

RECEIVED

Jul 16 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICO ANTONIO FUNDERBURK,

APPELLANT

APPELLATE CASE NO. 2024-000172

RECORD ON APPEAL

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

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

ANDREW D POWELL
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEY FOR APPELLANT

JIMMY A. RICHARDSON, II
Solicitor, Fifteenth Judicial Circuit
PO Box 1276
Conway, SC 29528
(843) 915-8608

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JANUARY 29 – FEBRUARY 2, 2024	1
DEFENSE WITHDRAWAL OF NOTICE TO RELY ON INSANITY DEFENSE BY MR. HILLER	5
DEFENSE NOTICE TO RELY ON INVOLUNTARY INTOXICATION DEFENSE BY MR. HILLER	6
RESPONSE OBJECTING TO CHARGING INVOLUNTARY INTOXICATION BY MS. WALLER	11
COURT DEFERS RULING ON REQUEST TO CHARGE INVOLUNTARY INTOXICATION	19
DEFENSE MOTION TO REDACT RACIAL SLURS FROM STATE’S EXHIBIT NO. 57-O (CELL PHONE VIDEO) BY MR. HILLER	21
RESPONSE OBJECTING TO REDACTION BY MS. WALLER	22
COURT DEFERS RULING ON DEFENSE MOTION TO REDACT RACIAL SLURS FROM STATE’S EXHIBIT NO. 57-O (CELL PHONE VIDEO)	23
DEFENSE MOTION TO SUPPRESS STATE’S EXHIBIT NO. 1 (FLETCHER’S BODY CAMERA VIDEO) BY MR. HILLER	23
RESPONSE OBJECTING TO SUPPRESSION BY MS. WALLER	26
CONTINUED DEFENSE MOTION TO SUPPRESS STATE’S EXHIBIT NO. 1 (FLETCHER’S BODY CAMERA VIDEO) BY MR. HILLER	28
COURT’S RULING DENYING DEFENSE MOTION TO SUPPRESS STATE’S EXHIBIT NO. 1 (FLETCHER’S BODY CAMERA VIDEO)	29
COURT’S RULING FINDING NO SEPARATE CHARGE FOR INVOLUNTARY INTOXICATION	34
DEFENSE WITHDRAWS WITHDRAWAL OF NOTICE TO RELY ON INSANITY DEFENSE BY MR. HILLER	35
CONTINUED STATE’S OBJECTION TO REDACTING RACIAL SLURS FROM STATE’S EXHIBIT NO. 57-O (CELL PHONE VIDEO) BY MS. WALLER	37

CONTINUED DEFENSE MOTION TO REDACT RACIAL SLURS FROM STATE’S EXHIBIT NO. 57-O (CELL PHONE VIDEO) BY MR. HILLER	38
COURT’S RULING DENYING DEFENSE MOTION TO REDACT RACIAL SLURS FROM STATE’S EXHIBIT NO. 57-O (CELL PHONE VIDEO).....	38
OPENING STATEMENT BY MR. MARTIN.....	46
OPENING STATEMENT BY MR. HILLER	53
TESTIMONY	
BYRON ROSS	
Direct Examination by Ms. Waller	56
Cross-Examination by Mr. Hiller	62
STATE’S MOTION TO REMAND THE DEFENDANT INTO CUSTODY BY MS. WALLER	64
RESPONSE OBJECTING TO REMAND BY MR. FOX	64
CONTINUED STATE’S MOTION TO REMAND THE DEFENDANT INTO CUSTODY BY MS. WALLER	65
COURT’S RULING REMANDING THE DEFENDANT INTO CUSTODY PENDING THE CONCLUSION OF THE TRIAL	66
TESTIMONY	
SELENA SMALL	
Direct Examination by Mr. Martin	67
Cross-Examination by Mr. Hiller	81
Redirect Examination by Mr. Martin.....	82
KELLY BONOME	
Direct Examination by Mr. Martin	87
KATHERINE ANDRADE	
Direct Examination by Ms. Waller	93
Cross-Examination by Mr. Hiller	97
JACKIE WITHERSPOON	
Direct Examination by Mr. Martin	97
Cross-Examination by Mr. Hiller	105
SEAN STICKLE	
Direct Examination by Mr. Martin	107

DEFENSE MOTION TO EXCLUDE PAGE 2 OF STATE’S EXHIBIT NO. 10 (EMT REPORT) BY MR. HILLER.....	110
RESPONSE BY MR. MARTIN.....	113
COURT DEFERS RULING ON ADMISSIBILITY OF STATE’S EXHIBIT NO. 10 (EMT REPORT).....	115
TESTIMONY	
SEAN STICKLE	
Direct Examination <i>in-camera</i> by Mr. Martin.....	115
Cross-Examination <i>in-camera</i> by Mr. Hiller.....	117
COURT’S FINDING STATE’S EXHIBIT NO. 10 (EMT REPORT) ADMISSIBLE SUBJECT TO REDACTION AND DENYING THE DEFENSE MOTION TO EXCLUDE PAGE 2	118
TESTIMONY	
SEAN STICKLE	
Continued Cross-Examination <i>in-camera</i> by Mr. Hiller	119
CONTINUED DEFENSE MOTION TO EXCLUDE STATE’S EXHIBIT NO. 10 (EMT REPORT) BY MR. HILLER.....	120
COURT RENEWS RULING FINDING STATE’S EXHIBIT NO. 10 (EMT REPORT) ADMISSIBLE.....	120
TESTIMONY	
SEAN STICKLE	
Continued Direct Examination by Mr. Martin.....	122
Cross-Examination by Mr. Hiller	126
APRIL MARTIN	
Direct Examination by Mr. Martin	129
DEFENSE MOTION TO EXCLUDE STATE’S EXHIBITS NOS. 72 – 99 (PHOTOS) PURSUANT TO RULE 403, SCRE AND TO <i>STATE V. NELSON</i> BY MR. FOX	132
RESPONSE OBJECTING TO EXCLUSION OF STATE’S EXHIBITS NOS. 72 – 99 (PHOTOS) BY MS. WALLER	139
COURT’S RULING FINDING STATE’S EXHIBITS NOS. 72 – 99 (PHOTOS) ADMISSIBLE AND DENYING THE DEFENSE MOTION TO EXCLUDE	141

TESTIMONY**DOCTOR RACHEL COBOS**

Direct Examination by Ms. Waller 142

Voir Dire Examination by Mr. Hiller 152

Continued Direct Examination by Ms. Waller 154

**DEFENSE RENEWAL OF OBJECTION TO STATE’S EXHIBITS NOS. 72 – 99 (PHOTOS)
BY MR. HILLER.....159****TESTIMONY****DOCTOR RACHEL COBOS**

Continued Direct Examination by Ms. Waller 159

Cross-Examination by Mr. Hiller 196

CINDY SMITH

Direct Examination by Ms. Waller 199

Cross-Examination by Mr. Hiller 205

MERRELL HAWKINS

Direct Examination by Ms. Waller 206

Cross-Examination by Mr. Hiller 212

LORI DUDLEY

Direct Examination by Ms. Waller 215

MATTHEW STEPHENSON

Direct Examination by Mr. Martin 218

Cross-Examination by Mr. Hiller 247

Redirect Examination by Mr. Martin.....252

BENJAMIN WELLS

Direct Examination by Ms. Waller 253

Cross-Examination by Mr. Hiller 261

Redirect Examination by Ms. Waller.....262

CHRISTIAN FLETCHER

Direct Examination by Ms. Waller 265

**DEFENSE RENEWAL OF OBJECTION TO STATE’S EXHIBIT NO. 1 (FLETCHER’S
BODY CAMERA VIDEO) BY MR. HILLER 283****TESTIMONY**

CHRISTIAN FLETCHER	
Continued Direct Examination by Ms. Waller	283
DEFENSE OBJECTION TO LINE OF QUESTIONING BY MR. HILLER.....	289
RESPONSE BY MS. WALLER.....	290
CONTINUED DEFENSE OBJECTION TO LINE OF QUESTIONING BY MR. HILLER ..	294
COURT’S RULING SUSTAINING DEFENSE OBJECTION TO LEADING.....	295
DEFENSE REQUEST FOR CURATIVE INSTRUCTION BY MR. HILLER	297
RESPONSE BY MS. WALLER.....	298
COURT’S RULING DENYING DEFENSE REQUEST FOR CURATIVE INSTRUCTION	298
DEFENSE OBJECTION TO THE CHARACTERIZATION OF THE DEFENDANT STATEMENT AS SELF-SERVING BY MR. HILLER.....	299
RESPONSE BY MS. WALLER.....	300
COURT’S RULING SUSTAINING DEFENSE OBJECTION TO THE CHARACTERIZATION OF THE DEFENDANT STATEMENT AS SELF-SERVING ..	300
STATE’S ARGUMENT PURSUANT TO <i>STATE V. WORTHY</i> REGARDING PRIOR DEFENDANT STATEMENT BY MS. WALLER.....	305

TESTIMONY

CHRISTIAN FLETCHER	
Direct Examination by Ms. Waller	309
Cross-Examination by Mr. Hiller	355
Redirect Examination by Ms. Waller.....	365
SARAH ZAPATA	
Direct Examination <i>in-camera</i> by Mr. Martin	370
Direct Examination by Mr. Martin	376
Cross-Examination by Ms. Zapata.....	399
Redirect Examination by Mr. Martin.....	402
K.S.	
Direct Examination by Ms. Waller	403
Cross-Examination by Mr. Hiller	438
Redirect Examination by Ms. Waller.....	445

STATE RESTS	446
DEFENSE MOTION FOR A DIRECTED VERDICT BY MR. HILLER	447
COURT’S RULING DENYING DEFENSE MOTION FOR A DIRECTED VERDICT	447
CHARGE CONFERENCE.....	447
TESTIMONY COLLOQUY WITH DEFENDANT	456

TESTIMONY

RICO FUNDERBURK	
Direct Examination by Mr. Hiller	461
Cross-Examination by Ms. Waller.....	488
DEFENSE RESTS	506
DEFENSE RENEWAL OF MOTION FOR DIRECTED VERDICT BY MR. HILLER	507
COURT’S RULING DENYING DEFENSE MOTION FOR A DIRECTED VERDICT	507
CONTINUED CHARGE CONFERENCE.....	508

TESTIMONY

DOCTOR EMILY GOTTFRIED	
Direct Examination by Ms. Waller	517
Cross-Examination by Mr. Hiller	538
STATE RESTS	541
DEFENSE RENEWAL OF MOTION FOR DIRECTED VERDICT AND ALL PRIOR MOTIONS BY MR. HILLER	541
COURT’S RULING DENYING DEFENSE MOTION FOR A DIRECTED VERDICT	541
CONTINUED CHARGE CONFERENCE.....	542
DEFENSE OBJECTION TO THE DELETION OF THE PROPOSED INVOLUNTARY INTOXICATION CHARGE BY MR. HILLER	547
CLOSING ARGUMENT BY MS. WALLER.....	548
CLOSING ARGUMENT BY MR. HILLER.....	570

CLOSING ARGUMENT IN REPLY BY MS. WALLER.....	575
CHARGE ON THE LAW	575
DEFENSE RENEWAL OF OBJECTION TO THE DELETION OF THE PROPOSED INVOLUNTARY INTOXICATION CHARGE BY MR. HILLER.....	591
VERDICT	594
DEFENSE RENEWAL OF MOTION FOR A DIRECTED VERDICT BY MR. HILLER....	596
COURT’S RULING DENYING DEFENSE MOTION FOR A DIRECTED VERDICT	596
SENTENCING	603
INDICTMENTS	605
SENTENCE SHEETS	611
CERTIFICATE OF COUNSEL	617

**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT 9 (BODY CAMERA), STATE’S EXHIBITS 54-56
(PHOTOGRAPHS), STATE’S EXHIBIT 57A-P (CELLPHONE VIDEOS), STATE’S
EXHIBITS 59-60 (TEXT MESSAGES), STATE’S EXHIBITS 72-99 (PHOTOGRAPHS)]**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY	)	2021-GS-26-04781 - 04783
		2023-GS-26-05443
State of South Carolina,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
	)	
Rico Antonio Funderburk,	)	January 29 - February 2, 2024
	)	
Defendant.	)	
	)	

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Leigh A. Waller, Esquire
George Henry Martin, III, Esquire
Attorneys for State

Jonathan M. Hiller, Esquire
J. Eric Fox, Esquire
Attorneys for Defendant

Sallie Beth Todd
Official Court Reporter

1 trial of this case.

2 So I hope everybody has a good evening. Thank you again
3 for your service, and we'll see you back at 9:15 tomorrow
4 morning. Thank you very much.

5 **REPORTER'S NOTE:** (Jury released for the day at 3:13PM)

6 **THE COURT:** All right. The state has one outstanding
7 motion. Are we ready to proceed on that one?

8 **MS. WALLER:** Yes, sir.

9 **THE COURT:** All right.

10 **MS. WALLER:** Your Honor, the state has -- it's just a
11 precautionary motion. It's a motion that the state's asking
12 for the defense and for the Court to cause the defense to
13 comply with the Rape Shield statute. Essentially what the
14 Rape Shield statute does, it protects victims of sexual
15 assault from being questioned about prior sexual conduct not
16 involved in the case. The only exception I know of is if you
17 are trying to say that a different person is the source of
18 semen or bodily fluids.

19 In this case the victim's phone was downloaded by the
20 police, so there is material on that phone related to her
21 having sexual relations with other people before the time
22 period that involves this case, and communications with them,
23 and we're asking that that be excluded. And that if the
24 defense intends to bring up any of that, that they let us
25 known in advance so that we can talk about it.

1 **THE COURT:** All right. As I understand, you can't bring
2 up any sexual conduct other than if it's with the defendant.

3 **MS. WALLER:** Yes, sir.

4 **THE COURT:** Or as you said, to show -- let me get the
5 exact wording. Except for, excuse me, sexual conduct with the
6 defendant or evidence of specific instances of sexual activity
7 with persons other than the defendant introduced to show the
8 source or origin of semen, pregnancy, disease, or anything of
9 that nature.

10 **MS. WALLER:** Yes, sir.

11 **THE COURT:** All right. And it does require the defense
12 to present or to advise the state if they intend to bring
13 anything up. Anything in that regard that defense wants to
14 put on the record?

15 **MR. FOX:** No, Judge. I mean at this time we understand
16 the rule and did not intend to get into any of that. I think
17 potentially, depending on what the evidence presented by the
18 state is, there may be items put into evidence that might, but
19 we can address that at the time.

20 **THE COURT:** Yes.

21 **MR. FOX:** So I don't think there's any issue. We
22 understand the requirements of the rule, but it does
23 contemplate basically a change in circumstances, if something
24 may arise during trial then we would seek to ---

25 **THE COURT:** I understand. And if that happens, make sure

1 you let the Court know so that we can do the in-camera
2 hearing.

3 **MR. FOX:** And in that instance there may be -- well it
4 would depend on the circumstances.

5 **THE COURT:** All right.

6 **MS. WALLER:** And there are allegations in the case that
7 the defendant is saying that part of the reason the things
8 that happened, the conduct that occurred, was because she was
9 prostituting herself, for lack of a better word. That's the
10 only thing that I see that could potentially come up in the
11 trial. And that may very well, if that comes up we can
12 address that at the time.

13 I'm really talking about the other things on the phone,
14 the texts and the photos and stuff like that.

15 **MR. FOX:** And I can't imagine at this point a scenario
16 that stuff outside the timeframe of these events, I can't
17 imagine a scenario where that would be an issue.

18 **MS. WALLER:** Yes.

19 **THE COURT:** All right. Well I know we always have to
20 walk kind of a fine line on this, so just make sure that if
21 you sense it coming up ---

22 **MR. FOX:** Yes, sir.

23 **THE COURT:** --- stand up, place your objection, or say we
24 need to move to an in-camera hearing, and we'll address it
25 that way.

1 **MS. WALLER:** Thank you, Your Honor.

2 **THE COURT:** All right. Anything further from the state?

3 **MS. WALLER:** Nothing further at this time.

4 **THE COURT:** All right. Anything from the defense?

5 **MR. HILLER:** Yes, sir, Your Honor.

6 May I approach with just a brief motion?

7 **THE COURT:** All right.

8 **MR. HILLER:** Earlier on in this case, the defense had
9 filed notice as required by Rule 5 to alert the state that we
10 intended to rely on the insanity defense. That was done a
11 while back in this case. At this time that is being
12 withdrawn, Your Honor. I will not be asserting through any
13 witness, expert, lay, or otherwise a mental standard for
14 M'Naughten or making any kind of affirmative defense leaning
15 to an argument that Mr. Funderburk had the inability to
16 distinguish legal moral right from moral legal wrong and/or
17 lacked the capacity to distinguish moral legal right from
18 moral legal wrong.

19 Just procedurally, when I filed that notice I had done
20 some work, I had an expert involved in the case. That expert,
21 even though it was done ex parte in filing the motion, it was
22 unbeknownst to me at the time, I'll admit I had never quite
23 gone through that process before. But apparently when you
24 file an ex parte, you then get a report back and no matter
25 what that report says, it goes to the state as well as the

1 defense.

2 I tried to do things along with way after that looking
3 for the value in the case, nothing really panned out, so at
4 this time I am, like I said, withdrawing that intent to rely
5 on the insanity defense.

6 **THE COURT:** All right. Anything the state wants to put
7 on the record?

8 **MS. WALLER:** The only thing, Your Honor, is I understand
9 they're withdrawing the insanity defense. But during the
10 course of the trial, just like the rape shield materials, it
11 may become apparent that the defendant is actually asserting
12 that defense anyway on his own through his testimony. And if
13 that is the case, the state would like to reserve the right to
14 call its own witnesses in response to that.

15 **THE COURT:** All right. Well, you know, we'll have to
16 deal with that issue. I know a lot of motions in limines,
17 and I don't even know if there is an outstanding motion in
18 limine, but as I understand it the defense is withdrawing any
19 type of insanity defense. He does not anticipate it being a
20 part of the trial. However, if contrary to that something
21 comes up, the state is certainly entitled to rebut it as they
22 deem appropriate, okay.

23 **MR. HILLER:** I guess in abundance of caution I need to be
24 as clear as I can. The defense was always kind of a twist on
25 insanity. I don't know if the state intends to play Mr.

1 Funderburk's three-and-a-half-hour long statement or not with
2 law enforcement. But definitely the body cam footage that
3 will be the subject of another matter that I do think the
4 state intends to play, Mr. Funderburk basically asserts that
5 he was under the influence of a substance involuntarily.
6 South Carolina has not adopted the (inaudible) code. There
7 is, for involuntary intoxication, there is some case law that
8 says that involuntary intoxication should be analyzed
9 (inaudible). There are also other cases tracking basically
10 the charges to the jury are the province of the Court based on
11 the testimony which is received from the witness stand.

12 There is an involuntary intoxication charge, but assuming
13 testimony plays out as expected, the defense would be
14 requesting. I don't want to -- I'm not trying to say that
15 involuntary intoxication and M'Naughten are the same thing. I
16 don't think that is settled in state law, honestly. There are
17 cases where the issue on appeal is whether or not the judge
18 properly charged or didn't charge specifically the Ralph King
19 Anderson involuntary intoxication charge, and insanity was not
20 alleged by either the state or the defense, so I'm ---

21 **THE COURT:** Well, but you're talking about when it comes
22 time to charge the jury?

23 **MR. HILLER:** Yes, sir.

24 **THE COURT:** All right.

25 **MR. HILLER:** But I just don't want the state to jump up

1 and say he's saying involuntary intoxication and that's
2 insanity and he withdrew that, because I don't ---

3 **THE COURT:** Involuntary intoxication and insanity are two
4 completely different things.

5 **MR. HILLER:** I agree. Yes, sir.

6 **THE COURT:** Yeah.

7 **MR. HILLER:** I just wanted to clarify.

8 **THE COURT:** Insanity means that you do not have the
9 mental capacity to distinguish moral and legal right from
10 moral and legal wrong.

11 **MS. WALLER:** That's my ---

12 **THE COURT:** Therefore, you cannot be held criminally
13 responsible because you can't distinguish between the two.

14 **MS. WALLER:** And it goes a little step further, Your
15 Honor, if you'll look at the case law and talk to the experts
16 in that field.

17 What the argument essentially is, is that once someone is
18 just being involuntarily intoxicated as a state of being, the
19 state would argue that that is not a defense because that in
20 our estimation is a diminished capacity which South Carolina
21 does not recognize. But if the defendant were to say that he
22 was involuntarily intoxicated, and that involuntary
23 intoxication caused him to lose touch with reality or exhibit
24 symptoms of insanity, then that would implicate the insanity
25 defense which is what they were originally saying. And that's

1 kind of how the medical experts that I've spoken to look at
2 the issue. That involuntary intoxication has to lead to a
3 temporary insanity where they have a diagnosable mental
4 condition while they're intoxicated that can either be
5 temporary or permanent. But just involuntary intoxication
6 alone, in the state's estimation, is a diminished capacity
7 argument which we don't think is allowed. But that may be
8 something we argue for ---

9 **THE COURT:** Well let's get it straightened out now and
10 we'll find out. Involuntary intoxication or diminished
11 capacity, is that a defense?

12 **MR. HILLER:** Diminished capacity is not recognized in
13 South Carolina, Your Honor. Most specifically the case that I
14 am referring to is, I'm going to go ahead and give the site
15 now, it's State v Shands, it's 424-SC-106, that's a 2018 Court
16 of Appeals case. The S.E. 2d site is 817 S.E. 2d 524.

17 **THE COURT:** And what does that say?

18 **MR. HILLER:** In that case Mr. Shands drank moonshine that
19 he purchased from a friend, lost control, ended up stabbing
20 his wife with a barbeque fork where he pursued her to a
21 neighbor's house and continued to assault her there. That
22 case says that the trial judge properly refused to charge
23 involuntary intoxication. Basically, he was going with the it
24 must have been laced with something that I didn't know about.
25 The court said that whatever he ingested, he ingested it

1 voluntarily. The fact that he didn't know what he was getting
2 into means that that trial judge did not err when he refused
3 to charge involuntary intoxication.

4 This case is extinguishable from that case in that Mr.
5 Funderburk's position has been, and remains, that unbeknownst
6 to him, through no fault of his own, he was supplied with a
7 substance that he knew nothing about.

8 **THE COURT:** He was what?

9 **MR. HILLER:** Given a substance that he knew nothing
10 about.

11 **THE COURT:** But did he voluntarily take the substance?

12 **MR. HILLER:** No.

13 **THE COURT:** Okay.

14 **MR. HILLER:** That is his position.

15 **THE COURT:** Okay. So somebody slipped him something and
16 he didn't know it.

17 **MR. HILLER:** Laced either while he was sleeping or laced
18 in food. Obviously, this is stuff that the state knows about.
19 They have been, you know, turned over in discovery to me. So
20 I do not believe that's diminished capacity, Your Honor. I do
21 understand that ---

22 **THE COURT:** I mean is there any precedent that deals with
23 it?

24 **MS. WALLER:** I think I've got that case in my hand, I'm
25 looking at it right now.

1 **THE COURT:** Well as I understand it, he says it's
2 extinguishable because the judge ruled it was not
3 involuntarily because he voluntarily took whatever made him
4 incapacitated. Here we've got a different situation.

5 **MS. WALLER:** It is, Your Honor. And in that case the
6 Judge granted the states request to charge that involuntarily
7 intoxication was not a defense because he was voluntarily
8 intoxicated. And it's pretty clear that voluntary
9 intoxication is not a defense. I don't believe there's any
10 case law directly on point that deals with involuntary
11 intoxication alone. However, there are cases that deal with
12 involuntary intoxication as it relates to not guilty by reason
13 of insanity. And those cases say that -- and there's also
14 cases that deal with brain tumors and stuff like that. And
15 they say that whatever condition a person is in that's
16 involuntary, whether it's a medical condition or whether it's
17 intoxication, has to create symptoms of insanity that can be
18 diagnosed, not just I was extremely drunk or extremely high
19 and it made me do this. A medical professional would have to
20 say that cause them to have a break from reality such that
21 they no longer had the ability to understand the difference
22 between right or wrong at the time that they committed the
23 actions.

24 **THE COURT:** Well I understand that's what he's saying.

25 **MS. WALLER:** That's what I've always understood him to be

1 saying, and I think that's still what he's saying, but they're
2 also saying at the same time that they're withdrawing that
3 defense. But the state anticipates that if the defendant
4 testifies he's going to say that he was involuntarily
5 intoxicated which made him be out of his mind, which made him
6 commit these crimes that he's now not responsible for.

7 **THE COURT:** All right. I mean you can't have it both
8 ways, either he couldn't distinguish moral right from wrong
9 and legal right from wrong and therefore there is no defense,
10 so through a mental condition, a tumor, or an involuntary
11 intoxication he could not distinguish legal and moral right
12 from wrong.

13 **MR. HILLER:** Your Honor, may I approach, and I can show
14 it to the state first, but can I approach with essentially
15 what is recognized as a valid jury charge in South Carolina,
16 whether or not it's charged of course bring ---

17 **MS. WALLER:** Okay. I've never seen this jury charge, but
18 it says, "he lost the ability to exercise independent judgment
19 and volition while committing the crimes alleged against him.
20 I don't think this is a proper jury charge in South Carolina.
21 It looks like it's coming from Ralph King Anderson, Jr. and
22 it's from 1998. I don't think this is in the current charge
23 book at all. I haven't seen it.

24 And I would also rely on the case of State versus
25 Hartfield, which is 300 SC 469. It says the defense of

1 insanity caused by the use of drugs or involuntary may be a
2 defense, but it doesn't say anything about just being
3 intoxicated as a defense, involuntary or otherwise.

4 **THE COURT:** I understand that, Your Honor. That is not
5 the only case law that I have.

6 Another case is the case of State v Pittman, it's pulling
7 up right now. that is 373 SC 527. This is a case from 2008.
8 It's a case where then a 12-year-old child shot his
9 grandparents with a shotgun, and one of the things that the
10 defense went with in that case was involuntary intoxication.
11 And that is an incredibly long opinion, but the portion that
12 relates to involuntary intoxication is quite brief. In that
13 case there were experts involved, and the specific case talks
14 about M'Naughten as a standard for whether a defendant's
15 mental condition at the time of the events rendered him
16 criminally responsible or not. Is says under this test, "the
17 defendant is considered legally insane if at the time of the
18 events he lacked the capacity to distinguish moral legal right
19 from wrong. And it stresses that the courts continually
20 utilize the M/Naughten test in criminal cases where issues of
21 incapacity are implicated. There were some challenges to that
22 at that trial. The court declined to charge the (inaudible)
23 code instead.

24 But what I do want to point out is the last sentence of
25 that paragraph is that that trial court also charged the jury

1 to find appellant not guilty if they found involuntary
2 intoxication in the case.

3 **THE COURT:** Yeah, but it sounds like if they found
4 involuntary intoxication in the case to the extent that it
5 rendered implication of the insanity defense, then that is an
6 absolute defense to the charge. So it still sounds to me, I
7 haven't read the case, but it sounds like what you're telling
8 me is that the court says if involuntary intoxication renders
9 a defendant unable to morally and legally distinguish between
10 right and wrong, then that is a not guilty, or it renders the
11 defendant not guilty for reasons of insanity. If they imposed
12 the M'Naughten analysis to determine whether or not he was
13 criminally responsible, or whoever the defendant was in that
14 case, was criminally responsible then it's still an insanity
15 defense. It's just it's an insanity defense not because of a
16 mental condition or a diagnosed mental deficiency or a tumor
17 or anything. It's a mental condition brought on by
18 involuntary intoxication is the way I understand it. I
19 haven't read that case.

20 **MS. WALLER:** That's my understanding of the Pittman case
21 too. Well it was a 14 year old they're arguing about because
22 of his age, but they also have experts arguing about whether
23 or not he had the ability to understand at the time he
24 committed the crimes the difference between right and wrong,
25 which is the M'Naughten standard.

1 **MR. HILLER:** I think part of it was there was a lot of
2 defendants in the case and ---

3 **THE COURT:** But I mean the question is, is as I
4 understand, there's no case law out there that says
5 involuntary intoxication is a defense to criminal -- to a
6 crime. As I understand your argument is involuntary
7 intoxication is a defense to a crime if the involuntary
8 intoxication renders the defendant unable to distinguish right
9 from wrong.

10 **MR. HILLER:** Or as the charge that the solicitor just saw
11 from the Ralph King Anderson request to charge, 2023 3rd
12 Edition, states: "If you find the defendant was given drugs or
13 alcoholic beverages without his knowledge and as a result he
14 lost his ability to exercise independent judgment and volition
15 while committing the crimes alleged against him, then it would
16 be your duty to find the defendant not guilty. I guess where
17 I'm coming from, Your Honor, is not guilty by reason of
18 insanity, and obviously punishment and all of that is not for
19 the jury and I'm not suggesting that, but if the jury were to
20 come back not guilty by reason of insanity that would trigger
21 the Department of Mental Health which makes very little sense
22 for somebody who but for the fact that he was drugged, which
23 would be the assertion. Where do you go after the trial if
24 the defense succeeds makes very little sense logically.

25 Obviously, State v Lewis which is 328 SC 373, that's

1 actually an Horry County case stems from the proposition that
2 the law to be charged is determined from the facts presented.
3 So if a defendant makes an assertion and says, you know, but
4 for the fact I was drugged against my knowledge for will, this
5 would not have happened, I think that's evidence for the jury
6 to consider. I don't know what expert could possibly come and
7 say no actually on September 27th of 2021 or August 27th, 2021,
8 which is in the date range of the indictments, that could not
9 possibly have been the case? How do you rebut that? I don't
10 have an expert that can do that.

11 **MS. WALLER:** Well we have an expert that will say that he
12 knew -- had the ability to distinguish between right and wrong
13 at the time that he committed the crime.

14 **THE COURT:** Well I know your expert's going to say that.
15 I mean the question is let's take it out of the realm of this,
16 you get somebody who is slipped something in a bar ---

17 **MS. WALLER:** Uh-huh. (Affirmative response)

18 **THE COURT:** They don't have any effects until they get in
19 the car and they're driving and ten minutes later they just
20 black out, cross the center lane, and hit somebody head-on,
21 and somebody has slipped something into their drink. What is
22 -- is there a defense there? Is that an insanity defense?

23 **MS. WALLER:** I would say that that is a different
24 situation when you're talking about someone driving a car
25 because you don't have to be insane to commit the actions of

1 passing out while driving a car. So it's not comparing apples
2 to apples.

3 From what I have read from the case law, the first thing
4 I want to say is I don't think that that requested charge is
5 lawful. It's just a request to charge. It's not binding
6 precedent in South Carolina. Everything I have read, and I've
7 spoken to the psychologist at MUSC about this at length and
8 the case law and the medical opinion is that when a person
9 alleges involuntary intoxication that means that they're not
10 guilty or not responsible for the crime. And we're not
11 talking about passing out and committing a crime because
12 they're passed out in their car and veered off the road.
13 We're talking about rape, kidnapping, and beating a woman
14 nearly to death over the course of two to three weeks and
15 whether or not being involuntarily intoxicated meant that
16 while he was committing those crimes that he had the
17 difference to distinguish whether or not his conduct was right
18 or wrong. That's the test and that's the only test that's
19 recognized in South Carolina according to my reading of the
20 case law. And honestly, Your Honor, when we started this I
21 had no idea what the law was in this area and I've researched
22 it and read it and that's my conclusion. I understand it
23 benefits me, but I also think it's the correct conclusion
24 because if he argues that he was -- just being involuntarily
25 intoxicated, just the state of being involuntarily intoxicated

1 doesn't make you commit a crime. It doesn't mean that you
2 don't know the difference between right and wrong. It's the
3 state of involuntary intoxication causing symptoms of mental
4 illness or insanity.

5 **THE COURT:** Well what he's saying is that it doesn't
6 cause insanity, but it causes a person not to be able to
7 control their actions.

8 **MS. WALLER:** I would argue that that's a diminished
9 capacity argument, and that that is not recognized in South
10 Carolina at all. He's saying that he might have known the
11 difference between right and wrong but he didn't completely
12 know or he didn't have the ability to stop himself from doing
13 something right or wrong. That sounds like classic diminished
14 capacity in South Carolina, and there is case law on that that
15 says South Carolina does not recognize that as a defense.

16 **THE COURT:** All right. Well I don't know what's going to
17 be said or done, but that deals with charges and a lot of
18 times I don't even know what I'm going to charge until I start
19 hearing the evidence.

20 Are you asking me at this point in time to make a
21 pretrial ruling on any issue?

22 **MR. HILLER:** Well, Your Honor, my client has from day one
23 maintained that -- you'll see the body cam, like I said ---

24 **THE COURT:** And I understand all of that. I know what
25 you're wanting. You're wanting to say he's not insane, we're

1 not inserting the insanity defense, but we do want you to
2 charge the jury that involuntary intoxication is a defense and
3 they have to find him not guilty. I mean I understand exactly
4 what your argument is.

5 **MR. HILLER:** That is my argument. I am not able, I mean,
6 he can say the M'Naughten standard on direct to his defense
7 because I don't have ---

8 **THE COURT:** Let me ask you this, why are you withdrawing
9 the insanity defense? Because if they come back and say they
10 find him not guilty, then you're going to have to go to DMH
11 for treatment and analysis.

12 **MR. HILLER:** Your Honor, my decision to withdraw the
13 insanity defense was based on essentially my research. The
14 Shands case, the one where it is distinguishable in that the
15 allegations or the assertion here by Mr. Funderburk had no
16 control over the fact that he was drugged, and that did take
17 away his independent judgment on volition.

18 **THE COURT:** All right. Well I mean I don't know that I
19 can keep him as asserting that as a defense, but I don't know
20 what I'm going to charge the jury at this point in time. If
21 you're looking for guidance, I'm going to have to go do the
22 research and see what jury charges do -- I recognize that if
23 you say you got that out of Ralph King Anderson's nook on
24 charges, it may be a vali charge, but I need to check and see
25 what his authority is and where he got it from as well. And

1 this might be the first time the issue has come up in the
2 State of South Carolina, I have no idea. I'll have to do some
3 research. I cannot make a pretrial ruling that tells you that
4 I'm going to charge the jury with your requested charge before
5 I've heard any testimony or evidence.

6 **MR. HILLER:** Yes, sir. And I don't think I can possibly
7 go that far. I'm just saying that what he charged the jury is
8 based on what comes from a box from that hasn't even been
9 approached yet by the first witness.

10 I guess my position is that the defense's belief is that
11 involuntary intoxication stands alone and apart from insanity,
12 which is ultimately temporary insanity, which is ultimately
13 because of a, you know, not a mental disease or defect as a
14 mental illness, but that something happened to somebody, and
15 that something is something that they had no control over.
16 I'm just distinguishing the two. I don't believe that the
17 case law is settled that any involuntary intoxication defense
18 must flow from M'Naughten. And there's at least precedent in
19 that both Pittman's jury did hear that charge, or something
20 similar to it, obviously I don't know the exact language that
21 judge used. But the Supreme Court noted that the judge
22 charged the jury that if you find involuntary intoxication you
23 must find him not guilty. That's directly in that section.

24 **THE COURT:** But they used the M'Naughten analysis.

25 **MR. HILLER:** Which is confusing, admittedly. But

1 M'Naughten would be guilty but mentally -- not guilty by
2 reason of insanity, but that sentence does not find him not
3 guilty full-stop, not not guilty by reason of insanity, so I
4 think both were charged.

5 **THE COURT:** I don't know. I'll have to do some research.

6 **MR. HILLER:** Yes, sir.

7 **THE COURT:** All right. Anything else? Anything else
8 pretrial?

9 **MR. HILLER:** Oh, yes. The -- something that I believe is
10 brief, but I want to ask the state to redact is part of the
11 evidence that I anticipate the state planning to admit are
12 cell phone videos that Mr. Funderburk took, like filming
13 himself with Ms. **K.S.**. He's obviously of African American
14 persuasion, I just say that for the record. And he uses word
15 that some people don't use, such as words that start with an
16 N. I'd ask that -- I believe that the use of that word in
17 Court would be way more prejudicial than probative, and I
18 would just ask that word just be redacted from any videos that
19 the state intends to play.

20 **THE COURT:** All right. What's the state's position?

21 **MS. WALLER:** I believe that's just one video.

22 **MR. HILLER:** Definitely one, and I think I know which one
23 that is.

24 **MS. WALLER:** I really need to look at it to be honest
25 with you. It's not that I want to play a racial slur for the

1 jury. I have no real desire to do that. But if you see --
2 maybe we should play the video. If you see the video, it's
3 the defendant's words he's using, not the state. It really
4 would depend to me if it changed the nature of that video
5 because it's very damning evidence against the defendant. I
6 just have to look at it, I apologize.

7 **THE COURT:** So we don't know if she consents or objects.

8 **MS. WALLER:** I'm sorry. I'm going to object right now,
9 but if I look at it tonight and I can consent, I will.

10 **MR. HILLER:** It is literally the last part of the
11 sentence. I think the sentiment comes out no matter what.

12 **MS. WALLER:** I can't even remember which one that was.

13 **MR. HILLER:** Okay. Well we can -- I just want to -- the
14 whole point of that is just so, you know, I don't want to
15 bring that up and then if that is your answer, then we have to
16 go redact it then and there. I was just trying to address
17 things that take time today, Your Honor, was basically my goal
18 in bringing that up right now.

19 **THE COURT:** Well, I mean are we -- are we going to have a
20 Jackson v Denno hearing?

21 **MR. HILLER:** No, sir, Your Honor.

22 **THE COURT:** Okay.

23 **MR. HILLER:** On the week on November 13th of 2023, Judge
24 Lawton McIntosh was here.

25 **THE COURT:** Okay.

1 **MR. HILLER:** And he agreed to address Jackson v Denno at
2 that time.

3 **THE COURT:** Okay. So he's already had the Jackson v
4 Denno?

5 **MR. HILLER:** Yes, Your Honor. We played the entire
6 three-and-a-half-hour long video.

7 **THE COURT:** Is that video part of that Jackson v Denno
8 hearing?

9 **MR. HILLER:** Yes.

10 **THE COURT:** Okay.

11 **MR. HILLER:** Well, yes and no. The video that I'm
12 talking about, the body cam, Judge McIntosh ruled that
13 although Mr. Funderburk was in detention, his responses were
14 spontaneous, they were -- had nothing -- you know, he was not
15 responding to interrogation, therefore what he says roadside
16 is -- there's no Jackson v Denno issue with that. Now,
17 obviously he did not address any other challenges to that
18 video, which is what I have to do now.

19 **THE COURT:** All right. I'm going to deny your motion in
20 limine. When it comes up, we'll have to address it then,
21 okay. If this is the defendant's statements and you're ruling
22 -- and you're not asking me to suppress the statement, I'm not
23 willing to purge and redact and do all of this in the
24 statement if it's your client's words.

25 **MR. HILLER:** No, Your Honor. I might be able -- I can

1 articulate I think maybe without the need to play the video.
2 So Mr. Funderburk is parking his car in a motel parking lot or
3 hotel parking lot. At this point there is a statewide
4 extradition out for him, so when the lead investigator
5 approaches the scene, and it's his bodycam, yeah, there's
6 already been a response by law enforcement. There are
7 probably between 20 and 25 agents armed with assault rifles,
8 armed with tactical combat gear, for lack of a better word,
9 holstered, shoulder AR-15 style weapons, holstered handguns.
10 I believe that's a show of force and that's what I'm really
11 getting to is it's substantially -- any probative value of
12 that statement that my client made is substantially outweighed
13 by the (inaudible) and that this footage shows these agents,
14 you know, it just has a look to it that I think the probative
15 value is outweighed by the prejudice. And obviously I say
16 excluded because that's what Rule 403 calls for.

17 **THE COURT:** Are you trying to exclude the bodycam?

18 **MR. HILLER:** Well that's what Rule 403 calls for. We
19 could maybe play just the audio and keep the video out of it.

20 **THE COURT:** Play me the part that you want suppressed.

21 **MS. WALLER:** We'll play it.

22 **THE COURT:** All right. I'm not going to suppress video
23 unless I'm seeing what I'm suppressing, so let me see it.

24 **MR. HILLER:** Judge MacIntosh looked at the initial
25 admissible -- because of the voluntariness of the statements.

1 **THE COURT:** So he's already done the Jackson v Denno?

2 **MS. WALLER:** For this statement, yes, sir.

3 **THE COURT:** Okay. They're now arguing that even though
4 it is a voluntary statement, the probative -- the prejudicial
5 effect far outweighs any probative value and therefore it
6 would be inadmissible.

7 **MS. WALLER:** Yes, sir. And we have arguments against
8 that.

9 **THE COURT:** And I understand, but let me see what they're
10 talking about first.

11 **REPORTER'S NOTE:** (Whereby TV is set up to play video.)

12 **MS. WALLER:** All right. We're going to play state's
13 exhibit 1.

14 **THE COURT:** All right. Any objection? All right. Now,
15 you're seeking to suppress this video?

16 **MR. HILLER:** Simply because that's the relief that 403
17 calls for.

18 **THE COURT:** Okay. All right. That's all I needed to
19 know. All right. How long is the video?

20 **MS. WALLER:** Eight minutes, Your Honor.

21 **THE COURT:** Okay. All right.

22 **MR. HILLER:** Your Honor, just for the record while that's
23 going on, the statement that Mr. Funderburk made that was
24 ruled not a Jackson issue, therefore admissible, starts 2
25 minutes and 24 seconds into the video and ends roughly at the

1 4:30 mark. So it's about two minutes of audio that was, you
2 know, eight minutes of this extra going on.

3 **THE COURT:** Okay. Well we'll watch the 8 minutes.

4 And this is what now, state's exhibit ---

5 **MS. WALLER:** Number 1, Your Honor.

6 **REPORTER'S NOTE:** (Whereby state's exhibit 1 is played)

7 **THE COURT:** That's it?

8 **MR. HILLER:** That's all, Your Honor.

9 **THE COURT:** All right. What's the probative value?

10 **MS. WALLER:** Your Honor, the defendant made several
11 statements through the course of that video. One thing that
12 he says is that he knows the actions he took. He says that he
13 has videos on his cell phone that will prove that he's
14 innocent, or he doesn't say innocent. He says that he wants
15 everybody there to see. He says that he is fully expected to
16 be stopped for maybe like a DV 3rd, but he didn't think it was
17 this bad. He makes a lot of statements that are inculpatory
18 for his guilt, for one thing.

19 And also it brings into one of the state's key pieces of
20 evidence are those videos that we recovered from his phone
21 that he actually referenced in this video. The state's
22 position is that the jury already is aware that he's charged
23 with kidnapping, CSC 1st degree, ABHAN, and DVHAN which were
24 all extremely serious crimes, they're violent crimes. The
25 reason that the take down or the arrest went like this was

1 +because it took police several days to apprehend the
2 defendant. You'll see testimony presented at trial that he
3 was saying that he was "on the run". He was texting that to
4 people. So Detective Fletcher at the time go the US Marshalls
5 involved. The way that you saw this arrest conducted is
6 standard procedure for the US Marshalls based on the fact that
7 it's a wanted fugitive for very serious crimes.

8 You'll also notice in the video that a police detective
9 didn't ask Mr. Funderburk any questions at all. These were
10 all voluntary kind of spontaneous statements. In fact,
11 Christian Fletcher told the defendant during the course of the
12 statement that he had an opportunity to talk to him later when
13 they got back to the police department and the defendant just
14 kept making these statements. The state's position is that
15 these are free and voluntary, and they're statements that the
16 ---

17 **THE COURT:** Well I mean as I understand, the Judge has
18 already ruled on that issue. The issue now is what is the
19 probative value versus the prejudicial effect?

20 **MS. WALLER:** The probative value is the jury gets to see
21 and hear the defendant. They get to see what actually
22 happened. They don't have to listen to audio that gives
23 what's going on. I would think that that cuts both ways.
24 That can both benefit the state and the defendant if the jury
25 is actually getting to see what took place in real time, in

1 real life that day and see what statements he made in that
2 situation. I think the situation, I think the questions
3 being, asked of him, the parties involved are all relevant for
4 the jury to see. Considering that the man is on trial for
5 kidnapping and rape in the first degree and ABHAN and DVHAN, I
6 don't see how it's possibly prejudicial for him to be
7 apprehended by multiple law enforcement officers.

8 And Christian Fletcher, who will testify at trial, will
9 testify that that's standard procedure and that it was done
10 because of the violent nature of the crime. And if you see
11 video footage on the night that she escaped into the Wal-Mart,
12 and photographs of her body and the state it was in, you
13 certainly can understand why the police thought that was
14 necessary.

15 **THE COURT:** All right. Mr. Hiller.

16 **MR. HILLER:** Yes, sir, Your Honor. As the Court's well
17 aware, (inaudible) unfair conditions, anything that would have
18 a tendency to suggest a decision on an improper basis. The
19 show of force, I think has a very real risk of doing just
20 that. It's telling the jury that, you know, this was an all
21 hands on deck, full on, you know, scramble everyone to get to
22 this parking lot. I don't see how that could not be
23 considered unduly prejudicial. As the state said, they're
24 interested in his words. The pictures are what's damning
25 here. Obviously, I asked for exclusion because that's what

1 the rule says; 403 is an exclusionary rule. Obviously the
2 Court could allow the words in, but also take some precautions
3 to make sure that the jury isn't affected by unfair prejudice.
4 Obviously, audio only is what the state is interested in, his
5 words, like I said. Audio only would, I think, if the Court's
6 inclined to allow it, it's already been ruled admissible and
7 under the Fourth Amendment -- Fifth Amendment violation since
8 they were voluntarily uttered. I do think that crafting
9 something that takes away officers handing each other assault
10 rifles, just that show of force. I think that's a real -- it
11 doesn't add anything to the case, and it can only hurt Mr.
12 Funderburk's rights to a fair trial.

13 **THE COURT:** All right. Well, I'm going to deny your
14 motion in limine. Based upon I can see the -- right there is
15 a prejudicial affect, but there is a probative value if the
16 state's testimony bears fact that he was on the run, they had
17 to get the US Marshalls involved, they had to show this -- get
18 this many people to get him arrested and there is a probative
19 value there, so I'm going to deny the motion. But that's
20 still based upon your recitation as to the videos or the
21 pictures of the horrendous crime, the fact that he was on the
22 run, the fact that the US Marshalls had to get involved, and
23 the fact that they had to track him for, what'd you say, two
24 or three days?

25 **MS. WALLER:** Two or three days.

1 **THE COURT:** Yeah.

2 **MS. WALLER:** Two days, Your Honor.

3 **THE COURT:** All right. What else?

4 **MR. HILLER:** Your Honor, I think the last thing that
5 needs to be brought up in trial is the post-Miranda statement
6 itself. What you just saw was basically the arrest and they
7 go straight to the ML Brown building where Detective Fletcher
8 conducts a fairly lengthy interview. I don't know for certain
9 whether or not the state intends to play that post-Miranda
10 interview, that of course has already been passed upon by this
11 Court through Judge MacIntost. But I did suggest or propose,
12 in light of the State v Williams case that talks about
13 inadmissible hearsay and improper -- well proper for an
14 investigative interview is not necessarily proper for the
15 courtroom. So I've provided the state with my requested
16 redactions. They have those. I think we're largely in
17 agreement, but I would ask the state to at least, you know ---

18 **MS. WALLER:** Your Honor, the state will make all of Mr.
19 Hiller's proposed redactions to the statement before it's
20 introduced into evidence before the jury.

21 **THE COURT:** All right.

22 **MS. WALLER:** I'll give you a copy as soon as we have it.

23 **THE COURT:** All right. So they agree to redact it.

24 **MR. HILLER:** And I believe that is it for now, Your
25 Honor.

1 **THE COURT:** All right. Let me just make my notes. All
2 right. Anything further from the state?

3 **MS. WALLER:** No, sir, Your Honor.

4 **THE COURT:** Anything further from the defense?

5 **MR. HILLER:** Your Honor, my understanding, going back to
6 the very first motion I brought up which was a withdrawal of
7 the reliance on the insanity defense. Obviously, how I open
8 in the morning, again I know you're not going to give an
9 advisory opinion on what you're going to charge, but is there
10 any research that I can rely on to help kind of address this?
11 Obviously, it would be circumspect ---

12 **THE COURT:** As I understand, you want me to charge the
13 jury that involuntary intoxication is a defense to these
14 crimes without a charge of insanity?

15 **MR. HILLER:** Yes, sir. Without the defense through
16 either a lay witness or expert laying a foundation having the
17 testimony regarding the M'Maughten standard.

18 **THE COURT:** All right. And I'm going to do some
19 research. I don't know what the law is, and hopefully I'll
20 get on it and get something. I mean I've got to believe that
21 y'all know if there's anything out there and what the law is
22 on involuntary intoxication. But it sounds like to me that
23 there's nothing out there and I'm just going to have to make a
24 judgment. If I have to make a judgment call, I can tell you I
25 don't know what I'm going to do if there is no legal guidance,

1 then I'm going to have to wait until I hear the evidence and
2 then make a decision as to charging the jury on what I think
3 the law should be. If you're telling me there is no law that
4 gives my any guidance, then I'm going to have to wait until I
5 hear the testimony, review the evidence, and it comes time to
6 charge and charge the jury. If there is no law that says what
7 it is, then I'm going to have to charge the jury on what I
8 think the law should be, and I don't know what that is at this
9 point.

10 **MR. HILLER:** Yes, sir.

11 **THE COURT:** All right. Well let me do some research
12 tonight to see if I can find anything. I can't believe that I
13 will find anything if y'all have searched any y'all haven't
14 found anything. I've got to believe that there's nothing in
15 there, which just means that I'll sit through the trial,
16 through the testimony and review the evidence and then charge
17 the jury on what I think the law should be when there's no --
18 when it's a novel issue in South Carolina. All right.

19 Anything else?

20 **MS. WALLER:** Nothing from the state.

21 **THE COURT:** Anything from defense?

22 **MR. HILLER:** No, Your Honor.

23 **THE COURT:** All right. Jury is coming in at 9:15. I'll
24 try to take the bench at 9:30, okay.

25 **MS. WALLER:** Thank you, Your Honor.

1 **THE COURT:** All right. Thank you very much. And if
2 y'all find anything tonight, I mean, if you see anything that
3 supports it because I haven't addressed this issue before. I
4 haven't had it come up before and I'm totally ignorant on what
5 the law is at this posture. So if at some point during
6 tonight y'all come up with some case law that explains the
7 issue, make a copy of it and have it here ready tomorrow
8 morning and we'll take a look at it.

9 **MS. WALLER:** I've printed a list of every case that dealt
10 with involuntary intoxication in South Carolina.

11 **THE COURT:** Okay.

12 **MS. WALLER:** I mean I can hand up this if you want it.

13 **THE COURT:** Let me take a look at it and I'll look at
14 those. Involuntary intoxication -- well let me take a look.
15 I'll take a look and see what I can find out, okay.

16 All right. Anything else?

17 **MR. HILLER:** That's it.

18 **THE COURT:** All right. Thank y'all very much.

19 **MS. WALLER:** Your Honor, there is one more matter.

20 **THE COURT:** Okay. Hold for a second. What have we got.

21 **MS. WALLER:** The state is going to ask that the defendant
22 be remanded in custody when the trial begins. The deputies
23 were just asking me for guidance right now. When we were
24 going to remand him back to custody?

25 **THE COURT:** Well, when is his bond no longer in effect?

1 Number two, it also deals with criminal intent. I think
2 if there's involuntary intoxication that affects whether or
3 not there's criminal intent at the time of the alleged
4 offense.

5 Anything further y'all want to put on the record in that
6 regard?

7 **MR. HILLER:** No, Your Honor. No, Your Honor. And for
8 the record, I know I did hand up a notice withdrawing the
9 intent to rely on the insanity defense.

10 **THE COURT:** Correct.

11 **MR. HILLER:** I am -- in light of Your Honor's ruling, I
12 am respectfully not withdrawing the defense at this time.

13 **THE COURT:** Okay. So you're going to keep the insanity
14 defense as a defense in this case?

15 **MR. HILLER:** Yes, sir.

16 **THE COURT:** All right.

17 **MR. HILLER:** A notice has been filed and served on the
18 state.

19 **THE COURT:** All right. All right. Anything from the
20 state in regard to that?

21 **MS. WALLER:** No, sir, Your Honor.

22 **THE COURT:** All right. Now, do we have anything -- oh,
23 has the -- did the jury -- did they pick a foreperson? I know
24 when I left yesterday the bailiff said she thought they had
25 picked a foreperson. Where's our bailiff from yesterday.

1 Matter of fact, I know she met me in the hallway and said they
2 have a foreperson. I said, well give it to me tomorrow
3 morning and I have not seen her today.

4 Can you -- yeah, check and see if they have a foreperson
5 and if they do, bring -- I think they'd already written down
6 the sheet and who the foreperson was. If you could get that
7 for me. Thank you.

8 All right. Also, I understand, Ms. Waller, you wanted to
9 put something on the record regarding what you handed up
10 yesterday?

11 **MS. WALLER:** Yes, sir. I handed up a list of cases to
12 Your Honor. I think I handed you the wrong list anyway
13 because it wasn't the one of the South Carolina cases, but Mr.
14 Hiller inadvertently didn't get a copy, so we just remedied
15 that this morning and gave him a copy of those cases.

16 **THE COURT:** All right. Yeah, I got it. And I'm going to
17 be quite honest with you, when you gave me the list, when I
18 saw one was a Kentucky case and one was a district court case,
19 I kind of did my own research and didn't really rely on it a
20 whole lot.

21 **MS. WALLER:** Yes, sir. I realized when I got back to my
22 office that it was the wrong thing. We also have the
23 outstanding matter of the video redaction that the defense has
24 requested.

25 **THE COURT:** All right.

1 **MS. WALLER:** Would you like us to play that for Your
2 Honor?

3 **THE COURT:** Well, I mean what is it? I'm assuming the
4 defense wants something redacted and the state objects to the
5 redaction?

6 **MS. WALLER:** The -- the defense would like the -- a
7 pejorative term redacted from about a one-minute long video.
8 The state's position is that the defendant is not using that
9 word in a pejorative manner. He is using it in more of a
10 colloquial manner. The state does not want to alter the
11 exhibit that deals with what the state found on the
12 defendant's cell phone and that are in the defendant's own
13 work. So we'd like a ruling from the Court if you want us to
14 take that word out or not; and I can play it. It's only --
15 it's less than a minute, I think, long. It's really short
16 one.

17 **THE COURT:** Any objection to the Court going ahead and
18 reviewing the video?

19 **MR. HILLER:** No, Your Honor. It's short.

20 **THE COURT:** All right. All right, let me check.

21 **MS. WALLER:** And for the purposes -- we've pre-marked
22 exhibits, Your Honor. This is going to be 57-0. 57 is a flash
23 drive with a bunch of videos on it. That's not the one. It
24 should be 57-0. Is that? Yeah.

25 **REPORTER'S NOTE:** (Whereby state's exhibit 57-0 is

1 played.)

2 **THE COURT:** All right. Let me hear from you, Mr. Hiller
3 or Mr. Fox.

4 **MR. HILLER:** Your Honor, I guess the defense's position
5 is the inclusion or exclusion of that racial slur doesn't
6 really do anything. Just -- doesn't detract from what he's
7 saying, it's just -- it's actually the last term at the end of
8 the sentence. It doesn't break it up. It doesn't make it any
9 disjointed. If somebody didn't know if it was just omitted,
10 you know, through silence, not a beep, nobody would even know
11 what was ever there unless they're lipreading. So I just
12 think the prejudicial value is it is not relevant first, and I
13 would say even if it is not relevant, it has a much greater
14 chance of being substantially prejudicial and probative, if
15 anything.

16 **THE COURT:** All right. Well, I think a redaction is
17 going to create a lot more speculation. You just beeping out
18 that one word as to what was said than the actual prejudice of
19 playing it, so I'm going to deny the motion to redact it. All
20 right.

21 All right. Now, the bailiff has handed me a note from
22 the jury. Juror number 120, Ronald Figura is the foreperson.
23 Mark that as Court's Exhibit 1.

24 **(COURT'S EXHIBIT NUMBER 1 IS**
25 **MARKED FOR IDENTIFICATION)**

1 **THE COURT:** All right. Anything from the state before we
2 bring the jury in?

3 **MS. WALLER:** Court's indulgence for a moment.

4 **THE COURT:** All right.

5 **MS. WALLER:** Nothing from the state, Your Honor.

6 **THE COURT:** Anything from the defense?

7 **MR. HILLER:** No, Your Honor.

8 **THE COURT:** All right. And I think all of y'all have
9 been in front of me before. When we get into testimony, we'll
10 bring the jury in. I'll do the opening charges. You can open
11 -- give your opening statements. When we get to witnesses, I
12 allow direct examination, cross-examination, redirect, only as
13 to matters addressed on cross that were not addressed on
14 direct. So I don't allow recross, so if they're on direct
15 examination, either side starts to exceed the scope of the
16 redirect, then just raise your objection and we'll deal with
17 hit then.

18 All right. All right. Let's go ahead and bring the
19 jury.

20 **REPORTER'S NOTE:** (Jury enters courtroom at 10:10am)

21 **THE COURT:** Ladies and gentlemen, welcome back. I hope
22 everybody had a good evening. I want to thank you for your
23 promptness in getting here on time this morning, and I want to
24 apologize for keeping you in the jury room for so long; but we
25 did have some pretrial matters we needed to address,

1 scheduling matters we needed to address, so that we had our
2 witnesses here ready to go forward without a break. And I
3 apologize for that delay. But I want to thank you for your
4 promptness in being here. That is a great assistance to the
5 Court. I understand Mr. Figura, you've been appointed as --
6 or elected as foreperson. Is that correct?

7 **THE FOREPERSON:** Yes, Your Honor.

8 **THE COURT:** All right. Thank you for serving in that
9 capacity. If you'd always occupy the seat where you now sit.
10 If our alternates would occupy the seats where you sit. The
11 rest of you, as I explained yesterday, are at liberty to sit
12 in whichever seat you like, whether it be the same seat
13 throughout the trial of the case, or alternating seats, or
14 whatever makes you feel more comfortable.

15 Now, we're getting ready to start the trial of the case
16 of the State of South Carolina versus Rico Antonio
17 Funderburk. But before we get started on that, as I told you
18 during qualifications in voir dire, juries are constantly or
19 jurors are constantly taking the oaths. So I'll need all
20 members of the jury to please stand and raise your right hand
21 while the clerk administers the oath for you to serve as
22 jurors on this specific case.

23 **REPORTER'S NOTE:** (Whereby clerk administers jury oath.)

24 **THE COURT:** All right. Thank you, ladies and gentlemen,
25 is there any member of the jury that did not respond to the

1 oath by saying "I do"? If so, please stand. All right.

2 Thank you very much.

3 All right. As I said, we're getting ready to start the
4 trial of the case of the State of South Carolina versus Rico
5 Antonio Funderburk. Now, before we begin the trial of this
6 case, I need to go over some preliminary charges with you. I
7 know from watching movies, reading books, watching TV shows,
8 and things of that nature, trials are often full of a lot of
9 suspense, a lot of action, a lot of anxiety. While that might
10 be the case in this trial, it probably won't be, and in
11 reality, trials are often slow, repetitive processes, the
12 exact opposite of what you might be accustomed to when you
13 watch trials for entertainment purposes.

14 But I hope that you do find the trial entertaining. I hope
15 you do find it educational and I want to thank you from the
16 outset for serving as jurors in this case. Now, the attorneys
17 appearing before you are advocates for the parties they
18 represent. But first and foremost, they are officers of the
19 Court. They're sworn to uphold the integrity and the fairness
20 of our judicial system, and to help you in a search for the
21 truth in this case.

22 You should expect them to be professional, competent, and
23 ethical in the representation of their client's interests.

24 Now, what I will now say is intended to serve as an
25 introduction to the trial of this case. These remarks are not

1 a charge on the law. I'll instruct you on the law applicable
2 to this case at the end of the trial before you retire to
3 consider your burden. This is merely an explanation of the
4 procedure that we will follow in the trial of this case, so
5 that you may better understand what is happening.
6 Now, the Defendant is charged by indictments filed with the
7 clerk of court. The Defendant is charged by these indictments
8 with the crimes of domestic violence in a high and aggravated
9 nature, criminal sexual conduct in the first degree,
10 kidnapping, and assault and battery of a high aggravated
11 nature. I'll explain the elements of these crimes to you at a
12 later time.

13 Now, these indictments are simply the charges by which
14 this case is brought into this court. They are not in any
15 sense evidence of any of the allegations contained in them.
16 The Defendant has pled not guilty to these indictments. The
17 State therefore has the burden of proving each of the elements
18 of the indictments beyond a reasonable doubt. It will be your
19 duty, ladies and gentlemen, to decide whether or not the State
20 has met that burden.

21 Your purpose as jurors is to find and determine the facts
22 of this case. You are the sole judge of the facts of this
23 case. If at any time I make any comment regarding the facts
24 of this case, you must disregard my comments. You are to
25 determine the facts from the testimony you hear in the other

1 evidence introduced during the trial of this case. It's up to
2 you to determine the inferences which you feel may properly be
3 drawn from that evidence.

4 It is especially important that you perform your duty of
5 determining the facts diligently and conscientiously, because
6 ordinarily, there is no way to correct an erroneous
7 determination of the facts by a jury. On the other hand, and
8 with equal emphasis, the same law that makes you the judge of
9 the facts, makes me the judge of the law. The law is given to
10 you by the Court is the only law that you may consider. You
11 must accept and follow the law as I give it to you, even
12 though you may disagree with it.

13 Just as I cannot tell you what the facts of this case
14 are, you cannot disagree with me about the law to be applied
15 in this case. Your job is to take the law as I give it to
16 you, and apply it to the facts as you find those facts to be
17 from the testimony of the witnesses and any other evidence
18 that is introduced during the trial of this case. After doing
19 that, you will render your verdict, a true and just verdict
20 under the solemn oath that you took as jurors.

21 Until I advise you to begin your deliberations, you must
22 not discuss this case with anyone, including your fellow
23 jurors. Do not discuss it with any friends, family members,
24 or anyone involved in the case. After the case is submitted
25 to you, you can then discuss the case but only in the jury

1 room with your fellow jurors. Now, the attorneys and the
2 parties in this case have been advised that they're not to
3 talk to you at all. So they're not being rude in this case.
4 They're just following the instructions of the Court.
5 During the trial, you're not to read or listen to or watch any
6 news reports about this case if there are any. This includes
7 anything that may be in the newspapers or on the internet, the
8 radio, or the television. You must not consider anything that
9 you may have read or heard about the case outside of the
10 courtroom, whether that be before or during the trial of this
11 case.

12 It's important that you keep an open mind and not decide
13 any issue in this case until all of the evidence has been
14 presented, the parties have made their closing arguments, and
15 I've instructed you on the law to be applied in this case is.
16 It is your solemn responsibility to determine the guilt or
17 innocence of the Defendant. And your verdict must be based
18 solely on the evidence as it is presented to you in this
19 trial, and on the law as I instruct you during and at the
20 close of the trial.

21 Now, in just a moment, the solicitor will make what is
22 called an opening statement, in which the solicitor will
23 explain to you the issues in this case or at least what the
24 solicitor thinks the issues in this case are. The attorneys
25 for the Defendant may also make an opening statement, although

1 they are not required to do so. What the attorneys tell you
2 during their opening statements is not evidence in this case.
3 It is only their contention as to what they feel the issues in
4 this case are.

5 The evidence in this case will be presented to you by
6 testimony of sworn witnesses from the witness stand and by
7 exhibits that may be introduced into evidence. In determining
8 what the true facts are in this case, you must decide whether
9 or not the testimony of a witness is believable. It is my
10 responsibility to rule as a matter of law as to whether
11 certain testimony is admissible at all or not. However, once
12 testimony is admitted into evidence, whether or not you
13 believe it, is solely for you to determine.

14 In deciding whether to believe a witness, you have the
15 right to consider the interest of any witness, the bias of any
16 witness, the prejudice of any witness, the opportunity for the
17 witness to have seen the matters and things about which the
18 witness may testify, and the way the witness acts on the
19 witness stand. You have the right to consider anything that
20 is in the record that will help you evaluate the testimony of
21 the witnesses. That means that it is your duty to pay close
22 attention to these witnesses, to observe the witnesses, to
23 listen to the witnesses, and to pay close attention to the
24 attorneys and to the Court.

25 Don't let your thoughts wander. Give strict attention to

1 the testimony in this case, so at the end of all of the
2 testimony, and after the arguments of counsel and the charge
3 on the law by the court, you will then be in a position to
4 determine what the true facts are, and to apply the law to
5 those facts and thus come up with a true and just verdict.

6 All right. Now, are there any additional charges or
7 challenges to the opening charges by the State?

8 **MS. WALLER:** No, sir, Your Honor.

9 **THE COURT:** Any by the Defense?

10 **MR. HILLER:** No, Your Honor.

11 **THE COURT:** All right. All right. Ladies and gentlemen,
12 we'll begin the trial of this case with the attorney's opening
13 statements. As I said in my preliminary charge, these opening
14 statements are not evidence in this case. It is simply the
15 attorney's contention as to what they feel the issues in this
16 case will be.

17 All right. Who wants to make an opening statement for
18 the State?

19 **MR. MARTIN:** May it please the Court, Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. MARTIN:** He took her belongings, her wallet, her
22 keys, her Social Security card, her ID, her cell phone. He
23 took her freedom, said they were homeless at the time and
24 whether they went to a hotel, a gas station, or they were in
25 the car, she was never by herself. She couldn't go anywhere.

1 They go in a hotel and unplug the cord from the wall, from the
2 phone. Can't make a phone call. She couldn't go near the
3 door. She couldn't talk loudly. She couldn't move in her
4 sleep. They're in a car and she's in the backseat, child lock
5 is on. And if she did want to leave, he threatened to cause
6 harm to her family. He took her dignity. When she'd go in a
7 hotel room, the first thing she had to do was remove her
8 clothes and be completely naked.

9 She couldn't go to the bathroom by herself, whether it
10 was inside or outside. Sometimes he would put her own makeup
11 on her face to cover the bruises he caused because she wasn't
12 doing it right.

13 Now, how is he able to do this? You're going to hear
14 that today and this week that between the dates of -- on or
15 about August the 9th, 2021, up until she escaped on August the
16 28th, 2021, here in Horry County, Rico Funderburk beat

17 K.S. over and over and over again until her face and
18 her body were unrecognizable. He'd beat her with whatever
19 he'd get his hands on. Sometimes it was his fist, sometimes
20 it was a lamp from the hotel room, sometimes it was a baseball
21 bat that he had inside of his car. Beat her so badly that he
22 fractured her eye socket, broke her nose. She had to have
23 surgery to even put the pieces back together again to make her
24 whole. And you're going to hear that she still struggles with
25 those injuries today.

1 He pulled her hair out. He burned her body. He'd take a
2 lighter, get it hot over her body, just burn her. He
3 mutilated her vagina with the lighter when he penetrated her
4 labia and burned her. Put a tire iron in her ear, made it
5 bleed. Put pliers up her anus.

6 Now, you might be wondering, well, you know, how'd she
7 get to this point? You'll hear that **KS**, like many people in
8 our area, moved to Myrtle Beach to get a new start on life.
9 She got an apartment, she got a job, and she met Rico
10 Funderburk. They got in a relationship, they moved in
11 together, things seemed okay on the surface. Soon, but the
12 summer of 2021, they were evicted, and started living out of
13 his car. And that's when her hell on earth began. And that -
14 - that's why we're here today.

15 Yesterday, we introduced ourselves. I'm George Henry
16 Martin. This is Leigh Waller, and we are attorneys,
17 prosecutors, and we prosecute cases here in the 15th circuit,
18 that's Horry and Georgetown counties. And when we do these
19 opening statements, this is sort of our way to give the jury
20 what we like to call a roadmap or an outline of what we
21 anticipate you to hear from the witness stand or what you may
22 expect to see.

23 But you're going to learn, as Judge Culbertson alluded
24 to, that trials are unpredictable like anything in life. And
25 you know, I'm learning that every day. My wife and I just had

1 a baby and nothing is certain in this world. And trials are
2 the same way. So we may have to call some witnesses out
3 quarter, there may be a few things here or there that are
4 different. But this is our general guideline of what sort of
5 to expect. Now, general -- Judge Culbertson mentioned the law
6 and he's absolutely right. He is -- he will tell you what the
7 law is. If myself or Ms. Waller misspeak and we say something
8 different than what Judge Culbertson said, remember what he
9 says is the law.

10 But it's hard for us to be able to talk with you guys
11 about the charges you're going to be seeing without at least
12 generally talking about them in the law. The judge is going
13 to tell you that the burden of proof in this case rests solely
14 with the State of South Carolina to prove Rico's Funderburk
15 guilty beyond a reasonable doubt.

16 What's reasonable doubt? That is where you are firmly
17 convinced that he is guilty. And it's not proof beyond all
18 possible doubt. Like I said, a few things in life are
19 certain. We know the sun's going to come up tomorrow. We
20 hope. We think it'll set tonight. Outside of that, there's
21 not a lot of certainty in this world.

22 The charges that are before you are domestic violence of
23 a high and aggravated nature, assault and battery of a high
24 and aggravated nature, criminal sexual conduct in the first
25 degree, and kidnapping. Now, before we get to the part of the

1 trial where the judge is going to explain the law to you,
2 you're first going to hear witnesses from the witness stand.
3 Who you going to hear from? You're going to see evidence and
4 hear evidence from this stand. You know, as attorneys we
5 always kind of like to say, or think that a picture paints a
6 thousand words, and our job is for paint a picture. But this
7 case, we have photographs, we have videos. Some that were
8 taken from the Defendant's phone. And you're going to see
9 this for yourself.

10 You're going to hear from the Walmart employees, who
11 rescued KS the night she escaped. You're going to hear from
12 the paramedic, who treated her injuries and rode with her to
13 the hospital. You're going to hear from law enforcement that
14 responded. The crime scene investigator that searched the car
15 where many of these crimes occurred. You're going to hear
16 from Sergeant Fletcher, the Horry County Police Department,
17 who manually searched the Defendant's phone and conducted the
18 investigation. You're going to hear from Sarah Zapata, an
19 agent with the South Carolina Law Enforcement Division. The
20 crime scene investigator took some swabs from suspected DNA
21 inside the car, and you're going to hear from her and she's
22 going to explain to you that that is -- that was associated
23 with KS .

24 You are going to hear from Dr. Cobos. She's the ER
25 physician and trauma surgeon at Grants Strand Medical Center,

1 or she was at the time. And she treated KS -- KS .
2 Her job was to put her back together again. She's going to
3 talk with you about these catastrophic injuries. You're going
4 to hear from KS herself. You know, it is hard for me to talk
5 with my own mama about my sex life and intimate details about
6 my life and my marriage sometimes. And it'd be hard for me to
7 come into a room and do that as well.

8 When we're done with the testimony, the Judge is then
9 going to talk with you about the law. Domestic violence of a
10 high aggravated nature. What is that? When a defendant
11 attempts to cause physical harm or injury, or does so to a
12 household member, someone that he cohabitated with, someone
13 that he lived with, and those injuries rise to the point of
14 great bodily injury or they could have -- or the victim
15 herself feared great bodily injury or death is domestic
16 violence of a high -- of a high and aggravated nature.
17 Assault and battery of a high and aggravated nature is very
18 similar, minus the cohabitating component of that. Great
19 bodily injury where the victim could have suffered great
20 bodily injury or death in the hands of the Defendant.
21 Kidnapping. Sort of what it sounds like. A Defendant
22 unlawfully kidnaps, he seizes, he abducts, he confines a
23 victim. And CSC, criminal sexual conduct in the first degree
24 is when a defendant commits a sexual battery upon a victim
25 while using aggravated force and/or the victim was a victim of

1 kidnapping or forceful confine. And what is a sexual battery?

2 The Judge is going to tell you that if sexual battery is
3 (inaudible), it's any penetration of the private part no
4 matter how slight. It doesn't have to be his penis. It could
5 be any object. It could be pliers in the anus. It could be
6 general mutilation to the point where the lighter had to
7 penetrate her labia. Complying with the Defendant's sexual
8 demands because you fear further injury or death is not
9 consent, it is rape.

10 I'm kind of reminded of -- I think we're at a point here
11 where it sort of reminded of the story when I was a baby
12 lawyer. I started in family court prosecuting juvenile
13 cases. And my boss in family court ironically is still Mr.
14 Fox's boss. You'll see him in a moment. One of the defense
15 attorneys, it's his wife. And she had a rule for me, you
16 know, and every time you go in front of a judge, you got three
17 things. You bring up three things, you already hear three
18 things, you sit down and let them talk and you're done.
19 Living a baby lawyer, it was hard for me to sort of follow
20 these three things.

21 And unlike my boss, Ms. Waller, she, you know, it's a
22 little more -- Ms. Fox is a little more strict with what she
23 wanted. And of course, I -- I -- the defense said their
24 thing. I stood up, I said, judge, not to beat a dead horse,
25 but she said, Mr. Martin, if the horse is dead, it's time to

1 dismount. So I'm not going to prolong too much longer. But
2 one thing I want you to remember as this trial goes on, as I
3 heard a Defense attorney say this one time in trial, and it
4 was still resonates with me to this day -- have a lot of
5 respect for her -- but she said, the jury is the last line of
6 defense for justice. The jury is the last line of defense for
7 justice. She was right then, and it's right today. In this
8 week, you will administer justice by a verdict of guilty.

9 **THE COURT:** Gentlemen, does the Defense wish to make an
10 opening statement?

11 **MR. HILLER:** May it please the Court?

12 **THE COURT:** Yes, sir.

13 **MR. HILLER:** Good morning, ladies and gentlemen. The
14 reason Mr. Rico Antonio Funderburk is sitting there at the
15 Defense table is because he has been charged with, as you just
16 heard, some very serious, if not incredibly serious crimes, to
17 which he has entered a -- a plea of not guilty. He's been
18 charged by a very powerful system, the state of South
19 Carolina, the full might of the state behind him. And that --
20 that system has weighed in on one side of what is ultimately,
21 a he said/ she said situation.

22 I don't mean that trite. I don't mean that in a glib way
23 at all, but it is exactly that because no one besides Mr.
24 Funderburk and Ms. **KS** are present when the events that
25 bring us here today in this courtroom took place. You heard a

1 lot about other witnesses. The State tends to call a Walmart
2 employees, sit down Ms. KS after the fact. Treating
3 physicians, law enforcement personnel. None of them can give
4 a firsthand account of what happened. Only Ms. KS and only
5 Mr. Funderburk can say what happened behind closed doors of a
6 hotel room that were sporadically visited in the vehicle,
7 Toyota Highlander that you're going to see about and here some
8 -- see pictures of and hear about.

9 But they have all the firsthand knowledge that there is
10 in this case. Ms. KS was hurt. She was injured. Make no
11 mistake, the evidence that is a part of the story, it's
12 probably the State's whole story, but there is another side of
13 the story. And you're going to hear it. You will hear from
14 Mr. Funderburk. You will hear what he is going to say to you
15 all in this case. And his story really is about the "why."
16 The "why" of what happened that brought him here today, facing
17 these very serious charges.

18 As to the domestic violence and assault charges, Mr.
19 Funderburk faces, through the course of this trial, it's
20 expected that you will hear the victim, Ms. KS
21 intentionally drug Mr. Funderburk with illegal substances
22 without his knowledge, without his consent. The Defense does
23 expect to show that as a direct result of these acts committed
24 against him, acts to which he did not consent, acts which
25 intoxicated him against his will. He essentially lost the

1 ability to use good judgment and control.

2 Because of his assertion, in the course of this trial,
3 the Defense will attempt to establish evidence to show that
4 these illegal substances introduced into Mr. Funderburk's body
5 -- again, something he did not condone in any way -- created
6 within him a temporary mental defect that took away his
7 ability to distinguish moral or legal right, from moral or
8 legal wrong. It also took away his ability to act or to
9 comport, bring his body into compliance with the requirements
10 of law and what we expect in -- in polite society and inside
11 society in which we live. This is known as an affirmative
12 defense; the defense of insanity. And you're going to hear a
13 lot more about that as this trial progresses.

14 As to this kidnapping charge the State brought up, the
15 Defense expects to show that Mr. Funderburk asked Ms. KS
16 many times, on many occasions to leave his vehicle, leave his
17 presence. Despite being offered these opportunities, she did
18 stay.

19 As to the -- the -- on criminal sexual conduct charge,
20 the Defense expects to show that any sexual encounters between
21 these dates that you heard, the August 9th to August 28th
22 dates, were consensual. The State will not be able to prove
23 beyond a reasonable doubt, forceful confinement, kidnapping,
24 and certainly not the use of aggravated force to accomplish
25 sexual battery.

1 Again, to all of these serious charges, Mr. Funderburk
2 has pled not guilty. The burden is on the State to prove his
3 guilt. The only way they can hope to do that is by overcoming
4 the presumption of innocence that surrounds and shields Mr.
5 Funderburk at this very moment. Please listen, as the
6 witnesses present what they have to say, please withhold
7 judgment, please keep an open mind, and with that, we thank
8 you for your service.

9 **THE COURT:** All right. All right. Ladies and gentlemen,
10 we'll now begin the evidentiary portion of the trial with the
11 State's case. The State can call your first witness.

12 **MS. WALLER:** Your Honor, the State calls Byron Ross.

13 **BYRON ROSS, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:**

14 **MR. ROSS:** My name is Byron Ross, B-Y-R-O-N R-O-S-S.

15 **DIRECT EXAMINATION OF BYRON ROSS BY MS. WALLER:**

16 Q: Good morning, Mr. Ross?

17 A: Yes.

18 Q: Where are you currently employed?

19 A: I'm currently employed with Food Lion in Sunset Beach,
20 North Carolina.

21 Q: Okay. Back on August 28, 2021, where were you employed?

22 A: On Walmart, down by Barefoot Landing in Myrtle Beach.

23 Q: Myrtle beach. Is that in Horry County?

24 A: Yes.

25 Q: And back then, what was your job title?

1 A: It was coach, be assistant manager, I guess you'd say.

2 Q: Do you recall an incident on August 28, 2021, that brings
3 you in court today?

4 A: Yes.

5 Q: Do you recall seeing the victim in this case, KS
6 [REDACTED], come into the Walmart that night?

7 A: Yes.

8 Q: So tell me what happened. What did you first see?

9 A: It was my associates were panicking, and they said they
10 had a lady coming through the front door of the bathroom, and
11 I saw her, and she was -- she was beat brutally. I -- I
12 couldn't even recognize if it was a man, woman or anything.
13 She was beat so bad that I couldn't recognize anything. And I
14 just -- we got -- the associates got her into the bathroom and
15 we shut the doors, and just made sure she was safe, and just
16 kept her in there. But it was -- it was just a horrific scene
17 to see her face beat up like that. It was pretty bad.

18 Q: Okay. You said that you kept her safe. Were you worried
19 about her safety?

20 A: Oh, yeah.

21 Q: And why was that?

22 A: Just by the fact of how bad she was beat.

23 Q: Did she tell you anything in that moment about what
24 happened to her?

25 A: Yeah. She said she was hit with a bat.

1 **MR. HILLER:** Objection.

2 **THE COURT:** Sustained. Hearsay.

3 **MS. WALLER:** Your Honor, it's an excited utterance, and
4 we'll see that on body cam later.

5 **THE COURT:** But if she's going to be here to testify --
6 okay. She can state what she said. This is hearsay. I
7 sustained the objection.

8 **BY MS. WALLER:**

9 Q: Okay. So you said that she was bruised, you couldn't
10 tell if she was a man or a woman, I think?

11 A: Yeah. Yeah, it was really bad more than ever. I mean,
12 stuff I hadn't even seen in a movie. Really bad.

13 Q: It was bad. So were all of the bruises fresh or you --
14 could you tell if there were old bruises as well?

15 A: Fresh. It was fresh.

16 Q: Was she bleeding?

17 A: Yes.

18 Q: What was her demeanor like?

19 A: Panic. Just, she was out of it. Stumbling words. She
20 was -- she was really weak too at the time. We had really
21 good associate at -- that helped her, took care of her in the
22 bathroom and until the ambulance got there. But she -- she --
23 it was -- she was devastated, you know what I mean? She --
24 she's lost everything that night.

25 Q: Were you concerned about the safety of the employees or

1 the other patrons of Walmart that --

2 A: Oh, yeah, that was on my mind also.

3 Q: And why was that?

4 A: Just the fact if you could -- someone, anyone could do
5 that to someone, then you have to worry about the safety of
6 others, especially if you're in charge.

7 Q: Did you have any idea at that moment the location of the
8 Defendant?

9 A: From just -- from what she said, it was outside in the
10 parking lot, and also associates did say that they saw her out
11 there in the car or near a car, and I knew at that time that
12 he was outside. So that -- that made me worry a lot.

13 Q: Okay. Did you place a 911 call that night?

14 A: Yes.

15 **MS. WALLER:** May I approach the witness, Your Honor?

16 **THE COURT:** Yes, ma'am.

17 **BY MS. WALLER:**

18 Q: I'm going to show you what's been marked as State's
19 Exhibit Number 4. Can you review this and tell me if you
20 recognize it?

21 A: Yes.

22 Q: Okay. Is -- is that a copy of the 911 call you made that
23 night?

24 A: Yes.

25 Q: And is it a true and accurate copy?

1 A: Yes.

2 Q: It's what you actually said and it depicts events as they
3 really happened?

4 A: Yes.

5 **MS. WALLER:** Your Honor, at this time, the State would
6 seek to introduce Exhibit Number 4 into evidence and publish
7 it for the jury.

8 **THE COURT:** All right. Any objection?

9 **MR. HILLER:** Your Honor, I have obviously heard the video
10 in the past. I do believe that there will be some hearsay
11 within hearsay that the State may be able to substantiate as
12 it goes, but I don't -- that wouldn't be proper to put that
13 for the jury for the -- in the presence of the jury for the
14 first time, just as it is.

15 **THE COURT:** All right. All right. State's Exhibit 4 is
16 admitted into evidence over the Defendant's Objection.

17 **MS. WALLER:** Thank you.

18 **(STATE'S EXHIBIT NUMBER 4 IS**
19 **ADMITTED INTO EVIDENCE)**

20 **REPORTER'S NOTE:** (Whereby State's Exhibit 1 is played)

21 **BY MS. WALLER:**

22 Q: Mr. Ross, we just heard the 911 call you placed that
23 night. Is that an accurate representation of the call you
24 made?

25 A: Yes.

1 Q: I think I heard you say in that call that you had someone
2 watching the front door of the Walmart?

3 A: Yes.

4 Q: Why was that?

5 A: Just, if there was any activity and you're coming towards
6 the door, you know, that they had a radio, they could let me
7 know and I could get there fast enough (inaudible).

8 Q: Okay. And after you placed the call, what did you do?

9 A: After I placed the call?

10 Q: Uh-uh.

11 A: Focused on her, you know, and made sure she was
12 comfortable.

13 Q: And did police eventually arrive -- ambulance?

14 A: Yes. Yes. I -- I waited for the police, of course, and
15 just focus on her and the ambulance did come, and I spoke with
16 the police. They said they would take care of her from there,
17 you know, but they did, they got her on the stretcher, and
18 they got her out of there. Transported her to the hospital.

19 Q: I'm going to show you -- so other than testifying here
20 today, did you have any other involvement in this case?

21 A: Uh-uh. (Negative response)

22 **MS. WALLER:** Okay. Thank you. No further questions,
23 Your Honor.

24 **THE COURT:** All right. Cross-examination?

25 **MR. HILLER:** Just briefly.

1 **CROSS EXAMINATION OF BYRON ROSS BY MR. HILLER:**

2 Q: Mr. Ross, you've never seen Rico Antonio Funderburk until
3 today, right?

4 A: Right.

5 A: I mean, and you're assuming that it's him because he's
6 sitting here, but you don't even know for sure that is him, do
7 you?

8 A: No. I -- no.

9 Q: So is it just fair to say that what you said on the 911
10 call, you were basically repeating it, you don't have any
11 firsthand knowledge of what happened?

12 A: I don't have firsthand knowledge exactly of what
13 happened. No. But --

14 Q: Well, thank you.

15 **MS. WALLER:** Your Honor, I'd like the witness be allowed
16 to answer.

17 **THE COURT:** Well, he can't get into any hearsay. He
18 can't get into what was told to him. He can only testify as
19 to what he personally observed, and what he personally knows.
20 If the testimony is a statement made by a third person who --
21 they have to be subjected to cross-examination.

22 **MS. WALLER:** Well, I don't know what he was going to say
23 because he wasn't allowed to finish.

24 **THE COURT:** All right. You can --

25 **MS. WALLER:** But the State would put on the record that

1 anything he heard that night was an excited utterance and a
2 present sense impression, which are object -- exceptions to
3 the hearsay rule.

4 **THE COURT:** Okay. I understand that. You can finish
5 your answer, but you can't testify as to what you were told by
6 anyone else. Okay?

7 **MR. ROSS:** Yeah.

8 **THE COURT:** All right.

9 **BY MR. HILLER:**

10 A: I was just going by what she said, you know, because she
11 was -- she was in such a state that I -- I had to make sure
12 she was okay, and everything she did tell me, yes, I was
13 repeating.

14 **MR. HILLER:** Thank you. I don't have any further
15 questions.

16 **THE COURT:** All right. Redirect?

17 **MS. WALLER:** No, Your Honor.

18 **THE COURT:** All right. You may step down.

19 **MR. ROSS:** Thank you.

20 **THE COURT:** The state can call you next witness.

21 **MR. MARTIN:** Your Honor, the State would call Selena
22 Small.

23 **THE COURT:** All right.

24 **SELENA SMALL, HAVING BEEN DULY SWORN TESTIFIES AS**

25 **FOLLOWS:**

1 **MS. SMALL:** Selena Small. The first name is S-E-L-E-N-A,
2 last name is small, S-M-A-L-L.

3 **THE COURT:** All right. Before we get started direct
4 examination, I've been told that the jurors need a break. So
5 we'll go ahead and take a morning break. We'll take about a
6 10 or 15-minute break. Do not discuss the case even among
7 yourselves at this time. Don't conduct any investigation.
8 Take about a 10 or 15-minute break and we'll come back to
9 this. All right. Thank you very much. Everyone else, please
10 remain seated while the jury is excused.

11 **REPORTER'S NOTE:** (Jury exits the courtroom at 10:56am)

12 **THE COURT:** All right. Anything from the State before we
13 take a recess?

14 **MS. WALLER:** Your Honor, the State does have one matter.
15 The State would ask that the Defendant now that the jury has
16 been sworn, that the Defendant be remanded to custody for the
17 duration of the trial.

18 **THE COURT:** All right. Anything from the Defense about -
19 -

20 **MR. FOX:** Judge, I would just -- of course the obligations
21 of the bondsman are -- are -- and upon the swearing of the
22 jury and call of the case, and we're at that point. We would
23 request that Mr. Funderburk under the Court's discretion be
24 allowed to remain out on bond. He's on an ankle monitor, and
25 has been for well over a year.

1 Judge, I'd like to hand up a couple items. One is Mr. Hiller
2 contacted Home Detention a week or so ago anticipating this
3 issue and was told that and, you know, make sure there's no
4 problems with him on home detention and with -- with his ankle
5 monitor. And they said he was both a model -- model person
6 and then there -- so included in here is just a follow-up
7 email -- a copy of a follow-up email from home detention, as
8 well as an affidavit of his bondsman, Priscilla Cox Spivey who
9 is with Priscilla's Bail Bonds, indicating that she's willing
10 to remain as bond person for Rico Funderburk during the term
11 in general sessions court, in which his case is called to
12 trial.

13 So again, it is within Your Honor's discretion, but it
14 sounds like he's been -- he's on a monitor. We'll know
15 exactly where he is. He's been no trouble. He's not a flight
16 risk -- showed up to court over and over here again for his
17 trial and the bondsman is willing to remain on the bond.

18 **THE COURT:** All right. Anything in reply?

19 **MS. WALLER:** Your Honor, the State would assert that the
20 Defendant is a flight risk. He's on trial now for crimes that
21 could put him away for the rest of his life. Two of those
22 crimes are violent, most serious offenses. The other two
23 crimes are also violent. I think the Defendant at this point
24 is a flight risk. If this trial begins to go badly, he'll
25 certainly have an incentive to run and to try to get away

1 before he faces that sentence that could be a potential of 80
2 to 100 years.

3 **THE COURT:** All right. Given the severity of the
4 charges, I understand the Defendant's argument, but my
5 understanding, even though bondsman said that they'll still go
6 bond, I think that the bond is off. So I'm going to order
7 that he be taken into custody pending finishing the trial of
8 the case.

9 **THE COURT:** Okay.

10 **MR. FOX:** If Your Honor would please make those items a
11 court's exhibit.

12 **THE COURT:** All right. Let's put this -- you can just
13 make them jointly together as Court's Exhibit 2. All right.

14 **MR. HILLER:** Thank you, Your Honor.

15 **(COURT'S EXHIBIT NUMBER 2 IS**
16 **MARKED FOR IDENTIFICATION)**

17 **THE COURT:** Thank you. All right. Anything further from
18 the State before we take a recess?

19 **MS. WALLER:** Nothing at this time, Your Honor.

20 **THE COURT:** Anything from the defense?

21 **MR. HILLER:** No, Your Honor.

22 **THE COURT:** All right. We'll take about 10 or 15-minute
23 recess. You may step down and we'll bring you back up.

24 **MS. SMALL:** Thank you, Your Honor.

25 **THE COURT:** All right. Thank you very much. Let's take

1 about a 10 to 15-minute recess.

2 **(COURT IS IN RECESS)**

3 **THE COURT:** All right. Anything from the State before we
4 bring the jury?

5 **MS. WALLER:** No, sir, Your Honor.

6 **THE COURT:** Anything from the Defense?

7 **MR. HILLER:** No, sir.

8 **THE COURT:** All right. Ms. Small, you can come back.
9 Take the stand. You're still under oath.

10 **REPORTER'S NOTE:** (Jury enters courtroom at 11:26am)

11 **THE COURT:** Hi, ladies and gentlemen. Welcome back.

12 We're ready to proceed with the trial of the case. Direct
13 examination.

14 **MR. MARTIN:** Thank you, Your Honor. May it please the
15 Court?

16 **THE COURT:** Yes.

17 **DIRECT EXAMINATION OF SELENA SMALL BY MR. MARTIN:**

18 Q: Ms. Small, where do you currently work?

19 A: At Walmart on Kings Road.

20 Q: And how long have you been at Walmart?

21 A: November would've been three years, a little over three
22 years.

23 Q: Working back at Walmart back in August of 2021?

24 A: Yes.

25 Q: What are your current duties at Walmart?

1 A: My current duties are, I'm the asset protections
2 operation coach, which in Walmart, coach means like assistant
3 manager. So I'm the assistant manager of asset protection and
4 security.

5 Q: Did you have that same role back in August of 2021?

6 A: Back then, I was not the manager. I was just what they
7 call the asset protection investigator. So I just worked in
8 AP as an hourly associate. I was later promoted.

9 Q: What did you do before you were at Walmart?

10 A: I retired from law enforcement here in Horry County.

11 Q: So as an asset protection investigator, if I said that
12 right, were you asked to look into a matter that occurred at
13 that Walmart back on August the 28, 2021?

14 A: Yes, I was.

15 Q: And did Horry County police ask you to look at video
16 surveillance from the Walmart?

17 A: Yes.

18 Q: Could you sort of explain the process you go through when
19 trying to pull relevant video surveillance at Walmart?

20 A: Essentially, if I get a request to pull video, I just
21 needed to know like what I was looking for, which I was what
22 requested to get video of what occurred as far as with a -- a
23 woman that had been in the store and the police responded. So
24 essentially, what we do is we go to that date and time. So I
25 go to the point on video where I see the person that the

1 police departments want video of, and then I backtrack for the
2 entire time that I can see on video that they are on property,
3 and basically, I put that video together and burn a copy and
4 turn it over to law enforcement.

5 Q: And is that what you did here?

6 A: Yes, it was.

7 Q: And are there multiple different camera locations or
8 angles throughout the school?

9 A: Yes, we have -- we have over 40 probably camera shots.
10 So we have cameras that are inside of our building, but we
11 also have them that go around the exterior of the building as
12 well.

13 Q: So after locating the victim and backtracking, as you
14 said, did you find a video of a Highlander parking into the
15 parking lot of Walmart?

16 A: I know that there was a vehicle that was parked and I
17 don't recall what the actual vehicle was at this time, but I
18 did get a vehicle that was part of the request to pull, but I
19 just don't remember exact vehicle type.

20 Q: And was that video about 30 minutes long?

21 A: Yes.

22 Q: And at the end of that video, do you see someone get out
23 and run into the shore?

24 A: Yes. You can tell that somebody -- that the vehicle
25 stops and somebody is getting out, then we can see running

1 across the front coming in the store.

2 Q: So in the beginning of the video and the end, is there
3 anything that goes on during the middle of that 30 minute
4 video?

5 A: No. Just the vehicle parks and you can't -- it's far
6 enough off that you really can't see inside of the vehicle or
7 anything. You just see it in the distance because it's at
8 night, and then towards the very end of the video is when it
9 like backs out or it comes out of the parking spot and you
10 see, you know, like an abrupt stop and some commotion, and
11 then somebody comes across the other camera shots.
12 But the first, so minutes for us at Walmart, we pulled the
13 video of the entire time somebody is potentially on the
14 property. So from the time that vehicle parked until the time
15 it left that camera shot. So once it comes into camera shot
16 and once it leaves, I just save the whole entire clip. I
17 don't pick and choose the time. It's just from the time the -
18 - the vehicle comes on, the camera shot until the time it
19 leaves and I just burn that whole copy.

20 Q: So I'm not going to waste your time or the jury's time
21 with that particular video, but did you pull other videos as
22 well?

23 A: I did.

24 Q: And did you pull a video of the victim in this case
25 running through the parking lot?

1 A: Yes.

2 **MR. MARTIN:** I'm going to show you what's been marked as
3 State's 6. May I approach the witness, Your Honor?

4 **THE COURT:** Yes.

5 **BY MR. MARTIN:**

6 Q: I'm showing you what's been marked for identification
7 purposes as State's 6. It's a CD. Do you recognize it?

8 A: Yes, I do.

9 Q: Are those your initials on the outside of that CD cover?

10 A: Yes, that's my initials.

11 Q: And is that how you're able to recognize it?

12 A: Yes.

13 Q: Have you previously viewed the video?

14 A: Yes.

15 Q: And is the video a fair and accurate representation of
16 the surveillance footage that you captured from Walmart?

17 A: Yes. It is.

18 **MR. MARTIN:** Your Honor, at this time the State would ask
19 that this be admitted into evidence and published to the
20 jury.

21 **THE COURT:** All right. Any objection?

22 **MR. HILLER:** No, Your Honor.

23 **THE COURT:** All right. State's Exhibit 6 admitted into
24 evidence without objection.

25 **(STATE'S EXHIBIT NUMBER 6 IS**

1 **ADMITTED INTO EVIDENCE)**

2 **THE COURT:** May I approach the witness and get the item
3 of evidence.

4 **BY MR. MARTIN:**

5 Q: Ms. Small, can you see the TV? Because I'm going to ask
6 you a few questions. Are you able --

7 A: I -- I can see it. I just -- once it's up there, I'll be
8 able to see if I can read it in, you know --

9 Q: Okay.

10 A: The camera shot. But I can see it from here.

11 Q: If you're unable to see anything, please just indicate.
12 Now, while we're getting this set up, Ms. Small, is there any
13 volume associated with these surveillance videos?

14 A: No, there's no sound to the video.

15 Q: And on these videos, will there be a time or date stamp
16 located somewhere on that video?

17 A: Yes. There'll be a camera name that tells -- like for
18 me, it tells me where that camera's located and then there'll
19 be a time and date on it.

20 **MR. MARTIN:** And is that located in the -- could you
21 pause that, please? So Your Honor, may I get the witness to
22 come down, so that she can see the relevant part of this
23 video?

24 **THE COURT:** She's going to need to be near a microphone,
25 so the court reporter can pick up her testimony.

1 **MR. MARTIN:** Okay.

2 **THE COURT:** All right.

3 **BY MR. MARTIN:**

4 Q: Ms. Small, could you just have a stand. This has a cord
5 on it.

6 A: Okay.

7 Q: Just carry the microphone with you.

8 A: Okay. I can see it now.

9 Q: So directing your attention to the top left hand corner
10 of that video, can you explain to the jury how you can tell
11 what time and date this video was captured?

12 A: Yes. It -- when you look up in the top left -- I know it
13 may be hard to kind of see from there -- but it -- the -- it
14 starts off in, it says exterior drive aisle one, and then the
15 next little bit right there, it talks about -- it'll say
16 8/28/2021 on there. And then the very next thing is -- is the
17 time. And for us it's in military time. So it says 225218.
18 And so that's basically like the start time of that video.
19 And then the next portion will say 8/28/21, and it'll say
20 225240, and that should be the end time.

21 So normally, that's how when our videos pull, it'll kind of
22 label it the -- basically the -- the camera shot, which is the
23 exterior drive aisle one. And then it's the date -- the time
24 the video starts, and then the date and the time that it
25 stops, is normally how it saves. And that's what it appears

1 to be here.

2 Q: And I'm not in the military, but is 225218 10:52 p.m.?

3 A: Yes, it is.

4 Q: Could you play the video please?

5 **REPORTER'S NOTE:** (Whereby State's Exhibit 6 is played)

6 **BY MR. MARTIN:**

7 Q: Thank you. Again, was that a fair and accurate
8 representation of the video that you pulled?

9 A: Yes, it is.

10 Q: And what did we see in that video? Can you tell us where
11 the camera location is?

12 A: Essentially, if you were like looking at my building at
13 Walmart, if you were facing the building of Walmart, it would
14 be the very right-hand side. So at our store, when you're
15 looking at our -- at our store, when you're facing the front,
16 the very far left side, if you're facing it is like 17 -- I
17 say 17 bypass -- but Highway 17 like where FASTPRO 22 (ph) is,
18 and if you're looking to the far right, which is what this
19 camera shot is over here to the right, is the side of our
20 building and it's a parking lot. We call it OGP, online
21 grocery pickup. So as you enter our store from the traffic
22 light, you come, if you go down the traffic light, you turn
23 down the road to come to our store, and you take a left into
24 our parking lot, where that little van is at the stop sign,
25 that is where you would kind of turn left and come across the

1 front of our building. So essentially, this camera shot is
2 facing where Marshals and places like that are in our -- in
3 the shopping complex next to us.

4 Q: So don't go on -- I'm going to ask you about another
5 video. Did you find -- or pull another video of the victim
6 running to an employee?

7 A: Yes.

8 Q: I'm going to show you what's been marked as State's 7 for
9 identification purposes.

10 A: Okay.

11 Q: Again, are you able to recognize this?

12 A: Yes, I am.

13 Q: Are those your initials on it?

14 A: Yes.

15 Q: Same set of questions. Is that how you're able to
16 recognize it?

17 A: Yes.

18 Q: And is this a video that you pulled from 8/282021 at
19 Walmart?

20 A: Yes, it is.

21 Q: And is it a fair and accurate representation of the video
22 that you saw the night you pulled it?

23 A: Yes.

24 **MR. MARTIN:** Your Honor, at this time the State would ask
25 to admit this into evidence as well and publish it for the

1 jury.

2 **THE COURT:** All right. Any objection?

3 **MR. HILLER:** None, Your Honor.

4 **THE COURT:** All right. State's Exhibit 7 admitted into
5 evidence without objection.

6 **(STATE'S EXHIBIT NUMBER 7 IS**

7 **ADMITTED INTO EVIDENCE)**

8 **BY MR. MARTIN:**

9 Q: Ms. Small, again, while we're getting this set up, is the
10 time and date in the same location on this video?

11 A: Yes, it should be in the top left.

12 Q: And when we get it up here, before we start it, would you
13 mind telling us what the time and date is of that video?

14 A: When it's up there?

15 Q: When it's up there.

16 A: Yes, I will.

17 Q: So directing your attention to the top left-hand corner
18 of the screen, could you tell us the time and date on this
19 video?

20 A: The time and date is 8/28/21. And again, it's the
21 military time. It says 225218. That's the start time of it.
22 And then 8/28/21 and then the time is 225240, and that'd be
23 the stop time.

24 Q: And again, that's 10:52 p.m.?

25 A: Correct.

1 Q: What's the camera angle of this -- of this video?

2 A: This one, again, if you're facing my store, it's still
3 kind of on the right-hand side. So essentially, this is
4 exterior drive three. The very first camera shot you saw was
5 exterior drive one. All of them basically overlap a little
6 ways as far as the camera view that it's catching. So
7 essentially, this would be, you would see that continuation --
8 the timestamps are roughly about the same, but that's the
9 continuation of when you saw the person on video running
10 across.

11 Basically, once they run across and they run off of that other
12 camera shot, then they're going to run into this camera shot.
13 And this is at the very front of the store, where there's a
14 big concrete pad. And so right off to the right side of that
15 screen is when you're coming towards our front door, it's
16 getting ready to enter what we call our grocery entrance.
17 It's kind of like the cart corral, and then our grocery
18 entrance.

19 Q: And finally, did you pull another video of the victim
20 running into the store with an employee?

21 A: Yes, I did.

22 Q: I'm going to show you what's been marked as State's 8 for
23 identification purposes. Could you look at that -- and again,
24 same set of questions. Do you recognize that?

25 A: Yes, I do.

1 Q: Are those your initials?

2 A: Yes. They are.

3 Q: And that's how you're able to recognize it?

4 A: Yes, those are my initials.

5 Q: Was -- is this video a fair and accurate representation
6 of what you witnessed when you originally pulled the video?

7 A: Yes, it is.

8 **MR. MARTIN:** Same thing, Your Honor. The State would ask
9 that this be admitted into evidence and published for the
10 jury.

11 **THE COURT:** Any objection?

12 **MR. HILLER:** Without objection.

13 **THE COURT:** All right. State's Exhibit 8 admitted into
14 evidence without objection.

15 **(STATE'S EXHIBIT NUMBER 8 IS**
16 **ENTERED INTO EVIDENCE)**

17 **BY MR. MARTIN:**

18 Q: Not to sound like a broken record, but again, is the time
19 and date on this video?

20 A: Yes, it is.

21 Q: And will it be -- sorry. If we can get it to play will
22 it be located in the top left-hand corner as well?

23 A: It should be, yes.

24 **REPORTER'S NOTE:** (Whereby State's Exhibit 8 is played).

25 **MR. MARTIN:** Pause that, please?

1 **REPORTER'S NOTE:** (Whereby video is stopped)

2 **BY MR. MARTIN:**

3 Q: And essentially is the time -- could you tell us what
4 time and date it is on -- on the video?

5 A: So essentially, same thing. If you look up in this top
6 left-hand corner, it says grocery entrance, and it's
7 8/28/2021. The timestamp starts where the video should start
8 at 225240, and it should end on 8/28/21 at 225248.

9 Q: Thank you.

10 **REPORTER'S NOTE:** (Whereby State's Exhibit 8 is
11 continued).

12 **BY MR. MARTIN:**

13 Q: And I think it's obvious, but what's the camera angle
14 there that we're looking at?

15 A: Basically, if you're coming into walking into our -- this
16 camera faces out our grocery entrance. So if you're facing
17 Walmart, the door is on the far right-hand side are what we
18 call the grocery entrance, and it's called our vestibule. And
19 this camera catches you as you come into the store. So this
20 is our grocery entrance as that last camera shot when they
21 were going off to the right. This picks up right when you
22 come around to the front of our building, and this is where
23 you enter our building on our -- what we call our grocery
24 side.

25 Q: And what essentially are we looking at in this video?

1 What do we see?

2 A: The doors right here on the left are what is considered
3 our entry doors. The other ones are our exit. So this is the
4 vestibule. So as soon as you enter our store, whoever's
5 coming through is going to come through and they're going to
6 go right past our camera. And right behind that camera angle
7 is the actual interior of our store. So if you've been in a
8 Walmart, there's kind of like two doors and there's just like
9 this area kind of like a vestibule, and that's what we call
10 it. And that's where this is.

11 Q: Thank you. You can have a seat.

12 A: Okay.

13 Q: Sorry to make you stand.

14 A: No, you're fine.

15 Q: And Ms. Small, after you pulled these videos, what'd you
16 do with them?

17 A: Basically, I saved the video to our computer program
18 which holds video for usually about 30 days. And I burned --
19 basically just burned a copy of those. I took those files and
20 burned them to a disc, and prepared them to turn over to the
21 Horry County Police Department.

22 Q: Other than testifying here today, did that conclude your
23 involvement in this case?

24 A: Yes, it did.

25 **MR. MARTIN:** Your Honor, no further questions from the

1 State at the moment.

2 **THE COURT:** All right, cross examination.

3 **MR. HILLER:** Just briefly.

4 **CROSS EXAMINATION OF SELENA SMALL BY MR. HILLER:**

5 Q: So we've seen three videos, and I believe you testified
6 about the fourth, much longer video?

7 A: Okay. Sorry, I didn't hear (inaudible). I apologize.

8 Q: That's okay. I'll speak up. You testified about -- at
9 the beginning, you testified about a much longer 29-minute
10 video, correct?

11 A: Correct.

12 Q: Okay. And I believe you said at the end of it a person
13 gets out of the vehicle and starts moving through the parking
14 lot?

15 A: I would have to see the exact shot. I know that the car
16 stops and you can -- there's some movement going on, but I
17 would have to view it to exactly say what happened right at
18 the end.

19 Q: Okay. So you don't remember what happened at the end of
20 it?

21 A: I remember the car like stopping and movement like of
22 people right around there, but I don't know who those people
23 are without like watching it here. I can't tell you, but.

24 Q: Okay. Do you -- maybe I asked this already, but let me
25 just be clear. Do you remember how many people got out of the

1 vehicle? I know you said that there was some movement.

2 A: Some movement. I don't recall how many people like that
3 may have. The only thing that I recall is the car stopping
4 and that there was some movement going on. But again, to
5 refresh my memory, I would probably have to watch the very
6 end. I don't want to say for certain because I don't recall.

7 Q: Do you remember if the car stayed stationary or if it
8 left on that same video?

9 A: On that same video, it should pull off because the -- the
10 vehicle goes around the building again. So if the vehicle
11 move -- parks, comes out the parking spot, and then starts to
12 move and there's a stop, and then it continues on, and at some
13 point, it goes around the whole building.

14 **MR. HILLER:** Okay. No further questions.

15 **THE COURT:** Redirect?

16 **MR. MARTIN:** Thank you, Your Honor.

17 **REDIRECT EXAMINATION OF SELENA SMALL BY MR. MARTIN:**

18 Q: Ms. Small, I tried to save you some time and I
19 apologize.

20 A: You're fine.

21 Q: The -- the Defense asked you about a video?

22 A: Yes.

23 **MR. MARTIN:** I'm -- I'm going to approach and ask you if
24 you can identify this. May I approach, Your Honor?

25 **THE COURT:** All right.

25 (STATE'S EXHIBIT NUMBER 5 IS

1 **ADMITTED INTO EVIDENCE)**

2 **MR. MARTIN:** And if I may, Your Honor, the witness has
3 already testified that there is nothing that happens within
4 this 30-minute period. If we could, we could just play the
5 end of the video, which was originally questioned on cross-
6 examination.

7 **THE COURT:** All right. What's the Defendant's position?

8 **MR. HILLER:** I'll leave that in the discretion of the
9 court. I certainly asked a relevant question across to
10 something that was brought up on the direct.

11 **THE COURT:** I mean the rules of evidence is they can play
12 whatever pertinent part they deem is pertinent. Defense has
13 the right to have the entire thing played if you want it. So
14 the -- I mean that -- I think that's how it goes with recorded
15 statements, videos, whatever. The person introducing the
16 evidence can play what they deem as appropriate. And then the
17 other person or the other party has the right to play the
18 entire video if they choose -- if they think it's -- it's
19 presenting something inaccurate.

20 **MR. HILLER:** Yes, sir, Your Honor. Relevant portion only
21 is fine with the Defense.

22 **THE COURT:** All right.

23 **MR. MARTIN:** Thank you, Your Honor.

24 If you could put it at the 29-minute mark. And it's not
25 on the TV.

1 **BY MR. MARTIN:**

2 Q: Ms. Small, if I could have you get off the stand again
3 like we did last time. Sorry.

4 A: That's fine.

5 Q: So again, is the time and the date in the same location
6 as the other three videos?

7 A: Yes, it should be.

8 Q: And what is the time and the date?

9 A: It is August 28, 2021. And the time that it starts is
10 2222, looks like zero, which would be right on like, you know,
11 right at the time of 10:22 p.m. And then 8/28/21, 2253.

12 Q: And what's this camera angle of?

13 A: So essentially, this is if you're facing our building at
14 Walmart, this is the right-hand side of our building. The
15 name on here is exterior side of building one. So for me, I
16 know that that's the side of the building, but I know this is
17 what we call online grocery pickup. So essentially, this
18 would be a different camera shot here. It's the side of the
19 building. We're on the very first video. You saw somebody
20 coming across. This is kind of the side angle video here. So
21 it's the side of our building.

22 Q: And I see a couple different vehicles in this video.
23 What's the vehicle that we're focused on here?

24 A: It's -- and maybe we get closer to kind of point to it.

25 Q: (Inaudible) just --

1 A: Okay. The vehicle that we would be watching on here
2 would essentially be right here. So that would be the video
3 or the vehicle right in this area.

4 Q: Is that the vehicle in the middle of the parking lot? Or
5 the -- in between the other vehicles?

6 A: Right here?

7 Q: Yes.

8 A: Yes.

9 **MR. MARTIN:** Thank you. If you could play it, please.

10 **REPORTER'S NOTE:** (Whereby State's Exhibit 5 is
11 played).

12 **BY MR. MARTIN:**

13 Q: So just to recap, what did we just see here?

14 A: That was the vehicle that you saw there is the vehicle
15 that backs up, and the person that I was following on camera
16 that you saw run around, or you know, that was appears to be
17 running, that had on a lighter colored shirt is -- when the
18 vehicle stops, all we know is you see it looks like that same
19 shirt is what comes across the front of the vehicle. And that
20 was it. And then I just followed, you know, basically I took
21 each camera shot that comes out after it and followed that
22 through until entering the store.

23 Q: So you -- do you pick her up on a separate angle seconds
24 later?

25 A: Yes. Yes, I do.

1 **MR. MARTIN:** Nothing further, Judge.

2 **THE COURT:** All right. You may step down.

3 State can call your next witness.

4 **MR. MARTIN:** Your Honor, the State will call Kelly
5 Bonome.

6 **KELLY BONOME, HAVING BEEN DULY SWORN TESTIFIES AS**
7 **FOLLOWS:**

8 **MS. BONOME:** My name is Kelly Bonome. K-E-L-L-Y, B-O-N-
9 O-M-E.

10 **DIRECT EXAMINATION OF KELLY BONOME BY MR MARTIN:**

11 Q: Morning, Ms. Bonome. Where do you currently work?

12 A: Walmart.

13 Q: How long have you been at Walmart?

14 A: A little over three years.

15 Q: Which Walmart do you work at?

16 A: I work at Walmart store 643 on Kings Road in Myrtle
17 Beach.

18 Q: And were you working at that store on August the 28,
19 2021?

20 A: Yes, sir.

21 Q: Did you work anywhere before Walmart?

22 A: I worked for Horry County government.

23 Q: And do you recall the evening of August the 28, 2021, at
24 the Kings Road Walmart?

25 A: Yes, sir.

1 Q: And what were you doing that evening at the store?

2 A: At the time of the incident -- well, my job title there
3 was a sales associate. I worked in sporting goods and fabrics
4 and crafts. At the time of the incident, I had gone outside
5 to take a quick break and was talking to two other associates
6 out there. And we heard somebody scream. It was a woman's
7 voice screaming, help me, help me, he's killing me, he's
8 killing me. Of course, I stood up real quick and went towards
9 the person that was running towards me, and brought them in
10 for safekeeping inside the store.

11 Q: So did you get a good look at this person when she comes
12 running up to you?

13 A: Yes. It was kind of dark, but we do have lighting out
14 there. She -- her hair was really curly. It was really
15 disheveled. She had smeared blood all over her. She had
16 bruises all over her. She was currently bleeding. Her eyes
17 were swollen, pretty much shut. She had marks all -- up and
18 down her arms. You could see the signs. I could see that
19 there were what appeared to be older bruises because they were
20 yellowed and not fresh. There were fresh bruises and that
21 they were dark and purple. There were red marks on her arms.
22 Her whole body and her whole, you know, clothing and
23 everything was -- was covered in blood, whether it be fresh or
24 smeared or -- or whatever.

25 Q: Can you describe her demeanor when you made contact with

1 her?

2 A: She was very emotional. She was literally screaming for
3 her life and running for her life. And so I, you know, got
4 her and brought her in for safekeeping.

5 Q: And you say running, was it clear she was running away?

6 A: Absolutely.

7 Q: And you just said safekeeping. Where'd you take her?

8 A: I took her to the ladies' room. I had thought about
9 somewhere safe for her to go if she -- because I was very
10 concerned that somebody was chasing her, because she said, you
11 know, she was running and she said, he's killing me, he's
12 killing me, actively. So I had to think of a place that was
13 safe. So I took her to the ladies' room, which is well lit
14 and really out of the public area, so that I could have people
15 attend to her while we called for help, to get help to her.

16 Q: You say it was well lit in the ladies' room. Did you get
17 an even better look at her injuries once she got her in
18 there?

19 A: Yes. But I've only stayed with her briefly. I was the
20 one who asked the -- the assistant manager on duty to contact
21 police and -- and ambulance. And then I went back and forth.
22 There was another associate who actually stayed with her. but
23 I could see that those -- those were marks on her that were --
24 they were both old and fresh, in that they were weeping or --
25 or bright purple versus fading. They were yellowish and --

1 and dim. I could see, you know, some cuts on her, mostly
2 around the facial area. And -- and again, the -- the purples
3 and the swelling around her eyes made it. So I was amazed
4 that she was even able to walk as far as she did.

5 Q: Why did you ask the assistant manager to call 911?

6 A: Because Walmart store policy requires that a member of
7 management make those calls for the most part. So I called
8 him to get him up there and to have him make that phone call.

9 **MR. MARTIN:** Court's indulgence.

10 **BY MR. MARTIN:**

11 Q: When you -- when you escorted the victim in the store,
12 were you captured on surveillance camera at Walmart?

13 A: Yes, sir.

14 Q: And if you watched that surveillance footage, would you
15 be able to say whether or not it fairly or accurately depicted
16 what happened the night you ran in with her?

17 A: Yes, sir.

18 **MR. MARTIN:** Your Honor, at this time, the State wishes
19 to play State's 8 again. This was the video of the victim and
20 the employee entering the store.

21 **THE COURT:** All right.

22 **MR. MARTIN:** It's very short.

23 Ms. Bonome, while we're getting this set up, I'm going to ask
24 that it be played. Go ahead and play the whole thing.

25 **REPORTER'S NOTE:** (Whereby State's exhibit 8 is played).

1 **BY MR. MARTIN:**

2 Q: Is that you on video?

3 A: Yes.

4 Q: It's -- is that the victim on video with you?

5 A: It is.

6 **MR. MARTIN:** You can pull it back up and pause it. I'll
7 tell you when. Go ahead and pause it.

8 **REPORTER'S NOTE:** (Whereby video is stopped).

9 **BY MR. MARTIN:**

10 Q: Now, is that a fair and accurate depiction of the victim
11 when you saw her and saw her injuries?

12 A: Yes.

13 Q: So what did you do next?

14 A: Took her into the bathroom. I called management to call
15 for 911 or call 911 to get help to her. And I went back and
16 forth between the bathroom and that door again. you know,
17 I've gotten a description that I was looking for a short black
18 male. And so, I was actually at the door watching back and
19 forth and then going -- checking on her while we were waiting
20 for emergency personnel. It is part of having been a door
21 greeter or AP host as part of the training that we received at
22 work, so that we can try and keep the -- the facility safe for
23 the public and the associates in the store.

24 So I was trying to look for somebody to come in behind her.

25 Thankfully, I never did see anyone from my vantage point. But

1 we checked back and forth and then at -- at some point in time
2 during that, while we were waiting for the first responders, I
3 could see them staging over by the Wendy's and the gas station
4 waiting to come in. And I went back and checked on her in the
5 bathroom again. And it was at that point that she was having
6 difficulty breathing. So I advised the -- the assistant
7 manager to go ahead and call 911 back and explain to them that
8 she was getting more critical or more injured along the way.

9 Q: Did you have a look at her hands?

10 A: Not a whole lot.

11 Q: What about her feet?

12 A: Not really that I can recall. She might have been
13 barefooted.

14 Q: So do you know if she was wearing shoes?

15 A: That's what I can't -- I can't honestly -- I -- in all
16 fairness, I can't honestly remember.

17 Q: Were you there when the police arrived?

18 A: Yes, sir.

19 Q: And what happened once the police arrived? Did you do
20 anything different?

21 A: Well, I escorted them to the bathroom, and then I got out
22 of the way because it was getting pretty crowded around
23 there.

24 Q: And other than testifying today, did that pretty much
25 conclude your involvement in this case?

1 A: Yes, sir.

2 **MR. MARTIN:** I don't have any more questions at the
3 moment. Please answer any questions that the Defense may
4 have.

5 **THE COURT:** All right. Cross-examination.

6 **MR. HILLER:** Not for this witness, Your Honor.

7 **THE COURT:** All right. You may step down.

8 State can call your next witness.

9 **MS. WALLER:** Your Honor, the State calls Kathy Loray
10 Andrade.

11 **KATHRINE ANDRADE, HAVING BEEN DULY SWORN TESTIFIES AS**
12 **FOLLOWS:**

13 **MS. ANDRADE:** My name is Katherine Cardona Andrade. K-A-
14 T-H-R-I-N-E, C-A-R-D-O-N-A, A-N-D-R-A-D-E.

15 **DIRECT EXAMINATION OF KATHRINE ANDRADE BY MS. WALLER:**

16 Q: Thank you. Where are you currently employed?

17 A: I'm currently employed at the Walmart at the 574. I was
18 previously employed at Walmart 643.

19 Q: So when you say 643, are you referring to the Walmart up
20 near Tanger Outlets in Myrtle Beach?

21 A: Yes, ma'am.

22 Q: And were you employed at that Walmart back on August 28,
23 2021?

24 A: Yes, ma'am.

25 Q: What was your job title at that time?

1 A: I was customer service representative.

2 Q: And what were your job duties as a customer service
3 representative?

4 A: I would take care of customer's returns, sometimes
5 complaints. I would help management do whatever needed to be
6 done, put away code sixes.

7 Q: Okay. So were you at work on the night of August 28,
8 2021, and something happened that brought you to court today?

9 A: Yes.

10 Q: Okay. Did you see the victim in this case, K.S.
11 [REDACTED]?

12 A: Yes.

13 Q: And how did you first become aware that she was in the
14 store?

15 A: I turned around and she was headed towards me with arms
16 open, blood everywhere.

17 Q: Okay. What did she look like? What her --

18 **MR. HILLER:** Your Honor, objection. Cumulative.

19 **THE COURT:** Overruled. I'll allow it.

20 **MS. ANDRADE:** She was literally covered in blood. her
21 face was bruised, eyes swollen, her whole body seemed to be
22 swollen.

23 **BY MS. WALLER:**

24 Q: And what was her demeanor?

25 A: She was paranoid, terrified, very, very scared.

1 Q: Could you tell she was trying to get away from
2 something?

3 A: Yes. She was trying to get away from something.

4 Q: Okay. And when you saw the bruises on her body and her
5 face, could you tell if all the bruises were fresh or were
6 some older?

7 A: Some on her face were definitely fresh. The other ones
8 that I saw were a mixture of fresh and old.

9 Q: Okay. What did you do when she ran towards you? Did you
10 -- did you offer her assistance?

11 A: I put my hands out, well, you know, blood everywhere. So
12 I immediately asked for gloves, which an associate got from me
13 and brought to me. I escorted her into the restroom as Kelly
14 stated and I began to administer care.

15 Q. What kind of care did you administer?

16 A: She told me that she'd been locked in a car without water
17 and because of the heat and severity, I was afraid she maybe
18 dehydrated. So I immediately ordered one of the associates to
19 get water. We began to clean up the blood that was all over
20 the place at that point, and her face was continuing to
21 bleed. So we took towels and we started to soak up the
22 blood.

23 Q: Was there a lot of blood?

24 A: Yes, ma'am.

25 Q: And could you tell if she was scared?

1 A: Yes, ma'am.

2 Q: Well, why -- could you tell why she was scared?

3 A: Yes, ma'am. She kept saying he was trying to kill her.
4 She kept repeating it all over and over again he's trying to
5 kill me. I know he wants to kill me.

6 Q: And did you state that the victim (inaudible) his phone
7 until paramedics arrived?

8 A: Yes, ma'am.

9 Q: And what happened after that?

10 A: She told me what happened to her.

11 Q: And can you tell me what she said happened to her?

12 **MR. HILLER:** Objection. Hearsay.

13 **THE COURT:** Sustained. You can't get into what somebody
14 else said.

15 **MS. ANDRADE:** Oh.

16 **MS. WALLER:** The judge (inaudible) can't answer.

17 **BY MS. WALLER:**

18 Q: So once she left in the ambulance, had -- did -- until
19 you saw her here in court today, did you ever see her again?

20 A: I have -- no.

21 Q: And other than testifying here today, have you had any
22 other involvement in this case?

23 A: No.

24 **MS. WALLER:** Okay. Please answer any questions the
25 Defense has.

1 **THE COURT:** Cross-examination?

2 **CROSS EXAMINATION OF KATHRINE ANDRADE BY MR. HILLER:**

3 Q: Your interaction with Ms. **K.S.** was limited to inside the
4 store, correct?

5 A: Yes.

6 Q: So you never saw anything outside the parking lot?

7 A: No.

8 **MR. HILLER:** No further questions?

9 **THE COURT:** Redirect?

10 **MS. WALLER:** No, sir, Your Honor.

11 **THE COURT:** All right. You may step down.

12 State can call your next witness.

13 **MR. MARTIN:** Thank you, Your Honor. State call Jackie
14 Witherspoon.

15 **JACKIE WITHERSPOON, HAVING BEEN DULY SWORN TESTIFIES AS**
16 **FOLLOWS:**

17 **SERGEANT WITHERSPOON:** Sergeant Jackie Witherspoon, Horry
18 County police. Sir?

19 **MR. MARTIN:** Go ahead. I'm sorry, I didn't mean to
20 interrupt you.

21 **SERGEANT WITHERSPOON:** You need me to spell my name?

22 **MR. MARTIN:** Please.

23 **SERGEANT WITHERSPOON:** Jackie, J-A-C-K-I-E. Last name
24 Witherspoon, W-I-T-H-E-R-S-P-O-O-N.

25 **DIRECT EXAMINATION OF JACKIE WITHERSPOON BY MR. MARTIN:**

1 Q: Sergeant Witherspoon, how long have you been in law
2 enforcement?

3 A: 20 years. Started in Orangeburg in 2002.

4 Q: Have you worked anywhere other than Orangeburg and Horry
5 County?

6 A: Had a short stint in Atlantic Beach, two and a half
7 years.

8 Q: So how long roughly have you been with Horry County? My
9 math isn't too good --

10 A: Since 2007.

11 Q: And what are your current duties with the county police
12 department?

13 A: Current duties is a patrol supervisor, precinct three,
14 which is the north end towards Lower River, which is
15 encompasses partial Harbor Beach all the way to 501. We
16 answer calls for service, anywhere from fire alarms,
17 residential alarms to homicides, anything of that nature.

18 Q: What other duties have you had with the county police
19 other than a patrol sergeant?

20 A: Motor team, motor officer, crime team supervisor, I mean,
21 street crime supervisor, narcotics detective for about five
22 years, domestic violence investigator, and -- I'm sorry, a few
23 task force while at narcotics.

24 Q: Back in August of 2021, did you have the same duties back
25 then that you do today?

1 A: Yes.

2 Q: And as a patrol sergeant, were you -- on or about August
3 the 28th, 2021, were you called out to an incident at the
4 Walmart at Tanger Outlets in the Myrtle Beach area of Horry
5 County?

6 A: Yes. We were.

7 Q: And do you remember the nature of the call for service?

8 A: If I remember correctly, came out as an assault and
9 battery or just occurred.

10 Q: And did you in fact respond to that Walmart for the
11 belief to be assault in progress?

12 A: Yes. I was the first one to arrive.

13 Q: Do you remember what -- what happened when you first
14 arrived?

15 A: I got called. Once I got the Walmart, I didn't go
16 directly inside the store. I wanted -- start with the parking
17 lot to make sure that vehicle, because we had a generic
18 vehicle prescription, make sure we went in the parking lot
19 before EMS arrived to the front doors. Once I did that, I
20 stopped up front, walked inside, I was guided to the bathroom
21 where the victim was located.

22 Q: And did you eventually make contact with the victim in
23 the bathroom?

24 A: Yes, sir.

25 Q: And did you get a look at any of her injuries?

1 A: As soon as I walked in, I could see her face and her face
2 was badly beaten and bruised, swollen, blood all over her face
3 and her hair.

4 Q: What else did you learn about the scene once you
5 arrived?

6 A: I saw that the employees were given the care. I got the
7 basic information, made sure I called for EMS to come
8 (inaudible) since the scene was deemed safe. I didn't really
9 want to get into the -- the details of what happened because
10 you could tell she was traumatized. I just basically got the
11 vehicle information, the person's name, which I relate to
12 other units coming in.

13 Q: And when you say traumatized, anything else about her
14 demeanor that stands out to you or stood out to you?

15 A: You could tell she was guarded. I don't know because of
16 what just happened, and another male was asking her questions,
17 but she was able to answer my -- the few questions I did ask.
18 But you could tell she was traumatized, scared, fearful.

19 Q: On the day of the incident, were you wearing body
20 camera?

21 A: Yes, sir.

22 Q: Could you briefly explain to the jury sort of how body
23 camera works?

24 A: So once we got a call for service, once we get close to
25 the scene, we activate the body camera, which still goes back

1 in time. A few just brief moments. So when I walked in, my
2 body cam was -- was on. We can't manipulate it, and our
3 policy states once we turn it on, it has to stay on for the
4 duration of the incident, or until we leave. So once I got --
5 before I went even start activating the body cam, especially
6 with the nature of this -- this incident, so -- and you can
7 tell it's running because it got a red light on it. I
8 wouldn't mind (inaudible) because of my height to bring it
9 down because most people aren't my height, so you want to try
10 and capture everything, and it catches the view is pretty --
11 pretty wide. It catches a lot.

12 Q: So to activate the body cam, do you push a button?

13 A: Have to press the center twice.

14 Q: Okay. And you mentioned going back in time. If it
15 records back in time, is there a small portion that's muted
16 with no audio?

17 A: Yes, no audio.

18 Q: Once you're done with your body cam, do you upload it
19 somehow?

20 A: We upload it at the precincts or you prefer they send --
21 they give us docking stations to take home, put it on the
22 docking station, and it uploads automatically, but either at
23 home or at the precinct.

24 Q: Is that what you did here?

25 A: Yes. I don't know that the precinct that'll keep the

1 document station in the (inaudible).

2 Q: And did you have any ability whatsoever to alter that
3 video at all?

4 A: No, sir.

5 **MR. MARTIN:** May I approach the witness?

6 **THE COURT:** Yes.

7 **BY MR. MARTIN:**

8 Q: I'm -- I'm showing you what's been marked as State's 9
9 for identification purposes. If you could take a look at that
10 and see if you identify that as your body camera.

11 A: Yes. It is.

12 Q: Is that your initials on the back of that?

13 A: Yes, sir.

14 Q: And is that how you're able to identify this?

15 A: Yes, sir.

16 Q: Have you previously watched it prior to testifying
17 today?

18 A: Yes, sir.

19 Q: And is that video a fair and accurate representation of
20 the events that you witnessed on August the 28th, 2021?

21 A: Yes, sir.

22 **MR. MARTIN:** Your Honor, at this time the State ask that
23 this body camera be admitted into evidence and that state's 9
24 be published to the jury.

25 **THE COURT:** All right. Any objection?

1 **MR. HILLER:** No, Your Honor.

2 **THE COURT:** All right. State's Exhibit 9 admitted into
3 evidence without objection.

4 **(STATE'S EXHIBIT NUMBER 9 IS**
5 **ADMITTED INTO EVIDENCE)**

6 **BY MR. MARTIN:**

7 Q: Sergeant Witherspoon, can you see the TV okay from where
8 you're at?

9 A: Yes, sir.

10 **MR. MARTIN:** Thank you. Whenever it's ready you can play
11 it. I don't have any more questions at the moment.

12 **REPORTER'S NOTE:** (Whereby State's 9 is played).

13 **BY MR. MARTIN:**

14 Q: Sergeant -- Sergeant Witherspoon, you just watched your
15 body camera. Again, is that a fair and accurate
16 representation of the events you witnessed that night?

17 A: Yes, sir.

18 Q: Now, on the body cam, did you hear over the radio, a BOLO
19 for a Highlander?

20 A: Yes, sir.

21 Q: What does BOLO mean?

22 A: Be on the lookout. Basically, broadcasting to other
23 agencies and other officers what to look for while traveling
24 in the area.

25 Q: And would that be something to know in relation to this

1 case?

2 A: Yes.

3 Q: And did you locate that car or the suspect on scene that
4 evening?

5 A: No, sir.

6 Q: Now, in the video -- and I wrote this down, so I wanted
7 to get it right -- you could be heard saying, "Her face is
8 like blue." What did you mean by that?

9 A: I was talking with the watch commander. He was asking
10 the extent of her injuries. And when I saw her, you -- some
11 parts of her face was blue because it was so swollen.

12 Q: Now, did you go with the victim to the hospital that
13 night or stay on scene?

14 A: Once I turned the body cam off, I left Walmart and
15 actually started riding around the area. Went to the mall,
16 but I didn't go to the hospital because at that point we -- I
17 knew detectives were coming out.

18 Q: Why did you ride around the area?

19 A: Just to make sure he wasn't parked behind buildings in
20 the -- in the area, across the street, at the mall, places
21 like that.

22 Q: Other than testifying here today, did that conclude your
23 involvement in this case?

24 A: Yes, sir.

25 **MR. MARTIN:** I don't have any further questions at the

1 moment.

2 **THE COURT:** All right. Cross-examination.

3 **MR. HILLER:** Thank you.

4 **CROSS EXAMINATION OF JACKIE WITHERSPOON BY MR. HILLER:**

5 Q: Seargent, so what we saw on body cam, fairly and accurate
6 summarizes the whole of your participation in this case?

7 A: Yes, sir.

8 Q: Until today?

9 A: Yes, sir.

10 Q: So you have no firsthand knowledge at all of what
11 happened?

12 A: No, sir.

13 **MR HILLER:** No further questions.

14 **THE COURT:** All right. Redirect?

15 **MS. WALLER:** No, Your Honor.

16 **THE COURT:** All right. You may step down.

17 Thank you. Ladies and gentlemen, it's 12:30, I think we're
18 going to go ahead and break for lunch. We've got lunch coming
19 for you. If it's not here yet, it'll be here very shortly.
20 I'm going to excuse you of the jury room while you'll have
21 plenty of time to eat lunch. We'll take probably at least an
22 hour break or longer, depending on whether or not the food is
23 here. Do not discuss the case even among yourselves. Don't
24 conduct any independent investigations. We'll take a break
25 for lunch and we'll bring you back shortly. Thank you very

1 much. Everyone one else please remain seated while the jury
2 is excused.

3 **REPORTER'S NOTE:** (Jury exits courtroom at 12:31pm)

4 **THE COURT:** All right. The clerk let me know that lunch
5 is here for the jury. So we'll take about an hour break, then
6 we'll come back. Okay. Anything from the State before we
7 recess for lunch?

8 **MS. WALLER:** No, sir.

9 **THE COURT:** Anything from the Defense?

10 **MR. HILLER:** No, Your Honor.

11 **THE COURT:** Al l right. We'll be in recess for lunch.

12 **(COURT IS IN RECESS)**

13 **THE BAILIFF:** All rise.

14 **THE COURT:** Thank you very much. Please be seated. All
15 right. Anything from the State before we bring the jury in?

16 **MS. WALLER:** No, sir, Your Honor.

17 **THE COURT:** Anything from the Defense?

18 **MR. HILLER:** No, sir.

19 **THE COURT:** All right. Let's bring the jury in.

20 **REPORTER'S NOTE:** (Jury enters courtroom at 1:39pm)

21 **THE COURT:** Hi, ladies and gentlemen. Welcome back.

22 Hope everybody had a good lunch. We're ready to resume the
23 trial of the case. State can call your next witness.

24 **MR. MARTIN:** Your Honor, the State calls Sean Stickle

25 **SEAN STICKLE, HAVING BEEN DULY SWORN TESTIFIES AS**

1 **FOLLOWS:**

2 **MS. STICKLE:** Sean Stickle, S-T-I-C-K-L-E.

3 **THE COURT:** All right. Direct examination.

4 **MR. MARTIN:** Thank you, Your Honor.

5 **DIRECT EXAMINATION OF SEAN STICKLE BY MR. MARTIN:**

6 Q: What's your current occupation?

7 A: I'm the Chief Deputy State Fire Marshal of the State of
8 South Carolina, and I'm the statewide safety officer for
9 emergency support function, ESF four and nine for firefighting
10 search and rescue when we have statewide events and a
11 firefighter paramedic for the last 25 years, including 10
12 years with -- Horry County Fire Rescue.

13 Q: Appropriate title, marshal, I guess?

14 A: Chief.

15 Q: Chief. Thank you. So you mentioned briefly working with
16 Horry County Fire Rescue. How long have you been doing that?

17 A: Ten years as a firefighter paramedic.

18 Q: And what are your duties as a firefighter paramedic?

19 A: To respond to 911 calls doing fires, alarms, medical
20 emergencies.

21 Q: Is there a certain amount of training that goes into the
22 requirements to be a paramedic?

23 A: To be a paramedic gets approximately one year of
24 training, three six credit hours, college credit hours, and
25 roughly 1200 hours of actual training.

1 Q: Any idea how many run outs or callouts you've had in your
2 day?

3 A: Thousands. No -- no idea.

4 Q: And I know you said you've been doing this the last 10
5 years, but were you working with Horry County as a firefighter
6 paramedic back on about August the 28, 2021?

7 A: Yes, sir.

8 Q: And on that date, do you recall, were you called out to a
9 Walmart off of Kings Road in the Myrtle Beach area, Horry
10 County?

11 A: Yes, sir.

12 Q: Do you remember meeting with a patient, [REDACTED] K.S. [REDACTED] ?

13 A: I do not recall her name, but I remember having a patient
14 25-year-old female.

15 Q: Okay. Thank you. I'm sorry for interrupting. Do you
16 remember the nature of that call out that was mentioned over
17 the radio?

18 A: Injured person from the assault.

19 Q: And were you given any other information over the radio
20 prior to arriving on scene?

21 A: The scene was unsafe currently and that we were at a
22 stage.

23 Q: So what did you do once you arrived at Walmart?

24 A: We just go in and locate the patient and then start a
25 primary assessment.

1 Q: So did you actually make contact with the patient or the
2 victim in this case?

3 A: I did. I was the primary care provider.

4 Q: And generally speaking, what is the general process you
5 use when you're -- when you walk into a situation to provide
6 care for a patient?

7 A: So we always gather our primary impression. We take a
8 look at, you know, just what we see, what's going on with the
9 patient. We have a various tools that we can use to determine
10 vital signs or, you know, if we need to stop bleeding, or if
11 there's some kind of trauma that we take care of.

12 Q: Do you notate your observations and your treatment in
13 some sort of a patient record?

14 A: I do.

15 Q: And is that record kept in the ordinary course of
16 business at Horry County Fire Rescue?

17 A: It is.

18 Q: And are you a custodian of those records being a Horry
19 County Fire Rescue?

20 A: I am.

21 Q: And did you in fact make a report on this date August the
22 28, 2021?

23 A: Yes, sir.

24 **MR. MARTIN:** I'm going to show you what's been marked for
25 identification purposes as State's 10. May I approach the

1 witness, Your Honor?

2 **THE COURT:** Yes.

3 **BY MR. MARTIN:**

4 Q: Take a moment and look at this and see if that -- or tell
5 me what that is.

6 A: That's my patient care report.

7 Q: And is that a true and accurate copy of your report?

8 A: It is.

9 **MR. MARTIN:** Your Honor, at this time the State asks that
10 that be admitted into evidence.

11 **THE COURT:** All right. Any objection?

12 **MR. HILLER:** Yes, Your Honor, to the extent -- and I have
13 the same report -- to the extent that there is definitely
14 hearsay within hearsay in there, and the Defense position
15 would be that the hearsay, while the State might suggest it
16 comes in under the statement for medical diagnosis or
17 treatment, I don't believe that that is actually the case.

18 **THE COURT:** All right. Let me see. Let me see.

19 **MR. MARTIN:** Your Honor, specifically speaking, we'd ask
20 what statement he'd be referring to.

21 **THE COURT:** All right. I'm assuming what you're talking
22 about is in the narrative report?

23 **MR. HILLER:** On page 2 of 3, Your Honor.

24 **THE COURT:** Yeah.

25 **MR. HILLER:** At least portions thereof.

1 **THE COURT:** Yeah. There are portions in the narrative on
2 page 2 of 3 that need to be redacted.

3 **MR. MARTIN:** May I be heard on that, Your Honor?

4 **THE COURT:** Well, you can, but I mean, I know rules
5 medical reports. If it's for diagnosis, it is. But here, he
6 is relaying what has been told to him by someone else who is
7 not here subject to cross-examination.
8 I mean, what -- what I'm talking about primarily is -- okay,
9 on the second line where it says -- well, first -- on the
10 first line under narrative.

11 **MR. HILLER:** Your Honor, I'm sorry to interrupt. Can I
12 request that maybe we send the jury out, so we can discuss
13 (inaudible) specifically --

14 **THE COURT:** That'll probably be the best thing to do.
15 Ladies and gentlemen, I'm going to excuse you to the jury room
16 -- and -- and I'll tell you why we do this. It's not that
17 we're trying to hide anything from you, but as I told you, you
18 and you alone decide the facts of the case, and you base your
19 determination of the facts upon witness testimony and
20 exhibits. There's come a point in trial where I need to
21 discuss the law with the attorneys, but often when we discuss
22 the law, we reference factual issues. But what I say about
23 the facts and what the attorneys say about the facts is not
24 evidence.

25 And so we don't want you to be influenced by something

1 that I say or something the lawyers say when we reference
2 these factual issues. We don't want that to play a part in
3 your determination of what the facts are, because you're base
4 your determination on the witness's testimony and the other
5 exhibits. And so that's why we excuse you the jury. So I'm
6 going to excuse you to the jury room for just a few minutes
7 and we'll bring you back out in just a second.

8 **REPORTER'S NOTE:** (Jury exits courtroom at 1:50pm)

9 **THE COURT:** All right. The way I read this, and as I
10 understand medical records, it can be come in for diagnostic
11 purposes, but it cannot reference anything that goes beyond
12 what is needed for diagnosis. So under the narrative, I think
13 it's okay to say dispatched for injury, oh eight, 25-year-old
14 F, and emotional distress due to -- oh no, an emotional
15 distress. I don't -- I think you're going to have to redact
16 "due to escaping abusive relationship for two months." Because
17 that has nothing to do with his observation or diagnosis of
18 the condition.

19 I think you can keep in "Patient had multiple injuries in
20 different stages of healing, severe facial head swelling from
21 being--" "-- severe facial head swelling." I think you have to
22 redact "from being struck with a pipe."

23 **MS. WALLER:** I -- Your Honor ---

24 **MR. MARTIN:** Your Honor, if you'd like, I mean, I can
25 wait until you're done with all of your redactions and we can

1 attack them one by one.

2 **THE COURT:** Okay. Well, all right, let's do them one by
3 one. Dispatch for injury. Oh, a 25-year-old F, and emotional
4 distress. Now, why do you say "due to escaping abusive
5 relationship for two months" stays in?

6 **MR. MARTIN:** State Agrees with you on that one, Your
7 Honor.

8 **THE COURT:** All right. "Patient had multiple injuries in
9 different stages of healing, severe facial head swell." All
10 right. Why not redact "from being struck with a pipe"?

11 **MR. MARTIN:** Your Honor, first of all, this does go
12 directly to the medical diagnosis and treatment.
13 Understanding the source or the cause of that injury is
14 pertinent to the witness being able to offer her appropriate
15 medical treatment. In fact --

16 **THE COURT:** So you're saying if she had severe facial
17 head swelling for some reason other than being struck with a
18 pipe, they would administer a different medical treatment? Or
19 being struck with the pipe is the reason they treated the
20 severe facial and head swelling the way they did?

21 **MR. MARTIN:** Exactly, Judge. There's a difference
22 between being hit with blunt-force trauma like a tool, a
23 vehicle, a baseball bat, or being hit with a fist, or being
24 hit with a stick, potentially. Blunt-force trauma is exactly
25 one of the things that they look for when they arrive on scene

1 to administer medical care. In fact, I have two cases, Your
2 Honor, that deal with a witness being a medical professional,
3 being allowed to testify about what a victim told them
4 happened in relating to the assault.

5 **THE COURT:** Well, yeah, when it goes to the treatment.
6 When it goes to the treatment, what happened? I was struck by
7 a car. Yes, that goes to the treatment. Let me hear from you
8 on that.

9 **MR. HILLER:** Your Honor, I mean pipe is obviously an
10 exceedingly broad word. I just think that it is an
11 observation of facial head swelling. I mean, the other thing
12 is -- and I'm not -- my general concern with this is that the
13 point of this is to stabilize her, get her the immediate
14 triage nurse, and get her to the hospital. I think maybe the
15 object is relevant to the doctor's analysis when they're
16 actually doing reconstruction, but I think that the treatment
17 and care should be limited to the emergency response nature of
18 this witness's involvement in the case.

19 Like not to go on, but you know, (inaudible) anus penetrated
20 with pliers. And we saw the body cam. I don't believe they
21 did any work, you know, beneath the clothes. I just don't see
22 how that -- and, you know, the exact object struck with, you
23 know, anything really on the second line except for maybe
24 marks. But then, again, we're talking about the tool. I just
25 don't see how the pliers, the pipe has to do with what they

1 did as they assessed her injuries, got her on a stretcher, got
2 her some fentanyl, and got her to the hospital.

3 **THE COURT:** Well, let me -- well, let's ask the witness.
4 How does being struck with the pipe assist in the treatment as
5 opposed to what treatment would -- would it have been had she
6 been struck with the bat, or had she been struck with a
7 treatment, or had she just fallen and hit her head and had
8 severe facial and head swelling from falling? Let's -- I'll
9 let you proffer the testimony and let's see how it -- see what
10 his answers is as to how that changes the treatment of falling
11 on the concrete sidewalk versus getting hit with a pipe. All
12 right.

13 **MR. MARTIN:** Thank you, Judge.

14 **THE COURT:** All right.

15 **PROFFERED TESTIMONY OF SEAN STICKLE BY MR. MARTIN:**

16 Q: When arriving on scene, is it normal protocol to speak
17 with the victim?

18 A: It is.

19 Q: And you ask the victim certain types of questions
20 relating to how the injuries occurred?

21 A: Correct. It's important to understand what the mechanism
22 of injury is. If we don't understand what the mechanism of
23 injury is, it's difficult to treat, and there are different,
24 depending on, you know, obviously a blunt object is a blunt
25 object, but a heavy pipe wrench or a pipe or a tire iron is

1 going to cause a lot more damage than, you know, something of
2 lesser weight.

3 Q: And with -- why would knowing the specifics of how the
4 injuries occur, in addition to that, be pertinent and for you
5 administering further medical care?

6 A: Because, I mean, I need to look to see if she's been
7 burned. I need to look to see if she's been penetrated and
8 there are wounds that need to be, you know, addressed before
9 we transport. Like, you know, in case there are life-saving
10 measures that need to take place. For example, penetrating
11 wounds, you could have severe bleeding or you could have --
12 getting struck in the face with a fist is different than
13 getting struck in the face with a bat or a pipe or et cetera.
14 Because the mechanism -- the mechanism of injury, the force is
15 so much greater that you have a higher probability of
16 fracturing, you know, facial (inaudible), et cetera.

17 Q: All right. The Defense mentioned a second ago about you
18 not observing anything under the clothes. Did you in fact
19 have to look at the victim's private parts in order to
20 administer care in this place -- this case?

21 A: We evaluate the whole entire body.

22 Q: Head to toe?

23 A: Head to toe.

24 Q: Why is that?

25 A: Because if we do not, we can miss a serious injury that

1 could be detrimental to patient care.

2 Q: Is it important to know going into a situation whether or
3 not you have to treat it as even a sexual assault?

4 A: That is correct.

5 Q: Why is that?

6 A: There are different procedures. If there is -- we
7 determine is a sexual assault, you have to do certain things
8 like keep their clothing together and for collection of
9 evidence purposes.

10 Q: So would knowing if anything penetrated a private part,
11 burns to a vagina, or pliers to an anus, is that pertinent to
12 know in administering care to a patient?

13 A: Yes, sir.

14 **MR. MARTIN:** Judge, I think nothing further at the
15 moment.

16 **THE COURT:** All right. Mr. Hiller, Mr. Fox?

17 **CROSS EXAMINATION OF SEAN STICKLE BY MR. HILLER:**

18 Q: So what treatment did you provide based on the specific
19 knowledge that she was reported that she was struck with a
20 pipe at the scene of the Walmart bathroom? That you wouldn't
21 have done if it just had -- for some other, then you would've
22 done different than if it was a different blunt object?

23 A: The -- the treatment was the same. It would -- she was
24 transported to level one trauma center due to possible facial
25 fractures and other possible internal injuries due to injuries

1 consistent with blunt-force trauma, and --

2 Q: So you -- you stabilized her neck, correct? And put her
3 on a stretcher?

4 A: She wouldn't have been able to tolerate a collar based on
5 the extent of her injuries actually.

6 Q: Well, is there any -- there's no other way to stabilize a
7 neck besides the collar?

8 A: There -- I mean, we strapped him down and we secured
9 him. Yes, but.

10 Q: And you took her to the hospital?

11 A: And -- and we took her to hospital administered
12 medications.

13 **MR. HILLER:** Your Honor, that's all I have. Also, I
14 would just argue also that this is going to be cumulative to
15 actual docs -- or doctor testimony that they've already
16 introducing. So it's kind of a cumulative objection, as well
17 to this report coming into evidence.

18 **THE COURT:** Well, based upon this witness's testimony
19 that same struck with a pipe is vital to the treatment, as
20 well as penetration marks from pliers is vital to treatment,
21 and penetration with pliers is vital to treatment. And that
22 he did in fact treat the genitalia of the anus in that area
23 based upon his -- as I understand that's his testimony. I'm
24 going to allow it to come in, but I'm going to order that it
25 be -- that part that says "due to escaping abusive

1 relationship for two months" be redacted.

2 **MR. MARTIN:** Can we grab the document and take a look.

3 **MS. WALLER:** Your Honor, Court's indulgence, we'll get
4 the redaction here so they can't see through it.

5 **THE COURT:** Okay.

6 **MR. HILLER:** Your Honor, while they're on their way out,
7 maybe -- can I -- may I ask just one more question.

8 **THE COURT:** All right.

9 **BY MR. HILLER:**

10 Q: Chief, do you have the prep-page report with you?

11 A: I do not, sir.

12 Q: Okay. Can I just ask you about one thing on it?

13 A: Yes, sir.

14 **MR. HILLER:** May I approach, Your Honor?

15 **THE COURT:** All right.

16 **BY MR. HILLER:**

17 Q: At the very top of page 2 it's assessments. Is the first
18 section. Why is not assessed written or entered on everything
19 from chest to heart sound, to lungs, to general to back, to
20 pelvis/GU/GI, left arm, right arm, left leg, right leg.

21 A: That is -- unfortunately, it's a selection box, and you
22 go back and forth, and you just select it and it was not
23 selected. It's -- it is a separate -- it's a different part
24 of the report where you go in and you select different
25 (inaudible) if you want to mark -- my -- my assessments in the

1 narrative of what I assessed.

2 Q: Okay. So it says in the narrative, not in the assessment
3 part.

4 A: Yeah. So the -- the assessment, the way that our report
5 system works is you select an assessment time and then you
6 have the option to, instead of filling out a narrative where
7 you can actually just mark what you find in selection boxes.
8 And sometimes it's good to fill it out and sometimes it
9 doesn't matter. But not assessed is not accurate.

10 Q: So would this have been a good time to fill that out?

11 A: Yes, sir.

12 **MR. HILLER:** I'm not sure it's reliable. If it's not, I
13 mean, I guess the State could get into that on wreck. I just
14 have a problem with it going back to the jury.

15 **THE COURT:** So what are you asking?

16 **MR. HILLER:** Well, he did say that it was basically
17 incomplete. I mean, maybe I'm putting words in his mouth, but
18 it could have been completed. It wasn't. I think he can
19 testify to what he did, and perhaps he can say, you know, what
20 she said for purposes of medical care. But I do have concerns
21 that this is a document going back to the jury and I have no
22 idea what weight they'll give to it and I cannot say that it's
23 reliable up in the back there.

24 **THE COURT:** All right. I'm going to overrule the
25 objection. I'm going to admit State's Exhibit 10, subject to

1 the redaction as previously ordered.

2 **(STATE'S EXHIBIT NUMBER 10 IS**
3 **ADMITTED INTO EVIDENCE)**

4 **MS. WALLER:** Okay. We -- let's do the redaction
5 together, please.

6 **THE COURT:** All right.

7 **MS. WALLER:** So you want to start with the word "due" and
8 end "at the end of months due to escaping abusive relationship
9 for two months" ?

10 **THE COURT:** Correct.

11 All right. Anything from the State before we bring the jury
12 in?

13 **MS. WALLER:** No, Your Honor.

14 **THE COURT:** Anything from the defense?

15 **MR. HILLER:** No, Your Honor. Thank you.

16 **THE COURT:** All right. Let's bring the jury in.

17 **REPORTER'S NOTE:** (Jury enters courtroom at 2:07pm)

18 **THE COURT:** Hi, ladies and gentlemen, welcome back.

19 We're ready to resume the trial of case. State's Exhibit
20 number 10 is admitted into evidence over Defendant's
21 objection. All right. You can continue with your direct
22 examination.

23 **MR. MARTIN:** Thank you, Your Honor. May I approach the
24 witness?

25 **THE COURT:** Yes.

1 **BY MR. MARTIN:**

2 Q: Chief, I'm handing you your (inaudible). Just to kind of
3 back up and get us back on track here, did you speak with the
4 victim in this case?

5 A: Yes, sir.

6 Q: And when speaking with her, or in speaking with a patient
7 in general, do you ask questions for the purpose of making
8 some sort of a medical diagnosis or understanding how to
9 administer medical treatment?

10 A: Yes, sir.

11 Q: And what kind of questions do you ask a patient?

12 A: Well, in this case, we would ask things like what the
13 mechanism of injury was, what happened to the patient, if they
14 were hurt anywhere, if they were bleeding anywhere that they
15 knew of. This patient was distressed. So it was more of a
16 primary impression and evaluating her (inaudible) trauma
17 assessment visually.

18 Q: You say distressed, could you describe her demeanor?

19 A: Emotionally distressed, not aware of really time, but
20 alert to oriented person, place and event.

21 Q: Could you talk about her appearance that you saw when you
22 made contact with her?

23 A: Her -- she had multiple contusions and different levels
24 of healing all over her body, markings all over her body from
25 what appeared to be some type of a tool. Her head was -- her

1 -- her whole facial structure and her skull was extremely
2 deformed due to what appeared to be blunt-force object, you
3 know, blunt-force trauma to her face -- face and skull.

4 Q: And in speaking with her in administering aid, do you
5 typically ask a victim how that trauma got there?

6 A: Absolutely. That's the mechanism of injury.

7 Q: And did you do that in this case?

8 A: I did.

9 Q: What was her answer?

10 A: She stated there was a pipe.

11 Q: Did she describe any other injuries about her body?

12 A: She stated that she had -- well, she had blunt-force
13 trauma all over her body, but she had tool markings all over
14 her body and stated it was pliers, including penetrating her
15 anus and she had burns to her genitalia or labia.

16 Q: And did you see the burn markings on her vagina?

17 A: I did.

18 Q: And did you see the injury to her anus?

19 A: I did.

20 Q: Upon hearing this, did you treat this case as if it was a
21 sexual assault?

22 A: I did.

23 Q: And why is that?

24 A: It's our duty to preserve evidence, and that's not for me
25 to determine, that's for law enforcement and forensic

1 scientists to determine. (Inaudible) to preserve the evidence
2 in the first place.

3 Q: If I could direct your attention to your report, in
4 there, you notate in the document trauma level as a level
5 one. Could you explain what that means?

6 A: So there are different types of trauma centers in the
7 state of South Carolina and over the nation. And Grand Strand
8 Medical is a level one trauma, and that more or less means
9 they have a neurologist on site. They have a specialized
10 team, they're ready to go when we call level one trauma and
11 their trauma team comes down and the specialized unit, they
12 take over the whole entire thing and they do a rapid trauma
13 assessment and decide whether this patient needs to go to
14 surgery, decide, you know, if they need some type of, you
15 know, CT scans, et cetera, right away. And then they do their
16 treatment from that point on.

17 Q: And what specifically about her injuries made you treat
18 the situation as a level one trauma?

19 A: Just the -- the amount of injuries, the actual trauma to
20 her head. She could have some type of internal bleed due to,
21 you know, that type of blunt-force trauma. Sometimes it
22 doesn't always show right away. I had a difficult time
23 evaluating her eyes, so I couldn't even tell. Her eyes were
24 so swollen shut. I could barely tell, you know, that's an
25 indication of a head bleed sometimes. So just based on the --

1 the mechanism of injury of being struck by some type of blunt
2 object, with great force, she needed to go to level one trauma
3 center for neuro evaluation. And -- and her burnt genitalia
4 actually is considered a pretty severe injury also.

5 Q: And also directing your attention to the second page of
6 your report, you notated that the level of service is advanced
7 life support. What does that mean?

8 A: As a paramedic, we're advanced life support. If it was
9 just an EMT basic, it'd be basic life support.

10 Q: I want to direct your attention to the top of page 2,
11 same page. This the first section -- section that states
12 assessments. You notate in there that certain areas of the
13 body were not assessed. Can you sort of go through that?

14 A: Sure. Well, that's -- that's actually inaccurate.
15 That's part of the tool -- that's part of the report. It's a
16 tool. That's an additional tool that can be used to further
17 go down and evaluate. If we want to put something specific
18 in, for example, the chest, we find that there are not
19 bilateral breast sounds. We can put that. So that part of
20 the tool is not filled out. It -- in the short transport,
21 it's really, you know, from Station 7 to Grand Strand it's
22 only a couple minutes. The fact of the matter is it's a level
23 one trauma and my assessments in the narrative, and the vital
24 signs.

25 Q: So in actuality, did you in fact assess these parts of

1 the body even though you -- it left it out of the report?

2 A: Absolutely. There was the rapid trauma assessment done.

3 **MR. MARTIN:** Court's indulgence, Your Honor.

4 **THE COURT:** All right.

5 **BY MR. MARTIN:**

6 Q: Previously, I asked you if you remember this case, and I
7 believe you answered, yes. Why is that?

8 A: Every -- the reason I remember this case specifically, I
9 remember very much how deformed her head was and the amount of
10 injuries throughout the entire body as a whole. And the cases
11 that I've been on prior to that -- that presented in the same
12 manner were usually homicides. That's why I remembered it. I
13 remember her standing there going, I can't believe she's
14 standing here.

15 **MR. MARTIN:** Nothing further at this time, Your Honor.

16 **THE COURT:** All right. Cross-examination.

17 **CROSS-EXAMINATION OF SEAN STICKLE BY MR. HILLER:**

18 Q: So -- so Chief, you arrived at the scene, you waited a
19 while to make sure it was safe, and then you went in and began
20 to assess to help. Is that right?

21 A: Yes.

22 Q: Okay. And the reason you're asking questions is for
23 purposes of diagnosis and treatment, correct?

24 A: Correct.

25 Q: Obviously, the more you know, the more you can -- so

1 you're -- you're not -- you're not an investigator? You're --
2 you're a first aid, essentially, correct? Unseen triage?

3 A: Well, I would say a rapid trauma assessment is an
4 investigation to what injuries they have. I mean, I actually
5 am an investigator, but in this case, I'm a -- I'm a patient
6 care provider.

7 Q: I know that -- so are you -- in the vital sign section on
8 kind of down the -- halfway down on the first page, you're
9 trained in the -- I guess is that the Glasgow Coma Score? The
10 GCS?

11 A: It is.

12 Q: Can you explain how you arrived at a 14? And just for
13 the jury's identification, could you tell them about the --
14 what that Glasgow Coma score is?

15 A: Sure. The Glasgow Coma Scale is based on their --
16 whether their eyes are open, what type of movements, what type
17 of, you know, how they're presenting as a patient, whether
18 they're oriented to person, place, time, event. And the
19 reason she was a 14 was because she wasn't aware of time.

20 Q: How close do you have to be to the actual time of data
21 with the check mark or the X? I'm just curious.

22 A: She didn't know what day it was.

23 Q: Okay.

24 A: So ...

25 Q: So it was kind of right -- right around --

1 A: Right.

2 Q: -- midnight? Around the time of the --

3 A: Yeah. Well --

4 Q: -- time of the day?

5 A: Yeah.

6 Q: Okay. So the only reason that she was not at 15 out of
7 15 is the lack of orientation to time?

8 A: Correct.

9 **MR. HILLER:** Okay. I don't have any other questions.

10 **THE COURT:** All right. Redirect?

11 **MR. MARTIN:** No, Your Honor.

12 **THE COURT:** All right. You may step down.

13 State can call your next witness.

14 **MS. WALLER:** Your Honor, the state calls April Martin.

15 **THE COURT:** All right.

16 **APRIL MARTIN, HAVING BEEN DULY SWORN TESTIFIES AS**

17 **FOLLOWS:**

18 **MS. MARTIN:** April Martin, A-P-R-I-L M-A-R-T-I-N.

19 **THE COURT:** All right. Let me see the attorneys.

20 **REPORTER'S NOTE:** (Whereby bench conference is held).

21 **THE COURT:** All right, ma'am. Your name is Dr. Martin?

22 **DR. MARTIN:** Yes.

23 **THE COURT:** All right. Hi, ladies and gentlemen of the
24 jury, when we went through voir dire, this witness was not
25 listed on the witness list. So I need to ask all members of

1 the jury, is there any member of the jury who's related by
2 blood or marriage, have a close personal relationship,
3 business relationship, social relationship, or any of type of
4 relationship with this witness, April Martin? If so, please
5 stand. All right. Let the record reflect that there was no
6 response. I'll allow the witness. They can continue -- or
7 can conduct direct examination.

8 **MS. WALLER:** Thank you.

9 **DIRECT EXAMINATION OF APRIL MARTIN BY MS. MARTIN**

10 Q: Ms. Martin, where are you currently employed?

11 A: Grand Strand Medical Center.

12 Q: What do you do at Grand Strand Medical Center?

13 A: Health Information and Management Director.

14 Q: So as a part of those duties, are you a keeper of medical
15 records at Grand Strand Medical Center?

16 A: Yes.

17 Q: And does Grand Medical Center maintain records for all
18 the patients who are seen at their facility for a period of
19 some time?

20 A: Yes.

21 Q: And how long is that?

22 A: By law, it's 10 years, but it depends on the age of the
23 person. If it's a minority versus, you know, someone of age.
24 But typically, it's 10 years.

25 Q: And what about, do you keep both written medical records

1 and copies of scans or tests or images that may be taken?

2 A: The images? Yes. Anything that is written is scanned
3 into electronic form.

4 Q: Okay. And did you receive a request, a search warrant
5 from law enforcement requesting the medical records of
6 KS [REDACTED] for a visit that she made to Grand Strand
7 Hospital around August 28, 2021?

8 A: Yes.

9 MS. WALLER: I'm gonna show you -- may I approach, Your
10 Honor?

11 THE COURT: Yes.

12 BY MS. WALLER:

13 Q: What's been marked is State's Exhibit Number 46. Have a
14 look at that, please. Do you recognize this?

15 A: Yes.

16 Q: And what is this?

17 A: It's a CD of the record for -- per your request.

18 Q: For K.S. [REDACTED]?

19 A: Yes.

20 Q: And is this a CD containing -- let's see, it's title --
21 it's Bone, surveys, CT scans and things like that on here?

22 A: It's images. Yes.

23 MS. WALLER: Images. Your Honor, at this time the State
24 would like to move Exhibit Number 46 into evidence.

25 THE COURT: All right. Any objection?

1 **MR. HILLER:** No objection, Your Honor.

2 **THE COURT:** All right. State's Exhibit 46 admitted into
3 evidence without objection.

4 **(STATE'S EXHIBIT NUMBER 46 IS**
5 **ADMITTED INTO EVIDENCE)**

6 **BY MS. WALLER:**

7 Q: And other than that, do you have any further involvement
8 in this case?

9 A: No.

10 **MS. WALLER:** Thank you. No further questions for this
11 witness.

12 **THE COURT:** All right. Cross-examination?

13 **MR. HILLER:** No, Your Honor.

14 **THE COURT:** All right. You may step down.

15 **MS. WALLER:** May we approach, Your Honor?

16 **THE COURT:** All right.

17 **REPORTER'S NOTE:** (Whereby bench conference is held)

18 **THE COURT:** All right. Ladies and gentlemen, the next
19 witness might take a while, so we're gonna go ahead and take a
20 short break. I'm going to excuse you back to the jury room.
21 Stretch your legs, use the restroom, whatever the case may
22 be. Do not discuss the case even among yourselves at this
23 point in time. We'll take about a 10 or 25-minute break and
24 then we'll bring you back in just a second. Thank you very
25 much.

1 **REPORTER'S NOTE:** (Jury exits courtroom at 2:25pm)

2 **THE COURT:** All right. Let's wait for Mr. Fox to get
3 back, or Mr. Hiller, do you want to go forward or wait for Mr.
4 Fox?

5 **MR. HILLER:** Mr. Fox was -- had really worked -- was
6 going to handle this part, Your Honor.

7 **THE COURT:** Okay. All right. That'll be fine. We'll
8 wait just a few minutes.

9 **(COURT IS IN RECESS)**

10 **THE COURT:** You want to go ahead, Mr. Fox, and state your
11 objection on the record.

12 **MR. FOX:** Judge, my objection is based on Rule 403, which
13 is that the prejudicial effect of -- of all of these photos.
14 I'm going to refer to them collectively, but the objection is
15 separate as to each and every exhibit. But that rule that the
16 prejudicial effect of these photographs greatly outweighs any
17 probative value. And that's based, I've handed this case to
18 the State, is based in large part on the South Carolina
19 Supreme Court's recent opinion in State v. Nelson, which is an
20 August 2023 case, which is about the admissibility of autopsy
21 photos.

22 These are not autopsy photos, but I think the analysis is
23 exactly the same. And they're highly -- the court is highly
24 skeptical of photos where they're not necessary. So there is
25 no -- and I'll let Your Honor read it, but basically the

1 Supreme Court says "Where there's no disputed fact that these
2 photos can clarify that the court should be very, very
3 skeptical of admitting these." So in Nelson, you had three
4 autopsy photos showing a woman who'd been murdered, she'd been
5 hit with a hammer in the head, she'd been stabbed dozens of
6 times, and then shot. So one photograph showed her, of
7 course, you know, nude on the autopsy table showed these from
8 face-up, but showed a little bit of decomposition in the
9 body. The body hadn't totally, but decomposition had started,
10 but basically showed very, very severe injuries to the head
11 from the hammer. And then there were photographs that showed
12 the body face down to illustrate the numerous stab wounds and
13 gunshot wounds.

14 And in that particular case, the fact that the woman had
15 been murdered wasn't an issue, was a who done it. It wasn't a
16 what. And so the court said, and in addition to that, you had
17 Dr. Batalis from MUSC, who was the autopsy doctor, or at least
18 who testified about the autopsy. I'm not sure which it was.
19 But he was able to describe in detail the injuries, he had
20 diagrams that he could refer to. And he admitted that he
21 could get all the information that he needed to, to the jury
22 orally or through the written records.

23 He said he thought it would be helpful for the jury to
24 have the pictures, but that he felt that he could accomplish
25 everything through his oral testimony. In this case, Judge,

1 we've already had -- even before the doctor testified -- we've
2 already had very detailed descriptions from Brian Ross, who
3 was the Walmart manager that called 911, and we've heard his
4 911 call describing in very great detail the injuries that he
5 observed. We had the ladies from Walmart, Kelly Bonome and
6 Katherine Cordona Andrade, who also gave detailed testimony,
7 specific testimony about the injuries to the face and
8 everything they observed and the age of these injuries, that
9 they appeared to be both newer and older, and the cuts.
10 They obviously didn't see anything under the clothes, but they
11 were able to describe in great detail the injuries. You had
12 Officer Jackie Witherspoon, who was also able to describe both
13 from his own personal encounter, but we saw his body cam,
14 which shows Ms. K.S. going into the -- or in the -- in the
15 bathroom at Walmart. And the jury can see for themselves some
16 of her injuries. You also have the surveillance footage of
17 Ms. K.S. coming into Walmart with one of the
18 employees. And you can at least observe -- the jury, be able
19 to observe her face.

20 You've got -- you'll have the doctor from Grand Strand
21 who's going to describe, I'm sure in very great detail what
22 she saw, what she observed, what she diagnosed, how she
23 treated. I believe she is also going to -- Ms. K.S., needed
24 a procedure they could not immediately do because of the
25 extent of her injuries. She had to heal up somewhat before

1 they could do some surgery on her face. That I believe was
2 done in Louisiana.

3 My belief -- I do not know this for sure, but my belief
4 is the Grand Strand doctor will review and testify about those
5 procedures in Louisiana, that she was able to review those
6 records and testify about that as well. You will have -- you
7 just have the paramedic, who was able to describe, again, in
8 great detail what it was that he observed and how he
9 diagnosed. And his records are also in there, with his
10 diagnosis and description of injuries.

11 So it's not necessary for anything. Everything that they
12 want to describe is -- has been or will be testified to. I
13 believe they're going to put in some images, some -- I'm going
14 to call it a CT scan, X-ray, that type of thing. I think that
15 we're about to get in. That's what the records that were just
16 put in through the records custodian were; the doctor and I'll
17 testify about these, but there is nothing that these
18 photographs show that can't be testified to. I'm sorry, Your
19 Honor. Do you have those in front of you? Okay.

20 **MS. WALLER:** And we can show them --

21 **MR. FOX:** You need -- you do need to see them. They're -
22 - they are extremely -- and the words in Nelson are gruesome,
23 and these are gruesome photographs. There's no other way to
24 characterize them. They're hard to look at. And I do not
25 think -- and the concern is that they may inflame the passions

1 of the jury and render a verdict that is based more on emotion
2 than on factual evidence in an improper way. So I do believe
3 you're required under 403 to balance a prejudicial effect
4 against their probative value.

5 And I think in this case, with the voluminous testimony
6 that we already have or will have regarding these injuries --
7 and I think many of those are duplicative. They just show the
8 same injuries from different angles. You know, you'll see
9 that from different times. There's one up close, there's one
10 from farther behind, there's one from this side or that side.
11 So I think many of them are duplicative and unnecessary. I
12 object all of them, but if Your Honor believes that any of
13 them are admissible, then I would ask us to go through and
14 analyze if there are any that can be left out because they're
15 unnecessarily cumulative to the picture and testimony that's
16 already in evidence.

17 **MS. WALLER:** And Your Honor, the State has the response
18 to that. Those photographs are absolutely essential to these
19 --

20 **THE COURT:** Well, wait a minute.

21 **MS. WALLER:** Yeah

22 **THE COURT:** Hold for a second. Let Mr. Fox make his
23 argument.

24 **MR. FOX:** Your Honor, I, you know, I'd encourage you to
25 take a few minutes to read Nelson because the other thing they

1 do very well in that opinion is they give the history of some
2 of their rulings going back and it -- so I didn't refer to all
3 of the cases. There's been many over the years. But one
4 thing they point out is most of the -- these situations come
5 up in death penalty cases, where you have a bifurcated
6 hearing, you've got the guilt phase and the sentencing phase,
7 and they're extremely careful and provide extra scrutiny when
8 it's in the guilt phase. Well, that's what we are here. In
9 other words, something that might be admissible in the death
10 penalty case for sentencing. Right. In terms of setting the
11 context, or showing the Defendant's frame of mind, that sort
12 of thing that may be appropriate in sentencing, they feel is
13 not appropriate at the guilt phase.

14 Well, in this instance, there one in the same. We're in
15 the guilt phase. There is no bifurcated separate sentencing
16 hearing, but we're clearly in the guilt phase. That's what
17 this trial is. And it's clear in reading through the history
18 of the supreme court decisions on this issue that they're
19 very, very, very careful. And there's very good language out
20 of Torres that say, "Today we strongly encourage all
21 solicitors to refrain from pushing the envelope on
22 admissibility in order to gain a victory, which in all
23 likelihood was already assured."

24 I think Your Honor's already getting a sense of the
25 volume of evidence in this case. You haven't even heard

1 everything yet.

2 **THE COURT:** But I mean, one of the distinguishing things
3 in Nelson was the Defendant in that case agreed that the
4 victim was brutally murdered, agreed that she had 90 wounds to
5 her body, agreed that -- agreed with her cause of death,
6 agreed with the general causes of the injuries that she
7 sustained. The only dispute in Nelson was who did it.

8 **MR. FOX:** Right.

9 **THE COURT:** They agreed we've got a victim who was
10 murdered, who was wounded; the cause of death, we agree with,
11 the place of death, we agree with

12 **MR. FOX:** Yes, sir.

13 **THE COURT:** The only thing, whereas here, I think there
14 is a dispute as to --

15 **MR. FOX:** Not to the injuries themselves. Now, we may
16 have a dispute, and we haven't gotten to our side of the case,
17 but I don't think there's any dispute that this woman was
18 injured. There may be some question --

19 **THE COURT:** But there's a dispute --

20 **MR. FOX:** -- about the -- and the who.

21 **THE COURT:** Well, I mean from your prior objections,
22 there's a dispute as to the cause of the injuries. I mean, I
23 know that based upon the prior testimony and the redactions
24 from the EMS provider and all of that, it appears that there
25 is a dispute as to the cause of the injuries.

1 **MR. FOX:** Well, specifically with the EMS provider that
2 was objecting to the characterization of the relationship.

3 **THE COURT:** All right. And anything else?

4 **MR. FOX:** No, sir.

5 **THE COURT:** All right. Let me hear from the State.
6 What's the probative value?

7 **MS. WALLER:** Your Honor, those pictures are absolutely
8 essential to the State's case in several regards. The first
9 thing I'd like to point out is the case law that Mr. Fox is
10 relying on deals with autopsy photos. That's a completely
11 different situation, where we have a victim who is alive and
12 able to testify about what caused the injuries in those
13 photos. She can actually and will do that on the stand point
14 to injuries on those photos, tell us when and how they were
15 caused, and tell us which of those injuries caused her
16 permanent scar.

17 The physician who is seated behind me and our next
18 witness will also review those photographs because she saw the
19 patient that night, and she will tell us about each of those
20 injuries and what she thinks cause -- what she thinks caused
21 them. It also goes to the State's argument and one of the
22 elements of the State's case that we must prove beyond a
23 reasonable doubt, which is great bodily injury.
24 The doctor will testify as to individual injuries that are
25 great bodily -- that show great bodily injury or a disregard

1 for human life. She will also testify that the overall
2 general condition of the patient's body, the state of it at
3 the time that she entered the hospital with old and new
4 injuries could have resulted in her death, and was
5 concerning. The State feels that those pictures are
6 essential. I can also tell you that there were 70 photos, and
7 I narrowed it down to 38 photos. The way I did that, and the
8 reason I did that was so that we wouldn't overwhelm everyone
9 with photos. But what we did was capture the front of her
10 face, the side of her face, her legs, injuries that she told
11 me she still has scars from.

12 You'll see there's a picture of her vagina in there with
13 the burn between her labia. That picture is actual evidence
14 of a penetrating injury from a sexual assault, and that's
15 critical to proving criminal sexual conduct in the case as
16 well. I certainly wouldn't be putting in these photos simply
17 to inflame the passions of the jury, and if she was a dead
18 body laying up there, I understand that it looks like she may
19 be dead, but she wasn't. She's alive, and she's sitting here,
20 and she's going to tell us what happened to get her in that
21 state.

22 And I think it's very important and crucial to the
23 State's case that the jury get to see what she looked like
24 after she left Mr. Funderburk that night and explain how she
25 got in that state. And if he wants to explain some other

1 explanation for how she looked like that, he's more than
2 welcome to do that, looking at the same photos. But there's
3 also tool marks on her body. We've got -- you'll see up here
4 on the desks stuff like these wrenches, stuff like this. The
5 witness is able to take this tool and show us on those
6 pictures which one of these tools caused those injuries and
7 who did that to her. This is what she calls a tire iron, but
8 she's going to actually go through and show us what caused
9 these injuries, and that's why we're putting those pictures
10 into evidence.

11 **THE COURT:** All right.

12 **MR. FOX:** I'm going to be very brief in reply. Yes.
13 I think the State just made -- pardon my argument for me --
14 she described in great detail what the victim, what Ms. **KS**
15 and what the doctor will testify to. They can describe in
16 great detail. Ms. **KS** can describe what she says was done
17 to her. The doctor can describe what she observed herself.
18 These photos don't add to that. And my argument isn't that
19 there's no probative value here. My argument is that the
20 prejudicial effect outweighs the probative value.

21 **THE COURT:** All right. I'm going to deny your motion. I -- I
22 think that the probative value does outweigh prejudicial
23 effect. So based upon Rule 403, now whether or not they lay
24 the foundation is yet to be determined, but I'm denying your
25 motion based on 403.

1 **MR. FOX:** Yes, sir.

2 **THE COURT:** All right. Anything further from the State
3 before we bring the jury back in?

4 **MS. WALLER:** No, sir, Your Honor.

5 **THE COURT:** Anything from the Defense?

6 **MR. HILLER:** Nothing. No, sir, Your Honor.

7 **THE COURT:** All right. Let's bring the jury back in.

8 **REPORTER'S NOTE:** (Jury enters courtroom at 2:46pm)

9 **THE COURT:** Hi, ladies and gentlemen. Welcome back. The
10 State can call your next witness.

11 **MS. WALLER:** Your Honor, the State calls Dr. Rachel
12 Cobos.

13 **RACHEL COBOS, HAVING BEEN DULY SWORN TESTIFIES AS**
14 **FOLLOWS:**

15 **DR. COBOS:** My name is Rachel Cobos. That's R-A-C-H-E-
16 L. And last name Cobos, C-O-B-O-S.

17 **DIRECT EXAMINATION OF RACHEL COBOS BY MS. WALLER:**

18 Q: Dr. Cobos, what's your profession?

19 A: So I am a surgical critical care. So that is, I have --
20 I'm board certified in general surgery, as well as critical
21 care. And I'm also a trauma surgeon, so it kind of
22 encompasses three things.

23 Q: Okay. And you're a medical doctor?

24 A: Correct. I'm a physician. Yes.

25 Q: You're a physician. And are you licensed in the state of

1 South Carolina?

2 A: Yes, I am licensed in the state of South Carolina, Texas,
3 and Missouri.

4 Q: How long have you been licensed in South Carolina?

5 A: Since 2018.

6 Q: Okay. What about medical school? What medical school
7 did you attend?

8 A: I attended Texas Tech Health Science Center. It's
9 located in Lubbock, Texas.

10 Q: And did you receive a medical degree?

11 A: Yes, ma'am. I graduated in 2012.

12 Q: Okay.

13 A: 2008. Sorry.

14 Q: That's okay.

15 A: Got to remember how far it go.

16 Q: It's been a while.

17 A: That's right.

18 Q: And where did you do your internship and residency?

19 A: So I went to residency in -- at Little Rock, Arkansas. I
20 attended their -- so for surgical training, that's five years
21 that you do that for surgical residency. And so I spent the
22 entirety of that time in Little Rock, Arkansas.

23 Q: Okay. And since that time, where have you practiced
24 medicine?

25 A: So after that training, I actually did an additional year

1 of fellowship that's specializing in surgical critical care
2 and trauma care. And I spent that year in San Antonio,
3 Texas. Then I followed up, I had moved here to South
4 Carolina, Myrtle Beach. And I have been a trauma surgeon at
5 Grand Strand Hospital for five years, since 2018.

6 Q: And are you -- do you still hold that position of trauma
7 surgeon at Grand Strand?

8 A: No. Not currently. I gave my notice as of January 2nd,
9 and I'm currently will be covering a hospital as a trauma
10 surgeon in Missouri for until I moved to be a missionary
11 doctor in Ethiopia.

12 Q: And I think I heard you already say that you are board
13 certified, and you said you're board certified in general
14 surgery and in surgical clinical care. Is that correct?

15 A: Yes, ma'am.

16 Q: Okay. Do you have any professional associations?

17 A: Yes. So I am a fellow of the American College of
18 Surgeons that requires interviews and a whole process of
19 giving cases that I had to do prior after I finished my
20 training. I am also a member of the Eastern Association of
21 the Society of Trauma, as well as American women's Surgeons,
22 and local medical affiliations in Myrtle Beach in Horry
23 County.

24 Q: And I know you've already testified that you did a one-
25 year training in Texas, additional training after your

1 internship and residency. Was that training in the diagnosis
2 and treatment of traumatic injuries?

3 A: Yes. I was at the level one center, University of Texas
4 in San Antonio. Extraordinarily busy. I was actually the
5 surgeon on call when the church shooting happened in 20 -- in
6 November, 2017. And I took care of a number of those children
7 that came through the doors, at that point. So yes, a lot of
8 care -- of critical care patients and specifically trauma
9 patients.

10 Q: Have you -- do you teach any classes or seminars in your
11 field?

12 A: Yes. So I am certified to teach the advanced trauma life
13 support, which we teach that to residents, other physicians in
14 order to how to care for patients in the initial evaluation of
15 trauma. I also educate about Stop the Bleed, which educates
16 civilians, law enforcement about tourniquets, things like
17 that. I've done a number of courses for surgical techs and
18 different lectures around the state. I did some middle school
19 teaching as well, future doctors, hopefully.

20 Q: Have you published any articles or --

21 A: I have published an article related to surgical
22 education, but personally, my heart is much more about
23 prevention and community outreach.

24 Q: Okay. Which is why you wanted to be a missionary
25 doctor?

1 A: Yep.

2 Q: So what requirements do you have to do to maintain your
3 medical license in South Carolina?

4 A: So for South Carolina, they have -- you have to get a
5 number of -- we call it CMEs or continuing medical education.
6 You have to do 40 of those in a two years. Specifically, one
7 has to include opiate information, but I -- I tend to try --
8 maybe I'm an overachiever again doctor, but I go -- tend to d
9 -- we have to do courses, we have to do different conferences,
10 and in there, we can get our education -- continuing education
11 courses. And that's, I get anywhere from a hundred each two
12 years to 120 depending on what conferences I attend.

13 Q: And do you have to pass an exam to maintain your board
14 certifications?

15 A: So in order to get our board certifications for general
16 surgery, I had to pass an oral and a written exam. And to
17 maintain it, every eight to 10 years, I have to take another
18 exam. For my critical care boards, I had to pass a written
19 board, and every two years for maintenance, I have to take
20 another exam and have to read a large booklet of articles in
21 order to take those tests.

22 Q: And you said that you -- you recently left your job at
23 Grand Strand. When you were there, you wore a few hats. What
24 were your job titles while you were there?

25 A: When I was at Grand Strand, I was the surgical director

1 of the ICU. I was the pediatric trauma medical director. I
2 was the associate trauma medical director, and I was also
3 manage the residents. That's the -- those in training. I was
4 the chair of the clinical competency. So I would rank, are
5 the residents able to go to the next step. So we would meet
6 as a group and assess that, determine that.

7 Q: And how long did you -- did you work at Grand Strand
8 Medical Center?

9 A: Worked from September 4, 2018, until January 2nd of this
10 year.

11 Q: And in that time, approximately, how many patients did
12 you diagnose and treat? You can do per year, whatever's
13 easiest for you.

14 A: So as a Grand strand, sees anywhere from 3000 to 4,000
15 trauma patients in a year. And given that I was -- I'm work
16 with anywhere from four to eight trauma surgeons alongside me,
17 I would see probably anywhere from 750 to 1,000 patients that
18 I would care or touch along the way, each year. And that was,
19 you know, so cumulative over five years, over 5,000 patients.

20 Q: Okay. I'm going to ask you about your experience and
21 specific types of injuries, and your expertise in those
22 fields. Okay. So in your time as a trauma surgeon, if you
23 had the opportunity to diagnose and treat patients with
24 bruising?

25 A: Yes. So to explain what I do as a trauma surgeon and

1 what I encompass, I'm the person they call. We have different
2 levels of notification, so they call me down. I have to be in
3 the trauma bay. In particular, we call it level ones. And so
4 those are the patient -- patients that come out -- come out of
5 the ambulance, so many gunshot wounds, bruising from car
6 accidents, assault. So we see that whole range of patients.
7 And when you have what we call blunt-force trauma, those can
8 cause bruises. And so I have a vast experience of dealing
9 with patients with significant ecchymosis or bruising.

10 Q: Okay. So you -- so you mentioned blunt-force trauma.
11 Would you have experience dealing with blunt-force trauma to
12 the thorax?

13 A: Yes. So significant blunt-force trauma, from assorted
14 instruments or from, again, vehicles, again assaults. We see
15 a wide -- I've seen a wide range. Every day, we can range a
16 number from 10, 20, 30 trauma activations. So you can imagine
17 in that you see a lot of different types of trauma and
18 injuries.

19 Q: What about blunt-force trauma, to an abrasions and burns
20 in various (inaudible)?

21 A: Yes, I actually spent an extensive time in my training at
22 a burn center caring for people with burns and caring for
23 doing all the skin -- skin transplants, the graft and things
24 like that. So I saw that extensively during my training. And
25 I've cared for patients and perform those procedures for these

1 burn patients while I've been in practice at Grand Strand.

2 Q: What about head injuries?

3 A: That's probably our most common. We have a very high
4 elderly population here in Horry County, so I see a lot of
5 falls. So I see -- care for a significant number, ground
6 level falls with significant bruising, facial fractures, as
7 well as concussions and other traumatic brain injuries.

8 Q: What about orbital fractures?

9 A: Lots of orbital fractures. We, you know, we live near
10 the beach. There's a tourist population, there's some fights
11 and some punches in the face. So I see a lot of orbital
12 fractures, a lot of facial trauma, jaw fractures. Yes.

13 Q: Nasal fractures?

14 A: Lots. That's probably the most common. You fall and you
15 break your nose right there. Right. So they might not have
16 significant injury, but they'll have that-- that nose broken.

17 Q: So have you seen a lot of injuries resulting from
18 assault? You just mentioned that?

19 A: We -- yes. I have cared for numerous patients from
20 assault, whether that was done -- different perpetrators,
21 whether it was partner violence, versus a stranger, versus a
22 bar fight, especially during bike week. But definitely have
23 seen a lot high range of those injuries.

24 Q: Is it common in your practice to review and interpret a
25 patient's medical scans?

1 A: So actually, again, like I mentioned, when they call out,
2 they tell us there is an 18-year-old status post a motor
3 vehicle collision. I have to go down there. I arrive in the
4 trauma bay, I assess the patient, I look at the patient, I
5 determine, do they need surgery now? Are they going to bleed
6 out? We need to do something at this moment. And based on
7 what their stable conditions, I will then move them to the CT
8 scan. As we're going through those images, these images are
9 coming up on the screen. The radiologists haven't reviewed
10 them yet. I have to determine, is there a massive head bleed
11 that I need to get them to the OR with a neurosurgeon because
12 if they -- if I don't, this will be it for them. Or is there
13 bleeding in their spleen? I've -- I've definitely gotten a
14 few calls. It's one of -- one of my things that I chuckle
15 about. I'll be in the operating room already taking out the
16 spleen. I'll get a call from the radiologist, hey, by the
17 way, did you see that spleen? Looks real bad. I was like, I
18 got it. It is in the bucket now. Thank you.

19 But it's -- it's important as the trauma surgeon to be viewing
20 those images in real time because it will directly impact my
21 clinical decision, and I need to make those decisions quickly
22 because that could have long lasting effects on the patient if
23 I don't see that. And if I miss that, that could delay their
24 care significantly.

25 Q: Do you also review patient medical records and charts in

1 your treatment and diagnosis of patients?

2 A: So as the surgical director of the ICU and the pediatric
3 trauma medical director, I probably reviewed anywhere from
4 eight to 20 charts, medical charts, every month. Because as a
5 trauma center, we have to review and say, are we doing things
6 right? What did we miss this time? Do we -- how can we do
7 things better? So I'm forever looking through those pictures,
8 looking through those images, and trying to figure out from a
9 quality perspective, how could we improve from a performance
10 improvements perspective. So that is very much a part of my
11 job, is looking through all those things.

12 Q: Okay. Have you also treated injuries in relation to
13 strangulation?

14 A: Yes. I have treated. I've seen fractures associated
15 with strangulation, as well as bruising and trauma associated
16 with strangulation. So I have cared for those as well as
17 individuals who have ligature marks from significant
18 strangulation. So I have cared for individuals -- even self-
19 inflicted strangulation wound, we've had to care for some of
20 those.

21 **MS. WALLER:** Your Honor, at this time, the state would
22 offer Dr. Cobos as an expert in the field of general surgery
23 and surgical critical care.

24 **THE COURT:** All right. Any challenges or questions? Mr.
25 Hiller, Mr. Fox?

1 **MR. HILLER:** Yes. One moment, Your Honor. Just one
2 moment, Your Honor.

3 **THE COURT:** All right.

4 **MR. HILLER:** For voir dire, Your Honor, yes, sir. Have a
5 few questions.

6 **THE COURT:** All right.

7 **VOIR DIRE EXAMINATION OF DOCTOR COBOS BY MR. HILLER:**

8 Q: So Dr. Cobos, if you said this, I apologize. Have you
9 been qualified as an expert in any court in the -- let's just
10 start with the nation. Any criminal or civil court?

11 A: I have not.

12 Q: Okay. So obviously not in the state of South Carolina?

13 A: Correct.

14 Q: Now, the State has offered you as an expert in the field
15 of general surgery, and I believe general critical care?

16 A: Surgical.

17 Q: Is surgery relating to repairing an orbital socket
18 considered general surgery, or is that more specific surgery?

19 A: So the actual procedure is performed by ENT or ears, nose
20 and throat surgeons. However, as a trauma surgeon, I have to
21 care for that patient. I am caring for the whole patient and
22 ensuring, so I have the follow up, I'm assessing those
23 injuries in the initial phases. So I don't perform the
24 surgery. I -- I don't fix those orbital bones, but I'm the
25 one caring for it and determining which order needs to be

1 fixed first, which body system is going to take priority and
2 who's going to care for those things.

3 Q: That is a -- is it your testimony to this court that you
4 are competent and qualified to testify to the procedure for
5 repairing an orbital fracture?

6 A: I am competent in talking about -- talk -- discussing the
7 procedure and the care of the patient who has those specific
8 injuries, and what the ramifications of those injuries would
9 be, what the aftermath of those injuries, and what the overall
10 long-lasting impact of that would be on a patient. Yes.

11 **MR. HILLER:** Court's indulgence.

12 **THE COURT:** All right.

13 **BY MR. HILLER:**

14 Q: Now, I don't want to get into the facts of this
15 particular case yet, but had -- well, let's just say for the
16 sake of argument that the procedure that I expect you'll be
17 asked to testify about repairing the orbital bone on Ms.

18 **KS** Had that procedure gone forward at Grand Strand, you
19 would not have been the surgeon practicing that procedure or -
20 -

21 A: That is correct.

22 **MR. HILLER:** Okay. No further questions, Your Honor.

23 **THE COURT:** All right. Any challenges?

24 **MR. HILLER:** Your Honor, there was a surgery performed
25 here that goes beyond general surgery. I think we heard that

1 from Dr. Cobos. Was obviously qualified in the fields that
2 the State has offered her in. I just would say that we may
3 need an expert that would go beyond more specialized surgery
4 and have more of a knowledge on that if the State wants to go
5 into to injuries that are more specialized in -- they
6 generally require more specialized surgery to repair.

7 **THE COURT:** All right. Over Defendant's objection, I
8 find this witness to be an expert in the field of general
9 surgery and surgical critical care.

10 Now, ladies and gentlemen of the jury, I'll instruct you on
11 expert testimony when I charge you on the law on the case, but
12 all you need to know at this point in time is that typically a
13 witness can only testify as to his or her personal
14 observations, what they saw, what they smell, what they
15 tasted, things of that nature. There is an exception for
16 witnesses who are qualified as experts, which means that in
17 addition to their personal observation, they are allowed to
18 render an opinion in the field in which they are qualified as
19 an expert.

20 All right. State can conduct your cross -- direct
21 examination.

22 **MS. WALLER:** Thank you.

23 **DIRECT EXAMINATION OF DOCTOR COBOS BY MS. WALLER:**

24 Q: Dr. Cobos, I'm going to ask you some general questions.
25 First, about how you diagnose and treat patients and then

1 we'll talk specifically about this case. So what's the
2 standard procedure for how you conduct an exam for the
3 diagnosis and treatment of an individual trauma patient?
4 Generally.

5 A: So as I said before, I'm an instructor for ATLS or
6 Advanced Trauma Life Support. So we go through a very
7 specific protocol when we're assessing patients. We call it
8 A, B, C. First things, what can kill you quickly, right?
9 Your airways. We assess someone's airway. Are they able to
10 breathe clearly? Do they need to be intubated and have
11 mechanical support of their breathing? Listen to their lungs,
12 both sides. Do they have a collapsed lung? Are they going to
13 that which could quickly kill someone? Then circulation. Are
14 they bleeding from anywhere significant? Do they have pulses
15 in all four extremities? Do they have significant mangled
16 extremity that I need to realign, so that I can ensure that
17 proper circulation is going to that extremity?

18 And then, so that's A B, C. Then we look at deformity and we
19 do exposure. We have to look at every part of your body. I
20 had one patient come in as a car accident and turns out they
21 had been shot. And we didn't find that out till we rolled
22 them over and found a hole that trees were sticking out of.
23 So it was -- so it's so crucial for us to look at every part
24 of the body and not miss injuries that could then make it
25 significant difference on diagnosis and treatment.

1 Q: And as part of your diagnosis and treatment, do you talk
2 to the patients, if you can?

3 A: Yes. It is ideal if we can speak to the patient, right?
4 If they can provide their history. What medical problems do
5 they have? What events led to this. Do they recall? It also
6 gives me a very -- a good picture of where is their mental
7 state are. Do they have signs of a traumatic brain injury?
8 Are they waxing and waning? Are they under the influence? Is
9 something going on? Often, even if someone is under the
10 influence, I worry that if they're confused or garbled speech
11 that they have a traumatic brain injury or they could be
12 bleeding out. So that is a big concern of me, because again,
13 life-threatening injuries will make a big difference on my
14 timing of when I need to fix things.

15 Q: So is it essential to your diagnosis and treatment of a
16 patient to kind of find out what happened to them?

17 A: It is extremely important. So for me, I get a brief
18 snapshot from EMS. They might say motorcycle accident or a
19 gunshot wound. But once I talk to the patient, right, the
20 physics and the mechanics of their injury make a big
21 difference, right? If you were hit by a semi versus a
22 motorcycle, there's going to be a difference in your injury
23 pattern, and that makes a difference. When I just see motor
24 vehicle collision, I may not know the difference until I talk
25 to the patient, and that's going to help me tailor my exam and

1 focus what I'm looking for and also increases my concerns
2 about certain diagnosis that could be life threatening.

3 Q: And I'm going to direct your attention to this case. Did
4 you have an opportunity to examine and diagnose and treat the
5 victim in this case, KS

6 A: Yes. So I was the on-call trauma surgeon. So we
7 received the notification over the call system. This was a
8 level one. It was the highest level of activation. And the
9 reason that was, is as I reviewed the chart, this patient,
10 when she was examined by EMS, her blood pressure was 90 over
11 palpable. So they couldn't even get the bottom number of her
12 blood pressure because of how low her blood pressure was. Her
13 heart rate was 137. So those two numbers means that she was
14 shock.

15 When I hear those numbers as a trauma surgeon, the short-
16 term mortality associated with shock is 20 to 50 percent. So
17 I am already very concerned that whoever's coming through the
18 door, if he has life threatening conditions -- a potential for
19 dying in this process. So I need to be high alert on
20 preparing blood and preparing the operating room or whoever
21 else support staff needs to come in order to help us.

22 Q: And when K.S. arrived at the hospital, did you
23 have an opportunity to examine her?

24 A: So yes, I -- when -- I was already present in the trauma
25 bay when she arrived. I -- we -- the patient was brought in

1 by EMS and we were met with, quite honestly, a shocking number
2 of external injuries. This was -- I've seen a lot of terrible
3 things. I've seen a lot of horrible things, and the amount of
4 bruises impacted each person that left that room. The amount
5 of trauma that she had sustained on her body was shocking to
6 everyone in that room, which we see a lot of terrible things.
7 And we examined. We saw the extent of both old and new fresh
8 injuries, which, again, was extensive. Her entire -- there
9 was not a single portion of her body that was not impacted
10 with signs of blunt and penetrating trauma.

11 **MS. WALLER:** May I approach the witness, Your Honor?

12 **THE COURT:** Yes, ma'am.

13 **BY MS. WALLER:**

14 Q: I'm going to show you what's been marked as State's
15 Exhibit -- it's going to be number 72 through 99. And these
16 are photographs. So I'm going to show you these, and you tell
17 me if you recognize those photographs or not. Just ,you can
18 take a minute to look through them.

19 A: This is -- I honestly don't have to look very far because
20 I did -- I just had to remember this case because these images
21 are imprinted in my mind. How horrific they were. So yes, to
22 answer your question, looking through these, I do remember
23 this day.

24 Q: And are those images a fair and accurate representation
25 of how **K.S.** looked in the hospital that night? Of

1 what you remember?

2 A: It's worse in real life, but yes.

3 **MS. WALLER:** Okay. Thank you. Your Honor, at this time,
4 the State would like to move Exhibit 72 through 99 into
5 evidence and we're going to be publishing them to the jury
6 individually.

7 **THE COURT:** All right. Any objection not previously
8 raised?

9 **MR. HILLER:** Same objection, Your Honor.

10 **THE COURT:** All right. State's Exhibit 72 through 99
11 admitted into evidence over Defendant's objection.

12 **(STATE'S EXHIBIT NUMBERS 72 - 99 ARE**
13 **ADMITTED INTO EVIDENCE)**

14 **MS. WALLER:** I -- I'm going to put them on the screen,
15 Your Honor, for the jury, rather than hold them up.

16 **THE COURT:** All right

17 **MS. WALLER:** I'll tell you which numbers, Riley.

18 **BY MS WALLER:**

19 Q: So just a little background before we start actually
20 looking at what you saw that night, talking about what you
21 saw, how did you conduct the exam with K.S. [REDACTED]? Did you
22 speak to her?

23 A: So, yes. Again, like I said, we're going to go through
24 our first airway is actually asking someone to talk. If they
25 can (inaudible), then they can get that air across her --

1 across their throat, right? So that's the first thing. We
2 did speak to her. We asked -- EMS had told us that she was
3 founded at Walmart. She had escaped from a situation. We
4 then asked -- confirmed that she had known her assailant, and
5 she had been assaulted for a -- a period -- our understanding
6 at the time was a few months. So this was a repeated assault,
7 which did bear testimony on what the trauma we saw. We saw
8 old and new healing wounds that would be consistent with
9 repeated assault over a period of time.

10 Q: Okay. And did she -- were the injuries that you saw in
11 the photos and in person that night consistent with what she
12 told you had happened to her?

13 A: Yes. So she told us that she had been beaten with a
14 number of different things, that she had been burned, and we
15 saw the signs of it across her body. There were bruises. Her
16 face was particularly disfigured and swollen. She had had
17 hair torn out of her scalp, she had bruises across, she had
18 burns. This was, I think the quite horrifying part, was
19 seeing burns across her breast and across her genitalia,
20 indicating that someone had taken the time to play something
21 hot and burn her specifically in those areas. And they were
22 at various stages of healing with erythema or redness around
23 them indicating possible irritation and inflammation.

24 Q: And in your time as a trauma surgeon, and especially
25 working in ER, how many traumatic injuries do you think he's

1 seen you? I think you just testified thousands a year?

2 A: Yeah. That's -- I mean, that's just a Grand Strand, but
3 overall, in, you know, over a -- a decade of doing this.
4 Yes.

5 Q: And yet you also testified just a second ago that -- that
6 you remember this this case very well. Why is that?

7 A: The -- the amount -- this was -- the amount of trauma
8 inflicted on a single person over a prolonged period of time
9 demonstrated a level -- it was horrific. I don't -- it --
10 everyone who walked out of that room was changed. I think
11 everyone who walked out of the room, if you asked them, they
12 would remember K.S. because of the amount that you -
13 - you were -- it was horrific to see what another human could
14 do to someone.

15 Q: So when you looked at the injuries, we're going to talk
16 about specific injuries, but just the -- you said she had a --
17 a score of 50, her mortality rate of around 50. So when she
18 came in, were you concerned that -- that her death could
19 result just from the state of her body at the time that she
20 got there?

21 A: So I knew she was coming in shock, which again, like I
22 told you, is 20 to 50 percent mortality. Seeing the extent of
23 her injuries, I had high concern that she could have a liver
24 laceration, a splenic laceration, she could be bleeding
25 internally, she could have fractures. For someone to do that

1 to another person, they're not going to stop right at -- and
2 so, that level of blunt-force trauma, repeated assault, I was
3 very concerned that she could have a bleed in her head, and
4 like I mentioned, the internal injuries even to her thorax, as
5 well as her abdomen, that could be life threatening.

6 Q: Let's show State's Exhibit Number 72 and publish that to
7 the jury. And you may have to come off if you can't see, but
8 if -- if you can see, fine, there -- that's fine too. You can
9 stay seated.

10 **MR. FOX:** Your Honor, we -- and I'm sorry. May we
11 approach?

12 **THE COURT:** All right.

13 **MR. FOX:** Turn that off.

14 **REPORTER'S NOTE:** (Whereby bench conference is held)

15 **MS. WALLER:** Can we put number 72 back up, please.

16 **BY MS. WALLER:**

17 Q: This State's Exhibit 72 is a picture of [REDACTED] K.S. [REDACTED]'s
18 face. Is that what she looked like in the hospital that
19 night?

20 A: Yes, that is what she looked like.

21 Q: And can you see, especially on her left side, the
22 bruising? Here?

23 A: So you can tell that she can't even open. We couldn't
24 even really open that left eye. Was very difficult to examine
25 it, given the amount of edema, swelling, disfigurement. You

1 can see how there's pooling of the blood down in the cheeks
2 because that's showing that how long her face has been bruised
3 repeatedly and that that blood has been able to settle along
4 her chin.

5 There's significant -- again, most -- the majority of trauma,
6 you can also see that all that hair being -- there's traumatic
7 alopecia or like hair being ripped out along that side of her
8 scalp, because that's why you -- you're seeing that -- that's
9 not just that her hair's parted there, that was actually
10 missing hair that had been ripped out. But yeah, she wasn't
11 even able to open that eye and visualize anything. You can
12 see bruising around the right eye too. So significant blunt-
13 force trauma to her head.

14 Q: And -- and we'll get to this in a minute. But based on
15 the condition that you saw her in, did you also order further
16 scans so that you could see what was going on underneath all
17 this?

18 A: Yes. Like I mentioned, I was very concerned that she
19 would show signs whether new or old of previous injuries and -
20 - especially injuries that could be life threatening. So her
21 state of shock. So we ordered a CT head and face because I
22 had high concern that she would have facial fractures. We
23 also ordered a neck -- neck imaging. This is -- she actually
24 had a collar on initially. We took it off. That -- that this
25 picture was then taken after that. But we had a collar on

1 because we were concerned that she could even have cervical
2 injuries. We got a thoracic and abdomen, so a chest, abdomen,
3 and pelvic CT scans looking for other injuries due to the just
4 diffuse amount of injuries that she had.

5 Q: Can we see state's 73 please? This -- this is the view
6 of -- I'm sorry. I have to orient myself -- the right side of
7 her face. Is just showing the bruising on that side that you
8 just described? Do you see anything further that bears
9 comment?

10 A: You can also see there's bruising along her neck, down
11 here. And there were marks consistent with attempted
12 strangulation. And actually, an article in the Journal of
13 Emergency Medicine in 2008 showed that with non -- with
14 nonfatal strangulation, there was a sixfold increase in
15 attempted homicide and a sevenfold increase in completed
16 homicide. So victims of non-fatal strangulation were
17 exponentially --

18 **MR. HILLER:** Objection, Your Honor. She's like quoting
19 statistics from a -- an article. I think that's beyond the
20 scope of her expertise.

21 **THE COURT:** All right. Sustained. Strike the last
22 response.

23 **MS. WALLER:** Can we see State's Exhibit 76, please?

24 **BY MS. WALLER:**

25 Q: Okay. This is a close-up of her neck and we were talking

1 about, you know, her injuries as regard to strangulation. So
2 can you see marks on her neck?

3 A: So you can see it looks like finger marks that looks --
4 they're small point -- punk tape points along her neck
5 concerning, again, we're seeing aftermath. I can't attest to
6 what -- what this happened, but very concerning for marks of
7 strangulation. And with that, like I mentioned before, that
8 can be injuries to your trachea, esophagus, there's your major
9 blood vessels, you can have dissection of your arteries, to
10 your brain actually causing stroke with any of these -- with
11 strangulation injuries. So these are very concerning, which
12 is why we obtained imaging to rule any of these out and ensure
13 that we didn't miss something.

14 Q: And did K.S. the patient indicate to you that
15 she had been strangled to the point of unconsciousness?

16 A: She -- yes. She mentioned -- she told that -- testified
17 that to our team that she had been strangled and her wounds
18 were -- were consistent with that.

19 Q: Okay. And can -- and -- and could strangling someone in
20 general cause them to die?

21 A: Yes. Strangling is high risk, as I mentioned. But
22 strangulation is high risk for death because you're cutting
23 off your airway and that's death can be occur very quickly.

24 Q: And would it be even more concerning to you as a
25 physician if you were strangled or choked to the point of

1 unconsciousness?

2 A: Because that -- yes. Because that -- to me, that
3 demonstrates behavior that someone is -- does not care about
4 life, and you're willing to take someone's life. So if that -
5 - if I see strangulation, I'm very concerned about my patient,
6 that this person -- actually, that was why we -- I was so
7 concerned about her. I admitted her to a locked unit because
8 I was worried that the perpetrator would follow her and
9 potentially try to attempt to end her life while she was in
10 the hospital. And as -- as a physician, my job is to continue
11 to protect her. So I was very, very concerned seeing all of
12 these marks that the level of violence that someone would
13 enact on another person, that that would continue and
14 potentially threaten my patient and my staff.

15 Q: Thank you. Can we see State's Exhibit 74, please? This
16 is a photo of the left side of her head -- of her face. I
17 think we saw in State's Exhibit 72. That was the more swollen
18 side with her eye swollen shut. And I think in this photo you
19 can also see what -- can you also see what you pointed out in
20 her hair?

21 A: Yeah. So you see the significant swelling, but you can
22 see all the traumatic alopecia, that traumatic removal of hair
23 that had occurred that someone had pulled out hair from that
24 side of her head.

25 Q: Can we see, please, State's Exhibit 75? 75, please. Oh,

1 I'm sorry, 77. I apologize. So this is a picture of the
2 victim's hand. What did you notice in particular about her
3 hands in this photo?

4 A: So with the extensive amount of bruising and edema, I was
5 really -- I was very concerned for fractures underlying this.
6 And so we ended up getting X-rays of all her extremities due
7 to the significant deformity that you visualize here, which
8 can also obviously cause lasting effect on your ability to
9 move your hands and function. So yes, you can see extensive
10 bruising. It's hard in the dark picture, but there's
11 extensive bruising going all the way up and you can see it
12 going overline her elbow. But both hands have significant
13 swelling and bruising.

14 Q: Okay. May I see State's Exhibit 78, please? This is a -
15 - an intimate photo of her left breast. And what injuries do
16 you as a physician see in her breast?

17 A: So do you see how there's yellow bruising? There's
18 purple bruising? So these are different stages of healing,
19 right? Consistent with her story of this occurring over
20 multiple events of assault occurring over a prolonged period
21 of time. You also see a bruise adjacent to her complex.
22 Above that it's old. It's not fresh, and it's not really
23 allowed to been healed or treated properly. Right? You can
24 see the erythema, the redness around it, the scab. This is --
25 and it was a fairly deep. I would classify this as a third --

1 third degree burn. So through all the layers of skin, which
2 would be prolonged at a point with heat, right? This is not
3 just a quick sunburn, this is not a quick touch to the stove.
4 This is a prolonged contact with a hot object.

5 Q: So I'm going to just point and make sure that we know
6 what you're talking about. Are you talking about this area
7 here is the prolonged burned area?

8 A: Yes. Yes.

9 Q: Okay. And do you know what this injury is? Can you tell
10 from the photo?

11 A: Honestly, from right now, it just looks like a knee
12 (inaudible) or a so it's -- it's hard to tell if it's a bruise
13 on this --

14 Q: Right.

15 A: It looks like a freckle or a mole. I can't -- I can't
16 distinctly tell that that's at the most, but it may be.

17 Q: And you -- you testified -- I -- I heard you say
18 something when you were describing this picture about
19 prolonged bruising. What about the lack of medical care for
20 these injuries? Does that impact the prognosis for the
21 patient?

22 A: Significantly. Right. With deformity and
23 disfigurement. So any -- if I see a burn initially, I'm able
24 to give medication, I'm able to treat it, we're able to -- at
25 different stages of healing, we're actually able to make

1 interventions that will make an impact long-term.

2 Unfortunately, with how far along it -- the scarring is going
3 to be significant worse, and you can imagine adjacent there's
4 significant nerve complexes around the areolar complex. So
5 this is more painful, more discomfort, and probably prolonged
6 pain secondary to these injuries.

7 Q: Okay. Thank you. Can we have 79, please? Okay. This
8 looks like her left side. It's her -- from basically
9 underneath her arm to around her little below her waist. And
10 I'm going to direct your attention to these. What are these
11 two areas? The dark purple areas?

12 A: So there's bruising, right? You see the small bruising.
13 But the -- the amount of blood pooled in there, I would say
14 that's a hematoma. That's -- that's significant amount of
15 blood pooling in that area. Significant amount of bruising.
16 So that would be a significant level of blunt-force trauma.
17 It is -- you -- you see that when someone's been hit by a car
18 at high rates of speed. You see that level of pooling. You
19 see someone on significant anticoagulation, so on Warfarin or
20 Coumadin might have an injury like that, but she's not on
21 either of those. So this -- this amount of pooling shows
22 significant level of blunt-force trauma, right? It's not just
23 pressure, it's not just a punch. This is something that was
24 significant at high rate of speed or at high force in order to
25 inflict this level of trauma. And as -- as you can tell, it's

1 not just one place, it's multiple places. So it was just not
2 one hit, it's multiple hits with a significant level of
3 force.

4 Q: And can you also see -- there are some bruises on to --
5 well, it's to my left of the photo, kind of on her stomach
6 that appear yellow or -- or not as purple or dark. What is
7 the significance of that?

8 A: Yes. To reiterate, I think that's why it was so horrific
9 for the staff to see this because you see the level -- this is
10 differing levels of stages of healing, right? So you have old
11 bruises, you have new bruises. So this is repeated assault
12 and repeated abuse over a prolonged period of time, which I
13 think was particularly horrific. It's one thing to see
14 someone get in a fight and have a few punches on their face,
15 but to see someone who has been -- who has undergone continued
16 assault and torture is quite horrifying.

17 Q: Can we see State's Exhibit 80, please? This is a close-
18 up of those same bruises that you just described. So I think
19 we've covered that. Can we see State's Exhibit 81, please?
20 So this is that same side of KS left side and we -- a
21 second ago saw a photo of kind of our side, but this one she's
22 more turned so that you can see her back. And do you also see
23 injuries on her back and leg here?

24 A: She was entirely covered in injuries and so it was across
25 her back, across her front. You can see them wrapping around

1 the side. Just the total volume of injuries is quite
2 significant.

3 Q: And then I can look -- you can see -- do you have -- you
4 don't -- do you have any idea what caused these injuries? If
5 you don't, that's fine.

6 A: You -- the ones that are lengthwise you'd imagine would
7 be a long -- long object. Could that be wood? Could that be
8 metal? I can't attest to that, but that would be something
9 consistent with that size. I don't know about the shape with
10 the --

11 Q: Okay. Can we see State's Exhibit 82, please? And this
12 looks like a close-up of the bruise, but a ruler. And can you
13 see how long this particular bruise area is on the ruler?

14 A: So the ruler is 15 centimeters, so that looks like it's
15 probably about 10, probably 12 centimeters. I could look
16 closer.

17 **MS. WALLER:** Oh, I -- I'll write -- may I approach, Your
18 Honor -- yeah, it's hard to see.

19 **BY MS. WALLER:**

20 Q: This is State's Exhibit 82 just so we can look at it
21 closer.

22 A: Yeah. So I guess 13 to 14 centimeters in the length.

23 Q: Okay. And is that a long bruise?

24 A: Yeah. You're only measuring one, right? There's one --
25 a small thin one right above it, and there's another one with

1 a similar length above it. So yes, fairly long bruise, not --
2 not in a hand imprint, not in a fist imprint. This is appears
3 to be consistent with another object being used.

4 Q: Okay. Something long?

5 A: Correct.

6 Q: May I see State's Number 83, please. And I'm going to
7 approach and hand you this one as well. So it has a ruler so
8 you can see it. Okay. And this one, we're also seeing the
9 ruler. How long is this -- this area?

10 A: This goes to 10 centimeters. And again, with this one,
11 you can see various stages. You can see the discoloration.
12 This is breakdown of blood products where it turns yellow and
13 green versus purple. So this looks like multiple injuries.
14 You also see -- do you see those punk tape marks? So --

15 Q: I'm going to point them out and tell me if I'm correct.
16 So we're talking about --

17 A: Yes.

18 Q: -- these little marks?

19 A: Uh-uh.

20 Q: Okay.

21 A: So that likely was significant trauma to actually cause
22 rupture of the skin and allow blood to come out through those,
23 so that the amount of trauma inflicted actually ruptured the
24 skin and blood is coming out of those wounds, because you're
25 hitting with such a -- a force. So you're causing micro

1 lacerations or cuts within the skin.

2 Q: Okay. Can we see State's Exhibit 84, please? This
3 appears to be her left leg. You can see those wounds that you
4 just talked about. Could those also have been caused by an
5 object puncturing -- puncturing her skin in some way -- some
6 of them?

7 A: It would.

8 Q: Or do you need a different --

9 A: Majority of them appear to be blunt. I don't --
10 personally on those, it doesn't appear to be punctures, but
11 just significant repeated blunt-force trauma.

12 Q: All right. Let's see State's Exhibit 85. And you're
13 seeing -- we're seeing, once again, the close-up of those
14 puncture and the bruises in the various stages of healing.
15 May we see State's Exhibit 86, please. This is her feet.
16 What is significant about her feet?

17 A: So as you can see that there's significant edema and
18 deformity of the ankle. There's bruises. The amount of
19 bruises like a one total bruise, right? It doesn't look like
20 one distinct point where you might have fallen or hit
21 something. This is her entire ankle is bruised, the blood is
22 pooling. So again, blood pooling means like it's not -- it
23 didn't happen today, right? This is a prolonged, this has
24 occurred over -- the blood has pooled down from her other
25 injuries and also from around the ankle. You can also -- so

1 that's all that purple that you see.

2 Also, the deformity -- I was again -- once again concerned
3 this woman had ran into Walmart, but I was still concerned
4 that she could have fractures, she could have done that run on
5 broken feet, broken legs. So those injuries were concerning
6 for that. You can also see obviously the significant dirt.
7 So she ran barefoot, was not properly shot, and ran into
8 Walmart, just trying to escape.

9 Q: And so, you're literally looking at a woman who is
10 bruised from head to toe, literally, in this case?

11 A: Yes.

12 Q: Okay. Can we see state's Exhibit Number 87, please?
13 Okay. This is her left leg and -- looks -- I'll let you
14 describe what you see. Does it look swollen to you?

15 A: So you notice significant edema, that edema is swelling,
16 right? That knee is very swollen. I was worried about. Then
17 she had -- she had a fracture of her tibia, her (inaudible) or
18 femur fracture. You see all the bruising and ecchymosis. So
19 she has sustained multiple -- multiple injuries to that leg.
20 And again, you see those little punk tape marks and even
21 little it's cuts. So that laceration. So repeated assault
22 that caused cuts to your skin that you're getting hit over and
23 over again, that then breaks the skin, and you can see that in
24 multiple places, especially on that left leg, left knee.

25 **MS. WALLER:** Okay. And the next photograph before we

1 show it, just for your information, is going to be a
2 photograph. The next two photographs are photographs of her
3 private areas just to give everybody a warning about that.
4 But the next area -- the next photo please, is state's Exhibit
5 Number 88.

6 **BY MS. WALLER:**

7 Q: Okay. So in this photograph you can see her legs -- her
8 leg, her right leg, and her vagina. And there's an area above
9 her vagina that appears bruised to me. Do you -- can you tell
10 us about that injury?

11 A: So you see -- you see the -- that's across her pubic
12 bone, that bruising that you can see it's pretty significant
13 bruising. So again, repeated assault of repeated blunt-force
14 trauma pressure on that area of her pubis. But there's -- you
15 can see bruising across both thighs actually. And along her
16 labia, there's bruising in that entire area and swelling. So
17 again, indicating the level of repeated assault in -- in her --
18 -- around her genitalia.

19 Q: Okay. The next photograph is going to be a close-up of
20 her genitalia. I'm going to get you to describe those
21 injuries. Can we please see state's Exhibit 89? Okay. You
22 described earlier that she had been burned in her vagina. So
23 --

24 A: Do you want me -- is it okay if I --

25 Q: Yeah, can you come down please?

1 **THE COURT:** As long as you're near a microphone where the
2 court reporter can pick up your testimony.

3 **MS. WALLER:** I'll get it for you. If you can't hear, let
4 me know.

5 **DR. COBOS:** I'm real loud.

6 **MS. WALLER:** That's good.

7 **BY MS. WALLER:**

8 Q: Okay. So, because show me what we're looking at. Where
9 do you see burns here?

10 A: So this is an old burn that has partially healed, but you
11 can still see this white gelatinous material that's
12 fibrinous. So again, not in a -- it's not healed in a good
13 state. Do you see how close this is to a labia? I mean this
14 level again, prolonged. This is a grade -- it's a third-
15 degree burn. So this is prolonged contact with something
16 heated. This is not a quick flash burn. This is not a
17 sunburn. This is something prolonged. Then you see right
18 here, this is another burn at a different stage. So this
19 happened on two different points of time.
20 So this is not one point where you get burned multiple
21 places. And these are actually at different stages than the
22 burn on her breast, that had scabs on it. These appear
23 different. So all three of these burns are showing different
24 events where this patient was burned and where these injuries
25 were inflicted. These are -- this is actually dirt and

1 contamination and potentially fecal matters. So you can
2 imagine that the risk of these getting extremely infected and
3 causing infection in these areas can spread like very rapidly
4 and cause significant disfigurement. But --

5 Q: And then this one too.

6 A: So this is her clitoris. You can see there's a --
7 there's actually erythema and edema along this labia minora.
8 There's labia majora, labia minora. And there's actually
9 erythema and bruising along here. Again, as indicating. But
10 you can see even over here there's small, old bruising, old
11 burn marks that were smaller in nature than the -- the big
12 extensive ones. So these are small pinpoints, but again,
13 still indicating wounds and injuries. And these are much
14 older that have actually been able to scar over as opposed to
15 this side, which again, showing -- demonstrating the
16 differences of time. I'll step back.

17 Q: That -- that's fine. And the bruise at the top of the
18 burn, and there you said erythema. Sorry, Doctor. I'm
19 sorry. At the top, in order to inflict that injury, would he
20 have to penetrate her labia?

21 A: Yes. He would have to penetrate the labia in order to
22 inflict that specific injury. And you can even see that
23 there's some deformity and differences. There's swelling on
24 that side indicating that injury.

25 Q: Can we see state's Exhibit Number, 90 please. Okay. So

1 this one you're getting to see the opposite leg. We saw the
2 left leg before. Now, we're seeing more of the right leg.
3 And again, in this picture, are you seeing the same types of
4 injuries that you described over her entire body? Just to
5 that leg?

6 A: Yes. Once we had uncovered her, just were overwhelmed by
7 the significant number of bruising, lacerations, and injuries
8 overall.

9 Q: Okay. And can we have state's Exhibit Number 91,
10 please? Okay. This photograph shows both of her legs. It
11 also shows that -- that big bruise kind of at the bottom of
12 her stomach, above her pubic bone. Is that the accurate way
13 to describe that one?

14 A: Yes.

15 Q: Can you see this picture depicts this -- this long
16 scratch mark here. Do you -- do you know what caused that or
17 is that just another -- just another injury? Another -- that
18 looks like a -- I guess my question is, is that a wound, is
19 that something that was bleeding?

20 A: Yes. So you can actually see multiple lacerations.
21 That's the longest one. But you see small little ones across,
22 and even across her abdomen, there's a small scab. So again,
23 multiple areas where her skin broke open secondary to whatever
24 was -- whatever instrument was utilized on her.

25 Q: And do you see particular bruising and redness around her

1 knee? What caused that, in your estimation.

2 A: It appeared that, again, that she had sustained
3 significant blunt-force trauma to her knee. That her knees
4 were hit repeatedly because you see the old -- and there's
5 layered bruising in the coloration and the discoloration of
6 her wounds and her tissue. So that indicates -- just,
7 everything kind of corroborated her story of having been
8 undergone this -- this assault over a prolonged period of
9 time.

10 Q: Can we see State's Exhibit 92, please? Okay. This is a
11 -- just a full body. It just shows kind of the -- the
12 bruising and injuries from head to toe, but this view is of
13 her right side. Okay. And you can see how swollen her face
14 is and that -- is that correct?

15 A: Yes. Significant swelling and edema across her entire
16 body.

17 Q: Can we have State's Exhibit 93. This is a close-up of
18 her hands and I -- and -- are you seeing the same thing here
19 that the edema in the hands that we saw earlier?

20 A: This honestly almost looks like someone used a tourniquet
21 or you -- around. You see there's like this distinct
22 demarcation. There's that white skin and then there's
23 bruising down.

24 Q: Here?

25 A: Yes. There's almost like a -- that's not usual, right?

1 You don't see -- you see the other bruises are circular or
2 marks of an instrument. It's very interesting to have a glove
3 shape. We see that when someone -- when there's abuse with
4 burns, when a child is dunked in the water or held under
5 water. This is -- having that distinct demarcation is very
6 concerning. Was blood supply cut off? Was something -- did
7 something occur? Did something wrap around to inflict that
8 level of bruising on that arm? Because it's a -- it is very
9 different to have it just consistently purple without the
10 spottiness that you see in the rest of her injuries.

11 Q: Okay. Can we have state's Exhibit Number 94, please?
12 This one shows what I believe is a wound to her right arm. Is
13 that correct?

14 A: Yes. So here you see the bruising going along the side
15 of her -- it goes all the way up her hand and along the side
16 of her. There's also bruising. You can see along her elbow
17 it's shadow, but there's bruising on her elbow as well.

18 Q: Okay. Can we see state's Exhibit Number 95, please?
19 This is a view of her back, but you can see that -- can you
20 see that the injuries also are on her back?

21 A: You can see that they extend and circumferentially around
22 the patient. You can also see there's ecchymosis on her
23 buttocks, going around, wrapping around, and again, all across
24 her thigh and hip. So this covered her entire body.

25 Q: Okay. Can we have State's Exhibit Number 96, please?

1 Okay. This is -- is this a photo of her hair as you saw it
2 that night?

3 A: Yes.

4 Q: And what is -- what do you notice about her hair in this
5 photo?

6 A: So you can see a distinct matting of the hair, again, in
7 a state of ill-wash, ill-health. There's -- it's obviously
8 extraordinarily tangled, matted with there's old signs of old
9 blood was in there. There were also areas, like I mentioned,
10 it was most significant on the left side of the face, but
11 there was areas that hair appeared. You can see a little bit
12 of the baldness near the neck, but like again, that hair had
13 been pulled out. So this patient had not been able to wash or
14 care for herself for a while.

15 Q: Can we see Number 97, please? This is her left -- her
16 left upper arm, which I don't believe we've seen a view of.
17 But once again, are you seeing the same types of injuries on
18 that arm?

19 A: Yes. And so, it appears -- right, you had that straight
20 bruise versus now a circular bruise. So different objects are
21 being utilized to inflict trauma onto the patient.

22 Q: Okay. And can we see number 98, please? This is a view
23 of the backs of her knees, which you also -- are you also
24 seeing those same injuries you described wrapping around her
25 leg?

1 A: Yes.

2 Q: Okay. The final image is State's Exhibit 99. This -- we
3 saw this left breast earlier. Now, we're seeing both breasts
4 and are you seeing the same injuries to both of her breasts?

5 A: Right. You see significant bruising. You also are able
6 to see her clavicle and chest, and you're seeing that this is
7 not new bruises. This is all yellow. The yellowish tone of
8 her skin, and you're seeing old bruises across there versus
9 the new purple bruises we're seeing on the breast. So
10 different stages of bruising on her chest.

11 **MS. WALLER:** Okay. All right. You can put that one
12 down. Thank you.

13 Court's indulgence. I'm sorry.

14 **THE COURT:** All right.

15 **BY MS. WALLER:**

16 Q: Dr. Cobos, in your treatment of **K.S.**, we looked at
17 that picture of her face, and you said you ordered some
18 scans. I'm going to show you what's been marked as State's
19 Exhibit Number 46. It's already been entered into evidence.
20 And is that disc a disc of the scans that Grand Strand Medical
21 Center had in their records from that night?

22 A: Yes. So as I said, we obtained -- I think the only thing
23 I see missing here is maybe the CT head. Because I see a CT
24 of the neck, a C spine, cervical spine, a chest, abdomen,
25 pelvis. And we also got a bone survey. That's what I -- I

1 only get bone surveys when I'm worried about babies who can't
2 tell me. I -- we got 34 X-rays on her because of how
3 concerned I was that she -- we might miss a fracture. But I
4 think that there's a CT head that is missing from this
5 specific. But yes, everything else is on here.

6 Q: And did you review the images on those with me and pick
7 out several that illustrate Ms. **K.S.**'s injuries from that
8 night?

9 A: Yes, I did.

10 Q: Okay. And does that -- does that disc contain literally
11 hundreds of images?

12 A: Thousands.

13 Q: Thousands. Okay. And can you kind of describe why
14 that's the case? Because, you know, to the jury so they
15 know.

16 A: So we kind of get small cuts, right? You're getting 2D
17 pictures of a 3D person. So you've got to get tiny millimeter
18 slices. And especially when we're looking at the head, face,
19 and neck, distinct -- that's the smallest cuts that we get
20 because you want to be able to recreate that picture and get
21 an attempt at a 3D image and be able to reconstruct these just
22 like you do a building plan, but reconstruct these images in
23 order to figure out what's the fracture, what's the
24 (inaudible). To see it from different perspectives.

25 **MS. WALLER:** Okay. May I approach the witness, your

1 Honor?

2 **THE COURT:** Yes, ma'am.

3 **BY MS. WALLER:**

4 Q: I'm going to show you what's been marked as State's
5 Exhibit -- oh, sorry. These are the ones we've looked at
6 earlier.

7 So I'm going to show you first what's been marked as
8 State's Exhibit Number 48. What is that? Well, hold on. Let
9 me see. 47. Let me try. Thank you. Sorry. State's Exhibit
10 47. What is that photograph?

11 A: I -- I liken it to a magician when you see them cutting a
12 woman in half and slicing to get you an idea of what we're
13 seeing. Right. You're seeing the picture. So what you're
14 actually seeing is kind of the face was sliced right here.
15 You're seeing that individual slice of the face. You can
16 visualize the bones most distinctly. They're going to show up
17 better, but you can see fat and muscle and blood vessels in
18 there. But it's just kind of this -- this profile of the face
19 is what this picture is.

20 Q: Okay. I'm going to show you --

21 A: Do you want me to describe the injury or just --

22 Q: Not yet. I'm going to show you 40 -- so that was 47.
23 I'm going to show you 48, 49, and 50. And you don't have to
24 kind of go into that much detail on these, just are those also
25 the same types of images that you just described?

1 A: Yep. Same type of images and from the same patient on
2 the same day.

3 Q: Okay.

4 A: So they have those.

5 Q: And were those images included on that disc that I showed
6 you earlier?

7 A: Yes, they were.

8 **MS. WALLER:** Okay. Your Honor, at this time the State
9 would like to move Exhibits number 47, 48, 49, and 50 into
10 evidence and published to the jury.

11 **THE COURT:** All right. Any objection?

12 **MR. HILLER:** I don't think so, Your Honor. It's a point
13 of clarification. Doctor, I thought you said that there might
14 be missing the CT from the head on the -- this that you just
15 spoke of.

16 **DR. COBOS:** Uh-huh. (Affirmative response)

17 **MR. HILLER:** And then you just said that the item or
18 State's 47 showed a cross section of the face?

19 **DR. COBOS:** This -- yes, this is a CT of maxilla face.
20 Those are two different CT images. CT head is exclusively
21 brain and actually doesn't always show the facial fractures.

22 **MR. HILLER:** Okay. Thank you for clarifying.

23 **THE COURT:** Any objection?

24 **MR. HILLER:** No, not without clarification.

25 **THE COURT:** All right. State's Exhibits 47, 48, 48, 49,

1 and 50 admitted into evidence without objection.

2 **(STATE'S EXHIBIT NUMBERS 47 - 50 ARE**
3 **ADMITTED INTO EVIDENCE)**

4 **MS. WALLER:** Can we see State's Exhibit Number 47,
5 please?

6 **BY MS. WALLER:**

7 Q: Okay. Now, we're actually getting to see the image you
8 described. So this is like a little slice and -- of a face.
9 Is that what we're seeing?

10 A: Correct.

11 Q: Okay. You might have to come down and point for this one
12 please. Because your expertise is going to be needed. Okay.
13 Just kind of show the jury what they're looking at. I think
14 you can kind of see, but just so we know what we're looking
15 at.

16 A: Right. So here are your orbits or your eye sockets,
17 that's what you're looking at. This is -- your brain is going
18 to be right here. This is your skull. That's why the white
19 lines are a little bit easier to see and distinct. And you
20 can see -- the judge to -- the jaw right here. Black is air,
21 right. You see air around, black is air. And so here, this
22 is -- it -- it's backwards. It will tell you right here. But
23 this is left side. The left side of her face, as we saw that
24 was significantly more injured, was the left side of the
25 face. So there's a distinct space right there. This is all

1 intact. You see how this is nice circle intact. There's a
2 space here indicating a fracture.

3 So the -- and you also see this bulging out. So the bulge is
4 considered herniation. What the problem with that is, we have
5 distinct muscles around our eyes that help us the -- in
6 particular this muscle, your inferior rectus helps you look
7 down, right? So when it squeezes, you're able to look down
8 and visualize down. They move it different places. So if
9 this herniates down, it -- what we worry about as a trauma
10 surgeon, I worry about entrapment. If something is trapped,
11 the longer it's trapped in that condition can cause
12 significant long-term results, long-term injury. So that can
13 cause with our eyes, we need our eyes to move together or we
14 have double vision. So with this being herniated through, I'm
15 worried that this is trapped and that will cause her -- will
16 cause in injury to her vision and probably long-term lasting
17 effects. What I worry about when I see this.

18 You can't -- from -- it was not obvious, is this recent? Is
19 this what time of injury? But there's some -- some level of
20 smoothness of the bone, which is concerning for an older
21 injury, as opposed to have just happened prior on that day
22 that we saw her. So the smoothness of this bone instead of a
23 -- as much of a jagged edge is concerning for an older
24 injury.

25 Q: Okay. And what about -- so when I'm like -- I'm not a

1 doctor either, but when I look at this is her nose, is that
2 correct?

3 A: Yes.

4 Q: It looks crooked to me.

5 A: So you see how there's a bend in here? There's --
6 there's almost complete closure of this side of her nose. You
7 see how there's -- you're not seeing the air pattern that can
8 get through. This is completely closed off or obstructed on
9 this right side. And then you're seeing, again, the gap right
10 here, and this bend. So concerning that her -- she has nasal
11 bone fractures and that -- that's causing the deformity and
12 actually obstruction or closure of her nose.

13 Q: And what would an obstruction or closure of her nerve --
14 what effect did that have on her breathing?

15 A: So this can have significant impact on -- well, of course
16 on breathing, we use both mouth and nose; especially people
17 are impacted more commonly at sleep times. So that can have
18 long lasting effects. And if you obstruct -- and you can have
19 significant bleeding, there's a lot of blood vessels in our
20 nose, and -- and that bleeding can actually obstruct your
21 airway and cause problems from a breathing standpoint too.

22 Q: Okay. And do you mind staying there for just a few
23 minutes?

24 A: Oh, yes.

25 Q: So let's look at number 48, State's 48. Okay. This is a

1 similar scan. It's just a -- a one of the other slices. Is
2 that a good way to say that?

3 A: Yes.

4 Q: Okay. And in this one what, I noticed as a lay person is
5 you could just see more of what you described as this
6 herniation. And this is -- is this her eyeball? Kind of?

7 A: Actually, these are -- it's going to be a little hard for
8 you. I can see it now because I'm close. But there are
9 lighter gray. This is her optic nerve. These are her
10 muscles. These are her medial and lateral rectus superior.
11 And you can see her inferior rectus has actually herniated or
12 fallen through. You can see how -- how big that gap is,
13 right? Like look at the difference, right? You're supposed
14 to have this nice circle. You can see how big that gap is and
15 the muscle has -- has actually fallen in through that space,
16 into that, here and here.

17 Again, like I mentioned on the last one, you see how this --
18 this right near is almost -- the right side of her nose is
19 almost completely occluded. You don't see that air gap. This
20 is a little bit different, but you see that crack -- there's a
21 little crack right there in the nice line that you should
22 normally see in someone's nasal bone.

23 Q: And when you see an injury like that, I think you called
24 it an -- a herniated rectus muscle, what would be your concern
25 for the long-term effect if -- if that injury was allowed to

1 stay like that?

2 A: So again, you don't see the -- the fracture -- fractures
3 that are old will have some ossification. The bone will
4 actually heal. It's trying to heal itself. And you see that
5 smoothness in these fractures indicating that this was -- did
6 not occur acutely. It did not happen the day we saw her. And
7 so the concern if that has been trapped like that, that can
8 cause significant double vision, right? Our eyes have to move
9 together, and if our eyes can't move together, you'll see two
10 things and then that can impact, again, your brain headaches,
11 migraines, it can cause significant lasting effects, and not
12 being able to see well will obviously have impacts on your
13 ability to drive and function.

14 Q: Okay. And did you -- did you recommend that KS
15 receive follow-up care for that injury?

16 A: So when we saw this, we actually contacted our ears,
17 nose, and throat surgeon. However, due to her extensive
18 swelling, how swollen her face is, they recommended that she
19 needed time for that facial -- facial swelling to go down
20 before they could fix it.

21 Q: Okay. And if -- and if that injury wasn't fixed, in your
22 experience as a trauma surgeon in surgical critical care and
23 general surgery, would she have a long-term lasting effect
24 from that injury?

25 A: Yes. So that would have long lasting diplopia or double

1 vision.

2 Q: And would that be a permanent physical impairment --

3 A: Yes.

4 Q: -- to her eye and to her vision?

5 A: Yes.

6 Q: Okay. Let's look at State's Exhibit 49, please. Okay.

7 This looks like a different view. So can you tell us what
8 view this is?

9 A: So this is like if you slice through this way, slicing
10 through this way, here's your brain. Again, we're going
11 lower, so we're lower to where your orbits are. You can see
12 the nasal bone better. You can see bilateral nasal
13 fractures. As you can see right here, there's actually air
14 tracking, air here. But this is -- you can see how there's a
15 break in that. You also see the significant deformity, like I
16 mentioned, bleeding to kind of that occlusion, that closing
17 off, that all this is swollen edema and you're not able to see
18 the normal air pattern. This is that right side that I --
19 that I mentioned was obstructed.

20 Q: Okay. And is that an injury for which you recommended
21 that K.S. get follow-up care?

22 A: Yes.

23 Q: And what was that recommendation?

24 A: So the same thing. We had someone -- our ears, nose, and
25 throat surgeon examine her while she was inpatient and then

1 she required -- they mentioned follow up in a week. She -- I
2 ultimately, I reviewed the charts and she followed up in New
3 Orleans for -- or Louisiana for repair.

4 Q: Okay. And if she didn't get that injury repaired, what
5 would be the long-term prognosis as far as permanent
6 disfigurement or impairment of a bodily function?

7 A: So definitely permanent disfigurement, right? You can
8 see that the nose is crushed. So the actual shape of the nose
9 that's permanently disfigured and how her -- the shape of her
10 nose. You can see that this -- it's a complete crushing,
11 right? Her whole nose is crushed in. But there's also the
12 function. So if you have obstructed nose, that can cause
13 significant breathing problems, especially sleep breathing.
14 And if people are impacted, I see this as a critical care
15 surgeon, if they can't breathe normally at night when they're
16 sleeping, that impacts -- that increases their risk of heart
17 attack, death, stroke. So this is -- this can have very
18 significant lasting effects on this patient.

19 Q: Okay. Can we see State's Exhibit Number 50? Is that
20 right? Okay. And is -- this is just another slice of that
21 same view, I think; is that correct?

22 A: Correct. Now, we're higher up. This is actually her
23 eyeball.

24 Q: Okay.

25 A: Right here, her globe. You can see some of that facial,

1 that nasal crush. So you see multiple breaks, you see air.
2 But you see all this air tracking around her eyeball, that is
3 not normal. Right. You see the difference. This is her
4 eyelid. You see that -- that, again, significant trauma to
5 the globe and more pressure on the eye. That was one of the
6 things we worried about, is increased pressure. Ocular
7 pressure can cause permanent blindness. So we actually assess
8 that. Sometimes we have to cut someone's eyelid and open it
9 up when they're this swollen in order to ensure that that --
10 they don't lose vision permanently. So that was something we
11 assessed, that you can see, again, this -- all this air
12 tracking around your eyelid, which is not normal.

13 Q: Thank you, Doctor. You can sit back down if you'd like.

14 So you talked about just now the long-term effects of
15 those -- those two particular injuries. We talked about
16 strangulation earlier. Is -- are -- is the injury to the
17 fracture to the orbital socket, is that something that would
18 heal or resolve on its own?

19 A: It would not.

20 Q: Would -- in your opinion, would a person need to have
21 that repaired in order to have any -- to have bodily flexion
22 restored?

23 A: Yes.

24 Q: And in your experience as a surgeon, does surgical repair
25 always result in giving you a 100 percent of function back?

1 A: No. Unfortunately, especially with injuries that are
2 prolonged or delayed, we do not get as good of results as we
3 would hope. And there can definitely be lasting double vision
4 and lasting effects from this.

5 Q: Okay. And did you recommend that she receive follow-up
6 care for this injury?

7 A: Yes, we did.

8 Q: And you -- I think you said that it would have to be
9 surgically repaired, the eye injury. You reviewed, at my
10 request, records from Louisiana that pertain to the victim?

11 A: Yes.

12 Q: Is that correct? And I'm not asking you to tell us how
13 the surgery was performed. I assume that's out of your area
14 of expertise?

15 A: Correct.

16 Q: But I am asking you, did she receive that follow-up
17 surgery that you thought she needed when you reviewed these
18 scans?

19 A: Yes, she did.

20 Q: Do you know if it resulted in restoring complete function
21 to her eye and vision?

22 A: So it did not. I read through the physician's
23 postoperative visits, and initially, she did have some
24 improvement in her double vision, but unfortunately, at her
25 third and fourth visit, there was still double vision was

1 still present -- improved, but still present, unfortunately,
2 for the patient.

3 Q: And would that be an expected outcome for that rectus
4 muscle that you described, that you saw this stance?

5 A: Yes, and it would be -- there would be higher risk of it
6 if it was a delayed presentation as I mentioned.

7 Q: Okay. Let's talk about the nasal fracture. The -- it's
8 basically the same questions. Did you recommend follow-up
9 treatment or care for the nasal fracture?

10 A: Yes.

11 Q: And would that injury resolve on its own without surgical
12 intervention at later date?

13 A: So our bodies can heal, but the functionality in your
14 ability to breathe and the deformity would not heal on its
15 own.

16 Q: So is it fair to say that in order to restore KS's
17 nose to some semblance of what it was before the assault, she
18 had to have surgery?

19 A: Yes.

20 Q: And did she actually have that surgery?

21 A: Yes, with the ears, nose, and (inaudible).

22 Q: Okay. And -- and is her nose today, in your opinion, the
23 same it was before this injury occurred?

24 A: As good as modern medicine is, we aren't good as the
25 original maker and so it -- unfortunately, you can't -- you

1 can attempt to get back, but it -- it's not going to be the
2 initial condition, original condition.

3 **MS. WALLER:** Court's indulgence.

4 **THE COURT:** All right.

5 **MS. WALLER:** No further questions at this time, Your
6 Honor. Please answer any questions the Defense has.

7 **THE COURT:** All right. Cross-examination?

8 **CROSS EXAMINATION OF DOCTOR COBOS BY MR. HILLER:**

9 Q: Doctor, that was a lot of information. Had to flip
10 through some notes here and -- I don't want to have those
11 pictures put back up on the screen, but I think one of the
12 pictures that we spent the most amount of time on was the --
13 picture of Ms. **K.S.**'s private parts, I think that was State's
14 89? There was a -- what you called an old burn. And then --

15 A: I stated that there were various burns -- there were the
16 numerous burns at various stages of healing, so.

17 Q: Right. Well --

18 A: The subacute or acute.

19 Q: Well, there was -- I mean, I -- I was going to finish the
20 thought there. Sorry. Because I -- I understand -- I have --
21 I know that there were several burns in that picture. But the
22 one that was the most healed, you said, I believe was a third-
23 degree burn, not a flash burn, evidence of prolonged contact
24 with some sort of hot instrument. How -- I noticed when you
25 were discussing the photographs with the solicitor, you didn't

1 really give any time frames, but you would use the word like
2 "old." Can you help me understand what the word "old" means in
3 the medical profession for a burn like that?

4 A: So there were burns on -- this was in the right side of
5 her genitalia that were likely -- they were completely
6 healed. So they were likely a month, not quite chronic, but a
7 month old, because they were -- they were the ones that you
8 probably couldn't really visualize. But then there was the
9 burn that had fibrinous exudate on it. And that would've been
10 more recent or within a week or two. To see that still kind
11 of, for lack of a better word, newy but just gelatinous
12 material. And then you had one that had almost scabbed over,
13 it was the really red wound. That was likely what would
14 classify as subacute for two to three weeks, but it had been
15 able to heal up, but was still much more distinct than the
16 other side.

17 Q: So your medical opinion, would it be fair to say is that
18 those burns could not have happened within the course of two
19 or three day period?

20 A: Correct.

21 Q: The -- the CT scans of the face, the left orbital socket
22 that had almost like the gray matter on this kind of distended
23 down, make sure I understand this, that was the muscle of
24 behind the eye, behind the actual --

25 A: So the muscle is actually comes behind, but it comes up

1 and attaches to your eyeball so that it can -- when it
2 contracts, it pulls your eyeball down, so it gets smaller, and
3 you're actually able to look down by that muscle going
4 smaller. And again, you have four, and four quadrants to be
5 able to move in different ways.

6 Q: So when you're saying the entrapment concern, that was
7 specifically speaking to that muscle?

8 A: The inferior rectus. Yes.

9 **MR. HILLER:** Okay. Court's indulgence just one moment.

10 **THE COURT:** All right.

11 **BY MR. HILLER:**

12 Q: All right, Doctor, it is -- it's obvious that you feel
13 compassionately about these injuries that were caused. But as
14 you sit here today, you don't know a what caused, you know,
15 that they occurred and you documented what you saw, correct?

16 A: Correct. I did not physically watch the assault occur.
17 I only saw the aftermath. But given my experience, I'm able
18 to assess the physics and dynamics of blunt-force versus
19 penetrating injuries.

20 **MR. HILLER:** Okay. I don't have any further questions,
21 Your Honor.

22 **THE COURT:** All right. Redirect?

23 **MS. WALLER:** Nothing further, Your Honor.

24 **THE COURT:** All right. You may step down.

25 Let me see the attorneys for a second.

1 **REPORTER'S NOTE:** (Whereby bench conference is held)

2 **THE COURT:** All right. State can call your next
3 witness.

4 **MS. WALLER:** State calls Cindy Smith.

5 **CINDY SMITH, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:**

6 **MS. SMITH:** My name is Cindy Smith. I'm currently
7 retired from the Plaquemines Sheriff's Office as a lieutenant
8 with the detective department.

9 **DIRECT EXAMINATION OF CINDY SMITH BY MS. WALLER:**

10 Q: So I address you as Mr. Smith or Lieutenant Smith?

11 A: Mr. Smith.

12 Q: Mr. Smith. Okay. Mr. Smith, you travel quite away to be
13 here today, didn't you?

14 A: Yes, ma'am.

15 Q: You -- did you come here from Louisiana?

16 A: Yes.

17 Q: And what is your current job? What do you do for a
18 living right now?

19 A: Right now, I am a middle school teacher working with a
20 special education at an alternative school.

21 Q: And before you became a middle school teacher, what did
22 you do?

23 A: I was currently employed with the sheriff's office,
24 working in the detective bureau.

25 Q: And was that in Louisiana?

1 A: Yes, in Plaquemines Parish, ma'am.

2 Q: Okay. And what were your job duties as a detective
3 working in that precinct?

4 A: As a detective, I would do a split operations as a
5 detective, investigating, and processing evidence.

6 Q: Was it sometimes your duty to collect evidence?

7 A: Yes.

8 Q: And when you -- did you sometimes collect what we call
9 DNA standards or buccal swab?

10 A: Yes, it was a DNA samples.

11 Q: DNA samples. And did someone from Horry County, South
12 Carolina where you are today, contact you about collecting one
13 of those samples?

14 A: Yes, ma'am.

15 Q: Do you remember who that was?

16 A: It was an Officer Fletcher at the time.

17 Q: And what did he ask you to do? Do you remember?

18 A: Yes. I spoke with Officer Fletcher in reference to a
19 case that was taking place in South Carolina. I didn't know
20 the actual city, and our assistance was requested from the
21 Plaquemines Parish Sheriff's Office Detective Bureau and
22 obtain a DNA sample through a buccal swab -- swab collection
23 kit.

24 Q: Okay. And can you tell the jury what is a buccal swab
25 collection kit?

1 A: A buccal swab collection kit is a set of cotton tips that
2 are used to actually obtain a swab sample from the mouth in
3 order to collect DNA samples that can be tested at the state
4 or local city crime lab.

5 Q: So is it essentially like a Q-tip swab in the cheek?

6 A: Yes, it's -- it could be either one or two swabs,
7 depending on the buccal swab collection kit sample. And what
8 you'll do is actually swab each cheek for several seconds
9 while twisting the buccal swab in order to get enough saliva
10 to be tested at the -- at the state crime lab or local crime
11 lab.

12 Q: And did you collect a buccal swab from K.S. ,
13 the victim in this case?

14 A: Yes.

15 Q: Okay. I'm going to show you what's been marked for
16 identification as State's Exhibit Number 41. This is our
17 police department's evidence record, but attached to it, I'm
18 going to direct your attention to the three pages attached to
19 that -- that record. Is -- once you got Ms. K.S.'s buccal
20 swab on those Q-tips, what did you do with them?

21 A: And the evidence bags that I have now, this is taken from
22 me, and what happened is, as explained, the buccal swabs were
23 collected and placed inside an evidence bag that was
24 specifically designed for buccal swabs. And from there, it
25 was -- actually, the front page was filled out by myself and

1 the victim that the slaps came from. It was sealed --
2 properly sealed by me. And also, we used evidence tape and we
3 obtained two prints. One right thumb, one left thumb to
4 ensure that specimen taken was from the person, which was
5 KS at the time. And then from there, once it was
6 properly sealed, I in turn sent it to our finance department,
7 which handles all shipping to wherever location that is needed
8 throughout the United States. And from there, the buccal swab
9 evidence was sent to based off of the instructions from
10 Officer Fletcher to the address that's listed on the paperwork
11 that you gave me.

12 Q: And is that the -- does it say Horry County Police
13 Department on there?

14 A: Yes.

15 Q: Okay. So what's -- did you -- when you -- after you took
16 the buccal swabs, did -- when did you place them in the
17 evidence collection back?

18 A: The same that as far as the -- the evidence itself.

19 Q: Did you put the buccal swabs in the bag in the presence
20 of K.S.?

21 A: Yes. Whenever we a -- a buccal swab is obtained by
22 anyone. It's done in the presence of the person collecting it
23 and the person who's we're taking a sample from, in their
24 presence, and it's actually sealed in their presence, labeled
25 and the thumbprints are actually taken and put on the evidence

1 bag. So there's no misunderstanding as to the sample that's
2 inside the buccal swab collection kit that's coming from the
3 person where the sample is received from, and it's taken right
4 to and there when we're doing it.

5 Q: And can you see in that photocopy of your bag that, did
6 you place a piece of evidence tape over the seal of that bag?

7 A: Yes. It's a special type of tape that is considered to
8 be a tamper proof. It's very thin. And once you've sealed a
9 particular envelope or a bag of some sort, that's in reference
10 to evidence. If the bag or envelope is tampered with any way,
11 the evidence tape will actually break. Then if the evidence
12 tapes breaks, then the sample is considered not valid.

13 Q: And did you -- can you see that evidence tape intact in
14 that photocopy?

15 A: Yes, it is also designed to reflect very well when you
16 photograph a copy. So you can tell if there is a tear or a
17 cut in -- on the evidence tape itself. And there were no cuts
18 at all on evidence tape.

19 Q: And I believe is your signature or initials across the
20 top of that (inaudible) tape?

21 A: The initials, when you actually seal any particular
22 evidence, your initials are placed either above or below the
23 evidence tape, in between the evidence tape, and the actual
24 envelope or back itself to show that there's a contact with
25 your -- my initials in this case, above and below the evidence

1 date in the actual bag to show that there's no way that you
2 can actually remove the evidence tape.

3 Q: And attached to the evidence, is there also a UPS
4 shipping receipt, or a shipping label, I think is a better way
5 to describe that?

6 A: Yes. Based on the instructions given by Officer
7 Fletcher, we have the shipping to the address.

8 Q: And where did it -- who did it come from?

9 A: It came from our finance officer, which I in turn gave
10 the evidence back directly to for safe keeping because we have
11 to keep the -- the evidence of whatever type in a controlled
12 environment at all times. And it was given to Linda Fisher
13 who handles all transportation items.

14 Q: And did she then mail it to the Horry County Police
15 Department?

16 A: Yes, she did.

17 **MS. WALLER:** Okay. I have no further questions for this
18 witness.

19 **THE COURT:** All right. Cross examination?

20 **MR. HILLER:** Just to make sure I understand. Mr. Smith,
21 so the SIS -- well, first of all, may I see because you
22 actually didn't --

23 **MS. WALLER:** It's up there. Yes.

24 **MR. HILLER:** Make sure what I'm looking at.

25 **MS. WALLER:** Yes.

1 **MR. HILLER:** May I just return this to him, Your Honor?

2 **THE COURT:** Yes.

3 **CROSS EXAMINATION OF CINDY SMITH BY MR. HILLER:**

4 Q: So on the evidence bag, the SIS, those are your
5 initials?

6 A: Are you referring to the first page, sir?

7 Q: I'm referring to what I believe to be the outside of the
8 evidence bag bearing the two thumb prints.

9 A: Okay. The evidence bag itself? Yes. They're my
10 initials, SLS.

11 Q: And contained in that bag are the -- are the buccal
12 swabs?

13 A: Yes.

14 Q: How many buccal swabs did you collect? Do you recall?

15 A: For this particular lock number, should have been two
16 small buccal swabs.

17 Q: And you gave -- did you actually do the packaging in --
18 of the evidence tag into the UPS shipping container? Or did
19 Ms. Fisher do that?

20 A: Ms. Linda Fisher did.

21 Q: Okay. And was it your testimony that she then mailed it
22 off or that you retrieved it from her and mailed it off?

23 A: No. Ms. Linda Fisher mailed the package off, based off of
24 the address that was given to her.

25 Q: So it went from you to Ms. Fisher to the UPS van, to

1 Horry County?

2 A: Yes.

3 **MR. HILLER:** Okay. No further questions.

4 **THE COURT:** Redirect?

5 **MR. WALLER:** No, sir, Your Honor.

6 **THE COURT:** All right. You may step down.

7 State can call your next witness.

8 **MS. WALLER:** Your Honor, the state calls Merrell

9 Hawkins.

10 **MERRELL HAWKINS, HAVING BEEN DULY SWORN TESTIFIES AS**

11 **FOLLOWS:**

12 **MS. HAWKINS:** Merrell Hawkins, M-E-R-R-E-L-L H-A-W-K-I-N-
13 S.

14 **DIRECT EXAMINATION OF MERRELL HAWKINS BY MS. WALLER:**

15 Q: Ms. Hawkins, where are you currently employed? What's
16 your primary job?

17 A: I -- I have two jobs.

18 Q: Okay.

19 A: But the -- for the purposes of today, I work at the Horry
20 County Police Department. I'm an evidence technician.

21 Q: What's your other job?

22 A: I work for Johns Hopkins University. I recently just got
23 promoted to assistant director of a new program for online
24 services for the social sciences program.

25 Q: Congratulations.

1 A: Thank you.

2 Q: At your job, do you work in the evidence department of
3 the Horry County Police Department?

4 A: Yes, ma'am.

5 Q: And what are your job duties there?

6 A: I intake the evidence. So evidence comes into us through
7 various sources, and we -- we intake it and then we maintain
8 the care, custody, and control of that evidence.

9 Q: So do you store the evidence in the secure facility?

10 A: Yes, ma'am.

11 Q: And do you have policies and procedures in place to
12 protect the evidence?

13 A: Yes, ma'am

14 Q: Do you also maintain evidence records or what we refer to
15 as chain of custody forms?

16 A: Yes, ma'am.

17 **MS. WALLER:** I'm going to show you what's been marked as
18 State Exhibit 41. The same one we just look at. May I
19 approach, Your Honor?

20 **THE COURT:** Yes.

21 **BY MS. WALLER:**

22 Q: Is -- is this one of Horry County Police Department's
23 evidence forms?

24 A: It is.

25 Q: And as an employee of Horry County Police Department, are

1 you in the study of those records?

2 A: I am, yes.

3 Q: Your Honor -- is that a fair and accurate copy of the
4 record in this case?

5 A: Yes, ma'am.

6 **MS. WALLER:** Your Honor, the state moves Exhibit 41 into
7 evidence at this time.

8 **THE COURT:** Any objection?

9 **MR. HILLER:** Just ask a question, Your Honor, before.

10 **MS. WALLER:** Well, I think I should -- I can finish. I
11 can ask her more.

12 **THE COURT:** All right. Lay some more foundation.

13 **BY MS. WALLER:**

14 Q: So when you're looking at that particular evidence form,
15 what is the item of evidence it's for, first of all?

16 A: It's for a set of DNA swabs.

17 Q: Okay. And does it have your signature on it?

18 A: It does, yes, ma'am.

19 Q: Okay. And attached to that form, are there also
20 photocopies attached?

21 A: There are.

22 Q: Did you make those photocopies?

23 A: I did.

24 Q: Okay. Do you recall how those buccal swabs came into
25 your possession?

1 A: I do.

2 Q: Okay. Can you tell me how that occurred please?

3 A: They came in through the mail to our -- the ML Brown
4 Building where I work. And one of the detectives, Detective
5 Dudley, he -- he actually got the package and he submitted
6 these to me. He actually dropped them in our drop slot. We
7 have a central drop slot, so he put them in the drop slot.

8 Q: And when you received those packages, were they intact?
9 That is, did you make those photocopies attached to that
10 evidence record?

11 A: I did.

12 Q: And can you see on those photocopies that the evidence
13 tape that we just heard testimony about is intact?

14 A: It is, yes.

15 Q: Could you tell in person if it had been tampered with?

16 A: Yes. I'm very familiar with evidence tape. I work with
17 it every day.

18 Q: Had it been tampered with?

19 A: No, ma'am.

20 Q: Okay. And once you received those items, what did you do
21 with them?

22 A: So I would've keep them in verified that I have the
23 package. I did not open this package. I put the entire
24 package the way it came into another envelope, and then we
25 packaged it to go to the state lab -- lab at SLED.

1 Q: So you never actually unsealed that tape either?

2 A: I did not.

3 Q: And did you also make copies of the UPS label showing
4 where it came from?

5 A: I did.

6 Q: And then I believe there's another form, it's a another -
7 - may I hold that for a second? I'm sorry. The second page
8 of this looks like -- also, it looks like a photograph of the
9 bag as well. Is that -- can you tell?

10 A: I am not a 100 percent. I -- it looks like the bag to me
11 and -- I'm not sure if it was bat or maybe a form that was
12 with it.

13 Q: But does it have -- does that -- does that look like also
14 a chain of custody form?

15 A: Yes. And that's why I would've photocopied it and put it
16 with our paperwork because this is the chain of custody from
17 the Sheriff's Department in Louisiana where it came from.

18 **MS. WALLER:** Okay. And Your Honor, at this time the
19 State moves this exhibit into evidence.

20 **THE COURT:** Any objection?

21 **MR. HILLER:** Yes, Your Honor. Just on grounds that the
22 last person to touch it in that sheriff's office and the first
23 person to touch it here are both missing from the chain.

24 **MS. WALLER:** Your Honor, State v. Hatcher only requests
25 us to identify witnesses in the chain, not to actually call in

1 live and in person for court.

2 **THE COURT:** All right. All right. State's Exhibit 41
3 admitted into evidence over Defendant's objection.

4 **(STATE'S EXHIBIT NUMBER 41 IS**
5 **ADMITTED INTO EVIDENCE)**

6 **MS. WALLER:** Thank you, Your Honor.

7 **BY MS. WALLER:**

8 Q: I'm going to show you -- may I approach your witness,
9 Your Honor?

10 **THE COURT:** Yes.

11 **BY MS. WALLER:**

12 Q: What's been marked as state's exhibit number 71. Can you
13 identify this exhibit?

14 A: Yes, ma'am. This is the envelope that I put those buccal
15 swabs into to go to SLED.

16 Q: Okay. So that -- is that the envelope that you received
17 in the mail? With the buccal swabs inside?

18 A: This is not the envelope that I received. This is the
19 envelope that -- the orange envelope is what I put them into.

20 Q: Okay.

21 A: The white envelope would've gone in this envelope, and
22 then I also put it into this heat-seal bag that SLED
23 requires.

24 Q: Okay.

25 Q: Once we package it in our packaging, then it goes in

1 their packaging. And you have my name and date on there when
2 I did that.

3 Q: Perfect. And SLED, you're referring to the South
4 Carolina Law Enforcement Division?

5 A: Correct. They -- they're the ones that have the
6 (inaudible).

7 Q: Okay. They test the DNA for the State; is that correct?

8 A: Correct.

9 **MS. WALLER:** No further questions for this witness, Your
10 Honor.

11 **THE COURT:** All right. Cross-examination?

12 **CROSS EXAMINATION OF MERRELL HAWKINS BY MR. HILLER:**

13 Q: David Dunley is no longer with the (Inaudible) City??

14 A: No, sir.

15 **MR. HILLER:** Okay. No other question.

16 **THE COURT:** Redirect?

17 **MS. WALLER:** No, sir, Your Honor.

18 **THE COURT:** All right. You can step down.

19 Let me see the attorneys.

20 **REPORTER'S NOTE:** (Whereby bench conference is held).

21 **THE COURT:** All right. Ladies and gentlemen, next
22 witness might take some time, so we're going to go ahead and
23 break for the day. I'm going to ask that you be back at 9:15
24 tomorrow morning. Again, I want to thank you for being prompt
25 this morning. I ask you to be prompt tomorrow morning. Do

1 not discuss the case even among yourselves. It's too early
2 for deliberations. Don't conduct any independent
3 investigations into the case. I hope everybody has a good
4 evening. And we'll see you back at 9:15 tomorrow morning.
5 Thank you very much.

6 **REPORTER'S NOTE:** (Jury exits courtroom at 4:31pm)

7 **THE COURT:** All right. Mr. Fox. I agree. We will put
8 something on the record.

9 **MR. FOX:** Yes, sir, Your Honor. We had a -- a bench
10 conference just before Dr. Rachel Cobos testified, because we
11 knew that was when the State was going to enter photographs.
12 And that specifically are State's exhibit 72 to 99, which we
13 previously objected to just before the doctor's testimony. I
14 did object to the manner which the State intended to publish
15 those photos to the jury. Specifically, they were shown from
16 a disc, from a computer and placed on a large TV monitor,
17 which I asked, I don't know exactly. I have a 55-inch screen
18 at home. This is a good bit bigger than that. So it's at
19 least 60, 65 inches. And my point being that that made them
20 then larger than life and exaggerated them -- not exaggerated,
21 at least increase the injuries -- made them even more vivid,
22 even more crucial. And that requested, Your Honor, to have
23 the State publish by simply handing copies of the eight by 10
24 photographs. I just wanted to place that on the record, Your
25 Honor.

1 **THE COURT:** All right. And as I recall here at the
2 sidebar, I denied your motion. I'll allow the State to
3 present the State's Exhibit 72 through 99 as they did. All
4 right. Anything further from the State before we recess for
5 the evening?

6 **MS. WALLER:** No, sir.

7 **THE COURT:** Anything from the Defense?

8 **MR. HILLER:** No, sir, Your Honor.

9 **THE COURT:** All right. We'll be in recess. I'll take
10 the bench at 9:30 tomorrow morning. All right.

11 **(COURT IS IN RECESS)**

12 **MS. WALLER:** Good morning.

13 **THE COURT:** Morning. How are you?

14 **MS. WALLER:** Good. How are you?

15 **THE COURT:** Doing well. All right. Anything from the
16 State before we bring the jury in?

17 **MS. WALLER:** No, sir, Your Honor.

18 **THE COURT:** Anything from the defense?

19 **MR. HILLER:** No, sir.

20 **THE COURT:** All right. Let's bring the jury in.

21 **REPORTER'S NOTE:** (Jury enters courtroom at 9:49am)

22 **THE COURT:** Today is the 31st?

23 Ladies and gentlemen, welcome back. I appreciate again
24 your promptness this morning. And I apologize again for
25 keeping you in the jury room for so long. But we're ready to

1 resume the trial of the case. The State can call your next
2 witness.

3 **MS. WALLER:** Your Honor, the State calls Lori Dudley.

4 **LORI DUDLEY, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:**

5 **MS. DUDLEY:** Lori Dudley, D-U-D-L-E-Y.

6 **DIRECT EXAMINATION OF LORI DUDLEY BY MS. WALLER:**

7 Q: Ms. Dudley, where are you currently employed?

8 A: I'm employed by the Horry County Police Department.

9 Q: And what's your job title there?

10 A: I'm the evidence supervisor.

11 Q: What are your job duties as the evidence supervisor?

12 A: My job duties are to manage the evidence unit. So, the
13 care, custody and control of all the evidence that we take in
14 is my responsibility.

15 Q: And how long have you worked at the Horry County Police
16 Department?

17 A: May will be 28 years.

18 Q: Twenty eight. Were you -- so if you've been there 28
19 years, you were of course, employed there back in September of
20 2021?

21 A: Yes, I was.

22 Q: As part of your job duties of being in charge of
23 evidence, do you sometimes transport items of evidence from
24 the evidence locker, evidence room that's secured at the
25 police department to SLED, the State Law Enforcement Division.

1 A: Yes, I do.

2 Q: And did you transport some items in the case we are here
3 for today?

4 A: Yes, I did.

5 Q: Okay. I'm going to show you what has been marked as
6 State's Exhibit 71.

7 **MS. WALLER:** May I approach Your Honor?

8 **THE COURT:** Yes.

9 **BY MS. WALLER:**

10 Q: And can you look at that package and tell me, is that a
11 package that came back from SLED?

12 A: Yes, it is.

13 Q: And how can you identify this package?

14 A: It has our case number on it as well as our agency logo,
15 and our barcode.

16 Q: Okay. And are those -- is -- does that package contain
17 two DNA swabs for K.S.?

18 A: Yes, it does.

19 Q: Okay. I'm going to show you what's been pre-marked as
20 State's Exhibit Number 102. Take a look at that. Is that
21 another item that came back from SLED?

22 A: Yes, it is.

23 Q: And does that package contain the buccal slides of Rico
24 Funderburk? If we need to open it, we can.

25 A: I don't think I have the right one.

1 Q: That has -- it should have other stuff. May I see it?
2 We may have to open this. Can you tell if it contains swabs
3 from areas above the armrest of the vehicle? Thank you.
4 A: Yes, it does.
5 Q: Does it also contain swabs from, it says, "Under the
6 armrest the interior of the vehicle? "
7 A: Yes, it does.
8 Q: Swabs smudges from the interior of the rear passenger
9 door?
10 A: Yes, it does.
11 Q: And does it contain swabs from the rear passenger door,
12 interior armrest?
13 A: Yes, it does.
14 Q: This -- and that should be everything in that package?
15 A: Yes.
16 Q: Did you transport that package to the State Law
17 Enforcement Division?
18 A: Yes, I did.
19 Q: Okay. I'm going to show you what's been marked as
20 State's Exhibit 65. I apologize. Does this one contain the
21 buccal swabs of Rico Funderburk?
22 A: Yes, it does.
23 Q: I'm going to show you what's been marked as State's
24 Exhibit Number 63. Do you recognize this item?
25 A: Yes, I do.

1 Q: And what is that document?

2 A: This is a chain of custody from State Law Enforcement
3 Division.

4 Q: And can you read that document and tell that you
5 transported those items to SLED?

6 A: Yes. My name appears on it.

7 Q: And when you took -- when you take them to SLED, what do
8 you do with them?

9 A: They are -- we pick them up from our office, drive them
10 to Columbia where we find an available locker and put the
11 evidence in a locker and drop the key.

12 Q: Do you alter or tamper with the evidence in any way?

13 A: No, I do not.

14 Q: And is that your standard policy and procedure at Horry
15 County Police Department?

16 A: Yes, it is.

17 **MS. WALLER:** Your Honor, I have no further questions for
18 this witness.

19 **THE COURT:** All right. Cross-examination.

20 **MR. HILLER:** Not on this witness, Your Honor.

21 **THE COURT:** All right. You may sit then.

22 **THE COURT:** State can call your next witness.

23 **MR. MARTIN:** Your Honor, State calls Matthew Stephenson.

24 **MATTHEW STEPHENSON, HAVING BEEN DULY SWORN TESTIFIES AS**
25 **FOLLOWS:**

1 **THE WITNESS:** Matthew Stevenson, S-T-E-P-H-E-N-S-O-N.

2 **DIRECT EXAMINATION OF MATTHEW STEPHENSON BY MR. MARTIN:**

3 Q: What's your occupation?

4 A: I'm a crime scene detective with Horry County Police
5 Department.

6 Q: And Detective, how long have you been with Horry County?

7 A: Sixteen years.

8 Q: How long have you been in law enforcement?

9 A: Twenty years total.

10 Q: And what's your current -- I know you said you're a
11 detective, but what is that current duty assignment that you
12 have with the county?

13 A: I'm currently the sergeant in our crime scene unit.

14 Q: And what -- as a sergeant of crime scene, what are some
15 of your duties and responsibilities on a day-to-day basis?

16 A: I oversee several crime scene detectives, and we are
17 responsible for processing various crime scenes, processing
18 any evidence that is turned in from patrol. And whatever
19 crime scene duties are needed throughout the department, we're
20 responsible for that.

21 Q: And do you have any sort of specialized training to be a
22 crime scene detective?

23 A: Yes. I've been to numerous classes on crime scene
24 photography, forensic photography DNA collection, fingerprint
25 identification and collection. And also, various classes on

1 crime scene processing.

2 Q: Back in August and September of 2021, were your duties
3 with the county the same?

4 A: No. I was -- I was a detective at the time.

5 Q: And still the crime scene?

6 A: Yes, I was.

7 Q: And back in August and September of 2021, did you have an
8 occasion to become involved in the case that you're here for
9 today?

10 A: I did.

11 Q: And were you asked to search and process a 2015 maroon
12 Toyota Highlander in this case?

13 A: Yes, I was.

14 Q: And who asked you to do that?

15 A: Detective Fletcher.

16 Q: And what date did you in fact, search and process that
17 Highlander?

18 A: It was September 3rd, 2021.

19 Q: So, generally speaking, how do you process or inventory a
20 vehicle that you're going to search?

21 A: When we start with a vehicle, our common practice is to
22 take overall photos of the exterior of the vehicle. At that
23 point, we collect any evidence from the exterior, whether that
24 be DNA fingerprints, whatever we need to collect from the
25 exterior. And then we move to the interior. We repeat

1 overall photographs before we move or touch anything. And
2 once those are completed, then we go into actual evidence
3 collection and inventory of the items that are in the vehicle.

4 Q: And do you generally know a few basic facts about the
5 case when you search the vehicle?

6 A: Yes.

7 Q: And why would that be?

8 A: It helps us to know what we're kind of looking for, or
9 what the crime actually was. And if we don't know what the
10 crime consisted of, then we could just collect a bunch of
11 random things and that serve no evidentiary value. So, it
12 helps us to have a few facts about the case.

13 Q: So, you're trying to look for relevant items?

14 A: Yes.

15 Q: And is everything you just described to the jury what you
16 did here in this case of Rico Funderburk?

17 A: Yes.

18 Q: So, let's start sort of with the exterior of the vehicle,
19 shall we? Did you in fact, in this case, photograph the
20 exterior of the vehicle?

21 A: I did.

22 Q: I'm going to show you what's been marked --

23 **MR. MARTIN:** Your Honor, may I approach the witness?

24 **THE COURT:** Yes.

25 **BY MR. MARTIN:**

1 Q: As State's 31. Do you recognize this photograph?

2 A: Yes, sir.

3 Q: What is that photograph of?

4 A: That's the photograph of the 2015 Maroon Toyota
5 Highlander that I searched on that date.

6 Q: Does it fairly and accurately represent the car as you
7 saw it?

8 A: Yes.

9 **MR. MARTIN:** Your Honor, the State would ask that
10 photograph be admitted into evidence and published for the
11 jury.

12 **THE COURT:** Any objection?

13 **MR. HILLER:** No, Your Honor.

14 **THE COURT:** All right. State's Exhibit 31 admitted into
15 evidence without objection.

16 **(STATE'S EXHIBIT NUMBER 31 IS**
17 **ADMITTED INTO EVIDENCE)**

18 **BY MR. MARTIN:**

19 Q: And while we're getting this queued up, did you then move
20 along to the exterior of the vehicle and search for what you
21 just referenced, any DNA evidence or anything like that?

22 A: I did.

23 Q: Did you find anything?

24 A: I found a couple of smudges on the rear passenger door,
25 on the -- I believe it was on the -- around the window and the

1 door handle.

2 Q: Did you find anything that you believed to be relevant to
3 the case?

4 A: On the exterior of the vehicle, no.

5 Q: So, let's move to the interior of the vehicle. Did you
6 in fact search the inside of this vehicle?

7 A: I did.

8 Q: And did you in fact, follow the same process essentially
9 that you used for the exterior of the vehicle?

10 A: Yes, I did.

11 Q: So, did you -- did you examine the interior of the
12 vehicle for any suspected DNA or blood or anything like that?

13 A: I did.

14 Q: And did you locate it?

15 A: I did.

16 Q: Did you locate anything above the arm armrest of the rear
17 driver door?

18 A: Yes, I did. There was what appeared to be blood.

19 Q: What about under the armrest of the rear driver door?

20 A: Yes.

21 Q: What about the interior rear passenger window?

22 A: Yes, sir.

23 Q: What about the rear passenger door armrest?

24 A: Yes ,sir.

25 Q: And lastly, what about the rear passenger door panel?

1 A: Yes, sir.

2 Q: Did you perform any testing on this?

3 A: The way that we do that is, I always take my DNA samples
4 for possible DNA from the area to start with, and then I go
5 back and take a, what we call a presumptive test from that
6 area, which we use Bloodstained Green QuickCheck is what it's
7 called. And it's a presumptive blood test, it reacts with the
8 Hema group in blood. And when you get a positive reaction,
9 the swab is swabbed with a cotton swab. When you put the
10 chemical on that swab, if there is the presence of blood is on
11 there, it will turn a dark green color. If there's -- if it's
12 a negative reaction, there won't be any color change on the
13 swab.

14 Q: And what were the results of the testing that you
15 performed?

16 A: The swabs collected or the presumptive tests from the
17 interior of the vehicle were all positive for the presence of
18 blood.

19 **MR. MARTIN:** Your Honor, may I approach the witness?

20 **THE COURT:** Yes.

21 **BY MR. MARTIN:**

22 Q: I'm approaching you with State's 21 through 25. Could
23 you take a moment and look at these and see if you recognize
24 those photos?

25 A: Yes, I recognize them.

1 Q: Are those the locations in which you conducted your
2 testing?

3 A: Yes, they are.

4 Q: And those photos fairly and accurately represent what you
5 saw and did that day?

6 A: Yes.

7 **MR. MARTIN:** Your Honor, the State would ask that these
8 photographs be admitted into evidence and published for the
9 jury.

10 **THE COURT:** Any objection?

11 **MR. MARTIN:** That one 21 to 25.

12 **MR. HILLER:** About two of those, five items of evidence,
13 Your Honor.

14 **THE COURT:** All right. State's exhibits 21, 22, 23, 24
15 and 25 are admitted into evidence without objection.

16 **(STATE'S EXHIBIT NUMBER 21 - 25**
17 **ARE ADMITTED INTO EVIDENCE)**

18 **MR. MARTIN:** Can we start with 21, please?

19 **BY MR. MARTIN:**

20 Q: And what in fact are we looking at here?

21 A: That is actually the box containing the swabs that I
22 collected from that area with my evidence number.

23 Q: And what area would that be?

24 A: It appears to be that that is the swab that I -- DNA swab
25 that I collected from the armrest of the passenger door,

1 interior.

2 Q: Thank you.

3 **MR. MARTIN:** And go to 22, please.

4 **BY MR. MARTIN:**

5 Q: Again, same question. What are we looking at in this
6 photograph?

7 A: That is again, the swabs that I collected from the area
8 of the rear passenger door panel.

9 Q: And did you -- and you in fact, swab that door, right?

10 A: Yes.

11 Q: Can you see in the photograph where in fact, or what in
12 fact, you did swab?

13 A: Yes. The red staining that is on the door panel itself
14 to the right of the Number 5 is where the evidence was
15 collected from.

16 **MR. MARTIN:** Twenty-three.

17 **BY MR. MARTIN:**

18 Q: And what are we looking at here?

19 A: That is a swab that was collected from the, I believe
20 it's the interior passenger window. There was a smudge on
21 there and that's where that was collected from.

22 Q: Twenty-four.

23 A: And that is a swab of the interior armrest. Again, Item
24 8.

25 Q: And this photograph, it's sort of hard to see. Why did

1 you -- why did you swab here?

2 A: I believe there was -- there was red staining on that
3 armrest in that panel inside that door.

4 Q: And finally, 25. And again, what are we looking at here?

5 A: That is a swab that was collected from the interior door
6 pocket where the handle is. There was red staining inside of
7 that handle that appeared to be broken.

8 **MR. MARTIN:** Your Honor, may I approach the witness?

9 **THE COURT:** Yes.

10 **BY MR. MARTIN:**

11 Q: I'm approaching you with State's 26 through 30. If you
12 could, again, just take a moment and look at these photographs
13 and see if you can identify them.

14 A: Yes.

15 Q: And are these photos of the presumptive positive swabs
16 that you took that day?

17 A: Yes, they are.

18 Q: They fairly and accurately represent what you saw?

19 A: Yes, sir.

20 **MR. MARTIN:** Your Honor, at this time, the State would
21 ask to admit 26 through 30 into evidence.

22 **THE COURT:** All right. Any objection?

23 **MR. HILLER:** Not to those pictures, Your Honor.

24 **THE COURT:** All right. State's Exhibits 26, 27, 28, 29
25 and 30 are admitted into evidence without objection.

1 (STATE'S EXHIBIT NUMBER 21 - 30

2 ARE ADMITTED INTO EVIDENCE)

3 MR. MARTIN: And again, we ask to publish these photos as
4 well to the jury.

5 THE COURT: All right.

6 BY MR. MARTIN:

7 Q: So, if we could start with 26. Now, in this photograph
8 are we looking at in fact, a swab?

9 A: Yes, we are.

10 Q: And I believe you previously testified that the swab
11 would turn a certain color if it in fact indicated a
12 presumptive positive; is that --

13 A: Yes. The reason it's called the Bloodstain Green
14 QuickCheck, is because of the dark green color that's
15 indicated on that swab. That would indicate a presumptive
16 positive for the presence of blood.

17 Q: And again, where was that swab taken?

18 A: That was taken from the interior passenger door armrest.

19 Q: Next one. Where was this swab taken?

20 A: From the interior passeng -- rear interior passenger door
21 panel from the red staining.

22 Q: And silly question, did it indicate positive?

23 A: It did.

24 Q: Okay. Where is this one?

25 A: That one is from the interior rear passenger door window

1 that is also indicating a positive reaction.

2 Q: How about this one?

3 A: It's same. A positive reaction on the interior passenger
4 -- rear passenger door armrest area.

5 Q: And finally 30? Same set of questions.

6 A: Yes. And that is again, indicating a positive reaction
7 from that red staining area inside of the door handle pocket.

8 Q: So, once you conducted this testing, what do you do next
9 with these swabs?

10 A: They are sealed, we take them to -- into our lab at the
11 police department, they're sealed with evidence tape, and then
12 they are sealed in an airtight heat seal.

13 Q: When you take these items to the evidence lock locker,
14 could you describe that process?

15 A: When we take them into our lab, we have our own secure
16 lockers inside of our lab that the crime scene detectives use
17 for processing other items at later times. But once they are
18 there, they are considered entered into evidence -- our
19 evidence section, because we -- our lab is only accessible by
20 us, by our division.

21 Q: And did you tamper with these swabs in any way?

22 A: No, I did not.

23 Q: When you take evidence back to the -- to the locker, do
24 you commonly fill out a form that's commonly called a chain of
25 custody form or chain of custody report?

1 A: Yes, we did.

2 Q: Did you in fact do that in this case?

3 A: Yes, sir. I did.

4 Q: And as an employee of Horry County Police Department, is
5 this document kept in the ordinary course of business?

6 A: Yes, it is.

7 Q: And are you a custodian of these records?

8 A: Yes, sir.

9 **MR. MARTIN:** Your Honor, I approach the witness with
10 State's 36?

11 **THE COURT:** Yes.

12 **BY MR. MARTIN:**

13 Q: Just take a moment. And is this in fact a fair and
14 accurate copy of the evidence log that you filled out?

15 A: Yes, it is.

16 **MR. MARTIN:** Your Honor. The State asks that that chain
17 of custody form, States 36 be admitted into evidence.

18 **THE COURT:** Any objection?

19 **MR. HILLER:** State's 36. Yes sir, Your Honor. There are
20 more items of evidence listed on that chain of custody form
21 than the State, I believe intends to introduce into evidence.
22 There's 10 items that testified over the other five are just
23 other items that apparently -- at least as of now, have not
24 been identified for use of this trial.

25 **THE COURT:** All right. State's Exhibit 36 admitted into

1 evidence over defendant's objection.

2 (STATE'S EXHIBIT NUMBER 36

3 IS ADMITTED INTO EVIDENCE)

4 BY MR. MARTIN:

5 Q: So, Defense has brought up an interesting point. When
6 you're examining something, is there a -- how do you go about
7 determining what gets sent to SLED and what doesn't get sent
8 to SLED?

9 A: It's part of my job to determine what is going to serve
10 the most evidentiary value. In this case from the vehicle
11 search, I determined that the DNA swabs that I had collected
12 would -- of the red staining that were presumptively positive,
13 would serve the most evidentiary value. SLED mandates that we
14 can only send five unknown swabs related to a violent crime.
15 They -- because there's just no physical way they can process
16 every swab that's collected throughout the state. So, I can
17 only send five. So, I have to be kind of picky and choosy
18 about what I send.

19 Q: So, in this particular case, were there other items
20 swabbed for DNA that were not sent to SLED?

21 A: There was, yes.

22 Q: And you previously testified that SLED only accepts five.
23 Is that a standard for the entire State of South Carolina?

24 A: As far as I'm aware, yes.

25 Q: Now, you previously testified -- previously testified

1 that when you take these items, you seal them up?

2 A: Yes.

3 Q: I'm going to show you States 102, which includes a couple
4 items inside of it. I'm going to ask you if you can identify
5 what these are -- the in fact, the swabs that you're referring
6 to. Take a moment and look at that.

7 A: Yes. These are the swabs I collected.

8 Q: And how are you able to identify that those are the
9 swabs?

10 A: These are the swabs that were collected from the vehicle.
11 I actually filled out this envelope myself and my signature's
12 on the back of this envelope. I can't see the seal, but I
13 believe I'm the one that sealed this input.

14 Q: So, when you -- moving along in your process of the in --
15 the interior of the vehicle. Did you then move to see if you
16 could locate any relevant items of evidence in this case?

17 A: I did.

18 Q: And again, in this particular case, what kind of items
19 were you -- were you looking for?

20 A: I was looking for various types of tools to include
21 socket wrenches that I was advised that were used to assault
22 the victim. Lighters that were used to burn the victim,
23 charging cords, a possible jack handle or tire iron type tool.
24 and also, possibly a ball bat.

25 **MR. MARTIN:** Your Honor, may I approach the witness with

1 State's 11, nut screwdriver?

2 **THE COURT:** Yes.

3 **BY MR. MARTIN:**

4 Q: Approaching you with what's been marked as State's 11,
5 nut screwdriver. Is that in fact an item that you found
6 inside the vehicle?

7 A: It is. The screwdriver's located in the front --
8 interior front driver's door.

9 Q: And is that -- tell me one more time, I'm sorry. Where
10 inside the vehicle was that found?

11 A: It was inside the interior front driver's door, like
12 little pocket that's inside the door.

13 Q: And how are you able to identify that that is in fact the
14 one that you found?

15 A: It was the one that I collected, and it was photographed,
16 and collected by me.

17 **MR. MARTIN:** Your Honor, at this time the State asked to
18 admit that into evidence.

19 **THE COURT:** Objection?

20 **MR. HILLER:** No, sir.

21 **THE COURT:** All right. State's Exhibit 11 admitted into
22 evidence without objection.

23 **(STATE'S EXHIBIT NUMBER 282**

24 **IS ADMITTED INTO EVIDENCE)**

25 **BY MR. MARTIN:**

1 Q: Next, I'm going to show you Item Number -- State's Item
2 Number 14. State's Item 14, socket wrench, is this in fact,
3 an item that you located from the vehicle?

4 A: Yes, it is.

5 Q: Where in the vehicle did you find that?

6 A: I bel -- may I refer to my case file?

7 Q: Please. Once you look at it, just turn it back right
8 over.

9 A: Yes, sir. That was -- that socket wrench was recovered
10 from the glove box of the vehicle.

11 Q: And again, that's in fact, the socket wrench you located?

12 A: Yes, it is.

13 **MR. MARTIN:** Your Honor, the State would ask to admit
14 State's 14 into evidence.

15 **THE COURT:** Any objection?

16 **MR. HILLER:** No, sir, Your Honor.

17 **THE COURT:** State's Exhibit 14 admitted into evidence
18 without objection.

19 **(STATE'S EXHIBIT NUMBER 14**

20 **ARE ADMITTED INTO EVIDENCE)**

21 **MR. MARTIN:** May I approach the witness?

22 **THE COURT:** All right.

23 **BY MR. MARTIN:**

24 Q: Approaching you with State's 16, socket wrench with black
25 selector. Did you in fact, locate that tool inside the

1 vehicle?

2 A: I did.

3 Q: And do you know where that inside the vehicle you located
4 that?

5 A: That item was also in the glove box.

6 **MR. MARTIN:** Your Honor, State asks to admit State's 14.

7 **THE COURT:** Fourteen was the last one.

8 **MR. MARTIN:** 16, Your Honor, I'm sorry, into evidence.

9 **THE COURT:** Any objection?

10 **MR. HILLER:** No, Your Honor.

11 **THE COURT:** State's Exhibit 16 admitted into evidence
12 without objection.

13 **(STATE'S EXHIBIT NUMBER 16**

14 **IS ADMITTED INTO EVIDENCE)**

15 **MR. MARTIN:** Your Honor, may I approach the witness?

16 **THE COURT:** Yes.

17 **BY MR. MARTIN:**

18 Q: Approaching you with State's 18, L-shaped jack handle.
19 Did you in fact, locate this inside of the car?

20 A: Yes, sir, I did.

21 Q: And do you know where you located that?

22 A: I believe it was in the rear passenger floorboard.

23 **MR. MARTIN:** Your Honor, the State asks to admit 18, the
24 jack handle into evidence.

25 **THE COURT:** Any objection?

1 **MR. HILLER:** No, Your Honor.

2 **THE COURT:** State's Exhibit 18 admitted into evidence
3 without objection.

4 **(STATE'S EXHIBIT NUMBER 18**

5 **IS ADMITTED INTO EVIDENCE)**

6 **BY MR. MARTIN:**

7 Q: Now, that particular item, did you swab that?

8 A: I did.

9 Q: And did you send that swab to SLED?

10 A: No, I did not.

11 Q: That was not one of the five that you selected?

12 A: No, sir.

13 Q: Why did you determine to swab that item.

14 A: Because it was possibly used in the crime and I swabbed
15 it for touch DNA.

16 Q: And would you suspect the defendant's own DNA to be on an
17 item found in his car?

18 A: Yes, I would.

19 Q: And to follow back a little bit with regards to SLED,
20 does the county have their own lab to test these items?

21 A: No, we do not.

22 Q: So, do you have to send all of these items to Columbia to
23 be tested?

24 A: Yes.

25 Q: And does SLED, in fact, test all the items around the

1 State of South Carolina, or test items for all around the
2 State of South?

3 A: Yes, they did.

4 Q: Next, I'm going to show you State's 15, pocketknife with
5 broken blade. Did you locate that item inside the vehicle?

6 A: I did.

7 Q: And do you remember where?

8 A: Yeah. I believe it was in the cup holder for the center
9 console.

10 **MR. MARTIN:** Your Honor, the State asks to move 15 into
11 evidence.

12 **THE COURT:** Any objection?

13 **MR. HILLER:** No, sir.

14 **THE COURT:** State's Exhibit 15 admitted into evidence
15 without objection.

16 **(STATE'S EXHIBIT NUMBER 15**
17 **ARE ADMITTED INTO EVIDENCE)**

18 **BY MR. MARTIN:**

19 Q: Now, did you find any lighters inside the vehicle?

20 A: I did.

21 Q: And why would you be looking for lighters?

22 A: I was advised that the victim was burned with lighters
23 during the commission of the crime.

24 Q: Approaching you with a pink lighter, States 12. Is that
25 in fact, a lighter that you recovered from the vehicle?

1 A: Yes, it is.

2 Q: And do you know where inside the vehicle you recovered
3 it?

4 A: It was in the front driver's door pocket.

5 Q: Okay. Next, is State's 13, a black lighter. You in
6 fact, recognize this?

7 A: Yes.

8 Q: Do you know where inside the vehicle that was located?

9 A: There was a bag in the rear passenger seat that this
10 lighter was found in.

11 Q: And lastly, State 17, the white lighter with a flower on
12 it. Do you recognize that?

13 A: Yes, I do.

14 Q: And was that also found inside the vehicle?

15 A: Yes, it was inside of -- actually, found inside of a pair
16 of shorts pockets that were in -- also in the same bag as the
17 previous lighter.

18 **MR. MARTIN:** Your Honor, at this time the State would
19 request that all three lighters be admitted into evidence.
20 That would be State's 12, State's 13 and State's 17.

21 **THE COURT:** Any objection?

22 **MR. HILLER:** No, Your Honor.

23 **THE COURT:** All right. State's Exhibits 12, 13, and 17
24 admitted into evidence without objection.

25 **(STATE'S EXHIBIT NUMBER 12, 13 & 17**

ARE ADMITTED INTO EVIDENCE)**BY MR. MARTIN:**

Q: Now, how about cell phones? Were you looking for any phones?

A: Yes, we were.

Q: And why would you be looking for phones?

A: It would indicate the identity of possible individuals that were in the vehicle.

MR. MARTIN: Court's indulgence.

THE COURT: All right.

REPORTER'S NOTE: (Whereby bench conference is held).

BY MR. MARTIN:

Q: I'm going to approach you with State's 19. Sorry, it's open because it's been charging. Can you identify State's 19?

A: Yes. That is the phone that was found inside the vehicle.

Q: And do you know where inside the vehicle that phone was located?

A: Yes. It was actually found between the driver's seat and the center console,

MR. MARTIN: Your Honor, the State would ask to admit 19 into evidence.

THE COURT: Any objection?

MR. HILLER: No, Your Honor.

THE COURT: State's Exhibit 19 admitted into evidence

1 without objection.

2 (STATE'S EXHIBIT NUMBER 19
3 IS ADMITTED INTO EVIDENCE)

4 **BY MR. MARTIN:**

5 Q: I'm going to approach with what's been marked as State's
6 32 for identification purposes. What are you looking at
7 there?

8 A: That's a photograph of a white color iPhone that was
9 located in the front -- inside the front driver's door.

10 Q: And is that fairly and accurately depict where you
11 located the phone?

12 A: Yes.

13 Q: And the phone you located?

14 A: Yes.

15 **MR. MARTIN:** Your Honor, at this time, State would ask
16 that 32 be admitted into evidence and published to the jury.

17 **THE COURT:** Any objections?

18 **MR. HILLER:** No, Your Honor.

19 **THE COURT:** State's Exhibit 32 admitted into evidence
20 without objection.

21 (STATE'S EXHIBIT NUMBER 32
22 IS ADMITTED INTO EVIDENCE)

23 **BY MR. MARTIN:**

24 Q: So, again, what are we looking at in this photograph?

25 A: It's the white iPhone that's in the door pocket. Near

1 the handle is the item that was photographed.

2 Q: Next, I'm going to approach with State's -- State's 34
3 and 33. Again, take a moment and see if you can identify
4 these.

5 A: Yes.

6 Q: And what are those photographs of?

7 A: They're photographs of the interior of the rear passenger
8 and driver door.

9 **MR. MARTIN:** Your Honor, at this time the State -- the
10 State asks to admit 33 and 34 into evidence.

11 **THE COURT:** Any objection?

12 **MR. HILLER:** No, sir.

13 **THE COURT:** State's Exhibits 33 and 34 admitted into
14 evidence without objection.

15 **(STATE'S EXHIBIT NUMBER 33 AND 34**
16 **ARE ADMITTED INTO EVIDENCE)**

17 **MR. MARTIN:** We ask to publish those to the jury.

18 **THE COURT:** All right.

19 **BY MR. MARTIN:**

20 Q: And while we're getting these photographs set up, when
21 you photograph the doors, for example, on a vehicle, do you
22 alter or manipulate or change anything on those doors in any
23 way?

24 A: No. We do not.

25 Q: So these photos, do they fairly and accurately represent

1 the state the car was in when you got this?

2 A: Yes.

3 **MR. MARTIN:** Your Honor, I ask that the witness be
4 allowed to step down.

5 **THE COURT:** All right. As long as he's near a microphone
6 for the court reporter to pick up his testimony.

7 **MR. MARTIN:** Okay. Just stand right here.

8 **BY MR. MARTIN:**

9 Q: So, what are we looking at, basically, in this photo?

10 A: Initially what drew my attention to this photo was the
11 scratch marks that are here near the window. Also the blood
12 staining that was here. That's what initially drew my
13 attention to this door. Because it was unknown right at the
14 time what may have caused those scratch marks, so we wanted to
15 make sure we photographed all that.

16 Q: And if we could zoom in? Now, are you familiar with
17 vehicles that have a child lock component on them?

18 A: Yes.

19 Q: And can you tell us whether or not the child lock is in
20 fact engaged on this door?

21 A: It is. It's a little hard to see, but the child lock is
22 actually in the down position, which would indicate that it is
23 locked and can only be opened from the outside.

24 Q: And, again, that's the position that it was in when you
25 searched the vehicle?

1 A: Yes.

2 Q: And, again, what are we looking at, just generally, in
3 this photograph?

4 A: Again, this is the -- this is the interior of the rear
5 passenger door. It -- same thing. There was same-type
6 scratches that were on the door underneath the window and
7 there was also like -- my attention was drawn because of the
8 staining. But, again, on this photo as well, which is the
9 other passenger -- other rear door, you can tell that the
10 child lock is in the down position, which again would indicate
11 that the door can only be opened from outside.

12 Q: And, again, this was the condition that the vehicle was
13 in when you searched it?

14 A: Yes.

15 Q: Thank you. This item's a little heavy, that's why it's
16 separate.

17 **MR. MARTIN:** Your Honor, may I approach the witness?

18 **THE COURT:** All right.

19 **BY MR. MARTIN:**

20 Q: I'm approaching you with State's 100 Carjack. That's
21 heavy, I'm sorry. Can you identify that?

22 A: Yes, sir. That's the jack from the vehicle that I
23 collected.

24 Q: Do you remember where in the vehicle you collected that?

25 A: Rear passenger floorboard.

1 **MR. MARTIN:** Your Honor, the state asks to admit State's
2 100 into evidence.

3 **THE COURT:** Any objection?

4 **MR. HILLER:** No, sir.

5 **THE COURT:** State's Exhibit 100 admitted into evidence
6 without objection.

7 **(STATE'S EXHIBIT NUMBER 100**
8 **IS ADMITTED INTO EVIDENCE)**

9 **BY MR. MARTIN:**

10 Q: Now, on searching the vehicle, did you locate any drugs?

11 A: There was a bag of -- what was --

12 **MR. HILLER:** Objection, Your Honor.

13 **THE COURT:** All right. Grounds? What's the relevancy?

14 **MR. HILLER:** Your Honor, the relevancy is that -- the
15 objection is I've never been handed a drug report.

16 **THE COURT:** All right. Sustain the objection.

17 **BY MR. MARTIN:**

18 Q: When you're searching a vehicle, do you look for anything
19 that could be associated with drug use?

20 A: I do.

21 Q: Like drug paraphernalia?

22 A: Yes.

23 Q: Did you locate any drug paraphernalia in the vehicle?

24 A: I located a small bag of what is believed to be
25 marijuana.

1 **MR. HILLER:** Objection.

2 **THE COURT:** Sustained. He's not charged with any type of
3 drug possession charge. Drugs are not involved in this case.

4 **MR. MARTIN:** Your Honor, may we approach?

5 **THE COURT:** Yes.

6 **REPORTER'S NOTE:** (Whereby bench conference is held).

7 **THE COURT:** All right. I sustain the defendant's
8 objection. Ladies and gentlemen, please disregard all of the
9 prior testimony regarding drugs in this case. This is not a
10 drug case. The defendant is not charged with possession, use
11 or any drug crime, therefore that information should not have
12 even come out at this point in time. So, totally disregard
13 any reference to drugs at this time. All right. You may
14 continue with your direct examination.

15 **BY MR. MARTIN:**

16 Q: We recently talked about evidence logs or evidence chain
17 of custody forms in this case. Did you in fact fill out a
18 chain of custody report for these items of evidence that we
19 just discussed here today?

20 A: I did.

21 Q: Sir, I'm going to approach -- I'm going to approach with
22 State's 37, State's 40, State's 42, State's 38, and State's
23 39. I apologize, they're a little out of order.

24 **THE COURT:** Yes. Give them to me again.

25 **MR. MARTIN:** Your Honor. It's 37, it's 38, it's 39, it's

1 40 and it's 42. 41 is already in evidence. May I approach
2 the witness?

3 **THE COURT:** Yes.

4 **BY MR. MARTIN:**

5 Q: Now, I know I'm handing you a number of these at once.
6 Take a moment and look at them and see if those are in fact
7 the evidence records that you filled out right there.

8 A: Yes. They are.

9 Q: And, again, they're kept in a normal, ordinary course of
10 business at Horry County Police Department?

11 A: Yes. They are.

12 Q: And as a Horry County police officer, are you a custodian
13 of those records?

14 A: I am.

15 **MR. MARTIN:** Your Honor, the state would ask that these
16 items of evidence be admitted into evidence.

17 **THE COURT:** Any objection?

18 **MR. HILLER:** Same objection as the report, Your Honor, in
19 that these custody chain documents have a lot of other items
20 listed that the state has not and does not appear to be
21 seeking to actually introduce into evidence.

22 **THE COURT:** All right. State's Exhibits 37, 38, 39, 40
23 and 42 are admitted into evidence over Defendant's objection.

24 **(STATE'S EXHIBIT NUMBERS 37, 38, 39, 40 AND 42**

25 **ARE ADMITTED INTO EVIDENCE)**

1 **BY MR. MARTIN:**

2 Q: Other than testifying here today, did that conclude your
3 involvement with this case?

4 A: Yes. It did.

5 **MR. MARTIN:** No more questions at the moment, Your Honor.

6 **THE COURT:** All right. Cross examination.

7 **MR. HILLER:** Yes, Your Honor.

8 **CROSS EXAMINATION OF MATTHEW STEPHENSON BY MR. HILLER:**

9 Q: Is detective now correct, Mr. Stephenson?

10 A: I was a detective at the time. I'm currently a -- the
11 sergeant of the unit now.

12 Q: Okay. All right. Thank you, sergeant. You prepared a
13 report of your involvement in this case, correct?

14 A: Yes.

15 Q: What's the purpose of that?

16 A: We -- anytime that we assist a detective with a case or
17 we work a crime scene, we always do an investigative report to
18 document our actions.

19 Q: And to help you recall your actions. So when on January
20 30th, 2024, you're asked about things that happened on
21 September 3rd, 2021, you can jog your memory, correct?

22 A: Yes, sir.

23 Q: Okay. And this -- for that reason, it's very important
24 to actually write a detailed report?

25 A: Yes, sir.

1 Q: That documents everything you did?

2 A: Yes, sir.

3 Q: And, of course, nothing that you didn't do?

4 A: Right.

5 Q: Okay. And do you have -- I think I referenced that you
6 referred to -- I think I recall that you may have referenced
7 your report earlier today. Is it -- do you have a copy of
8 that report with you today?

9 A: I do.

10 Q: So, the Bloodstain Green QuickCheck, we saw them on the -
11 - on the screen there. They are just literally a swab that
12 turns green, and hence the name, when it reacts to the
13 hemoglobin?

14 A: Hemoglobin in -- with the presence of blood, yes.

15 Q: Okay. And you collected five swabs because of -- at
16 least what you believe to be a SLED mandate, that no matter
17 how serious the case, five is the limit?

18 A: Yes.

19 Q: Now, is that the policy or is it five at a time? Or are
20 you not sure?

21 A: It's per case, I believe.

22 Q: Okay. So, you identified five stains within the interior
23 of the vehicle and those were the (inaudible) identified as
24 most relevant, most likely to be of evidentiary value?

25 A: Yes, sir.

1 Q: But not the weapons presumed to be used in this case?

2 A: There was the -- some of the items were swabbed for touch
3 DNA, but it was already known that the defendant and the
4 victim were in the vehicle and it would be a safe bet to say
5 that their touch DNA would possibly be on these items for
6 being in the vehicle with them.

7 Q: So, you did not check the jack handle for -- with a green
8 check or a blood thing -- Green QuickCheck?

9 A: The jack handle, no. I did not.

10 Q: Okay. But had you done that and had it reacted green,
11 that would've been potentially something to send to SLED?

12 A: Upon a visual inspection of that item, I did not see any
13 areas where there was possible blood.

14 Q: Okay. So, that would be the same for the nut screwdriver
15 that's State's 11?

16 A: Yes.

17 Q: That would be the same for the socket wrench that's
18 State's 14?

19 A: Yes.

20 Q: No visual indication of blood on either?

21 A: No.

22 Q: Same for State's Evidence 16?

23 A: Yes.

24 Q: No visual evidence of blood on that. And State's 15, the
25 pocket knife, the broken one?

1 A: Yes. Same answer.

2 Q: I don't want to belabor the point, but basically anything
3 that you collected was visually inspected?

4 A: Yes.

5 Q: The most useful, from a forensic analysis point, was
6 swabbed and then sent onto the SLED?

7 A: Yes.

8 Q: Okay. Same with the lighters, visually inspected but
9 nothing further done? Bagged and tagged as they ---

10 A: Yes, sir. There was nothing else done at the point.

11 Q: Okay. Now, we saw the pictures of the child locks and
12 they're in a downward and engaged position?

13 A: Yes, sir.

14 Q: Did you check them to make sure that they actually were
15 functional?

16 A: I did not. I didn't alter the vehicle.

17 Q: And you don't know when they were engaged or how long
18 they had been in that stage?

19 A: No. I don't.

20 Q: Or obviously by who?

21 A: Right.

22 Q: We saw the pictures on the back doors with the scratches?

23 A: Mm-hmm.

24 Q: As well -- I think they were the same ones that showed
25 the child locks?

1 A: Yes.

2 Q: One of the pieces of evidence that's -- one of the pieces
3 of evidence you collected is not here before us today, but
4 it's on the evidence chain or the evidence sheet that the
5 state put in evidence. Do you recall collecting some Humane
6 Society paperwork? It's 11 -- or sorry. It's your 29. 1.
7 It's in evidence as Humane Society Paperwork. Do you recall
8 collecting that?

9 A: I recall collecting paperwork from the vehicle. I don't
10 -- I don't know if it was actually Humane Society without
11 going back and looking at the chains.

12 Q: Well if -- you can.

13 A: Can I look at these chains here that ---

14 Q: It would be -- I'm sorry, it's on either 37, 38, 39, 40
15 or 42. It was admitted in that badge. I'm trying to tell you
16 to just draw your attention, but you'll probably find it
17 faster than me.

18 A: Yes. I did collect Humane Society paperwork.

19 Q: Okay. Thank you. Did you find a baseball bat in the
20 vehicle?

21 A: I did not.

22 Q: Did you find pliers in the vehicle?

23 A: I do not believe I did.

24 Q: And anything -- oh, anything. So, basically, you went
25 through the vehicle at the as-found condition, you grabbed the

1 item of evidence that you moved over into the case and that
2 does complete your involvement in this matter?

3 A: Yes, sir.

4 **MR. HILLER:** I don't have any other questions at the
5 moment.

6 **THE COURT:** All right. Redirect?

7 **REDIRECT EXAMINATION OF MATTHEW STEPHENSON BY MR. MARTIN:**

8 Q: You were just asked about a number of items that maybe
9 you did or didn't find?

10 A: Yes, sir.

11 Q: Going in and searching of the vehicle, do you know the
12 length of time between when the defendant -- when the crime
13 occurred and the defendant was later apprehended?

14 A: I do not notice the timeframe.

15 Q: In your experience in crime scene and law enforcement, is
16 it -- is it often common that ---

17 **MR. HILLER:** Objection to speculation.

18 **MR. MARTIN:** I'll rephrase, Your Honor if that's okay.

19 **BY MR. MARTIN:**

20 Q: How long have you been working specifically in crime
21 scene?

22 A: Three years.

23 Q: And during your time in crime scene, you conduct a lot of
24 presumptive positive tests for blood?

25 A: Yes.

1 Q: Is it -- can blood be wiped off of an item?

2 A: Yes. It can.

3 **MR. MARTIN:** No further questions for this witness.

4 **THE COURT:** All right. You may step down. You may step
5 down.

6 **SERGEANT STEPHENSON:** Thanks.

7 **THE COURT:** All right. State, you can call your next
8 witness.

9 **MS. WALLER:** Your Honor, the State calls Benjamin Wells.

10 **BENJAMIN WELLS, HAVING BEEN DULY SWORN TESTIFIES AS**

11 **FOLLOWS:**

12 **MR. MARTIN:** Your Honor, may I approach the witness stand
13 and remove the items of evidence that I left up there?

14 **THE COURT:** Yes.

15 **MR. MARTIN:** Thank you, Your Honor.

16 **LIEUTENANT WELLS:** Benjamin Wells, B-E-N-J-A-M-I-N W-E-L-
17 L-S.

18 **DIRECT EXAMINATION OF BENJAMIN WELLS BY MS. WALLER:**

19 Q: Mr. Wells, where do you work?

20 A: I work for the Horry County Sheriff's Office.

21 Q: What's your title and rank?

22 A: I'm a Lieutenant.

23 Q: Lieutenant Wells, I apologize. Lieutenant Wells, how
24 long have you worked at Horry County Sheriff's Department?

25 A: I'm on my 23rd year.

1 Q: 23 years. Did you work anywhere before that or did you
2 start your law enforcement period?

3 A: Started on law enforcement period.

4 Q: What was your position back in September of 2021?

5 A: I oversee a digital lab for the Horry County Sheriff's
6 Office.

7 Q: And as over -- as a person who oversees that lab, what
8 are your duties and responsibilities?

9 A: My duties are extracting data off of digital devices and
10 being able to put it in a readable format so you are able to
11 see what is going on the device without altering or messing
12 with the device.

13 Q: And how long have you been concentrating in this kind of
14 electronic evidence collection (inaudible)?

15 A: Since 2010.

16 Q: Did you receive any special training in order to work in
17 -- would an appropriate way to term this be digital forensic?

18 A: Yes.

19 Q: Did you receive any special training for that?

20 A: I have. I've been certified by the Federal Law
21 Enforcement Training Center in Glynco, Georgia and digital
22 evidence access specialist, Seized Computer Evidence Recovery.
23 I've been to the National Computer Forensics Institute with
24 the -- sponsored by the United States Secret Service. I've
25 had trainings through SANS Institute and various vendors that

1 offer the software for digital forensics.

2 Q: Are you familiar with Cellebrite or a Cellebrite device?

3 A: I am.

4 Q: And do you use that -- a Cellebrite device to extract
5 data from a cell phone?

6 A: I do.

7 Q: And when I say extract or you say extract -- I guess I'll
8 put that word, but when you extract data, what do you mean by
9 data extraction from a cell phone?

10 A: The contents of the device will pull them off and put
11 them into its own format and then it could be parsed to see
12 the contents of the device.

13 Q: Okay. And is Cellebrite a tool commonly used by law
14 enforcement to extract data from cell phones?

15 A: It is.

16 Q: Are you trained to use the Cellebrite device?

17 A: Yes.

18 Q: Okay.

19 A: I have several certifications and I'm also a certified
20 instructor and I teach Cellebrite.

21 **MS. WALLER:** Thank you. Court's indulgence, please.

22 **THE COURT:** All right.

23 **MS. WALLER:** I'm looking for the one that has a sheriff's
24 badge on the front of it.

25 **BY MS. WALLER:**

1 Q: All right. And were you asked to extract cell phone data
2 from a cell phone collected in this case?

3 A: I was.

4 Q: Did you actually do that?

5 A: I did.

6 Q: And were you able to extract data from the phone?

7 A: I was.

8 Q: What affects whether or not you can extract data from a
9 cell phone?

10 A: There's many different factors. There can be different
11 levels of security on the device. There can be different
12 operating systems, PIN codes, encryption, many different
13 things. Not only that, physical condition of the device as
14 well can affect extractions.

15 **MS. WALLER:** May I approach the witness, Your Honor?

16 **THE COURT:** Yes.

17 **BY MS. WALLER:**

18 Q: I'm going to show you what's been marked as State's
19 Exhibit Number 51. Do you recognize this report?

20 A: I do.

21 Q: What is that?

22 A: This is an extraction report of some of the content -- of
23 the contents of the phone.

24 Q: And can you tell what date you performed the extraction?

25 A: The extraction time was March 4th, 2022.

1 Q: And can you look at that report and tell what phone you
2 extracted the data from?

3 A: This was a Google Pixel 3.

4 Q: I'm going to approach and show you what's been entered
5 into evidence as State's Number 19. And it's open. Please
6 take a look at that phone and tell me if that's the phone from
7 which you extracted the evidence. The data.

8 A: It is.

9 Q: And how can you tell it's the same phone?

10 A: The sticker on the back is from my lab and the IMEI
11 number is posted on here and it matches with the report.

12 Q: What do you mean by IMEI number?

13 A: It's a international mobile equipment identifier. It's a
14 unique identifier for a device.

15 Q: Does every phone have an IMEI number that's unique to
16 that phone?

17 A: Every phone has unique numbers.

18 Q: Okay. Do you recall whenever you received that phone,
19 were you immediately able to extract data using the Cellebrite
20 device?

21 A: I was not.

22 Q: Why not?

23 A: The device was damaged and there's ports -- the port was
24 damaged in here, which was not able to make a connection.

25 Q: Were you able to repair that damage?

1 A: I was.

2 Q: And how did you repair it?

3 A: Basically, when an object or something was pushed into
4 the device, there was a pin that was moved over and it wasn't
5 making contact with the cord itself. So, I was able to take a
6 apparatus and be able to move the pin over to the proper back
7 -- bend the pin back to the proper place in order to make a
8 connection with the cord.

9 Q: Okay. And at that point, were you able to connect it to
10 the Cellebrite device and extract data?

11 A: I was.

12 Q: Is there a phone number associated with that telephone?

13 A: There is.

14 Q: And what's -- do you know the phone number? Can you tell
15 me?

16 A: Let's see here. (843) 680-[REDACTED].

17 Q: Okay. And can you -- on that report, you can see some
18 other information. Can you see a hotspot password for that
19 device?

20 A: I do.

21 Q: And what is the hotspot password?

22 A: RicoF1294.

23 Q: Okay. And when you extracted the data, did you have the
24 passcode to the phone?

25 A: I did.

1 Q: Okay. Where did you get that telephone?

2 A: Horry County Evidence.

3 **MS. WALLER:** Court's indulgence, please.

4 **THE COURT:** All right.

5 **BY MS. WALLER:**

6 Q: I am going to show you what's been previously admitted
7 into evidence as State's Exhibit Number 39. Do you recognize
8 that as what we commonly call a chain of custody form?

9 A: I do.

10 Q: And does it show that that phone was signed out to you?

11 A: It does.

12 Q: And does it also show you signing the phone back into
13 evidence?

14 A: It does.

15 Q: Okay. So, I just have a couple of quick questions. Tell
16 me kind of what the process is. How do you actually
17 physically extract the data from the phone?

18 A: Well, we have to basically analyze the -- look at the
19 device physically. Figure out what devices are supported by
20 the product and which product you're able to use. We will
21 insert the connection to the device and we will be able to
22 choose different extractions of being able to pull the data
23 off.

24 Once you're presented with the extractions, you are able
25 to download those and then you have to take that parsed

1 information that has been pulled off -- or I'm sorry, the
2 information that is on the device that has been pulled off and
3 use another software, maybe by Cellebrite, to analyze it or to
4 put it into a readable format so you can ---

5 Q: And once you extracted the data from the phone, did you
6 give a copy of that data to Detective Christian Fletcher with
7 the Horry County Police Department?

8 A: I turned it over to Horry County Evidence, yes.

9 Q: Okay. Did you add, change or delete any of the data you
10 collected from the phone before you turned it over to the
11 police department?

12 A: I did not.

13 Q: Would you be able to add data to a phone? Can you put
14 something on there that's not there?

15 A: Without physically touching the device through the
16 extraction, it's no.

17 Q: So the extraction doesn't add anything to the phone
18 that's not on the phone?

19 A: To the device, no.

20 Q: Did you create the report that you see in front of you?

21 A: I did.

22 **MS. WALLER:** And I can't remember if I made that into
23 evidence. Your Honor, at this time, the state would move
24 Exhibit Number -- is 51?

25 **LIEUTENANT WELLS:** It is.

1 **MS. WALLER:** 51 into evidence.

2 **THE COURT:** Any objection?

3 **MR. HILLER:** The four-page document?

4 **MS. WALLER:** Yeah.

5 **MR. HILLER:** I have no objection, Your Honor.

6 **THE COURT:** All right. State's Exhibit 51 admitted into
7 evidence without objection.

8 **(STATE'S EXHIBIT NUMBER 51**

9 **IS ADMITTED INTO EVIDENCE)**

10 **MS. WALLER:** May we approach really briefly, Your Honor?

11 **THE COURT:** All right.

12 **MS. WALLER:** I apologize.

13 **REPORTER'S NOTE:** (Whereby bench conference is held).

14 **MS. WALLER:** All right. Thank you. The state has no
15 further questions for this witness. Please answer any
16 questions the defense may have.

17 **THE COURT:** Cross examination.

18 **MR. HILLER:** Thank you, Your Honor.

19 **CROSS EXAMINATION OF BENJAMIN WELLS BY MR. HILLER:**

20 **Q:** Lieutenant, sounded like you described a sort of a two-
21 step process for this extraction: the downloading of the
22 phone, and then it almost sounded like a reorganization step
23 at the end. Or did I just completely misunderstand what you
24 were saying?

25 **A:** No.

1 Q: Then you said it needed another program provided by
2 Cellebrite?

3 A: Correct. It's -- once an extraction is downloaded into a
4 certain format, that format is not immediately legible to
5 anyone without the software. So, what that file is, is taken
6 into a physical analyzer, which it's called, and it reads the
7 file and use the algorithms to be able to decipher and show
8 what device information was on it.

9 Q: Okay. So, does the Cellebrite technology modify file
10 names on the original device?

11 A: It does not.

12 Q: Okay. So, if you have a file, you know, that sometimes,
13 you know -- like, for example, this phone in question appears
14 to name a file based on creation date of a -- of a video, for
15 example. Cellebrite would not modify that in any way through
16 its process or through its manipulation of data?

17 A: The data is not manipulated at all. It's just read.

18 **MR. HILLER:** Okay. Okay. No further questions.

19 **THE COURT:** All right. Redirect.

20 **REDIRECT EXAMINATION OF BENJAMIN WELLS BY MS. WALLER:**

21 Q: I need to ask you some questions about the way Cellebrite
22 may show a date of something. So, does Cellebrite sometimes
23 show dates that videos or photos are created?

24 A: There's different -- there's different dates. Dates give
25 -- there's modified dates, created dates, and the difference

1 is in what it pulls, the data that it pulls, and how it reads
2 the -- where that data came from.

3 Q: So if -- could Cellebrite pull -- and in this case there
4 are videos and text messages and photos, essentially. Would
5 the Cellebrite show -- always show the created date or could
6 it sometimes show a modified date?

7 A: Sometimes it could show one, sometimes it could show the
8 other.

9 Q: And sometimes could it show both dates?

10 A: Yes.

11 Q: And why? Why does it sometimes show a modified date? I
12 mean, I think my question's inherent in the word, but ---

13 A: It could have been modified through the device.

14 **MS. WALLER:** Okay. Thank you. No further questions.

15 **THE COURT:** All right. You may step down.

16 All right. Ladies and gentlemen, it's about 11 o'clock.

17 We're going to go ahead and take a short break, give you an
18 opportunity to stretch your legs, use the restroom, get
19 something to drink, whatever the case may be. We'll take
20 about a 10 or 15-minute break.

21 Do not discuss the case even among yourselves. It's too
22 early for deliberations. Don't conduct any independent
23 investigations. We'll take about a 10 or 15-minute break and
24 we'll come back and get restarted in just a minute. Thank you
25 very much. Everyone else please remain seated while the

1 jury's excused.

2 **REPORTER'S NOTE:** (Jury exits the courtroom at 11:00am)

3 **THE COURT:** Anything from the state before we take a
4 short recess?

5 **MS. WALLER:** No, sir -- Your Honor.

6 **THE COURT:** Anything from the defense?

7 **MR. MARTIN:** No, Your Honor.

8 **THE COURT:** All right. We'll take about a 10 or 15-
9 minute break and come back and get started.

10 **(COURT IS IN RECESS)**

11 **THE COURT:** All right. Anything from State before we
12 bring the jury in?

13 **MS. WALLER:** Court's indulgence for one moment, Your
14 Honor. Your Honor, I apologize, let me spread something out
15 really quickly. Take just a moment. I -- and I'm so sorry.

16 **THE COURT:** All right.

17 **MS. WALLER:** He has a copy.

18 **(COURT IS IN RECESS)**

19 **THE COURT:** Anything from the State before we bring the
20 jury in?

21 **MS. WALLER:** No, sir, Your Honor.

22 **THE COURT:** Anything from the Defense?

23 **MR. HILLER:** No, Your Honor.

24 **THE COURT:** All right. Let's bring the jury in.

25 **REPORTER'S NOTE:** (Jury enters courtroom at 11:22am)

1 **THE COURT:** Ladies, gentlemen, welcome back. Again, I
2 apologize for keeping you in the jury room for so long, but we
3 ready to continue with the case.

4 The State can call your next witness.

5 **MS. WALLER:** Your Honor, the State calls Sergeant
6 Christian Fletcher.

7 **CHRISTIAN FLETCHER, HAVING BEEN DULY SWORN TESTIFIES AS**
8 **FOLLOWS:**

9 **THE CLERK:** Please State your name and spell your first
10 name.

11 **SERGEANT FLETCHER:** My name is Sergeant Christian
12 Fletcher. First name is C-H-R-I-S-T-I-A-N. Last name
13 Fletcher, F-L-E-T-C-H-E-R.

14 **DIRECT EXAMINATION OF SERGEANT FLETCHER BY MS. WALLER:**

15 Q: Sergeant Fletcher, where are you currently employed?

16 A: Employed with the Horry County Police Department.

17 Q: How long have you been employed there?

18 A: Going on eight years.

19 Q: So is that around 2016?

20 A: Correct.

21 Q: Where did you work before that?

22 A: Horry County Sheriff's Office and Georgetown County
23 Sheriff's Office.

24 Q: And how long -- how much law enforcement experience did
25 you have before you began working at Horry County Police

1 Department?

2 A: Approximately three years.

3 Q: What are your current duties at the police department?

4 A: I'm currently a patrol sergeant for the first precinct.
5 I am the first-line supervisor for a group of call responsible
6 officers. So essentially, I'm in charge of a shift.

7 Q: Back in August and September of 2021, when these crimes
8 occurred, what was your job title?

9 A: I was a detective in the criminal investigation division,
10 more specifically a special victim unit detective. And even
11 more specifically, I was a domestic violence investigator
12 through a grant funded by the Federal Government.

13 Q: And as a detective, what were your job duties back then?

14 A: Interviewing suspects, witnesses, victims, collecting
15 items of evidentiary value and following whatever pertinent
16 investigative leads there were for any given case.

17 Q: Let me direct your attention back to August of 2021, did
18 you have an occasion to become involved in the investigation
19 of the case that brings us to court today?

20 A: Yes, I did.

21 Q: And how did you first become involved in the case?

22 A: I was on call -- I was the on-call detective the night
23 that Ms. K.S. was located. So essentially there's a rotating
24 schedule for who is call responsive for immediate need, and
25 that was me that night.

1 Q: So do you remember approximately what time you would've
2 gotten a call?

3 A: I was asleep, so I believe it was sometime between 10:11
4 p.m., somewhere around there.

5 Q: Okay.

6 A: Probably when I responded out.

7 Q: And when you responded, where did you go?

8 A: I went to Grand Strand Regional Medical Center.

9 Q: What did you -- what's the first thing you did when you
10 got there?

11 A: When I first got there, I spoke with the watch commander
12 who indicated to me generally what had went on, just that they
13 had a female that attributed signs of being assaulted. I then
14 went inside the medical center and spoke with staff.

15 Q: Did you have information about how [REDACTED] K.S. [REDACTED] had
16 come to be at the hospital at that point?

17 A: Yeah. So it was indicated to me that she was located at
18 a Walmart, up near Highway 22 on Kings Road, that she had fled
19 into the store, was located by some staff, heavily injured.

20 Q: What did you learn about her condition when you arrived
21 at the hospital?

22 A: Through investigation, it was learned that she had
23 substantial blood force trauma to the entirety of her body,
24 focus mainly on her head and face, as well as extensive burns
25 and injuries consistent with pattern marking from blunt force

1 trauma.

2 Q: And once you received that information, did -- did you
3 then go and see and speak to the victim?

4 A: I did briefly. That conversation was very short and a
5 pointed due to her condition. I deemed it much more
6 appropriate that she received medical care and speak with me
7 at the time. So a brief interview was conducted.

8 Q: What was her demeanor when you were speaking to her?

9 A: Hysterical, scared, battered, confused.

10 Q: Okay. I'm going to show you what's been previously
11 admitted into evidence as State's Exhibit Number 72. Is -- do
12 you recognize this photo?

13 A: I do, yes, ma'am.

14 Q: Is that what the victim looked like the night you arrived
15 at the hospital?

16 A: As good as a picture can do. Yes.

17 Q: So what was your impression of her condition when you saw
18 her?

19 A: Just grotesquely injured. I've worn a lot of hats over
20 the -- over my career and I can say without any shadow of
21 doubt that it was the most extensive blunt force trauma
22 injuries that I've ever noted that didn't result in death.

23 Q: So you said you conducted a brief interview with her.
24 What did -- what kind of information did you learn during that
25 interview that directed your investigation?

1 A: Essentially that brief first interview was just
2 establishing who was responsible, and establishing the fact
3 that it was someone that met household member criteria. So it
4 was established that it was a boyfriend of Ms. [K.S.] that
5 conducted the assault upon her person, and that they met the
6 cohabitation standards for household members.

7 Q: Were you able to establish a timeline of when the
8 injuries and when the crime occurred?

9 A: Yeah, in general, again, this first interaction was very
10 brief, but in general I learned that it was over a several day
11 span prior to our interaction.

12 Q: Did -- were you able to identify a suspect at that point?

13 A: Yes.

14 Q: And who did you identify as the suspect?

15 A: Rico Antonio Funderburk.

16 Q: Did you take steps to try and locate him at that time?

17 A: We did. We exhausted all patrol level resources through
18 BOLOs, which are -- it's bulletin that we post out through
19 dispatch channels for all active law enforcement in the area
20 to be on the lookout for Mr. Funderburk and the associated
21 vehicle that he was suspected to operating at the time.

22 Q: Okay. Were you concerned about the victim's safety at
23 the hospital?

24 A: Highly.

25 Q: Why was that?

1 A: Due to her condition, especially in the realm of domestic
2 violence, it's highly concerning about their safety to the
3 point that I made sure to speak with administrative staff and
4 security to make sure she was entered as what we refer to as a
5 Jane Doe. So there is no available record to anybody in the
6 public about her location, whereabouts, name, anything like
7 that. So if somebody were to call or show up, it was made
8 clear that she was not to be seen or any information provided.

9 Q: And is that kind of a standard procedure that you would
10 go through in a case where you're concerned for a victim's
11 safety?

12 A: Yes.

13 Q: So once you left the hospital that night, did you do any
14 further investigations during the night?

15 A: Most of it was clerical work, again, sending out
16 information to permanent sources to potentially locate Mr.
17 Funderburk.

18 Q: Okay. Did you follow up the next day at the hospital and
19 meet the victim a second time?

20 A: I did.

21 Q: Do you -- did you -- what relevant information did you
22 learn at that time that directed your investigation?

23 A: The investigation yielded that her injuries were caused
24 in a physical manner by the Defendant, that they had been
25 cohabitating romantically at an apartment off of Dunbar Street

1 in Myrtle Beach area of the county --

2 **MR. HILLER:** Your Honor, I'm going to object to hearsay.
3 This is --

4 **THE COURT:** Sustained.

5 **MR. HILLER:** A nice way of --

6 **THE COURT:** Sustained. I sustained your objection. You
7 can't get into what he was told by anyone else.

8 **MR. HILLER:** Can the monitor also be turned off, Your
9 Honor?

10 **THE COURT:** She's -- is it direct examination? She can
11 leave it there is she wants. Sorry, go ahead.

12 **BY MS. WALLER:**

13 Q: So I'm going to ask you the next question. So don't
14 identify who she said did this, but did you ask Ms. **K.S.** if
15 she had been sexually assaulted?

16 A: I did.

17 Q: Did she indicate to you at first that she had been
18 sexually assaulted?

19 A: At first, no.

20 Q: And so why -- what did -- did you continue to ask
21 questions to determine whether you thought a sexual assault
22 had occurred?

23 A: Yes.

24 Q: And did she eventually describe to you that she had been
25 sexually assaulted?

1 **MR. HILLER:** Hearsay.

2 **MS. WALLER:** Your Honor --

3 **THE COURT:** Sustained.

4 **MS. WALLER:** Your Honor, that's an exception to the
5 hearsay rule. It define was not hearsay as long as it's
6 limited to the fact that she said she was sexually assaulted.
7 And the time of --

8 **THE COURT:** All right. Give -- hold for a second. Give
9 me the authority.

10 **MS. WALLER:** May I approach, Your Honor.

11 **THE COURT:** Yes, ma'am.

12 **MS. WALLER:** May I approach, Your Honor?

13 **THE COURT:** Yes.

14 **MS. WALLER:** Or would you like us to approach?

15 **THE COURT:** Yes.

16 **REPORTER'S NOTE:** (Whereby bench conference is held)

17 **THE COURT:** All right. Objection is overruled. I'll
18 allow.

19 **BY MS. WALLER:**

20 Q: Okay. I'll ask you again just so you remember the
21 question. So when you -- did you question Ms. **K.S.** further
22 regarding sexual assault?

23 A: Yes, I did.

24 Q: Did you determine through that question that -- that she
25 -- did she disclose sexual assaults to you?

1 A: Yes, she did.

2 Q: And so, as I said, I'm limiting, do not say who she said
3 did it, but you can tell me what she said happened to her and
4 when and where it occurred. Okay?

5 A: Okay. It was indicated that she was vaginally
6 penetrated, regardless of how slight by objects and/or his
7 person during the commission of a kidnapping where she was not
8 free to leave, which meets the criteria for sexual battery.

9 Q: Did she also indicate to you that objects -- I think you
10 -- well, you might have just said that she indicated that
11 objects were used. Did she indicate to you that objects were
12 used to burn her vagina, essentially?

13 A: Yes. Specifically, that a lighter was heated to a
14 temperature high enough to cause burning and then pressed to
15 her vagina and breasts.

16 Q: And so, in your training experience, as of what I think
17 you called that SVU, what does that mean?

18 A: It's special victims unit. So our primary focuses are on
19 violent crimes against children or the elderly. And then the
20 primary focus is crimes of a sexual nature.

21 Q: Okay. And in your training experience, did you recognize
22 those statements as disclosures of sexual assault?

23 A: Yes.

24 Q: Okay. All right. And were you able to establish from
25 that when those occurred?

1 A: Yes.

2 Q: And can you tell me when that was?

3 A: During the date range of the indictments that are at
4 hand, they occurred during the mid-month of August to late
5 month of August.

6 Q: So did you -- so the date you responded to the hospital,
7 you can correct me if I'm wrong, is that the night of August
8 28th into the morning of August 29th?

9 A: Yes.

10 Q: Of 2021?

11 A: Yes.

12 Q: And so approximately how long before that night did these
13 crimes occur?

14 A: Again, they -- they spanned. I'm not exactly sure
15 without reference of the file as to each individual injury.
16 but they spanned a gap of approximately 12 to 14 days,
17 somewhere in there.

18 Q: Okay. And based on your investigation up until that
19 point, did you identify crimes for which you wanted to get
20 arrest warrants against the suspect at that time, Rico
21 Funderburk?

22 A: I did, yes.

23 Q: And which arrest warrants did you obtain?

24 A: In total or after that --

25 Q: You can -- go ahead and tell us in title and explain why

1 there's a gap.

2 A: Initially, the first charge obtained was after the first
3 brief interview with Ms. K.S. . That was for domestic
4 violence of a high and aggravated nature due to the assault,
5 post second interview charges for kidnapping, as well as
6 criminal sexual conduct in the first degree were obtained.

7 Q: Okay. And were you -- okay, so when you were at the
8 hospital that night, were you -- or I guess that's the next
9 day. We're at the next day now. Were you able to determine
10 if any tools or weapons were used in the commission of the
11 crimes?

12 A: Her injuries were consistent with the use of blunt edge
13 weaponry or blunt edge objects, consistent with my training
14 and experience.

15 Q: Okay. And were you able to immediately serve those
16 arrest warrants on the Defendant Rico Funderburk?

17 A: No, I was not.

18 Q: Okay. While you were at the hospital that day, did you
19 retrieve the items of clothing that K.S. was wearing that
20 day when she ran into the Walmart?

21 A: I did.

22 MS. WALLER: Okay. I'm going to show you some items.
23 You could take that down, Your Honor.

24 **BY MS. WALLER:**

25 Q: I'm going to show you what's been marked as State's

1 Exhibit 45. This is State's Exhibit 45. Okay. You kind of
2 have -- it's kind of a -- I'll just turn it for you. Do you
3 recognize this?

4 A: I do.

5 Q: Is this the shirt that you retrieved from the hospital?

6 A: It is.

7 Q: Is that the shirt that [REDACTED] K.S. [REDACTED] was wearing when
8 she ran into Walmart?

9 A: It is.

10 **MS. WALLER:** Your Honor, the State moves to enter Exhibit
11 45 into evidence.

12 **THE COURT:** Any objection.

13 **MR. HILLER:** I have no objection.

14 **THE COURT:** State's Exhibit 45 is admitted into evidence.

15 **(STATES EXHIBIT NUMBER 45 IS**
16 **ADMITTED INTO EVIDENCE)**

17 **BY MS. WALLER:**

18 Q: Okay. And let's just look at it for a minute. Can you
19 see -- I'll hold it like this. Can you see like areas of
20 discoloration on there?

21 A: I can.

22 Q: Okay. I'm going to show you what's been marked as
23 State's Exhibit Number 44. Do you recognize this?

24 A: I do.

25 Q: Are these the pants that [REDACTED] K.S. [REDACTED] was wearing that

1 night?

2 A: Yes, they are.

3 Q: And -- I'll show (inaudible). You can see that they're
4 cut here. Can you see that?

5 A: Yes, ma'am.

6 Q: Do you have any idea why that would be the case?

7 A: It's typical in trauma-like situations for being cut from
8 the patient for treatment.

9 Q: At some point in your investigation, did you go to
10 Walmart where she ran into the Walmart and tried to retrieve
11 video surveillance footage?

12 A: I did. Were you able to do that?

13 Q: Yes, ma'am.

14 Q: And what did you do with that footage?

15 A: That footage was observed first and foremost, and then
16 uploaded to our secure server as an item of evidentiary value.

17 Q: And when you watched that footage, were you able to see
18 KS run into the Walmart?

19 A: I was.

20 Q: And the jury's already seen that footage, but were the
21 items of clothing that you see in State's Exhibit 44 and, 43?
22 45, the items that she was wearing in those videos?

23 A: Yes.

24 Q: I'm going to show you what's been marked as State's
25 Exhibit 43, and we talked a lot about these. Is that what's

1 commonly referred to as a Horry County chain of custody form?

2 A: Yes, ma'am. It is.

3 Q: Okay. And as an employee of Horry County Police
4 Department, are you a records custodian?

5 A: I am.

6 Q: And is -- does that form show that you transported those
7 items of evidence to the county and put them in evidence?

8 A: It does.

9 Q: And have they remained there since that time?

10 A: Yes.

11 Q: So we heard from CSI Stevenson and we just talked about
12 these discolored areas. Did you have any of this kind of
13 discoloration tested to see what it was?

14 A: I did not.

15 Q: And -- and why would you not need to do that?

16 A: Largely because it's apparent where it came from. It's
17 K.S.'s clothing and due to her State and injury at the
18 time.

19 Q: Did you collect all of the items of clothing that the
20 hospital had in his possession that night?

21 A: I did.

22 Q: So I don't see any shoes or socks. Did she have shoes
23 and socks?

24 A: No, she did not.

25 Q: Can you see in the video that she's actually barefoot

1 when she runs into the Walmart?

2 A: Yes, you can.

3 Q: So we just talked -- we talked about the arrest warrants
4 that you got. And did you attempt in those -- in the next
5 couple days to locate the Defendant Rico Funderburk?

6 A: I did.

7 Q: Were you able to initially do that?

8 A: No, I was not.

9 Q: So did you enlist the help of other law enforcement
10 agencies to try and locate him?

11 A: Yes, I did.

12 Q: And whose help did you -- did you enlist?

13 A: The United States Marshal Service.

14 Q: So tell the jury why would you ask the United States
15 Marshal Service to help you locate him?

16 A: The same reason that someone would ask me to help with a
17 crime of this nature. It's their area of expertise. It's
18 what they do, is locate previously unlocatable people.

19 Q: So they're quite good at it?

20 A: I would say so.

21 Q: And was the U.S. Marshal Service able to pinpoint a
22 location from Mr. Funderburk?

23 A: They were.

24 Q: Did you participate with the U.S. Marshal service in
25 actually conducting the arrest of Mr. Funderburk?

1 A: Yes. I was present for the briefing, the process, and
2 the apprehension of Mr. Funderburk.

3 Q: And how long after the victim ran into Walmart were you
4 able to find Mr. Funderburk?

5 A: I believe it was two days, splitting hairs again over
6 midnight, but two days.

7 Q: Approximately two days?

8 A: Yeah.

9 Q: And were you and the marshals concerned with the safety
10 of the officers who were conducting the arrest before you
11 conducted the arrest?

12 A: Highly. At any time that crimes of this nature are
13 alleged, we're at the forefront. We use extreme caution for
14 our safety, the suspect safety, and then obviously the safety
15 of the community.

16 Q: I think I heard you say you were on a briefing just now.

17 A: Yes.

18 Q: So what were you doing at the briefing? What was that?
19 Tell the jury kind of what that is.

20 A: The purpose of the briefing is to give -- assisting law
21 enforcement agencies the proper knowledge to understand what
22 has been alleged and what kind of safety precautions need to
23 be taken in order to effectively take someone into custody.

24 Q: So were -- did -- were there other officers other than
25 just you and the U.S. Marshals?

1 A: Yes. So U.S. Marshals, at least locally, are typically
2 done through what's called a TFO program, a Task Force
3 Officers. So they are attached to U.S. Marshal Service, but
4 they -- they're also employed by other local police agencies.
5 So their accompanying agencies were present as well.

6 Q: And were you and the other officers present armed?

7 A: Yes.

8 Q: Is that standard procedure when you go to arrest the
9 suspect?

10 A: Yes. Standard procedure always.

11 Q: For any suspect?

12 A: Yes.

13 Q: But is it -- do you have a heightened standard for
14 someone who you consider to be armed and dangerous?

15 A: Yes.

16 Q: Did you have information at the time from the 911 call
17 that the Defendant may have had a gun?

18 A: Yes. I was.

19 Q: I'm going to show you what is marked as State's Exhibit
20 Number 1. And I'm going to ask you if you can -- well, first
21 of all I'll say, were you wearing a body cam when you
22 conducted the arrest?

23 A: I was.

24 Q: And I think that we heard what a body camera is, but can
25 you tell the jury what a body camera is?

1 A: A body-worn camera is just a camera that all uniformed
2 officers wear. Its intention is to record video evidence of
3 any interaction with public. It's a loop streaming device, so
4 when it is activated, it loops in reverse 30 seconds or minute
5 depending on activation rate at the time. I believe the time
6 is 30 seconds. That's a muted audio clip for 30 seconds
7 immediately upon activation audio and video starting for it.

8 Q: Okay. And so you can actually -- the jury can actually
9 see what happened real time that day?

10 A: Yes.

11 Q: I'm going to show you what's been marked, as I said, it's
12 State's Exhibit 1. Can you tell me what this is?

13 A: Yes. This is a copy of my body-worn camera from the
14 apprehension of Mr. Funderburk.

15 Q: And did you turn that over to the solicitor's office?

16 A: I did.

17 Q: Have you reviewed that copy?

18 A: I have.

19 Q: How can you tell?

20 A: My signature is on the back.

21 Q: And was it a true and accurate copy of the events that
22 occurred at the arrest?

23 A: It is.

24 **MS. WALLER:** Your Honor, at this time the State would
25 seek to introduce Exhibit Number 1 into evidence and publish

1 for the jury.

2 **THE COURT:** Any objection?

3 **MR. HILLER:** Yes, Your Honor. Subject to the (inaudible)
4 objection of the trial.

5 **THE COURT:** All right. State's Exhibit 1 is admitted
6 into evidence over Defendant's objection.

7 **(STATE'S EXHIBIT NUMBER 1 IS**
8 **ADMITTED INTO EVIDENCE)**

9 **MS. WALLER:** Your Honor, I want to make sure that I moved
10 the evidence chain, which is State's Exhibit 43 into evidence.

11 **THE COURT:** Any objection?

12 **MR. HILLER:** I don't think she has no objection.

13 **MS. WALLER:** And then also make sure that we move the
14 pants into evidence. And that is 44.

15 **THE COURT:** All right. Any objection?

16 **MR. HILLER:** No, Your Honor.

17 **THE COURT:** All right. State's Exhibits 43 and 44 are
18 admitted without object.

19 **(STATE'S EXHIBIT NUMBERS 43 & 44 ARE**
20 **ADMITTED INTO EVIDENCE)**

21 **REPORTER'S NOTE:** (Whereby State's Exhibit 1 is played).

22 **MS. WALLER:** You can take it down.

23 **BY MS. WALLER:**

24 Q: Okay. Detective, Fletcher, we've just seen your body cam
25 footage from that arrest. Is that a true and accurate

1 representation of what actually occurred that day?

2 A: Yes, it is.

3 Q: And we saw the Defendant, did you see him there in
4 handcuffs, did you ask him any questions about the case at the
5 time you made this arrest?

6 A: No, I did not.

7 Q: And I think you can be heard on body cam saying, I'm
8 going to -- we'll have time to talk later or so. I'm
9 paraphrasing. Did you tell him you would talk to him and
10 interview him later?

11 A: Yes. The intention was to hold an interview at our
12 offices.

13 Q: Did he nevertheless make spontaneous statements to you
14 and other law enforcement officers present about the case?

15 A: He did.

16 Q: And so let's talk about what he said. Were some of those
17 statements incriminating for him?

18 A: Yes. In respect to him saying that he knew his
19 involvement of what it was.

20 Q: Okay. Did he -- did he say -- did he indicate to you
21 that he knew that he might have to answer to the police?

22 A: He did.

23 Q: Did he say that he knew his actions and what he did?

24 A: He did.

25 Q: Did he say his actions were justified?

1 A: He did.

2 Q: Did he indicate that he had videos on his cell phone that
3 he wanted you and other detectives to view?

4 A: Yes. I believe he said 16 or 17 some odd videos.

5 Q: Okay. So after -- after this, did you then transport him
6 or someone transport him to the ML Brown Building, the Horry
7 County police department headquarters?

8 A: Yes. He was transported by uniform officer.

9 Q: And when you got there, did you conduct an interview with
10 him?

11 A: I did, for almost four hours.

12 Q: For four hours?

13 A: Nearly. Yes, ma'am.

14 Q: Okay. And did you give him what's commonly called a
15 Miranda warning before you interviewed him?

16 A: I did.

17 Q: And just briefly, what is that?

18 A: Miranda warning is just your -- advisement of your Fifth
19 Amendment constitutional rights to silence and not to speak
20 with law enforcement if you so choose.

21 Q: Okay. And did he sign a form indicating that he
22 understood Miranda?

23 A: He did.

24 Q: I'm going to going to show you what's been marked as
25 State's Exhibit Number 2. Is that a copy of the Miranda form

1 you filed?

2 A: Yes. It is.

3 Q: Is that record kept in ordinary normal course of
4 business?

5 A: It is.

6 Q: Are you a records custodian?

7 A: I am.

8 **MS. WALLER:** Your Honor, at this time the State would
9 move the Miranda form number two into evidence.

10 **THE COURT:** Any objection?

11 **MR. HILLER:** No, Your Honor.

12 **THE COURT:** State's Exhibit 2 is admitted into evidence
13 without objection.

14 **(STATE'S EXHIBIT NUMBER 2 IS**

15 **ADMITTED INTO EVIDENCE)**

16 **BY MS. WALLER:**

17 Q: All right. Was that interview also audio and video
18 recorded?

19 A: Yes. That is standard reference.

20 Q: So how many suspects have you interviewed in your time as
21 a police detective or now sergeant?

22 A: Hundreds, if not thousands. Lots.

23 Q: A whole lot?

24 A: Lots.

25 Q: And in your experience, you said this was a four-hour

1 interview?

2 A: Correct.

3 Q: Do defendants try to minimize or otherwise explain the
4 way their conduct to you?

5 A: I would say that is typical behavior of most defendants.

6 Q: Okay. And in this case, did Rico Funderburk do that?

7 A: Yes.

8 **MR. HILLER:** Objection. Kind of the ultimate issue in
9 the case?

10 **THE COURT:** Yeah. I think that might be a factual issue
11 for the jury to determine. I sustain the objection.

12 **BY MS. WALLER:**

13 Q: Okay. Did Rico Funderburk tell you that he and
14 K.S. [REDACTED] lived together?

15 A: He did.

16 Q: Did he tell you they were in a romantic relationship?

17 A: He did.

18 Q: Did he tell you where they lived?

19 A: Yes. They said that they initially resided in an
20 apartment off of Dunbar Street, the Myrtle Beach area.

21 Q: Did he give you multiple reasons -- multiple reasons for
22 to explain K.S. [REDACTED]'s injuries that we've seen,
23 yesterday?

24 A: Indirectly, yes.

25 Q: Okay. So did he tell you that it should -- it wasn't as

1 serious as it looked?

2 A: Yes.

3 Q: Did he tell you that the victim could have injured
4 herself?

5 A: Yes. He implied on numerous occasions that the injuries
6 may be self-inflicted.

7 Q: Did he indicate that you that there was a time lag
8 between when she ran away and when you actually first saw her?

9 A: Yes.

10 Q: Did he say -- did he blame the victim for her own
11 injuries -- did he say they were a result of her own conduct?

12 A: Yes.

13 Q: Can you gimme an example of what kind of conduct that
14 was?

15 A: He indicated on numerous occasions that Ms. K.S. had
16 provided him with illicit or narcotic-type substances.

17 Q: So he told you she was drugging him against his will; is
18 that correct?

19 A: Yes. As well as providing him other substances.

20 Q: Okay. You're saying provide him other substances, what
21 do you mean by that?

22 **THE COURT:** Objection, Your Honor --

23 **THE COURT:** Hold for a second. We got an objection

24 **MR. HILLER:** Your Honor, this time I think I have a
25 matter of law.

1 **THE COURT:** All right. Ladies and gentlemen, we need to
2 address a matter of law, so I'm going to excuse you back in
3 the jury room for just a few minutes. Do not discuss even
4 among yourselves at this time. Thank you very much.

5 **REPORTER'S NOTE:** (Jury exits courtroom at 12:01pm)

6 **THE COURT:** All right. Mr. Hiller.

7 **MR. HILLER:** Your Honor, I'm sorry to hear that. As that
8 line of questioning started, it sounded like the State may be
9 laying the foundation for playing this roughly three and a
10 half, shorter than that most likely, statement with
11 redactions. But now, it's an out-of-order paraphrasing of a
12 post Miranda interview. I don't think I've ever seen that
13 before. I don't know that that's, I mean, it certainly --
14 there was a finding by the Court, not Your Honor, but Judge
15 Law McIntosh that the statement was admissible, but --

16 **THE COURT:** The statement being the recorded statement?

17 **MR. HILLER:** Yes. Not a paraphrase and out-of-order or
18 paraphrasing of the statement. The last question I didn't
19 write down, but it was certainly asking for a judgment call on
20 the statement itself. The State has to play the statement at
21 this point. I think they were trying to avoid it, and I just
22 didn't want that line of question to go any further before I
23 said -- well, I don't believe I should ever say in front of
24 the jury.

25 **THE COURT:** All right.

1 **MS. WALLER:** Your Honor, it's the State's position that
2 we do not have to play the video and audio recorded statement.
3 The ruling from the Court and the case law is that the
4 Defendant's statement, any statement they make to the police
5 or otherwise is admissible in court. Before we had the
6 ability to audio and video record, we frequently had
7 paraphrases, and I've actually had witnesses testify in trials
8 before where we didn't play the statements, but they gave
9 brief recitation. And honestly, that was my last question
10 about the drugging. That was it.

11 **THE COURT:** Well, let me ask you this. The Jackson v. -
12 - who did the Jackson v. Denno hearing?

13 **MR. HILLER:** Lawton McIntosh.

14 **THE COURT:** All right. Judge McIntosh, when he did
15 Jackson v Denno, did he -- was the statement presented to him
16 the video or was it the officer's summarization as to what was
17 told?

18 **MS. WALLER:** It was the video that played to him, but
19 it's the State's position that once the Defendant makes a
20 voluntary statement and that statement is deemed admissible,
21 that it's admissible, however the State admits it, we don't
22 have to actually play the video.

23 **THE COURT:** I disagree. I think if you're going to put
24 an officer on the stand and say, she told me A, B, and C and
25 this is based upon the interview, then you need to have a

1 Jackson v. Denno on that.

2 **MS. WALLER:** On the -- so would you like to conduct a
3 Jackson v. Denno on what we just talked about? Or what --

4 **THE COURT:** What statement are you going to use?

5 **MS. WALLER:** Well, this is it.

6 **THE COURT:** So you're not going to use the recorded
7 statement at all?

8 **MS. WALLER:** No, sir. It is a three and a -- a three and
9 a half, four-hour long self-serving statement. The State's
10 not going to play it.

11 **THE COURT:** Well, see --

12 **MS. WALLER:** Unless --

13 **THE COURT:** But what I understand, they don't even know
14 what this officer is going to say. They know what the video
15 says, but they don't know what this officer is going to say
16 she told him.

17 **MS. WALLER:** I don't think the officer has said anything
18 that is not reflecting --

19 **THE COURT:** Well, you've asked him, did she say A, B,
20 and C, and he said yes. Did she say D, E and H? Yes. Did
21 she say this? Yes. So you're kind of leading him as to, did
22 she tell you this, and he's just answering yes or no.

23 **MS. WALLER:** Well, he can say what he -- if I -- if you
24 prefer him to say it in a more narrative form --

25 **THE COURT:** We're going to have to do that.

1 **MS. WALLER:** Okay, that's fine.

2 **THE COURT:** Because they don't know what his testimony
3 is. When they went through the Jackson v Denno, they saw the
4 video, they knew what the video said, they knew that's what
5 the State was presenting. Unless he has testified in front of
6 these -- or in front of the Defendant or these attorneys
7 saying, this is what she was told to me --

8 **MS. WALLER:** I think --

9 **THE COURT:** I mean he can say --

10 **MS. WALLER:** We can do that quickly, Your Honor, because
11 this is really the end of it. He's -- and he can -- he can
12 speak for himself. I won't even speak for him. He can say
13 what he's going to say. It's really the reasons why the
14 Defendant said that she was injured. What happened that
15 caused this. That's all we're getting into. That's all that
16 we take away from the video. And there -- there are actually
17 reasons that are beneficial to him because he came up with the
18 self-serving statements.

19 **THE COURT:** Well --

20 **MR. HILLER:** And Your Honor, that self-serving statement
21 as it's characterized is also the defense, I mean.

22 **MS. WALLER:** Well, he can testify. Just like this, I
23 think this witness can also testify. And really and truly
24 what you just heard is the sum total of what we're getting
25 into with this witness. That's really it. It is a --

1 **THE COURT:** That's fine.

2 **MS. WALLER:** Yeah.

3 Your Honor That's fine. But it was not presented to Judge
4 McIntosh that way. What was presented to Judge McIntosh is
5 that the State intended to use the Defendant's prior statement
6 as evidence against him. Here's the video; this is what we're
7 going to use.

8 **MS. WALLER:** That is -- I will tell you that I never said
9 that this is what we're going to use at court. I just said
10 this is the Defendant's statement. Is his statement to the
11 police admissible. And I think it is admissible, whether it's
12 through testimony or through playing the video. I never
13 represented that we were going to play the video, Your Honor.

14 **THE COURT:** Find me some authority where you had a
15 Jackson v. Denno on a statement, but then presented it
16 differently than the way it was presented on Jackson v. Denno.

17 **MS. WALLER:** Well, I've actually done that in other
18 trials.

19 **THE COURT:** Has it passed a public review?

20 **MS. WALLER:** It's been years ago. I did it in front of
21 Judge John where we -- we showed what the -- I actually did it
22 in front of Judge Birch and Judge John where we played the
23 Jackson v. Denno and then the officer testified, because the
24 whole inquiry is, was the statement free and voluntary, not
25 what media we use or how we present it to the jury.

1 **THE COURT:** And I don't doubt that you've done that
2 before. Listen to my question to you. Is there an appellate
3 decision that says a Defendant's prior out-of-court statement
4 is presented for a Jackson v. Denno in one form, and then used
5 at trial in a different form?

6 **MS. WALLER:** I'll have to look.

7 **THE COURT:** Okay, let's --

8 **MS. WALLER:** Do you want me to go look, I'll be happy.

9 **THE COURT:** If that's the way you're proceeding in this
10 case and you say that it is admissible evidence, then yeah,
11 we're going to have to get it that way. Because I'm thinking
12 Judge McIntosh said this is -- I mean, what if there, you
13 know, I mean what if there's a discrepancy between his
14 testimony,

15 **MS. WALLER:** Then they can object, and they can play that
16 portion to impeach the witness. That's the whole procedure.
17 That's how you get -- that's why it's okay. because if he
18 says something wrong, they can say, that's not what he said.
19 Isn't that true? And then they can impeach his testimony.

20 **THE COURT:** Well, let me hear from you on that. Why
21 can't you do it that way?

22 **MR. HILLER:** Your Honor, it is a three-and-a-half-hour
23 statement. I have listened to it many times. But for one
24 attorney to keep that much information in her head and pull up
25 the exact spot in that, impeach on the spot, and go back to

1 cross --

2 **MS. WALLER:** We do that all time. And if there's a
3 transcript that I provided --

4 **THE COURT:** Listen, court reporter can only pick up one
5 person at one time, so let's do not talk at the same time.
6 You get to put your complete position on the record, then the
7 Defense gets to put their complete position on the record.
8 Okay? All right. Finish your argument, Mr. Hiller.

9 **MR. HILLER:** I mean, that is a herculean effort that I
10 think is unreasonable given the advances in technology, given
11 the fact that has used that technology extensively in this
12 case. I also think that it's a -- could potentially be a due
13 process violation. It is at least putting me under the
14 microscope at PCR. You didn't remember section, you know, 15
15 minutes in and yeah. Okay, fine. I'll be ineffective. I
16 don't know. I do not know his three-and-a-half-hour statement
17 by heart. I'm sorry. That is nothing that's ever been asked
18 of me to do.

19 **THE COURT:** Well, I'll tell you what we're going to do.
20 I'm going to let her go ahead and present her case the way she
21 wants to. If you want to take a break review the recorded
22 statement, it may take three-and-a-half hours. I'll look
23 forward to that opportunity.

24 **MR. HILLER:** Well, and the other thing, Your Honor,
25 obviously, you know, dropping -- I'm sure this is just timing-

1 wise, but, you know, dropping the -- dropping the lead
2 investigator on me 10 minutes after lunchtime or 10 minutes
3 afternoon as --

4 **THE COURT:** That's why I'm going to give you as much
5 time as you want.

6 **MR. HILLER:** Yes, sir.

7 **THE COURT:** If you want to take the rest of the afternoon
8 reviewing the statement to verify his -- the veracity of what
9 he's testifying to, then I'll allow you to do that. Because I
10 recognize that they presented it to Judge Macintosh in one
11 form, and now they're presenting it at trial in a completely
12 different form. I've never had that happen before. Every
13 time I've been through a Jackson v. Denno, it's been used at
14 trial the same way it was presented, or it was presented at
15 trial in the same way it was presented during the Jackson v.
16 Denno. I'm going to go ahead and allow him to do it. If it's
17 wrong, you've got your appealed issue.

18 **MR. HILLER:** And I will say, Your Honor, I was -- not to
19 argue -- but I was kind of okay with the leading, the yes --
20 not exactly leading, but obviously -- type question. And I
21 thought the video was coming, then it became apparent that
22 maybe it's not, and that is the State summarizing the
23 detective and then getting the detective to say yes.

24 **THE COURT:** And I agree with you on that. I sustained
25 your objection. No more leading questions. Just asking what

1 did she say.

2 **MS. WALLER:** Yes, sir. And I will say that was not
3 intended to mislead --

4 **THE COURT:** I understand that, but that's what's
5 happened. It may not be intentional, but that still does not
6 relieve the State of the obligation to follow the rules of
7 evidence in the proper way to direct and examine a witness.
8 You can't -- you can't lead the witness.

9 **MS. WALLER:** I understand that.

10 **THE COURT:** All right. Anything from the State before
11 we bring the jury back in?

12 **MR. HILLER:** No, sir, Your Honor.

13 **THE COURT:** Anything from the Defendant?

14 **MR. HILLER:** Briefly, Your Honor. Just since the jury is
15 still out, we approached Your Honor earlier on a sidebar when
16 the State relied on Rule 801(D), Subsection -- sorry, 801(D),
17 one large D, that was about the -- a statement of a declarant
18 regarding a CSC-type case. The end of that sentence, Your
19 Honor, is -- and the statement is limited to the time and
20 place of the incident. I do want to put on the record that I
21 believe the questioning far exceeded time and place of the
22 incident. I think at least a curative instruction would be
23 necessary. I believe the officer tested to both the actual
24 level of CSC penetration, again, far beyond what the rule will
25 allow us.

1 **MS. WALLER:** Your Honor, and I will say I presented that
2 evidence many, many times. And if you -- there is appellate
3 case law on that the -- the rule reads -- what he is talking
4 about, the rule reads that way, but you can't say that she
5 said she was sexually assaulted without saying she was
6 sexually assaulted, essentially. So the rule contemplates
7 that the -- that he's going to say yes, she told me she was
8 sexually assaulted and when and where it occurred. So all he
9 did was say how she said she was sexually assaulted, what she
10 said. And that kind of testimony is presented very
11 frequently. We call it an outcry witness.

12 **THE COURT:** All right. I'll overrule on that objection.

13 **MS. WALLER:** Thank you.

14 **THE COURT:** Anything further from the Defense before we
15 bring the jury?

16 **MR. HILLER:** Judge, Mr. Funderburk did ask if he could
17 have a quick break (inaudible).

18 **THE COURT:** All right. Just take about a 10, 15-minute
19 break then we'll back.

20 (BREAK)

21 **THE COURT:** All right. Are we ready to proceed?
22 Anything from the State?

23 **MS. WALLER:** Your Honor, I do think it -- probably I
24 should just put on the record since we've had a lot of
25 discussions about this, that the State does not intend to play

1 the video in its case-in-chief, but the State could play the
2 video as impeachment.

3 **THE COURT:** Well, I mean that's -- as I understand,
4 you're saying that you can do that. I understand there's no
5 appellate decision. I'm going to allow you to do it, but
6 whether or not you can present a Defendant's out-of-court
7 statement one way at a Jackson v. Denno hearing, and then a
8 different way at the trial. I don't know, because I
9 understand there's no appellate decision one way or the other
10 on that issue. So I'm going allow it, then I'll let the
11 appellate courts deal with it. All right?

12 **MS. WALLER:** All right.

13 **THE COURT:** Anything you want to put on the record, Mr.
14 Hiller?

15 **MR. HILLER:** Just that I do object to the State since
16 they're not going to play the jury -- to allow the jury, you
17 know, to basically calling -- calling a statement self-serving
18 is a comment on credibility. That's fine to say enclosed in
19 argument, I believe. But to comment on the credibility of a
20 Defendant without -- through the -- through --

21 **THE COURT:** Well, they can't -- they cannot comment on
22 the credibility. That's true. You cannot challenge the
23 Defendant's credibility unless the Defendant puts his
24 credibility at issue in trial.

25 **MS. WALLER:** I think -- I'm sorry.

1 **MR. HILLER:** It's been called self-serving. So if the
2 State can help me how that's not challenging credibility.

3 **MS. WALLER:** I think that the detective can characterize
4 the interview and the statements he heard in the interview.
5 How -- in the way that Christian Fletcher has, because when he
6 -- the point of doing the interview is to determine whether or
7 not he thinks the Defendant committed the crimes and whether
8 to continue with the arrest process. He's got to make a
9 credibility determination at that point. I mean, and it's not
10 really credibility, it's did you believe what he said of what
11 evidence do you have that he didn't do?

12 **THE COURT:** Well --

13 **MS. WALLER:** But I can ask that without saying it in that
14 manner.

15 **THE COURT:** I think the law is clear. The Defendant's
16 credibility cannot be presented to the jury unless the
17 Defendant, which is credibility at issue.

18 **MS. WALLER:** I do -- I completely agree. I understand
19 the ruling --

20 **THE COURT:** And you can't -- I'm granting the Defendant's
21 motion that you can't ask this officer, was he telling the
22 truth? Was he lying?

23 **MS. WALLER:** I'm not going to do that, Your Honor.

24 **THE COURT:** Was he dishonest? Trying to mislead? Was he
25 not trying to mislead? You can ask him what did the Defendant

1 say?

2 **MS. WALLER:** Okay. And I just for the record, I haven't
3 asked any of those types of questions, nor do I intend to.
4 The only thing I asked is did he give a self-serving statement
5 to minimize his conduct? Just for the record. That's --

6 **THE COURT:** Well, I'm going to --

7 **MS. WALLER:** I don't think that's a comment on
8 credibility.

9 **THE COURT:** All right. I'm going to let that go, but I'm
10 not going to -- let's just stick with what did the Defendant
11 say? It's up to the jury.

12 **MS. WALLER:** I have --

13 **THE COURT:** Respectful determinations.

14 **MS. WALLER:** I'm not going to ask this -- that question.

15 **THE COURT:** All right, Mr. Hiller, anything else?

16 **MR. HILLER:** Just to point out, we already saw him be
17 arrested. This post Miranda interview was not to help the
18 detective decide whether or not to go forward with the arrest
19 that had been --

20 **THE COURT:** Yes.

21 **MR. HILLER:** So I know we can do all this stuff forever,
22 but that just -- I thought was kind of an factual error.

23 **THE COURT:** All right.

24 **MS. WALLER:** Yeah, that.

25 **THE COURT:** All right. Anything further before we bring

1 the jury in? All right. Let's bring the jury in. Matter of
2 fact, we want to go ahead and break down for lunch? I mean,
3 you basically have about five to 10 minutes. You want to go
4 ahead and break for lunch?

5 **MS. WALLER:** It's -- breaking for lunch is fine with me.
6 If you would like to go back on the record and I can just move
7 on to other questions if you want -- if you think that helps,
8 I can do that.

9 **THE COURT:** well, you tell me.

10 **MS. WALLER:** I don't have any further questions about the
11 statement. That was the last question anyway.

12 **THE COURT:** All right. You've got about five minutes.
13 Do you want to use the five minutes, or do you want to break
14 the lunch?

15 **MS. WALLER:** Well --

16 **MR. HILLER:** Well, if those were the only statements,
17 Your Honor said that the further statements will have to be in
18 -- having the detective testify in narrative form. At this
19 point, it sounds like the State doesn't really draw -- did
20 draw me off, so --

21 **MS. WALLER:** Well, I can do that if you want me to. I
22 mean, that's my point. That was my last question.

23 **THE COURT:** You need to present your case the way you
24 want to present it. I'm not going to tell you how to try, Mr.
25 Hiller is not going to tell you how to try (inaudible).

1 That's the decision --

2 **MS. WALLER:** So the questions that -- I guess it's not
3 that I want you to tell me what's -- I'm not understanding
4 what you're -- do you want me to just -- you want me to ask
5 him again? Do we need to cure it on the record or do you just
6 --

7 **THE COURT:** I've ruled in your favor.

8 **MS. WALLER:** Okay.

9 **THE COURT:** There's nothing to cure.

10 **MS. WALLER:** Thank you. Okay. I'm just -- I wasn't
11 clear.

12 **THE COURT:** I just told you no more leading the witness.

13 **MS. WALLER:** Perfect.

14 **THE COURT:** There was too much leading, but there was not
15 an objection until now. And I'm sustaining that objection.
16 No more.

17 **MS. WALLER:** Thank you.

18 **THE COURT:** All right.

19 **MS. WALLER:** I think we can just break for lunch.

20 **THE COURT:** All right. Let's go ahead and bring the jury
21 in.

22 **REPORTER'S NOTE:** (Jury enters courtroom at 12:11pm)

23 **THE COURT:** Ladies and gentlemen, I apologize for
24 bringing you in and out so often. But we did have some
25 matters we needed to address, and taking a little bit longer

1 and it is almost 12:30. I'm going to -- we're going to go
2 ahead and break for lunch. Again, we've got lunch coming for
3 you. Take your time eating lunch. Do not discuss the case
4 even among yourselves. We'll take about an hour break and
5 then we'll come back and resume the trial. All right. Thank
6 you very much.

7 **REPORTER'S NOTE:** (Jury exits courtroom at 12:12pm)

8 **THE COURT:** All right. Officer Fletcher, we're still in
9 the middle of your testimony. So the law says you cannot
10 discuss your testimony with anyone. You cannot discuss it
11 with the State's attorneys. You cannot discuss it with
12 Defense attorneys. You cannot discuss it with anyone, whether
13 that be what you've testified to thus far or what you
14 anticipate testifying to in the future. Okay?

15 **DETECTIVE FLETCHER:** Yes, sir.

16 **THE COURT:** All right. So best thing is just don't even
17 discuss this case at all with anyone while we break for lunch.
18 Anything from the State before we break for lunch?

19 **MS. WALLER:** No, sir, Your Honor.

20 **THE COURT:** Anything from the Defense?

21 **MR. HILLER:** No, Your Honor.

22 **THE COURT:** All right. We'll take about an hour of
23 recess and come back.

24 **(COURT IS IN RECESS)**

25 **THE COURT:** All right. Anything from the State before we

1 bring the jury in?

2 **MS. WALLER:** Your Honor, briefly, I'd like to address
3 briefly the matter that we discussed before the break. I
4 understand that you ruled in the State's favor, but you were
5 asking for a case law on point -- that supported the State's
6 position. And at lunch I found a case that I do believe
7 supports the State's position. I'd just like to put it on the
8 record.

9 **THE COURT:** All right. What is that?

10 **MS. WALLER:** It is the case of State v. Worthy. I'll
11 pass up a copy for Your Honor and give the Defense a copy.
12 And I'll briefly summarize it. I highlighted the relevant
13 portion. Your Honor, this is a case from 1962. It's a case
14 of State v. Worthy. The citation is 239 S.C. 449. This State
15 -- this case stands for the proposition that where proof of a
16 conversation has been of two different kinds; namely, in this
17 case it was a recording of audio only, and testimony by
18 witnesses who overheard it. It has been argued that both the
19 recording and the testimony were the best evidence. However,
20 courts have not regulated either the secondary position, but
21 have held that both types of evidence are equally competent
22 primary evidence. The court went on to say that a witness
23 can properly testify to a conversation, notwithstanding the
24 fact that it's been recording and the recording was not
25 produced. The State feels -- this case also you'll see has

1 been overruled, but it's on over other grounds. And I have
2 copies of the overruling case if you would like to verify
3 that. So the State's position is that the testimony of
4 Detective Fletcher is proper testimony, even though the
5 Defendant's statement was audio and video recorded.

6 The purpose of the Jackson v. Denno hearing before trial
7 was to determine the voluntariness of this statement. Is the
8 State's position we wouldn't have even had to play it, but
9 it's the -- it's the easiest way to show the voluntariness of
10 the statement. And once that's been ruled off, the Jackson v.
11 Denno inquiry ends. However, that doesn't even mean that the
12 statement itself is admissible at trial. There are still
13 challenges to the admissibility at that point, as we actually
14 saw in this case because we had a Jackson v. Denno on the body
15 cam and the Defense still challenged the admissibility.

16 So the State's position is the purpose of the Jackson v.
17 Denno is solely to determine whether the confession or the
18 statement was freely and voluntarily given pursuant to the
19 Jackson v. Denno Standard. And at trial, the State can offer
20 either testimonial evidence of the statement or the reporting
21 of the statement.

22 **THE COURT:** Okay. Well, I understand the State v.
23 Worthy, but this does not deal with the State presenting the
24 Defendant's prior statement in one form at Jackson v. Denno,
25 and then in a different form of trial.

1 **MS. WALLER:** Your Honor, I never represented at the
2 Jackson v. Denno that we were going to play the statement. We
3 played it for the purpose -- and I'll also say that Detective
4 Fletcher did actually testify live and in person at the
5 Jackson v. Denno regarding the voluntariness of the statement.
6 So the State offered his live testimony about the statement
7 and we offered the statement. And the question was whether it
8 was voluntary. He testified it was, and the video videotape
9 bore that out. But whether --

10 **THE COURT:** I understand Jackson v. Denno is to determine
11 the voluntariness of the statement. I've just never had it
12 come up where the State has presented a statement of the
13 Jackson v. Denno hearing in one form, i.e., a video or a
14 written statement. And then when you get to trial, they don't
15 use the video or the written statement. They use the
16 testimony of the officer conducting the interview. I've never
17 had that come up before, and I've never read an appellate
18 court case that dealt with that issue.

19 Now, you may very well be right because Jackson v. Denno
20 is simply to determine the voluntariness of the State. That's
21 why I ruled in your favor. I'm going to let you present it
22 however you want to, but as I understand, even this case that
23 you presented does not deal with the issue as to whether or
24 not the State present a prior statement in one form of the
25 Jackson v. Denno hearing, and then present it in a different

1 form at the trial.

2 **MS. WALLER:** Well, it is the State's position that the
3 State does not have to determine how it presents this case
4 pretrial and that we can present the case. And then you've
5 already ruled in our favor in that regard. And the State
6 would also just like to point out that the Defense does have
7 the opportunity to cross-examine and impeach the detective on
8 anything he says that the Defendant said. And they have had a
9 copy of the Defendant's statement for at least two years now,
10 and I personally gave them a transcript of the statement back
11 in October -- November, November 13th. But that's -- I just
12 want to put that on the record.

13 **THE COURT:** All right. Anything Defense wants to put on
14 the record in that regard?

15 **MR. HILLER:** We're ready for the jury, Your Honor.

16 **THE COURT:** All right. Let's bring the jury.

17 All right. Officer Fletcher, you're still under oath,
18 okay?

19 **THE WITNESS:** Yes, sir.

20 **REPORTER'S NOTE:** (Jury enters courtroom at 1:43pm)

21 **THE COURT:** Gentlemen -- ladies and gentlemen, welcome
22 back. Hope everybody had a good lunch. We're ready to resume
23 the trial of this case. Ms. Waller, you can continue with
24 your direct examination.

25 **MS. WALLER:** Thank you, Your Honor.

1 **BY MS. WALLER:**

2 Q: Sergeant Fletcher, we watched your body cam footage of
3 the arrest of the Defendant. In that footage, did the
4 Defendant indicate to you that he had videos that he wanted
5 looked?

6 A: Yes, he did.

7 Q: And where were they located?

8 A: On his phone.

9 Q: Did you attempt to locate those videos?

10 A: I did.

11 Q: And how did you do that?

12 A: Through the course of the investigation, there were
13 several cell phones that were located. All of those phones
14 were put through the standard process via obtaining a search
15 warrant and attempting to have the data from the phone
16 extracted via forensic analysis.

17 Q: Okay. I'm going to show you a photograph that's been
18 previously admitted in the evidence. State's Exhibit 32,
19 please.

20 We saw this photograph earlier through the CSI. Showing
21 you what's been previously marked as State's Exhibit 32. Have
22 you seen this photograph before?

23 A: I have.

24 Q: And do you see the phone in the photograph?

25 A: Yes, I can see it.

1 Q: So when you saw this, what did you believe that phone to
2 be?

3 A: I believe that phone initially to belong to Mr.
4 Funderburk.

5 Q: Why did you think that?

6 A: Due to its location of the vehicle where it wasn't the
7 driver door.

8 Q: Okay. And did you attempt to search that phone?

9 A: I did.

10 Q: Did you find out that it was -- did you find out who the
11 phone belonged to?

12 A: Yeah. Materially, and both by corroborating statement.
13 It turned out to be KS's phone.

14 Q: Okay. And I think we heard CSI Stevenson testify that
15 there were other phones located in the search of the car. Do
16 you know if that is correct?

17 A: Yes. There were two others.

18 Q: Okay. And did you eventually identify one of the phones
19 as potentially belonging to the Defendant?

20 A: I did.

21 Q: Okay. I'm going to show you what's been marked as
22 State's Exhibit Number 61. Oh, I'm sorry. State's Exhibit
23 19. Take a look at that. Is that the Defendant's phone?

24 A: It is.

25 Q: And did you attempt to search that phone?

1 A: I did.

2 Q: Originally, were you successful?

3 A: No, I was not.

4 Q: Why not?

5 A: To park, I did not have access to a -- a security code

6 for the phone, nor did the port the phone work for downloading

7 purposes.

8 Q: Okay. Did you attempt to get the security code or the

9 passcode to the phone?

10 A: I did.

11 Q: How did you do that?

12 A: I went to speak with Mr. Funderburk again to ask for his

13 passcode to the phone, which he denied me.

14 Q: Okay. Were you at some point in the future able to get

15 that passcode?

16 A: Yes, I was.

17 Q: And how did you do that?

18 A: Contact -- I was made -- excuse me. I was made aware of

19 a screen jail phone call where Mr. Funderburk provided the

20 passcode of the phone to another party.

21 Q: Okay. And were you made aware by one of the solicitor's

22 offices investigators?

23 A: Yes. Correct.

24 Q: And is it -- do you know if i's standard practice for the

25 jail to record phone calls between inmates of the outside

1 public?

2 A: Yes. All of them are monitored and uploaded to a server
3 that we have access to.

4 Q: Okay. Once you got the passcode, did you try to search
5 the phone a second time?

6 A: I did.

7 Q: And how would you conduct that search?

8 A: Again, because of the stance of the port not being in
9 working order, I knew that at that time, a typical download
10 wasn't possible. So I manually searched the phone, the same
11 way you would operate your phone or someone else's phone. I -
12 - I went through it. I also created secondary videos from
13 another recording device of the screen of the phone as I did
14 that.

15 Q: So when you say you recorded secondary videos, you mean
16 you just held a recording device over the phone while you
17 looked at the videos and recorded the content of the phone?

18 A: Yes. I was issued a, I believe it was a Nikon camera at
19 the time that -- for the performance of my job. So I used it
20 to capture a video of the video, if that makes sense.

21 Q: Okay. And did you find material on that phone that's
22 relevant to this case?

23 A: I did.

24 Q: Did you at some point ask Benjamin Wells to try to
25 extract the data from the phone?

1 A: Yes. After the manual search, I did reach out to Mr.
2 Wells in the attempt to have the phone downloaded.

3 Q: Was he able to do that?

4 A: He was, after fixing the port.

5 Q: Did he return the results to you?

6 A: Indirectly, yes. He returned them to the Horry County
7 Police Department, which were then forwarded to me.

8 Q: Okay. And were you able to review those results?

9 A: I was.

10 Q: Did you find the same material on the, what I'm going to
11 refer to as the Cellebrite, as you did on the phone when you
12 looked at the phone?

13 A: I did, yes. The same -- same items were present on both
14 the manual and the Cellebrite extraction.

15 Q: Okay. I'm going to show you what's been marked as
16 State's Exhibit 57. I'm going to show you what's been marked
17 as State's exhibit 57. It's flash drive. Do you recognize
18 that?

19 A: I do.

20 Q: And have you reviewed that?

21 A: I have.

22 Q: How do you know?

23 A: This is the same envelope. Bears my signature of the --

24 Q: Okay. What does that contain?

25 A: This contains several videos from Mr. Funderburk from --

1 Q: Videos that you retrieved from the cell phone?

2 A: Yes.

3 **MS. WALLER:** For the court reporter's information, the
4 flash drive itself is number 57. The individual files on here
5 are labeled 57A through O. We'll go through each one
6 individually.

7 Your Honor, at this time the State would move exhibits
8 57A through O -- I'm sorry, A through P. Let me make sure
9 that's correct -- into evidence. These are the videos that
10 Detective Fletcher just identified he pulled from the phone
11 and the Cellebrite report.

12 **THE COURT:** All right. Is that all of State's Exhibit
13 57?

14 **MS. WALLER:** Yes, sir. What it is, is because the files
15 are large, they're on a flash drive and each one is just
16 labeled 57A through O. And each -- each letter is an
17 individual video.

18 **THE COURT:** Okay. But I mean the A through O, is all the
19 videos.

20 **MS. WALLER:** A through P. Yes, sir.

21 **THE COURT:** A through P is all the videos?

22 **MS. WALLER:** It's all the videos.

23 **THE COURT:** And you're seeking to introduce A through P?

24 **MS. WALLER:** Yes, sir.

25 **THE COURT:** All right. Any objection?

1 **MR. HILLER:** Is the State's position for authentication
2 that is a witness of knowledge or what exactly is the theory
3 of that? This is a proper authentication for videos that
4 neither is in or recorded.

5 **MS. WALLER:** Well, the State's position is that they were
6 taken from the Defendant's phone and the detective. I can ask
7 him some questions about how he authenticated the phone.

8 **BY MS. WALLER:**

9 Q: So when you looked through the Defendant's phone, how did
10 you know it was his phone?

11 A: Materially, the same way that I would be able to tell --
12 you would be able to tell my phone is my phone or your phone
13 is yours. So pictures, different accounts with names, phone
14 numbers, conversation history between involved parties by
15 name, phone number, and particular account information.

16 Q: And when you reviewed the videos, were you able to
17 identify the Defendant in the videos?

18 A: Yes.

19 Q: And how were you able to do that?

20 A: Well, it's -- several of the videos are as clear as they
21 a photograph. And comparatively, they are the same people.

22 Q: And were you able to also identify the victim, KS
23 [REDACTED]?

24 A: Yes. By the same -- by the same means.

25 Q: And have you also showed those videos to the victim,

1 KS ?

2 A: I have.

3 Q: Okay. And did -- hold on one second. Okay. I'm going
4 to show you what was marked into -- and presented into
5 evidence as State Number 51. That's the -- the Cellebrite
6 report summary. And I might have to stand there and direct
7 your attention to -- I'm going to direct your attention to
8 just here. What does it say to hotspot password is on the
9 file?

10 A: The hotspot password reads R-I-C-O-F 1294.

11 Q: Thank you. So when you finished manually and searching
12 upon, were you confident that was the Defendant's cell phone?

13 A: Yes, I was.

14 Q: And that the videos depicted -- K.S. or the
15 Defendant Rico Funderburk?

16 A: Yes. Or combination of both.

17 **MS. WALLER:** The State seeks to introduce and publish
18 these videos at this time.

19 **THE COURT:** All right. Any objection?

20 **MR. HILLER:** No objection, Your Honor.

21 **THE COURT:** All right. State's exhibit 57 admitted into
22 evidence without objections.

23 **(STATE'S EXHIBIT NUMBER 57 A - P**

24 **ARE ADMITTED INTO EVIDENCE)**

25

1 **MS. WALLER:** Okay. Just pull it up for a second. Okay.
2 Let's play 57A, please.

3 **REPORTER'S NOTE:** (Whereby State's Exhibit 57A is
4 played).

5 **BY MS. WALLER:**

6 Q: Okay. You just watched 57A, and what did you -- what was
7 relevant about this video to you?

8 A: I can't make the audio out, but Ms. **KS** uninjured and
9 appears happy and content, as well as Mr. Funderburk

10 Q: Okay. And when you were reviewing these videos, were all
11 of the videos taken within the timeframe when you understood
12 Ms. **K.S.** and Mr. Funderburk being in a relationship?

13 A: Yes. They were all taken within that same contract. ??

14 **MS. WALLER:** Let's watch 57B please.

15 **REPORTER'S NOTE:** (Whereby State's Exhibit 57B is
16 played).

17 **MS. WALLER:** I just want to ask, can everyone hear okay,
18 or do you? No.

19 So do you -- do you -- Court's indulgence, do you mind if
20 we put some external speakers up, so --

21 **THE COURT:** That'd be fine.

22 **MS. WALLER:** Okay. Thank you. Do you have the speakers?

23 **THE CLERK:** They're already on.

24 **MS. WALLER:** Oh, they're already here?

25 **THE CLERK:** Yes.

1 **MS. WALLER:** Well, let -- perhaps we can move it closer.

2 **THE CLERK:** Yeah, absolutely.

3 **THE COURT:** Well, it's going to need to be where the
4 Defense can see it and the court can see it. So you going to
5 need to leave probably (inaudible).

6 **MS. WALLER:** Can you bring the speakers closer? Or a
7 microphone to the speaker. That might help. Yeah, Let's do
8 that. Yeah, here we go by the way.

9 And please raise your hand if you can't hear. All right.
10 Replay this and see if this is better.

11 **REPORTER'S NOTE:** (Whereby State's Exhibit 57B is
12 played).

13 Everyone's here now? Okay. Thank you.

14 **BY MS. WALLER:**

15 Q: Detective Fletcher, what was relevant about this video to
16 you?

17 A: Generally, the same. Depicts what would be consistent
18 language with a romantic relationship, referencing love and
19 the willingness to do anything for someone, so it depicts a
20 relationship that would be typical, I guess.

21 **MS. WALLER:** Okay. Let me play 57C please.

22 **REPORTER'S NOTE:** (Whereby State's Exhibit 57C is
23 played).

24 **BY MS. WALLER:**

25 Q: And what's relevant about this video?

1 A: More of the same.

2 Q: And could you tell what he said to her? What he called
3 her?

4 A: I believe what he said was, "You're the prettiest girl
5 alive."

6 **MS. WALLER:** Okay. Can we play 57D please?

7 **REPORTER'S NOTE:** (Whereby State's Exhibit 57D is
8 played).

9 **BY MS. WALLER:**

10 Q: What did -- what did Mr. Funderburk ask her in this
11 video?

12 A: If Mrs. K.S. would be his girlfriend.

13 Q: And what was her response?

14 A: Yes.

15 **MS. WALLER:** Okay. let's play 57E.

16 **REPORTER'S NOTE:** (Whereby State's Exhibit 57E is
17 played).

18 **BY MS. WALLER:**

19 Q: Okay. What's significant about this big one??in your
20 investigation?

21 A: It's shows the -- shows a shift, I guess from the
22 previous videos of love and happiness to some sort of argument
23 about the stance of the relationship.

24 **MS. WALLER:** Okay. Let's play 57F please.

25 **REPORTER'S NOTE:** (Whereby State's Exhibit 57F is

1 played).

2 **BY MS. WALLER:**

3 Q: Detective Fletcher, why did you identify this video as
4 being reported to your investigation?

5 A: Again, it's that switch in -- it's that switch in status
6 and conversation. There clears to be -- there -- there seems
7 to be clear fear in Ms. K.S. 's voice as she responds to them,
8 pleading please, please, please, please, please. Also, at the
9 end you can see the beginnings of the downturn of her physical
10 appearance through her hair and just general condition, as
11 well as its consistency statement-wise as to what I have
12 learned at this point.

13 **MS. WALLER:** Can you back up so we can see her -- a shot
14 of her face, please? Right there.

15 **BY MS. WALLER:**

16 Q: Okay. Can you tell me what's significant about this
17 picture? What do you see on her face here?

18 A: Can I step down? There's a little bit --

19 **MS. WALLER:** Can the witness step down, Your Honor?

20 **THE COURT:** Yes. As long as there's (inaudible) and pick
21 up the test.

22 **BY MS. WALLER:**

23 Q: So we're looking at these areas.

24 A: I just want to be by the microphone.

25 Q: Yeah. Okay.

1 A: So as you can see the dissolvment of the hair, the
2 beginning parts of the matting that was present at the end, as
3 well as her eyes and the discoloration, what appears to be
4 bruising in and around both of her eyes.

5 Q: It looks like -- can you see the -- this eye -- is this -
6 - can you see stuff here in here? Just point so we can --

7 A: Yeah. It seems to -- to both eyes -- above this eye,
8 there seems to be some sort of either bruise or small
9 laceration. This eye seems to be discolored below and above,
10 as well as the white of the eye seems to be red, consistent
11 with injury.

12 Q: And you heard them in this video discuss drug use?

13 A: Yes.

14 Q: Did you find any hard drugs anywhere in relation to this
15 case?

16 A: No, I never did.

17 Q: In your experience as a detective, are you familiar with
18 drug use?

19 A: I am.

20 **MS. WALLER:** Let's play -- I'm going to do something to
21 you tonight, first. Is that 57E? That was F. So let's play
22 57G please.

23 **REPORTER'S NOTE:** (Whereby State's Exhibit 57G is
24 played).

25 **BY MS. WALLER:**

1 Q: Detective Fletcher, why did you identify this video as
2 relevant to your investigation?

3 A: Generally, the same. Again, the progression of the
4 incident as it -- as it pertains to their relationship. Also,
5 the clear and concise, you know, fear in her voice, also
6 paired with her verbally saying, I'm afraid, I'm afraid of
7 you. I'm scared to go to bed tonight. And with Mr.
8 Funderburk's response of, You should be afraid, I'm going to
9 do something to you. Also towards the end, if you notice she
10 made statements that she just wants to, and several things she
11 listed that she just wants to, were like, make phone calls to
12 her mother, or talk to people about what was going on. So I
13 think that it was important to document.

14 **MS. WALLER:** Okay, thank you. Let's play 57H.

15 **REPORTER'S NOTE:** (Whereby State's Exhibit 57H is
16 played).

17 **BY MS. WALLER:**

18 Q: Detective Fletcher, in this video, it looks like it's
19 five minutes and 20 seconds long on the time. Do you see what
20 the Defendant's doing? Physically doing?

21 A: Yeah. It appears as though he is driving a car.

22 Q: He's driving a car.

23 A: Objectively -- yes.

24 Q: And does he appear to have any problems whatsoever
25 driving the car?

1 A: No.

2 Q: Does he appear to be under the influence of any --
3 anything at all?

4 A: No.

5 Q: And you have -- do you have training and experience as a
6 police officer in recognizing signs of impairment due to
7 alcohol, drugs?

8 A: Yes, I do.

9 Q: Is he exhibiting any of those signs?

10 A: No.

11 Q: Do you also hear him speaking to a person who's off
12 camera?

13 A: Yes.

14 Q: Do you recognize the person's voice?

15 A: Yes. That's Ms. K.S. .

16 Q: Okay. And why did you identify this video as something
17 relevant to your investigation?

18 A: So the duress that the video starts off with is
19 consistent with one's prior. There's some clear concern,
20 worry, or fear in Ms. K.S.'s voice. As video progresses and
21 they continue to talk, Mr. Funderburk threatens physical
22 violence upon her about hitting her in the eye. He also asks
23 her if he -- if she just wants to cut ties to which she --
24 there's a long pause, and the reply is much more concerned
25 about his reaction to the answer rather than providing the

1 answer. I believe at one point she says that I'm -- I'm
2 afraid to tell you the truth because you'll be mad, and I'm
3 afraid to tell you no because you'll beat me. I think it
4 shows a direct correlation to the lack of free will that she
5 had in this moment.

6 **MS. WALLER:** Okay, thank you. Can we play 57I please?

7 **REPORTER'S NOTE:** (Whereby State's Exhibit 57I is
8 played).

9 **MS. WALLER:** Can you back this one up, so we can see the
10 shot of the victim and the car? Go further toward the end.
11 Where you can see the victim. Keep going. A little bit
12 further, see if we can get a better shot. Do you -- I'm
13 sorry, I know this is difficult. Play it for a second and
14 I'll tell you. I tried to catch it.

15 **BY MS. WALLER:**

16 Q. We're going to try to get a still shot, so that you can
17 see the physical condition of the victim. But based on what
18 you just watched, what's her physical condition in this video?

19 A: Further deteriorated than the last. The hair is
20 continuing to map. I believe when we see the still shot, be
21 able to see if it looks like she's beginning to lose some of
22 her hair and the face condition appears to be worsening with
23 more bruising, signs of some sort of trauma.

24 Q: Okay. And what's her demeanor like in this video?

25 A: I mean, I would best describe it as embarrassed. It

1 seems like that's the intention, is to pick fun at and make
2 fun of some sort of bathroom-related issue that Ms. **K.S.** had.

3 Q: And I -- this is a screenshot, it's a little fuzzy and
4 it's just difficult to capture that moment where you can see
5 all of her. But do you see her physical condition in this
6 photograph?

7 A: Yes. And I would say it mirrors what I said earlier.

8 **MS. WALLER:** Okay. Can we have 57J please.

9 **REPORTER'S NOTE:** (Whereby State's Exhibit 57J is
10 played).

11 **BY MS. WALLER:**

12 Q: There's no video of this one, but what did you hear the
13 Defendant say?

14 A: A biggest note, to be careful about what you say to me.
15 You could hear the duress, again, Ms. **K.S.**'s voice and at the
16 end he -- I believe he says, before I put this expletive tire
17 iron in your mouth.

18 Q: Okay. And was a tire iron one of the items you were
19 looking for when you were told -- when you were having
20 evidence collecting in this case?

21 A: It was

22 **MS. WALLER:** Can we play 57K please.

23 **REPORTER'S NOTE:** (Whereby State's Exhibit 57K is
24 played).

25 **BY MS. WALLER:**

1 Q: What's notable about her physical condition?

2 A: Again, deteriorating further as we move on.

3 Q: Okay. And is this -- did you hear him speak to her
4 regarding her wanting to leave?

5 A: Yes. Said that she was -- said that she could go,
6 however, she asked for her phone, to which she replies that
7 it's generally in the back, as well as trying to take another
8 piece of personal property from her.

9 Q: And at the very end, could you tell what he -- if he took
10 anything from her?

11 A: I believe he was trying to take, it sounds like keys and
12 she was fumbling with what looks like an Apple watch. So I
13 believe it was a combination of both of those things,
14 potentially.

15 **MS. WALLER:** Okay. Can we play 57L please?

16 **REPORTER'S NOTE:** (Whereby State's Exhibit 57L is
17 played).

18 **BY MS. WALLER:**

19 Q: Okay. Is the tone of this one different than previously?

20 A: Yeah. So I would say this is the first video that shows
21 like the act of actual physical violence. The -- the tone and
22 phrases used are confirmatory that -- that an assault has
23 taken place, and then you actually witness some sort of
24 physical altercation between the two. The continued pleas of
25 asking her to stop or asking him to stop, along with just the,

1 you know, mental decline to the point of not wanting to be
2 with us anymore.

3 Q: And did the Defendant actually confess to meeting rooms
4 With you??

5 A: Yeah. He says directly, I believe, I just beat a bitch.

6 **MS. WALLER:** Thank you. Can we see 57M please.

7 **REPORTER'S NOTE:** (Whereby State's Exhibit 57M is
8 played).

9 **BY MS. WALLER:**

10 Q: In this video, what does the Defendant appear to be
11 doing?

12 A: Driving the car again.

13 Q: And does he appear to be under the influence?

14 A: No.

15 Q: Does he appear to be having any trouble driving the car?

16 A: No, he is not.

17 Q: And is he also videotaping at the same time?

18 Q: He is.

19 Q: That's speaking to victim?

20 A: Yes. Correct.

21 Q: You can hear something happen off camera. Did you note
22 that?

23 A: Yes. At the end of the conversation, you can hear what
24 appears to be a smack, followed by again extreme duress from
25 Ms. **K.S.**.

1 **MS. WALLER:** Okay. Can we play 57N please?

2 **REPORTER'S NOTE:** (Whereby State's Exhibit 57N is
3 played).

4 **BY MS. WALLER:**

5 Q: In this video, can you see the victim's condition?

6 A: Yeah. It's deteriorated much further. You can see the
7 bruising and discoloration extending down into her cheeks, as
8 well as significant swelling. Her overall tone has changed
9 largely in part to the injuries to her face, as well as her
10 hair. The continual matting loss of hair is more prevalent.

11 **MS. WALLER:** Okay. Can we play 57O please?

12 **REPORTER'S NOTE:** (Whereby State's Exhibit 57O is
13 played).

14 **MS. WALLER:** Okay. Can you back that up.

15 **REPORTER'S NOTE:** (Whereby the video is stopped).

16 **MR. HILLER:** Your Honor, just for the record, note my
17 objection.

18 **THE COURT:** All right.

19 **MS. WALLER:** Can you back it up to where you can see the
20 victim?

21 **REPORTER'S NOTE:** (Whereby State's Exhibit 57O is
22 played).

23 **MS. WALLER:** There you go. That's good.

24 **BY MS. WALLER:**

25 Q: Okay. Can you see the victim in this frame?

1 A: I can.

2 Q: And what is her physical condition?

3 A: Again, even further deteriorated, more and more bruising,
4 hair in the same condition, and she appears to be holding some
5 sort of compression on her eye, whether that be ice or a towel
6 or whatever. But she's tried to render some form of aid to
7 her injured face.

8 Q: Okay. Did you hear what he said at the beginning?

9 A: I believe he said I'm about to go fed. Is that what
10 you're referring to? Yes.

11 **MS. WALLER:** All right. Let's play 57P please.

12 **REPORTER'S NOTE:** (Whereby State's Exhibit 57P is
13 played).

14 **BY MS. WALLER:**

15 Q: That's the last video. I don't really have any
16 questions. I think that one speaks for itself. Detective
17 Fletcher, we just watched State's exhibits 57A through P. Are
18 those all the videos that you recovered that you thought were
19 relevant to the case from the Defendant's file?

20 A: They are.

21 Q: And you've narrated and told us why you chose those and
22 why you wanted us to see those, could you just briefly tell me
23 why you chose that progression of video?

24 A: For the sake of the charges and how they played out, I
25 believe that one shows the clear romantic relationship

1 initially between the two, establishing of his household
2 members who involved in a romantic relationship. As you see
3 the images and the videos progress you show -- showed the
4 injury progression, her mental progression, her inability to
5 have free thought or will, the progression of her physical
6 injuries to the gross manner that they were in the end. And
7 just the general progression of not only the relationship, not
8 only her physical condition, but also her mental wellbeing.

9 **MS. WALLER:** I want -- could you put up the last video
10 for one more second please? 57P.

11 **THE CLERK:** Yes.

12 **MS. WALLER:** See if you can do a still shot of her face
13 at the beginning of her. Okay. Go for it a little bit.
14 There you go.

15 **BY MS. WALLER:**

16 Q: I -- I just wanted to put the still shot up there because
17 is this substantially the condition that you saw K.S.
18 in at the hospital that night?

19 A: Give or take, yes. This is -- this is the most similar
20 video or picture evidence that was located throughout the
21 course of the investigation that is most similar to the
22 condition the night that I saw.

23 Q: And how would you describe her condition in this type of
24 video?

25 A: I have regularly described her condition, it looks as

1 though she has fallen down a mountain. Every piece of her
2 body is battered and bruised. You have large chunks of hair
3 missing. The swelling and just discoloration to her face is
4 astonishing. Also in this video, which you can see and notice
5 is her hands, the hands are very, very swollen, and bruised,
6 and discolored. And in my experience, those are consistent
7 with what we would consider defensive markings. The blocking
8 or attempt to stop of some sort of physical assault thus
9 striking your hands or your forearms, I would say that this is
10 absolutely what I would consider some sort of life-threatening
11 blunt force injury to this person.

12 Q: Okay. Thank you. When you searched the phone, did you
13 also find photographs on the phone that were relevant to the
14 case?

15 A: I did.

16 Q: I am going to show you what's been marked 52, 53, 54, 55,
17 and 56. Please look at those.

18 Are those photographs that you located on Funderburk's
19 telephone?

20 A: They are.

21 Q: The cell phone?

22 A: They are.

23 Q: And have you showed those photographs to [REDACTED] K.S. ?

24 A: She has been shown (inaudible) picture. Yes.

25 Q: Okay. And can you identify the victim, [REDACTED] K.S. ,

1 some of those photographs?

2 A: Yes.

3 **MS. WALLER:** Your Honor, at this time, the State seeks to
4 introduce 52, 53, 54, 55, and 56 into evidence and publish
5 into the jury.

6 **THE COURT:** Any objection?

7 **MR. HILLER:** 403 objection, Your Honor.

8 **THE COURT:** Let me see. All right. State's Exhibits 52,
9 53, 54, 55, and 56 are admitted into evidence over Defendant's
10 objection.

11 **(STATE'S EXHIBIT NUMBERS 52 - 53**

12 **ARE ADMITTED INTO EVIDENCE)**

13 **MS. WALLER:** All right, let's publish -- let's start with
14 50 -- State's Exhibit 54 is a photograph.

15 **BY MS. WALLER:**

16 Q: Okay. Who's depicted in this picture?

17 A: Ms. **K.S.**

18 Q: And where did you find this photograph?

19 A: This phone was found in the course of extracting the data
20 from Mr. Funderburk's phone.

21 Q: So a photograph from his cell phone?

22 A: Correct.

23 Q: Okay. Can we see State's Exhibit 55 please? What does
24 this picture show?

25 A: Again, Ms. **K.S.**'s heavily battered.

1 Q: And where did you retrieve this photograph?

2 A: The same location, Mr. Funderburk's phone.

3 Q: Okay. And let's see State's Exhibit 56 please. Okay.
4 And this appears to be legs. We'll ask others to identify who
5 they are, but where did you locate this picture?

6 A: This photo was from the same location, Mr. Funderburk's
7 phone.

8 Q: Okay. Can we have Exhibit Number 52 please? Can you
9 tell me what this is a photo of?

10 A: That is a photo of Ms. [REDACTED] 's Ohio-issued driver's
11 license.

12 Q: And where did you find that photo?

13 A: Also, in Mr. Funderburk's phone.

14 Q: Can we see 53 please? And what is this photograph?

15 A: That is a photograph of Mrs. [REDACTED] 's Social Security
16 card.

17 Q: And where did you find this photograph?

18 A: Also, in Mr. Funderburk's phone.

19 Q: Okay, thank you. You can take that down. Okay. When
20 you were going through the phone, did you also find text
21 messages that had gone from Mr. Funderburk's phone to other
22 friends?

23 A: I did.

24 Q: Okay. And I'm going to show you pictures. Do you have
25 any way to know if the other -- the receiving party, who that

1 is?

2 A: No. I have no way to confirm that.

3 Q: So you're not making any representations about that?

4 A: No.

5 Q: But I think you previously testified that you did
6 confirm, based on your search of the phone, that it was Rico
7 Funderburk's phone?

8 A: Correct.

9 Q: Okay. I'm going to show you what's been marked as
10 State's Exhibit 59.

11 Q: And that's a photograph. Is that a photograph that you
12 took?

13 A: Yes. This is a photograph that I took.

14 Q: What does it depict?

15 A: It is a text message chain between Mr. Funderburk and a
16 second party.

17 Q: Okay. And how do you tell which -- which color
18 represents the Defendant's statement?

19 A: The chat format, as well as when you pull it from the
20 Cellebrite side of things shows that the blue bubbles belong
21 to -- are sent from Mr. Funderburk's device, and the other
22 color bubbles are sent from another device, much like the way
23 your phones work.

24 **MS. WALLER:** Your Honor, at this time the State seeks to
25 introduce Exhibit 59 into evidence.

1 **THE COURT:** All right. Any objection?

2 **MR. HILLER:** No, Your Honor.

3 **THE COURT:** State's Exhibit 59 admitted into evidence
4 without objection.

5 **(STATE'S EXHIBIT NUMBER 59**

6 **IS ADMITTED INTO EVIDENCE)**

7 **MS. WALLER:** We'd like to publish it as well, Your Honor.

8 **THE COURT:** All right.

9 **MS. WALLER:** 59 please.

10 **BY MS. WALLER:**

11 Q: Okay. I don't know if the jury can read this or not, but
12 what was the first bubble say?

13 A: First blue bubble says, "Sis, I'm on the run."

14 Q: What does the -- what is the response, just for clarity?

15 A: The second party response, "For what?"

16 Q: And what is the response to that?

17 A: The response is, "We got into it and I flipped out
18 (inaudible)."

19 Q: Okay. And then further, what's the response to that?

20 A: The response is, "Why?"

21 Q: Okay. What is the response?

22 A: The response is, "This girl just admitted to drugging me
23 and sucking dick in my car."

24 Q: Okay. And when you read those messages, what do you take
25 them to mean?

1 A: I take them to mean that Mr. Funderburk is saying that he
2 is on the run from law enforcement in reference to the actions
3 that took place between he and Ms. K.S. .

4 Q: And then what about the second part where we got into it
5 and I flipped out?

6 A: I would assume that that was consistent with the items
7 you saw on video being physical assault.

8 Q: And when the person or the phone says "why," why does he
9 say it happened?

10 A: He says that it happened because Ms. K.S. admitted to
11 drugging him.

12 Q: And what else? Can you read it?

13 A: No.

14 Q: I'm sorry, I have to -- I'll hand it back to you.

15 A: Oh, excuse me. Admitted to drugging him and sucking dick
16 in his car.

17 Q: Okay. I am going to show you what's been marked as
18 State's Exhibit Number 58. Okay. Are those text messages
19 that you located on the Defendant Rico Funderburk's phone?

20 A: They are. These are photographs that I took.

21 Q: Okay. And do you have any idea -- there's a name on
22 there. What's the name on there?

23 A: The name is Glinda.

24 Q: But do you have any idea that who that person is or -- or
25 if that's actually the person that says it was?

1 Q: No.

2 A: Okay. So, but can you tell which of the statements come
3 from the phone that you searched?

4 A: More of the same materially, it just makes sense. And
5 then knowing how phones operate, the messages derived in the
6 blue color are sent from Mr. Funderburk and the others from
7 the second party.

8 **MS. WALLER:** Your Honor, at this time, State seeks to
9 introduce Exhibit 58 into evidence and publish to the jury.

10 **THE COURT:** Any objection?

11 **MR. HILLER:** No, Your Honor.

12 **THE COURT:** State's exhibit number 58 admitted into
13 evidence without objection.

14 **(STATE'S EXHIBIT NUMBER 58**

15 **IS ADMITTED INTO EVIDENCE)**

16 **MS. WALLER:** Okay. Publish it please. It's multiple
17 pages. I'll tell you when to flip.

18 **BY MS. WALLER:**

19 Q: Okay. I don't think the jury can read this, but this
20 text, can you -- can you tell us like the first text what it
21 says. It's --

22 A: The first text, which is from the second party says, "If
23 you are with **K.S.**, you please tell her she needs to call me
24 right now."

25 Q: What's the response?

1 A: It's the second text from the same second party and it
2 says, "Hi Rico, this is KS 's mom. I'm so sorry to bother
3 you. Have you heard from KS recently by chance? I'm just
4 getting a little concerned because we cannot reach her --" "--
5 or can't reach her." Excuse me.

6 Q: What's the response?

7 A: The response comes from Rico's device and it's, "Yeah, I
8 have, when I see her I'll have her call you."

9 Q: Okay. What's the response to that?

10 A: From the second party, "Okay, thank you. Not sure if her
11 phone is dead or off. Go straight to voicemail and thank you
12 again."

13 Q: What's the response?

14 A: "No problem."

15 Q: Okay. And then continue.

16 A: "I hate to keep bothering you. Do you have any idea how
17 I can get ahold of KS? Her phone --" "-- her phone is still
18 off. I'm getting really worried."

19 Q: Can you see, is there a date and time on that particular
20 text?

21 A: Yeah. So the date above shows is August 27th and the
22 previous conversation happening on August 26th. So a day
23 apart.

24 Q: Okay. All right. And can you read the next text? Flip
25 to the next page please. Okay.

1 A: You want me to continue?

2 Q: Yeah, please. Just please read it for us.

3 A: Would you like me to break it by like response?

4 Q: Yes.

5 A: Okay. It says, "I hate to keep bothering you. Do you
6 have any idea how I can get ahold of **KS**? Her phone is still
7 off. I'm getting really worried." Response is, "I told her to
8 call me you." Response, "Do you know where she is? I'm not
9 even sure she has a place to live." Response, "She's been
10 staying at the Marriott Hotel by Broadway." Response, "She
11 told me she ran out of money. Now I have no idea what's going
12 on. I haven't been able to contact her since then." Response,
13 which is slightly cut off is --

14 Q: Sorry. She's -- okay.

15 A: Am I good?

16 Q: Are they out of order?

17 A: No, no, no, no. I was just --

18 Q: Okay.

19 A: Good to go. Okay. "Yeah, we were talking about that
20 Wednesday. She trying to a job at Broadway and the hotels,
21 but her old job getting in the way apparently." Response,
22 "Well, thank you for your response. If you see her, please
23 tell her to call me." Response, "No problem." Response, "Do
24 you know of anyone else she may hang with?"

25 Another message from the second party, "Was Wednesday the

1 last time you saw her?" Response, "I'll drive over there
2 around 1:00 if she hasn't called by then, not right off. I
3 don't know too many of her friends like that." Response, "Her
4 phone has been off for like two days. Was Wednesday the last
5 day you saw her?" Response, "No. Last night." Response,
6 "Okay. I just need to know she's alive."
7 Q: Okay. Please move on.
8 A: And then the last response, "Oh, well, yeah."
9 Q: Okay. So at the end of those texts?
10 A: Yes.
11 Q: Okay. Okay. I'm going to show you what's been marked as
12 State's Exhibit Number 62.
13 **MR. HILLER:** May I see.
14 **MS. WALLER:** Oh, sorry.
15 **BY MS. WALLER:**
16 Q: All right. This is State 62. Is this also a picture of
17 text messages that you retrieve from the Defendant's cell
18 phone?
19 A: Yes. This is more of a second.
20 Q: Okay. And can you tell what the -- the name of the
21 person is, who's responding?
22 A: The name shown is Adam.
23 Q: But once again, you don't know if that is actually Adam
24 or Rico?
25 A: No. I have no way of knowing that.

1 **MS. WALLER:** Okay. Can -- at this time, Your Honor, the
2 State would seek to introduce 62 admitted into evidence and
3 published to the jury.

4 **THE COURT:** Any objection?

5 **MR. HILLER:** No, Your Honor.

6 **THE COURT:** State's Exhibit 62 admitted into evidence
7 without objection.

8 **(STATE'S EXHIBIT NUMBER 62**

9 **IS ADMITTED INTO EVIDENCE)**

10 **BY MS. WALLER:**

11 Q: Okay. And once again, are the -- the kind of the colors
12 and the bubbles work the same way. And we all have some
13 (inaudible), so. Okay. Do you mind reading that text
14 exchange please? You can start with the ones -- or there --
15 there's a date. Can you see the date in the middle of this,
16 the text screen?

17 A: Yes. Sunday, August 29th, 2:35 p.m.

18 Q: And what's significant about that date to you?

19 A: That is the day directly after Ms. KS was located by
20 the staff at Walmart.

21 Q: Okay. And you don't have to read if there's any kind of
22 slurs or anything in there.

23 A: Okay.

24 Q: But there's also some curse language that you can address
25 however you'd like. Can you read the exchange there?

1 A: It says, "What you doing brah?" The response coming from
2 Mr. Funderburk's device is, "On the run brah. Got people
3 after me, man. Bitch is trying to set me up and kill me.
4 Fuck it man. I'm going to just take it how it comes. Police
5 on me too." The response is -- okay, continue or not?
6 Q: Yeah, you can read the rest of it.
7 A: The response is, "So it is the law or some blank?" The
8 response is, "Both the blank is ex-police brah."
9 Q: Okay. Is that the end?
10 A: No, there's one more response. The response from the
11 second party is, "Damn, blank. You might need to go on low.
12 I'm here but not trying to get caught up."
13 Q: Okay. Thank you. Okay. I'm going to show you what's
14 been marked as State's Exhibit 60 and 61. All right. I am
15 showing you what's been marked as State 60 and 61. And do you
16 recognize these reports?
17 A: Yes. These are extraction reports from the program
18 Cellebrite from Mr. Funderburk's phone.
19 Q: Okay. So are those items that you located after you got
20 the data extraction from the phone?
21 A: Yes.
22 Q: And were you able to print out these Facebook messages?
23 A: Yes.
24 Q: Okay. So the first one is Exhibit 60?
25 A: Yes. Correct.

1 Q: Okay. What's the date on that?

2 A: The first image appears to be a sent TikTok and it's from
3 August 28, 2021.

4 Q: What's significant about that date?

5 A: Say again? I'm sorry.

6 Q: What's significant about that date?

7 A: August 28th is the day that Ms. **KS** was located by the
8 Walmart employees.

9 Q: Okay. And is it the same, can you tell if he's speaking
10 to a third party?

11 A: Yes. There's communication between the number and --

12 Q: And do you see a name on there just so we can identify?

13 A: The name is sorted by some sort of particular number and
14 then it's also Breezy Bree.

15 Q: Okay. So Breezy Bree, but do you know who Breezy Bree
16 is?

17 A: I have no idea.

18 Q: Okay. Can you read that exchange for us please?

19 A: Again, the first message doesn't seem to have --

20 **MR. HILLER:** Your Honor --

21 **MS. WALLER:** Oh, I'm sorry, it's not in evidence. I
22 apologize. Your Honor, at this time the State seek to admit
23 Exhibit 60 into evidence and publish to the jury.

24 **THE COURT:** Any objection?

25 **MR. HILLER:** No, Your Honor.

1 **THE COURT:** State's Exhibit 60 admitted into evidence
2 without objection.

3 **(STATE'S EXHIBIT NUMBER 60**
4 **IS ADMITTED INTO EVIDENCE)**

5 **BY MS. WALLER:**

6 Q: And put it -- put it on the TV and you read it once we
7 get it.

8 A: Okay.

9 Q: I think you need to zoom out. You need zoom out to see
10 the -- okay. All right. And so what is this first green
11 bubble? Is that the TikTok video you referenced?

12 A: Yes. So it's the extractions translation of the TikTok
13 message.

14 Q: Okay. Scroll down so we can see it down. Okay. Go to
15 the second page please. There we go. All right. What does
16 this first bubble say?

17 A: The first message from the contact listed as Breezy Bree
18 says, "WYA."

19 Q: Do you know what that means?

20 A: In my experience, it's where you at.

21 Q: Okay. And what's the response?

22 A: There isn't one initially and then another from Breezy
23 Bree that just says hello.

24 Q: Okay. Okay. What's the response? I can't -- or is this
25 the right page? I can't follow along.

1 A: Yeah.

2 Q: It's kind of difficult to see.

3 A: Yeah, you're correct.

4 Q: Okay.

5 A: The response from Mr. Funderburk is, "On the run," with
6 several exclamation points.

7 Q: Okay.

8 A: The response from the contact Breezy Bree is, "What?"
9 Another response from the contact Breezy Bree is, "Answer the
10 fucking phone." And that's it.

11 Q: And that's it. Okay. So I'm going to direct your
12 attention to State's Exhibit 61. What does that appear to be?

13 A: The same. It's a Cellebrite extraction report for
14 messages from Mr. Funderburk's phone.

15 Q: And who were they with?

16 A: The same contact name and number stored as Breezy Bree.

17 Q: Okay. And did you pull those from the Cellebrite data
18 extraction?

19 A: Correct.

20 **MS. WALLER:** Your Honor, at this time the State seeks to
21 introduce Exhibit 61 into evidence.

22 **THE COURT:** Any objection?

23 **MR. HILLER:** No, Your Honor.

24 **THE COURT:** State's Exhibit 61 admitted into evidence
25 without objection.

**(STATE'S EXHIBIT NUMBER 61
IS ADMITTED INTO EVIDENCE)**

BY MS. WALLER:

Q: Okay. And can you -- can you read this one?

A: Yes.

Q: So the -- which party is the green?

A: The green would be Rico and it's indicated on top of the bubble by name and like the ID number for the device.

Q: Okay. And what's the date on this? What -- when does it start?

A: The date is 8/28/2021.

Q: Okay. Read this conversation for us please.

A: The first bubble for Mr. Funderburk's device is, "WYA," and "WYD." And in my experience, that's where you at and what you're doing. The response from the contact Breezy Bree just says Walmart. The next response also for Breezy Bree is, "Sitting on a blanket." The response from Funderburk's device is, "Police there," question mark. The response from Breezy Bree is, "About to go to the beach." It's access, but it says assess. Another response from Breezy Bree, "No." Another response from Breezy Bree, "Hell no". A response from Funderburk's device, "See a crazy bitch, two black eyes and green pants," question mark. Response from Breezy Bree, "No." Response from Mr. Funderburk's, "Damn, I fucked up." Response from Breezy Bree, "WIM," which in my experience is what you

1 mean. The next response is from Breezy Bree, and this is the
2 extractions translation of sending a -- a pin, like your live
3 location to someone. Response from Funderburk, "OTW," which
4 in my experience is on the way.

5 Q: Is that the end?

6 A: And that's it.

7 Q: Okay. Thank you for reading those for us. Did you -- in
8 addition to doing everything that you've already just
9 described, did you also get what's commonly called a DNA
10 standard or a buccal swab from the Defendant Rico Funderburk?

11 A: I did.

12 Q: And how did you do that?

13 A: At the time he was currently housed at the detention
14 facility, I obtained a search warrant for DNA standards swab
15 or buccal swabs for Mr. Funderburk. I responded to the
16 detention facility and collected them.

17 Q: Okay. And when you say a buccal swab, is that -- just so
18 they know, it's just a Q-tip collected DNA swapped back from
19 the mouth?

20 A: Correct. It's a set of Q-tips that are rub on the inner
21 cheek of the person in question. And that is used to create a
22 DNA standard.

23 Q: I'm going to approach and show you what's been marked as
24 State's Exhibit 35 and -- and this is 65. So is -- what is
25 State's Exhibit 65?

1 A: 65 appears to be a SLED heat seal from Horry County
2 Police Department. It's the evidence envelope that I turned
3 in with Mr. Funderburk's buccal swab.

4 Q: Okay. And can you look at the second item I gave you?
5 35. Is that what is commonly called the chain of custody form
6 Horry County police evidence form?

7 A: It is.

8 Q: And does that show that you signed that evidence into the
9 Horry County Police Department?

10 A: Yes, it does.

11 Q: So when you do that, what do you do with it?

12 A: After collection it is packaged appropriately, and then
13 dropped off at our evidence division and signed over to them
14 via this chain. It then becomes their secure property to
15 forward however we decipher.

16 Q: Okay. And is that standard procedure for how you handle
17 evidence?

18 A: Yes.

19 **MS. WALLER:** Court's indulgence?

20 **THE COURT:** All right.

21 **MS. WALLER:** Your Honor, I'd like to -- the State moves
22 to admit Exhibit 35 into evidence, and Exhibit 65.

23 **THE COURT:** Any objection?

24 **MR. HILLER:** No objection to either evidence.

25 **THE COURT:** All right. State's Exhibits 35 and 65

1 admitted to evidence without objection.

2 (STATE'S EXHIBIT NUMBERS 35 AND 65

3 ARE ADMITTED INTO EVIDENCE)

4 BY MS. WALLER:

5 Q: I'm going to back -- back up to those Facebook messages
6 between Rico Funderburk's cell phone and Breezy Bree. You
7 read about loud, he said something -- and I'm paraphrasing.
8 Did -- well -- well, actually, I'll just read it. Let me see
9 it.

10 A: Which section? Here's both of them.

11 Q: The second one.

12 A: I believe that's the second one.

13 Q: Okay. So he says, "See a crazy bitch, two black eyes and
14 green pants," question mark, question mark. We've seen, and
15 you've seen the surveillance footage from KS
16 running into Walmart. What was she wearing?

17 A: She was wearing green pants and had black eyes.

18 Q: That's -- and did you collect her clothing that she was
19 wearing from the hospital that night?

20 A: I did.

21 Q: Okay. I'm going to show you -- we've already put these
22 in evidence, but are these the green pants that she was
23 wearing?

24 A: I would say those are in fact green pants.

25 Q: And once again you can see where they've been cut off of

1 her body?

2 A: Correct.

3 Q: Okay.

4 **THE COURT:** For the record, that State's Exhibit what?

5 **MS. WALLER:** For the record, this is State's exhibit 44.

6 **THE COURT:** All right.

7 **MS. WALLER:** Your Honor, the State has no further
8 questions for this witness at this time.

9 **THE COURT:** All right, ladies and gentlemen, we've been
10 at it for a little over an hour and a half. Now, we're going
11 to go ahead and take a break. Take about a 10 to 15 minute
12 break, give you an opportunity to stretch your legs. Do not
13 discuss the case even among yourselves. We'll take a 10 or 15
14 minute break and bring you back in just a few minutes. Thank
15 you very much.

16 **REPORTER'S NOTE:** (Jury exits the courtroom at 3:05pm)

17 **THE COURT:** All right. Anything from State before we
18 take a break?

19 **MS. WALLER:** No, sir, Your Honor.

20 **THE COURT:** Anything from the Defense?

21 **MR. HILLER:** Yes, Your Honor. You had indicated before
22 the break for lunch that since the State decided to just
23 basically summarize through Sergeant Fletcher -- Mr.
24 Funderburk's post Miranda statement that I could have a little
25 more time as I make sure I don't miss anything on cross. To

1 me makes sense to -- I'm not going to take three and a half
2 hours, but.

3 **THE COURT:** Well, I mean you can take -- since I
4 presented that way, you can take it as long as you need.

5 **MR. HILLER:** Yes, sir.

6 **THE COURT:** To go through it. Is that what you wanted?

7 **MR. HILLER:** I was going to say it makes sense now to,
8 you know, since the next thing up is cross-examination.

9 **THE COURT:** All right. Well, it's 3:00. How much time
10 do you think you're going to need? What do we want? I mean,
11 do we want to cut the jury loose for the day?

12 **MS. WALLER:** Your Honor, the State has witnesses here
13 from SLED that have traveled from Columbia --

14 **THE COURT:** I'm sorry, that's just the way it works. He
15 gets to review the video. Since you presented it the way you
16 chose to present it, I'm going to allow him to review the
17 video to see if he wants to use it to impeach any testimony.
18 That's just the way it works. You tell me what does the
19 defense want to do?

20 **MR. HILLER:** Your Honor, may we break now for the 15-
21 minute break and I'll consult with Mr. Fox during that break
22 and we'll perhaps go back in chambers and we can put what we
23 say on the record thereafter.

24 **THE COURT:** Well, whatever we put on, we're going to do in
25 open court.

1 **MR. HILLER:** Sure. Well, I mean, just to inform the
2 Court because I --

3 **THE COURT:** I guess my question is, do we want to bring
4 the jury back in and cut them loose for the day and come back
5 tomorrow morning? In other words, do you think that your
6 review of the Defendant's video that was presented at the
7 Jackson v. Denno hearing, is it going to take you the
8 remainder of the day to review that, or are we going to need
9 the jury some more today?

10 **MR. HILLER:** One moment, Your Honor. Your Honor, this
11 is, you know, day in court. It's a long time coming. I do
12 think I need the time.

13 **THE COURT:** Okay. All right. We'll bring the jury back
14 in. We'll break for the today. I'll give you the remainder
15 of the afternoon to review the video and then we'll come back
16 and start cross-examination of this witness tomorrow. All
17 right. All right. Anything from the State before we bring
18 the jury back in?

19 **MS. WALLER:** No, sir, Your Honor.

20 **THE COURT:** Anything from the Defense?

21 **MR. HILLER:** No, Your Honor.

22 **THE COURT:** All right, let's bring the jury.

23 **REPORTER'S NOTE:** (Jury enters courtroom at 3:14pm)

24 **THE COURT:** All right. Ladies and gentlemen, welcome
25 back. I apologize for cutting your break short, but we've got

1 some scheduling matters we need to attend to at this point in
2 time, and it's going to take a while. So rather than keeping
3 you in the jury room with it being 3:15 already, rather than
4 keeping you in the jury room for the next hour or hour and a
5 half, we're going to go ahead and break for the day. And I'm
6 going to ask that you please be back at 9:15 tomorrow morning.

7 Again, do not discuss the case even among yourselves.
8 Don't conduct any independent investigation. I hope you have
9 a good evening, and we'll see you back at nine 15 tomorrow
10 morning. Thank you very much.

11 **REPORTER'S NOTE:** (Jury exits the courtroom at 3:15pm)

12 **THE COURT:** All right. Again, Officer Fletcher, we're in
13 the middle of your testimony. So the law requires that you
14 not discuss your testimony with anyone, whether that be what
15 you testified to thus far, or what you anticipate testifying
16 to in the future. All right?

17 **SERGEANT FLETCHER:** Yes, sir.

18 **THE COURT:** All right. Anything from the State before we
19 take a break?

20 **MS. WALLER:** No, sir, Your Honor.

21 **THE COURT:** Anything from the Defense?

22 **MR. HILLER:** No, Your Honor.

23 **THE COURT:** All right. Now, having said that, do we want
24 to just get back tomorrow morning at 9:30 and resume? Or do
25 you want to start hitting -- looking at the video hard and we

1 stick around in case any issue comes up?

2 **MR. HILLER:** No. I mean, I understand the report's ruling
3 that they can try the case they want. I cannot imagine any
4 issue coming up. It's all about just --

5 **THE COURT:** It's just giving you an opportunity to look
6 through the video to see if you want to impeach this witness's
7 testimony based upon the way they presented the Defendant's
8 statement.

9 **MR. HILLER:** Yes, sir. I think that's -- I need to do on
10 my own.

11 **THE COURT:** All right. All right. We'll be in recess
12 until 9:30 tomorrow.

13 **(COURT IS IN RECESS)**

14 **THE BAILIFF:** All rise.

15 **THE COURT:** Thank you very much. Please be seated. All
16 right. Good morning, ladies and gentlemen. Anything from the
17 State before we bring the jury in?

18 **MS. WALLER:** No, sir.

19 **THE COURT:** Anything from the Defense?

20 **MR. HILLER:** No, Your Honor.

21 **THE COURT:** All right. Let's bring the jury. Officer
22 Fletcher, I'll remind you you're still under oath from
23 yesterday.

24 **SERGEANT FLETCHER:** Yes, sir.

25 **REPORTER'S NOTE:** (Jury enters courtroom at 9:55am)

1 **THE COURT:** Ladies and gentlemen, welcome back. I hope
2 everybody had a good evening. Again, I want to thank you for
3 being so prompt this morning, and I apologize for keeping you
4 in the jury room for so long. When we broke yesterday, the
5 State had just finished their direct examination of this
6 witness, we'll continue at this time. Mr. Hiller, Mr. Fox,
7 cross-examination.

8 **MR. HILLER:** Thank you, Your Honor.

9 **CROSS EXAMINATION OF SERGEANT FLETCHER BY MR. HILLER:**

10 Q: Good morning, Sergeant Fletcher.

11 A: Good morning.

12 Q: So I think it was yesterday, sort of near the beginning
13 of your direct examination or somewhere in there anyway, the
14 State introduced, through you, your body cam footage from the
15 hotel parking lot where Mr. Funderburk was arrested, correct?

16 A: Correct.

17 Q: And solicitor asked you about some of the statements Mr.
18 Funderburk made there without being interrogated, correct?

19 A: Correct.

20 Q: But isn't it true that he also said there, and I'm going
21 to quote this, "Any action that I did possibly commit, I was
22 under the influence of a substance that I knew nothing about"?

23 A: Yes. He did make that statement.

24 Q: You tell him that you're going to give him a chance to
25 talk to you and then you actually -- he proceeds not in your

1 vehicle, but in another vehicle to the ML Brown Building,
2 correct?

3 A: Yes. That is correct.

4 Q: Do you remember about what time of day that was?

5 A: The start of the interview or when I made contact with
6 him? It would -- I would say it was the general evening,
7 probably 5:00, 6:00 p.m., somewhere in there. I -- I'm not --
8 I'm not certain without looking at the file.

9 Q: And that'd be on the body cam footage anyway, wouldn't
10 you --

11 A: Yes. It would be timestamped on the body cam.

12 Q: Same with -- I believe you testified that you did a
13 recorded interview at his station?

14 A: Yes. At the ML Brown Building, we have interview rooms
15 that are audio and video recorded from multiple angles. So we
16 just want to conduct it there.

17 Q: And those are timestamped as well, correct?

18 A: Yes, sir.

19 **MR. HILLER:** But just for purposes of identification, may
20 I approach Your Honor?

21 **THE COURT:** Yes.

22 **BY MR. HILLER:**

23 Q: I'm going to show you something just for purposes of
24 identification. It's been pre-marked as State's 3, but it is
25 not into evidence. Can you just take a look at that and tell

1 me what it is?

2 A: Yeah. This is the -- this is a copy of Mr. Funderburk's
3 interview at the ML Brown Building.

4 Q: And that should be -- so those are your, that's your mark
5 on the back of your initials?

6 A: Yes, sir. That's my signature.

7 Q: So you would believe that this is a fair and accurate
8 representation of whatever was said during the interview?

9 A: Yes, sir. I would.

10 Q: And it was, I think you said about four hours yesterday?

11 A: Yeah. I believe the stamp on it is three and a half
12 hours, about somewhere in there.

13 Q: And it was sort of a back and forth interview, I would
14 say there's -- is that fair to say?

15 A: I would say that's how most interviews or conversations
16 work. Yes, sir.

17 Q: Sure. But you've got an agenda, you're trying to get
18 some -- you have specific questions that you want answers to.

19 A: Yes, correct.

20 Q: And of course, there's a story that the Defendant's
21 trying to tell, generally?

22 A: Yeah. Again, I would say that's the general purpose of
23 an interview.

24 Q: And they're not always aligned on the same track. So
25 there's some give and take back and forth?

1 A: Sure.

2 Q: During the interview, Mr. Funderburk told you that he met
3 Ms. [REDACTED] on social media?

4 A: He did.

5 Q: He told you that that relationship did end up turning
6 romantic?

7 A: Yes, he did.

8 Q: You, I guess, had to corroborated from either earlier
9 information that you had that they became homeless following
10 an eviction?

11 A: Yes. That was the statement provided.

12 Q: Did Mr. Funderburk tell you that he started to suspect
13 that Ms. [REDACTED] was using drugs?

14 A: Yes, he did. Multiple times.

15 Q: And did he tell you that he actually found her drugs?

16 A: He had made reference to several suspected drugs that he
17 thought that he had seen in the vehicle. Yes.

18 Q: And then confronted her about what he said he found?

19 A: Say again? I'm sorry.

20 Q: And -- and he also told you that he confronted her about
21 what he told you that he found?

22 A: Yes, he did.

23 Q: And he told you about some admissions she makes about
24 drugging him too, doesn't he?

25 A: Yes. He said that she had admitted on numerous occasions

1 that she had provided that.

2 **MS. WALLER:** Objection. Your Honor, the basis of the
3 objection is that he's allowed to impeach the witness based on
4 his testimony he had yesterday. But this witness did not get
5 into any of this yesterday.

6 **THE COURT:** Overruled. This is cross-examination. He
7 can cross-examine him on anything that was told to ask. I'll
8 allow. Go ahead.

9 **BY MR. HILLER:**

10 Q: (Inaudible) such as, I'm sorry, I just wanted you to
11 enjoy the drugs as much as I do.

12 A: Yes.

13 Q: You would report that she told him that he put them in
14 her mouth while he slept?

15 A: Yes.

16 Q: Sprinkled on his clothes?

17 A: Yes.

18 Q: And then some -- and then food, essentially, fries, I
19 think was one of the specific stories.

20 A: I believe there was something spoken about fries. I
21 can't recall if it was that the drugs were on the fries or if
22 they -- I -- yes. There was something about food and
23 narcotics. Sure.

24 Q: And he also told you about symptoms, physical symptoms,
25 reactions such as racing heart. Do you recall him telling you

1 his heart was racing? I recall.

2 A: Him notating a racing heart, yes.

3 Q: At the time of this interview, you already had the
4 warrants, right?

5 A: Say again, I'm sorry.

6 Q: At the time of this interview, which I believe was on the
7 2nd of September, maybe the 1st, you already had your
8 warrants, right?

9 A: Correct.

10 Q: In fact, you had served them or told him that he was
11 under arrest for them?

12 A: I hadn't done the -- I hadn't done the official server
13 process that occurred at the jail, but yes, I had told him
14 what he was under arrest for and what the charges were.

15 Q: So did the interview that he gave you change the course
16 of your investigation at all?

17 A: In the simplest of terms, no. It provided his statement,
18 it provided his account, but there was nothing uncovered that
19 would've changed any of the criminal findings that were
20 already located.

21 Q: You still got a search warrant for the Highlander after
22 this interview?

23 A: Correct.

24 Q: And you got search warrants for cellphone data or a
25 record -- or not data. Well, data not records?

1 A: Yeah. Through the course of the investigation, there
2 were many, many search warrants obtained.

3 Q: And the DNA search warrants and --

4 A: Yes DNA.

5 Q: And medical records?

6 A: Yes.

7 Q: That was pretty much the whole investigation, right?

8 A: The investigation was done through the interview process
9 of Mr. Funderburk and Ms. KS, forensic data from cell
10 phones, forensic data from other search warrants for the car,
11 several different channels and evidence, but.

12 Q: During your interview phase of the investigation, you
13 learned that the couple or the parties would stay at hotels
14 sporadically?

15 A: Correct. That was -- that was both of their accounts,
16 was that they had stayed -- frequented at several hotels in
17 the Myrtle Beach, in North Myrtle beach area.

18 Q: And they were actually consistent with the same hotels.
19 Were they not?

20 A: Their stories were generally consistent. I wouldn't say
21 they were perfectly consistent, but then again, if you ask any
22 two people any two things, there's typically some sort of
23 discrepancy along the lines. But yes, they were generally
24 consistent, I would say.

25 Q: I was only asking as to the hotels.

1 A: As to the hotels, yes.

2 Q: Yes. Okay, thank you. Did -- was there a Days Inn
3 involved?

4 A: I believe so.

5 Q: Comfort Inn involved?

6 A: I believe so.

7 Q: A Courtyard involved?

8 A: I believe so.

9 Q: Any other hotels involved that you can think of?

10 A: Off the top of my head, I'm -- I'm not certain. There
11 were -- like I said, there were several hotels mentioned in --
12 in the Myrtle Beach and North Myrtle Beach area. As well as,
13 I guess technically Conway, one of them is kind of on that
14 cusp line between Conway and Myrtle Beach.

15 Q: Yes. Do you know of any hotels in the area that do not
16 have surveillance on -- on premise?

17 A: I am not aware of the hotels giving surveillance hotel to
18 hotel, no.

19 Q: Sure. Would you say it is fair to say that the Days Inn
20 likely had surveillance footage?

21 A: Most hotels have surveillance footage.

22 Q: I think so as well. Did you go to any of these hotels?

23 A: I did not.

24 Q: Did any member of the investigation team go to the
25 hotels?

1 A: No, not to my knowledge or in my direction.

2 Q: So any surveillance footage that could have been pulled
3 was not pulled?

4 A: No, it was not.

5 Q: And that could have helped your -- helped the
6 investigation?

7 A: I would say no. The action of the hotel was whether or
8 not they were present, which was corroborated by both of their
9 statements.

10 Q: Well, you've made some assertions during the trial that
11 you believe she was not free to leave. If there's a image
12 showing that, that would help the investigation; would it not?

13 A: Image showing what exactly?

14 Q: Some sort of coercion control, you know, not free to
15 leave.

16 A: Again, those items of evidence were located through other
17 avenues. So the avenue of surveillance photo -- surveillance
18 video was not explored.

19 Q: But conversely, if there was surveillance footage
20 hypothetically showing her smoking a cigarette outside the
21 lobby by herself?

22 **MS. WALLER:** Objection. Calls for speculation.

23 **THE COURT:** Overruled. Go ahead.

24 **BY MR. HILLER:**

25 Q: That might actually provide exculpatory evidence or

1 evidence that does not assist her investigation, correct?

2 A: Hypothetically speaking, if that was something that was
3 present, true.

4 Q: But we'll never know?

5 A: We will not.

6 Q: And you were present when the Highlander was searched,
7 correct?

8 A: I was in the impact lot, yes.

9 Q: Okay. Were you directing it? You had --

10 A: No.

11 Q: Okay.

12 A: I'm just the detective. We are allowed the opportunity
13 to be present if we would like to be present. That is
14 something that is conducted by our crime scene investigators.
15 That's their area of expertise.

16 **MR. HILLER:** Court's indulgence just one moment, Your
17 Honor.

18 **THE COURT:** All right.

19 **BY MR. HILLER:**

20 Q: You were present in the courtroom yesterday during the
21 crime scene investigator's statement, correct?

22 A: I was.

23 Q: Okay. And he testified that five items of evidence were
24 sent to SLED?

25 A: I believe that is what he said. That is what I

1 understand the standard protocol.

2 Q: So is it your belief that SLED would've rejected a
3 submission of an additional five items of evidence perhaps?

4 A: That is the way I understand the process. I -- I'm not
5 certain. I've never had to send DNA evidence directly to SLED
6 in a five unit capacity in my career. I don't -- that's not
7 my area. I can't really answer that question.

8 MR. HILLER: Okay. I don't have any further questions,
9 Your Honor.

10 THE COURT: All right. Redirect?

11 **REDIRECT EXAMINATION OF SERGEANT FLETCHER BY MS. WALLER:**

12 Q: Sergeant Fletcher, you just talked to Mr. Hiller and you
13 referenced that in the body cam, the Defendant can be say --
14 heard saying, any actions I took, I was under a substance.

15 A: Yes.

16 Q: Is that correct? Okay. And in your training experience
17 as a police sergeant, do you have experience with people who
18 are under the influence of drugs?

19 A: Extensive, 10 years of it or so, 11.

20 Q: And did he also ask you about how these drugs were given
21 to the Defendant? What your conversation with him was like?

22 A: He did.

23 Q: So you said that he told you that the victim put the
24 drugs in his mouth?

25 A: Correct.

1 Q: What kind of drugs did he say he was under the influence
2 of?

3 A: Through the course of the interview, I believe he made
4 reference to cocaine, heroin, methamphetamine, things. What -
5 - what would largely be referred to as hard drugs or
6 narcotics.

7 Q: And in your training experience as a police detective, do
8 you get high from putting any of those drugs in your mouth?

9 A: Oral ingestion of most of those substances do not render
10 any type of effect.

11 Q: Okay. We watched the videos with you yesterday and
12 you've watched them, I'm sure multiple times. Did you see in
13 any of the videos, any evidence that the Defendant appeared to
14 be under the influence of any of those drugs?

15 A: I did not.

16 Q: You said, I believe a second ago that you were present at
17 the search of the Highlander?

18 A: I was.

19 Q: Did you find any of those hard drugs in the Highlander
20 when it was searched?

21 A: No. Through evidence chain, nor in my presence were any
22 hard drugs located inside the vehicle.

23 Q: Do you recall asking the Defendant during the interview
24 if he ever saw Ms. KS do any drugs or ingest drugs or get
25 high on drugs? I don't know how exactly to say it, but I

1 think you --

2 A: Yeah. I asked him that question many times. Those
3 questions were answered in a variety of ways, but there was
4 never any direct implication of watching her physically
5 consume drugs, just the suspicion of her using them.

6 Q: Mr. Hiller asked you about getting surveillance footage.
7 And in your experience as a detective, do you always go out
8 and gather every piece of evidence that you possibly could
9 get?

10 A: Yeah. Possibly, we try. Obviously there's timestamp and
11 time crunch considerations on us at the time that unit meet
12 those two detectives, myself and one other. We have to
13 prioritize like any other function of job that anyone does.
14 We have to prioritize based on time. So we have to prioritize
15 items of evidentiary value based on the ability to obtain
16 them. And their permanence in the case. Again, because of
17 the locations and questions being corroborated by both
18 parties, and paired with the timeframe of security -- security
19 footage being held on a typical standard, it wasn't something
20 that was prioritized as evidentiary -- evidentiary value that
21 we needed to get at the time.

22 **MS. WALLER:** Court's indulgence, Your Honor.

23 **THE COURT:** All right.

24 **BY MS. WALLER:**

25 Q: I mentioned this a second ago, but Mr. Hiller brought up

1 that body cam and we just talked about, any actions I took, I
2 took because I was under the influence. I'm paraphrasing. Do
3 you recall what statement he made after that?

4 A: Not verbatim or offhand.

5 Q: The statement I'm referring to is where he starts saying,
6 any actions that I took, does --

7 **MR. HILLER:** Objection, Your Honor, well.

8 **MS. WALLER:** I can play it if you need to.

9 **MR. HILLER:** He does. And -- find that they're reverse
10 order.

11 **THE COURT:** Overruled. I'll allow it. Go ahead.

12 **BY MS. WALLER:**

13 Q: Well, what my question is this. When the Defendant made
14 those statements, did it seem to you that he understood what
15 he had done?

16 A: In general, I believe the statement paraphrased from
17 start to finish, not in any particular order, was any actions
18 that the Defendant did or did not do or due to him being under
19 the influence and that he was well aware of what those actions
20 were.

21 **MS. WALLER:** Thank you. No further questions, Your
22 Honor.

23 **THE COURT:** All right. You may step down.

24 **SERGEANT FLETCHER:** Thank you.

25 **THE COURT:** State can call your next witness.

1 **MR. MARTIN:** Your Honor, the State calls Sarah Zapata.

2 **MR. FOX:** Your Honor, we have a matter of law before we -
3 - this witness takes the stand.

4 **THE COURT:** All right. Ladies and gentlemen, I'm going
5 to excuse you back to the jury room for just a minute while I
6 address this legal issue.

7 **REPORTER'S NOTE:** (Jury exits the courtroom at 10:13am)

8 **THE COURT:** All right. Mr. Fox?

9 **MR. FOX:** Thank you, Your Honor. And the solicitor can
10 correct me if I'm mistaken here. I believe Ms. Zapata is the
11 analyst from SLED who did the DNA analysis on blood that was
12 collected from Defendant's vehicle. Is that correct? Ms.
13 Zapata --

14 **MR. MARTIN:** It was the swabs that CSI tested.

15 **MR. FOX:** She's the analyst, correct?

16 **MR. MARTIN:** Yes, she is.

17 **MR. FOX:** Okay. So Judge, pursuant to the South Carolina
18 Supreme Court's case in State v. Phillips, which is 430 South
19 Carolina 319, that's a 2020 case. They're very explicit.
20 That was also a DNA case, because I assume from reading her
21 report, she's going to testify not just about testing these
22 swabs, but also to the random match probability statistics of
23 giant numbers that we always see. And the supreme court is
24 very, very, very clear that prior to that Your Honor and your
25 gatekeeping function must make a finding that this is -- it

1 must be explained that the method by which DNA analyst
2 calculates random match probability must be explained. In
3 other words, they must explain the science, not just I ran it
4 through this program and spit out a number. So there's got to
5 be something, there's got to be a foundation before she gives
6 these statistics. I mean, for all of it, right? This is a
7 Council Daubert analysis under 702 and which as an expert and
8 under rule 403. And I'd urge you to take a quick look at that
9 case because it's -- they're very explicit. There must be a
10 finding on the record prior to any witness such as this
11 testifying.

12 **THE COURT:** All right. So I guess we'll go ahead and let
13 him proffer the testimony at this point in time and then we'll
14 proceed.

15 **MR. MARTIN:** Yes, sir.

16 **THE COURT:** Call your witness.

17 **MS. MARTIN:** Ms. Zapata, take the stand.

18 **SARAH ZAPATA, HAVING BEEN DULY SWORN TESTIFIES AS**
19 **FOLLOWS:**

20 **AGENT ZAPATA:** Sarah Zapata, Z-A-P-A-T-A.

21 **DIRECT EXAMINATION OF SARAH ZAPATA BY MR. MARTIN:**

22 Q: Ms. Zapata, we're going to just start sort of with some
23 basics. How long have you been with SLED?

24 A: I have been with SLED for eight and a half years
25 approximately.

1 Q: I know Mr. Fox has already alluded to this, but what is
2 your current role as SLED?

3 A: I am an analyst in the DNA case work department.

4 Q: And were you in fact the analyst that conducted testing
5 in this case against Rico Funderburk?

6 A: Yes, I was.

7 Q: And what exactly does a forensic DNA analysis or a DNA
8 analyst do?

9 A: We will review the case information and any requests made
10 on the item for DNA analysis. We'll receive the items of
11 evidence from either evidence control or from another
12 technician or analyst in the laboratory. If the items have to
13 move through other departments or other sections, we will
14 perform serology testing if necessary, depending on the
15 request on the item, which is body fluid identification. And
16 then we will take those items of evidence through our standard
17 laboratory procedures in order to develop a DNA profile. We
18 would do the same thing with any known standards in the case.

19 And then if the items of evidence generated profiles that
20 are suitable for interpretation according to our protocols, we
21 will then interpret those profiles. Use our software to
22 calculate any statistics necessary when making comparisons to
23 a standard, and then prepare a report of our findings and
24 testify in court.

25 Q: So before we get to that, let me back up a little bit.

1 What's your educational background?

2 A: I have a Bachelor of Science in Forensic Science from
3 Pennsylvania State University.

4 Q: And you have to have additional specialized training in
5 order to become A DNA analyst?

6 A: Yes.

7 Q: And what would that be?

8 A: My employment at SLED, I underwent a training program for
9 approximately a year and a half, under a qualified DNA
10 analyst. And that included all of the laboratory procedures
11 that we use in the course of our business. Also
12 interpretation, calculation of statistics, report writing.
13 And then in order to successfully complete that training
14 program, I had to demonstrate that I could correctly use all
15 of those different laboratory procedures, complete several
16 written and oral exams in mock court, as well as competency
17 test. And we are also required to be proficiency tested twice
18 per year to demonstrate continued compliance and also have
19 several hours of continuing education each year. And we
20 accomplish that by going through conferences or attending
21 different trainings.

22 Q: So that's a lot. You mentioned proficiency testing.
23 Have you always passed that testing?

24 A: Yes, I have.

25 Q: Now, sort of circling back, what you had previously

1 testified about the testing process. Could you briefly
2 describe the steps you take in processing or analyzing testing
3 DNA?

4 A: Do you mean like the laboratory steps?

5 Q: Yes.

6 A: Okay. There are four main portions of the laboratory
7 analysis. The first part is extraction, where we are
8 isolating the DNA from whatever the item of evidence is. The
9 second step is quantitation, where we are determining the
10 amount of human DNA that is present on that item. And then
11 the next step is amplification, which is where we are actually
12 targeting the specific areas of the DNA that we are testing
13 for, and making many copies of those specific areas only in
14 order to detect those areas on our final instrument, which is
15 what separates those copy areas into the DNA profile that we
16 then interpret.

17 Q: Now, Defense has sort of alluded to this STRmix that this
18 reference in your report. Can you explain to the court what
19 STRmix is?

20 A: STRmix is a software program that we use as part of our
21 interpretation process. We as the analyst must first review
22 the data of the DNA profile. Like I said earlier, confirm
23 that it is suitable for interpretation according to our
24 protocol. So it has to have certain amount of information
25 there to be able to interpret, and then determine is it just a

1 single source of DNA only from one individual or is it a
2 mixture, or DNA for multiple individuals. If it is, then how
3 many individuals? And then I would input that information
4 into the STRmix program and then review all of the data that
5 STRmix outputs to make sure that it is intuitive to what I see
6 as the DNA analyst actually interpreting the profile. And
7 then I can accept that data and use it in order to actually
8 calculate the statistics.

9 Q: And I know it would take quite some time. But this
10 STRmix statistic, could you calculate that by hand if you had
11 to?

12 A: Yes. The software just uses the formula to calculate it
13 on the computer for us.

14 Q: And you mentioned single source, multiple source. Is
15 this a single source situation in this case?

16 A: In this case, all of the profiles of the evidence items
17 were single source.

18 Q: Now, all of these steps, procedures, testing you just
19 testified to, are these procedures used in other labs across
20 the country?

21 A: Yes.

22 Q: And is this recognized within the scientific community?

23 A: Yes.

24 Q: And how about your labs accreditation, is SLED accredited
25 by any national organizations?

1 A: Yes. SLED as an agency is accredited by CALEA, which is
2 the Commission on Accreditation for Law Enforcement Agencies.
3 And then the SLED Laboratory is also accredited by ANAB, which
4 is the American National Standards Institute National
5 Accreditation Board. And then the DNA department requires
6 further accreditation through the FBI quality assurance
7 standards.

8 Q: Have you ever been qualified as an expert in the area of
9 forensic DNA analysis?

10 A: Yes, I have.

11 Q: How many times? Any idea?

12 A: I believe it's 22.

13 Q: And have any of those times been here in General Sessions
14 Court in South Carolina,

15 A: All but one, which was in a family court.

16 Q: Has any court ever declined or failed to recognize you as
17 an expert in forensic DNA analysis?

18 A: No.

19 **MR. MARTIN:** Your Honor, I believe that's all the
20 questions we have at the moment to satisfy this -- this
21 hearing.

22 **THE COURT:** All right. Any challenges or questions?

23 **MR. FOX:** No, Your Honor. Very thorough, and I don't
24 have any follow-up questions to that.

25 **THE COURT:** All right. Anything? Go ahead and bring the

1 jury in.

2 **MR. MARTIN:** Your Honor, the State intends to go through
3 the same thing in front of the jury and we're ready.

4 **THE COURT:** All right. If I could just get this witness
5 in is -- the pot; is that correct?

6 **AGENT ZAPATA:** Yes.

7 **THE COURT:** All right. If I can get you to step down and
8 just sit behind the State and then we'll bring the jury in.
9 They'll recall you as a witness. We'll put her under oath
10 again. We'll proceed in that fashion. All right. Anything
11 from the State before we bring the jury in?

12 **MR. MARTIN:** No, Your Honor.

13 **THE COURT:** Anything from the Defense?

14 **MR. FOX:** No, sir.

15 **THE COURT:** All right. Let's bring the jury in.

16 **REPORTER'S NOTE:** (Jury enters courtroom at 10:25am)

17 **THE COURT:** All right. Ladies and gentlemen, welcome
18 back. We're ready to proceed with the trial of the case.
19 State can call you next witness.

20 **MR. MARTIN:** Thank you, Your Honor. The State calls
21 Sarah Zapata with the South Carolina Law Enforcement Division.

22 **SARAH ZAPATA, HAVING BEEN DULY SWORN TESTIFIES AS**

23 **FOLLOWS:**

24 **AGENT ZAPATA:** Sarah Zapata, Z-A-P-A-T-A.

25 **DIRECT EXAMINATION OF SARAH ZAPATA BY MS. MARTIN:**

1 Q: Ms. Zapata, where are you currently employed?

2 A: At the South Carolina Law Enforcement Division, commonly
3 known as SLED.

4 Q: How long have you been there?

5 A: About eight and a half years.

6 Q: And what are your current duties or your current position
7 at SLED?

8 A: I am an analyst in the DNA case work department.

9 Q: And what does a forensic or analyst, DNA analyst,
10 whatever you want to call it, what does a DNA analyst do?

11 A: When I'm assigned a case, I'll review the case submission
12 documentation to see what the requests are on a particular
13 item. I'll receive the items of evidence from either evidence
14 control or another analyst or technician in the laboratory.
15 And then I'll take the items of evidence through our standard
16 laboratory procedures in order to develop a DNA profile. I'll
17 then determine if the profiles that were generated are
18 suitable for comparison according to our protocols. If they
19 are, then I'll make any comparisons from the items of evidence
20 to any known standards submitted in the case, calculate a
21 statistic, prepare a report, and then testify in court.

22 Q: As a DNA analyst, do you sometimes have to perform
23 serology testing as well?

24 A: Yes, that is part of our workflow as well.

25 Q: What is serology?

1 A: Serology is body fluid identification.

2 Q: And let's back up a little bit. What's your educational
3 background?

4 A: I have a Bachelor of Science in Forensic Science under
5 Pennsylvania State University.

6 Q: In addition to that, do you have any specialized training
7 in order to be a DNA analyst at SLED?

8 A: Yes.

9 Q: And what would that be?

10 A: Upon employment at SLED, I went through a training
11 process for approximately a year and a half under a qualified
12 DNA analyst. And that training covered all the different
13 laboratory procedures that we perform; interpretation of
14 profiles, calculating certificates, preparing report. And
15 then in order to successfully complete that training, I had to
16 demonstrate my ability to perform all of that lab work,
17 complete several written and oral exams in mock court, several
18 mock cases, and then finally be able to actually perform
19 analysis on case work. And then in addition to that, we are
20 required to be proficiency tested twice a year to demonstrate
21 that we are able to take items of evidence through and obtain
22 the correct result for those items of evidence. And then also
23 have several hours of continuing education every year.

24 Q: Have you always passed these forensic tests?

25 A: Yes, I have.

1 Q: Have you ever been qualified as an expert in the area of
2 forensic DNA analysis?

3 A: Yes.

4 Q: Any idea how many times?

5 A: About 22.

6 Q: Have any of those times been here in General Sessions
7 Court?

8 A: Yes.

9 Q: Have any -- any other courts?

10 A: Also family court. Once.

11 Q: Has the court ever declined to recognize you as an expert
12 in forensic DNA analysis?

13 A: No.

14 **MR. MARTIN:** Your Honor, at this time the State would ask
15 to proffer -- or to offer the witness as an expert in DNA
16 analysis.

17 **THE COURT:** All right. Any challenges or questions?

18 **MR. FOX:** No, Your Honor.

19 **THE COURT:** All right. This witness to be an expert in
20 the field of DNA analysis.

21 **BY MR. MARTIN:**

22 Q: So let's talk a little bit about DNA analysis. Is there
23 a standard procedure of steps that you follow when analyzing
24 DNA?

25 A: Yes.

1 Q: And what would that be?

2 A: There are four main steps to the DNA analysis process in
3 the laboratory. The first step is extraction, where we are
4 isolating the DNA from the actual item of evidence. The
5 second step is quantitation, or we're determining the amount
6 of human DNA that is present on the item. And then the next
7 step is amplification. So when we are generating a DNA
8 profile, we are targeting just specific areas on the DNA that
9 are vary from person to person. And so, during the
10 amplification step, we actually target those areas and make
11 many copies of those specific areas in order for them to be
12 detectable on our last instrument, which is what separates the
13 DNA into a profile.

14 Q: Are these procedures used in other labs around the
15 country?

16 A: Yes, it's the standard method.

17 Q: And is it recognized within the scientific community?

18 A: Yes.

19 Q: And how about SLEDs accreditations. Are -- is SLED
20 accredited by any national organizations?

21 A: Yes. SLED as an agency overall is accredited by CALEA,
22 which is the Commission on Accreditation for Law Enforcement
23 Agencies. The SLED Laboratory is accredited by ANAB, which is
24 the American National Standards Institute National
25 Accreditation Board. And then the DNA casework department is

1 further accredited by FBI under their quality assurance
2 standards.

3 Q: Moving along to the case that brings you here today, were
4 you assigned to perform DNA analysis in the case against Rico
5 Funderburk, SLED lab ID number L21-18912?

6 A: Yes, I was.

7 **MR. FOX:** Your Honor, it's time -- excuse me. May we
8 approach?

9 **THE COURT:** All right.

10 **REPORTER'S NOTE:** (Whereby bench conference is held).

11 **BY MR. MARTIN:**

12 Q: Ms. Zapata, can you briefly explain the process or how
13 evidence comes to the lab at SLED?

14 A: So evidence is submitted to the SLED Laboratory through
15 our evidence control department. So outside agencies will
16 bring the evidence and evidence to the evidence control
17 department, and then it will be input into our system. Every
18 time a new case is brought in, it will be assigned a unique
19 case number. And then each item in that case would be
20 assigned a unique item number, and a barcode containing that
21 lab number. And that item number would be placed on the item.
22 And then every time that item moves to the laboratory, either
23 from a physical location or to an individual, that barcode is
24 scanned and a password is entered to capture that movement.

25 Q: And in this particular case, again, were you asked --

1 were you asked to examine certain items of evidence?

2 A: Yes.

3 Q: And are these items of evidence typically notated in some
4 sort of evidence chain or evidence report?

5 A: In a chain of custody. Yes.

6 Q: And is that chain of custody kept in the ordinary course
7 of business at SLED?

8 A: Yes. It is.

9 Q: And as an employee of SLED, are you a custodian of those
10 business records?

11 A: Yes, I am.

12 **MR. MARTIN:** May I approach?

13 **THE COURT:** Yes.

14 **BY MR. MARTIN:**

15 Q: I'm showing you State 63. Take a second and look at that
16 and see if you recognize it.

17 A: Yes.

18 Q: Is that in fact the chain of custody -- a copy of the
19 chain of custody report for the items that you tested in this
20 case?

21 A: Yes. It is.

22 Q: And is that a fair and accurate copy of the report?

23 A: It appears to be, yes.

24 **MR. MARTIN:** Judge, the State would ask to admit this
25 into evidence.

1 **THE COURT:** Any objection?

2 **MR. FOX:** No, Your Honor.

3 **THE COURT:** All right. State's Exhibit 63 admitted into
4 evidence without objection.

5 **(STATE'S EXHIBIT NUMBER 63**

6 **IS ADMITTED INTO EVIDENCE)**

7 **BY MR. MARTIN:**

8 Q: So I think my last question before that was -- and I'm
9 going to ask it again. Once a case is assigned to you, what
10 do you do?

11 A: I will review the information given to me by the agency
12 as the items that were submitted, what the requests are on
13 those items, and then move forward with the DNA analysis.

14 Q: And when you moved forward with the DNA analysis in this
15 case, did you notate any of your conclusions or findings in a
16 report?

17 A: Yes.

18 **MR. MARTIN:** May I approach the witness, Judge?

19 **THE COURT:** Yes.

20 **BY MR. MARTIN:**

21 Q: Let me show you what's been marked as State 64. Take a
22 moment to look at that and see if that is a copy of your
23 report.

24 A: Yes, it appears to be a copy of my report.

25 Q: True and accurate copy of your report?

1 A: Yes.

2 **MR. MARTIN:** Your Honor, at this time, the State asked to
3 admit the report into evidence.

4 **THE COURT:** Any objection?

5 **MR. FOX:** I think they -- I know they have the written
6 chain. I believe that what was required, they should be
7 testifying off of DNA sample material. And I believe they
8 need to have the witnesses testify. I'm not saying they can't
9 get there by (inaudible0 at this time. They need to have the
10 witnesses to establish the chain under the rules of evidence
11 rather than simply the report. Right under written chain of
12 custody. Sorry. I object at this time. So I don't believe
13 the foundation for the chain has been laid to allow this
14 report to come in.

15 **MR. MARTIN:** Your Honor, the State's -- the State's
16 opinion on this matter is that pursuant to State v. Hatcher,
17 obviously as Mr. Fox has alluded to, we don't -- we're not
18 required to have every member of the chain present to testify.
19 However, every member of the chain is supposed to be either
20 identified or put into evidence. Here, the State has
21 accomplished that by placing that evidence chain into
22 evidence, every person in that chain is now into evidence.

23 **THE COURT:** All right. All right. State's Exhibit 64 is
24 admitted in evidence over Defendant's objection.

25 **(STATE'S EXHIBIT NUMBER 64)**

1 **IS ADMITTED INTO EVIDENCE)**

2 **BY MR. MARTIN:**

3 Q: Ms. Zapata, you previously testified to the standard
4 procedure you followed when performing DNA analysis. Did you
5 in fact do that in this case?

6 A: Yes, I did.

7 Q: Now, I'm going to start on your report, sort work my way
8 down. What is a DNA standard?

9 A: A standard is a sample that is taken from a known
10 individual. It can be a buccal swab or a swab from the inside
11 of someone's cheek, or a blood sample. And we use those in
12 order to make comparisons to any unknown DNA profiles that are
13 generated from evidence samples.

14 Q: And again, kind of a silly question, you sort of already
15 talked about it, but why do you need one?

16 A: In order to make comparisons to those evidence profile.

17 **MR. MARTIN:** May I approach?

18 **THE COURT:** Yes.

19 **BY MR. MARTIN:**

20 Q: Let me show you what's already been entered into
21 evidence, State's 65, Rico Funderburk's buccal swab. If you
22 take a moment and look at that, see if you can identify that.

23 A: I can.

24 Q: And what is it?

25 A: This is the buccal swab that was submitted for Rico

1 Funderburk. It's our SLED item 1.

2 Q: And is that in fact the buccal swab you used in this
3 case?

4 A: Yes, it is.

5 **MR. MARTIN:** I'm going to -- may I approach, Your Honor?

6 **THE COURT:** Yes.

7 **BY MR. MARTIN:**

8 Q: State's 71. If you could take a moment and look at that
9 and see if you can identify what that is. It would be SLED
10 item 7.

11 A: These are the buccal swabs from KS.

12 Q: And they -- are they in fact the buccal swabs that you
13 used in this case?

14 A: Yes.

15 **MR. MARTIN:** At this time, Your Honor, the State would
16 ask to admit this item into evidence.

17 **THE COURT:** All right. 7?

18 **MR. MARTIN:** It's SLED 7, State 71. State 71.

19 **THE COURT:** Oh, State 71.

20 **MR. MARTIN:** Yes, Your Honor.

21 **THE COURT:** Any objection?

22 **MR. FOX:** No, Your Honor.

23 **THE COURT:** All right. State's Exhibit 71 admitted into
24 evidence without objection.

25 **(STATE'S EXHIBIT NUMBER 71)**

1 **IS ADMITTED INTO EVIDENCE)**

2 **BY MR. MARTIN:**

3 Q: I'm going to approach. I'm going to approach with what's
4 been marked as State's 102. This is just the -- 102 is just
5 the outer shelf from SLED. So just focusing on the outside
6 packaging, what is that?

7 A: This is container A in this case. This is SLED item
8 number and container letter. It contains five swabs -- sets
9 of swabs.

10 **MR. MARTIN:** Okay. Your Honor, if I may give the witness
11 a pair of scissors, so to that she can open this package.
12 They're over here at the --

13 **THE COURT:** Okay. I mean it is not in evidence, is it?

14 **MR. MARTIN:** Well, Your Honor, in order for it to become
15 an evidence, there are items contained within the package that
16 have to be addressed.

17 **THE COURT:** All right. That would be fine.

18 **MR. MARTIN:** Thank you. 102 is literally just the bag.

19 **THE COURT:** All right. That would be fine.

20 **MR. MARTIN:** Thank you.

21 **BY MR. MARTIN:**

22 Q: Now, Ms. Zapata, if you could open the bag. And
23 directing your attention to SLED item 2, swabs from above --
24 from area above the armrest, interior view.

25 A: SLED item 2.

1 **MR. MARTIN:** Court's indulgence, Your Honor.

2 **THE COURT:** All right.

3 **BY MR. MARTIN:**

4 Q: Is that in fact a swab from the area above the armrest
5 interior of the vehicle that you used in this case?

6 A: Yes. That was the description prior to.

7 **MR. MARTIN:** Your Honor, the State wishes to mark this as
8 State's 66 and move that into evidence.

9 **THE COURT:** All right. Any objection?

10 **MR. FOX:** None, Your Honor.

11 **THE COURT:** All right. State's exhibit 66 admitted into
12 evidence without objection.

13 **(STATE'S EXHIBIT NUMBER 66**
14 **IS ADMITTED INTO EVIDENCE)**

15 **BY MR. MARTIN:**

16 Q: What did you do if --

17 **MR. FOX:** Pardon me. I'm sorry. Judge, I'd like to
18 place on the record that my objection to the chain of custody
19 is continuing.

20 **THE COURT:** All right.

21 **MR. FOX:** So I mean to waive with each of these
22 individual matters, so I want to clarify, I have an ongoing
23 objection in renewing it with each of these items that she's
24 going to -- that this witness is going to testify to regarding
25 the things that she tested for DNA.

1 **THE COURT:** All right.

2 **MR. FOX:** Thank you.

3 **BY MR. MARTIN:**

4 Q: So what if anything, did you do with this item?

5 A: I first performed serology testing on this item because
6 the request was for blood. And then after that serology
7 testing, we did through those four steps of the DNA process
8 that I described earlier.

9 Q: What were the results of the serology testing?

10 A: For item two, the result was no human blood identified.

11 Q: And even though there was no human blood identified, were
12 you still able to analyze the item?

13 A: Yes.

14 Q: In your report, I see you mentioned STRmix. What is
15 STRmix?

16 A: STRmix is a software program that we use in the
17 interpretation process for DNA analysis, and we also use it to
18 calculate our statistics. So if we have a DNA profile and we
19 are making a comparison to an individual, we have to be able
20 to give a weight to that comparison. And we do that by
21 calculating something called a likelihood ratio.

22 Q: And what is the likelihood ratio?

23 A: A likelihood ratio is a comparison of two different
24 scenarios to see which scenario is a better explanation of the
25 data that we are seeing.

1 Q: And I see in your report you also mentioned a proposition
2 set. What's a proposition set?

3 A: So a proposition set is those two opposing scenarios that
4 we are comparing. So a likelihood ratio works kind of like a
5 seesaw. You have one scenario on one side of the seesaw and
6 then an opposing scenario on the other side of the seesaw.
7 And the likelihood ratio will give a weight in support of one
8 scenario over the other. And that sounds very complicated,
9 but you do those kinds of comparisons on a daily basis without
10 realizing that's what you're doing. So for example, if you
11 have a plate of cookies on the table, and you have a toddler,
12 and unicorn and you step away and come back and all the
13 cookies have been eaten, there's two possible explanations,
14 right, for how those cookies were eaten.

15 So the result is the cookies were eaten. That's what
16 we're trying to find the best explanation for. Scenario one,
17 on one side of the seesaw is that the toddler ate the cookies.
18 Scenario two is that the newborn ate the cookies. Obviously,
19 it's going to tip in the direction of the toddler, the newborn
20 (inaudible) cookies. So it's going to be a likelihood ratio
21 in support of the toddler eating the cookies. So it's always
22 given what that final result is, what explanation is more
23 likely.

24 Q: Thank you. And I see in your report too is stating --
25 interpreted as a single source. What does that mean?

1 A: A single source means that the profile post view DNA from
2 only one individual.

3 Q: And speaking of proposition sets, what were the
4 proposition sets used here in their analysis?

5 A: Okay. So for this scenario, when making a comparison to
6 KS, any time we're comparing an individual to a
7 profile, that person is going to be included in the first
8 scenario. And then the opposing scenario is always going to
9 be an unidentified unrelated individual, because we need
10 something to contrast that to. And so the two scenarios for
11 this case were -- for this item were KS
12 contributed the DNA profile versus an unidentified unrelated
13 individual contributed the DNA profile.

14 Q: And regarding SLED's 2, State's 66, the swabs from the
15 area above the armrest interior of the vehicle, what were the
16 results of your analysis?

17 A: The DNA profile is approximately 1.56 sextillion times
18 more likely if KS contributed the profile than if
19 an unidentified unrelated individual contributed the profile.

20 Q: How much is -- I've only got, you know, fingers and toes
21 here. How much is 1.56 sextillion?

22 A: There are 21 zeros after the five.

23 Q: And is there a scale that you use to sort of illustrate
24 the strength of these likelihood ratios?

25 A: Yes. (Inaudible) the scale on my report.

1 Q: And per that scale, is 1.56 sextillion very strong
2 support?

3 A: Yes. On the scale anything greater than 1 million is
4 very strong support.

5 Q: Now, the next item I'd like to move to is SLED item 3.
6 It's going to be State's 67. You identified that in the
7 package that I handed you?

8 A: Yes.

9 Q: And is that in fact the swabs from the area under the
10 armrest interior of the vehicle?

11 A: Yes.

12 Q: And that is in fact the swabs that you analyzed in this
13 case?

14 A: Yes.

15 **MR. MARTIN:** Your Honor, the State moves to admit that
16 into evidence?

17 **THE COURT:** How is that identified?

18 **MR. MARTIN:** State's 67, Your Honor.

19 **THE COURT:** Any objection?

20 **MR. FOX:** Just the continuing objection, Your Honor.

21 **THE COURT:** All right. State's Exhibit 67 admitted into
22 evidence over Defendant's objection.

23 **(STATE'S EXHIBIT NUMBER 67**

24 **IS ADMITTED INTO EVIDENCE)**

25 **BY MR. MARTIN:**

1 Q: So Agent Zapata, the same set of questions here. Were
2 you able to perform serology on this item?

3 A: Yes.

4 Q: And what were the results?

5 A: Blood identified.

6 Q: And in this item, did you again use STRmix to calculate
7 your likelihood ratios?

8 A: Yes, I did.

9 Q: And what were the proposition sets used here?

10 A: For this item, the DNA profile was also incorporated by a
11 single source. And so, the proposition sets were set up the
12 same way with KS contributed the DNA profile
13 versus an unidentified unrelated individual contributed the
14 DNA profile. And the result of that comparison is the DNA
15 profile is approximately 33 septillion times more likely if
16 KS contributed the profile than if an unidentified
17 unrelated individual contributed the profile.

18 Q: And how big of a number is 34 --

19 A: Thiry-three.

20 Q: -- septillion - 33 septillion.

21 A: There are 24 zeros after the three.

22 Q: And is that considered based off of your scale very
23 strong support?

24 A: Yes.

25 Q: And again, that was the results of your serology were

1 blood?

2 A: Blood identified. Yes.

3 Q: Moving along to SLED item number 4, swabs from smudges
4 interior rear passenger door, State's 68. Do you identify
5 that?

6 A: Yes.

7 **MR. MARTIN:** If you could place that label beside it.
8 Thank you.

9 **BY MR. MARTIN:**

10 Q: And is that in fact the swabs that you analyzed here in
11 this case?

12 A: Yes.

13 **MR. MARTIN:** Your Honor, at this time the State moves to
14 admit 68 into evidence.

15 **THE COURT:** Any objection?

16 **MR. FOX:** Same objection, Your Honor.

17 **THE COURT:** All right. State's Exhibit 68 admitted into
18 evidence over Defendant's objection.

19 **(STATE'S EXHIBIT NUMBER 68**

20 **IS ADMITTED INTO EVIDENCE)**

21 **BY MR. MARTIN:**

22 Q: Now, with these swabs from the smudges interior rear
23 passenger door -- sorry, that's a mouthful -- what were the
24 results of any serology testing that you conducted?

25 A: For item four, no human blood identified.

1 Q: And did you again use sort of a STRmix to analyze this
2 item?

3 A: Yes, it was analyzed in the same way.

4 Q: And did you use the same proposition sets here?

5 A: Yes. the same comparison was made to KS and
6 so the proposition sets were the same.

7 Q: And what were the results of your analysis?

8 A: The DNA profile is approximately 32 septillion times more
9 likely if KS contributed the profile than if an
10 unidentified unrelated individual contributed to the profile.

11 Q: And again, how many zeroes is that in septillion?

12 A: 24 after 32.

13 Q: Showing you -- if you could also identify SLED number 5,
14 that's going to be State's 69, swabs for rear passenger door,
15 interior armrest. Do you see that in the evidence you have in
16 front of you?

17 A: Yes.

18 Q: If you could mark that. And the same question again, I'm
19 sorry we're getting repetitive, but is that in fact the swabs
20 that you used and analyzed or that you analyzed in this case?

21 A: Yes.

22 **MR. MARTIN:** Your Honor, at this time the State ask that
23 State's at 69 be admitted into evidence.

24 **THE COURT:** Any objection?

25 **MR. FOX:** Same objection, Your Honor.

1 **THE COURT:** All right. State's exhibit 69 admitted into
2 evidence over Defendant's objection.

3 **(STATE'S EXHIBIT NUMBER 69**

4 **IS ADMITTED INTO EVIDENCE)**

5 **BY MR. MARTIN:**

6 Q: Again, same set of questions. Did you in fact perform
7 serology here on the swabs from the rear passenger door
8 interior armrest? What were the results?

9 A: Blood identified.

10 Q: Did you again use STRmix to calculate your likelihood
11 ratios?

12 A: Yes. The same comparison was made to K.S. .

13 Q: And how about the proposition sets? Are they the same
14 here?

15 A: Yes.

16 Q: What was the result of your analysis?

17 A: The DNA profile is approximately 33 septillion times more
18 likely if K.S. contributed the profile than if an
19 unidentified unrelated individual contributed the profile.

20 Q: I believe your previous testimony was 24 zeros. Is that
21 very strong support?

22 A: Yes.

23 Q: Lastly, SLED item 6, swabs from the rear interior
24 passenger door panel of vehicle. This is going to be State's
25 70. You see that before you?

1 A: Yes, I do.

2 Q: Again, if you could mark that. Are those in fact the
3 swabs that you analyzed in this case?

4 A: Yes, they are.

5 **MR. MARTIN:** Your Honor, at this time the State ask that
6 70 be admitted into evidence.

7 **THE COURT:** Any objection?

8 **MR. FOX:** Same objection, Your Honor.

9 **THE COURT:** State's Exhibit 70 admitted into evidence
10 over Defendant's objection.

11 **(STATE'S EXHIBIT NUMBER 70**

12 **IS ADMITTED INTO EVIDENCE)**

13 **BY MR. MARTIN:**

14 Q: And I sound like a broken record, but again, did you
15 perform serology on the swabs from the rear interior passenger
16 door panel of the vehicle?

17 A: Yes, I did.

18 Q: What were the results?

19 A: Blood identified.

20 Q: And again, did you use STRmix here on this -- did you use
21 STRmix here?

22 A: Yes, I did.

23 Q: And did you use the same proposition sets?

24 A: I did.

25 Q: And what were the results of your analysis here?

1 A: The DNA profile is approximately 33 septillion times more
2 likely if K.S. contributed to the profile than if an
3 unidentified unrelated individual contributed to the profile.

4 Q: And again, is that very strong support according to your
5 scale?

6 A: Yes. It is.

7 **MR. MARTIN:** Court's indulgence please, Your Honor?

8 **THE COURT:** All right.

9 **BY MR. MARTIN:**

10 Q: So lastly -- and I didn't ask you this in the beginning
11 and I probably should have -- does SLED test items for
12 agencies across the State of South Carolina?

13 A: Yes, we do.

14 Q: Does SLED have a policy regarding how many items law
15 enforcement can submit per case?

16 A: It's more of a guideline. It's not a hard policy, but
17 yes, we have some guidelines for that.

18 Q: And generally speaking, what's the reason for that
19 policy? What -- what is the -- what is the guideline?

20 A: Approximately five items of evidence for violent crimes.

21 Q: And what's the reason for that?

22 A: In order to ensure that we are first testing the most
23 probative items for a case, so that we can test as many cases
24 as possible for as many agencies as possible. And then if
25 more is needed, we can discuss that and do that at a later

1 time.

2 Q: And other than testifying here today, did this conclude
3 your involvement in the case?

4 A: Yes.

5 **MR. MARTIN:** Nothing further at the moment, Your Honor.

6 **THE COURT:** All right. Cross-examination.

7 **MR. FOX:** Thank you, Your Honor.

8 **CROSS EXAMINATION OF SARAH ZAPATA BY MR. FOX:**

9 Q: So Ms. Zapata, if an agency for reasons of their own felt
10 it was important to send SLED 6, 7, 8, 9 items and they said
11 this is really important, we have a very, very serious case,
12 you would accept those for analysis; would you not?

13 A: Yes, we would.

14 Q: Okay. You wouldn't just pick 5 and toss the rest and
15 say, get out of here? Okay.

16 A: No.

17 Q: Now, you determined that with some of these swabs taken
18 from different locations inside the vehicle in question, that
19 there was blood and other materials you could get DNA from,
20 correct? So what would be -- the blood is self-explanatory.
21 And I assume that was human blood?

22 A: Our test that confirms for blood, also cross reacts with
23 ferret blood and higher primates. So we don't say human blood
24 because there's a possibility for that.

25 Q: There might be a ferret or a gorilla in the car. Okay.

1 A: Hypothetically, it's a possible.

2 Q: I understand. What would be some examples? So for the
3 other samples, I think there were two that there was no blood
4 detected.

5 A: No human blood identified.

6 Q: No human, right. What -- give us an example of what that
7 might be. In other words, what sort of material -- what
8 source material might that be that would allow you to identify
9 human DNA?

10 A: So some sources of DNA are saliva, semen, blood as
11 mentioned, and also touch DNA.

12 Q: Okay.

13 A: So DNA left behind when you touch an object from your
14 skin cells.

15 Q: And do you know what the material of the -- of that
16 vehicle was -- in other words, with the armrest, do you know
17 if it was plastic or leather or cloth? Do you have any idea?

18 A: I do not. I do not swab it, so I don't --

19 Q: But potentially, you could leave a -- a person could
20 leave on a -- a wooden surface or a plastic surface or any
21 number of different types of, correct?

22 A: Correct.

23 Q: Okay. And I'm talking about -- I'm referring to -- to
24 touch DNA. And then that actually can be in some
25 circumstances be transferred; can it not?

1 A: Yeah.

2 Q: In other words, someone might come along and grab
3 something another person had touched or touched it themselves
4 and then go into, you know, I might touch something here and
5 walk across the room and touch another officer. It can be
6 transferred, correct?

7 A: Yes.

8 Q: Okay. So potentially, you were only asked to test those
9 swabs from inside the vehicle in question, but potentially you
10 would be able to take and obtain DNA perhaps from a cigarette
11 lighter?

12 A: It's possible.

13 Q: Okay. Or a metal object like that socket wrench?

14 A: It's -- it's possible.

15 Q: Okay. Now, with regard to the blood -- or actually with
16 any of the DNA samples, they can tell you an awful lot. You
17 cannot determine, though, with the -- with the test that you
18 do when that material was deposited. Can you?

19 A: That's correct.

20 Q: Okay. Were the circumstances under which it was
21 deposited?

22 A: Right. I cannot say how or when the DNA was deposited on
23 my end.

24 MR. FOX: Okay. Thank you. No further question, Your
25 Honor.

1 **THE COURT:** All right. Redirect?

2 **MR. MARTIN:** Court's indulgence.

3 **REDIRECT EXAMINATION OF SARAH ZAPATA BY MR. MARTIN:**

4 Q: Ms. Zapata, Mr. Fox asked you about touch DNA, would you
5 expect to find someone's touch DNA on their own piece of
6 property inside their own vehicle?

7 A: Yes.

8 **MR. MARTIN:** Nothing further, Your Honor.

9 **THE COURT:** All right. You may step down.
10 All right. State may call you next witness.

11 **MS. WALLER:** Your Honor, may this witness be excused from
12 her subpoena. She's just (inaudible).

13 **THE COURT:** Any objection?

14 **MR. HILLER:** No.

15 **THE COURT:** All right. She's free to go. Thank you.

16 **MS. WALLER:** Your Honor, the next witness is rather
17 lengthy.

18 **THE COURT:** All right. All right, ladies and gentlemen,
19 it sounds like it's a good time for us to take a short break.
20 We'll take about a 10, 15-minute break. Do not discuss the
21 case even among yourselves. We'll take 10 to 15 minute break.

22 **REPORTER'S NOTE:** (Jury exits the courtroom at 11:01am)

23 **THE COURT:** All right. Anything from the State before we
24 recess?

25 **MS. WALLER:** No, sir, Your Honor.

1 **THE COURT:** Anything from the Defense?

2 **MR. HILLER:** No, Your Honor.

3 **THE COURT:** All right. Take 10 to 15 minute recess and
4 then we'll come back.

5 **(COURT IS IN RECESS)**

6 **THE COURT:** All right. Anything from the State before we
7 bring the jury in?

8 **MS. WALLER:** No, sir, Your Honor.

9 **THE COURT:** Anything from the Defense?

10 **MR. HILLER:** No, Your Honor.

11 **THE COURT:** All right. Let's bring the jury in.

12 **REPORTER'S NOTE:** (Jury enters the courtroom at 11:27am)

13 **THE COURT:** All right. Ladies and gentlemen, welcome
14 back. State can call your next witness.

15 **MS. WALLER:** Your Honor, the State calls [REDACTED] K.S. .

16 [REDACTED] K.S. , HAVING BEEN DULY SWORN TESTIFIES AS

17 FOLLOWS:

18 **MS. K.S. :** [REDACTED] K.S. . [REDACTED] K.S. .

19 DIRECT EXAMINATION OF [REDACTED] K.S. BY MS. WALLER:

20 Q: Good morning, [REDACTED] K.S. .

21 A: Good morning.

22 Q: Where did you live before you moved to Myrtle Beach back
23 in 2021?

24 A: I was living with my sister in North Carolina.

25 Q: And why did you move to Myrtle Beach?

1 A: I had a situation that before that I found my grandma
2 dead. So my sister said it would be good to come stay with
3 her for a little bit. And then we went to Myrtle Beach. She
4 said it would be a good touristy area. I could always find a
5 job. It would be a good new chapter for me. So we took a
6 weekend down there and looked around and stuff.

7 Q: So did you move to Myrtle Beach?

8 A: I did.

9 Q: And when you moved to Myrtle Beach, did you get an
10 apartment?

11 A: Yeah. I -- I found the house on Dunbar Street. Me and
12 my sister went and we looked at it, and it was suitable for
13 me. It was close to my job, which I had found, so it was a
14 good spot for me to be at.

15 Q: So where did you work?

16 A: I started working at Topgolf.

17 Q: And did you have a car?

18 A: And we did get me a car, yes. I had car.

19 Q: Okay. Do you recall how you first met the Defendant Rico
20 Funderburk?

21 A: Yes, I met him on Tinder.

22 Q: And do you remember when you -- around what time? So I'm
23 going to ask you questions about when and where things
24 happened.

25 A: Okay.

1 Q: Are -- can you -- as you sit here today, can you give me
2 exact dates about when and where things happened?

3 A: I could get close, but I don't, I mean, there was a lot
4 that happened in between the dates. I couldn't give you exact
5 time.

6 Q: Okay. So when I ask you, just give me the closest that
7 you can remember.

8 A: Okay.

9 Q: So when did you first meet the Defendant in person?

10 A: Around July 11th.

11 Q: That's good. What year?

12 A: 2 -- 2021.

13 Q: And after that first meeting, did he eventually move into
14 your apartment on Dunbar Street?

15 A: Yes.

16 Q: How long after you met him do you think he started
17 staying there?

18 A: Approximately a few days. Up towards a week.

19 Q: Okay.

20 A: It was just a few days.

21 Q: And did he have anywhere else to live at that time?

22 A: From what he told me, no.

23 Q: Okay. Did he have his belongings there at your house?

24 A: Yes. There was. His belongings were at my house.

25 Q: Okay. And you've been sitting in court this week and

1 yesterday; is that correct?

2 A: Yesterday.

3 Q: Yesterday. Did you -- and you saw some videos that I
4 played for Detective Christian Fletcher?

5 A: Yes.

6 Q: Okay. So some of those first videos, I'm not going to
7 replay them for -- for you. Okay? But did you see in some of
8 those early videos, what was the nature of the relationship at
9 the start?

10 A: It was good. It was fine. We would, you know, hang out
11 at my house. We didn't, you know, we would go walk on the
12 beach if we wanted to. Just kind of like a normal
13 relationship, of what you would think a normal relationship
14 would be. We would go get food together, hang out. There was
15 nothing.

16 Q: Okay. And at some point, when you were staying -- when
17 you were still at your place on Dunbar Street, did -- were
18 there some behaviors or things that the Defendant started
19 doing that were concerning to you? Looking back?

20 A: Looking back, hindsight 2020, there were some things.
21 One of the things was I wasn't allowed to move in my sleep.
22 He felt that if I was moving in my sleep, I was doing
23 something to him. I wasn't allowed to touch his food, his
24 drinks. I was never allowed to get things. Never could close
25 the bathroom door, always use the restroom with the door open,

1 things like that. Looking back.

2 Q: Looking back. At the time, were that concerning to you?

3 A: At the time, I didn't think so. I was -- at the time, I
4 was happy and things were fine, so I thought -- I just thought
5 I was compromising in our relationship, but that's fine. The
6 door can be open.

7 Q: Okay. And do you recall the Defendant asking you to be
8 his girlfriend?

9 A: I do.

10 Q: And did you agree?

11 A: I did.

12 Q: So at some point, did you have to leave your place on
13 Dunbar Street?

14 A: Yes, I did.

15 Q: And why was that?

16 A: I was getting evicted. I wasn't paying rent and stuff,
17 so I was getting evicted.

18 Q: And had you lost your job or were you just having
19 financial --

20 A: I did. I did lose my job, yes.

21 Q: And when you got evicted, where did you go?

22 A: Really, I had no place to go. We just went into his car.

23 Q: Okay. What'd you do with all your stuff?

24 A: A lot of the stuff that I packed up in my -- from my
25 house, I put in my vehicle. When -- he just kept it in my

1 vehicle and then necessities that I needed day-to-day; I had a
2 small bag and I took his vehicle.

3 Q: Where -- what did you do with your vehicle?

4 A: My vehicle, we had drove -- we loaded it up, and both of
5 us. We had drove to the Walmart on Seaboard Street. We
6 parked it close to a lamp with a camera on it, and so we just
7 left it there.

8 Q: And how did you get -- were you driving two cars or one
9 car? How did you get to Walmart?

10 A: So we were both in my one vehicle. We both drove my one
11 vehicle.

12 Q: And where was the Defendant's car when you were both
13 driving your car?

14 A: His car was left back at my -- at the Dunbar Street
15 house.

16 Q: Okay.

17 A: Which I was getting evicted from.

18 Q: So how'd you get back to his car?

19 A: So we Ubered from Walmart and then Seaboard Street back
20 to my house to get back to his car.

21 Q: So if you had two cars, why would you take both cars to
22 Walmart?

23 A: He was not comfortable with that. He did not like me to
24 be out of his sight. He thought that if I was out of his
25 sight, I was doing something I shouldn't have been.

1 Q: Okay. So once you -- I'm going to just say you moved
2 into the car. What kind of car was it?

3 A: A Toyota Highlander. I don't know what year, but it's
4 maroon. It was the purple one on the pictures yesterday.

5 Q: Okay. And once you moved into the car, did you have a
6 plan at that point to try to get a place to live or were you
7 just planning to live in the car forever?

8 A: So we did have somewhat of a plan. He was supposed to be
9 moving into the pier. He said that he would -- just needed to
10 get the money for that and then we would just move into that
11 location together.

12 Q: Okay. And after you moved into the car, did the
13 relationship take a turn?

14 A: Yes.

15 Q: And what began to happen?

16 A: He became very violent. He became very aggressive and
17 mean. His temperament was not the same. He just became very
18 scary.

19 Q: When you were living in the car, did he have certain
20 rules or behaviors that you had to follow?

21 A: Yes. Again, with the no moving in the sleep, you can't
22 move in your sleep. He didn't like when my hands would go
23 towards my face, so I couldn't like -- I couldn't like wipe my
24 nose, blow my nose if I had to go sneeze or something like
25 that. He didn't like me moving my hands towards my face at

1 all.

2 Q: And did you -- and one of the videos yesterday, I think
3 you could see him tell you not to put your hands in your face.
4 Do you recall that?

5 A: I do. And I specifically remember it because I was
6 having -- because of my condition at the time, I was a little
7 bit more mucousy in my nose and stuff. So I was -- I did have
8 a booger coming out, so I was -- had a tissue and I was going
9 like that to get it out because it was long. And that's what
10 he was talking about.

11 Q: And what was the condition of your nose? What do you
12 mean by that?

13 A: May not have been completely broken at the time, but it
14 was harder for me to breathe. And it hurt a lot. It hurt a
15 lot to just touch it. It hurt to just breath.

16 Q: And how -- how'd you get injured, do you know?

17 A: Multiple -- there's -- I can't tell you there's one
18 specific incident where he may have punched me and it broke.
19 It was multiple times that he was hitting me in the face.
20 Another thing he did like to do when it was hurting like that
21 was he would go and he would pinch my nose like this and push
22 it into my face and wiggle. And that -- and I felt like
23 cracks when he would do it in my nose. So it -- I don't know
24 if that may have affected anything more, but that hurt a lot.

25 Q: Okay. And just while we're on the topic, do -- and one

1 of the videos we saw today -- please excuse my language, but
2 he said that's why your shit is leaking. Was -- can you tell
3 me what that was referring to?

4 A: So I -- I'm sure I was bleeding at the point -- at that
5 point. There was clear fluid that was coming out of my ears
6 and my nose. I didn't know what it was. What -- it wasn't
7 mucousy and it wasn't yellow, it wasn't -- it wasn't mucus, but
8 it was just a clear fluid that kept coming out my ears and my
9 nose.

10 Q: Okay. And you just mentioned your ears. What did he do
11 to your ears?

12 A: He did a few things, but he used a tire iron and he used
13 a sharp end. I call it a tire iron.

14 Q: I'm going to show you. Okay.

15 A: Yeah.

16 Q: Let me see.

17 A: It might be called something else. But he put that sharp
18 edge into my ear, right here, and he would dig into them. At
19 the time he -- I was laying on his lap and he was holding my
20 head down like that, and he would dig it into the side of it
21 and it would start bleeding and --

22 Q: Okay. All right. I'm going to show you, this item has
23 been marked as State's Exhibit 18, and then this one is marked
24 as State's Exhibit 100. Okay. All right. I'm going to show
25 you. You tell me which one. This is 18. Okay. And this is

1 100.

2 A: That one.

3 Q: So you identify that State's Exhibit 100. Is that why
4 you're calling the -- the tire --

5 A: Yeah. This is the one that he would put into my ears.

6 Q: Okay. And what did that -- what kind of injuries did
7 that cause to your ears?

8 A: They were bleeding. I can't hear as well out of this one
9 anymore. And this part of my ears completely like calloused.
10 It's -- it's hard as the rock.

11 Q: Okay. Did the Defendant use other tools to cause you
12 injuries?

13 A: Yes. Multiple.

14 Q: Okay. Do you mind if I show you some photographs?

15 A: Yeah.

16 Q: Not -- we're not -- I'm not going to show all of them.

17 A: That's okay.

18 Q: And -- and you can -- can you tell me how you got these
19 bruises?

20 A: Absolutely.

21 Q: Okay. Let's -- I'm going to show you State's Exhibit 76.
22 Okay. This picture of your neck, what happened to your neck?

23 A: He choked me a lot. Strangled me a lot.

24 Q: Did you ever get choked to the point of unconsciousness?

25 A: Yes.

1 Q: Were you scared?

2 A: Very, very scared.

3 Q: Okay. All right. Let's show -- I'm going to show
4 State's Exhibit 77, which is in evidence. Okay. This is a
5 picture of your hands?

6 A: Yeah.

7 Q: What happened to your hands?

8 A: A lot. So the top of my hands here, one of the things he
9 would do is take the ratchet or pliers and he would hammer
10 them down like that. And he couldn't really move my fingers
11 or anything like that. He would do that. And a lot of the --
12 lot of the bruising and stuff you see on my arms is a lot of
13 like defensive, trying to hide my face from being hit so much.

14 Q: And you can see marks on your fingers in this picture
15 too? Why are there marks in your finger?

16 A: The ring finger -- ring finger on my right hand.

17 Q: This here?

18 A: Yep. My nails completely bled right there. He had bit
19 my finger so hard and then the nail had died and fallen off.
20 That took months. Had died and fallen off and it regrew back.

21 Q: Okay. I'm going to show you what's marked State's
22 Exhibit 16 and 14. You -- you said ratchet. I'm not sure.
23 I'm just going to hand you both and you can tell me which one
24 if you can identify.

25 A: I remember both of these. These were -- he -- I couldn't

1 tell you which one, and they are different because of the
2 backs, but I couldn't tell you which one it was that he hit me
3 with. But he would hit my knees, feet, and hands a lot, these
4 ones.

5 Q: Okay. And I think -- I'm not sure what exhibit is, but I
6 think we saw pictures of your knees. How about State's
7 Exhibit 84? I'm sorry, that's not the right one. 90, let's
8 see 90. Let me show you State's Exhibit 90. Okay. This is
9 one of the pictures I was thinking about. Can you see that
10 there are -- can you see the -- the damage to your knees
11 there?

12 A: Yes.

13 Q: And you said he would hit you. I'm just making sure that
14 I understand. Is State's Exhibit 14 and 16 at different
15 points in time?

16 A: Yeah, multiple (inaudible) occasions.

17 Q: Okay. What about other tools? There's also scratches on
18 your legs, I can see in the picture. How'd you get those
19 scratches?

20 A: He had needle on those pliers. So that big scratch that
21 you see on my right leg, that's right above my knee, I have
22 that scar still today. He would hit me with the needle on
23 those pliers a lot. And then he would -- he would open them
24 and with the points, and he would jab them into my leg and
25 then he'd go and pinch the skin.

1 Q: And is -- is that -- are these marks, these tight marks
2 from those pliers?

3 A: Yeah. Yes.

4 Q: And did they bleed?

5 A: Yes.

6 Q: Did it hurt?

7 A: A lot.

8 Q: I believe -- Can you think of -- I'm going to show you
9 what's been marked as State's Exhibit Number 80. Okay. Do
10 you recognize these bruises?

11 A: Yes.

12 Q: How did you get these bruises?

13 A: These bruises are along my back on -- on my left side.
14 He had hit me with a wooden bat that would -- he had in the
15 car, and he hit me multiple times with it.

16 Q: And when -- we talked a lot about how you got these
17 different injuries, do you remember what timeframe this stuff
18 occurred and how -- how many days or weeks if you recall?

19 A: Well, I escaped August 28th. He asked me to be his
20 girlfriend on the 5th. I would say a few days after that is
21 when the real violence started. So anywhere from August 9th
22 or 10th, to the 28th.

23 Q: Okay. So you're talking about a period of two to three
24 weeks?

25 A: Yes.

1 Q: That this -- and over the period of two to three weeks,
2 did the violence escalate?

3 A: Yes.

4 Q: Okay.

5 A: Actually, he would say it would be 10 times worse every
6 time. He would say 10 times worse every time.

7 Q: And why would, if you know, why would he say he was doing
8 this things to you?

9 A: He says I was giving him drugs.

10 Q: Were you giving him drugs?

11 A: I was not.

12 Q: Did you have access to any drugs?

13 A: I had no access to drugs.

14 Q: Were you yourself using drugs at that time?

15 A: Nothing. We may have been smoking weed at the time,
16 which was bought by somebody he knew. He rolled it. He was
17 the main person to do anything. We were smoking weed, but
18 there was nothing else. No drinking even, nothing like that.

19 Q: Okay. So no heroin?

20 A: No heroin.

21 Q: What about cocaine?

22 A: None.

23 Q: What about methamphetamine?

24 A: None.

25 Q: Xanax?

1 A: Nothing.

2 Q: Did you have access to your wallet?

3 A: No access to my wallet, my phone, my car keys. I
4 couldn't hold anything. And he didn't like me to have access
5 to that.

6 Q: Did you have any money?

7 A: I had no money. Any money that we did get went right to
8 him. It was right for him.

9 Q: What about your cell phone? Did you have your cell
10 phone?

11 A: No.

12 Q: Where was it?

13 A: He had it locked up in the glove box or it was on him.

14 Q: Okay. Would he ever let you use it?

15 A: There was an occasion when my mom -- I was able to text
16 my mom, and just let her know that I was okay, which I wasn't.
17 But I -- he was telling me what I needed to say to her, let
18 her know that I was okay and I was living.

19 Q: Okay. I'm going to show you what's been marked as
20 State's Exhibit 96. This one -- describe what happened. How
21 did your hair get in that State?

22 A: We weren't showering every day or anything like that.
23 And when we were in -- when we were in hotel rooms a lot. We
24 -- and we would be arguing. I would cover myself and I would
25 lay in the bed while he's hitting me and I would go like this.

1 He actually said to me that he's never seen somebody gate or
2 roll like I have out of trying to get out of like being kept
3 and held down. I just need a second.

4 Q: That's okay. That's fine. Take a minute. It's okay.
5 Take all the time you need.

6 A: So a lot of the matting in my hair is from trying to
7 wiggle to get out of the situation that I was stuck in.

8 Q: And we saw in the video and some other pictures, you were
9 missing chunks of the hair. How did that happen?

10 A: I had one of like a knot from my hair being so mat right
11 here. So I was brushing it out and I was trying to, you know,
12 pick it out and stuff, and he said I wasn't doing it right.
13 So he snatched the hairbrush and started brushing it and then
14 a whole patch came out.

15 Q: Okay. And in this photograph too, you can see some marks
16 on the back of your neck?

17 A: Yeah.

18 Q: How did this happen?

19 A: Like I said, he bit my finger the one time. He had bit
20 my shoulder so bad to where it became almost infected because
21 his mouth had -- he had an abscess and his -- came infected
22 down here. I have a scar from that bite mark today.

23 Q: Can you see it? I'm going to point to -- you're saying -
24 -

25 A: I can see it because I know where it is.

1 Q: Okay. So where is it in this photo?

2 A: It's above the tattoo. There's a dark red line, you can
3 see --

4 Q: Right here?

5 A: Right there. That's -- that was the red inflamed part
6 around it.

7 Q: Okay. And did he also -- did he ever hit you in the head
8 with anything?

9 A: Yeah. The -- actually, this thing here, he had picked up
10 and swung -- and you can see the little scratches on the back
11 of my neck here. He had swung this at me a -- a couple times.
12 I couldn't tell you how many times, but he had swung it. Hit
13 me with the whole -- the whole thing.

14 Q: What this -- for the purpose of the records. All right.
15 It State's Exhibit 100. And is this thing heavy?

16 A: Really heavy.

17 Q: And did that hurt

18 A: A lot.

19 Q: All right. I'm going to show you State's 11 -- State's
20 11. Do you recognize this?

21 A: Screwdriver.

22 Q: Yeah.

23 A: He -- he would hit my hands with this, hit the back of it
24 like that on my knees, on my feet, on my elbows. He said he
25 always would go for the joints because those ones hurt the

1 worst and you wouldn't be able to run away.

2 Q: Okay. What about your feet?

3 A: Yeah, my feet. He hurt those ones really bad, on the top
4 of them just like my hands with that too.

5 Q: What about just fist?

6 A: Yeah. When in doubt he went with his fist, he would hit
7 me in the face, hit me in the head. Anywhere. Anywhere.
8 There's -- I think there's actually a picture where he got
9 punched me.

10 Q: Okay. Let's see. Can we have -- State's Exhibit 93.
11 87. I apologize. All right. So there's a clearer picture,
12 but this one doesn't depict as much --

13 A: Yes.

14 Q: Okay. Is -- is this what you're talking to?

15 A: Yes, he got punched me like that.

16 Q: Okay. And it left that mark?

17 A: Yeah.

18 Q: All right. We talked a lot about this physical abuse
19 that you underwent. You said you were living in the car. Did
20 you sometimes stay other places?

21 A: Yes. We stayed in hotels. During the week, it was
22 cheaper. So most of the time we did stay in hotels. It was
23 during the week.

24 Q: Okay. And when you stayed in hotels, kind of what would
25 happen when you got into the room?

1 A: First, when I got into the room, I always had to take my
2 clothes off. I would -- I have to be completely naked. And
3 then I -- we were just -- I was one of the big things.

4 Another thing, he pulled the -- he pulled the phone cords out
5 of the walls, so I couldn't call anybody. Those are two major
6 things.

7 Q: And what about when you take him to the hotel, would you
8 see other people around, like hotel clerks?

9 A: Yeah, I would. I would be standing right next to them
10 and we would be checking into the hotels and stuff. And I did
11 see other people, yes.

12 Q: And at the time that you saw some of those people, did
13 you have marks on your body or on your face?

14 A: Not for our first hotel, but yeah, I did have marks, but
15 I was covered up mostly. I almost always wore sweatshirt,
16 long pants. I mean, it's the middle of summer, I'm wearing
17 sweat pants and sweatshirts. I had had my hair in such a
18 fashion that it's like covering the side of my face.

19 Q: What about makeup? Did you ever use makeup to try to
20 cover up your face?

21 A: Yes. He was very angry about that. After I looked so
22 bad, the first time we went over to -- it was either a
23 Walgreens or a CVS. And we went in and we got makeup. And
24 when we walked out he said, I can't believe you made me spend
25 60 fucking dollars because your face looks like that.

1 Q: And did you put the makeup on yourself?

2 A: I attempted to. I would do the best I could. He wasn't
3 pleased with how it looked, so he would always do it.

4 Q: Okay. And while all this stuff was going on, did you
5 ever think about wanting a life?

6 A: All the time.

7 Q: And why did you do that?

8 A: He had threatened my family a lot. And I said that it's
9 -- that my family's fault. You know, my family doesn't --
10 shouldn't have anything to do with this. So I stayed because
11 I was worried for them. I was worried for me too because if I
12 did end up trying to walk away, I feel he would find me. He
13 would come and try.

14 Q: There are videos where he's saying, do you want to leave?
15 Did you feel like you were -- if you wanted to, you could have
16 left at that point?

17 A: I did not.

18 Q: What do you think would've happened?

19 A: He would've came and found me and got me or, yeah, I
20 wouldn't have -- even if I went to reach for the door, he
21 would've ripped -- and ripped me back in.

22 Q: Okay. Do you think -- is that one of the things that
23 caused physical violence against you?

24 A: I don't understand what you mean.

25 Q: I guess I'm asking that in our (inaudible). If you had -

1 - if you expressed that you wanted to leave, there's a video
2 where you say --

3 A: Right.

4 Q: He says you wanted to leave last night. Would that --
5 would -- did that make him angry?

6 A: Yes. It made him very angry. If I said I wanted to
7 leave, or if I didn't want to leave, it would make him mad
8 either way.

9 Q: Okay. And is that why you said in one of those videos, I
10 feel like I'm going to get beat either way?

11 A: Yes.

12 Q: Is that what would happen in those circumstances?

13 A: Yes.

14 Q: You would get beaten?

15 A: Beaten very bad.

16 Q: Well, we talked about the car too. Whenever you were --
17 were you ever allowed to be away from the Defendant?

18 A: No. Never.

19 Q: Were you allowed to do normal kind of things by yourself?

20 A: No.

21 Q: So give me an example of things that you weren't allowed
22 to do that you now do by yourself that you weren't allowed to.

23 A: Using the bathroom by myself is a big thing. Showered by
24 myself. I couldn't shower by myself. Sorry.

25 Q: It's okay. That's good. Thank you. What about when you

1 were in public or the Defendant was in public? I'm sorry.

2 You -- take -- take a minute. It's okay.

3 A: Okay.

4 Q: I -- I believe you were in the courtroom when we saw --

5 it's going to -- it is State's Exhibit 52 and 53. It's for

6 pictures of your driver's license and Social Security. That

7 Social Security card that we got off the Defendant's phone.

8 Do you know why it had pictures of those items?

9 A: I -- the address that's on my ID is my parents' address,
10 I'm assuming.

11 Q: Did he at some point take those items away from you?

12 A: They were in my wallet and I wasn't allowed access to my
13 wallet. So he had everything. Yes, he took them.

14 Q: Did he even take your personal belongings? Like did you
15 have other personal belongings that he took?

16 A: Yes. And I had my phone, my wallet, my car keys, my
17 Apple watch, my everything.

18 Q: Okay. And I believe you told me earlier that you noticed
19 something about the Defendant's video when he was getting
20 arrested?

21 A: Yes.

22 **MS. WALLER:** What -- Your Honor, we've taken a still shot
23 from that video that's previously entered -- entered in
24 evidence, and put it on this flash drive, so we don't have to
25 queue up the video. We'd like to this time mark this as

1 State's Exhibit 103 and introduce it into evidence and publish
2 it to the jury. It's a still shot from the video of the
3 surveillance.

4 **THE COURT:** Any objection to State's Exhibit 103?

5 **MR. HILLER:** It's a new exhibit, right?

6 **MS. WALLER:** It's a new exhibit. I've marked it because
7 -- so that we wouldn't have to queue up the video.

8 **MR. HILLER:** I think she would have to identify it first,
9 but I don't anticipate an objection.

10 **THE COURT:** All right. From what I -- yeah. What is it?

11 **MS. WALLER:** It's a still shot of the Defendant standing
12 in handcuffs, where you can see his arms.

13 **THE COURT:** All right. From?

14 **MS. WALLER:** From the Fletcher's body cam.

15 **THE COURT:** Which is?

16 **MS. WALLER:** Which is State's Exhibit number 1.

17 **THE COURT:** Okay. So it's a still shot of State's
18 Exhibit 1 of a portion of State's Exhibit 1, is what she said.
19 Any objection?

20 **MR. HILLER:** No.

21 **THE COURT:** All right. State's Exhibit 103 admitted into
22 evidence without objection.

23 **(STATE'S EXHIBIT NUMBER 103**

24 **IS ADMITTED INTO EVIDENCE)**

25 **BY MS. WALLER:**

1 Q: Okay. You -- you told me that you noticed on it. What
2 did you notice about this video?

3 A: He's wearing my Apple watch.

4 Q: He's wearing your Apple watch. Did you have an Apple --
5 did he have an Apple watch of his own?

6 A: No.

7 Q: What about his physical condition in -- in these videos,
8 does he have any marks on him?

9 A: None that I see.

10 Q: Let's see State's Exhibit 32. Okay. So this is State's
11 Exhibit 32. What can you see stuck in the door there?

12 A: A white iPhone.

13 Q: And do you -- was that your white iPhone?

14 A: Yes. It was linked to the Apple watch.

15 Q: It was linked to the Apple Watch?

16 A: Yes.

17 Q: Okay. Thank you. You can take that one down. So I'm
18 going to talk to you about a more sensitive topic now, sexual
19 assault. Okay? At one point did you have a consensual
20 relationship -- sexual relationship with the Defendant?

21 A: Yes.

22 Q: And at some point, did that relationship also take a
23 turn?

24 A: Yes.

25 Q: And why was that?

1 A: We still didn't have intercourse after I was being
2 beaten, after I would get hit and stuff like that. But I
3 never felt comfortable actually doing it. I did it because I
4 felt like he wanted me to do it.

5 Q: And what did you think would happen if he didn't do what
6 he wanted you to do?

7 A: If I didn't comply with what he wanted me to do, I would
8 be -- I would be hit. I would -- I -- I would be hurt in some
9 fashion.

10 Q: So did you feel like you had the ability to say no at
11 that point?

12 A: No.

13 Q: I believe it was -- someone asked you at first when you
14 first kind of ran into the Walmart if you had been raped. Do
15 you remember what you told them?

16 A: I think I said no.

17 Q: And why did you say no at that point?

18 A: Because there wasn't a point where he pushed me up
19 against a wall and forcibly entered his self inside of me. So
20 I didn't -- there wasn't a point that happened. So I said no,
21 I wasn't raped.

22 Q: Okay. But you just testified that you complied because
23 you were afraid?

24 A: Right.

25 Q: Is that correct?

1 A: Correct.

2 Q: Now, we going to talk about -- I'm going to show you this
3 picture, but I'm not going to put it up here, okay?

4 A: Yes.

5 Q: So we're going to show -- I'm going to show you the
6 picture. It states Exhibit 89. And this is a picture of your
7 private area. So we're not going to show. I'm going to let
8 you look at it so we follow along. Okay. And on that
9 photograph, do you see heavily burn mark?

10 A: I do.

11 Q: Can you tell me how you got those burns?

12 A: We were in one of the hotels that night and he was upset
13 because he had lost all his money gambling and he was really,
14 really mad about it. He blamed me because I told -- I didn't
15 tell him to stop. That's what he kept saying. It's your
16 fault. You didn't tell me to stop. So what happened was,
17 pretty much he took a lighter and he lit it and held it lit
18 for minutes at a time. And he pushed me onto the bed, spread
19 my -- spread my leg, and pushed the lighter that was just lit
20 for like two minutes onto my private areas.

21 Q: And what portion of your private areas did it burn?

22 A: Specifically, my clitoris, he had burned. And then
23 there's a burn here that's in between where my -- my leg folds
24 back.

25 Q: And -- and when he burned your clitoris, did it penetrate

1 your labia?

2 A: He did.

3 Q: How did that feel?

4 A: I can't even describe to you how it felt. It just hurt
5 so bad. I even screamed. I screamed because he did that one.

6 Q: Did anybody come?

7 A: Nobody came.

8 Q: Okay. I'm sorry. I'll take that one. What about your
9 anus? Did he ever do anything to your anus?

10 A: He tried to put those pliers inside and spread them. He
11 tried to spread it.

12 Q: Okay. So he put the needle in those pliers and your anus
13 opened them up. Is that right?

14 A: Yes.

15 Q: Okay. Did he ever try to -- and -- and did that actually
16 penetrate your anus?

17 A: I was squeezed so tight. My legs were squeezed really
18 tight. I don't think he entered my anus, but he was on the
19 brink of it.

20 Q: Okay. And did he ever try to put anything else in your
21 anus?

22 A: Not that I remember.

23 Q: Okay. And when he was -- when he was trying to do that,
24 what did you do?

25 A: I was screaming, begging for him to stop, trying to get

1 out of a position that was -- I was in, that he was trying to
2 do that. I was trying to get out of -- of that.

3 Q: Okay. Do you remember if that hurt?

4 A: Yes. It -- it poked me. It hurts. Yes.

5 Q: Okay. Let's talk about the night you ran into the
6 Walmart. Let's talk about the night that you ran into the
7 Walmart. I know you know the date because I heard you say it
8 earlier. What date was that?

9 Q: August 28th.

10 A: So I'm going to -- can you tell me -- did things escalate
11 even more on that date?

12 A: Yes.

13 Q: Okay.

14 A: Yes.

15 Q: All right. So I'm going to show you a video, okay? And
16 it -- you can tell me what you see in the video. But before
17 we do that, let's just talk for a second about the video. For
18 background. We saw a lot of video yesterday. Did the
19 Defendant videotape a lot of your relationship?

20 A: Yes.

21 Q: And -- and in the videos, I could hear you confessing to
22 things like drugging him?

23 A: Correct.

24 Q: Or other prostituting yourself?

25 A: Correct.

1 Q: The first question is, did you ever drug the Defendant in
2 any way?

3 A: I did not.

4 Q: Did you ever, when you were with him, ever prostitute
5 yourself in exchange for drugs or money?

6 A: I did not.

7 Q: Were you ever allowed out of the site?

8 A: I was not.

9 Q: So did you have an opportunity to do any of those things?

10 A: No.

11 Q: But on the videos you're confessing to him, why did you
12 say you did things that you didn't do?

13 A: Well, there's a lot of time before the videos that you
14 see were -- that you see. There is three hours before that.
15 I went through hell telling him, no, I did not do this. No, I
16 did not do this. No, I did not do this. Over and over and
17 over again. All he says is, you're lying. No, that's not the
18 truth. Tell me the truth. Tell me the truth. So, in my eyes
19 at the time, I was like, I will say whatever you want me to
20 tell you. So you please just do not beat me again. Just
21 please don't -- I say whatever you want me to say.

22 Q: Okay. All right. I'm going to show you this video, this
23 -- the last video, and it State's exhibit 57P.

24 **REPORTER'S NOTE:** (Whereby State's 57P is played).

25 **MS. WALLER:** You can take that one down.

1 **BY MS. WALLER:**

2 Q: In the video, you said he was sprinkling drugs on his
3 clothes. Were you doing that?

4 A: I was not.

5 Q: I think in one of the other videos he's talking about,
6 you gave him eyedrops?

7 A: I think so, yes.

8 Q: Did you ever give him any eyedrops?

9 A: I did not.

10 Q: Do you know what effect that would happen on someone?

11 A: I did not at the -- I did not, but I do now. I -- I know
12 now.

13 Q: What -- what do you mean? What do you know now?

14 A: That I know that it -- it possibly could hurt somebody.

15 Q: And how do you know that?

16 A: I -- well, I don't know it. In fact, I didn't like
17 Google it or anything.

18 Q: I got you. So you've just been told that?

19 A: I've just been told things. Yeah. I was told -- I was
20 told by him that that could hurt somebody. Sorry, yes.

21 Q: I got you. Okay. I was -- I'm making sure.

22 A: I'm sorry.

23 Q: So there's no -- you have never heard that from anyone
24 with authority?

25 A: Right. No. Doctors have told me that.

1 Q: Okay. That's -- that was my question. So let's talk
2 about the night that you went into the Walmart. Is this
3 video, how close in time do you think this video was made to
4 when you ran into Walmart?

5 A: Maybe a day or two before.

6 Q: Okay. So hours? Would it be hours or a day?

7 A: It could be.

8 Q: I'm just asking for a -- a day or two. I mean, that's
9 fine if that's your answer.

10 A: I -- I couldn't give you a specific timeline. I could
11 tell you I looked really, really bad in that one and I know
12 that that was closer to the end.

13 Q: Right. That's why I asked you that. Because of -- you
14 look nearly the same. So what had changed at that point? Why
15 did you decide at that point to actually make a report that
16 day, or that night?

17 A: He had specifically said I'm going to take you back over
18 to the other spot. I'm going to kill you.

19 Q: Okay. What's the other spot?

20 A: So at the Walmart, we were -- where we were in the video,
21 we were sitting on like where they pick up groceries, online
22 ordering groceries and stuff. But on the other side, back
23 towards like the automotive section where you take your car,
24 there was two semis there. And he would park in between them.
25 So like, there's no cameras that couldn't see in between there

1 or anything.

2 Q: Yeah. And you testified before that you parked your car
3 near a camera at Walmart?

4 A: Yes.

5 Q: Was the Defendant aware of the location of security
6 cameras when you were with him?

7 A: Yeah. He definitely looked for them. He was definitely
8 always trying to watch out for things.

9 Q: And was that to avoid them or for some other reason?

10 A: I probably didn't want me to be on camera somewhere
11 looking like I did.

12 Q: Okay. So that night, so -- so when you tell me about how
13 you got out of the car. It looks like in that video you're in
14 the back seat?

15 A: Yes.

16 Q: Okay. Were you in the back seat?

17 A: I was in the back seat.

18 Q: And could you open the doors from the back seat and get
19 out of the car?

20 A: No. You could not.

21 Q: Okay. And after he said he was going to kill you, did
22 you decide to try to get away?

23 A: Yeah. I figured that if he was going to go over there
24 and kill me, I might as well try. And if he's going to kill
25 me, he's going to kill -- kill me either way. I have to try.

1 Q: Okay. And if you had told him you wanted to leave, would
2 you be a -- would you have been allowed to leave?

3 A: No. And honestly, at that point, the way I looked, I
4 don't think I was going to be able to just be let go.

5 Q: Had you ever -- had anyone ever sought any medical
6 attention for any of your injuries?

7 A: Not while I was with him. After I got into the Walmart,
8 I, you know, had medical and stuff, but while I was with him,
9 no.

10 Q: So when you were in the back and you were worried, were
11 you -- were you afraid?

12 A: I was -- I was petrified that night. That night I was --
13 I thought for sure it was going to be my night.

14 Q: I got you. And so how did you -- if you couldn't open
15 the doors from the backseat, how'd you get out? How'd you
16 open the door?

17 A: It was hot. It's a summer. It was hot. And I had the
18 back window down. So the window was down and we were sitting
19 in the back. He had said what he said, and he was jumping; he
20 was going to get into the front seat. So he had went into the
21 front seat and the window was down, and he went and he backed
22 out of the spot. And I would -- he -- he was saying he was
23 going to go kill me. I was like, please, no, no. And I
24 remember I reached my hand out, I grabbed the handle, and I
25 opened it, and I fell out of the car onto the ground. And

1 then I -- I went back like that on my arms while I was
2 screaming, help, please. He's going to kill me. He's going
3 to kill me. Please help. And I was looking at him. He had
4 jumped -- he must have thrown it in park. He had jumped back
5 to the back passenger seat that I was sitting in. And he was
6 like, come on **KS**. It's not that serious. So I was still
7 backing up screaming. I got up and I took off. And that was
8 the last.

9 Q: And did you run into the Walmart?

10 A: And I ran towards the Walmart entrance where there were
11 people. I was screaming. I was seeing people; I was
12 screaming; somebody help. Yes.

13 Q: Okay. And did you get help that night?

14 A: I did.

15 Q: Okay. So let's talk about your injuries a little bit.
16 Okay. Did you have an injury -- do you recall having an
17 injury to your eye?

18 A: Yes, I do.

19 Q: Okay. So what happened to your eye?

20 A: My orbital socket, here, broke. So the bone was not
21 there anymore. And my eyeball was sinking into my sinus,
22 here.

23 Q: So what kind of symptoms did that cause you to have?

24 A: I had a lot of double vision, so I couldn't -- when I
25 would go and I would look down, I would see two separate

1 things and the migraines that come with it, it would just be
2 from pain, just -- just thumping.

3 Q: Did you have surgery to try to repair it?

4 A: I did.

5 Q: And do you still experience symptoms today because of
6 that injury?

7 A: I do.

8 Q: And what is that?

9 A: I, again, still have the double vision. I also have a
10 little black dot that floats around in my eye. So that little
11 black dot just floats there. It stays there. The migraines
12 that I get, this little vein right here, just sits there in
13 the thumbs all the time when I have a migraine or if I strain
14 my eyes too much once, start right up.

15 Q: What about the position of your eyes? Can -- if you look
16 at your eyes, can you see a difference?

17 A: When I look at myself in the mirror, I see it's
18 different. I see my eyes are not in line with themselves.
19 This eye here sit -- sits a little bit more upwards and out.
20 So you can see the bottom part of my eye a lot more in there
21 compared to this one.

22 Q: Okay. How about your nose? Did you have injuries to
23 your nose? I think you described -- you described that
24 earlier.

25 A: I -- yeah. Described how you would grab and wiggle like

1 that. Yeah.

2 Q: What kind of symptoms did that cause?

3 A: I wasn't able to breathe correctly while I was sleeping
4 at all. He actually got mad about that a couple times. He
5 told me he will shut my fat ass up because I was snoring so
6 loud and I was bothering him gambling. But I was -- I -- I
7 would snore really bad. I couldn't breathe out of this side.
8 I started breathing a lot more through my mouth and so I would
9 just be louder.

10 Q: Did you have that injury repaired as well?

11 A: I did.

12 **MS. WALLER:** Court's indulgence?

13 **THE COURT:** All right.

14 **MS. WALLER:** Thank you for answering all my questions.

15 Please answer any questions the Defense may have.

16 **THE COURT:** Let me see the attorneys for a second.

17 **REPORTER'S NOTE:** (Whereby bench conference was held)

18 **THE COURT:** All right. Cross-examination.

19 **CROSS EXAMINATION OF** **K.S.** **BY MR. HILLER:**

20 Q: Ms. **K.S.**, at the beginning of your testimony with the
21 solicitor, you told us that you came to Myrtle Beach by way of
22 North Carolina. Is that right? Where did you -- where are
23 you from originally?

24 A: I live in Ohio. Originally from Ohio.

25 Q: Yeah. I don't mean to know more than that, but there was

1 -- oh, so you came here from Ohio, by the way of North
2 Carolina?

3 A: So I was in Ohio first, and then I went to North
4 Carolina, and then I went to North Myrtle Beach. Is that what
5 you're asking?

6 Q: Yes, ma'am.

7 A: Yes.

8 Q: About how long were you in North Carolina?

9 A:

10 A couple -- I think I got there -- I think I was with my
11 sister for three weeks until about approximately.

12 Q: Do you recognize the gentleman sitting behind the
13 prosecutor's office? He's now a sergeant, but he's -- was it
14 detective back then?

15 A: Yes.

16 Q: Recognize him?

17 A: Detective Fletcher. Yes.

18 Q: Yes. You talked to him, he's the guy who came to the
19 hospital to see you, right?

20 A: He sure is.

21 Q: You saw him pretty -- I don't know if you remember much
22 about the first time you saw him because you were kind of in
23 the middle of getting worked on.

24 A: Yes.

25 Q: But then did he come back and see you again? Do you

1 remember?

2 A: He sure did.

3 Q: And came and talked to you for quite a while.

4 A: Three and a half hours.

5 Q: Yes, ma'am. Do you remember that conversation pretty
6 well? I know it's been a while.

7 A: It's been about two years. I -- I remember most of
8 everything, yes.

9 Q: Now, you talked to -- when you were talking to the
10 prosecutor, you -- you were very clear that you were not using
11 drugs in that vehicle around the time of the incidents that
12 you described, right?

13 A: I said that we had -- we had been smoking marijuana
14 together. Other than that, no, there's no other drugs.

15 Q: Sorry, I wasn't even thinking about --

16 A: Oh, okay.

17 Q: That substance. But the hard drugs. I'm just focused on
18 that. The -- the things that would be stronger, I suppose.

19 A: Correct. There's no -- no use of those. Correct.

20 Q: One of the videos that the solicitor played yesterday,
21 you did mention a type of acid. You said acid was the last
22 drug that you did.

23 A: Correct. I had taken that before I had even met, and was
24 with the Defendant.

25 Q: Okay. So that was a true statement, but not --

1 A: That was a -- correct. That was a true statement.

2 However, I was not with him at the time. That was before I
3 had met him.

4 Q: Understood. And I'm not going to pry to this, but it was
5 -- do you have a history of drug use?

6 A: I -- I do, yes.

7 Q: Okay. Do you remember telling the detective at the
8 hospital that while in South Carolina -- again, before you met
9 the Defendant, Mr. Funderburk -- that you had used drugs other
10 than marijuana?

11 A: Yes.

12 Q: Okay. Were those drugs, Molly, Xanax and acid, does that
13 sound about the kind of the stuff that you might have used?

14 A: Yes.

15 Q: How many hotel stays versus car stays do you think in
16 that timeframe, roughly two and a half weeks, between August
17 10 and August 28?

18 A: We stayed at three separate hotels. Stayed at the Days
19 Inn, I believe that was one night. Then we stayed at the
20 Comfort Inn. And I -- I'm confused about the Comfort. I
21 don't know if it's three or four nights. if it -- it might
22 have been three nights and four days. But that was
23 approximately three or four days. And then the Courtyard Inn
24 was two days.

25 Q: And they were intermittent?

1 A: And -- correct. Like -- like I said, the hotels are
2 cheaper during the week, so we would mostly spend the weekends
3 in the vehicle. And if we could find a good deal during the
4 week, we would find a hotel to stay in.

5 Q: Did you ever go -- and I don't mean to disparage the
6 boulevard, but did you ever look for the lower budget options
7 that are right on the beach?

8 A: I didn't really have a choice of saying, hey, let's go to
9 the beach once. That was the decision he had made. So he's
10 the one who decided where we would go.

11 Q: Okay. That's fair. Do you remember an incident where
12 you stayed overnight in the car at actually Grand Strand
13 Hospital?

14 A: I do.

15 Q: Do you remember encountering anyone other than Mr.
16 Funderburk that night?

17 A: I do.

18 Q: What kind of person did you encounter?

19 A: He was a security guard. He came and he knocked down the
20 window.

21 Q: Okay. Do you remember roughly when, during this
22 timeframe that was -- I know you already said the dates are a
23 little fuzzy and that's fair.

24 A: It was more towards the beginning. I feel I did not look
25 as bad as I did towards the end. So it was more towards the

1 beginning.

2 Q: Would that -- is it fair to say that you did not want to
3 get away at that time? Or is that -- well, you testified on
4 direct that even though there's videos -- and some of those
5 are at the beginning of the progression. First, let's make
6 sure I'm clear. We start at Dunbar. There's a few of the --
7 the nicer moments captured on camera. And then there's -- the
8 next one I think is him telling you to get out of the car.
9 And, you know, you look like a lot like yourself. You know,
10 it's not -- it's not that bad. And he's telling you to leave
11 and you don't leave. Is it your testimony now that you were
12 afraid on that day to leave and that's why you didn't, that --
13 I think you said --

14 A: Yes.

15 Q: Okay. Well, when there's a security guard who's actually
16 at the window, would not that be a -- a perfect time to leave,
17 if that's what you really wanted to do?

18 A: I -- I understand what you're saying. In that moment, I
19 felt that if I were to have said something, he could have been
20 in the mind frame -- because I don't know what he's thinking
21 all the time -- he could have been in the mind frame of throw
22 it in drive, throw it in reverse, run the guy over and take
23 off. So for me to be like, hey, Mr. security guard, I look
24 like this and please help me now, I didn't feel was a safe
25 option for me. And on top of that, he didn't have a look at

1 me. He didn't see me. I was sitting in the back. He
2 couldn't see me. He told me to stay in the back. When he
3 climbed up into the front seat to talk to the gentleman, I was
4 in the back and I was sitting there. I wasn't able to lean up
5 and show my face and how it looked at that time.

6 Q: Okay. The video where you told -- you -- you discussed
7 this with the prosecutor a little while ago, and you basically
8 put it like, I didn't -- it's kind of like, I think the phrase
9 is a Hobson's choice. Not a good -- not a good option.
10 Rocking a hard place maybe is a more common phrase. You said
11 that you thought you'd get beaten either way. Wasn't that a
12 conversation about cutting ties, not getting out of the car?

13 A: I couldn't tell you. I would have to see the video to
14 remember. But there was a video. Yes.

15 Q: The part at the end of the direct examination where the
16 solicitor brought it to more sensitive subjects, which is
17 sexual assault, I believe it was your testimony that at first
18 sex, or you know, physical relations were consensual with Mr.
19 Funderburk?

20 A: Yes.

21 Q: And then it turned to the point where sexual encounters
22 were still occurring. And then you started talking about your
23 motivation for why you would agree to it?

24 A: Correct.

25 Q: I believe you said that you thought it would be worse for

1 you if you refused?

2 A: Yes.

3 Q: Do you ever -- do you have an example of a time where you
4 actually did refuse and it -- and it did go worse for you?

5 A: No, because I never did refuse.

6 **MR. HILLER:** Okay.

7 **THE COURT:** All right.

8 **MR. HILLER:** No further questions.

9 **THE COURT:** All right. Redirect?

10 **MS. WALLER:** Very briefly, Your Honor.

11 **REDIRECT EXAMINATION OF** K.S. **BY MS. WALLER:**

12 Q: Did the Defendant ever get mad at you because you weren't
13 able to perform sex acts?

14 A: Yes. After the first couple of times, he had hit me in
15 my jaw. He enjoyed oral, me performing oral sex on him. So
16 after the first couple of times, my jaw -- of being punched in
17 my jaw, it would hurt to perform oral sex. So I would get
18 black jaw and then he would get upset that I wasn't able to
19 complete for him.

20 Q: Okay. And he -- he asked you about -- did you --
21 basically, did you just do it so you wouldn't get beaten?

22 A: Correct.

23 Q: Did you have any control over whether or not he burned
24 your vagina?

25 A: No control.

1 Q: Did you consent to that?

2 A: I did not.

3 Q: Did he hold you down and do that?

4 A: He did.

5 **MS. WALLER:** Thank you. No further questions.

6 **THE COURT:** All right. You may step down.

7 **MS. WALLER:** Your Honor, I neglected to mark 103.

8 **MR. MARTIN:** It's right there.

9 **MS. WALLER:** I neglected to mark. This is State's
10 Exhibit Number 103. It's the still shot from Fletcher's body
11 cam, which is Exhibit Number 1.

12 **THE COURT:** We've already admitted that in evidence.
13 All right. State can call your next witness.

14 **MS. WALLER:** Your Honor, at this time the State rests.

15 **THE COURT:** All right.

16 Ladies and gentlemen, the State has rested their case.
17 So the law requires that I now go over some matters of law
18 with the attorneys. Given the time of day, it's also a good
19 time to go ahead and break for lunch. We've got lunch coming
20 for you. So we're going to go ahead and break for lunch.
21 We'll probably break for about an hour and then come back and
22 resume the trial at that time. All right. Thank you very
23 much.

24 **REPORTER'S NOTE:** (Jury exits the courtroom at 12:35pm)

25 **THE COURT:** All right. Any motions at this time?

1 **MS. WALLER:** Nothing from the State.

2 **THE COURT:** All right.

3 **MR. HILLER:** Yes, Your Honor. At this time, the Defense
4 does move for a directed verdict. Obviously, the standard was
5 very differential to the State. We know what it is very well.
6 But the law does require that the Defense make the motion,
7 that the Court direct a verdict for the Defendant. And we
8 would ask the court to do so on grounds that the State has
9 failed to present any type of evidence such that the jury
10 could reach a verdict of guilty on either of the three charged
11 through the standard Grand Jury process the DVHAN and
12 aggravated the CSC first, the kidnapping, as well as the
13 directly indicted assault battery high and aggravated nature
14 charges.

15 **THE COURT:** All right. All right. I'm going to deny
16 your motion, however, I do have a question as to whether or
17 not assault and battery of high and aggravated nature is a
18 lesser included CDVHAN. What -- I understand why the State
19 indicted both. What is the Defendant's position in that?

20 **MR. HILLER:** Your Honor, if memory serves, DVHAN and
21 aggravated is its own separate section of code. The other
22 types of domestic first, second, third, all are under the same
23 umbrella. I think it's 16-3-300, maybe it's 600. But that
24 portion of the section code does talk about assault being
25 lesser included of DV first, for example, DB second, DB third,

1 and then assaults are lesser included as those. But the DVHAN
2 statute does not specifically say it. I think that's why the
3 State charged it the way they did. I don't think it's lesser
4 included, I guess is what I'm on --

5 **THE COURT:** Okay.

6 **MR. HILLER:** -- record saying, that's why.

7 **THE COURT:** All right. So I guess the Defense position,
8 if it's not lesser included and it goes to the jury, then the
9 jury can convict them of both --

10 **MR. HILLER:** No.

11 **THE COURT:** -- ABHAN and CDVHAN.

12 **MR. HILLER:** No, Your Honor. Respectfully, I think they
13 would have to merge for sentencing. That would be the Defense
14 position if the jury were to convict. I think the State,
15 since as Your Honor's heard the testimony, there was a brief
16 period of what the State 's saying is cohabitation.
17 Obviously, the Defense hasn't presented yet.

18 **THE COURT:** I understand.

19 **MR. HILLER:** So in the event the jury did not find
20 cohabitation, I think the fallback would be assault and
21 battery of a high and aggravated. But the thing --

22 **THE COURT:** You see that's what I'm saying. Is if it is
23 -- if there's no cohabitation, then how is ABHAN not lesser
24 included? If that's the only distinguishing difference
25 between domestic violence of high aggravated nature, and

1 assault and battery of high aggravated nature. The only
2 distinction is the cohabitation or that the victim is --
3 whether or not the victim is a household member.

4 **MR. HILLER:** Yes, sir. I'm happy --

5 **THE COURT:** Not a lesser included.

6 **MS. WALLER:** Your Honor, my -- the reason that -- and
7 honestly, I don't think there is an -- an answer that says it
8 is or isn't. But when you actually hold the statutes up side
9 by side, the language is different. And if you read the case
10 law, it basically says that it has to require the same
11 elements except one adds more than the other. The other --

12 **THE COURT:** And that's my question -- excuse me for
13 interrupting, but my question is what do you have to prove for
14 assault and battery of a high aggravated nature?

15 **MS. WALLER:** So for some --

16 **THE COURT:** -- you do not have to prove for criminal
17 domestic violence.

18 **MS. WALLER:** So criminal domestic -- so I'll kind of give
19 you a synopsis if that helps. So DVHAN, it says, "The cause
20 or attempt to cause physical harm or injury to a household
21 member under circumstances that create fear or imminent peril,
22 circumstance manifests extremely difference to the value of
23 human life and great bodily injury resulted, or they feared
24 great bodily injury or death." ABHAN says, Great bodily -- it
25 says -- it's more simple. I can pull up the statute.

1 **THE COURT:** Well, I mean, I guess my question is, tell me
2 what do you -- what element of ABHAN do you have to prove that
3 you do not have to prove for CDV -- I mean for a domestic
4 violence.

5 **MS. WALLER:** I think you have to prove it's a household
6 member and I think you have to prove its circumstances that
7 create fear or imminent peril. But other than that, I agree
8 with you, it's the same. And I don't know if it's a lesser
9 included or not.

10 **THE COURT:** I mean, I know the wording.

11 **MS. WALLER:** It's the same sentence.

12 **THE COURT:** I know the wording is different, but I'm
13 thinking that if you prove all of the elements of domestic
14 violence of a high aggravated nature, saving and accepting
15 that the victim is a household member, then is that assault
16 and battery of a high aggravated nature. I think it is. And
17 I can't think of anything for assault and battery of a high
18 aggravated nature that you have to prove for a conviction of
19 that crime that you do not also have to prove to get a
20 conviction for domestic violence of high and aggravated
21 assault.

22 **MS. WALLER:** I think that -- that is correct. That you -
23 - it certainly isn't that you have to prove more for ABHAN.
24 ABHAN requires less.

25 **THE COURT:** And so there's no -- I guess my question is,

1 is there an additional element --

2 **MS. WALLER:** He might commit.

3 **MR. HILLER:** -- of ABHAN that is not one of the elements
4 of domestic violence of high and aggravated --

5 **MR. MARTIN:** Judge, I hate to speak, but I know this was
6 Ms. Waller's issue. As Your Honor knows, I prosecuted
7 domestic violence cases for about a year. The reason I always
8 treat them as different -- and I may not be correct, but I'd
9 like to put it on the record for the Court. For DVHAN, it's
10 great bodily injury resulted or victim reasonably feared great
11 bodily injury or death. For assault and battery of a high and
12 aggravated nature, it's slightly different. It is that great
13 bodily injury results or the act is accomplished by means
14 likely to produce great bodily injury or death. So DVHAN
15 deals with either great bodily injury occurred or the victim
16 could have feared that this death or great bodily injury could
17 occurred. Assault and battery of a high aggravated nature is
18 either great bodily injury resulted or the act itself could
19 have resulted in GBI or death. And that's why they're
20 different.

21 So it's not that ABHAN is adding anything extra, it's
22 just a slightly different element than DVHAN, if that makes
23 sense. And that's why the State's position typically is that
24 is not a lesser included. Now, I could be wrong about that,
25 but because they read differently, that is why I always

1 indicted it separately

2 **THE COURT:** All right.

3 **MR. MARTIN:** But the sentence is the same. You're
4 correct about that.

5 **THE COURT:** I mean, my question is, in this case -- and I
6 know we haven't gone through the Defense, but just kind of
7 pre-thinking -- if everything -- every charge goes to the
8 jury, can the Defendant be convicted of both domestic violence
9 of high and aggravated nature and assault and battery of high
10 and aggravated nature - high aggravated nature. Why is that
11 not double jeopardy?

12 **MS. WALLER:** I don't think it is double jeopardy, and I
13 can explain why. But I also don't have a problem with giving
14 the jury the choice if that's what the Court's inclined to do.

15 **THE COURT:** Well, I mean I --

16 **MS. WALLER:** But here's my argument. My argument is that
17 the State, if it had chosen to, could have indicted a charge
18 for either ABHAN or DVHAN for every injury that he caused that
19 resulted in great bodily injury. We could have done four
20 indictments. It is the same with a rape charge. We can
21 always indict for every -- every instance that the crime
22 occurs separately. In South Carolina, it's just our kind of
23 common practice not to do that because it's really not
24 necessary to indict them. Our case law says that you can put
25 a date range in an indictment and then you can talk about all

1 those separate instances, which they could technically require
2 us to indict separately. But as you know, that could require
3 10 indictments sometimes, which is just not in the interest of
4 judicial economy.

5 So my argument and my thinking when I indicted that way
6 was that the jury could find him guilty for great bodily
7 injury for the injury to her eye, to the injury to her nose,
8 to the injury when he was choking her, and for the injury that
9 the doctor testified that her body -- the whole State of her
10 body that -- the total circumstances her body could have
11 resulted in her death. So the State's argument is there's
12 four separate great bodily injury events that could go for
13 DVHAN or ABHAN. And so what I did is I indicted ABHAN and
14 DVHAN. I just did one indictment for it to cover each
15 scenario. And it --

16 **THE COURT:** Well, I mean so you were relying on a
17 separate set of facts for one charge and another set of facts
18 for the other charge? Or was it the State's position because
19 there may be a factual issue as whether or not the victim was
20 a household member. Let's do --

21 **MS. WALLER:** That's -- I did it because of -- I wanted to
22 give -- because I did not think it was a lesser included. So
23 I wanted to give the jury that option if they don't think
24 she's a household member. The second option, that's why I did
25 it. I'm happy to tell you that. My argument, though, is just

1 that I think it's proper to indict both because there are
2 these separate instances, but I did it. My thinking was it's
3 not a lesser included and the jury needs to have an option for
4 assault and battery of high and aggravated nature if they
5 don't think that she's a household member. And I do think
6 she's a household member. They lived together and then they
7 lived in the car. But I can see how someone, and there's no
8 case law on whether living in a car and being homeless is a
9 household member. It's something that comes up frequently in
10 the law because a lot of domestic violence victims are
11 homeless.

12 So it's just an issue that we are aware of as the State,
13 that we have to prove that. So that's why I did both, Your
14 Honor. But I don't have a problem with giving them a choice
15 of DVHAN or ABHAN, at all.

16 **THE COURT:** All right. Anything further on that issue?

17 **MR. FOX:** I appreciate the solicitor. I'm not sure how
18 you do that exactly.

19 **THE COURT:** That's what I'm saying. To me it's easier to
20 do it as a lesser included versus saying you can find him
21 guilty of this indictment or you can find him guilty of this
22 indictment, or you can find him not guilty of both
23 indictments, but you can't find him guilty of both
24 indictments.

25 **MS. WALLER:** Well, if -- Your Honor, I will agree with

1 you that whether or not ABHAN is a lesser included and DVHAN
2 is unsettled case law. And if it's your ruling that that's a
3 lesser included, the State doesn't really have a problem with
4 that either. Because I just don't know the answer.

5 **THE COURT:** Well, we don't have to make a decision now
6 because we haven't even gotten to that stage. But if we get
7 to that stage, and if there is a question as to whether or not
8 I charge as a lesser included or I charge as a separate
9 indictment, I guess based upon the State 's argument, I'll
10 just let the Defense choose what you want me to do. And like
11 I said, that's pre-judgment. I don't even know. We may be
12 arguing about something that's going to be inconsequential. I
13 don't know. But I just kind of keep in the back of your mind.
14 That might be something I'll let y'all decide how you want me
15 to handle it from the Defense standpoint as to whether or not
16 you want me to charge it as lesser included or charge it as a
17 separate indictment. All right.

18 **MR. HILLER:** Yes, sir, Your Honor, we'll be thinking
19 about it.

20 **THE COURT:** All right. Any other motions at this time?

21 **MR. HILLER:** Not from the Defense.

22 **THE COURT:** Okay. All right. Let's go ahead -- and I'm
23 not going to be looking to your client for an answer at this
24 time, but let me go ahead and go over with him his rights to
25 testify in this case so that he can ponder that over lunch.

1 **MR. HILLER:** All right.

2 **THE COURT:** All right, sir, if I can get you to raise
3 your right hand, please.

4 **RICO FUNDERBURK, HAVING BEEN DULY SWORN TESTIFIES AS**
5 **FOLLOWS:**

6 **THE COURT:** All right. Thank you very much. You can put
7 your hand down now. Your name is Rico Antonio Funderburk?

8 **MR. FUNDERBURK:** Yes, sir.

9 **THE COURT:** All right. Mr. Funderburk, at this time I'm
10 going to explain to you certain rights that you have under the
11 United States Constitution. If you do not understand what I'm
12 saying, please let me know, and if you want me to explain
13 anything in more detail, please let me know. Now, do you
14 understand that?

15 **MR. FUNDERBURK:** Yes, sir.

16 **THE COURT:** All right. We have now reached the stage of
17 the trial where you may present your Defense. You have the
18 right to claim the protections given to you by the Fifth
19 Amendment to the United States Constitution. This amendment
20 states in part that no person shall be compelled in any
21 criminal case to be a witness against himself. This means
22 that you cannot be required to testify in this case. You have
23 the right to testify on your own behalf.

24 However, no one can make you testify. This is a personal
25 right, and no one can waive this right except for you. If you

1 decide to testify, you will be subject to the same rules that
2 govern other witnesses and you may be examined and cross-
3 examined on any relevant issue in this case. In addition, if
4 you have any convictions involving dishonesty or false
5 statement of crimes punishable by imprisonment for more than
6 one year, and this court determines that the probative value
7 of admitting this evidence outweighs its prejudicial effect,
8 the solicitor will be able to introduce your record to attack
9 your credibility.

10 Now, at this time, are there any prior criminal records
11 or bad acts that the State intends to use to impeach the
12 Defendant's credibility if (inaudible) stand?

13 **MS. WALLER:** I'm sorry, Your Honor. The Defendant from
14 2015 has a charge of domestic violence third degree, which is
15 a misdemeanor, right?

16 **MR. FUNDERBURK:** Yes.

17 **MS. WALLER:** And he has a 2020 -- I'm sorry -- a 2012
18 disorderly conduct, which is also a misdemeanor. Those are
19 the only certified convictions that we've been able to locate.

20 **THE COURT:** All right. So I'll not allow either one of
21 those to be used. Okay?

22 **MS. WALLER:** Yes.

23 **THE COURT:** All right. All right. So they will not be
24 allowed to use either of those convictions to attack your
25 credibility, right?

1 **MR. FUNDERBURK:** Yes, sir.

2 **THE COURT:** Now, if you decide to testify, this decision
3 on your part must be freely, voluntarily, and intelligently
4 made with the knowledge of the protections given to you by the
5 Fifth Amendment to the United States Constitution and the
6 consequences of your decision to testify. If you decide not
7 to testify, I will instruct the jurors that they cannot give
8 the fact that you did not testify any consideration
9 whatsoever, and that there is to be absolutely no prejudice to
10 you because you did not testify. It's left entirely up to you
11 whether or not you testify. You may talk with your attorney,
12 your family, and friends or anyone else, but the final
13 decision will be left entirely up to you. Have you understand
14 what I've explained to you?

15 **MR. FUNDERBURK:** Yes, sir.

16 **THE COURT:** Now, do you have any questions about what
17 I've explained to you?

18 **MR. FUNDERBURK:** No, sir.

19 **THE COURT:** Okay. All right. We're going to go ahead
20 and break for lunch. That'll give you lunchtime to decide
21 whether or not you wish to testify. And when we come back,
22 I'll ask you at that time whether or not you wish to testify
23 in this case. All right?

24 **MR. FUNDERBURK:** Yes.

25 **THE COURT:** All right. Anything further from the State

1 in that regard?

2 **MS. WALLER:** No, sir, Your Honor.

3 **THE COURT:** Anything further from the Defense.

4 **MR. HILLER:** No, Your Honor.

5 **THE COURT:** All right. Let's go ahead. We'll break for
6 about an hour and then we'll come back.

7 **(COURT IS IN RECESS)**

8 **THE BAILIFF:** All rise.

9 **THE COURT:** Thank you very much. Please be seated.
10 All right. Mr. Funderburk, if I could get you to stand
11 please?

12 **MR. FUNDERBURK:** Yes, sir.

13 **THE COURT:** Raise your right hand again.

14 Thank you very much. Put your hand down. Now, do you
15 recall your rights under the Fifth Amendment to the United
16 States Constitution as I explained them to you before we broke
17 for lunch?

18 **MR. FUNDERBURK:** Yes, sir. I do.

19 **THE COURT:** All right. Do you have any questions about
20 those rights?

21 **MR. FUNDERBURK:** No, sir.

22 **THE COURT:** Do you understand those rights?

23 **MR. FUNDERBURK:** Yes, sir.

24 **THE COURT:** Have you had an ample opportunity to discuss
25 with your attorneys, with your family, your friends, or anyone

1 that you want to discuss with whether or not you testify in
2 this case?

3 **MR. FUNDERBURK:** Yes, sir. I've had some amount of time.

4 **THE COURT:** All right. Do you need any more time to
5 decide whether or not you wish to testify in this case?

6 **MR. FUNDERBURK:** No, sir, I don't.

7 **THE COURT:** All right. Do you wish to testify?

8 **MR. FUNDERBURK:** Yes, sir. I do.

9 **THE COURT:** All right. Is this your decision?

10 **MR. FUNDERBURK:** Yes, sir. It is.

11 **THE COURT:** All right. Anything further you want on the
12 record, Mr. Fox and Mr. Hiller?

13 **MR. HILLER:** Not -- as to his right to testify, Your
14 Honor, I believe he's been fully informed decision to exercise
15 that right.

16 **THE COURT:** All right. Anything further the State wants
17 on the record regarding Mr. Funderburk desire to testify?

18 **MS. WALLER:** No, sir, Your Honor.

19 **THE COURT:** All right, thank you very much.

20 All right. Anything from the State before we bring the
21 jury in?

22 **MS. WALLER:** No, sir, Your Honor.

23 **THE COURT:** Anything from the Defense?

24 **MR. HILLER:** No, sir.

25 **THE COURT:** All right. Let's bring the jury in.

1 **REPORTER'S NOTE:** (Jury enters the courtroom at 2:24pm)

2 **THE COURT:** All right. Ladies and gentlemen, welcome
3 back. I hope everybody had a good lunch. We're ready to
4 proceed with the trial of the case. The State has rested
5 their case. So now is the time of trial where the Defendant
6 can present its case if he chooses to do so. Mr. Hiller, Mr.
7 Fox, Defense can call your first witness.

8 **MR. HILLER:** Thank you, Your Honor. The Defense at this
9 time would call to the stand Mr. Rico Antonio Funderburk.

10 **THE COURT:** All right.

11 Speaker 6:

12 **RICO FUNDERBURK, HAVING BEEN DULY SWORN TESTIFIES AS**
13 **FOLLOWS:**

14 **MR. FUNDERBURK:** Yes, ma'am. Rico Funderburk. R-I-C-O
15 F-U-N-D-E-R-B-U-R-K.

16 **DIRECT EXAMINATION OF RICO FUNDERBURK BY MR. HILLER:**

17 Q: Good afternoon, Rico. All right. We're going to get to
18 everything that we need to cover, but let's first start off by
19 just giving a little bit of background information about
20 yourself.

21 A: Yes, sir.

22 Q: How old are you?

23 A: 29 years old.

24 Q: All right. How far did you go in school?

25 A: I made it to my senior year, but had a few difficulty and

1 had to stop.

2 Q: Senior year of high school?

3 A: Yes, sir.

4 Q: Which high school did you attend?

5 A: Central High School in Pageland, South Carolina.

6 Q: After high school, did you ever get any special training
7 or certifications of any sort?

8 A: No special training or like certifications. Well, I
9 guess you can consider my marketing career special training in
10 that field.

11 Q: Tell me --

12 A: I guess advertising.

13 Q: Tell me more about that.

14 A: Well, I worked as a off property connoisseur or off
15 property consultant for Westgate Resort -- Resorts for like
16 seven years. And I also partnered and did a contract with
17 Blue Green Vacations for about a year and a half. And
18 basically, I advertised vacation packages and specialists for
19 that resort and try to generate leads and potential clients
20 for them.

21 Q: Okay. You mentioned Central High School in Pageland.

22 A: Yes, sir.

23 Q: Is that where you're from?

24 A: Yes, sir.

25 Q: Where's Pageland?

1 A: It's like the upstate of South Carolina, right below --
2 if anybody's familiar with the area right below Charlotte, I
3 think (inaudible) that area. Right across the little small
4 town, like 2,800 people population.

5 Q: Small.

6 A: Very small.

7 Q: Well, how long have you lived in Myrtle Beach?

8 A: Well, I've been here about 12 years in the Horry County
9 area in general. Myrtle Beach, probably about nine.

10 Q: The 12 years you said in -- in this county?

11 A: Yes, sir.

12 Q: What brought you here?

13 A: Better opportunity. You know, a lot more jobs and
14 different careers to explore than just a few factories and
15 time rules and stuff like that, which (inaudible) in hometown.

16 Q: Okay. Well, let's turn to the year 2021.

17 A: Yes, sir.

18 Q: Kind of a big year for the world really. Do you remember
19 what was going on back then?

20 A: Oh, yeah, that was when Covid was just tearing everything
21 up, closing everything early and, you know, jobs were closing
22 down early, cutting a lot of people back, limited a lot of
23 employment.

24 Q: Were you working at that time?

25 A: At that time, I was not.

1 Q: Is -- did you just tell us why?

2 A: Yes, sir.

3 Q: Where were you living, I guess I'll focus you on the
4 summer of 2021. Where were you living at that time?

5 A: During the summer, I was in between houses. I think it
6 was March, late March of that year. I had just completed a
7 lease at Harborside Apartments on 74th Avenue Beach. And I
8 tried to renew that lease, and I was informed by the owner
9 that they were selling that condo, which that, you know, last
10 minute decision kind of left me homeless. And so I started
11 staying in hotels throughout the week. And on the weekend I
12 would stay in my car because it was a lot cheaper than some of
13 these places in this area.

14 Q: So did you have a plan to get back on your feet?

15 A: Oh, yes, I did.

16 Q: What was that?

17 A: To work throughout the week and accumulate money. I
18 already had a lease signed at the period in Conway. So I was
19 just going to work and save money throughout the weekend, on
20 the weekend, just kind of cut back on what I spent, and use
21 that to get the ball rolling.

22 Q: All right. Let's talk about this relationship with Ms.
23 K.S.. All right?

24 A: Okay.

25 Q: How did you first become acquainted with her or connect

1 with her?

2 A: I had matched with her on a app called Tinder, and I
3 didn't really entertain it for a long time, for a really long
4 time. I think we matched and we stayed matched for like three
5 weeks to a month before I initiated conversation. She was the
6 first one to actually initiated the conversation, and that's
7 how that came about.

8 Q: So an online match led to a personal meeting?

9 A: Eventually.

10 Q: When was that?

11 A: Probably two, maybe three months after talking online.
12 It wasn't immediate at all.

13 Q: And we've already talked about, this has been a long time
14 ago. We're relatively speaking a while back. Dates aren't
15 exactly concrete. When -- what month do you think you first
16 met with her and met her in person?

17 A: I think it was on or around about July 11th, somewhere in
18 there. So I would say it was -- say mid-July.

19 Q: And where was she living at the time?

20 A: I can't think of the exact address.

21 Q: Well, I don't need --

22 A: Small apartment, one bedroom, one bathroom apartment on
23 Dunbar Street.

24 Q: Okay. So you meet -- is that where you met or did you
25 meet somewhere, you know, public place?

1 A: We never met anywhere out in public. Her first
2 invitation to hang out with her was at her house and it was at
3 like 5:30, 6:00 in the morning.

4 Q: Okay. Well, how'd that first meeting go?

5 A: It was pretty smooth actually. Started off with some
6 small conversation, ended up turning into a casual thing
7 really quick, and I could -- I could say I enjoyed myself and
8 I think she enjoyed it. And so it kind of span off from
9 there.

10 Q: Okay. Did you ever stay the night at Dunbar?

11 A: Periodically, yeah. Like I -- I spent the night -- well,
12 it wasn't technically spending the night, but I stayed there
13 for a couple hours, about seven, eight hours before we part
14 ways that day. And then we'd go multiple days of just talking
15 over the phone and then I'd pop up there again and spend the
16 night.

17 Q: But you wouldn't, like, would you leave an apartment to
18 go sleep in a car?

19 A: Yes.

20 Q: Why?

21 A: Because at the time I was a big fan of my personal space,
22 huge fan of my personal space. And then at this time I was
23 also seeing another friend casually. So, you know, couldn't
24 just be there all the time and do that too.

25 Q: So you heard during State's case that you lived at the

1 Dunbar apartment?

2 A: That's correct. I heard that.

3 Q: Do you agree?

4 A: I wouldn't necessarily say I lived there, and I
5 definitely didn't have any personal belongings there other
6 than a speaker and a pack of cigarettes.

7 Q: A speaker and a pack of cigarettes.

8 A: Cigarettes. Yes. I wouldn't -- I wouldn't really
9 consider that personal belongings or living there.

10 Q: Do you remember the eviction?

11 A: I do.

12 Q: Let's start with the date. Do you remember the date that
13 that apartment was no longer available for a living in?

14 A: I don't remember the exact date, but I know it was early
15 August.

16 Q: Okay. So we're talking meeting on July 11 and the
17 eviction sometime in early August. So less than a month of
18 actually being with her?

19 A: Yeah.

20 Q: Or being, you know, having, you know, spending together
21 in the same place. Okay. So where else did you live between
22 the time of July 11th and August 9th?

23 A: I would stay at hotels, of course, I would spend the
24 night at my brother's house. I would meet up with another
25 girl who I was casually seeing and then stay with her for the

1 night. Different spots. Kind of whatever was available at
2 the time.

3 Q: Kind of keep in your options open?

4 A: Yes, sir.

5 Q: All right. Tell me about the eviction. When did you
6 find out about it?

7 A: Okay. So when I found out she was being evicted. Okay.
8 So is it all right to tell you what led up to this?

9 Q: Sure.

10 A: Okay. So we're hanging out one day at her house a couple
11 of days prior, you know, just kind of just casually chilling.
12 And she would -- she would get up, get dressed in her Topgolf
13 uniform and say she'd have to be at work at a certain time,
14 and she'd leave the house and I'd leave her house, of course,
15 because I have no right to stay there. And maybe three, four
16 days later, the landlord knock at the door and her exact words
17 were, can you get the door back? I went and answered the
18 door. It was her landlord. I can't think of the guy's name.
19 He was just like, what are y'all doing? Y'all haven't paid
20 rent in two months. You have to get out. I said, well,
21 excuse me, sir, I don't live here. I'm just a friend of hers.

22 And he goes on to tell me that she's had a lot of
23 traffic. She hasn't been paying rent. She's not keeping up
24 the property. Multiple reasons of why he wants her out of the
25 house. And so I negotiated with him. I pulled him outside of

1 the apartment. Whenever I was talking to him, he was standing
2 at the doorway of the apartment. I pulled him outside. I
3 said, hey, how much -- how much is she behind? Her rent at
4 the time was \$700. He said that she was 1400 behind. And I
5 said, well, I have \$700 cash on me right now. I can give you
6 that and it's coming Friday. I can try to have the other 700
7 to you, that way she'll no longer be in debt.

8 And he says, now at this point, it's not about the money.
9 I'd rather just have her off the property. And I responded to
10 him and said, well, you can't just kick her out on the spot
11 like this. It's a process. And he said, no, if I say she has
12 to go, she has to go.

13 So I went **KS.** and offered her a ride to the courthouse.
14 We left her apartment, we went to the courthouse, we spoke to
15 the -- I think it was the clerk of court and asked him, you
16 know, like could -- was it legal for them to actually kick her
17 out of the house? And they said no. And they said that once
18 he did serve a written notice of eviction that we could appeal
19 it. And within 10 days we had the right to ask for a court
20 date.

21 And so she was like, hey, you know, I don't know nothing
22 about this. I'm not from here. Can you help me out with
23 this? And I'm like, you know, I kind of got problems on my
24 own. I am in little bit of situation of my own. And she was
25 -- she actually begged me. She said, please, please, you're

1 the only person that I have. Please help me figure this out.
2 And so I did and we waited a couple of days. I was in and
3 out. I was periodically there throughout the day and
4 sometimes I'd be there overnight. And I think it was on the
5 eighth or ninth day, we requested a court date. We went to
6 that court date. We explained what the landlord was doing,
7 and the judge gave her a certain amount of time to be out of
8 the house.

9 So she was like, I don't know where I'm going to go. I
10 don't know what I'm going do. And at the time, I only had
11 \$700 to my name, so I really couldn't support two people and
12 pay for a hotel every night. But she told me that she wanted
13 me to help her figure it out.

14 Q: Okay.

15 A: And so I -- so I did.

16 Q: So you kind of walked it through the process, but then of
17 course the ultimate day comes where the get out is official
18 and legal?

19 Q: Exactly.

20 A: All right. What happens then?

21 Q: So we end up back in the car, and -- and I'm pretty sure
22 all of you heard this earlier where she said that we took the
23 Uber from Dunbar to Walmart with the car, with all of her
24 belongings, which was actually her idea. She thought that
25 once we packed the car, and I didn't have anything there, her

1 stuff was all packed up. If she left that I would just leave
2 and go be with somebody else. So she was like, no, you know,
3 let's -- you ride with me and you can come back and get your
4 car. Almost refusing to leave. Basically refusing to leave
5 without the car.

6 Q: Okay. So why a Walmart?

7 A: Oh, because Walmart's 24 hours and they won't tow you for
8 being there for long periods of time.

9 Q: Okay. Do you remember where you stayed the first night
10 after the eviction was final?

11 A: I do believe it was at -- at Days Inn, but I -- I could
12 be wrong, given a timeframe, but I think it was at -- at Days
13 Inn, or actually -- actually it may have been the car the
14 first night and then the following night at Days Inn. But
15 don't quote me on that timeline, like I said, it is -- it's
16 been long.

17 Q: Did it seem to you that Ms. **K.S.** was familiar with like
18 living in a car?

19 A: Yeah, actually.

20 Q: Tell me more about that.

21 A: She -- she was extremely comfortable. She had no problem
22 with it whatsoever. She actually gave me different ideas and
23 ways to accommodate me while I was going through this
24 situation. Like keeping toilet paper in the car and having
25 hand sanitizer, and keeping baby wipes, and different things

1 like that, that I never would've thought of.

2 Q: Okay. Okay. Did you at some point in this period of
3 living in cars, living in hotels, when they're cheaper, did
4 you at some point begin to notice changes in her behavior?

5 A: I did actually.

6 Q: Tell me what you observed.

7 A: She went from being really sensitive, sweet and caring to
8 being more dominant, aggressive and mean, like waking up next
9 to a different person.

10 Q: What did you attribute this change to?

11 A: At first, the first day I just thought it was the stress
12 of the situation, not having anywhere to go and not having
13 anything or not being close with her family. And then as it
14 progressed, it kind of seemed from my knowledge to be, you
15 know, drug related.

16 Q: From your knowledge?

17 A: From my knowledge of seeing him being around people that
18 use drugs, it kind of seemed the same.

19 Q: Well, we've heard about the detective's knowledge of drug
20 activity. What -- what's the basis of your knowledge of drug
21 activity?

22 A: Well, I kind of grew up in a -- I guess the only way I
23 could put it in the courtroom is a poverty-stricken
24 environment. So seeing people use drugs and abuse drugs was
25 extremely common, which kind of contributes to my lack of

1 interest in it.

2 Q: What types of drugs have you observed people use in the
3 past?

4 A: Cocaine, methamphetamine, crack, cocaine, heroin, opioids
5 like prescription pain pills.

6 Q: Okay. So specifically what type of observations did you
7 make of Ms. K.S.'s behavior or demeanor that led you to
8 suspect drugs in particular? Not some -- not stress, for
9 example.

10 A: Well, her body movements, about things that she would
11 say, her being awake for days at a time. Her mood swings and
12 temper change, little things like that.

13 Q: Or big things.

14 A: Definitely big things. Leading us to where we are today.

15 Q: Eventually, were these suspicions confirmed?

16 A: Yes, sir. They were.

17 Q: How?

18 A: Because on one occasion, I found drugs in my car and it
19 just so happened to be on her person.

20 Q: Can you tell that story?

21 A: Yes, I can. One day we were at a Wendy's restaurant --
22 and this is more towards the end, like little towards the end.

23 Q: Well, let's not go to the end. Let's try to stay -- not
24 to cut -- I'm sorry to cut you off.

25 A: Okay.

1 Q: But tell me about the -- was -- so, well, let me make
2 sure I'm clear. Is that Wendy's the first time you found
3 drugs in your car?

4 A: It was not.

5 Q: Well, tell me about the first time.

6 A: The first time I found drugs in my car, I was actually
7 cleaning it. I was cleaning it out and, you know, we were
8 going to sleep in it that night. So I kind of wanted
9 everything to be in place and, you know, nothing really in the
10 way. And I found a small bag containing drugs, what I believe
11 to be methamphetamine. And with me not being a drug user, of
12 course, and having a zero tolerance towards drugs, that's when
13 I automatically accused and suspected Ms. KS of possessing
14 those drugs and have those drugs in my car.

15 Q: So did -- did I hear you right that you confronted her
16 about it?

17 A: Yes, sir, I did.

18 Q: How did that go?

19 A: She gave me multiple different excuses in the beginning.
20 I thought it could have been one of your friends or you could
21 have given somebody a ride and they left it there. But at
22 this point we have been together 24/7 and we had cleaned out
23 the car multiple times.

24 Q: All right. So was that the first instance you were
25 cleaning out your car and you found it?

1 A: Yes, sir.

2 Q: Is it the second, the Wendy's story or is there another?

3 A: The second would be the Wendy's story.

4 Q: So there's two -- two instances where you found drugs in
5 your car?

6 A: Yes, sir.

7 Q: All right. Tell me about the Wendy's story.

8 A: The Wendy's incident was, I had went in the gas station
9 to pay for gas. And -- well, before this, we get to the first
10 part. First part, we went to Wendy's. We got some food. I
11 find myself to be extremely cautious around new people. So
12 when we purchased this food in Wendy's, it was wrapped up
13 extremely tight, put inside one bag, tied into a knot -- a
14 plastic bag is what I'm referring to, like a grocery bag --
15 tied into a knot and then placed in another bag, with a bag
16 upside down. Now, this bag was set to a specific spot, right?
17 That way if something was to happen or if it was moved or
18 anything like that, I would automatically throw it away, or
19 she could just have it for herself because I didn't --

20 Q: Mr. Funderburk, I'm sorry to stop you, but at the court
21 reporter's request, could you please either slide that
22 microphone towards you?

23 A: Oh, I'm sorry. How's that? Is this better? Okay.

24 Q: I'm so sorry to throw you off. But you were at the
25 Wendy's, the bag was tied double tight.

1 A: Yeah. So I put the bag in a specific spot, and if
2 anything was to happen to it or if it moved or if anything was
3 different, I would throw it on my -- sorry. I would throw
4 that bag away or let her have the contents in the bag just
5 because I -- I wouldn't trust it at the time. And so when I
6 came back from (inaudible), I went for gas in the gas station.
7 The bag was in the same spot. It was perfect. It hadn't been
8 touched. And I look over at KS and there's a substance all
9 over her lap. All over her lap.

10 And I say, babe, what is this? And she was like, oh,
11 it's just salt from the fries. Now, I'm not a professional
12 when it comes to salt or seasonings on food or anything like
13 that, but these were extremely large crystal-shaped objects
14 that were about, I'd say maybe an inch, inch and a half in
15 size. And they were in multiple little pieces all around the
16 clothes, and she says, it's just salt. Now, I've seen regular
17 salt, I've seen bath salt, I've seen Himalayan salt. There's
18 no salt in the world that I can think of that looks like this.
19 So I pick up a piece of this and she's like, no, no, no, it's
20 fine. She tries to hurry and brush it off of her. And as I
21 touch this stuff it like, to the touch, it starts to
22 disintegrate. So my first assumption was that it was
23 methamphetamine. So that ended up being a situation of its
24 own.

25 Q: That's a cliffhanger. It ended up being a situation of

1 its own.

2 A: Is there any more questions regarding that situation?

3 Q: I just want to know what you mean by that.

4 A: We had a verbal altercation at first, because like I
5 said, I was only accusing at that time. I'm not a drug
6 specialist or drug analyst or anything like that. So I
7 couldn't confirm that it was methamphetamine. But I was
8 almost positive -- I was positive that it was methamphetamines
9 without being a specialist. And so we got into a verbal
10 altercation about that situation and it led to us having a --
11 a little bit of a disagreement of whether she should stay in
12 my presence or not. So I demanded that she get out of my car
13 that night and she refused. And I actually pulled over, went
14 to the passenger side, grabbed one arm and one leg to try to
15 forcefully pull Ms. KS out of my car.

16 Q: Do you --

17 A: -- she was going for it.

18 Q: So she ended up staying after all?

19 A: Oh, yeah.

20 Q: Okay. Do you remember -- you said that was towards the
21 end of this period?

22 A: Yes, sir.

23 Q: Do you remember -- can you be any more specific.

24 A: About which -- which part actually?

25 Q: The -- the timeframe.

1 A: The timeframe. I'm not 100 percent accurate with the
2 timeline. So, it's going to be --

3 Q: Okay. Fair enough. All right. So far we've covered
4 some instances of what -- what you're saying is hard use of
5 drugs.

6 A: Yes, sir.

7 Q: Did you have any other suspicions regarding drugs?

8 A: I did.

9 Q: Tell me about that.

10 A: I felt that she was giving me drugs, like dosing me with
11 drugs against my will.

12 Q: Why?

13 A: Well, I felt that way because when I wake up in the
14 morning, I would feel like a rapping heartbeat or I'd be
15 profusely sweating or feeling nauseous or just all out feeling
16 out of the ordinary. And it caused me to be somewhat nervous,
17 somewhat paranoid. And it was just -- it was just a sick
18 feeling. But at the -- at the same time, I was only assuming
19 and accusing, and this was on multiple occasions, and we had
20 multiple fights. Verbal fights at the time, over her doing
21 this.

22 Q: Okay. So you gave us some physical symptoms, you just
23 said a racing heart.

24 A: Yes, sir.

25 Q: Any other physical symptoms?

1 A: Looking back on it now, as I recall, I would've mood
2 changes. I would be -- I'd be happy with it one second and
3 I'd be furious with it the next. I would be, I guess you
4 could say in a manic state.

5 Q: Now, during these -- and -- and you said that you accused
6 her of giving you drugs?

7 A: Yes, sir. That was earlier on. And then on one occasion
8 I caught her giving me drugs.

9 Q: Okay. We'll get to that in a minute. But when -- is it
10 your testimony here today -- and I -- I understand you have to
11 look back on it. There's no option to do that, anything, but
12 look back on it at this point.

13 A: Yes, sir.

14 Q: But looking back on it now, do you believe that you
15 actually were under the influence of drugs at those times?

16 A: Yes, sir. Absolutely 100 percent.

17 Q: Do you believe that during those periods of accusing that
18 Ms. KS was injured?

19 A: Yes, sir.

20 Q: Do you believe that you were responsible for those
21 injuries?

22 A: Yes, sir, I do.

23 Q: You just told us that you caught Ms. KS in the act of
24 drugging you one time?

25 A: Yes, sir.

1 Q: Was that the first time that your suspicions were
2 actually confirmed?

3 A: The second time. Actually, the first time is when she
4 had a substance and tossed said substance. She was over some
5 food that she was preparing for the both of us and she tossed
6 a bag, and that would be my first time catching her, but
7 actually standing (inaudible) her over me with it in her
8 hands. Yeah.

9 Q: Okay. What -- so she was preparing food?

10 A: Yes, sir.

11 Q: All right. Was this in a hotel, or in your car, or
12 somewhere else?

13 A: This was in a hotel.

14 Q: So did -- was it a studio with a kitchen or --

15 A: Yes, sir. Well, it didn't have a kitchen, you know, it
16 was standard hotel room with the microwave and the
17 refrigerator.

18 Q: Okay.

19 A: And we had ordered some takeout. She was in the process
20 of beefing it up and getting our drinks ready.

21 Q: Okay. What did you -- exactly what happened?

22 A: When I walked over, she looked as if she was seasoning
23 some food. And I was just curious because like I said, I am
24 cautious when it comes down to being around new people and
25 cooking and stuff like that. Like I'm wondering -- honestly,

1 I was like, you know, being stereotypical people can't cook,
2 you know what I mean? So I'm like, I'm wondering what she's
3 seasoning with, but at the same time I'm curious to what is
4 she doing with my food? So as I approach her, she kind of
5 tosses that off to the -- the right-hand side. And I'm like -
6 - I'm like, what are you doing? Of course, I'm freaked out at
7 that moment. Like, I saw you throw something. And I go pick
8 it up. It's just a plastic bag, smaller plastic bag with a
9 knot at the top, and it only has a little contents left and
10 the rest of it is like throughout the carpet. And I
11 automatically say, this is drugs -- and excuse my language in
12 the Court. Do you want me to say quote unquote what I said in
13 that moment?

14 Q: You can say whatever you want. I think this jury's heard
15 about everything.

16 A: I said, "You're giving me fucking drugs." And her
17 reaction was just about like everybody else is in this
18 courtroom. She didn't know what to say at first. And she was
19 like, that's not what I threw. That was already there. And
20 yeah, that's how that situation.

21 Q: The first situation?

22 A: Yeah.

23 Q: Tell me about the second situation.

24 A: The second situation, I was actually sleeping and I woke
25 up to a weird chemical. I always describe it this way, you

1 know, it's just like I do. I describe it as the taste of pine
2 salt, bleach and vinegar, all mixed together. And so I asked
3 her, I said, what are you giving me? And I asked this person
4 in a (inaudible) manner. I actually asked her, when I asked
5 her, I grabbed her by her neck and my exact word -- my exact
6 words was, "What did you give me bitch?" And her response was,
7 it's meth, and I want you to -- I wanted you to enjoy it as
8 much as I did. And that situation escalated quite quickly and
9 she ended up being hurt. Looking back on that now.

10 At that time, I -- I couldn't really -- I couldn't really
11 distinguish right from wrong. But looking back on it now, I
12 was wrong in the situation. And if I could have helped my
13 reaction or mentally confirmed my reaction, it would've been
14 different. But as we sit here today, in a clear mindset, I
15 would like to apologize.

16 Q: All right. Let me ask you another question. Let me ask
17 you another question about right from wrong. You just brought
18 that up and it's obviously very important. What did -- what
19 do you mean by the right thing to do?

20 A: Like in the mindset I am today, if I pull up to a stop
21 sign, I know to stop. If I'm at a red light, I know to stop.
22 And if I'm at a green light, I know to go.

23 Q: Okay. That means you know the rules of the road.

24 A: Exactly. Exactly. And I know that this is illegal, this
25 is not illegal. But at that state of mind, I couldn't -- I

1 couldn't tell you what was right from wrong. I couldn't tell
2 you what was up and down.

3 Q: Okay. It's just me and you in this courtroom, no one
4 else.

5 A: Yes, sir.

6 Q: I turned around, put my hand in my pocket, just, you
7 know, absent mindedly, forget that there's \$100 bill on there.
8 When I pull my hand out, bill slips out, flutters to the
9 floor, but I'm walking that way. So I don't know it. You
10 know, I don't know that I just dropped my \$ 100 bill.

11 A: Right.

12 Q: What's the right thing to do?

13 A: Right thing is to say, excuse me, sir, you just dropped \$
14 100 bill.

15 Q: And what would be the wrong thing to do?

16 A: To take it and put it in my pocket and not tell you
17 anything.

18 Q: And we could do a hundred examples of that.

19 A: Exactly.

20 Q: So, wrong to hit a woman?

21 A: Exactly.

22 Q: Right to sort a conflict through discussion?

23 A: Yes, sir.

24 Q: How -- so your words just a minute ago is you couldn't
25 tell right from wrong?

1 A: Yes, sir.

2 Q: And why was -- why were you unable to determine right
3 from wrong in your words?

4 A: Given the fact that I was given an illegal substance
5 against my will on multiple periods of times, multiple periods
6 of time.

7 Q: How many?

8 A: How many?

9 Q: Yeah.

10 A: I don't -- I don't want to go on record and give an exact
11 number.

12 Q: Approximately how many?

13 A: Approximately anywhere from seven to 10 times.

14 Q: Over the course of a --

15 A: Over the course of three weeks.

16 Q: Okay.

17 A: Two and a half to three weeks.

18 Q: Okay. Do you -- did you ever go anywhere to get tested
19 for drugs?

20 A: I was not given that opportunity in the end, but
21 throughout the duration of that time, I've contacted Poison
22 Control multiple times and made them aware of the situation
23 and what had happened. And I followed their instructions.
24 Poison Control told me to induce vomiting or drink lots of
25 water, induce vomiting and seek medical help. Now, at the

1 time, I felt that if I seek out medical treatment, I mean,
2 this is Myrtle Beach. It's Horry County where we're at right
3 now currently, but I was in the Myrtle Beach area. If I just
4 run up in the hospital and say that I consumed some drugs
5 involuntarily, I'm pretty sure they would notify the police.
6 And I'm pretty sure we are all well aware of how 2021 was with
7 the situation with African Americans and members of the law
8 enforcement. So it was a personal choice, but I was a little
9 bit more cautious, looking back on it than I should have been.
10 So didn't do that. But I also did follow Poison Control's
11 remedy of drinking water and induce some vomiting.

12 Q: We've seen during the State's case, several videos, A
13 through P, I believe, of -- of videos from your phone?

14 A: Yes, sir.

15 Q: Is it -- I'm not going to go through those videos by --
16 one by one, but do you believe that you were under the
17 influence of -- do you believe that you were involuntarily
18 under the influence of illegal substances in every one of
19 those videos? Some of them? None of them? What do you
20 think.

21 A: Not -- not in every one of them. But I know I was in a
22 few of them.

23 Q: Do you -- which one of them -- one of them do you think -
24 - or do you -- why -- which one and why were you under the
25 influence? Or how do you know?

1 A: I could tell which ones I was under the influence by my
2 character and the way that I presented myself and my actions
3 in those videos.

4 Q: We see some of those videos where you are asking Ms.
5 KS to get out of the vehicle.

6 A: Yes, sir.

7 Q: Was that a sincere request to get out of the vehicle?

8 A: Yes, sir. I had actually begged her on multiple
9 occasions. The only reason why that was videotaped is because
10 on previous occasions when I would ask her, she would get very
11 violent. Extremely violent actually, because she was like, if
12 you're not -- and excuse my language. I hope the Court
13 forgives it. You're not going to be with another bitch.
14 You're going to be with me until I die. So after a certain
15 point, it was kind of like, I got to have some kind of proof.
16 Nobody's going to believe me. If I sit in front of all of you
17 today and just tell you this, you wouldn't believe it. But if
18 you see that video, you may see me not at my best character,
19 but you see me trying to get away from this person.

20 Q: Why not just drive her to her car and say bye?

21 A: Oh, because she gave me different ultimatum. She told me
22 that if I didn't let her stay or if I didn't give her the
23 money that I had set to come in, that she would go to the
24 police and she would say that I did this, that and the third,
25 meaning that particular injuries that I had done to her,

1 almost blackmailing me with it.

2 Q: Okay. Well, we saw a lot of photos of Ms. [KS] at the
3 hospital.

4 A: Yes, sir.

5 Q: And we heard testimony from Dr. Cobos as to the extent of
6 those injuries.

7 A: Yes, sir.

8 Q: Did you cause those injuries to Ms. [KS]'s face?

9 A: Yes, sir. I did.

10 Q: Again, why?

11 A: At the time of the altercation, I was under the influence
12 of a substance that I was given involuntary, like not at my
13 own free will.

14 Q: What's impact -- what impact or effect did that substance
15 have on you, on your person?

16 A: It enabled me to -- it enabled me to judge right from
17 wrong.

18 Q: I'm sorry?

19 A: It enabled me to correctly judge from right -- right from
20 wrong.

21 Q: Did you say enabled?

22 A: It disabled -- it disabled me to -- forgive me. I'm a
23 little nervous.

24 Q: No. That's fair.

25 A: It -- it took my ability to judge right from wrong.

1 Q: Okay. What about your ability to conform your actions to
2 what the law requires?

3 A: Definitely took that away.

4 Q: And again, you know what's right?

5 A: Yes, sir.

6 Q: It's right to return \$ 100, wrong to keep someone else's
7 \$ 100.

8 A: Exactly.

9 Q: And then same thing applies to assault. Do you think
10 there's any defense to the assault charges? I mean obviously
11 --

12 A: Of course, I was given drugs against my will.

13 Q: Right. But besides that?

14 A: No, sir.

15 Q: Please answer any other questions the State may have of
16 you. Okay?

17 A: Yes, sir.

18 **THE COURT:** Cross-examination?

19 **CROSS EXAMINATION OF RICO FUNDERBURK BY MS. WALLER:**

20 Q: Good afternoon, Mr. Funderburk.

21 A: How are you?

22 Q: I'd like to ask you some questions about, I think what
23 you've been calling the situation." Okay?

24 A: Yes, sir. I meant, yes ma'am. I apologize.

25 Q: You said -- let's start at the beginning. You said that

1 you had a plan to get back on your feet through work. What
2 were you doing for work?

3 A: I was a off property connoisseur for a company called
4 Recco Marketing at Myrtle Beach.

5 Q: At the time that you and K.S. were together in
6 August of 2021?

7 A: Yes, ma'am. I was a independent contractor, meaning that
8 at the end of the year I filed a 1099, meaning that I didn't
9 have a set work schedule or set work hours. I could post up
10 at any booth or venue that allowed me to work at any time
11 during the day before 10 -- well, before -- after 9:00 a.m. or
12 before 11:00 p.m. at night.

13 Q: Do you have any pay stubs from that time period proving
14 that?

15 A: I do not. I do not. But I'm pretty sure it wouldn't be
16 hard for me to retrieve them if necessary.

17 Q: You said that you only had \$700 to your name. If you
18 were working at that job, why did you only have \$700 to your
19 name?

20 A: Well, let -- let me tell you a little bit about that job.
21 That job is, I can go post up -- book tours, meaning that I
22 can go to those locations, book tours. For every tour that I
23 book, I'm given a \$20 deposit. Right. And if that family
24 that I book for that tour goes to that hotel, I receive \$225.
25 Now, that \$20 that I was given is automatically deducted from

1 that \$225. So I'm at 205 now. Now, I also have what's called
2 a gift cost, meaning that I can give you four tickets to the
3 aquarium, a beach photo, and let's say some little knickknack
4 souvenirs worth about \$ 20. I deduct that off. Right. And
5 those four tickets to the aquarium only cost me about \$14 and
6 some change. So it would give me just, you know, whatever
7 that is, deducted from that balance of \$205. And that's put
8 on my paycheck. Now, it takes me about five to 10 minutes to
9 persuade a family and go check out this hotel with this nice
10 bills and whistles. And then that's all there is to it. So
11 you said if I only had \$700 -- what was -- can you -- can you
12 ask the question one more time, please? I'm sorry, I got a
13 little distracted.

14 Q: I -- I don't really think it matters at this point.
15 Let's move on. You said that you and KS were together 24/7
16 when Mr. Hiller questioned you. 24 hours a day, seven days a
17 week. Is that what you said?

18 A: At one point we were 24/7. Yes ma'am. At one point.

19 Q: At -- at what point is that?

20 A: Towards the end of our relationship?

21 Q: Towards the end of your relationship. What would you --
22 what would you classify as towards the end of your
23 relationship?

24 A: I'd say maybe the last week.

25 Q: The last week. So the last week before she ran into the

1 Walmart?

2 A: Yes, ma'am.

3 Q: And were you still begging her to leave at that point?

4 A: Yes, ma'am. All the way up to the last day.

5 Q: To the last day?

6 A: Yes, ma'am.

7 Q: So you were begging her to leave when she ran into the
8 Walmart?

9 A: Actually, right before she ran into the Walmart, I said,
10 do you want to go to the hospital or the police station.

11 Q: I thought you were -- you said a minute ago that you were
12 scared to go to the -- that scared to go to the hospital
13 because they would call the police. So now you're saying that
14 you wanted to go either to the hospital or the police station?

15 A: Yes, ma'am.

16 Q: So which one is it?

17 A: I actually told her that we were going to the hospital or
18 the police station as a way to get her out my car.

19 Q: So you didn't tell her you were going to take her over
20 there and kill her?

21 A: I did not.

22 Q: You said that **KS** begged you for help and that the
23 kindness of your heart, even though you had your own
24 situation, you helped her. Is that correct?

25 A: In other words, yes, ma'am.

1 Q: Okay. And you've been in court this week and seen these
2 photos of KS [REDACTED]'s body; is that correct?

3 A: Yes, ma'am.

4 Q: Is -- is that how you helped her, by putting her in that
5 state?

6 A: It was not.

7 Q: But you admit that you put her in that state?

8 A: Yes, ma'am. I do.

9 Q: You also said that she was drugging you against your
10 will, correct?

11 A: Yes, ma'am.

12 Q: Did you ever see her do drugs?

13 A: No, ma'am. I did not.

14 Q: So why did you think that she was doing drugs?

15 A: Because the presence of drugs that I had found and her
16 corroborating body actions and movements and all of that. The
17 way she was acting.

18 Q: The way she was acting. Corroborating -- you said
19 corroborating body movements?

20 A: Yes, ma'am.

21 Q: What is that?

22 A: When you got a person that's tweaking it up -- when you
23 have a person that's under the influence. Sorry. That's
24 constantly pulling at their hair, that can't keep still,
25 that's just fidgeting uncontrollably.

1 Q: So even though you never saw her do drugs because she was
2 fidgeting, you thought she was on drugs; is that correct?

3 A: In other words, yes, ma'am.

4 Q: Okay. And you've talked about an incident where she was
5 cooking and you thought she might be seizing food and she
6 threw a baggy in the trash can. Is that correct?

7 A: I never said she threw it in the trash can. I said she
8 threw it.

9 Q: She threw it. Okay. So, and you said you believe it had
10 drugs in it?

11 A: Yes, ma'am. And I still do to this day.

12 Q: Okay. What did they look like?

13 A: A crystal-like substance?

14 Q: Was it hard or soft?

15 A: I want to say it was kind of hard, but at the same time I
16 didn't really get the feel and put my hands on it. I just
17 kind of looked at it through the bag.

18 Q: Okay. And I think you said the bag was tied?

19 A: It had a knot on it, but there was a tear under the knot.

20 Q: Okay. And --

21 A: Indicating that if she opened it, she had to pull it
22 open.

23 Q: Okay.

24 A: But the knot was still kind of there. Yes, ma'am.

25 Q: Were -- so were the drugs inside or somewhere else?

1 A: Inside of what?

2 Q: Inside the bag.

3 A: Can you explain your question better?

4 Q: Were the drugs located inside the bag that you described
5 just now?

6 A: They were a little bit of contents left in the bag that I
7 believe was drugs. Yes, ma'am.

8 Q: Okay. And when you ingested those drugs, how did you
9 feel?

10 A: On that particular occasion?

11 Q: Yes.

12 A: Same symptoms. Same symptoms. I had an elevated heart
13 rate, mood swings, perfuse, sweating, and little bit of a
14 stomach ache, as far as I can recall.

15 Q: So were you on drugs every time you hit Ms. **KS**?

16 A: I couldn't say if I was or wasn't, being the fact that
17 her drugging was periodically.

18 Q: Okay. So what if I ask you like this, was there ever a
19 time when you hit Ms. **KS** when you weren't on drugs? Or
20 that when you knew what you were doing? How about that?

21 A: To my knowledge, no. There was not.

22 Q: Okay.

23 A: Because before the drugging and the accusation of
24 drugging came in, we had a pretty decent relationship.

25 Q: And you said when you're in your right mind that you know

1 how to drive a car, you know that you're supposed to stop at
2 the stop sign and all that, right? You said that just a
3 minute ago.

4 A: Yes, I did.

5 Q: All right. Let's see. State's exhibit 57M please.

6 **REPORTER'S NOTE:** (Whereby State's Exhibit 57M is
7 played).

8 **BY MS. WALLER:**

9 Q: Okay. In this video, you're driving the car, right?

10 A: Yes, ma'am. I am.

11 Q: You're also videotaping?

12 A: Yes, ma'am. I am, with my cell phone on my left.

13 Q: With your cell phone? And it sounded like you hit **KS** in
14 that video, didn't it?

15 A: I can't recall if I did or didn't.

16 Q: Well, can you recall whether you went under influence of
17 drugs or not when you made this video?

18 A: I cannot.

19 Q: You cannot?

20 A: No, ma'am. Because I can't think of the exact day and
21 what all we did on that exact day.

22 Q: So you may or may not have been under the influence of
23 drugs when you made the video?

24 A: Yes, ma'am. That is correct.

25 Q: Okay. You said -- you said a minute ago that you

1 attempted to forcibly remove Ms. [KS] from your car. Is that
2 correct?

3 A: Yes, ma'am.

4 Q: And you weren't able to make her get out of the car?

5 A: No, ma'am. I was not. She was actually pretty dedicated
6 to staying.

7 Q: Okay. We've seen the photographs of the state she was
8 in. So you're telling me that you're able to inflict the
9 injuries that you've already admitted in open court that you
10 inflicted on her, correct?

11 A: Yes.

12 Q: But you couldn't force her to get out of your car?

13 A: Exactly.

14 Q: Okay. You also said -- you said just a minute ago that
15 you told [KS] that last night -- and you've seen the video from
16 that last day, haven't you? Can you bring up 57E please. And
17 just bring up a screenshot of the last image of her face?

18 Okay. Can you go forward a little bit, as soon as your
19 eyes open. Okay, that's good enough. Is this what [KS]
20 [KS] looked like when she got in her car that night at
21 Walmart?

22 A: I can't say that I'm 100 percent sure.

23 Q: Why not?

24 A: It's been so long.

25 Q: So you don't remember whether or not she looked like that

1 or substantially like that, that that night?

2 A: She -- she could have, but I don't want to say 100
3 percent for sure.

4 Q: Okay. Well, when she got out of her car, when she -- do
5 you remember when she got out of your car that night?

6 A: Not 100 percent. No, ma'am.

7 Q: Do you remember telling police detectives that she opened
8 the back door, fell out, and screamed to the top of her lungs,
9 "help," and started running and screaming at the top of her
10 lungs into the Walmart?

11 A: I don't remember that part exactly, but I do remember
12 telling the police that she got out of the car and when I went
13 to her to approach her, she said, watch this motherfucker, and
14 took off running.

15 Q: Okay.

16 A: I remember that.

17 Q: And when she ran into the Walmart, what did you do?

18 A: She was finally out of my car, so I -- what other
19 belongings she had, I tossed them out the window and left.

20 Q: So you took --

21 A: What other belongings I could grab, I tossed out and
22 left. I believe it was a couple of bracelets off my front
23 seat.

24 Q: Okay. What about her Apple watch?

25 A: Her Apple watch at the time was in the back seat of my

1 car.

2 Q: Did you start wearing it?

3 A: I did.

4 Q: Okay. What about her cell phone? What did you do with
5 that?

6 A: It was also in the back seat of my car as well. And I
7 found that that following -- I think -- not the following
8 morning, but the morning after due to it ringing under the
9 back seat.

10 Q: Did you indicate to police detectives that that was your
11 phone?

12 A: I did because two days prior KS said that I could have
13 the phone and the Apple watch, actually.

14 Q: Okay. And when she got up in the car in this state, you
15 just drove away and took off; isn't that correct?

16 A: Yes, ma'am. Not take off, but I casually drove away, as
17 you can see from the video.

18 Q: Well, you sent text message, did you not, to people
19 saying I'm on the run?

20 A: I did do that, yes, ma'am.

21 Q: So you were on the run, correct?

22 A: I felt as though there would be consequences that would
23 have followed those actions, but not to this level of
24 severity.

25 Q: So you said a minute ago that KS would give you

1 ultimatum. She's going to go to the police if you don't let
2 her say.

3 A: Yes.

4 Q: But then you just said that you threatened to take her to
5 the police or the hospital and that's why she left. So --

6 A: Exactly. S

7 Q: So both were true at the same time?

8 A: They are. Yes, ma'am.

9 Q: Okay.

10 A: Because that was before she had openly admitted to
11 committing those crimes. And those crimes I'm referring to is
12 drugging me against my will and committing a sexual act on me
13 while I was under the influence of drugs against my will.
14 Need I explain some more?

15 Q: Well, I -- I have questions.

16 A: Okay.

17 Q: So you said -- you're basically saying that she sexually
18 assaulted you?

19 A: Well, I'll -- I don't know exactly now being more
20 informed on the law if that was a sexual assault, but last
21 time I recall speaking with Detective Fletcher and he said in
22 his interview, which you refuse to play today, that it was
23 something. I don't know if it was a sexual assault, but his
24 words, it's something.

25 Q: What is it -- what do you think it is?

1 A: I -- I kind of feel like it's rape.

2 Q: You think that KS raped you? Is that
3 correct?

4 A: That's -- that's not words and that's not what I said.

5 Q: I think you literally just said it.

6 A: Well, I could -- I could be misinformed on what sexual
7 assault means, but being here today in a court of law in the
8 state of South Carolina is very broad.

9 Q: It doesn't matter what sexual assault means when I asked
10 you a question. Do you think you were raped?

11 A: Oh, well, you said do I think she sexually assaulted me?

12 Q: Yes.

13 A: And you just said it didn't matter what sexually
14 assaulted means. So I think you kind of contradicted yourself
15 on that statement, and I'm a little confused.

16 Q: It doesn't. Do you think that KS raped you.

17 A: Rape as in physical penetration? No, ma'am. But rape as
18 in committing a sexual act against my will? Yes, ma'am.

19 Q: Okay.

20 A: If that helps answer your question.

21 Q: Not really, but thank you.

22 A: You're welcome.

23 Q: You had pictures of KS's driver's license on
24 your cell phone, didn't you?

25 A: I specifically didn't have those pictures. No. Those