

VOLUME I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

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Jan 29 2026

S.C. SUPREME COURT

TELLY MCCLAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001993

APPENDIX

WANDA H. CARTER
Interim Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DANIELLE E. DIXON
Assistant Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEYS FOR RESPONDENT

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) CASE NO. 2014-GS-08-653;
3 COUNTY OF BERKELEY) 655; 658; 658; 839; 840
4 STATE OF SOUTH)
CAROLINA,)
5) Transcript of Record
Plaintiff,)
6)
vs.)
7) Date: February 29, 2016
TELLY DARNELL MCCLAM,) March 1, 2016
8 Defendant.) March 2, 2016
March 3, 2016

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11 B E F O R E:

12 THE HONORABLE DEADRA JEFFERSON

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17 Denise J. Lauder, RPR

18 Ninth Judicial Circuit

19 Circuit Court

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1 A P P E A R A N C E S

2

3 REPRESENTING THE STATE OF SOUTH CAROLINA:

4

5 ANNE WILLIAMS, ASSISTANT SOLICITOR

6 DANIEL POULOS, ASSISTANT SOLICITOR

7 300B California Avenue

8 Moncks Corner, SC 29461

9

10 REPRESENTING THE DEFENDANT:

11

12 DAVID SCHWACKE, PUBLIC DEFENDER'S OFFICE

13 DEBORAH LITTLEJOHN, PUBLIC DEFENDER'S OFFICE

14 219 N Highway 52

15 Moncks Corner, SC 29461-3926

16

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1 (The following proceedings were held in
2 the Court of General Sessions, Berkeley County,
3 South Carolina, February 29, 2016, 11:28 a.m.)

4 (STATE'S EXH. 1 - 83, Photographs,
5 were premarked for identification by the
6 Solicitor's Office.)

7 THE COURT: Ladies and gentlemen, we
8 are going to select a jury for the State of South
9 Carolina v. --

10 MR. SCHWACKE: Your Honor, there is
11 some matters that I need --

12 THE COURT: Those matters are premature
13 and our case law supports that that matter is
14 premature until such time that we're not able to
15 select an impartial jury.

16 MR. SCHWACKE: That's one of them, but
17 I have others, Your Honor, if we may approach.

18 THE COURT: You may.

19 (Bench conference.)

20 MR. SCHWACKE: I want to make sure
21 before you publish the Indictments to the jury for
22 the charges. Originally, there were two --

23 MS. WILLIAMS: I only gave them the
24 one.

25 MR. SCHWACKE: -- possession of a

1 weapon during the commission of a violent crime, so
2 she's taken that out. The other is dealing with
3 the name of the offense, a felon in possession of a
4 firearm. That is not the technical name of it.

5 THE COURT: What is the name of it?

6 MS. WILLIAMS: It's on that
7 stipulation.

8 MR. SCHWACKE: -- by a person convicted
9 of a crime of violence. I do have copies --

10 THE COURT: I have the stipulation --
11 actually, my clerk has -- well, no, she doesn't.
12 Where is that stipulation?

13 MR. SCHWACKE: Your Honor, here's a
14 copy of the statute.

15 THE COURT: Oh, I don't need the
16 statute. I just need the stipulation.

17 MS. WILLIAMS: The stipulation is
18 regarding something slightly different, but it is
19 that statute.

20 THE COURT: Yeah. It's unlawful
21 possession of a firearm of a person convicted of a
22 violent offense. That's what I'll refer to it as.

23 MS. WILLIAMS: Thank you, Your Honor.

24 (End of bench conference.)

25 THE COURT: Ladies and gentlemen, we're

1 going to select a jury for the case of the State of
2 South Carolina V Telly McClam. There are several
3 Indictments and they are as follows -- and I would
4 ask that you listen carefully. We're going to go
5 through a process that is called voir dire, which
6 is simply a legal term meaning that I'm going to
7 ask you some questions so that the attorneys can
8 more effectively exercise their peremptory
9 challenges in jury selection.

10 If the question applies to you, I need
11 you to stand, and in a loud and clear voice give me
12 your name and juror number, an answer to the
13 question, if applicable, and remain standing until
14 I have completed questioning you. I will tell you
15 in advance a few of the questions I may ask may
16 seem intensely personal, and if you are
17 uncomfortable answering them in the presence of
18 your fellow jurors, make me aware of it so that I
19 can speak with you privately with Counsel and the
20 Court Reporter.

21 And the Indictments are as follows:
22 2014-GS-08-839, it is an indictment for criminal
23 sexual conduct, first degree. That Indictment
24 alleges as follows: That Telly Darnell McClam did
25 in Berkeley County, South Carolina, on or about

1 October 28, 2013, commit a sexual battery upon the
2 victim, [REDACTED] L. J. [REDACTED], without her consent, and
3 with the use of aggravated force; to wit:
4 Fellatio, alleging a violation of Code Section
5 16-3-652 of the Code of Laws, as amended.

6 And Indictment 2014-GS-08-840, an
7 indictment of criminal sexual conduct, first
8 degree; that Indictment alleges that Telly Darnell
9 McClam did in Berkeley County, South Carolina, on
10 or about October 28, 2013, commit a sexual battery
11 upon the victim, [REDACTED] L. J. [REDACTED], without her
12 consent and with the use of aggravated force; to
13 wit: Genital intercourse, alleging a violation of
14 Code Section 16-3-652 of the Code of Laws.

15 Indictment 2014-GS-08-653, an
16 indictment for kidnapping, and that indictment
17 alleges that Telly Darnell McClam did in Berkeley
18 County, South Carolina, on or about October 28,
19 2013, unlawfully seize, confine, inveigle, decoy,
20 kidnap, abduct or carry away one [REDACTED] L. J. [REDACTED],
21 without authority of law, alleging a violation of
22 code section 16-39-10 of the Code of Laws.

23 Indictment 2014-GS-08-654, an
24 Indictment for kidnapping, and that Indictment
25 alleges that Telly Darnell McClam did in Berkeley

1 County, South Carolina, on or about October 28,
2 2013, unlawfully seize, confine, inveigle, decoy,
3 kidnap, abduct, or carry away one Deadrene McHoney,
4 without the authority of law, alleging a violation
5 of section 16-3-910 of the Code of Laws.

6 Indictment 2014-GS-08-655, an
7 Indictment for burglary, first degree; that
8 Indictment alleges that Telly Darnell McClam did in
9 Berkeley County, South Carolina, on or about
10 October 28, 2013, enter the dwelling of Johnnie
11 Ruth Jenkins, located at [REDACTED] Way,
12 without consent and with the intent to commit a
13 crime therein; to wit: Kidnapping.

14 That, in addition, the Defendant was
15 armed with a 22-caliber revolver, alleging a
16 violation of 16-11-3 of the Code of Laws, as
17 amended.

18 Indictment 2014-GS-08-658, an
19 Indictment for possession of a weapon during the
20 commission of a violent crime; that Indictment
21 alleges that Telly Darnell McClam did in Berkeley
22 County, South Carolina, on or about October 28,
23 2013, possess a handgun or visibly display what
24 appeared to be a handgun during the commission of
25 or attempted commission of kidnapping, defined as a

1 violent crime, pursuant to 16-23-490 of the Code of
2 Laws, as amended.

3 And Indictment 2014-GS-08-659, an
4 Indictment for unlawful possession of a firearm by
5 a person convicted of a violent offense; and that
6 Indictment alleges that Telly Darnell McClam did in
7 Berkeley County, South Carolina, on or about
8 October 28, 2013, did wilfully, unlawfully and
9 feloniously have in his possession and under his
10 control a handgun; to wit: A 22-caliber revolver,
11 alleging a violation of 16-23-500 of the Code of
12 Laws of South Carolina, and alleging all of these
13 actions to be against the peace and dignity of the
14 State.

15 Again, ladies and gentlemen, I'm going
16 to ask you a series of questions. If a question
17 applies to you, please stand and in a loud and
18 clear voice give us your name, your juror number,
19 an answer to the question if applicable, and remain
20 standing until the Court has completed questioning
21 you.

22 Before we do that, I'm going to have
23 Counsel for the State to introduce themselves and
24 anyone who will be assisting them in the trial of
25 this case, and publish the names and the members of

1 their office, and have Counsel for the defense to
2 provide the same information and have his client
3 stand and face the panel. You may proceed.

4 MS. WILLIAMS: Thank you, Your Honor.
5 Good morning. My name is Anne Williams. I'm the
6 Assistant Solicitor here in Berkeley County. The
7 elected Solicitor for the Ninth Circuit, which I
8 work for, is Scarlett Wilson. She is over the
9 Charleston and Berkeley offices.

10 In our office we have Brian Alfaro, who
11 is our Deputy Solicitor, George Smith, Chip Cannon,
12 Price Segal, Dan Poulos, who is seated with me
13 trying this case, Kendra Wilson, Jamie McManus,
14 Wilson McNeeley, Camilla Sas, and also helping us,
15 she just left for a minute, is Danita Brown, our
16 paralegal. Dan Wilson is here from the Berkeley
17 County Sheriff's Office, and he is the case agent
18 for this case.

19 Thank you.

20 MR. SCHWACKE: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 MR. SCHWACKE: Good morning. My name
23 is David Schwacke, I am representing Mr. Telly
24 McClam. Seated with me is Ms. Debbie Littlejohn,
25 she will be assisting me in the case. Our

1 immediate boss is Mr. Ashley Pennington. He is the
2 Public Defender of Charleston and Berkeley
3 Counties. Also in that office we have Keisha
4 White, Chad Shelton and Julia Shivers.

5 Thank you.

6 THE COURT: Again, ladies and
7 gentlemen, if a question applies to you, please
8 stand and in a loud and clear voice give us your
9 name, your juror number, an answer to the question
10 and remain standing until the Court has completed
11 questioning you.

12 Is there any member of the panel
13 related by blood or marriage to Telly Darnell
14 McClam, [REDACTED] L. J. [REDACTED], Deadrene McHoney, or
15 Johnnie Ruth Jenkins? If so, please stand at this
16 time.

17 THE JURY PANEL: (None)

18 THE COURT: Does any member have a
19 close personal or social relationship with Telly
20 Darnell McClam, [REDACTED] L. J. [REDACTED], Deadrene McHoney,
21 or Johnnie Ruth Jenkins? If so, please stand at
22 this time.

23 THE JURY PANEL: (None)

24 THE COURT: The following are a list of
25 potential witnesses. Please listen carefully.

1 **L. J.**, Johnnie Ruth Jenkins, Deadrene
2 McHoney, Quetta Jenkins, Christopher Jenkins,
3 Arvinbhai Patel, A-R-V-I-N-D-B-H-A-I, Kevin Crout,
4 Beatrice Jones Cooper, Emma Cooper, Samantha
5 Cooper, Margaret McClam, Charlie Wilson, Captain
6 Robert Shuler, Kevin Murphy, Detective Dan Wilson,
7 Detective James Riser, Detective Johnny Weise,
8 Lieutenant Geno Alteri, Sergeant Priscilla Bland,
9 Crystal Spence, Augustus Flood, Shane Musgrave,
10 Dean Kokinda, Kim Milks, Corporal Colt Arrington,
11 all of the Berkeley County Sheriff's Office;
12 Detective J. Wren, Detective Juan Ballard, and
13 Captain Sherrod Simmons of the Williamsburg County
14 Sheriff's Office; Agent Gerard Cucurollo,
15 C-U-C-U-R-O-L-L-O, Amy Stevens, Doris Yarborough,
16 Ben Varnadore, Patricia Crooks, Lesa Chapman,
17 Jessica Stowe, Jennifer Aycock, Chad Smith, Thomas
18 Darnell, Samuel Stewart, all of the South Carolina
19 Law Enforcement Division, or SLED; Kalayne Dufault,
20 Russell Hagen, William Register, Alyssa Rheingold,
21 Dr. Clayton Hofstra and Dr. Jeffrey Hayden, all of
22 the Medical University of South Carolina.

23 Is there any member of the panel
24 related by blood or marriage to any of the people
25 that I have just listed, or does anyone have a

1 close personal or social relationship with any of
2 these individuals, or has any member of the panel
3 ever been treated by any of the doctors listed? If
4 so, please stand at this time.

5 THE JURY PANEL: (None)

6 THE COURT: Has any member ever been
7 represented by any of the attorneys involved in
8 this case or any of the lawyers in their offices?
9 If so, please stand at this time.

10 THE JURY PANEL: (None)

11 THE COURT: Is there any member of the
12 panel related by blood or marriage to or have a
13 close personal or social relationship with any of
14 the attorneys involved in this office, any of the
15 attorneys in their office or anyone employed in any
16 capacity in their offices? If so, please stand at
17 this time.

18 THE COURT: Yes, sir; your name and
19 your juror number?

20 POTENTIAL JUROR: Tim Lambert, 92.

21 THE COURT: Yes, sir.

22 POTENTIAL JUROR: Julie Shivers.

23 THE COURT: And what is the nature of
24 that relationship?

25 POTENTIAL JUROR: She's representing

1 me.

2 THE COURT: I can't hear you.

3 POTENTIAL JUROR: She's representing
4 me.

5 THE COURT: Sir, as a result of this
6 experience, do you feel that you can remain fair
7 and impartial?

8 POTENTIAL JUROR: Yes.

9 THE COURT: Do you feel you can render
10 a fair and impartial decision in this case, based
11 solely on the evidence as it will be presented and
12 on the law as the Court will instruct?

13 POTENTIAL JUROR: Yes, ma'am.

14 THE COURT: Thank you, sir. You may
15 take your seat.

16 Is there any member of the panel aware
17 of any bias or prejudice towards either the State
18 or the defense in this case? If so, please stand
19 at this time.

20 THE JURY PANEL: (None)

21 THE COURT: Is there any member of the
22 panel who is a member of the grand jury that issued
23 the Indictments in this case? If so, please stand
24 at this time.

25 THE JURY PANEL: (None)

1 THE COURT: Is there any member of the
2 panel who is a member of or contributor to any
3 group which has as its primary concern the
4 promotion of law enforcement or victims' rights?
5 These would include, but are not limited to,
6 Mothers Against Drunk Driving, Students Against
7 Drunk Driving, Citizens Against Violent Crime,
8 People Against Rape, Citizens Advocating a Return
9 to Decency and Ethics, Parents Empowered to Save
10 Teens, Darkness to Light, or any other type of
11 community advocacy or watch group? If so, please
12 stand at this time.

13 THE JURY PANEL: (None)

14 THE COURT: Is there any member of the
15 panel who has a moral, philosophical, or religious
16 opposition to sitting in judgment of a fellow human
17 being? If so, please stand at this time.

18 Yes, ma'am. Tell me your name and
19 juror number.

20 POTENTIAL JUROR: Deborah Bean, number
21 11.

22 THE COURT: And, ma'am, is it a
23 religious, moral, or philosophical --

24 POTENTIAL JUROR: Religious.

25 THE COURT: And, ma'am, would you be

1 able to set that aside to follow the instructions
2 of the Court?

3 POTENTIAL JUROR: No, ma'am, I can't.

4 THE COURT: Ma'am, you would be exempt
5 from this case only. You may take your seat.

6 Is there any member of the panel who
7 has a moral, religious or philosophical opposition
8 to any of the offenses of criminal sexual conduct
9 in the first degree, kidnapping, or burglary in the
10 first degree, such that it would impair your
11 ability to sit as a fair and impartial juror in
12 this case?

13 Yes, ma'am. Tell me your name and
14 juror number.

15 POTENTIAL JUROR: Beverly Delaney,
16 number 42.

17 THE COURT: And, ma'am, would you be
18 able to set those opinions aside and follow the
19 instructions of the Court?

20 POTENTIAL JUROR: No.

21 THE COURT: You would be exempt, ma'am.
22 Please take your seat.

23 Is there any member of the panel who
24 has read, watched, or listened to any media
25 accounts about this case? That includes anything

1 that could have been seen on television, heard on
2 the radio, read in the newspapers or on the
3 Internet. If so, please stand at this time.

4 THE JURY PANEL: (None)

5 THE COURT: Is there any member who has
6 any personal knowledge of the alleged facts and
7 circumstances of this offense? If so, please stand
8 at this time.

9 THE JURY PANEL: (None)

10 THE COURT: Is there any member of the
11 panel who has had what they would consider an
12 unpleasant experience with law enforcement, such
13 that it would affect your ability to be fair and
14 impartial in this case? If so, please stand at
15 this time.

16 THE JURY PANEL: (None)

17 THE COURT: I know this is an intensely
18 personal question and if you want to speak to the
19 Court privately, with the lawyers and the Court
20 Reporter, please make me aware of it. Again, I do
21 not want anyone to suffer any embarrassment. Is
22 there any member of the panel or a close member of
23 your family who has been the victim of a violent
24 crime or a sexual assault? If so, please stand at
25 this time.

1 THE JURY PANEL: (None)

2 THE COURT: Is there any member of the
3 panel -- actually, it would not apply. Well, it
4 would. I'm going to ask the question differently.
5 Is there any member of the panel, not currently,
6 but who was formerly employed in law enforcement?
7 If so, please stand at this time.

8 THE JURY PANEL: (None)

9 THE COURT: Is there any member of the
10 panel --

11 Yes, ma'am. Tell me your name and
12 juror number.

13 POTENTIAL JUROR: Patricia Laudato, 93.
14 I work with the Colleton County Sheriff's Office,
15 but I'm not a sworn officer.

16 THE COURT: You are currently employed
17 in that capacity, correct?

18 POTENTIAL JUROR: Yes.

19 THE COURT: We would have discerned
20 that in roll call. This is for those who were
21 formerly employed who would not have disclosed that
22 information. Thank you, ma'am.

23 Is there any member of the panel who
24 has a family member who is employed in law
25 enforcement? If so, please stand at this time.

1 Okay. I'm going to start with this .
2 side and then work my way over to this side. I
3 need the relationship of the person and what agency
4 and I need you to remain standing.

5 Yes, ma'am.

6 POTENTIAL JUROR: Tara Browder, 18, and
7 it's my brother-in-law, for the City of Charleston.

8 THE COURT: And starting on this row,
9 ma'am.

10 POTENTIAL JUROR: Juror 119, Janet
11 Parsley. My brother is in law enforcement for
12 Berkeley County.

13 THE COURT: What agency?

14 POTENTIAL JUROR: I'm not sure.

15 THE COURT: Is it the Berkeley County
16 Sheriff's Department --

17 POTENTIAL JUROR: Sheriff's Department.

18 THE COURT: Yes, ma'am.

19 POTENTIAL JUROR: Nichole Graham, juror
20 number 60. My husband is a police officer with the
21 Department of Defense.

22 THE COURT: And next to you; yes,
23 ma'am.

24 POTENTIAL JUROR: Vicki Stigleman. My
25 son is a police officer with Trident Community

1 College.

2 THE COURT: Your son is a police
3 officer with who?

4 POTENTIAL JUROR: Trident Community
5 College.

6 THE COURT: And your juror number?

7 POTENTIAL JUROR: 145.

8 THE COURT: And yes, ma'am.

9 POTENTIAL JUROR: I'm Melanie Mitchell
10 and my juror number is 188. My cousin, Deloris.

11 THE COURT: You said your cousin,
12 Deloris?

13 POTENTIAL JUROR: Yes.

14 THE COURT: What agency?

15 POTENTIAL JUROR: She works here in
16 Moncks Corner.

17 THE COURT: The Berkeley County
18 Sheriff's Office?

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: Yes, sir.

21 POTENTIAL JUROR: Number 147. I have
22 family members in Missouri that are police
23 officers.

24 THE COURT: Which family members?

25 POTENTIAL JUROR: My cousins, two.

1 THE COURT: Okay. Thank you, sir. If
2 you would remain standing.

3 Yes, ma'am.

4 POTENTIAL JUROR: Juror number 67,
5 Coretta Hamilton. My uncle, Mark Hamilton, is a
6 lieutenant with Berkeley County Sheriff's
7 Department.

8 THE COURT: If you would remain
9 standing.

10 And yes, ma'am, next to her.

11 POTENTIAL JUROR: Cheryl Mitchum, juror
12 number 108. I have a nephew who works with
13 Charleston County Police Department and I have a
14 cousin who works with the Berkeley County Sheriff's
15 Department.

16 THE COURT: If you would remain
17 standing.

18 Yes, ma'am.

19 POTENTIAL JUROR: I'm 189, and I have
20 family members, two.

21 THE COURT: I need to know their
22 relationship to you.

23 POTENTIAL JUROR: My cousins.

24 THE COURT: And what agency?

25 POTENTIAL JUROR: Work for Berkeley

1 County right here, and another one works for
2 Charleston County in the Sheriff's Department.

3 THE COURT: Did I get everybody? As a
4 result of these experiences, do you feel that you
5 can remain fair and impartial and render a fair and
6 impartial decision in this case, based solely on
7 the evidence as it would be presented and on the
8 law as the Court will instruct? If the answer is
9 yes, please take your seat.

10 Let the record reflect that all
11 answered yes with the exception of 189 and number
12 188. They will be excused from the trial of this
13 case only.

14 You may take your seats.

15 Is there any member of the panel that
16 has specialized training in the counselling of
17 victims of violent crimes? If so, please stand at
18 this time.

19 THE JURY PANEL: (None)

20 THE COURT: I assume since this
21 question is duplicated that you all agree, I'm
22 referring to State's No. 4 and defense No. 12.

23 MS. WILLIAMS: Oh, yes, Your Honor.

24 THE COURT: Is there any member of the
25 panel or any member of your family who has ever

1 been falsely accused of a crime? If so, please
2 stand at this time.

3 THE JURY PANEL: (None)

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

10 I've already excused you from the trial
11 of this case, ma'am.

12 POTENTIAL JUROR: Your Honor, is there
13 any way that I can speak to you after this?

14 THE COURT: Sure. And, ma'am, your
15 name and juror number?

16 POTENTIAL JUROR: Beverley Delaney,
17 juror 42.

18 THE COURT: Any additional questions
19 from the State?

20 MS. WILLIAMS: No, Your Honor.

21 THE COURT: From the defense?

22 MR. SCHWACKE: None, Your Honor.

23 THE COURT: Strikes will be ten and
24 five. Who would like to demonstrate for me?

25 Ladies and gentlemen, if your name is

1 called, please come forward with all of your
2 personal belongings, stand where the bailiff is
3 standing until we either seat you or excuse you as
4 a juror.

5 You may proceed when you're ready.

6 THE CLERK: Ladies and gentlemen of the
7 jury, as I call your name, please come forth and
8 bring your personal belongings with you. If I say,
9 seat the juror, please have a seat in the jury box.
10 If I say, do not seat the juror, please return to
11 your original seat. And please follow the
12 instructions of the bailiff here.

13 THE COURT: Juror 171, Megan West.

14 MR. SCHWACKE: May we approach?

15 THE COURT: Sure.

16 (Bench conference.)

17 MR. SCHWACKE: It's my understanding
18 she works for the West Law Firm.

19 MR. POULOS: She's Mason's
20 sister-in-law.

21 MR. SCHWACKE: Mason's sister-in-law.

22 THE COURT: Part time.

23 MR. SCHWACKE: And they also do the
24 assets forfeiture for the Solicitor's Office.

25 THE COURT: Asset forfeitures are civil

1 in nature to a large extent. She's not indicated
2 she can't be fair and impartial in this case.
3 She's not -- has indicated she has nothing to do
4 with this case, so unless she's indicated some
5 indication of not being fair and impartial, you can
6 use your peremptory challenge. There's no cause to
7 strike her.

8 MR. SCHWACKE: She didn't disclose it,
9 Your Honor.

10 THE COURT: She must not have had
11 anything to disclose. She stood up in voir dire
12 and told you where she worked. I asked all of the
13 questions about whether she had any personal
14 knowledge of the case; she did not stand.

15 (End of bench conference.)

16 THE COURT: Proceed.

17 THE CLERK: What says the State?

18 MS. WILLIAMS: Please seat the juror.

19 MR. SCHWACKE: Over our objection,
20 please seat the juror.

21 THE COURT: We've already noted the
22 objection. I have a recorder. Don't say anything
23 else further in the presence of the panel. Do you
24 wish to seat or excuse the juror?

25 MR. SCHWACKE: Excuse the juror.

1 THE COURT: Juror is excused.
2 THE CLERK: Excuse the juror.
3 Juror number 12, Lavern Bennett.
4 What says the State?
5 MS. WILLIAMS: Please seat the juror.
6 THE CLERK: What says the defendant?
7 MR. SCHWACKE: Seat the juror.
8 THE CLERK: Seat the juror.
9 Juror number 115, Robert O'Brien.
10 What says the State?
11 MS. WILLIAMS: Please seat the juror.
12 THE CLERK: What says the Defendant?
13 MR. SCHWACKE: Please excuse the juror.
14 THE CLERK: Excuse the juror.
15 Juror number 110, Julie Moore.
16 What says the State?
17 MS. WILLIAMS: Please excuse the juror.
18 THE CLERK: Excuse the juror.
19 THE COURT: Strikes are 5 and 10. I
20 should have said that earlier.
21 THE CLERK: Juror 57, Jacoba Gillians.
22 What says the State?
23 MS. WILLIAMS: Please seat the juror.
24 THE CLERK: What says the Defendant?
25 MR. SCHWACKE: Please seat the juror.

1 THE CLERK: Seat the juror.
2 Juror 46, Juanita Fain.
3 What says the State?
4 MS. WILLIAMS: Please seat the juror.
5 THE CLERK: What says the Defendant?
6 MR. SCHWACKE: Seat the juror.
7 THE CLERK: Seat the juror.
8 Juror 166, Isaiah Washington, Junior.
9 What says the State?
10 MS. WILLIAMS: Please excuse the
11 juror.
12 THE CLERK: Excuse the juror.
13 Juror 25, Jacob Carroll.
14 What says the State?
15 MS. WILLIAMS: Please seat the juror.
16 THE CLERK: What says the Defendant?
17 MR. SCHWACKE: Beg the Court's
18 indulgence.
19 THE COURT: Uh-huh.
20 MR. SCHWACKE: Please excuse the juror.
21 THE CLERK: Excuse the juror.
22 Juror number 122, Anita Petzolt.
23 What says the State?
24 MS. WILLIAMS: Seat the juror.
25 THE CLERK: What says the Defendant?

1 MR. SCHWACKE: Please seat the juror.

2 THE CLERK: Seat the juror.

3 Juror 173, Willie Mae White.

4 What says the State?

5 THE COURT: If you could stand here in
6 front of the table, ma'am. Thank you.

7 MS. WILLIAMS: Please seat the juror.

8 THE CLERK: What says the Defendant?

9 MR. SCHWACKE: Please seat the juror.

10 THE CLERK: Seat the juror.

11 Juror 147, Peyton Stone.

12 What says the State?

13 MS. WILLIAMS: Please seat the juror.

14 THE CLERK: What says the Defendant?

15 MR. SCHWACKE: Excuse the juror.

16 THE CLERK: Excuse the juror.

17 Juror number 119, Janet Parsley.

18 What says the State?

19 MS. WILLIAMS: Seat the juror.

20 THE CLERK: What says the Defendant?

21 MR. SCHWACKE: Seat the juror.

22 THE CLERK: Seat the juror.

23 Juror 117, Shane Panaia.

24 What says the State?

25 MS. WILLIAMS: Beg the Court's

1 indulgence.

2 THE COURT: Uh-huh.

3 MS. WILLIAMS: Please seat the juror.

4 THE CLERK: What says the Defendant?

5 MR. SCHWACKE: Please seat the juror.

6 THE CLERK: Seat the juror.

7 Juror 20, Paul Brownlee.

8 What says the State?

9 MS. WILLIAMS: Please seat the juror.

10 THE CLERK: What says the Defendant?

11 MR. SCHWACKE: Excuse the juror.

12 THE CLERK: Excuse the juror.

13 Juror 49, Stephanie Foss.

14 What says the State?

15 MS. WILLIAMS: Please seat the juror.

16 THE CLERK: What says the Defendant?

17 MR. SCHWACKE: Excuse the juror.

18 THE CLERK: Excuse the juror.

19 Juror 92, Timothy Lambert.

20 What says the State?

21 MS. WILLIAMS. Your Honor, may we

22 approach?

23 THE COURT: Uh-huh.

24 (Bench conference.)

25 MS. WILLIAMS: We would ask that you

1 move him to the other case because Julie Shivers
2 represents him.

3 THE COURT: He's indicated he could be
4 fair and impartial. If you want to exercise a
5 peremptory challenge, you may. Overruled.

6 (End of bench conference.)

7 THE COURT: Proceed.

8 MS. WILLIAMS: Excuse the juror.

9 THE CLERK: Excuse the juror.

10 Juror number 9, Rayner Ballesteros.

11 What says the State?

12 MS. WILLIAMS: Please seat the juror.

13 THE CLERK: What says the Defendant?

14 MR. SCHWACKE: Please seat the juror.

15 THE CLERK: Seat the juror.

16 Juror 75, Miranda Herring.

17 What says the State?

18 MS. WILLIAMS: Please seat the juror.

19 THE CLERK: What says the Defendant?

20 MR. SCHWACKE: Please seat the juror.

21 THE CLERK: Seat the juror.

22 Juror 93, Patricia Laudato.

23 What says the State?

24 MS. WILLIAMS: Please seat the juror.

25 THE CLERK: What says the Defendant?

1 MR. SCHWACKE: Please excuse the juror
2 from the trial of this case.

3 THE CLERK: Excuse the juror.

4 Juror 112, Scott Nelson.

5 What says the State?

6 MS. WILLIAMS: Seat the juror.

7 THE CLERK: What says the Defendant?

8 MR. SCHWACKE: Seat the juror.

9 THE CLERK: Seat the juror.

10 Juror 56, Christina Gibson.

11 What says the State?

12 MS. WILLIAMS: Please seat the juror.

13 THE COURT: What says the Defendant?

14 MR. SCHWACKE: Seat the juror.

15 THE CLERK: Seat the juror.

16 Juror 65, Trent Gustafson.

17 What says the State?

18 MS. WILLIAMS: Please seat the juror.

19 THE CLERK: What says the Defendant?

20 MR. SCHWACKE: Please excuse the juror.

21 THE CLERK: Excuse the juror.

22 Juror 82, Wesley Infinger.

23 What says the State?

24 MS. WILLIAMS: Please seat the juror.

25 THE CLERK: What says the Defendant?

1 MR. SCHWACKE: Please seat the juror.

2 THE CLERK: Seat the juror.

3 THE COURT: There will be two
4 alternates, strikes are one and two. You may
5 proceed.

6 THE CLERK: Juror 185, Daniel Krueger.
7 What says the State?

8 MS. WILLIAMS: Seat the juror.

9 THE CLERK: What says the Defendant?

10 MR. SCHWACKE: Excuse the juror.

11 THE CLERK: Excuse the juror.

12 Juror 178, Otto Wilson, Junior.

13 What says the State?

14 MS. WILLIAMS: Excuse the juror.

15 THE CLERK: Excuse the juror.

16 Juror 145, Vicki Stigleman.

17 Any challenge for cause from the State?

18 MS. WILLIAMS: None from the State.

19 THE COURT: What says the Defendant?

20 MR. SCHWACKE: Excuse the juror in this
21 case.

22 THE CLERK: Excuse the juror.

23 Juror 139, Stuart Short.

24 Any challenge for cause from the State?

25 MS. WILLIAMS: None from the State.

1 THE CLERK: Any challenge for cause
2 from the Defendant?

3 MR. SCHWACKE: None from the defense.

4 THE CLERK: Seat the juror.

5 Second alternate. Juror 60, Nichole
6 Graham.

7 What says the State?

8 MS. WILLIAMS: Seat the juror.

9 THE CLERK: What says the Defendant?

10 MR. SCHWACKE: Excuse the juror.

11 THE CLERK: Excuse the juror.

12 Juror 163, Jeffrey Walker.

13 What says the State?

14 MS. WILLIAMS: Excuse the juror.

15 THE CLERK: Excuse the juror.

16 Juror 183, James Chance.

17 Any challenge for cause from the State?

18 MS. WILLIAMS: No.

19 THE COURT: What says the Defendant?

20 MR. SCHWACKE: Excuse the juror.

21 THE COURT: Excuse the juror.

22 Juror 68, James Hamilton.

23 Any challenge for cause from the State?

24 MS. WILLIAMS: None from the State.

25 THE COURT: Any challenge for cause

1 from the Defendant?

2 MR. SCHWACKE: None from the Defendant.

3 THE CLERK: Seat the juror.

4 THE COURT: Any motions regarding the
5 selection of the jury? From the State?

6 MS. WILLIAMS: No, Your Honor.

7 THE COURT: From the defense?

8 MR. SCHWACKE: Your Honor, just for the
9 record, to renew --

10 THE COURT: I need a specific motion,
11 not just for the record. If there's a motion that
12 has a good faith basis, I need to hear it. If
13 not --

14 MR. SCHWACKE: If we could hear this --

15 THE COURT: Please approach.

16 (Bench conference.)

17 MR. SCHWACKE: Your Honor, I just
18 wanted to put on the record --

19 THE COURT: Yeah, but it has to be with
20 specificity. You can't just make a general motion
21 on a Batson.

22 MR. SCHWACKE: I'm not making a Batson
23 motion.

24 THE COURT: What motion are you making?

25 MR. SCHWACKE: It's actually just

1 renewing my change of venue motion.

2 THE COURT: I'm going to hear that in
3 camera. It's moot, though, because no one stood in
4 reference to the question. I'm going to deal with
5 that outside of the jury's presence. I need to
6 know if you have a Batson motion.

7 MR. SCHWACKE: I don't have a Batson
8 motion.

9 (End of bench conference.)

10 THE COURT: Please state for the
11 record, are there any motions regarding selection
12 of the jury? From the defense?

13 MR. SCHWACKE: None, Your Honor.

14 THE COURT: Okay. Do we need to take
15 them over to Judge -- how many do we have left?
16 Would you estimate if there is enough room over
17 there for all of them? They can hold 40.

18 Do we have more than 40? Can you do a
19 quick count for me right quick?

20 (Off-the-record conference.)

21 THE COURT: The following individuals
22 can leave or you can just call us after 6:00 this
23 evening for further instructions. And these are
24 the individuals that I protected for Tuesday, No.
25 102 -- and Wednesday, No. 102, No. 158, No. 165,

1 and No. 176. You are excused for the remainder of
2 the day. Call back after 6:00 for further
3 instructions. And number 159, you are as well.

4 That leaves us with how many?

5 THE CLERK: I have 47.

6 THE COURT: Ladies and gentlemen, the
7 bailiff -- I was trying to do some numbers to see
8 if I had enough room to put you in the civil
9 Judge's courtroom for jury selection without having
10 to send you back to the jury assembly room, but,
11 unfortunately, I won't be able to do that; I just
12 don't have enough room. So I'm going to have to
13 send you all back to the jury assembly room and
14 then they will pick a panel to take over to that
15 Judge, and he will be selecting one case today.

16 Number 42, if you could approach the
17 Court Reporter, please, so I could speak to you as
18 you requested.

19 (The following was held between the
20 Judge, the Court Reporter and Juror Number 42.)

21 THE COURT: I don't have any more
22 sexual assaults going on. We only have one case
23 left that we're trying.

24 POTENTIAL JUROR: I don't want to have
25 to go through this again.

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

2 (The following was held in open court.)

3 THE COURT: Okay. You can take them
4 over to the assembly room. Thank you, very much,
5 ladies and gentlemen.

6 (Jury panel out.)

7 Ladies and gentlemen, you've been
8 selected for the case of State v. Telly Darnell
9 McClam. If you would go with the bailiffs for me,
10 please. Do not discuss the case or speculate what
11 you may think it could or would be about. I need
12 to discuss some scheduling issues with the
13 attorneys about how we will be proceeding for the
14 rest of the day. We appreciate your patience.

15 (Jury out, 12:17 p.m.)

16 THE COURT: Now, as I understand it,
17 the State has already served Mr. McClam with a life
18 without parole notice; is that correct?

19 MS. WILLIAMS: That's correct, Your
20 Honor. We originally offered him 15 to 25 years,
21 which he turned down on the record in court, and
22 then we gathered together his previous convictions
23 and we served him. He's actually eligible for life
24 on a number of charges, but we just chose that one.

25 THE COURT: And you all received

1 notice, correct?

2 MR. SCHWACKE: We did, Your Honor.

3 THE COURT: Okay. Now, let's see, as
4 regards to the motion for a change in venue, that
5 was filed on February 29th, 2016, with the
6 accompanying documents, the Court would find that
7 motion is moot. Our case law is -- amply supports
8 that a motion for venue -- a change in venue is not
9 ripe until such time that the Court cannot select a
10 fair and impartial jury; and when the jury was
11 posed the question, did they have any knowledge of
12 the case either personally or via the media, no one
13 stood. So the motion is moot in and of itself and
14 I would note that for the record.

15 Now, are there going to be any Jackson
16 v. Denno, Biggers kinds of issues that we need to
17 take up?

18 MS. WILLIAMS: Your Honor, the only
19 issue that I can think of that would need to be
20 taken up, nothing regarding statements --

21 THE COURT: I need you to answer my
22 questions in the order I asked. There's a method
23 to what I'm doing. I need to know if we have
24 issues on Jackson v. Denno or Neil v. Biggers?

25 MS. WILLIAMS: No, ma'am.

1 THE COURT: Is that correct, Mr.
2 Schwacke?

3 MR. SCHWACKE: That's what I've been
4 informed. They do not intend to put into any -- in
5 the record, any statements of my client.

6 THE COURT: Now, as regards to the
7 Stipulation that I have been presented, which is
8 the State and the defense stipulated that the
9 Defendant has previously been convicted of a
10 violent felony, I would assume then that would be
11 the evidence you all would present or you all have
12 agreed to present in support of the Indictment
13 regarding a person convicted in possession of a
14 firearm, or at least one of the elements, without
15 going into any additional facts of the case; is
16 that correct?

17 MS. WILLIAMS: That's correct, Your
18 Honor. I think we have to have a finding on the
19 record that he does have that conviction, but for
20 the jury --

21 THE COURT: I think you all have
22 stipulated to that.

23 MS. WILLIAMS: The statute specifically
24 says that the Court has to make a finding -- the
25 Judge that hears the case --

1 THE COURT: I understand that, I'm
2 going to do what is required by the statute, but it
3 makes the issue fairly moot when you all have
4 stipulated that he has that conviction. The
5 purpose of the question is, there is no need to put
6 the sentence sheet in the presence of the jury if
7 you have stipulated to it?

8 MS. WILLIAMS: That's correct.

9 THE COURT: And that's why I asked the
10 question that I asked.

11 MS. WILLIAMS: Yes, Your Honor.

12 MR. SCHWACKE: I think case law still
13 requires the State to establish a nexus of the gun
14 to the crime --

15 THE COURT: Yeah, that goes without --

16 MR. SCHWACKE: -- so that --

17 THE COURT: Well, they're still going
18 to have to establish the other elements, that being
19 somebody who saw him with the weapon.

20 MR. SCHWACKE: Yes, ma'am.

21 THE COURT: I think that's -- that's an
22 assumption I've made, that they will be able to
23 meet that element. And at the appropriate time
24 I'll make any -- any findings, but I need to know
25 the nature of the stipulation and the scope of it,

1 and that's why I've asked the questions that I have
2 asked.

3 All right. That then takes us -- we've
4 already dealt with the life without parole notice.

5 MS. WILLIAMS: And, Your Honor, do you
6 have a copy of the certified conviction? He has a
7 burglary first and a CSC second, and those would be
8 the thing that satisfies those particular -- that
9 particular statute, just for the finding. I might
10 have just given you one of them, but --

11 THE COURT: I have a certified true
12 copy from 6/16/99 on the CSC second.

13 MS. WILLIAMS: May I add this -- this
14 is also to satisfy that statute. He's got a
15 burglary first that is classified as violent.

16 THE COURT: I don't think they're
17 contesting, that if he's convicted, he's subject to
18 LWOP, correct?

19 MS. WILLIAMS: I'm saying for the
20 purpose of him having a violent conviction for
21 unlawful possession of a firearm --

22 THE COURT: Yeah, but none of that is
23 going before the jury because you all have a
24 stipulation. I mean, the nature of the offense
25 would not go before the jury. Just the fact that

1 you all have stipulated that that element of the
2 offense is satisfied.

3 MS. WILLIAMS: That it is a felony and
4 it's violent. That's what the statute requires.

5 THE COURT: Okay. Is there a reason
6 you gave me two copies of this? I assume one of
7 them must have been for Mr. Schwacke, this
8 acknowledgment of notice of life without parole?

9 MS. WILLIAMS: I think one Mr. Schwacke
10 signed and one -- one was served on Mr. Schwacke
11 and one was signed by --

12 THE COURT: I have two signed by
13 Mr. Schwacke.

14 MS. WILLIAMS: In the presence of
15 Mr. McClam, Mr. Schwacke signed for Mr. McClam in
16 front of Judge Young because he didn't want to sign
17 it or he couldn't --

18 THE COURT: I see why I have two of
19 them. Now, let's see. That leaves us with -- did
20 you give the Court Reporter a copy of the
21 stipulation, the original? And your stipulation
22 needs to be signed. Did you give that to her to be
23 made an exhibit?

24 MR. SCHWACKE: I have a clean copy.
25 Mine is going to be marked up.

1 MS. WILLIAMS: I gave her something --
2 Did I give you that?

3 THE COURT REPORTER: No, I don't have
4 that.

5 MS. WILLIAMS: I have a clean copy. We
6 will sign it and hand it to her.

7 (COURT EXH. 1, Stipulation, was marked
8 for identification.)

9 MS. WILLIAMS: Would that be read to
10 the jury at the time of the charge?

11 THE COURT: No, I wouldn't read it.
12 You all need to publish it at some point. I don't
13 know how you all have agreed to do that.

14 Well, you all need to decide -- if it's
15 going to go back to the -- generally, stipulations
16 don't go back to the jury. They're published and
17 then I instruct them what a stipulation is. I'm
18 not going to allow that sentence sheet to go back
19 to the jury; it's more prejudicial than probative.

20 MS. WILLIAMS: It's not an exhibit.

21 THE COURT: Well, that's what was
22 attached to my stipulation.

23 MS. WILLIAMS: Not to hers, Your Honor.
24 Every judge does it differently. I know Judge
25 Dennis just reads it during the charge and that's

1 why I asked. However Your Honor wants us to do it.
2 I can introduce it as evidence and publish it --

3 THE COURT: I would think that you
4 would have to, because it's an element of your
5 case.

6 MS. WILLIAMS: That's fine.

7 THE COURT: I'm not going to read it,
8 because I don't want to make any statements on the
9 facts.

10 MS. WILLIAMS: Okay. We will just
11 introduce it and send it back, because there is no
12 sentencing sheet attached.

13 THE COURT: And is that how the defense
14 agrees that you all would do that?

15 MS. WILLIAMS: Is that okay?

16 MR. SCHWACKE: I'm fine if, at some
17 appropriate time before they close their case, they
18 can enter that stipulation into the record.

19 THE COURT: As a State's exhibit; is
20 that correct? How do you plan to enter it? I need
21 you all to be on the same page. I don't want to
22 have to deal with it at the time.

23 MR. SCHWACKE: Enter it as a State's
24 exhibit for identification, Your Honor --

25 THE COURT: No. They didn't plan to

1 send it back. That's why I'm asking the question.

2 MR. SCHWACKE: I can't agree to that,
3 but I can agree to it being a Court exhibit and it
4 can be read into the record.

5 THE COURT: Generally, that's what you
6 do, you read it into the record.

7 MS. WILLIAMS: Okay. If it's a Court
8 exhibit, then we are both agreeing it is entered as
9 a Court exhibit and we are just going to publish
10 it?

11 THE COURT: Generally, that's the way
12 it's done. Stipulations generally don't go back to
13 the jury. They're not evidence. They're an
14 agreement that an element of the offense has been
15 met.

16 MS. WILLIAMS: Usually the Judge has
17 been reading them, so that's what I'm a little bit
18 confused about.

19 THE COURT: Well, everybody does things
20 differently, and I'm not reading it, because then
21 it would be me making a statement about the facts
22 of the case or the elements of the case. The only
23 thing I'm going to instruct the jury is what a
24 stipulation is, which is an agreement that you all
25 have reached.

1 MS. WILLIAMS: So we will just before
2 the conclusion of our case --

3 THE COURT: That's generally the way
4 it's done. You publish the stipulation, one side
5 or the other. Sometimes it's joint and sometimes
6 jointly people refer to it and publish it,
7 sometimes the State publishes it. It just depends
8 on the nature of the stipulation as to which party
9 publishes it.

10 MS. WILLIAMS: We would like Mr.
11 Schwacke to publish it.

12 THE COURT: He doesn't have anything to
13 prove.

14 MS. WILLIAMS: All right. That's fine,
15 Your Honor. We'll just publish it as a Court's
16 exhibit.

17 THE COURT: No. You would publish it
18 as a stipulation, and it will be made a Court's
19 exhibit. It doesn't go back to the jury. Unless
20 you'd want to mark it as a Court's exhibit so it
21 goes back to the jury.

22 MS. WILLIAMS: No, I'm not suggesting
23 that we send it back. We will read it as a
24 stipulation.

25 THE COURT: That leaves us with the

1 Defendant's notice to present evidence of victim's
2 sexual conduct. I don't know which victim -- oh,
3 **L. J.**. I guess I need to ask the
4 question preliminarily, what is the State's
5 position regarding that? I don't have any
6 responsive documents filed.

7 MS. WILLIAMS: We just got it this
8 morning, so that's why.

9 THE COURT: It was filed this morning.
10 I didn't realize that.

11 MS. WILLIAMS: The State's position is
12 that it is completely false, there is no
13 information to back it up, there's no facts to
14 support it, so we would ask that whatever evidence
15 they have, that the Court consider it and make a
16 ruling. We can have **L. J.** here -- she
17 was supposed to come at 1:15. We can call her and
18 try to get her here sooner.

19 THE COURT: I just need to know whether
20 you have an objection.

21 MS. WILLIAMS: We have a strong
22 objection to it.

23 THE COURT: Okay. Then I will hear it
24 in camera and the defense is strictly prohibited
25 from going into it until such time that the Court

1 creates a proffer.

2 MR. SCHWACKE: Yes, ma'am.

3 THE COURT: I have a note that Jacoba
4 Gillians, juror number 57, has indicated she's
5 worked with Dr. Hofstra and Dr. Hayden at MUSC. I
6 don't know why she didn't disclose that at the
7 time, but now I need to do some additional voir
8 dire. Is there any exception from the State?

9 MS. WILLIAMS: No, Your Honor. We may
10 call them and we may not, so at this point I think
11 it would be a good thing to do.

12 THE COURT: Any exception from the
13 defense?

14 MR. SCHWACKE: No, Your Honor.

15 THE COURT: Please get number 57 for
16 me, please.

17 (Juror Number 57 in the courtroom.)

18 THE COURT: Ma'am, if you would state
19 your name for the record.

20 JUROR NUMBER 57: Jacoba Gillians.

21 THE COURT: And your juror number?

22 JUROR NUMBER 57: 57.

23 THE COURT: And, ma'am, you've sent a
24 note with the bailiffs indicating that you worked
25 with Dr. Hofstra and Dr. Hayden; is that correct?

1 JUROR NUMBER 57: Yes, ma'am.

2 THE COURT: You're employed at the
3 Medical University of South Carolina; is that
4 correct?

5 JUROR NUMBER 57: Yes, ma'am.

6 THE COURT: And you are employed in
7 what capacity?

8 JUROR NUMBER 57: I'm a systems
9 educator. I actually trained them on the
10 electronic medical records use at the hospital.

11 THE COURT: So you train everybody?

12 JUROR NUMBER 57: I train our emergency
13 room physicians and a couple of other providers and
14 nurses.

15 THE COURT: How long would you estimate
16 that you trained these individuals?

17 JUROR NUMBER 57: The last time I spoke
18 with Dr. Hayden was maybe last month about some
19 training, but Dr. Hofstra, it's been a while.

20 THE COURT: Can you define a while for
21 me?

22 JUROR NUMBER 57: Probably over two
23 years.

24 THE COURT: Okay. And when you say you
25 spoke with Dr. Hayden about a month ago, I assume,

1 based on what you said, it was not an extensive
2 conversation?

3 JUROR NUMBER 57: We were e-mailing
4 about some training for the new system.

5 THE COURT: But it wasn't about him
6 specifically?

7 JUROR NUMBER 57: No.

8 THE COURT: It was in the -- the nature
9 of scheduling?

10 JUROR NUMBER 57: Yes, sir -- yes,
11 ma'am.

12 THE COURT: When did you say you
13 trained him actually, how long ago?

14 JUROR NUMBER 57: Our actual first
15 round of training for ASAP has been over
16 three-and-a-half-years.

17 THE COURT: As a result of your
18 experience with these two individuals, do you feel
19 that you can remain fair and impartial?

20 JUROR NUMBER 57: Yes, ma'am.

21 THE COURT: Do you feel that you can
22 render a fair and impartial decision in this case,
23 based solely on the evidence as it would be
24 presented and on the law as the Court will
25 instruct?

1 JUROR NUMBER 57: Yes.

2 THE COURT: And is there a reason you
3 did not disclose this during the original voir
4 dire?

5 JUROR NUMBER 57: I didn't understand
6 what the question was because it's just -- I don't
7 know them. It's just a professional -- every now
8 and then I will talk to them.

9 THE COURT: Okay. Ma'am, if you would
10 go back with the bailiffs and please do not discuss
11 what we've discussed with any of your fellow
12 jurors.

13 JUROR NUMBER 57: Okay.

14 THE COURT: Thank you.

15 (Juror Number 57 out of the courtroom.)

16 Anything from the State?

17 MS. WILLIAMS: Not from the State.

18 THE COURT: Anything from the defense?

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: There's no -- I find that
21 she is fair and impartial, has not indicated that
22 she cannot remain fair and impartial and render a
23 decision based on the evidence and law as the Court
24 will instruct. Have her note -- it's really not
25 her note. Do we know who wrote this note?

1 THE BAILLIFF: She did, Your Honor.

2 THE COURT: I will just have it marked
3 as a Court's exhibit.

4 (COURT EXH. 2, Juror's note, was marked
5 for identification.)

6 THE COURT: All right. Now, anything
7 else we need to take up before we begin with the
8 trial? From the State?

9 MS. WILLIAMS: Not from the State.

10 THE COURT: From the defense?

11 MR. SCHWACKE: Your Honor, we have
12 addressed the testimony concerning the rape shield
13 statute. The State had in its brief argued that it
14 wishes to introduce some 404 evidence. I would
15 just like to make sure before any of that gets
16 presented or even mentioned in opening --

17 THE COURT: Where was that filed, that
18 they said they were going to go into some 404 --

19 MS. WILLIAMS: It was in our trial
20 brief, Your Honor.

21 MR. SCHWACKE: Judge, I believe that
22 would also include res gestae evidence.

23 THE COURT: We would have to take those
24 up in camera and create a proffer before any of
25 that is introduced to the jury. Is that understood

1 from the State?

2 MS. WILLIAMS: Yes, Your Honor.

3 THE COURT: From the defense?

4 MR. SCHWACKE: Yes.

5 THE COURT: Is there anything else we
6 need to take up before we proceed? From the State?

7 MS. WILLIAMS: Just for clarification
8 as far as the 404(B), we're not going to go into
9 any specific instances of abuse or sexual conduct
10 before, but the only thing they would testify to is
11 the reason that Mr. McClam said he was angry
12 because she had left him.

13 THE COURT: I would still have to take
14 it up in camera and make a proffer. I don't know
15 what they're going to say and I have no point of
16 reference and I am not going to make a decision in
17 the blind without hearing it in its totality.

18 MS. WILLIAMS: Do you want us to start
19 their testimony and then break and do the proffer
20 or do the proffer before they testify?

21 THE COURT: You need to do it within
22 its natural context, whenever it would normally
23 come up during the questioning. If you start it
24 before, I still don't have a point of reference.

25 MS. WILLIAMS: I got you.

1 THE COURT: I don't know what they're
2 going to testify to.

3 Anything else we need to take up before
4 we begin? From the State?

5 MS. WILLIAMS: No, Your Honor.

6 THE COURT: From the defense?

7 MR. SCHWACKE: Earlier this morning, my
8 client indicated that among --

9 THE COURT: I can't hear you.

10 MR. SCHWACKE: -- among the motions he
11 wished for the Court to --

12 THE COURT: There's no hybrid
13 representation, so he can't make any motions.

14 MR. SCHWACKE: I understand. On his
15 behalf then, we would ask for a continuance.

16 THE COURT: What basis?

17 MR. SCHWACKE: Based upon my client's
18 belief that he and his counsel are not prepared for
19 trial.

20 THE COURT: But I have no doubt that
21 you are, correct?

22 MR. SCHWACKE: Yes, ma'am.

23 THE COURT: Okay. Motion is denied.

24 I assume you got all of the discovery?
25 I'm talking to you, Mr. Schwacke.

1 MR. SCHWACKE: Yes, ma'am.

2 THE COURT: You've gone over it with
3 your client?

4 MR. SCHWACKE: I have.

5 THE COURT: And he's provided you --
6 he's assisted you?

7 MR. SCHWACKE: He has.

8 THE COURT: And you've followed up on
9 everything that he's given you?

10 MR. SCHWACKE: Yes, ma'am.

11 THE COURT: Okay. All right. Is there
12 anything else we need to take up before we proceed?
13 From the State?

14 MS. WILLIAMS: No, Your Honor. When
15 would we have -- just for the rape shield motion,
16 do you want us to have her here for testimony
17 before we begin or --

18 THE COURT: I'm going to create a
19 proffer within the context of her testimony. I
20 don't know what her testimony is going to be, so
21 I'm not ruling in advance. I learned a long time
22 ago people say things different in camera.

23 MS. WILLIAMS: We can assume he's not
24 going to ask her anything about --

25 THE COURT: I think he's already been

1 told not to.

2 You are clear about that, right?

3 MR. SCHWACKE: Yes, ma'am.

4 THE COURT: And you're clear about the
5 404 (B) ?

6 MS. WILLIAMS: Yes, Your Honor.

7 THE COURT: All right. I think maybe
8 we should break for lunch and start fresh. What do
9 you think? I think it would give us more time in
10 the afternoon. Any exception from the State?

11 MS. WILLIAMS: No, Your Honor.

12 THE COURT: From the defense?

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: So we'll break until --
15 let's see, I have 12:35. Let's break until 1:35
16 for lunch, and then we'll resume with opening
17 argument and opening instruction. If you can get
18 the jury for me.

19 Madame Clerk, if you would swear the
20 jury when they come back in.

21 (Jury panel in, 12:35 p.m.)

22 THE COURT: Ladies and gentlemen, if
23 you would stand for me and raise your right hands
24 to be sworn.

25 Madame Clerk, you may proceed.

1 THE JURY,

2 being first duly sworn, testified as follows:

3 THE COURT: Thank you, ladies and
4 gentlemen. You may be seated. You've had a long
5 morning so we are going to break for lunch until
6 1:35, which gives you an hour for lunch.

7 During this break, please do not
8 discuss this case among yourselves or with anyone
9 else. Please do not speculate about what you think
10 the case could or may be about. Do not watch,
11 read, or listen to any media accounts about the
12 case; that includes anything in the newspaper,
13 radio, television or anything on the Internet, if
14 there are any such reports. And you're strictly
15 instructed not to do any independent research of
16 any type on the Internet.

17 We are going to resume with opening
18 instruction and opening argument of counsel, and
19 then we will proceed to as many witnesses as we can
20 accommodate until we adjourn at 5:00 on today.

21 I hate to tell you this, but disregard
22 that clock; it's fast, I never look at it. We
23 operate by national time, which is on our computer,
24 and we have 12:35. Every clock in the State is
25 different. If I paid attention, I would be

1 changing my watch every week and I just -- between
2 keeping the clock in my car seven minutes fast and
3 that, it would have me confused all day long. You
4 all have a great lunch.

5 Take instructions from the deputies.
6 They will tell you how to return to the courthouse
7 and, then, as soon as you have arrived, we will
8 resume with the proceedings.

9 Thank you for your patience and enjoy
10 the pretty sunshine and your lunch.

11 (Jury out, 12:37 p.m.)

12 Of the State's witnesses, I have a list
13 numbered 1 through 41. Can you please tell me how
14 many of these witnesses you do not intend to call,
15 by number?

16 MS. WILLIAMS: Yes, Your Honor. The --
17 Mr. Schwacke hasn't stipulated to any chain
18 witnesses.

19 THE COURT: If you could just tell me
20 the numbers you don't intend to call, whether it be
21 1, 2, 3, 4, 5, as it is numbered on the list I was
22 given.

23 MS. WILLIAMS: At this point, number
24 27 --

25 THE COURT: Are you going to stipulate

1 to the chain or are you going to force them to
2 bring all of these people from Columbia to testify?

3 MR. SCHWACKE: Your Honor, based on
4 the --

5 THE COURT: It's up to you.

6 MR. SCHWACKE: -- my client's been
7 notified of life without parole --

8 THE COURT: You don't have to explain.
9 I just need a yes or no.

10 MR. SCHWACKE: Yes, ma'am.

11 THE COURT: Who all are you not going
12 to be calling? You indicated you might not call
13 these doctors. I assume you wouldn't, since you
14 have a SANE examiner.

15 MS. WILLIAMS: Well, it depends on how
16 her testimony goes. We probably won't call them,
17 but I would like to reserve the option to call
18 them.

19 THE COURT: Uh-huh.

20 MS. WILLIAMS: There are several law
21 enforcement people, Kokinda, Mills, and
22 Arrington --

23 THE COURT: I need the numbers.

24 MS. WILLIAMS: Okay. 35, 36 and 37.
25 Well, we have a different list.

1 THE COURT: 35 on my list is Kokinda,
2 36 is Mills, and 37 is Arrington.

3 MS. WILLIAMS: We may not call them
4 because it might be cumulative. I want to make
5 sure that I'm working off the same list as Your
6 Honor. Detective Daniel will be here. He's the
7 case agent, and depending on how all the other
8 testimony unfolds, he may be cumulative. We don't
9 know yet. I guess we have to bring Amy Stephens,
10 19, as a chain witness. I can't really think of
11 anyone else at this point. For strategic reasons,
12 we may wind up eliminating people, but as far as
13 who I know right now, that's probably it. Oh, Lisa
14 Chapman.

15 THE COURT: What number? I have her as
16 28.

17 MS. WILLIAMS: Yeah, we're going to
18 need her. She's a chain.

19 THE COURT: That's all right.

20 Any witnesses that you have listed that
21 you don't intend to call, Mr. Schwacke? I have
22 yours listed as 1 through 8.

23 MR. SCHWACKE: There's overlap. At
24 this point we would --

25 THE COURT: Who is overlapping? Mr.

1 Patel is overlapping. So I would assume you don't
2 need to call him in your case since they're going
3 to call him.

4 MS. WILLIAMS: We may not call him,
5 Your Honor. We don't know.

6 THE COURT: Okay. Where else is there
7 overlapping, Mr. Schwacke? I don't see Ms. Cooper
8 on their list.

9 MR. SCHWACKE: Emma Cooper is first on
10 my last, last on their list. Beatrice Cooper is an
11 overlap.

12 THE COURT: Beatrice Jones you mean?

13 MR. SCHWACKE: I'm sorry, Beatrice
14 Jones.

15 THE COURT: Samantha Cooper as well,
16 isn't she? Maybe not.

17 MS. WILLIAMS: I don't have her.

18 MR. SCHWACKE: No.

19 THE COURT: Margaret McClam.

20 MR. SCHWACKE: That's his mother.

21 THE COURT: Officer Sean Padget.

22 MR. SCHWACKE: He is with the St.
23 Stephen Police --

24 THE COURT: Is he on the list with the
25 State?

1 MS. WILLIAMS: I think he is, Your
2 Honor. That has to do with the 404(B) incident.
3 It's a prior domestic violence.

4 THE COURT: I don't see Eddie Brown on
5 the State's list. I ask for scheduling purposes.
6 There are a great many witnesses. I would ask you
7 all to be mindful, to be succinct, and thorough.
8 We don't have the luxury of going into next week.
9 I have to go to my mandatory conference.

10 MR. SCHWACKE: I believe we will be
11 finished before then. And, Your Honor, we would
12 ask for witnesses to be sequestered.

13 THE COURT: I assume there is no
14 exception to that?

15 MS. WILLIAMS: There isn't, except we
16 would ask for the case agent to be allowed to be
17 in, as well as the two victims, **L. J.** and
18 Deadrene McHoney.

19 THE COURT: I assume there is no
20 exception to that?

21 MR. SCHWACKE: There is not, Your
22 Honor.

23 THE COURT: All right. See you at
24 1:35. I would ask that you have the witnesses
25 available so we don't have to wait.

1 (A luncheon recess transpired.)

2 THE COURT: Did you all give the Court
3 Reporter anything to be premarked? Has the
4 defense?

5 MS. WILLIAMS: There has been no
6 agreement. Mr. Schwacke has not agreed to
7 anything.

8 THE COURT: Is that correct?

9 MR. SCHWACKE: And those were just made
10 available two minutes ago, so I have not had a
11 chance to go through them.

12 MS. WILLIAMS: Those are the same
13 pictures that you have.

14 THE COURT: What are they pictures of?

15 MS. WILLIAMS: Mostly the scene, Your
16 Honor, items that -- there's multiple scenes, but
17 items from each of the kidnappings, the homes they
18 were kidnapped from, the house they were duct-taped
19 in, there are some maps, but Mr. Schwacke came over
20 to our office and we went over all the photographs
21 and the evidence.

22 THE COURT: I guess I'm trying to
23 figure out what -- do we really need to go through
24 all the motions of having them admitted or what can
25 be admitted, and where there is really no tangible

1 exception to it. Like a the map, is there an
2 objection to a map?

3 MR. SCHWACKE: I said there was no
4 objection to the map previously.

5 THE COURT: Have you looked at the list
6 that they've provided? They really should have had
7 the Court Reporter premark them.

8 MR. SCHWACKE: I have to be thankful to
9 Ms. Williams for her compliance with Rule 5, but
10 she is prone to send duplicate information, so --
11 and in a good way. Things get marked twice and I
12 have three copies of something and I only need one.
13 So I need the opportunity to actually go through
14 those folders. So I can do that after the break.

15 THE COURT: Is your first witness going
16 to have any of these exhibits?

17 MS. WILLIAMS: Yes, Your Honor.

18 THE COURT: Okay. So then it's going
19 to be a moot issue.

20 MS. WILLIAMS: They're separated by
21 location. He might just be able to go through them
22 quickly.

23 (There was a break in the proceedings
24 while Exhibits were examined and agreed to.)

25 THE COURT: State's Exhibits 1 through

1 82 are marked and admitted without objection; is
2 that correct? From the State?

3 MS. WILLIAMS: Yes.

4 THE COURT: From the defense?

5 MR. SCHWACKE: Yes.

6 (STATE'S EXH. 1 - 82, Pictures, in
7 evidence.)

8 THE COURT: Anything else we need to
9 take up before we continue with opening
10 instructions and arguments?

11 MS. WILLIAMS: No, Your Honor.

12 THE COURT: From the defense?

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: Please bring in the jury.
15 And bring in 173 as the foreperson.

16 While they're bringing them in, I'm
17 going to have this marked as a Court's Exhibit, a
18 note from the second alternate. Apparently, his
19 wife reminded him at lunch that they have an
20 appointment on Friday to take some maternity
21 pictures, and he's asking to be excused. I'm not
22 going to make him any promises, because you never
23 know what could happen and he really should have
24 told us ahead of time; he probably forgot. I'm
25 anticipating that we will probably be able to

1 release him for his appointment.

2 MS. WILLIAMS: Yes, Your Honor.

3 (COURT EXH. 3, Juror's Note, was marked
4 for identification.)

5 (Jury in, 1:59 p.m.)

6 THE COURT: We appreciate your
7 patience. We had some brief matters of law that we
8 needed to take up before we got started that will
9 allow us to move along without having to take a
10 break for that purpose. Please know we do not take
11 your time for granted.

12 Juror number 68, we have received your
13 note. I will do my best to accommodate you. I
14 can't make any promises right at this moment. I
15 wouldn't ask you to reschedule it necessarily. I
16 anticipate we will be able to release you in order
17 to honor that commitment, but I can't make any
18 promises. I'm hoping things go as smoothly as I
19 would like, but, you know, life sort of happens.
20 We'll do our best to accommodate you. I just
21 wanted you to know that I received your request.

22 Ladies and gentlemen, you've been
23 selected for the case of the State of South
24 Carolina v Telly D. McClam. What I'm now going to
25 say to you is intended to serve as an introduction

1 to the trial of this case. These remarks are not a
2 charge on the law in this case. I will instruct
3 you on the law applicable to this case at the end
4 of the trial before you retire to consider your
5 verdict.

6 So that you know, when I use the term,
7 charge, that is a term of art, a legal term of art
8 that simply means instructions. When I use that
9 term, again, please know it is interchangeable with
10 the word, instruction.

11 This is merely an explanation of the
12 procedure that we will follow during the trial of
13 this case so that you may better understand what is
14 happening. You will be given the opportunity to
15 take notes. Each of you has a notepad. Please
16 write your number on the very first page of that
17 notepad so that you will be able to identify which
18 one belongs to you. I will give you some
19 additional instructions regarding note-taking, but
20 just preliminarily so that you know, your notes
21 will be secured during breaks and recesses and you
22 don't have to worry about anyone infringing on your
23 privacy.

24 The Defendant is charged by several
25 Indictments filed in this court with the crimes of

1 criminal sexual conduct in the first degree,
2 kidnapping, possession of a weapon during the
3 commission of a violent crime, and unlawful
4 possession of a firearm by a person convicted of a
5 violent offense, the elements of which I will
6 explain to you later.

7 The Indictments, ladies and gentlemen,
8 are simply the charge, or charges, by which the
9 case is brought into court, and they are not in any
10 sense evidence of any of the allegations they may
11 contain.

12 The Defendant has pled not guilty to
13 the Indictments. The State, therefore, has the
14 burden of proving each of the elements of the
15 Indictments beyond a reasonable doubt. It will be
16 your duty, ladies and gentlemen, to decide whether
17 the State has met their burden or not.

18 Your purpose as jurors is to find and
19 determine the facts. You are the sole judges of
20 the facts in this case. If at any time I make a
21 comment regarding the facts, you must disregard it.
22 You are to determine the facts from the testimony
23 you hear and other evidence introduced in court.
24 It is up to you to determine the inferences which
25 you feel may be properly drawn from the evidence.

1 It is especially important that you
2 perform your duty of determining the facts
3 diligently and conscientiously, because ordinarily
4 there is no way to correct an erroneous
5 determination of facts made by a trial jury. On
6 the other hand, and with equal emphasis, the same
7 law that makes you the judges of the facts makes me
8 the judge of the law.

9 The law as given by the Court is the
10 only law you may consider. You must accept and
11 follow it even though you may disagree with it.
12 The Court cannot tell you what the facts are and
13 you cannot disagree with the Court about what the
14 law is or what the law should be.

15 Your responsibility, ladies and
16 gentlemen, is to take the law as I instruct it and
17 apply it to the facts as you find them from the
18 testimony of the sworn witnesses and the other
19 evidence that will be introduced during the course
20 of this trial. After doing that, ladies and
21 gentlemen, you will render your verdict, a true and
22 just verdict under the solemn oath that you have
23 taken as jurors in this case.

24 Until I advise you to begin your
25 deliberations, you must not discuss this case with

1 anyone. That includes your fellow jurors, your
2 friends, family members, and anyone involved in the
3 case. After the case is submitted to you, you must
4 discuss it only in the jury room among your fellow
5 jurors.

6 The attorneys and the parties have been
7 advised that they are not to speak to you at all,
8 so if you should run into them in the courthouse,
9 the parking lot, or even at a local restaurant
10 during lunch and they don't speak with you, please
11 don't think they are being unfriendly. They are
12 simply strictly following the Court's instructions.
13 Again, we would not want an innocent conversation
14 to be observed and misinterpreted. In other words,
15 we would not want someone to think that you were
16 inappropriately discussing the facts and
17 circumstances of the case.

18 During this trial, you are not to read,
19 watch, or listen to any news reports about this
20 case. That includes anything that may be in the
21 newspapers, on the Internet, radio, or television.
22 You must not do any independent research of any
23 type on the Internet regarding any issue or matter
24 involved in this case. You must not consider
25 anything that you may have read or heard about this

1 case outside the courtroom, whether before or
2 during the trial.

3 It is essential that you maintain an
4 open mind and not decide any issue in this case
5 until all of the evidence has been presented, the
6 parties have made their closing arguments, and I
7 have instructed you on the law of this case.

8 It is your sole responsibility to
9 determine whether the State has met their burden of
10 proof, and your verdict must be based solely on the
11 evidence as it is presented to you in this trial
12 and on the law as I will instruct you during and at
13 the close of the trial.

14 In just a moment the Solicitor will
15 make what is called an opening statement, in which
16 the Solicitor will explain to you what he or she
17 believes the issues to be in this case. In other
18 words, she will argue to you what she believes the
19 evidence will show in this case. The attorney for
20 the Defendant may make an opening statement,
21 although he is not required to do so.

22 Keep in mind, ladies and gentlemen,
23 that what the attorneys tell you during their
24 opening statements is not evidence in this case.
25 It is only their contention as to what they believe

1 the evidence will show in this case. The evidence
2 will be presented to you by the testimony of sworn
3 witnesses from the witness stand and/or by exhibits
4 that may be introduced into evidence.

5 From time to time during the trial you
6 will hear the attorneys say, Your Honor, I object.
7 Just as in sports, business or any other structured
8 activities, there are certain rules that we must
9 obey in the presentation of evidence. These rules
10 have a definite purpose. They insure that you
11 receive the most trustworthy and reliable evidence
12 available.

13 An objection is the procedure the
14 attorney uses to call a possible violation of these
15 rules to my attention as the judge of the court,
16 and for this reason you should never hold an
17 attorney's objection against them, nor should you
18 conclude from the Court overruling or sustaining an
19 objection that I favor one side or the other. In
20 fact, you should expect many objections. It is not
21 unusual during the course of a trial.

22 Also, from time to time, you will hear
23 the attorney say, Your Honor, we have a question of
24 law or a matter of law to discuss, or they may ask
25 to approach the bench, or I may ask them to

1 approach the bench, or it may even be necessary for
2 us to exclude you from the courtroom for a short
3 while while we discuss matters of law. The reason
4 we do this is, as I have explained, you are the
5 judges of the facts.

6 And sometimes when I am discussing
7 matters of law with the attorneys, it might be
8 necessary for me to make a comment about the facts
9 in connection with ruling whether an evidentiary
10 rule applies or a procedural rule or a statute and
11 for this reason we exclude you from the courtroom
12 so that in no way will you be influenced by
13 anything that the Court may say or do in connection
14 with the facts of this case.

15 In determining what the true facts are,
16 you must decide whether or not the testimony of a
17 witness or witnesses is believable. It is my
18 responsibility to rule as a matter of law as to
19 whether certain testimony is admissible at all or
20 not. Once it is admitted, ladies and gentlemen,
21 whether or not you believe it is solely a matter
22 for you to determine as the finders of the facts in
23 this case.

24 In deciding whether to believe a
25 witness, you have the right to consider the

1 interest of any witness, the bias of any witness,
2 the prejudice of any witness, the opportunity for
3 the witness to have seen the matters and things
4 about which the testimony may testify, and the way
5 the witness acts on the witness stand, something we
6 commonly refer to as their demeanor.

7 You have the right to consider anything
8 that is in the record that will help you evaluate
9 the testimony of the witnesses; that means, ladies
10 and gentlemen, that it is your duty to pay close
11 attention to the witnesses, observe them, listen to
12 them, and pay close attention to the attorneys and
13 the Court. Although we know sometimes it is very
14 difficult, please do not allow your thoughts to
15 wander but give strict attention to the testimony
16 so that at the end of the testimony, after the
17 arguments of the attorneys, and the charge on the
18 law given by the Court, you will then be in a
19 position to determine what the true facts are,
20 apply the law to those facts, and thus render a
21 true and just verdict in this case.

22 During the course of the trial you will
23 be given the opportunity to take notes.
24 Note-taking is a privilege that you may choose to
25 exercise or choose not to exercise. Please don't

1 feel that you are required to take notes. Not
2 everyone finds note-taking helpful to them. If you
3 should decide to take notes, please don't try to
4 record everything that is said; it's physically
5 impossible.

6 I'm a copious note-taker, but even with
7 that, sometimes when I have to go back and listen
8 to transcripts, I find that I put the end of the
9 sentence at the beginning, I've put in words that I
10 would commonly use instead of the word that the
11 witness used. That is only human nature, to
12 translate information as you process it. So please
13 don't try to record everything that is said,
14 because as the finders of the fact, it is essential
15 that you rely on your powers of observation in
16 observing the witnesses. So please don't allow
17 note-taking to become a distraction to you.

18 You may want to keep an outline of the
19 main points that are being made and the arguments
20 that are being made, so that when you retire to
21 deliberate regarding this case, you can allow the
22 notes to refresh your memory. Please be reminded
23 that your notes are for your individual and your
24 specific purposes. They're only to be used to
25 refresh your memory. They're not to be used or

1 shared with anyone else.

2 During breaks and recesses, your notes
3 will be left in your seats, and during the evening
4 recess we will keep them under lock and key. And
5 we do that so there is no premature temptation to
6 deliberate as to any matter that may have been
7 discussed prior to a break.

8 Ladies and gentlemen, please be
9 reminded that your notes should not be considered
10 any more reliable than a fellow juror's memory.

11 Madame -- ladies and gentlemen, I have
12 selected your foreperson. Your foreperson does not
13 have any greater vote or voice than you do. It is
14 simply that we need someone to fill out the verdict
15 form and write out any questions that you may have
16 during deliberations. So, again, I emphasize it is
17 a purely random process that the Court employs and
18 that person does not have any greater vote or voice
19 than you do.

20 Madame forelady, it will be your
21 responsibility to write out the verdict and any
22 questions the jury may have during deliberations,
23 but I'll give you further instructions regarding
24 that at the conclusion of the case.

25 In order to preserve everyone's rights,

1 I'm going to give the parties an opportunity to
2 take exception to anything that the Court has said
3 by way of opening instruction.

4 Is there any exception from the State?

5 MS. WILLIAMS: No, Your Honor.

6 THE COURT: From the defense?

7 MR. SCHWACKE: None, Your Honor.

8 THE COURT: Ladies and gentlemen, I
9 would ask that you give the attorneys your
10 undivided attention in opening argument.

11 You may proceed.

12 MR. POULOS: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 MR. POULOS: Fear, power, and control;
15 that's what the case is about, ladies and
16 gentlemen. The Defendant used fear to exert his
17 power and his control over his ex-girlfriend,
18 Deadrene McHoney, and her 17-year-old daughter,
19 **L. J.**. He used that fear and power to
20 kidnap **L. J.**, threaten her, and rape her. He
21 used that power to kidnap and threaten her mother
22 as well.

23 The Defendant, Telly McClam, wanted to
24 be in control. He wanted to get Deadrene's
25 attention. And he has all of our attention here

1 today, ladies and gentlemen.

2 Deadrene and the Defendant you will
3 hear had been in a relationship. Five days before
4 this incident, Deadrene had ended the relationship.
5 You will hear evidence that the Defendant was
6 calling her, texting her frantically, and on
7 October 27, 2013, into October 28th of that year,
8 Deadrene did not respond. This made the Defendant
9 angry until he reached a boiling point. And he
10 decided if he could not get her attention through a
11 text message, he would do something else, something
12 bigger. He would target her daughter.

13 So in the morning -- early morning
14 hours of October 28th, 2013, that's just what he
15 did. The Defendant knew that [L. J.], who you will
16 hear also goes by the name of [L. J.], was living
17 with her grandmother at the time. He knew that her
18 grandparents went to work early, while it was still
19 dark, and he knew that she would still be in the
20 house alone.

21 So he parked his vehicle that morning
22 out by a dirt road, walked through some woods,
23 watched and waited. When he saw the grandparents
24 leave the house, he acted. He broke into the back
25 door of the home, walked down the hall and went

1 straight to [L. J.]'s room. [L. J.] awoke with him
2 standing over her with a knife in one hand and a
3 gun in the other.

4 At first she thought she was dreaming
5 until he said, come with me. He led her out of the
6 house, walked her through the woods under the cover
7 of night, and put her in his car. He insisted on
8 knowing where her mother was, and she told him.
9 And they started driving.

10 At that time, [L. J.] thought maybe he
11 was taking her to her mother, but as they
12 approached a secluded location in Pineville, an
13 area out of sight, out of sound from anyone that
14 could help her, she knew something was wrong. And
15 that, ladies and gentlemen, is where [L. J.]'s life
16 changed forever.

17 Now, the Defendant used some language
18 that I'm going to have to repeat and I will
19 apologize in advance as to the offensive nature of
20 the language, but it's important that you know what
21 he said. It's important that you understand the
22 full gravity of this case and it's important that
23 you understand the Defendant's mindset and it's
24 important that you understand the victim's mindset.

25 They approached that area in Pineville,

1 parked the car, and he said, I'm going to let you
2 call your mom, but first I want some pussy. Those
3 were his words to a 17-year-old girl. Those were
4 his words to the daughter of the woman that he had
5 been dating, a woman who at this time probably
6 still had feelings for him. **L. J.** of course said
7 no. And the Defendant said, well, then this is
8 where you die.

9 Got out of the car, he pointed the gun
10 at her, she frantically tried to lock the doors,
11 the back door of the vehicle was broken, he got in
12 the car and forced her out. At that time he forced
13 **L. J.** to perform oral sex on him. He forced **L. J.**
14 to have sexual intercourse with him, he raped her.
15 When he was finished, he took her to his own
16 mother's house and he parked his car in the back
17 yard, he gave her his phone and he said, I want to
18 talk to your mom, find your mom, and tell everyone
19 don't call the police.

20 You will see evidence that **L. J.** sent
21 text messages, she sent phone calls. She said,
22 Telly's got me, don't call the police, find my mom.
23 Eventually, they found Deadrene and when she
24 discovered that her daughter was with this man, she
25 did the only thing she could do, she agreed to meet

1 him. She agreed to get in the car because that was
2 the only thing she should think of to protect her
3 daughter.

4 Once the Defendant had both Deadrene
5 and **L. J.** in his vehicle, he went up to
6 Williamsburg County, where his family lives, his
7 safe haven, and broke into a house. He duct-taped
8 **L. J.** -- excuse me -- Deadrene's hands and legs,
9 he duct-taped **L. J.**'s hands and legs, and he
10 bragged to Deadrene about having just raped her
11 daughter. And he said to them, you know, I could
12 kill you right now.

13 He held them captive quite some time
14 that day, but there came a time when they had to
15 leave the house. And he warned them, you better
16 act normal. He took them to one of his family
17 member's house to get money and food. He took them
18 to a gas station and said, you better act normal.
19 Now, at this point, he had kidnapped, threatened
20 and raped **L. J.**, he had kidnapped and threatened
21 Deadrene, and he still had in his possession a
22 22-caliber revolver. So they did what he said,
23 because Telly was in control.

24 While this was going on, there was a
25 manhunt. Berkeley County Sheriff's Office,

1 Williamsburg County Sheriff's Office, SLED, St.
2 Stephen Police, they were trying to find this man
3 to rescue these women. Deputies from Berkeley
4 County got a tip they were near a house in which he
5 had duct-taped the two women. They went to that
6 location, and lo and behold, he drove right by them
7 in a blue four-door sedan.

8 Flailing their hands out the back
9 windows for help, a high-speed chase pursued down
10 some back country roads. The deputies had to back
11 off so as not to cause an accident, until the
12 Defendant stopped his car and fled into the woods.

13 Deadrene and **L. J.** ran to the
14 deputies crying and the manhunt became more
15 focused. A short time later another tip came in
16 that he was seen near his sister's house not far
17 away. At that point law enforcement agents and
18 bloodhounds converged and apprehended the Defendant
19 face down in the woods next to a railroad track
20 with that same 22-caliber revolver.

21 That is what happened, ladies and
22 gentlemen. Those are the facts that we will prove
23 to you. Deadrene and **L. J.** will tell you their
24 story. Their family members will testify, law
25 enforcement agents will testify, and despite what

1 the defense may suggest to you, the evidence is
2 clear and it is corroborated. You will see
3 photographs of the broken door where **L. J.** was
4 staying, you will hear evidence of a sexual assault
5 kit that was done on **L. J.** at the Medical
6 University that came back positive for the
7 Defendant's DNA, you will see his fingerprints on
8 the duct tape that he used to bind them. You will
9 see his fingerprints inside the car that he fled
10 in. You will see photographs from a deer camera
11 that was hidden at one of the houses that
12 corroborates everything that Deadrene and **L. J.**
13 will tell you. You will see the gun that he used
14 to hold them captive.

15 The evidence is clear, ladies and
16 gentlemen. Those are the facts of the case. I
17 want to talk to you a little bit about the law.
18 The Judge is the final authority on the law. She
19 will give you the law at the end of the trial and
20 you must take it as she gives it to you. I want to
21 give you a preview of the law.

22 The Defendant is charged with burglary
23 in the first degree, two counts of kidnapping, one
24 count of possession of a weapon during the
25 commission of a violent crime, one count of

1 possession of a weapon by a person convicted of a
2 violent felony offense, and criminal sexual conduct
3 in the first degree.

4 Burglary in the first degree occurs
5 when a person enters a dwelling without consent
6 with intent to commit a crime inside, either while
7 armed with a deadly weapon or displaying what
8 appears to be a knife, pistol, revolver, or other
9 firearm. The evidence will show you Telly McClam
10 entered [L. J.]'s residence on [REDACTED] Drive, he
11 did so while armed with a knife and revolver and he
12 did so with the intent of kidnapping her. His
13 intent can be shown by his conduct, by the
14 circumstances, and the evidence of the broken door
15 and the weapons shows you his intent. A deadly
16 weapon can be any instrument likely to cause death
17 or great bodily harm.

18 The next charge is kidnapping: To
19 unlawfully seize, confine, inveigle, decoy, kidnap,
20 abduct, carry away, any other person by any means
21 whatsoever without authority of law. The evidence
22 will show you that he abducted [L. J.] from her
23 house. He inveigled Deadrene, he induced her to
24 get into his vehicle and become his captive to
25 avoid harm to her daughter.

1 Possession of a weapon during the
2 commission of a violent crime. The Judge will tell
3 you that kidnapping is classified as a violent
4 crime. The evidence will show you that during the
5 kidnapping, the Defendant possessed a weapon.

6 Possession of a firearm by a person
7 convicted of a violent offense: You will hear
8 evidence that the Defendant has a prior conviction
9 of a felony offense classified as violent and he
10 was, therefore, precluded from having a firearm.

11 Lastly, criminal sexual conduct in the
12 first degree: A person engaged in a sexual battery
13 with the victim and either used aggravated force or
14 the victim was also the victim of a kidnapping or
15 burglary. The evidence will show you that the
16 Defendant engaged in a sexual battery. He did so
17 using aggravated force and he did so against the
18 victim who was the victim of a kidnapping.

19 What is aggravated force? The threat
20 of using a deadly weapon. Sexual battery can be
21 sexual intercourse or fellatio, oral sex. The
22 evidence will show you that the Defendant forced
23 sexual intercourse and oral sex on **L. J.**.

24 Telly McClam wanted attention. I ask
25 each and every one of you today to give him your

1 full attention and give this trial your full
2 attention, and when we have finished, to find him
3 guilty of all counts. Thank you.

4 THE COURT: You may proceed.

5 MR. SCHWACKE: Thank you.

6 Ladies and gentlemen, I'm proud here
7 today to represent Mr. Telly McClam. I'm proud for
8 a number of reasons. The first is that this
9 process, which is a time-honored process, has
10 invited you into it today. Over the past two weeks
11 we have been just burdened with phone calls coming
12 from people that deal with the executive branch of
13 the government, presidential campaign, executive
14 department.

15 In November you're going to be asked to
16 select a representative. That's going to be the
17 legislative process, but how often are you invited
18 into the judicial process? We even make it so you
19 don't have to do it if you've done it within the
20 past three years. We make it easy for you.

21 It's been said about other things, in
22 other times, in other ways, and you've heard it
23 applied to different things, but with much power
24 comes great responsibility. Now, I'm not talking
25 about the State having that power. I'm talking

1 about you having that power. You have the power to
2 decide the facts in this case.

3 What the State has told you about the
4 facts? Huh-uh. It's not a fact if you don't hear
5 it, if it doesn't come from that chair, or an
6 exhibit. Until that happens, there are no facts.
7 So we can erase that little chalkboard that they've
8 written on, because throughout this process,
9 starting now and all the way through, Mr. McClam is
10 presumed to be innocent.

11 And that is your burden, to make sure
12 that happens. On your oath you have promised to
13 listen to the very end, and only then, after the
14 Judge instructs you on the law, go back into your
15 jury room and make that decision.

16 So yes, I'm proud to be part of a
17 process like that. We've had men and women die
18 fighting for that. And all I ask and all Telly
19 asks for you now is to preserve it, preserve it for
20 this case, and do your oath and make your
21 determination, but do it based on the law as the
22 Judge gives it to you and the facts as you hear it
23 over there.

24 If you hear reasonable doubt, your
25 verdict must be not guilty. Again, I thank you for

L. J. - DIRECT EXAM

1 being here and participating in this process. We
2 can't do this without you.

3 THE COURT: State may proceed.

4 MS. WILLIAMS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MS. WILLIAMS: The State calls **L. J.**

7 **[REDACTED]**.

8 THE COURT: If you would swear the
9 witness please.

10 **L. J.**,

11 being first duly sworn, testified as follows:

12 THE CLERK: Have a seat. State your
13 full name for the record and spell your last name.

14 THE WITNESS: **L. J.**

15 **[REDACTED]**.

16 DIRECT EXAMINATION

17 BY MS. WILLIAMS:

18 Q. **L. J.**, do you have a nickname?

19 A. **L. J.**.

20 Q. **L. J.**?

21 A. Yes, ma'am.

22 Q. And where do you live right now?

23 A. Moncks Corner.

24 Q. And where were you living back on
25 October 28th of 2013?

L. J. - DIRECT EXAM

1 A. At my grandmother's house in St.
2 Stephen.

3 Q. Do you remember the address?

4 A. [REDACTED] Way.

5 Q. Okay. And who lived in that house with
6 you all?

7 A. My grandmother, my granddaddy and my
8 sister, Brianna.

9 Q. And how long had you lived there?

10 A. About four years.

11 Q. Okay. And do you have other sisters?

12 A. Yes, ma'am; Shanario and Taquana
13 (phonetic).

14 Q. And how old were they?

15 A. Taquana was about 13, 14, Shanario was
16 about 14 I believe, Brianna was probably like 15.

17 Q. And how old were you at that time?

18 A. 17.

19 Q. And where did your other two sisters
20 live?

21 A. They lived with my mother and Telly.

22 Q. And on October 28, 2013, were they
23 still living with Telly?

24 A. No, ma'am.

25 Q. And when you say, Telly, who are you

L. J. - DIRECT EXAM

1 talking about?

2 A. My mother's ex-boyfriend.

3 Q. Do you know his last name?

4 A. McClam.

5 Q. Do you see him here today?

6 A. Yes, ma'am.

7 Q. Can you just point to him?

8 A. (Pointing)

9 Q. What is he wearing?

10 A. A suit.

11 Q. Okay.

12 MS. WILLIAMS: Your Honor, please let
13 the record reflect that she has identified the
14 Defendant, Telly McClam.

15 THE COURT: You may proceed.

16 BY MS. WILLIAMS:

17 Q. And what school were you going to at
18 that time?

19 A. Timberland.

20 Q. Was the house and school in Berkeley
21 County?

22 A. Yes, ma'am.

23 Q. And what grade were you in?

24 A. Twelfth.

25 Q. What time did you usually get up for

- 1 school in the morning?
- 2 A. About 7.
- 3 Q. And did your grandma work?
- 4 A. Yes, ma'am.
- 5 Q. Where did she work?
- 6 A. At Timberland.
- 7 Q. What did she do?
- 8 A. She was an aid on the bus.
- 9 Q. And what time did she leave?
- 10 A. She would leave about quarter to five.
- 11 Q. And how did she usually get to work?
- 12 A. She usually drove.
- 13 Q. On October 28th, how did she get to
- 14 work?
- 15 A. My grandfather took her.
- 16 Q. Why was that?
- 17 A. She wrecked her -- she wrecked her van.
- 18 Q. Okay. So he had to drive her?
- 19 A. Yes.
- 20 Q. And was Brianna home on that day?
- 21 A. No.
- 22 Q. Do you remember where she was?
- 23 A. She was at a friend's house.
- 24 Q. Okay. And so when your grandparents --
- 25 did your grandma get up to go to work that day?

L. J. - DIRECT EXAM

1 A. Yes, ma'am.

2 Q. At that time that you said, the usual
3 time?

4 A. Yes, ma'am.

5 Q. What did you do usually when they would
6 leave?

7 A. She would wake me up to come lock the
8 door.

9 Q. Did you do that on that day?

10 A. Yes, ma'am.

11 Q. And then what would you do?

12 A. Go back in my bedroom and go to sleep.

13 Q. On that day, what happened? Well, what
14 time did you usually wake up, 7:00?

15 A. Yes, ma'am.

16 Q. On that day, when did you wake up?

17 A. I woke up like 4:45 probably to go lock
18 the door, and then about a little bit before 5:00,
19 like five or ten minutes after I laid down, I got
20 back up.

21 Q. And why did you wake up earlier that
22 day?

23 A. Because I heard somebody coming down
24 the hallway.

25 Q. And then what happened?

L. J. - *DIRECT EXAM*

1 A. Then when I looked up -- well, at first
2 I thought it was my grandparents, but he never
3 comes down that hallway and he just left to take my
4 grand momma to work. So when I looked up, it was
5 Telly and he had a gun and a knife in his hand. At
6 first I thought I was dreaming, but I wasn't.

7 Q. What did the gun look like?

8 A. It was a revolver and -- it was like a
9 black revolver.

10 Q. Do you remember anything else about it?

11 A. It had a brownish-red handle.

12 Q. And what else did he have with him?

13 A. A knife, a green knife.

14 MS. WILLIAMS: Your Honor, I'm showing
15 defense counsel what's been marked as State's 89.

16 Your Honor, may I approach?

17 THE COURT: You may.

18 BY MS. WILLIAMS:

19 Q. What is this? Is this the gun he had
20 in his hand?

21 A. Yes, ma'am.

22 MS. WILLIAMS: Your Honor, at this
23 time, we would offer State's 89 into evidence.

24 THE COURT: Any objection?

25 MR. SCHWACKE: Until it's complete --

L. J. - DIRECT EXAM

1 THE COURT: Chain needs to be
2 completed. ID only.

3 MS. WILLIAMS: Okay. And I'm going to
4 show defense counsel what was marked as State's 96.

5 May I approach?

6 THE COURT: You may.

7 BY MS. WILLIAMS:

8 Q. What is that?

9 A. The knife that he had.

10 MS. WILLIAMS: Your Honor, at this time
11 we would offer State's 96 into evidence.

12 THE COURT: I would assume the same
13 exception, until you can establish a chain.

14 MS. WILLIAMS: Can we approach, Your
15 Honor?

16 THE COURT: Yes. You need to complete
17 the chain. He's objected to it. I need to know
18 how it got here today from where it was taken from
19 him.

20 MS. WILLIAMS: I understand.

21 THE COURT: A complete chain. ID only.

22 BY MS. WILLIAMS.

23 Q. After he came into the house with the
24 gun and knife, what happened next?

25 A. He told me to come with him.

L. J. - *DIRECT EXAM*

1 Q. And what did you have on?

2 A. I had on some black like capri
3 sweatpants and like a blue shirt, a sweatshirt.

4 Q. Is that what you wore to bed?

5 A. Yes.

6 Q. And do you own a phone?

7 A. Yes, ma'am.

8 Q. Did you at that time?

9 A. Yes, ma'am.

10 Q. Did you bring that with you?

11 A. No, ma'am.

12 Q. And then where did he take you?

13 A. He said he was taking me to where my
14 momma was, but before -- we went in the direction
15 to where my momma was, but he turned on a road
16 before we got there and we went to Pineville.

17 Q. Okay. So let's back up a little. He
18 took you out of the house, and then where did you
19 go next? Specifically.

20 A. We walked through the woods, through a
21 little path to get to his car.

22 Q. Okay. And do you remember what his car
23 looked?

24 A. It was a blue -- like a blue Hyundai, I
25 believe.

L. J. - DIRECT EXAM

1 Q. Did he say anything to you about what
2 he was doing or where you were going or why he was
3 doing what he was doing?

4 A. He said that we were going to my
5 mother's house -- my uncle's house. He wanted to
6 talk to my mother. He told me that -- he had
7 already been in my grandmother's house. He told me
8 that he went through her stuff, he told me the type
9 of stuff that she had in her drawer, in her closet.
10 He told me that he was waiting there since 8:00 the
11 night before --

12 Q. Okay.

13 A. -- watching.

14 Q. Okay. Do you remember telling the
15 police that he said, your mom think I'm playing?

16 A. Yes, ma'am.

17 Q. Is that what he said?

18 A. (Nodding head.)

19 Q. Do you know how he got into the home?

20 A. He pried the door open.

21 Q. Okay.

22 A. Because when we left, he pried it back
23 closed somehow.

24 Q. Explain to me what that means.

25 A. He had something and he like just

L. J. - DIRECT EXAM

1 closed the door back to make it look like nobody
2 had gotten into it.

3 Q. Okay. After you got into the car, did
4 he say where he was taking you?

5 A. At first he said we were going to my
6 mom's but we didn't go.

7 Q. Where did you go?

8 A. To Pineville.

9 Q. And where in Pineville was it? Were
10 you familiar with that area?

11 A. Yes.

12 Q. How were you familiar with it?

13 A. We lived down the road.

14 Q. Okay.

15 A. We used to.

16 Q. Okay. And at first when you got in the
17 car, where did you think you were going?

18 A. To my mom's.

19 Q. And when did you figure out that was
20 not the case?

21 A. When he turned on the road.

22 Q. Okay. And did he say anything to you
23 about why he had not gone to your mom's place?

24 A. Not then. When we got in Pineville.

25 Q. What did he say?

L. J. - DIRECT EXAM

1 A. He said, well, I'm going to take you
2 and I'll let you call your mom, but first I want
3 some P word.

4 Q. When you say P word, are you talking
5 about the word pussy?

6 A. Yes, ma'am.

7 Q. Okay. And so at this point, where in
8 that Pineville area did you go? Can you describe
9 that area?

10 A. We went down a long dirt road and it
11 was basically a lot of -- like a lot of fields and
12 woods and trees and stuff.

13 Q. Okay. And then what happened?

14 A. He parked his car, he said that, and
15 then at first I thought he was just joking, but
16 then I looked and he looked serious. So I said,
17 no. And he said, well, this is where you're going
18 to die then. And he got out of the car and he came
19 -- he came around the car to like open my door, but
20 I locked it and I jumped in the driver's seat.

21 I tried to find the keys because I
22 thought he left the keys, but he didn't. And then
23 he pointed the gun at the door and he came back
24 around and he opened the door behind me. And he
25 said -- he started like smirking. He was like,

L. J. - DIRECT EXAM

1 now, you know these doors don't lock.

2 And he said, get out, get out of the
3 car. And that's when I got out. He told me to
4 take -- pull down my pants and take the bottom half
5 of my clothes off.

6 Q. And did you?

7 A. Yes, ma'am.

8 Q. Why did you?

9 A. He had a gun.

10 Q. Okay.

11 THE COURT: I'm sorry, I couldn't hear
12 the answer. Please repeat the answer.

13 THE WITNESS: He had a gun.

14 BY MS. WILLIAMS:

15 Q. And then what happened next?

16 A. I got on the car.

17 Q. Why did you get on the car?

18 A. Because he told me to.

19 Q. When you say, you got on the car, can
20 you explain what part of the car you got on?

21 A. The hood of the car.

22 Q. Okay.

23 A. I got on the hood of the car and I was
24 crying. And I asked, why are you doing this? He
25 said, I have to have some type of enjoyment out of

L. J. - DIRECT EXAM

1 this. And he told me to get down and he made me do
2 oral sex on him, and then after that he got on the
3 car and told me to get back on the car and he raped
4 me.

5 Q. Okay. Now, was it still dark out?

6 A. Yes, ma'am.

7 Q. And when you say he told you to get
8 down off the car and do oral sex on him, how was he
9 positioned? Was he standing? Sitting? Kneeling?

10 A. Standing.

11 Q. And how were you?

12 A. Like kneeling down.

13 Q. Okay. And where was the gun?

14 A. In his hand.

15 Q. Did he say anything to you?

16 A. He said not to bite his private area.

17 Q. Did he use the word, private area?

18 A. No, ma'am.

19 Q. What word did he use?

20 A. His dick.

21 Q. Okay. And then after that when you got
22 back on the car, can you explain what position you
23 were in?

24 A. I was like -- I was sitting on the hood
25 of the car, like leaning back a little bit.

L. J. - DIRECT EXAM

1 Q. And where was he?

2 A. In front of me.

3 Q. Was he standing or sitting?

4 A. Standing.

5 Q. Okay. And did his penis go into your
6 vagina?

7 A. Yes, ma'am.

8 Q. After that, what happened?

9 A. After that, he gave me a pair of his
10 pants to wear because I was on my menstrual cycle,
11 and I got -- basically urinated on myself because
12 of how scared I was.

13 Q. So when you urinated on yourself, was
14 that on the clothing that you had worn there?

15 A. Yes, ma'am.

16 Q. And I know this is personal, but you
17 were on your menstrual period. Did you have some
18 kind of precautions that you brought for that, like
19 with your clothing? Did you have some kind of
20 sanitary supplies with you?

21 A. No. All I had was the pad that I had
22 on.

23 Q. Okay. And so when you put his clothes
24 on, did you put on any underwear or did you put the
25 pad back on or just his clothes?

L. J. - DIRECT EXAM

1 A. Just his clothes.

2 Q. Without any underwear?

3 A. Yes, ma'am.

4 Q. And what did his pants look like?

5 A. They were beige, like khaki pants.

6 Q. Where did he get them from?

7 A. The trunk of his car.

8 Q. Okay. And so after that, where did you

9 go next?

10 A. We left there and we went behind his
11 mother's house.

12 Q. Let me back up. Is Pineville in
13 Berkeley County too?

14 A. Yes, ma'am.

15 Q. You went by his mother's house. What
16 county does she live in?

17 A. Berkeley County.

18 Q. Where was her house?

19 A. I think it's Yeamans Hall Road, I
20 believe.

21 Q. What did you do when you got there?

22 A. When we got there, we sat behind --
23 behind her house, like right in front of the shed.
24 And he had me calling a bunch of people.

25 Q. Okay. Who was he having you call?

L. J. - *DIRECT EXAM*

1 A. He had me call my uncle, he had me call
2 my uncle's wife's phone. He had me call a bunch of
3 people around that lived near where my uncle and my
4 mother was.

5 Q. And did he have you trying to call your
6 mother?

7 A. Yes, ma'am.

8 Q. And was it just calls or was there any
9 other kind of communication?

10 A. Text messages.

11 Q. Okay. And what were the text messages
12 that he was having you send?

13 A. He told me to tell -- to text them and
14 tell them not to call the police and that he had me
15 and he just wanted to talk.

16 Q. Okay. And did you do that?

17 A. Yes, ma'am.

18 Q. What phone were you using?

19 A. His phone.

20 MS. WILLIAMS: Your Honor, I'm going to
21 show defense counsel what's been marked as State's
22 102.

23 Q. (BY MS. WILLIAMS) What is this?

24 A. Telephone.

25 Q. Is this the phone you used to type the

1 texts on?

2 A. Yes, ma'am.

3 Q. How do you know that?

4 A. I just remember the phone.

5 Q. Did you look through the phone and look
6 at the texts?

7 A. Yes.

8 Q. Did you put something on there to show
9 that was the phone you looked through?

10 A. My initials.

11 Q. Okay. And look at these pictures and
12 tell me if you recognize those.

13 A. Yes, ma'am.

14 Q. What are these pictures of?

15 A. Text messages that you sent.

16 Q. How do you know those are text messages
17 that you sent?

18 A. I recognize what I sent.

19 MS. WILLIAMS: Your Honor, at this
20 time, we would offer State's --

21 Q. (BY MS. WILLIAMS) Do these accurately
22 depict the text messages that you sent?

23 A. Yes.

24 MS. WILLIAMS: We would offer State's
25 151 through 156 into evidence.

L. J. - DIRECT EXAM

1 THE COURT: Any objection?

2 Show them again to Mr. Schwacke.

3 MR. SCHWACKE: No, Your Honor.

4 THE COURT: Marked and admitted without
5 objection.

6 (STATE'S EXH. 151 - 156, Photographs in
7 evidence.)

8 BY MS. WILLIAMS:

9 Q. **L. J.**, those pictures are going to come
10 up behind you. If you could just read what that
11 says.

12 A. Quetta, this is **L. J.**. Tell my momma
13 to call me on this number ASAP.

14 Q. Who is Quetta?

15 A. My uncle's wife.

16 Q. Who did she live with at that time?

17 A. My uncle and my mother.

18 MS. WILLIAMS: Can you put up 152?

19 Q. (BY MS. WILLIAMS) What does this one
20 say?

21 A. This is **L. J.**, tell my momma to call me
22 on this number ASAP, please.

23 MS. WILLIAMS: And can you put up 153?

24 THE WITNESS: Call back number

25 **[REDACTED]**.

L. J. - DIRECT EXAM

1 BY MS. WILLIAMS:

2 Q. And what time is it and what date is
3 it?

4 A. Monday, October 28, 5:30 a.m.

5 Q. Okay. And 154.

6 A. Uncle, this is **L. J.**, I need tell my
7 momma ASAP, tell her to call.

8 Q. And 155?

9 A. **L. J.**: I need tell my momma ASAP.
10 Tell her to call on this number. It's important.

11 Q. 156? And what date and time for that
12 text message?

13 A. Monday, October 28, 5:15 a.m.

14 Q. Okay. You can turn back around,

15 **L. J.**.

16 MS. WILLIAMS: Your Honor, at this
17 time, we have an issue of law we would like to take
18 up with the Court.

19 THE COURT: Madame forelady, ladies
20 and gentlemen, I have an issue of law I need to
21 take up with the attorneys. During this break,
22 please do not discuss the case and leave your
23 notepads in your seats.

24 (Jury out, 2:52 p.m.)

25 THE COURT: You may be seated.

L. J. - DIRECT EXAM

1 You may proceed.

2 MS. WILLIAMS: Your Honor, at this
3 time --

4 THE COURT: You need to proceed with
5 the questions you want to ask so I can get a
6 proffer.

7 PROFFERED EXAMINATION

8 BY MS. WILLIAMS:

9 Q. Okay. **L. J.**, had you ever had any kind
10 of relationship with Telly McClam that was sexual
11 or romantic in any way?

12 A. No, ma'am.

13 Q. And how often had you even been alone
14 with him?

15 THE COURT: I needed to make sure that
16 the door was closed. Go ahead.

17 THE WITNESS: Not really at all.

18 BY MS. WILLIAMS:

19 Q. When you were with him, who was usually
20 with him?

21 A. My mother.

22 Q. And were there other reasons why you
23 would have been afraid of Telly McClam, besides --

24 THE COURT: You need to watch the
25 leading. You need to rephrase the question.

L. J. - DIRECT EXAM

1 BY MS. WILLIAMS:

2 Q. Okay. What else had happened -- what
3 else had you observed about Telly McClam within the
4 past six months between your mother and he?

5 A. He's kind of violent sometimes. He --
6 he's basically kind of violent.

7 Q. Was there any particular incident that
8 you witnessed about -- between them that was the
9 subject of a police report?

10 A. Yes, ma'am. At October Festival, he
11 got mad at my mother for some reason, and we were
12 going to my aunt's house, and he tried to ram us
13 with his car because she wouldn't stop. So we
14 turned around and went back towards the festival
15 where the police were. And when we stopped, he hit
16 the back of the car.

17 Well, my mother's truck was the car.
18 And -- at the stoplight, and we went and stopped.
19 And he came and he broke like the top piece, like
20 the little thing -- I don't know what it's called.
21 He broke that off, and then when we got in there,
22 he came in there and he basically snatched my
23 momma's window out.

24 And like a little while later, after we
25 wrote the police report kind of thing, we were

L. J. - DIRECT EXAM

1 leaving and he was coming, and he was basically
2 fighting my mom to get in the car, saying he was
3 going with us. Somehow he got into the window and
4 got the keys and got into the driver's seat. I
5 jumped out of the car and my momma did too. And he
6 grabbed her by her jacket, and I was pulling on her
7 and screaming and telling him to stop, but he
8 didn't.

9 And we -- he was -- he was -- the next
10 thing I know, he had her by her hair somehow,
11 holding her, trying to get her in the car. And
12 while he was doing that, he was basically driving
13 and I was still holding onto my mother, whatever.
14 And she finally was just like, stop, before you
15 hurt my daughter. I'll go with you. And after
16 that, they left.

17 Q. Okay. What happened to that charge, if
18 you know?

19 A. I'm not sure.

20 Q. Okay. And was there any other
21 incidents that you knew about when he broke into
22 the house, regarding any other family member?

23 A. Not that I know of.

24 Q. What about your sister?

25 A. My little sister? I was -- I was -- he

L. J. - DIRECT EXAM

1 tried to rape her.

2 Q. And did you know about that when he
3 broke into the house?

4 A. Yes, ma'am.

5 Q. And how did that make you feel about
6 him?

7 A. Scared.

8 Q. Okay. And you testified you never had
9 any kind of relationship with him except that he's
10 your mother's boyfriend?

11 A. Yes.

12 MS. WILLIAMS: Nothing further.

13 THE COURT: Any questions for the
14 witness, only on this line of questioning?

15 PROFFERED EXAMINATION

16 BY MR. SCHWACKE:

17 Q. You just talked about your little
18 sister. How did you hear about that?

19 A. After -- after it happened, or
20 whatever, my mom -- after they went to the
21 jailhouse, or whatever, she came and we all went to
22 my aunt's house and they told us.

23 Q. So you heard about it from someone, you
24 didn't witness it?

25 A. No, I didn't witness it.

L. J. - DIRECT EXAM

1 Q. You weren't home in that house when it
2 happened?

3 A. No. I was at my grandmother's house.

4 Q. That wasn't the house that you were
5 living in? You weren't living in that house when
6 that happened?

7 A. No, sir.

8 Q. Now, the incident that happened back in
9 April, you know those charges were dropped, don't
10 you?

11 A. I've heard it, yes.

12 Q. Okay. Because you said you did not
13 know what happened to those?

14 A. I heard they were dropped.

15 Q. And you heard that from your mother?

16 A. No. I think it was my grandmother.

17 Q. Okay. Did you hear that from the
18 newspaper reporter that you interviewed with?

19 A. Interviewed? No.

20 Q. The newspaper story that you were
21 interviewed with, didn't it say that those charges
22 had been dropped and that's why you-all were having
23 a problem getting the police to believe you?

24 A. I don't know. I don't remember. It's
25 been awhile since I read those newspapers.

L. J. - DIRECT EXAM

1 Q. The incident that happened with -- at
2 the festival in April, that was an incident between
3 you -- I mean, between Telly and your mother?

4 A. Yes.

5 Q. And didn't involve you?

6 A. I was there.

7 Q. Right. You were a witness?

8 A. Uh-huh.

9 Q. But no one was doing anything to you?

10 A. No.

11 Q. And the only thing you know about what
12 happened with your little sister was from your
13 mother?

14 A. My mother and my sister.

15 MR. SCHWACKE: One moment, Your Honor.

16 THE COURT: Uh-huh.

17 BY MR. SCHWACKE:

18 Q. Has Telly teased you before?

19 A. What do you mean?

20 Q. Make jokes with, wrestle with, any of
21 those kind of things?

22 A. Not wrestle with, but he made jokes.
23 He used to make us laugh sometimes.

24 MR. SCHWACKE: Okay. That's all the
25 questions I have on this point.

L. J. - *DIRECT EXAM*

1 THE COURT: Any objection to the line
2 of questioning?

3 MR. SCHWACKE: What she is -- I guess
4 I'm trying to sort of figure out exactly where we
5 are in this process.

6 THE COURT: We are now in an in camera
7 hearing where we have created a proffer and I think
8 the line of questioning is clear. I need to know
9 if you have an objection to the line of
10 questioning.

11 MR. SCHWACKE: I do, because it becomes
12 prejudicial to my client. If you do a 404(B)
13 analysis, this is not going to -- neither of these
14 two earlier incidents provide anything to assist
15 the charge in fact here today in making a
16 determination. Bear with me just one second.

17 Normally, Your Honor, evidence of other
18 bad acts or crimes are admissible to show only
19 motive, identity, existence of common scheme, plan,
20 the absence of mistake, or lack of accident, or
21 intent; because, otherwise, the Rules completely --
22 Rule's exclusion doesn't allow that type of
23 evidence at all.

24 The Court has to perceive clearly that
25 the transaction and the crime that's now being

L. J. - DIRECT EXAM

1 charged, that there's some logical relevancy, that
2 the accused should be given the benefit of the
3 doubt, if there is none, because the evidence
4 should not be admitted. It should be rejected.

5 Even if the Lyle exception is granted,
6 the Court still has to weigh the 404(3) analysis of
7 whether or not the evidence is so dangerous to my
8 client's being prejudiced by that information, that
9 it should not be admitted.

10 If you look at that sort of Lyle line
11 of testimony, among the different things that you
12 see -- and I'm not sure why the State is offering
13 this. Are they offering it --

14 THE COURT: They're offering it for her
15 to say why she's never been alone with him, because
16 she's fearful of him.

17 MR. SCHWACKE: And my question on that
18 is, with regards to Lyle, what is the element they
19 are seeking to introduce this under?

20 THE COURT: I would have to assume
21 motive and intent.

22 MS. WILLIAMS: And lack of mistake,
23 because he's now saying it's consensual. That was
24 the whole purpose of Mr. Schwacke's motion; he
25 wanted to introduce evidence that they'd had sex

L. J. - *DIRECT EXAM*

1 before. If it's consensual, then it's lack of
2 mistake, it's motive, intent.

3 THE COURT: Is he, in fact -- is that
4 his defense, this was consensual? How old was she
5 at the time?

6 MS. WILLIAMS: 17.

7 THE COURT: And how old was he at the
8 time?

9 MS. WILLIAMS: 37. And he filed a
10 motion to try to get in evidence of consent, none
11 of which we're aware of.

12 MR. SCHWACKE: And at this point we
13 haven't made an attempt to offer...

14 THE COURT: I'm sorry, I can't hear
15 you.

16 MR. SCHWACKE: At this point we have
17 not made any effort to offer that evidence, but we
18 are of the belief that this clearly was improper
19 evidence of bad acts and would be --

20 THE COURT: Well, there's two types of
21 testimony she's offered; one of which is, did they
22 ever have any kind of relationship? I don't have a
23 problem with that question; I think it's
24 permissible.

25 MS. WILLIAMS: We're not going to ask

L. J. - DIRECT EXAM

1 that, Your Honor.

2 THE COURT: Well, then why did you ask
3 it in camera?

4 MS. WILLIAMS: Because -- we offered it
5 because Mr. Schwacke filed a motion to try to get
6 in evidence of --

7 THE COURT: I understand that, but I've
8 asked you to ask the questions you intended to ask
9 in the presence of the jury, and one of them is
10 whether she had a relationship with him. So I need
11 to know, do you plan to ask that question?

12 MS. WILLIAMS: Not that question. That
13 was for the purpose of Your Honor being able to
14 evaluate whether he had any --

15 THE COURT: I can't evaluate until he
16 testifies. Until he testifies, there is no
17 consent.

18 MS. WILLIAMS: He can cross-examine
19 her.

20 THE COURT: I can't anticipate what
21 he's going to ask her.

22 MS. WILLIAMS: Well, I don't want him
23 to ask her something about rape shield, because
24 then I --

25 THE COURT: He can't. He has to do

L. J. - *DIRECT EXAM*

1 that in camera, so that's a moot issue.

2 MS. WILLIAMS: I guess I assumed that
3 he was going to ask her questions about that during
4 this proffer, because I don't know when he would.

5 THE COURT: I have no idea.

6 MS. WILLIAMS: But while she's on the
7 stand, I wanted to get that information out so that
8 if later he offers that, you would have this
9 testimony to consider, so we wouldn't have to bring
10 her all the way back to testify about that issue.
11 But we would be asking her questions about the
12 prior.

13 THE COURT: What do you mean, bring her
14 all the way back? She's on the stand; he's going
15 to conduct his cross-examination. I'm confused.

16 MS. WILLIAMS: When he proffers his
17 client about any exception to rape shield --

18 THE COURT: He can't proffer his client
19 unless his client testifies.

20 MS. WILLIAMS: At that point, Your
21 Honor, I would like you to be able to consider what
22 she --

23 THE COURT: You may have to bring her
24 back. I don't know if that's going to happen or
25 not. You may want to call her in rebuttal; I have

L. J. - DIRECT EXAM

1 no idea. I have no idea what he's going to say, if
2 he's going to testify.

3 MS. WILLIAMS: Okay. I wanted you to
4 be able to consider what she's saying now outside
5 of the presence of the jury when you consider
6 whether or not he has presented any reliable
7 evidence that would be an exception to the rape
8 shield, and while we were on the topic I asked her
9 that question. But we would be offering the other
10 evidence of his -- her knowledge of his prior
11 crimes as to show why she went with him, why she
12 was afraid of him, and why she didn't want to be
13 alone with him.

14 THE COURT: I don't think you need to
15 -- frankly, if somebody came -- if I believe her
16 testimony is true, that if somebody came into my
17 house at 5:00 in the morning, who I was not living
18 with, who was not my custodian, I don't think she
19 needs to provide any other evidence regarding why
20 she didn't want to go with him. He wasn't her
21 father. I don't know that you need to muddy the
22 issue.

23 I think she's made it very clear that
24 him coming into the house without her grandfather
25 or grandmother being there was disconcerting to

L. J. - *DIRECT EXAM*

1 her. He did not have a key to the house, which
2 means he had to have broken in. I think that's
3 enough to establish she had fear of him.

4 Now, if they open the door, that's
5 another issue, which well could happen. In which
6 case I'm going to reserve whether it becomes
7 relevant. Right now it's not relevant and it's
8 more prejudicial than probative, at this moment.
9 Because I don't have any evidence at this point
10 that rises to the level of you coming within an
11 exception, because there has been no evidence
12 introduced where he's refuting motive, intent,
13 absence of mistake, all of those things that come
14 within the Lyle exception, but I'm not -- I'm not
15 precluding the Court from revisiting the issue if
16 the door is opened.

17 MS. WILLIAMS: Thank you.

18 THE COURT: And other evidence about an
19 alleged rape of her sister, all of that is hearsay.
20 She has no personal knowledge of it, so that won't
21 be coming in.

22 MS. WILLIAMS: We would just offer that
23 if it becomes relevant later and he opens the
24 door --

25 THE COURT: If he opens the door, but

L. J. - DIRECT EXAM

1 you're still going to have to establish that she
2 knows about it of her own personal knowledge, not
3 that somebody told her.

4 MS. WILLIAMS: Well, the fact that she
5 knew about it is what made her afraid of him.

6 THE COURT: Somebody told her. She has
7 to know of it of her own personal knowledge,
8 otherwise it's hearsay and doesn't come within the
9 exception.

10 All right. Are we ready to proceed?

11 MS. WILLIAMS: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 I assume then you're not going to ask
14 any of these questions?

15 MS. WILLIAMS: Correct.

16 THE COURT: All right.

17 (Jury in, 3:09 p.m.)

18 THE COURT: You may be seated, ladies
19 and gentlemen. We appreciate your patience. We
20 will move on with the examination of the witness.
21 You may proceed.

22 MS. WILLIAMS: May I approach, Your
23 Honor?

24 THE COURT: Yes, ma'am.

25 BY MS. WILLIAMS:

L. J. - DIRECT EXAM

1 Q. I'm going to show you the last three
2 pictures and tell me if you recognize these.

3 A. Yes.

4 Q. Do those accurately depict the messages
5 that you sent that morning?

6 A. Yes, ma'am.

7 MS. WILLIAMS: Your Honor, at this time
8 we would offer 138, 139, and 140 into evidence.

9 THE COURT: Any objection?

10 MR. SCHWACKE: No objection.

11 THE COURT: 138, 139 and 140, marked
12 and admitted without objection.

13 You may proceed.

14 (STATE'S EXH. 138 - 140 Photographs in
15 evidence.)

16 BY MS. WILLIAMS:

17 Q. What does this message say?

18 A. This is **L. J.** Telly got me. Call
19 this phone now. No police or other family.

20 Q. Why did you put, no police or other
21 family?

22 A. He didn't want any police involved.

23 Q. 139. And is that part of the same
24 message?

25 A. Yes, ma'am.

L. J. - DIRECT EXAM

1 Q. And 140. And tell us the date and time
2 of the message that you see on this picture.

3 A. Monday, October 28, 4:59 a.m.

4 Q. Thank you. Okay. So, **L. J.**, where did
5 you go after the rape? After his mother's house?

6 A. We went to get my mother from my
7 uncle's house.

8 Q. Did anyone see you at his mother's
9 house, that you're aware of?

10 A. Not that I'm aware of.

11 Q. Okay. And where did your uncle live?

12 A. He lived in **[REDACTED]**
13 **[REDACTED]** Road, I believe.

14 Q. And when you were leaving the location
15 where you were raped, do you remember any of the
16 names of the streets that you saw when you were
17 there or that you might be familiar with?

18 A. I don't remember the names of the
19 street, but I just know where it's at.

20 Q. Do you remember telling detectives that
21 Matilda Circle was one of the places over there?

22 A. Yes, ma'am.

23 Q. Okay. How long ago was all this, when
24 you talked to detectives?

25 A. Like a couple of days after it

L. J. - DIRECT EXAM

1 happened.

2 Q. So three years ago?

3 A. Yes, ma'am.

4 Q. And so when you got to your mother's
5 house, what happened? Or where she was staying?

6 A. I got in the back seat and she got in
7 the car and we left.

8 Q. And where was the gun at that time?

9 A. I'm not sure.

10 Q. It was still in the car?

11 A. Yes, ma'am.

12 Q. And where was the knife?

13 A. Still in the car.

14 Q. And where did you go next?

15 A. After that we went to Lanes to an
16 abandoned house -- or the cabin.

17 Q. Okay. I'm going to show you some
18 photographs.

19 MS. WILLIAMS: Your Honor, I'm showing
20 defense counsel -- we've already agreed to these.

21 BY MS. WILLIAMS:

22 Q. I'm going to show you --

23 MS. WILLIAMS: Can you put up State's

24 1?

25 Q. (BY MS. WILLIAMS) We are going to go

L. J. - DIRECT EXAM

1 back and look at some pictures. What is this a
2 picture of?

3 A. My grandmother's house.

4 THE COURT REPORTER: I can't hear her
5 turned around.

6 THE COURT: I need you to speak up for
7 us so the Court Reporter can take down everything
8 you're saying.

9 THE WITNESS: Yes, ma'am. My
10 grandmother's house.

11 BY MS. WILLIAMS:

12 Q. And is that the location where you were
13 taken from that you just testified about?

14 A. Yes, ma'am.

15 Q. And State's 5?

16 A. That's my grandma's back door.

17 Q. Is that the back door that you left out
18 of?

19 A. Yes, ma'am.

20 Q. And what door did he come in?

21 A. The back door.

22 Q. How do you know that?

23 A. Because he couldn't get through the
24 front. And we -- that's the door we left out of
25 and that's the door he pried close.

L. J. - DIRECT EXAM

1 Q. And State's 7. What is that a picture
2 of?

3 A. Her locks.

4 Q. Okay. Is that where he pried it open?

5 A. Yes, ma'am.

6 Q. State's 9?

7 A. That's my grandma's kitchen and
8 curtain.

9 Q. I'm going to hand you a little pointer.
10 If you could kind of show us where on this picture
11 he would have come in and where your room was.

12 A. He would have came in through the
13 kitchen and come down the hallway, down here to
14 where my room was.

15 Q. State's 10.

16 A. That's my room.

17 Q. Okay. Is that the room you were in
18 when you were taken?

19 A. Yes, ma'am.

20 Q. State's 13. What is that a picture of?

21 A. Me and my younger sister, Brianna.

22 Q. But the picture is on what?

23 A. My cell phone.

24 Q. Okay. And is that the cell phone that
25 you did not take with you that day?

L. J. - DIRECT EXAM

1 A. Yes, ma'am.

2 Q. State's 14.

3 A. That's my bed.

4 MS. WILLIAMS: Okay. Beg the Court's
5 indulgence just a second.

6 Q. (BY MS. WILLIAMS) State's 12. There
7 are some books on the dresser right there. What
8 kind of books are those?

9 A. ACT books.

10 Q. And were you studying for the ACT at
11 the time?

12 A. Yes, ma'am.

13 Q. And lastly, State's 16 out of this
14 bunch. What's that a picture of?

15 A. The place where he had his car parked.

16 MS. WILLIAMS: And if you could put up
17 State's 22 -- 21 and 22.

18 THE WITNESS: That's my uncle -- like
19 that's the road to go to my uncle's house.

20 BY MS. WILLIAMS:

21 Q. And when you say, your uncle, is that
22 the uncle that your mother was living with?

23 A. Yes, ma'am.

24 Q. And is that where you drove to to get
25 her?

L. J. - DIRECT EXAM

1 A. Yes, ma'am.

2 Q. Where did she come in relation to the
3 house? Show us, if it's on that picture, where she
4 came out, where you met her.

5 A. We met her like right in this area
6 right here. (Indicating)

7 Q. Okay. Okay. You can turn back around.
8 So you said that you went to Lane?

9 A. Yes, ma'am.

10 Q. Okay. What is that area?

11 A. Williamsburg County.

12 Q. Okay. How long did it take you to get
13 there?

14 A. About 20 minutes or -- 20 minutes
15 maybe.

16 Q. Do you have any idea why you were going
17 there?

18 A. No, I'm guessing.

19 MR. SCHWACKE: Objection, Your Honor.

20 THE COURT: Speculation; sustained.

21 MS. WILLIAMS: Okay.

22 THE COURT: Unless she knows of her
23 own knowledge and you can establish a foundation.

24 BY MS. WILLIAMS:

25 Q. You didn't know why, then?

L. J. - DIRECT EXAM

1 A. No.

2 Q. When you got there, what happened?

3 A. When we got there, he broke into the
4 cabin place. And we went in the house and he
5 duct-taped me and my mom. And he said -- before he
6 left, he told my momma that I have good P word and
7 good head too. And he laughed and --

8 Q. So when he said that to your mother,
9 did he use that word, pussy? And what did he --
10 did he just tell her? Can you explain or
11 demonstrate how he told her?

12 A. He said that and he laughed and he
13 left.

14 Q. And where did he park the car when you
15 got there?

16 A. On the other side of the road, like
17 behind some bushes and stuff.

18 MS. WILLIAMS: Okay. Can you publish
19 25?

20 Q. (BY MS. WILLIAMS) He's going to put a
21 couple of more pictures up there. Can you tell us
22 what that's a picture of?

23 A. The cabin.

24 Q. Okay. And 38. Can you show us which
25 door, if you remember, he broke into?

L. J. - DIRECT EXAM

1 A. This one. (Indicating)

2 Q. And 39. And what is that a picture of
3 by the cabin?

4 A. The car --

5 Q. Okay.

6 A. -- that he used to get us.

7 Q. Is that the car you were in that day?

8 A. Yes, ma'am.

9 Q. Okay. And, at that time, were you all
10 aware of any kind of camera that was in the woods?
11 Did you know anything about that?

12 A. No, ma'am.

13 Q. Okay. So after he -- you said he tied
14 you up. What did he tie you up with?

15 A. Duct tape.

16 Q. And what -- where? Like how were you
17 sitting? Where were you?

18 A. We were sitting like on this chair by a
19 window.

20 Q. Okay. And why did he -- did he tell
21 you why he was tying you all up?

22 A. So he could move the car.

23 Q. Where had he put it initially?

24 A. On the other side of the road behind
25 some bushes.

L. J. - DIRECT EXAM

1 Q. And what did do after he duct-taped
2 you?

3 A. He went and got it and put it behind
4 the house.

5 Q. Did he say -- did he threaten you at
6 all when you were there? Did he say anything to
7 you about what he was going to do or his intention
8 or anything to you-all?

9 A. No. But he said, I could kill you
10 right now and nobody would ever know.

11 Q. Did he still have the gun?

12 A. Yes, ma'am, he had it in his hand.

13 Q. What else did you-all do while you were
14 at the cabin?

15 A. We were just sitting there and him and
16 my mom was -- were talking and I had to use the
17 bathroom. And that was it.

18 Q. Okay. And do you know how long you
19 were there?

20 A. No.

21 Q. And after you left there, where did you
22 go next?

23 A. After we left there, we went somewhere
24 and we went in the woods.

25 Q. Okay. And when you were driving

L. J. - DIRECT EXAM

1 around, do you know what counties you were driving
2 through at this time?

3 A. No. I assumed we were still in
4 Williamsburg County.

5 Q. And do you know where in the woods you
6 were?

7 A. No.

8 Q. Okay. How far off the road did you go
9 in?

10 A. Not that far, but far enough where
11 nobody could see us.

12 Q. Okay. And what happened in the woods
13 that time?

14 A. When we went in the woods that time,
15 him and my momma were talking. They got out of the
16 car and were talking and I stayed in the car.

17 Q. Okay. Did you hear any of the things
18 that he said to her?

19 A. I didn't hear them.

20 Q. Okay. During this whole time, did you
21 have an opportunity to observe your mom, how she
22 was and her physical demeanor and how she was
23 acting?

24 A. She was -- basically, she was trying to
25 act as if she was, you know, strong, so that I

L. J. - DIRECT EXAM

1 wouldn't break down, but I could tell she was kind
2 of scared.

3 Q. How could you tell?

4 A. You could tell by the look on her face
5 like and she was shaking and stuff.

6 Q. And did you leave the woods?

7 A. Yes. We left the woods and we went to
8 his sister's house to get something to eat because
9 I said I was hungry.

10 Q. Where does she live, if you know?

11 A. I don't know.

12 Q. Okay. What did you do when you got
13 there?

14 A. We got something to eat, I went and
15 used the rest room and after that, we left.

16 Q. Okay. Why didn't you run away or tell
17 her?

18 A. He had the gun in his pocket and he
19 told us to act normal.

20 Q. So did you act normal?

21 A. Yes, ma'am.

22 Q. Where did you go after that?

23 A. After that, we went to his aunt's house
24 to get gas money and then we went to the gas
25 station.

L. J. - DIRECT EXAM

1 Q. And when you went to his aunt's house,
2 what was that like? Where does she live? Can you
3 describe the neighborhood or area?

4 A. I don't remember.

5 Q. Was there a lot of houses around?

6 A. I don't remember.

7 Q. Okay. And so when you got there, did
8 you tell the aunt? Did you try to run? Did you
9 let them know that he was holding you against your
10 will?

11 A. No, ma'am.

12 Q. Why not?

13 A. Because he told us to act normal.

14 Q. Okay. And when you went to the gas
15 station, who pumped the gas?

16 A. He did.

17 Q. And where were you?

18 A. In the car.

19 Q. And where did your mom go?

20 A. To go pay for the gas.

21 Q. Why did she go in and pay for the gas;
22 do you know?

23 A. No.

24 Q. Did he tell her to?

25 A. Yes, ma'am.

L. J. - DIRECT EXAM

1 Q. Do you know that? Did you hear him
2 tell her?

3 A. Yes.

4 Q. Okay. And did she tell anyone at the
5 gas station?

6 A. No.

7 Q. Nobody cried for help?

8 A. No, ma'am.

9 Q. And after the gas station, where did
10 you go?

11 A. After the gas station, we just drove
12 around for a little bit, and a lady saw us and she
13 said something about an Amber Alert. And after
14 that, we went back into the woods. We went into a
15 different part of the woods and we went deeper into
16 the woods.

17 Q. What happened that time?

18 A. That time, they were like talking and
19 stuff. And then after that, we left out and we saw
20 the police.

21 Q. Do you remember him falling asleep at
22 any point?

23 A. No, ma'am.

24 Q. Okay. And how were you feeling this
25 whole time?

L. J. - DIRECT EXAM

1 A. Scared.

2 Q. And when you left out of the woods the
3 other time, the last time -- well, before you got
4 to the woods at that time, was there any time
5 during this whole period when you called anyone,
6 you or your mom?

7 A. Yes, ma'am. He had us call and tell
8 them -- I don't remember exactly what it was, but I
9 know he told us to call them and tell them not to
10 call the police, he was going to bring us home at
11 nighttime.

12 Q. Who did he tell you to call?

13 A. My grandma.

14 Q. And who is she? What's her name?

15 A. Johnnie Ruth Jenkins.

16 Q. Okay. Was there anyone that you
17 remember besides her that you had to call?

18 A. No, I don't remember.

19 Q. Okay. And when you say that you saw
20 the police, can you describe to us what happened
21 during that?

22 A. When we came out of the woods, we were
23 coming out of the woods and the police car -- like,
24 a police car passed us. And he saw the police car
25 and the police car saw us and that's when we got in

L. J. - DIRECT EXAM

1 like a chase.

2 Q. And what kind of road -- when you say,
3 chase, can you describe what happened and what kind
4 of road it was?

5 A. At first we were on like a paved road,
6 and then the police were following us and we were
7 going like really, really fast. And then we turned
8 down like a rocky dirt road, and we were like
9 waving to the police, or whatever, because he told
10 us to wave to the police to tell them to stop. And
11 after that, we ended up back at the house.

12 Q. And when you were going really fast in
13 the car, did you have your seat belts on?

14 A. No, ma'am.

15 Q. When you say, back to the house, which
16 house?

17 A. The cabin.

18 Q. What happened when you got there?

19 A. When we got there, he jumped out of the
20 car and went to the trunk and got bullets and a bag
21 I guess and he ran into the woods.

22 Q. And what did you and your momma do?

23 A. We ran.

24 Q. Did you see the police?

25 A. Yes, ma'am.

L. J. - DIRECT EXAM

1 Q. And where did you go after that, after
2 the police got you?

3 A. After that, we went to the hospital.

4 Q. Okay. What time was it by this time;
5 do you remember?

6 A. No, ma'am.

7 Q. Do you remember anything during the day
8 that would give you a clue as to how long this
9 thing went on?

10 A. When we were at the gas station, I saw
11 buses so I assumed it was like 1 or 2:00.

12 Q. And how long were you at MUSC, the
13 hospital?

14 A. Hours.

15 Q. And what had to happen there?

16 A. They had to look up in me and take
17 pictures and stuff.

18 Q. And after you left there, what kind of
19 aftercare did you have to have? Like what kind of
20 things did you have to do medically?

21 A. I had to take a lot of medicine and I
22 had to go to a mental health hospital.

23 MS. WILLIAMS: Beg the Court's
24 indulgence.

25 THE COURT: Yes, ma'am.

[REDACTED] L. J. - CROSS EXAM

1 MS. WILLIAMS: I don't have any more
2 questions for you, [REDACTED] L. J.. Please answer any
3 questions from the defense.

4 THE COURT: You may proceed.

5 CROSS-EXAMINATION

6 BY MR. SCHWACKE:

7 Q. Hey, [REDACTED] L. J.. How are you doing?

8 A. Fine, and you?

9 Q. I have a couple of questions. Trying
10 to understand some of what you said. So you have a
11 phone.

12 A. Yes, sir.

13 Q. But you left it that morning, you did
14 not take it with you?

15 A. Yes, sir.

16 Q. And your mom, she has how many phones?

17 A. She had one phone.

18 Q. Just one phone or two phones?

19 A. She had one phone with her when she
20 came, because she was talking on the phone with him
21 when we were coming.

22 Q. So the phone that all of the texting
23 was going on was whose phone?

24 A. That I was texting on?

25 Q. Right.

L. J. - CROSS EXAM

1 A. I was texting off of Telly's phone.

2 Q. So Telly had a phone, your mom had a
3 phone in the car?

4 A. Yes, sir.

5 Q. Any other phones in the car?

6 A. No; just my mom's and Telly's.

7 Q. Does Telly have more than one phone?

8 A. I'm not sure.

9 Q. And you're not sure if your mom has one
10 or two phones?

11 A. I just know she had the one.

12 Q. Okay. When you were talking about you
13 had gone to Pineville and before you had gone over
14 to your aunt and your uncle's house, what clothes
15 did you change into?

16 A. His clothes.

17 Q. His clothes?

18 A. His pants.

19 Q. And they were what?

20 A. He had some beige khaki-looking pants.

21 Q. Anything else?

22 A. I had on a sweater because he gave me a
23 sweater earlier that day because I was cold.

24 Q. What kind of sweater?

25 A. I don't remember exactly how it looked.

L. J. - CROSS EXAM

1 It was like a hoodie though.

2 Q. Did he give you a pair of pants the
3 first time and you ended up telling him they were
4 too cold and you wanted another pair of pants?

5 A. I don't remember.

6 Q. You don't remember?

7 A. I don't remember.

8 Q. All right. So how many times did you
9 go to a gas station?

10 A. Just once.

11 Q. Just once?

12 A. Uh-huh.

13 Q. And you thought that was 1 or 2:00 in
14 the afternoon?

15 A. Uh-huh.

16 Q. How long after that did the police find
17 you?

18 A. I'm not exactly sure how long it was,
19 but it was a little while after.

20 Q. So a little while or a long -- what is
21 a little while?

22 A. I would say about 30 minutes to an
23 hour, probably.

24 Q. So the pictures that they showed of the
25 Road house, that's your aunt and uncle's

L. J. - CROSS EXAM

1 house?

2 A. Yes, sir.

3 Q. And where did you say Telly stopped and
4 parked when you went over there?

5 A. Like almost to the trees.

6 Q. So how far away was that away from the
7 picture -- in the picture that we saw?

8 A. (No response.)

9 Q. **L. J.**, if you could turn around, is
10 that your aunt and uncle's trailer?

11 THE COURT: I need you to identify the
12 exhibit you're showing.

13 MR. SCHWACKE: This would be State's
14 Exhibit 21.

15 THE WITNESS: No, that's not the
16 trailer. The trailer is like further to the right.

17 BY MR. SCHWACKE:

18 Q. The next one over is actually their
19 trailer?

20 A. Yes, sir.

21 Q. Okay. Thank you.

22 Were Telly and your mom doing a lot of
23 talking that you weren't paying attention to?

24 A. Yes, sir.

25 Q. Did you ever pay attention to what they

L. J. - CROSS EXAM

1 were saying?

2 A. No, not really. Every time they
3 talked, they basically left.

4 Q. So they were having like a private
5 conversation you weren't a part of?

6 A. Yes, sir.

7 Q. So when you first go to the house in
8 the woods, the brick -- that had the bricks, that
9 house, about what time of day are we talking about
10 there?

11 A. It was in the morning time.

12 Q. Okay. And you stayed at that house for
13 how long?

14 A. Probably about 30 to 45 minutes.

15 Q. And you say at one point he put duct
16 tape on both you and your mother?

17 A. Yes, sir.

18 Q. Where did he put duct tape on you?

19 A. On my legs and wrists.

20 Q. And whereabouts?

21 A. Like in these areas. (Indicating)

22 Q. And, again, you were wearing khaki
23 pants?

24 A. Uh-huh.

25 Q. Were they long or short?

L. J. - CROSS EXAM

1 A. Like short.

2 Q. The first person that you talked to
3 that day, either on the phone or in person, after
4 you had gotten into the car and your mom is in the
5 car with you, who is the first person that you
6 talked to?

7 A. When my mother got in the car?

8 Q. She's in the car, right. On the phone
9 now, who is the first phone contact that you had
10 after your mom is now in the vehicle?

11 A. I think it was my grandma and my uncle.

12 Q. And your grandmother is named what?

13 A. Johnnie Ruth Jenkins.

14 Q. And who is the other person you said?

15 A. My uncle.

16 Q. Uncle. Were those texts or were those
17 talk?

18 A. Talking on the phone.

19 Q. And the phone you would have used,
20 because it's either your mom's or Telly's, was
21 whose?

22 A. I think it was Telly's.

23 Q. Okay. So Telly let you have the phone?

24 A. Uh-huh.

25 Q. Any instructions about his phone?

L. J. - CROSS EXAM

1 A. What do you mean? Like, how he told us
2 to use the phone? We had to put it on
3 speakerphone.

4 Q. Okay. And you're sitting where in the
5 car?

6 A. In the back seat.

7 Q. How big is that car?

8 A. Not that big.

9 Q. And so you go to the house, you talk to
10 Johnnie -- your grandmother, Johnnie, and your
11 uncle. What's his name?

12 A. Chris.

13 Q. Jenkins?

14 A. Uh-huh.

15 Q. And then the next person, the actual
16 live person you see after you leave that house, is
17 who?

18 A. His sister.

19 Q. And do you know her name?

20 A. No, I don't remember it.

21 Q. Do you know where she lived?

22 A. I know she lived in a brick house. I
23 don't know exactly where she lives.

24 Q. Had you been there before?

25 A. No, just that once.

L. J. - CROSS EXAM

1 Q. This is the only time that you've ever
2 been to her house?

3 A. Yes, sir.

4 Q. And this is to get food?

5 A. Yes, sir.

6 Q. Okay. So did you go inside or stay out
7 in the car?

8 A. We went inside.

9 Q. Okay. Where did you go?

10 A. We went in the kitchen and I had to use
11 the rest room.

12 Q. All right. So her house, if you walk
13 in the front door, there's a room. And then the
14 kitchen is just past that?

15 A. I don't remember how her house looks,
16 like inside of the house.

17 Q. Okay. You don't remember -- do you
18 remember where the bathroom was in her home?

19 A. I don't remember nothing about how her
20 house looked inside.

21 Q. But you were there?

22 A. Yes, sir.

23 Q. At one point, were you in the kitchen
24 alone?

25 A. No.

L. J. - CROSS EXAM

1 Q. You were never in the kitchen alone?

2 A. I don't believe so.

3 Q. Were you in the kitchen without Telly?

4 A. I don't remember.

5 Q. Because you were there to get money for
6 gas, correct?

7 A. No. We went to his sister's house to
8 get food.

9 Q. But you didn't hear him ask for gas
10 money as well while they were there?

11 A. I don't know if he asked for gas money
12 when we were there. I know we went to his aunt's
13 house for gas money.

14 Q. So let's stay at his sister's,
15 Beatrice. Okay. Do you remember her name?

16 A. No.

17 Q. Okay. So she's given you cupcakes,
18 she's given you Kool-aid to drink, she's given you
19 Sloppy Joe's and potato salad. And you all are all
20 eating that around her kitchen table while she's
21 serving food?

22 A. We didn't stay to eat the food.

23 Q. You didn't eat any of it in her house?

24 A. I ate some of it in her house.

25 Q. And then that got wrapped up and taken

L. J. - CROSS EXAM

1 with you, what wasn't --

2 A. It was wrapped up and we took it with
3 us.

4 Q. Where do you go next?

5 A. After we left her house, we went to his
6 aunt's house for gas money.

7 Q. And his aunt is who?

8 A. I don't know her name. I have never
9 met her.

10 Q. You've never met her?

11 A. No.

12 Q. You've never been in her house before?

13 A. No.

14 Q. You've never gone over there to her
15 house before in your mom's truck?

16 A. Not that I know of. Not that I
17 remember.

18 Q. Do you remember where she was when you
19 got there?

20 A. I think she was outside.

21 Q. Then where did you go?

22 A. After we left her house, we went to the
23 gas station.

24 Q. Because she gave you some money?

25 A. Uh-huh.

L. J. - CROSS EXAM

1 Q. Did you see how much?

2 A. No.

3 Q. And the gas station is the 52 Station?

4 A. Yes, sir.

5 Q. Have you been there before?

6 A. I don't know.

7 Q. So have you talked -- did you talk with
8 anybody else on the phone after you leave his
9 aunt's house?

10 A. No. I know we -- we had -- I know we
11 talked to -- on the phone, no. We haven't talked
12 to nobody else on the phone, I don't think.

13 Q. So you only made two phone calls the
14 entire time with your mom at that point?

15 A. No. I think it was only one.

16 Q. I thought you'd said that you had
17 spoken both to your -- Johnnie and to your uncle?

18 A. They were together.

19 Q. Okay. Not in separate phone calls?

20 A. No.

21 Q. You talked to both of them at the same
22 time. What about any other text messages?

23 A. There were no more text messages, that
24 I know of.

25 Q. I wasn't quite clear and understood

L. J. - CROSS EXAM

1 what you said about waving to the police. Tell me
2 about that.

3 A. He told us to try to get them to stop,
4 because he was going really fast and they were
5 basically chasing us. So we were waving to the
6 police for them to stop, because he told us to tell
7 them -- to try to get them to stop.

8 Q. So Telly is the one telling you to get
9 the police's attention to stop?

10 A. Yes.

11 MR. SCHWACKE: One moment, Your Honor.

12 THE COURT: Uh-huh.

13 BY MR. SCHWACKE:

14 Q. Didn't Beatrice substitute teach for
15 you at one point?

16 A. I don't know.

17 Q. You don't remember?

18 A. No. I don't remember half of the
19 teachers that I have at school; well, half of the
20 substitute teachers.

21 Q. This would have been the same woman
22 that you had seen that day?

23 A. I seen her, but I don't remember her
24 substituting for any of my classes.

25 MR. SCHWACKE: Thank you. That's all

1 of my questions.

2 THE COURT: Any redirect?

3 MS. WILLIAMS: No, Your Honor.

4 THE COURT: Ma'am, you may step down.

5 Madame forelady, ladies and gentlemen,

6 we are going to take a brief rest room break.

7 During the break, please do not discuss the case

8 and please leave your notepads in your seats.

9 If you would go with the bailiffs,

10 please.

11 (Jury out, 3:44 p.m.)

12 THE COURT: Who is the State's next

13 witness?

14 MS. WILLIAMS: Captain Bobby Shuler.

15 THE COURT: We will be at ease for 10

16 minutes.

17 (A recess transpired.)

18 THE COURT: It's my understanding you

19 all have agreed to State's 108 through 132, 143

20 through 150, 157 through 158, coming into evidence

21 without objection. Is that correct?

22 MS. WILLIAMS: Yes, Your Honor.

23 MR. SCHWACKE: Yes, Your Honor.

24 THE COURT: It will be marked and

25 admitted without objection.

1 (STATE'S EXH. 132 Photographs in
2 evidence.)

3 (STATE'S EXH. 143 - 150 Photographs in
4 evidence.)

5 (STATE'S EXH. 157 Photograph in
6 evidence.)

7 (STATE'S EXH. 158 Photograph in
8 evidence.)

9 THE COURT: Now, I need to address some
10 security concerns. There is way too much movement
11 in the gallery. I have instructed at the behest of
12 the deputies, they are going to control that
13 without my intervention. So if they feel like
14 there's too much movement, you're going to be
15 removed and not be allowed to return. So I need
16 you to govern yourselves accordingly.

17 State ready to proceed?

18 MS. WILLIAMS: Yes.

19 THE COURT: Defense ready to proceed?

20 MR. SCHWACKE: Yes.

21 THE COURT: Please bring in the jury.

22 And where is the next -- is the next
23 witness in the courtroom?

24 MR. POULOS: He's not. He's right
25 outside.

BOBBY RAY SHULER - DIRECT EXAM

1 THE COURT: Have them ready so we don't
2 have to wait. If you have a witness, they should
3 be in the courtroom.

4 (Jury in, 4:03 p.m.)

5 THE COURT: You may be seated.

6 Ladies and gentlemen, I hope you
7 enjoyed your break. We will now resume testimony.
8 You may call the next witness.

9 MR. POULOS: The State calls Bobby
10 Shuler.

11 BOBBY RAY SHULER,
12 being first duly sworn, testified as follows:

13 THE CLERK: Please state your full name
14 and spell your last.

15 THE WITNESS: Bobby Ray Shuler,
16 S-H-U-L-E-R.

17 THE COURT: You may proceed.

18 DIRECT EXAMINATION

19 BY MR. POULOS:

20 Q. Afternoon, Captain Shuler.

21 A. Afternoon.

22 Q. Tell us where you work.

23 A. Berkeley County Sheriff's Office.

24 Q. How long have you been there?

25 A. Approximately, 16 years.

BOBBY RAY SHULER - DIRECT EXAM

1 Q. What is your position there?

2 A. I'm currently the Captain over the
3 Investigations Division.

4 Q. What responsibility do you have as the
5 Captain of the Investigations Division?

6 A. My overall job is to see to the overall
7 function and day-to-day operations of the Criminal
8 Investigations Division.

9 Q. Are you familiar with the facts and
10 circumstances that led to this Defendant's arrest
11 in this case?

12 A. Yes, I am.

13 Q. Okay. Did you assist in that
14 investigation and the apprehension of this
15 Defendant?

16 A. Yes, I did.

17 Q. Explain to the jury what role you
18 played throughout the course of these incidents.

19 A. Back when that incident occurred, I was
20 a sergeant. I was one of the lead sergeants,
21 detectives. I responded to one of the addresses in
22 question, which was the [REDACTED] address. Once I
23 got there, I started coordinating with Detective
24 Wilson and several of the other detectives that
25 were there, along with coordinating the forensics

BOBBY RAY SHULER - DIRECT EXAM

1 response and just organizing the search with the
2 patrol division and other agencies.

3 Q. What other agencies were you working
4 with?

5 A. Initially, we were working with
6 Bonneau, St. Stephen, Berkeley County Sheriff's
7 Office, DNR got involved, Highway Patrol got
8 involved, SLED eventually got involved, also the
9 Federal Bureau of Prisons got involved, Charleston
10 County Sheriff's Office got involved. So I think
11 that pretty much wraps it up as far as agencies
12 involved.

13 Q. And each of those agencies had
14 representatives in the field searching?

15 A. They absolutely did.

16 Q. How did Berkeley County Sheriff's
17 Office first get involved in this case?

18 A. We received a call through dispatch and
19 the patrol deputies responded out to [REDACTED] Road
20 in reference to a possible kidnapping.

21 Q. Okay. And is [REDACTED] Road in
22 Berkeley County?

23 A. It is.

24 Q. Who called you from that address?

25 A. If I remember correctly, the caller was

BOBBY RAY SHULER - DIRECT EXAM

1 a member of Deadrene McHoney's family. I think
2 Chiquita -- Quetta Jenkins, I believe.

3 Q. Do you know why they called? Why you
4 responded to that residence?

5 A. The alleged kidnapping of both Deadrene
6 and **L. J.**, if I'm pronouncing that correct.

7 Q. Did detectives speak to Deadrene's
8 family members when they arrived?

9 A. They did.

10 Q. And did they indicate whether or not
11 the Defendant had picked up Deadrene from that
12 residence?

13 A. Yes, they did.

14 Q. After responding to Road, did
15 your office receive any other calls?

16 A. Yeah. While we were there, we received
17 another phone call, from a Johnnie Jenkins, which
18 is the mother of Deadrene McHoney and also the
19 grandmother of **L. J.**, stating that the
20 granddaughter had been kidnapped.

21 Q. What is her address?

22 A. Her address is Road.

23 Q. Okay.

24 A. That's also in Berkeley County.

25 Q. And that's the address that you

BOBBY RAY SHULER - DIRECT EXAM

1 personally responded to?

2 A. That's correct.

3 Q. What other departments responded?

4 A. The initial responding deputies, a
5 couple of detectives, and then also we had
6 Lieutenant Kokinda. He's a member of the forensics
7 unit.

8 Q. And did he attempt to collect evidence
9 there?

10 A. He did.

11 Q. Okay. Were there signs of forced entry
12 at the [REDACTED] house?

13 A. Yes. The back door lock to the actual
14 residence and there was also fresh pry marks on the
15 back door of the residence.

16 Q. After you went -- after your deputies
17 went to [REDACTED] Road and [REDACTED] Road, what action
18 did your agency take at that time?

19 A. Based off the fact that we had a
20 kidnapping and it met the criteria -- most people
21 are familiar with the Amber Alert -- we sent two
22 detectives to St. Stephen's PD to fax the paperwork
23 to SLED to issue the Amber Alert for **L. J.**
24 [REDACTED], and we also sent it to -- based off
25 information -- the facts and circumstances in this

BOBBY RAY SHULER - DIRECT EXAM

1 case, Detective Cortain was sent to the office to
2 start working on obtaining an arrest warrant for
3 the Defendant.

4 Q. Did your deputies of Berkeley County
5 speak to any of the Defendant's family members in
6 an attempt to locate them?

7 A. Yes. Detective Riser and Detective
8 Weise both responded to meet with a Margaret
9 McClam, which is the mother of the Defendant, on
10 that. They responded over to Williamsburg County,
11 which is the county that joins up to Berkeley
12 County, and met with a Emma Cooper and also met --
13 which is the aunt of the Defendant, and they also
14 responded to and met with a Ms. Beatrice Jones,
15 which is a sister of the Defendant.

16 Q. Do you recall where Ms. Cooper and Ms.
17 Jones resided?

18 A. Ms. Cooper, if my memory refreshes me,
19 lives at [REDACTED] Avenue, which is located in
20 Salter, South Carolina, which is also right there
21 in Williamsburg County. And Ms. Beatrice Jones,
22 she lives at [REDACTED] Circle, which is located in
23 Lane, South Carolina, and they all just kind of
24 butt up together there in Williamsburg County.

25 Q. Okay. Did your deputies make any

BOBBY RAY SHULER - DIRECT EXAM

1 initial contact with the Defendant?

2 A. They did. After speaking with Emma
3 Cooper and leaving there, they were still in
4 Williamsburg County, they were leaving to head back
5 to Highway 52 and in the process of doing that,
6 they received a phone call advising them that the
7 Defendant was back --

8 MR. SCHWACKE: Your Honor, I would
9 object; hearsay.

10 THE COURT: Overruled. It's not
11 offered for the truth, but for the details of the
12 investigation.

13 You may proceed.

14 THE WITNESS: They were proceeding back
15 to [REDACTED] Circle, which is located in Lane. In
16 the process of that, they spotted the Defendant's
17 vehicle and the Defendant, along with both of the
18 victims.

19 BY MR. POULOS:

20 Q. Did they pursue them?

21 A. They did.

22 Q. How did that go?

23 A. They saw the vehicle, they turned
24 around on it, they passed it, they turned around on
25 it, at which point they saw both victims --

BOBBY RAY SHULER - DIRECT EXAM

1 MR. SCHWACKE: Your Honor, hearsay
2 again.

3 THE COURT: You need to establish that
4 it's within his rational perception and he saw
5 this.

6 MR. POULOS: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 By MR. POULOS:

9 Q. Did your agency at some point respond
10 to [REDACTED] Road in Williamsburg County?

11 A. Yes.

12 Q. Why did you respond there?

13 A. Pursuant to a high-speed pursuit,
14 that's where the pursuit stopped, behind an
15 abandoned residence at [REDACTED] Road, where the
16 Defendant fled into the woods on foot and both
17 victims were located.

18 Q. Was he presumed to be armed at that
19 time?

20 A. Yes, he was.

21 Q. Okay. After Berkeley County arrived at
22 that location on [REDACTED] Road, what did your agency
23 do in the course of its investigation?

24 A. Obviously, we immediately took both
25 victims to make sure they were secure, secured the

BOBBY RAY SHULER - DIRECT EXAM

1 area as a crime scene, we also began to set up a
2 perimeter around the area with all the responding
3 agencies to try to help locate the Defendant after
4 he fled into the woods.

5 Q. Okay. Was the Defendant eventually
6 apprehended at some point?

7 A. Yes; he was, later that night.

8 Q. Was your agency involved in that
9 apprehension?

10 A. We were.

11 Q. And explain how an apprehension
12 occurred.

13 A. We received a tip that the Defendant
14 was possibly back over in the area of [REDACTED]
15 Circle in Lane, South Carolina, where his sister
16 lives. So all the responding agencies converged on
17 that area and we set up a perimeter and then we
18 started searching it with bloodhounds and
19 helicopters and everything else, trying to see if
20 we could locate the subject.

21 Q. Okay. Deputy, I'm going to show you
22 what is marked as State's 107. Do you recognize
23 that map?

24 A. Yes, sir. This is a map of the area
25 where [REDACTED] Court is in Lane, South Carolina.

BOBBY RAY SHULER - DIRECT EXAM

1 Q. Does it fairly and accurately represent
2 the street layout as it was on the day of the
3 apprehension?

4 A. Yes, sir.

5 MR. POULOS: I would offer this into
6 evidence, Your Honor.

7 THE COURT: Any objection?

8 MR. SCHWACKE: None, Your Honor.

9 THE COURT: Marked and admitted without
10 objection, Number 107.

11 (STATE'S EXH. 107 Map in evidence.)

12 BY MR. POULOS:

13 Q. Captain, if you would use the laser
14 pointer here and identify for the jury where [REDACTED]
15 [REDACTED] Court is.

16 A. [REDACTED] Court is right here.
17 (Indicating)

18 Q. Do you know where approximately the
19 Defendant was apprehended?

20 A. I want to say he was somewhere in this
21 wood line, in this area. I know it was near the
22 tracks.

23 Q. Okay. Thank you.

24 Did your investigation reveal anything
25 about the area of Fairview Drive and Red Rose

BOBBY RAY SHULER - DIRECT EXAM

1 Avenue near Matilda Circle?

2 A. Based off after the victims were
3 located and everything else, through that
4 investigation, we determined the Fairfield View and
5 Rose Drive area was an area where the -- one of the
6 victims was sexually assaulted prior to all the
7 pursuit and everything else.

8 Q. Is that near Matilda Circle?

9 A. That's correct.

10 Q. Is Fairview Drive and Red Rose Avenue,
11 is that in Berkeley County?

12 A. That's also in Berkeley County.

13 Q. I would like to show you State's 102.
14 I show you State's 102. Do you recognize this map,
15 Captain Shuler?

16 A. Yes.

17 Q. And is that -- what is that a map of?

18 A. It's an overall map of both -- some of
19 the incident locations in Berkeley County, and also
20 it goes -- crosses into the county line into
21 Williamsburg County and some locations of interest
22 in Williamsburg.

23 Q. Does that fairly and accurately
24 represent how the roads were laid out at the time
25 of the incident?

BOBBY RAY SHULER - DIRECT EXAM

1 A. That is correct.

2 MR. POULOS: Your Honor, I would offer
3 that into evidence.

4 THE COURT: Any objection?

5 MR. SCHWACKE: No objection.

6 THE COURT: Without objection, State's
7 102.

8 (STATE'S EXH. 102 Map in evidence.)

9 MR. POULOS: The State has Exhibit 102
10 blown up, if Captain Shuler could step down for
11 demonstrative purposes.

12 THE COURT: You may.

13 THE WITNESS: Okay.

14 BY MR. POULOS:

15 Q. Captain, I would like to have you point
16 out some of these locations for the jury.

17 THE COURT: You need to switch places
18 so he's speaking to the Court Reporter.

19 BY MR. POULOS:

20 Q. Can you identify [REDACTED] Way?

21 A. [REDACTED] Way is located right
22 here.

23 Q. Okay. And is that Johnnie Jenkins's
24 address?

25 A. That's correct.

BOBBY RAY SHULER - DIRECT EXAM

1 Q. And that's in Berkeley County?

2 A. That's correct.

3 Q. Can you identify the area of Fairview
4 Road, Red Rose Avenue and Matilda Circle?

5 A. This is Fairfield Drive and Red Rose
6 Avenue.

7 Q. Okay. Is that in Berkeley County as
8 well?

9 A. That's also in Berkeley County.

10 Q. Please show the jury where 116 --
11 excuse me, [REDACTED] Road is.

12 A. [REDACTED] Road is right down here.

13 THE COURT: Are you-all saying grass or
14 brass?

15 THE WITNESS: [REDACTED].

16 BY MR. POULOS:

17 Q. Is that also in Berkeley County?

18 A. That's correct.

19 Q. Captain, where is [REDACTED] Road?

20 A. It's all the way up at the top of the
21 map. As you see, this is in Williamsburg County.

22 Q. Okay. Captain, how long would it take
23 to get from [REDACTED] Road to [REDACTED] Road?

24 A. Probably -- well, if you're driving the
25 speed limit, maybe 20 minutes, maybe.

BOBBY RAY SHULER - DIRECT EXAM

1 Q. Okay. Can you point out where [REDACTED]
2 [REDACTED] Court is?

3 A. Right here on the map, not too far from
4 the area of [REDACTED] Road.

5 Q. Is that in the area where the Defendant
6 was apprehended, approximately?

7 A. Yes, in that area of [REDACTED] Road in
8 Williamsburg.

9 Q. Now, it's not on the map, but if you
10 can point out where approximately [REDACTED] Avenue
11 would be.

12 A. [REDACTED] Road, even though it's not on
13 the map, it's real close in the area of [REDACTED]
14 Road, so it's going to be up in this area up here.
15 (Indicating)

16 Q. You indicated that Detective Riser had
17 spoken to an Emma Cooper?

18 A. Yes; the aunt of the Defendant.

19 Q. And is it your understanding, that was
20 her address?

21 A. That's correct.

22 Q. You can take your seat, Captain.

23 What kind of range are we dealing with
24 here square mileage-wise to encompass all of these
25 different sites?

BOBBY RAY SHULER - CROSS EXAM

1 A. Maybe from [REDACTED] Road to about where
2 [REDACTED] Court is, I would have to say maybe 30,
3 40 miles.

4 Q. Is that part of the reason why other
5 agencies were brought in to assist?

6 A. Absolutely.

7 Q. Were there bloodhound teams there as
8 well?

9 A. Yeah. We had bloodhound units from
10 three different agencies to include ours, and also
11 two different aviation units participating, both
12 SLED and Charleston County aviation units.

13 MR. POULOS: Thank you, Captain.

14 THE COURT: Any questions for the
15 witness?

16 CROSS-EXAMINATION

17 BY MR. SCHWACKE:

18 Q. Do you have a copy of the report that
19 you prepared in this case?

20 A. I do not, no. I was the supervisor on
21 scene to advise everybody and was giving people
22 tasks and their responsibilities.

23 Q. So, in other words, you didn't do one?

24 A. That's correct.

25 Q. And is that what they teach you at the

BOBBY RAY SHULER - CROSS EXAM

1 Academy?

2 A. There was nothing -- my involvement was
3 strictly a supervision position and that's what I
4 did.

5 Q. And after three years, it would have
6 been good to have something you yourself prepared
7 to go back and refresh your memory from?

8 A. Sure, if I had something like that.

9 Q. So whose reports did you use to refresh
10 your memory?

11 A. I had both Detective Riser and
12 Detective Wilson, the detectives that actually
13 responded there.

14 Q. And they did reports?

15 A. That's correct.

16 Q. So the accuracy of your information
17 depends on their accuracy?

18 A. I remember the case very well. It was
19 one of those cases that stuck in your mind.

20 MR. SCHWACKE: One moment, Your Honor.

21 THE COURT: Yes, sir.

22 BY MR. SCHWACKE:

23 Q. You didn't participate in the
24 collection of any evidence?

25 A. I did not.

BOBBY RAY SHULER - CROSS/REDIRECT EXAM

1 Q. This got complicated for the Berkeley
2 County Sheriff's Office, didn't it?

3 A. As far as?

4 Q. Well, at one point you have two
5 different case numbers while working the same
6 incident?

7 A. Yeah. We have two different -- two
8 different incidents; two different locations, and
9 two different incidents.

10 Q. So reports were being done under both
11 numbers?

12 A. Yes, that's correct.

13 Q. And you didn't do a report at all?

14 A. That's correct.

15 MR. SCHWACKE: Okay. Thank you.

16 That's all the questions I have.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. POULOS:

20 Q. The reports of the detectives that you
21 reviewed, you were supervising those detectives
22 during the incident?

23 A. That's correct.

24 MR. POULOS: Thank you. Nothing
25 further.

1 THE COURT: Any objection to the
2 witness being excused?

3 MR. SCHWACKE: No, Your Honor.

4 MR. POULOS: None from the State.

5 THE COURT: Sir, you're excused.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 Call your next witness.

9 MS. WILLIAMS: The State calls Johnnie
10 Ruth Jenkins.

11 THE COURT: Is her testimony going to
12 take you beyond 5:00?

13 MS. WILLIAMS: No, Your Honor.

14 Your Honor, may we approach?

15 THE COURT: Sure.

16 (Bench conference.)

17 MS. WILLIAMS: I anticipate her
18 testimony being relatively short, but then Chris
19 Jenkins being even shorter. He flew in from
20 Atlanta --

21 THE COURT: Well, then I suggest you
22 make good use of your time because I'm not going
23 far beyond 5:00.

24 MS. WILLIAMS: Okay. Thank you.

25 (End of bench conference.)

JOHNNIE RUTH JENKINS - DIRECT EXAM

1 JOHNNIE RUTH JENKINS,

2 being first duly sworn, testified as follows:

3 THE CLERK: Thank you. Please take a
4 seat. State your full name and spell your last
5 name.

6 THE WITNESS: Johnnie Jenkins,
7 J-E-N-K-I-N-S.

8 THE COURT: You may proceed.

9 DIRECT EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Thank you, Ms. Jenkins. Where do you
12 live?

13 A. In St. Stephen.

14 Q. What is your address?

15 A. [REDACTED] Way.

16 Q. Were you living there back on
17 October 28, 2013?

18 A. Yes.

19 Q. Who did you live with?

20 A. Me and a friend of mine that lived
21 together, my boyfriend.

22 Q. And what about anybody else that was
23 living there?

24 A. L. J. and Brianna.

25 Q. Are these -- how are they related?

JOHNNIE RUTH JENKINS - DIRECT EXAM

- 1 A. My grands.
- 2 Q. And does **L. J.** have a nickname?
- 3 A. It's -- we call her **L. J.**.
- 4 Q. Are you a little nervous?
- 5 A. Yes.
- 6 Q. It's okay. Is your address in Berkeley
- 7 County?
- 8 A. Yes, it is.
- 9 Q. Do you know Telly McClam?
- 10 A. Yes, I do.
- 11 Q. How do you know him?
- 12 A. I've been knowing him a long time. His
- 13 sister that passed away, me and her were best
- 14 friends.
- 15 Q. Okay. And did he ever date any of your
- 16 children?
- 17 A. No.
- 18 Q. What about Deadrene?
- 19 A. Yes. Not back then, but, yeah, about a
- 20 year ago.
- 21 Q. Okay. Could it have been at the time
- 22 of October 28, 2013; was that around the time they
- 23 dated?
- 24 A. Well, yes, uh-huh.
- 25 Q. Had she been living with him?

JOHNNIE RUTH JENKINS - DIRECT EXAM

1 A. Yes.

2 Q. And do you remember where she was
3 living at the time of October 28, 2013?

4 A. She left him and went to my son.

5 Q. What is your son's name?

6 A. Christopher Jenkins.

7 Q. Where did he live?

8 A. [REDACTED] Road.

9 Q. Okay. Do you know who lived there?

10 A. His wife, him, his kids, and Deadrene
11 and her two young girls.

12 Q. Okay. And where did you work at the
13 time this event occurred?

14 A. Timberland, Berkeley County School
15 Assistant for the buses.

16 Q. How long had you worked there?

17 A. 16 years.

18 Q. Do you still work there?

19 A. Huh-uh.

20 Q. What did you do exactly?

21 A. Monitored work for special needs and
22 monitored kids on the bus.

23 Q. What time did you go to work in the
24 morning?

25 A. I normally -- sometimes I leave home

JOHNNIE RUTH JENKINS - DIRECT EXAM

1 about quarter to five.

2 Q. Like 4:45?

3 A. Uh-huh.

4 Q. And --

5 THE COURT: Ma'am, if you could say yes
6 or no.

7 THE WITNESS: Okay.

8 THE COURT: Thank you.

9 You may continue.

10 MS. WILLIAMS: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 BY MS. WILLIAMS:

13 Q. Did you work on that date, October 28,
14 2013?

15 A. Yes.

16 Q. How did you get to work that day?

17 A. My boyfriend took me.

18 Q. Okay. And how did you ordinarily get
19 to work?

20 A. I drive. I had a van.

21 Q. Okay. Why did you not drive that day?

22 A. Because I didn't have the van at the
23 time.

24 Q. Okay. And who was left at the home
25 when you left?

JOHNNIE RUTH JENKINS - DIRECT EXAM

1 A. L. J.

2 Q. Okay. And was anyone else there with
3 her?

4 A. No.

5 Q. So when you left, what, if anything,
6 does she do? What was your routine?

7 A. When I leaves out, I normally call her
8 and wake her up and tell her I'm about to leave and
9 I want her to lock the door behind me.

10 Q. In that area where you live, how close
11 is your next neighbor? Like how many houses?

12 A. One house over, then it's a house
13 across the woods area, but nobody can't see. The
14 house next door, somebody can see there.

15 Q. Can you describe like the woods or the
16 roads around there?

17 A. I have a road on the -- my house -- I
18 come down Way, so the road come into my
19 house. And there's a road on the side, a little
20 road on the side before you get into my area where
21 I lives at. So a road goes straight in the back
22 and goes around into another road that goes out.
23 Then there is another road in the back, but nobody
24 can travel that road.

25 Q. Okay. And is it fair to say that it's

JOHNNIE RUTH JENKINS - DIRECT EXAM

1 pretty isolated?

2 A. Yes.

3 Q. And so after you got to work, did you
4 hear anything else about your granddaughter that
5 day?

6 A. When I was coming back into the school
7 just before I was getting ready to get off the bus,
8 my son called.

9 Q. Without telling us what he said
10 specifically, what happened next? What did you do
11 next?

12 A. I went to try and clock out and tried
13 to get to my house so I could see what was going
14 on.

15 Q. When you were -- your son called, what
16 was his demeanor like? How did he sound?

17 A. He was like, Mom, Mom? I said, what?
18 He said, Telly got **L. J.**. I said, no, he don't.
19 And he said, yes, he does, Momma. I said, no, he
20 don't. And I said, oh, my God.

21 Q. How were you feeling about that?

22 A. Not very good at all.

23 Q. Where did you go next?

24 A. I went to my son's house from the
25 school, and when I got there, a lot of TV -- the

JOHNNIE RUTH JENKINS - CROSS EXAM

1 newspeople was there, some of them, and they were
2 around and polices. And then later I said, I have
3 to go to my house and check it out. And I went to
4 my house not thinking of looking at the door. I
5 wanted to know how he got in there. So I went and
6 put the key in the door and I went on in the house.
7 I check around and I see nothing. I came back out
8 and I look at the door and I said, oh, my God, he
9 went in through my door. He pried my door open.

10 Q. Okay. And could you see the damage on
11 the door?

12 A. Uh-huh, I could.

13 MS. WILLIAMS: Okay. Beg the Court's
14 indulgence.

15 By MS. WILLIAMS:

16 Q. Which door of your home was that?

17 A. The back door.

18 MS. WILLIAMS: No further questions.
19 Answer any that the defense might have.

20 THE COURT: You may proceed.

21 CROSS-EXAMINATION

22 BY MR. SCHWACKE:

23 Q. So the only phone call you got all day
24 was from your son?

25 A. Well, I got that call from him, and

JOHNNIE RUTH JENKINS - CROSS EXAM

1 once I got there and when I left there, I went to
2 my house, I got another phone call.

3 Q. And that was from whom?

4 A. That was from my daughter, Deadrene.

5 Q. And that was about what time?

6 A. At that time, I think like about 8:30
7 or something.

8 Q. And she spoke with you?

9 A. Yes. She said, Mommy, we're okay.
10 Telly just wanted to talk to me. And he said don't
11 call the cops, that he would bring us back at
12 daybreak -- dark, you know.

13 MR. SCHWACKE: Thank you. That's all
14 the questions I have.

15 THE COURT: Any redirect?

16 MS. WILLIAMS: No.

17 THE COURT: Any objection to the
18 witness being excused? From the State?

19 MS. WILLIAMS: No, Your Honor.

20 THE COURT: From the defense?

21 MR. SCHWACKE: None, Your Honor.

22 THE COURT: Ma'am, you're excused.

23 Call your next witness.

24 MS. WILLIAMS: Christopher Jenkins; the
25 next witness is Deadrene McHoney and.

CHRISTOPHER JENKINS - DIRECT EXAM

1 THE COURT: And who is after that?

2 MS. WILLIAMS: Lieutenant Murphy.

3 CHRISTOPHER JENKINS,

4 being first duly sworn, testified as follows:

5 THE CLERK: Have a seat, state your
6 full name for the record and spell your last name.

7 THE WITNESS: Christopher Jenkins,
8 J-E-N-K-I-N-S.

9 DIRECT EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Where do you live, Mr. Jenkins?

12 A. [REDACTED] Circle, Jonesboro,
13 Georgia.

14 Q. Where were you living back on October
15 28, 2013?

16 A. [REDACTED] Lane, St. Stephen.

17 Q. Who did you live with at that time?

18 A. Me and my wife, my kids.

19 Q. How many kids did you have? Do you
20 have?

21 A. Five.

22 Q. And did someone else come to live with
23 you sometime around October 28, 2013?

24 A. Yes, my sister.

25 Q. And who else?

CHRISTOPHER JENKINS - DIRECT EXAM

- 1 A. And my nieces.
- 2 Q. And had she been there long?
- 3 A. A few days.
- 4 Q. Who did she live with before that?
- 5 A. The Defendant.
- 6 Q. Okay. And is that Mr. McClam?
- 7 A. Yes.
- 8 Q. And where were you working back on
- 9 October 28, 2013?
- 10 A. For Adams Electric, downtown
- 11 Charleston.
- 12 Q. And what time did you used to leave for
- 13 work in the morning?
- 14 A. Six.
- 15 Q. And who is **L. J.** to you?
- 16 A. My niece.
- 17 Q. And was she living with you or someone
- 18 else?
- 19 A. She was living with my mom.
- 20 Q. Okay. And who is that?
- 21 A. Johnnie Ruth Jenkins.
- 22 Q. Okay. And at some point on
- 23 October 28th, 2013, did you hear from your niece?
- 24 A. Yes.
- 25 Q. What name does she go by?

CHRISTOPHER JENKINS - DIRECT EXAM

1 A. **L. J.**

2 Q. And where were you when you heard from
3 her?

4 A. I was at work.

5 Q. And what did she sound like? Can you
6 describe her demeanor?

7 A. She -- like she was -- like something
8 just wasn't right, like she was scared of
9 something.

10 Q. Okay. And did she call you or text you
11 or how did you hear from her?

12 A. She called me.

13 Q. And what did she tell you?

14 A. She wanted to speak to her mom, it was
15 very urgent that she speak to her mom.

16 Q. Did she tell you why?

17 A. She kept beating around the bush, I
18 just need to talk to my mom, it's really, really
19 important.

20 Q. Did she tell you who she was with?

21 A. No, ma'am, but from the number that she
22 called me, I noticed the number.

23 Q. Okay. And whose number was that?

24 A. Mr. McClam.

25 Q. And you recognized the number?

CHRISTOPHER JENKINS - DIRECT EXAM

1 A. Yes.

2 Q. Do you still remember that number, or
3 no?

4 A. No, ma'am.

5 Q. And did she tell you she was with
6 Mr. McClam at first or --

7 A. No. When I asked her, that's when the
8 phone hung up.

9 Q. Okay. And what did you do next?

10 A. I called my wife.

11 Q. And did you tell her what happened?

12 A. Yes.

13 Q. And did you stay at work that day?

14 A. I left.

15 Q. And where did you go?

16 A. Home.

17 Q. Why did you leave?

18 A. Because I wanted to see what was going
19 on with my niece.

20 Q. And at some point during that day, did
21 you hear from your sister or your niece?

22 A. Yes, they called me.

23 Q. And what was the nature of that
24 conversation?

25 A. Actually, it was Mr. McClam. It was

CHRISTOPHER JENKINS - DIRECT EXAM

1 like, everything is all right, I just wanted to
2 talk to them.

3 Q. That's what he said to you?

4 A. That's what he said. And I was like,
5 bring them back.

6 Q. Did you have any reason to believe that
7 he was going to bring them back?

8 A. No.

9 Q. And did you talk to -- after you talked
10 to Mr. McClam -- did he call you from that same
11 number?

12 A. Yes.

13 Q. And you recognized that number as his?

14 A. Yes.

15 Q. And is that the same number that she
16 was texting you from?

17 A. Called me.

18 Q. Called you, sorry. And do you remember
19 about what time that was?

20 A. I'd just got to work and it would
21 normally take me roughly 45 minutes to an hour, so
22 it was probably around seven.

23 Q. Okay. And when you got back home and
24 you heard from Mr. McClam, do you remember about
25 what time that was?

CHRISTOPHER JENKINS - DIRECT EXAM

1 A. Around nine I want to say.

2 Q. Okay. And did he bring them back?

3 A. No, he didn't.

4 Q. Did you ever get any phone calls about
5 the police from anybody?

6 A. Yes, my sister.

7 Q. What did she say?

8 A. Don't call the police.

9 MS. WILLIAMS: I don't have any other
10 questions for you, Mr. Jenkins. Please answer any
11 from the defense.

12 THE COURT: Any questions for the
13 witness?

14 MR. SCHWACKE: No questions.

15 THE COURT: Any objection to the
16 witness being excused? From the State?

17 MS. WILLIAMS: No, Your Honor.

18 THE COURT: From the defense?

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: Sir, you're excused.

21 THE COURT: Counsel approach, please.

22 (Bench conference.)

23 THE COURT: Do you have any other short
24 witnesses?

25 MS. WILLIAMS: I don't.

1 THE COURT: Who is next? You don't
2 have anybody else here to testify?

3 MS. WILLIAMS: We don't, Judge.

4 THE COURT: I hate to waste 20 minutes.
5 Be mindful of your time tomorrow.

6 (End of bench conference.)

7 THE COURT: Madame Forelady, ladies and
8 gentlemen, we're going to take advantage of the
9 break in testimony to take our evening recess.
10 During the break, please do not discuss the case.
11 Please leave your notepads in your seats. Please
12 do not read, watch, or listen to any media accounts
13 about this case and don't do any independent
14 research on the Internet.

15 We'll resume in the morning at 9:30.
16 You will come directly to the area as directed by
17 the bailiff and as soon as everyone has arrived, we
18 will resume testimony. Have a great evening.
19 We'll see you in the morning.

20 (Jury out, 4:37 p.m.)

21 THE COURT: You may be seated.
22 Anything before we adjourn? From the State?

23 MS. WILLIAMS: No, Your Honor.

24 THE COURT: From the defense?

25 MR. SCHWACKE: No, Your Honor.

1 THE COURT: See you in the morning at
2 9:30. If there's anything else that you can
3 premark, I suggest that you take the time to do
4 that with the Court Reporter before you leave this
5 evening.

6 (These proceedings were recessed at
7 4:42 p.m., to be continued March 1, 2016 at 9:30
8 a.m.)

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1 (The following proceedings were held in
2 the Court of General Sessions, March 1, 2016,
3 Berkeley County, South Carolina, at 9:39 a.m.)

4 THE COURT: State ready to proceed?

5 MS. WILLIAMS: Yes, Your Honor. We
6 have one thing to inform the Court.

7 THE COURT: Yes, ma'am.

8 MS. WILLIAMS: We have gotten with your
9 clerk and eliminated several witnesses off of the
10 witness list. We think we will probably be done by
11 Wednesday morning, the latest. We still have some
12 chain witnesses, but we will be relying on State v.
13 Hatcher to eliminate some of the insignificant
14 chain witnesses, and at the appropriate time, if
15 you want to hear argument, we will certainly --

16 THE COURT: Argument on what?

17 MS. WILLIAMS: If there is an objection
18 to us not bringing --

19 THE COURT: Yeah. I'll determine
20 how -- you know, if I need argument, I'll entertain
21 it. If not, I will take up any objections that are
22 contemporaneously made.

23 MS. WILLIAMS: Understood. Thank you,
24 Your Honor.

25 THE COURT: Anything before we proceed,

1 from the defense?

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: Now, Madame Court Reporter,
4 you indicated you needed some additional time to
5 deal with exhibits this morning. If you could,
6 tell me what those exhibits are.

7 THE COURT REPORTER: Yes, ma'am. The
8 defense has agreed to 103 through 106, 133 through
9 137, and 141 through 142.

10 THE COURT: Mr. Schwacke, is that
11 correct? 103 through 106, 133 through 137, and 141
12 through 142.

13 MR. SCHWACKE: I'm sorry, Your Honor,
14 could you --

15 THE COURT: 103 through 106?

16 MR. SCHWACKE: Yes, ma'am.

17 THE COURT: 133 through 137?

18 MR. SCHWACKE: Yes, ma'am.

19 THE COURT: And 141 through 142? 141
20 and 142.

21 MR. SCHWACKE: Yes, ma'am.

22 THE COURT: Okay. So those come in
23 without objection.

24 (STATE'S EXH. 103 - 106 in evidence.)

25 (STATE'S EXH. 133 - 137 in evidence.)

1 (STATE'S EXH. 141 - 142 in evidence.)

2 THE COURT: Is the State ready to
3 proceed?

4 MS. WILLIAMS: Yes, Your Honor.

5 THE COURT: Is the defense ready to
6 proceed?

7 MR. SCHWACKE: Yes, ma'am.

8 THE COURT: Who is the State's first
9 witness?

10 MR. POULOS: Kevin Murphy.

11 THE COURT: Where is he?

12 MR. POULOS: Right outside the
13 courtroom.

14 THE COURT: I need you to have somebody
15 to have your witnesses available right -- without
16 us having to look for them.

17 MS. WILLIAMS: We're sorry about that
18 yesterday, Your Honor. We're going to have them
19 stacked right there. We had a long talk with all
20 of them yesterday, and we have two extra people
21 helping us today.

22 THE COURT: Thank you, appreciate it.

23 (Jury in, 9:39 a.m.)

24 THE COURT: You may be seated. Good
25 morning, ladies and gentlemen of the jury. I hope

KEVIN MURPHY - DIRECT EXAM

1 everyone had a pleasant evening. We are now going
2 to resume testimony. I would ask that you give the
3 attorneys your undivided attention.

4 MR. POULOS: The State calls Kevin
5 Murphy.

6 THE COURT: Sir, come forward -- oh,
7 he's right there. You may proceed.

8 KEVIN MURPHY,
9 being first duly sworn, testified as follows:

10 THE CLERK: Have a seat and state your
11 full name for the record, and spell your last name.

12 THE WITNESS: Kevin P. Murphy,
13 M-U-R-P-H-Y.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. Morning, Detective.

18 A. Morning.

19 Q. Tell us where you work.

20 A. I work at the Berkeley County Sheriff's
21 Office.

22 Q. How long have you worked there?

23 A. Since January 2003.

24 Q. What is your current position?

25 A. I'm a detective lieutenant.

KEVIN MURPHY - DIRECT EXAM

1 Q. And what responsibility does that
2 entail?

3 A. I do Internet crimes against children,
4 investigations, cellular phone forensics and some
5 computer forensics.

6 Q. As part of the cellular phone
7 forensics, do you exact data from cellular phones?

8 A. Yes.

9 Q. Explain how you go about extracting the
10 data.

11 A. We have equipment that specializes in
12 cellular phone extraction and other devices similar
13 to that. It's called Cellebrite. There is a
14 device that you attach the phone to that extracts
15 the data and puts it on a thumb drive, puts the
16 thumb drive into a computer, transfers data over to
17 the computer, and then there's software that parses
18 it out, which means it takes the raw data and puts
19 it into a format that you can read and understand.

20 Q. How many times have you used the
21 Cellebrite system to retrieve data from cell
22 phones?

23 A. Between 150 and 200 phones.

24 Q. Do you have any training or
25 certifications in using that program?

KEVIN MURPHY - DIRECT EXAM

1 A. Yes. I have two certifications, one in
2 what is called a Universal Forensics Extraction
3 Device, which is the device I explained you hook
4 the phone to, and also a certification in the
5 software.

6 Q. Is the Cellebrite system commonly used
7 among law enforcement?

8 A. It's probably the most popular.

9 Q. How long have you been using it?

10 A. Oh, probably about six years.

11 Q. Okay. Did you retrieve data from a
12 phone in this case?

13 A. I did.

14 MR. POULOS: May I approach, Your
15 Honor?

16 THE COURT: You may.

17 BY MR. POULOS:

18 Q. This is marked as State's 101 and
19 identified by a previous witness. Do you recognize
20 that phone?

21 A. I do.

22 Q. And is that one of the phones that you
23 extracted data from in this case?

24 A. Yes.

25 Q. When did you conduct that data

KEVIN MURPHY - DIRECT EXAM

1 extraction?

2 A. I would have to look at the report.

3 Q. Detective, I will show you what is
4 marked as Exhibit 161. Do you recognize that
5 document?

6 A. Yes, sir, it's one of the extraction
7 reports.

8 Q. Is that the extraction report from the
9 phone sitting in front of you now?

10 A. It is.

11 Q. Do you know? Are there unique
12 identifying marks?

13 A. There is. It's what's called an MEID
14 and that matches the MEID on the phone and the
15 model of the phone.

16 Q. What is the model and the last few
17 digits of the MEID?

18 A. The model number is -- it's a Samsung
19 SCH-U365, also referred to as a Gusto 2, and the
20 text version of the MEID is A, I want to say five
21 0s, 442DBC9A.

22 Q. Okay. Detective, does your report
23 refresh your recollection as to when you conducted
24 this data extraction?

25 A. Yes.

KEVIN MURPHY - DIRECT EXAM

1 Q. When was it?

2 A. 29th of October 2013.

3 Q. Where did it take place?

4 A. In my office, Berkeley County Sheriff's
5 Office.

6 Q. Was there retrievable data on the
7 phone?

8 A. Yes.

9 Q. Is that data contained in that report?

10 A. Yes.

11 Q. I'm showing you State's Exhibit 160.
12 Do you recognize that one-page document?

13 A. Yes. It's an extraction of what
14 appears to be SMS messages from this report.

15 Q. Is that an excerpt from that full
16 report?

17 A. Yes.

18 Q. Okay. And does that excerpt contain
19 the same information that is contained on the page
20 in the report that it's taken from?

21 A. Yes.

22 Q. Okay. Were you able to confirm that
23 the text messages listed in that excerpt are
24 physically contained on the phone? Did you
25 physically go into the phone and look at those

KEVIN MURPHY - DIRECT EXAM

1 messages?

2 A. Yes. I personally looked at the phone
3 and text messages and matched the messages on the
4 phone.

5 Q. Is the excerpt of the report a fair and
6 accurate depiction of the messages that are on the
7 phone?

8 A. Yes.

9 MR. POULOS: Your Honor, I would offer
10 this into evidence as State's 160.

11 MR. SCHWACKE: No objection.

12 MR. POULOS: Permission to publish,
13 Your Honor?

14 THE COURT: You may proceed.

15 (STATE'S EXH. 160 in evidence.)

16 By MR. POULOS:

17 Q. Detective, can you please read the text
18 of the excerpt to the jury, starting with the text
19 message at the top going down to the bottom there?

20 A. Starting at line 64?

21 Q. Yes.

22 A. Do you want me to read the phone
23 numbers or --

24 Q. Just the messages are fine.

25 A. Well, some of them have, as you can

KEVIN MURPHY - DIRECT EXAM

1 see, the letter U instead of Y-O-U. I will read
2 them phonetically, if that's acceptable.

3 Either you're gonna call or not. Stop
4 fucking playing and call me now, exclamation point.
5 I think that may be an exclamation point, it's kind
6 of close. I am asking you please don't do this,
7 exclamation point. Please, exclamation point.

8 Trese, please call me. So I mean totally nothing
9 to you, question mark. That's what you saying,
10 question mark. Then call me, prove it, exclamation
11 point. So I guess not. Oh, you with a nigga,
12 question mark. Are you trying to make me lose my
13 mind, snap, question mark. Must be, exclamation
14 point. And then looks like D-N-T, which I would
15 imagine is, don't do this, Trese. I am sincerely
16 begging you to give me what I need. I am at my
17 breaking point. All I want is you and that's all I
18 have to say. Now call me. If, and then it looks
19 like an ampersand, and you can't this time and have
20 some true love and understanding, then I D-N-T, I
21 guess that's don't, know what else to tell you --
22 to tell you. Are you with me or not, question
23 mark. I give you five M-I-N, five minutes, to
24 prove to me what it is, ampersand, and that's --
25 and that's word as bond, several exclamation

KEVIN MURPHY - DIRECT EXAM

1 points, and then an ampersand, or it could be a
2 smiley face. I really can't tell by looking. No
3 more -- no more games for me. Fuck it, I will give
4 up on everything and throw my life away and run
5 away forever. And I mean that, exclamation point.
6 No probation -- no probation for, looks like,
7 C-L-A-R-K, and I don't know what that last thing
8 is, A-D possibly, and that's that. Then fucking
9 call me. Keep it real. Then call me back. You
10 are choice -- I guess it's you're choice,
11 exclamation point. You got 'till 1:00 to make it
12 right. I do love you and that's very much,
13 exclamation point.

14 Ma, this is -- Ma, this is -- I can't
15 see if that's Lay -- I can't really see on either
16 one of them. I am with Telly. He said for you not
17 to call the police cause all he wants to do is talk
18 to you. Chris, **L. J.** Telly got me. Call --
19 looks like, Chris -- Chris, **L. J.** Telly got me.
20 Call, looks like, D-H-I-S phone now. No police or
21 other family members involved. Momma, Telly got
22 me. Chris, **L. J.** Please D-H-A -- looks like
23 D-H-A police or any other family members. Uncle,
24 D-H-I-S, **L. J.** Need to -- need, and then it's
25 T-A-M-A, M-A-M-A ASAP. Tell her -- tell her, looks

KEVIN MURPHY - DIRECT EXAM

1 like T-A, call on D-H-I-S number. It's important.
2 And then it looks like Quetta, Q-U-E-T-T-A,
3 D-H-I-S, [REDACTED]. Tell Momma to call me on D-H-I-S
4 number ASAP please. Momma, D-H-A-A phone please,
5 it's [REDACTED]. And then, who dis, question mark, busy
6 cops.

7 Q. Detective, on line 81 where it says, I
8 do love you and that's very much, approximately
9 what time was that message sent, according to your
10 report?

11 A. It was sent on the 28th of October 2013
12 at 1:00 and 51 seconds.

13 Q. That's a.m.?

14 A. Yes.

15 Q. Okay. And the message that started
16 with line 82, Mom, this is [REDACTED], I am with Telly,
17 when is that message sent?

18 A. 10/28/2013, 5:58:47 a.m.

19 Q. The time stamps on your report, are
20 those accurate time stamps?

21 A. The -- after I had performed these --
22 the extraction, I had noticed that the UFED
23 software updated and when it did, it messed with
24 the Daylight Savings Time setting, and I noted that
25 in the report.

KEVIN MURPHY - CROSS EXAM

1 Q. So the times in your report are an hour
2 off from what they would be in the phone --

3 A. Yes.

4 Q. -- because of Daylight Savings Time?

5 A. I noted that in the report.

6 MR. POULOS: No further questions.

7 THE COURT: Any questions for the
8 witness?

9 MR. SCHWACKE: Yes, Your Honor.

10 THE COURT: You may proceed.

11 CROSS-EXAMINATION

12 BY MR. SCHWACKE:

13 Q. Officer Murphy, how long have you been
14 doing these extractions?

15 A. Five or six years we've had the device.

16 Q. And you've been with the department how
17 long?

18 A. Since 2003.

19 Q. And this is one of the several or many
20 different types of law enforcement programs that do
21 this?

22 A. I don't understand the question.

23 Q. The extraction process, there's more
24 than one company that --

25 A. Yes.

KEVIN MURPHY - CROSS EXAM

1 Q. About how many?

2 A. I don't know. There's -- there's some
3 that do, you know, like partial stuff where they
4 will -- if you can get the data off the phone, they
5 will extract -- they will parse it out. There's
6 only maybe two or three major companies that
7 produce it.

8 Q. And you've been working with it since?

9 A. I don't know the exact date.

10 Q. In this case, how many phones were you
11 given to do an extraction from?

12 A. I don't recall how many phones I was
13 given.

14 Q. Do you have a report that you can
15 refresh your memory?

16 A. If I had the report. That I can
17 recall, I only recall the one phone, but I --
18 honestly, I can't be sure.

19 (DFT. EXH. 1, Copy of search warrant,
20 was marked for identification.)

21 (DFT. EXH. 2, Copy of search warrant,
22 was marked for identification.)

23 BY MR. SCHWACKE:

24 Q. I'm going to show you what's been
25 marked as Defendant's Exhibit Number 1 and ask if

KEVIN MURPHY - CROSS EXAM

1 you're familiar with that.

2 A. Yes.

3 Q. And what is that?

4 A. This is the search warrant for this
5 phone.

6 Q. I'm going to show you what's been
7 marked as Defendant's Exhibit 2, for
8 identification.

9 A. Yes.

10 Q. Are you familiar with that?

11 A. Yes.

12 Q. And what is that?

13 A. This is for a second phone. They are
14 both Samsung, different model numbers and different
15 unique identifiers.

16 Q. You did the extraction on both of
17 those?

18 A. According to this, I did the extraction
19 on this as well.

20 Q. Okay. With this equipment, does it in
21 any way allow you to capture information that had
22 been user deleted?

23 A. Yes.

24 Q. What does it allow you to retrieve?

25 A. It varies. It can -- it depends on,

KEVIN MURPHY - CROSS EXAM

1 number one, the type of extraction or whether or
2 not I can do that. It depends where the data is
3 stored on the phone whether or not it can be
4 retrieved. And it is capable of retrieving images,
5 texts. It can carve strings out of deleted -- out
6 of the deleted data, if that makes sense, but it
7 doesn't know exactly where it goes because they're
8 kind of disassociated, if you will.

9 So the answer to your question is, it
10 varies on what can be extracted -- what can be
11 extracted has been previously deleted, on several
12 factors.

13 Q. So in some instances, it cannot recover
14 that information?

15 A. In some instances, deleted data cannot
16 be recovered.

17 Q. And there was nothing to prevent the
18 sheriff's department from attempting to secure all
19 of the information regarding this phone and this
20 account through the particular provider company?

21 A. You're saying submit a search warrant
22 to the phone company?

23 Q. Yes.

24 A. There was nothing to prevent us from
25 doing that, no, sir.

KEVIN MURPHY - CROSS EXAM

1 Q. And in that instance, everything is
2 obtained, even things that might have been user
3 deleted and not able to be picked up from the
4 Cellebrite?

5 A. I noticed on that phone it says
6 Verizon. Verizon claims, for instance, that they
7 retain text message content, which would be --
8 there's two things from text messages that you can
9 recover. One of them is the fact that a text
10 message was sent on a certain date, it was 12
11 kilobytes in size and what the times were and some
12 other digital data, but not what was in the
13 message. The other one is text message content,
14 which is, please stop by the store and pick me up a
15 half gallon of milk.

16 Q. What you just read?

17 A. Correct. Verizon claims that their
18 data recovery rate -- that their retention period
19 for text messages are three to five days. I found
20 that is not always true, so with the -- by the time
21 the search warrant had been served, would those
22 text messages have been on Verizon's servers? I
23 can't say that with any a surety whatsoever.

24 Q. Well, you were doing the extraction the
25 day after this incident allegedly happened?

KEVIN MURPHY - CROSS EXAM

1 A. Yes.

2 Q. One day?

3 A. Correct.

4 Q. And it's obvious in reading what you
5 read that there were responses coming in that
6 didn't show on that printout?

7 A. I don't know if there were responses
8 that didn't show up.

9 Q. There were questions being asked and
10 then there would be a different question being
11 asked, as if there was a conversation going on, but
12 part of it was missing, correct?

13 A. I guess that's a personal -- I've --
14 honestly, I've read so many, you can't -- there's
15 no -- I can't -- I can't say that. That would be
16 an opinion; I don't know.

17 Q. Can you tell from the information that
18 you extract who is the owner of a particular phone?

19 A. Sometimes there are names on the phone
20 or other personal identifying information. I
21 believe the name -- I think it was Darrel on that
22 phone, whoever owned the phone put on there. Other
23 than that, no.

24 Q. Is there a way to tell what account is
25 on that phone, user account?

KEVIN MURPHY - CROSS EXAM

1 A. It would go by the phone number.

2 Q. And did you have a phone number on
3 this?

4 A. There is a phone number, yes.

5 Q. Have you used a program other than
6 Cellebrite?

7 A. Do I use?

8 Q. Have you?

9 A. I have occasionally used another
10 program called BlackLight. Not to extract the
11 data, but to parse it out. And usually with
12 iPhones, because that's what it's primarily
13 designed for, IOS systems.

14 Q. And so I want to understand a little
15 bit more about deletions, because if you look
16 through the reports that you generated from your
17 extraction, it shows intact, but it has no other
18 information. Others of them show deleted. Is that
19 a function of the machine? Is that --

20 A. Yes. The machine -- the software that
21 parses it out, not the -- again, let me just
22 explain. There is a two-step process. One of them
23 is a little black box, if you will, which is
24 basically a small computer. That is what you hook
25 the phone to to extract the data from the phone.

KEVIN MURPHY - CROSS EXAM

1 It extracts the data. Depending on the type of
2 extraction you do, there's logical and physical
3 extractions.

4 Physical is basically making a carbon
5 copy of the phone's memory chip itself. The other
6 one is called logical, where it extracts the kind
7 of data that you would -- if you were physically
8 looking on the phone yourself, basically. Data
9 that is deleted is sent into unallocated space,
10 which is basically what the phone would look at as
11 empty space.

12 You will be able to retrieve stuff like
13 that using the physical; however, most phones, for
14 their SMS, which is your simple text messages, they
15 have usually a sequel-like database and when the
16 messages are deleted -- it's like a box. Okay.

17 Here's the difference: It's like a
18 box. It's like if you delete something in the box,
19 it just stays in the box, just goes down to the
20 bottom. If it totally gets deleted, it gets thrown
21 outside the box. That's the best way to explain
22 it. That's one of the things that makes it -- that
23 makes it possible for us to delete -- to recover
24 deleted text messages with their date, time stamp
25 and the rest of the information, not just the

KEVIN MURPHY - CROSS EXAM

1 string that says, pick me up milk, without telling
2 you what it really was. If that helps answer your
3 question.

4 Q. And, again, you were doing this
5 extraction on the 29th of October?

6 A. Correct.

7 Q. And that would have been the day after
8 the alleged incidents?

9 A. I believe so.

10 Q. A search warrant was not obtained for
11 records from the cell phone service provider
12 company?

13 A. I don't know. I wouldn't have been
14 responsible for that.

15 Q. You would have been provided the
16 report, I'm assuming, to explain to other people
17 what was involved in that?

18 A. No. Not necessarily, no, sir.

19 Q. They don't come to you as the resident
20 expert?

21 A. Occasionally, but not always.

22 Q. So no search warrant was provided to
23 the company that --

24 A. I don't know the answer to that
25 question.

KEVIN MURPHY - REDIRECT EXAM

1 Q. Okay.

2 A. If it's not in the report, then the
3 answer is no.

4 Q. You don't know whose phone that is?

5 A. No. I go by the chain of custody that
6 was given to me. I examine the phone and it goes
7 back into the evidence.

8 Q. And your extraction report shows there
9 was some information, at least, deleted from the
10 phone?

11 A. Yes.

12 MR. SCHWACKE: No further questions.

13 THE COURT: Any redirect?

14 MR. POULOS: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. Detective, Mr. Schwacke asked you if
18 there appeared to be some obvious deletions from
19 the text screen string we read to the jury. Is it
20 equally plausible those are just unanswered text
21 messages?

22 A. Honestly, I don't think anybody can
23 give you -- you know, other than the people who
24 sent and received them.

25 Q. Okay. I'm going to show you State's

KEVIN MURPHY - REDIRECT EXAM

1 162. Do you recognize this photograph?

2 A. Yes.

3 Q. And what is that a photograph of?

4 A. A photograph of this -- this particular
5 phone that's turned on, what you see.

6 Q. Is the screen saver on the phone
7 visible?

8 A. Yes.

9 Q. And what does the screen saver say?

10 A. In this image, it says in the center,
11 Darnell, D-A-R-N-E-L-L, and then it says Tuesday,
12 March 1, 8:53 a.m., and then new contacts.

13 THE COURT: Sir, if you could speak
14 directly into the microphone.

15 THE WITNESS: Oh, I'm sorry, ma'am.

16 THE COURT: That's all right.

17 MR. POULOS: The State offers this into
18 evidence as 162.

19 THE COURT: You need to show it to
20 Counsel.

21 MR. POULOS: I did.

22 MR. SCHWACKE: No objection.

23 THE COURT: Marked and admitted without
24 objection.

25 (STATE'S EXH. 162 in evidence.)

KEVIN MURPHY - REDIRECT EXAM

1 BY MR. POULOS:

2 Q. Darnell, is it your understanding
3 that's the Defendant's middle name?

4 A. I don't know.

5 Q. Okay. But that photograph came from
6 that phone, correct?

7 A. Yes.

8 Q. And the text message string you read to
9 the jury came from that phone?

10 A. Yes.

11 MR. POULOS: One moment. No further
12 questions, Your Honor. Thank you.

13 THE COURT: Any objection to the
14 witness being excused? From the State?

15 MR. POULOS: None from the State.

16 THE COURT: From the defense?

17 MR. SCHWACKE: None, Your Honor.

18 THE COURT: Sir, you're excused.

19 Call your next witness.

20 MS. WILLIAMS: The State would call
21 Deadrene McHoney, M-C-H-O-N-E-Y.

22 DEADRENE MCHONEY,
23 being first duly sworn, testified as follows:

24 THE CLERK: State your full name for
25 the record and spell your last name.

DEADRENE MCHONEY - DIRECT EXAM

1 THE WITNESS: Deadrene Waltrese

2 McHoney, M-C-H-O-N-E-Y.

3 THE COURT: If you would spell your
4 first name for the Court Reporter.

5 THE WITNESS: You said spell it?

6 THE COURT: Yes, ma'am.

7 THE WITNESS: D-E-A-D-R-E-N-E,
8 W-A-L-T-R-E-S-E.

9 THE COURT: You may proceed.

10 MS. WILLIAMS: Thank you.

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Do you sometimes go by a different
14 name?

15 A. Yes.

16 Q. And what is that?

17 A. Trese.

18 THE COURT REPORTER: Can you speak into
19 the microphone? Pull it down. Thank you.

20 BY MS. WILLIAMS:

21 Q. Is that the name that the defendant
22 called you?

23 A. Yes, ma'am.

24 Q. Do you see the defendant here today?

25 A. Yes.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. Where is he?

2 A. Right over there. (Indicating)

3 Q. Okay. What's he wearing?

4 A. A gray suit.

5 MS. WILLIAMS: Please let the record
6 reflect that this victim has identified the
7 defendant, Telly McClam.

8 Q. (By MS. WILLIAMS) And you have been in
9 a relationship with Mr. McClam; is that correct?

10 A. Yes.

11 Q. What is his full name?

12 A. Telly Darnell McClam.

13 Q. And how long were you in a relationship
14 with him?

15 A. Since, like, about August 2013 up until
16 like about a week before the incident.

17 Q. Okay. And you've had some trouble in
18 the past, have you not?

19 A. Yes, ma'am.

20 Q. Do you have a forgery from 2006 --

21 A. Yes.

22 Q. -- on your record?

23 A. Yes.

24 Q. And you're all finished with that, you
25 completed it?

DEADRENE MCHONEY - DIRECT EXAM

1 A. Yes, ma'am.

2 Q. Paid everything back. And that was --
3 that was almost ten years ago?

4 A. Yes.

5 Q. And how long had you known Mr. McClam
6 before you dated him?

7 A. Oh, we grew up together. We went to
8 elementary school together and then he moved away.

9 Q. Okay. And how many children do you
10 have?

11 A. Four girls.

12 Q. And at the time of October 2013, where
13 were you living?

14 A. Repeat the question.

15 Q. At the time all this occurred, where
16 were you living? October 28, 2013.

17 A. At my brother's house.

18 Q. Okay. How many people were in that
19 house?

20 A. My brother, five -- his five kids, my
21 brother, his wife, me and my two young daughters.

22 Q. So this wasn't a permanent situation?

23 A. Huh-uh.

24 Q. And why were you there?

25 A. Because I had just left the defendant.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. And how did he feel about that?

2 A. He didn't like it.

3 Q. And at some point during the time that
4 you had moved in with your brother -- first of all,
5 how many days had you been there; do you know?

6 A. No more than probably about five.

7 Q. During that time, did he try to contact
8 you at all?

9 A. Yes.

10 Q. And did you ever answer any of the
11 calls in the beginning?

12 A. I don't think I did.

13 Q. Okay. The evening before this event
14 occurred with your daughter and you, did you get
15 some text messages and some phone calls from Mr.
16 McClam?

17 A. I did.

18 Q. And did you answer any of them?

19 A. No.

20 Q. Why is that?

21 A. Because I know what he wanted and I
22 knew he wasn't going to stop.

23 Q. Were you awake the whole time you were
24 getting the calls?

25 A. No.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. Do you remember what time you went to
2 sleep that night?

3 A. No, ma'am, I don't.

4 Q. When was the first time -- how long had
5 you dated him, did you say?

6 A. From August 2013 up until about a week
7 before the incident happened.

8 Q. And what was the thing that finally
9 made you go with the defendant that day?

10 MR. SCHWACKE: Your Honor, may we
11 approach?

12 THE COURT: You may.

13 (Bench conference.)

14 MR. SCHWACKE: She's pitting for
15 information.

16 THE COURT: If she said, what made you
17 go with him that day, it's res gestae. That's a
18 continuum of events. She's entitled to say why she
19 went with him. As long as it's not a reference to
20 something that happened in the past.

21 MS. WILLIAMS: I've warned them not to
22 say anything about the two prior --

23 THE COURT: I need to be sure.

24 MS. WILLIAMS: I'll do a hearing even
25 when it's not necessary, I promise you. Like

DEADRENE MCHONEY - DIRECT EXAM

1 yesterday --

2 THE COURT: Uh-huh. I need to be sure.
3 I mean, you can't control her. What do you
4 anticipate her response to be?

5 MS. WILLIAMS: That she got a call from
6 her daughter and --

7 THE COURT: Okay. That's res gestae.

8 (End of bench conference.)

9 THE COURT: Overruled, you may proceed.

10 BY MS. WILLIAMS:

11 Q. So at some point you got in a car with
12 Telly McClam that day?

13 A. I did.

14 Q. And up until that point, you just
15 testified that you didn't want anything to do with
16 him, you were ignoring the calls?

17 A. Right.

18 Q. What made you get in the car?

19 A. Because he had my daughter.

20 Q. Without going into any specifics, why
21 did that alarm you?

22 A. Because he physically harmed me before,
23 so I was scared for her.

24 Q. So you got in the car and what
25 happened? What was the first thing he told you?

DEADRENE MCHONEY - DIRECT EXAM

1 A. I think he said he just wanted to talk
2 to me.

3 Q. Okay.

4 A. And then he pulled the gun from under
5 his right leg and showed me the gun and then he had
6 the knife in the driver door panel.

7 Q. Okay. Do you remember if he said
8 anything about the gun?

9 A. I don't remember.

10 Q. Do you remember telling police officers
11 that he said, I got this right here, and showing
12 you the gun?

13 A. He could have said that.

14 Q. Do you remember telling them that?

15 A. Yes, ma'am.

16 Q. You haven't watched the -- or listened
17 to the tape-recorded interview that you gave the
18 police detectives, did you?

19 A. No.

20 Q. And you call **L. J.** **L. J.**?

21 A. Yes.

22 Q. And that's the daughter he had?

23 A. Yes, ma'am.

24 Q. When you got into the car, where did
25 you sit?

DEADRENE MCHONEY - DIRECT EXAM

1 A. In the passenger seat.

2 Q. Where was [REDACTED]?

3 A. Sitting behind the driver's seat.

4 Q. At this point did you know of anything
5 that had transpired between [REDACTED] and him?

6 A. No.

7 Q. Where was the gun that you saw?

8 A. Under his right leg.

9 Q. And did you see any other weapon in the
10 car at that time?

11 A. He showed me the knife.

12 Q. Okay. Do you remember what the knife
13 looked like?

14 A. It's a green knife, like razor blade
15 sharp, folded in.

16 Q. And that was with the defendant?

17 A. Yes, ma'am.

18 MS. WILLIAMS: Your Honor, I'm going to
19 show her what has been marked as State's 96. I'm
20 going to show defense counsel first.

21 May I approach?

22 THE COURT: Uh-huh.

23 BY MS. WILLIAMS:

24 Q. What is this?

25 A. That's the knife that he had.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. This is a folding -- this folds all the
2 way out?

3 A. Yes.

4 Q. How would you describe that blade?

5 A. Like razor sharp.

6 Q. Now, after you left the home that you
7 shared with your brother -- what town was that in?

8 A. Berkeley.

9 Q. Berkeley County?

10 A. Uh-huh.

11 Q. Do you remember what the town was?

12 A. 41 area.

13 Q. Is that near St. Stephens or --

14 A. In between St. Stephens and Bonneau.

15 Q. Where did you go next?

16 A. He drove like through Westerville, the
17 back road, and we came out -- like ended up in
18 Pineville by J. K. School, went straight across all
19 the way to Highway 52 and then headed towards Lane,
20 South Carolina.

21 Q. And when you're talking about going
22 through Pineville and 52, is that still Berkeley
23 County?

24 A. Yes.

25 Q. When you get to the Lane area, what

DEADRENE MCHONEY - DIRECT EXAM

1 county is that?

2 A. Williamsburg.

3 Q. Where did you wind up?

4 A. At a cabin.

5 Q. Had you been to that cabin before?

6 A. No, ma'am.

7 Q. And did he tell you why you were there?

8 A. He said it was his -- his dad had

9 something to do with it.

10 Q. Okay. What did it look like?

11 A. An abandoned cabin.

12 Q. When you were driving there, what kind
13 of car were you in?

14 A. A small blue car.

15 Q. Do you know whose car that was?

16 A. His mom.

17 Q. Okay. And on the way over, did he say
18 anything to you that you remember?

19 A. He kept saying that he loved me and he
20 just wanted to talk to me, and that I thought he
21 was playing with me.

22 Q. He thought you were playing with him?

23 A. Uh-huh.

24 Q. And when you got to the cabin, what
25 happened?

DEADRENE MCHONEY - DIRECT EXAM

1 A. **L. J.**, my daughter, had to use the rest
2 room. Well, he broke into the cabin. At first, we
3 got to the cabin, he parked the car across the
4 street behind some bushes and then we walked over
5 and crossed to the cabin. He went to the side door
6 and couldn't get in. He went to the front door and
7 couldn't get in. He had a hammer and busted into
8 the side door.

9 Q. Do you remember what the hammer looked
10 like?

11 A. Just a regular small hammer. It had
12 some duct tape on it.

13 Q. What kind of cigarettes does Mr. McClam
14 smoke?

15 A. Newports 100, in the box.

16 Q. I'm going to show you some pictures
17 behind you if you could turn around and look at
18 them.

19 Denita, would you please put up State's
20 80?

21 Tell the jury what that's a picture of.

22 A. That's a picture of the cabin that he
23 broke into and that's a picture of the car.

24 Q. And could you put up State's 48?

25 Now, what is this a picture of?

DEADRENE MCHONEY - DIRECT EXAM

1 A. A cigarette lighter, a phone, and a Bud
2 Light can.

3 Q. And it looks like just a phone back.
4 Why would there be a phone back in his car when you
5 were traveling around and not the whole phone?

6 A. Because he kept the phone back off and
7 the batteries out until he wanted us to make a
8 phone call to our family members and tell them,
9 don't call the police.

10 Q. Why did he take the batteries and phone
11 the backs off?

12 A. Because he said the police can't track
13 the phone like that.

14 Q. Do you know if that's true or not?

15 A. I'm not sure.

16 Q. State's 46. And what is that a picture
17 of?

18 A. A pack of Newport Box 100s.

19 Q. State's 51. Is that the door that he
20 broke into?

21 A. Yes, ma'am.

22 Q. State's 82. Is that -- tell us what
23 that is. Is that inside the cabin?

24 A. I'm not sure.

25 MR. SCHWACKE: Your Honor, may we

DEADRENE MCHONEY - DIRECT EXAM

1 approach?

2 THE COURT: Yes.

3 (Bench conference.)

4 MR. SCHWACKE: I'll object next time.

5 THE COURT: Leading?

6 MR. SCHWACKE: Leading the witness on
7 the photographs, like, is that the door he broke
8 in.

9 THE COURT: I'm listening. Is the
10 objection leading?

11 MS. WILLIAMS: I'll stop leading.

12 THE COURT: Sustained, leading.

13 (End of bench conference.)

14 THE COURT: You may proceed.

15 BY MS. WILLIAMS:

16 Q. State's Exhibit 64. Do you recognize
17 that picture?

18 A. That's the living room of the cabin.

19 Q. Okay. And is there anything about that
20 couch that you remember about that day?

21 A. That's where me and [L. J.] sat when she
22 came from the rest room and that's where he
23 duct-taped our feet and our hands together.

24 Q. And I'm going to show you State's 92.
25 Oh, 93, I'm sorry. What is that?

DEADRENE MCHONEY - DIRECT EXAM

1 A. The hammer that he had to break into
2 the cabin.

3 Q. Is that the one that Telly McClam used
4 to break into the cabin?

5 A. Yes.

6 Q. And you recognize it because --

7 THE COURT: Watch the leading.

8 MS. WILLIAMS: Okay. Your Honor, at
9 this time we would offer State's 93.

10 THE COURT: Any objection?

11 MR. SCHWACKE: No.

12 THE COURT: Without objection, marked
13 and admitted in evidence.

14 (STATE'S EXH. 93 in evidence.)

15 BY MS. WILLIAMS:

16 Q. Now, when you first got there, where
17 did Mr. McClam put his car?

18 A. Across the street.

19 Q. Okay. And why did he do that, if you
20 know?

21 A. I guess because it wasn't his --

22 MR. SCHWACKE: Objection.

23 THE COURT: Sustained; speculation.
24 You need to establish a foundation that's within
25 her rational perception.

DEADRENE MCHONEY - DIRECT EXAM

1 BY MS. WILLIAMS:

2 Q. Did he ever tell you why he put the car
3 across the street?

4 A. He didn't want anyone to see it.

5 Q. And did the car remain there?

6 A. Not the whole time.

7 Q. Okay. And why did he tell you he was
8 tieing you up with duct tape?

9 A. Because he was going back across the
10 street to get the car and he didn't want us to run,
11 so he duct-taped us together.

12 Q. What part?

13 A. He duct-taped our hands, our wrists
14 together like this (Indicating) and our arms
15 together.

16 Q. And what color was the duct tape?

17 A. Silver.

18 Q. And do you know how long you were there
19 being duct-taped?

20 A. It was just probably long enough for
21 him to go out and get the car, and he searched
22 around in the house for a little bit.

23 Q. And when he was searching around the
24 house for a little bit, what did he find, if
25 anything?

DEADRENE MCHONEY - DIRECT EXAM

1 A. I think he had some beer. I think it
2 was Bud Light, some Diet Coke or Pepsi soda, and
3 some shotgun bullets.

4 Q. Okay. And where was the gun at this
5 time?

6 A. He had it on him.

7 Q. Okay. And did you all see the gun?

8 A. He kept it in -- he had on like a
9 hoodie, I think. And he kept it like in the front
10 pocket.

11 Q. Did you know where the knife was?

12 A. No, not at that time.

13 Q. Okay. And did he say anything to you
14 or touch you or do anything like that when he was
15 leaving to move the car?

16 A. Yes, he did. He actually said that, I
17 could kill you all right now and no one would know,
18 and then after he duct-taped me, he turned around
19 smiling and walked to me and tapped me on the face
20 and said oh, yeah, your daughter got good pussy and
21 good head.

22 Q. Is that the first time you learned that
23 he raped your daughter?

24 A. Yes, ma'am.

25 Q. After that, when he came back and went

DEADRENE MCHONEY - DIRECT EXAM

1 through the house and found those items, what
2 happened next?

3 A. He took the tape off of us and then we
4 left.

5 Q. I'm going to show you what's been
6 marked as State's 54. If you can turn around, can
7 you tell us what that's a picture of?

8 A. The back of -- the trunk of the car.

9 Q. Okay. And do you see any items in
10 there that you recognize?

11 A. His clothes, the gray duct tape and I
12 think some sneakers that he had on.

13 Q. I'm going to hand you -- may I
14 approach?

15 THE COURT: You may.

16 BY MS. WILLIAMS:

17 Q. I'm going to hand you this little
18 pointer. If you can point to the duct tape.

19 A. It's right there. (Indicating)

20 Q. Okay. Thank you. State's 66, do you
21 recognize what's in that picture?

22 A. Yes, ma'am, that's the duct tape that
23 he taped us with.

24 Q. And 67, what is that a picture of?

25 A. Some more of the duct tape that he took

DEADRENE MCHONEY - DIRECT EXAM

1 off of us.

2 Q. Okay. Thank you.

3 Now, during the course of your
4 relationship with Mr. McClam, there were times even
5 close to this event where you -- how did you feel
6 about him?

7 A. I started to hate him.

8 Q. But did you always hate him?

9 A. I didn't always hate him. The last few
10 months in the relationship, things just totally
11 turned around. He started being abusive and
12 talking to me all sorts of ways.

13 Q. Without going into those details, were
14 there times when you expressed different emotions
15 to him, even when things were going wrong? Did you
16 sometimes let him know a different type of emotion?
17 Did you sometimes tell him that you didn't hate him
18 --

19 A. Yes, ma'am.

20 Q. -- even when things were bad?

21 A. Yes.

22 Q. In fact, even after he was arrested,
23 didn't you sometimes tell him you loved him?

24 A. Yes.

25 Q. So after you left the cabin, where did

DEADRENE MCHONEY - DIRECT EXAM

1 you go next?] Do you even know what time it was by
2 this time?

3 A. No, ma'am.

4 Q. What time was it that you started
5 getting calls from your daughter? Do you remember
6 what time you woke up?

7 A. I was actually still asleep. My
8 sister-in-law brought the phone in the living room
9 and told me that my daughter, **L. J.**, was on the
10 phone, she needed to talk to me.

11 Q. And do you know about what time you
12 left Road?

13 A. Like after seven.

14 Q. Okay. And so after the cabin, do you
15 know -- do you have any idea what time it was at
16 that point?

17 A. No.

18 Q. Where did you go next?

19 A. To his sister's house.

20 Q. Okay. And what did you do at his
21 sister's house?

22 A. Me and my daughter went to the rest
23 room, but before we got into the house, he told us
24 -- before we went into the house, he told us to act
25 normal. We went into the house, he took his sister

DEADRENE MCHONEY - DIRECT EXAM

1 and he took her into a room and talked about two
2 minutes while me and my daughter used the rest
3 room. We came back out and sat down and she came
4 in and I guess Mr. McClam told her that my daughter
5 wanted something to eat. She went into the kitchen
6 and fixed I think some leftovers that she had.

7 Q. Okay. And you didn't run away?

8 A. No, ma'am.

9 Q. Did you tell the sister that you were
10 being held against your will?

11 A. No, ma'am.

12 THE COURT: You need to say yes or no.

13 Q. (By MS. WILLIAMS) Could you repeat your
14 answer?

15 A. No, ma'am.

16 Q. And why?

17 A. Why didn't I run?

18 Q. Yes.

19 A. Because I know what he was capable of.

20 Q. And did you and your daughter have any
21 time to form a plan? Was there any time that you
22 were alone for any length of time?

23 A. No.

24 Q. After the sister's house, what did you
25 do? Do you know how long you were there?

DEADRENE MCHONEY - DIRECT EXAM

1 A. No longer than about 20 minutes.

2 Q. What did you do next?

3 A. He called his aunt on the phone because
4 he realized that the car was running low on gas.
5 He called and asked her if he could get \$5 of gas.

6 Q. And was he able to do that?

7 A. Yes, ma'am.

8 Q. And so where does the aunt live?

9 A. It's somewhere in Salters.

10 Q. And is that -- how far away is that
11 from the sister's house?

12 A. Not too far.

13 Q. When you got there, who got out of the
14 car?

15 A. Telly did.

16 Q. Okay. Where were you and your
17 daughter?

18 A. Sitting in the car.

19 Q. Did you communicate with the aunt and
20 anyone else at that house?

21 A. No, ma'am.

22 Q. What kind of area is that?

23 A. It's almost like a remote area. It's
24 just like her trailer was one spot and there was a
25 house a couple of -- like maybe about a hundred

DEADRENE MCHONEY - DIRECT EXAM

1 foot up and then another abandoned trailer. Other
2 than that, it was a lot of woods.

3 Q. Exhibit 105, please, State's 105. Now,
4 can you show us where the aunt's house is with the
5 -- with the pointer? The red one.

6 A. This is it. (Indicating)

7 Q. Okay. Do you know who lives in any of
8 the other houses?

9 A. Mr. McClam's family.

10 Q. Okay. And what's surrounding that?
11 It's hard to tell from this aerial, but you've been
12 there. What is that?

13 A. It's just like -- that's the field;
14 it's a bunch of fields and woods.

15 Q. Okay. All right. Thank you. What did
16 you do after you got the \$5?

17 A. Went to the 52 gas station.

18 Q. And who pumped the gas?

19 A. Mr. McClam did.

20 Q. And where was **L. J.**?

21 A. In the car.

22 Q. And where did you go?

23 A. Into the gas station to pay for the
24 gas.

25 Q. And did you tell anyone in the gas

DEADRENE MCHONEY - DIRECT EXAM

1 station you were being held against your will?

2 A. No, ma'am, I was so afraid.

3 Q. Besides going to the aunt's house and
4 sister's house and the gas station, was there
5 anywhere else that you went?

6 A. In the woods.

7 Q. Tell us about that.

8 A. We went in the woods and we was riding
9 around for like an hour. He said he was looking
10 for a spot, because if the cops had any helicopters
11 or anything looking for us, he wanted to park under
12 some trees so the car wouldn't be seen.

13 Q. And so how many times did you go into
14 the woods?

15 A. Maybe like about three times.

16 Q. Do you know for sure? Do you remember
17 for sure?

18 A. It was about three times.

19 Q. Okay. And what happened when you would
20 go into the woods?

21 A. My daughter was -- I know she was
22 scared, so I asked him, can we get out of the car
23 and talk. And he did agree to that. We walked
24 away from the car, like around a limb that was
25 hanging down so my daughter couldn't see us. And I

DEADRENE MCHONEY - DIRECT EXAM

1 asked him why was he doing this? And he was facing
2 the woods, not facing me at the time.

3 And that's when he pulled the gun out
4 of his pocket and he pointed it towards me and
5 said, this is what I brought you out for. And I
6 started begging and pleading for my life, and I
7 guess he felt sorry, or whatever. And then he
8 said, well, I'm going to kill **L. J.** then. And I
9 started begging and pleading for her life.

10 Q. Did he say why he was going to kill
11 **L. J.**?

12 A. No.

13 Q. What condition was **L. J.** in physically?
14 Like describe what she was wearing and what was
15 going on.

16 A. She was frantic and scared. She had on
17 a pair of his big, like, khaki short pants.

18 Q. Where was her underwear and all --
19 where were her clothes?

20 A. I think he had them in the trunk,
21 because he made her take them off earlier.

22 Q. Was there anything going on with her
23 body at that time?

24 A. She was on her menstruation.

25 Q. And did she have on any underwear?

DEADRENE MCHONEY - DIRECT EXAM

1 A. I don't think she had any underwear on.

2 Q. You don't know for sure?

3 A. Huh-uh.

4 Q. Okay. And what else happened in the
5 woods? That was just one of the times?

6 A. Yes, ma'am.

7 Q. Did he say -- did he tell you any of
8 the plans he had for you?

9 A. Yes, ma'am. He said that -- he
10 promised me that he would take my daughter back at
11 like dusk dark, and that he was going to take me
12 back, me and him was just going to run, and I was
13 going to run with him. He wasn't going to let me
14 go.

15 And I asked him how was we supposed to
16 live like that? And he said he would just rob
17 people so we could live.

18 Q. So he was telling you these different
19 things. Were these at different times in the woods
20 or when were all of these plans being told to you?

21 A. That was when he pointed the gun at me.

22 Q. Okay. Can you describe another time in
23 the woods?

24 A. We just sat in the woods.

25 Q. Okay.

DEADRENE MCHONEY - DIRECT EXAM

1 A. Sat in the car.

2 Q. Okay.

3 A. He like dozed off for a second, but I
4 couldn't escape because he had the gun right there.
5 And the back passenger door, I think that door
6 wouldn't open, and the door that **L. J.** sat by, he
7 had the seat back so she couldn't really get out.

8 Q. Do you know where you were in the
9 woods? What county or where you were?

10 A. No, ma'am.

11 Q. And was there anything wrong with any
12 of the doors in that car?

13 A. The back passenger door, I think that
14 door couldn't open and the back driver door, that
15 door couldn't lock.

16 Q. Okay. And you were familiar with that
17 car -- or were you familiar with that car?

18 A. Yes.

19 Q. Why?

20 A. That's the car that he used.

21 Q. Who owned that car?

22 A. His mother.

23 Q. Now, at some point, did you encounter a
24 member of his family in all of these travels?

25 A. I seen them. I didn't talk to them.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. Okay. Did anyone drive by you?

2 A. His cousin.

3 Q. Do you know her?

4 A. I don't know her, know her, but I've
5 been to that house before and she was there.
6 That's his aunt's daughter.

7 Q. Okay. And tell us about that
8 encounter.

9 A. He stopped -- she waved us down and he
10 stopped. And she was like, you don't -- there's an
11 Amber Alert out for you-all and the police said
12 that they are going to shoot you down on sight.
13 And then he went back into the woods after that.

14 Q. Okay. And did he say anything about
15 the Amber Alert or anything regarding that, that
16 you can remember?

17 A. I think he said, I thought you said you
18 weren't going to call the police, or something like
19 that.

20 Q. At some point, did you call your
21 family?

22 A. Yes, ma'am, I did.

23 Q. And tell us about how that went.

24 A. He allowed us to call I think like two
25 times to let them know he was going to bring us

DEADRENE MCHONEY - DIRECT EXAM

1 back and don't get no police or nothing involved.

2 Q. Okay. And who were you able to reach
3 at your family?

4 A. I think my mom and my daughter.

5 Q. Okay. And do you remember him calling
6 Christopher?

7 A. I don't remember him calling my
8 brother, but I remember him talking to him.

9 Q. Okay. And was the phone -- did he do
10 anything with the phone that was special when you
11 were talking? Like who could hear?

12 A. Everybody, because it had to be on
13 speakerphone.

14 Q. Why did it have to be on speakerphone?

15 A. Because he wanted to hear everything.

16 Q. Okay. Now, after you're in and out of
17 the woods, what happens next?

18 A. The last time, after the cousin told
19 him about the Amber Alert, we went back into the
20 woods, I told him I had to use the bathroom. So I
21 guess he was going to take me back to his sister's
22 house to use the rest room, but as we was coming
23 out the woods, the detectives was passing by. And
24 they swung around in the road after they seen us
25 and that's when he mashed the gas.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. And when you say, mashed the gas, what
2 does that mean?

3 A. He speed up.

4 Q. And who was behind you?

5 A. The burgundy car, the officers.

6 Q. Burgundy?

7 A. Uh-huh.

8 Q. What kind of road were you on?

9 A. At first it was the paved road, but
10 then he dipped off into a dirt road, a very curvy
11 rocky dirt road.

12 Q. Do you know how fast you were going?

13 A. About 90 miles per hour.

14 Q. Did you have your seat belts on?

15 A. No, ma'am.

16 Q. What happened next?

17 A. We ended up back at the cabin.

18 Q. Okay. And when you got to the cabin,
19 what happened?

20 A. He told me and **L. J.** to get out and try
21 to stop the police, and he got out, went into the
22 trunk, took a plastic bag out and then he ran into
23 the woods.

24 Q. Can you put State's 106 up? I'm going
25 to show you one more map. Do you recognize this

DEADRENE MCHONEY - DIRECT EXAM

1 area on this map?

2 A. Unity Church Road, because I used to
3 live on that road a couple of years ago.

4 Q. Do you recognize any of those roads
5 from any of the events that you've described in
6 your testimony?

7 A. [REDACTED] Avenue, I think that's his
8 sister's address or his aunt's address, and [REDACTED]
9 [REDACTED] Road, I think that's where the abandoned
10 cabin was.

11 Q. What about any of the other roads in
12 yellow?

13 A. That's by a train track. That would be
14 by his sister's house.

15 Q. Okay. Thank you.

16 Now, do you remember talking to
17 detectives in the days following this event?

18 A. Yes.

19 Q. How long, if you know, was Mr. McClam
20 out there before he was captured?

21 A. About six, seven hours, I think.

22 Q. Okay. And when you talked to the
23 police, was that before or after they caught him;
24 do you remember?

25 A. After.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. Okay. And do you remember giving the
2 police the text messages that he had been sending
3 you, telling them the text messages?

4 A. Yes.

5 Q. Do you remember telling them the number
6 that was on the phone?

7 A. Yes.

8 Q. Do you remember what that number was
9 today?

10 A. I believe it was [REDACTED].

11 Q. Okay. I'm going to show you -- I'm
12 going to show you State's 160.

13 MS. WILLIAMS: May I approach?

14 THE COURT: You may.

15 BY MS. WILLIAMS:

16 Q. Tell me if you recognize the messages
17 on here.

18 A. Yes, ma'am, I do.

19 Q. And what are those messages?

20 A. Messages that Mr. McClam sent to me.

21 Q. And do you see the times there on the
22 messages that he was sending you?

23 A. Yes, ma'am.

24 Q. And during that period of time, were
25 you awake?

DEADRENE MCHONEY - DIRECT EXAM

1 A. No, ma'am.

2 Q. Were you answering?

3 A. No, ma'am.

4 Q. And at some point do the messages
5 change?

6 A. Yes, ma'am; at the end of it.

7 Q. Okay. And is there any time when the
8 messages appear to be coming from someone else?

9 A. Yes.

10 Q. What time does that start?

11 A. At 5:58.

12 Q. Okay. What is the last message that
13 you get from Mr. McClam before your daughter gets
14 on?

15 A. It says 1:00.

16 Q. What does it say?

17 A. It says, I do love you and that's very
18 much.

19 Q. Okay. What about the one before that?

20 A. It says, you got until 1:00 to make it
21 right.

22 Q. Okay. Thank you.

23 THE COURT: Could you clarify which
24 exhibit you're referring to?

25 MS. WILLIAMS: 106.

DEADRENE MCHONEY - DIRECT EXAM

1 MR. SCHWACKE: 160.

2 MS. WILLIAMS: Oh, I'm sorry, 160, Your
3 Honor. Beg the Court's indulgence.

4 THE COURT: Uh-huh.

5 BY MS. WILLIAMS:

6 Q. Would you have gotten in the car had he
7 not had your daughter?

8 A. No, ma'am.

9 Q. And did he get on the phone with you to
10 tell you he had your daughter?

11 A. Yes, ma'am.

12 Q. And what did he say about her and about
13 you getting in the car?

14 A. He said that he had **L. J.**, he wasn't
15 going to hurt her, all he wanted to do was to talk
16 to me and that he was going to send somebody to
17 come and pick me up.

18 Q. But you had to get in the car?

19 A. Yes, ma'am.

20 Q. After that, did you feel like you could
21 leave the car when you first got in with **L. J.**?

22 A. No, ma'am.

23 Q. Why was that?

24 A. He hurt me physically before.

25 Q. What else did he have with him?

DEADRENE MCHONEY - CROSS EXAM

1 A. The gun and knife.

2 Q. When you were driving around with him
3 and you got to the cabin, were you free to go
4 there?

5 A. No, ma'am.

6 Q. When were you finally free to go?

7 A. After the last time he got to the cabin
8 and the officers were right there.

9 Q. And where was he?

10 A. He was running into the woods.

11 Q. So when he left?

12 A. Uh-huh.

13 MS. WILLIAMS: Nothing further.

14 THE COURT: Any questions for the
15 witness?

16 CROSS-EXAMINATION

17 BY MR. SCHWACKE:

18 Q. Do you prefer Deadrene or Trese?

19 A. It doesn't matter.

20 Q. How old are you?

21 A. I'm 38.

22 Q. And you had known Telly when you were
23 younger?

24 A. Uh-huh. Yes, sir.

25 Q. How old were you about when you first

DEADRENE MCHONEY - CROSS EXAM

1 met him?

2 A. About elementary, maybe first or second
3 grade.

4 Q. And are you -- are you from Berkeley
5 County or where are you from?

6 A. Berkeley County.

7 Q. But you indicated you lived up off of
8 that Church --

9 A. Church Hill Road.

10 Q. -- Church Hill Road?

11 A. Uh-huh.

12 Q. When was that?

13 A. About three or four years ago.

14 Q. And so you are familiar with that area?

15 A. Not too familiar because I never really
16 got out.

17 Q. But you lived in that area?

18 A. Uh-huh.

19 Q. What were you wearing on that date?

20 A. When he picked me up?

21 Q. Did you change clothes at some point?

22 A. No, I didn't.

23 Q. So when -- on that day when he picked
24 you up, what were you wearing?

25 A. Some jeans and a T-shirt and I think a

DEADRENE MCHONEY - CROSS EXAM

1 jacket.

2 Q. Let me go back a second. So how many
3 daughters do you have?

4 A. Four.

5 Q. And their ages are what?

6 A. The ages are now?

7 Q. Yes, ma'am.

8 A. 18, 17, 16, and 15.

9 Q. And with the exception of **L. J.**, for a
10 period of time you-all had moved in with your
11 mother?

12 A. Uh-huh.

13 Q. And you've already indicated you had
14 moved out away from Telly before this day?

15 A. Yes, sir.

16 Q. So when you're in the car -- you
17 earlier had your cell phone. Did you have your
18 cell phone in the car when he picked you up?

19 A. No, I didn't.

20 Q. Where was your phone?

21 A. I left it at my brother's house.

22 Q. And how many phones do you have?

23 A. That I had at that time?

24 Q. Yes.

25 A. I think I had two phones at the time.

DEADRENE MCHONEY - CROSS EXAM

1 One was like one of those DSS phones and the other
2 was like a Verizon phone that wasn't turned on.

3 Q. You had two numbers?

4 A. Uh-huh.

5 Q. And if there were extractions from
6 other phones receiving messages from what you're
7 calling the DSS phone, you were in fact over the
8 period of this time using both of those phones?

9 A. I was only using one phone. The
10 Verizon phone wouldn't turn on.

11 Q. And you say you didn't have a phone at
12 all that day?

13 A. No, sir.

14 Q. Did you turn over your phone to the
15 police?

16 A. After the incident.

17 Q. How many phones did you turn over?

18 A. It was just that one I think because
19 that was the only phone that he was texting.

20 Q. Again, you had the number [REDACTED] ?

21 A. Yes, sir.

22 Q. And you had the number [REDACTED] ?

23 A. Yes, sir.

24 Q. And that was at the same time?

25 A. Uh-huh.

DEADRENE MCHONEY - CROSS EXAM

1 Q. And only -- the police got one phone
2 from you?

3 A. The phone that he was texting; the
4 phone that was actually on, that I could make and
5 receive phone calls off of it.

6 Q. All right. So you indicated that you
7 get into the car with him. At that point, that
8 happens where, in front of your mom's, or at what
9 location?

10 A. [REDACTED] Road.

11 Q. And that's --

12 A. My brother's.

13 Q. Your brother's?

14 A. Uh-huh.

15 Q. And from that point -- you get in the
16 front seat, **L. J.** is already in the back seat, and
17 Telly is driving?

18 A. Yes, sir.

19 Q. You go to the woods?

20 A. We go to Lane, and we rode around for
21 awhile because he said he was looking for a good
22 area to park the car because he didn't want any
23 helicopters or anyone to notice the car.

24 Q. And at some point you go over to
25 Beatrice's house?

DEADRENE MCHONEY - CROSS EXAM

- 1 A. Yes.
- 2 Q. Who is that?
- 3 A. His sister.
- 4 Q. And you have met her before?
- 5 A. Yes, I have.
- 6 Q. How many times have you met her?
- 7 A. Maybe about two or three.
- 8 Q. And she lives kind of right by some
- 9 railroad tracks?
- 10 A. Yes, sir.
- 11 Q. So all three of you go into her house?
- 12 A. Yes, sir.
- 13 Q. And that's the first person you see
- 14 after you go with Telly?
- 15 A. Yes, sir.
- 16 Q. And when you enter her house, you have
- 17 a living room that you first go into and then a
- 18 kitchen and a dining area in the back?
- 19 A. Yes.
- 20 Q. And that's where you went --
- 21 A. Uh-huh, yes, sir.
- 22 Q. -- to the dining area? Did anyone use
- 23 the rest room?
- 24 A. Me and my daughter.
- 25 Q. You both did?

DEADRENE MCHONEY - CROSS EXAM

1 A. Yes.

2 Q. And so to get to that, before you would
3 get to the kitchen, you would turn to the left and
4 it would be like the second door on the right?

5 A. On the right.

6 Q. Was anyone else in the house?

7 A. Just his sister, I believe.

8 Q. Beatrice?

9 A. Uh-huh.

10 Q. Was her daughter in the back room?

11 A. I don't remember her being there.

12 Q. Okay. And the reason to go there was
13 to ask for money?

14 A. To get food.

15 Q. And that was based upon?

16 A. My daughter said she was hungry.

17 Q. So he drove to Beatrice's, and you were
18 there you indicated about 20 minutes?

19 A. Yes.

20 Q. And during that time, Telly went into
21 the back to talk with her while you were up in the
22 kitchen?

23 A. While we were in the bathroom.

24 Q. Only one person at a time in the
25 bathroom?

DEADRENE MCHONEY - CROSS EXAM

1 A. No, we both went to the bathroom.

2 Q. So you had a chance to talk to each
3 other then?

4 A. Not very long.

5 Q. But you had a chance?

6 A. We could have talked. But of course
7 that wasn't on our mind. We were being held
8 captive by a gun.

9 Q. Beatrice, what do you know about her?

10 A. She substitutes at school.

11 Q. She's a teacher?

12 A. Uh-huh.

13 Q. She has a duty to report, as a teacher?

14 A. She has what?

15 Q. A duty to report to law enforcement, as
16 a teacher?

17 A. I guess.

18 Q. So you were there 20 minutes?

19 A. About 20 minutes.

20 Q. She served you cupcakes, Kool-aid,
21 potato salad and Sloppy Joe's?

22 A. Uh-huh.

23 Q. And then what you don't eat gets
24 wrapped up and put back into --

25 A. My daughter ate a couple of spoons. I

DEADRENE MCHONEY - CROSS EXAM

1 never ate anything.

2 Q. That got wrapped up and put into the
3 car?

4 A. Yes, sir.

5 Q. Are you having any conversation with
6 Beatrice?

7 A. No, sir.

8 Q. Not saying anything?

9 A. No, sir.

10 Q. Just totally quiet?

11 A. Yes, sir.

12 Q. No conversation back and forth between
13 you and her?

14 A. No, sir.

15 Q. What happens after you leave
16 Beatrice's?

17 A. He noticed the gas and called his aunt
18 for gas money.

19 Q. So that's Ms. Cooper?

20 A. Yes.

21 Q. Emma?

22 A. Uh-huh.

23 Q. And you have met her before?

24 A. Uh-huh.

25 Q. You'd been to her house before?

DEADRENE MCHONEY - CROSS EXAM

1 A. Yes, I have.

2 Q. How many times have you been to her
3 house?

4 A. I think twice.

5 Q. Could it be more than that?

6 A. I don't think so.

7 Q. Are there times you went there in the
8 -- was there a truck or an Explorer? You had a
9 vehicle?

10 A. Uh-huh.

11 Q. What was your vehicle?

12 A. A red Explorer.

13 Q. And you went to her house in that
14 Explorer before?

15 A. Uh-huh.

16 Q. Was Telly with you when you went that
17 time?

18 A. Yes, he was.

19 Q. Was **L. J.** with you when you went that
20 time?

21 A. No, she wasn't.

22 Q. Was **L. J.** with you at any time you went
23 to Ms. Cooper's house?

24 A. No, she wasn't.

25 Q. Where was Ms. Cooper when you arrived

DEADRENE MCHONEY - CROSS EXAM

1 at her house?

2 A. I think she was coming from around the
3 back of the trailer. I think she was doing some
4 kind of gardening or something.

5 Q. And were there some men outside right
6 next door?

7 A. I'm not sure. I think her son might
8 have been out there, but I don't remember.

9 Q. And you indicated you never went in
10 that time?

11 A. No, sir.

12 Q. Where did you go after -- about how
13 long were you out there?

14 A. Not long. Just long enough for him to
15 ask her how she was doing and for her to give him
16 \$5 for gas.

17 Q. And so how much money did he give you
18 to get gas?

19 A. \$5.

20 Q. Okay. Is that what happens next?

21 A. After we leave the aunt's house?

22 Q. Right.

23 A. We go to the gas station.

24 Q. What gas station did you go to?

25 A. 52 gas station.

DEADRENE MCHONEY - CROSS EXAM

1 Q. And you have met with the Solicitor for
2 this case, correct?

3 A. Uh-huh.

4 Q. Before testifying --

5 A. Uh-huh.

6 Q. -- giving information? They showed you
7 video of you at the 52 station?

8 A. No, sir.

9 Q. Okay. Do you recall going into the 52
10 station?

11 A. I do.

12 Q. And who gets out of the vehicle first?

13 A. Telly does.

14 Q. All right. And at that point he's
15 outside, he's going to get the gas?

16 A. No. He gives me the \$5 for me to go in
17 and pay for the gas.

18 Q. How does he give that to you? Does he
19 reach across the car to you?

20 A. He handed it inside the car.

21 Q. Where is **L. J.**?

22 A. Sitting in the back seat.

23 Q. So then you go and walk into the store.
24 Do you recall a gentleman being at the door at the
25 time you walk in, opening and holding the door for

DEADRENE MCHONEY - CROSS EXAM

1 you?

2 A. I don't recall that.

3 Q. Do you remember going to the counter
4 and it's a female attendant?

5 A. Yes, uh-huh.

6 Q. Do you say anything to the female
7 attendant?

8 A. \$5 gas and on pump -- whatever pump it
9 was.

10 Q. And that's all you say?

11 A. Yes.

12 Q. And then what do you do?

13 A. I walk back out of the store and go to
14 the car and sit in the car and he's out there
15 pumping gas.

16 Q. Because he's not finished pumping that
17 \$5 of gas before you get out there?

18 A. No.

19 Q. Where did you-all go after that?

20 A. After that, we go back to the woods.

21 Q. At some point you come into contact
22 with Samantha Cooper?

23 A. Yes, sir.

24 Q. And do you know Samantha?

25 A. I have seen her. We might have said

DEADRENE MCHONEY - CROSS EXAM

1 like two or three words to each other. Other than
2 that, I don't know her.

3 Q. Where would you have seen her?

4 A. At her mom's house.

5 Q. Was that a family gathering or what?

6 A. A family gathering.

7 Q. How many family gatherings do you
8 remember going to with Telly's family?

9 A. Two.

10 Q. And where were they?

11 A. One was at his aunt's house, I think
12 Ms. Cooper, and the other was at his mom's house.

13 Q. So Emma Cooper's house is where you
14 went to get gas?

15 A. Uh-huh.

16 Q. So the cousin, or Samantha, she passes
17 you while you-all are driving? You-all see each
18 other --

19 A. Uh-huh.

20 Q. -- and sort of back up, somebody's
21 going to come back and talk to people about what
22 was going on?

23 A. Yes, sir.

24 Q. At that point, she says something about
25 an Amber Alert?

DEADRENE MCHONEY - CROSS EXAM

1 A. Yes, sir.

2 Q. And you all are all surprised about
3 that?

4 A. Yes, sir.

5 Q. You didn't know that was going on?

6 A. I'm quite sure that my family had
7 called the cops, but I didn't know an Amber Alert
8 was out.

9 Q. And you don't have any part of the
10 conversation with Samantha, is that the way --

11 A. No, sir.

12 Q. -- that works? You don't say help?
13 You don't say --

14 A. Nothing.

15 Q. You don't gesture?

16 A. Nothing.

17 Q. And then it's not long after that, the
18 police come?

19 A. Yes, sir.

20 Q. And Telly is telling you to wave your
21 hands out of the car?

22 A. Yes, he was.

23 Q. To get the attention of the police?

24 A. Yes.

25 Q. Do you smoke?

DEADRENE MCHONEY - CROSS EXAM

1 A. Yes, sir, I do.

2 Q. Do you smoke the same kind of
3 cigarettes?

4 A. Yes, I do, but I smoke short
5 cigarettes.

6 Q. And clothes-wise, you had on -- you're
7 not sure?

8 A. I just know it was jeans and some
9 sneakers and a T-shirt.

10 Q. Short-sleeved T-shirt, long-sleeved?

11 A. Short.

12 Q. What about the jeans?

13 A. Long jeans.

14 Q. All the way down?

15 A. Uh-huh.

16 MR. SCHWACKE: One moment, Your Honor.

17 BY MR. SCHWACKE:

18 Q. How many times have you met with the
19 Solicitor?

20 A. Two times.

21 Q. Did they review with you your recorded
22 statement?

23 A. No, sir.

24 Q. You never played it back?

25 A. No, sir.

DEADRENE MCHONEY - CROSS EXAM

1 Q. And you gave that approximately when?

2 A. Like a day after the incident, a day or
3 two after the incident.

4 Q. So your memory would be fresher then
5 than it would be now?

6 A. Yes, sir.

7 Q. Did the police tell -- ask you to tell
8 them any and everything about the case so they
9 could keep a record of that?

10 A. Yes, sir.

11 Q. You would have given them every detail?

12 A. Yes, sir.

13 Q. But you have not reviewed your
14 statement?

15 A. No, sir.

16 Q. Again, you had the opportunity to tell
17 Ms. Cooper and whoever the gentlemen were outside
18 of her house next door, you had the opportunity to
19 tell Samantha Cooper, you had the opportunity to
20 tell Beatrice Jones, but neither of -- and you had
21 the opportunity to tell the man at the gas station
22 as well as the attendant, and you didn't tell any
23 of those people anything about this?

24 A. No, sir.

25 MR. SCHWACKE: Thank you.

DEADRENE MCHONEY - CROSS EXAM

1 THE COURT: Any redirect?

2 MS. WILLIAMS: Yes, and we have an
3 issue of law, Your Honor.

4 THE COURT: Approach.

5 (Bench conference.)

6 MS. WILLIAMS: The last time she called
7 the police, she pulled into a busy area, she called
8 the police and they were right there. He came and
9 smashed the window and dragged her out of the car
10 and then they made the arrest and she wound up
11 dropping the charges. And then when her daughter
12 was raped, they told her they weren't going to take
13 the or her? Charges because she dropped the last
14 one.

15 THE COURT: What does that have to do
16 with anything?

17 MS. WILLIAMS: I would like to get into
18 the fact, that even when she does tell them --

19 THE COURT: Nope, because it wasn't
20 raised in that manner. It hasn't been raised at
21 all, actually.

22 MS. WILLIAMS: He's implying.

23 THE COURT: And she's already gotten in
24 that she got in because she was afraid of him from
25 the past. That's on the record.

DEADRENE MCHONEY - REDIRECT EXAM

1 Next.

2 (End of bench conference.)

3 THE COURT: You may proceed.

4 MS. WILLIAMS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 REDIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Ms. McHoney, do you remember telling
9 the detectives that you were wearing capris --
10 could you have said you were wearing capris back
11 three years ago when you gave your statement? Is
12 that possible?

13 A. It could be possible, I'm not sure. I
14 just got up from sleep.

15 Q. And Mr. Schwacke rattled off a bunch of
16 phone numbers that could have been yours. I'm
17 going to show you what's been marked 160.

18 MS. WILLIAMS: May I approach?

19 THE COURT: You may.

20 BY MS. WILLIAMS:

21 Q. What was the actual phone number that
22 he was calling you on? If you can read it from the
23 report.

24 A. [REDACTED].

25 Q. [REDACTED]. And you testified that when you

DEADRENE MCHONEY - REDIRECT EXAM

1 went to [REDACTED], and you were showed the map, that
2 was a pretty desolate area?

3 A. Uh-huh.

4 Q. Why else would you not run away from
5 Telly McClam if -- even if you felt like you had an
6 opening? What was in your mind? How did you feel
7 about your situation? Did you feel like you had an
8 opportunity to run away?

9 A. No, I didn't, because he was only
10 around his family and around a bunch of wooded
11 area. Where was I supposed to go?

12 Q. How did you feel about Mr. McClam by
13 that point?

14 A. I hated him.

15 Q. And did you fear him?

16 A. Yes, I did.

17 MS. WILLIAMS: Thank you very much.

18 THE COURT: Ma'am, you may step down.
19 Madame Forelady, and ladies and gentlemen, we are
20 going to take advantage of the break in testimony
21 to take a short rest room break. Please do not
22 discuss the case and please leave your notepads in
23 your seats.

24 (Jury out, 11:07 a.m.)

25 THE COURT: You may be seated. We'll

KEVIN CROUT - DIRECT EXAM

1 be at ease for ten minutes. Make sure that the
2 Court Reporter has all of the exhibits.

3 (A recess transpired.)

4 THE COURT: Is the State ready to
5 proceed?

6 MS. WILLIAMS: Yes.

7 THE COURT: Is the defense ready to
8 proceed?

9 MR. SCHWACKE: Yes, Your Honor.

10 (Jury in, 11:25 a.m.)

11 THE COURT: Call the next witness.

12 MR. POULOS: State calls Kevin Crout.

13 THE COURT: Please swear the witness.

14 KEVIN CROUT,

15 being first duly sworn, testified as follows:

16 THE CLERK: Have a seat, state your
17 full name and spell your last name.

18 THE WITNESS: Christopher Kevin Crout,
19 C-R-O-U-T.

20 THE COURT: You may proceed.

21 Sir, if you would speak directly into
22 the microphone for us.

23 DIRECT EXAMINATION

24 BY MR. POULOS:

25 Q. Morning, Mr. Crout.

KEVIN CROUT - DIRECT EXAM

1 A. Morning.

2 Q. Tell the jury where you're from.

3 A. I'm from Summerville, South Carolina.

4 Q. How long have you lived in the area?

5 A. Approximately, ten years.

6 Q. Does your family own a residence at

7 [REDACTED] Road in Salters, South Carolina?

8 A. Yes, we do.

9 Q. Turn around and take a look at the
10 screen there. Is that your residence at [REDACTED]

11 [REDACTED] Road?

12 A. Yes, it is.

13 Q. State's 38, is that another angle of
14 the residence?

15 A. Yes, it is.

16 Q. Okay. Thank you. What do you use that
17 house for?

18 A. Typically, we use the property for
19 hunting on the weekends.

20 Q. So it's not an abandoned property?

21 A. No. We're typically there at least
22 every weekend.

23 Q. Back on October 28, 2013, did you have
24 a deer camera mounted near that property?

25 A. Yes, we did.

KEVIN CROUT - DIRECT EXAM

1 Q. What is a deer camera?

2 A. Typically, a deer camera is mounted
3 normally in the woods and it's used to take
4 pictures of wildlife in a particular area.

5 Q. And how is it activated?

6 A. It's activated by motion. So if an
7 animal or something came by and hit the motion
8 sensor, it takes a photo.

9 Q. Does it take repeated photos or does it
10 take pauses in between? How does it work?

11 A. Yeah. It typically takes a pause,
12 about 30 seconds, in between photos. It depends on
13 the type of camera that -- the type of camera that
14 you got.

15 Q. I'm going to show you State's 72 and
16 73. Take a look at the screen again. Is that the
17 deer camera on the property?

18 A. Yes, it is.

19 Q. 73; is that it again there?

20 A. Yes.

21 Q. Okay.

22 THE COURT: Which number is that,
23 please?

24 MR. POULOS: That is 73, Your Honor.

25 THE COURT: Okay. That's just a

KEVIN CROUT - DIRECT EXAM

1 close-up?

2 MR. POULOS: Yes.

3 BY MR. POULOS:

4 Q. Did you give the sheriff's office
5 permission to take this camera and extract photos?

6 A. Yes, I did.

7 Q. And have you reviewed the photos that
8 were taken from the camera?

9 A. Yes.

10 Q. And so you're familiar with how those
11 photos generally appear?

12 A. Yes.

13 Q. Do the photos produced by this camera
14 have an accurate date and time stamp on them?

15 A. They do.

16 Q. Do they also bear the camera's brand
17 name?

18 A. They do.

19 Q. I show you State's 78 and 80, already
20 in evidence. First 78, now directing your
21 attention to the bottom of the photo. Is there a
22 time and date stamp?

23 A. Yes, there is.

24 Q. Okay. And is that your residence in
25 the background?

KEVIN CROUT - DIRECT EXAM

1 A. Yes, it is.

2 Q. What is the time and date on that
3 photograph?

4 A. 9:22 a.m. on October 28th, 2013.

5 Q. Show you State's 80. Again, is there a
6 time and date stamp?

7 A. Yes, it is.

8 Q. Is that the residence in the
9 background?

10 A. Yes, it is.

11 Q. What's the time and date?

12 A. 3:22 p.m. on October 28th, 2013.

13 Q. Thank you, Mr. Crout.

14 The blue vehicle that you see in these
15 photos, have you ever seen that vehicle before?

16 A. No, I haven't.

17 Q. Anyone in your family drive a vehicle
18 like that?

19 A. No, they don't.

20 Q. Do you know the defendant in this case,
21 Telly McClam?

22 A. I do not.

23 Q. Has Mr. McClam ever had permission to
24 enter onto your property or into your house?

25 A. No, he hasn't.

KEVIN CROUT - CROSS EXAM

1 MR. POULOS: I have no further
2 questions of this witness, Your Honor.

3 THE COURT: Any questions of the
4 witness?

5 MR. SCHWACKE: Just a few.

6 CROSS-EXAMINATION

7 BY MR. SCHWACKE:

8 Q. Has the State shown you more
9 photographs than just the two?

10 A. I have seen a few photographs. I don't
11 recall exactly how many or in addition to what I've
12 already seen.

13 Q. There's one that appears to be of an
14 elderly gentleman in a hat and beard. Is he a
15 relative?

16 A. That's my father.

17 Q. Okay. Just so I understand, if there
18 was a photo that was triggered and taken by the
19 camera at 9:22 a.m., when would we expect the next
20 photograph?

21 A. If something were to come by and set
22 off the motion sensor; if there's nothing moving
23 within that particular area, the camera doesn't
24 necessarily take a photo.

25 Q. So a person getting out of a car would

KEVIN CROUT - CROSS/REDIRECT EXAM

1 be a motion which would --

2 A. Possibly.

3 Q. When was the last time you would have
4 been at the residence?

5 A. The end of December.

6 Q. I'm sorry, prior to October 28th of
7 2013. Do you recall --

8 A. I would have been there probably the
9 weekend prior. During that time of year, we're
10 normally there every weekend.

11 Q. Did you go out to the scene?

12 A. No, I didn't.

13 Q. So they just said, we want your camera.
14 Can we have it?

15 A. Yes.

16 MR. SCHWACKE: Thank you. That's all
17 the questions I have.

18 THE COURT: Any redirect?

19 MR. POULOS: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. POULOS:

22 Q. Mr. Crout, just to clarify, you stated
23 the pause in between the photographs is
24 approximately 30 seconds. Could it be longer? Do
25 you know exactly how long the pause is?

KEVIN CROUT - CROSS/REDIRECT EXAM

1 A. Oh, no. It could be up to five to
2 ten minutes. Just depends on how it's set.

3 Q. And once that 30-seconds or five-minute
4 or 10-minute pause passes, it will only take a
5 photograph if there is still continuous motion?

6 A. That's correct.

7 Q. No further questions.

8 THE COURT: Any objection to the
9 witness being excused?

10 MR. POULOS: Not from the State.

11 THE COURT: From the defense?

12 MR. SCHWACKE: None, Your Honor.

13 THE COURT: Sir, you're excused.

14 THE WITNESS: Am I excused from my
15 Subpoena?

16 THE COURT: Yes, sir, have a good day.
17 Call your next witness.

18 MR. POULOS: The State calls James
19 Riser.

20 JAMES RISER,
21 being first duly sworn, testified as follows:

22 THE CLERK: State your full name for
23 the record and spell your last name.

24 THE WITNESS: James Riser, R-I-S-E-R.

25 THE COURT: You may proceed.

JAMES RISER - DIRECT EXAM

1 MS. WILLIAMS: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. WILLIAMS:

4 Q. Good morning.

5 A. Morning.

6 Q. And where are you employed?

7 A. With the Berkeley County Sheriff's
8 Office, Criminal Investigation Division.

9 Q. How long have you worked there?

10 A. I've been with the sheriff's office
11 going on 13 years.

12 Q. Okay. And in what capacity were you
13 working with the sheriff's office on October 28,
14 2013?

15 A. I was in the Criminal Investigation
16 Division, a detective.

17 Q. And did you respond to a case involving
18 a kidnapping on that date?

19 A. I did.

20 Q. Where did you respond first?

21 A. At first I responded to [REDACTED], I think it
22 was, [REDACTED] Road in St. Stephens, South Carolina,
23 County of Berkeley.

24 Q. Okay. And what did you do initially?

25 A. Upon arrival, Detective Corporal Weise

JAMES RISER - DIRECT EXAM

1 also responded with me, we rode together. Upon
2 arrival, I stepped out of the car. I was met by
3 Captain Ollic of the Berkeley County Sheriff's
4 Office, who was over the Criminal Investigation
5 Division. He handed me an Amber Alert page and
6 informed me to go to St. Stephen's Police
7 Department, which is in the county of Berkeley, and
8 fax it to SLED, which is South Carolina Law
9 Enforcement Division.

10 Q. Okay. And at some point in the
11 investigation did you determine who the suspect
12 was?

13 A. Yes.

14 Q. And who was that?

15 A. Telly McClam.

16 Q. What did you do next?

17 A. After that, myself and Detective Weise
18 and the St. Stephens Police Department went to I
19 think it was [REDACTED] Street or Circle, it's right
20 there in St. Stephens, and met with Mr. McClam's
21 mother.

22 Q. And what did you do after that?

23 A. She informed us that Mr. Telly had been
24 to his sister's house up in Williamsburg County,
25 and she provided us the address and the name, which

JAMES RISER - DIRECT EXAM

1 was Beatrice Jones Bennett, I think it was. I
2 would have to look at my notes to see the exact
3 name. It was a Beatrice and she lived on [REDACTED]
4 [REDACTED] in Lane, South Carolina.

5 Q. Okay. Would it refresh your memory to
6 see your report?

7 A. Yes, ma'am, if I could. I could give
8 you the correct name.

9 MS. WILLIAMS: May I approach, Your
10 Honor?

11 THE COURT: You may.

12 THE WITNESS: It was a Beatrice Cooper
13 Jones, my mistake. She lived at [REDACTED] Court,
14 Lane, Williamsburg County, South Carolina.

15 BY MS. WILLIAMS:

16 Q. Based on that call, what did you do
17 next?

18 A. I informed Captain Ollic of the
19 information that we had received. I was
20 instructed, myself and Detective Weise, to go and
21 see if we could talk to Ms. Bennett.

22 Q. Okay.

23 A. Sorry, Ms. Jones.

24 Q. And is this in Williamsburg County at
25 this point?

JAMES RISER - DIRECT EXAM

1 A. Yes, it is.

2 Q. And where did you go next?

3 A. We then proceeded to [REDACTED] Court
4 to talk to Beatrice Cooper Jones. She stated that
5 -- she gave us a statement saying that Mr. Telly
6 had been there earlier that morning and that he had
7 already visited his aunt, Emma Cooper, and she
8 lived at [REDACTED] Avenue in Salters, South
9 Carolina, County of Williamsburg, and that she is
10 -- was expecting us.

11 Q. Okay. And at some point did you get
12 information of where the defendant was?

13 A. After we had talked to Ms. Emma at
14 [REDACTED], she provided a statement also. I left her
15 my cell phone number and asked her if she ever
16 found out anything about Mr. Telly or saw him, to
17 please give me a call. Myself and Detective Weise
18 then left and proceeded back towards Berkeley
19 County.

20 Upon getting to about 52, the
21 intersection on 52 and turning left to come back to
22 Berkeley County, I received a phone call from Ms.
23 Emma in reference to -- that her daughter -- I
24 think it was her daughter -- let me make sure here
25 -- that her daughter was with Telly -- Mr. Telly

JAMES RISER - DIRECT EXAM

1 and that the victims -- they were all in an area of
2 Union Church Road and [REDACTED] Road, for us to turn
3 around, at which time I did turn around and try to
4 advise Captain Ollic and Sergeant Shuler of the
5 information that I had just found out about. I
6 couldn't raise them on the radio and we proceeded
7 on in that direction.

8 Q. And did you see him at some point?

9 A. Yes, I did. As I come to the
10 intersection there, we proceeded through the
11 intersection, came up to Morningstar, which was a
12 road to my right. At that time, the vehicle, 2000
13 Hyundai, came out right in front of us, directly in
14 front of us. In fact, we almost had to hit the
15 brakes. Mr. Telly was driving, the two victims
16 were in the car. I then proceeded to turn around
17 on the vehicle and advised dispatch that I had the
18 vehicle identified and was following it.

19 At that time Mr. Telly started to speed
20 up at a high rate of speed. I observed him run a
21 stop sign. At that time I initiated my blue lights
22 and sirens, trying to get him to stop. The victims
23 were hanging their hands out the window waving,
24 seemed to be waving in a help-me manner.

25 Q. Would it assist you to have a map to

JAMES RISER - DIRECT EXAM

1 show the course of this chase?

2 A. Yes.

3 Q. Okay. Could you put up number 106?

4 If you could just explain where you saw
5 him and where the chase began.

6 A. Right in this area is Morningstar. We
7 came through this intersection, was coming up this
8 way to go back towards [REDACTED], is where Emma lived,
9 the aunt. As we approached this intersection, he
10 was coming out, cut in front of us and headed back
11 down this way.

12 We spun around and he headed up --
13 started at a high rate of speed. He went through
14 this intersection, which is a stop sign, at a high
15 rate of speed. I initiated my blue lights and
16 sirens, informed dispatch that I was behind the
17 vehicle in pursuit at that time. I handed the mic
18 over to my partner so he could call it out so I
19 could focus on driving the vehicle.

20 The victims were hanging out -- their
21 hands out the window, waving in like a distress
22 mode, wanting -- wanting -- we looked at it like
23 they were wanting our help. Somewhere around in
24 here, we were told to turn off the blue lights and
25 sirens, but continue to follow them at a safe

JAMES RISER - DIRECT EXAM

1 distance.

2 They came down this way, they got on
3 Thunderbolt Road this way. This is an unpaved
4 road. I'm not sure if it was gravel or dirt, but
5 it was one or two, still at a high rate of speed.
6 They turned here, come back down Pickle, and all
7 this -- all this whole area right here is unpaved
8 road. It was like a dirt road, gravel, and they
9 were travelling at a high rate of speed. They
10 turned back left, continued back up the way we --
11 from where we saw them.

12 We were still following them at a safe
13 distance, came through the intersection, and about
14 right in here, there's a house where they cut in
15 and ditched the car behind it.

16 Q. And when you had your blue lights on
17 and your sirens, that was within view of Mr.
18 McClam's car, so would that have been obvious?

19 A. Yes.

20 Q. And did he at any time make an effort
21 to stop for the blue lights and the sirens?

22 A. No. He actually increased his speed.

23 Q. And where did he go once he ditched the
24 car?

25 A. Once he ditched the car behind the

JAMES RISER - DIRECT EXAM

1 residence right here, was like an abandoned
2 residence, we saw him run across the little dirt
3 road right here beside the residence that went back
4 to the residence and beside it. If I can explain
5 the road, it was like a hunting camp road where you
6 come off the main road and go back into. It was
7 one of them like, but it went right beside the
8 house back up this way. I observed him also myself
9 -- myself and Detective Weise observed him run
10 across the road and into this patch of woods right
11 here, like in the direction of [REDACTED] where his aunt
12 lived, at which time I informed Detective Weise to
13 go to the victims, check on them, and I proceeded
14 after Mr. Telly.

15 Q. Okay. State's 41. Is that the
16 vehicle?

17 A. Yes, it is; a blue Hyundai DI 404,
18 four-door.

19 Q. State's 78, again, what is that?

20 A. This is the vehicle parked behind the
21 residence right here.

22 Q. Okay. And would you put up State's 52?
23 Well, that's not right. 32, I'm sorry. Okay. Can
24 you explain what that is and where it is?

25 A. This is the residence here, this is the

JAMES RISER - DIRECT EXAM

1 fence that I think is on the right-hand side -- I'm
2 sorry, if you're standing on the road facing the
3 house, it would to the left-hand side. The actual
4 road is over here on the right-hand side, in this
5 area.

6 Q. And which road did you go down and
7 which road did he go down?

8 A. I went down this one. I'm not sure if
9 he went down this one or this one. I'm not quite
10 sure.

11 Q. Okay. Can you put up 28? What is
12 that?

13 A. Yes. That's the road right there and,
14 in fact, right around this curve right here, it
15 went to really soft pluff dirt.

16 Q. Okay. And can you see that road -- or
17 that house from on the road?

18 A. Yes. Once, in fact, I went to just the
19 pluff right there, and that's the road. As you go
20 down it, the house is actually sitting about right
21 there where the arrow is. And as it goes down, it
22 goes right beside the house just a short distance,
23 a yard distance.

24 Q. Okay. And so it's your testimony that
25 you ran into the woods?

JAMES RISER - CROSS EXAM

1 A. Yes, ma'am. I ran after Mr. Telly, but
2 lost sight of him in the woods. And for my safety
3 and knowing that he was armed, I stopped, took
4 cover behind a tree and kept sight of where -- a
5 bearing of where I last saw him. So I knew more
6 officers were coming and also K9 was coming. So I
7 stayed there.

8 I could still talk to Officer Weise. I
9 asked him, did you have -- you know, we were
10 yelling back and forth because it's a short
11 distance. I yelled at him and said, did you find
12 them? He said, I've got them. They had actually
13 got out of the vehicle, went around the house on
14 the opposite side that we were at, and he went
15 around the house and found them in the front yard
16 near that gate.

17 Q. And how did you know he had a gun?

18 A. From what we were told at the initial
19 report when we first arrived.

20 MS. WILLIAMS: Okay. Thank you.

21 THE COURT: Any questions for the
22 witness?

23 CROSS-EXAMINATION

24 BY MR. SCHWACKE:

25 Q. Do you remember what your unit number

JAMES RISER - CROSS EXAM

1 was back on October 2013? Would it have been BC
2 202?

3 A. It could have been.

4 Q. If I show you a list, would that assist
5 you in that?

6 A. It could, yes, sir.

7 (DFT. EXH. 3, Copy of CAD report, was
8 marked for identification.)

9 BY MR. SCHWACKE:

10 Q. Officer Riser, I'm going to show you
11 what has been marked as Defendant's Exhibit Number
12 3 for identification, and ask if you are familiar
13 with that.

14 A. Yes. This is a CAD incident detail.

15 Q. And a CAD report is a way of
16 memorializing both radio and telephone
17 communications concerning a case?

18 A. You could say that, yes. It depends on
19 -

20 Q. Tell me what you want to call it.

21 A. It's radio communication, what you put
22 out on the radio and stuff.

23 Q. It's a log that is done
24 contemporaneously --

25 A. Yes.

JAMES RISER - CROSS EXAM

1 Q. -- with an event?

2 A. Yes, with people and dispatch.

3 Q. And so at that time, does this indicate
4 that you would have been unit 202?

5 A. Yes, BC 202.

6 Q. And then would it refresh your memory
7 -- you mentioned the communications that were going
8 on during the chase in your testimony?

9 A. Yes.

10 Q. And there's an indication that -- from
11 BC 202, your unit, that the car was spotted?

12 A. Yes, 202 spotted the car.

13 Q. And what time was that?

14 A. That would be on the 28th at 14:12:42,
15 which would be 2:12 and 42 seconds.

16 Q. And then there is another indication?

17 A. Yes. BC 202 turned onto Tate Road,
18 backed off.

19 Q. And then there is another?

20 A. Left on Union Church.

21 Q. And then the next designations for BC
22 202?

23 A. And that was -- one was at -- turned
24 off -- turned on Tate Road, backed off 14:13:34,
25 left on Union Church Road at 14:14:41. [REDACTED]

JAMES RISER - CROSS EXAM

1 Road, looks like 14:15:37, dirt road off of [REDACTED]
2 Road, hundred yards behind house, subject 1080 on
3 foot, subject in wood.

4 Q. At that point, the car chase has ended?

5 A. Yes.

6 Q. And so the time for that entry, that
7 subject on foot --

8 A. 14:16; from 14:12 to 14:16.

9 Q. So roughly three,
10 three-and-a-half-minutes?

11 A. Roughly four minutes, give or take.
12 And then it says, subject in the woods, two females
13 10-4.

14 Q. So that means that has ended that part
15 of the chase. During the course of your
16 investigation that day, you came into contact with
17 a number of Mr. McClam's relatives; is that
18 correct?

19 A. I did.

20 Q. And that would have included his
21 mother, Margaret?

22 A. His mother.

23 Q. Margaret?

24 A. I think that was her name.

25 Q. She was the one at [REDACTED] Circle

JAMES RISER - CROSS EXAM

1 that you testified about?

2 A. Okay.

3 Q. You met with Beatrice Jones?

4 A. Yes, the sister at [REDACTED].

5 Q. You also met his aunt, Emma Cooper?

6 A. Yes, at [REDACTED].

7 Q. And then after that you met with a
8 cousin, Samantha Cooper, who was in the car --

9 A. I don't remember that one.

10 Q. Okay.

11 A. You will have to refresh my memory on
12 that one.

13 Q. You didn't take statements from --
14 never mind, you weren't involved in this.

15 A. Okay.

16 Q. But as for the people you came in
17 contact with, Margaret, Beatrice and Emma, they
18 were all highly and fully cooperative with law
19 enforcement?

20 A. Yes.

21 Q. They did exactly what they said they
22 would do, they contacted you when they had
23 information?

24 A. Yes.

25 Q. And they provided you information with

JAMES RISER - CROSS EXAM

1 where he was last seen?

2 A. Yes. In fact, it was -- Ms. Emma is
3 the one that called me.

4 MR. SCHWACKE: Thank you. That's all
5 the questions I have.

6 THE COURT: Any redirect?

7 MS. WILLIAMS: No, Your Honor.

8 THE COURT: Any objection to the
9 witness being excused? From the State?

10 MS. WILLIAMS: No, Your Honor.

11 THE COURT: From the defense? Any
12 objection to the witness being excused?

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: Sir, you're excused.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 Call your next witness.

18 MS. WILLIAMS: State calls Detective
19 Weise.

20 JOHN WEISE,

21 being first duly sworn, testified as follows:

22 THE CLERK: Have a seat, state your
23 full name for the record and spell your last name.

24 THE WITNESS: John Weise, W-E-I-S-E.

25 DIRECT EXAMINATION

JOHN WEISE - DIRECT EXAM

1 BY MS. WILLIAMS:

2 Q. Where are you employed?

3 A. Berkeley County Sheriff's Office.

4 Q. How long have you been there?

5 A. Six years.

6 Q. And what are your duties?

7 A. At the moment I'm assigned to the
8 uniform patrol.

9 Q. Okay. And what were your duties back
10 on October 28, 2013?

11 A. I was in training in CID, which is
12 Criminal Investigation.

13 Q. And back on that date, did you get
14 involved in the case involving Telly McClam?

15 A. I did.

16 Q. And who were you working with that day?

17 A. Detective Riser.

18 Q. And were you with Detective Riser
19 during a high-speed chase?

20 A. I was.

21 Q. And do you remember about where that
22 chase was?

23 A. I can't recall the name of the road,
24 but it was in Williamsburg County.

25 Q. And how fast was the vehicle that you

JOHN WEISE - DIRECT EXAM

1 were chasing going, if you remember?

2 A. I was a passenger, I don't recall, but
3 it was initially -- I believe it -- it was up to
4 60, 70 miles per hour.

5 Q. What kind of roads were you on?

6 A. Initially it was a paved road and then
7 turned off onto a gravel or dirt road.

8 Q. Okay. And did at any time the
9 defendant make any effort to stop?

10 A. No, ma'am.

11 Q. What did you observe when you were
12 behind the vehicle?

13 A. When we initially were behind him, the
14 victims were both waving their arms out of the
15 window, that appeared to be in distress.

16 Q. Where did this chase end?

17 A. It was behind a house. He turned off
18 onto a little dirt road and parked behind the
19 house.

20 Q. Where did the defendant go?

21 A. He ran into the woods.

22 Q. And where did Riser go?

23 A. He followed him until he lost sight of
24 him.

25 Q. Who came into contact with the victims?

JOHN WEISE - DIRECT EXAM

1 A. I did.

2 Q. And can you describe their demeanor?

3 A. They were visibly upset, crying.

4 Q. And where did you put them?

5 A. I immediately put them into Lieutenant
6 Riser's car.

7 Q. What was the purpose of that?

8 A. To keep them secure.

9 MS. WILLIAMS: Thank you. No further
10 questions.

11 THE COURT: Any cross-examination of
12 the witness?

13 MR. SCHWACKE: No questions, Your
14 Honor.

15 THE COURT: Any objection to the
16 witness being excused? From the State?

17 MS. WILLIAMS: No, Your Honor.

18 THE COURT: From the defense?

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: Thank you. You're excused.
21 Call your next witness.

22 MR. POULOS: Detective Alteri.

23 GENO ALTERI,

24 being first duly sworn, testified as follows:

25 THE CLERK: Please have a seat, state

GENO ALTERI - DIRECT EXAM

1 your full name for the record and spell your last.

2 THE WITNESS: Geno Alteri, G-E-N-O,

3 A-L-T-E-R-I.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. POULOS:

7 Q. Morning, Detective.

8 A. Morning.

9 Q. Where do you currently work?

10 A. Berkeley County Sheriff's Office.

11 Q. How long have you been with the

12 sheriff's office?

13 A. Approximately 20 years.

14 Q. Okay. What is your position there?

15 A. Now I'm a lieutenant in the forensics

16 unit.

17 Q. Okay. What did you do previously?

18 A. I was in detectives.

19 Q. What are your current responsibilities

20 at BCSO?

21 A. I am currently with the forensics unit,
22 collecting and preserving evidence.

23 Q. Were you involved in the investigation
24 and collection of evidence in this case?

25 A. I was.

GENO ALTERI - DIRECT EXAM

1 Q. I want to direct your attention to
2 October 28, 2013. Did you respond to [REDACTED]
3 Road in Williamsburg that day?

4 A. I did.

5 Q. What was your responsibility at that
6 residence?

7 A. I had only been in forensics a short
8 time at that time, so myself and Detective Spence
9 went to the residence to process the scene for
10 Williamsburg County.

11 Q. Okay. And what was the first thing you
12 did in processing that scene?

13 A. Photographed the exterior of the
14 residence and the vehicle.

15 Q. Okay. Showing you State's 43 on the
16 screen. Is this the vehicle that was present at
17 that location you photographed?

18 A. Yes, it is.

19 Q. I'm showing you State's 39. Is that
20 the residence you photographed, with the vehicle in
21 the photograph as well?

22 A. It is.

23 Q. Okay. Who processed the car?

24 A. That will be -- actually it was all
25 three of us. It was Detective Spence, myself, and

GENO ALTERI - DIRECT EXAM

1 Detective Wrenn from Williamsburg County.

2 Q. And after -- after the car was
3 photographed and processed, did you process the
4 residence?

5 A. Yes, sir.

6 Q. Okay. State's 36 -- 62, I'm sorry. Is
7 this the interior of the residence that you
8 photographed?

9 A. Yes.

10 Q. 63. Same thing?

11 A. Yes, sir.

12 Q. Okay. 65; another photo inside the
13 house?

14 A. Yes, sir.

15 Q. Did you collect anything from inside
16 that house?

17 A. Yes.

18 Q. What did you collect?

19 A. Some duct tape, newspapers, some
20 washcloths, I believe a cigarette butt.

21 Q. I want to show you State's 66 and 67.
22 Looking at State's 66, what is that?

23 A. That's some duct tape that was in the
24 -- I believe that's in the living room.

25 Q. And you collected that duct tape?

GENO ALTERI - DIRECT EXAM

1 A. Yes.

2 Q. Okay. State's 67. Again, what is
3 that?

4 A. It's also more duct tape.

5 Q. Okay. After you collected that duct
6 tape, how did you package it?

7 A. It was put into a bag that Detective
8 Wrenn had documented.

9 Q. How many bags did you say you put the
10 duct tape in?

11 A. I don't know exactly how many bags were
12 used.

13 Q. I'm going to show you State's 87 and
14 88.

15 MR. SCHWACKE: Your Honor, we might
16 need a minute at this time.

17 THE COURT: It's been marked and
18 admitted prior to.

19 That's number 77 and 78?

20 MS. LITTLEJOHN: 87 and 88.

21 THE COURT: Okay. I misunderstood the
22 numbers. Approach.

23 (Bench conference.)

24 MR. SCHWACKE: Sorry.

25 THE COURT: That's okay. What's the

GENO ALTERI - DIRECT EXAM

1 problem?

2 MR. SCHWACKE: Obviously, we're
3 challenging every step in the chain, so that's what
4 we were trying to sort out. We were looking for
5 the sort of transfer of custody forms.

6 MR. POULOS: He put the tape in the
7 bags, another deputy filled out the evidence sheet
8 while he was doing it, and a third deputy received
9 it. So we're not going to put it into evidence
10 until we're done.

11 MS. WILLIAMS: They were all there at
12 the same time. Those people will come in after,
13 but since he collected it --

14 THE COURT: He's entitled to testify he
15 collected it and he put it in the bags.

16 MR. SCHWACKE: I'm not -- I just wanted
17 to see exactly what paperwork they had for that
18 process.

19 THE COURT: I assume they'll offer that
20 through the witness who actually filled it out.

21 (End of bench conference.)

22 THE COURT: You may proceed.

23 BY MR. POULOS:

24 Q. I'm showing you what's been marked as
25 State's 87 and 88. Do you recognize those two

GENO ALTERI - DIRECT EXAM

1 paper bags?

2 A. Yes.

3 Q. And what are those?

4 A. These are the bags that were used to
5 collect the evidence.

6 Q. Did you put the tape in those bags?

7 A. Yes.

8 Q. Okay. And did your partner, Mr.
9 Spence, record the transaction on the evidence
10 sheet?

11 A. Yeah. I believe it was Detective
12 Spence.

13 Q. Okay. Who did you give the bag of tape
14 to?

15 A. Detective Wrenn.

16 Q. Okay. And who was Detective Wrenn
17 with?

18 A. Williamsburg County.

19 Q. Okay. Were the bags stapled and closed
20 when you gave them to Detective Wrenn?

21 A. They were not.

22 Q. Did you later collect anything from the
23 surrounding area of the residence?

24 A. Outside of the residence there was a
25 deer camera that was in the tree. I don't recall

GENO ALTERI - DIRECT EXAM

1 exactly who asked for it, but we ended up taking
2 it.

3 Q. What did you do with the deer camera?

4 A. It was turned over to Detective Wrenn.

5 Q. Did you also at some point collect a
6 buccal swab from the defendant in this case?

7 A. I did.

8 Q. What is a buccal swab?

9 A. It's a swab from the mouth, so you can
10 compare it to any other DNA evidence that you have
11 in the case.

12 Q. I show you what's been marked as
13 State's 100. Do you recognize this item marked
14 State's 100?

15 A. Yes.

16 Q. And what do you recognize it to be?

17 A. This is the chain of custody. Once we
18 take the buccal swab from whoever we're getting it
19 from, then it's turned over to us and then we turn
20 it in to Evidence.

21 Q. The item contained in that pouch is the
22 defendant's buccal swab?

23 A. Correct.

24 Q. Okay. When did you retrieve that from
25 the defendant?

GENO ALTERI - DIRECT EXAM

1 A. This says 10/31/2013.

2 Q. What did you do with it?

3 A. Turned it in to Evidence for it to be
4 sent to SLED.

5 Q. You logged it in to Evidence yourself?

6 A. It could have been either myself or
7 Detective Spence. I'm the one that actually turned
8 it in. Whether I logged it in or her, I don't
9 know.

10 Q. And it was within your possession
11 between the time you took it and the time you
12 logged it in to Evidence?

13 A. Correct.

14 Q. I show you what has been marked as
15 State's 84. Do you recognize that item?

16 A. Yes.

17 Q. What is that?

18 A. This is an ASA kit that was picked up
19 from MUSC.

20 Q. What is an ASA kit?

21 A. A sexual assault kit.

22 Q. Does that pertain to the victim,
23 **L. J.**, in this case?

24 A. Yes.

25 Q. When did you pick that up?

GENO ALTERI - CROSS EXAM

1 A. 1/16/2014.

2 Q. Was it sealed when you picked it up?

3 A. Yes.

4 Q. Did it remain sealed when it was in
5 your custody?

6 A. Yes.

7 Q. What did you do with it?

8 A. It was sent to SLED.

9 Q. What did you do with it right after you
10 picked it up?

11 A. It was logged in to Evidence.

12 MR. POULOS: Okay. I have no further
13 questions for this witness.

14 THE COURT: Any questions for this
15 witness?

16 CROSS-EXAMINATION

17 BY MR. SCHWACKE:

18 Q. Officer Alteri, the item that was just
19 provided to you in the box, that's -- what number
20 is that again?

21 A. 84, I believe. I don't have my glasses
22 with me.

23 Q. When did it come into your possession?

24 A. That would have been picked up from
25 MUSC on 1/16/2014.

GENO ALTERI - CROSS EXAM

1 Q. And you picked it up from MUSC?

2 A. Correct. I got it from Sergeant
3 Register.

4 Q. Is he with the?

5 A. Public Safety.

6 Q. Public Safety with MUSC?

7 A. Yes, sir.

8 Q. Register?

9 A. Yes, sir.

10 Q. Does that indicate when that kit was
11 created?

12 A. No, not the chain of custody. On the
13 box itself it says, 10/28 of '13.

14 Q. And the first time it comes into law
15 enforcement's possession after that is January 16,
16 2014?

17 A. That's when Berkeley County took
18 possession of it.

19 Q. There were a number of items that were
20 taken at the location?

21 A. MUSC?

22 Q. No. No, I'm sorry, at the location, at
23 the house?

24 A. Yes, sir.

25 Q. And you didn't go to any other location

GENO ALTERI - CROSS EXAM

1 for any of the other evidence?

2 A. No, sir. We were only on the actual
3 property where the car and the residence was.

4 Q. Was there a time when these items --
5 the additional items that were taken from the
6 house, placed into the custody of the Williamsburg
7 County Sheriff's Office?

8 A. All evidence from the scene that we did
9 that day on the 28th, I believe it was, was turned
10 over to Williamsburg County. We did not take
11 anything from that -- on that date that we were
12 there.

13 Q. So the items -- you did a supplemental
14 report.

15 (DFT. EXH. 4, Report, was marked for
16 identification.)

17 BY MR. SCHWACKE:

18 Q. I show you what has been marked
19 Defendant's Exhibit 4 for identification and ask if
20 you are familiar with that.

21 A. I am.

22 Q. And what is that?

23 A. This is my supplement to the incident.

24 Q. And it helps you remember things when
25 you have a trial three years after?

GENO ALTERI - CROSS EXAM

1 A. Yes.

2 Q. You searched both the house and
3 vehicle; is that correct?

4 A. I did not search the vehicle. I
5 photographed and assisted in processing for prints.

6 Q. Who would have searched the vehicle?

7 A. That was Detective Spence and Wrenn.

8 Q. And all of those items were then turned
9 over to Detective Wrenn?

10 A. Correct.

11 Q. And that's exactly what the last line
12 on that page says?

13 A. All items including -- I'm sorry, all
14 items, including the items taken from the vehicle,
15 were turned over to Detective Wrenn, correct.

16 Q. I guess what is confusing me is this
17 page of the supplemental report.

18 A. Okay.

19 Q. And at the very top of the list, it
20 says, these items were retained by this agency?

21 A. This was not on that day. This was
22 later on we met with -- once we found out that we
23 were going to be handling the case, then we met
24 back up with Detective Wrenn and collected all the
25 evidence that she had and brought it to us.

GENO ALTERI - CROSS EXAM

1 Q. So at this point, Williamsburg County
2 has no evidence that belongs to this case?

3 A. I can't answer that. As far as I know,
4 they do not.

5 Q. So the items that were placed into
6 evidence included a pair of female black pants?

7 A. I don't know. I would have to look
8 at -- yes.

9 Q. Is that correct? Pair of white
10 underwear with a sanitary pad, pair of sneakers
11 size 12?

12 A. Yes.

13 Q. Pair of jeans?

14 A. Yes.

15 Q. Blue and white shirt?

16 A. Yes.

17 Q. Is that a T-shirt times three?

18 A. I want to say it's extra --

19 Q. Extra extra extra large?

20 A. Correct.

21 Q. Socks times two?

22 A. Yes.

23 Q. So I assume that's two pairs. Stocking
24 cap, a green and black knife, red and black ball
25 cap, green lighter with -- I'm sorry, green lighter

GENO ALTERI - CROSS EXAM

1 and an empty Newport cigarette pack -- so those
2 were together?

3 A. Yeah. All of this was given to us
4 together.

5 Q. Backs to cell phones and that says
6 plural, so do you know how many backs to cell
7 phones that was?

8 A. I do not.

9 Q. A cell phone, cell phone chargers, and
10 then a Smith and Wesson 22-caliber handgun?

11 A. Yes.

12 Q. Okay. With regards to the page before
13 that, you indicated that you collected the deer
14 camera, you collected the newspaper, there were
15 cuttings that were taken from various mattresses?

16 A. Correct.

17 Q. There were a number of photographs that
18 you took of that information; is that correct?

19 A. Correct.

20 MR. SCHWACKE: Thank you. That's all
21 the questions I have.

22 THE COURT: Any redirect?

23 MR. POULOS: Yes, Your Honor.

24 THE COURT: You may proceed.

25 REDIRECT EXAMINATION

GENO ALTERI - REDIRECT EXAM

1 BY MR. POULOS:

2 Q. Just to be clear, Detective, State's 87
3 and 88, which you identified as the duct tape you
4 collected and put in bags, you gave those to
5 Detective Wrenn from Williamsburg County?

6 A. Yes.

7 Q. Everything you collected from the house
8 that day went to Williamsburg County?

9 A. Yes.

10 Q. And some of the items were brought back
11 to Berkeley County?

12 A. Yes.

13 Q. The duct tape that you gave to
14 Detective Wrenn was not part of the items that came
15 back?

16 A. Not according to my list.

17 MR. POULOS: Okay. Nothing further,
18 Your Honor. Thank you.

19 THE COURT: Any objection to the
20 witness being excused? From the State?

21 MR. POULOS: None from the State.

22 THE COURT: From the defense?

23 MR. SCHWACKE: No, Your Honor.

24 THE COURT: Sir, you're excused.

25 THE WITNESS: Thank you.

CRYSTAL SPENCE - DIRECT EXAM

1 THE COURT: You're welcome.

2 Call your next witness.

3 MR. POULOS: The State calls Crystal
4 Spence.

5 CRYSTAL SPENCE,

6 being first duly sworn, testified as follows:

7 THE CLERK: Have a seat, state your
8 full name and spell your last name.

9 THE WITNESS: Crystal Spence,
10 S-P-E-N-C-E.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MR. POULOS:

14 Q. Afternoon. Where do you work?

15 A. Berkeley County Sheriff's Office.

16 Q. How long have you been there?

17 A. Since 2000.

18 Q. What is your position?

19 A. Forensics service unit.

20 Q. What are your responsibilities in that
21 role?

22 A. Processing crime scenes, logging in
23 evidence and taking evidence to other agencies for
24 processing.

25 Q. Okay. Directing your attention to

CRYSTAL SPENCE - DIRECT EXAM

1 October 28, 2013, did you respond to [REDACTED]
2 Road in Williamsburg with Lieutenant Alteri?

3 A. Yes, I did.

4 Q. What's the first thing you did?

5 A. Process the vehicle.

6 Q. Okay. Describe the vehicle.

7 A. It is a blue Hyundai Accent, and it was
8 located behind the residence.

9 Q. Did you recover a number of items from
10 that vehicle?

11 A. Yes.

12 Q. Okay. I want to show you State's 45.
13 What are we looking at there?

14 A. That is a large knife.

15 Q. And did you recover that knife from the
16 vehicle?

17 A. Yes, I did.

18 Q. I show you State's Exhibit -- what has
19 been marked for identification, 96. What is that?

20 A. This is the knife.

21 Q. That is the knife that you recovered
22 from that vehicle?

23 A. Yes, I did.

24 MR. POULOS: Your Honor, I would offer
25 that into evidence as State's 96.

CRYSTAL SPENCE - DIRECT EXAM

1 MR. SCHWACKE: At this time, no
2 objection.

3 THE COURT: Marked and admitted without
4 objection.

5 (STATE'S EXH. 96 in evidence.)

6 BY MR. POULOS:

7 Q. I show you State's 54. What is that?

8 A. That's a picture of the trunk.

9 Q. Okay. What's in the trunk?

10 A. The roll of duct tape, clothing, shoes.

11 Q. Did you collect the duct tape that you
12 see in the picture there?

13 A. Yes, I did.

14 Q. If you would look in that bag and tell
15 us, what is in there, please?

16 A. One roll of duct tape.

17 Q. Is that the duct tape you recovered
18 from the trunk?

19 A. Yes.

20 MR. POULOS: I would offer that into
21 evidence as State's 94.

22 THE COURT: Any objection?

23 MR. SCHWACKE: No objection.

24 THE COURT: Marked and admitted without
25 objection.

CRYSTAL SPENCE - DIRECT EXAM

1 (STATE'S EXH. 94 in evidence.)

2 BY MR. POULOS:

3 Q. I show you a photograph marked as
4 State's 52. What are we looking at there?

5 A. That is the passenger side floorboard
6 and a pair of black pants.

7 Q. What was inside of those pants?

8 A. A pair of underwear and a sanitary
9 napkin.

10 Q. You collected those?

11 A. Yes, I did.

12 Q. And who did you turn all this evidence
13 over to?

14 A. Lieutenant Wrenn from Williamsburg.

15 Q. Okay. I show you State's 46 and
16 State's 97. First of all, referring to the
17 photograph, State's 47, what is that?

18 A. That's the floorboard of the driver's
19 side of the vehicle.

20 Q. What is in the floorboard?

21 A. A pack of Newport cigarettes.

22 Q. Did you recover that pack of
23 cigarettes?

24 A. Yes.

25 Q. I show you State's 97. Is that the

CRYSTAL SPENCE - DIRECT EXAM

1 pack of cigarettes you recovered?

2 A. Yes, it is.

3 MR. POULOS: I would offer that in
4 evidence as State's 97.

5 MR. SCHWACKE: No objection.

6 THE COURT: Marked and admitted without
7 objection.

8 (STATE'S EXH. 97 in evidence.)

9 BY MR. POULOS:

10 Q. Did you attempt to take fingerprints
11 from that cigarette pack?

12 A. Yes, I did.

13 Q. And did you also attempt to take
14 fingerprints from the vehicle itself?

15 A. Yes, I did.

16 Q. Describe that process for me.

17 A. I'm sorry?

18 Q. Describe the process for me.

19 A. With Bateman powder and a brush we
20 processed the outside of the vehicle where you
21 would think people would touch. Once you see ridge
22 detail, which is the lines on your fingers, we lift
23 that with tape and then put it on backer cards,
24 which are called latent lifts.

25 Q. I show you what's been marked as

CRYSTAL SPENCE - DIRECT EXAM

1 State's 99, containing 99 A, B, C, and D. Tell me
2 what those are, please.

3 A. These are the four latents obtained
4 from that scene.

5 Q. Okay. Now let's back up. You put the
6 powder on the car and you put the tape on the car?

7 A. Yes.

8 Q. Who then pulls the tape off?

9 A. Lieutenant Wrenn.

10 Q. What did she do with it?

11 A. She put it on this white card and wrote
12 the information on the back.

13 Q. And you saw her do that?

14 A. Yes, I did.

15 Q. Is there a reason why you take turns,
16 why you wouldn't be putting the tape on the card?

17 A. Normally, when you're dusting, your
18 gloves and everything get really black and then the
19 cards get real black and are messy. So one person
20 dusts and one person lifts the prints.

21 Q. What did you do with those latents
22 after they were --

23 A. They were turned over to Lieutenant
24 Wrenn.

25 Q. Okay. And are they in the same

CRYSTAL SPENCE - DIRECT EXAM

1 condition as they were when you turned them over?

2 A. Yes, sir.

3 MR. POULOS: I would offer those into
4 evidence, Your Honor.

5 MR. SCHWACKE: No objection.

6 THE COURT: Marked and admitted without
7 objection.

8 (STATE'S EXH. 99A, B, C and D in
9 evidence.)

10 By MR. POULOS:

11 Q. I show you a box marked State's 85,
12 containing State's 87 and 88. If you could look at
13 State's 87 and 88 and tell me if you recognize
14 those two bags.

15 A. Those are the style bags we use in
16 forensics to put evidence in at scenes.

17 Q. And did you observe evidence being
18 placed into those bags?

19 A. Yes.

20 Q. Who placed it in there?

21 A. Lieutenant Alteri placed it in the
22 bags, Lieutenant Wrenn wrote on the bags, and then
23 I filled out chain of custody as everything was
24 handed to me.

25 Q. You filled out the chain of custody

CRYSTAL SPENCE - CROSS EXAM

1 noting that it went to Lieutenant Wrenn?

2 A. Correct.

3 MR. POULOS: Okay. I would offer 87
4 and 88 into evidence.

5 THE COURT: Any objection?

6 MR. SCHWACKE: Not at this time, Your
7 Honor, until the chain is complete.

8 THE COURT: That didn't answer my
9 question. Do you have an objection to the
10 admission of 87 and 88?

11 MR. SCHWACKE: I do, Your Honor.

12 THE COURT: Okay. They are marked for
13 ID, subject to completion of the chain.

14 MR. POULOS: Thank you, Your Honor.

15 No further questions.

16 THE COURT: Any questions for the
17 witness?

18 CROSS-EXAMINATION

19 BY MR. SCHWACKE:

20 Q. Are there markings you place on bags to
21 indicate who did what?

22 A. I can just tell by the handwriting on
23 the bag. The numbers should coincide with the
24 markers when they're photographed and then I know
25 her handwriting.

CRYSTAL SPENCE - CROSS EXAM

1 Q. And where is anything to indicate that
2 you were in the process of it?

3 A. Chain of custody.

4 Q. And that's a separate --

5 A. Piece of paper.

6 Q. And is that part of what's in your hand
7 right now?

8 A. No. This is just the bag.

9 Q. So somewhere there is a chain sheet?

10 A. Yes.

11 Q. For every item?

12 A. For every item.

13 Q. Would each item have its own sheet?

14 A. No. There's several items on a chain
15 of custody. On some of the pieces of chain of
16 custody, there's up to nine items on a chain of
17 custody.

18 Q. So you haven't seen that in terms of
19 your testimony here today -- you haven't seen that
20 sheet?

21 A. No.

22 MR. SCHWACKE: That's all I have.

23 THE COURT: Any redirect?

24 MR. POULOS: No, Your Honor.

25 THE COURT: Any objection to the

GERARD CUCURULLO - DIRECT EXAM

1 witness being excused? From the State?

2 MS. WILLIAMS: None from the State.

3 THE COURT: From the defense?

4 MR. SCHWACKE: No, Your Honor.

5 THE COURT: Ma'am, you're excused.

6 You may call your next witness.

7 MS. WILLIAMS: State would call Agent
8 Cucurullo.

9 GERARD CUCURULLO,

10 being first duly sworn, testified as follows:

11 THE CLERK: Have a seat, state your
12 full name for the record, and spell your first and
13 last name, please.

14 THE WITNESS: Gerard Cucurullo.

15 THE COURT: Spell your last name,
16 please.

17 THE WITNESS: C-U-C-U-R-U-L-L-O.

18 THE COURT: You may proceed.

19 MS. WILLIAMS: Thank you.

20 DIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Agent Cucurullo, who do you work for?

23 A. South Carolina Law Enforcement
24 Division.

25 Q. And where are you based?

GERARD CUCURULLO - DIRECT EXAM

1 A. Columbia.

2 Q. And how long have you worked for them?

3 A. About three years.

4 Q. And what are your duties?

5 A. I work for the bloodhound tracking
6 team; we track criminals and missing people with
7 bloodhounds.

8 Q. What kind of training and experience is
9 involved in the bloodhound team?

10 A. We do a lot of in-house. We've had
11 dogs at SLED since the '50s. We've had a lot of
12 experience with Premiere Agency out of South
13 Carolina running bloodhounds, but I've also been to
14 three week-long schools, one put on by the Federal
15 Government.

16 Q. These are what kind of dogs?

17 A. They are bloodhound mixes. Bloodhound
18 has the best nose, but we mix in Bluetick and
19 Redbone.

20 Q. Did you have an opportunity to respond
21 to a call on October 28, 2013?

22 A. I did.

23 Q. What kind of call was that?

24 A. I went to two calls on that day, but I
25 believe the one that we're here for is the one in

GERARD CUCURULLO - DIRECT EXAM

1 Williamsburg.

2 Q. Okay. And were you trying to find a
3 suspect or a missing person?

4 A. We were called to help track a suspect.

5 Q. And when you arrived at the scene, do
6 you remember about what area that was in in
7 Williamsburg?

8 A. It was close to I believe a prison or
9 jail of some sort.

10 Q. Near Ridgeville?

11 A. I don't recall.

12 Q. Okay. What was the terrain like? What
13 did it look like?

14 A. A lot of woods.

15 Q. And how many agencies were onsite when
16 you got there?

17 A. There were numerous agencies. I can't
18 give you an exact number. I know there was an
19 agent from our SLED Fugitive Team, Charleston
20 County Dogs had already been in the woods,
21 Williamsburg Sheriff's Department -- I'm sure there
22 were others.

23 Q. Who did you arrive with?

24 A. At the time, I was with two other
25 tracking team members in the vehicle we were with,

GERARD CUCURULLO - DIRECT EXAM

1 and there were also two other tracking team members
2 responding as well.

3 Q. Did you have the name of the person
4 that you were looking for?

5 A. We were given a description. I don't
6 know if we had the name or not.

7 Q. What was the description?

8 A. I can't recall.

9 Q. Would it refresh your memory to look at
10 your report?

11 A. Sure.

12 MS. WILLIAMS: May I approach?

13 THE COURT: Yes.

14 THE WITNESS: What was your question?

15 By MS. WILLIAMS:

16 Q. Who were you looking for?

17 A. Telly McClam.

18 Q. Okay. And does it have how big he was
19 at the time?

20 A. I'm sure it did, but I don't have that
21 on my report. They normally give us a description
22 by height, weight, what they were wearing at the
23 time.

24 Q. And what did you learn upon arrival at
25 the scene?

GERARD CUCURULLO - DIRECT EXAM

1 A. Of course we learned he was wanted and
2 we had learned that Charleston County K9 had been
3 in the woods attempting to track him. When we were
4 there, they were starting to come out of the woods.
5 So we were just starting to get intel on where the
6 last place they saw him, the last place they were
7 tracking him, so we could establish where we needed
8 to start.

9 Q. What was the name of the dog that you
10 were handling that day?

11 A. Jessie, one of our bloodhound mixes.

12 Q. What did you do with Jessie after that,
13 after you found out about the -- not the success of
14 Charleston County?

15 A. After the Charleston County, we
16 discussed with them where's the last place they
17 thought they had him and we went into the woods in
18 that area and attempted to put bloodhound Jessie
19 around that area to see if she would pick up on a
20 track that they didn't pick up on, and we were
21 unsuccessful at that time.

22 Q. Okay. So what happened next?

23 A. So we got out of the woods. A lot of
24 times we'll get additional spottings, so we gave it
25 a little bit of time, hoping to get another

GERARD CUCURULLO - DIRECT EXAM

1 spotting so we could start the dog again if the
2 suspect doesn't get picked up. And in this case,
3 that's what happened. We got an additional
4 sighting.

5 Q. And do you even know about what time
6 this was?

7 A. I know we got the call around
8 5:00 p.m., but I don't recall how long between the
9 initial track and next sighting was. I don't
10 recall.

11 Q. So when you get the tip, then, do you
12 move to another location?

13 A. We do. We got the call that there was
14 somebody knocking on the back door or back window
15 of the suspect's mother's house.

16 Q. And how far away do you go next?

17 A. It was a few miles.

18 Q. Then what happens?

19 A. So we responded to that location and
20 once again we pulled bloodhound Jessie out of the
21 dog wagon and cut her in the backyard where the
22 suspect was last possibly at, and bloodhound Jessie
23 pretty quickly picked up on the trail and started
24 tracking.

25 Q. Did you at some point put eyes on him?

GERARD CUCURULLO - DIRECT EXAM

1 A. So we started tracking, and when we
2 track, we want a perimeter. We don't always track
3 directly to the suspect. Sometimes we push the
4 suspect to the perimeter where other officers are
5 and they can catch them.

6 In this case, Steve Sly, one of our
7 other trackers, had gone to the left and there were
8 railroad tracks that ran on the other side of the
9 woods and it gives you a clear view a good distance
10 down the wood line. In this case it worked out,
11 because he saw an individual they identified as the
12 suspect run across the railroad tracks.

13 And so we started tracking from the
14 house and ended up going across the railroad
15 tracks. And Stevie was too far away to be able to
16 run and catch him, but he did confirm where --
17 tracking where he saw the individual and we tracked
18 to the other side of the woods, where we first made
19 contact with Mr. McClam.

20 Q. And were you present when Mr. McClam
21 was apprehended?

22 A. I was.

23 Q. Can you explain that to us, how that
24 went down?

25 A. We approached him and he was initially

GERARD CUCURULLO - DIRECT EXAM

1 going the opposite direction of us. And we gave
2 him lots of verbal commands, let's see your hands,
3 you're under arrest, and get on the ground. He
4 initially didn't want to respond with anything.

5 And then he started getting on the
6 ground, and at this point I saw he didn't have any
7 weapons in his hands and I couldn't tell about
8 around his waistline or anything like that, didn't
9 see any in his hands. So I approached, I grabbed
10 -- I dropped the dog, because I was running
11 bloodhound Jessie at the time, dropped the lead to
12 the dog, and I approached and I grabbed I believe
13 it was his left arm and another officer had started
14 coming up to grab his right.

15 So as I had his left arm about the
16 wrist, I looked over to make sure that his other
17 hand was -- started getting secured. At this time
18 he's prone on the ground, I'm off I believe on the
19 left side, and another officer on the opposite
20 side, and I could tell he was starting to -- he was
21 resisting some and he started feeling around on the
22 ground next to him. I thought that was odd at the
23 time, but we were trying to get his hands behind
24 his back.

25 So I didn't pay any attention to that

GERARD CUCURULLO - DIRECT EXAM

1 at the time. And it took awhile, he didn't respond
2 to our verbal orders, didn't want to put his hands
3 behind his back, but we were able to get his hands
4 behind his back and get him handcuffed. That's
5 when I started thinking, why is he trying to feel
6 around on the ground. And I started looking and
7 within a couple of feet, there was a silver
8 revolver on the ground next to us.

9 Q. Okay. And that was right where he was
10 feeling around with his hands?

11 A. It was close to it.

12 Q. Okay. And once he was apprehended, was
13 he removed from that area? Where was he placed?

14 A. We had local officers, I guess there
15 was a road on the other side of the wood line, and
16 we had turned him over to local officers to have
17 him transported to wherever he was going and then
18 we also -- we didn't collect the gun at that time.
19 We stood there and waited for other local officers
20 to come in, the crime scene or whoever they wanted
21 to take pictures and process it before we picked it
22 up. We didn't want to contaminate any of the
23 evidence they had there.

24 Q. So that gun right by Mr. McClam, you
25 held secure until someone else could pick it up?

GERARD CUCURULLO - DIRECT EXAM

1 A. We secured it there and left it alone.
2 We didn't pick it up. We had a perimeter around
3 it. It was going nowhere and no one had access to
4 it.

5 Q. How did you describe that gun in your
6 report?

7 A. It was a silver in color revolver.

8 Q. Did you see anything about the handle?

9 A. It was a different color. It was brown
10 or black.

11 Q. Would you recognize the gun if you saw
12 it?

13 A. I probably would, but it's been a
14 while.

15 MS. WILLIAMS: Your Honor, I'm going to
16 show him what has been marked as State's 90.

17 THE WITNESS: That does look similar to
18 the gun I saw that day.

19 BY MS. WILLIAMS:

20 Q. And this gun was kept secure by your
21 agency until somebody from the local agency could
22 pick it up?

23 A. Yes, ma'am.

24 Q. I believe in a previous statement you
25 described the defendant's arrest as a tussle. Do

GERARD CUCURULLO - CROSS EXAM

1 you remember saying that?

2 A. Yeah. He -- he wasn't -- he wasn't
3 listening to our verbal commands. It wasn't a
4 fight. There wasn't punches or anything like that.
5 He was being -- he was resisting. He didn't want
6 to go to jail. He had something else on his mind,
7 he wasn't obeying what we wanted him to do. He
8 didn't want to put his hands behind his back. We
9 struggled with that, to get him in handcuffs.

10 MS. WILLIAMS: Okay. Thank you.

11 THE COURT: Cross-examination of the
12 witness?

13 CROSS-EXAMINATION

14 BY MR. SCHWACKE:

15 Q. I'm not going to try to say your last
16 name.

17 A. Cucurullo; it's a tough one.

18 Q. Okay. How long have you been with
19 SLED?

20 A. I've been with SLED for over three
21 years.

22 Q. And it's all been with dog tracking?

23 A. Yes, sir. That's my primary duties.

24 Q. I'm assuming there are different types
25 of dogs at SLED?

GERARD CUCURULLO - CROSS EXAM

1 A. There are. There are.

2 Q. You mentioned a bloodhound mix which is
3 used for tracking and then there would be other
4 drug dogs or --

5 A. We do -- we have bomb dogs, narcotic
6 dogs, we have an apprehension dog that can also
7 track and do our searches, so we have different
8 dogs for different situations.

9 Q. And does SLED offer training or do you
10 get that from someplace else?

11 A. We do most of our training in-house.
12 We have numerous years of training there, but we go
13 externally as well. I've been to three different
14 week-long schools about tracking. One was put on
15 by the Federal Government.

16 Q. Is this training the type for both the
17 handler and the dog?

18 A. Yes.

19 Q. At the same time?

20 A. Some could be one-on-one or it could
21 just be the handler out there looking for signs by
22 ourselves. We're trained to track with our eyes
23 and not just the dog. We want to confirm that the
24 dog is on the trail of what we see. So looking for
25 footprints, looking for a shine on the grass where

GERARD CUCURULLO - CROSS EXAM

1 it's been pushed down, twigs that have been broken.
2 We want to confirm that the dog is on the proper
3 trail. Yes, we train with the dog and without as
4 well.

5 Q. Is there such a thing as too many dogs
6 on a search? Can they mess up -- can one set of
7 dogs mess up the process for another set of dogs?

8 A. If -- if you're speaking of
9 contamination, that does become an issue, but we
10 train on that. You just have to work through it.
11 We want to get the dog struck on that one scent,
12 and with our dogs, once they're on that one scent,
13 that's what they're going to track for.

14 Q. And so about how long were you out
15 there that day?

16 A. We got the call about 5:00, and my
17 report says we were -- we had cleared from there
18 about 1:20 in the morning. I believe that was back
19 in Columbia, 1:20.

20 Q. Do you recall what the weather was?

21 A. I don't recall.

22 Q. The Solicitor was asking about the
23 report indicating a tussle. What do you remember
24 specifically about that?

25 A. Just what I stated. It wasn't a -- he

GERARD CUCURULLO - CROSS EXAM

1 was resisting arrest. He didn't want to put his
2 hands behind his back, he didn't want to go to
3 jail, he wasn't listening to the verbal commands.

4 Q. Had he gotten worked up? Was he
5 sweaty? What was his physical shape?

6 A. I don't recall.

7 Q. And after he is taken down, you
8 indicate that he's kind of reaching towards an
9 area?

10 A. He was reaching off to his side like he
11 was searching for something.

12 Q. And at that point, once he's in
13 custody, there is a weapon that's similar to the
14 one that was shown to you today?

15 A. Yes, sir.

16 Q. And you all took great lengths to make
17 sure that there was no contamination, touching,
18 anything to the weapon, until someone else could
19 come and pick it up?

20 A. Yes, sir.

21 Q. Did you remain until that person came?

22 A. I did.

23 Q. Do you know who the person was?

24 A. I just know it was a local officer.

25 Q. Okay. Any of the local agencies? It

GERARD CUCURULLO - CROSS EXAM

1 could have been Williamsburg or --

2 A. I believe it was Williamsburg, but I
3 don't recall.

4 Q. Was it a uniformed officer or --

5 A. I believe it was an uniformed officer.

6 MR. SCHWACKE: One moment. That's all
7 the questions I have.

8 THE COURT: Any redirect?

9 MS. WILLIAMS: No, Your Honor.

10 THE COURT: I can't hear you.

11 MS. WILLIAMS: No, Your Honor.

12 THE COURT: Any objection to the
13 witness being excused? From the State?

14 MS. WILLIAMS: No.

15 THE COURT: From the defense?

16 MR. SCHWACKE: No, Your Honor.

17 THE COURT: Sir, you're excused.

18 THE WITNESS: Thank you very much.

19 THE COURT: You're welcome.

20 Call your next witness.

21 MS. WILLIAMS: Detective Ballard.

22 JUAN BALLARD,

23 being first duly sworn, testified as follows:

24 THE CLERK: Have a seat, state your
25 full name and spell your last name.

JUAN BALLARD - DIRECT EXAM

1 THE WITNESS: Juan Ballard,
2 Williamsburg County Sheriff's Office,
3 B-A-L-L-A-R-D.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Detective Ballard, how long have you
8 worked for Williamsburg County Sheriff's Office?

9 A. Going on 18 years.

10 Q. Okay. And where did you work before
11 that?

12 A. Atlantic Beach, South Carolina.

13 Q. And generally your responsibilities are
14 in the detective unit?

15 A. Yes, ma'am.

16 Q. And did you respond to a call regarding
17 Telly McClam on 10/28/2013?

18 A. I did.

19 Q. And was that an agency assist?

20 A. It was.

21 Q. Where did you initially respond?

22 A. To a residence on [REDACTED] Road in the
23 Salters area.

24 Q. At some point did you learn that the
25 defendant had been apprehended?

JUAN BALLARD - DIRECT EXAM

1 A. Yes.

2 Q. And did you go to that location?

3 A. I did.

4 Q. And did you collect anything from that
5 location?

6 A. I did.

7 Q. What was that?

8 A. A small caliber, I think 22, revolver.

9 Q. Okay. And when you got there, who was
10 in control of that evidence?

11 A. SLED agents.

12 MS. WILLIAMS: Okay. Your Honor, I'm
13 going to show Detective Ballard what has been
14 marked as State's 89 and 90.

15 May I approach?

16 THE COURT: You may.

17 BY MS. WILLIAMS:

18 Q. Can you tell us what this box is and
19 what's inside?

20 A. It's an evidence box we use to put
21 small items in, like handguns, knives, things like
22 that.

23 Q. Is that the evidence box you used that
24 day?

25 A. It is.

JUAN BALLARD - DIRECT EXAM

1 Q. And is there some kind of identifying
2 mark on this gun and on this box that shows you
3 that this is the box that you collected for this
4 gun?

5 A. It is, serial number.

6 Q. What is the serial number on the
7 weapon?

8 A. 20365.

9 Q. And what is the serial number on the
10 box?

11 A. 20365.

12 Q. And what did you do with this box when
13 -- after you collected it? Where did you put it
14 next?

15 A. We put it in our drop box at the
16 sheriff's office.

17 Q. Who did you give it to specifically to
18 do that?

19 A. Lieutenant Wrenn.

20 Q. Okay. And was there anything else you
21 collected at the time?

22 A. There was ammunition out of the gun I
23 took out.

24 Q. Was the ammunition in the gun when you
25 collected it?

JUAN BALLARD - DIRECT EXAM

1 A. It was.

2 Q. Okay. And describe the scene like
3 where you got the gun, where SLED was holding it.
4 Was it a neighborhood? Tell us what the terrain
5 was like.

6 A. It was a wooded area, probably from me
7 to the table, from the railroad tracks.

8 Q. And, in addition --

9 MS. WILLIAMS: At this time, Your
10 Honor, we would offer State's 89, the box that the
11 gun was in, and State's 90 into evidence.

12 THE COURT: Any objection?

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: Marked and admitted without
15 objection.

16 (STATE'S EXH. 89 in evidence.)

17 (STATE'S EXH. 90 in evidence.)

18 BY MS. WILLIAMS:

19 Q. Just to be clear, State's 91, are these
20 the bullets that were in the gun?

21 A. Yes, ma'am.

22 Q. And that's what you put into the box?

23 A. I did.

24 MS. WILLIAMS: We would offer State's
25 91 as well.

JUAN BALLARD - DIRECT EXAM

1 THE COURT: Any objection?

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: Marked and admitted without
4 objection.

5 (STATE'S EXH. 91 in evidence.)

6 BY MS. WILLIAMS:

7 Q. Did you also get a deer camera at some
8 point?

9 A. Yes.

10 Q. What did you do with that?

11 A. Took the memory card out and downloaded
12 the pictures.

13 Q. And you printed some of those pictures?

14 A. I did.

15 Q. And in addition to that, did you also
16 take some items to SLED?

17 A. I did.

18 Q. And I'm going to show you --

19 MS. WILLIAMS: May I approach?

20 THE COURT: You may.

21 BY MS. WILLIAMS:

22 Q. This is State's 85. Can you tell us
23 what was in this box, if you know?

24 A. I can't recall everything that was in
25 the box at this point.

JUAN BALLARD - DIRECT EXAM

1 Q. Is there a slip that can help you? Can
2 you tell us -- is that a slip that's on the box?

3 A. Yes, ma'am.

4 Q. And what was in the box?

5 A. Sealed box with two pieces of duct
6 tape, buccal swabs from Deadrene McHoney, swabs
7 from duct tape, 11 latent prints and a ten-print
8 from Telly McClam.

9 Q. And how do you know you took these
10 things to SLED?

11 A. My initials are right there.

12 (Indicating)

13 Q. And what does that read?

14 A. JLB.

15 Q. Okay. And did you tamper with this box
16 or do anything else to this box --

17 A. I did not.

18 Q. -- except deliver it?

19 A. Except deliver it.

20 Q. Detective, we just talked about item
21 85. Can you say which item's numbers are in this
22 box? Can you read off the item numbers that are in
23 the box?

24 A. 87, 88.

25 Q. And what about here?

JUAN BALLARD - DIRECT EXAM

1 A. 86.

2 Q. Okay. And those items, State's 88, 87,
3 and 86, are contained in State's 85?

4 A. Yes, ma'am.

5 Q. And that was sealed with your initials?

6 A. It was.

7 MS. WILLIAMS: May I approach?

8 THE COURT: You may.

9 BY MS. WILLIAMS

10 Q. Did you take some latent cards to SLED?
11 And this is State's 99.

12 A. Yes, ma'am, I did.

13 Q. And how do you know that you took those
14 up?

15 A. That's my scribble.

16 Q. Okay. Thank you. Thank you, Detective
17 Ballard. No other questions.

18 THE COURT: Any questions for the
19 witness?

20 MR. SCHWACKE: Just a couple questions.

21 CROSS-EXAMINATION

22 BY MR. SCHWACKE:

23 Q. Do you recall when you went out to the
24 tracks that night exactly or whereabouts the gun
25 was?

JUAN BALLARD - CROSS EXAM

1 A. Do I recall exactly where the gun was
2 at?

3 Q. Generally?

4 A. Yeah.

5 Q. Where was it?

6 A. It was -- like I said, it was in a
7 wooded area beside the railroad tracks in the Lane
8 community.

9 Q. There were officer there at the time?

10 A. Yes.

11 Q. About how many SLED agents out there?

12 A. I can't recall how many SLED agents.

13 There was like 60 of us out there.

14 Q. And how did you take the gun into your
15 possession?

16 A. When the SLED agents alerted us that
17 the gun was in the woods, I went in there and took
18 possession of the gun, placed it in the box and put
19 it in my vehicle and it stayed there until I took
20 it to the office.

21 Q. So you had the box with you when you
22 went?

23 A. We keep boxes in our vehicles.

24 Q. Okay. And did you wear any gloves?

25 A. I did.

JUAN BALLARD - CROSS EXAM

1 Q. What kind of gloves?

2 A. Black latex gloves.

3 Q. Do you recall when you did the transfer
4 to SLED of these items?

5 A. I can't remember the exact date on
6 that.

7 Q. Were those taken by Juan Ballard --
8 that's you?

9 A. That's me.

10 Q. They were taken up there -- if it says
11 -- it has the sealing official, Investigator Juan
12 Ballard?

13 A. Yes.

14 Q. And it says, date 4/9/2014, would that
15 be the date?

16 A. Is that the SLED seal?

17 Q. It is their evidence bag.

18 A. That's when I took it then.

19 Q. So, again, April 9, 2014?

20 A. That would be correct.

21 MR. SCHWACKE: That's all, Your Honor.

22 THE COURT: Any redirect of the
23 witness?

24 MS. WILLIAMS: No, Your Honor.

25 THE COURT: Any objection to the

1 witness being excused? From the State?

2 MS. WILLIAMS: Not from the State.

3 MR. SCHWACKE: No, ma'am.

4 THE COURT: Sir, you're excused.

5 THE WITNESS: Thank you, ma'am.

6 THE COURT: You're welcome.

7 We're going to take advantage of this
8 break in testimony to take our lunch recess. We
9 are going to break until five after two. During
10 the break, do not discuss the case among yourselves
11 and do not do any independent research on the
12 Internet, and please do not read, watch, or listen
13 to any media accounts about this case if there are
14 any, and please don't have any contact with anyone
15 in or about the courthouse. Again, we would not
16 want an innocent conversation misinterpreted. If
17 you would leave your notepads in your seats and
18 follow the directions of the bailiff. As soon as
19 everyone returns at 2:05, we will resume testimony.

20 (Jury out, 1:02 p.m.)

21 THE COURT: You may be seated. Okay.

22 Mr. Schwacke, I took something under advisement
23 because I didn't want to ask this question in the
24 presence of the jury and I knew we would have a
25 break. I'm confused as to whom you claim is

1 missing in the chain on number 87 and 88 of the
2 State.

3 MR. SCHWACKE: I did not -- we agreed
4 on -- I did earlier, but they just completed it
5 with Mr. Ballard.

6 THE COURT: They completed it, but they
7 didn't offer it, unless I --

8 MS. WILLIAMS: Well, we offered it --

9 THE COURT: You offered it earlier, but
10 you didn't offer it just now and that's why I'm
11 asking the question. So is there no exception to
12 87 and 88?

13 MR. SCHWACKE: Based on his testimony,
14 no, Your Honor.

15 THE COURT: 87 and 88 are in without
16 objection.

17 (STATE'S EXH. 87 in evidence.)

18 (STATE'S EXH. 88 in evidence.)

19 THE COURT: All right. Anything else
20 we need to take up before we adjourn for lunch?
21 From the State?

22 MS. WILLIAMS: No, Your Honor.

23 THE COURT: From the defense?

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: Have a good lunch. See

1 you all at 2:05.

2 (A luncheon recess transpired.)

3 THE COURT: State ready to proceed?

4 MS. WILLIAMS: Yes, Your Honor. I
5 wanted to inquire about a scheduling issue. We
6 will conclude today with our final witness. We're
7 offering an expert on domestic violence, on the
8 dynamics of domestic violence. And Mr. Schwacke is
9 going to want a hearing about her credentials and
10 also about whether she is relevant to this trial.

11 I imagine that we will finish with all
12 of our other witnesses, we have about seven
13 witnesses left, by close to 4:00 or 4:30. I would
14 hate to have her come all the way up here unless
15 you want me to bring her up here, if we're going to
16 stay past 5:00.

17 THE COURT: I'm not going beyond 5:00.

18 MS. WILLIAMS: So we would just plan to
19 have her in the morning.

20 THE COURT: That would be your last
21 witness?

22 MS. WILLIAMS: Yes, ma'am.

23 THE COURT: What is tomorrow,
24 Wednesday?

25 MS. WILLIAMS: Yes, ma'am.

1 THE COURT: Mr. Schwacke, do you still
2 intend to call witnesses?

3 MR. SCHWACKE: That's currently our
4 intention.

5 THE COURT: How many of those do you
6 still intend to call?

7 MR. SCHWACKE: This is subject to
8 our --

9 THE COURT: Well, you don't have to
10 present anybody. This is for scheduling purposes.

11 MR. SCHWACKE: I believe we would have
12 as many as five to six witnesses. And at some
13 point, Your Honor, you will have to address my
14 client with regard to his own intentions.

15 THE COURT: Yes, of course.

16 MR. SCHWACKE: I believe -- I'm
17 planning to have all of my witnesses here in the
18 morning.

19 THE COURT: Well, my question becomes,
20 how long are the witnesses that the State has
21 remaining?

22 MS. WILLIAMS: For today?

23 THE COURT: Yes.

24 MS. WILLIAMS: We got through eight
25 this morning and one of the eight was the victim,

1 which took a lot longer. We do have a couple of --
2 four SLED people that I think are going to be
3 vigorously cross-examined so I'm guessing at least
4 two hours, but possibly longer. But, you know, the
5 bulk of it is the nurse, the SLED scientists, which
6 is three of them, a couple of chain people, and
7 that's pretty much it.

8 THE COURT: And then who is your last
9 witness that you've indicated you plan to call?

10 MS. WILLIAMS: It is Dr. Alyssa
11 Rheingold, and we've provided her CV to Mr.
12 Schwacke. She has testified numerous times up here
13 just about the dynamics of domestic violence, about
14 trauma, why kidnapping victims act a certain way,
15 what the --

16 THE COURT: Let me ask you a question.
17 Are you going to object to her testimony,
18 Mr. Schwacke?

19 MR. SCHWACKE: Yes, ma'am.

20 THE COURT: And what would be the basis
21 of the objection?

22 MR. SCHWACKE: Well, first, the
23 Solicitor just sort of painted with a broad brush
24 there as what she will be testifying to. I'm not
25 sure that the science of what she is about to

1 testify has yet sort of been approved.

2 THE COURT: What are you referring to?

3 MR. SCHWACKE: Well, she's -- she's
4 intending to be an expert and testify as an expert
5 witness in a broad area of things, including
6 domestic violence; where this might be classified
7 as a domestic violence case, it's not been framed
8 in that way, other than the occasional question by
9 Ms. Williams, but no witnesses described it as
10 such.

11 I don't believe that the information
12 that she could provide would be of benefit to a
13 jury, that they would be able to essentially
14 understand the nature of a person being fearful of
15 a weapon being pointed at them without the
16 direction of someone being paid as an expert
17 witness to come in here and say that.

18 THE COURT: You lost me. I thought
19 they were going to present her as an expert.

20 MR. SCHWACKE: They are.

21 THE COURT: People testify all the time
22 about why people don't report things, why in
23 stressful situations they don't act in certain
24 manners. Of course, she can't say that
25 specifically of these individuals. She can only

1 talk in general hypotheticals, but that's a tested
2 science.

3 It's not anything new. It's testified
4 to around the state and across the country every
5 day. I don't know that -- I don't think -- I can't
6 imagine a valid objection scientifically, because
7 it has been tested, but relevance may -- I haven't
8 heard anything about domestic violence at this
9 point that would make it relevant, but I think she
10 can talk about the dynamics of how people react to
11 stressful situations, depending on her
12 qualifications. I would have to hear that.

13 MR. SCHWACKE: That's where I am as
14 well, as to whether or not she would be qualified
15 as an expert.

16 THE COURT: You have her CV, don't you?

17 MR. SCHWACKE: I do. I see a lot of
18 things, but at this point, I don't know what your
19 ruling would be.

20 THE COURT: I have no idea. I haven't
21 heard anything, but I'm just trying to flesh out
22 whether there's really an objection. Sometimes
23 there's several grounds for objections. I don't
24 think there can be a valid objection on the
25 science. There might be some objection to her

1 expertise, her education, training, and experience,
2 and maybe an objection on relevance, but I need for
3 you to be focused in your objection.

4 I think we should only expend time on
5 things that are valid. I think we all know that
6 science has been tested and proven and there's
7 nothing -- it's not rocket science; people testify
8 to that all the time. They testify about why
9 children don't report certain things, they testify
10 about why adults don't report certain things,
11 especially when there's a delayed report in a rape,
12 which we know happens all the time, and it's
13 testified to all the time. I'm trying to figure
14 out what the basis of the objection would be.

15 MR. SCHWACKE: Your Honor, at the
16 appropriate time we would object to her
17 qualification as an expert and the relevancy of her
18 testimony.

19 THE COURT: Well, then you need to
20 guesstimate on your time, how long it's going to
21 take. I don't want to have -- I don't want us to
22 have some long extended break.

23 MS. WILLIAMS: I understand.

24 THE COURT: Because -- it's not going
25 to matter to me one way or the other, but you don't

1 get to hear the complaints on the back end from the
2 jury when their time was wasted and they've taken
3 off from their jobs. They see us leaving court
4 early as not a good thing. They see that as a
5 waste of their time. They don't tell you that, but
6 we get to hear it.

7 So if it seems that I'm being exacting
8 on time, that is why. Because you-all don't get to
9 hear the back end of what we hear. So we have to
10 make as much use of the jurors' time as possible.

11 MS. WILLIAMS: Well, just in an effort
12 to make it a little more efficient, could we submit
13 her CV to the Court and --

14 THE COURT: I'm still going to have to
15 hear it.

16 MS. WILLIAMS: Well, I understand that,
17 but maybe we could at least hear the argument and
18 the case law about the relevance and then we could
19 just -- she's going to be voir dired as far as --

20 THE COURT: I will have to hear her
21 testimony before I make any decision about her
22 qualifications. Her CV is educational, but it's
23 not going to assist me in making a record and
24 making a decision.

25 MS. WILLIAMS: Well --

1 THE COURT: I have to hear her
2 testimony. I have to judge her credibility, I have
3 to listen to what she has to say.

4 MS. WILLIAMS: Could we maybe just have
5 the relevance portion and the case law argument --

6 THE COURT: I haven't heard anything.

7 MS. WILLIAMS: I can't bring her up
8 here for today and then bring her back tomorrow for
9 testimony. I don't even know if we have the budget
10 for --

11 THE COURT: You have to make that call.

12 MS. WILLIAMS: Okay.

13 THE COURT: Are we ready to go forward?
14 State ready?

15 MS. WILLIAMS: Yes, Your Honor.

16 THE COURT: Defense ready?

17 MR. SCHWACKE: Yes, Your Honor.

18 THE COURT: And who is the State's next
19 witness?

20 MS. WILLIAMS: SANE nurse Karlayne
21 Dufault.

22 THE COURT: Is she present?

23 MS. WILLIAMS: She is.

24 THE COURT: Okay. Bring in the jury.

25 (Jury in, 2:20 p.m.)

KARLAYNE DUFAULT - DIRECT EXAM

1 THE COURT: You may be seated.

2 Ladies and gentlemen, I hope you had a
3 good lunch. We are now going to resume testimony.

4 The State may call their next witness.

5 MS. WILLIAMS: Karlayne Dufault.

6 KARLAYNE DUFAULT

7 being first duly sworn, testified as follows:

8 THE CLERK: Have a seat, state your
9 full name for the record and spell your last name.

10 THE WITNESS: Karlayne Default,
11 D-U-F-A-U-L-T.

12 THE COURT: And could you spell your
13 first name as well?

14 THE WITNESS: Yes, ma'am,
15 K-A-R-L-A-Y-N-E.

16 THE COURT: You may proceed.

17 MS. WILLIAMS: Thank you.

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. How long have you -- where do you work?

21 A. I work at MUSC Children's Hospital.

22 Q. And how long have you worked there?

23 A. I have worked there since 1999.

24 Q. And what do you do? What is your
25 present position?

KARLAYNE DUFAULT - DIRECT EXAM

1 A. I'm a pediatric nurse practitioner in
2 the division of child abuse pediatrics.

3 Q. And are you also a nurse practitioner?

4 A. Nurse practitioner, yes, ma'am, and
5 also a certified pediatric sexual assault nurse
6 examiner.

7 Q. What is your educational background?

8 A. I went to MUSC College of Nursing
9 undergraduate and received my Bachelor's of Science
10 in Nursing, and then I also did a Master's Program
11 at the College of Nursing under the pediatric nurse
12 practitioner program.

13 Q. And is continuing education also
14 required in your field?

15 A. Yes, ma'am.

16 Q. Tell us a little bit about that.

17 A. Each year I have to have 12 hours of
18 CEUs that are directly related to child abuse
19 pediatrics.

20 Q. And how long have you worked in the
21 pediatric SANE area?

22 A. Since 2004.

23 Q. Okay. What special educational or
24 practical requirements are there for that specific
25 specialty?

KARLAYNE DFAULT - DIRECT EXAM

1 A. When I first started, I did a
2 three-month training under a child abuse
3 pediatrician before I was allowed to do cases on my
4 own, and then the 12 hours of continuing education
5 per year are specifically related to child abuse
6 pediatrics.

7 Q. Do you presently supervise anyone?

8 A. I do. I'm the nursing coordinator for
9 Pediatric Sexual Assault Nurse Examiner Program and
10 under that program we have five RNs that work on
11 acute sexual assault cases for us.

12 MS. WILLIAMS: Your Honor, at this time
13 the State would offer Karlayne Dufault as an expert
14 in sexual assault nurse examination.

15 THE COURT: Any questions or
16 objections?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: Admitted without
19 objection. You may proceed.

20 BY MS. WILLIAMS:

21 Q. Now, were you working at MUSC in this
22 capacity October 28th, 2013?

23 A. Yes, ma'am.

24 Q. And during this time can you tell us if
25 you treated a patient named **L. J.** ?

KARLAYNE DUFAULT - DIRECT EXAM

1 A. I did.

2 Q. Did you obtain general information
3 concerning the patient when she came in?

4 A. Yes, ma'am, I did.

5 Q. Do you do that routinely?

6 A. We do.

7 Q. And did she tell you why she was there?

8 A. She did, yes, ma'am.

9 Q. Did she tell you she was sexually
10 assaulted?

11 A. Yes, ma'am, she did.

12 Q. Did she tell you where she was sexually
13 assaulted?

14 A. She did.

15 Q. And where did she say?

16 A. She said she was assaulted in
17 Pineville, down a dirt road, on the top of a car.

18 Q. And did she tell you when that
19 occurred?

20 A. It had happened that morning between 5
21 to 6:00 a.m.

22 Q. Okay. And what is the protocol or
23 procedure for doctors in treating a patient for
24 sexual assault? What is done first?

25 A. So first we have two types of exams for

KARLAYNE DUFAULT - DIRECT EXAM

1 child sexual assault. And how we decide which exam
2 we are going to do is based on the time frame. So
3 if an alleged assault occurred within 72 hours,
4 then we do what we call an acute exam. And that is
5 where we do a head-to-toe exam of the body, looking
6 for any injuries to the skin, and then we also do a
7 genital exam, looking for any trauma to the genital
8 area. We also use a kit where we have swabs that
9 we're swabbing for potential DNA evidence and then
10 offering prophylactic medications for pregnancy and
11 sexually transmitted infections as well.

12 Q. You mentioned trauma to the genitals.
13 We've all seen television and we all expect when
14 someone is raped there will be terrible injuries to
15 the genitals. Is that the case usually?

16 A. In acute sexual assault, about -- the
17 national standards are about 20 percent of the time
18 we will see an acute injury. So about one in five
19 patients will have an acute injury.

20 Q. And for those four out of five, would
21 you rule out that they were sexually assaulted?

22 A. No. History is very important in every
23 part of medicine, so it's the same for sexual abuse
24 as well.

25 Q. Have studies been done about people

KARLAYNE DFAULT - DIRECT EXAM

1 that it was verified that they were sexually
2 assaulted, but there is no injury?

3 A. There are. There are two articles in
4 child abuse pediatrics that we refer to frequently;
5 one is by Dr. Joyce Adams and it's called, "It's
6 Normal to be Normal". And so these were cases that
7 were legally confirmed to be child sexual abuse and
8 most of the children did not have genital injuries.

9 The second article that we reference a
10 lot is by Dr. Nancy Kellogg, and it is a group of
11 teenagers that have been sexually assaulted and
12 became pregnant as a result of the assault. And
13 there -- most of those genital exams are normal as
14 well, they don't have any acute injuries or any
15 healing scarring injuries from the -- from the
16 assault.

17 Q. Okay. And why is that? Can you
18 explain to the jury why that is anatomically? Why
19 someone could be sexually assaulted, but you don't
20 see any injury to the genital area?

21 A. The two biggest evident reasons are,
22 what type of assault happened? What type of
23 penetration happened? And then the second reason
24 is that the vaginal muscle is very elastic. So
25 even when there is a history of vaginal penile

KARLAYNE DUFAULT - DIRECT EXAM

1 penetration, that muscle is very elastic, and that
2 is the main reason why we do not see injury all the
3 time.

4 Q. Okay. And do you often examine younger
5 children than the age of 17?

6 A. Yes. Our protocol at the Children's
7 Hospital is from birth until the age of 17.

8 Q. And so even in young children, do you
9 find this to be true?

10 A. We do, yes. And those statistics
11 include younger children as well.

12 Q. And not to be too graphic, but the area
13 of the body that we're talking about is mucousy or
14 like a mucousy --

15 A. It's a mucous membrane.

16 Q. And does that affect too whether
17 there's going to be injuries, as to what is going
18 on with the body?

19 A. It can, yes.

20 Q. And I know there's not a lot of
21 research on menstrual blood, but certainly
22 menstrual blood would be a liquid present; if it
23 was present at the time -- hypothetically at the
24 time of the assault, would you think that it's
25 possible that could act as a lubricant?

KARLAYNE DFAULT - DIRECT EXAM

1 A. It's possible.

2 Q. And in this case, did you -- did you
3 collect a history?

4 A. I did, yes.

5 Q. And why is a history important?

6 A. So we do a -- just a general medical
7 history of the patient to see if they have any
8 previous surgeries to their body or also
9 specifically to their genital area, and we also see
10 if they're on daily medications. That's important
11 for your exam, their overall health, and we do a
12 history of the present illness, so while they are
13 currently there.

14 Q. And for purposes of medical diagnosis
15 and treatment, is there certain information
16 important for you to collect in order to determine
17 what treatment to give the patient?

18 A. Yes.

19 Q. And would the presence of a condom be
20 important?

21 A. Yes.

22 Q. Why?

23 A. Well, first, if a condom was used, we
24 would want to try to gather that as evidence; and
25 then secondly, it may help us decide on what --

KARLAYNE DUFAULT - DIRECT EXAM

1 what tests to run and what -- what medications to
2 administer.

3 Q. And in this case, was a condom used?

4 A. No, ma'am.

5 Q. And would it be important to know where
6 you had to swab on the body to collect evidence?

7 A. Yes.

8 Q. And would it be important to know if
9 there was licking or kissing on the neck or
10 sucking, like what we call a hickey?

11 A. Yes.

12 Q. And in this case, did any of that
13 occur?

14 A. No, ma'am.

15 Q. So you did not have to swab anywhere
16 else?

17 A. I did not, not on the --

18 Q. The neck or the face or --

19 A. Correct.

20 Q. And would it be important for medical
21 diagnosis and treatment to know if there was a
22 penetrating injury -- I'm sorry, a penetration of
23 the vagina or the anus or the mouth?

24 A. Yes.

25 Q. Why is that?

KARLAYNE DUFAULT - DIRECT EXAM

1 A. Because we definitely want to swab
2 those areas for potential DNA and also do separate
3 swabs for sexually transmitted infections.

4 Q. And in this case, did you collect that
5 information?

6 A. I did, yes, ma'am.

7 Q. And where was this -- this teenager
8 penetrated?

9 A. There was a history of vaginal penile
10 penetration, digital, which is finger vagina
11 penetration, and then oral penetration as well.

12 Q. And explain to us what that exam is
13 like when you're collecting evidence and treating
14 the patient.

15 A. So we first come in and explain the
16 exam to the patient. We get consent to do the
17 exam. We then do a head-to-toe exam, looking for
18 any signs of trauma to the skin, and then we do
19 oral -- or swabs based on the history. So usually
20 I start with the mouth, looking for any injuries to
21 the mouth.

22 I do a swab of the mouth for the
23 potential DNA for the kit. We have the patient
24 rinse their mouth with water and we wait about 15
25 minutes and do another swab on the inside of the

KARLAYNE DUFAULT - DIRECT EXAM

1 cheek. It's called a buccal swab. And that is for
2 us to obtain the patient's DNA so that we have
3 their DNA to reference to any other DNA that may be
4 picked up from the exam.

5 At that point, if I had any history of
6 any licking or kissing to the neck or breast or
7 abdomen, I do swabs to that area for saliva. And
8 then we do the genital exam. And we so look
9 externally at the vaginal area to look for any
10 signs of injury. We then swab with our Q-tips for
11 potential DNA evidence and then swab with another
12 Q-tip if we're going to test for sexually
13 transmitted infections. We can do -- on some
14 patients, we can do internal vaginal exams if they
15 can tolerate that and then we do an anal exam. So
16 we're looking externally for any signs of trauma
17 and then we're swabbing for potential DNA evidence
18 and then a second swab for sexually transmitted
19 infections.

20 Q. And physically where is the victim or
21 the patient when this is all going on? Can you
22 explain how -- is it a hospital bed, stirrups?

23 A. In a teenager, we do use -- all of our
24 patients are on stretchers. And for teenagers we
25 do have stirrups that their feet are placed in and

KARLAYNE DFAULT - DIRECT EXAM

1 they are laying supine, which is on the back, for
2 the exam.

3 Q. And how long do these exams usually
4 take?

5 A. From start to finish, collecting the
6 history until we package up everything, usually
7 about three to four hours.

8 Q. And photographs are taken --

9 A. Yes.

10 Q. -- of the vaginal area?

11 A. Yes, with the consent of the patient
12 and care taker.

13 Q. Now, in this case, you did not see any
14 injuries?

15 A. No, ma'am.

16 Q. And in this case, you did note
17 menstrual blood?

18 A. Yes.

19 Q. And did this patient come in with any
20 underwear?

21 A. She was not wearing underwear, no,
22 ma'am.

23 Q. Okay. Are there any notes as to what
24 she was wearing when she came in?

25 A. Yes. She had on a shirt, pants, bra,

KARLAYNE DUFAULT - DIRECT EXAM

1 and socks.

2 Q. You didn't note a description of any of
3 the clothing?

4 A. No, ma'am.

5 Q. After you take the swabs that you just
6 described to the jury, what do you do with them?

7 A. They are then placed in a swab dryer
8 that has a key to lock the dryer, and we turn the
9 dryer on and the key is kept on our person. And
10 usually about 30 to 45 minutes is the amount of
11 time for our swabs to completely dry, as long as
12 they're not super saturated with secretions.

13 Q. Okay. I'm showing an exhibit
14 previously marked as State's 84.

15 MS. WILLIAMS: May I approach?

16 THE COURT: You may.

17 By MS. WILLIAMS:

18 Q. Can you tell us what this is?

19 A. This is an acute sexual assault kit.

20 Q. And is this the kit that -- do you
21 recognize that specific kit?

22 A. Those are the kits that we use in our
23 emergency room.

24 Q. And is this the kit that you used that
25 day on L. J.?

KARLAYNE DFAULT - DIRECT EXAM

1 A. Can I --

2 Q. Yes, you can open it.

3 A. Yes. This is -- yes, I used this kit.

4 Q. And if you open it up -- I'm not sure.

5 Open it up and see if your packaging is --

6 A. (Indicating)

7 Q. Okay. What are these items that you're
8 taking out?

9 A. So these are different parts of the
10 kit. This is a debris collection sheet. When the
11 patient has on the clothes -- the same clothes that
12 they were wearing after or during the assault, we
13 have them stand on this white sheet, remove their
14 clothing. The clothing are packaged up into a
15 large white bag, and then that debris collection
16 sheet is packaged up as well.

17 Q. Okay. And are your initials on any of
18 these items?

19 A. They are, yes.

20 Q. What is this?

21 A. This is an envelope that holds the DNA
22 section of the kit. It includes the known buccal
23 swab, envelopes of any suspected body fluids,
24 suspected saliva, the vaginal, oral, rectal swabs,
25 if we do fingernail scrapings. There is a vaginal,

KARLAYNE DUFAULT - DIRECT EXAM

1 oral, and rectal slide holder, which is right here.
2 If we do pubic hair combing, then there is also an
3 envelope for any miscellaneous materials that we
4 might find on the patient.

5 MS. WILLIAMS: I'm going to mark the
6 debris envelope as 84A.

7 (STATE'S EXH. 84A, Debris envelope, was
8 marked for identification.)

9 MS. WILLIAMS: And the DNA envelope is
10 84 B.

11 (STATE'S EXH. 84B, DNA envelope, was
12 marked for identification.)

13 BY MS. WILLIAMS:

14 Q. And what else did you say was in here?

15 A. There's also another envelope for any
16 toxicology. So if we're concerned it is a
17 drug-facilitated sexual assault, we can send blood
18 and urine for toxicology. And there is an envelope
19 for underwear.

20 Q. And none of that was sent?

21 A. It was not collected.

22 Q. Is there anything else in this bag that
23 you handled that has your initials on it?

24 A. The only other thing is this slide
25 container. These are slides when we get oral,

KARLAYNE DFAULT - DIRECT EXAM

1 vaginal, and rectal smears.

2 MS. WILLIAMS: And I will mark this as
3 84C.

4 (STATE'S EXH. 84C, Slide container, was
5 marked for identification.)

6 BY MS. WILLIAMS:

7 Q. After you packaged all the stuff up,
8 what did you do with it next?

9 A. We then -- if law enforcement is
10 investigating the case, if they are present, we
11 turn it over to them. If not, we call our MUSC
12 public safety team and they have an officer come to
13 take the kits for us.

14 Q. And what happened in this case?

15 A. Public safety came.

16 Q. Who specifically did you give it to
17 next?

18 A. So after me, chain of custody went to
19 Officer Russell Hagen.

20 Q. And that's the last time you handled
21 this particular item?

22 A. Yes.

23 Q. Okay. Thank you.

24 Now, as far as **L. J.**, what
25 kind of post treatment did she have? You mentioned

KARLAYNE DUFAULT - DIRECT EXAM

1 some medications.

2 A. Yes. So she -- she was tested for
3 gonorrhea, chlamydia, trichomonas, pregnancy, HIV
4 and syphilis. And then we also gave her
5 medications. One is Rocephin, it is an IM shot
6 that is used to prophylax for gonorrhea. She got
7 Azithromycin pills, which is a prophylaxis for
8 chlamydia. She got Plan B tablets, which are
9 pregnancy prophylaxis; Flagyl tablets, which are
10 for trichomonas; and then in this case she also
11 qualified for HIV prophylaxis. So that is one pill
12 a day for 28 days.

13 Q. Are there side effects of the HIV
14 medication?

15 A. The biggest -- we use a medication
16 called Truvada. The biggest report is GI upset,
17 some nausea and diarrhea is the biggest complaints
18 that we have.

19 MS. WILLIAMS: Court's indulgence?

20 THE COURT: Yes, ma'am.

21 MS. WILLIAMS: Thank you very much.

22 THE COURT: Any questions for the
23 witness?

24 CROSS-EXAMINATION

25 BY MR. SCHWACKE:

KARLAYNE DUFAULT - CROSS EXAM

1 Q. Ms. Dufault, you've been doing this
2 how long?

3 A. Since May of 2004, so almost 12 years.

4 Q. And your training was at MUSC?

5 A. Yes, sir.

6 Q. In terms of these types of testing, you
7 mentioned acute. That would be -- would mean of
8 recent origin? Is that what that means in terms of
9 what you do?

10 A. Yes, sir; acute is within 72 hours.
11 The allegation is within 72 hours.

12 Q. And where no physical findings are
13 made, it becomes all sort of important to
14 understand what the patient is reporting as the
15 history of what's happened?

16 A. Yes.

17 Q. With kids, you sometimes have people so
18 young they can't do that?

19 A. In our prepubertal children, we will
20 ask them if they know why they are here. And if
21 they say, no, then we don't question them any
22 further. A lot of times we will get a separate
23 history from the family that's with them in a
24 different room. And with our teenagers, we ask
25 them the same question; why are they here? And if

KARLAYNE DUFAULT - CROSS EXAM

1 they give us information, then we ask medically
2 important questions.

3 Q. And in this case, **L. J.** gave a
4 history of what?

5 A. She gave a history of sexual assault.
6 She had actually written a statement to law
7 enforcement prior to coming to our emergency room
8 and so she gave me a copy of that to read. And
9 then there's also a page where I ask about the
10 contact that's happened. And so she was able to
11 answer those yes or no questions.

12 Q. And so, again, the history of sexual
13 assault that she gave you was of what acts?

14 A. Of vaginal penile penetration, digital
15 vaginal penetration, and oral penile penetration.

16 Q. And that history kind of bears out some
17 of the statistics I guess that you were giving
18 earlier, where there are often times where sexual
19 assaults occur where there are no reports of
20 physical findings. Obviously, oral sex often won't
21 leave any type of evidence of an injury whatsoever?

22 A. Correct.

23 Q. And so those statistics would include
24 those type of offenses as well?

25 A. They do, yes, sir.

KARLAYNE DUFAULT - CROSS EXAM

1 Q. And she did not report a history of any
2 type of penile anal contact?

3 A. No.

4 Q. The Solicitor asked you about the items
5 that were recovered at the time of the examination,
6 especially when you were doing the sheet to collect
7 the debris. There are pictures that are taken of
8 the physical injuries. There are no pictures taken
9 of any of the physical evidence, clothing or any of
10 that type of thing during an examination?

11 A. Not normally. If we have clothing that
12 is torn or has blood on it, we will take a photo of
13 that, but otherwise we do not take photos of the
14 clothing. We take photos of any skin injuries and
15 we do photo document all of our genital exams with
16 the family's consent. We do 100 percent peer
17 review. So as a nurse practitioner, I have a
18 physician that reviews all of my cases and my
19 photos.

20 Q. Going back to my question with regard
21 to clothing, had there been evidence of blood or
22 anything else on the clothing, you would have
23 photographed it or kept that?

24 A. Correct. The clothing in this case was
25 submitted with the kit, but had I noted any blood,

KARLAYNE DUFAULT - CROSS EXAM

1 I would have photographed that.

2 Q. You didn't note any blood on any
3 clothing?

4 A. No, sir.

5 Q. Have you had people give you a wrong
6 history?

7 A. It -- as a medical examiner, it's not
8 my role to decide if it is true or not. I treat
9 the patient medically and then, in these cases, I
10 let law enforcement figure out those facts.

11 Q. When did you conduct this exam?

12 A. It was on October 28, 2013.

13 Q. And do you know when you would have
14 transferred the kit over to your public safety
15 officer?

16 A. I do. The time is on the back of the
17 kit.

18 Q. This would be State's Exhibit 84.

19 A. So Officer Hagen took custody of the
20 kit at 2224, which is military time for 10:24 p.m.

21 Q. Thank you.

22 A. You're welcome.

23 Q. In this case, there were no indications
24 of any type of physical injuries?

25 A. There was no trauma, yes, sir.

KARLAYNE DUFAULT - REDIRECT EXAM

1 MR. SCHWACKE: One moment. Thank you.

2 That's all the questions I have.

3 THE COURT: Any redirect?

4 MS. WILLIAMS: Yes.

5 THE COURT: You may proceed.

6 REDIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Mr. Schwacke asked you, when there was
9 no physical findings, then the history is all the
10 more important, but that word, physical findings,
11 is misleading in terms of whether something is a
12 sexual assault, isn't it? Because you could have
13 physical findings even if there's consensual sex?

14 A. Yes.

15 Q. So if two adults, or a 17-year-old and
16 a boyfriend, have sex and it's consensual, there
17 can be tears and there can be all kind of
18 contusions, depending on the type of sex they have
19 and if there's lubrication and all that kind of
20 stuff; isn't that correct?

21 A. Correct.

22 Q. So you can have physical findings in
23 consensual sex and no physical findings in rape?

24 A. Yes.

25 Q. Hasn't that been your experience?

KARLAYNE DUFAULT - REDIRECT EXAM

1 A. Yes.

2 Q. And you collected some clothing from
3 the victim. Did you collect her pants?

4 A. I collected a shirt, pants, bra, and
5 socks.

6 MS. WILLIAMS: I'm going to mark this
7 -- Madame Court Reporter, what's our next number?

8 THE COURT REPORTER: 163.

9 MR. SCHWACKE: Your Honor, may we
10 approach?

11 THE COURT: Yes, you may.

12 (Bench conference.)

13 MR. SCHWACKE: Your Honor, I haven't
14 seen what's in that bag. I just don't want it
15 opened up with the jury all sitting in here.

16 MS. WILLIAM: We looked at it together
17 over at forensics. And you just asked her if she
18 would have photographed it if there was blood on
19 the pants. There is blood all over the pants. So
20 we can take a break and you can look at it again.

21 THE COURT: Did you look at it with
22 her?

23 MR. SCHWACKE: Now that she's reminded
24 me which bag that one is. We looked at it over at
25 -- I didn't realize there was blood on it.

KARLAYNE DFAULT - REDIRECT EXAM

1 MS. WILLIAMS: It's in the crotch. Now
2 that it's become an issue, I need to ask her about
3 it.

4 THE COURT: Next? I assume it's
5 withdrawn?

6 MR. SCHWACKE: Yes, Your Honor.

7 (End of bench conference.)

8 THE COURT: You may proceed.

9 BY MS. WILLIAMS:

10 Q. I'm going to show you this bag and if
11 you could tell us if this is the bag you used to
12 collect --

13 THE COURT: We need to get her some
14 gloves.

15 Q. (BY MS. WILLIAMS) If you could just
16 identify if there's anything on the bag that shows
17 this is the bag you used to collect **L. J.**
18 **[REDACTED]** clothing.

19 A. So there's a label of outer clothing
20 that I filled out with her name and what all was in
21 there.

22 Q. And if you could pull out the pants,
23 and take a look at those. Mr. Schwacke asked you
24 if -- implied there was no blood on it because you
25 didn't -- is there any blood on there?

KARLAYNE DFAULT - REDIRECT EXAM

1 A. Yes. This does appear to be blood in
2 the crotch of these pants.

3 Q. Okay. Thank you. And what other
4 items, if you could just describe them, are in
5 here?

6 A. These are a pair of sweatpants and
7 there are socks, there is several sports bras, and
8 a regular bra, and this is a sweatshirt.

9 Q. Okay. And are these the items that you
10 got from the victim, [REDACTED] L. J. [REDACTED] ?

11 A. Yes.

12 MS. WILLIAMS: We would offer this item
13 163 into evidence.

14 THE COURT: Any objection?

15 MR. SCHWACKE: No, Your Honor.

16 THE COURT: Without objection, marked
17 and admitted. You're going to have to find another
18 bag.

19 (STATE'S EXH. 163 in evidence.)

20 MS. WILLIAMS: We will, Your Honor.

21 Nothing further.

22 THE COURT: Any objection to the
23 witness being excused? From the State.

24 MS. WILLIAMS: No, Your Honor.

25 THE COURT: From the defense?

RUSSELL HAGEN - DIRECT EXAM

1 MR. SCHWACKE: No, Your Honor.

2 THE COURT: Ma'am, you're excused.

3 THE WITNESS: Okay. Thank you.

4 THE COURT: You may call your next
5 witness.

6 MS. WILLIAMS: State calls Russell
7 Hagen.

8 RUSSELL HAGEN,
9 being first duly sworn, testified as follows:

10 THE CLERK: Please have a seat, state
11 your full name for the record and spell your last
12 name.

13 THE WITNESS: My name is Russell Hagen.
14 The last name is spelled H-A-G-E-N.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Where do you work, Mr. Hagen?

19 A. Medical University of South Carolina
20 Public Safety Department.

21 Q. What do you do?

22 A. I'm a police officer there.

23 Q. And do you have any interaction with
24 the sexual assault nurse examiners from time to
25 time?

RUSSELL HAGEN - DIRECT EXAM

1 A. Yes.

2 Q. And tell us about that.

3 A. We routinely get called for -- to pick
4 up sexual assault kits such as the one sitting in
5 front of you, looks like that, and for other
6 departments, local departments. And what we do is
7 we will take them from the nurse, bring them to our
8 headquarters and secure them in our evidence locker
9 for them to then come back it up.

10 Q. How far away are those two spots?

11 A. One block.

12 Q. How do you keep them? In what type of
13 way?

14 A. When I transport it to our
15 headquarters, it gets logged as evidence and it's
16 secured into an evidence locker in a refrigerator
17 which is a secured refrigerator.

18 Q. Do you remember having any contact with
19 this evidence in this case?

20 A. Yes.

21 MS. WILLIAMS: Your Honor, I'm going to
22 approach with State's 84 with the Court's
23 permission.

24 BY MS. WILLIAMS:

25 Q. Tell us what this is.

RUSSELL HAGEN - DIRECT EXAM

1 A. This is an evidence kit, sexual assault
2 evidence kit, and this is a chain of custody --
3 chain of custody form which provides the custody of
4 who had it to each person and each person and each
5 person.

6 Q. Okay. And are you on there?

7 A. I am.

8 Q. And who did you get it from?

9 A. I got it from Ms. Dufault, the nurse.

10 Q. Okay. And what did you do with -- and
11 what date did you get it?

12 A. I got it on the 28th of October. It
13 looks like October 13th -- October 28, 2013.

14 Q. Okay. And then what did you do with it
15 next?

16 A. When I received it from her, I did
17 bring it back to our headquarters and logged it as
18 evidence and secured it in our evidence locker.

19 MS. WILLIAMS: No further questions.

20 THE COURT: Any questions for the
21 witness?

22 MR. SCHWACKE: No, Your Honor.

23 THE COURT: Any objection to the
24 witness being excused? From the State?

25 MS. WILLIAMS: No, Your Honor.

WILLIAM REGISTER - DIRECT EXAM

1 THE COURT: From the defense?

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: Sir, you're excused.

4 THE WITNESS: Thank you.

5 THE COURT: You're welcome.

6 Call your next witness.

7 MS. WILLIAMS: The State would call
8 William Register.

9 WILLIAM REGISTER,

10 being first duly sworn, testified as follows:

11 THE CLERK: Have a seat, state your
12 full name for the record and spell your last name.

13 THE WITNESS: My name is William Donald
14 Register, last name is spelled R-E-G-I-S-T-E-R.

15 THE COURT: You may proceed.

16 MS. WILLIAMS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Where do you work, Mr. Register?

21 A. I am a sergeant with MUSC Department of
22 Public Safety, assigned to investigations division.

23 Q. And do you from time to time pick up
24 sexual assault kits from the sexual assault nurse
25 examiners?

WILLIAM REGISTER - DIRECT EXAM

1 A. Not specifically from the nurse
2 examiner. I pick it up from the refrigerator after
3 its been placed into evidence and the report is
4 done by the officer that picks it up from the SANE
5 nurse.

6 Q. Okay. You work in the building where
7 the refrigerator is?

8 A. Yes.

9 Q. And in this case, did you release a
10 sexual assault kit to anybody from the
11 refrigerator, to any detectives or police officers
12 in this case?

13 A. Yes. On January 16th, I believe, the
14 report -- supplemental that I did, I released it to
15 then Sergeant Alteri with the Berkeley County
16 Sheriff's Office.

17 Q. And how do you know it was this
18 particular case?

19 A. When the evidence is logged into the
20 evidence system, a tracking number is automatically
21 computer generated, specifically assigning that
22 piece of evidence to that report. That tracking
23 number is then not only placed on the evidence
24 sheet, but also on the evidence itself. It's a T
25 number.

WILLIAM REGISTER - DIRECT EXAM

1 Q. Okay. And would it be anywhere on the
2 box?

3 A. Yes.

4 MS. WILLIAMS: May I approach?

5 THE COURT: You may.

6 BY MS. WILLIAMS:

7 Q. Is that identifying number on here
8 where you can see it?

9 A. T3804 matches up to T3804 on the
10 evidence sheet.

11 Q. You released it to Sergeant Alteri?

12 A. I'm sorry?

13 Q. You released it to Sergeant Alteri?

14 A. I did.

15 MS. WILLIAMS: Okay. Thank you. No
16 further questions.

17 THE COURT: Any questions for the
18 witness?

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: Any objection to the
21 witness being excused? From the State?

22 MS. WILLIAMS: Not from the State.

23 THE COURT: From the defense?

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: Sir, you're excused.

PAMELA WRENN - DIRECT EXAM

1 THE WITNESS: Thank you.

2 THE COURT: You're welcome.

3 You may call your next witness.

4 MR. POULOS: The State calls Pamela
5 Wrenn.

6 PAMELA WRENN,

7 being first duly sworn, testified as follows:

8 THE CLERK: Have a seat, state your
9 full name for the record and spell your last name.

10 THE WITNESS: Pamela Jean Wrenn,
11 W-R-E-N-N.

12 THE COURT: You may proceed.

13 MR. POULOS: Thank you.

14 THE COURT: You're welcome.

15 DIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. Afternoon, Detective Wrenn. Where do
18 you work?

19 A. Williamsburg County Sheriff's Office.

20 Q. How long have you been with that
21 office?

22 A. Since 2007.

23 Q. What is your position?

24 A. I'm lieutenant over investigations.

25 Q. And what does that entail?

PAMELA WRENN - DIRECT EXAM

1 A. Any criminal investigations within the
2 sheriff's department.

3 Q. Did you assist in the investigation and
4 apprehension of the defendant in this case?

5 A. Yes, I did.

6 Q. On October 28, 2013, did you respond to
7 [REDACTED] Road?

8 A. Yes, I did.

9 Q. What did you do there?

10 A. We responded to a call given out by
11 central dispatch that Berkeley County investigators
12 had spotted a vehicle involved in a case that
13 occurred in their county.

14 Q. Once you arrived, did you assist in
15 processing some evidence?

16 A. I assisted, yes, sir.

17 Q. Specifically, as to a blue vehicle, did
18 you assist Detective Spence with Berkeley County in
19 processing that vehicle?

20 A. I did. It was a 2000 blue in color
21 Hyundai.

22 Q. Would that include assisting with
23 latent fingerprint lifts?

24 A. That's correct.

25 Q. I will show you what has already been

PAMELA WRENN - DIRECT EXAM

1 entered into evidence as State's 99, which contains
2 99A, B, C, and D. Do you recognize these cards?

3 A. Yes, I do.

4 Q. Are those the latent print cards that
5 you assisted Detective Spence with and took into
6 custody?

7 A. Yes, sir.

8 Q. Did you also collect pieces of duct
9 tape from the residence?

10 A. That's correct.

11 Q. Okay. Who did you collect those from?

12 A. Detective Alteri.

13 Q. Let me show you State's 85, containing
14 State's 87 and 88, which are already in evidence.
15 Do you recognize the two paper bags labeled 87 and
16 88?

17 A. Yes.

18 Q. Is that the duct tape that you received
19 from Lieutenant Alteri?

20 A. Yes, sir.

21 Q. How do you recognize it?

22 A. This is my writing on the outside and I
23 have it listed under contents, one piece of duct
24 tape from inside the house.

25 Q. And you took custody of that for

PAMELA WRENN - DIRECT EXAM

1 Williamsburg County Sheriff's Office?

2 A. Yes, I did.

3 Q. Lastly, after the defendant was --
4 second to last, after the defendant was
5 apprehended, did you receive a firearm?

6 A. Yes, I did.

7 Q. And who did you receive that from?

8 A. From Investigator Ballard with
9 Williamsburg County Sheriff's Office.

10 Q. I show you State's 89, containing
11 State's 90, 91. Is this the firearm that you
12 received from Ballard?

13 A. Yes, it is.

14 Q. How do you know?

15 A. This is my writing on the unfired round
16 and this is my writing on the outside of the box.

17 Q. Okay. Thank you.

18 Was that gun sent -- eventually sent to
19 Berkeley County Sheriff's Office?

20 A. Yes, it was.

21 Q. Did you also assist in collecting
22 photographs from a deer camera?

23 A. Yes.

24 Q. Who gave you custody of the deer
25 camera?

PAMELA WRENN - DIRECT EXAM

1 A. It was retrieved at the scene on the
2 28th of October when we arrived there, and then
3 Investigator Ballard removed the SIM card and
4 printed out the pictures.

5 Q. And you observed Detective Ballard
6 remove the SIM card and print out the pictures?

7 A. Yes.

8 Q. And, lastly, did you recover a hammer
9 from [REDACTED] Road?

10 A. The following day, yes, sir.

11 Q. I'm going to show you State's 92, a bag
12 containing State's 93. Do you recognize State's
13 93?

14 A. Yes, sir, I do.

15 Q. What is this?

16 A. That is a hammer with duct tape that,
17 through the investigation, we were advised was used
18 to make entry into the residence.

19 MR. POULOS: State's 93 already being
20 in evidence, I have no further questions.

21 THE COURT: Any questions for the
22 witness?

23 MR. SCHWACKE: No, Your Honor.

24 THE COURT: Any objection to the
25 witness being excused? From the State?

AUGUST FLOOD - DIRECT EXAM

1 MR. POULOS: None from the State.

2 THE COURT: From the defense?

3 MR. SCHWACKE: No, Your Honor.

4 THE COURT: Ma'am, you're excused.

5 Call your next witness.

6 MR. POULOS: The State calls Augustus
7 Flood.

8 AUGUSTUS FLOOD,

9 being first duly sworn, testified as follows:

10 THE CLERK: Please state your full name
11 for the record and spell the last.

12 THE WITNESS: Augustus Flood, the
13 Third, A-U-G-U-S-T-U-S, F-L-O-O-D.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. Good afternoon. Where do you work?

18 A. Berkeley County Sheriff's Office. I'm
19 with forensics.

20 Q. How long have you been with the
21 sheriff's office?

22 A. Since March of 2011.

23 Q. What does your current position in
24 forensics entail?

25 A. I'm a forensic technician.

AUGUST FLOOD - DIRECT EXAM

1 Q. What responsibilities does that
2 include?

3 A. I do crime scene investigations; I
4 analyze all of our drugs, marijuana, that comes in.
5 I make most of our SLED runs and daily operations
6 at the forensics office.

7 Q. Did you assist in transporting some
8 pieces of evidence in this case?

9 A. Yes, I did.

10 Q. I show you what's been marked as
11 State's Exhibit 100 and previously identified as
12 the defendant's buccal swab. Did you transport
13 that buccal swab up to SLED?

14 A. Yes, I did.

15 Q. What date did you transport it?

16 A. 12/3/14.

17 Q. Was it in your control and custody
18 exclusively until you checked it in?

19 A. That's correct.

20 Q. Was it sealed the entire time?

21 A. Absolutely, yes, sir.

22 MR. POULOS: State offers that into
23 evidence as State's 100.

24 THE COURT: Any objection?

25 MR. SCHWACKE: No, Your Honor.

AUGUST FLOOD - DIRECT EXAM

1 THE COURT: Marked and admitted without
2 objection.

3 (STATE'S EXH. 100 in evidence.)

4 BY MR. POULOS:

5 Q. I also show you State's 84, which has
6 been previously identified as the sexual assault
7 kit. Did you transport that kit to SLED as well?

8 A. I would have to look at the chain of
9 custody. Yes, sir. I did.

10 Q. And you retrieved that from Berkeley
11 County as evidence?

12 A. Yes.

13 Q. What day did you take it up to SLED?

14 A. 12/3/14.

15 Q. Was it in your control and custody the
16 entire time until you checked it in?

17 A. Yes, it was.

18 Q. And did it remain sealed?

19 A. Yes, it was.

20 Q. Lastly, showing you State's 89, which
21 is in evidence, 89 containing 90 and 91. Did you
22 transport this gun up to SLED as well?

23 A. Yes, sir, I did.

24 MR. POULOS: And, Your Honor, at this
25 time, I apologize, I would move State's 84 into

AUGUST FLOOD - CROSS EXAM

1 evidence.

2 THE COURT: Any objection?

3 MR. SCHWACKE: Yes, Your Honor.

4 THE COURT: ID only.

5 MR. SCHWACKE: Still requires a
6 complete chain.

7 MR. POULOS: No further questions for
8 this witness.

9 THE COURT: Any questions for the
10 witness?

11 CROSS-EXAMINATION

12 BY MS. LITTLEJOHN:

13 Q. Officer Flood, can you -- you described
14 that you make SLED runs. When you do that,
15 basically you don't just take just this case, you
16 take several cases with you, don't you?

17 A. That's correct.

18 MS. LITTLEJOHN: Okay. I have no
19 further questions, Your Honor.

20 THE COURT: Any redirect?

21 MR. POULOS: No, Your Honor.

22 THE COURT: Any objection to the
23 witness being excused?

24 MR. POULOS: None from the State.

25 THE COURT: From the defense?

AMY STEPHENS - DIRECT EXAM

1 MS. LITTLEJOHN: No, Your Honor.

2 THE COURT: Sir, you're excused.

3 You may call your next witness.

4 MS. WILLIAMS: The State calls Amy
5 Stephens.

6 AMY STEPHENS,

7 being first duly sworn, testified as follows:

8 THE CLERK: Please state your full name
9 for the record and spell the last.

10 THE WITNESS: Amy Stephens,
11 S-T-E-P-H-E-N-S.

12 DIRECT EXAMINATION

13 BY MS. WILLIAMS:

14 Q. Amy, what do you do for a living?

15 A. I'm currently employed as a forensics
16 technician in the evidence control department at
17 the South Carolina Law Enforcement Division, also
18 known as SLED.

19 Q. And how long have you been there?

20 A. As of March 2nd, which is this week, I
21 will have been there ten years.

22 Q. What do you do specifically there?

23 A. Our main job responsibilities are to
24 log in, package, and transfer evidence for forensic
25 analysis.

AMY STEPHENS - DIRECT EXAM

1 Q. And are you familiar with the items of
2 evidence in this case?

3 A. Yes, I am.

4 Q. I'm showing Mr. Schwacke what has been
5 marked as State's 84.

6 MS. WILLIAMS: May I approach, Your
7 Honor?

8 THE COURT: You may.

9 BY MS. WILLIAMS:

10 Q. Can you tell us if you logged in this
11 piece of evidence? And explain what it is.

12 A. Yes, I did. This is a CSC kit from the
13 victim in this case. Once evidence is brought in
14 to SLED, we assign it a unique lab number and we
15 identify it by this unique lab number that is
16 affixed to the SLED packaging.

17 Q. Do you tamper with it? Do you change
18 it? Do you do anything with that evidence except
19 log it in?

20 A. All we do is log it in and package it
21 for transfer to the department that is going to
22 analyze it.

23 Q. When you say package it, what
24 specifically do you do?

25 A. In this case, I packaged the contents

AMY STEPHENS - DIRECT EXAM

1 of the CSC kit into this SLED heat-sealed pouch. I
2 would have sealed the heat-sealed pouch and have
3 the submitting officer initial and date the SLED
4 heat-sealed pouch and then I'd sign and date the
5 heat-sealed pouch.

6 Q. And is it stored in a secure location?

7 A. Yes, it is.

8 Q. Okay. Thank you.

9 I'm going to show you another piece of
10 evidence marked State's 85.

11 MS. WILLIAMS: May I approach?

12 THE COURT: You may.

13 By MS. WILLIAMS:

14 Q. Do you recognize this piece of
15 evidence?

16 A. The box itself I recognize, based on
17 the lab number that is affixed to this box.

18 Q. Okay. And is that an item that you
19 logged in?

20 A. Yes.

21 Q. Did you package it in that box?

22 A. Yes, I did.

23 Q. And did you seal it up?

24 A. I did.

25 Q. Did you tamper with it in any way?

AMY STEPHENS - DIRECT EXAM

1 A. No, I did not.

2 Q. What is this item, just for the jury's

3 --

4 A. State's 85.

5 Q. What does it contain?

6 A. State's 85, which corresponds with SLED
7 L14-04487, contains SLED items 6 and 7, which were
8 paper bags containing duct tape.

9 Q. Okay. Thank you.

10 And, lastly, State's 100. Is that
11 something you also logged in?

12 A. Yes, it is.

13 Q. Okay. And what is that?

14 A. This is the buccal swab from Telly
15 McClam.

16 Q. And you didn't tamper with it, change
17 it, do anything to it that would change the
18 integrity of the evidence?

19 A. No, I did not.

20 Q. And did you seal it?

21 A. Yes. I placed it in the SLED
22 heat-sealed pouch.

23 MS. WILLIAMS: No further questions.

24 THE COURT: Any questions for the
25 witness?

AMY STEPHENS - CROSS/REDIRECT EXAM

1 CROSS-EXAMINATION

2 BY MR. SCHWACKE:

3 Q. In this case, did you get evidence from
4 Williamsburg County Sheriff's Office as well as
5 Berkeley County Sheriff's Office?

6 A. Yes, I did.

7 Q. Are those items included in what we're
8 talking about here today?

9 A. The items that were in the box, they
10 were submitted from the Williamsburg County
11 Sheriff's Office.

12 Q. If there's any other evidence from
13 Williamsburg County, you don't know about it?

14 A. I have evidence from that particular
15 case; several items of evidence were submitted.

16 Q. And it's not something that you have
17 testified about today?

18 A. No, it's not.

19 MR. SCHWACKE: Thank you.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. What are the other items that you got
24 from Williamsburg County?

25 A. SLED case number L14-04487, we received

AMY STEPHENS - CROSS/REDIRECT EXAM

1 a buccal swab from Deadrene McHoney, four latent
2 lifts from a vehicle, and two paper bags containing
3 duct tape.

4 MS. WILLIAMS: Okay. Thank you.

5 THE COURT: Any objection to the
6 witness being excused? From the State?

7 MS. WILLIAMS: No, Your Honor.

8 THE COURT: From the defense?

9 MR. SCHWACKE: No, Your Honor.

10 THE COURT: Ma'am, you're excused.

11 THE WITNESS: Thank you.

12 THE COURT: You're welcome.

13 We are going to take a brief rest room
14 break.

15 Ladies and gentlemen, we're going to
16 take a brief rest room break. During the break,
17 please do not discuss the case and leave your
18 notepads in your seats.

19 (Jury out, 3:17 p.m.)

20 THE COURT: You may be seated. Who is
21 the State's next witness?

22 MS. WILLIAMS: The State's next witness
23 is Jessica Herron from SLED and then we have Samuel
24 Stewart.

25 THE COURT: You said Jessica Herron?

1 MS. WILLIAMS: Yes, H-E-R-R-O-N. She
2 just got married, Your Honor. It used to be Stowe
3 on the list.

4 THE COURT: Okay. Let's take a brief
5 rest room break.

6 (A recess transpired.)

7 THE COURT: State ready to proceed?

8 MS. WILLIAMS: Yes, Your Honor.

9 THE COURT: Is the defense ready to
10 proceed?

11 MR. SCHWACKE: Yes, Your Honor.

12 THE COURT: Please bring in the jury.
13 Do you have the next witness ready?

14 MS. WILLIAMS: Yes.

15 (Jury in, 3:25 p.m.)

16 THE COURT: Please call your next
17 witness.

18 MS. WILLIAMS: The State calls Jessie
19 Stowe.

20 THE COURT: Please swear the witness.

21 JESSICA STOWE

22 being first duly sworn, testified as follows:

23 THE CLERK: Have a seat, state your
24 full name for the record and spell the last name.

25 THE WITNESS: Jessica Stowe, S-T-O-W-E.

JESSICA STOWE - DIRECT EXAM

1 THE COURT: You may proceed.

2 MS. WILLIAMS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. WILLIAMS:

5 Q. Where do you work?

6 A. I work for the South Carolina Law
7 Enforcement Division, often referred to as SLED.

8 Q. What do you do there?

9 A. I'm a forensic serologist.

10 Q. What is a forensic serologist?

11 A. Well, first off, serology is the
12 identification of body fluids, so that is blood,
13 semen, and saliva. As a forensic serologist, what
14 we're doing is we're screening items of evidence
15 that are submitted to the DNA department for these
16 potential body fluids. We use resources to
17 determine what is there and what isn't. If we find
18 a body fluid, we proceed to put them -- to create
19 small cuttings for the DNA department. We generate
20 a report based off of our findings and then we
21 testify in court.

22 Q. What is your educational background?

23 A. I have a Bachelor's of Science in
24 Biological Sciences from the University of South
25 Carolina, along with a minor in chemistry; also,

JESSICA STOWE - DIRECT EXAM

1 through SLED I have taken numerous classes through
2 places such as West Virginia University, dna.gov,
3 in courses such as hair analysis, courtroom
4 testimony, biological evidence, as well as a
5 graduate level course from the University of
6 Florida in biological evidence and serology.

7 Q. How long have you worked in the field
8 of forensic science?

9 A. Almost four years.

10 Q. What are your duties?

11 A. As a forensic serologist, like I said
12 earlier, we examine items of evidence for body
13 fluids, we create small cuttings for DNA analysis,
14 we generate a report and we also participate in the
15 review of our peers' work as well.

16 Q. How many cases would you say that you
17 have worked on at SLED?

18 A. At least a thousand. It's a lot.

19 Q. Okay. And have you testified before as
20 an expert in the field of forensic science DNA
21 analysis before?

22 A. I have.

23 Q. How many times would you say?

24 A. Four.

25 Q. Your Honor, at this time the State

JESSICA STOWE - DIRECT EXAM

1 would offer Ms. Herron to be qualified as an expert
2 in the field of forensic science DNA analysis.

3 THE COURT: Any objections or
4 questions?

5 MS. LITTLEJOHN: Yes, Your Honor.

6 THE COURT: Approach.

7 (Bench conference.)

8 THE COURT: What are your objections
9 to her qualifications?

10 MS. LITTLEJOHN: She testified to a
11 dna.gov class, but she did not testify with regard
12 to her serology. Serology is a really specialized
13 field with the blood.

14 THE COURT: She's testifying about DNA,
15 though, isn't she?

16 MS. LITTLEJOHN: She only testified to
17 the DNA --

18 MS. WILLIAMS: I can get into some of
19 her specialized training.

20 THE COURT: You need to get into all of
21 her training and experience.

22 MS. LITTLEJOHN: And what classes
23 particularly. I'll be going through the same thing
24 with the DNA analysis. I want to know what she has
25 peer reviewed and what publications as well.

JESSICA STOWE - DIRECT EXAM

1 THE COURT: You need to lay a
2 foundation for both.

3 (End of bench conference.)

4 THE COURT: You may proceed.

5 MS. WILLIAMS: Thank you.

6 BY MS. WILLIAMS:

7 Q. So let's talk a little bit about your
8 background and training and experience in serology
9 specifically.

10 A. Right. So what we do, we have a SLED
11 in-house training program. I was trained by a
12 Court-qualified DNA analyst and evidence processing
13 technician. In the beginning you are watching a
14 lot of cases, you're observing. It's at this point
15 you're learning the policies and procedures,
16 watching your training -- just getting comfortable
17 in the lab.

18 After you've observed for awhile, your
19 trainer will let you do small things. You may test
20 this for blood, you might test this for semen.
21 Again, you're just getting comfortable with the
22 evidence and in that environment. Once you've done
23 this awhile you enter a phase of your training
24 called your training samples.

25 What these are is they are just

JESSICA STOWE - DIRECT EXAM

1 swatches of cloth, they're swabs. It's made
2 in-house. And it's our job to use all the
3 resources available to us to find what body fluids
4 are present on these cloths and swabs and which
5 ones aren't recent. Once we do this successfully,
6 we then enter a phase of our training called
7 supervised casework, where we're working cases at
8 this point under our trainer from the beginning to
9 the end.

10 Once you have done this for awhile and
11 you're doing a good job, you enter a phase called
12 the competency exam. A competency exam is a
13 five-part examination that encompasses all aspects
14 of a forensic serologist. Once you complete this
15 successfully, you're then deemed competent to
16 perform forensic serology.

17 Q. And is this all part of requirement to
18 make SLED a certified lab?

19 A. Yes.

20 Q. So SLED could not be certified without
21 its serologists going through this level of
22 training?

23 A. As far as their requirements with their
24 certification, I'm not sure of the logistics behind
25 it, but this is definitely something that I know

JESSICA STOWE - DIRECT EXAM

1 they will require.

2 Q. And it is a certified lab?

3 A. Oh, yes.

4 Q. You talked a little bit about some of
5 the classes you took from the graduate program.
6 Could you just go into that a little bit in more
7 detail?

8 A. Yes. So I am a forensic serologist.
9 We work focussing on body fluids. Our class, what
10 we're doing, it just goes over the components that
11 we're looking for when we're screening for these
12 body fluids, as well as hair analysis. You know,
13 how do we look at hair? How do we determine if
14 these -- the hairs are eligible for DNA analysis?

15 It's important to keep in mind, as a
16 serologist, we don't perform DNA analysis. What
17 we're doing is we are examining these piece of
18 evidence for these body fluids or the biological
19 material necessary to develop DNA profiles.

20 So by the time we're finished with the
21 evidence, we have narrowed down areas on the
22 evidence that could potentially lead to a DNA
23 profile, such as the blood, the semen, the hair or
24 saliva. And then, like I said, we put them into
25 tubes, and then they are forwarded to the DNA

JESSICA STOWE - DIRECT EXAM

1 analyst who performs DNA analysis in that case.

2 Q. When you said you had worked on over a
3 thousand cases as a serologist at SLED, were there
4 also some cases that you worked on when you were in
5 the training program?

6 A. Oh, absolutely, yes.

7 Q. How many cases would you have worked on
8 in the training program through SLED?

9 A. Hundreds.

10 Q. And are all of your cases subject to
11 peer review?

12 A. All of them, every single one of them.
13 They go through two levels of review, having a
14 technical review and an administrative review.

15 Q. And you talked about some additional
16 classes you took at West Virginia?

17 A. West Virginia University, yes.

18 Q. Tell us about those classes.

19 A. They were classes that I took early on
20 when I began my job at SLED. Because I have just
21 the science background, it was important that SLED
22 brings me up to the forensic aspect of it, as most
23 employers do. So these courses just helped me
24 learn the forensic -- the legal aspect, such as --
25 like I said, the hair analysis, how to handle

JESSICA STOWE - DIRECT EXAM

1 biological evidence.

2 So they're going over making sure
3 you're changing your gloves. Again, this is all
4 stuff that we learn in-house, but these are just
5 courses to help reiterate what we're going to be
6 doing in our everyday work at SLED. So changing
7 your gloves, wearing your lab coat, making sure to
8 be careful when you handle evidence, because a lot
9 could be wet at the time so you could, you know,
10 transfer something you don't want disease-wise, but
11 that's really what our course is over as well as
12 courtroom testimony, so how to handle that.

13 Q. So it was the forensic aspect of
14 serology?

15 A. Yes.

16 Q. And you mentioned that your bachelor's
17 degree was in biology?

18 A. Yes. It was in biology with a minor in
19 chemistry from the University of South Carolina.

20 MS. WILLIAMS: Your Honor, at this time
21 we would move Ms. Stowe to be qualified as an
22 expert in the field of forensic science,
23 specifically serology.

24 THE COURT: Any questions objection or
25 objections?

JESSICA STOWE - DIRECT EXAM

1 MS. LITTLEJOHN: Your Honor, we don't
2 have an objection to it being limited strictly to
3 serological analyst.

4 THE COURT: I think that's the area
5 she moved to have her admitted. Is there any
6 objection?

7 MS. LITTLEJOHN: Only limited to the
8 serological analysis, Your Honor.

9 THE COURT: She's moved to admit her as
10 a forensic scientist with a specialty in serology.
11 Is there any exception?

12 MS. LITTLEJOHN: No exception as long
13 as it's narrowed to that.

14 THE COURT: You may proceed.

15 MS. WILLIAMS: Thank you.

16 THE COURT: You're welcome.

17 BY MS. WILLIAMS:

18 Q. So Ms. Stowe, used to be Ms. Herron?

19 A. Yes.

20 Q. Did you work on items of evidence in
21 this case?

22 A. I did.

23 Q. And I'm going to show you a piece of
24 evidence, State's 84.

25 MS. WILLIAMS: With the Court's

JESSICA STOWE - DIRECT EXAM

1 permission --

2 THE COURT: Yes, ma'am, you may
3 approach.

4 BY MS. WILLIAMS:

5 Q. We have broken this down and marked
6 individual things as well. If you could just tell
7 us how you got this piece of evidence, the
8 condition it was in, and what's inside.

9 A. Okay. This appears to be a sexual
10 assault kit. When a case is assigned to us, we
11 fill out a formal request to the evidence control
12 portion of the lab and then once they let me know
13 that my evidence is ready, it is taken into my
14 custody and then I make sure that everything has
15 been properly sealed and make sure it hasn't been
16 tampered with.

17 Q. Was that kit sealed when you received
18 it and had anything been tampered with?

19 A. Yes. This is the portion that I would
20 have received right here. (Indicating)

21 Q. And was it sealed?

22 A. Yes, it was sealed.

23 Q. Had anything been tampered with?

24 A. No.

25 Q. And what do you do when you get it?

JESSICA STOWE - DIRECT EXAM

1 A. What I do is I then inventory it. It
2 came in as L14-14994, item 2. So item 2 overall is
3 the sexual assault kit. What we do is we open it
4 up and we look at the items that were collected by
5 the sexual assault nurse. And in this case --
6 would you like me to go through with you what was
7 put down?

8 Q. Sure.

9 A. I inventoried smears, vaginal, oral and
10 rectal; vaginal swabs, oral swabs, rectal swabs;
11 pubic hair combing, the victim's buccal swab and a
12 debris collection. So that's what I did when I got
13 it.

14 Q. Okay. And what did you do with those
15 items? Did you separate them? Did you --

16 A. Yes. Once they're separated, I then
17 created them in our information system, which is
18 how -- with what I just read, with the smears, the
19 vaginal, oral, and rectal swabs; all of those
20 become their own item. And the request in this
21 case was to look for semen, and that's the type of
22 screening I performed on this sexual assault kit.

23 Q. Did you find semen on any of the items?

24 A. Would you like me to read my --

25 Q. Uh-huh.

JESSICA STOWE - DIRECT EXAM

1 A. Regarding the vaginal swabs,
2 examination for a component of semen, P30, was
3 positive. No spermatozoa identified. Item
4 forwarded to the DNA section.

5 Oral swabs, examination for component
6 of semen, P30 and spermatozoa were negative, no
7 semen identified.

8 Rectal swabs, examination for a
9 component of semen, P30, was positive. No
10 spermatozoa identified. Item forwarded to the DNA
11 section. And those are the items that I
12 specifically tested.

13 Q. Okay. And what is P30?

14 A. So when you think of semen, it's the
15 male reproductive fluid; however, it's important to
16 realize that semen seminal fluid has two
17 components. It has a liquid component, which is
18 the seminal fluid, and then it has the cellular
19 component, which is your sperm cells, the
20 spermatozoa. It's the cells that have the tails,
21 the squiggly tails.

22 So what we're doing is we're taking
23 that and looking at the liquid portion, because
24 that's the portion that has the protein and the
25 enzymes and everything that we use to screen for

JESSICA STOWE - DIRECT EXAM

1 the possible presence of saliva, and that's where
2 the P30 would be.

3 Q. Is P30 found in any other substance
4 besides semen?

5 A. Yes, P30 is found in very high levels
6 in male seminal fluids; however, it can be found in
7 low levels in vaginal fluid, the blood of males
8 with prostate cancer and female breast milk.

9 Q. And your test is designed to pick up
10 low levels of P30?

11 A. No, our test is designed to detect the
12 levels of P30 at higher levels.

13 Q. And do you sometimes get results on a
14 rectal swab even when there is no rectal assault?

15 A. Yes, it is common.

16 Q. Okay.

17 A. Would you like me to explain?

18 Q. Please.

19 A. So when ejaculation occurs inside the
20 vagina, the semen is going to encounter gravity.
21 So the gravity is going to pull the seminal fluid,
22 because it is a liquid, out of the vagina and
23 sometimes it will drain into the rectal area. So
24 even though a rectal assault may have not have
25 occurred, semen could still be present in that area

JESSICA STOWE - CROSS EXAM

1 just from drainage and gravity.

2 Q. And as far as you detecting semen, but
3 no sperm, hypothetically, could that be equated to,
4 say, a man that has a low sperm count?

5 A. Yes.

6 Q. Or a man that can't get his wife
7 pregnant because he has semen but he doesn't have
8 sperm?

9 A. Yes.

10 Q. So just to reiterate, the protein found
11 in semen was found on the vaginal swabs and the
12 rectal swabs of the sexual assault kit from **L. J.**

13 **[REDACTED]**?

14 A. That's correct, yes.

15 MS. WILLIAMS: Court's indulgence?

16 THE COURT: Yes, ma'am.

17 MS. WILLIAMS: Thank you very much.

18 THE COURT: Any questions for the
19 witness?

20 CROSS-EXAMINATION

21 BY MS. LITTLEJOHN:

22 Q. Ms. Stowe -- I had to correct myself.
23 I wanted to call you by your maiden name.

24 A. It's okay. It happens all the time.

25 Q. Just a couple of questions for you

JESSICA STOWE - CROSS EXAM

1 here. Pretty much as I understand it, there is
2 somebody with SLED, stuff is dropped off and they
3 check it in?

4 A. Okay.

5 Q. And then pretty much everything comes
6 through serology, doesn't it?

7 A. Not everything. Just anything that
8 would need body fluid examination, as well as
9 touch, and other requests that's not really
10 relevant to this request.

11 Q. Okay. Do you know if anything else
12 other than this came through your department?

13 A. I don't understand your question. I'm
14 sorry.

15 Q. Well, like clothes that she may have
16 been wearing, would they have come through your
17 department?

18 A. If they were submitted to SLED --

19 Q. They would have come through your
20 department?

21 A. They could have, yes.

22 Q. So that would have come through
23 serology?

24 A. It could have, yes.

25 Q. Weapons don't come through your

JESSICA STOWE - CROSS EXAM

1 department, right?

2 A. They do.

3 Q. They do?

4 A. Yes. It depends -- a completely
5 different case scenario.

6 Q. Like for maybe touch DNA or something
7 like that?

8 A. Yes, nothing relative to this case.

9 Q. Okay. So you're kind of the screener
10 in a way, separating out where things will go, in a
11 sense? Like you will screen it and send it off to
12 DNA or screen it and send it to another division?

13 A. Not to another division. I would only
14 forward things to the DNA department. We're a
15 subset of the DNA department. So as a screener,
16 what I'm doing is I'm determining what items could
17 we possibly get a DNA profile from and with, you
18 know, my testing, and that's what I forward to DNA.

19 Q. And one thing you look for in that
20 might be, say if I touched this right here,
21 (Indicating), you know, hey, she touched that right
22 there, that podium. I bet we can find some -- if
23 somebody swabbed it, we can find her DNA on that.
24 Let me test it?

25 A. Yes, that is certainly possible.

JESSICA STOWE - CROSS EXAM

1 Q. Transfer DNA is what we call it?

2 A. Right. Our department handles case
3 scenarios like that as well.

4 MS. LITTLEJOHN: Okay. Your Honor, may
5 I approach the witness?

6 THE COURT: You may.

7 BY MS. LITTLEJOHN:

8 Q. I noticed earlier you said that one of
9 the things that you did was you took some classes
10 about -- on the forensics of it, about handling
11 evidence and everything?

12 A. Uh-huh.

13 Q. Because that's pretty important, right?

14 A. Absolutely.

15 Q. Because, I mean -- and the thing about
16 it is, you don't know how it was handled before it
17 hit SLED, do you?

18 A. No, we have no idea.

19 Q. And one of the things you do is put it
20 in this heat-sealed bag, right?

21 A. Well, when I get it, it is typically in
22 that bag, yes.

23 Q. And this is a SLED bag, right?

24 A. Yes. It appears to be one of our
25 heat-sealed pouches.

JESSICA STOWE - CROSS EXAM

1 Q. And you -- sort of like you see on the
2 commercial with food, it's sealed with heat?

3 A. Yes.

4 Q. Until you opened it?

5 A. Yes.

6 Q. Okay. So you don't know what happened
7 to it before SLED got it, before it was
8 heat-sealed?

9 A. No, I don't, huh-uh. I just make sure
10 that when I get it, it is in proper condition.

11 Q. And it's important for it to be
12 heat-sealed so that no contaminants get into it?

13 A. Well, it's not necessarily important
14 that it's heat-sealed. We get a lot of evidence in
15 boxes. It's important that all entries that lead
16 to the evidence is sealed off so nothing can get
17 inside or anything can get out.

18 Q. Right. You wouldn't want all of a
19 sudden, you know, goodness, somebody sneeze even?
20 You wouldn't want anything like that?

21 A. No, you wouldn't. No.

22 Q. Okay. Can you imagine somebody
23 touching it without their gloves on?

24 A. No.

25 Q. No. And on the swabs you did, you

JESSICA STOWE - CROSS EXAM

1 can't tell where in the vagina actually the swabs
2 were taken from, because you weren't present, were
3 you?

4 A. That would be correct, yes. When we
5 get the vaginal swabs, all we know is that it's
6 from the vaginal area.

7 Q. And you don't know how it got there,
8 right?

9 A. No.

10 MS. LITTLEJOHN: Okay. I have no
11 further questions, Your Honor.

12 THE COURT: Any redirect?

13 MS. WILLIAMS: No, Your Honor.

14 THE COURT: Any objection to the
15 witness being excused?

16 MS. WILLIAMS: No, Your Honor.

17 MS. LITTLEJOHN: No.

18 THE COURT: Ma'am, you're excused.

19 THE WITNESS: Thank you.

20 THE COURT: You're welcome.

21 You may call the next witness.

22 MS. WILLIAMS: State calls Samuel
23 Stewart.

24 SAMUEL STEWART,

25 being first duly sworn, testified as follows:

SAMUEL STEWART - DIRECT EXAM

1 THE CLERK: Please state your full name
2 for the record and spell the last.

3 THE WITNESS: Samuel Stewart,
4 S-T-E-W-A-R-T.

5 THE COURT: You may proceed.

6 MS. WILLIAMS: Thank you.

7 DIRECT EXAMINATION

8 BY MS. WILLIAMS:

9 Q. Where do you work, Mr. Stewart?

10 A. I work for the South Carolina Law
11 Enforcement Division, commonly known as SLED.

12 Q. What do you do there?

13 A. I'm a forensic scientist assigned to
14 the DNA casework department.

15 Q. What is your educational background?

16 A. I received my Bachelor's of Science in
17 Biology from Francis Marion University; I received
18 in-house SLED training under a Court-qualified
19 analyst for over a year and a half; I had to
20 successfully complete a written exam, oral exam and
21 a competency exam and a mock trial to be deemed
22 competent as a DNA analyst.

23 Q. And are you certified in any -- a
24 member of any associations that certify in any
25 areas?

SAMUEL STEWART - DIRECT EXAM

1 A. Not at this time.

2 Q. And what other courses have you had to
3 take in your experience with SLED?

4 A. I had to make sure to have basic
5 courses, such as genetics, microbiology, and
6 statistics training.

7 Q. And before you were able to conduct
8 your own cases, tell us what kind of training you
9 had in observing or participating in lab work at
10 SLED.

11 A. Yes. My trainer allowed me to watch
12 her do her lab work, I also got to participate in
13 helping her complete the DNA process on those lab
14 works as well, and I also shadowed her while going
15 to court to get a feel for that.

16 Q. How many cases would you say you've
17 watched and observed in that program?

18 A. Over a hundred; hundreds.

19 Q. And how many cases would you say you've
20 worked on on your own?

21 A. I would say hundreds as well.

22 Q. And in your course of work at SLED,
23 tell us specifically what you do.

24 A. As a DNA analyst, I'm responsible for
25 processing any evidence and known standards through

SAMUEL STEWART - DIRECT EXAM

1 DNA. My purpose is to try to determine whether or
2 not the DNA profile I develop from those known
3 standards, which can come from a subject or a
4 victim, can be included or excluded as a possible
5 contributor to the DNA profile from that evidence.
6 I'm responsible for putting those findings in a
7 report and giving that report to the submitting
8 agency. I'm also responsible for reviewing the
9 work of my peers and eight hours of continuing
10 education a year.

11 Q. And in those eight hours of continuing
12 education, what kinds of courses are you required
13 to take?

14 A. Various courses, such as mixture
15 interpretations, statistics training, just any
16 number of those trainings along the area of DNA,
17 being updated on new technologies and methodologies
18 that are being done in DNA. Any of those numbers
19 things can be done in eight hours of training.

20 Q. How long have you worked there?

21 A. Four years.

22 Q. So in that four years, you've had to
23 take an additional 32 hours of DNA training, in
24 addition to your Bachelor of Arts work and your
25 peer work and additional courses?

SAMUEL STEWART - DIRECT EXAM

1 A. That's correct.

2 Q. And what types of cases are you usually
3 working on when you're analyzing DNA at SLED?

4 A. The cases can vary from homicide,
5 burglary, robbery, sexual assault. It can vary
6 from a number of different cases.

7 Q. Is there peer review on all of your
8 cases?

9 A. Yes, there is. There's a two-tiered
10 peer review. The peer review first is done by one
11 of my fellow colleagues and then --

12 MS. LITTLEJOHN: Your Honor, I'm going
13 to object to this peer review. I think it's
14 improper bolstering.

15 THE COURT: Overruled. You may
16 continue.

17 THE WITNESS: And then also a final
18 peer review is done by a senior DNA analyst. Once
19 it gets through those peer reviews, then it's ready
20 for submission to the submitting agency.

21 BY MS. WILLIAMS:

22 Q. Is it fair to say that, in addition to
23 all of your background and foundational work,
24 educationally and practically, it's ongoing
25 training for DNA analysis?

SAMUEL STEWART - DIRECT EXAM

1 A. That's correct.

2 MS. WILLIAMS: At this time, Your
3 Honor, we would offer Mr. Stewart to be qualified
4 as an expert in the field of forensic science,
5 specifically DNA analysis.

6 THE COURT: Any questions or
7 objections?

8 MS. LITTLEJOHN: We would like to have
9 the opportunity to question him.

10 THE COURT: You may proceed.

11 EXAMINATION (VOIR DIRE)

12 BY MS. LITTLEJOHN:

13 Q. Hey, Agent Stewart. I'm Debbie
14 Littlejohn. You and I have talked a little bit.
15 Forensic DNA is, I guess for lack of a better word,
16 is hard science instead of soft science; in other
17 words, the chemistry part of it instead of the
18 psychology part of it?

19 A. Okay. I can agree with that.

20 Q. Okay. Likewise, so would -- statistics
21 is sort of a hard science. Can you tell us what
22 sort of classes, past, say, the basic 16 hours in
23 chemistry or regression analysis, you've had?

24 A. Yes. I've had the regular statistics,
25 but I've also had the eight-hour continuing

SAMUEL STEWART - DIRECT EXAM

1 education in statistics as well.

2 Q. What do you learn in that?

3 A. We understand the probabilistic
4 statistics, which is what we use. This statistics
5 is -- which has been used from the FBI. It's just
6 basic statistics that -- at every location, that we
7 use during our developing a DNA profile.

8 Q. So that's basically the class where
9 they talk about which test to apply to what --
10 basically, which test to apply to what -- which
11 statistical test to apply to what test?

12 A. What this course does is lets us know
13 which formula we need to use at every location to
14 develop the probabilistic of how random or how
15 often we would see these in these certain
16 locations. That's what the training is for.

17 Q. Have you had any training on
18 algorithms?

19 A. No; I have not had any training on
20 algorithms.

21 Q. My understanding of DNA is that it's
22 somewhat computer generated and it's based on the
23 algorithms, correct?

24 A. Well, yes. It is computer based, but
25 like I said, we know the formula. The formula is

SAMUEL STEWART - DIRECT EXAM

1 what we use and the computer just does that for us.

2 Q. So if the computer algorithms are off,
3 then it can't really be -- how do you determine if
4 it's working or not?

5 A. Well, the computers are always updated
6 and constantly being checked and making sure that
7 -- like I said, this is done by the FBI. And it's
8 constantly making sure that all the types and all
9 the formulas and everything is working properly.
10 We just had an update to the FBI database not too
11 long ago as well. So we're always constantly
12 making sure that those formulas are being done and
13 applied properly.

14 Q. So they'll come in if the computer is
15 not --

16 MS. WILLIAMS: Objection.

17 THE COURT: Basis?

18 MS. WILLIAMS: It goes beyond the scope
19 of his expertise and the expertise for DNA analysis
20 and the science of it.

21 THE COURT: I think she can question
22 him regarding the equipment he uses, but that
23 really does not go to the validity of his
24 qualifications to testify as an expert. That's
25 more in the nature of cross-examination and how

SAMUEL STEWART - DIRECT EXAM

1 thorough his analysis was.

2 MS. LITTLEJOHN: Your Honor, I need to
3 make sure that he understands the equipment that
4 he's using when he does the DNA, because the
5 equipment is part --

6 THE COURT: I will give you some
7 latitude, but you need to move on. It goes to the
8 weight of his testimony, not his expertise.

9 BY MS. LITTLEJOHN:

10 Q. Population genetics is part of DNA,
11 correct?

12 A. It's what we use to put weight to the
13 information that we have or that we report.

14 Q. And we break down the population
15 according to different races?

16 A. Yes, we do.

17 Q. And how many classes have you had on
18 population genetics? How many graduate school
19 classes have you had on that?

20 A. I have not taken any graduate classes
21 on it. But, like I said, we have the eight-hour
22 continuing education that we do have in-house. I
23 have taken that.

24 Q. And that's just one eight-hour class?

25 A. Well, yes; it was an eight-hour class.

SAMUEL STEWART - DIRECT EXAM

1 Q. In population genetics?

2 A. Yes, that's correct.

3 Q. Are you licensed? Such as CPAs have a
4 license, MDs have a license and pass a board. Are
5 you licensed and pass a board?

6 A. I'm certified in DNA analysis. I have
7 my certification and qualifications in those areas,
8 so, yes, I guess you could say I'm certified as a
9 DNA expert.

10 Q. So you would be able to go to any other
11 state and practice it?

12 A. Yes, I should be able to do that.

13 Q. Okay. And have you published anything?

14 A. I have not.

15 Q. And have you had any reviewing of your
16 material that's been through a blind proficiency
17 testing versus peer review?

18 A. I don't understand the question.

19 Q. In other words, not by people that you
20 work with?

21 A. Proficiency test done by other
22 laboratories?

23 Q. Right.

24 A. We do our proficiency testing in-house.

25 Q. I mean, have you had other laboratories

SAMUEL STEWART - DIRECT EXAM

1 look at your techniques to determine --

2 A. Yes, we are audited. We are audited
3 twice a year. We have an internal audit that is
4 done by SLED and we have another forensic lab that
5 comes in and does an audit as well.

6 Q. And who would that be?

7 A. It varies. We have different states
8 that we rotate with.

9 Q. Okay. So the population genetics, your
10 only -- that's only been eight hours --

11 MS. WILLIAMS: Objection; asked and
12 answered.

13 THE COURT: I haven't heard the
14 totality of the question. Please complete the
15 question.

16 MS. LITTLEJOHN: I was saying, so the
17 population genetics is just the eight hours you've
18 had, right?

19 THE WITNESS: Including what I took in
20 school, yes.

21 BY MS. LITTLEJOHN:

22 Q. Okay. Did you take some extra classes
23 in school on population genetics?

24 A. Like I said, I only took the statistics
25 that was necessary for my course work and the eight

SAMUEL STEWART - DIRECT EXAM

1 hours that I took at SLED as well.

2 MS. LITTLEJOHN: Okay. I have no
3 further questions, Your Honor.

4 THE COURT: Any questions -- any
5 redirect on his qualifications from the State?

6 MS. WILLIAMS: No, Your Honor.

7 THE COURT: Any objection to him being
8 admitted as an expert in DNA analysis?

9 MS. LITTLEJOHN: None, Your Honor.

10 THE COURT: So admitted. Please
11 proceed.

12 CONTINUING DIRECT EXAMINATION.

13 BY MS. WILLIAMS:

14 Q. In the course of your work at SLED, did
15 you receive items of evidence in this case?

16 A. Yes, I did.

17 Q. And I think that there's a box sitting
18 in front of you marked State's 84. If you could
19 look at this and see if you received items of
20 evidence that came in in this box. You can open
21 it.

22 A. Yes, I did.

23 Q. Okay. And when you get it, it comes
24 from serology?

25 A. That's correct.

SAMUEL STEWART - DIRECT EXAM

1 Q. And is it resealed and by the time you
2 get it, it's sealed up?

3 A. Yes, that's correct.

4 Q. And when you got it, did you do
5 anything to tamper with it or change the evidence
6 or do anything with the evidence except test it?

7 A. No, I did not.

8 Q. So tell us what you do with those
9 pieces of evidence when you got them.

10 A. When I received this evidence in my
11 custody, I take a look and see what has been done
12 by the serologist and what she has stated needs to
13 be forwarded for DNA. I take those items and do
14 processing on them.

15 We have four basic -- basic steps that
16 we use. We do extraction, which is taking the DNA
17 from the swabs and put it into a preserved
18 solution. That stabilizes it and makes sure it
19 lasts for a long time. We also quantify it.
20 Quantification is important. We have -- we have to
21 do this step because we need to know how much DNA
22 we have.

23 When we know how much DNA we have, we
24 know exactly what range to put it into to submit it
25 to our instrument. We also have to take another

SAMUEL STEWART - DIRECT EXAM

1 step, which is a PCR step, which is making multiple
2 copies of the DNA. This is to make sure that we
3 have enough DNA to get full representation of the
4 DNA profile that we're looking for.

5 Once we have that, we put it into the
6 instrument and it runs in the instrument and that
7 gives us our DNA profile.

8 Q. And if you could -- did you commit the
9 description of the items of evidence that you
10 worked on to a report?

11 A. Yes, I did.

12 Q. If you could describe to the jury what
13 items of evidence you worked on, that would be
14 helpful.

15 A. Yes. Item 1 was a buccal swab from
16 Telly McClam.

17 Q. What is a buccal swab? We've heard
18 about how they take it, but what is it that you're
19 using that for?

20 A. Buccal swab is used for a known
21 standard. It is for us to be able to compare their
22 DNA to the DNA profile of the evidence.

23 Q. And go on.

24 A. Item 2 was a buccal swab from **L. J.**
25 **[REDACTED]**. Item 2.2 was vaginal swabs and item 2.4

SAMUEL STEWART - DIRECT EXAM

1 were rectal swabs.

2 Q. Were those vaginal and rectal swabs
3 from **L. J.** ?

4 A. Yes, they were.

5 Q. Okay. And then you just described some
6 of the testing that you did on those items. So you
7 extracted DNA from the items that you got from the
8 sexual assault kit?

9 A. That's correct.

10 Q. That's not the way you said it, you
11 said it a lot smarter. And then you compared it to
12 Mr. McClam's DNA?

13 A. That's correct.

14 Q. And what were the results?

15 A. The DNA profile developed from the
16 sperm fraction of items 2.2 and 2.4 is a mixture of
17 at least two individuals. A DNA profile foreign to
18 **L. J.** is present within the mixture and
19 matches the DNA profile of Telly McClam. The
20 probability of randomly selecting an unrelated
21 individual having a DNA profile matching this
22 foreign profile is approximately 1 in 2.2 billion.

23 Q. The chances that it's someone else
24 besides Telly McClam is 1 in 2.2 billion?

25 A. That's correct.

SAMUEL STEWART - DIRECT EXAM

1 Q. Just a little bit of confusion that I
2 had with it, the serologist talked about the fact
3 that there was semen, but no sperm, but in this
4 report, it refers to it as a sperm fraction.
5 Explain that.

6 A. No problem. When we have a positive
7 result for the presumptive testing of semen, what I
8 stated about the extraction, we do a special type
9 of extraction of these samples. This extraction is
10 known as a differential extraction. Essentially
11 what I'm doing is I'm separating the evidence into
12 two fractions, a non-sperm fraction which is -- I
13 just hope to get to the -- get only the female DNA,
14 the victim, and in a sperm fraction.

15 This fraction is any potential male DNA
16 that may be there. And this is done so that we can
17 get a clear cut or see if there's any male DNA
18 there. If I was not doing this type of extraction,
19 the overwhelming female DNA would mask the
20 potential male DNA.

21 Q. So when you say sperm fraction, what
22 you're really talking about is just the male DNA in
23 that mixture?

24 A. Yes; hopefully, the male DNA that would
25 be extracted.

SAMUEL STEWART - DIRECT EXAM

1 Q. You didn't test for whether there was
2 actually spermatozoa?

3 A. No, I did not.

4 Q. That was done before and she determined
5 that there was the P30 from the semen?

6 A. That's correct.

7 Q. Is there a chart that helps explain to
8 the jury how strong this match is?

9 A. Yes, there is.

10 MS. WILLIAMS: Your Honor, I'm going to
11 show Counsel what has been previously marked as
12 164. And, Madame Court Reporter, we marked this
13 chart just for demonstrative purposes.

14 THE COURT: 164 for ID only.

15 (STATE'S EXH. 164, Chart, was marked
16 for identification.)

17 MS. WILLIAMS: May we publish as a
18 demonstrative aid?

19 MS. LITTLEJOHN: No objection.

20 BY MS. WILLIAMS:

21 Q. And you have a pointer up here. And if
22 you can just kind of --it goes that way, the chair,
23 sorry. If you could use that thing.

24 A. So what we're looking at here --

25 THE COURT REPORTER: I can't hear him.

SAMUEL STEWART - DIRECT EXAM

1 THE COURT: Sir, if you could speak a
2 little louder.

3 THE WITNESS: So what we're looking at
4 here is my DNA table. The first column -- excuse
5 me, this first row right here is the DNA profile of
6 Mr. Telly McClam. What you see here are the
7 different locations for that DNA profile. We have
8 16 different locations that we use to develop a DNA
9 profile. So, like I said, the first one belongs to
10 Telly McClam. The second one belongs to **L. J.**
11 **[REDACTED]**. These other rows are the vaginal swabs
12 and rectal swabs, 2.2 and 2.4.

13 As I stated earlier, I separated, using
14 the differential extraction, into two different
15 fractions, a non-sperm fraction and a sperm
16 fraction. As I stated before, the non-sperm
17 fraction, I'm just trying to get the female DNA.
18 Just trying to separate it out from any potential
19 male DNA that may be there.

20 As you can see -- I will take 2.2 NS
21 for example. If you look at the DNA types of every
22 location, between the non-sperm fraction and
23 **L. J. [REDACTED]**, you will see that it corresponded
24 between every location. And this is what I'm
25 looking for. I'm looking for correspondence from

SAMUEL STEWART - DIRECT EXAM

1 the known standards, which are these two at the
2 top, and the DNA profile from the evidence.

3 And looking at this, I can see that the
4 DNA profile at item 2.2 NS belongs to Ms. **L. J.**,
5 which is what I was trying to accomplish. For item
6 2.2 S, the sperm fraction, I did get Ms. **L. J.** in
7 here as well, but I also got a foreign DNA profile.
8 And when I -- when we have samples like this that
9 are taken from an individual's body, I'm able to
10 treat it as an intimate sample. That means, I
11 expect to find them at these locations. I expected
12 to find her DNA since these DNAs did come from her
13 body, her vaginal swabs, her rectal swabs.

14 So essentially what I did, I remove her
15 DNA types from this mixture, because it's a mixture
16 of these two individuals, and what I do is I look
17 at the foreign types that do not belong to Ms.
18 **L. J.**. And when I do that, I get the foreign DNA
19 profile and I look at that foreign DNA profile and
20 I compare that it to Mr. McClam's DNA profile and I
21 was able to determine that the foreign DNA at each
22 location at 2.2 S matched the DNA profile of
23 Mr. McClam's.

24 I will take it one step at a time.
25 Right here, I have a 1415 and I also have a 1415

SAMUEL STEWART - DIRECT EXAM

1 for Mr. McClam. I also have a 30.2 and a 31, and
2 that also matches -- excuse me, I'm sorry, I'm
3 getting confused. I have 29 and a 31.2 and a 29
4 and a 31.2 here for Mr. McClam.

5 So I look at every location and I take
6 it overall as a profile and I look and see whether
7 or not I have correspondence to every location.
8 And because I did, I was able to determine a match
9 for that foreign profile for 2.2 S and 2.4 S.

10 Q. Thank you. Now, there were other items
11 of evidence that you received in this case, that
12 you were not successful in finding any evidence on;
13 is that correct?

14 A. That is correct.

15 Q. And could you just briefly tell us what
16 those were?

17 A. I also did samples from a related case.
18 That case number was L14-4487. In that case I was
19 given -- I was given swabs from duct tape. And I
20 was unable to develop a DNA profile from those
21 items. That was 6.1 and 7.1 from that case.

22 Q. And who were they wanting you to
23 compare for DNA analysis to the duct tape swab?

24 A. I also have a buccal swab from Deadrene
25 McHoney.

SAMUEL STEWART - CROSS EXAM

1 MS. WILLIAMS: Okay. Thank you.

2 Nothing further.

3 THE COURT: Any questions for the
4 witness?

5 CROSS-EXAMINATION

6 BY MS. LITTLEJOHN:

7 Q. Agent Stewart, when you gave that
8 number that you gave earlier, one of the reasons we
9 were talking about population genetics is because
10 we have to break down the population into the size
11 to be able to say what's consistent with and what's
12 not consistent with a certain DNA, correct?

13 A. I don't follow you.

14 Q. In other words, I believe -- if you
15 said 01 in 700 people, would -- it would be
16 consistent with -- you gave a number on your report
17 of 1 in 2.2 billion?

18 A. That's correct.

19 Q. And that's because of population
20 genetics, right?

21 A. That's correct.

22 Q. And statistics, that you come up with
23 that kind of number, right?

24 A. That is correct.

25 Q. Because that's really kind of

SAMUEL STEWART - CROSS EXAM

1 misleading because we don't even have that many
2 people in the US, do we?

3 A. Well, it is in the world, and the world
4 is approximately 7 billion, but it goes to the
5 rarity of the profile. It's not just about the
6 number of people in the world. What we're looking
7 at is we're looking to see if we took a random
8 person's DNA profile and we compared it to that DNA
9 profile, the foreign profile that I was able to
10 pull out, what are the chances that that random
11 person's DNA profile would match the DNA -- that
12 foreign profile I should say, and the probability
13 of that happening is the 2.2 billion.

14 We're not looking at just the world
15 population. We're looking at the probability of a
16 random person DNA's profile matching that foreign
17 profile.

18 Q. We were looking at probabilities?

19 A. That's correct.

20 Q. So we're looking at, is something
21 consistent with?

22 A. Or we're looking for a rarity, I should
23 say maybe.

24 Q. So it's not so much a match, it's
25 consistent with?

SAMUEL STEWART - CROSS EXAM

1 A. I can say within a scientific certainty
2 that it's a match with that high number of a stat.

3 Q. Didn't you also say in your report, a
4 mixture of at least two individuals?

5 A. That's correct. And that is our
6 wording that we use when we use at least, but for
7 this profile, what I was looking at, I can
8 definitely say it was mainly just a mixture of two
9 individuals, but our wording does state at least
10 two.

11 Q. And that's because scientifically, you
12 want to be solid to say something scientifically,
13 which is why you're wanting to -- it would be
14 consistent with something, correct?

15 A. (No response.)

16 Q. Did you by any chance -- working in the
17 DNA lab, I know you run across a lot of items and
18 let's just -- you work for SLED, which means you
19 work for law enforcement, and you-all work with the
20 Solicitors and all. If I wanted to call up and ask
21 that something be examined, as a defense attorney,
22 can I do that?

23 A. I'm not exactly sure.

24 Q. If I called up and said, hey, can you
25 examine something, would you do it?

SAMUEL STEWART - CROSS EXAM

1 A. I would have to check the policy. As
2 far as I know, I have not heard of that happening.

3 Q. I haven't either in 20-something years.
4 You usually get a copy of the police report when
5 you do it, too? Don't they send you a copy of the
6 police report, or not?

7 A. We get a copy of the SANE nurse's
8 protocol and we get a copy of the incident report.

9 Q. And you also work with touch DNA,
10 right?

11 A. Yes, we do.

12 Q. And transfer DNA?

13 A. Essentially, touch DNA, that's correct.

14 Q. Where something can be on something and
15 it can be transferred?

16 A. That is possible.

17 Q. And you would agree that we have to
18 validate all of our studies, right?

19 A. Yes, validation we do in-house.

20 Q. And there are error rates on
21 everything?

22 A. We don't report an error rate on what
23 we do as a DNA analyst.

24 Q. You don't record it, is that what you
25 said?

SAMUEL STEWART - CROSS EXAM

1 A. We do not report it. We do not have an
2 error rate.

3 Q. But you're familiar with the recent lab
4 mixup I think where they had to readjust the
5 population --

6 A. We had --

7 Q. -- at the big FBI lab, right?

8 A. We had an update to the database, the
9 FBI database. And I also would like to state,
10 when we have these updates, we went ahead and we
11 recalculated all of the statistics that we
12 previously did before the update. And I also did
13 it for this case as well, and the probabilistic did
14 not change that I just stated, 2.2 billion, when I
15 recalculated the statistics.

16 Q. But we have errors that occur from time
17 to time in some labs, even in the FBI. Like you
18 just said, we had to have that update?

19 A. As I said, it was an update. I'm not
20 sure about an error, but I know it was an update.

21 Q. And there have been some things that
22 have happened over the times in some of these. You
23 would agree with me, in a perfect world, if
24 everything was perfect, with all the evidence being
25 perfect, DNA would be a great reliable tool?

SAMUEL STEWART - CROSS EXAM

1 A. I think DNA is a great reliable tool.

2 Q. I think it's pretty good, but I'm
3 saying it would be a great reliable tool. There
4 are a lot of things that you can't help, aren't
5 there?

6 A. I'm not sure I understand.

7 Q. Well, imagine if you would --

8 MS. LITTLEJOHN: Your Honor, may I
9 approach?

10 THE COURT: You may.

11 By MS. LITTLEJOHN:

12 Q. Imagine if you would somebody sees a
13 piece of evidence, gets a set of gloves out of the
14 trunk of their car that's been sitting there like
15 this (Indicating) in the trunk of a car, unsealed,
16 or don't even get gloves, they put them on and then
17 they pop this one off, get a soda, then put this
18 one on with this hand, a lot of cross-contamination
19 can happen before it ever hits you, right?

20 A. As far as I know, everyone follows --

21 Q. I'm talking about you. Before it hits
22 you, you don't have anything to do with that, do
23 you?

24 A. No, I don't have anything to do with
25 that before it hits me with the evidence.

SAMUEL STEWART - CROSS EXAM

1 Q. There's a lot of things that can happen
2 to evidence before it ever hits you?

3 A. That's possible.

4 Q. Because at SLED, you-all know boxes,
5 you seal them, right?

6 A. Yes. Everything stays in a heat-sealed
7 pouch.

8 Q. Do you-all keep them in dusty trunks or
9 anything?

10 A. No, we do not. We have an evidence
11 storage locker.

12 Q. And that's, I assume, a controlled
13 environment?

14 A. Yes.

15 Q. Because you would not want to stick new
16 evidence in, say, some box that could have been
17 opened and in your trunk, right?

18 A. That's correct.

19 Q. Because that would be the
20 cross-contamination that we're talking about,
21 right?

22 A. Yes.

23 Q. And you never know what might get in
24 there, right?

25 So there's lots of things that can lead

SAMUEL STEWART - CROSS EXAM

1 to this. If it's not packaged appropriately,
2 before it gets to you, products can be damaged,
3 right? Items can be?

4 A. I guess that's possible.

5 Q. I mean, this is before it gets to you.
6 If something in transport isn't done appropriately,
7 before it gets to you, things can be damaged,
8 correct?

9 A. Once again, I have no information on
10 any of this, but I guess it's possible, but --

11 Q. There are lots of things that can
12 happen to items before they get to you?

13 A. Yes, that's correct.

14 Q. You have absolutely no control over
15 that?

16 A. That's correct.

17 Q. So you can do -- you can do everything
18 with the DNA, but how something may have gotten
19 where, that's up to however many people's hands and
20 what environment it was, and how well-trained they
21 were, they take evidence collections classes, et
22 cetera, because you know how important that is,
23 correct?

24 A. That's correct.

25 Q. As a matter of fact, evidence

SAMUEL STEWART - CROSS EXAM

1 collection is probably one of the top things that
2 you learn, isn't it?

3 A. Yes, it is.

4 Q. You can't tell how long DNA has been
5 present, can you?

6 A. No, I cannot.

7 Q. Look on the chart that Ms. Williams
8 had. We're looking at I think 15 loci up there,
9 right?

10 A. 16.

11 Q. Okay. 16 with the male/female?

12 A. That is correct.

13 Q. Other countries do look at more?

14 A. Yes, that's correct. I mean, different
15 laboratories in different countries, they do look
16 at various different loci.

17 Q. Is there a reason that -- a particular
18 reason, or do you know, why SLED doesn't look
19 beyond the 15, 16?

20 A. As we are right now, we only look at
21 the core loci that is done by the FBI. We do do a
22 couple of others besides those, and we are also
23 looking to update, to go to another kit that does
24 include more loci. At this time, yes, we do stick
25 with the 15 different loci and mostly closely

SAMUEL STEWART - CROSS EXAM

1 because of the FBI.

2 Q. And, in fact, it's more expensive to
3 get a kit that costs -- with more loci, correct?

4 A. Expense is not the word. We're looking
5 at getting a new kit that has more loci as we talk
6 right now.

7 Q. Oh, good. When it comes to the alleles
8 and the levels, does it identify low-level alleles?

9 A. Yes. We have specialized kits that
10 looks at low-level alleles or low-level DNA, I
11 should say.

12 Q. Okay. So you don't know how the police
13 handled the evidence because you weren't there,
14 right?

15 A. That's correct.

16 Q. You don't know if facial masks were
17 worn?

18 A. No, I have no information on that.

19 Q. You don't know, if they did, what type
20 they wore?

21 A. No.

22 Q. You don't know if they wore gloves?

23 A. No, I do not.

24 Q. You don't know, if they wore them, if
25 they changed them in between each specimen?

SAMUEL STEWART - CROSS EXAM

1 A. No, I do not know, but I believe this
2 evidence here was collected by a SANE nurse.

3 Q. You don't know what happened there, do
4 you?

5 A. No, I do not.

6 Q. And you don't know if the pen, that was
7 recorded, just to put things on, had been
8 contaminated and written on and touched with the
9 glove, do you?

10 A. No, I do not know.

11 Q. So there are a lot of unknowns that you
12 don't have. You don't know, when it got
13 transported, if it was in extreme heat, do you?

14 A. No, I do not.

15 Q. You don't know if, when it got
16 transported, it was in there with a bunch of other
17 stuff, just everything piled on top of each other,
18 do you?

19 A. No, I don't know how it was
20 transported.

21 Q. But at SLED, you heat-seal it to
22 prevent any leakage or anything getting in, right?

23 A. Yes, and to protect the identity of the
24 -- the evidence and to show there was no tampering.

25 Q. Because, I mean, it's heat-sealed then,

SAMUEL STEWART - CROSS EXAM

1 right? At SLED?

2 A. Yes.

3 Q. And we get our DNA from who? I don't
4 think we talked about that. Who does your DNA come
5 from?

6 A. Essentially, DNA -- we get -- if I can
7 explain. We get our DNA from our chromosomes.
8 That's where we get the DNA from. We receive half
9 of our chromosomes from our mother and the other
10 half from our father. That's why you will see
11 either one number or two numbers when you saw the
12 known standards. Either your mother or your father
13 donated you -- your mother or your father donated
14 you one number, making it two; or, essentially,
15 when you see just one number, that means that your
16 parents donated the same number to you.

17 Q. So, essentially, my DNA would have
18 something similar to my brother or my male cousins
19 or my male uncles, something like that?

20 A. Yes. Close relatives would have a
21 slightly similar DNA profile.

22 Q. And with regard to DNA and transfer and
23 all, isn't it true that we shed about 40,000 skin
24 cells a day?

25 A. Individuals shed differently. You

SAMUEL STEWART - CROSS EXAM

1 can't really gauge how much an individual sheds.
2 Some people shed heavily and some people shed
3 lightly. We don't have any concrete evidence on
4 how much an individual can shed.

5 Q. But individuals do shed a lot of skin
6 cells, don't they?

7 A. As I said, some people shed lightly and
8 some more than lightly.

9 Q. Would you agree with me it's more than
10 5,000 --

11 A. I can't put a number onto it.

12 Q. If someone were to tape my hands and
13 untape them, you would agree with me that's on my
14 skin, right? Because they wrapped the tape around
15 there?

16 A. Are you asking about the tape?

17 Q. Right. If you wrap tape around my
18 wrist and then take it off, there would be hair,
19 right?

20 A. I believe it's possible.

21 Q. Skin cells?

22 A. Yes, that would be possible.

23 Q. All sorts of things that you could test
24 for DNA if it, in fact, was wrapped around my
25 hands?

SAMUEL STEWART - CROSS EXAM

1 A. Yes, it is possible.

2 Q. If you're really lucky, you can get it
3 wrapped around my wrists and my ankles, right? And
4 you would have even more material if it was on me
5 that you could test for my skin cells and some
6 hair, right?

7 A. Yes, that's possible.

8 Q. Do you know if you were sent any --
9 were you sent a telephone -- were you sent a
10 telephone to test for DNA?

11 A. No, I was not.

12 Q. Were you sent any DNA swabs from door
13 handles?

14 A. No, I was not.

15 Q. Were you sent any shorts to test for
16 DNA?

17 A. No, I was not.

18 Q. Were you sent a pair of female black
19 pants to test for DNA?

20 A. No, I was not.

21 Q. Were you sent a knife to test for DNA?

22 A. No, I was not.

23 Q. Were you sent a cigarette package to
24 test for DNA?

25 A. No, I was not.

SAMUEL STEWART - REDIRECT EXAM

1 Q. And I'm going to assume the answer but
2 I will ask it anyway. Have you ever done a
3 cigarette butt testing for DNA?

4 A. Yes, I have.

5 Q. Okay. And that can be done?

6 A. Yes, it can be.

7 Q. Were you sent any cigarette butts to
8 test for DNA?

9 A. No, I was not.

10 Q. Were you sent any lighters to test for
11 DNA?

12 A. No, I was not.

13 Q. Were you sent a gun to test for DNA?

14 A. No, I was not.

15 MS. LITTLEJOHN: No further questions,
16 Your Honor.

17 THE COURT: Any redirect?

18 MS. WILLIAMS: Briefly.

19 THE COURT: You may proceed.

20 REDIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Ms. Littlejohn asked you about whether
23 or not, if somebody had their hands wrapped in duct
24 tape, if you would find DNA. And you tested swabs
25 from duct tape, right?

SAMUEL STEWART - REDIRECT EXAM

1 A. That's correct.

2 Q. And you don't know where on the duct
3 tape the swabs were taken?

4 A. No, I do not.

5 Q. So just because you don't find
6 someone's DNA on the swabs from part of the duct
7 tape, that doesn't mean that they weren't tied up
8 with duct tape?

9 A. That's correct.

10 Q. Isn't it true that you often get items
11 of evidence for touch DNA and you don't have any
12 results?

13 A. That's right.

14 Q. What are some of the reasons why it's
15 so difficult to get touch DNA?

16 A. As I stated earlier, some people are
17 heavy shedders and some people are light shedders.
18 Also, you know, it's transfer DNA. So,
19 essentially, you're touching an object and trying
20 to see if you can get DNA from that. And sometimes
21 it's just not there, we don't have enough genetic
22 material there to develop a DNA profile.

23 Q. And Ms. Littlejohn went through a
24 litany of other ways that you could test for DNA in
25 the sexual assault kit; you could have done this,

SAMUEL STEWART - REDIRECT EXAM

1 you could have done that, and, in fact, you could
2 have. You could have done PCR testing, correct?

3 A. Essentially, I did do PCR.

4 Q. You could have done where you separate
5 out the male?

6 A. Oh, you mean Y testing?

7 Q. Y testing.

8 A. Yes, I could have done that.

9 Q. But you didn't need to, did you,
10 because you had a match?

11 A. That's correct.

12 MS. WILLIAMS: Thank you.

13 THE COURT: Any objection to the
14 witness being excused?

15 MS. WILLIAMS: Not from the State.

16 THE COURT: From the defense?

17 MS. LITTLEJOHN: None from the defense.

18 THE COURT: Sir, you are excused.

19 THE WITNESS: Thank you.

20 THE COURT: You're welcome.

21 Call your next witness.

22 MR. POULOS: The State calls Thomas
23 Darnell.

24 THOMAS DARNELL,

25 being first duly sworn, testified as follows:

THOMAS DARNELL - DIRECT EXAM

1 THE CLERK: Have a seat, state your
2 full name for the record, and spell the last name.

3 THE WITNESS: Thomas Edward Darnell.
4 Last name is spelled D-A-R-N-E-L-L.

5 THE COURT: You may proceed.

6 MR. POULOS: Thank you.

7 DIRECT EXAMINATION

8 BY MR. POULOS:

9 Q. Good afternoon, Mr. Darnell.

10 A. Afternoon.

11 Q. Tell us where you're employed.

12 A. I work for the State Law Enforcement
13 Division, more commonly referred to as SLED.

14 Q. How long have you worked for SLED?

15 A. I've been there 25 years total. About
16 20 of that I've been in the forensic laboratory.

17 Q. Is that your current position, in the
18 forensic lab?

19 A. Yes.

20 Q. What are your responsibilities?

21 A. I'm a latent print examiner or a
22 fingerprint examiner at the laboratory. Basically,
23 what I do is I receive evidence from outside
24 agencies and I process those items of evidence to
25 determine if there are any fingerprints present.

THOMAS DARNELL - DIRECT EXAM

1 Q. Does that include fingerprint analysis?

2 A. Yes, sir.

3 Q. And you stated you've been working in
4 that field for 20 years?

5 A. Yes, sir, about 20 years.

6 Q. Can you describe for us your work
7 history, your specialized education, any kind of
8 training that you've received in the field?

9 A. First of all, I have a college degree
10 from University of South Carolina; I have a
11 Bachelor's of Science in Criminal Justice,
12 graduated from there in 1982; I started out at
13 Richland County Sheriff's Office in Columbia. I
14 worked there for about eight years, I was in
15 uniform patrol there. 1990, I started working for
16 SLED. I was in the latent fingerprint crime scene
17 department. 1998, I was promoted to lieutenant
18 over the latent print department. In 2004, I left
19 the lab briefly; stayed at SLED, but went to a
20 different department at SLED. In 2008, I returned
21 to the laboratory and once again I was supervisor
22 over the latent print department where I was for
23 about two years. I then signed up for retirement
24 in 2009; kept working -- left there and went to --
25 back to Richland County and worked there for about

THOMAS DARNELL - DIRECT EXAM

1 a year doing latent work for Sheriff Lock.

2 After that, I deployed to Afghanistan
3 and did forensic work for the US military. I
4 returned home and was rehired back at SLED in 2012
5 to be a latent print examiner and that's where I'm
6 currently at.

7 As far as my training, I completed an
8 in-house training program at SLED in the latent
9 print laboratory, dealing with latent print
10 processing, how to process evidence and how to do
11 comparisons. Once I completed the in-house
12 training program, I attended the State Academy
13 there in Columbia. I've taken numerous courses
14 dealing with latent print processing, latent print
15 comparisons, I've taken some courses out of state
16 as well.

17 All of the courses have dealt with some
18 form of latent processing or comparison. I took
19 some classes on how to testify in court, how to
20 present evidence in a courtroom. Also, I've attend
21 the FBI Academy in Quantico, Virginia for a
22 three-week course dealing with latent -- most
23 anything dealing with latent prints, processing,
24 comparison. I actually had several courses that I
25 went through.

THOMAS DARNELL - DIRECT EXAM

1 In addition to the training that I've
2 had, I've trained other examiners to do the work
3 that I'm doing. Some training was done in-house,
4 some was done out in the field across the state.

5 Q. Approximately how many fingerprints or
6 palm prints have you examined in your career?

7 A. I guess it would be safe to say
8 thousands. When you think about a fingerprint
9 card, there's ten fingers. Most of us do have ten
10 fingers. If you look at it that way, I've looked
11 at thousands upon thousands of fingerprints as well
12 as palm prints.

13 Q. Have you ever been qualified as an
14 expert in a South Carolina State Court before for
15 latent analysis?

16 A. Yes, I have.

17 MR. POULOS: Your Honor, I would move
18 to have this witness qualified as an expert in
19 latent fingerprint analysis.

20 THE COURT: Any questions or
21 objections?

22 MR. SCHWACKE: Absolutely none.

23 THE COURT: Without objection, so
24 admitted. You may proceed.

25 BY MR. POULOS:

THOMAS DARNELL - DIRECT EXAM

1 Q. Please describe for the jury how the
2 different processes can be used to obtain
3 fingerprints.

4 A. When determining which process to use,
5 I basically have to consider if the evidence is
6 porous or nonporous. Porous would be something
7 like paper, something that basically you have --
8 that liquid would penetrate. Nonporous would be
9 like a can or a piece of countertop or something
10 like that.

11 Once I determine if it's porous or
12 nonporous, I then have several different options to
13 use. I can use anything from Super Glue fuming to
14 black powder to different dye stains, different
15 chemicals that we can use. I also have the ability
16 to use different light sources. Some folks like to
17 refer to it as a laser. That's not really what it
18 is, but that's what folks like to refer to it as, a
19 laser light.

20 But I have a variety of processes at my
21 disposal that I can use. And in some cases I can
22 use -- I can actually use more than one process on
23 certain types of evidence, depending on what I'm
24 trying to achieve.

25 So the basic consideration is whether

THOMAS DARNELL - DIRECT EXAM

1 the surface of the evidence is porous or nonporous
2 determines which technique I would have to use.

3 Q. In your experience, are fingerprints
4 always recovered from an item that was handled?

5 A. No, sir, not always recovered. And the
6 reason for that is that the majority of your
7 fingerprint is nothing more than moisture that
8 comes out of the pores in your skin. It just
9 depends on how you're perspiring and it depends on
10 how -- how -- or the condition of the surface that
11 might be touched. It depends on how you touch it,
12 it depends on how you handle it, it depends on if
13 someone else comes behind you and touches the area
14 that you just touched.

15 It depends on things like weather.
16 Think about the fact that the fingerprint is mostly
17 moisture. Just to -- just the presence of being
18 out in the elements could damage a print. But I
19 know we all watch television and they always get
20 fingerprints, and that doesn't happen in the real
21 crime scene field.

22 Q. Did you analyze fingerprints in this
23 case?

24 A. I did.

25 Q. And what, generally, items did you look

THOMAS DARNELL - DIRECT EXAM

1 at when analyzing this fingerprint?

2 A. I had -- I received some latent lifts
3 or some fingerprint lifts that came in from the
4 submitting agency. I also looked at some -- a
5 couple of pieces of sections of duct tape that I
6 was asked to examine.

7 Q. I'll show you State's 85 first. As to
8 State's 87 and 88, do you recognize those two
9 items?

10 A. Yes, I do.

11 Q. And did you receive those for analysis?

12 A. I did.

13 Q. What do they contain?

14 A. State's 87 is a brown paper bag that's
15 marked as containing some duct tape, indicating
16 it's coming from inside the residence. And it
17 gives an address, date it was collected and so
18 forth. And on the outside of the bag it has our
19 laboratory number and it has an item number that
20 was given to the item once it came to the
21 laboratory and it has my initials.

22 Q. What's the item number for Exhibit 87?

23 A. Item number six.

24 Q. And what about State's 88?

25 A. State's 88 is another brown bag, also

THOMAS DARNELL - DIRECT EXAM

1 indicates duct tape should be inside, gives the
2 address of -- [REDACTED] Road is the location
3 written on the outside. It also has the laboratory
4 number and my item number, which is item number
5 seven, and it has my initials on the outside of the
6 bag that I placed on once I received these items.

7 Q. How did you receive these items? What
8 condition were they in?

9 A. These bags were actually stapled
10 closed. You can see there is a staple here still
11 in the bag. They were stapled closed to prevent
12 something from coming in or coming out, and it was
13 folded over, just as you see it here. And both of
14 these bags, State's 87 and 88, were located inside
15 of a sealed cardboard box. So, basically, when I
16 received it, it was inside a sealed box.

17 Q. Okay. What type of tests did you run
18 on the two pieces of duct tape?

19 A. On the duct tape, there were -- there
20 were a couple of things I did with it. It was
21 submitted with a request to see if there was any
22 touch DNA present. I'm not a DNA analyst. I'm a
23 latent print examiner, but I do know how to collect
24 and how to swab evidence, and we have certain
25 procedures that we have to do.

THOMAS DARNELL - DIRECT EXAM

1 In this case, I swabbed the nonadhesive
2 side of the tape with a sterile swab, allowed it to
3 air dry, and packaged it to be transported to the
4 DNA department. And I actually did this before I
5 began to separate the tape. And once I did the
6 swabs for touch DNA or for the potential of there
7 being touch DNA, I then began my fingerprint
8 processing.

9 I was able to process both sides, the
10 non-adhesive side as well as the adhesive, or the
11 sticky, side. The non-adhesive side, the
12 non-sticky side, I used a Super Glue fuming
13 technique and then -- to see if I could enhance or
14 develop any moisture from any prints that might be
15 there. And once I did that, I was able to process
16 the sticky side of the tape, basically using what
17 was essentially a black liquid power that is
18 referred to as WETWOP, W-E-T-W-O-P, the product is
19 called.

20 It's essentially a liquid powder and
21 I'm brushing it onto the surface, allowing it to
22 dry, and then I rinse it off under tap water. And
23 if there are fingerprints present on the sticky
24 side of the tape, it would enhance those to where I
25 could see them better. And in this case they would

THOMAS DARNELL - DIRECT EXAM

1 be black. They would be able to -- I would develop
2 them and be able to see them and enhance them to
3 where I could do a comparison.

4 Q. Specifically as to State's 87, which is
5 SLED item 6, were you able to recover any
6 fingerprints from that piece of duct tape?

7 A. Yes, I was.

8 Q. Okay. And what did you do once you
9 developed -- once you saw that there were prints on
10 it, what did you do with that piece of tape?

11 A. Once I saw that there were fingerprints
12 on State's 87, item 6, I had to get them
13 documented. I had to get them preserved. I had to
14 get them photographed. So what I did at that point
15 is, rather than trying to transfer an entire bundle
16 of tape, you know, to the photographer, I took a
17 pair of scissors, and keep in mind I've already
18 processed it at this point, so I'm done with the
19 process. I took a pair of scissors and clipped out
20 those sections where the prints were and placed
21 those into a box, labeled them accordingly with my
22 identifier, my initials and so forth, and then I
23 transferred them to photography for them to be
24 photographed.

25 Q. I'm showing you State's 86. Do you

THOMAS DARNELL - DIRECT EXAM

1 recognize this box and its contents?

2 A. Yes, I do.

3 Q. What is that?

4 A. This box contains three pieces of duct
5 tape. It has a label attached to the duct tape.
6 The label again has the lab number and the item
7 number that I assigned to each impression, and it
8 also bears my initials. There was actually two
9 prints on one piece of tape and the other two
10 pieces of tape has a single print visible.

11 Q. Okay. So you cut those pieces off of a
12 bigger piece and put them in a box to be
13 photographed?

14 A. Yes, sir.

15 Q. Okay. And what did you do with that
16 box? Who did you send it to?

17 A. Once I -- once I secured it inside the
18 box and labeled it accordingly and so forth and
19 positioned it where it wouldn't move around, I
20 sealed it up with evidence tape, yellow evidence
21 tape, and I dated and initialed it, so that way --
22 and then I transferred it to what we call our photo
23 studio. It goes into our photo studio and from
24 there the photographer would retrieve it and then
25 he would do what he has to do in the photo lab.

THOMAS DARNELL - DIRECT EXAM

1 Q. And did you receive that box back from
2 the photographer?

3 A. I did. I received it back from the
4 photographer and it was also sealed by him once he
5 finished it. Again, that's to prevent anything
6 from being cross-contaminated or, you know,
7 anything from getting in or anything from leaving
8 the box. And he sealed it with the same evidence
9 tape. In fact, you can actually see what appears
10 to be his initials on the box.

11 MR. POULOS: Your Honor, at this time I
12 would move State's 86 into evidence.

13 THE COURT: Any objection?

14 MR. SCHWACKE: No objection.

15 THE COURT: Marked and admitted without
16 objection.

17 (STATE'S EXH. 86 in evidence.)

18 BY MR. POULOS:

19 Q. Did I receive the photographs of those
20 pieces of duct tape?

21 A. Yes, sir.

22 Q. I show you State's 98, which contains
23 98 A through M. We'll start with 98 A, B, C, D.
24 Do you recognize those items?

25 A. Yes, I do.

THOMAS DARNELL - DIRECT EXAM

1 Q. And what are those?

2 A. These are photographs that were
3 produced by our photo studio and each photograph is
4 a duplication of what is inside State's 87.

5 Q. Why do you photograph it?

6 A. I have to get it photographed so I can
7 do my comparisons. It's difficult to sometimes
8 handle evidence that has a print on it to do a
9 comparison, so I can -- get it onto film and get it
10 captured, so -- where I can more easily handle it
11 to make my comparison.

12 Q. Did you also received latent lifts in
13 this case?

14 A. Yes, I did.

15 Q. I show you what is already in evidence
16 as State's 99, containing 99A, B, C and D. Look at
17 these items and tell me what they are.

18 A. States 99A through D, these are all
19 latent lifts, fingerprint lifts, that were
20 submitted by the -- I think they were done by the
21 Berkeley County Sheriff's Office and they were
22 submitted to the laboratory as part of this case
23 and I was asked to examine them to determine if
24 they were identifiable or not.

25 Q. Are the SLED item numbers listed on

THOMAS DARNELL - DIRECT EXAM

1 those exhibits?

2 A. Yes, there is.

3 MR. POULOS: Your Honor, I would offer
4 these into evidence. I'm sorry, they're already in
5 evidence. I apologize.

6 THE COURT: What numbers did you just
7 refer to?

8 MR. POULOS: 99A, B, C and D.

9 BY MR. POULOS

10 Q. Did you also compare the prints on the
11 latent cards and the duct tape to a set of known
12 prints?

13 A. Yes, I did.

14 Q. I'm going to show you State's 98E
15 through M. Can you tell me what those are, please?

16 A. State's 98E through M are -- these are
17 what I refer to as or what most of us -- we all
18 refer to them in the fingerprint world as major
19 case prints. Major case prints means that they are
20 not just fingerprint cards, but they're also palm
21 print cards as well. Each of these items bears the
22 laboratory number and it bears my initials and the
23 item number that it was assigned to at SLED, which
24 is item 8, and they bear the name of Telly McClam.

25 MR. POULOS: I would offer these into

THOMAS DARNELL - DIRECT EXAM

1 evidence as well.

2 THE COURT: Any objection?

3 MR. SCHWACKE: No objection.

4 THE COURT: Marked and admitted without
5 objection.

6 (STATE'S EXH. 98E - M in evidence.)

7 BY MR. POULOS:

8 Q. Mr. Darnell, specifically as to item 3,
9 what is item 3.1?

10 A. SLED 3.1 is a latent lift that was
11 submitted by the agency. And it is marked as
12 having come from an empty cigarette pack, driver's
13 side floorboard. The item 3.1 is the -- is a
14 sub-item of -- on this latent lift. The sub-item
15 is indicating the presence of a fingerprint.

16 Q. And did you compare that to Mr.
17 McClam's known fingerprints?

18 A. Yes, I did.

19 Q. And what was the ultimate result?

20 A. The result was that sub-item 3.1 was
21 identified as having been made by the right middle
22 finger of Mr. Telly Darnell McClam.

23 Q. Now, as to items 6.2, 6.3, 6.4, 6.5,
24 SLED items referring to the prints recovered from
25 the pieces of duct tape, did you compare those as

THOMAS DARNELL - DIRECT EXAM

1 well to Mr. McClam's known prints?

2 A. Yes, I did.

3 Q. What was the conclusion to that
4 comparison?

5 A. 6.2, which was an impression that came
6 from the sticky side or the adhesive side of the
7 tape from State's 87, 6.2 was identified with the
8 left middle finger of Telly Darnell McClam. 6.3,
9 also on the adhesive side of the duct tape, was
10 identified to his left index finger of Telly
11 Darnell McClam. And then 6.4 was identified with
12 his right index finger of the -- again, on the
13 adhesive side of the duct tape. And then 6.5 was
14 identified with the left index finger of Telly
15 Darnell McClam.

16 Q. Mr. Darnell, did you prepare a
17 demonstrative aid for today to show how the actual
18 comparison is done?

19 A. I did.

20 MR. POULOS: May Mr. Darnell step down?

21 THE COURT: Uh-huh.

22 MR. POULOS: We're referring to State's
23 Exhibit 159 for demonstrative purposes.

24 THE COURT: 159, ID only.

25 BY MR. POULOS:

THOMAS DARNELL - DIRECT EXAM

1 Q. Can you explain to the jury how you go
2 about comparing prints and what markers you use?

3 A. Well, first of all, let me explain that
4 this is nothing more than a demonstration as to how
5 I reached my conclusion on one of the prints that I
6 have identified. This particular print was
7 identified with the right index finger of Telly
8 McClam. And, again, the print came from the
9 adhesive side of the duct tape.

10 And what I've got here is a chart
11 showing -- I've got two prints. I have a latent
12 print. The word latent means hidden or invisible,
13 or in this case it was -- in this case, this print
14 was developed with the liquid black powder that I
15 previously mentioned to you. That's what the
16 latent print is.

17 On the other side of the chart is a
18 known print. This is actually his right index
19 finger or I should say -- and I'm looking at a card
20 that has his name on it, but it's indicating it
21 being his right index finger. This is a known
22 print. This is a print that was taken under a
23 controlled environment, where a person's print is
24 just simply inked or just digitally produced onto a
25 card.

THOMAS DARNELL - DIRECT EXAM

1 So, in other words, I know whose print
2 this belongs to based on the card that I had. I
3 did not know whose print this was initially when I
4 developed it. When I made the comparison, I was
5 able to determine that this print was made by this
6 finger. And how I was able to do that is, first of
7 all, one important thing to understand is that
8 prints are permanent.

9 Your prints are permanent and they are
10 unique to each other. They are unique in that,
11 within the pattern, you have certain individual
12 characteristics that are going to differ from one
13 person to the next. You may have the same pattern
14 as the next person sitting next to you today, but
15 what makes it unique is the characteristics inside
16 of that print.

17 These black lines that you see, is
18 nothing more than the raised portions of skin on
19 your fingers. On your fingers you have raised
20 portions of skin that are constantly exuding
21 perspiration. When you touch something, you may or
22 may not leave that pattern or that perspiration on
23 that surface. In this case, this impression was
24 left on the adhesive side of the duct tape.

25 And what I have is, you can see some

THOMAS DARNELL - DIRECT EXAM

1 red lines and some letters. And the A --

2 THE COURT REPORTER: Judge, I can't
3 hear him now with the air-conditioner on, I'm
4 sorry.

5 THE COURT: Sir, they're going to put
6 it up on the screen, so you can retake your seat
7 and they're going to give you a pointer.

8 You may proceed. Please speak loudly
9 so the Court Reporter can hear you.

10 THE WITNESS: Can I sit this way?

11 THE COURT: Yes, sir. Just project
12 your voice for me.

13 THE WITNESS: Okay. What I've got is
14 the -- on this side is the latent fingerprint and
15 the known print I was just showing you on my chart.
16 This is an enlargement of what I just had in front
17 of you. Each red line marks a characteristic.
18 Okay. If you can look at -- let's just start with
19 -- and let say, I can go from A to I, I can go from
20 F to B, or -- and I will have the same number of
21 black lines, if you will, between the two. And
22 these characteristics appear in the same relative
23 position in both the latent and in the known.

24 If you can start with -- we'll just
25 start with A. You can see that A is pointing to

THOMAS DARNELL - DIRECT EXAM

1 what I call an ending ridge. You can see how the
2 -- see how the lines sort of -- it starts out and
3 it comes to an end right there. The end of that
4 red line is marking that ending ridge. That's just
5 one of the characteristics that we look for.

6 And then you can come over to the known
7 print, and again you see the A, you see that same
8 black line, how to comes to an end. It's in the
9 same position between the two. And let's go from A
10 to -- let's go from A to B in this case, and I've
11 got -- let's go back to the latent print and you
12 will see I have two lines between A and B, two
13 black lines.

14 That's the fingerprint pattern. I have
15 two black lines and then I have B, which is another
16 ending ridge. And then you roll to the known print
17 and you've got two lines and then you have the same
18 ending ridge, which is what I have marked as B.

19 So at this point I've got two things
20 that correspond. Okay. I have about ten things
21 marked here. There's actually about 20 or so in
22 this print. Some of them are very obvious, that
23 you can see. And I didn't want to mark them all,
24 because if I did, you would have a mess. There
25 would be red lines everywhere and it would be hard

THOMAS DARNELL - DIRECT EXAM

1 for me to demonstrate.

2 Let's go over to -- let's see. Let's
3 go to I. See right here? (Indicating) You've got
4 what looks to be one ridge that starts out and it
5 splits into two. Right there. (Indicating) Come
6 over to I on the known print and you have the same
7 formation right here. That's what we refer to as a
8 bifurcation or a forking ridge. It's one ridge
9 that starts out and it simply comes into a split.

10 And we have -- let's drop down to H and
11 G. H and G, see the little ridge that kind of cuts
12 across two there? I have the same formation in the
13 known print as well. Kind of cuts across the two
14 black lines there.

15 One I've examined the entire print and
16 once I've looked at all of the areas and there's
17 one important thing that I have to -- I have to
18 meet: There cannot be anything in this print that
19 is unexplainable. In other words, if I find a
20 characteristic in this latent that does not appear
21 in this known print, in that point, I would have to
22 say that this print was not made by this known
23 print.

24 That didn't happen in this case;
25 everything that I found corresponded between the

THOMAS DARNELL - DIRECT EXAM

1 two. So this latent on that adhesive side of the
2 tape was -- no doubt was made by this index finger
3 when I compared the two. Keep in mind, the latent
4 print is a -- you know, if you just look at it, it
5 does -- it does look different because that's --
6 that's because it's -- it was a chance impression.

7 This print wasn't intended to be left
8 on the tape. You've got some smudging and so
9 forth. You have some smudging here. Obviously,
10 that smudging isn't here and it's not here. The
11 reason for that is because this known print was
12 taken by someone who had the person in front of
13 them and they have -- and they are able to evenly
14 -- have an even amount of pressure and they are
15 able to roll that fingerprint to where it's legible
16 all the way through from side to side.

17 So you will see some smudging here, but
18 that could be from, again, how the person touched
19 the tape. It's just a number of things. Keep in
20 mind, too, the tape was stuck together. I had to
21 peel it apart and all that. But you can see the
22 overall patterns, see, the shape is there. That's
23 the first thing I look for. If it has the same
24 pattern and the same shape, then I'm going to start
25 looking at it a little bit harder.

THOMAS DARNELL - CROSS EXAM

1 If I have this pattern here and this
2 pattern over here is not even close, I'm not going
3 to waste my time looking at it. Because it has the
4 same pattern is when I start digging into the
5 detail of the print to be able to determine if a
6 print was made by a certain individual.

7 Q. Mr. Darnell, is there any doubt in your
8 mind whatsoever that the prints found on the duct
9 tape are Telly McClam's prints?

10 A. No doubt in my mind.

11 MR. POULOS: No further questions, Your
12 Honor.

13 THE COURT: Any questions for the
14 witness?

15 MR. SCHWACKE: Just a few.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. And your rank now is?

20 A. Well, I'm just a retired agent at SLED,
21 I suppose. I was a lieutenant, but I'm a retired
22 lieutenant, so I'm just referred to as just I guess
23 Mr.

24 Q. Mr. Darnell, thank you for being here
25 today. I have a couple of questions. I wanted to

THOMAS DARNELL - CROSS EXAM

1 understand sort of the process that you went
2 through when you first received the adhesive tape.
3 You indicated, first, that you're not a DNA guy,
4 but you know how to try to save DNA-type evidence.

5 A. Yes, sir. I've been trained how to
6 collect it, yes, sir.

7 Q. And in this instance, you sort of had
8 to take on that role first with the tape?

9 A. Yes, sir.

10 Q. And so you did the swabbing to preserve
11 something if it existed on the tape?

12 A. Yes.

13 Q. And that would have been to both the
14 adhesive side and non-adhesive side?

15 A. Actually, in this case I chose to
16 process the non-adhesive side of the tape, and that
17 was based on my experiences at processing tape. I
18 tend to get much better results on the --
19 developing a latent print on the adhesive side of
20 the tape versus the non-adhesive side of the tape
21 over all of the tape I've processed throughout my
22 career. So I'm juggling two disciplines here, I'm
23 juggling DNA and latent prints. I'm trying to do
24 both, essentially, but in this case I swabbed a
25 non-adhesive side of the tape prior to attempting

THOMAS DARNELL - CROSS EXAM

1 to separate it.

2 Q. And, again, when you swab, you don't
3 swab the entire piece of tape, you select a space
4 or an area?

5 A. That's correct. That's correct. And
6 the tape when it came in was sort of stuck together
7 in pieces, so I tried to swab what I could see on
8 the outside. I tried to swab just sort of random
9 -- actually just random swabbing of the tape in an
10 attempt to collect touch DNA.

11 Q. And after that, you did do a swabbing
12 on the non-adhesive side as well?

13 A. Yes, sir.

14 Q. And that's what went to DNA from you,
15 was -- were the swabs that you had actually done?

16 A. Yes.

17 Q. The tape itself never made it over to
18 DNA?

19 A. No, sir.

20 Q. And then really the last sort of
21 question I have for you is, the one thing about
22 fingerprints is, you can't say when they got placed
23 there?

24 A. No, sir, I can't. I can only say that
25 it -- when someone -- when the tape was touched is

1 when the print was put there. I can't tell you
2 when it was put there.

3 MR. SCHWACKE: One moment. That's all
4 the questions we have.

5 THE COURT: Any redirect?

6 MR. POULOS: None, Your Honor.

7 THE COURT: Any objection to the
8 witness being excused? From the State?

9 MR. POULOS: None from the State.

10 THE COURT: From the defense?

11 MR. SCHWACKE: No, Your Honor.

12 THE COURT: Sir, you're excused.

13 Thank you.

14 Madame forelady, ladies and gentlemen,
15 I'm going to give you a brief rest room break. We
16 have an additional witness who has driven from
17 Columbia that we would like to try to complete
18 before we adjourn today. If that would cause
19 anyone any inconvenience, please let the bailiff
20 know. I can adjust the schedule accordingly. We
21 appreciate your patience. If you will go with the
22 bailiffs.

23 (Jury out, 5:07 p.m.)

24 THE COURT: You may be seated. Who is
25 the additional witness you indicated you have?

1 MR. POULOS: Chad Smith. He's going to
2 testify about the gun. He should be very brief.

3 THE COURT: And that's the only other
4 witness you have from Columbia?

5 MS. WILLIAMS: Yes, Your Honor. We
6 would like to move in item 84.

7 MR. SCHWACKE: No objection.

8 THE COURT: Marked and admitted
9 without objection.

10 MS. WILLIAMS: And I think it's A, B,
11 C.

12 (STATE'S EXH. 84A, B, C in evidence.)

13 THE COURT: All right. We'll take a
14 brief recess.

15 (A recess transpired.)

16 THE COURT: Bring in the jury.

17 (Jury in, 5:26 p.m.)

18 THE COURT: You may be seated.

19 MR. POULOS: The State calls Chad
20 Smith.

21 CHAD SMITH,

22 being first duly sworn, testified as follows:

23 THE CLERK: Have a seat, state your
24 full name and spell your last name.

25 THE WITNESS: My name is Chad Smith,

CHAD SMITH - DIRECT EXAM

1 S-M-I-T-H.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MR. POULOS:

5 Q. Afternoon, Mr. Smith.

6 A. Afternoon.

7 Q. Where do you work?

8 A. I work at South Carolina Law
9 Enforcement Division, commonly known as SLED.

10 Q. How long have you been at SLED?

11 A. About seven and a half years.

12 Q. And what is your current position?

13 A. I'm in the firearms department. I'm a
14 firearms examiner. The majority of what I do is
15 examination of firearms, examination of components
16 in ammunition, and the majority of my examinations
17 are trying to determine if a specific ammunition
18 component, such as a bullet or cartridge case, was
19 fired by a particular firearm.

20 Q. What specialized training do you have
21 in your present position?

22 A. I have a Bachelor of Science degree
23 from Clemson University in Biological Sciences. I
24 came onboard with SLED in 2008 and began my
25 training as a firearms examiner. The training

CHAD SMITH - DIRECT EXAM

1 program lasts between three to five years and it's
2 supervised by Court-qualified examiners of the
3 firearms department. It involves extensive reading
4 and studying, multiple exams and tests are given
5 during this period. Also during my training I
6 helped other examiners prepare their own casework,
7 and then at the end of my training period, I
8 received a comprehensive multipart examination,
9 which I successfully passed, and then I began to
10 receive my own casework.

11 Q. How many firearms would you say you've
12 tested in your career?

13 A. Several hundred.

14 Q. Have you previously been qualified as
15 an expert in that field?

16 A. Yes.

17 MR. POULOS: At this time, the State
18 would move to have Mr. Smith qualified as an expert
19 in firearms testing and identification.

20 MR. SCHWACKE: No objection.

21 THE COURT: So admitted without
22 objection.

23 BY MR. POULOS:

24 Q. Mr. Smith, did you test a firearm in
25 this case?

CHAD SMITH - DIRECT EXAM

1 A. Yes, sir, I did.

2 Q. I'm showing you what's already in
3 evidence as State's 89, which contains State's 90
4 and State's 91. Please look through those items
5 and tell us what it is.

6 A. Ladies and gentlemen, this firearm is
7 safe to handle; the cylinder is open and it has
8 cable ties around it, so it is safe.

9 Q. Can you examine the firearm and compare
10 it with the serial number on your report and tell
11 us if that's the gun that you examined?

12 A. Yes, sir, it is.

13 Q. Okay. How did SLED come into
14 possession of this weapon?

15 A. The Berkeley County Sheriff's Office
16 submitted the firearm and then I would receive it
17 from our evidence control department. And then
18 once I have it in my custody, I can either begin
19 working on it right away or store it in my own
20 evidence locker.

21 Q. And what type of tests -- or did you
22 perform tests on this specific firearm?

23 A. Yes, sir.

24 Q. What type of test?

25 A. I was asked to perform a function test,

CHAD SMITH - CROSS EXAM

1 basically, to see if the firearm functioned
2 properly.

3 Q. And what were the results of your test?

4 A. My results were that, yes, sir, the
5 firearm functioned; it is in working order.

6 Q. Did some rounds come with that gun to
7 SLED?

8 A. Yes, sir, there were four unfired
9 cartridges with it.

10 Q. And do those cartridges fit the gun?

11 A. They are. They are the caliber for
12 this particular firearm.

13 MR. POULOS: No further questions from
14 the State.

15 THE COURT: Any questions for the
16 witness?

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. And you're aware of no other evidence
20 that was -- no other --

21 A. Firearms --

22 Q. -- testing that was done on that
23 firearm that wasn't related to function?

24 A. Right. No, sir.

25 MR. SCHWACKE: Thank you. That's all

1 the questions I have.

2 THE COURT: Any redirect?

3 MR. POULOS: Nothing from the State.

4 THE COURT: Any objection to the
5 witness being excused?

6 MR. POULOS: None from the State.

7 THE COURT: From the defense?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: Sir, you're excused.

10 THE WITNESS: All right. Thank you.

11 THE COURT: You're welcome.

12 Counsel approach, please.

13 (Bench conference.)

14 THE COURT: Do you have any other
15 witnesses from SLED?

16 MS. WILLIAMS: No, Judge.

17 THE COURT: Okay. That was your last
18 witness other than the person you were talking
19 about in the morning.

20 MS. WILLIAMS: Yes.

21 THE COURT: Okay. Step back.

22 (End of bench conference.)

23 THE COURT: Madame Forelady, ladies and
24 gentlemen, we're going to take advantage of this
25 break in testimony to take our evening recess.

1 During the break, please do not discuss the case
2 among yourselves or with anyone else. Please do
3 not do any type of independent research of any type
4 on the Internet regarding any issue or matter
5 involved in this case and please do not watch,
6 read, or listen to any media accounts about this
7 case.

8 When you return to the courthouse in
9 the morning when we resume at 9:30, please do not
10 have any contact with anyone in or about the
11 courthouse. Please leave your notepads in your
12 seats. As soon as everyone has arrived, we will
13 resume testimony in the morning. Have a great
14 evening.

15 (Jury out, 5:32 p.m.)

16 THE COURT: You may be seated. What
17 evidence, Madame Court Reporter, were you trying to
18 bring to my attention?

19 THE COURT REPORTER: The defense has
20 agreed to Exhibits 133 through 137.

21 THE COURT: Is that correct?

22 MR. SCHWACKE: Yes, ma'am.

23 THE COURT: Those will come in without
24 objection.

25 (STATE'S EXH. 133 - 137 in evidence.)

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 THE COURT: Now, will the State be
2 calling Chiquita Jenkins?

3 MS. WILLIAMS: No, Your Honor. Alyssa
4 Rheingold is our last witness.

5 THE COURT: Captain Sherod Timmons?

6 MS. WILLIAMS: No, Your Honor.

7 THE COURT: Ben Varnadore?

8 MS. WILLIAMS: No, Your Honor.

9 THE COURT: And she will be here in the
10 morning, correct?

11 MS. WILLIAMS: She will.

12 THE COURT: Okay. Now, sir, if you
13 would stand for me and raise your right hand to be
14 sworn.

15 TELLY DARNELL MCCLAM,
16 being first duly sworn, testified as follows:

17 THE COURT: I need you to answer the
18 question. Ms. Littlejohn cannot answer for you.

19 THE DEFENDANT: Yes.

20 EXAMINATION

21 BY THE COURT:

22 Q. You can put your hand down. Sir, state
23 your full name for the record.

24 A. It's Telly McClam.

25 Q. Do you have a middle name?

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 A. Telly Darnell McClam.

2 THE COURT: Does the State have any
3 convictions they would be seeking to introduce to
4 impeach Mr. McClam's credibility?

5 MS. WILLIAMS: Yes, Your Honor.

6 THE COURT: If you would tell me what
7 those are, please.

8 MS. WILLIAMS: A 1999 --

9 THE COURT: I can't hear you with your
10 back turned. And neither can the Court Reporter.

11 MS. WILLIAMS: Court's indulgence.

12 I have handed the Court, in reference
13 to other motions, a criminal sexual conduct in the
14 second degree from 1999 --

15 THE COURT: Why would that impeach his
16 credibility?

17 MS. WILLIAMS: Well, it just depends on
18 how he testifies. I'm making the Court aware of
19 his prior conviction. Burglary first from 1999, he
20 has a burglary second from 1999 and he has an ABHAN
21 from 1999.

22 THE COURT: When was he released from
23 confinement, because those would be more than ten
24 years old?

25 MS. WILLIAMS: He got out of prison, I

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 think, in 2010.

2 THE DEFENDANT: March 1st, 2012. I did
3 13 years.

4 THE COURT: On which charges, sir?

5 THE DEFENDANT: The ones that she
6 just --

7 THE COURT: All of them?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Did the burglary first of
10 the burglary second actually involve a theft or was
11 it simply a breaking into a home associated with
12 the CSC second?

13 MS. WILLIAMS: The burglary first was
14 associated with a separate attempted rape that was
15 pled down to an ABHAN.

16 THE COURT: So it was not a theft?

17 MS. WILLIAMS: It was not a theft.

18 THE COURT: And neither was the
19 burglary second I assume?

20 MS. WILLIAMS: I do think the burglary
21 second was -- had something to do with theft, Your
22 Honor, but I can look through his file.

23 THE COURT: Mr. Schwacke, do you have
24 any indication that the burglary second had
25 anything to do with a theft?

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 MR. SCHWACKE: The State has given us a
2 complete package of what they were going to
3 introduce and I'm trying to find it.

4 THE COURT: Did it involve a theft or
5 was it associated with the break-in on one of these
6 CSCs? The CSC or the ABHAN?

7 Well, if he had a CSC and it was pled
8 down, then he doesn't have a CSC and an ABHAN, does
9 he?

10 MS. WILLIAMS: Actually, Your Honor,
11 the CSC second was a separate incident with a
12 friend of his or --

13 THE COURT: And so then the ABHAN was
14 what was pled down?

15 MS. WILLIAMS: Well, the ABHAN -- he
16 had -- he has a breaking into autos, that I didn't
17 tell you about, that is from 1999 and the burglary
18 second degree, which does appear to be associated
19 with a theft.

20 The ABHAN --

21 THE COURT: I need to know exactly how
22 it was associated with the theft.

23 MS. WILLIAMS: Well, I will have to
24 have the Court's indulgence for just a moment to
25 look at this. I apologize; I should have had this

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 for you earlier, but I didn't.

2 THE COURT: I also need to know when
3 he was released from confinement on the breaking
4 and entering a motor vehicle. Because that one
5 only carries five years, so it couldn't have been
6 in 2012.

7 MS. WILLIAMS: It appears that he
8 broke into Dorothy White's garage --

9 MR. SCHWACKE: And stole tools.

10 MS. WILLIAMS: -- and stole tools and
11 that is the breaking and entering into autos.

12 THE COURT: When was he released from
13 confinement? Because it's clearly over ten years
14 old. And unless you gave them notice that you
15 intended to use it, you can't use it, and I still
16 have to do the balancing regarding the ten years.

17 MS. WILLIAMS: I don't know. I don't
18 know if he served time on that or not. I have to
19 look it up. Mr. Schwacke's aware of all of these
20 --

21 THE COURT: I still have to do the
22 balancing, if it's more than ten years old.

23 MS. WILLIAMS: I will have to get his
24 sentencing sheets; for some reason the breaking
25 into autos is not in here and there's actually four

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 separate Indictments for that charge. And I can
2 have those to you in the morning.

3 THE COURT: Well, I need some
4 information now because I'm advising him of his
5 rights so he can have adequate time to talk with
6 his lawyer so I don't have to spend additional time
7 on this later.

8 When were you given advance notice, Mr.
9 Schwacke?

10 MR. SCHWACKE: As to the notice of
11 life --

12 THE COURT: As to all of them? The use
13 of these offenses to impeach your client's
14 credibility.

15 MR. SCHWACKE: We have not had that
16 discussion until now.

17 THE COURT: You didn't get written
18 notice that they planned to use these offenses
19 against your client?

20 MR. SCHWACKE: Other than for the
21 purpose of punishment, not with regard to
22 impeachment.

23 THE COURT: So what did you receive in
24 writing? You said she gave you something.

25 MR. SCHWACKE: This would be the packet

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 that ties in to establish the record for purposes
2 of establishing that he's got prior crimes of
3 violence, for the LWOP, life without parole
4 provision.

5 MS. WILLIAMS: I e-mailed both
6 burglaries to Mr. Schwacke --

7 THE COURT: But did you tell him that
8 you planned to use it to impeach his client and it
9 was more than ten years old?

10 MS. WILLIAMS: No, not specifically. I
11 thought that I explained it, but not specifically.

12 THE COURT: Well, Rule 609 requires
13 advanced written notice. Because if it's more than
14 ten years old, based on the -- when his period of
15 confinement ended, 2012, those offenses would not
16 be more than ten years old, but the B&E motor
17 vehicle in '99 would have to be more than ten years
18 old because it only carries five years. And even
19 if he got active time, he would have maxed out on
20 it a long time ago. So I need to know whether you
21 gave him notice regarding that.

22 MS. WILLIAMS: For the B&E?

23 THE COURT: Uh-huh.

24 MS. WILLIAMS: I don't think he has
25 notice, pursuant to 602. So what we're looking at

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 then is the burglaries that he got out in 2012 for.

2 THE COURT: And you'd have to prove
3 pursuant to case law that each of those involved a
4 theft and then I would have to engage in the
5 balancing. It simply being a burglary does not
6 bring it within the confines of impeachment. So I
7 would need to know if the burglary first involved a
8 theft and if the burglary second involved a theft.

9 MS. WILLIAMS: The burglary first and
10 the burglary second were at the same address, so I
11 would have to go through the file and figure out if
12 they involved --

13 THE COURT: What is your knowledge of
14 the facts and circumstances of these offenses, Mr.
15 Schwacke?

16 MR. SCHWACKE: I'm looking at that
17 case. The burglary appears to have involved what
18 later becomes the assault and battery of a high and
19 aggravated nature from a CSC. Okay. I see -- I
20 see a -- I am a visual person.

21 Your Honor, I need to write these down
22 to figure them out, but it appears that the
23 burglary charge and the accompanying ABHAN charge
24 did not have to do with theft. It had to do with
25 --

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 THE COURT: Breaking in to commit the
2 CSC. That is -- I have a burglary second and a
3 burglary first.

4 MS. WILLIAMS: Right. The burglary
5 second I think has to do with theft. I'm trying to
6 find some proof of that.

7 THE COURT: The burglary first did not?

8 MR. SCHWACKE: Not as alleged in the
9 arrest warrant under E764744.

10 THE COURT: Is that a burglary first?

11 MR. SCHWACKE: That's a burglary first,
12 Your Honor. And the ABHAN charge with that is
13 E764743. That's assault and battery with a high
14 and aggravated nature.

15 BY THE COURT:

16 Q. Sir, at this time, I'm going to explain
17 to you certain of your rights. If you do not
18 understand something that I say, please let me
19 know. If you want me to explain anything in more
20 detail, please let me know. Do you understand?

21 A. Yes, ma'am.

22 Q. I'm explaining these rights to you in
23 advance of what I anticipate, the State resting
24 their case at some point in the morning, so that
25 you will be fully advised, and then I will give you

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 the opportunity to speak with your lawyer,
2 additionally, if you need to. Do you understand?

3 A. Yes, ma'am.

4 Q. Sir, you have the right to claim the
5 protections given to you by the Fifth Amendment of
6 the Constitution of the United States when
7 presenting your defense or the opportunity to
8 present your defense. This Amendment states in
9 part that no person should be compelled in any
10 criminal case to be a witness against himself.
11 This means that you cannot be required to testify.
12 You have the right to testify; however, no one can
13 make you testify. This is a personal right and no
14 one can waive this right except you. If you decide
15 to testify, you would be subject to the same rules
16 that govern other witnesses and you may be examined
17 and cross-examined on any relevant issue in this
18 case. In addition, if you have any convictions
19 involving dishonesty or false statements or of
20 crimes punishable by imprisonment for more than one
21 year and this Court determines that the probative
22 value of admitting this evidence outweighs its
23 prejudicial effect to you, the Solicitor will be
24 able to attack -- to introduce your record to
25 attack your credibility.

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 If you decide to testify, this decision
2 on your part must be made freely, intelligently and
3 voluntarily, with knowledge of the protections
4 given to you by the Fifth Amendment and the
5 consequences of your decision to testify. If you
6 decide not to testify, I will instruct the jury
7 that they cannot give this fact any consideration
8 whatsoever, that there is to be no prejudice to you
9 and that you have no burden of proof in this case;
10 that the State is required to prove your guilt
11 beyond a reasonable doubt, and that they cannot
12 discuss your lack of testifying in any manner
13 whatsoever.

14 Whether you testify is entirely left up
15 to you. You can speak to your attorney, family
16 members, friends or anyone else, but the final
17 decision is yourself. Do you understand your
18 rights, sir?

19 A. Yes.

20 Q. Do you have any questions about what I
21 have explained to you?

22 A. No, ma'am.

23 Q. And I'm going to give you an
24 opportunity over this evening as well as tomorrow
25 prior to your attorneys presenting your defense to

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 discuss this any further with your attorneys. Do
2 you understand?

3 A. Yes, ma'am.

4 THE COURT: Preliminarily, as regards
5 the CSC second, that would not be admissible as it
6 would not be probative. It would be more
7 prejudicial in light of the similarity of the
8 offenses he is currently charged with. Unless
9 there can be some nexus or some theft shown in
10 connection with the burglary in the first degree,
11 as well as the burglary in the second degree, those
12 would be inadmissible. And an ABHAN is not
13 admissible for purposes of impeaching credibility,
14 and unless the B&E motor vehicle comes within the
15 ten-year time limit, that would be inadmissible as
16 well.

17 We'll be at ease until the morning.

18 MR. SCHWACKE: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 (These proceedings were recessed at
21 5:50 p.m., to be continued March 2, 2016, at 9:30
22 a.m.)

23

24

25