF KIDNAPPING,
4 HOLDING HER AGAINST HER WILL, THAT SHE DIDN'T --- SHE
5 COULD'VE VOLUNTARILY GONE WITH HIM ACROSS THE STATE LINES,
6 BUT IF STILL SHE WANTED TO LEAVE, IF SHE WAS SEIZED OR
7 CONFINED IN THAT CAR, THEN HE IS GUILTY OF KIDNAPPING. HE
8 IS GOING TO GIVE YOU THE OPTION OF CONVICTING HIM OF
9 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. HE IS GOING
10 TO DEFINE THAT FOR YOU, THAT SEXUAL BATTERY INCLUDES ORAL
11 SEX AND INCLUDES VAGINAL SEX AND IT MEANS THAT THOSE SEX
12 ACTS WERE ACCOMPANIED BY AGGRAVATED FORCE, AND IF YOU FIND
13 THAT THAT SEXUAL BATTERY OCCURRED, WHICH MOST ---
14 EVERYBODY AGREES THAT THE SEX OCCURRED, BUT YOU FIND THAT
15 IT WAS ACCOMPLISHED BY USE OF FORCE, AGGRAVATED FORCE,
16 THEN THE DEFENDANT IS GUILTY OF CRIMINAL SEXUAL CONDUCT IN
17 THE FIRST DEGREE. THE LAW ALSO DEMANDS THAT IF SOME
18 LESSER INCLUDED OFFENSE IS PROVEN BY THE EVIDENCE THE
19 JUDGE MUST SUBMIT IT TO YOU, AND THAT IS THAT YOU WILL BE
20 GIVEN THE OPTION OF CONVICTING HIM OF ASSAULT AND BATTERY
21 OF A HIGH AND AGGRAVATED NATURE, WHICH MEANS YOU FIND THAT
22 THE SEX WAS CONSENSUAL BUT THAT HE NONETHELESS AGGRAVATED
23 INJURY UPON HER. THOSE WILL BE YOUR OPTIONS. NOW, MR.
24 LEMEL LIKES TO ACCUSE ME OF BEING A SPIN-DOCTOR. IT'S
25 FUNNY HE'S THE SAME SPIN-DOCTOR HIMSELF. AND THAT'S

CLOSING STATEMENTS

734

1 PRETTY MUCH OUR ROLE. LET'S BE HONEST, LAWYERS AND
2 POLITICIANS THAT'S WHAT WE DO, BUT THERE'S ALSO A FINER
3 ART TO IT, BECAUSE WE CAN'T GET UP THERE AND SAY ANYTHING
4 WE WANT. WE HAVE TO RELY ON FOR THE MOST PART WHAT'S IN
5 THESE BAGS AND THIS EVIDENCE AND WHAT COMES FROM THIS
6 WITNESS CHAIR, AND IF YOU DON'T BELIEVE THAT MR. LEMEL IS
7 EQUALLY A SPIN-DOCTOR, YOU CAN LOOK AT THAT VIDEO AND IF
8 YOU ACTUALLY SEE HER FINGER CURL LIKE THIS, THEN YOU SEE
9 SOME IN PIXELS I CERTAINLY CANNOT, AND IF YOU CAN TELL
10 SOMETHING FROM THE BUMP ON THE CORNER UP BY THE CAR AT ONE
11 SECOND THAT THAT'S HER LEG, THEN YOU SEE SOMETHING I
12 CANNOT. BUT THAT IS YOUR ROLE TO DECIDE WHAT THE EVIDENCE
13 IS. AND IT'S NOT JUST MY ROLE TO PUT ABOUT SPIN. IT IS
14 MY ROLE TO BRING ABOUT EVIDENCE, TO HAVE THAT EVIDENCE
15 ANALYZED, TO CALL THE WITNESSES, TO ASK THEM CERTAIN
16 QUESTIONS AND TO TRY AND ASSIST YOU IN DECIDING WHAT
17 HAPPENED THAT NIGHT. AND FOR THE MOST PART YOU'RE GOING
18 TO BE GIVEN TWO VERSIONS OF EVENTS. NOW, I HAVE A TWIN
19 SISTER AND WE USED TO GET IN FIGHTS AND WE WOULD RUN TO
20 OUR MOM AND BOTH SAY HE (SIC) STARTED IT. HE (SIC)
21 APPROACHED ME. AND WHAT MY MOTHER WOULD FIND OUT IS THAT
22 THE TRUTH IS PROBABLY SOMEWHERE IN THE MIDDLE, THAT WHILE
23 PERHAPS MY SISTER DEALT THE FIRST BLOW, I KIND OF EGGED
24 HER ON AND I CALLED HER NAMES, PULLED HER HAIR, SOMETHING
25 LIKE THAT. YOU THE JURY ARE GOING TO BE GIVEN THE OPTION

CLOSING STATEMENTS

735

1 AS THE JUDGE WILL INSTRUCT YOU TO BELIEVE ALL OF WHAT A
2 WITNESS SAYS, SOME OF WHAT A WITNESS SAYS, NONE OF WHAT A
3 WITNESS SAYS, AND THE TRUTH MAY VERY WELL INDEED BE
4 SOMEWHERE IN THE MIDDLE, BUT MISTI'S STORY OF RAPE AND
5 KIDNAPPING IS COMPELLING, BECAUSE PRETTY MUCH YOU HAVE TO
6 BELIEVE ONE OR TWO THINGS. YOU ULTIMATELY CAN COME TO ONE
7 OR TWO CONCLUSIONS. ONE, THAT MISTI HILL, A PERSON WHO
8 HAS HAD AN ADDICTION PROBLEM IN THE PAST, WHO HAS
9 EMOTIONAL PROBLEMS AND DIAGNOSED WITH BIPOLAR, OUT THERE
10 AT FIVE THIRTY IN THE MORNING ENGAGING IN UNREASONABLE AND
11 RISKY BEHAVIOR, BUT NONETHELESS LAW-ABIDING CITIZEN, MAKES
12 THE UNWISE DECISION TO GET IN THE CAR WITH TERRY DUNOVANT,
13 THAT HE AGREES INITIALLY TO TAKE HER HOME, BUT WHEN SHE
14 DOESN'T HAVE THE MONEY TO PAY FOR THE RIDE OR THE CRACK,
15 HE DECIDES HE'S NOT GOING TO GET CHEATED FOR THE SECOND
16 TIME THAT NIGHT AND DRIVES A FEW MILES FURTHER SOUTH TO A
17 GRAVEYARD WHERE HE RAPES HER, BECAUSE HE'S GOING TO GET
18 HIS MONEY'S WORTH. OR WHAT YOU HAVE TO BELIEVE IS THAT
19 TERRY DUNOVANT WHO HAD BEEN DOING CRACK ALL NIGHT BY HIS
20 OWN ADMISSION FINDS MISTI HILL AT THE GAS STATION, BEING
21 THE CONCERNED CITIZEN THAT HE IS AND HEARING HER SAD STORY
22 ABOUT HOW SHE GOT KICKED OUT OF THE MOTEL DECIDES I'M
23 GOING TO GIVE HER A RIDE HOME, THAT SHE BEGINS PERFORMING
24 ORAL SEX ON HIM BEFORE THEY EVEN LEAVE THE GAS STATION,
25 THAT INTERMITTENTLY ON THE RIDE DOWN THERE THAT SHE'LL POP

CLOSING STATEMENTS

736

1 UP AND TELL HIM WHERE TO TURN, NOW THIS IS WHERE THE
2 CHURCH IS AND, NO, GO THERE. NOW THEY ENGAGE IN
3 CONSENSUAL SEX OUT BEHIND THE CAR IN A GRAVEYARD OF A
4 CHURCH. NOW MIND YOU, ACCORDING TO HIM SHE'S BEEN TURNING
5 TRICKS AT THE HOTEL RIGHT BY THE GAS STATION ALL NIGHT,
6 BUT SHE WANTS SOMEWHERE TO HIDE, SO SHE IS GOING TO TAKE
7 HIM FIFTEEN MILES SOUTH TO THE GRAVEYARD TO HAVE SEX.
8 THEN BEING A CONSIDERATE PROSTITUTE SHE REMOVES HER
9 BANDANNA AND SAYS HERE, CLEAN YOURSELF UP. CAN YOU DROP
10 ME OFF AT THE HOT SPOT ON YOUR WAY UP THE ROAD. AND THEN
11 BECAUSE SHE'S NO LONGER THE CONSIDERATE PROSTITUTE SHE
12 GETS MAD, SOMEBODY BEAT HER UP THE NIGHT BEFORE AND
13 DESPITE THE FACT THAT SHE SMOKED CRACK AND DRANK AND
14 DOESN'T FEEL THE BROKEN RIBS SHE MUST'VE HAD AT THE GAS
15 STATION BECAUSE TERRY DUNOVANT DIDN'T DO IT TO HER, THE
16 SEMEN IS THE ANTIDOTE TO THE PAIN MASKING OF COCAINE, SHE
17 GOES TO THE DIXIE DINER AND CALLS 9-1-1. THAT'S WHAT
18 YOU'RE BEING OFFERED, THOSE TWO CHOICES. NOW, FOR THE
19 MOST PART THE DEFENSE IS ALWAYS INEVITABLY NO
20 INVESTIGATION IS PERFECT AND WILL POINT OUT A FEW MINOR
21 INCONSISTENCES, AND THEY WANT TO DRESS THAT UP AND SPIN IT
22 UP AND BLOW IT UP INTO REASONABLE DOUBT. AND THE FIRST
23 THING THAT THEY PICK ON IS THE WHOLE STRANGER VERSUS
24 ACQUAINTANCE DEBATE THAT SOMEHOW IS A REASON TO ATTACK THE
25 CREDIBILITY OF MISTI HILL. THE FACT THAT ONE OFFICER WHO

CLOSING STATEMENTS

737

1 ASKED HER, DO YOU KNOW HIS NAME AND SHE SAYS ALL I KNOW
2 HIM BY IS TONY. DO YOU KNOW HIS LAST NAME. NO. HE SAYS,
3 WELL, THAT MEETS MY DEFINITION OF STRANGER AND CHECKS
4 STRANGER. THE SANE NURSE A FEW HOURS LATER ASKED HER AND
5 SHE SAYS I KNEW HIM AS TONY; I KNEW HIM FROM MY PAST; I
6 REALIZED THAT ONCE I GOT IN THE CAR WITH HIM, GOES NOT
7 QUITE STRANGER, I'LL CHECK ACQUAINTANCE. THAT'S THE
8 REASONABLE DOUBT YOU CAN POINT TO, THE STRANGER VERSUS
9 ACQUAINTANCE DEBATE? THEY GO, OH, WELL, WE'RE GOING TO
10 MAKE IT BETTER. DR. RIMMER SAYS, WELL, HE BOUGHT DRUGS
11 OFF OF HER (SIC) EARLIER THAT NIGHT, SO YOU KNOW, THEY
12 EVEN HAD MORE OF A CONNECTION. FUNNY WHEN TERRY DUNOVANT
13 SPOKE HE EVEN SAID HE DIDN'T SELL HER DRUGS EARLIER THAT
14 NIGHT, NOR DOES MISTI HILL. SHE'S --- IT'S ALL ABOUT WHAT
15 HAPPENED IN THE CAR ON THE WAY DOWN 321. WHAT SHE'S
16 TELLING HIM I WENT HIM FOR DRUGS AND THEN IT TURNED INTO
17 RAPE. HE DOESN'T EVEN CHECK THE ACQUAINTANCE VERSUS
18 STRANGER BOX. IT'S NOT INCONSISTENT. IT'S DIFFERENT
19 PEOPLE'S INTERPRETATION OF WHAT HAPPENED. SHANE CHILDERS
20 WILL TELL YOU THAT HE COULD BARELY GET THE STORY OUT OF
21 HER BECAUSE THE EMT IS THERE, THEY'RE PUTTING OXYGEN ON
22 HER, SHE'S EMOTIONAL. THAT'S THE INCONSISTENCY YOU CAN
23 POINT TO? WE HAVE ANOTHER INCONSISTENCY. THE SANE NURSE,
24 YOU REMEMBER, C. J. CARRINGER, THE FIRST NURSE THAT
25 TESTIFIED, SHE'S NOT A SANE NURSE. SHE'S DONE A FEW OF

CLOSING STATEMENTS

738

1 THESE EXAMS IN THE PAST; SHE DOESN'T ROUTINELY FILL OUT
2 THESE FORMS AND SHE DOESN'T ROUTINELY PERFORM THESE KITS
3 TO THE EXTENT THAT SHE'S NOT EVEN COMFORTABLE DOING IT
4 HERSELF, AND INSTEAD THEY CALL THE YORK COUNTY SHERIFF'S
5 OFFICE NURSE TO COME WALK HER THROUGH IT. SO THE OTHER
6 REASONABLE DOUBT THAT THEY CLAIM THEY WANT TO POINT TO YOU
7 IS THAT THE SANE NURSE WHEN SHE'S GOING THROUGH CHECKS THE
8 BOX, OH, VICTIM BY ASSAILANT AND NOT OF ASSAILANT BY
9 VICTIM. THE NURSE INDICATES SHE CAN'T EVEN TELL YOU WHICH
10 WAY --- I MEAN --- WE COULD COME UP WITH A BETTER FORM
11 THAT MAKES IT MORE CLEAR. COULD WE NOT? BUT IS THAT
12 REASONABLE DOUBT THAT SHE CHECKED THE WRONG BOX? BECAUSE
13 NOTICE THE NURSE SAYS IN THE SUMMARY, IN THE FACTUAL
14 SUMMARY THAT HE ATTEMPTED TO GET HER TO PERFORM ORAL SEX
15 ON HIM, ATTEMPTED FORCED ORAL SEX ON HIM. SO WHEN WE'RE
16 ACTUALLY WRITING WORDS AND NOT CHECKING BOXES IT'S
17 COHERENT. AND DO WE REALLY BELIEVE THAT MISTI HILL FOR
18 SOME REASON JUST WITH ONE SANE NURSE SAID, YOU KNOW, HE
19 ALSO TRIED TO PERFORM ORAL SEX ON ME. IS IT REASONABLE
20 FOR EITHER OF THOSE TWO TO REALLY WANT HIM TO PERFORM ORAL
21 SEX ON HER? IF IT'S A RAPE, I DON'T THINK HE'S GOING
22 THERE. IF SHE'S A CRACK PROSTITUTE, I DON'T THINK HE'S
23 GOING THERE. IT'S A WRONG CHECKED BOX, AND IT IS NOT
24 REASONABLE DOUBT. IT IS NOT CONSISTENT WITH EVERY OTHER
25 THING THAT SHE SAYS, AND IF THE BEST THING THAT THEY CAN

CLOSING STATEMENTS

739

1 POINT TO IS SOME CHECKED BOXES, THEN THE STATE HAS DONE
2 ITS JOB. HERE'S THE OTHER THING ABOUT THE DEFENDANT'S
3 VERSION AND THIS IS WHERE THEY ULTIMATELY AND USUALLY
4 ULTIMATELY FALL SHORT, IS THAT THE DEFENDANTS WILL TAKE
5 EACH LITTLE PIECE AND EXAMINE IT IN A VACUUM, TRY AND MAKE
6 THE BUMP ON THE VIDEO SOMETHING IT ISN'T AND THIS AND
7 THAT, BUT IT'S WHEN THEY GET THE THINGS TOGETHER THAT THEY
8 FALL APART. THEY SPEND A LOT TIME --- MR. LEMEL DOES A
9 VERY THOROUGH JOB WITH DR. RIMMER POINTING OUT HOW MISTI
10 IS BIPOLAR, THAT SHE'S ON MEDICATION FOR BIPOLARITY, THAT
11 SHE IS --- WOULD CRY FOR NO REASON; SHE WOULD BE
12 EMOTIONAL, UNCREDIBLE (SIC), THAT SHE WOULD EXAGGERATE,
13 THAT SHE WAS UNDER THE INFLUENCE OF CRACK COCAINE, THAT
14 SHE HAD A .15 BLOOD ALCOHOL LEVEL. THEY DO A GOOD JOB OF
15 TRYING TO TEAR HER APART. THEY DIDN'T --- ACCORDING TO
16 THEM SHE'S SO DRUNK SHE DOESN'T EVEN KNOW WHICH WAY IS
17 NORTH OR SOUTH. SITTING IN THIS COURTROOM I CAN'T EVEN
18 TELL YOU NOW WHICH WAY IS NORTH OR SOUTH. BUT REALIZE
19 THIS, IF THE SHE'S DRUNK, CRACKED UP, BIPOLAR, EMOTIONAL,
20 PSYCHOLOGICAL MESS ONE STEP AWAY FROM NEEDING TO BE
21 COMMITTED SOMEWHERE, HOW DOES SHE MANAGE TO GET SO MUCH
22 RIGHT? TRULY, HOW DOES SHE EVEN MANAGE TO GET FROM THE
23 GRAB AND GO IN BESSEMER CITY TO THE WEEPING MARY BAPTIST
24 CHURCH? IN HER CONDITION BY THEIR ACCOUNT SHE SHOULDN'T
25 BE ABLE TO FIND IT IF SHE HAD A MAGELLAN HELPING HER. HOW

CLOSING STATEMENTS

740

1 DOES SHE GET SO MUCH RIGHT? THEY WANT TO GO, OH, SHE ONLY
2 WENT AND BOUGHT (SIC) THE JURY TO MATCH IT TO HER
3 TESTIMONY. LOOK AT STATE'S EXHIBIT NUMBER 4(A). LOOK AT
4 THE BRACELET ON HER HAND. IF YOU'LL LOOK AT THE BRACELET
5 IN EVIDENCE. MISTI TENDS TO WEAR THE SAME JEWELRY. AND
6 THIS PHOTOGRAPH WAS TAKEN LONG BEFORE SHE KNEW WHAT THEY
7 FOUND IN THE GRAVEYARD. BECAUSE REALIZE THIS, THEY DON'T
8 EVEN WANT YOU TO BELIEVE FOR SOME REASON THAT IT'S HER
9 JEWELRY IN THE GRAVEYARD. I MEAN I THOUGHT THEY'D JUST
10 SAY THAT SHE PULLED IT OFF TO MAKE IT LOOK LIKE RAPE, BUT
11 I GUESS MISTI SAID, YOU KNOW WHAT, I'VE GOT THESE
12 INJURIES, BROKEN RIBS, I'M BUSTED UP, I MEAN HE SEES ME
13 WHEN HE PICKS UP (SIC) THE GAS STATION, I'M GLAD HE'S
14 WILLING TO PICK ME UP, GOT ALL THESE INJURIES, I GOT TO
15 FAKE A RAPE CHARGE BECAUSE I DON'T WANT TO TELL MY MOM
16 I'VE BEEN SMOKING CRACK, SO I'M GOING TO TAKE YOU TO THIS
17 GRAVEYARD, AND YOU KNOW WHAT, THERE MIGHT BE JEWELRY THERE
18 LATER I CAN SAY WAS MINE THAT CAME OFF IN THE STRUGGLE.
19 REALLY? IT'S NOT HER JEWELRY? SHE'S WEARING THE SAME
20 KIND IN THE PICTURES IN THE HOSPITAL; THE STUFF'S STILL
21 LEFT ON HER. SHE GOT THAT LUCKY TO PICK A GRAVEYARD THAT
22 HAD SOME JEWELRY IN IT? THAT'S WHERE I TEND TO KEEP MY
23 JEWELRY IS OUT LAYING IN THE GRAVEYARD. NO. SHE'S NOT
24 THAT MUCH OF A MASTERMIND TO FAKE RAPE ACCUSATIONS.
25 BECAUSE LET'S LOOK AT HER INJURIES. BECAUSE MR. LEMEL

CLOSING STATEMENTS

741

1 DOESN'T REALLY WANT YOU TO LOOK AT THE PICTURES. BECAUSE
2 THIS REALLY IS WHAT COMPELS THE POLICE AND I BELIEVE WHAT
3 WILL ULTIMATELY COMPEL YOU TO BELIEVE THAT SHE WAS RAPED
4 THAT NIGHT. MR. LEMEL LIKES TO SAY SHE ONLY HAD ONE ---
5 OH, A CRACKED RIB. DR. RIMMER SAID SHE HAS TWO FRACTURED
6 RIBS AND POSSIBLY A THIRD, THAT SHE WAS IN SIGNIFICANT,
7 SERIOUS PAIN, UNCOMFORTABLE AND THAT THAT CAUSES PEOPLE TO
8 HAVE DIFFICULTY EVEN MOVING ABOUT FREELY. YOU LOOK ON
9 THAT VIDEO AND YOU ASK YOURSELF IF SHE'S A WOMAN WALKING
10 AROUND WITH THREE CRACKED RIBS. YOU CAN SEE THE BRUISING
11 TO HER FACE, STATE'S 4. YOU CAN SEE THE BLACK EYE THAT IS
12 FORMING, NOT HEALING, STATE'S 4(C). YOU CAN SEE THE
13 BRUISING LEFT FROM THE CHOKE MARKS ON HER NECK, STATE'S
14 4(E). YOU CAN SEE THE BRUISING TO HER EAR WHICH ALSO HAS
15 A RUPTURED EARDRUM ACCORDING TO DR. RIMMER IN STATE'S
16 4(F). YOU CAN SEE THE BRUISING TO HER CHEST IN STATE'S
17 4(G). NOW, MR. DUNOVANT DOESN'T INITIALLY NOTICE THE
18 BRUISES ON HER CHEST WHEN HE TALKS TO THE LIEUTENANT
19 TOLSON. NOW HE'S SEEN THE EVIDENCE. HE SAYS WELL YOU CAN
20 SEE IT ANYWAY. YOU HAVE THE T-SHIRT IN THE WHITE BAG.
21 LOOK AT THE T-SHIRT. ASK YOURSELF IF THESE BRUISES ARE
22 AVAILABLE, BECAUSE IT'S A T-SHIRT NECK. IT'S NOT A SCOOP
23 NECK. RED SCRAPES TO HER INNER ARM. 4(L), THE ABRASIONS
24 TO HER ELBOW, A RUB MARK LIKE SHE IS BEING RUBBED UP AND
25 AGAINST THE TRUNK OF A CAR, NOT SCABBED OVER, NOT HEALED,

CLOSING STATEMENTS

742

1 THE SKIN'S STILL PULLED BACK. 4(M), THE BRUISING TO THE
2 OTHER ELBOW. 4(N), THE BRUISES FORMING ON HER KNEE, STILL
3 RED, STILL SWOLLEN. MR. LEMEL, IT COULDN'T BE A SCRATCH
4 MARK THAT HIGH UP ON HER BACK IF SHE'S BENT OVER HAVING
5 SEX. WELL, YOU KNOW WHAT, THAT ASSUMES THAT SHE WAS
6 STAYING STILL. THAT ASSUMES SHE WASN'T PUTTING UP A
7 FIGHT. THAT ASSUMES SHE'S NOT TRYING TO SLIDE DOWN THE
8 CAR TRYING TO GET AWAY FROM HIM. THAT ASSUMES A
9 CONSENSUAL SEX ACT, BUT YOU CAN IMAGINE IN A STRUGGLE IF
10 SHE IS TRYING TO MOVE AROUND TRYING TO GET FROM UNDERNEATH
11 HIM, HE MIGHT ACTUALLY SCRATCH HER. HOW DOES SHE KNOW
12 IT'S ZIPPER? SHE'S THE ONE FEELING IT. LOWER ON HER BACK
13 MORE CONSISTENT WITH THE SEX ACT. HERE, CLOSE TO EVEN
14 WHERE HER BUTTOCKS MEET. IN ADDITION TO THE EAR, IN
15 ADDITION TO THE RIBS, IN ADDITION TO THE VAGINAL REDNESS
16 AND SWELLING, NOT ONLY AT THE ENTRANCE BUT DEEP INSIDE THE
17 VAGINAL VAULT. AND MR. LEMEL SAID, NO, THIS WAS NOT ---
18 THIS WAS NOT SEX INVOLVING LOVE. NO, IT WASN'T, BUT IT
19 ALSO WASN'T CONSENSUAL SEX, BECAUSE WHILE PROSTITUTES MAY
20 NOT HAVE SEX FOR LOVE, THEY ARE USUALLY A WILLING
21 PARTICIPANT BECAUSE THEY'RE GETTING SOME MONEY; THEY'RE
22 GETTING SOME CRACK; THEY GO ALONG WITH IT. THEY DON'T PUT
23 UP A FIGHT, CERTAINLY NOT A FIGHT THAT LEAVES THESE TYPE
24 OF INJURIES. THEY ALSO DON'T USUALLY ACCUSE THEIR JOHNS
25 OF RAPE BECAUSE IT MIGHT BE BAD FOR BUSINESS. (PAUSE)

CLOSING STATEMENTS

743

1 13(B), A PICTURE OF DEFENDANT'S HAND. HE WANTS YOU TO
2 BELIEVE THAT THIS HAPPENED SOME TWELVE HOURS PRIOR WHEN HE
3 GOT IN A FIGHT WITH HIS DRUG DEALER OF TEN TO TWELVE YEARS
4 BECAUSE HE SLIGHTED HIM ON SOME WEIGHT. FIRST OF ALL, NOT
5 GOOD TO BEAT UP YOUR DRUG DEALER BECAUSE YOU GET IN A
6 DISAGREEMENT. IT'S NOT WALMART WHERE YOU JUST THROW A
7 COMPLAINT. THIS HAS BEEN YOUR SUPPLIER FOR TEN TO TWELVE
8 YEARS AND YOU'RE GOING TO GET IN A DRAG-DOWN, KNOCK-OUT
9 FIGHT WITH HIM, BECAUSE YOU CAN IMMEDIATELY TELL HE
10 SHORTED YOU ON SOME WEIGHT? WHERE'S THAT GUY? AND THIS
11 ISN'T JUST A SCRATCHED KNUCKLE. HE'S GOT A CAST ON. THEY
12 HAD TO SPLINT HIS HAND IT WAS SO SWOLLEN AND INJURED, NOT
13 TAPE UP HIS KNUCKLES. HE ACTUALLY HURTS HIS HAND THAT
14 BAD, EVIDENTLY NOT FEELING THAT PAIN BECAUSE HE STILL GOES
15 AND PICKS OUT MISTI. ASK YOURSELF IF THESE ARE THE
16 INJURIES OF A MAN WHO'S BEATING UP A WOMAN WHILE HE'S
17 TRYING TO HAVE SEX WITH HER, IF THAT STILL IS SOMEWHAT
18 FRESH WOUND WHEN THE POLICE FIND HIM A FEW HOURS LATER, IF
19 THAT'S NOT A TWELVE HOUR WOUND THAT HE GOT IN A FIGHT WITH
20 A DRUG DEALER. MR. LEMEL BROUGHT OUT THE MAP. YOU'LL
21 HAVE THE MAP. AND HIS POINT IS THE ONLY REASON THEY END
22 UP --- THE REASON HOW THEY END UP IN THE GRAVEYARD IS
23 SHE'S FAMILIAR WITH THE CHURCH, ALTHOUGH SHE DENIES THAT.
24 HE DENIES THAT, AS WELL. YOU DON'T REALLY KNOW WHO'S
25 FAMILIAR WITH THE CHURCH, WHO DROVE BY THERE, WHO MAY HAVE

CLOSING STATEMENTS

744

1 ATTENDED SERVICE THERE. DOUBTFUL THAT EITHER ONE OF THESE
2 TWO REALLY GOING TO CHURCH A WHOLE LOT, EITHER ONE OF THEM
3 HAD BEEN THERE. HE SAYS SHE'S FAMILIAR WITH IT BECAUSE
4 SHE'S ATE AT THAT DINER AND THAT'S WHY SHE TOOK HIM TO
5 THAT GRAVEYARD. NOW, BECAUSE SHE'S GOT SOMETHING TO HIDE,
6 HER. SHE'S GIVING HIM A BLOW-JOB BEFORE THEY LEAVE THE
7 GAS STATION. ACCORDING TO THEM SHE'S BEEN TURNING TRICKS
8 AT THE HOTEL ALL NIGHT. ACCORDING TO DETECTIVE WEST THERE
9 ARE UMPTEEN DIFFERENT PLACES BETWEEN THE GRAB AND GO AND
10 THE CHURCH WHERE THEY COULD'VE DONE THIS, WHERE THEY
11 COULD'VE HAD SEX, WHERE THEY COULD'VE SMOKED CRACK. HE
12 DOES IT ROUTINELY IN THE AREA. ACCORDING TO THEM SO DOES
13 SHE. SHE'S REALLY GOT THAT MUCH TO HIDE THAT SHE'S GOING
14 TO TAKE HIM ON A FIFTEEN MILE DETOUR TO A GRAVEYARD JUST
15 TO HAVE SEX THAT SHE'S BEEN DOING ALL NIGHT, OR DOES
16 SOMEBODY WITH SOMETHING MUCH MORE SINISTER IN MIND REALLY
17 HAVE SOMETHING TO HIDE, BECAUSE SHE'S A CRACK PROSTITUTE
18 LOOKING FOR A WAY HOME? I THINK THEY WOULD'VE STOPPED AT
19 FORBES ROAD AND 321, SHE COULD'VE WALKED THERE. WHY DOES
20 A PROSTITUTE HAVE TO GET FIFTEEN MILES SOUTH TO A
21 GRAVEYARD TO HAVE SEX? OR WHY DOES A RAPIST? WHO HAD
22 MORE TO HIDE? WHO WAS MORE AFRAID OF THE POLICE DRIVING
23 BY? WHO HAD MORE PLANS? HER? HIM? REMIND YOU THIS
24 CHURCH DOESN'T EVEN SIT DIRECTLY BEHIND THE DIXIE DINER.
25 YOU CAN LOOK AT THE AERIAL MAP. THERE'S THE DIXIE DINER;

CLOSING STATEMENTS

745

1 THERE'S ANOTHER BUSINESS; THEN THERE'S A CHURCH AND THEY
2 DON'T EVEN PULL IN THE PARKING LOT TO THIS LITTLE SIDE
3 ROAD. THEY PULL UP BEHIND THE GRAVEYARD. THERE'S A
4 FIELD, ANY NUMBER ONE OF AREAS, BUT THEY GET ALL THE WAY
5 OFF TO THE SIDE HERE. COWINKA, HINKLY (PHONETIC) WHERE
6 THERE'S SOME JEWELRY SHE CAN LATER CLAIM WAS HERS. THAT'S
7 SMART OF HER. LOOK AT HIS STATEMENT. BECAUSE WHAT MR.
8 LEMEL IRONICALLY DIDN'T REALLY TALK A WHOLE LOT ABOUT WAS
9 EITHER HIS TESTIMONY OR HIS STATEMENT. MISTI HILL TELLS
10 THEM THAT HE HAD ON A WHITE WIFE-BEATER T-SHIRT. HE
11 ADMITS ON PAGE TWO THAT'S WHAT HE HAD ON. LOOK THROUGH
12 THE CLOTHES HE HAD ON, NOT WHAT HE HAD ON WHEN THEY
13 ARRESTED HIM. HE NOW WANTS YOU TO BELIEVE THAT ANY
14 SLEEVELESS T-SHIRT IS REALLY A WIFE-BEATER. BUT COMMON
15 SENSE WILL TELL YOU THAT THAT IS A SPECIFIC TANK TOP, AN
16 UNDERSHIRT THAT MEN WEAR, THAT IS COMMONLY REFERRED TO AS
17 THAT. AND FOR SOME REASON IN ADDITION TO LYING ABOUT HIS
18 NAME, HE GETS RID OF IT, IN ADDITION TO THE PURSE. WHAT
19 DID MR. DUNOVANT SAY WHEN I SAID, DID SHE LEAVE HER PURSE
20 IN YOUR CAR? COULD'VE BEEN AN ABSENT MISTAKE. DO YOU
21 REMEMBER THAT? I DON'T KNOW NOTHING ABOUT A PURSE. I
22 DON'T KNOW NOTHING. I DON'T KNOW NOTHING ABOUT A PURSE.
23 NOT I DON'T RECALL IF SHE LEFT IT IN THERE; I DON'T
24 REMEMBER IT. AND YOU SAW IT IN THE VIDEO. SHE'S NOT
25 WALKING AROUND WITH LIKE A LITTLE POCKET BOOK. SHE'S GOT

CLOSING STATEMENTS

746

1 ON QUITE THE SATCHEL. WHITE, BLACK, CHECKED AND HE
2 DOESN'T REMEMBER THAT? AND YOU HAVE TO EITHER BELIEVE
3 THAT SHE DIDN'T LEAVE IT IN THE CAR EITHER WHEN HE DROVE
4 OFF AND LEFT HER OR WHEN THEIR CONSENSUAL SEX ACT WAS
5 ACCOMPLISHED AND HE DROPPED HER OFF AT THE HOT SPOT, BUT.
6 THEY WANT YOU TO BELIEVE THAT SHE SOMEHOW HID IT IN THE
7 WOODS TO CLAIM HE STOLE IT. SHE DOESN'T EXAGGERATE WHAT
8 WAS IN IT. SHE DOESN'T CLAIM THERE WAS A DIGITAL CAMERA
9 WITH THIRTY-THREE HUNDRED DOLLARS OR SHE HAD TONS OF CASH.
10 SHE SAYS THERE WAS FIFTEEN DOLLARS WORTH OF STUFF IN MY
11 PURSE, AND HE DROVE OFF WITH IT. I GUESS SHE PLANTED IT
12 THERE SO SHE COULD SAY RAPE LATER. BECAUSE, YOU KNOW,
13 SHE'S GOT THIS RAPE THING DOWN PAT. HE ALSO SAYS IT WAS
14 ON THE DRIVER'S SIDE HOOD OF THE CAR. HE CHANGES HIS
15 STORY WHEN HER FINGERPRINTS ARE ON THE REAR WINDSHIELD OF
16 THE CAR. HE TELLS YOU THAT THEY MEET UP AT TWO THIRTY IN
17 THE MORNING, NOT FIVE THIRTY IN THE MORNING. WHY IS HE
18 LOOKING TO HIDE WHAT TIME THEY GOT TOGETHER? FOR THE MOST
19 PART HE KNOWS IT'S AROUND DAYBREAK. HE STATES, SHE ASKED
20 ME FOR A DATE. MR. LEMEL SAYS THE VIDEO WAS CONCLUSIVE.
21 NOW, MR. LEMEL'S PUTTING A LOT OF SPIN ON THIS VIDEO. YOU
22 CAN LOOK AT IT AGAIN. IN ONE FRAME SHE'S AT THE CORNER
23 AND HE'S HEADING TO HER CAR. IN THE NEXT FRAME THEY'RE
24 BOTH GONE. WHO APPROACHED WHO? NOT RESOLVED. AND HERE'S
25 THE THING, YOU DON'T NEED TO ANSWER THAT QUESTION. THE

CLOSING STATEMENTS

747

1 JUDGE IS GOING TO GIVE YOU SOME VERDICT FORMS AND IN ONE
2 OF THE QUESTIONS YOU'RE NOT GOING TO CHECK OFF WAS MISTI
3 HILL APPROACHED TERRY DUNOVANT. CHECK. TERRY DUNOVANT
4 APPROACHED MISTI HILL. CHECK. DOES IT REALLY MATTER WHO
5 APPROACHED WHO IF SHE WAS LOOKING FOR A RIDE AND CALLED
6 OUT FOR HIM OR HE WAS LOOKING FOR SEX AND CALLED OUT TO
7 HER? DOES THAT REALLY MATTER? IF SHE CALLED OUT TO HIM
8 DOES THAT MEAN IT'S NOT RAPE? NO. HE TELLS YOU SHE'S
9 BEEN DOING CRACK, TURNING TRICKS ALL NIGHT. THE
10 TOXICOLOGIST TOLD YOU SHE HASN'T DONE CRACK, MORE THAN ONE
11 PUFF THAT DIDN'T INHALE ANY APPRECIABLE AMOUNT IN THE PAST
12 TWELVE HOURS. IF SHE'S A CRACK PROSTITUTE TURNING TRICKS
13 ALL NIGHT AND NOT A WORKING GIRL DRINKING AT A BAR, HER
14 CRACK LEVEL WOULD'VE BEEN AT SOME LEVEL APPRECIABLE. SHE
15 WOULD'VE HAD MORE THAN A PUFF. BECAUSE MR. DUNOVANT TELLS
16 YOU, YOU GET THE CRACK, YOU DO THE CRACK. YOU DON'T HOARD
17 IT LIKE SQUIRRELS WITH NUTS FOR WINTER. IF SHE'S OUT
18 THERE TURNING TRICKS, THE CRACK PROSTITUTE THEY WANT TO
19 TURN HER INTO, WHERE IS THE CRACK IN HER SYSTEM? HE TELLS
20 YOU AND HE'S GOING TO TELL YOU THAT SHE HAD THE INJURIES
21 ON HER WHEN HE PICKED HER UP, BECAUSE OTHERWISE HE DID
22 THAT TO HER. IS THAT REALLY THE PROSTITUTE YOU'RE GOING
23 TO PICK THAT NIGHT, THE ONE THAT LOOKS LIKE THAT IN THOSE
24 PHOTOGRAPHS, THE ONE WITH THREE BROKEN RIBS THAT CAN
25 BARELY MOVE, THE ONE THAT'S BIPOLAR, EMOTIONAL,

CLOSING STATEMENTS

748

1 IRRATIONAL? THAT'S WHO YOU'RE GOING TO CHOOSE TO SLEEP
2 WITH THAT NIGHT, WHEN THERE'S PLENTY OF THEM AROUND THE
3 CORNER? IT'S NOT LIKE THAT WAS YOUR ONLY CHANCE? OR DID
4 SHE REALLY NOT LOOK LIKE THAT YET, THAT HE REALLY WASN'T
5 FEELING SORRY FOR HER YET, THAT HE REALLY THOUGHT HE FOUND
6 SOMEONE VULNERABLE THAT HE COULD TAKE ADVANTAGE OF? DID
7 HE NECESSARILY PICK HER UP WITH THE PLANS TO RAPE HER? I
8 DON'T KNOW. YOU DON'T NEED TO DECIDE. COULD IT HAVE BEEN
9 THAT WHEN HE FOUND OUT SHE DIDN'T HAVE THE MONEY TO PAY
10 FOR THE RIDE OR CRACK HE DECIDED HE WAS GOING TO GET HIS
11 MONEY'S WORTH ONE WAY OR THE OTHER? BUT IT IS NOT
12 REASONABLE TO BELIEVE THAT SHE LOOKED LIKE THAT WHEN HE
13 PICKED HER UP. HE HAS TO COME UP WITH A STORY THAT SHE
14 DID SO YOU DON'T THINK HE DID IT TO HER. HE FURTHER HAS
15 TO COME UP WITH A STORY THAT HE HAD GOT IN A FIGHT WITH
16 SOMEBODY ELSE TO EXPLAIN WHY HIS OWN HAND ENDS UP IN A
17 CAST THE NEXT DAY. HE SAYS SHE GOT MAD BECAUSE SHE DIDN'T
18 GET ENOUGH MONEY, AND THAT'S WHY SHE CRIED RAPE, BECAUSE
19 THAT'S WHAT YOU HAVE TO BELIEVE, BECAUSE WHAT ELSE DOES
20 SHE HAVE TO GAIN? RAPE VICTIMS DON'T GET A FREE TRIP TO
21 DISNEY WORLD. HER PARENTS AREN'T GOING TO EMBRACE HER
22 WITH OPEN ARMS WHEN THEY FIND OUT SHE WAS OUT DRINKING AND
23 SMOKING CRACK THAT NIGHT. AND SHE SAYS TO NOT ONLY THE
24 DOCTOR, THE NURSE, BUT THE DETECTIVES THAT SHE HAD SMOKED
25 CRACK WITH HIM THAT NIGHT, SO SHE'S NOT AFRAID OF WHAT TO

CLOSING STATEMENTS

749

1 HIDE FROM HER MOM ANYMORE. . WHAT DOES MISTI HILL HAVE TO
2 GAIN BY TELLING THIS STORY? WHAT? WHAT DOES HE HAVE TO
3 LOSE IF YOU DON'T BELIEVE HIS? BECAUSE SHE NOT ONLY HAD
4 TO CRY RAPE, SHE HAD TO DO IT WITH A CERTAIN AMOUNT OF
5 CLAIRVOYANCE AND CONSCIOUSNESS THAT THEY WANT YOU TO
6 BELIEVE SHE'S TOO IRRATIONAL INTOXICATED TO COME UP WITH,
7 THAT SHE WOULD COME UP WITH A GRAVEYARD WHERE THERE WAS
8 SOME JEWELRY LYING AROUND SHE COULD LATER CLAIM WAS HERS,
9 THAT SHE TOOK HIM FIFTEEN MILES SOUTH TO SOUTH CAROLINA
10 BECAUSE SHE HAD SOMETHING TO HIDE EVEN THOUGH SHE'S DOING
11 IT AT THE GAS STATION, THAT IN BETWEEN GIVING HIM ORAL SEX
12 AND SMOKING CRACK SHE'S TELLING HIM WHERE TO GO. HE WANTS
13 YOU TO BELIEVE THAT HE'S SMOKING CRACK DRIVING DOWN THE
14 ROAD. HE TELLS YOU IT'S A PIPE; IT'S NOT A CIGARETTE.
15 REALLY? WITH TWO HANDS ON THE STEERING WHEEL AND SHE
16 PERFORMING ORAL SEX YOU'VE GOT A CRACK PIPE YOU'RE BURNING
17 AND DRIVING DOWN THE ROAD? THAT'S HIS REASONABLE STORY?
18 LOOK AT HIS STATEMENT AND WHAT HE DESCRIBES AS THE
19 INJURIES TO HER AND TO LIEUTENANT TOLSON. SHE'S GOT A
20 KNOT ON HER HEAD AND SOME SCRATCHES. LOOK AT HOW HIS
21 TESTIMONY CHANGES NOW THAT HE SAT THROUGH THE TRIAL.
22 SHE'S GOT A BRUISED CHEST, A SPLIT LIP. HE DOESN'T SAY
23 THAT (SIC) LIEUTENANT TOLSON. WHY WOULD YOU CHANGE YOUR
24 STORY? BECAUSE YOU'VE SEEN THE PICTURES? LOOK AT THE T-
25 SHIRT. ASK HIM IF HE COULD'VE SEEN THE BRUISES TO HER

CLOSING STATEMENTS

750

1 CHEST. YOU HAVE THE OPPORTUNITY TO OBSERVE BOTH OF THEM
2 TESTIFY. YOU HAD THE OPPORTUNITY TO SEE MISTI HILL BECOME
3 EMOTIONAL WHEN SHE DESCRIBED THE RAPE. WAS SHE PERHAPS
4 CONFRONTATIONAL WITH MR. LEMEL? YES. SHE IS HERE TELLING
5 YOU SOME RATHER EMBARRASSING DETAILS AND HE IS DEFENDING
6 THE MAN THAT RAPED HER. LOOK AT HIS TESTIMONY. LOOK AT
7 HOW MANY TIMES I WOULD ASK THE SAME QUESTION AND HE
8 WOULDN'T ANSWER OR I'D ASK DIFFERENT QUESTIONS AND I GOT
9 THE SAME REHEARSED ANSWER. HE DIDN'T LIKE LIEUTENANT
10 TOLSON, NOT BECAUSE SHE WAS TRYING TO TRICK HIM. HE
11 DIDN'T LIKE ME ANYMORE WHEN I APPROACHED HIM WITH THE
12 PHOTOGRAPHS. HE FOR THE MOST PART WOULD BARELY EVEN
13 ACKNOWLEDGE I WAS HERE. HE SAT HERE THIS WAY LOOKING AT
14 ME JUST OUT OF THE CORNER OF THE EYE. HE GAVE PATENT
15 ANSWERS OF NO I DIDN'T DO THAT. MR. LEMEL SAYS WELL HE
16 ACKNOWLEDGED HE TRADED SEX FOR CRACK. SURE. HE DIDN'T
17 USE A CONDOM. HE KNEW THEY WERE GOING TO BE ABLE TO PROVE
18 HE HAD SEX WITH HER. WHEN THEY TOLD HIM WHO THEY HAD, WHO
19 WAS BLAMING HIM OF RAPE HE COULDN'T DENY THE SEX BECAUSE
20 HE HADN'T USED A CONDOM. HE SAYS, OH, I JUST WENT WHERE
21 SHE TOLD ME. THAT'S HOW WE ENDED UP IN THAT GRAVEYARD.
22 A MAN WHO GETS SLIGHTED TEN TO FIFTEEN DOLLARS ON CRACK
23 GETS IN A FISTFIGHT WITH HIS DRUG DEALER BUT IS GOING TO
24 LET A PROSTITUTE TAKE HIM ON A BESSEMER CITY CLOVER DETOUR
25 TO HAVE SEX? AND NOT GOING TO, LOOK HONEY, WE'VE GONE FAR

CLOSING STATEMENTS

751

1 ENOUGH; WE'RE GOING TO PULL OVER THIS PARKING LOT RIGHT
2 HERE; WE DON'T NEED TO GO ALL THE WAY DOWN TO THAT
3 GRAVEYARD DOWN THERE. WHY WE GOING ALL THE WAY DOWN
4 THERE? REALLY? HE'S JUST DRIVING AND SHE'S TELLING HIM
5 WHERE TO GO. HE'S NOT AN INNOCENT BYSTANDER. HOW DO YOU
6 KNOW THE SEX WAS NOT CONSENSUAL? BEYOND THE INJURIES,
7 BEYOND THE INJURIES HOW DO YOU KNOW IT WASN'T CONSENSUAL?
8 IF IT WAS CONSENSUAL AND SHE WAS LOOKING FOR A RIDE HOME,
9 THEY'RE NOT GOING TO THE GRAVEYARD, THEY'RE STOPPING AT
10 THE BUSINESS AT THE END OF HER ROAD, SHE'D BE ABLE TO WALK
11 HOME AFTERWARDS. THEY'RE GOING TO STAY BY THE GAS STATION
12 UP AT THE TRUCK STOP WHERE WHEN SHE GETS DONE WITH TERRY
13 SHE CAN TURN THE NEXT TRICK. THE ONLY REASON TO GO TO THE
14 GRAVEYARD IS YOU HAVE SOMETHING MORE PLANNED. SHE LEAVES
15 HER PURSE IN THE CAR. NOBODY REALLY SAID HE PULLED IT
16 AWAY FROM HER. HE'S NOT CHARGED WITH STEALING THE PURSE.
17 THE REASON YOU'RE TOLD OF THE PURSE IS BECAUSE SHE WASN'T,
18 HI, THANKS FOR THE SEX AND THE BANDANNA, HAVE A NICE
19 NIGHT, GET OUT AT THE HOT SPOT, TAKE YOUR PURSE WITH YOU,
20 THAT WAS SOME GOOD CRACK. THAT'S NOT HOW THE NIGHT CAME
21 TO AN END. BUT THAT IS HOW CONSENSUAL SEX WOULD HAVE.
22 NON-CONSENSUAL SEX YOU LEAVE HER IN THE GRAVEYARD WHERE
23 YOU RAPED HER. HE GETS RID OF HIS WIFE-BEATER T-SHIRT.
24 IF YOU JUST TRADED SEX FOR CRACK, WHY ARE YOU CHANGING
25 CLOTHES? WHY ARE YOU DITCHING THE PURSE? WHY DO YOU NOT

CLOSING STATEMENTS

752

1 KNOW NOTHING ABOUT IT WHEN THE POLICE ASKED YOU? SHE MADE
2 A MISTAKE; SHE LEFT HER PURSE IN MY CAR. I'VE LEFT MY
3 PURSE IN MY HUSBAND'S CAR BEFORE. IT'S NOT LIKE THAT. I
4 DON'T KNOW NOTHING. DO WE REALLY BELIEVE MR. LEMEL'S
5 SUGGESTION THAT SHE SAID IN HER GROSSLY INTOXICATED,
6 BIPOLAR, EXAGGERATING, FAKING THE RAPE STORY SHE SAYS, OH,
7 I THINK IF I GET RID OF MY PURSE IT'LL LOOK BETTER? THE
8 JEWELRY IN THE GRAVEYARD, DID SHE PLANT IT? DID IT COME
9 OFF IN THE STRUGGLE? OR AS MR. LEMEL SUGGESTED, SHE JUST
10 HAPPENED TO PICK A GRAVEYARD WITH JEWELRY LYING ON THE
11 GROUND AND LATER, SAY, OH, THAT'S MINE, LET ME BUY SOME
12 MATCHING EARRINGS. THEY WANT TO ATTACK WHAT WASN'T TESTED
13 IN THIS CASE. THEY WANT TO ATTACK THE POLICE WHO SUGGESTS
14 THAT DETECTIVE BOMAR IS THIS SPIN DOCTOR EXTRAORDINAIRE,
15 BECAUSE HE DOESN'T REMEMBER THE TRUCK PUMPS IN THE OTHER
16 PHOTOGRAPH, THAT HE WON'T ACKNOWLEDGE THAT THE DARK BLURRY
17 PIXELATED AREA NEAR THE CAR IS A LEG AND BECAUSE HE WON'T
18 ACKNOWLEDGE THAT SHE COULD BE CROOKING HER FINGER WHEN
19 HE'S MERELY STATING THE SAME THING YOU SAY, HE CAN'T TELL
20 WHAT THAT IS. AND MR. LEMEL SAYS, OH, HE WOULDN'T ADMIT
21 HE KNEW ANYTHING ABOUT PROSTITUTION. THAT'S NOT WHAT
22 DETECTIVE BOMAR SAID. HE SAID, I DON'T KNOW OF ANY
23 SPECIAL HIERARCHY AMONG PROSTITUTES, BUT HE DID
24 ACKNOWLEDGE THAT HE KNEW ABOUT PROSTITUTION. THEY WANT TO
25 TALK ABOUT, OH, THEY COULD'VE TESTED ALL THIS EVIDENCE.

CLOSING STATEMENTS

753

1 IT SAT THERE FOR TWO YEARS. BUT AS LILY GALLMAN EXPLAINS
2 TO YOU, SLED STARTS WITH THE INSIDE OF THE BODY AND STOPS.
3 I TOLD YOU AT THE BEGINNING I DON'T GET MY DNA RESULTS IN
4 THIRTY MINUTES. PART OF THE REASON THIS CASE IS SO LONG,
5 WE WERE WAITING ON THE TESTING, NOT BECAUSE IT TAKES SO
6 LONG, BUT BECAUSE OF THE AMOUNT OF CRIME IN SOUTH CAROLINA
7 HAS CREATED SUCH A BACK LOG AT THE STATE CRIME LAB THAT WE
8 HAVE TO WAIT ON IT. THEY TESTED HER VAGINA. THEY WANT
9 YOU TO SAY, OH, BUT THE PANTIES, THAT'S WHERE THE REAL
10 EVIDENCE OF PROSTITUTION IS. REALLY? MOST MEN HAVING SEX
11 WITH PROSTITUTES EITHER EJACULATE IN THEIR MOUTH OR THEIR
12 VAGINA, NOT PANTIES. HER VAGINA HAD ONE PERSON'S DNA.
13 HIS. HER ORAL SWABS HAD NOTHING. DON'T YOU THINK IF THE
14 MIXTURE WAS IN THE PANTIES IT MIGHT ACTUALLY ALSO BE IN
15 THE VAGINA? OH, WE COULD'VE TESTED THAT. WE COULD'VE
16 FINGER-PRINTED THE JEWELRY, BECAUSE IT'S NOT ENOUGH SHE'S
17 WEARING SIMILAR JEWELRY IN THE PHOTOS. THEY HAD SEX. NO
18 DOUBT ABOUT IT. THEY WANT YOU TO LOOK AT EVIDENCE THAT
19 WASN'T TESTED SO YOU DON'T LOOK AT THE INJURIES THAT ARE
20 SINGULARLY CONVINCING. BECAUSE HERE'S THE THING, YOU CAN
21 ASSUME ARGUMENT OR YOU CAN GIVE THEM THE BENEFIT OF THE
22 DOUBT THAT SHE IS A PROSTITUTE THAT HAS BEEN TURNING
23 TRICKS ALL NIGHT. THERE'S NO DOUBT ABOUT IT BASED ON THE
24 VIDEO THAT SHE HAD --- SHE DID NOT HAVE THOSE INJURIES
25 WHEN HE PICKED HER UP. THREE BROKEN RIBS. I DON'T CARE

CLOSING STATEMENTS

754

1 HOW GOOD THE CRACK IS, SHE'S NOT WALKING AROUND THAT WELL.
2 A BUSTED EARDRUM, POSSIBLY TWO, BRUISES, LACERATIONS, RUB
3 MARKS, SCRAPES, SHE'S LOOKING LIKE THAT? BECAUSE EVEN IF
4 SHE WAS A PROSTITUTE, HE DIDN'T DESERVE (SIC) TO DO THAT
5 TO HER. THAT DOESN'T MAKE HIM NOT GUILTY. THE FACT THAT
6 YOU RAPE AND KIDNAP A PROSTITUTE, THAT'S NOT A LICENSE FOR
7 YOU, BECAUSE UNFORTUNATELY, IT USED TO BE A LONG TIME AGO
8 THAT IF A WOMAN WAS WEARING A SHORT SKIRT, DRESSED
9 PROVOCATIVELY, SLIGHTLY INTOXICATED, IT WASN'T RAPE, BUT
10 WE'VE CHANGED, AND THE LAW SAYS A WOMAN HAS THE RIGHT TO
11 SAY NO, AND YOU JUST DON'T HAVE TO TAKE MISTI HILL'S WORD
12 THAT SHE SAID NO. YOU HAVE HER INJURIES TO PROVE IT,
13 BECAUSE LOOKING AT THE PHOTOS OF HER, LOOKING AT HER
14 INJURIES, WHAT YOU KNOW IS NO MATTER WHAT THEY HAVE SAID
15 ABOUT HER BACKGROUND AND, OH, THEY WANT TO TALK ABOUT HOW
16 TEN YEARS AGO SHE HAD A FRAUDULENT CHECK CONVICTION. HE'S
17 GOT A POSSESSION OF STOLEN GOODS AND TWO FRAUDULENT CHECKS
18 AS WELL. THAT MEANS YOU DON'T BELIEVE HER? THAT MEANS
19 IT'S OKAY TO RAPE HER? THAT MEANS IT'S OKAY TO KIDNAP
20 HER? NO ONE CONSENTS TO THOSE INJURIES. NO ONE DESERVES
21 THOSE INJURIES, AND THOSE INJURIES ARE EVIDENCE THAT SHE
22 WAS RAPED AND KIDNAPPED THAT DAY, PERIOD. THERE'S NO SPIN
23 GOING TO MAKE THAT GO AWAY. THEIR STORY ABOUT HOW CRACK
24 MASK THE PAIN. EVIDENTLY SEX WITH HIM WAS THE ANTIDOTE TO
25 THE MASK, BECAUSE THE MINUTE SHE GETS DONE SHE'S AT THE

CLOSING STATEMENTS

755

1 DIXIE DINER CALLING 9-1-1. HE PICKS HER UP AT FIVE
2 THIRTY; THEY MAKE IT ALL THE WAY SOUTH, HAVE THE SEX AND
3 BY A LITTLE BEFORE SIX THIRTY SHE'S CALLING 9-1-1, AND
4 ACCORDING TO THEM THEY SMOKED CRACK IN BETWEEN, SO SOMEHOW
5 THAT'S NOT CONTINUING THE MASKING EFFECT THEY WANT YOU TO
6 BELIEVE WOULD'VE CAUSED HER TO IGNORE THE INJURIES ALL
7 NIGHT. THE EVIDENCE IS CLEAR AND IT IS COMPELLING. HER
8 STORY WHILE NOT WISE, WHILE NOT SOMETHING YOU OR I MIGHT
9 DO, NONETHELESS COMPELLING, CONSISTENT WITH ALL THE
10 EVIDENCE. SHE GOT THE TAG NUMBER RIGHT. SHE MISSED THE
11 LAST NUMBER. FOUR TWENTY DOLLAR ROCKS, .15 BA, FAKING
12 RAPE CHARGE LIKE A MASTERMIND, SHE EVEN GETS THE TAG
13 NUMBER RIGHT. BECAUSE THAT'S THE WAY IT HAPPENED, NOT
14 BECAUSE SHE DESERVES TO TEACH CLASSES ON HOW TO FAKE A
15 RAPE CHARGE TOMORROW. SHE GOT IN THE CAR WITH HIM. THEY
16 DROVE SOUTH. HE DROVE HER TO A GRAVEYARD; HE DECIDED HE
17 WAS GOING TO GET HIS MONEY'S WORTH, EITHER WHAT HE'D GIVEN
18 HER IN THE LONG RIDE HOME, THE CRACK THEY SHARED, AND HE
19 WAS GOING TO GET IT WITH SEX, THE SAME WAY HE GOT HIS OWN
20 WAY WHENEVER. HE ADMITTED TO YOU THAT HE'S NOT A MAN
21 ABOVE GETTING WHAT HE DESERVES IS HIS. MR. LEMEL, WELL,
22 THERE'S NO TEARING AND ABRASION, SO IT WASN'T RAPE. MAYBE
23 BY THE TIME HE BEAT HER UP SO BAD SHE FINALLY JUST
24 RELENTEED. MAYBE BECAUSE THEY DIDN'T HAVE A SANE NURSE
25 QUALIFIED AT PMC THAT THEY COULDN'T BRING THE DYE IN THERE

CLOSING STATEMENTS

756

1 ARE TEARS AND ABRASIONS THERE, BUT EVEN WITHOUT THE
2 INTERNAL INJURIES, THE EXTERNAL INJURIES OF RAPE ARE
3 COMPELLING. GO INTO YOUR JURY ROOM; LISTEN TO THE
4 EVIDENCE; LISTEN TO THE CHARGE OF THE JUDGE; LOOK AT THE
5 EVIDENCE; LOOK AT WHO GOT WHAT MORE RIGHT; LOOK AT WHO HAS
6 SOMETHING TO GAIN; LOOK AT WHO HAS SOMETHING TO LOSE. DO
7 NOT MAKE A DECISION ON WHO YOU'D RATHER BE FRIENDS WITH OR
8 INVITE OVER FOR DINNER OR ANY OTHER FATHOMABLE,
9 CONCEIVABLE NOTION, OTHER THAN WHAT DOES THE EVIDENCE
10 SHOW. DOES IT SHOW THAT MISTI HILL WAS OUT DRINKING THAT
11 NIGHT? YES, THAT'S WHAT SHE TOLD YOU. DOES IT SHOW YOU
12 THAT SHE HADN'T BEEN TURNING TRICKS ALL NIGHT? YES, NO
13 CRACK IN HER SYSTEM TELLS YOU THAT. DOES IT SHOW YOU WHO
14 APPROACHED WHO? NO, BUT YOU DON'T NEED TO ANSWER THAT
15 QUESTION. WE KNOW SHE GOT IN THE CAR WITH HIM; WE KNOW
16 THEM ENDED UP IN THE GRAVEYARD. DOES IT SHOW YOU WHETHER
17 OR NOT CONSENSUAL SEX WAS BY FORCE OR NOT, WHETHER HE BEAT
18 HER, WHETHER HE USES AGGRAVATED FORCE TO COMPEL HER TO
19 HAVE SEX WITH HIM? HE'S CHARGED WITH ORAL SEX AND VAGINAL
20 SEX. HOW DO YOU KNOW THE ORAL SEX WASN'T CONSENSUAL AND
21 THE VAGINAL CONSENT IS WHEN SHE PUT UP A FIGHT? BECAUSE
22 HE BOXED HER IN THE EAR WHEN SHE WOULDN'T PERFORM ORAL
23 SEX. BECAUSE IF THEY'RE HAVING SEX FROM BEHIND THERE'S NO
24 REASON TO BEAT HER UP THE SIDE OF THE HEAD. THAT'S WHEN
25 SHE GETS THE BRUISE IN THE BACK OF THE HEAD. MR. LEMEL,

CLOSING STATEMENTS

757

1 WELL, THE STORY ABOUT HOW THEY GOT IN THE BACK OF THE CAR
2 THAT'S NEW TODAY. HE DIDN'T ASK ANY OF THE OTHER PEOPLE
3 WHETHER SHE DIDN'T TELL HIM THAT, AND SHE SAYS THEY GET IN
4 THE BACK OF THE CAR AND THEY COULDN'T DO SEX. HIS
5 STATEMENT ABOUT HER PANTS BEING DOWN THAT'S HIS
6 RECOLLECTION. YOU LISTEN TO THE TESTIMONY. SHE DIDN'T
7 SAY THAT. SHE SAID THEY GOT BACK THERE; HE'S TRYING TO
8 GET HER PANTS OFF AND BECAUSE SHE HAPPENED TO BE A TALL
9 GIRL, SO IS HE AND THEY'RE IN THE BACK OF A FORD TAURUS
10 THAT HE CAN'T MANAGE TO ACCOMPLISH IT THERE. BUT THAT IS
11 WHERE SHE GETS THE CHOKE MARKS ON HER NECK AND THE
12 BRUISING THAT YOU SEE, THAT HE PULLS HER BACK OUT OF THE
13 CAR, THAT HE BENDS HER OVER THE BACK OF THE CAR AND THE
14 STRUGGLE CONTINUES AND THAT'S HOW SHE GETS THE ZIPPER
15 ABRASIONS UP AND DOWN HER BUTTOCKS AND HER BACK. SHE
16 LEAVES THE PURSE IN THE CAR AND SHE RUNS TO THE DIXIE
17 DINER. HE TELLS YOU SHE (SIC) DROPS HER OFF AT THE HOT
18 SPOT. WHY DOESN'T SHE JUST CALL 9-1-1 FROM THERE? WHY
19 DOES SHE SOMEHOW MANAGE TO MAKE IT FIFTY YARDS BACK TO THE
20 DIXIE DINER? SHE DECIDED THAT WAS A MORE COMPELLING PLACE
21 TO CRY RAPE? OR IS THAT JUST WHERE HE REMEMBERS PASSING
22 AFTER HE LEFT HER IN THE GRAVEYARD SO HE CAN CLAIM THAT HE
23 DIDN'T RAPE AND KIDNAP HER, HE DROPPED HER OFF AFTER THEY
24 ENGAGED IN CONSENSUAL SEX, OH, AND SHE GAVE ME THE
25 BANDANNA BECAUSE SHE'S A CONSIDERABLE PROSTITUTE AND

CLOSING STATEMENTS

758

1 WANTED ME TO BE CLEAN AFTERWARDS. REALLY? THAT'S
2 REASONABLE DOUBT? CONSIDER THE EVIDENCE; CONSIDER THE
3 STORY; LISTEN TO THE TESTIMONY IF YOU NEED TO. YOUR JOB
4 DOESN'T START IF I FAIL MY JOB. YOUR JOB STARTS THE DAY
5 WE START LISTENING TO TESTIMONY AND YOUR JOB TRULY BEGINS
6 IN EARNEST WHEN YOU GO BACK INTO THE JURY ROOM AND YOU
7 DELIBERATE. AND THE STATE FEELS THAT WHEN YOU DO SO AND
8 YOU LOOK AT THE EVIDENCE AND YOU LOOK AT THE PHOTOS AND
9 YOU LOOK AT THE INJURIES, THAT YOU WILL COME TO THE SAME
10 CONCLUSION LAW ENFORCEMENT DID, THAT THE DEFENDANT IS
11 GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE FOR
12 THE ORAL SEX HE FORCED HER TO PERFORM, FOR THE VAGINAL SEX
13 HE FORCED UPON HER AND THAT HE KIDNAPPED AND CONFINED HER
14 IN THE BACK OF THE CAR BECAUSE ANY WOMAN WOULD'VE RUN AWAY
15 FROM THAT, THAN THE BEATING SHE CHOSE TO ENDURE. AND YOU
16 HOLD HIM ACCOUNTABLE AND YOU TELL HIM THAT JUST BECAUSE
17 SHE WAS VULNERABLE OR BIPOLAR OR INTOXICATED OR ANY OTHER
18 NAMES THEY WANT TO CALL HER, SHE DIDN'T DESERVE THIS. SHE
19 DIDN'T CONSENT TO THIS, AND HE DIDN'T HAVE A LICENSE TO
20 RAPE.

21 THE COURT - MEMBERS OF THE JURY PANEL, WE'RE
22 GOING TO TAKE A BREAK BEFORE I CHARGE YOU ON THE LAW.
23 DON'T START DELIBERATING YET. THIS WILL BE JUST A
24 REFRESHER BREAK.

25 (JURY EXITS THE COURTROOM)

CLOSING STATEMENTS

759

1 (RECESS TAKEN)

2 THE COURT - THANK YOU. TAKE YOUR SEATS. LET'S
3 GET MR. DUNOVANT.

4 WHILE HE'S COMING IN, WHAT ABOUT THE VIDEO? HOW
5 DO WE --- HOW DOES COUNSEL PROPOSE THAT --- IT'S IN
6 EVIDENCE. RIGHT?

7 MS. LIPINSKI - IT IS IN EVIDENCE. I THINK THAT
8 EITHER THEY CAN COME IN IF THEY WANT TO --- I DON'T KNOW
9 THAT THERE'S A WAY TO DO IT BACK THERE.

10 THE COURT - WELL, THE PROBLEM WITH COMING IS
11 THAT THAT PUTS THE CASE BACK IN ONE OF Y'ALL'S CONTROL AND
12 THAT ---

13 MS. LIPINSKI - I DON'T KNOW --- DO YOU OBJECT IF
14 WE GET DAVID IN HERE SEEING HE'S THE COMPUTER GUY ---

15 THE COURT - WELL, YOU CAN SEE WHAT MY CONCERN IS
16 THAT IF THE JURY COMES IN TO WATCH IT WE'VE GOT THE JURY
17 DIRECTING SOMEBODY, WELL, BACK IT UP THERE, DO THIS AND
18 THAT. OF COURSE, I --- IT'S GOING TO BE VERY AWKWARD.
19 I'M GOING TO GIVE THEM THAT OPTION, BUT WE'VE GOT TO HAVE
20 SOMEBODY WHO IS SEMI-NEUTRAL AND IT'S NOT ME. I DON'T
21 KNOW IF MY --- MY CLERK ---

22 MS. LIPINSKI - I CAN --- WE CAN EASILY EDUCATE
23 HIM. IT'S NOT THAT COMPLICATED ONCE WE FIGURE OUT ---

24 THE COURT - HE WENT TO THE CITADEL. YOU THINK
25 HE CAN --- YOU THINK YOU CAN EASILY EDUCATE HIM?

JURY CHARGE

760

1 MS. LIPINSKI - I THINK THIS PARTICULAR PROGRAM
2 I CAN EASILY EDUCATE HIM.

3 MR. LEMEL - IF I CAN ONLY MESS IT UP AS MUCH AS
4 I DID, HE CAN'T MESS IT UP ---

5 THE COURT - WELL, ALL RIGHT --- I'LL JUST TELL
6 THEM TO COME BACK IN IF THEY WANT TO SEE AND WE'LL GET
7 SCOTT VERSED ON IT, BECAUSE I DO HAVE SOME CONCERNS ABOUT
8 ONE PARTY ---

9 MS. LIPINSKI - THAT'S FINE.

10 THE COURT - AND I KNOW I CAN'T DO IT.

11 (MR. DUNOVANT ENTERS THE COURTROOM)

12 THE COURT - ALL RIGHT, BRING IN THE JURY.

13 (JURY ENTERS THE COURTROOM)

14 JURY CHARGE

15 THE COURT - MEMBERS OF THE JURY PANEL IT'S NOW
16 TIME FOR ME TO CHARGE YOU THE LAW WHICH YOU ARE ULTIMATELY
17 TO APPLY TO THE FACTS AS YOU DETERMINE THE FACTS TO BE.
18 AS YOU KNOW, MR. DUNOVANT IS CHARGED WITH THREE OFFENSES,
19 TWO ARE CRIMINAL SEXUAL CONDUCT. THEY ALLEGE HE COMMITTED
20 A SEXUAL BATTERY ON MS. HILL ON THE DATE SET FORTH IN THE
21 INDICTMENT, ONCE VAGINALLY AND ONCE ORALLY. IT'S ALLEGED
22 ALSO THAT ON THAT DATE HE KIDNAPPED HER. I WILL DEFINE
23 THOSE TERMS FOR YOU LATER AND TELL YOU THE ELEMENTS THAT
24 MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. I
25 TELL YOU NOW THAT THE FACT THAT MR. DUNOVANT HAS BEEN

JURY CHARGE

761

1 CHARGED, THE FACT THAT HE IS ON TRIAL IS NOT EVIDENCE.
2 THAT'S JUST THE WAY OUR SYSTEM WORKS. WHEN SOMEONE IS
3 THOUGHT TO HAVE COMMITTED AN OFFENSE THEY ARE CHARGED.
4 THE CASE IS PROCESSED THROUGH OUR COURT SYSTEM; IT GOES TO
5 A TRIAL AND THEN IT IS UP TO YOU TO DETERMINE WHETHER OR
6 NOT THE STATE HAS CONVINCED YOU OF THAT PERSON'S GUILT
7 BEYOND A REASONABLE DOUBT, BUT THE FACT THAT HE IS ON
8 TRIAL IS OF NO IMPORTANCE IN DETERMINING WHAT YOUR VERDICT
9 SHOULD BE, NOR IS THE FACT THAT THERE ARE THREE
10 INDICTMENTS. AGAIN, THE STATE BELIEVES THAT THEY --- OR
11 HAVE CHARGED HIM WITH THREE SEPARATE OFFENSES, BUT THE
12 STATE MUST PROVE EACH OF THOSE INDEPENDENT OF THEMSELVES.
13 THAT IS, YOU EXAMINE EACH CHARGE BASED ON THE LAW AS I
14 CHARGE IT TO YOU AS THE ELEMENTS OF THAT OFFENSE AND LOOK
15 AT THE FACTS AND SEE IF THE STATE HAS PROVEN THAT OFFENSE
16 BEYOND A REASONABLE DOUBT AND YOUR VERDICT MAY BE ONE ---
17 A VERDICT ON ONE CHARGE AND A DIFFERENT ONE ON ANOTHER
18 CHARGE. MR. DUNOVANT HAS PLED NOT GUILTY TO THESE CHARGES
19 AND HIS PLEA OF NOT GUILTY PLACES ON THE STATE THE BURDEN
20 TO PROVE HIS GUILT BEYOND A REASONABLE DOUBT. ANYONE
21 CHARGED WITH ANY OFFENSE IN OUR SYSTEM IS PRESUMED
22 INNOCENT. PRESUMPTION OF INNOCENCE IS A SUBSTANTIAL LEGAL
23 RIGHT. IT IS NOT JUST A MERE LEGAL THEORY OR MERE LEGAL
24 PHRASE. IT IS A SUBSTANTIAL RIGHT THAT INURES TO THE
25 BENEFIT OF ANY CHARGED WITH ANY OFFENSE IN OUR SYSTEM.

JURY CHARGE

762

1 THE PRESUMPTION OF INNOCENCE ATTACHED TO MR. DUNOVANT AT
2 THE TIME OF HIS ARREST HAS PROCEEDED WITH HIM AS HIS CASE
3 IS PROCESSED THROUGH OUR COURT SYSTEM, REMAINS WITH HIM AT
4 THIS MOMENT. IN FACT, PRESUMPTION OF INNOCENCE REMAINS
5 WITH MR. DUNOVANT AND INURES TO HIS BENEFIT EVEN AS YOU
6 DELIBERATE. PRESUMPTION OF INNOCENCE IN MR. DUNOVANT'S
7 FAVOR IS REMOVED IF AND WHEN AND ONLY IF AND WHEN YOU AS
8 THE TRIAL JURY IN THIS CASE DETERMINE THAT THE STATE HAS
9 PROVEN HIS GUILT BEYOND A REASONABLE DOUBT. NOW, THE
10 STATE IS NOT REQUIRED TO PROVE HIS GUILT BEYOND ALL OR
11 BEYOND EVERY DOUBT. THERE ARE VERY FEW THINGS IN OUR LIFE
12 THAT WE CAN KNOW WITH ABSOLUTE CERTAINTY AND THAT IS NOT
13 REQUIRED. OUR COURTS HAVE DEFINED A REASONABLE DOUBT AS
14 THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
15 HESITATE TO ACT. PROOF BEYOND REASONABLE DOUBT IS PROOF
16 THAT LEAVES YOU FIRMLY CONVINCED OF AN INDIVIDUAL'S GUILT.
17 IN CRIMINAL CASES, AS I SAID, ABSOLUTE CERTAINTY IS NOT
18 REQUIRED. IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE
19 YOU ARE FIRMLY CONVINCED THAT MR. DUNOVANT IS GUILTY OF
20 ONE OR MORE OF THE INDICTMENTS AGAINST HIM YOU WOULD FIND
21 HIM GUILTY. ON THE OTHER HAND IF YOU THINK THERE'S A REAL
22 POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE
23 BENEFIT OF THAT DOUBT AND FIND HIM NOT GUILTY. HE IS
24 ENTITLED TO THE BENEFIT OF ANY REASONABLE DOUBT YOU HAVE
25 AS TO ANY ISSUE IN THIS CASE. AS I TOLD YOU WHEN WE

JURY CHARGE

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1 STARTED THIS TRIAL, I AM THE SOLE JUDGE OF THE LAW IN THIS
2 CASE. YOU MUST TAKE, ACCEPT AND APPLY THE LAW AS I CHARGE
3 IT AND THIS IS TRUE EVEN IF YOU THINK I CHARGE THE LAW IN
4 ERROR OR EVEN IF YOU THINK THE LAW SHOULD BE DIFFERENT.
5 YOUR OATH REQUIRES YOU TO TAKE, ACCEPT AND APPLY THE LAW
6 AS I CHARGE IT. YOU'RE NOT TO INFER FROM ANYTHING I HAVE
7 SAID OR DONE OR ANYTHING I SAY OR DO AT ANY TIME AS
8 INDICATING AN OPINION OF MINE ON THE FACTS. OUR LAW DOES
9 NOT ALLOW A TRIAL JUDGE TO FORMULATE OR EXPRESS TO A JURY
10 OPINION ON THE FACTS. IF YOU MAKE ANY SUCH INFERENCE YOU
11 WOULD BE INCORRECT IN DOING THAT. IT IS SOLELY UP TO YOU
12 TO EXAMINE THE EVIDENCE AND TO GIVE TO THE EVIDENCE THE
13 EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH YOU BELIEVE
14 THE EVIDENCE SHOULD HAVE. IN DOING THIS YOU MAY BELIEVE
15 ONE WITNESS AS OPPOSED TO SEVERAL, SEVERAL WITNESSES AS
16 OPPOSED TO ONE. YOU MAY BELIEVE ALL, PART OR NONE OF A
17 WITNESSES' TESTIMONY. IN ANALYZING THE EVIDENCE USE YOUR
18 COMMON SENSE, YOUR SENSE OF LOGIC, YOUR SENSE OF REASON.
19 USE YOUR EXPERIENCES IN LIFE. AS JUDGES OF THE FACTS YOU
20 MUST JUDGE THE CREDIBILITY, THAT IS THE BELIEVABILITY OF
21 THE WITNESSES WHO HAVE TESTIFIED. IN ASSESSING
22 BELIEVABILITY, CREDIBILITY, USE THOSE THINGS I'VE JUST
23 TALKED ABOUT. USE THOSE THINGS THAT YOU FIND IN YOUR DAY-
24 TO-DAY LIFE AS BEING INDICATIVE OF TRUTHFULNESS, AND YOU
25 CAN USE CERTAIN EVALUATORS I CALL THEM, A WITNESSES'

JURY CHARGE

764

1 DEMEANOR, HOW THEY ACT ON THE STAND, ARE THEY HESITANT OR
2 STRAIGHT FORWARD. YOU CAN LOOK AT THE CONSISTENCIES OR
3 INCONSISTENCIES IN A WITNESSES' TESTIMONY AS GIVEN AND
4 WHEN COMPARED WITH OTHER EARLIER STATEMENTS. YOU CAN
5 CONSIDER ANY BIAS OR PREJUDICE A WITNESS MAY HAVE, THAT IS
6 WHETHER A WITNESS WOULD WISH TO HELP OR HURT ONE SIDE OR
7 THE OTHER. YOU CAN CONSIDER THE OPPORTUNITY A WITNESS HAD
8 TO ACTUALLY KNOW THOSE THINGS ABOUT WHICH THE WITNESS
9 TESTIFIED. IN THIS CASE THERE'S BEEN SOME TESTIMONY THAT
10 WITNESSES HAD A CRIMINAL RECORD. INDIVIDUALS WITH
11 CRIMINAL RECORDS ARE COMPETENT TO TESTIFY DURING A TRIAL
12 AND THEIR PAST RECORD DOES NOT AFFECT THEIR ABILITY TO DO
13 SO. ANYONE'S PAST RECORD CAN BE CONSIDERED BY YOU IF YOU
14 CONSIDER IT AT ALL ONLY AS TO THE WITNESSES'
15 BELIEVABILITY. YOU'RE THE SOLE JUDGE OF THE FACTS. AS TO
16 MR. DUNOVANT, YOU'RE NOT TO USE THE FACT THAT HE HAS A
17 PRIOR RECORD AS ANY INDICATION OF HIS HAVING COMMITTED
18 THESE OFFENSES. YOU CAN CONSIDER ANY PRIOR OFFENSE ONLY
19 ON THE ISSUE AS TO WHAT DEGREE OF BELIEVABILITY TO GIVE
20 HIS TESTIMONY. IN THIS CASE WE'VE HAD TESTIMONY OF
21 INDIVIDUALS WHO WE QUALIFIED AS EXPERTS OR I QUALIFIED AS
22 EXPERTS. INDIVIDUALS ARE GENERALLY NOT ALLOWED TO RENDER
23 EXPERT TESTIMONY OR GIVE OPINION TESTIMONY. GENERALLY AN
24 INDIVIDUAL IS ALLOWED TO ONLY TESTIFY AS TO FACTS WHICH
25 THEY'VE OBSERVED, THEY'VE SEEN SOMETHING OR HEARD IT.

JURY CHARGE

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1 GENERALLY IT COULD BE WITH ONE OF THE OTHER THREE SENSES,
2 BUT THAT'S GENERALLY SOMETHING THAT SOMEONE'S SEEN OR
3 HEARD. HOWEVER, WHERE AN INDIVIDUAL HAS CERTAIN TRAINING,
4 CERTAIN EDUCATION, CERTAIN SKILLS AND EXPERIENCES IN A
5 CERTAIN AREA, OUR LAW ALLOWS THAT PERSON TO BE QUALIFIED
6 AS AN EXPERT AND QUALIFIED TO RENDER AN OPINION. THE
7 OPINIONS OF EXPERTS ARE NOT BINDING ON YOU. THEY'RE
8 ALLOWED INTO EVIDENCE ONLY TO ASSIST YOU. YOU MAY ACCEPT
9 OR REJECT IN WHOLE OR IN PART THE EXPERT'S TESTIMONY. IT
10 IS UP TO YOU TO DETERMINE THE FACTS. AGAIN, THEIR
11 TESTIMONY IS ALLOWED TO ASSIST YOU. YOU LOOK AT AN
12 EXPERT'S TESTIMONY JUST AS YOU LOOK AT THE TESTIMONY OF
13 OTHER WITNESSES. ALSO, AS AN EXPERT LOOK AT THEIR
14 ABILITY, THAT IS THEIR QUALIFICATIONS TO RENDER THE
15 OPINION THEY REACH AND YOU CAN CONSIDER AND WEIGH IN
16 ADDITION TO THEIR ABILITY TO GIVE AN OPINION THE REASONS
17 THEY GIVE FOR THE OPINION THEY REACH. AGAIN, THAT
18 TESTIMONY IS ALLOWED TO ASSIST YOU. IT IS NOT BINDING ON
19 YOU. IN THIS CASE I EARLIER RULED AND ALLOWED A STATEMENT
20 MADE BY MR. DUNOVANT TO BE ENTERED INTO EVIDENCE. IT IS
21 UP TO YOU TO DETERMINE WHETHER HE GAVE THAT STATEMENT
22 FREELY AND VOLUNTARILY AND WHAT WEIGHT, IF ANY, TO GIVE
23 THAT STATEMENT. IN DETERMINING WHAT WEIGHT TO GIVE THE
24 STATEMENT HE MADE YOU CAN CONSIDER WHETHER OR NOT HE HAD
25 BEEN PROPERLY ADVISED OF HIS RIGHTS UNDER MIRANDA, THE

JURY CHARGE

766

1 FIFTH AMENDMENT RIGHTS, AND YOU CAN CONSIDER SUCH OTHER
2 CIRCUMSTANCES AS YOU DEEM APPROPRIATE TO DETERMINE WHETHER
3 OR NOT YOU WISH TO ACCEPT OR REJECT HIS STATEMENT IN WHOLE
4 OR IN PART. THAT IS YOU MUST DETERMINE BEFORE YOU
5 CONSIDER HIS STATEMENT WHETHER IT WAS GIVEN FREELY,
6 VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY AFTER HE HAD BEEN
7 ADVISED OF HIS CONSTITUTIONAL AND MIRANDA RIGHTS. IN
8 CASES OF THIS TYPE THERE ARE GENERALLY TWO TYPES OF
9 EVIDENCE PRESENTED, DIRECT AND CIRCUMSTANTIAL. DIRECT
10 EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE
11 ACTUAL KNOWLEDGE OF A FACT. IT IS EVIDENCE WHICH
12 IMMEDIATELY ESTABLISHES THE MAIN FACT SOUGHT TO BE PROVEN.
13 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND
14 CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS
15 EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS
16 FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL
17 EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL
18 KNOWLEDGE OR OBSERVATION. OUR LAW MAKES ABSOLUTELY NO
19 DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN
20 CIRCUMSTANTIAL EVIDENCE AS OPPOSED TO DIRECT EVIDENCE. A
21 GREATER DEGREE OF CERTAINTY IS NOT REQUIRED OF
22 CIRCUMSTANTIAL EVIDENCE AS OPPOSED TO DIRECT EVIDENCE.
23 WHAT YOU SHOULD DO IN THIS IS WEIGH ALL OF THE EVIDENCE.
24 AFTER WEIGHING ALL THE EVIDENCE IF YOU ARE NOT CONVINCED
25 OF MR. DUNOVANT'S GUILT BEYOND A REASONABLE DOUBT YOU

JURY CHARGE

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1 WOULD FIND HIM NOT GUILTY. MR. DUNOVANT IS CHARGED WITH
2 TWO --- IN TWO INDICTMENTS OF CRIMINAL SEXUAL CONDUCT IN
3 THE FIRST DEGREE. AS TO ONE IT IS ALLEGED TO HAVE BEEN
4 VAGINAL AND ONE ORAL. THE FIRST ELEMENT THE STATE MUST
5 PROVE BEYOND A REASONABLE DOUBT AS TO THESE TWO CHARGES IS
6 THAT MR. DUNOVANT ENGAGED IN A SEXUAL BATTERY WITH THE
7 VICTIM, MS. HILL. A SEXUAL BATTERY --- THE DEFINITION OF
8 SEXUAL BATTERY UNDER THE LAWS --- AND THIS IS A LAW PASSED
9 BY OUR LEGISLATURE. IT IS A STATUTORY LAW. THAT LAW SAYS
10 THAT A SEXUAL BATTERY INCLUDES SEXUAL INTERCOURSE AND
11 FELLATIO. THIS WOULD INCLUDE EITHER OF THOSE EVEN IF THEY
12 WERE ONLY SLIGHT AND INTRUDED ONLY A PART OF A PERSON'S
13 BODY. IF YOU FIND THAT THE STATE HAS NOT SHOWN BEYOND A
14 REASONABLE DOUBT THAT MR. DUNOVANT COMMITTED A SEXUAL
15 BATTERY, YOU WOULD STOP DELIBERATING AND YOUR VERDICT
16 WOULD BE NOT GUILTY. IF, HOWEVER, YOU FOUND THAT A SEXUAL
17 BATTERY DID OCCUR, THEN YOU MUST DECIDE WHETHER THE STATE
18 HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE --- MR.
19 DUNOVANT, IF HE IS FOUND TO HAVE COMMITTED A SEXUAL
20 BATTERY, USED AGGRAVATED FORCE TO ACCOMPLISH THE SEXUAL
21 BATTERY. AGGRAVATED FORCE MEANS THE USE OF PHYSICAL FORCE
22 OR PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED NATURE TO
23 OVERCOME THE VICTIM OR THAT THE VICTIM SUBMITTED TO SEXUAL
24 BATTERY WHILE THE VICTIM WAS ALSO THE VICTIM OF FORCIBLE
25 CONFINEMENT OR KIDNAPPING. THE STATE MUST PROVE THOSE

JURY CHARGE

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1 ELEMENTS BEFORE YOU COULD CONVICT MR. DUNOVANT OF EITHER
2 ONE OR BOTH OF CRIMINAL SEXUAL CONDUCT CHARGES. NOW OUR
3 LAW ALLOWS A JURY TO CONSIDER WHAT IS KNOWN AS A LESSER
4 INCLUDED OFFENSE UNDER THOSE TWO CHARGES. THAT IS, THE
5 OFFENSE THAT'S NOT SPELLED OUT IN THE INDICTMENT BUT BY
6 NATURE OF THE CHARGE THERE IS WHAT THE STATE CONSIDERS A
7 CRIME WITH ELEMENTS THAT I'LL TELL YOU ABOUT THAT YOU
8 COULD CONSIDER IF YOU DETERMINE THAT THE STATE HAS NOT
9 PROVEN HIS GUILT BEYOND A REASONABLE DOUBT AS TO THE
10 CHARGES. YOU DO NOT HAVE TO CONSIDER THIS. THIS IS FOR
11 YOUR --- IT'S UP TO YOU TO DETERMINE WHETHER THE FACTS
12 SUPPORT YOUR CONSIDERATION OF THIS AND UNDER THE LAW
13 WHETHER OR NOT MR. DUNOVANT HAS COMMITTED IF HE'S PROVEN -
14 -- IF YOU FIND HIM NOT GUILTY OF THE CHARGES WHETHER OR
15 NOT THE STATE HAS PROVEN THESE LESSER BUT NOT STATED
16 CHARGES BEYOND A REASONABLE DOUBT. THAT CHARGE --- AND IT
17 APPLIES TO BOTH OF THE SEXUAL --- CRIMINAL SEXUAL CONDUCT
18 --- IS ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
19 NATURE. ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
20 NATURE IS AN UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON
21 OF ANOTHER ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION.
22 AN ASSAULT OCCURS WHEN A PERSON UNLAWFULLY ATTEMPTS OR
23 OFFERS TO COMMIT A VIOLENT INJURY ON ANOTHER PERSON AND
24 HAS A PRESENT ABILITY TO COMPLETE THE ATTEMPTED INJURY.
25 AN ASSAULT IS THE INTENTIONAL CREATION OF REASONABLE FEAR

JURY CHARGE

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1 OF IMMEDIATE BODILY HARM TO ANOTHER. IT IS NOT NECESSARY
2 THAT THE ATTEMPTED INJURY OR ARM ACTUALLY TAKE PLACE FOR
3 THERE TO BE AN ASSAULT. AS WAY OF EXAMPLE, IF I'M WITHIN
4 STRIKING DISTANCE OF YOU AND I RARE BACK WITH MY FIST AS
5 THOUGH I'M GOING TO STRIKE YOU AND YOU THINK I MIGHT
6 BECAUSE I'M CLOSE ENOUGH AND I'M IN AN ANGRY MOOD, THEN I
7 HAVE ASSAULTED YOU EVEN IF I DON'T GO FORWARD AND STRIKE
8 YOU. NOW, A BATTERY IS THE UNLAWFUL TOUCHING OF ANOTHER
9 PERSON BY A PERSON COMMITTING AN ASSAULT. IF I FOLLOW
10 THROUGH AND COME THROUGH WITH MY FIST AND ACTUALLY DO
11 STRIKE YOU, THEN MY ASSAULT IS TURNED INTO AN ASSAULT AND
12 A BATTERY BECAUSE I HAVE ACTUALLY TOUCHED YOUR BODY IN A
13 RUDE AND RESENTFUL OR ANGRY MANNER. AN UNLAWFUL --
14 BATTERY IS THE UNLAWFUL TOUCHING ON ANOTHER PERSON BY AN
15 INDIVIDUAL WHO HAS COMMITTED AN ASSAULT. THE UNLAWFUL
16 TOUCHING CAN BE CAUSED BY ANY PART OF ANYONE'S BODY OR BY
17 ANY OBJECT THAT AN INDIVIDUAL HAS PUT INTO MOTION. A
18 BATTERY, AS I JUST SAID, IS THE COMPLETION OF THE ASSAULT
19 BY USING OR APPLYING FORCE TO ANOTHER PERSON NO MATTER HOW
20 SLIGHT IT IS IF IS IT DONE IN A RUDE, ANGRY OR RESENTFUL
21 MANNER WITHOUT LEGAL JUSTIFICATION FOR SO DOING. THE
22 STATE MUST ALSO PROVE FOR THERE TO BE AN ASSAULT OF A HIGH
23 AND AGGRAVATED NATURE ASSAULT AND BATTERY, NOT ONLY THERE
24 WAS AN ASSAULT AND BATTERY BUT THAT THERE WERE
25 CIRCUMSTANCES OF AGGRAVATION. CIRCUMSTANCES OF

JURY CHARGE

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1 AGGRAVATION MAY BE THE --- THE INTENT TO COMMIT A FELONY,
2 THE INFLICTION --- THE INFLICTION OF SERIOUS BODILY
3 INJURY, A GREAT DISPARITY BETWEEN THE AGES OF PHYSICAL
4 CONDITION OF THE PARTIES, A DIFFERENCE IN THE GENDERS OF
5 THE PARTIES, THE TAKING OF INDECENT LIBERTIES OR
6 FAMILIARITIES WITH A FEMALE THROUGH THE USE OF FORCE, A
7 PURPOSEFUL INFLICTION OF SHAME AND DISGRACE. THESE ARE
8 JUST EXAMPLES OF WHAT MAY BE CONSIDERED CIRCUMSTANCES OF
9 AGGRAVATION AND THAT STATE --- IF IT IS NOT PROVEN TO YOUR
10 SATISFACTION HIS GUILT OF CRIMINAL SEXUAL CONDUCT BEYOND
11 A REASONABLE DOUBT AND YOU CONSIDER THE LESSER INCLUDED,
12 OF COURSE, YOU COULD NOT FIND HIM GUILTY OF EITHER UNLESS
13 THEY HAVE PROVEN THAT OFFENSE BEYOND A REASONABLE DOUBT.
14 ANOTHER STATUTORY OFFENSE WITH WHICH HE IS CHARGED IS
15 KIDNAPPING. HERE THE STATE MUST PROVE BEYOND A REASONABLE
16 DOUBT THAT MR. DUNOVANT KNOWINGLY AND UNLAWFULLY SEIZED,
17 CONFINED, INVEIGLED DECOYED, KIDNAPPED, ABDUCTED OR
18 CARRIED AWAY ANOTHER PERSON WITHOUT AUTHORITY OF LAW. TO
19 DO A THING UNLAWFULLY IS TO DO IT WILLFULLY AND AGAINST
20 THE LAW. KNOWINGLY MEANS WITH KNOWLEDGE, CONSCIOUSLY AND
21 NOT ACCIDENTLY. TO SEIZE MEANS TO TAKE HOLD OF SUDDENLY
22 OR FORCEFULLY. CONFINED MEANS TO LIMIT, RESTRICT OR
23 ENCLOSE WITHIN BOUNDS, IMPRISON, SHUT-IN OR KEEP IN.
24 INVEIGLE MEANS TO LURE, ENTICE OR LEAD ASTRAY BY FALSE
25 REPRESENTATIONS, PROMISES OR OTHER DECEITFUL MEANS. DECOY

JURY CHARGE

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1 MEANS TO LURE AS TO --- SUCH AS TO LURE OR ENTICE SOMEONE
2 INTO A SITUATION OR A TRAP. KIDNAP IS TO REMOVE A PERSON
3 AGAINST THEIR WILL BY UNLAWFUL FORCE OR BY FRAUD. ABDUCT
4 MEANS TO CARRY AWAY SECRETLY OR BY FORCE FOR AN ILLEGAL
5 PURPOSE. CARRY AWAY SIMPLY MEANS TO REMOVE. THE STATE
6 DOES NOT HAVE TO PROVE THAT MR. DUNOVANT DID ALL OF THOSE
7 THINGS I'VE JUST MENTIONED. INSTEAD IF YOU FIND BEYOND A
8 REASONABLE DOUBT THAT HE DID ANY OF THESE THINGS REGARDING
9 MISTI HILL YOU WOULD BE ABLE TO FIND HIM GUILTY OF
10 KIDNAPPING. SOMETHING DONE WITHOUT THE AUTHORITY OF LAW
11 IS SOMETHING WHICH THE LAW DOES NOT SANCTION, PERMIT,
12 ALLOW, CONDONE OR PROVIDE JUSTIFICATION FOR. A KIDNAPPING
13 DOES NOT HAVE TO BE FOR ANY PERSONAL OR MONETARY GAIN OR
14 FOR ANY ILLEGAL PURPOSE BUT MUST --- MAY BE FOR ANY REASON
15 WHATSOEVER. NOW, IN THIS CASE I'LL GO OVER THEM WITH YOU
16 IN JUST A MOMENT, THERE ARE POSSIBLE VERDICTS THAT I WILL
17 GO OVER ON A VERDICT FORM AND I'LL EXPLAIN THAT TO YOU IN
18 A MOMENT. YOUR VERDICTS CANNOT BE BASED ON PASSION,
19 PREJUDICE, PUBLIC OPINION, SYMPATHY OR MATTERS OUTSIDE OF
20 THE RECORD. WHILE YOUR VERDICT MUST BE UNANIMOUS, ALL
21 TWELVE JURORS MUST AGREE. MR. FOREMAN, YOU'RE TO PRESIDE
22 OVER THE DELIBERATION AND SIGN THE VERDICT FORMS THAT I'LL
23 EXPLAIN TO YOU IN JUST A MOMENT. YOU WILL FILL IN THE
24 VERDICT FORMS AFTER ALL TWELVE HAVE REACHED A UNANIMOUS
25 VERDICT. WHILE YOU'RE DELIBERATING, IF YOU HAVE ANY

JURY CHARGE

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1 QUESTIONS, WRITE THEM DOWN AND SEND THEM OUT TO ME, I WILL
2 RESPOND AFTER CONSULTING WITH THE ATTORNEYS. IT MAY BE
3 THAT I CAN WRITE AN ANSWER ON THE NOTE ITSELF. IT MAY BE
4 THAT I'LL HAVE TO BRING YOU BACK INTO THE COURTROOM AND
5 ANSWER YOUR QUESTION HERE IN OPEN COURT. WE CAN HAVE
6 TESTIMONY RE-PLAYED IF YOU WISH. YOU WILL HAVE THE
7 EXHIBITS IN THERE WITH YOU. THE VIDEO IS AVAILABLE.
8 SINCE IT'S SOMEWHAT DIFFICULT TO OPERATE, IF YOU WISH TO
9 HAVE US GO THROUGH IT, LET US KNOW WHAT PARTS YOU'RE
10 INTERESTED IN, MY LAW CLERK, SCOTT FORSTER, WILL OPERATE
11 IT AND WE'LL BE GLAD TO SHOW YOU ANY PARTS OF THE VIDEO
12 YOU WISH TO SEE, BUT WE'LL HAVE TO DO THAT OUT HERE IN
13 OPEN COURT BECAUSE OF THE NATURE OF IT WE CANNOT SEND IT
14 IN. EVEN IF WE SEND IN THE EQUIPMENT, IT WOULD NOT BE
15 OPERABLE, SO WE HAVE TO DO THAT OUT HERE. I'M SORRY, BUT
16 THAT'S THE ONLY WAY WE CAN DO THAT. I'VE ORDERED LUNCH.
17 IT SHOULD BE HERE BY NOW. IT'S HERE. IT'S PIZZA. IF YOU
18 DON'T LIKE PIZZA, I'M SORRY. AND YOU CAN EAT LUNCH AND
19 THEN DELIBERATE OR YOU CAN DELIBERATE WHILE YOU EAT LUNCH.
20 ALL TWELVE OF YOU SHOULD BE WORKING. IF YOU TAKE A BREAK
21 TO EAT LUNCH, IF YOU TAKE A BREAK AT SOME POINT TO DO
22 ANYTHING, ALL OF YOU WILL BE ON BREAK. IT HAS TO BE A
23 UNANIMOUS VERDICT, SO EITHER ALL ON BREAK OR ALL WORKING.
24 WHEN YOU FIRST GO INTO THE JURY ROOM DO NOT START
25 DELIBERATING BECAUSE I HAVE TO GO OVER MY CHARGE WITH THE

JURY CHARGE

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1 ATTORNEYS. IF I HAVE MADE AN ERROR I'LL HAVE TO BRING YOU
2 BACK IN AND CORRECT IT. IF NOT, I WILL SEND IN THE
3 EXHIBITS AND THE VERDICT FORM AND THE BAILIFF WILL TELL
4 YOU AT THAT TIME TO START DELIBERATING BUT DO NOT DO SO
5 UNTIL THAT TIME. WHEN A UNANIMOUS VERDICT HAS BEEN
6 REACHED BY THE JURY, MR. FOREMAN, IF YOU'LL KNOCK ON THE
7 DOOR THE BAILIFF WILL COME AND GET US. I WILL BE DOING
8 SOME OTHER WORK, BUT I WILL SEND FOR YOU AS PROMPTLY AS I
9 CAN ONCE A VERDICT HAS BEEN REACHED OR WHENEVER YOU SEND
10 OUT A NOTE WE WILL ATTEND TO THAT AS PROMPTLY AS WE CAN.
11 MS. STROTHERS, YOU WILL STAY IN HERE WITH US AS ALTERNATE
12 AND NOT PARTICIPATE IN THE DELIBERATIONS. SO WHEN THE
13 JURY GOES TO THE JURY ROOM IN JUST A MOMENT YOU WILL
14 REMAIN IN HERE. THE VERDICT FORMS ATTACHED TO ALL THREE
15 INDICTMENTS. THE KIDNAPPING ONE SIMPLY HAS TWO CHOICES.
16 THE VERDICT FORMS FOR THE CRIMINAL SEXUAL CONDUCT HAVE
17 THREE, BECAUSE THEY INCLUDE THAT LESSER INCLUDED OF
18 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. THE
19 ORDER IN WHICH I HAVE SET THESE ON THE VERDICT FORM IS OF
20 NO IMPORTANCE. I HAVE TO SET THEM ON SOME --- IN SOME
21 FORM. I ALWAYS USE THIS ORDER. SO THE ORDER THEY'RE IN
22 DOES NOT INDICATE ANY PREFERENCE THAT ONE SHOULD HAVE OVER
23 THE OTHERS. AS TO THE KIDNAPPING THERE ARE TWO OPTIONS.
24 IF YOU FIND THAT THE STATE HAS PROVEN MR. DUNOVANT GUILTY
25 OF KIDNAPPING, YOU WOULD SIMPLY PUT A CHECK OR X-MARK IN

JURY CHARGE

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1 FRONT OF THE FIRST LINE THAT SIMPLY SAYS THAT, WE FIND THE
2 DEFENDANT GUILTY OF KIDNAPPING. IF YOU FIND THE STATE HAS
3 FAILED TO PROVE THAT OFFENSE BEYOND A REASONABLE DOUBT,
4 YOU WOULD USE THE SECOND LINE THAT SAYS WE FIND THE
5 DEFENDANT NOT GUILTY, PUT A X OR A CHECK IN FRONT OF THAT.
6 YOU WOULD MARK THE CRIMINAL SEXUAL CONDUCT VERDICTS THE
7 SAME WAY, BUT THERE ARE THREE OPTIONS. AS TO EACH THE
8 FIRST IS, WE FIND THE DEFENDANT GUILTY OF CRIMINAL SEXUAL
9 CONDUCT IN THE FIRST DEGREE, WHICH YOU WOULD USE IF THAT'S
10 THE JURY'S UNANIMOUS VERDICT. THE SECOND IS, WE FIND THE
11 DEFENDANT GUILTY OF A LESSER INCLUDED OFFENSE OF ASSAULT
12 AND BATTERY OF A HIGH AND AGGRAVATED NATURE. YOU WOULD
13 USE THAT IF YOU FIND THE STATE HAS FAILED TO PROVE MR.
14 DUNOVANT GUILTY OF CRIMINAL SEXUAL CONDUCT BUT HAS FOUND -
15 -- BUT YOU HAVE FOUND HIM GUILTY OF THE LESSER INCLUDED
16 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. IF
17 YOU FIND THE STATE HAS FAILED TO PROVE HIS GUILT BEYOND A
18 REASONABLE DOUBT AS TO EITHER OF THOSE CHARGES YOU WOULD
19 USE THE THIRD FORM THAT SAYS WE FIND THE DEFENDANT NOT
20 GUILTY. THESE INDICTMENTS THAT YOU WILL HAVE IN THE JURY
21 ROOM ARE NOT EVIDENCE. THEY'RE SIMPLY THE CHARGING PAPERS
22 BY WAY OF WHICH THIS CASE IS PROCESSED THROUGH OUR COURT
23 SYSTEM AND THEY ARE ULTIMATELY WHERE THE JURY'S UNANIMOUS
24 VERDICT WILL BE ENROLLED AND THEY WILL BE THE PAPERWORK OF
25 THE RECORD IN THIS CASE. SO I'M GOING TO LET ALL OF YOU

JURY CHARGE

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1 BUT MS. STROTHERS GO TO THE JURY ROOM AT THIS TIME, BUT
2 DON'T START EATING AND DON'T START DELIBERATING AND DON'T
3 GET TOO COMFORTABLE BECAUSE I MAY HAVE TO SEND FOR YOU IN
4 JUST A MOMENT.

5 (JURY EXITS THE COURTROOM)

6 THE COURT - MS. STROTHERS, I'LL BE WITH YOU IN
7 JUST A MOMENT. BEAR WITH US JUST --- ALL RIGHT, ANYTHING
8 FROM THE STATE?

9 MS. LIPINSKI - NOTHING FROM THE STATE.

10 THE COURT - ANYTHING FROM DEFENSE?

11 MR. LEMEL - NO, SIR, YOUR HONOR.

12 THE COURT - ALL RIGHT, IF YOU WILL LOOK OVER THE
13 VERDICT FORMS AND THE EXHIBITS WE'LL SEND THEM IN AND THE
14 BAILIFF WILL TELL THEM TO START --- TELL THEM TO START
15 DELIBERATING. WE'VE GOT PLEAS AND THINGS STARTING AT TWO
16 THIRTY. MS. STROTHERS, THIS FINISHES YOUR WORK. I
17 BELIEVE --- SHE DOESN'T HAVE TO CALL BACK, DOES SHE?

18 MS. LIPINSKI - NO, YOUR HONOR.

19 THE COURT - OKAY. THEY'RE TRYING A WEEK-LONG
20 CASE NEXT DOOR AND WE'RE NOT GOING TO START A CASE ON
21 THURSDAY AFTERNOON, SO YOU'LL BE MAILED A CHECK. DO YOU
22 NEED A STATEMENT TO TAKE TO WORK OR ANYTHING?

23 JUROR - NO, YOUR HONOR.

24 THE COURT - OKAY. WELL, YOU'RE CERTAINLY
25 WELCOME TO STAY. WE'LL GET YOU SOME PIZZA, IF YOU WISH.

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1 THE BAILIFF WILL TAKE CARE OF THAT. OR YOU CAN LEAVE, BUT
2 WE APPRECIATE YOUR HELP. THANK YOU. ALL RIGHT, CHECK
3 EVERYTHING AND SEND IT IN AND WE'LL BE AT EASE.

4 MS. LIPINSKI - WE WENT THROUGH THE EXHIBITS ON
5 THE BREAK, YOUR HONOR, SO IF WE CAN LOOK AT THE VERDICT
6 FORMS.

7 THE COURT - ALL RIGHT.

8 (COUNSEL REVIEWS VERDICT FORMS)

9 THE COURT - ALL RIGHT, WE'LL BE AT EASE UNTIL
10 TWO THIRTY THEN.

11 (JURY DELIBERATES AT 1:42 P.M.)

12 (COURT IN RECESS AWAITING VERDICT)

13 THE COURT - BRING OUT MR. DUNOVANT.

14 (MR. DUNOVANT ENTERS THE COURTROOM)

15 THE COURT - ALL RIGHT, I UNDERSTAND WE HAVE
16 VERDICTS IN MR. DUNOVANT'S CASE. WE HAVE QUITE A NUMBER
17 OF PEOPLE HERE WHICH IS FINE. PEOPLE HAVE A RIGHT TO BE
18 PRESENT WHEN THE VERDICT'S RETURNED. I WILL TELL YOU IN
19 ADVANCE IF ANYONE FEELS LIKE THEY ARE IN SUCH EMOTIONAL
20 STATE THAT THEY CANNOT HANDLE WHATEVER THE VERDICT MAY BE,
21 PLEASE GO AHEAD AND REMOVE YOURSELF. THE COURT WILL NOT
22 TOLERATE ANY OUTBURSTS. I DON'T KNOW WHAT THE VERDICT IS
23 OF COURSE, BUT WHATEVER IT IS WE WOULD NOT --- ANYONE WHO
24 DOES NOT THINK THEY CAN CONTROL THEIR EMOTIONS NEEDS TO
25 LEAVE NOW BECAUSE IF THERE ARE ANY OUTBURSTS I'LL BE

1 REQUIRED TO FIND THAT PERSON IN CONTEMPT OF COURT AND PUT
2 THEM IN JAIL. ALL RIGHT BRING IN THE JURY.

3 (JURY RETURNS TO THE COURTROOM WITH VERDICT AT
4 3:05 P.M.)

5 THE COURT - MR. FOREMAN, I UNDERSTAND THE JURY'S
6 REACHED A VERDICT.

7 FOREMAN - YES, WE HAVE, YOUR HONOR.

8 THE COURT - IF YOU'LL HAND IT TO THE BAILIFF,
9 HE'LL HAND IT UP TO ME.

10 (VERDICT IS HANDED UP TO THE COURT FOR REVIEW
11 WHICH IS THEN HANDED TO THE DEPUTY CLERK FOR PUBLISHING)

12 DEPUTY CLERK - 2007-GS-46-3117, THE STATE VERSUS
13 TERRY DUNOVANT, WE FIND THE DEFENDANT GUILT OF KIDNAPPING,
14 SIGNED BY THE FOREPERSON DATED TODAY'S DATE.

15 2007-GS-46-3119, THE STATE OF SOUTH CAROLINA
16 VERSUS TERRY DUNOVANT, WE FIND THE DEFENDANT GUILTY OF
17 CRIMINAL SEXUAL CONDUCT FIRST DEGREE, SIGNED BY THE
18 FOREPERSON DATED TODAY'S DATE.

19 2007-GS-46-3118, THE STATE OF SOUTH CAROLINA
20 VERSUS TERRY DUNOVANT, WE FIND THE DEFENDANT GUILTY OF
21 CRIMINAL SEXUAL CONDUCT FIRST DEGREE, SIGNED BY THE
22 FOREPERSON DATED TODAY'S DATE.

23 LADIES AND GENTLEMEN OF THE JURY IF THIS BE YOUR
24 VERDICT PLEASE SAY YOU ALL BY RAISING YOUR RIGHT HAND.

25 (JURORS AFFIRM)

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1 DEPUTY CLERK - LET THE RECORD REFLECT ALL JURORS
2 AFFIRM THIS VERDICT.

3 THE COURT - ALL RIGHT, ANYTHING FROM THE STATE
4 BEFORE THE JURY'S DISMISSED?

5 MS. LIPINSKI - NONE.

6 THE COURT - ANYTHING FROM THE DEFENSE?

7 MR. LEMEL - YOUR HONOR, NOTHING FROM THE JURORS.

8 THE COURT - ALL RIGHT, MEMBERS OF THE JURY
9 PANEL, WE APPRECIATE YOUR HELP. THIS FINISHES YOUR WORK
10 FOR THIS WEEK. I DO NOT REQUIRE YOU TO STAY WHILE I
11 IMPOSE THE SENTENCE BUT I --- IF YOU WISH, YOU CAN GO
12 AROUND AND THEY'LL GET YOU COME IN THE FRONT AND I'M GOING
13 TO ASK THAT THE LAST TWO ROWS TO MY LEFT WHICH WOULD BE
14 YOUR RIGHT BE MADE AVAILABLE IF ANY OF THE JURORS WANT TO
15 COME BACK IN FOR THE FURTHER PROCEEDINGS WHICH FOLLOW
16 THIS, BUT WE APPRECIATE YOUR HELP. WE'RE THROUGH WITH
17 JURY TRIALS FOR THE WEEK. WE'RE NOW --- JUDGE ALFORD'S
18 STILL IN A TRIAL; I'M TAKING PLEAS TODAY AND TOMORROW AND
19 SO THIS WILL FINISH YOUR WORK, SO YOU'LL BE MAILED A
20 CHECK. IF ANY YOU NEED A STATEMENT --- DO ANY OF YOU A
21 STATEMENT TO TAKE TO WORK?

22 (NO RESPONSE)

23 THE COURT - ALL RIGHT, THEN JUST WAIT AND YOU'LL
24 BE MAILED A CHECK AND YOU'LL RECEIVE IT NEXT WEEK, SO YOU
25 FEEL FREE TO LEAVE AND JUST GO THIS WAY AND ---

1 (DISCUSSION IS HELD BETWEEN THE DEPUTY CLERK AND
2 THE COURT WHICH WAS NOT REPORTED)

3 THE COURT - THAT'S RIGHT. NEED THE FOREMAN TO
4 SIGN THE ORIGINALS ON THE BACK OF THE INDICTMENTS. SHE'LL
5 SHOW YOU HOW TO DO THAT. SO YOU CAN COME ON FORWARD AND
6 EVERYONE ELSE CAN LEAVE.

7 (JURORS EXIT THE COURTROOM AND FOREMAN
8 APPROACHES THE CLERK)

9 THE COURT - MR. LEMEL, ANY MOTIONS OR ANYTHING?

10 MR. LEMEL - YES, SIR, YOUR HONOR. WE'D MOVE TO
11 SET ASIDE THE VERDICTS AND GRANT A NEW TRIAL.

12 THE COURT - THAT MOTION'S DENIED. I THINK THE
13 VERDICTS ARE VERY WELL SUPPORTED BY THE EVIDENCE. ALL
14 RIGHT, YOU WANT TO BRING MR. DUNOVANT AROUND FOR
15 SENTENCING AND THE STATE --- MR. MAINES AND ---

16 (COUNSEL AND DEFENDANT APPROACH THE BENCH FOR
17 SENTENCING)

18 THE COURT - ALL RIGHT, MS. LIPINSKI, I KNOW THE
19 RECORD THAT WAS INTRODUCED. IS THERE ANY OTHER RECORD ---
20 DOES HE HAVE ANY RECORD? HE'S FIFTY-FOUR, I BELIEVE,
21 YEARS OF AGE AND CAN ONLY GO BACK SO MANY YEARS. DOES HE
22 HAVE ANY PRIOR RECORD OTHER THAN WHAT I'M ALREADY AWARE
23 OF?

24 MR. DUNOVANT - I'M FORTY-FIVE.

25 THE COURT - FORTY-FIVE, I'M SORRY.

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1 MS. LIPINSKI - HE HAS A COUPLE OF DRIVING
2 OFFENSES. HE DOES HAVE A TOTAL OF FIVE LARCENY CHARGES,
3 INCLUDING THE POSSESSION OF STOLEN GOODS AND THEN THE
4 OTHER WORTHLESS CHECK CHARGES. HE ALSO WAS CONVICTED OF
5 HABITUAL MISDEMEANOR ASSAULT IN '02 WHICH MEANS HE HAS AT
6 LEAST TWO PRIOR ASSAULT CHARGES IN NORTH CAROLINA TO GET
7 THAT HABITUAL CHARACTERIZATION. HE DOES HAVE SOME
8 TRAFFICKING OFFENSES, YOUR HONOR.

9 THE COURT - SOME WHAT?

10 MS. LIPINSKI - TRAFFIC OFFENSES. IN 1987 HE WAS
11 CONVICTED OF ASSAULT WITH A DEADLY WEAPON. HE DID PLEAD
12 TO A LESSER INCLUDED OFFENSE BUT HE WAS CONVICTED OF THAT.
13 AND THE LARCENIES ARE APPROXIMATELY THE LATE 90'S AS WELL,
14 YOUR HONOR, SO HE DOES HAVE A RECORD OFF AND OFF SINCE
15 1987.

16 THE COURT - INCLUDING ACTS OF VIOLENCE.

17 MS. LIPINSKI - THE ASSAULT WITH A DEADLY WEAPON
18 WOULD BE THE CLOSEST ONE TO THAT, YOUR HONOR.

19 THE COURT - ALL RIGHT, MS. HILL I HEARD --- I
20 HEARD YOU TESTIFY, BUT I'LL BE GLAD FOR YOU TO ADD
21 ANYTHING ELSE THAT YOU WISH TO SAY.

22 (NO RESPONSE)

23 MS. LIPINSKI - YOUR HONOR, SHE'S A LITTLE
24 EMOTIONAL. WE TALKED ABOUT THIS BEFORE IN THE EVENT THAT
25 HE WAS CONVICTED. SHE JUST REQUEST THAT YOUR HONOR

1 SENTENCE HIM TO THE MAXIMUM SENTENCE FOR THE MOST PART
2 BECAUSE HE'S TAKEN SOMETHING FROM HER THAT'LL NEVER BE
3 BACK. MS. HILL HAS HAD A NUMBER OF PROBLEMS SINCE THIS
4 OFFENSE. SHE REALLY HASN'T BEEN ABLE TO WORK AGAIN.
5 SHE'S HAD SOME EMOTIONAL PROBLEMS AS WELL, AND IT REALLY
6 HAS HAUNTED HER AND WILL CONTINUE TO HAUNT HER FOR THE
7 REST OF HER LIFE.

8 THE COURT - ALL RIGHT. ALL RIGHT, MR. LEMEL.

9 MR. LEMEL - YOUR HONOR, YOU KNOW, I'VE BEEN
10 REPRESENTING TERRY FOR JUST UNDER TWO YEARS. HE HAS BEEN
11 INCARCERATED THAT ENTIRE TIME. WE ARE ASKING THAT HE BE
12 GIVEN CREDIT FOR THE TWO YEARS, JUST SHY OF TWO YEARS THAT
13 HE HAS SERVED AT THIS POINT IN TIME. YOUR HONOR, I CAN
14 TELL YOU THAT HE HAS BEEN AN EXCELLENT CLIENT FOR ME.
15 HE'S BEEN EXTRAORDINARILY PATIENT. WE'VE ATTEMPTED TO
16 TAKE HIS CASE TO TRIAL ON A NUMBER OF OCCASIONS AND
17 UNFORTUNATELY, THROUGH NO FAULT OF HIS THERE'S BEEN
18 VARIOUS INTERRUPTIONS. I HAVE HAD CERTAIN FAMILY
19 EMERGENCIES. THERE'S BEEN CERTAIN ISSUES ON THE
20 SOLICITOR'S SIDE AS WELL. SOME OF THE TIMES THAT HE HAS
21 ALWAYS BEEN EXTRAORDINARILY PATIENT WITH THAT IN WAITING
22 HIS DAY IN COURT. I CAN ONLY COMMENT, YOUR HONOR, THAT
23 WITH ME HE'S BEEN --- HE'S ALWAYS ACTED IN AN APPROPRIATE
24 FASHION, APPROPRIATE MANNER, HAS BEEN A VERY GOOD CLIENT
25 FOR ME. THERE'S NOT A WHOLE LOT MORE TO SAY THAN THAT,

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1 YOUR HONOR. I BELIEVE THAT TERRY DOES WISH TO ADDRESS THE
2 COURT BRIEFLY.

3 THE COURT - ALL RIGHT. YES, SIR?

4 MR. DUNOVANT - YES, I'D JUST LIKE TO SAY THAT --
5 - TO MY FAMILY, TO MY MOTHER AND MY SISTER, I LOVE YOU AND
6 I'M TOTALLY INNOCENT AS I STAND HERE TODAY.

7 THE COURT - ALL RIGHT, MR. DUNOVANT, YOU'VE GOT
8 A FAIRLY --- NOT THE WORST RECORD I'VE EVER SEEN, BUT
9 YOU'VE GOT A RECORD AND SOME OF IT INCLUDES ASSAULTIVE
10 CONDUCT IN THE PAST AND YOU'RE NOT HERE BEING TRIED FOR
11 DRUGS, BUT YOU'VE GOT A --- YOU MADE IT CLEAR ON THE STAND
12 THAT YOU CONTINUE TO USE ILLEGAL --- OR A USER, HABITUAL
13 USER OF ILLEGAL SUBSTANCES.

14 MR. DUNOVANT - YES, YOUR HONOR, BUT I ALSO
15 DEFENDED MYSELF, TOO. THAT'S, LIKE I SAY, PART OF --- LOT
16 OF THE STREETS, LIKE I SAY AS FAR AS MY RECORD. WHEN
17 SOMEONE TRYING TO HURT ME I'VE GOT TO FIGHT BACK. I JUST
18 CAN'T JUST GET BEAT DOWN LIKE A DOG IN THE STREET.

19 THE COURT - WELL, I UNDER --- YES, I CAN
20 UNDERSTAND THAT. YOU GOT IN A FIGHT THIS NIGHT. IN FACT,
21 YOU GOT IN TWO FIGHTS, ONE OVER DOPE AND ONE OVER SEX
22 APPARENTLY.

23 MR. DUNOVANT - THAT'S WHAT THE COURT SAY, SIR.
24 YES.

25 THE COURT - YES, THAT'S WHAT THE COURT SAY.

1 MR. DUNOVANT - YES.

2 THE COURT - ALL RIGHT. ANYTHING ELSE?

3 MR. LEMEL - NO, SIR.

4 THE COURT - ANYTHING ELSE YOU WANT TO SAY, MR.
5 DUNOVANT?

6 MR. DUNOVANT - THE COURT ALREADY MADE THEIR MIND
7 UP, SIR.

8 THE COURT - ALL RIGHT. SENTENCE ON KIDNAPPING
9 IS THIRTY YEARS, ON THE TWO CRIMINAL SEXUAL CONDUCTS, EACH
10 OF THOSE FOR TWENTY YEARS. THEY'RE TO ALL RUN CONCURRENT.
11 THANK YOU.

12 MS. LIPINSKI - THANK YOU, YOUR HONOR.

13 (END OF TRANSCRIPT)

14

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CERTIFICATE

I, SHIRLEY G. BROOM, THE UNDERSIGNED COURT REPORTER, HEREBY CERTIFY THAT THE FOREGOING 783 PAGES, CONSISTING OF VOLUMES I AND II CONSTITUTE A TRUE RECORD OF PROCEEDINGS TAKEN IN THE CASE OF STATE VS. TERRY ARNAIL DUNOVANT, AS TAKEN BY ME AT THE TIME AND PLACE STATED.

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED, THAT I AM NOT OF COUNSEL FOR, RELATED TO, OR IN THE EMPLOYEE OF ANY OF THE PARTIES TO THIS ACTION AND THAT I HAVE NO INTEREST WHATSOEVER IN THE OUTCOME OF THIS CASE.

THIS THE 5th DAY OF Sept., 2009.


SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

County: York 63Date: 3-30-09

VOIR DIRE

Case No: 07-65-46-0317, 0318,Judge: John C. Hayes, IIIPl./State: State

0319

State/Plaint. Atty: Mendy LipinskiJ.D. MainesDefendant: Terry Arnauld DuneauDefense Atty: Gary Lemet / Kindle JohnsonCourt Reporter: Shirley G. Broom

Juror No.	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
205	Frances E. Saunderson	F	W		✓	X	
61	Phillip Procco	M	W		✓	✓	✓
160	Antonio Mickel	M	B		X		
226	Ronald Sutton	M	W		✓	✓	✓
60	Cornelia Crawford	F	B		✓	✓	✓
5	Scott Allen	M	W		✓	✓	✓
189	Ernest Ramsey	M	W		✓	✓	✓
124	Raymond Johnson	M	W		✓	✓	✓
215	Chandler Skinner	M	W		✓	✓	✓
177	Kenneth Newell	M	W		✓	✓	✓
20	Ronnie Bentley	M	W		✓	X	
186	Victor Pendergrass	M	W		✓	X	
27	Trena Bost	F	W		✓	✓	✓
56	Stephen Cowart	M	W		✓	✓	✓
9	Jean Baccus	F	B		✓	✓	✓
122	Samuel Jackson	M	W		✓	X	
59	Linda Crawford	F	W		✓	X	
33	Beau Broussard	M	W		✓	✓	✓
224	Patricia Strother	F	B		✓	✓	✓

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for court, "P" for Plaintiff or "D" for Defense.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY ARNAIL DUNOVANT,

APPELLANT

FINAL BRIEF OF APPELLANT

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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TABLE OF AUTHORITIES

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<u>State v. McKnight</u> , 352 S.C. 635, 642, 576 S.E.2d 168, 171, <i>cert. denied</i> , 540 U.S. 819, 124 S.Ct. 101, 157 L.Ed.2d 36 (2003)	7
<u>State v. Mitchell</u> , 341 S.C. 404, 409, 535 S.E.2d 126, 127.	7
<u>State v. Rothschild</u> , 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002)	7

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court judge err in not granting Dunovant's motion for a directed verdict on 2 counts of criminal sexual conduct, 1st degree, because the testimony of the alleged victim was incredible as a matter of law?

II. Did the trial court judge err in not granting Dunovant's motion for a directed verdict on kidnapping because the testimony of the alleged victim was incredible as a matter of law?

STATEMENT OF THE CASE

Terry Arnail Dunovant was indicted by the York County grand jury of 2 counts of criminal sexual conduct, 1st degree and kidnapping. He was tried before the Honorable John C. Hayes III and a jury March 20th- April 2nd, 2009. He was represented by Gary Lemel, Esquire. He was convicted, and sentenced to 20 years for the criminal sexual conduct charges, and 30 years for kidnapping; all sentences were ordered concurrent.

This appeal timely follows.

ARGUMENT

The trial court judge erred in not granting Dunovant's motion for a directed verdict for 2 counts of criminal sexual conduct, 1st degree and kidnapping because the purported victim's testimony was incredible as a matter of law (Issues I and II).

These charges arose out of events that occurred on March 7, 2006. Dunovant was accused of picking up the purported victim at a convenience store/ truck stop early the morning, taking her to the Weeping Mary Baptist Church, forcing her to perform oral sex on him, and then committing vaginal intercourse against her. At trial, many factual issues were not in dispute. It was not disputed, for example, that the purported victim and Dunovant had sexual intercourse. It was not disputed that they encountered one another in the early morning hours at a convenience store/ truck stop. It was not disputed that they smoked crack together during their trip from the truck stop to the Weeping Mary Baptist Church. And it was not disputed that the sexual intercourse occurred in the graveyard of that church. At issue, however, was whether the contact was consensual or not.

The purported victim testified that she was forced to perform oral sexual acts on the defendant, and that, at the church, he drug her from the car and forced to her to engage in vaginal sexual intercourse on the back of the car. When she resisted, she was further assaulted by Dunovant. ROA p. 122, l. 5- p. 129, l. 7.

She testified that, earlier in the night, she had been to a couple of bars, Good Time Charlies and Happy Days. ROA p. 92, ll. 2-9; ROA p. 94, ll. 12-18. She consumed beer at these bars, even though, suffering from bipolar disorder, she knew she should not have been drinking. ROA p. 146, l. 6-23. She had worked earlier that day, and was planning to work the next day. ROA p. 88, ll. 2-12; ROA p. 94, ll. 4-5. She left the latter bar around 3:30am

with a woman, an “acquaintance” (and whose name she did not know), and they went to pick up the woman’s son. The three of them then drove around. The purported victim testified that she asked to be dropped off at the truck stop because the woman and her son were going to look for crack, and she did not want to be involved. Although she has smoked crack extensively in the past—even having attended rehabilitation for her problem—she testified that she was clean and did not want to be involved with any drug use. ROA p. 97, l. 20- 98, l. 19; ROA p. 141, ll. 13- 142, l. 22. At the truck station, she testified that she called a cab to come and pick her up. It never arrived. According to her story, she said that Dunovant approached her and asked if she needed a ride. At approximately 5:30am, she testified that she got into the car with a total stranger, expecting him to give her a ride home. They smoked crack together. She testified that at some point, she realized that they were acquaintances. ROA p. 84, l. 10- p. 161, l. 6; 159, ll. 5-19. The purported victim has a prior conviction for credit card fraud. ROA p. 89, ll. 7-19.

Dunovant testified at trial; and that the contact was consensual. He described to the jury his encountering the purported victim at the truck stop, and that she approached him and asked him if he was interested in “a date.” Dunovant understood from her request that she was a prostitute. ROA p. 179, ll.4-10. He testified that she was disheveled, and that she appeared to have been in a fight. According to her, she had been turning “tricks” at the hotel next to the truck stop, but had been thrown out of the hotel room by other persons there. Feeling sorry for her, he agreed to pay her for sex. ROA p. 180, ll. 6-14. He testified that she directed him to the Weeping Mary Baptist Church graveyard. ROA p. 185, ll. 1- p. 186, l. 8. After they had sex, he then took her to the Hot Spot store and dropped her off. ROA p.

189, ll. 8-9. He denied that he ever physically assaulted the purported victim. ROA p. 190, ll. 11- p. 191, l. 7.

Dunovant admitted that he had the crack cocaine that night. He is an addict. ROA p. 168, ll. 18-25. He had wounds on his hands because he had been in a fight earlier with his drug dealer. ROA p. 172, ll. 1-8.

At the end of the state's case, Dunovant motioned for a directed verdict and was denied. ROA p. 162, ll. 11-23. The judge erred in not granting the motion, because the alleged victim's testimony was incredible as a matter of law, and the evidence merely raised a suspicion that Dunovant was guilty of the crime. A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. McKnight, 352 S.C. 635, 642, 576 S.E.2d 168, 171, *cert. denied*, 540 U.S. 819, 124 S.Ct. 101, 157 L.Ed.2d 36 (2003); State v. Rothschild, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002). The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. State v. Mitchell, 341 S.C. 404, 409, 535 S.E.2d 126, 127. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). See also State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). In this case, the evidence presented by the State did not rise above the level of mere suspicion.

The alleged victim's testimony was incredible as a matter of law because she testified that she was initially dropped off at the truck stop so that she could avoid using drugs that night. Instead, she got into a car with Dunovant and immediately started smoking crack cocaine. Also, she testified that she only drank four beers at the bars, but

the state's witness, Dr. Eagerton, a toxicologist, testified that she had an alcohol level of .147 at approximately 5:30am, suggesting substantially more. ROA p. 82, ll. 23- p. 83, l.

2. Her testimony was also implausible that he was a stranger, but then she confessed that she knew him. Too, her testimony was implausible because the videotape at the truck stop shows that she was approaching other men early in the morning. ROA p. 55, l. 1- p.

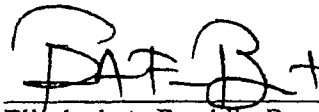
81, l. 17. The purported victim's testimony was implausible as a matter of law, and the trial court judge should have granted Dunovant's motion for a directed verdict.

Respectfully, Dunovant asks this Court to reverse his convictions and direct a verdict of acquittal for both counts of criminal sexual conduct, 1st degree and kidnapping.

CONCLUSION

For the preceding reason, Dunovant asks this Court to reverse his convictions and direct a judgment of acquittal on both counts of criminal sexual conduct, 1st degree and kidnapping.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAF-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

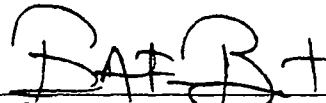
ATTORNEY FOR APPELLANT.

This 9th day of June, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 9th, 2010


ELIZABETH A. FRANKLIN-BEST
Appellate Defender

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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

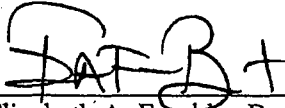
V.

TERRY ARNAIL DUNOVANT,

APPELLANT

CERTIFICATE OF SERVICE

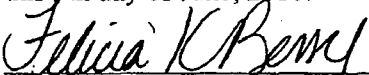
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R. J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of June, 2010.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 9th day of June, 2010.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 15, 2010.

2011CP4603371

STATE OF SOUTH CAROLINA) In the Court of Common Pleas

County of York CERTIFIED TRUE COPY

2011 NOV 28 AM 9:35
Terry Dunovant Elizabeth Alexander
 Full name and prison number, if any, of applicant. DAVID HAMILTON
 #334019 CLERK OF COURT
 YORK COUNTY, SC

v.

State of South Carolina
 Name of Respondent)

POST-CONVICTION RELIEF

FILED-RECEIVED
 2011 AUG 31 AM 11:33
 DAVID HAMILTON
 C.C.P. & G.S.
 YORK COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Perry Corr. Inst. 430 Oaklawn Rd Pelzer South Carolina 29669
2. Name and location of Court which imposed sentence York County General Sessions Court
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Kidnapping - 2007-65-46-03117
 - (b) CSC 1st 2007-65-46-03118
 - (c) CSC 1st 2007-65-46-03119
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4-2-09 # Kidnapping # 30 YEARS
 - (b) 4-2-09 # Sexual Conduct # 20 YEARS
 - (c) 4-2-09 # Sexual Conduct # 20 YEARS

CONCURRENT

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeal (Direct)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- *(c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attached pages
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) see attached pages

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

Direct Appeal

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

no

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) no

(d) any other petitions, motions or applications in this or any other Court?

no

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

Direct Appeal

ii.

N/A

iii.

N/A

iv.

N/A

(b) the name and location of the Court in which each was filed:

i.

S.C. Court of Appeal

ii.

iii.

iv.

(c) the disposition thereof:

i.

Denied

ii.

iii.

iv.

* (d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) N/A
- (c) N/A

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
✓
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i.

Carly Lewis (Trial)

ii.

P.O. Box 691

iii.

York, SC 29745

(b) the proceedings at which each such attorney represented you:

i.

Elizabeth Best (Appellate)

ii.

P.O. Box 11589

iii.

Columbia SC 29211-1589

18. State clearly the relief you seek in filing this application.

Vacate and Remand for New Trial

19. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

COUNTY OF York)

VERIFICATION

I, Terry Dunovant #334019, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Terry Dunovant

Sworn to and subscribed before me

This 22nd day of August, 2011

Stuart M. Melanthys

Notary Public for South Carolina

My Commission Expires January 7, 2016

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Terry Dunovant #334019, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Terry Dunovant
Applicant

Sworn to and subscribed before me

This 22nd day of August, 2011

Stuart M. Melanthys

Notary Public for South Carolina

My Commission Expires: January 7, 2016

- 1) Counsel failure to investigate and interview witnesses constituted ineffective assistance
- 2) Appellate counsel ineffective for failure to cite authority which would support his claim.
- 3) Counsel failed to challenge the chain of custody of the evidence
- 4) Counsel failed to request that applicant's statement be suppressed.
- 5) Counsel ineffective for allowing the state to admit evidence of applicant's prior bad acts
- 6) Appellate counsel ineffective for failure to request a complete trial transcript.
- 7) Counsel's failure to raise on appeal issue of admissibility of Nurse Pearson testimony ineffective
- 8) Counsel ineffective for not objecting to judge prematurely telling the jury that they were free to talk about the case.
- 9) Counsel ineffective for failure to subpoena 2 witnesses.
- 10) Counsel failure to make an objection at the time of evidence / ineffective

- 1) my attorney failed to devote himself to my cause
- 2) my attorney neglected the necessary investigation and the preparation in my case
- 3) my attorney did not do the necessary factual investigation on my behalf.
- 4) my attorney did not conscientiously gather any information to protect my rights.
- 5) My attorney never explained to me or discussed with me any of the elements of the crimes charged.
- 6) my attorney never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
- 7) my attorney failed to serve my cause in good faith.
- 8) my attorney did not have my best interest in mind while he was suppose to be investigating my case.

- (1) Counsel failure to investigate and interview witnesses constituted ineffective assistance of counsel.

An attorney must engage in a reasonable amount of pretrial investigation and at a minimum, interview potential witnesses and make an independent investigation of the facts and circumstances in the case. Nealy, 764 F.2d at 1177. The failure to interview eyewitness to a crime strongly support a claim of ineffective assistance of counsel. Several witnesses that had information about the case were not interviewed. Counsel failed to interview eyewitness, police officer and Nurses. Counsel restricted his pre-trial investigation to discussions with applicant and examination of prosecutor's file. This omission prejudiced the applicant. See Thomas v. State, 417 S.E.2d 531

② Appellate counsel ineffective for failure to cite authority which would support claim.

The applicant is entitled to effective assistance of counsel on first appeal as of right. The attorney general quoted in her Reply Brief that appellate attorney failed to cite any authority in applicant's Direct appeal Final brief, which would support his claims. ~~See~~ pgth 5 of Respondent's Final Brief.

Appellate attorney must play the role of an advocate, rather than a mere friend of the court assisting in detached evaluation of appellant's claim.

81

③ Counsel failed to challenge the chain of custody of the evidence.

Throughout the course of the trial, several pieces of evidence was admitted without objection. Counsel failed to challenge the state's evidence/chain of custody.

While proof not negate all possibility of tampering, it is generally held that the party offering such specimen is required to establish, at least as far as practicable a complete chain of evidence, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed. As stated in *Rogers v. Commonwealth*, 90 S.E. 2d 257, where the substance has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. See also *State v. Chisler*, 584 S.E. 2d 401. See pg 100 + 101 L. 2. See transcript pg # 206 L. 15-20

- (4) Counsel failed to request that my statement be suppressed.

The applicant gave a statement to the police officer after being arrested. Counsel should have requested that his statement be suppressed because it was involuntary.

Statements are inadmissible at trial when they are made involuntarily.

State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989). A statement is made involuntarily when it is induced by a promise of leniency. State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987) See transcript Page #233

- (5) Counsel ineffective for allowing the State to admit evidence of his prior bad acts.

During the course of the trial, the Solicitor illicit some prior bad acts from the victim concerning a prior sale of drugs and that they smoked crack cocaine. The applicant alleges the evidence (1) did not constitute clear and convincing proof of a prior crime (2) was irrelevant, and (3) was extremely prejudicial. Appointed Counsel failed to object to these lines of questions and answers. The State also failed to provide clear and convincing evidence of the prior drug sale, and the evidence should not have been admitted.

^{testimony} Evidence of a person's other bad acts is inadmissible to prove the person's propensity to commit a crime. Rule 404(b) SCRE
See Parker, 433 S.E. 2d 531, Berry, 503 S.E. 2d 770.

(6) Appellate counsel ineffective for failure to request a complete trial transcript.

The applicant spoke to appellate counsel several times during his Direct appeal process. Each time the applicant instructed appellate attorney Best to make the state reproduce a full and complete trial transcript. See attached inaccuracies. The portions of the jury instruction and solicitor's direct and closing argument contain a strikingly large number of incomplete sentences, unintelligible phrases and words which cast doubt on the meaning of the sentence. It is impossible to determine what was a transcription error and what was actually said. Appellant is requesting that a complete transcript be transcribed for a meaningful ~~appellate~~ appellate review.

⑦ Counsel's failure to raise on appeal issue of admissibility of nurse hearsay testimony, which would have entitled applicant to reversal, constituted ineffective assistance of counsel. In this case, contrary to the judges ruling, the nurses testimony fell outside the limited corroborative testimony allowable under this exception since she supplied the only testimony regarding the identity of the perpetrator and the details of the incident. This was not corroborative testimony. See SALE nurse testimony and Nurse Boringer. See also Simpkins v. State, 303 S.C. 364, 401 S.E. 2d 142.

(F) Counsel ineffective for not objecting to judge prematurely telling the jury that they were free to talk about the case.

During the course of the trial when the trial court would send the jury out to take care of some business between the lawyers, Counsel was ineffective for failing to interpose an objection when the trial court made several statements. See trial transcript page —, prior to arguments of counsel or the charge on the law, in his instruction to the jury before they left the courtroom and before they recessed for lunch. See pages #149 L. 7-8 + pg #55 L. 16-24

Jury should not begin discussing case or deciding issues until all evidence has been introduced, arguments of counsel have been completed, and applicable law has been charged. See trans. pg #222 L. 6-16 + pg #317 L. 12-15 + L. 20-21 + pg #373 L. 3-17 + pg #457 L. 1-6 + pg #533 L. 15-16 + pg #579 L. 23-25 + pg #580 L. 1-2 + pg #440 L. 18-22

- ⑨ Counsel was ineffective for failure to subpoena 2 witnesses. 817

Counsel's representation fell below an objective standard of reasonableness, and that but for counsel's errors, there is a reasonable probability the result would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, Mitchell v. State, 379 S.E. 2d 123.

Two witnesses that saw m.s.f. that night would have testified that the victim was working as a prostitute at the gas station. Their testimony would have established that she consistently frequented the gas station late at night, which would have changed the outcome of the trial. Lynn Rabre pg# 542419

- (10) Counsel was ineffective for failure to make an objection at the time evidence is offered constitutes a waiver of the right to object.

Throughout the applicant's trial, counsel failed to object to several comment, trial court errors, prejudicial comments and unfairness of the proceedings. See *McCreight v. MacDougall*, 248 S.C. 322, 149 S.E. 2D 621. See also *State v. Crowley*, 226 S.C. 472, 85 S.E. 2D 714 (an objection to the admission of evidence must be on a specific ground). Here in this case, counsel failed to object to the following:

- Failure to object to the solicitor testifying pg # 47 L. 4-25 and pg # 48 L. 1-25
- Failure to object to nurse pg # 151 L. 3
- Failure to object pg # 163 L. 1-8 see #7
- Failure to object to the SANE report submitted by Carringer
- Failure to object pg # 240 L. 11-25 & #242 L. 12-14 pg # 41 L. 1-25

- Failure to object to (race) pg# 353 L. 819
- Failure to object pg# 343 L. 9-22
- Failure to object pg# 346 L. 17-19
- Failure to object to prejudicial question pg# 478 L. 16-25 + pg# 479 1-3
- Failure to request juror to be dismissed pg# 487 L. 10-15 + pg# 489 L. 17-21
- Failure to object to Dr. Egerton replacing H. Daley / testifying to toxicology report pg# 495 L. 9-13
- Counsel failed to have items that were submitted for evidence independently tested
- Failed to have Lt. Tolson testify to her report pg# 612 L. 23-25
- Failed to specify his motion for Directed verdict, pg# 613 L. 11-13
- Failure to request a lesser included offense ABHAM pg# 619 L. 18-19
- Failed to make state produce clear & convincing evidence of prior convictions pg# 657 L. 20-21
- Failed to state specific motion
- Failed to object to solicitor testifying (we pg# 732 L. 14-18 + pg# 754 L. 9-10 + pg# 755 L. 4-5)
- Failed to object to jury charge - pg# 760-775

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Terry Dunovant, #334019,

2011-CP-46-3371

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on August 31, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the September 2007 term of the York County Grand Jury for Kidnapping (2007-GS-46-3117) and two counts of Criminal Sexual Conduct, 1st Degree (2007-GS-46-3118, -3119). Gary Lemel, Esquire, represented him. On April 2, 2009, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for thirty (30) years for Kidnapping and twenty (20) years, concurrent, for each count of Criminal Sexual Conduct, 1st Degree.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Dunovant, Op. No. 2010-UP-546 (S.C. Ct. App. filed December 16, 2010). The Remittitur was issued on January 5, 2011

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Counsel failure to investigate and interview witness constituted ineffective assistance"
 - b. "Counsel failed to challenge the chain of custody of the evidence"
 - c. "Counsel failed to request that applicant's statement be suppressed"
 - d. "Counsel ineffective for allowing the state to admit evidence of applicant's prior bad acts"
 - e. "Counsel ineffective for not objecting to judge prematurely telling the jury that they were free to talk about the case"
 - f. "Counsel ineffective for failure to subpoena 2 witnesses"
 - g. "Counsel failure to make an objection at the time of evidence ineffective"
2. Ineffective assistance of appellate counsel
 - a. "Appellate Counsel ineffective for failure to cite authority which would support his claim"
 - b. "Appellate Counsel ineffective for failure to request a complete trial transcript"
 - c. "Counsel's failure to raise an appeal issue of admissibility of nurse hearsay testimony in effective"

For the purpose of this Return, the Respondent incorporates the appellate court records, the Clerk of Court records, and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C.

at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided

representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either

expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

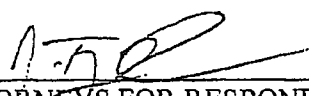
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Staff Attorney

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

_____, 2011.

1 STATE OF SOUTH CAROLINA

2 -----x

3 TERRY DUNOVANT,

4 Appellant,

5 Case No.

6 -against- 2011-CP-46-3371

7 STATE OF SOUTH CAROLINA,

8 Respondent.

9 -----x

10 October 10, 2012

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE EDGAR W. DICKSON

15

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

17 HATTIE E. BOYCE, Esquire

18 Attorney for the Plaintiff

19

20 DAVIDA MATHIS, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1		<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RE CROSS</u>
3	Terry Dunovant			
4	Mr. Brooks	5		
5	Mr. Johnson		10	
6				
7				
8	Gary Lemel			
9	Mr. Brooks	17		
10	Mr. Johnson		21	
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E X H I B I T SNO.DESCRIPTIONI.D.EVD.

No Exhibits marked.

1 THE COURT: Are you ready?

2 MR. BROOKS: Yes, sir.

3 THE COURT: All right, call your first
4 witness.

5 MR. BROOKS: We call Mr. Dunovant to the
6 stand.

7 TERRY DUNOVANT, called as a witness, having
8 been duly sworn by The Clerk, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BROOKS:

12 Q. Let me know when you are ready. Are you ready?

13 A. Yes.

14 Q. Okay. Terry, you are currently incarcerated for
15 these charges, is that correct?

16 A. Yes, sir.

17 Q. And, Mr. Gary Lemel represented you; is that
18 correct?

19 A. Yes.

20 Q. And as we go forward in this question and answer
21 process you did testified at your trial so you know you
22 need to speak up so court reporter can hear you.

23 A. Yes.

24 Q. Now, you raised this Post Conviction Relief
25 application to seek a new, trial is that correct?

1 A. Yes, that is correct.

2 Q. Now, you raised as far as issues about Mr. Lemel
3 representation of you. Now, one of the things that you
4 put in the application was his failure to investigate.
5 Can you explain what you mean by that?

6 A. Yes. What I mean by he failed to investigate, I
7 had witness also pertaining to this incident and Mr.
8 Lemel didn't send a party out or investigate, people to
9 go investigate the case. If he had done so the outcome
10 of this trial would have been totally different on my
11 behalf and I feel that he did not do the necessary foot
12 work to do that.

13 Q. Okay. And what do you think he should have done?

14 A. He should have subpoenaed the witness. Should
15 had talked with the nurses, the police officers,
16 everyone involved in the case, which he did not do that.

17 Q. Okay. Now, one of other issues that you raised
18 in the application was he failed to challenge the chain
19 of custody.

20 Can you explain what you mean by that?

21 A. Well, I am not a lawyer or anything. I don't
22 really know the law, but the chain of custody if I
23 correct --

24 Q. The court knows the law. Are you talking about
25 the forensic evidence that was used in your trial?

1 A. Yes, that's correct.

2 Q. And you didn't challenge that; is that correct?

3 A. Yes.

4 Q. And you felt like he should have challenged that?

5 A. Yes. He didn't challenge it.

6 Q. Now, you testified at your trial?

7 A. Yes, I did.

8 Q. There was evidence about some prior bad acts of
9 yours; is that correct?

10 A. Yes.

11 Q. And you felt that should not have come in to your
12 trial?

13 A. Exactly.

14 Q. Do you remember what those bad acts were?

15 A. Yes. I had a worthless check, maybe seven or
16 eight years ago. I had a driving while licensed was
17 suspended.

18 Q. And the jury heard those things?

19 A. Yes, they did.

20 Q. And those things you felt the jurors should not
21 have heard; is that correct?

22 A. Correct.

23 Q. Now, one of the things -- another thing was there
24 was a nurse that testified on behalf of the State?

25 A. Yes. That's correct.

1 Q. And you said it was hearsay testimony that came
2 in, right?

3 A. Yes.

4 Q. And you felt that Mr. Lemel should have objected
5 to that or kept that from coming in?

6 A. Yes, sir.

7 Q. And another issue you raised is you felt that the
8 judge prematurely told the jury that they were free to
9 talk about the case?

10 A. Yes. Yes, I feel that was wrong to. He told the
11 jury they was free to talk about my case before the case
12 was even presided on. Evidence was presided. [Sic] I
13 feel that he lead the jury wrong on that and they had
14 already made the assumption and found me guilty.

15 Q. Now, the other thing you said is that Mr. Lemel
16 did not subpoena two witnesses. Can you explain why
17 that was important for your case?

18 A. Again I feel if he had subpoenaed the two
19 witnesses on my behalf this trial would have come out
20 totally different on my behalf.

21 Q. Why is that? Why do you feel these two witnesses
22 were critical to your case?

23 A. Because this young lady were a prostitute and
24 they would have testified on my behalf and it would have
25 came out a different story on my behalf.

1 Q. Okay. As a matter of fact evidence came out to
2 that effect, is that correct?

3 A. Yes, it did.

4 Q. Now, since then, since you put this application
5 together you raise an issue about the Interstate
6 Agreement Detainer Act?

7 A. Correct.

8 Q. And can you tell the Court what should have been
9 addressed in that?

10 A. Yes, by me being from another State, if I am
11 correct I think they have like 120 days to 180 days to
12 take to me to trial and I was incarcerated for over 14
13 months before the start of the trial.

14 Q. Okay. And you feel that as a result of that your
15 trial counsel, Mr. Lemel, should have asked for the
16 charges to be dismissed; is that correct?

17 A. Yes. Correct.

18 Q. Now, you also raised in the application some
19 issues against appellant counsel, and one of them you
20 felt that appellant counsel failed to cite authority
21 which would support your argument; is that correct?

22 A. That's correct.

23 Q. And appellant counsel was ineffective for failure
24 to request a complete trial transcript?

25 A. Correct.

1 Q. All right. Now, Mr. Dunovant, is there anything
2 else we haven't covered?

3 A. No, I think you covered everything. I wasn't
4 given a fair trial and I just ask the Court to, you
5 know, have leniency.

6 Q. Give you a new trial?

7 A. Grant me a new trial.

8 Q. All right. This is your bite at the apple at the
9 PCR.

10 A. I understand that.

11 Q. So I want you to take a minute. Have we
12 forgotten anything?

13 A. Not that I can recall. I mean, I am a little
14 nervous. Not anything I can think of. If I am missing
15 something here --

16 Q. Okay. All right. Answer any questions the
17 attorney general may have?

18 THE COURT: Mr. Johnson.

19 MR. JOHNSON: May it please the court.

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. JOHNSON:

23 Q. Mr. Dunovant, you have claimed that appellant
24 counsel failed to cite case law that would support your
25 case?

1 A. Correct.

2 Q. Did you bring any case law here today that
3 supports your claim?

4 A. Yes, sir.

5 Q. Okay. Have you presented that case law?

6 A. Not case law. I have some issues here.

7 Q. But you said she failed to cite case law. Do you
8 have any case law that supports that allegation?

9 A. Again, like I say I am not an attorney. Like I
10 say I don't know the law, but the only thing I know I
11 went to the law library and I picked -- I pulled my
12 record went against other cases that failed under my
13 case.

14 Q. You say your counsel failed to investigate and
15 failed to subpoena witnesses to I guess establish that
16 your claim that the victim was a prosecute?

17 A. Exactly.

18 Q. Did you bring those witnesses here today?

19 A. No, sir, I couldn't. No.

20 Q. You said your attorney should have challenged the
21 prior bad acts of the worthless check prior convictions.
22 Are you aware your attorney did challenge that on page
23 617 of the transcript?

24 A. No.

25 Q. He did challenge that.

1 A. He did?

2 Q. Yes, sir, page 617 and the Court allowed that in.

3 A. The Court allowed it, but he did not object.

4 MR. JOHNSON: The Court's indulgence, Your
5 Honor.

6 THE COURT: Take your time.

7 MR. JOHNSON: Page 617, line 18, Your Honor.

8 THE COURT: Yes.

9 MR. JOHNSON: May I approach the witness?

10 THE COURT: Yes, sir.

11 MR. JOHNSON: Thank you.

12 Q. Mr. Dunovant, with regard to the worthless
13 checks, I would challenge those for dishonesty.

14 (Counsel reading from transcript).

15 So he did in fact challenge it. Is that a yes?

16 A. Yes.

17 Q. Mr. Dunovant, you testified at this trial; is
18 that correct?

19 A. Yes.

20 Q. Apparently the jury didn't buy your story did
21 they?

22 A. Apparently they did not.

23 Q. Because Mr. Lemel argued in closing argument they
24 would have to believe the victim's story beyond a
25 reasonable doubt in order to convict you; isn't that

1 right?

2 A. Yes.

3 Q. And apparently they believed the victim over you?

4 A. Apparently they did. Like I said, I feel again
5 if my witness had been present to speak on my behalf and
6 the judge told the jury that it was free to talk about
7 this case, the outcome would have been to the totally
8 different again.

9 Q. Can you please point to me where the judge told
10 the jury to deliberate prematurely?

11 A. Yes, sir.

12 Q. Please do.

13 A. You are correct about me telling where the jury
14 was free to talk about this, yes.

15 Q. Before the case was ever submitted to the jury?

16 A. Yes. Exactly. Just give me a moment please.

17 Q. Take your time.

18 A. It is kind of hard to get.

19 Q. Do you need counsel to come help you?

20 A. Yes, if you don't mind.

21 MR. BROOKS: Very nice of counsel to offer
22 my services.

23 (Mr. Brooks approaches the witness and they
24 look through the transcript.)

25 MR. BROOKS: Page 149, lines seven and

1 eight.

2 MR. JOHNSON: Page 149, line seven says,
3 "Let's take about a ten minute break. Recess
4 taken."

5 MR. BROOKS: And he also has, page 85, line
6 16 through 24.

7 MR. JOHNSON: Lines 16 through 24 says --
8 all it says, "Mr. Lemel, we are going to -- I had
9 to break it up. We are going to have to take a
10 break. I am going to let you go to the jury room
11 just for a few minutes and we will finish up when
12 you come back."

13 THE DEFENDANT: If you go further than that
14 I got several others underlined.

15 MR. BROOKS: You want me to just tell you
16 what he got underlined?

17 MR. JOHNSON: Please.

18 MR. BROOKS: Page 222, line six through 16.

19 MR. JOHNSON: Did you say 222?

20 MR. BROOKS: Correct.

21 MR. JOHNSON: Your Honor, just for the
22 record all he does is tell the jury to go back
23 and take a break.

24 THE COURT: I got it.

25 MR. BROOKS: Page 317, line 12 through 15

1 and line 20 to 21.

2 MR. JOHNSON: Take about a ten-minute break
3 take. An afternoon break.

4 MR. BROOKS: Page 373, lines three through
5 17.

6 MR. JOHNSON: 378?

7 MR. BROOKS: 373.

8 MR. JOHNSON: 373, thank you. Another
9 break, Your Honor.

10 MR. BROOKS: Page 487, lines one through
11 six.

12 MR. JOHNSON: Another break, Your Honor.

13 MR. BROOKS: Page 533, lines 15 through 16.

14 MR. JOHNSON: Another refreshment break,
15 Your Honor.

16 MR. BROOKS: Page 579, it looks like line
17 23.

18 MR. JOHNSON: Another refreshment break,
19 Your Honor.

20 MR. BROOKS: Page 580, line one and two.

21 MR. JOHNSON: Another break.

22 MR. BROOKS: One more. Page 440, line 18
23 through 22.

24 THE DEFENDANT: Again, like I said I would
25 speak to on this --

1 THE COURT: Hold on. Let him find the page.

2 MR. JOHNSON: "This will be a good point to
3 take a littler refreshment break. I will let
4 everybody go to the jury room and I will send for
5 you in just a few minutes. You may step down if
6 you wish and refresh yourself.

7 Your Honor, I submit there is no evidence
8 where the judge tells the jury they can
9 prematurely deliberate on this case.

10 THE COURT: Continue your questions.

11 MR. JOHNSON: All right.

12 BY MR. JOHNSON:

13 Q. So Mr. Dunovant, you have no case law here today
14 to support your appellant counsel claim?

15 A. Yes.

16 Q. You brought witnesses here today?

17 A. Oh, no, like I said I couldn't.

18 Q. You didn't bring any case law, did you?

19 A. No.

20 Q. You didn't bring any witnesses with you?

21 A. No.

22 MR. JOHNSON: No further questions, Your
23 Honor.

24 THE COURT: All right. Anything on
25 redirect.

1 MR. BROOKS: Nothing further, judge.

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

4 MR. BROOKS: Call Mr. Lemel to the stand.

5 GRAY LEMEL, called as a witness, having
6 been duly sworn by The Clerk, was examined and
7 testified as follows:

8 THE COURT: Good morning Mr. Lemel.

9 MR. LEMEL: Good morning, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. BROOKS:

12 Q. Gary, how are you doing?

13 A. Just fine, thank you, sir.

14 Q. You represented Mr. Dunovant?

15 A. I did.

16 Q. Now, can you briefly just give me a summary of
17 what the State's case was against him?

18 A. The State's case was that he committed a violent
19 rape against Miss Hill in sort of a rural part of York
20 County. That he was arrested in North Carolina and
21 extradited down here and it did take an extended period
22 of time. It was over a year. I don't remember the
23 exact amount of time. I think he said 14 months. That
24 sounds about right for the case to come to trial.

25 At the trial the primary piece -- one of the

1 primary pieces of evidence was the video from the
2 convenience store where the two parties encountered
3 them. We went over that in detail and it essentially
4 came down to a -- there was never a question of identity
5 in case. When you have a criminal sexual conduct case,
6 there is three issues. One, did penetration take place.
7 In order for there be to be a sexual battery there has
8 to be penetration. Two, was it consensual or not. And
9 three, is the identity of the person who had, if a
10 sexual battery occurred and it was not consensual is the
11 identity of the person in question.

12 In this particular case both the first and the
13 third were not at issue. There was no question the
14 penetration had taken place. There was no question that
15 Terry was involved. It was simply a question of whether
16 it was consensual or not.

17 Q. All right. And basically it got down to a
18 credibility issue?

19 A. It very much was a credibility issue, correct,
20 because there were only two witnesses to the actual
21 incident and that was Terry and the victim.

22 Q. And did you do a significant amount of research
23 on the alleged victim in this case?

24 A. I did some. I certainly knew what her background
25 was in terms of criminal convictions that we could go

1 after her on. I wish I had done more. In retrospect at
2 the end of this trial when I look back and think the one
3 thing I could have done better would have been to go
4 after her background. There was a lot of stuff that she
5 put out there in terms of job history. She mentioned
6 friends that she had allegedly been with immediately
7 before she went to this gas station. I did not have
8 that information before trial. I did not approach her
9 before trial to try to see if she would give a
10 statement. That was a tactical decision on my part. In
11 retrospect I wish I would have done so. I wish I would
12 have done more investigation particularly on her job
13 background because the issue of what she was doing there
14 that nite at one a.m. or early in the morning hours
15 there at the gas station came down to a question of why
16 she was there. Her employment. And why she was
17 approaching men at the gas station. That was a big
18 issue and if I had known more about what she told in
19 claims of her regular employment I would have been in a
20 better position to address some of her claims.

21 Q. Did you have the use of a private investigator?

22 A. I did not have the use of a private investigator
23 on the case. I did not request funds for a private
24 investigator. I was working with the public defender's
25 office. They do have an investigators that work for the

1 public defender's office. I could have brought one of
2 those investigators in to do that. I did not do that.

3 Q. And that's what you mean by in retrospect you
4 feel like you should have done a more extensive
5 background history on her?

6 A. Any time I have got a case that I have gone to
7 trial and lost on there is always stuff I wish I would
8 have done different. Some of it is very minor and some
9 of it is of significance.

10 I think in this particular case the biggest
11 significant thing would have been if I had done more of
12 an investigation with regard to her because it was such
13 a credibility issue. If I could have impeached her or
14 found something that was wasn't true by way of a
15 background statement, not directly on the case but some
16 ancillary matter that could have called her credibility
17 into question or challenged that of course that would
18 have brought everything in her testimony under question
19 and that would have been probably the most effective
20 thing I could have done. So in retrospect, yeah, that
21 is one thing I wish I would have done differently.

22 Q. Would you say her credibility was a significant
23 crux of the State's case?

24 A. Yes. There were only two witnesses. In an issue
25 of consent when you only have the two parties there,

1 obviously their credibility is very important.

2 MR. BROOKS: Beg the Court's indulgence. No
3 other questions judge.

4 THE COURT: Anything on cross examination?

5 MR. JOHNSON: Yes, Your Honor, just briefly.

6 CROSS EXAMINATION

7 BY MR. JOHNSON:

8 Q. Mr. Lemel, you said credibility was the crux of
9 this case, weren't the physical injuries also pretty big
10 evidence in this case?

11 A. There is no question the physical injuries were
12 significant. Mostly the external injuries. I did not
13 review the sexual assault examiner's file extensively.
14 I don't recall if there were a lot of internal injuries.
15 I recall there were significant external injuries on the
16 victim's back, some bruising on the face. There was of
17 course a question of how old those were and where those
18 were from. As I recall the statement that there was
19 some question about other men she may have been with
20 that night and other parties she may have been with and
21 whether those injuries may have taken place from the
22 hands of someone other than Terry. That was certainly
23 an issue and the fact that Terry himself had an injury
24 on his hand from a fight that happened earlier and of
25 course that was portrayed by the State as evidence that

1 he was the one that inflicted the injuries on the
2 victim.

3 The physical injuries were certainly significant
4 from the credibility stand point in terms of their
5 presence.

6 Q. The ruptured ear drum and the bleeding in the
7 ears?

8 A. Correct. Correct.

9 Q. You testified that you wish you in hind site
10 would have researched more of the victim's background?

11 A. Yes.

12 Q. Had you done that and they confirmed her story
13 wouldn't that be more damaging to Mr. Dunovant?

14 A. Yes, but I will say this, I would have at least
15 known that it was coming or at least known that was a
16 position they were going to take. And I can't tell you
17 what the answer would have been. I don't know whether
18 she would talked to me or not. I don't know whether I
19 would have found out all the information that came out
20 at trial with regard to the background and her job and
21 other people that she was with that night.

22 I know that the State did not have those
23 individuals available to them. But it is one of those
24 things that I wish I had done.

25 Q. But didn't you argue that?

1 A. I think I did.

2 Q. The State didn't present those witnesses?

3 A. Honestly I could not tell you if I did or not. I
4 probably would have. That would have been my habit. I
5 would have to look at the transcript to look at my
6 closing argument which I can if you want me to, but I
7 don't recall off the top of my head.

8 Q. Didn't you actually, I believe, cross examine the
9 lead investigator for more than one hundred pages of
10 this transcript?

11 A. There was extensive cross examination and I did
12 as much cross examination as I could of them and medical
13 personnel and the victim.

14 Q. And how long have you been trying cases?

15 A. Since 1996.

16 Q. You have tried jury cases?

17 A. Many jury cases.

18 Q. Criminal sexual conduct cases?

19 A. Several. There was a period of time right about
20 this point of time where I was assigned basically to
21 handle a large portion of the criminal sexual conduct
22 cases that came through the public defender's office and
23 I would venture to say that in the middle part of the
24 last decade I probably tried more jury trial cases of
25 criminal sexual conduct than anybody else in the county

1 just by way of that assignment. I did a lot of criminal
2 sexual conduct cases from 2005, roughly, to 2009.

3 Q. Let's go over Mr. Dunovant's allegations. He
4 says that you failed to challenge the chain of custody
5 in this case?

6 A. I don't know specifically what he is referring
7 to. I will tell you that in a situation where our issue
8 is not identity but consent, it is my practice not to
9 try to fight in front of the jury over stuff that I
10 don't think is valuable. There was nothing in of a
11 chain of custody sort that I thought was in any way
12 going to help Mr. Dunovant and rather then distract the
13 jury away from what I thought the real issue in this
14 case was I did not challenge the chain of custody.

15 Q. Such as DNA evidence --

16 A. Yes.

17 Q. -- it is just irrelevant in a case like this?

18 A. It is not that it is irrelevant, but the question
19 of identity wasn't at issue because quite frankly
20 Terry's own position and Terry's own statements. He
21 never denied that sex occurred. So identity simply was
22 not an issue therefore it was not -- in my opinion when
23 you do that in front of the jury you simply lose
24 credibility on the real issues by trying to distract
25 them from something in my opinion was not an a good

1 issue.

2 Q. The last thing I want to touch on is the
3 Interstate Container Agreement. Do you have any
4 position on that?

5 A. Okay, and maybe I missed something. My
6 understanding of what he is referring to and the times I
7 dealt with that is somebody is in custody in prison in
8 another State and is brought into this State, then there
9 is a limit as far as the amount of time they have to try
10 them. I don't recall but I don't think that Terry was
11 actually -- he had been extradited from North Carolina.
12 He waived extradition and came down here, but that is
13 different then Interstate Detainer Agreement because
14 Interstate Detainer Agreement applies to people who are
15 in prison in another state and Terry unless I am -- I
16 don't recall that, if that is the case. That is the
17 only time I have run into that situation of the time
18 limit. I have had cases actually get dismissed on that
19 basis where somebody is brought down and kind of
20 forgotten about. A 180 days later I make a motion under
21 the Interstate Detainer Act to dismiss the charge.

22 I don't recall that being the situation with
23 Terry. If it was I missed it. But I don't recall that
24 being the case.

25 Q. So in your estimation it was inapplicable to this

1 case at hand?

2 A. Yes, as I understand what that act applies to,
3 correct. Again, if I am wrong about that and that was
4 the case then I missed it.

5 MR. JOHNSON: No further questions, Your
6 Honor. Thank you.

7 THE COURT: Anything on redirect.

8 MR. BROOKS: No, sir.

9 THE COURT: You may step down.

10 All right, Mr. Brooks you may call your next
11 witness.

12 MR. BROOKS: Judge, that is the applicant's
13 case.

14 THE COURT: All right. What I will do, I
15 have been provided with a copy of the trial
16 transcript which I will review and I will
17 get back to you all with my decision.

18 MR. BROOKS: Thank you, Judge.

19 MR. JOHNSON: Thank you, Your Honor.

20 (END OF TRANSCRIPT)

21 * * * * *

22

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 10th day of October, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 23, 2013

Aileen Butler

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Terry Dunovant, #334019,

2011-CP-46-3371

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 31, 2011. The Respondent made its Return on January 27, 2012. An evidentiary hearing into the matter was convened on October 10, 2012, at the Moss Justice Center in York, SC. Charles T. Brooks, III, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Gary Lemel, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the September 2007 term of the York County Grand Jury for Kidnapping (2007-GS-46-3117) and two counts of Criminal Sexual Conduct, 1st Degree (2007-GS-46-3118, -3119). Gary Lemel, Esquire, represented him. On April 2, 2009, the Applicant proceeded to a jury trial pursuant to which he was

found guilty of all charges as indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for thirty (30) years for Kidnapping and twenty (20) years, concurrent, for each count of Criminal Sexual Conduct, 1st Degree.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Dunovant, Op. No. 2010-UP-546 (S.C. Ct. App. filed December 16, 2010). The Remittitur was issued on January 5, 2011

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Counsel failure to investigate and interview witness constituted ineffective assistance"
 - b. "Counsel failed to challenge the chain of custody of the evidence"
 - c. "Counsel failed to request that applicant's statement be suppressed"
 - d. "Counsel ineffective for allowing the state to admit evidence of applicant's prior bad acts"
 - e. "Counsel ineffective for not objecting to judge prematurely telling the jury that they were free to talk about the case"
 - f. "Counsel ineffective for failure to subpoena 2 witnesses"
 - g. "Counsel failure to make an objection at the time of evidence ineffective"
2. Ineffective assistance of appellate counsel
 - a. "Appellate Counsel ineffective for failure to cite authority which would support his claim"
 - b. "Appellate Counsel ineffective for failure to request a complete trial transcript"
 - c. "Counsel's failure to raise an appeal issue of admissibility of nurse hearsay testimony in effective"

At the hearing, the Applicant proceeded on his claims of ineffective assistance of trial counsel.

SUMMARY OF TESTIMONY

The Applicant testified he believed Counsel was ineffective for failing to investigate and subpoena witnesses, failing to challenge the chain of custody of the forensic evidence, failing to

challenge the jury hearing of Applicant's prior bad acts, failing to object to the trial judge's instruction for the jury to prematurely deliberate, and failing to have the charges dismissed under the Interstate Detainer Agreement.

On cross-examination, the Applicant admitted no witnesses were present to testify on his behalf at the PCR hearing. He also admitted that he chose to testify and was able to relay to the jury his version of the facts. He further admitted the jury apparently believed Victim's version of the facts beyond a reasonable doubt as he was convicted of the kidnapping and sexual assault.

Counsel testified this case was one of a violent rape committed against Victim in a rural area. He stated the evidence the State presented at trial was a video from the gas station where Applicant picked Victim up in his car, along with testimony from Victim, witnesses, and Applicant. Counsel testified identification was never a factor, nor was the issue of penetration. The only factual issue in this case was whether Victim consented to the sexual encounter or was forced to have sexual relations with Applicant. Counsel then stated the case boiled down to Victim's credibility against Applicant's credibility. Counsel testified while he researched Victim's background, he wished he would have conducted more investigation into Victim's job history, friends she might have been with, and allegations of prostitution. He also stated he did not hire a private investigator.

On cross-examination, Counsel testified Victim had extensive physical injuries from the incident. He also admitted had he conducted more investigation into Victim's background and her version of the facts were confirmed, it would have been more damaging to Applicant's case at trial. Counsel also testified he extensively cross-examined the witnesses in the case based on his experience as a defense attorney in many prior criminal sexual conduct cases.

Counsel testified he did not challenge the chain of custody of the forensic evidence because it was not an issue in this case. Again, Counsel stated this case revolved around Victim's consent of the sexual encounter. Lastly, Counsel stated he did not move to have the charges dismissed under the Interstate Detainer Agreement because it was completely inapplicable to this case as Applicant was extradited back to South Carolina.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript, all of which assists the Court in judging the ~~the~~ ^{witnesses'} credibility. The Court finds the testimony of the Applicant concerning ineffective assistance of counsel not credible while finding the testimony of Gary Lemel, Applicant's trial counsel, very credible.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Interview/Call witnesses on the Applicant's behalf

The Applicant alleges Counsel was ineffective for failing to interview witnesses on his behalf.

At the PCR hearing, the Applicant testified Counsel failed to interview witnesses from the scene the night of his arrest.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of

a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

This Court finds Counsel was not ineffective for failing to interview or subpoena witnesses on the Applicant's behalf. The Applicant failed to produce any testimony or evidence at the PCR hearing to show what these witnesses would have testified to at trial or how their testimony would have altered the outcome of his trial. Additionally, the Applicant has failed to prove any resulting prejudice from Counsel's alleged shortcoming. Accordingly, this allegation is denied.

Victim's background

Additionally, the Applicant alleges Counsel was ineffective for not investigating Victim's background more thoroughly.

The Applicant testified Counsel failed to interview and subpoena witnesses to prove Victim was a prostitute and therefore, the sexual encounter was consensual.

Counsel testified while he would have liked to have more thoroughly investigated Victim's background and version of the facts, had he done so and confirmed the facts as presented at trial, it would have damaged Applicant's case.

This Court finds Counsel was not ineffective with regards to Victim's background. Counsel specifically cross-examined Victim in this case as to attempt to show she was a prostitute. His questions and argument were consistent with the defense theory of the case. E.g. Tr. p. 594 ("Q: So this was the second person that you were riding with that night that didn't take you home?"); Tr. 706 ("There were discussions before they ever get into the car. Each side knew what the other was doing,



what they were looking for.") This Court finds any regret on the part of Counsel was due to hindsight and not ineffective assistance. Additionally, the Applicant failed to provide evidence or testimony of witnesses that would prove that Victim was a prostitute and that the sexual encounter was consensual. Further, this Court finds no resulting prejudice from Counsel's representation. Accordingly, this allegation is denied.

Other allegations

While the Applicant alleged in his application and at the evidentiary hearing that Counsel was ineffective for failing to challenge the chain of custody of the forensic evidence, failing to challenge the jury hearing of Applicant's prior bad acts, failing to object to the trial judge's instruction for the jury to prematurely deliberate, and failing to have the charges dismissed under the Interstate Detainer Agreement, this Court finds Applicant failed to meet his burden of proving Counsel's ineffectiveness. Specifically, Applicant failed to produce evidence sufficient to show how the trial's outcome would have been different had Counsel objected or challenged the above issues. Applicant also failed to show how these alleged deficiencies prejudiced his trial. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

6/27, 2013

Danahy, South Carolina

859

WITNESSES

CSO Comar

DOCKET NO. 2007-GS-46-03117

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

September 13, Term 2007

ARREST WARRANT NUMBER

151645

THE STATE

VS.

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

FILE BILL

TERRY ARNAIL DUNOVANT

Ordeperson of Grand Jury
ate: 9-13-07

VERDICT

Guilty

Indictment for

KIDNAPPING

Ordeperson of Petit Jury
ate:

SC Code: 16-03-910
CDR Code: 0095

CERTIFIED TRUE COPY
2011 SEP - 6 PM 12:01
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2007, the Grand Jurors of York County present upon their oath:

KIDNAPPING

The Defendant, Terry Arnail Dunovant, did in York County, South Carolina, on or about May 03, 2007, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Misty Hill, without authority of law, all in violation of Section 16-03-910 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

198

WITNESSES

(CSO) Yeager

DOCKET NO. 2007-GS-46- 03118

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

September 13, Term 2007

in

ARREST WARRANT NUMBER

1-163319

THE STATE

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TERRY ARNAIL DUNOVANT

TRUE BILL

QW Montgomery

Foreperson of Grand Jury

Date: 9-13-07

VERDICT

Guilty

CRIMINAL SEXUAL CONDUCT, 1st DEGREE

Indictment for

R. Edward H. St. Pierre
Foreperson of Petit Jury
Date

SC Code: 16-03-652
CDR Code: 160

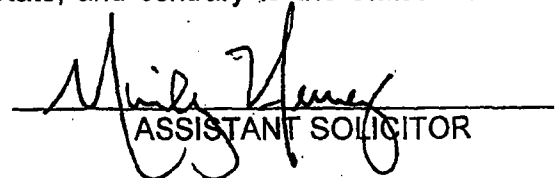
**CERTIFIED TRUE COPY
STATE OF SOUTH CAROLINA, OF ORIGINAL INDICTMENT
COUNTY OF YORK INSTRUMENT WHICH
IS ON FILE IN THIS
OFFICE**

At a Court of General Sessions, convened on September 13, 2007, the Grand Jurors of York County present upon their oath:

CRIMINAL SEXUAL CONDUCT, 1st DEGREE

The Defendant, Terry Arnail Dunovant, did in York County, South Carolina, on or about May 03, 2007, wilfully, unlawfully and feloniously without just cause and against the victim, Misty Hill, will and consent, and with the use of aggravated force, engage in a sexual battery, to wit: the defendant did force the victim to engage in oral sex, against her will and without her consent, all in violation of Section 16-03-652, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

33
88
WITNESSES

CSO Yeager

DOCKET NO. 2007-GS-46- 0 3119

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

September 13, Term 2007

ARREST WARRANT NUMBER

-163320

THE STATE

VS.

TERRY ARNAL DUNOVANT

ACTION OF GRAND JURY

TRUE BILL

Off. [Signature]
oreperson of Grand Jury
ale: 9-13-07

VERDICT

Guilty

CRIMINAL SEXUAL CONDUCT, 1st DEGREE

Indictment for

[Signature]
oreperson of Petit Jury
ate:

SC Code: 16-03-652
CDR Code: 160

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
2011 SEP -6 PM 12:02
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

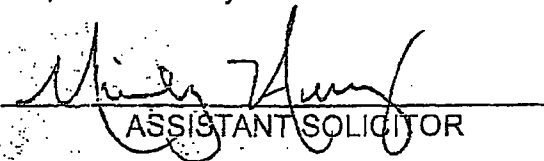
INDICTMENT

At a Court of General Sessions, convened on September 13, 2007, the Grand Jurors of York County present upon their oath:

CRIMINAL SEXUAL CONDUCT, 1st DEGREE

The Defendant, Terry Arnail Dunovant, did in York County, South Carolina, on or about May 03, 2007, wilfully, unlawfully and feloniously without just cause and against the victim, Misty Hill, will and consent, and with the use of aggravated force, engage in a sexual battery, to wit: the defendant did force the victim to engage in vaginal sex, against her will and without her consent, all in violation of Section 16-03-652, Code of Laws of South Carolina, (1976, as amended).

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



ASSISTANT SOLICITOR