

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Greenville County

Honorable Vernon F. Dunbar, Circuit Court Judge

ROBERT DAVIS SMITH, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002223

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF GREENVILLE
4 2013-GS-23-07305

5 State of South Carolina

6 vs.

7 Robert Davis Smith, Jr.

8

9 Greenville, South Carolina

10 March 2, 2016

11 Before the Honorable Brian M. Gibbons

12

13 APPEARANCES

14 For the State: Kimberly Howard, Kathryn McCall

15 For the Defendant: Randy Chambers

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

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2 THE COURT: Madam Solicitor, you had indicated you
3 needed a verdict form or something like that?

4 MS. HOWARD: I do. Your Honor, as you'll see on the
5 indictment there are seven charges listed, the State has
6 opted to go forward on only three of them, it being the
7 criminal sexual conduct first degree, the burglary first
8 degree and the possession of a weapon during the commission
9 of a violent crime. So if -- we would just ask that there
10 be a verdict form that covers all of us so that the jury
11 doesn't know that there were --

12 THE COURT: All right. Well, in preparing that are
13 there going to be any lesser offenses? I don't know, I
14 haven't heard the evidence yet, I have no idea. Mr.
15 Chambers? Because that's one of the -- a simple verdict
16 form is easy to do, but if there's any lesser offenses
17 which would possibly apply --

18 MR. CHAMBERS: We may need to amend the verdict form
19 at the end, which I don't think will be a problem. I don't
20 know until --

21 THE COURT: They're not going to get the verdict form
22 until the end anyway.

23 MR. CHAMBERS: Yeah, that's exactly right. I don't
24 know until when the evidence is presented what position I'm
25 going to take as far as lesser included offenses go.

PRETRIAL MOTIONS

1 THE COURT: Okay. Sounds good. We'll scratch
2 something up and go from there. Anything else I need to
3 know before we --

4 MS. HOWARD: Your Honor, the State will be looking to
5 introduce a two and -- approximately two to two and a half
6 hour interview of the defendant, so I don't know if you
7 want to pick the jury first and then do a Jackson v. Denno
8 hearing or -- and we also will be introducing a photo
9 lineup, or you know, if the Court allows. And so those are
10 the only motions we have is a Jackson v. Denno. But if you
11 wanted to get them -- if you want to go ahead and do the
12 jury, have them settled and then we can do it, it's up to
13 your scheduling, Your Honor.

14 THE COURT: Let's say we get a jury panel in here, we
15 pick a jury, that will take 30 or 45 minutes probably, then
16 just cut them loose until, what, 1:00? We can do -- however
17 you -- you're telling me -- how long is the statement?

18 MS. HOWARD: We anticipate going into tomorrow.

19 THE COURT: I'm with you on that. But how much of the
20 statement do I need to look at to determine whether it's
21 admissible under Jackson versus Denno? Am I going to be
22 looking at the whole two and a half hour statement?

23 MS. HOWARD: No. And, Your Honor, we have provided a
24 copy to the defense attorney and if you wanted to look it
25 over, but we will be asking the officer just the basic

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1 standard questions to get it admitted. And if you -- I can
2 provide you a copy to look over over lunch and just play it
3 for the jury at the same time, it's to however you want or
4 how Mr. Chambers feels like it needs to happen.

5 THE COURT: All right.

6 MR. CHAMBERS: I don't know that you need to watch the
7 video, Your Honor. He -- and if you do I think the only
8 portion we're going to need to view will be the part where
9 at the beginning the officer reads my client his rights and
10 goes over the rights form with him. Obviously we have to
11 have a Jackson v. Denno, but, you know, I don't think that
12 we need to listen to that whole tape.

13 THE COURT: Well, we can just do that now then before
14 we bring up the jury panel.

15 MS. HOWARD: Okay, perfect.

16 THE COURT: And then the -- it's a photo lineup ID,
17 lineup ID, Biggers issues and all of that?

18 MR. CHAMBERS: Yeah, Your Honor. Identity is not
19 really an issue in this case, but there is a photo lineup.

20 THE COURT: All right. Well, go ahead and deal with
21 all of those before we do a jury count.

22 MS. HOWARD: Are you objecting to the photo lineup?

23 MR. CHAMBERS: No. I don't object to the photo lineup
24 just because there's not -- that's not an issue in this
25 case.

PRETRIAL MOTIONS

1 THE COURT: Okay. So that doesn't sound like we need
2 a Biggers hearing then.

3 MR. CHAMBERS: I think we can do without the Neil vs.
4 Biggers hearing on that.

5 THE COURT: Okay. We'll just do Jackson v. Denno.

6 (Break in proceedings.)

7 THE COURT: Madam Solicitor, if you will go ahead and
8 introduce the case and then tell me what we're doing.

9 MS. HOWARD: Your Honor, this is State versus Robert
10 W. Smith. He is charged with criminal sexual conduct first
11 degree, burglary first degree and possession of a weapon
12 during the commission of a violent crime. At this time the
13 State through the course of the trial will be looking to
14 introduce the defendant's interview, which includes all of
15 the statements he made to the police. So for purposes of
16 admission and determining that that was voluntarily made
17 and knowingly made, the State for purposes of a Jackson v.
18 Denno hearing would call Investigator Tim Conroy to the
19 stand.

20 The witness, TIMOTHY MICHAEL CONROY, was first duly
21 sworn and testified as follows:

22 THE CLERK: Will you state your full name for the
23 record?

24 THE WITNESS: Timothy Michael Conroy.

25 DIRECT EXAMINATION

PRETRIAL MOTIONS

1 BY MS. HOWARD:

2 Q Investigator Conroy, real quick, just tell us where
3 you work and how long you've been there.

4 A I work for the Greenville Police Department, I've
5 been there approximately 20 years.

6 Q And you interviewed the defendant in this case,
7 correct?

8 A That is correct.

9 Q Were you also the lead investigator?

10 A Yes, ma'am.

11 Q What day did you speak with the defendant?

12 A June 18, 2013.

13 Q And where did you first speak with him, and then tell
14 us about where the later interview took place.

15 A I first encountered Mr. Smith at 1014 Wade Hampton
16 Boulevard, and he was transferred back to my office, or
17 the interview room.

18 Q At the time before you got to the interview room, did
19 you ask him any questions or take down any statements that
20 he made?

21 A No, I did not.

22 Q When you got back to the interview room, was he in
23 handcuffs?

24 A He was handcuffed to the chair, yes, ma'am.

25 Q But was he under arrest?

PRETRIAL MOTIONS

1 A He was not free to go, he was in investigative
2 detention.

3 Q Before speaking with him was he read his Miranda
4 rights?

5 A He was.

6 Q And did you give him a form and have him read it, did
7 you give him a statement? Tell us a little bit how you did
8 that.

9 A I had a form, asked him to read -- I gathered some
10 personal information, wrote that on the form and I asked
11 him to read the first line -- I then asked him if he --
12 and that was to confirm he could read. I then asked him
13 if he wanted to read the rest of the form to himself or
14 have me read it to him, and he continued to read the form
15 to himself and initial on each line stating that he
16 understood it.

17 Q Can you tell us what that form said?

18 A It was a waiver of his rights, I don't know exactly
19 verbatim what it said.

20 Q Did it -- I hand you the -- you said he read it to
21 himself. Tell me if he indicated that he knew what he was
22 reading and how you determined that he knew what he was
23 reading and that he understood.

24 A He initialed beside each line as well as signed the
25 form.

PRETRIAL MOTIONS

1 Q Okay. So I will pass up State's Exhibit Number 11.

2 Tell us what is at the top, what those wordings are at the
3 top.

4 A Just that it's a freely and voluntary statement.

5 Q I'm going to pass up State's Number 12. If you could
6 tell us what that is, tell the Court, please.

7 A This is a -- these are the rights that he was
8 advised.

9 Q Okay. And so is that the form that he read from when
10 you said he was reading his rights?

11 A That's correct.

12 Q Could you read that form to the Court, please? I know
13 it's a little tedious, but just so we know what was related
14 to the defendant?

15 A At the top left corner it has got his personal
16 information, his name, date of birth, social security
17 number, his education level, and then if he could read or
18 write, the box yes is checked. He read out loud, "Before
19 you answer any questions you must understand your rights."
20 Then it goes on to say, "You have the right to remain
21 silent. Anything you say can be used against you in
22 court. You have the right to talk to a lawyer for advice
23 before you are asked any questions and have him with you
24 during questioning. If you have no money to pay a
25 lawyer's fee the Court will appoint one to represent you

PRETRIAL MOTIONS

1 without cost if you wish. If you decide to answer
2 questions now without a lawyer present you will still have
3 the right to stop answering at anytime. You also have the
4 right to stop answering at anytime before you talk to a
5 lawyer." He initialed all of those. And then the bottom
6 paragraph is a waiver of rights, and prior to him reading
7 that I asked him if he understood what the word coercion
8 meant. I explained it was force, could be mental or
9 physical force, trying to get him to do or say something.
10 And the next statement is, "I have read the statement of
11 my rights, I understand what the rights are. I am willing
12 to make a statement and answer questions. I do not want a
13 lawyer at this time. I understand and know what I am
14 doing. No promises or threats have been made to me and no
15 pressure or coercion of any kind has been used against
16 me." He initialed by the word coercion at the end of that
17 paragraph and then signed the form.

18 Q And how many times can you count that he initialed
19 this form, or in how many different places, I guess?

20 A Seven places.

21 Q And coercion is circled. Tell me about that, why is
22 that circled?

23 A I explained what it meant to him so that he
24 understood what the definition of coercion was.

25 Q So after you went through his rights and y'all went

PRETRIAL MOTIONS

1 through the form, did it appear to you that he understood
2 his Miranda warnings?

3 A Yes, it did.

4 Q Did it appear to you that he wanted to waive his
5 rights?

6 A Yes.

7 Q I'm going to show you what's been marked as State's
8 Exhibit Number 9. Do you recognize State's Number 9?

9 A This is a copy of the interview of Mr. Smith.

10 Q And how do you know that that's the copy?

11 A My initials are on this DVD.

12 Q Have you viewed that prior to coming to Court?

13 A I have.

14 Q And is it a true and accurate depiction of the
15 interview that you had with the defendant where he made
16 statements?

17 A Yes, it is.

18 Q Now, for court purposes we discussed this, there are a
19 few things redacted from that, correct?

20 A That's correct.

21 Q And can you tell us what portions you and I went over
22 that were redacted?

23 A At one point I talked to him about being on probation
24 and then other -- his previous charges.

25 Q Okay. And then wasn't there a reference to some

PRETRIAL MOTIONS

1 drugs?

2 A That is correct.

3 Q So other than those few times has that video changed
4 in any way?

5 A No, it has not.

6 Q Those few redactions are the only things out of that
7 video.

8 A That's correct.

9 MS. HOWARD: Your Honor, at this time the State would
10 move to admit the video. If you want me to finish Jackson
11 v. Denno --

12 THE COURT: For the purposes of this hearing?

13 MR. CHAMBERS: Just for the purposes of this hearing,
14 Your Honor.

15 THE COURT: Just publish it and that will be fine.

16 MS. HOWARD: I will finish my questioning and then I
17 will show the portion where they discussed Miranda.

18 THE COURT: Okay.

19 Q So tell me, Investigator Conroy, a little bit about
20 the defendant while y'all were doing this interview. How
21 long does this interview last?

22 A Approximately three hours.

23 Q And how was his physical condition during this
24 interview?

25 A He appeared to be healthy and coherent.

PRETRIAL MOTIONS

1 Q Did you threaten him in any way, was he coerced in any
2 way to making these statements?

3 A No, he was not.

4 Q Were any promises made to the defendant in exchange
5 for his statement?

6 A No.

7 Q Was he deprived of food, water, did he ask to go to
8 the bathroom?

9 A No.

10 Q If he did ask, did you deprive him of any of those
11 things?

12 A No, I did not deprive him.

13 Q So did it appear to you that he understood what was
14 going on during the entire time?

15 A Yes, it did.

16 Q And was his statement freely and voluntarily given?

17 A It was.

18 MS. HOWARD: Your Honor, at this time I'm going to
19 play the portion where they discussed the first bit of the
20 video.

21 THE COURT: Okay.

22 (The video was played.)

23 MS. HOWARD: Your Honor, at this point in the video if
24 the defense attorney wants me to continue to show -- but at
25 this point he begins the interview.

PRETRIAL MOTIONS

1 Q So Investigator Conroy, after this occurred, did
2 you -- how much longer again did you say the interview
3 lasted?

4 A Roughly three hours.

5 Q And did you -- again, one more time, was the entire
6 conversation recorded?

7 A Yes, it was.

8 Q And did you reduce it to a written statement?

9 A A very brief written statement, yes.

10 Q And that's already been marked as -- well, take a look
11 at State's Number 11 and tell me if that is the written
12 statement -- what you reduced to a written statement?

13 A Yes, it is.

14 Q Could you read that form and then read the statement
15 for me?

16 A It says, "I, Robert David Smith, do hereby give
17 freely and voluntarily the statement to Detective T. M.
18 Conroy who have identified themselves to me as officers in
19 the Greenville Police Department, South Carolina. I have
20 been advised that I do not have to make this statement or
21 any other statements, and that what I say can be used
22 against me in a court of law. I have been advised that I
23 have a right to talk with an attorney of my choice, but I
24 am -- and that if I am financially unavailable to obtain
25 an attorney the Court will appoint an attorney before we

PRETRIAL MOTIONS

1 proceed. I have not been threatened or promised any
2 reward for any statement."

3 Q And so the part that you wrote, did you write it for
4 him or did he write it, the statement that's on his form?

5 A The statement I typed out.

6 Q And did you give him a chance to review it?

7 A I did.

8 Q And how do we know -- the Court know that he reviewed
9 it?

10 A He initialed at the beginning of the paragraph and at
11 the bottom of the paragraph as well as signed the form.

12 Q And again, through the whole time, did it appear to
13 you that he understood what his rights were in terms of
14 this talking with you?

15 A Yes, he did.

16 Q And did he at anytime during the interview cease to --
17 ask you to stop the conversation so he could call a lawyer
18 or do anything?

19 A No, he did not.

20 Q Did he say or express any sort of discomfort or felt
21 that he was threatened in any way to you?

22 A No.

23 MS. HOWARD: Your Honor, at this time the State has no
24 further questions of the investigator for purposes of this
25 hearing.

PRETRIAL MOTIONS

1 THE COURT: All right. Mr. Chambers?

2 CROSS EXAMINATION

3 BY MR. CHAMBERS:

4 Q Investigator, you said you initially spoke to Mr.
5 Smith I think somewhere on Wade Hampton Boulevard?

6 A That's correct.

7 Q Where on Wade Hampton Boulevard?

8 A On 1014 Wade Hampton Boulevard at Labor Place.

9 Q Was that at his place of employment?

10 A That's where he was, yes.

11 Q And was he there with his boss, Jim Sawyer?

12 A Correct.

13 Q What prompted you to be at that location to talk to
14 Mr. Smith?

15 MS. HOWARD: Your Honor, I'm going to object, this is
16 just Jackson v. Denno. The officer already testified that
17 he didn't have any statements from that conversation with
18 him initially.

19 MR. CHAMBERS: It leads up to the statement, I
20 believe.

21 THE COURT: I'll overrule it.

22 A The question is what led me there?

23 Q Yeah. How is it that you were there to talk to Mr.
24 Smith?

25 A There was a phone collected from the scene and that

PRETRIAL MOTIONS

1 phone was called, and the person on the other line stated
2 it was his phone.

3 Q And so someone called the phone that you had in your
4 possession?

5 A That's correct.

6 Q And someone called looking for that phone?

7 A Correct.

8 Q And did you set up a meeting?

9 A I did.

10 Q Was that at that Labor Finders place?

11 A Yes, sir.

12 Q And that's where you met Mr. Smith?

13 A Yes, sir.

14 Q Did you indicate to Mr. Smith at that point that he
15 was the subject of an investigation into an alleged
16 criminal sexual conduct?

17 A No, I did not.

18 Q What prompted him to come down to the police station
19 to talk to you?

20 A He was not free to leave, he was detained.

21 Q So you took him into custody right then.

22 A That's correct.

23 Q Did you apprise him of his rights at that location?

24 A I did not.

25 Q Did you tell him he was under arrest?

PRETRIAL MOTIONS

1 A No, sir.

2 Q What did you tell him?

3 A He was placed in the back of the patrol car, he was
4 handcuffed and placed in the back of the patrol car and
5 advised we were going to go down to my office.

6 Q Did you tell him why?

7 A I was investigating a crime.

8 Q So what you said to him before you put handcuffs on
9 him was, "I'm investigating a crime and I am now detaining
10 you and I'm taking you to the police station."

11 A That's correct.

12 Q You didn't give him the opportunity to say no?

13 A He was placed in handcuffs and -- I didn't have any
14 other conversation -- I didn't have any other -- I didn't
15 talk to him anymore once he was in the back in the patrol
16 car.

17 Q What was your legal authority for putting handcuffs on
18 him and putting him in a car and taking him away?

19 A There was enough probable cause to -- I believe to
20 effect an arrest at that point.

21 Q But you didn't get an arrest warrant.

22 A Not at that point, after the interview I did.

23 Q So you essentially placed him under arrest without an
24 arrest warrant and without apprizing him that he was under
25 arrest or even what it was that he was charged with.

PRETRIAL MOTIONS

1 A I took him into investigative detention to speak with
2 him.

3 Q But what's your legal authority for just saying, "I'm
4 going to put handcuffs on somebody and take them down to
5 the jail?"

6 A The evidence that I've gathered through the
7 investigation.

8 Q But that's when you go get an arrest warrant, isn't
9 it?

10 A I wanted to interview him prior to getting that
11 arrest warrant.

12 Q But he has the right to tell you, no, he's not going
13 to go down there, does he not?

14 A He never did advise me he didn't want to.

15 Q Well, you didn't give him that option, did you?

16 A He had the option to ask officers in the car, in the
17 patrol car.

18 Q You did not give him the option to say no. You put
19 handcuffs on him and took him to the police station.

20 A Yes, sir.

21 Q And you didn't tell him why?

22 A I did not want to divulge information on the scene at
23 this point.

24 Q So it would be correct to say at this point absent any
25 legal authority that you illegally took him into custody

PRETRIAL MOTIONS

1 and took him to the police station.

2 A No. I think the elements of the crime would have
3 enabled me to make an arrest at that point and I did not
4 have time to go get a search warrant.

5 Q That may be true, but that's when you get a warrant
6 from a neutral and detached magistrate, is it not?

7 A That is correct. But once he was in the office he
8 didn't -- he was advised of his rights.

9 Q Yeah. Once you illegally took him to the office he
10 was advised of his rights.

11 A Correct.

12 Q And even then you didn't -- when you walked into the
13 room he was already handcuffed to a chair, wasn't he?

14 A That's correct.

15 Q He was even then not advised of why he was there, was
16 he?

17 A No. I wanted the element of surprise to see what he
18 would tell me because he made statements to someone else.

19 Q And you didn't read his rights out loud to him, did
20 you?

21 A No, sir. He advised he could read.

22 Q And so you relied on the fact that this person that
23 you had illegally detained and handcuffed to a chair, that
24 he was going to be able to under those circumstances, read
25 that and understand exactly why he was there.

PRETRIAL MOTIONS

1 A That's why I had him read the first line so he could
2 prove that he could read.

3 Q And then that's -- so that's when you read him his
4 rights and you began to ask him questions.

5 A That's correct.

6 MR. CHAMBERS: That's all the questions I have.

7 THE COURT: Any redirect?

8 REDIRECT EXAMINATION

9 BY MS. HOWARD:

10 Q Again, Investigator Conroy, at anytime did he ask to
11 stop the interview or ask to call a lawyer, either of those
12 two things?

13 A No.

14 Q And at anytime did he look in -- to be in any distress
15 during the time that you were interviewing him?

16 A No, he did not.

17 MS. HOWARD: Nothing further.

18 THE COURT: All right. Thank you, sir, you can step
19 down.

20 MS. HOWARD: Your Honor, at this time the State would
21 ask that you allow us to publish and admit State's Number 9
22 of the interview of the defendant. He was given his
23 Miranda warnings, he expressed no desire to cease the
24 investigation or the interview, he didn't ask for a lawyer,
25 none of those things are present. He understood what

PRETRIAL MOTIONS

1 coercion meant, they went over there. And at no time was
2 he deprived of anything like a bathroom break or water or
3 any of that per the officer's testimony. And the State
4 would submit to you, Your Honor, that it was freely given,
5 knowingly given, intelligently given and that he spoke with
6 them -- spoke with this investigator and gave a statement,
7 that would be one that should be admitted.

8 THE COURT: All right. Mr. Chambers?

9 MR. CHAMBERS: Your Honor, I'm going to object to the
10 introduction of the statement because my client was
11 illegally and without any legal authority with which I am
12 familiar, was essentially without an arrest warrant, taken
13 into custody and taken into a police station. He was never
14 at any point informed of why they were taking him there,
15 what the aim of it was. At that point in the investigation
16 the officer felt like he had probable cause for an arrest,
17 the proper course would have been to obtain an arrest
18 warrant and then gone out and arrested my client.
19 Essentially what he did was make a warrantless arrest
20 without advising my client as to why he was placing him
21 under custody and then took him to the police station and
22 handcuffed him to a chair. That seizure of my client at
23 that point, that apprehension was illegal, and anything
24 that flows after that should be suppressed, should not be
25 allowed into evidence, there's no way to cure that. He can

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1 give him all the rights that he wants to at that point, he
2 wasn't under arrest. He had the freedom not to go down
3 there to begin with, but nobody told him that, he wasn't
4 given that choice. As the police officer testified, we put
5 handcuffs on him, we put him in the police car, we didn't
6 tell him why we were doing that and we took him to the law
7 enforcement center, and that was the situation that my
8 client found himself in. It was an illegal detention, it
9 is blatantly illegal and it is certainly by its very nature
10 coercive and anything that came out of that, our position
11 is, is not admissible.

12 THE COURT: All right. Thank you.

13 MS. HOWARD: Your Honor, I would just respectfully
14 disagree. You heard the investigator testify that at no
15 time did he say he would not go with them, put up any kind
16 of -- I know a fight or struggle is not required. He
17 expressed through the entire exchange as the investigator
18 testified to, he expressed no desire to not go with them,
19 to not be a part of that investigation, and to cease it.
20 And he was charged with very serious, very violent crimes
21 and the officer -- it's general practice to secure the
22 situation and for officer safety they had to have him
23 handcuffed. So the State would submit that it is not
24 illegal detention and it was not coerced as Mr. Chambers is
25 trying to say.

PRETRIAL MOTIONS

1 MR. CHAMBERS: I would just indicate, Your Honor, that
2 the officer clearly testified he wasn't given the option to
3 say no. He wasn't -- he just wasn't. They didn't do a --
4 they could have secured him at the scene, I guess, while
5 they got an arrest warrant, there were any number of things
6 that they could have done. But the decision that this
7 experienced law officer made was to make an illegal arrest,
8 illegally detain him and take him without apprizing him of
9 his rights down to the law enforcement center.

10 THE COURT: Talk to me about investigative detention.
11 Aren't officers allowed to detain individuals while
12 investigations are going on?

13 MR. CHAMBERS: I don't know that there's an
14 investigative detention that's allowed. They're allowed to
15 secure a scene until a warrant can be obtained, Your Honor,
16 is my understanding. But this was --

17 THE COURT: You're saying this went above and beyond
18 that because they actually removed him from the area and
19 took him down to the law enforcement center.

20 MR. CHAMBERS: For all intensive purposes they placed
21 him under arrest. Even if they would have had an arrest
22 warrant they would have been required to tell him what he
23 was being arrested for, that he was under arrest and why.
24 But in this case they didn't have a warrant and didn't even
25 take the step of saying "This is why we're taking you in."

PRETRIAL MOTIONS

1 His whole expectation in talking to the police to begin
2 with was he was trying to get his phone back, he'd lost his
3 phone and they had it. He didn't even know it was the
4 police that he was talking to until they got down there.
5 But, you know, there were a whole bunch of things the
6 officer could have done, but what he chose to do was to
7 effect an illegal arrest. And again, our position is
8 anything that flows from that is inadmissible.

9 THE COURT: Anything further, Ms. Howard?

10 MS. HOWARD: Your Honor, again, investigative
11 detention is firm in case law, it is allowed, it is a
12 practice that is used by law enforcement. And I would
13 just, again, go back one more time, that he did not ask to
14 stop the conversation. Regardless of what the argument can
15 be now, he gave him -- and you saw how they went through
16 over and over in the video, Your Honor, and not one time
17 did he say, "I don't want to cooperate, I don't want to
18 talk to you and I need a lawyer, let me go," and so the
19 investigator continued with the interview at that time.

20 THE COURT: Any other pretrial issues except for this
21 one?

22 MS. HOWARD: No, sir.

23 THE COURT: Mr. Chambers, any other pretrial issues?

24 MR. CHAMBERS: No, Your Honor. I would just say for
25 the record that there is a photo lineup that they wanted to

PRETRIAL MOTIONS

1 introduce.

2 THE COURT: The argument you just made for this issue
3 extends to that.

4 MR. CHAMBERS: It extends to that, yeah.

5 THE COURT: But there's no separate Neil versus
6 Biggers issues, it's a fruit of the poisonous tree issue.
7 Y'all give me a moment, I'm going to go back in chambers
8 and think about it a little bit and I will be back out and
9 announce my decision here momentarily, okay?

10 MS. HOWARD: And, Your Honor, one thing. As to the
11 lineup, it was -- you'll give us a chance to discuss that
12 regardless of what you rule?

13 THE COURT: Yeah.

14 MS. HOWARD: Just making sure.

15 (Break in proceedings.)

16 THE COURT: After reviewing the law and considering
17 the testimony and evidence presented the defendant's motion
18 to suppress is denied. I find the statement, it was
19 voluntarily, knowingly and intelligently made and therefore
20 is admissible. I also deny the motion to suppress
21 concerning the photo, or is it a photo lineup?

22 MS. HOWARD: It is, yes, sir.

23 THE COURT: The photo lineup. All right. Anything
24 else I need to know about or anything else we need to do
25 before we bring the jury panel up here?

PRETRIAL MOTIONS

1 MS. HOWARD: No, Your Honor. The State is ready.

2 MR. CHAMBERS: No, Your Honor.

3 THE COURT: Do y'all have any requested voir dire you
4 wish for me to ask?

5 MS. HOWARD: Your Honor, I would ask that you ask if
6 you aren't already that if any of the jurors have been a
7 victim of a violent crime or have a family member.

8 THE COURT: Any members of the jury or their close
9 friend or relatives --

10 MR. CHAMBERS: Violent crime or a crime that is sexual
11 in nature, Your Honor.

12 THE COURT: Or a crime sexual in nature.

13 MR. CHAMBERS: And that would be my only request as
14 well, Your Honor.

15 THE COURT: Then I will just ask general stuff that I
16 normally ask but no other specific ones.

17 MS. HOWARD: None from the State, Your Honor.

18 (Break in proceedings as the jury panel entered the
19 Courtroom.)

20 THE COURT: Thank you, Madam Bailiff. Good morning,
21 ladies and gentlemen of the jury panel. Let me introduce
22 myself to you, again, my name is Brian Gibbons and I'm a
23 circuit judge From Chester, South Carolina and I'm visiting
24 in Greenville County this week holding court here as all
25 circuit judges do, we all travel around the state, and it's

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1 always a great pleasure and privilege to be over here in
2 the 13th Circuit holding court. Seated up here are both my
3 law clerks, my current law clerk and the new one who starts
4 this summer getting a little training in here before he
5 starts for me this summer so I know they're excited as
6 well. As you all know you're here serving as jurors for
7 this term this week of general sessions court which is what
8 we call criminal court in South Carolina. At this time --
9 since I believe the last time you were sworn in was Monday
10 morning, I'm going to have you sworn in again because I
11 have some questions to ask you before we start another
12 trial. So at this time if you will all please stand.

13 (The jury panel was sworn.)

14 THE COURT: At this time I'm going to have the State
15 call the case.

16 MS. HOWARD: Your Honor, this is the State versus
17 Robert David Smith, he is charged with criminal sexual
18 conduct in the first degree, burglary in the first degree
19 and possession of a weapon during the commission of a
20 violent crime.

21 THE COURT: Ladies and gentlemen of the jury, as we're
22 about to begin the trial of the case of the State of South
23 Carolina against Robert Davis Smith, Jr. who's been charged
24 with criminal sexual conduct first degree, burglary first
25 degree and possession of a weapon during the commission of

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1 a violent crime. Now, before we select the jury there are
2 several questions which I need to ask you, these are called
3 voir dire questions which is Latin for something, I can't
4 remember exactly what it's for, but all lawyers in every
5 court use that term voir dire but that's what it means. So
6 before I ask a question I'm going to have each side
7 represented by each counsel table introduce themselves to
8 you. First, we'll start with the State of South Carolina.
9 Madam Solicitor, if you'll introduce everybody seated at
10 your table and then we will go to Mr. Chambers.

11 MS. HOWARD: I'm Kimberly Howard, I work for the 13th
12 Circuit Solicitor's Office under Walt Wilkins who is our
13 circuit solicitor. Also Casey McCall, who is one of the
14 attorneys, as well as our lead investigator in the case,
15 Tim Conroy, he works with the Greenville Police Department.

16 THE COURT: Thank you. Mr. Chambers?

17 MR. CHAMBERS: I'm Randy Chambers, I practice law here
18 in Greenville. I also do appointed work through the public
19 defender's office. Seated here beside me -- if you could
20 just stand up -- this is Robert David Smith, Jr he goes by
21 Rob, you'll hear him referred to as the defendant in this
22 case, I'm representing Rob in this case.

23 THE COURT: All right. Thank y'all. So the first
24 question I have, ladies and gentlemen -- and if a question
25 applies to you I'm going to ask that you please stand if

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1 you're able to and then we will go from there, and I will
2 ask for your juror number and then we will go from there.
3 So the first question I have for you, is there any member
4 of the jury panel who is related by blood or marriage or
5 have a close, personal or social relationship with any of
6 the attorneys involved in this case? If so, please stand.
7 Has any member of the jury panel ever been represented by
8 any of the attorneys involved in this case? If so, please
9 stand. No response to either one of those two questions.
10 Is any member of the jury panel related by blood or
11 marriage or have a close, personal or social relationship
12 with the investigator involved in this case or with Mr.
13 Robert Davis Smith, Jr.? If so, please stand. All right.
14 No response. I'm going to read out some names, I won't
15 read all of them out at one time so the names can kind of
16 stay fresh in your mind. These are potential witnesses in
17 the case and just because I name these people doesn't mean
18 all of them are going to testify, okay? They're in no
19 particular order. But here are some potential witnesses.
20 And the question I'm going to have for you after I give the
21 names are if you're related by blood or marriage to the
22 people, or have a close, personal or social relationship
23 with the people, okay? So here are some names. M.F. [REDACTED]
24 [REDACTED], or formerly known as M.F. [REDACTED]. Walter Pope.
25 Lisa Crowder. Adam Jennings. Jim Sawyer. So does any

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1 member of the jury panel have a close, personal
2 relationship with any of those people or related by blood
3 or marriage to any of them? If so, please stand. Here are
4 some more. No response to that. Sarina Brown, Alissa
5 Manfredi, M.D., Officer Patricia Mullinax, Officer Jason
6 Semanyk. Is any member of the jury panel related by blood
7 or marriage or have a close personal or social relationship
8 with any of those people? If so, please stand. No
9 response. And lastly, Officer John Crane. Investigator
10 Timothy Conroy, and Francis Moore. Same question, related
11 by blood or marriage or have any close, personal or social
12 relationship with any of those witnesses? If so, please
13 stand. All right, no response. Now, is any -- I always
14 ask this question, I don't know how it can apply because
15 you know nothing about the case -- has any member of the
16 jury panel formed or expressed an opinion about any issue
17 or matter involved in this case? If so, please stand. No
18 response. Has any member of the jury panel ever been a
19 victim or have a close friend or relative who has been a
20 victim of a violent crime or of a crime that was sexual in
21 nature? If so, please stand. No response. Is there any
22 member of the jury panel that was a member of the grand
23 jury panel who issued the indictment in this case? If so,
24 please stand. No response. Is there any member of the
25 jury panel who is a member of or contributor to any group

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1 which has as its primary concern the promotion of law
2 enforcement or victim's rights. That's like the Trooper's
3 Association or Fraternal Order of Police, Mother's Against
4 Drunk Driving, stuff like that. If so, please stand. No
5 response. Lastly, is there any member of the jury panel
6 who has a religious, philosophical or moral reason why he
7 or she cannot be a fair and impartial juror in this case?
8 If so, please stand. No response. Any further voir dire
9 from the State?

10 MS. HOWARD: Nothing from the State, Your Honor.

11 THE COURT: Any further from the defense?

12 MR. CHAMBERS: No, Your Honor.

13 THE COURT: All right, thank you. We will commence
14 with selecting a jury.

15 (Break in proceedings.)

16 THE CLERK: Juror number 164, Rusty Young. What says
17 the State?

18 MS. HOWARD: Please present this juror.

19 THE COURT: What says the defendant?

20 MR. CHAMBERS: Swear Mr. Young, please.

21 THE CLERK: Juror number 20, Ashlyn Brown. What says
22 the State?

23 MS. HOWARD: Please present this juror.

24 THE CLERK: What says the defendant?

25 MR. CHAMBERS: Excuse Ms. Brown from this case,

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1 please.

2 THE CLERK: Juror 48, James Duncan. What says the
3 State?

4 MS. HOWARD: Present this juror.

5 THE CLERK: What says the defendant?

6 MR. CHAMBERS: Swear Mr. Duncan.

7 THE CLERK: Juror number 34, Thomas Chisholm. What
8 says the State?

9 MS. HOWARD: Please present this juror.

10 THE CLERK: What says the defendant?

11 MR. CHAMBERS: Swear Mr. Chisholm, please.

12 THE CLERK: Juror number 98, Tyler Mills. What says
13 the State?

14 MS. HOWARD: Please present this juror.

15 THE CLERK: What says the defendant?

16 MR. CHAMBERS: Excuse Mr. Mills from this case,
17 please.

18 THE CLERK: Juror number 15, Marris Black. What says
19 the State?

20 MS. HOWARD: Please excuse this juror.

21 THE CLERK: Juror number 108, Eric Mullinax. What
22 says the State?

23 MS. HOWARD: Please present this juror.

24 THE CLERK: What says the defendant?

25 MR. CHAMBERS: Swear Mr. Mullinax, please.

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1 THE CLERK: Juror number 18, Tonya Bray. What says
2 the State?

3 MS. HOWARD: Please present this juror.

4 THE CLERK: What says the defendant?

5 MR. CHAMBERS: Swear Ms. Bray, please.

6 THE CLERK: Juror number 165. Seirmy alexander. What
7 says the State?

8 MS. HOWARD: Please excuse this juror.

9 THE CLERK: Juror number 116, Heather Prisou. What
10 says the State?

11 MS. HOWARD: Please present this juror. And Madam
12 Clerk, was it 115 or 116?

13 THE CLERK: 116.

14 MS. HOWARD: Okay. Please present this juror.

15 THE CLERK: What says the defendant?

16 MR. CHAMBERS: Excuse Ms. Prisou in this case please.

17 THE CLERK: Juror number 147, Thomas Turner. What
18 says the State?

19 MS. HOWARD: Please excuse this juror.

20 THE CLERK: Juror number 33, David Caruso. What says
21 the State?

22 MS. HOWARD: Please present this juror.

23 THE CLERK: What says the defendant?

24 MR. CHAMBERS: Swear Mr. Caruso, please.

25 THE CLERK: Juror number, 115 Ruth Parris. What says

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1 the stay.

2 MS. HOWARD: Please present this juror.

3 THE CLERK: What says the defendant?

4 MR. CHAMBERS: Excuse Ms. Parris in this case, please.

5 THE CLERK: Juror number 140, Bianca Swafford. What
6 says the State?

7 MS. HOWARD: Please present this juror.

8 THE CLERK: What says the defendant?

9 MR. CHAMBERS: Swear Ms. Swafford, please.

10 THE CLERK: Juror number 70, Scott Horvat. What says
11 the State?

12 MS. HOWARD: Please present this juror.

13 THE CLERK: What says the defendant?

14 MR. CHAMBERS: Excuse Mr. Horvat, please.

15 THE CLERK: Juror number 66, Joseph Hershey. What
16 says the State?

17 MS. HOWARD: Excuse this juror.

18 THE CLERK: Juror number 69, Gloria Holland. What
19 says the State?

20 MS. HOWARD: Please present this juror.

21 THE CLERK: What says the defendant?

22 MR. CHAMBERS: Swear Ms. Holland, please.

23 THE CLERK: Juror number 156, Maurine White. What
24 says the State?

25 MS. HOWARD: Please present this juror.

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1 THE CLERK: What says the defendant?

2 MR. CHAMBERS: Swear Ms. White, please.

3 THE CLERK: Juror number 19, Erica Brewer. What says
4 the State?

5 MS. HOWARD: Please present this juror.

6 THE CLERK: What says the defendant?

7 MS. HOWARD: Excuse Ms. Brewer from this case, please.

8 THE CLERK: Juror number 123, Lisa Roach. What says
9 the State?

10 MS. HOWARD: Please present this juror.

11 THE CLERK: What says the defendant?

12 MR. CHAMBERS: Swear Ms. Roach, please.

13 THE CLERK: Juror number 153, Roger Warren. What says
14 the State?

15 MS. HOWARD: Please excuse this juror.

16 THE CLERK: Juror number 128, Angela Shaw. What says
17 the State?

18 THE COURT: Any challenge for cause?

19 MS. HOWARD: No, Your Honor, please present this
20 juror.

21 THE CLERK: What says the defendant?

22 MR. CHAMBERS: Excuse Ms. Shaw from this case, please.

23 THE CLERK: Juror number 173, Brian Isabell. Does the
24 State have any challenge for cause?

25 MS. HOWARD: No, Madam Clerk, please present this

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1 juror.

2 THE CLERK: What says the defendant?

3 MR. CHAMBERS: Swear Mr. Isabell, please.

4 THE CLERK: Juror number 10, Lisa Beard. Does the
5 State have any challenge for cause?

6 MS. HOWARD: No, Madam Clerk, please present this
7 juror.

8 THE CLERK: What says the defendant?

9 MR. CHAMBERS: Excuse Ms. Beard from this case,
10 please.

11 THE CLERK: Juror number 174, Willard Lowens. Does
12 the State have any challenge for cause?

13 MS. HOWARD: No, Madam Clerk, please present this
14 juror.

15 THE CLERK: What says the defendant?

16 MR. CHAMBERS: Swear Mr. Lowens, please.

17 THE CLERK: I have 12.

18 THE COURT: One and two on alternates.

19 THE CLERK: Juror number 167, Joseph Bradley. What
20 says the State?

21 MS. HOWARD: Please present this juror.

22 THE CLERK: What says the defendant?

23 MR. CHAMBERS: Swear Mr. Bradley, please.

24 (The jury was called to the box and the remaining
25 Panel was excused.)

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1 THE COURT: Any matters of law concerning jury
2 selection?

3 MS. HOWARD: No, Your Honor.

4 THE COURT: Ms. White, that's juror number, 156. I
5 will strike her for cause then for the record since she's
6 protected for tomorrow. You're free to leave, just go down
7 to the jury room, ma'am. Mr. Bradley, slide over, you are
8 now on the jury. All right. And then we will have the
9 jury panel come right in real quick and pick another
10 alternate. Starting with on the strike sheet number 27.

11 (The panel returned to the courtroom.)

12 THE COURT: State will have one strike and the defense
13 will have two.

14 THE CLERK: Juror number 104, Anna Morenz. What says
15 the State?

16 MS. HOWARD: Please present this juror.

17 THE CLERK: What says the defendant?

18 MR. CHAMBERS: Swear Ms. Morenz, please.

19 THE COURT: All right. Ms. Morenz, you can come on
20 around. Everybody else, now y'all can go.

21 (The remaining panel was released.)

22 THE COURT: Before we start in with new initial
23 instruction to you and opening statements, anybody need to
24 use the restroom or anything like that? Let's do that.
25 Good because I need to also. What we're going to do is --

1 Madam Clerk, go ahead and swear the trial jury. No issues
2 of law regarding jury selection.

3 (At this time the jury was sworn.)

4 THE COURT: Ladies and gentlemen of the jury, you've
5 been sworn in now as the trial jury in this case. I am
6 going to take just a brief comfort recess before we get
7 started, we'll be in here for a little bit, we'll certainly
8 take a break for lunch and everything here momentarily, but
9 we will go ahead and get started so we can move the trial
10 forward. Take about a 10 minute recess. You don't know
11 anything about the case, don't even talk about the case, so
12 we'll bring you back out here shortly.

13 (The jury left the courtroom.)

14 THE COURT: All right. Anything before we break?

15 MS. HOWARD: No, Your Honor.

16 (Break was taken.)

17 THE COURT: All members of jury are present. Ladies
18 and gentlemen of the jury, I'm going to speak to you for a
19 few moments to kind of give you an idea of what to expect.
20 Before we begin the trial let me tell you that this trial
21 is going to be different from what you might expect. Many
22 people don't have the chance to attend actual court
23 sessions like you're doing, much less participate in them
24 as you are doing in the role of a juror, and so they think
25 what they see on TV or in the movies or reading books are

1 what trials are always like. And while from time to time
2 trials may be full of intense action, riveting
3 circumstances and high drama, this trial is not for
4 entertainment. It is a fundamental part of our democracy
5 in an effort to make sure that justice is done between the
6 parties before the Court, and making sure that justice is
7 done can sometimes be a repetitive, often slow and
8 deliberate process, the opposite of what you might expect,
9 okay? But then the important thing is remember, ladies and
10 gentlemen, in this courtroom -- this beautiful courthouse
11 y'all have in Greenville County is a place of honor
12 dedicated to the protection and preservation of citizens'
13 rights through what many have called the greatest justice
14 system ever created. The lawyers who are appearing before
15 you are advocates for the parties they represent, but first
16 and foremost they're officers of this Court sworn to uphold
17 the integrity and fairness of our judicial system, and they
18 do that to help you as jurors for your search for the
19 truth. You should expect them to be professional,
20 competent and ethical in the representation of their
21 respective clients. Remember, you just took that oath
22 prior to the break to do the same thing in your search for
23 the truth, so you're also expected to act the same way.
24 Thank you again for accepting this important civic duty and
25 responsibility. Let me tell you basically how a trial

1 proceeds. The first thing that's going to happen is that
2 the State will make an opening statement. An opening
3 statement is not evidence, it is simply an outline to help
4 you understand what the State expects the evidence will
5 show. Now, the defense can make an opening statement if
6 they want to, but they don't have to, and I'll get into
7 that later on in the trial. Following opening statements
8 you will then hear testimony from evidence -- excuse me,
9 from witnesses and receive various evidence in the case.
10 This will consist of testimony from various witnesses who
11 will sit right here and testify under oath and exhibits may
12 come into evidence, which at the end you will have a chance
13 to look at. Following the completion of the testimony and
14 the evidence phase of the trial, the lawyers again will
15 have an opportunity to speak directly to you by what's
16 called closing arguments, okay? Closing arguments are
17 where the lawyer tries to persuade you based upon the
18 evidence as he or she sees what has come into evidence
19 during the trial and try to persuade you as to a verdict.
20 Again, closing arguments are not evidence. Following
21 closing arguments that's when I will instruct you on the
22 law as it pertains to the issues that have arisen in this
23 case, okay? When I have completed my instructions to you,
24 that's the first time you'll begin to be able to talk about
25 the case. So when we take a break for lunch for example

1 you don't talk about the case. When you take a break to go
2 to the restroom or to get a snack or whatever you don't
3 talk about the case. You cannot talk about the case until
4 you've heard everything, until you know or have an
5 understanding about what the law is at the end, okay? Of
6 course, as you know this is a criminal case which has been
7 brought by the State of South Carolina who has charged the
8 defendant with various crimes. Now, the charges against
9 the defendant is contained in this indictment. Now, this
10 indictment, ladies and gentlemen, is not evidence of
11 anything, it's simply a written description of the charges
12 that have been made by the State of South Carolina against
13 the defendant. Now, the defendant has pled not guilty to
14 these charges and is presumed innocent unless and until
15 proven guilty by the State beyond a reasonable doubt. Now,
16 I will define reasonable doubt for you in detail later on,
17 but I will tell you right now a reasonable doubt is that
18 kind of doubt which will make a reasonable person to
19 hesitate to act. Now, a defendant has the right to not
20 testify and never has to prove innocence or present any
21 evidence, the burden of proof is always upon the State of
22 South Carolina. Now, it's going to be your duty, ladies
23 and gentlemen, to decide from the evidence what the facts
24 are, you and you alone are the judges of the facts. You
25 will hear the evidence and decide what the facts are, and

1 then you will apply those facts to the law which I give to
2 you. Just like you're the judge of the facts, I'm the
3 judge of the law, and in doing so you must follow the law
4 that I give you whether you agree with it or not. Also,
5 ladies and gentlemen, please don't take anything that I may
6 say or do during the trial as indicating what you think I
7 think of the evidence or what you think I think your
8 verdict should be, that's solely your role, okay? Now,
9 just like rules which govern sports and other activities,
10 we have certain rules of evidence that all courts use all
11 across the United States, these are called the Rules of
12 Evidence, and the reason we have these rules, ladies and
13 gentlemen, is because since you're the judges of the facts
14 you have to get the best evidence possible and we have
15 these evidence rules to make sure that you get the best
16 evidence possible. So if a lawyer hears something or sees
17 something that he or she thinks may be in violation of the
18 rules of evidence, that lawyer may stand and object -- and
19 you've seen it on TV or heard it in movies, "objection,"
20 and then I rule on the objection, okay? If I sustain an
21 objection that means the question cannot be answered or the
22 thing cannot come into evidence. When I overrule an
23 objection that means the question can be answered or the
24 exhibit may come into evidence. Now, whenever I sustain an
25 objection don't speculate about what the answer would have

1 been or what the thing would have shown because that's
2 beyond your scope. You are only to judge the evidence that
3 comes in the record in this case, okay? And sometimes it
4 will be necessary for me to deal with matters of law
5 outside of your presence. I'll try to get the lawyers up
6 here to discuss that as much as possible by way of a bench
7 conference rather than make y'all get up and down from your
8 jury box, okay? But from time to time I may have to send
9 you back to the jury room to deal with matters of law. And
10 again, we're not trying to keep anything from you or hide
11 anything from you, this is just a procedure used by all
12 courts and all lawyers to make sure that you get the best
13 evidence possible, okay? Since you are the judge of the
14 facts you're going to have to decide which witnesses to
15 believe or which witnesses not to believe, this is called
16 credibility. In deciding the credibility of witnesses,
17 ladies and gentlemen, you can believe everything a witness
18 says, some of it or none of it, that's your power and your
19 discretion. Now, you know, you don't have notebooks up
20 there, you don't have pens and pencils, okay, so you're not
21 going to be allowed to take notes during the trial. So
22 please pay close attention to what goes on and what the
23 testimony is so you can accurately discuss it at the end.
24 In addition you're going to have to make your decision
25 based upon the evidence presented. You're not going to

1 have a written transcript of the trial to consult and it's
2 very difficult and time consuming for my court reporter
3 Mike, to read back or play back lengthy testimony, so
4 please pay close attention to every witness, giving their
5 testimony your utmost attention. Now, until I advise you
6 to begin talking about the case or begin deliberating about
7 the case you must not discuss this case with anyone
8 including your fellow jurors, friends, family members or
9 anybody else involved in this case. When you leave here,
10 you know, you can't do any independent research on the
11 case, you know. Don't go on Google and look up the names
12 of people. Don't start looking up about the prosecutor,
13 about the defense lawyer, about me, that's a violation of
14 your oath as jurors, because remember, your verdict must be
15 based solely on the evidence presented in this courtroom.
16 See, that's stuff outside the courtroom and you mess up the
17 whole process if you do that. Also, if anybody tries to
18 speak with you in violation of these rules about this trial
19 let me know about it and believe me I'll take care of it,
20 okay? Now, having said that, many of you may choose to
21 stay in the area rather than go home during lunch recesses
22 or the like, and that's fine, that's your prerogative. I
23 try to make lunch recesses long enough to give those of you
24 who may live to the outlying areas time to get home taking
25 into account traffic and eating and then coming back. But

1 if you choose to remain here and go downtown and enjoy
2 lunch you may see somebody familiar from the courtroom,
3 innocent conversations can be easily misconstrued. So if
4 you see us at the sub shop or somewhere around eating lunch
5 don't talk to us, we're not going to talk to you, and we're
6 not being rude, we're just making sure that everything is
7 done accordingly. It's important, ladies and gentlemen,
8 finally that you keep an open mind and not decide any issue
9 in this case until everything has been presented to you
10 until you have heard the law, okay? It's your solum
11 responsibly to determine the guilt or innocence of the
12 defendant and your verdict must be unanimous and it must be
13 based solely on the evidence presented in this courtroom
14 and on the law as I give you during and at the close of
15 trial. Thank you again for being a juror in this case. We
16 will now proceed with the trial. Madam Solicitor?

17 MR. CHAMBERS: May it please the Court?

18 THE COURT: Yes.

19 MS. MCCALL: Mr. Chambers, ladies and gentlemen. As
20 the Judge mentioned earlier, my name is Kasey McCall, this
21 is Kimberly Howard, and we are prosecutors here in the 13th
22 Judicial Circuit Solicitor's Office, it's our job to
23 prosecute criminal cases here in Greenville County. This
24 morning -- well, it's almost lunchtime -- I'm going to
25 briefly tell you three things. The first thing, I will

OPENING STATEMENTS

1 tell you is what this case is about, second, I will tell
2 you what the State has the duty and requirement to prove,
3 and third, I will tell you how the State intends to prove
4 its case. First, what this case is about. This case is
5 about a complete stranger who came into a woman's motel
6 room and sexually assaulted her in front of her children.
7 Second, what the State has both a duty and requirement to
8 prove. The defendant has been charged with burglary in the
9 first degree, criminal sexual conduct first degree, and
10 possession of a weapon during the commission of a violent
11 crime. As prosecutors in this case we have the entire
12 burden of proof in today's trial. The State must prove to
13 you that on June 17, 2013, this defendant did enter into a
14 dwelling, in this case a motel room, the victim's motel
15 room, without consent with the intent to commit a crime
16 inside and that he was armed with a deadly weapon. The
17 State must also prove to you that this defendant did commit
18 a sexual battery on the victim and used aggravated force,
19 the sexual battery in this case is vaginal penetration.
20 And finally, we will prove to you that this defendant was
21 found to be in possession of a weapon during the commission
22 of a violent crime later. Later in this case the Judge is
23 going to instruct you that the burglary first degree and
24 criminal sexual conduct first degree are classified as
25 violent crimes. Now, I want to talk to you about how the

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1 State intends to prove its case. You're going to hear from
2 several witnesses today, to name a few, one of the first
3 witnesses that you will hear from is the victim, M.F. [REDACTED]
4 [REDACTED], she was at the time known as M.F. [REDACTED], but now
5 M.F. [REDACTED]. She's going to tell you that on June 17th of
6 2013 she was -- while she was cleaning her motel room she
7 was putting her sheets outside the motel room for the maid
8 service to come and collect them, and when that happened
9 the defendant pushed her, came into her motel room. She
10 can go into detail on how the defendant put a box cutter up
11 to her throat, threw her on the bed, proceeded to choke her
12 and then sexually assaulted her in front of two young
13 children. She did not know this man, she did not consent
14 to anything. You're also going to hear from some medical
15 professionals who treated the victim after the sexual
16 assault. And you'll also hear from Investigator Conroy who
17 is with the Greenville Police Department, he will testify
18 about how he became involved in the case and how his
19 involvement -- how his investigation led to the arrest of
20 the defendant. You're going to get a chance to watch the
21 defendant's statement on video. Now, it's going to seem
22 long but it's important that we give you everything that
23 you need to make a decision in this case. We're going to
24 streamline this case as much as possible, but we have to
25 put forward all of the important evidence that you need to

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1 make a fair decision, and after you've heard all of the
2 testimony and considered all of the evidence we'll be
3 asking you to come back and find this defendant guilty and
4 hold him responsible for his actions. Thank you for your
5 time.

6 THE COURT: All right, thank you very much. Yes, sir?

7 MR. CHAMBERS: May it please the Court, Your Honor?
8 Solicitors? Ladies and gentlemen, as I told you earlier
9 seated here beside me is Rob Smith, he is the person that
10 you have heard referred to as the defendant and you will
11 continue to hear him referred to as the defendant. That
12 frankly is a term that I've never liked, because as His
13 Honor has already told you, he doesn't have to prove
14 anything. The burden of proof is on these folks over here,
15 the State, these two prosecutors and this police
16 investigator over here, and they have to prove everything
17 that Ms. McCall just laid out to you, they have to prove it
18 beyond a reasonable doubt. The better word and the word
19 that I recall back when I started my career as a Navy
20 lawyer referred to the person who is standing trial as the
21 accused, because what they have done at this point is they
22 have made an accusation against Rob Smith. And as you
23 heard, to put it in more of what I guess I would say are
24 layman's terms, he has been accused by the State of raping
25 a young lady named M.F. [REDACTED], and specifically what

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1 we call it in South Carolina is criminal sexual conduct
2 first degree, and as Ms. McCall told you what they have to
3 prove to you beyond a reasonable doubt is that Rob used
4 aggravated force in committing a sexual battery, and sexual
5 battery requires penetration, and specifically what they're
6 alleging they say is vaginal penetration by Rob. He's also
7 charged with burglary first, but that's part and parcel of
8 them accusing him of raping her, because what they have to
9 prove to you beyond a reasonable doubt is that he
10 unlawfully entered the dwelling, in this case the motel
11 room that she was residing in. And quite literally, folks,
12 he has been sitting and waiting for the better part of
13 three years -- we're going to go all of the way back to
14 June 17th of 2013, the better part of three years sitting
15 and waiting for his day in court, sitting and waiting for
16 the day that they have to come to court and prove their
17 case beyond a reasonable doubt, sitting and waiting with
18 this accusation, this terrible accusation hanging over his
19 head. And today is the day that we're here, and thankfully
20 you are here, because you are here as the triers of fact in
21 this case to determine if they're going to meet the burden
22 that they have, and I will talk to you some more about that
23 in a minute. But I believe that what the evidence is going
24 to show in this case -- and a lot of these things are going
25 to be agreed upon, there are going to be some things that

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1 are in contention. The biggest thing I will tell you from
2 the outset is that Rob's position has been when he's talked
3 to the police and his position continues to be that he did
4 not commit the crimes with which he is charged, he did not
5 commit those crimes. You will hear evidence that back on
6 June 17th of 2013 this was alleged to have occurred at the
7 Regal Inn. Now, many of you living here in Greenville for
8 any length of time may have driven by the Regal Inn
9 countless times and not even realized that it was there.
10 It's very non-discreet motel, it's out here on Wade Hampton
11 Boulevard still inside the city limits, if you're familiar
12 with Henry's Smokehouse is, just a little ways down from
13 there. It sits there -- the one end where the office is
14 located faces Wade Hampton Boulevard and there's
15 approximately 40 rooms on two levels, all of the doors face
16 the outside and there's a little walkway that comes in
17 front of all of those rooms. If you're facing the
18 front-end of that building, the one that's on Wade Hampton,
19 the rooms on the right side face where there's a little lot
20 there that sells outbuildings and things like that, and
21 then over to the left there's a small convenience store/gas
22 station type place called it is either CP's or GP's, I can
23 never remember. This was alleged to have occurred in room
24 ■■■, which is a room where the alleged victim -- and you're
25 going to hear them call her the victim all the way through

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1 this, she's not a victim unless you find beyond a
2 reasonable doubt she is, but that's how they're going to
3 refer to her. The alleged victim in this case, M.F. [REDACTED]
4 [REDACTED], was residing with her two children in room [REDACTED].
5 Room [REDACTED], it's on the second floor facing the gas station,
6 there are rooms on both sides and rooms beneath and it's
7 approximately four rooms down from where the office is
8 located with the office being on the first floor. You are
9 going to hear, I believe, through the evidence in this case
10 that this is a fairly low rent establishment, okay? That
11 is the type of place where most of the people staying there
12 are staying there for lengthy periods of time. This is a
13 place that has full-sized refrigerators in it because
14 people are there for quite sometime, even though these are
15 small motel rooms that are located very closely together.
16 You are going to hear that this happened at sometime around
17 11ish in the day, in other words broad daylight. You are
18 going to hear that Rob did -- was, in fact, on the
19 premises, this is not going to be a case of mistaken
20 identity, Rob was there. I will tell you right now that
21 the evidence in this case is going to show that Rob did, in
22 fact, engage in sexual intercourse with the alleged victim
23 in this case and he told the police that. You're going to
24 hear that from his first interaction with the police that
25 he cooperated with them fully, that he waived his right to

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1 give a statement and gave a statement, even though at that
2 point he wasn't sure what they were talking to him about,
3 and we'll get into that a lot more later. But one of the
4 things that I want you to be aware of is you're going to
5 see a recorded statement from Rob Smith in this case. And
6 you as the trier of fact are going to get to make
7 determinations about how this statement was procured and
8 how it was given, the circumstances and everything that's
9 involved, that's part of what you're going to do. But what
10 you'll see among other things is that Rob cooperated with
11 everything that they wanted him to do. They said you don't
12 have to give a statement, you can talk to a lawyer, but
13 you'll see that he gives a statement. You'll see that they
14 asked to search his backpack, and he says "sure," he even
15 signed a form saying you can search my backpack. You're
16 going to see that they wanted to go and look at a storage
17 unit that he had and he said, "As long as I can go with you
18 you can go look at the storage unit." You're going to hear
19 all of those things. Now, they charged him with possession
20 of a weapon during the commission of a crime, and Ms.
21 McCall even said box cutter, but one of the things you're
22 going to hear in this case is they never recovered any type
23 of weapon, they will have no weapon to show you, because
24 even though they searched all of these places they didn't
25 find anything. There's a lot that you're going to be able

OPENING STATEMENTS

1 to consider in this case, you've heard a summary of the
2 facts from Ms. McCall, you've heard a little bit from me,
3 but here is where the evidence is going to come from. The
4 evidence is going to come from this witness stand right
5 here and it's going to come from whatever exhibits that
6 they choose to give you, and you will be the triers of
7 fact. The reason the system works is because we bring
8 people like you in from your everyday lives, different
9 backgrounds, different circumstances and all of you have a
10 common sense that you have gained from just living life,
11 okay? And you don't leave that at the door, that's the
12 biggest reason this system works. And so what y'all are
13 going to do is as you listen to witnesses and you examine
14 evidence you're going to ask yourself, does this make sense
15 to me? Does the way that they're saying this went down
16 make sense to me? Is it corroborated? Do I believe it?
17 The same thing that you do to a large extent all of the
18 time. We're right in the middle one of the craziest
19 presidential races I can ever recall, and so on a daily
20 basis you find yourself asking do I believe what this
21 person is telling me? Does it make sense to me? That's
22 what you're going to do as you sit here and you do your job
23 as jurors. Listen, this is -- short of service in the
24 military, our founding fathers believed this to be the most
25 important thing that citizens could do. I don't mean to

OPENING STATEMENTS

1 sound like I'm giving you a civics lesson, but John Adams,
2 our second president, obviously one of the very influential
3 founding fathers believed it to be so important that he
4 referred to trial by jury as the very heart and lungs of
5 liberty. It is the check on the government making an
6 accusation against somebody, the police making an
7 accusation against somebody without it being proven, and
8 they have to prove it beyond a reasonable doubt. His Honor
9 has already told you it's the kind of doubt that would
10 cause a reasonable person to hesitate to act. It is
11 possible for you to believe that somebody probably did
12 something wrong but that's not enough. When you leave here
13 would you still have doubt? Would you bet something that
14 is near and dear to you to the decision that you make? And
15 here is how I always like to put it into perspective for
16 you, and I'll wrap-up pretty quickly, there are other
17 courts that are going on right now, I know there's a civil
18 case that's going on just down the hallway, and if you were
19 in that serving on that jury the plaintiff would only have
20 the burden of proving his or her case by a preponderance of
21 the evidence, in other words, the greater weight. If we
22 had a metaphorical scale here they would have to tip that
23 scale just slightly in their favor and they would win. And
24 listen, those are cases that involve thousands and even
25 millions of dollars at times, that involve cases where

OPENING STATEMENTS

1 there's been a loss of life, loss of limb, and yet the
2 burden of proof is only by a preponderance of evidence.
3 There are other courtrooms, arbitrations for example, where
4 the evidence standard is by clear and convincing evidence
5 which always sounds almost absolute to me. But when it
6 comes to criminal cases, the only kinds of cases that we
7 can deprive somebody of their liberty, the only kinds of
8 cases where somebody will carry a conviction with them for
9 the rest of their lives, that's where we have the greatest
10 burden of all and that's beyond a reasonable doubt, beyond
11 a reasonable doubt, you have to move that scale almost all
12 of the way. Now, that doesn't mean beyond all doubt
13 because frankly that's impossible. It is certainly
14 possible that the sun won't come up tomorrow but it is not
15 probable, okay? Now, common sense tells me and basically
16 just everyday life tells me that there are going to be at
17 least a few of you sitting there who believe that just by
18 virtue of the fact that these folks over here believe that
19 my client is guilty of something and that Rob is sitting
20 over here and he's being called a defendant, that there are
21 at least some of you who believe that he probably did
22 something and you're sitting there waiting on somebody to
23 prove to you that he didn't. Well, folks, that would worry
24 me except for the fact that I've been doing this awhile and
25 I know that people like you take this very seriously, and I

OPENING STATEMENTS

1 know that when you took that oath a few minutes ago that
2 you were ready to sit here and do your duty as jurors, and
3 that's what you're going to do, you're going to hold them
4 to their burden. Our position is they're not going to be
5 able to meet that burden because Rob Smith didn't do what
6 he's accused of doing. I'm not going to tell you he's an
7 angel, I'm not going to tell you that you're going to like
8 everything about him, okay? But we believe that he is not
9 guilty, that's how he's pled. We look forward to hearing
10 their case. And again, I want to say we appreciate you
11 being here, he's been waiting nearly three years for that
12 day, and because you're here we're going to get this
13 resolved. Thank you.

14 THE COURT: Thank you, Mr. Chambers. State ready to
15 call its first witness?

16 MS. HOWARD: Your Honor, may we approach just for
17 timing and scheduling purposes?

18 THE COURT: Yes.

19 (A bench conference was held.)

20 THE COURT: Ladies and gentlemen, the last thing I
21 want is a juror who is hungry or thirsty or that kind of
22 thing, so what we're going to do is based upon the timing
23 of things -- you never know how it works, we will go ahead
24 and break for lunch, ladies and gentlemen. I wanted to go
25 ahead and give you an idea of what you're going to hear so

OPENING STATEMENTS

1 that's why I went ahead and allowed them to do opening
2 statements. Why don't we be down until 2:00, okay? I want
3 you back in your jury room -- not the -- right here on this
4 hallway, and the bailiffs will show you where to go and
5 stuff, be back here at 2:00 ready to roll, okay? Before we
6 leave let me go ahead and appoint a foreperson for the
7 jury. Where is Ms. Bray? Ms. Bray, I'm appointing you as
8 the forelady of the jury, the trial jury. It is going to
9 be your duty to preside over deliberations in the jury
10 room. You will also be the jury's spokesperson here in
11 court, it's going to be your duty to write the verdict on
12 the verdict form. But remember the verdict has to be
13 unanimous, and you're not authorized to write on the
14 verdict form until you've reached a unanimous verdict, but
15 I'll give you further instructions about that later on in
16 the case, okay? So thank you for accepting that
17 responsibility.

18 (The jury left the courtroom and a lunch break was
19 Taken.)

20 THE COURT: All right. Are we ready for the jury?

21 MS. HOWARD: Yes, sir, Your Honor.

22 MR. CHAMBERS: Yes, sir.

23 THE COURT: All right. You can bring them in.

24 (The jury returned to the courtroom.)

25 THE COURT: All right. All jurors are present.

OPENING STATEMENTS

1 Solicitor you may call your first witness.

2 MS. HOWARD: State calls Frances Moore.

3 The witness, FRANCES MOORE, was first duly sworn and
4 testified as follows:

5 THE CLERK: Will you state your full name for the
6 record?

7 THE WITNESS: Frances Moore.

8 DIRECT EXAMINATION

9 BY MS. MCCALL:

10 Q Ms. Moore, can you tell us where you work?

11 A I work at the Greenville Police Department in the 911
12 Center.

13 Q Okay. And what do you do for the 911 Center?

14 A I supervise the 911 Center as far as hiring, records
15 retention, general operations.

16 Q What are your duties -- is it with dispatch?

17 A Yes, ma'am, it is. It involves answering the 911
18 calls and managing the personnel to answer the 911 calls
19 as well as dispatch out police and fire services.

20 Q Okay. And what kind of calls do you receive?

21 A We receive a wide variety of calls. A lot of 911
22 calls; robberies, thefts, traffic accidents, anything that
23 the police or fire respond to we accept. So --

24 Q Okay. So that would include 911 emergency calls?

25 A Yes, ma'am, it does.

FRANCES MOORE - DIRECT

1 Q Describe the process of how 911 calls are handled
2 there.

3 A When we receive a 911 call if it's a landline call we
4 receive a screen that shows us where the call is coming
5 from and phone number that it's being placed from. If
6 it's a mobile call we receive the cellular tower that it
7 is hitting and then we question callers about what is
8 going on, what is their emergency. If they need medical
9 assistance we're going to send EMS, if it's police or fire
10 assistance they need we'll dispatch out units. And then
11 we ask questions about what went on to precipitate the
12 event, what they're facing now and try to assist in
13 managing the situation before responders get there until
14 the responders arrive and then they take over.

15 Q Okay. And how are these calls preserved?

16 A We have a recording system that preserved off the DVD
17 as well as a server backup, and we preserve calls for at
18 least three years.

19 Q Okay. Are they preserved in a normal regular course
20 of business operations?

21 A They are, yes, ma'am.

22 Q Once they're preserved or recorded, what happens to
23 these recordings?

24 A I'm sorry, say again.

25 Q Once they are preserved or recorded, what happens to

FRANCES MOORE - DIRECT

1 these recordings?

2 A We maintain them until the retention period expires,
3 and after three years we'll go ahead and dispose of the
4 media.

5 Q And so where -- during that period or time where you
6 are retaining them, where are they stored?

7 A They're stored in my office in a locked cabinet.

8 Q Okay. And when the investigator or prosecutors copy
9 the particular call, explain how you provide that copy.

10 A They'll send us notice if they need an audio
11 recording preserved -- either preserved or go ahead and
12 pull and I will go ahead and pull it off the media and
13 either place it in the property in evidence or hand it
14 directly to the solicitor or to the officer requesting.

15 Q Okay. And so you know, how do you access -- you said
16 it's in a locked --

17 A It's in a locked cabinet, it's also available via
18 server so I'm pulling it off a computer that has multiple
19 layers of security attached to it.

20 Q And what media do you record the call?

21 A We record it onto a CD.

22 Q A CD like this?

23 A Yes, ma'am.

24 Q I'm handing you what's been marked as State's Exhibit
25 Number 1. Do you recognize it?

FRANCES MOORE - DIRECT

1 A Yes, ma'am. It's got my initials on it that it's a
2 recording that's been pulled.

3 Q And what is it?

4 A It's a 911 call from June 17th at the Regal Inn.

5 Q Okay. And have you listened to it?

6 A I have.

7 Q And how do you know that you listened to it?

8 A I listened to it when I was pulling the recording and
9 also went back and listened to it again yesterday.

10 Q What is recorded to this CD?

11 A What is on the CD is a 911 call that was placed on
12 June 17th at 11:49 hours in the morning.

13 Q Is it a fair and accurate recording of the 911
14 emergency call made in this case?

15 A It is.

16 Q And who placed the call?

17 A A female named M.F. [REDACTED].

18 Q Who was the dispatcher on this call?

19 A The dispatcher on the call was Paige Luper.

20 MS. MCCALL: The State moves to introduce this into
21 evidence.

22 THE COURT: All right. Without objection introduced
23 into evidence.

24 MR. CHAMBERS: No objection.

25 (The 911 CD was received as State's 1.)

FRANCES MOORE - DIRECT

1 MS. MCCALL: Permission to publish it?

2 THE COURT: Permission to publish granted.

3 (The CD was played.)

4 MS. MCCALL: That's all of the questions I have for
5 you, if you could please answer any questions for Mr.
6 Chambers.

7 CROSS EXAMINATION

8 BY MR. CHAMBERS:

9 Q Is that the entire tape?

10 A That's the entire 911 call, yes, sir.

11 Q So did the call end at that point?

12 A Yes, sir.

13 Q You don't have the part on there where the dispatcher,
14 Ms. Luper, would have contacted police officers and sent
15 the officers out there to --

16 A That's over the radio traffic. That is the 911 call
17 alone, it's not the radio traffic.

18 Q So you get a call like that and it's not procedure to
19 stay on the phone with somebody who is -- who supposedly
20 something like that just happened?

21 A It was -- already occurred, sir. We only the stay on
22 the phone if it's an in-progress emergency or if there's
23 still an active assailant or whatever in the room or
24 close-by.

25 Q So who would the dispatcher have called after hanging

FRANCES MOORE - CROSS

1 up with that person?

2 A She entered the call into our computer aided dispatch
3 system and then the radio operator would radio officers in
4 the field and have them in route to that location.

5 Q Did you pull a tape of the conversation between the
6 radio operator and the police officers?

7 A I don't have it here but it's readily available and I
8 can pull that if needed.

9 Q Okay. And Ms. Luper, does she still work as a
10 dispatcher?

11 A She does.

12 MR. CHAMBERS: Okay. That's all of the questions I
13 have, thank you.

14 THE COURT: Anything else?

15 MS. MCCALL: That's all of the questions.

16 THE COURT: Thank you, ma'am. You can step down and
17 you're free to leave. Call your next witness.

18 MS. MCCALL: State calls M.F. [REDACTED].

19 The witness, M.F. [REDACTED], was first duly sworn and
20 Testified as follows:

21 THE CLERK: Will you state your full name for the
22 record?

23 THE WITNESS: My name is M.F. [REDACTED].

24 DIRECT EXAMINATION

25 BY MS. MCCALL:

FRANCES MOORE - CROSS

- 1 Q Can you tell us -- how old are you, M.F. [REDACTED] ?
- 2 A I am 26.
- 3 Q And do you live in Greenville County?
- 4 A Yes, ma'am.
- 5 Q How long have you lived in Greenville County?
- 6 A A little over three years now.
- 7 Q And where did you live before that?
- 8 A Lancaster, South Carolina.
- 9 Q Now, are you working right now?
- 10 A I'm in the process of starting a new business.
- 11 Q Of what now?
- 12 A Of starting a new business.
- 13 Q What type of business is that?
- 14 A A cleaning business.
- 15 Q And so you just now are starting that business up
- 16 right now?
- 17 A Yes. I just stopped working at a factory a couple of
- 18 months ago.
- 19 Q And you worked there for how long?
- 20 A Two years.
- 21 Q And what was your title at that?
- 22 A A trainer.
- 23 Q Do you have children?
- 24 A Yes, ma'am, I do.
- 25 Q How old are they?

M.F. [REDACTED] - DIRECT

- 1 A My daughter is three and my son is five.
- 2 Q Now, your -- is your son, is he in kindergarten?
- 3 A Yes, ma'am.
- 4 Q Where is he in school?
- 5 A Sara Collins.
- 6 Q And so are you married?
- 7 A Yes, ma'am.
- 8 Q And what is your husband's name?
- 9 A Walter Pope.
- 10 Q And how long have you two been together?
- 11 A Almost six years, we've been married for two.
- 12 Q I want to talk about June of 2013 now, okay? Where
- 13 were you working then? Were you working then?
- 14 A I was not.
- 15 Q And tell us how old your children were at that time.
- 16 A My daughter was seven months and my son was three.
- 17 Q Were you still nursing your little girl at that time?
- 18 A Yes, ma'am, I was.
- 19 Q Were you married then?
- 20 A No.
- 21 Q So what was your last name June of 2013?
- 22 A M.F. [REDACTED].
- 23 Q Did you have a boyfriend at this time?
- 24 A Yes, who is my husband now.
- 25 Q Was your husband now, Walter, Mr. Pope, was he living

M.F. [REDACTED] - DIRECT

1 with you at the time in June?

2 A Yes, ma'am.

3 Q And was he working then?

4 A Yes, ma'am.

5 Q And where was he working?

6 A He worked at Labor Smart down the street.

7 Q Do you remember who his boss was?

8 A James Sawyer.

9 Q Where were you living at the time in June of 2013?

10 A At Regal Inn.

11 Q How long had you been living at the Regal Inn?

12 A About eight months.

13 Q And can you tell us where the Regal Inn is located?

14 A Right beside the old CVS on Wade Hampton.

15 Q So is that in Greenville County?

16 A Yes.

17 Q I now want to focus your attention on June 17th of
18 2013. Do you remember that day?

19 A Yes.

20 Q Can you tell us where you were on that day?

21 A I was in our room that day.

22 Q And were your kids with you?

23 A Yes, ma'am.

24 Q Do you remember what you were doing midmorning June
25 17th?

M.F. [REDACTED] - DIRECT

1 A Stripping the beds, putting stuff outside, getting
2 ready for the maid to come pick up the stuff and then
3 waiting on her to come back.

4 Q You stripped the sheets and you put them outside the
5 room waiting on the maid to come back --

6 A Come pick them up, yes.

7 Q You were doing that, so the door to your room was open
8 at that time?

9 A Yes, ma'am.

10 Q So when you were doing that and the door was open you
11 step off, what happened?

12 A I was walking back and forth through the room, the
13 next thing I know a man comes by and asks me for someone
14 named Mike Mike and I said I didn't know who that was, and
15 he walked down the corridor.

16 Q At that time did you know this man?

17 A No.

18 Q Ever seen him before?

19 A No.

20 Q So at that time what did you do then? You went back
21 to cleaning?

22 A Went back to doing what I was doing.

23 Q And then any other conversations from the man?

24 A No.

25 Q So you go back to what you're doing, and then tell us

M.F. [REDACTED] - DIRECT

1 what happens next.

2 A I've already got the one bed stripped, I'm going back
3 and forth between my daughter and the beds, the next thing
4 I know when I go towards my son he's in my room and
5 closing the door.

6 Q Does he have anything with him at this time?

7 A At that time he has the box cutter out.

8 Q Does he say anything to you?

9 A He tells me to be quiet and then closes the door and
10 puts the box cutter closer to me and then tells me to get
11 on the bed.

12 Q And what are you doing at this time?

13 A I'm pretty much standing in the middle of the room
14 about kind of panicking at that point.

15 Q And are you telling him anything? I mean, is it --

16 A I don't remember.

17 Q Okay. So he tells you to be quiet and you're standing
18 there beside the bed, and what happens at that time?

19 A I got pushed onto the bed and then we end up fighting
20 from about the middle of the bed until we get to the edge
21 of the bed and we end up falling on the floor where I'm
22 still fighting until he chokes me where I can barely
23 breath anymore.

24 Q And do you remember -- like when he's choking you, do
25 you remember like what exactly was happening at that time?

M.F. [REDACTED] - DIRECT

- 1 A I don't understand what you mean.
- 2 Q So I said -- so when he's choking you you're on the
- 3 bed or you've already fallen off?
- 4 A By the time he's choking me I'm already falling off
- 5 the bed, at the edge of it on the floor.
- 6 Q And where are the children at this time?
- 7 A My daughter is in a bouncer on the other bed, and my
- 8 son is hiding in the corner beside the refrigerator.
- 9 Q And so did he penetrate you?
- 10 A Yes, ma'am, on the floor.
- 11 Q Right when you were on the floor.
- 12 A Yes.
- 13 Q And where did he penetrate you?
- 14 A In my vaginal area.
- 15 Q And how long did you say did it last for?
- 16 A Moments.
- 17 Q Did he ejaculate from what you could tell?
- 18 A No, ma'am.
- 19 Q Do you remember a condom?
- 20 A No, ma'am.
- 21 Q Was any part of this consensual?
- 22 A No, ma'am.
- 23 Q So after this assault what did he do?
- 24 A He told me and the kids to get in the bathroom and to
- 25 go stay in there. While I took my -- I took my son first

M.F. [REDACTED] - DIRECT

1 because he was already trying to get to me so I pushed him
2 in front of me and put him into the bathroom. I can see
3 him in the mirror of the bathroom, and I see when he goes
4 to the TV and I see when he leaves, when he leaves I run
5 to the door and lock it.

6 Q And so you saw him leave?

7 A Yes, ma'am, through the mirror.

8 Q Just make sure, did you say that -- you said he had a
9 weapon, right?

10 A Yes, ma'am, he has the box cutter.

11 Q I want to show you some pictures really quick. I'm
12 going to show you -- I show you what has been marked as
13 State's Exhibits 2 through 5. Take a look at those
14 photographs. Do you recognize what is depicted in those
15 photos?

16 A Yes, ma'am. This is my old hotel room, the beds
17 where my baby was at the time and the bouncer --

18 Q Just a general -- I will go over it when I put it up
19 on the document -- were those pictures taken from the day
20 of the incident?

21 A Yes, ma'am.

22 Q Are they a fair and accurate representation as it
23 appeared on June 17th of 2013?

24 A Yes, ma'am.

25 Q And do these appear -- the photographs appear to be

M.F. [REDACTED] - DIRECT

1 altered in any way?

2 A No, ma'am.

3 MS. HOWARD: Your Honor, I move that State's Exhibits
4 2 through 5 be admitted into evidence.

5 MR. CHAMBERS: No objection, Your Honor.

6 (The photos were received as State's 2-5.)

7 Q Can you tell the jury what State's Exhibit 2 depicts,
8 please?

9 A It is the room -- the bed my daughter was on, the bed
10 that this happened at and towards the bathroom.

11 Q Okay. So on the bed with the sheet, that little --

12 A That's the bouncy that my daughter was in.

13 Q And where did you say your son was?

14 A My son -- where the bed is with the sheets on it
15 still, if you would go to the corner a little bit there is
16 a refrigerator right there, he's in between the side of
17 the bed and the refrigerator.

18 Q And can you point to the jury where the assault took
19 place? If you just hold it down --

20 A I've got it. It started here and ended right there.

21 Q Okay. Can you tell us what this is a picture of?

22 A The TV, sink and boxes.

23 Q And was there anything on that TV before when the
24 defendant was in there in that room?

25 A Yes, ma'am. There's something that's missing right

M.F. [REDACTED] - DIRECT

1 here beside this wallet that you see right here, there was
2 money before him.

3 Q And so when you saw the defendant leave through the
4 mirror --

5 A When he stopped at the TV that's what happened but I
6 didn't realize that at first because that's not the first
7 place I went to.

8 Q All right. Looking at State's Exhibit 4, can you
9 please tell us what State's Exhibit 4 is?

10 A Finger marks on my neck.

11 Q That's your neck and --

12 A Yes, ma'am.

13 Q Okay. And then this is the -- and can you point to
14 the -- with that laser. Hold it down.

15 A It's right there above my tattoo.

16 MS. MCCALL: You can turn the lights on.

17 Q Now tell me, was there any money -- other than the
18 money that you saw that was taken from the TV, did you give
19 him any money or did he give you any money?

20 A No.

21 Q Was he ever invited in?

22 A No.

23 Q After the defendant left what did you do?

24 A I locked the door, then I called 911.

25 Q And you just heard the 911 call, was that you?

M.F. [REDACTED] - DIRECT

- 1 A Yes, ma'am.
- 2 Q And that's what you remember saying.
- 3 A Yes, ma'am.
- 4 Q Did you call anyone else after the 911 call?
- 5 A After the 911 call I called Jim Sawyer to have him
- 6 get in touch with Walter Pope.
- 7 Q And so remind me who Jim Sawyer is again.
- 8 A He is the guy in charge of Labor Smart, he is the
- 9 boss.
- 10 Q He is Walter Pope's boss.
- 11 A Yes, Walter's boss.
- 12 Q So you tried to get in touch with Walter.
- 13 A He was in Clemson doing work there.
- 14 Q Did you call anyone else?
- 15 A Not until the cops got there, that's when I called
- 16 for my mother at my mother's house to get someone to get
- 17 the kids.
- 18 Q Did you ever get to talk to Walter?
- 19 A It was about 20 minutes later after everything
- 20 happened, the cops and the people were already there by
- 21 the time he called me back.
- 22 Q And what did you tell him?
- 23 A That I needed him to come home.
- 24 Q I want to now talk about when the police did respond.
- 25 Were you still in the room when the police responded?

M.F. [REDACTED] - DIRECT

1 A Yes.

2 Q I guess the door was locked until they got there?

3 A Yes.

4 Q Was anyone else there with you besides just you and
5 your kids?

6 A Just me and my kids.

7 Q What did the police do when they arrived?

8 A Asked me what happened, asked me if I was okay,
9 called me a mess and started to look around the room for
10 anything out of order or anything like that.

11 Q Take pictures?

12 A And take pictures and all that stuff.

13 Q So when they were looking around the room, did they
14 find anything or did you see anything that wasn't yours?

15 A One of the officers, I don't remember which one,
16 found the phone that was by the bed that my daughter was
17 on.

18 Q I'll show you State's Exhibits 6 and 7, please. Take
19 a look at those photographs. Do you recognize what's
20 depicted in those photos?

21 A Yes, ma'am. It's the bed my daughter was on and a
22 phone sitting at the bottom of it.

23 Q And are they fair and accurate presentations of how it
24 appeared on June 17th of 2013?

25 A Yes, ma'am.

M.F. [REDACTED] - DIRECT

1 Q Do they appear to be altered in any way?

2 A No, ma'am.

3 MS. HOWARD: Your Honor, I move that State's Exhibits
4 6 and 7 be admitted into evidence.

5 MR. CHAMBERS: No objection.

6 THE COURT: Without objection introduced into
7 evidence, and you can show them.

8 (The photos were received as State's 6 and 7.)

9 Q Can you tell the jury what State's Exhibit 6 depicts?
10 And I know -- take that laser -- it's really hard to do,
11 right where that one is --

12 A It's right -- about right there is a cellphone, it
13 does not belong to me.

14 Q Maybe you can get this closer. So like that's the
15 closer picture of the phone that you recognize it was not
16 your phone or anyone that lived in that room's phone that
17 you knew of?

18 A Yes.

19 Q Okay. Show me real quick on this photo where -- you
20 see where the phone is -- where the assault took place.

21 A It would be down here past where you see these shoes.
22 The shoes are at the bottom of the other bed that it would
23 have happened at.

24 Q So it was kind of like behind it and over.

25 A Yes.

M.F. [REDACTED] - DIRECT

1 Q Okay. So you said the police called EMS.

2 A Yes, ma'am.

3 Q And so once EMS arrived, where did you go?

4 A I was put in the back of the ambulance and sent to
5 the hospital.

6 Q And were you examined at the hospital?

7 A Yes, ma'am.

8 Q What happened? Did you have to take your clothes off
9 or --

10 A Yes, ma'am. I had to stand on a sheet while I took
11 my clothes off to make sure if anything was on my clothes
12 that it would fall on the sheet, and like cough to make
13 sure if anything was on me it would come in, and they
14 checked inside and checked me for any type of diseases or
15 anything.

16 Q Was it uncomfortable? I'm sure.

17 A It was very uncomfortable.

18 Q And how long would you say that process took?

19 A Somewhere between three to four hours.

20 Q I want to talk about after you left the hospital, I
21 guess it would be a couple of days later. Did Investigator
22 Conroy show you a photographic lineup?

23 A Yes, ma'am, he did.

24 Q And this was on June 19th of 2013?

25 A Yes, ma'am.

M.F. [REDACTED] - DIRECT

1 Q Where did this take place?

2 A At my room.

3 Q Investigator Conroy came back to your room and did
4 that?

5 A Yes, ma'am.

6 Q What did Investigator Conroy tell you when he handed
7 you the photograph lineup?

8 A That he was going to show me some pictures and if I
9 recognized anybody to point them out.

10 Q If you recognized anybody that had assaulted you?

11 A Yes.

12 Q Did he tell you that one of the persons in the lineup
13 was definitely the person who sexually assaulted you?

14 A No.

15 Q Were you led to believe that you had to or should pick
16 someone out?

17 A No.

18 Q Did you feel any pressure to pick somebody out of that
19 lineup?

20 A No.

21 Q How did he present that lineup to you?

22 A He told me to look at all of them carefully before I
23 said anything and then he went to go hand me the paper.

24 Q Did he suggest anything to you, which photograph to
25 select?

M.F. [REDACTED] - DIRECT

1 A No.

2 Q So he didn't influence your decision at all?

3 A No.

4 Q Now, when you were shown that photographic lineup, did
5 you see the person who sexually assaulted you displayed in
6 that lineup?

7 A Yes, ma'am.

8 Q Did you tell Investigator Conroy which photograph you
9 picked?

10 A Yes, ma'am.

11 Q Was there any doubt in your selection?

12 A No.

13 Q I'm showing you what has been previously marked as
14 State's Exhibit 10. Is this the photographic lineup that
15 you were shown?

16 A Yes, ma'am.

17 Q And how do you recognize it?

18 A How do I recognize it? I signed it at the bottom.

19 Q Is it substantially in the same condition that it was
20 when you last saw it?

21 A Yes, ma'am.

22 Q You don't see any changes or additions to it?

23 A No.

24 Q Point out on the exhibit the photograph you chose.

25 What number is that?

M.F. [REDACTED] - DIRECT

1 A Number two.

2 Q Did you mark which photograph you selected?

3 A Yes, ma'am.

4 Q And you signed it you said?

5 A Yes, ma'am.

6 Q Did you ever select a photograph of any other person
7 as being the person who sexually assaulted you?

8 A No, ma'am.

9 Q Any other lineup ever shown to you?

10 A No.

11 Q Do you see the person who sexually assaulted you and
12 who you picked in the lineup here in this courtroom?

13 A Yes, ma'am.

14 Q Please point him out for the jury.

15 A He's over there (indicating.)

16 Q Is everything that you told us today what you told the
17 police over two and a half years ago?

18 A I'm sorry?

19 Q Is everything that you told us today what you told
20 Investigator Conroy and the other police officers that you
21 spoke with over two and a half years ago?

22 A Yes.

23 Q Couple of follow-up questions. Just going back to --
24 I know this is uncomfortable, but going back to when the
25 assault was taking place you said that he penetrated the

M.F. [REDACTED] - DIRECT

1 vaginal area, I just want to make sure it's clear, what did
2 he penetrate with?

3 A His penis.

4 Q I also want to ask you, how has this affected you and
5 how you live life from now, from that point forward?

6 A I'm a little better now, it's a little better now.
7 It was a little hard at first because I couldn't be with
8 who I'm married to at first, but I'm a little better now.
9 I'm still a little jumpy but I'm fine.

10 MS. MCCALL: I know this is hard and I really
11 appreciate your answers to all of my questions, and please
12 answer any questions that Mr. Chambers has for you, okay?

13 THE COURT: Thank you, Solicitor. Mr. Chambers?

14 MR. CHAMBERS: May it please the Court, Your Honor?

15 CROSS EXAMINATION

16 BY MR. CHAMBERS:

17 Q So back on June 17th of 2013 that's when all of these
18 things allegedly occurred; is that correct?

19 A Yes.

20 Q And you were staying at the Regal Inn in room [REDACTED].

21 A Yes.

22 Q And you had been living there for about eight months;
23 is that correct?

24 A Yes.

25 Q And you were living there with your two children. And

M.F. [REDACTED] - DIRECT

1 what ages were they at the time?

2 A My daughter was seven months, and my son was three
3 years old.

4 Q And you were also living there with Walter Pope?

5 A Yes.

6 Q And Walter Pope was not there that day, right?

7 A No.

8 Q He was working?

9 A Yes, in Clemson.

10 Q And he worked for Labor Smart?

11 A Yes.

12 Q For Jim Sawyer.

13 A Yes.

14 Q And Jim Sawyer is a person you knew; is that correct?

15 A I never actually personally met him at that time, no.
16 He was someone I had spoke to on the phone a couple of
17 times but I'd never met him.

18 Q But you knew him as Jim Sawyer, Walter's boss, and you
19 knew to call him. You called him that day.

20 A Yes. I had been told by Walter always if I couldn't
21 get in touch with him to call Jim.

22 Q And this hotel, or motel I guess, there are a lot of
23 people who are living there, correct?

24 A Yes.

25 Q And they're not just making it there -- they're not

M.F. [REDACTED] - CROSS

1 just staying there for a day or two, most of the people
2 there are actually living there for some period of time.

3 A Yes.

4 Q Those rooms have full size refrigerators in them,
5 correct?

6 A They did at the time.

7 Q I mean, they look like regular motel rooms but most of
8 the people are living there.

9 A Yes, most people live there.

10 Q And that's what y'all were doing.

11 A Yes.

12 Q And there's usually a good many people staying there,
13 correct?

14 A Yes.

15 Q It's usually close to being full, would that be fair
16 to say?

17 A Never seen it that way.

18 Q But there's usually people around.

19 A Yes.

20 Q Okay. And particularly during the day there are
21 people that work at the hotel, correct?

22 A Yes.

23 Q I think the guy that owns the place is named B. K. and
24 he and his family run the place.

25 A He's the manager.

M.F. [REDACTED] - CROSS

1 Q And they have people who work and clean the rooms and
2 do things like that.

3 A Yes.

4 Q And so those people are generally there around through
5 the day and you would see them around; is that correct?

6 A Yes.

7 Q And the room that you were in was on the second floor,
8 correct?

9 A Yes.

10 Q And there were rooms located on either side of you,
11 correct?

12 A Yes.

13 Q And there were rooms that were below you as well.

14 A Yes.

15 Q And you were -- although on the second floor and the
16 office is located on the first floor, your room is
17 approximately four doors down from where the office is
18 located in the front; is that correct?

19 A Yes.

20 Q And that room also faced the gas station that is very
21 nearby and you could just stand out there outside your door
22 and see people coming and going in the gas station; is that
23 correct?

24 A Yes.

25 Q And I think that just a few doors from where you would

M.F. [REDACTED] - CROSS

1 have been standing if you're down there on the landing,
2 there is a breezeway type place that goes in between
3 different sections of rooms; is that right?

4 A Yes.

5 Q Okay. So you were standing -- the first time you say
6 that you saw Rob you were standing out on the landing in
7 front of your room?

8 A No.

9 Q Where were you?

10 A My door is open at this time, I am about a few steps
11 behind in my door.

12 Q So you're actually standing in your room.

13 A Yes.

14 Q So you don't see him walk up.

15 A No.

16 Q But you said that he walked up, and today I believe
17 you indicated that he asked for somebody named Mike Mike?

18 A Yes. When he was passing my room he asked if I knew
19 somebody that stayed at the hotel named Mike Mike.

20 Q That's sort of an unusual name, Mike Mike.

21 A It's something -- I hate to use the term but ghetto,
22 but no, it's not an unusual name, no.

23 Q But you remember it very distinctly today that it was
24 Mike Mike; is that correct?

25 A Yes.

M.F. [REDACTED] - CROSS

1 Q Now, do you remember that you gave a statement to the
2 investigator back on the day that this was alleged to have
3 happened?

4 A Yes.

5 Q Actually you first talked to a police officer named
6 Mullinax; is that right?

7 A I don't remember the name but I do remember talking
8 to them.

9 Q The uniformed police officer?

10 A Yes.

11 Q And then you also talked to this gentleman that's over
12 here, did you talk to him?

13 A Yes.

14 Q And that's the person to whom you gave the written
15 statement; is that right?

16 A Yes.

17 Q Do you remember that when you gave the statement to
18 this officer you indicated that the person was named Mookie
19 that he asked for?

20 A I believe I said a couple of different names kind of
21 like that, Mookie, Mike Mike, I said both of those
22 actually.

23 Q So now you're not really clear about the name that the
24 person said.

25 A Actually I never said I wasn't clear, you did, and I

M.F. [REDACTED] - CROSS

1 said it was Mike Mike.

2 Q Well, a few minutes ago you seemed to indicate it was
3 Mike Mike and you were pretty sure about that.

4 A And I just said that I was clear that it was Mike
5 Mike.

6 Q Okay. So when you told the officer that he asked for
7 somebody named Mookie then that was wrong?

8 A And I just said a second ago, I said that when I
9 spoke to the officer I said it was something like Mookie
10 or Mike Mike, no, it was Mike Mike.

11 Q Well, I don't want to make too big of a deal out of
12 this, but you had a chance to look this over and sign it;
13 is that right? That is a copy of your statement?

14 A Yes.

15 Q And then you signed it afterward, that's your
16 handwriting.

17 A Yes.

18 Q So you wrote the name Mookie but you didn't write the
19 name Mike Mike, did you?

20 A Yeah, I see it now. Yes.

21 Q You never put down the name Mike Mike. Okay. You
22 also indicated that the person was wearing -- okay -- we'll
23 talk about -- I don't want get into that. And after asking
24 you if he knew this person, whether it was Mookie or
25 whether it was Mike Mike, this fellow right here, Rob, he

M.F. [REDACTED] - CROSS

1 walked away; is that right?

2 A Yes, he did.

3 Q Did you see where he went?

4 A Towards where you are saying the breezeway was.

5 Q Yeah.

6 A He walked that way instead of back like where the
7 steps are.

8 Q As though he were looking for somebody.

9 A Yes, like he was going to go around the corner.

10 Q And there wasn't anything that would seem suspicious
11 about him, you weren't worried about him.

12 A And once he started going that way I didn't think
13 anything else about it.

14 Q Had you been you would have shut the door; is that
15 right?

16 A Yes.

17 Q But then you said later that you were in your room and
18 I believe you were stripping a sheet off one of the other
19 beds and he came into your room; is that right?

20 A Yes.

21 Q Exactly what did he do?

22 A He came in the room, shut the door and pulled out a
23 box cutter and told me to be quiet and then --

24 Q Where did he pull the box cutter from?

25 A I believe it was from behind him.

M.F. [REDACTED] - CROSS

1 Q So his hands were free when he walked into the room is
2 what you're saying?

3 A Like he had -- holding nothing?

4 Q In other words when he came in -- because you're
5 indicating that he pulled the box cutter so now you're -- I
6 want to make sure I understand you correctly, he walked
7 into your room, shut the door and then pulled the box
8 cutter from somewhere else.

9 A He walked in the room, closed the door and the next
10 thing I see is the box cutter, I'm not him so I don't know
11 where it came from.

12 Q Well, I'm just asking what you saw.

13 A And I'm telling you what I saw.

14 Q Do you recall which hand he had the box cutter?

15 A It would have been in his left.

16 Q So he had it in his left hand.

17 A I'm really bad with left and right.

18 Q Okay. And you said he told you to be quiet, right?

19 A Yes.

20 Q Now, again, I want to go back to the statement that
21 you gave on the day that this occurred. Do you recall
22 telling the investigator, "I kept cleaning and he came
23 back, said something, I don't know, pulled out a box
24 cutter, closed the door said 'don't do anything or I'll cut
25 you." Do you remember that?

M.F. [REDACTED] - CROSS

1 A Not really.

2 Q Okay. Well, I want to show it to you so -- once again

3 I want to make sure this is your statement.

4 A I mean if it is there that's what I said.

5 Q Just look at it because I want to make sure I'm

6 getting this right.

7 A Okay. That's what it says.

8 Q So when you talked to the officer he already had the

9 box cutter in his hand, he didn't pull it out from

10 anywhere; is that right? That's what you told the

11 investigator, right, according to this statement?

12 A Yes.

13 Q But you do recall as you said today as far as the left

14 hand, you told Officer Mullinax that he had it in his left

15 hand as well, right?

16 A You mean on that day?

17 Q Yeah.

18 A I don't know. I don't know who Officer Mullinax is,

19 I don't know any of that.

20 Q Well, the officer that was in the uniform, you

21 remember --

22 A I don't remember that officer.

23 Q But your testimony today for sure is that he had it in

24 his left hand.

25 A Yeah. I'm not distraught today.

M.F. [REDACTED] - CROSS

1 Q And so your recollection today is better than your
2 recollection was three years ago?

3 A On some things? Yes.

4 Q Okay. Now, you testified earlier, if I heard you
5 correctly, that you immediately started putting up a fight.

6 A Yes.

7 Q In what way were you putting up a fight?

8 A On the bed I'm kicking, kind of waiving my arms -- I
9 don't know what you would call it, but waiving my arms
10 around trying to stop.

11 Q And yelling at him as well?

12 A Probably.

13 Q Well, I'm asking --

14 A It was a panic situation, I don't remember exactly
15 how everything went down, but I do know I wasn't just
16 laying there, I know that much.

17 Q So you were actively fighting him and yelling at him,
18 correct?

19 A I said I was fighting, I don't know if I was yelling.

20 Q Do you remember saying that you were yelling at him to
21 leave your kids alone?

22 A It sounds like something I would say, yes.

23 Q And I believe that your testimony was that the two of
24 you fell on the floor.

25 A Yes.

M.F. [REDACTED] - CROSS

1 Q And this was during the course of fighting. This
2 fighting I guess is what caused you to fall on the floor.

3 A You start from like the middle of the bed and you
4 keep fighting you end up rolling off the side.

5 Q And you say, again, if I heard you correctly, that he
6 never -- that he kept the box cutter the entire time.

7 A As far as I remember, yes. But most of the time my
8 eyes weren't on him.

9 Q And he was using the other hand to fight you off. So
10 he's got a box cutter in his left hand --

11 A Knees, hands, everything you can think of. By the
12 time we got on the floor I don't know where a box cutter
13 was, because the only thing I remember what his hands were
14 on is my throat.

15 Q And you said he also pulled his pants down.

16 A Yes. The only time that I actually looked down his
17 pants were actually down.

18 Q Did he take them off or did he just pull them down?

19 A No. They weren't completely off, they were like a
20 little maybe below his knees.

21 Q And I would assume since you were fighting he was also
22 pulling your clothes off as well.

23 A The one point when he actually did penetrate we were
24 on the floor at that point, that's when he actually --
25 when he stuck inside of me he still had one hand on my

M.F. [REDACTED] - CROSS

1 throat and the other hand moving my panties and stuff on
2 to the other side.

3 Q So while you are actively fighting him with your arms
4 and your legs and your knees and whatever, he is holding
5 the box cutter in his left hand, fighting you off with his
6 right hand, pulling off your clothes and pulling off his
7 clothes as well.

8 A Like I just stated, on the floor I don't remember a
9 box cutter, I remember a hand around my throat. And most
10 of the time on the floor I wasn't looking at him, because
11 by that time my son was inching out of the corner, so he
12 wasn't on my mind.

13 Q You also indicated in the statement that you gave that
14 you don't believe he ever got an erection, correct?

15 A Yes.

16 Q Yes, that he did not get an erection.

17 A Yes. I stated that I don't believe he got an
18 erection just like I stated earlier.

19 Q So he actually -- your testimony is is that he was
20 able to penetrate you with a soft penis.

21 A Sure.

22 Q Do you remember the officer at some point asking you
23 about what appeared to be blood on the mattress in your
24 room?

25 A Yes.

M.F. [REDACTED] - CROSS

1 Q And did you indicate to the officer that you were
2 menstruating at that point, that you were on your period?

3 A Yes.

4 Q And is it true you were on your period during that
5 time?

6 A Yes.

7 Q I believe you indicated they even asked you if you had
8 any tampons or sanitary napkins and you indicated that you
9 did not have any.

10 A Yes.

11 Q And you said that the blood that was on the mattress
12 came from when you sat down on the mattress to put your
13 clothes back on.

14 A Yes.

15 Q And I don't mean to be over graphic, I know this is a
16 sensitive subject, so you were actively menstruating at
17 that point to the point that it created a large spot on the
18 mattress; is that correct?

19 A Yes.

20 Q The truth is you actually at least know of Rob Smith,
21 correct?

22 A I'm sorry, what was the question?

23 Q The truth is you actually know of Rob Smith. You know
24 who Rob Smith is, correct?

25 A No, I don't.

M.F. [REDACTED] - CROSS

1 Q In fact, Rob Smith worked for Labor Smart and actually
2 knew Walter Pope, correct?

3 A Neither one of us know him.

4 Q Well, you already indicated he worked for Jim Sawyer.

5 A Who, Walter?

6 Q Yeah.

7 A Yes.

8 Q So then you're aware that Rob Smith also worked for
9 Jim Sawyer.

10 A I did after the fact.

11 Q So you did become aware, at least you're willing to
12 admit today that you --

13 A No. That's nothing that I never not stated, that I
14 told from the junk -- that's one reason Jim was brought
15 into it is because Jim stated to us that's where he was
16 picked up, that he worked for him, that's how I found out.

17 Q In fact, I'm sure you're aware at this point that Jim
18 Sawyer is the one who actually called looking for Rob's
19 cellphone and that's how the police initially met with Rob.

20 A I didn't know that.

21 Q Because that's the cellphone that was in your room
22 near the bed.

23 A I didn't know about Jim calling or anything. All I
24 was told was that he actually had worked with Labor Smart,
25 I was told that a few minutes later.

M.F. [REDACTED] - CROSS

1 Q So it is a fact then that Walter and Rob worked
2 together.

3 A That doesn't mean they worked together.

4 Q But you're not willing to admit that you knew Rob.

5 A I'm not going to admit something that's not true, I
6 don't know him at all.

7 Q Okay. When he came by there looking for Mike or Mike
8 Mike or Mookie or whoever it was, when he came back you
9 invited him into the room, didn't you?

10 A No.

11 Q You told him that you needed money for milk and
12 diapers and that you would --

13 A My baby was breast fed, I don't need milk or money
14 for anything.

15 Q And you offered to have sex with him for money.

16 A No.

17 Q And what happened between the two of you was
18 consensual, is that not correct?

19 A No.

20 Q And the reason that you have made up this story and
21 pursued it the way that you have is that you got worried
22 that Walter would find out about it because they worked
23 together at Labor Smart.

24 A No.

25 Q I mean, it's an odd coincidence that these two men,

M.F. [REDACTED] - CROSS

1 the one that you were living with --

2 A You mean at a Labor Smart place that is three
3 buildings down from Regal Inn?

4 Q Yeah.

5 A It doesn't sound like coincidence to me when you
6 think about the geographics of it, because for him to walk
7 anywhere he had to pass Regal Inn.

8 Q You were worried that Walter was going to find out
9 what you had done.

10 A No.

11 Q Now, among the calls that you said you made after you
12 called 911 you called B. K. the guy that owns the place.

13 A Yes.

14 Q And he came up there, correct?

15 A Yes.

16 Q And the truth of the matter is he started yelling at
17 you and made you move out following this incident, correct?

18 A Actually, no. I stayed there a little -- a lot
19 longer after that.

20 Q But he did tell you --

21 A He told me that I was bringing problems to his hotel
22 with these police having to come and he would rather us
23 move out.

24 Q He yelled at you and told you to move out.

25 A Yes.

M.F. [REDACTED] - CROSS

1 Q You may have stayed a little while longer but B. K.
2 made it clear he wanted you out of there.

3 A Until he spoke to Walter.

4 Q I mean, there's a lot of illicit activity that goes on
5 at that place, right? I mean, you live there.

6 A Never seen any. Actually I don't -- I know a lot of
7 people that live there years before I did and never seen
8 them do any.

9 Q And you're saying that this happened essentially in
10 the middle of the day about 11:00.

11 A Yeah.

12 Q With rooms on either side and rooms below you.

13 A Yeah.

14 Q And despite the fact that you say you were fighting
15 and possibly yelling that all of this was going on,
16 nobody --

17 A Since I lived there I also know that there was only
18 person around my room at that time and they weren't even
19 in their room.

20 Q Nobody heard or saw anything, did they?

21 A From my understanding.

22 MR. CHAMBERS: That's all the questions I have for
23 you. Thank you.

24 THE COURT: Any redirect?

25 MS. MCCALL: Just one question.

M.F. [REDACTED] - CROSS

1 REDIRECT EXAMINATION

2 BY MS. MCCALL:

3 Q So, you know, Mr. Chambers, when he was asking you
4 questions you said that your eyes were not even on the
5 defendant most of the time. What were your eyes on at that
6 time when he was attacking you?

7 A Like I just stated, they were on my son, my son was
8 my main priority.

9 Q Okay.

10 MS. MCCALL: That's all.

11 THE COURT: Thank you, ma'am, you can step down. The
12 State can call its next witness.

13 MS. HOWARD: Your Honor, the State would call Adam
14 Jennings to the stand.

15 The witness, ADAM JENNINGS, was first duly sworn and
16 Testified as follows:

17 THE CLERK: Please state your full name for the
18 record.

19 THE WITNESS: Christopher Adams Jennings.

20 DIRECT EXAMINATION

21 BY MS. HOWARD:

22 Q Mr. Jennings, tell us where you live.

23 A I live in Lyman, South Carolina.

24 Q And do you work -- or did you work for EMS?

25 A I did.

ADAM JENNINGS - DIRECT

1 Q And is that where you were working in June of 2013,
2 specifically June 17th of 2013?

3 A Yes, ma'am, it is.

4 Q On that date did you respond to the Regal Inn, which
5 was 536 Wade Hampton Boulevard?

6 A Yes, ma'am.

7 Q Tell me what you did -- or how you came to respond
8 there, and tell us what you did when you got there, and
9 just the process as an EMS operator or employee what you do
10 when you respond to a scene.

11 A Okay. So we were dispatched to the call as a sexual
12 assault. Upon arrival to the scene Greenville City PD was
13 already on scene, and the patient was at that time still
14 in the room. We were informed by Greenville City PD that
15 the patient was being photographed by forensics. Shortly
16 thereafter I believe if the notes are correct, about three
17 minutes after our arrival on scene the patient came down
18 the steps and to us, was assisted into the back of the
19 truck. At that time normal protocol says that we take
20 vitals, gather the patient's information asking pertinent
21 medical questions, go from there transporting to the
22 hospital.

23 Q So did you -- you were the one that transported her to
24 the hospital?

25 A I was the primary caregiver.

ADAM JENNINGS - DIRECT

1 Q And which hospital did you go to and where at the
2 hospital do you take someone that's a sexual assault
3 victim?

4 A Okay. We went to Greenville Memorial, I don't know
5 what the hospital's normal protocol is as far as where
6 that patient is taken. Prior to going to the hospital
7 normal EMS protocol says we call the hospital, notify them
8 of our arrival, kind of give them a heads-up of what's
9 headed their way. That particular day we were taken into
10 the CHF unit in the emergency department, it's a more
11 private setting. At that time I waited for a transfer of
12 care, the ER staff told me they were waiting on one of the
13 sexual assault nurses to come down.

14 Q Then so as part of your role as an EMS, paramedic or
15 as the responding EMS officer, do you just put the patient
16 in the back of the car and move on or do you do part of an
17 examination yourself?

18 A So in the case of a sexual assault it would not be
19 normal to conduct a -- any sort of gynecologic or an exam
20 like that on a patient. So in this particular case it was
21 in my opinion about comforting the patient and doing
22 anything that we could during the short transport that we
23 had to ensure that she was okay and comfortable.

24 Q Did you take any vital signs or notice anything that
25 you noted on your report about the patients?

ADAM JENNINGS - DIRECT

1 A Uh-huh, two sets of vital signs. I will say the
2 patients did also have a secondary complaint of neck pain,
3 there was some bruising that I didn't notate on my patient
4 care report at that time.

5 Q And did she tell you -- did she tell you why she
6 called or what had happened just for purposes of your
7 treatment? Did she tell you she was sexually assaulted or
8 did law enforcement?

9 A Law enforcement.

10 Q So after you took her to the ER and dropped her off at
11 the hospital, did you have any other involvement in the
12 case?

13 A No, ma'am.

14 Q Did you know the victim?

15 A No, ma'am.

16 Q Have you come to know her since?

17 A No, ma'am.

18 MS. HOWARD: Thank you. No further questions.

19 THE WITNESS: Thank you.

20 MR. CHAMBERS: No questions for Mr. Jennings, Your
21 Honor.

22 THE COURT: Thank you, sir, you can step down. You
23 can call your next witness.

24 MS. HOWARD: Your Honor, the State's next witness is
25 Dr. Alissa Manfredi. I'm going to check if she's here.

ADAM JENNINGS - DIRECT

1 (Break in proceedings.)

2 MS. HOWARD: At this time the State calls Dr. Alissa
3 Manfredi.

4 The witness, ALISSA MANFREDI, M.D., was first duly
5 sworn and testified as follows:

6 THE CLERK: Will you state your full name for the
7 record?

8 THE WITNESS: Alissa Manfredi.

9 DIRECT EXAMINATION

10 BY MS. HOWARD:

11 Q Dr. Manfredi, would you please give us some
12 information concerning your educational background, where
13 you work now and your background as an M.D.?

14 A Sure. I went to undergraduate at the University of
15 Delaware, I went to medical school at Jefferson Medical
16 College in Philadelphia. I did my residency training at
17 Wake Forrest University Baptist Medical Center in
18 Winston-Salem. Then I worked for three years in primary
19 care in the State of Kentucky. And I worked for a year in
20 Indiana in the emergency department, and then when I moved
21 to Greenville I worked in the emergency department at GHS
22 for about six years, and then I am now the medical
23 director for Gentiva Hospice.

24 Q And were you working as the ER doctor at the hospital
25 back on June of 2013?

ALISSA MANFREDI, M.D. - DIRECT

1 A Yes.

2 Q Specifically were you working on the day of June 17th?

3 A I wouldn't know, if I was referred to the record,
4 but --

5 Q Just to refresh your memory I'm going to pass up the
6 medical record.

7 MS. HOWARD: Any objection from you.

8 MR. CHAMBERS: No.

9 Q Were you working June 17, 2013, Dr. Manfredi?

10 A My name is on the record for that day, yes.

11 Q So during this time can you tell us from looking at
12 your record if you had the opportunity to treat a patient
13 by the name of M.F. ?

14 A According to this record, yes.

15 Q What time did she arrive at the ER? Again, refer to
16 your notes if you need to.

17 A It appears that the presenting problem was
18 timestamped at 14:26.

19 Q So when the patient was at -- when M.F. was at
20 the hospital did you obtain general information concerning
21 her when she was there? How does that process work when
22 someone is admitted into the ER?

23 A Typically they come from ER triage, they are triaged
24 by a nurse in that part of the emergency department. Most
25 often times history is taken, the presenting problem is

ALISSA MANFREDI, M.D. - DIRECT

1 expressed and then the patient is brought to the
2 appropriate part of the emergency department.

3 Q And in the case of M.F. [REDACTED], was her presenting
4 problem that she had been sexually assaulted?

5 A According to this record, yes.

6 Q So on a sexual assault patient, tell me the process
7 for that. Do you do treatment the same way that you would
8 any other patient or is there a special protocol for that?

9 A Typically at the time when I was working in the
10 emergency department the patients who reported that they
11 had been sexually assaulted were brought to a specific
12 part of the emergency department and evaluated by a nurse
13 that specifically took care of sexual assault victims.

14 Q Is there a specific form you use for that protocol or
15 is that protocol followed every time someone comes to the
16 ER?

17 A The officers that bring the patients, if the patient
18 has called 911, bring a kit, it is a sexual assault kit
19 that's expressly followed because -- the kit is expressly
20 followed.

21 Q Tell us about expressly following the kit. What has
22 to happen -- is that about a physical examination, or could
23 you tell us about that, please?

24 A It does involve a physical examination. It involves
25 paperwork, it involves physical examination, it involves

ALISSA MANFREDI, M.D. - DIRECT

1 samples that are taken from the patient. Typically it is
2 done by a nurse that is specially trained in that area
3 and/or a physician who is in the emergency department at
4 the time.

5 Q And if you would just again detail that physical
6 examination for us and what happens when someone comes in
7 as a victim of a sexual assault.

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1 A The patient is interviewed and asked about the events
2 surrounding the action, and there are forms to be filled
3 out based on the physical exam, so essentially from head
4 to toe the patient is examined. Those notes are recorded
5 on paperwork that is then secured in the kit. Also
6 secured in the kit are samples taken from potentially oral
7 swabs, also vaginal swabs, rectal swabs and it does
8 involve a pelvic exam of the speculum.

9 Q What is a speculum?

10 A A speculum is a device used to examine the external
11 vaginal mucosa as well as introitus, so it has to be
12 inserted into the introitus to examine the inside of the
13 vaginal wall, and cervix if it is present.

14 Q So would you describe this as an invasive procedure or
15 uncomfortable, or comfortable? How would you describe the
16 procedure?

17 A It does invade an orifice, so --

18 Q Is it -- I mean, is it seemingly an uncomfortable
19 or -- how would you describe it from --

20 A I don't think many people would describe that as
21 comfortable.

22 Q So you have some medical records that you're referring
23 to right now?

24 A Yes.

25 Q Is that -- when a patient comes in and y'all document

ALISSA MANFREDI, M.D. - DIRECT

1 everything it's kept in some form of medical record under
2 their name; is that correct?

3 A Correct.

4 Q And how is that stored?

5 A On the computer. There are multiple types of
6 computer medical records, but this -- all medical records
7 that at least can be reprinted are stored on a computer.

8 Q I want to focus real fast to specifically the victim
9 in this case, M.F. [REDACTED], and the possible locations
10 of injury as described to you by the victim. Did she
11 describe a sexual assault? Did she tell the treating nurse
12 or you as the physician she was sexually assaulted?

13 A According to this record, yes, that was her
14 presenting issue was sexual assault.

15 Q And did she say what form of sexual assault? And I
16 know that's an odd question, but did she say what kind of
17 sexual assault occurred?

18 A I'm not sure I understand your question.

19 Q Did she say that there was oral sex, vaginal
20 penetration, anal penetration? What does your record show?

21 A I can't glean anything from this record as to the
22 specifics of that, that's not on this record.

23 Q Okay. Did she complain of any physical or violent
24 contact that she had with the person that assaulted her?

25 A According to what I wrote in the text portion of the

ALISSA MANFREDI, M.D. - DIRECT

1 notes where I was able to document I put "Patient
2 evaluated for SA," which would be sexual assault. "Please
3 see report for details of that," meaning the report that's
4 in the kit that's sealed. "I am evaluating right-sided
5 neck pain. Patient reports that her assailant choked
6 her."

7 Q And what did you do for her for that? Did you treat
8 that in any way?

9 A According to the medication profile I prescribed
10 Cataflam, which is an antiinflammatory, and according to
11 nursing notes I prescribed this antiinflammatory to help
12 with her pain.

13 Q Now, as to the physical examination that dealt with
14 the sexual assault, do your notes say anything that was
15 noted from that examination?

16 A According to my physical exam I recorded right-sided
17 neck tender, slight swelling and red marks and bruising,
18 that is the neck exam. That's the only physical exam
19 that's reported on this record.

20 Q Okay. I'm going to point to the last page for you.
21 And maybe I'm not using the right term when I say physical
22 exam, there might be another, but pointing to the second to
23 the last page, what does the report notate there?

24 A So there are other physical exam findings based on
25 the nursing assessment that are bolded, that typically

ALISSA MANFREDI, M.D. - DIRECT

1 means in our medical record that we used at that time that
2 was something that had to be entered, and it's reported
3 that patient appears in pain and distress. Patient is
4 oriented to person, oriented to time. Other bolded
5 physical exam findings are lacerations noted to the
6 genital area and bloody vaginal discharge.

7 Q So there are lacerations to the genital area notated
8 on that.

9 A Correct.

10 Q And did you -- what did you treat her -- did you
11 prescribe anything or do anything in forms of treatment for
12 the sexual assault?

13 A Yes. As part of the screening patients are screened
14 for hepatitis, gonorrhea, chlamydia and pregnancy. And so
15 I treated her based on this record with antibiotics that
16 would empirically treat for gonorrhea, trichomoniasis.
17 And I also see that I prescribed her Zofran which is an
18 anti-medic which I will often use when patients have to
19 take multiple medications at a time that could potentiate
20 nausea.

21 Q So all of those that are sort of the protocol as you
22 said, all of those together can cause nausea?

23 A Correct.

24 Q So that's why you prescribed the extra Zofran.

25 A That's why I would have done that, yes.

ALISSA MANFREDI, M.D. - DIRECT

1 Q Do you know if they take those meds while they're
2 still there? Is that something -- is that also protocol
3 that they are to take all of that medication there?

4 A Yes.

5 Q Did you know the victim before this or -- and have you
6 had any -- other than being called to testify today, have
7 you had any other involvement in this case?

8 A I have not.

9 Q As a M.D. or any other capacity?

10 A I have not.

11 MS. HOWARD: No further questions at this time, please
12 answer any questions that Mr. Chambers may have for you.

13 CROSS EXAMINATION

14 BY MR. CHAMBERS:

15 Q Those medications that you gave, those are just
16 basically a prophylactic measure that you give anybody that
17 alleges a sexual assault, correct?

18 A Zofran is not a prophylactic drug, but the other
19 drugs, yes, we empirically treat.

20 Q You didn't have any specific indication that she had
21 been exposed to any sort of a STD or anything, you were
22 just taking precautions in case that had happened, correct?

23 A Would you mind --

24 Q In other words, you do this on -- as just part of the
25 normal protocol, it's not because that there was a specific

ALISSA MANFREDI, M.D. - CROSS

1 indication that she had, in fact, been exposed to a sexual
2 transmitted disease or anything like, it's a precautionary
3 step is what I'm driving at.

4 A I guess my answer to that would be it is the protocol
5 that we use when someone alleges a sexual assault
6 specifically.

7 Q And you, of course, had no independent recollection
8 about anything that you're testifying to, you're going
9 based on your notes.

10 A Based on the medical record.

11 Q And if you would have noted anything that you found
12 given the type of case it was it would be in that medical
13 record, correct?

14 A There is that medical record. There is also the
15 physical exam finding sheet that is in the SA kit.

16 Q Well, you -- in other words, the medical records that
17 you generated through your examination, knowing that you
18 would not have an independent recollection, you would have
19 listed any finding in those records, correct? You would
20 want it to be accurate when you came in here and talked to
21 the jury today.

22 A I'm not sure I have an answer, I'm sorry.

23 Q I'm not trying to be overly complicated, I'm really
24 not, I'm surprised at kind of how this is going. Really
25 here is what I'm asking you. When you complete your

ALISSA MANFREDI, M.D. - CROSS

1 paperwork you are going to note all of your findings.

2 A What I typically do -- and I would have to refer to
3 this record -- is if there is a SA kit done I will almost
4 always say sexual assault kit completed, please see that
5 for details, and then I will know anything else on the
6 EMR.

7 Q Okay. I feel like you had a much easier time
8 answering her questions. I'm not trying to be combative, I
9 just wanted to know if you noted everything that you found.
10 Did you note all of the possible physical injuries that
11 were found?

12 A They're noted.

13 Q Okay. You wouldn't have left anything off, correct?

14 A I don't see why I would have.

15 Q Okay. And so what you found was that there was a
16 laceration to the vagina, that was one of the things you
17 found, correct?

18 A That was in the nursing documentation.

19 Q So that was not something you found.

20 A I would have to look at the record to see if I noted
21 anything about it on the EMR.

22 Q Okay. And then you said that there was some
23 tenderness and perhaps slight swelling and redness to the
24 right side of the neck?

25 A I do remember just reading that, yes.

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1 Q And I didn't hear you testify to finding any other
2 injuries anywhere; is that right?

3 A Unless there's something on that record I didn't
4 read.

5 Q So no bruises, cuts or anything to any arms, elbows,
6 knees, legs, anything like that?

7 A Not unless it's on there, no, sir.

8 Q And you indicated that there was a bloody discharge.
9 Do your records reflect that the bloody discharge was due
10 to the fact that the person that you examined in this case
11 was menstruating, that she was on her menstrual cycle?

12 A The records do say that.

13 Q And that would be the reason for the bloody discharge,
14 right?

15 A It's a possibility, yes.

16 Q I mean, wouldn't it be more than a possibly if
17 somebody is menstruating, I mean, the bloody discharge is
18 kind of part and parcel to the whole thing, correct?

19 A You would most often see that, yes.

20 MR. CHAMBERS: Okay. Thank you.

21 THE COURT: Anything else?

22 MS. HOWARD: Nothing further from the State.

23 THE COURT: Thank you, ma'am, you may step down, you
24 are free to leave. Let's take about a ten minute recess,
25 kind of refresh ourselves and get ready for the rest of

ALISSA MANFREDI, M.D. - CROSS

1 afternoon, okay? Don't talk about the case.

2 (The jury left the courtroom and a recess was taken.)

3 THE COURT: Are y'all ready for the jury?

4 MS. HOWARD: Yes, sir.

5 MR. CHAMBERS: Yes, sir.

6 THE COURT: Bring them all in if you're ready.

7 (The jury returned to the courtroom.)

8 THE COURT: All members of the jury are present. You
9 may call your next witness.

10 MS. HOWARD: Your Honor, at this time the State calls
11 Lisa Crowder.

12 The witness, LISA CROWDER, was first duly sworn and
13 testified as follows:

14 THE CLERK: Please state your full name for the
15 record.

16 THE WITNESS: Mary Lisa Crowder.

17 DIRECT EXAMINATION

18 BY MS. HOWARD:

19 Q Ms. Crowder, where do you live?

20 A I live at the [REDACTED], Greenville,
21 South Carolina.

22 Q And are you currently working?

23 A Actually I'm not, I start a new job next week.

24 Q In June of 2013 were you working at that time?

25 A I was working at Regal Inn on Wade Hampton Boulevard.

LISA CROWDER - DIRECT

1 Q And specifically, do you remember working on the
2 morning of June 17th of 2013?

3 A Yes, ma'am.

4 Q And can you tell the Court and this jury what you saw
5 the day of June 17th of 2013 that brings you in the court
6 today to testify?

7 A I was in the laundry room doing my morning laundry
8 and my boyfriend came and said that he saw a suspicious
9 bag outside the upstairs laundry room, and we're always
10 supposed to watch out for suspicious stuff there, so --

11 Q I'm going to stop you to give them little points of
12 reference. Laundry room, was this on the first floor?

13 A I was in the first floor laundry room.

14 Q And you said your boyfriend came down and told you
15 there was a suspicious bag upstairs.

16 A Yes.

17 Q Okay. Keep going.

18 A And I went up to see what was going on. We always
19 got to go check stuff out, so we went up to check it out
20 and as we start down the breezeway there is a black guy
21 starts running towards us and we kind of get out of the
22 way, he goes past us and he had the bag over his shoulder.
23 It was a camouflaged sandy colored bag, and he went down
24 the stairwell and crossed the parking lot like he was
25 going across the highway.

LISA CROWDER - DIRECT

1 Q Was this man that went past you, was he slowly
2 walking? Describe --

3 A No, he was in a hurry.

4 Q And the backpack you saw, is that the one that your --

5 A Yeah. He said that looked like the same book bag.

6 Q So you're just -- tell me what you did at the Regal
7 Inn to where you were down in the laundry room and working?

8 A I was a housekeeper. I did laundry and did the --
9 cleaned up the rooms.

10 Q And how long had you been there?

11 A About two years.

12 Q You knew the area pretty well?

13 A Yes, ma'am.

14 Q Do you know what direction this man came from? Let me
15 ask that a better way. Were you familiar with the victim
16 in this case, M.F. [REDACTED]?

17 A Yes, only by cleaning her room.

18 Q Was she living at the Regal Inn?

19 A Yeah, she was living at the Regal Inn.

20 Q Who was she living with, do you remember?

21 A I don't remember if it was her husband or boyfriend
22 and two children.

23 Q Okay. And what floor was that on?

24 A Second floor.

25 Q So when you saw this man running past you, or did you

LISA CROWDER - DIRECT

1 say hurrying past you?

2 A Yes, ma'am.

3 Q Did you notice his clothing in any way? Was he doing
4 anything with his clothes?

5 A His pants was kind of saggy and he was trying to pull
6 them up and fixing his -- I couldn't see real good, but
7 his pants was sagging and he was trying to pull them up.

8 Q And did you give a statement to the police that you
9 saw this?

10 A Yes, ma'am.

11 Q Was that that day or immediately, or do you remember?

12 A No, it was just a little bit later. I had started
13 back doing my job because there's always something going
14 out there so I really didn't think much about it. And the
15 police came and found me, I went back down trying to do
16 laundry and they come found me.

17 Q And is what you're telling us today the same thing you
18 told them June 17th of 2013?

19 A Yes, ma'am.

20 Q And other than testifying in court today, did you have
21 any other involvement with this case or with the victim or
22 anything?

23 A No. I haven't actually even thought about it since
24 then, it's been like almost three years ago, so no.

25 MS. HOWARD: At this time no further questions, if you

LISA CROWDER - CROSS

1 will answer any questions at that Mr. Chambers has.

2 CROSS EXAMINATION

3 BY MR. CHAMBERS:

4 Q So you were working downstairs. Were you working on
5 the same side of the building as room [REDACTED]?

6 A It's in the middle, the laundry room is in the middle
7 of the bottom floor breezeway.

8 Q Were you in the laundry room itself?

9 A Yes, I was.

10 Q And Mr. Hobson came and got you?

11 A Yes.

12 Q And what was were Hobson doing there?

13 A He was doing maintenance.

14 Q So both of you worked there.

15 A Yeah. He was only there on days that it was raining
16 or -- he has a regular job, but that day he had -- he was
17 there to help me. He didn't have -- they didn't have work
18 for him to do.

19 Q But he was there that day working.

20 A Yes.

21 Q And the fellow that owns the place, they call him B.

22 K.

23 A Yes.

24 Q What's his name?

25 A I'm actually not 100 percent sure, I only call him B.

LISA CROWDER - CROSS

1 K. Their last name is Patel, I don't know.

2 Q I think all the hotel owners seemed to be named Patel.

3 A Right.

4 Q So at any rate, Leonard came and told you that he saw
5 a backpack. Now, where was the backpack?

6 A It was sitting outside the laundry room upstairs.

7 Q Just laying there?

8 A It was sitting in front of the door. It's like a
9 corner and as you go around that corner the girl's room is
10 like three doors down from that corner.

11 Q So did you stay there with the backpack, did you pick
12 it up or take it somewhere?

13 A No. Actually we didn't get up to the backpack. He
14 had it -- the boy had it on him as he was coming towards
15 us.

16 Q And that was the first time you had seen a backpack,
17 right?

18 A Yes.

19 Q Because you didn't see it in the laundry room, you're
20 just going by what Leonard told you.

21 A Yeah.

22 Q And you saw a fellow come by you and you said he
23 seemed like he was in a hurry.

24 A Yes.

25 Q But other than that -- you said that his pants were

LISA CROWDER - CROSS

1 sagging. That's pretty common, right?

2 A Yes.

3 Q Everybody walks around with their pants falling off of
4 them.

5 A Uh-huh.

6 Q And you didn't notice anything else about him and he
7 went across the parking lot and left.

8 A He went across the parking lot like he was going to
9 run across the highway towards the Kangaroo.

10 Q Across Wade Hampton?

11 A Yes.

12 Q The Kangaroo is kind of -- I can't ever remember the
13 name of the street that cuts through there, but there's a
14 street that runs right by the Kangaroo right there, right?

15 A Yeah, but I don't remember the name of it either.

16 Q Now, you said there was always something going on out
17 there. What do you mean by that?

18 A It's just a low rate hotel, that's all I'll say.

19 Q Is there prostitution that goes on out there?

20 A Not as much as drug related stuff.

21 Q But you wouldn't be surprised if there was
22 prostitution.

23 A No, I wouldn't.

24 Q And drug activity is common.

25 A Yes.

LISA CROWDER - REDIRECT

1 Q And the police are out there on a fairly frequent
2 basis; is that right?

3 A Uh-huh.

4 Q If things are getting out of hand with somebody has B.
5 K. been known to ask people to move out or leave?

6 A Yes.

7 MR. CHAMBERS: That's all of the questions I have for
8 you. Thank you.

9 MS. HOWARD: Just a few.

10 THE COURT: All right.

11 REDIRECT EXAMINATION

12 BY MS. HOWARD:

13 Q Mr. Chambers asked you if there was always something
14 going on. In the time you were there, was there ever any
15 issues other than this day with the victim, M.F. [REDACTED]
16 [REDACTED], and her boyfriend.

17 A Not that I know about.

18 Q And were you there often?

19 A Just about seven days a week, I was the only
20 housekeeper at that time.

21 Q And just one other point of clarification, you said
22 that the bag was close to the girl's room. When you said
23 the girl's room, did you mean M.F. [REDACTED]?

24 A Yeah, I meant M.F. [REDACTED].

25 MS. HOWARD: No further questions.

JIM SAWYER - DIRECT

1 THE COURT: Thank you ma'am, you can step down and
2 you're free to leave. Call your next witness.

3 MS. HOWARD: State calls Jim Sawyer to the stand.
4 The witness, JIM SAWYER, was first duly sworn and
5 testified as follows:

6 THE CLERK: Please state your full name for the
7 record.

8 THE WITNESS: James Weldon Sawyer.

9 DIRECT EXAMINATION

10 BY MS. MCCALL:

11 Q Mr. Sawyer, can you please tell us where you are
12 employed today?

13 A I actually started a new job this coming up Monday,
14 I'm on my two week notice right now, so --

15 Q What will you be doing on Monday?

16 A I going to be staying in the staffing industry, going
17 to be working for a local staffing company here in town.

18 Q So when you say your two weeks notice, where were you
19 working?

20 A I was working for Labor Smart.

21 Q And how long did you work there?

22 A Three and a half years.

23 Q Tell us with a Labor Smart is.

24 A Okay. Labor Smart is an on-demand staffing company,
25 it's a lot of day labor especially to the construction

JIM SAWYER - DIRECT

1 industry. How we typically operated was during morning --
2 we opened at 6:00 a.m. between about 6:00 and 8:00 a.m.
3 people wanting to work would come to the office, we would
4 give them work tickets and send them out to whatever job
5 we had that day.

6 Q What was your job position?

7 A I was the branch manager.

8 Q So with being branch manager what were your general
9 duties.

10 A Everything. I would dispatch workers in the morning
11 to go to work. I was also responsible for sales, bringing
12 in new clients, finding places to put people to work, also
13 recruiting, a little bit of everything. I ran the office
14 here in town.

15 Q Backtrack, I meant to ask you, why are you leaving --
16 why did you put in your notice to Labor Smart?

17 A When I was working with Labor Smart towards the end I
18 got promoted to district manager and I was covering six
19 states and I wasn't home very much, so this new job I'm
20 going to be able to be in Greenville all of the time so
21 I'm happy about that.

22 Q So about how many employees would you say typically
23 are working at Labor Smart at a given time?

24 A Usually -- probably around 35 or 40 we would send out
25 each day.

JIM SAWYER - DIRECT

1 Q And so you said that you placed them in different job
2 sites. About roughly -- I know it's an estimate -- how
3 many different job sites at any given time are you placing
4 employees for?

5 A Probably 15 to 20 different job sites.

6 Q And one or two employees going to each one of those
7 different --

8 A Exactly.

9 Q The actually office of Labor Smart where these people
10 that you said were coming in to check between 6:00 and
11 8:00, how big is that actual office?

12 A It was just a small retail type establishment, but it
13 was pretty small.

14 Q Were you really the only one that was staying there
15 for the day?

16 A Well, I would come in, send everybody to work. Once
17 everybody had cleared out typically that's when I would
18 lock the office and go make sales calls and then come back
19 in the afternoon and cut checks for everybody.

20 Q And during these hours between 6:00 and 8:00, was it
21 pretty busy, different people come in and out?

22 A Yeah, people coming and going.

23 Q Kind of like a rolling, revolving door?

24 A Uh-huh.

25 Q And was it different people that came each day or some

JIM SAWYER - DIRECT

1 person might come Monday and not come Tuesday, or was it
2 pretty --

3 A It was. We paid daily so somebody might show up
4 everyday consistently, other people might show up once and
5 we would never see them again, sometimes people would show
6 up every few days whenever they wanted to work.

7 Q Tell us where this office, Labor Smart, is located.

8 A 1014 Wade Hampton, it's directly across the street
9 from the IHOP and next to the Dollar General.

10 Q And so is it close to the Regal Inn motel?

11 A Yes, it is.

12 Q Now, do you know the defendant in this case, Robert
13 Smith, that's sitting over at the table?

14 A Yes, he worked for me.

15 Q That's what I was going to say is how do you know him?
16 So he worked for Labor Smart. About how long would you say
17 he worked there?

18 A A few months.

19 Q Did Walter Pope work for you back in June of 2013?

20 A He did.

21 Q And so based on your description of how Labor Smarts
22 worked, although Walter Pope and the defendant, Robert
23 Smith, technically worked for you in the year of 2013, is
24 it possible that they did not know each other?

25 A That is possible.

JIM SAWYER - DIRECT

1 Q And I don't know if I asked him about the defendant,
2 was he working for you in June of 2013?

3 A Yes.

4 Q I'll turn your attention to June 17, 2013, the day of
5 the incident we're here for. Were you working on that day?

6 A He did not work that day.

7 Q No, I'm asking were you.

8 A Yeah, I was at work that day.

9 Q Now, the next question, did the defendant work on that
10 day?

11 A He did not work. He did come to the office that
12 morning but I didn't have any place I could send him.

13 Q Do you remember about what time he left Labor Smart?

14 A I think it was around 10:00 because he did wait
15 around.

16 Q Do you remember if Walter Pope worked on June 17th?

17 A He did.

18 Q Do you remember what job Walter was working that day?

19 A Yeah. We were doing construction out at Aspen
20 Heights Apartments out in Clemson and he was on that job.

21 Q And so while you were at work on June 17th of 2013,
22 did you get a call from somebody looking for Walter?

23 A I did.

24 Q Do you remember that conversation?

25 A Yeah. It was a female that called and she was upset

JIM SAWYER - DIRECT

1 and crying, I don't really like to get involved with
2 things, but she was trying to get ahold of Walter and so I
3 told her I would have him call her back.

4 Q And is that typical for employees to call you looking
5 for -- I guess employee's family members or friends to call
6 you looking for the employee?

7 A It is. Because during any given week if you came to
8 my place to work I could send you to 15 different places,
9 and so they would call the office and typically I was the
10 one that knew where everybody was.

11 Q So now I turn your attention to the next day, June
12 18th of 2013. Did you see the defendant that day?

13 A I did.

14 Q Did you call the defendant on June 18th of 2013?

15 A I did.

16 Q And do you remember why you were calling him?

17 A I had a job for him and he was running late and so I
18 called to see where he was.

19 Q Did he answer his phone?

20 A He did not answer when I called.

21 Q Did the defendant show up for work later after that
22 call?

23 A He did, he showed up later on.

24 Q Did you know why the defendant didn't answer his
25 phone?

JIM SAWYER - DIRECT

1 A Yeah. Well, I asked him, I said, "Why are you late?
2 I called you." And he told me he had lost his phone.

3 Q Well, when he arrived to Labor Smart on June 18th, did
4 he ask you about anything?

5 A He did. He asked if I had heard about all of the
6 commotion that had happened down at the Regal Inn and I
7 told him no, I hadn't heard anything about it.

8 Q Did he tell you anything else about this Regal
9 incident?

10 A He said that there was a man with a knife down there
11 and a lot of police and a lot of people.

12 Q Did the defendant use your phone to try to call your
13 cellphone to try to find it?

14 A Yeah. When he said his phone was missing it wasn't
15 going straight to voice mail when I called so I called
16 back, somebody answered and I handed the phone to him so
17 he could track his phone down.

18 Q Do you know who answered the defendant's cellphone?

19 A I didn't at the time, but it was a police officer is
20 the one that had answered the phone.

21 Q How do you know that?

22 A Because the police -- when we called, you know, they
23 said -- whoever was on the phone said that they would
24 bring the phone to Robert and, you know, wanted to know
25 where the address was and then the police showed up.

JIM SAWYER - CROSS

1 Q And what happened when the police showed up?

2 A They asked a few questions and took him into custody.

3 Q Is everything that you told us today what you told the
4 police over two and a half years ago?

5 A Yes.

6 Q Did you have any other involvement in this case?

7 A No.

8 MS. MCCALL: Would you please answer any questions
9 that Mr. Chambers has for you?

10 CROSS EXAMINATION

11 BY MR. CHAMBERS:

12 Q Now, you said 35 to 40. Were there 35 to 40 regular
13 people at the time or was that an ever changing number?

14 A It was an ever changing number.

15 Q How do you get your employees at Labor Smart?

16 A People would just come in and fill out applications,
17 we would run ads on Craigslist, we would do job fares with
18 Goodwill, word of mouth, all over the place.

19 Q But they can't just randomly come by. There is some
20 sort of an application process that takes place?

21 A Yeah. The person comes by, fills out an application
22 and brings two forms of ID so we can E-verify them, yeah,
23 but that's how you get started.

24 Q You want to make sure that you're not hiring
25 undocumented workers or somebody whose going to be

JIM SAWYER - CROSS

1 dangerous to the people that you're sending out and that
2 sort of thing.

3 A That's why we ask for the two forms of ID so that we
4 can run the E-verify.

5 Q But typically 35 to 40 is the number of people that
6 you would have?

7 A Yes.

8 Q And these weren't -- it wasn't a regular 9:00 to 5:00
9 type, they would show up as they wanted to work once you
10 had E-verified them and they would essentially gather
11 outside your office and wait for you to come in to see if
12 they had work if they wanted to work that day.

13 A Yeah, exactly. If you wanted to work you would just
14 show up, be there at 6:00 and if I had a place to send
15 them then I would send everybody out.

16 Q So typically when you would show up there would be a
17 group of people out there waiting on you.

18 A Yes, sir.

19 Q So they would all just be kind of hanging out together
20 waiting on you to come in.

21 A Well, there would be people waiting usually at 6:00
22 in the morning.

23 Q Yeah. And then even after you started to send people
24 out they would hang around for at least awhile looking to
25 see if there was going to be a job that you could send them

JIM SAWYER - CROSS

1 on.

2 A Yeah. If I didn't have them already on a work
3 ticket, yes.

4 Q So the people that were working there, even though
5 they didn't necessarily work together, they did spend time
6 together there essentially if nothing else waiting to see
7 if there was a job.

8 A Yeah. There would be people waiting in our waiting
9 room.

10 Q So when you say it's possible that Rob Smith and
11 Walter Pope didn't know one another, it's also very
12 possible that they did know one another, or at least were
13 acquainted with one another, correct?

14 A I mean, I guess it's possible, yes.

15 Q They both, for example, that day, June 17th, they had
16 both been there that morning, correct?

17 A Yes.

18 Q And that probably wasn't the only time that they were
19 there on same day, right?

20 A Yeah. That's possible, yeah.

21 Q And typically you would -- even if everybody that was
22 working for you at the time showed up you wouldn't have
23 more than 40 people, right?

24 A Correct.

25 Q And typically that wouldn't be the case, right? There

JIM SAWYER - CROSS

1 would be fewer than that.

2 A Yeah. It would usually be fewer than that because
3 not everybody showed up at the same time.

4 Q And so it wouldn't surprise you at all if they knew
5 each other, would it?

6 A They could have met each other, I really don't know
7 about that.

8 Q Now, you're in fairly close proximity there, at least
9 you were when you were working for them, to the Regal Inn,
10 right?

11 A Yes.

12 Q And there's another hotel, kind of a similar hotel
13 that's over on the other side of Wade Hampton that would
14 have been close to you as well, correct? I cannot remember
15 the name of it.

16 A Yeah. There's a few hotels right there on Wade
17 Hampton.

18 Q And are you aware that a lot of the people that worked
19 for you are what you might refer to as transient type
20 people, they don't necessarily have a permanent address?

21 A Yeah.

22 Q And so they lived at places like the Regal Inn and
23 this other hotel that we're talking about, right?

24 A Yes, sir.

25 Q And you were aware of that.

JIM SAWYER - CROSS

1 A Yes, sir.

2 Q Because a lot of them would probably just walk down
3 there from the hotel where they were staying.

4 A Yeah. We would have a lot of people walk to the
5 office.

6 Q So if something had happened at one of these hotels it
7 would not be at all unusual for there to be some discussion
8 among people that were there about that having gone on; is
9 that right?

10 A Say that again.

11 Q In other words, if something had happened at one of
12 these hotels where these people stayed, it wouldn't be
13 unusual for somebody to come in and start talking about it
14 there at Labor Smart, right?

15 A I guess, sure.

16 Q You've probably had discussions like that with people,
17 "Hey, did you see this or did hear about that," or whatever
18 about these people that worked there, is that fair to say?

19 A Yes.

20 Q And obviously these people would talk about that among
21 one another, that would be -- just common sense would tell
22 us that would be the case, true?

23 A Okay. Sure.

24 Q And you had tried to call Rob only to find out he had
25 lost his cellphone, right?

JIM SAWYER - CROSS

1 A Yes.

2 Q And he didn't know where it was so essentially he
3 enlisted your help and said, "Hey, would you call it?" And
4 you did that.

5 A Uh-huh.

6 Q Because he's looking for his phone. He didn't seem
7 hesitant about trying to find his phone or anything like
8 that, right?

9 A Well, he just mentioned that he'd lost his phone so I
10 was going to help him and call it.

11 Q So when you called it and you got somebody on the
12 phone you put him on the phone and he talked to him.

13 A Yes.

14 Q And then you later found out that that was the police.

15 A Yes.

16 Q And that has been your, as you told the solicitor,
17 only involvement with this case.

18 A Yes.

19 MR. CHAMBERS: All right. Thank you very much.

20 REDIRECT EXAMINATION

21 BY MS. MCCALL:

22 Q So as the branch manager of Labor Smart or when you
23 worked for them did you usually know of any issues between
24 coworkers? If there were any arguments going on you would
25 know that?

JIM SAWYER - REDIRECT

1 A I would know about it if there was like an
2 altercation on a job site or something like that, but not
3 a lot.

4 Q So did you know about any issues or altercations or
5 arguments between this defendant and Walter Pope?

6 A No.

7 MS. MCCALL: Thank you, that's all we have.

8 THE COURT: Thank you, sir, you can step down and
9 you're free to leave. All right. Y'all don't have another
10 witness for today; isn't that right?

11 MS. HOWARD: No, Your Honor, not for today.

12 THE COURT: We're having transportation issues with a
13 witness, my fault, y'all don't be mad at the lawyers. What
14 we're going to do, now is a good time to go ahead and stop
15 for the day, ladies and gentlemen. We're going to start
16 tomorrow morning at 9:00 so if you can get here a little
17 bit earlier, I want to try to finish everything tomorrow if
18 possible, maybe earlier tomorrow. So remember, when you
19 leave here tonight let me give you a specific instruction.
20 First of all you can't talk about the case with yourselves
21 even though you're the trial jury. Most importantly don't
22 talk about it with friends or family members. If they ask
23 you certainly you can tell them you're on the trial jury
24 and that kind of thing, but if they press you to talk about
25 it, what kind of case it is, say the judge said that you

1 can't talk about it, just blame it on me, I'm used to it,
2 that's fine with me. Don't do any independent research on
3 it, don't Google names, don't go on social media and talk
4 about being on a trial jury. I bet you every single one of
5 you probably have a Facebook page or a Twitter or something
6 like that, don't do that, that's how you get in trouble
7 doing that kind of stuff, okay? And plus you'll compromise
8 the process, okay? I want you to have a wonderful evening,
9 come back bright and early tomorrow and we'll get started
10 at 9:00.

11 (The jury left the courtroom and court recessed for
12 the evening.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for Greenville County, South Carolina, on
9 the 2nd day of March, 2016.

10 I do further certify that am neither of kin, counsel,
11 nor interest to any party hereto.

12

13

August 25, 2016

14

15


Michael C. Watkins

16

17

Court Reporter

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19

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25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 ROBERT DAVIS SMITH,) 2013-GS-23-07305
7 JR.,) MARCH 3, 2016
8 DEFENDANT.) GREENVILLE, SOUTH CAROLINA

9
10
11 B E F O R E:

12 THE HONORABLE BRIAN M. GIBBONS, JUDGE. ; And a Jury.
13
14
15

16
17 A P P E A R A N C E S:

18 KIMBERLY HOWARD, ASSISTANT SOLICITOR
19 KATHRYN MCCALL, ASSISTANT SOLICITOR
20 ATTORNEYS FOR THE STATE

21 RANDY CHAMBERS, ESQUIRE
22 ATTORNEY FOR THE DEFENDANT
23

24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

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(MARCH 3, 2016)

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1 (PROCEEDINGS, MARCH 3, 2016)

2 THE COURT: Are y'all ready?

3 Anything before we bring the jury in?

4 MS. HOWARD: Judge, I do want to bring one thing
5 to the court's attention --

6 THE COURT: Okay.

7 MS. HOWARD: -- that happened yesterday, and I
8 apologize for not doing it then, but overnight and thinking,
9 so, as you know, unless the defendant takes the stand, the
10 State would not be able to get his prior record in, unless
11 the door is opened by the defense counsel.

12 Yesterday in questioning Mr. Chambers asked our
13 witness, Jim Sawyer, about the background check they do on
14 the people that work for them. And in the questioning, one
15 of the questions he said to him was "so y'all determine if
16 they are a danger to the community before you employed
17 them," and Jim Sawyer said "yes."

18 Well, I'm not saying at all that Mr. Chambers did
19 that in bad faith, but he does have the NCIC and this
20 defendant is a registered sex offender with two sex offender
21 violations, so I don't know what more danger to the
22 community you can be than that. And I don't want to open
23 the door to some appealable issue and -- or -- and bring
24 that out through my investigator, but I would ask and make
25 the motion at this time that he be not allowed, for lack of

1 a better word, to argue that point in closing argument,
2 because it's just not true and it would be misleading to the
3 jury.

4 THE COURT: Okay.

5 Mr. Chambers, what's your response?

6 MR. CHAMBERS: I didn't have any plans to do that.
7 I wasn't even trying to go there with the questioning. It
8 basically was just trying to establish that they don't --
9 it's not just a situation where anybody in the world can
10 just show up and get a job that day, that he had a set
11 number -- I was going more to the fact that they have a set
12 number of people that work there, that it's not just --

13 THE COURT: Because of that he probably knew --

14 MR. CHAMBERS: Exactly.

15 THE COURT: -- her husband and --

16 MR. CHAMBERS: Yeah, that was -- that was the
17 whole reason for that.

18 MS. HOWARD: And I want to be clear. I am not
19 saying that defense counsel --

20 THE COURT: I know that.

21 MS. HOWARD: -- would mislead the jury in any way.
22 I'm just being proactive.

23 THE COURT: All right. Well, that's fine. Yeah,
24 he will do that.

25 MR. CHAMBERS: Yes.

1 THE COURT: Sounds good.

2 MS. HOWARD: Thank you, Your Honor.

3 THE COURT: Okay. Let's bring the jury in.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: Good morning, ladies and gentlemen.

7 I hope you had a wonderful evening yesterday. I
8 know you are ready to get started this morning and we will
9 jump right into it.

10 Madam Solicitor, you may call your next witness.

11 MS. MCCALL: Okay. The State calls Walter Pope.

12 THE COURT: Walter Pope.

13 WALTER POPE, having been first duly sworn,
14 testified as follows:

15 THE CLERK: Please have a seat.

16 Please state your full name for the record.

17 THE WITNESS: I'm Walter Pope.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION BY MS. MCCALL:

20 Q. Good morning, Mr. Pope.

21 A. Good morning.

22 Q. Can you please tell the jury how old you are today?

23 A. I'm forty-one.

24 Q. Okay. And do you live in Greenville County?

25 A. Yes, I do.

1 Q. And how long do you stay in Greenville County?

2 A. About three years, I believe.

3 Q. Before that were you close by, or --

4 A. I'm still getting the counties and boroughs and all
5 that. Yeah, before that I believe we lived in Lancaster
6 County.

7 Q. Lancaster.

8 And tell me, are you -- do you work? Do you have a
9 job?

10 A. Yes.

11 Q. What do you do?

12 A. I do security for different clubs and different --
13 three or four different hotels.

14 Q. Okay. And how long have you been doing that?

15 A. I have been doing that more or less since I got out of
16 high school, but I got into it back in here recently a
17 little over the last year.

18 Q. Okay. Now, do you know formerly known M.F. [REDACTED],
19 now M.F. [REDACTED]?

20 A. Yes.

21 Q. So she's your wife?

22 A. Yes.

23 Q. And how long have you been with her?

24 A. Six years, I believe.

25 Q. Six years.

1 So -- and you are married. How long have y'all been
2 married?

3 A. You are trying to get me in trouble.

4 It's about three years now. About three years.

5 Q. Okay. Do you have any children together?

6 A. Yeah.

7 Q. One?

8 A. We have two, Ethan and Pittman.

9 Q. How old are they?

10 A. They are three and five.

11 Q. Now, back in June of 2013, were you -- I guess you were
12 in a relationship with M.F. at that time?

13 A. Yes.

14 Q. Were y'all living together?

15 A. Yeah.

16 Q. And were you -- where were you living then?

17 A. We were living in the Regal Inn.

18 Q. Okay. And where were you working at that time?

19 A. I was working for Labor -- Labor Smart.

20 Q. Okay. And who was your boss?

21 A. Jim Sawyer.

22 Q. Okay. Now, I want to turn your attention to June 17th,
23 2013, okay? Were you working on that day?

24 A. Yes.

25 Q. And do you remember what job you were working -- like

1 where you were working?

2 A. We had a construction job and it was an ongoing thing
3 down at Clemson.

4 Q. Okay. And do you remember about what time you left
5 your residence at Regal Inn and head to work that day?

6 A. I think it was between six and seven.

7 Q. Okay. So while you were at work on that day, on June
8 17th, did you get a call from M.F. ?

9 A. Yes.

10 Q. Do you remember that conversation at all?

11 A. Yes.

12 Q. How did she sound?

13 A. She was very distraught. It was -- she couldn't quite
14 get her thoughts or her words together.

15 Q. And what -- do you know why she was calling, what she
16 was asking?

17 A. She needed -- Jim had called me first, but he couldn't
18 get me because we were on the site. And then when she
19 finally did get ahold of me she was like "I need you to come
20 home."

21 Q. Okay. And did you ask her what was wrong or why you
22 needed to come home and what did she say?

23 A. She said "I don't want to really tell you this over the
24 phone, but I need you to come home like now."

25 Q. Okay. And so?

1 A. So I came home.

2 Q. You came home after that.

3 So when you finally saw M.F. when you got home, what
4 did she seem like?

5 A. When I -- we were actually pulling up at the exact same
6 time. She had -- she was just coming from the hospital and
7 she had a bandage -- like bandages on her arms or whatever.
8 Whenever she saw me, she just grabbed me and she was like
9 really shook, and I was like "whoa, whoa, whoa, what's going
10 on?"

11 Q. Okay. And did she tell you at that time that she had
12 been sexually assaulted?

13 A. Eventually, because at first she didn't say anything.
14 She was just --

15 Q. Right.

16 A. She just was crying like.

17 Q. And did she tell you, you know, about the kind of
18 claims that the assault had happened and where?

19 A. Yes, she told me like shortly after I had gone to work,
20 you know, and somebody broke in the house.

21 Q. Okay. And that it was in the motel room?

22 A. Yeah, with some sort of weapon or some sort of thing, I
23 guess.

24 Q. Could you tell if this sexual assault had affected her
25 like after that?

1 A. For -- M.F. [REDACTED] was like a pretty strong person. When
2 she got like fiery for her, which is contrary to which she
3 would appear, but she became very standoffish, very
4 skittish. You know, she would jump like at anything. She
5 didn't really sleep like she was supposed to. This went on
6 for awhile. I'm -- I don't -- I can't put an exact time
7 frame on it, but I'm going to say it was awhile.

8 Q. Right.

9 And so like the next day, did you go back to work the
10 next today?

11 A. No.

12 Q. That was on a Monday. June 17th was a Monday. So you
13 said you took the rest of the week off, or --

14 A. Yes, I took -- I took -- I know it was at least the
15 first like couple of days, like the first week. And when I
16 felt like she was all right, or whatever, for me to be gone
17 for a little while, then I went, but I know it was at least
18 seven to ten days.

19 Q. Now I want to talk to you about the defendant. Did you
20 know the defendant Robert Smith?

21 A. No.

22 Q. And, you know, did you know that he worked for Labor
23 Smart? Before this incident did you know that he worked for
24 Labor Smart?

25 A. No, I don't know him at all in any capacity.

1 I saw the mug shot thing and then I was like he looks
2 familiar. And then actually it wasn't so much him that
3 looked familiar. When Jim was telling me about a bag that
4 he had. He carries this terrible bag and that stood out and
5 I put it with the face, but we -- you know, we don't know
6 each other at all.

7 Q. Thank you, sir.

8 MS. MCCALL: That's all the questions that I have.
9 Thank you.

10 THE COURT: Mr. Chambers.

11 CROSS EXAMINATION BY MR. CHAMBERS:

12 Q. But it sounds like y'all probably came in contact with
13 one another at some point, right, you and Rob Smith?

14 A. Not so as I can recall, no.

15 Q. You said the bag stood out to you, which means that you
16 had seen someone with that bag.

17 A. Well, I'm sorry, you said contact. Contact to me would
18 be we had an interaction or whatnot. Him passing by and me
19 noticing this terrible bag, or whatever, I didn't correlate
20 that as the same thing.

21 Q. I mean you both worked at Labor Smart?

22 A. Yes.

23 Q. And the way things worked at Labor Smart, as I
24 understand it, is there is a pool of about thirty-five or
25 forty workers who at any given time will gather there at

1 Labor Smart and wait for -- to be detailed out to jobs?

2 A. No, that's -- that's not exactly the way it works, no.

3 Q. Well, I mean -- so how does it work? You don't ever go
4 over to that office where other people are there waiting to
5 be sent by Jim Sawyer out to jobs?

6 A. Well, if you -- if you understood the dynamics of the
7 way it works, the only reason that you have to come into the
8 office is if you are not scheduled to work the next day.
9 You come into the office looking for work.

10 If you are on a scheduled ticket, you have no reason to
11 come to the office. You can make arrangements with your
12 transportation, or whatnot, where they will pick you up,
13 because I stay down the street from the job and it was on
14 the way to the job. I never had to go to the job most of
15 the time.

16 Q. I understand that. It's -- but there are times when
17 you are not on a ticket and you will go there looking for
18 work?

19 A. Yes.

20 Q. And so it's not uncommon for there to be a group of
21 people there waiting to be sent out to work somewhere?

22 A. I imagine, yes. That's reasonable, yes.

23 Q. And you probably have been in that position yourself?

24 A. Not usually, no.

25 Q. And you have even indicated that this bag was familiar

1 to you, that you had seen that bag. I mean, that's what you
2 testified to. I'm not trying to put words in your mouth. I
3 just want to make sure I heard it correctly.

4 A. I believe you are mixing the two statements together.

5 Having seen the bag, it stood out in my mind, because
6 I -- it was just really ugly, that -- I mean, it was ugly
7 enough to draw attention, but as far as what the -- what --

8 Being up at Labor Smart, Jim and I knew each other
9 before I started working at Labor Smart, so I could call Jim
10 directly to see whether or not there was work, and so I was
11 never usually in a position to just go over there and just
12 be hanging around.

13 Q. Now I'm curious. When you say it was ugly, I mean, it
14 was really ugly. Describe what you mean by that.

15 A. It was orange and it didn't seem to match anything.
16 That's why it stood out.

17 Q. So it wasn't desert camo?

18 A. Yeah, but it was orange desert camo. Who does that?

19 Q. I don't know. I'm not familiar with the bag, but --

20 A. Clearly you do, because I didn't say it was orange
21 desert camo. Clearly you are familiar with the bag.

22 Q. I didn't say it was orange either.

23 A. Yes, you did.

24 THE COURT: Hang on. Hang you. Just answer the
25 question.

1 BY MR. CHAMBERS:

2 Q. I said it was desert camo, if I remember correctly, and
3 you said it was orange, is that not correct?

4 A. Yes, you said it was desert camo.

5 Q. You are the one that said it was the ugliest bag
6 essentially that you had ever seen and that was the reason
7 it stood out so much. Is that not what you said?

8 A. Not the ugliest I have ever seen, but it's on the list,
9 yeah.

10 Q. I mean, it made such an impression on you that you
11 described it to the jury that way.

12 A. Yes.

13 Q. Which, again, I would ask you, would not common sense
14 indicate that you must have had some interaction at some
15 point, or at least been in the presence of the person that
16 was carrying such a bag?

17 A. Yes, we have been in each other's presence, yes.

18 Q. Okay.

19 A. I believe I explained that when say -- I misunderstood
20 when you said contact versus the passing inference. I
21 thought I cleared that up.

22 Q. I'm not asking you if y'all were best friends. I'm
23 just asking you if --

24 A. And I seen him, yes.

25 Q. Yeah.

1 A. Yes.

2 Q. There would have been the opportunity for you two to
3 have exchanged pleasantries with one another at some point?

4 A. No, we have never spoken.

5 Q. Okay. But at least that opportunity would have been
6 there?

7 A. I imagine so, yes.

8 Q. I mean, if another person were to say "oh, you work at
9 Labor Smart too. You might know Rob Smith." That would be
10 something that somebody might ask in a situation like that?

11 A. They couldn't, because I wouldn't know his name. I
12 wouldn't know who they were talking about.

13 Q. Okay. And y'all had been living over there at the
14 Regal Inn for several months, is that correct?

15 A. Yes.

16 Q. And you were in room [REDACTED]?

17 A. Yes.

18 Q. And that's on the second floor with rooms on either
19 side?

20 A. Yes.

21 Q. And rooms under it?

22 A. Yes.

23 Q. And these rooms were all in close proximity to one
24 another, is that correct?

25 A. Yes.

1 Q. Would it be fair to refer to this as a fairly low rent
2 type of hotel?

3 A. No, it's average.

4 Q. What?

5 A. It's average.

6 Q. Okay. Now, you are originally from Pennsylvania, is
7 that correct?

8 A. Yes.

9 Q. And you have got felony convictions in Pennsylvania?

10 A. No.

11 Q. You weren't, for example, convicted of robbery in 1996?

12 A. No.

13 MS. MCCALL: Objection.

14 Can we approach?

15 THE COURT: Yes.

16 (Whereupon, the lawyers approached the bench for
17 an off-the-record discussion)

18 MR. CHAMBERS: That's all questions that I have
19 for you, Mr. Pope.

20 THE COURT: Any redirect?

21 MS. MCCALL: No, Your Honor.

22 THE COURT: All right. Thank you, sir. You can
23 step down.

24 The State can call its next witness.

25 MS. HOWARD: Your Honor, at this time the State

1 would call Patricia Mullinax.

2 THE COURT: All right. Ms. Mullinax.

3 OFFICER PATRICIA MULLINAX, having been first duly
4 sworn, testified as follows:

5 THE CLERK: Please have a seat.

6 Will you state your full name for the record.

7 THE WITNESS: Patricia Mullinax.

8 DIRECT EXAMINATION BY MS. HOWARD:

9 Q. Lieutenant Mullinax, where do you work now?

10 A. At the Greenville City Police Department.

11 Q. What's your rank?

12 A. Lieutenant.

13 Q. And were you -- how long have you been with the police
14 department?

15 A. About thirteen years.

16 Q. Were you working back in June of 2013? What was your
17 role with the police department then?

18 A. I was a corporal on uniform patrol assigned to Adam
19 Beat.

20 Q. Would Adam Beat include the area of Wade Hampton
21 Boulevard where the Regal Inn is located?

22 A. Yes, ma'am.

23 Q. And were you corporal over -- is that as a road
24 officer?

25 A. Yes, ma'am.

1 Q. Tell me what you would do as a road officer.

2 A. Patrol my assigned area. Respond to 911 calls.

3 Q. Okay. Did you respond to a 911 call on June 17th,
4 2013, at the Regal Inn?

5 A. Yes, ma'am.

6 Q. And what county was that in?

7 A. Greenville County.

8 Q. And how long would you say -- with the 911 call, tell
9 us a little bit about that. So someone calls into 911 and
10 is in distress. How does that come to you and then how do
11 you know where to go?

12 A. Typically they will call in. The dispatch, they will
13 enter a call under the CAD System and they will call me on
14 the radio and dispatch it to me and then I'll arrive on the
15 scene.

16 Q. To the best of your recollection, do you know how long
17 it took you to get there that day?

18 A. I don't know specifically. I would say within five to
19 ten minutes.

20 Q. And when you got there, tell us what you saw at the
21 Regal Inn. Did you -- tell us what you were responding to
22 first when you got there.

23 A. I don't recall exactly how the call was given out over
24 the radio, but when I got on the scene, you know, I met the
25 victim in her room. There were two small children, I

1 believe. She was upset or, you know, was explaining some
2 things to me.

3 At that point in time when we established what had
4 happened when she was, you know, telling me the story, we
5 secured the scene, made sure nothing would be messed with
6 and then we notified the proper supervisors and then, you
7 know, the detective division.

8 Q. And so you just as the first responding officer -- were
9 you the first responding officer?

10 A. I believe so that day.

11 Q. And you basically hold the scene?

12 A. Yes.

13 Q. Would that be a good way to say it?

14 A. Yes, once we -- once we -- you know, I spoke with her,
15 speak with the victim and then we figure out what's going
16 on, then we would hold the scene, secure it, and then follow
17 the next steps.

18 Q. And so did she tell you that she was sexually
19 assaulted?

20 A. Yes, ma'am.

21 Q. And then did you take a statement from her?

22 A. I believe so. I believe that I, you know, took the
23 written statement from her. I would have to look at my
24 report. It was awhile ago.

25 Q. To refresh your memory I will pass up your report. If

1 you will flip through there and just so you can be able to
2 accurately tell the jury whether or not you took a
3 statement.

4 A. In my report I write "a written statement was obtained
5 from the victim" I completed the victim notification form.

6 Q. And did you -- when you said you -- after you kind of
7 hold down the scene and a lead detective comes, who was that
8 in this case?

9 A. It's Detective Conroy, or at the time it was Detective
10 Conroy.

11 Q. And did you do -- did you have any other involvement?
12 Did you do anything else in this investigation, or at that
13 point in time is it your job to pass it off to the lead
14 detective?

15 A. At that point in time he moves in and, yeah, we would
16 just -- and anything supportive, but really at that point we
17 didn't have much further involvement.

18 Q. And you didn't know the victim when you responded or
19 have any chance to investigate this incident any further?

20 A. No, ma'am.

21 Q. Thank you.

22 MS. HOWARD: No further questions.

23 CROSS EXAMINATION BY MR. CHAMBERS:

24 Q. When you went over to do your investigation, you
25 actually took a fairly detailed statement from M.F.

1 [REDACTED], correct?

2 A. Yes, sir.

3 Q. Do you have that there with you?

4 A. I don't have the specific statement. I have what I
5 documented in my report.

6 Q. Which would have been accurate, correct?

7 A. Yes, sir.

8 Q. I mean, you are not going to write down something
9 that's not accurate?

10 A. Yes, sir.

11 Q. If you write it down, that's what she told you?

12 A. Yes, sir.

13 Q. All right. If you could just look there at the front
14 page and I'm going to ask you about some of the things that
15 you wrote.

16 She indicated that she first saw the man that she said
17 attacked her, he came by and asked for someone named
18 "Mookie" and she said she didn't know "Mookie" and then
19 walked away, is that correct? He walked away?

20 A. Yes, sir, that's what I have written down.

21 Q. And she said that he then came back. She was pulling
22 the sheets off of one of the beds and she looked in the
23 doorway and she saw him standing in the doorway, is that
24 correct?

25 A. Yes, sir.

1 Q. She indicated that as soon as she saw him that she saw
2 that he had a box cutter in his left hand, is that correct?

3 A. Yes, sir.

4 Q. She doesn't indicate that he slammed the door and then
5 pulled out a box cutter, does she?

6 A. I don't recall specifically. What she told me at the
7 time is what I wrote down in the report.

8 Q. So what you have written is that he was standing in the
9 doorway and he was holding a box cutter?

10 A. Yes, sir.

11 Q. And she indicated at that point that her three year old
12 son, who had been running in and out of the room, was
13 standing behind the alleged attacker, is that correct?

14 A. Yes.

15 Q. So her child was not inside the room, but was actually
16 outside the room apparently standing behind the person that
17 she said attacked her?

18 A. Yes, sir.

19 Q. Is that correct?

20 A. Yes, sir.

21 Q. So that's what she told you immediately after this
22 allegedly happened?

23 A. Yes, sir.

24 Q. She indicated to you that even before closing the door
25 that he actually spoke to her and told her not to say

1 anything and then he entered the room. Is that what you
2 wrote?

3 A. Yes.

4 Q. And that after that he walked in, with her son
5 following him, and he then closed the door, correct?

6 A. Yes, sir.

7 Q. She indicated to you that he continued to hold this box
8 cutter in his left hand through this entire time, is that
9 correct?

10 A. I apologize. It's a long statement.

11 I believe so.

12 Q. That she indicated to you that while holding the box
13 cutter in his left hand, that he threw her on the bed that
14 had no sheets on it, correct?

15 A. Yes, sir.

16 Q. And that they began to struggle on the mattress?

17 A. Yes, sir.

18 Q. She indicates that she pushed away the left hand that
19 had that box cutter in it and that he then reached and
20 choked her with his right hand?

21 A. Yes.

22 Q. And this would have been while he is undressing himself
23 and undressing her in order to engage in this sexual attack,
24 is that basically what was indicated to you?

25 A. Yes, sir.

1 Q. And I guess assuming that he was holding a box cutter
2 in his left hand and he was choking her with one hand, which
3 would be the right hand, that would mean that his thumb
4 would have been over on the left side of her neck and his
5 fingers would have been on the right side of her neck, is
6 that what you would think?

7 A. Possibly.

8 Q. Okay. Did you talk to anybody else that was staying at
9 the hotel?

10 A. No, I did not.

11 Q. Did you speak to the owner of the hotel?

12 A. I don't recall. If it was, it was in passing. It
13 wasn't anything specifically related to this.

14 Q. Did you make any attempt to speak to other people that
15 were at the hotel?

16 A. I did not at the time.

17 Q. Okay. You said not at the time. Did you at any time?

18 A. Not in this investigation, no.

19 Q. Were there other officers out there that was involved
20 in the investigation at the hotel?

21 A. There were other officers out there, yes.

22 Q. Do you know if they talked to anybody that was staying
23 at the hotel?

24 A. I don't recall.

25 Q. Do you know of any reports from anybody that said they

1 heard a commotion of any kind?

2 A. Not that I'm aware of.

3 Q. You would be aware of it. You investigated it,
4 correct?

5 A. Well, the lead investigator would have been the
6 detective. I was just the first responder on the scene,
7 so --

8 Q. So did this investigator eventually come out to the
9 scene before you left?

10 A. Yes, sir.

11 Q. And did you give him an update about what you had found
12 so far?

13 A. Yes, sir.

14 Q. Did he ask you or any of the other uniformed officers
15 to canvass the area and talk to other people that may have
16 heard or seen anything?

17 A. Not me in particular. I was, you know, at the scene at
18 the time holding the scene. I don't know if he spoke with
19 the other officers or not.

20 Q. But that would be fairly normal, right, to find out if
21 anybody heard or saw anything?

22 A. Depending on the circumstances, yes.

23 Q. I mean, you want to do a complete investigation into
24 something like this.

25 A. Uh-huh.

1 Q. But as far as you know, there was nobody that saw or
2 heard anything relevant to what the alleged victim in this
3 case had to say, correct?

4 A. Correct.

5 Q. All right. Thank you.

6 MR. CHAMBERS: That's all the questions that I
7 have.

8 MS. HOWARD: Just a few on redirect.

9 REDIRECT EXAMINATION BY MS. HOWARD:

10 Q. Lieutenant Mullinax, do you -- again, you were only
11 there to hold the scene, correct?

12 A. Yes, ma'am.

13 Q. And Mr. Chambers spoke a lot about what you wrote in
14 your report, but you took a written statement from the
15 victim, correct?

16 A. Yes, ma'am.

17 Q. So those were her words, correct?

18 A. Yes.

19 Q. Okay. Do you recognize this, and I'm showing you right
20 there, does that look like the written statement that you
21 took from the victim?

22 A. Yes, ma'am.

23 Q. Do you -- how do you know that? Is your name on that
24 form?

25 A. Yes, I signed it at the bottom.

1 Q. Okay. Can you read the first part of her words and her
2 statement?

3 A. "I was putting my dirty sheets and towels outside for
4 the maid and a guy with a black three button up shirt with a
5 white shirt and jeans asked me if I knew anyone named
6 "Mookie". I said no. I kept cleaning and he came back and
7 said something I don't know, pulled out a box cutter, closed
8 the door and said don't do anything, I'll cut you. I kept
9 saying please not in front of my kids."

10 Q. Thank you.

11 MS. HOWARD: No further questions.

12 THE COURT: All right. Thank you, ma'am. You may
13 step down. You are also free to leave.

14 THE WITNESS: Thank you, sir.

15 THE COURT: All right. The State can call its
16 next witness.

17 MS. HOWARD: Your Honor, at this time the State
18 would call Investigator Tim Conroy.

19 THE COURT: All right, sir.

20 INVESTIGATOR TIMOTHY CONROY, having been first
21 duly sworn, testified as follows:

22 THE CLERK: Please have a seat.

23 Will you state your full name for the record.

24 THE WITNESS: Timothy Michael Conroy.

25

1 DIRECT EXAMINATION BY MS. HOWARD:

2 Q. Detective Conroy, where do you work?

3 A. Greenville Police Department.

4 Q. How long have you been there?

5 A. About twenty years.

6 Q. And what is your current rank?

7 A. Sergeant.

8 Q. Is that the same thing as detective? What's the
9 difference?

10 A. Sergeant is a one level above detective or corporal.

11 Q. And how long have you been a sergeant with the police
12 department?

13 A. It was two years this past January.

14 Q. In June of 2013, what was your role in the police
15 department?

16 A. I was a detective in the violent crimes unit.

17 Q. Tell me a little bit about your background, your
18 education, your training in becoming a detective and what
19 that takes.

20 A. I started out on the road. I did five years and then I
21 was transferred to the detective division.

22 Once you are a detective, you take numerous charge
23 classes, interview classes, as well as classes from the
24 forensics division that assists in locating items on the
25 scenes, different kind of crime scenes, looking to what to

1 collect and what to preserve, and interviewing techniques,
2 as well as other interview classes.

3 Q. And is the training continuous there? Do you do this
4 at the beginning of your career and then never do it again,
5 or continuously train?

6 A. No, you continuously train.

7 Q. Were you working on June 17th, 2013, in your capacity
8 as a detective?

9 A. Yes, I was.

10 Q. Did you respond that day to the Regal Inn on Wade
11 Hampton Boulevard?

12 A. I did.

13 Q. And, again, that's in Greenville County, correct?

14 A. That is correct.

15 Q. And why did you respond that day to the Regal Inn?

16 A. I was in my office and received a phone call stating
17 that there was a criminal sexual conduct out at the Regal
18 Inn and I proceeded at the scene to interview witnesses and
19 victims and collect evidence.

20 Q. And how long do you think it took you to get there?

21 A. I was probably there within thirty minutes of the
22 incident being reported.

23 Q. And so you were immediately -- were you or were you not
24 immediately set as sort of the lead investigator or
25 detective?

1 A. Yes, I was.

2 Q. So tell me specifically in a sexual assault case, when
3 you respond to an incident as the lead detective, what do
4 you do? Where do you start?

5 A. When I got there, I like to talk to -- uniformed patrol
6 is already taking statements from witnesses or victims, and
7 I like to do that so I can have a statement from the victim
8 prior to her going to the hospital to get treated or
9 examined at the hospital. That way if something is
10 documented, I have got something to work on.

11 I make sure the scene is secured, and forensics was
12 notified to come process the scene.

13 Q. And forensics was called in this case?

14 A. That's correct.

15 Q. I'm going to show you some pictures.

16 I'm showing you what's been marked as State's Exhibit
17 No. 2. I'll put it on the screen in a minute. I will let
18 this thing warm up and I'll show the pictures, okay?

19 A. Okay.

20 Q. Tell me a little bit about -- you said that y'all
21 interviewed witnesses, or that's part of it, that the
22 responding officers interview and you sort of oversee that.
23 Tell me a little bit about that in this case.

24 A. In this case they -- the responding officers actually
25 took statements from a couple people, and after -- once I

1 arrived I read over those statements and then re-interviewed
2 them to see if there was anything else that they could add.

3 Also -- there are also people that came up just because
4 all of the officers presence and the EMS presence there. I
5 asked them if they saw anything and they were pretty much
6 there just to look to see what was going on.

7 Q. And so do you know of any witnesses that were
8 interviewed that did know anything?

9 A. The house cleaner and her boyfriend, another worker I
10 believe at the hotel.

11 Q. And they were -- where they were -- and the victim
12 testified to this, but where they were -- I don't know the
13 victim testified to this, but where they were living, where
14 their room was located, were there a lot of people staying
15 around them at that time?

16 A. No, there were vacant rooms around the victim's room.

17 Q. So the people that just came up to see what was going
18 on, they did not stay around them?

19 A. That's correct.

20 Q. So -- this is a picture. Do you know what that picture
21 is?

22 A. That's the inside of room [REDACTED].

23 Q. And that's what it looks like when you arrived?

24 A. That's correct.

25 Q. Okay. So tell me about forensics coming. What's their

1 role in everything?

2 A. What they do is they -- they will collect any evidence.
3 In this case they would look for any DNA that may have been
4 left behind. They would have collected sheets or anything
5 that was possibly left by a suspect.

6 Q. Now, were they -- in the course of your investigation,
7 do you know if forensics ever found anything in the room,
8 fingerprints of anyone, or --

9 A. None of -- there was no conclusive tests performed.

10 Q. Does that include DNA, or what all does that include?

11 A. We -- we took several DNA swabs and submitted them and
12 the findings were negative, or inconclusive.

13 Q. And then were fingerprints found at all --

14 A. No.

15 Q. -- of the victim?

16 A. No.

17 Q. Walter Pope, of anyone?

18 A. No.

19 Q. Is that unusual, or --

20 A. No, fingerprints, it's got to be a clean surface. It
21 depends on how oily someone's fingers are and it's not
22 uncommon not to find any evidence at the scene.

23 Q. So at the time of this incident were you able to
24 identify the name of a suspect after speaking with the
25 victim and --

1 A. No, I was not.

2 Q. So were there any other calls for service that day at
3 the Regal Inn --

4 A. No.

5 Q. -- on June 17th?

6 A. No, there were no calls for service at the Regal Inn on
7 that day.

8 Q. So did you have any leads from your investigation, from
9 speaking with the witnesses and looking through the room?

10 A. The only lead that came up there is there was a cell
11 phone located in between the two beds that was not the
12 victim's or her fiance's at the time.

13 Q. Okay, and I apologize to do this.

14 MS. HOWARD: Could you, Madam Bailiff, if you will
15 just -- we want to keep them dim, but I want to show a few
16 pictures.

17 THE COURT: Don't let anybody fall asleep now.
18 Keep your attention. That's fine.

19 BY MS. HOWARD:

20 Q. All right. So I am showing you what has been admitted
21 as State's No. 6. Can you -- it's really hard to see, so
22 I'm going to give you this laser and have you point to --
23 what is that number one in that picture?

24 A. This is just an evidence marker and this is a picture
25 of the area between the two beds in the room.

1 The door would have been over here to the right and
2 this is an evidence marker and this shiny item right here is
3 a cell phone that the victim stated was not hers or her
4 fiance's.

5 Q. So when you were referring to a lead, is that what
6 you -- as being a phone, is that the phone that you are
7 referring to?

8 A. That's correct.

9 Q. I'm now showing you State's No. 7.

10 A. This is just a close-up picture of the phone here that
11 was collected and processed.

12 Q. So having that one lead, what did you do?

13 A. That phone was processed on the scene by forensics.
14 They took a swab, a DNA swab, off that phone and then it was
15 turned over to me and I took it back to my office.

16 Q. And, again, were any fingerprints or DNA able to come
17 back conclusive even from the phone?

18 A. No, ma'am.

19 Q. So you got the phone back to your office. What did you
20 do? Did you get a search warrant for the phone? What do
21 you do?

22 A. I did. I typed up a search warrant for the contents on
23 the phone to see if I could -- and I gave it to our analyst
24 to see if he could see if there was any phone numbers or
25 anything that could identify the owner of the phone on

1 there. When it was turned over to him it was locked, so he
2 was unable to break the password and download it from the
3 data.

4 Q. Did you try to go any other route?

5 A. I did. I was able to -- we were able to dial 911 from
6 the phone to get the phone number. I got subscriber
7 information off that -- or, excuse me, not the subscriber
8 information. I got the phone and it came back to Verizon.
9 A search warrant was typed up for Verizon and e-mailed to
10 them to find out if the phone had a subscriber.

11 Q. Were you able to find out that way?

12 A. No, ma'am, I was not.

13 Q. So how were you -- how were you able to figure out who
14 this phone belonged to?

15 A. This phone was kept in my office and the next morning
16 it rang and I answered it and I advised the caller that I
17 found this phone on Wade Hampton Boulevard and he said he
18 lost his phone and we arranged to meet so I could give the
19 phone back to him.

20 Q. And you said this was the next day?

21 A. This was the next morning, yes.

22 Q. So did you -- I know that you said that you had no
23 leads, other than the phone, and did you still actually look
24 for anyone in the area that might have seen anything? Tell
25 me what y'all did before the next day.

1 A. I looked through -- we have field interview cards, so
2 whenever an officer gets out somewhere, they fill a field
3 interview card out. I looked through all those cards to see
4 if anybody matching that description with an officer got out
5 with them in that area, as well as look through reports
6 around that area.

7 Q. And you said matching that description. What
8 description?

9 A. Basically I had a black male. I had clothing
10 description; black Polo-type shirt with three buttons. A
11 white T-shirt and a book bag and facial hair.

12 Q. Now, did you have the book bag --

13 A. I did not.

14 Q. -- description at that time?

15 A. At that time I did. I got it from the witnesses at the
16 scene, the Regal Inn.

17 Q. The victim did not?

18 A. The victim did not.

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

20 Well, so you said the phone rings and you answer it and
21 arrange a meeting. Tell me about the meeting.

22 A. I -- again, I asked him -- I told him I found the phone
23 on Wade Hampton Boulevard and if he lost it, or if it was
24 his, and I could meet him to bring it back to him. He
25 stated he was at 1014 Wade Hampton Boulevard, which is Labor

1 Smart. I told him I would be up there in a little while
2 with the phone to give it back to him.

3 Me and another detective drove up there, sat and
4 watched Labor Smart for about five minutes and then it was
5 decided to go ahead and go inside to see if he was inside.
6 As we approached the building we were met on the outside by
7 Mr. Smith.

8 Q. And when you stated Mr. Smith, are you referring to the
9 defendant in this case?

10 A. That's correct.

11 Q. Is he in the courtroom today?

12 A. He is.

13 Q. Would you point to him for the jury, please?

14 A. He's over here wearing the blue shirt with glasses.

15 Q. And so you see him and make contact with him. What do
16 you do next?

17 A. Oh, at that point he -- he's wearing the same exact
18 thing that the victim described. I called for a uniform
19 officer to come out, because at that point I'm going to
20 detain him. I don't want him to flee the scene and I
21 retained him and I placed him in handcuffs and put him in
22 the patrol car.

23 Q. And was there any personal items that he had at Labor
24 Smart that went with him?

25 A. Right, there was a camouflage book bag inside the

1 business at Labor Smart.

2 Q. I'm going to show you what's been marked as State's
3 Exhibit No. 8.

4 Before I publish to the jury, can you tell me what this
5 picture shows?

6 A. This is a picture of a book bag that was located in
7 Labor Smart.

8 Q. And what -- does that -- does that picture accurately
9 show what that book bag looked like on June 18th, 2013?

10 A. Yes, it does.

11 MS. HOWARD: Your Honor, at this time I would ask
12 to admit this item of evidence, please.

13 MR. CHAMBERS: No objection.

14 THE COURT: Without objection, introduced.

15 MS. HOWARD: State's No. 8.

16 (Whereupon, State's Exhibit No. 8 was entered into
17 the record as evidence)

18 BY MS. HOWARD:

19 Q. Could you describe -- I know it's obvious because we
20 are looking at it, but would you describe this book bag?

21 A. This is a -- I guess you could say a Desert Storm camo
22 book bag.

23 Q. And did he admit that that book bag was his?

24 A. He did.

25 Q. So you have him placed in investigative detention at

1 that time. Is that the word that you used, or I just put
2 those words in?

3 A. That's what I used earlier.

4 Q. And is that your policy or protocol?

5 A. Yes, it is.

6 Q. Tell me what you did. You said you cuffed him. Y'all
7 handcuffed him so he wouldn't flee, is that correct?

8 A. That's correct.

9 Q. And then where did you take him when you placed him in
10 the back of the patrol car?

11 A. He was brought to the Law Enforcement Division and
12 placed in an interview room.

13 Q. And tell me a little bit about interviewing a suspect.
14 Are you trained in how to do that?

15 A. I have taken numerous classes of how to talk to people
16 and try to get them to feel comfortable. One technique I
17 use is to desensitize the incident. This is a very enhanced
18 incident. I didn't want to come across that he was a bad
19 person, so I kind of desensitized him and talked to him.

20 Q. Is that -- is that normal? Is that how you usually do
21 these interviews?

22 A. That's the way I do them. I go in there and tell them,
23 kind of talk -- I don't talk down to them and tell them, you
24 know, they are not a bad person, made a mistake, we all make
25 mistakes, to get them comfortable.

1 Q. And did you in the process of this interview
2 actually --

3 I'll say it this way. Did you give him his Miranda
4 Warnings?

5 A. Yes, I did.

6 Q. And what are the Miranda Warnings or your Miranda
7 Rights?

8 A. Your rights are to have counsel or a lawyer represent
9 you, and you don't have to answer any questions without an
10 attorney.

11 There is a form that I read verbatim to him, or he
12 reads, or somebody being interviewed. I advise them that at
13 no point am I going to force them or coerce them to say
14 anything that they don't want to do or say.

15 Q. I'm going to show you what's been marked as State's
16 Exhibit 12. Is that the waiver form or the form that you
17 are talking about that has the rights on there?

18 A. Yes, it is.

19 Q. And would you read that to the jury just so that they
20 can hear what the defendant --

21 A. I can.

22 Could I have a little light, please?

23 Q. Sorry about that.

24 A. Thank you.

25 This is a rights form that we use in the -- at the

1 police department. At the top left corner it's got personal
2 information, such as name, date of birth, Social Security
3 number, the education level, and it's got a question if you
4 can read or write with a yes or no block, and the yes block
5 was checked.

6 In the top right corner it's got a case number, which
7 is significant -- or just for this incident. And then it's
8 got the date and time, and then it's got --

9 The first line I had him read out loud to me "before we
10 ask you any questions you must understand your rights." At
11 this point he stated that he would read the form to himself,
12 after I confirmed that he could read.

13 The form reads as "you have the right to remain silent.

14 "Anything you say can be used against you in court.

15 "You have the right to talk to a lawyer for advice
16 before we ask you any questions and have him you with during
17 questioning.

18 "If you have no money to pay lawyer fees the court will
19 appoint one to represent you without costs, if you wish.

20 "If you decide to answer questions now without a lawyer
21 present you would still have the right to stop answering at
22 any time.

23 "You also have the right to stop answering at any time
24 until you talk to a lawyer."

25 And he initialed beside each of those lines stating

1 that he understood what they said.

2 And then there is a waiver of rights down at the
3 bottom. And prior to reading that, I asked him if he knew
4 what the word coerce meant. He stated he -- and I explained
5 to him that it meant force. It could be mental or physical
6 force trying to get him to do or say something.

7 I went on to say physical force would be like I'm going
8 to hit him or use something against him; or mental force
9 would be like piping noise into the room until he just
10 wanted to talk. I advised him I am not going to use any of
11 that.

12 And then he read, and the statement reads "I have read
13 this statement of my rights and I understand what my rights
14 are. I'm willing to make a statement and answer questions.
15 I do not want a lawyer at this time. I understand and know
16 what I am doing. No promises or threats have been made to
17 me and no pressure or coercion of any kind has been used
18 against me."

19 He also initialed by the word coercion and at the end
20 of that paragraph and then he signed the form.

21 Q. Okay. And at that point in time did you understand --
22 were you -- I'm going to strike that.

23 Did he waive his right for you to --

24 A. He did. I asked him if he wished -- if he wanted to
25 talk to me and he said he would speak with me.

1 Q. And then how did you record this? Did you then go into
2 an interview room with him?

3 A. I did, and the interview room is equipped with an audio
4 and video equipment and it was turned on prior to me reading
5 these rights to him, prior to the interview starting.

6 Q. So was the entire thing recorded?

7 A. It was.

8 Q. And did you -- at any time did he ask to stop the
9 interview or ask to leave or anything?

10 A. No, he did not.

11 Q. And did you deprive him of bathroom breaks, or did he
12 ask for water or food, or anything, and you say no, or --

13 A. No, he did not request anything.

14 Q. Did you threaten him or coerce him in any way to talk
15 to you?

16 A. I did not.

17 Q. So how long would you say this -- several hours? How
18 long would you say it --

19 A. The interview is roughly about three hours.

20 MS. HOWARD: Your Honor, at this time --

21 BY MS. HOWARD:

22 Q. Well, let me show you this, which is State's Exhibit
23 No. 9. Do you recognize that disc?

24 A. I do.

25 Q. And how do you recognize that?

1 A. It's got my initials on it.

2 Q. Okay. Did you view that prior to coming to court?

3 A. I did.

4 Q. And what is that interview?

5 A. This is the interview that took place on June 18th,
6 2013, with the defendant Mr. Smith.

7 MS. HOWARD: Your Honor, at this time the State
8 would ask to submit the interview.

9 MR. CHAMBERS: Your Honor, I would renew my
10 earlier objection.

11 THE COURT: All right. The previous objection is
12 noted, overruled, and you may publish.

13 (Whereupon, State's Exhibit No. 9 was entered into
14 the record as evidence)

15 MS. HOWARD: And, Your Honor, for purposes of --
16 I'm going to continue with his questioning.

17 THE COURT: Okay.

18 MS. HOWARD: And the video is about two hours and
19 fifteen minutes.

20 THE COURT: Right. We were going to take a break
21 before we did that.

22 MS. HOWARD: They might want to take a break
23 before we started it.

24 THE COURT: Just let me know when you intend on
25 publishing it and then we will take a morning recess.

1 MS. HOWARD: Okay.

2 BY MS. HOWARD:

3 Q. We will come back to the interview and discuss that.

4 Tell me what you did after the interview.

5 A. After the interview I -- that day?

6 Q. Did you place him under or --

7 A. He was placed under arrest that day and brought over to
8 the detention center.

9 Q. Did you do anything else in further investigation of
10 this case?

11 A. I did. I put a photo lineup together of Mr. Smith and
12 I showed it to the victim.

13 Q. Okay. I'm going to show you what's been marked as
14 State's Exhibit No. 10. If you will pick it up and take a
15 look at that and tell me what it is, without showing it to
16 the jury yet, please.

17 A. This is a photo lineup containing Mr. -- the defendant
18 Smith and with five other individuals.

19 Q. Okay. I'm going to show Mr. Chambers also.

20 Is this lineup in the same --

21 MR. CHAMBERS: I have seen it.

22 BY MS. HOWARD:

23 Q. Is this lineup in the same condition in the original
24 copy that you showed the victim?

25 A. Yes, it is.

1 Q. Was she able to pick anyone out of that lineup?

2 A. She was.

3 Q. Did she at any time pick anyone else?

4 A. No.

5 Q. Was she told that she had to pick someone?

6 A. No.

7 Q. Was she sort of coerced to pick someone?

8 A. No, she was not.

9 Q. How long -- when you placed the photo lineup in front
10 of her, how long would you say it took her to pick him out?

11 A. She picked him out immediately without any hesitation.

12 Q. And how do you know that that's the one that she --
13 that Mr. Smith is the one she picked out?

14 A. She circled and then she wrote on the bottom and signed
15 it.

16 MS. HOWARD: Your Honor, at this time the State
17 would move to admit it.

18 MR. CHAMBERS: I'll renew my earlier objection.

19 THE COURT: Objection -- the previous objection is
20 noted and overruled and introduced as the State's next in
21 order.

22 (Whereupon, State's Exhibit No. 10 was entered
23 into the record as evidence)

24 MS. HOWARD: Your Honor, permission to publish to
25 the jury.

1 THE COURT: All right, permission granted.

2 BY MS. HOWARD:

3 Q. If you will just take the laser pointer and just real
4 quick point out the things that you talked about about her
5 circling.

6 A. Again, it's the case number that is relevant to this
7 case and I showed it to her on June 19th.

8 THE WITNESS: May I stand up?

9 THE COURT: Yes, sir.

10 A. Which is dated down here. It's hard to see. I don't
11 know if I can see it down there. And picture number two is
12 circled, and she's also signed it.

13 BY MS. HOWARD:

14 Q. Picture number two, again, who is that?

15 A. That is Robert Smith, the defendant.

16 Q. And, again, is he in the courtroom today?

17 A. He is sitting at the table over here with the glasses
18 and blue shirt.

19 Q. So after you did the photo lineup was there any further
20 investigation done in this case? Was there any followup or
21 did you close your case and --

22 A. Just submitting evidence to the lab and that was -- and
23 when the results came back inconclusive, that was it.

24 Q. And since this date and you arrested the defendant for
25 these charges, have you had -- other than for preparation

1 for court, have you had any other involvement in any way
2 with the victim or did you know her personally before?

3 A. No.

4 Q. Any connection?

5 A. No, ma'am. The first time I met the victim was on that
6 day and I haven't talked to anybody since.

7 Q. Okay.

8 MS. HOWARD: Your Honor, at this time the State is
9 going to want to publish the video. Again, it is about two
10 hours and fifteen minutes long, so if you want to recess.

11 THE COURT: Yeah, now is a good time to go ahead
12 and take about a ten or fifteen minutes recess, all right?
13 And don't y'all talk about the case. We will recess and
14 come back in here and then the video will be published,
15 okay? Thank y'all.

16 Y'all head on back to the jury room.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: All right. Anything before we break?

20 MS. HOWARD: No, sir.

21 THE COURT: We are down for a break. Thank you.

22 MS. HOWARD: Thank you, Your Honor.

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: All right, y'all ready for the jury?

1 All right bring them in.

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: All right. All the members of the
5 jury are present and you may resume questioning the witness.
6 Well, I believe we were going to publish --

7 MS. HOWARD: Your Honor, I would request
8 permission to publish.

9 THE COURT: Permission granted.

10 Ladies and gentlemen, please pay close attention
11 to the video screen.

12 (Whereupon, the videotape was played to the jury
13 panel)

14 (Whereupon, videotape stopped)

15 BY MS. HOWARD:

16 Q. Investigator Conroy, y'all are talking about the time
17 today. Is that y'all talking about discussing right now, is
18 that the present day that you are in, or is it the day of
19 your investigating?

20 A. Previous day. The day that I was investigating.

21 Q. Which was what day?

22 A. June 17th, 2013.

23 Q. Okay. Making sure.

24 (Whereupon, videotape started)

25 (Whereupon, videotape stopped)

1 MS. HOWARD: Your Honor, with defense counsel's
2 permission I'm going to fast forward to when Detective
3 Conroy comes back into the room.

4 MR. CHAMBERS: That's correct, Your Honor. He
5 just basically sits in the room for a period of time.

6 THE COURT: Okay. That would be good.

7 MS. HOWARD: I beg your indulgence in finding it.

8 THE COURT: That's fine.

9 (Whereupon, the videotape was fast forwarded to
10 where Detective Conroy re-entered the room)

11 (Whereupon, videotaped started)

12 (Whereupon, videotaped stopped)

13 MS. HOWARD: Your Honor, I'm just checking in make
14 sure. We still probably have about forty-five more minutes
15 or so yet.

16 THE COURT: Madam Forelady, do y'all need a break?
17 Do you want to take one?

18 JURY FORELADY: We are okay.

19 THE COURT: All right. Let's keep on plugging
20 away.

21 (Whereupon, videotape started)

22 (Whereupon, videotape stopped)

23 THE COURT: If y'all want to stand up you can.
24 I'm fixing to stand up and stretch out a little bit as well.
25 You can stand and listen as well. Don't feel like you have

1 to sit there, okay, so that will be all right.

2 What we will do is we will keep on plugging
3 through, but we may take a break in about fifteen minutes
4 just because I'm going to need to run to the restroom
5 myself.

6 MS. HOWARD: You just let me know, Your Honor.

7 THE COURT: Okay.

8 (Whereupon, videotape started)

9 (Whereupon, videotape stopped)

10 THE COURT: Your Honor, defense attorney, any
11 objection to me fast forwarding while he is just sitting
12 there?

13 MR. CHAMBERS: No.

14 THE COURT: All right.

15 Everybody still okay?

16 All right.

17 (Whereupon, videotape started)

18 (Whereupon, videotape stopped)

19 MS. HOWARD: Any objection to fast forwarding?

20 THE COURT: Mr. Chambers, any objection?

21 MR. CHAMBERS: No, Your Honor.

22 THE COURT: All right.

23 About how much longer?

24 MS. HOWARD: One minute. One or two minutes.

25 THE COURT: That's good.

1 (Whereupon, videotape started)

2 (Whereupon, videotape concluded)

3 BY MS. HOWARD:

4 Q. Detective Conroy, after that interview did you speak
5 with -- did you place the defendant under arrest for the
6 charges we are here for today?

7 A. Yes, I did.

8 Q. Did you speak with him any further after that arrest?

9 A. No, I did not.

10 Q. I have just a couple of questions to ask you about the
11 storage unit he talked about. Did you search the storage
12 unit?

13 A. No, we did not.

14 Q. Why not?

15 A. Because if we were only looking for a box cutter, there
16 may be a box cutter in there, we couldn't relate that to the
17 crime that we were investigating, so I didn't see any need
18 to go look.

19 Q. And according to the defendant, you wouldn't even have
20 been able to get in there, correct?

21 A. That's correct.

22 Q. Did you recover the box cutter?

23 A. No, we did not.

24 Q. Is that common?

25 A. That's very common. It's very -- it's not very common

1 to recover weapons used during crimes, violent crimes.

2 Q. And then you talked a lot about the video at the hotel.

3 Did you check for that video?

4 A. The video was inoperable that day, so there was no
5 video.

6 Q. But you did check as part of your investigation?

7 A. I did.

8 MS. HOWARD: At this time I have no further
9 questions.

10 THE COURT: All right. Y'all come up here real
11 quick scheduling wise.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 THE COURT: Here is what we are going to do.
15 Ladies and gentlemen, I know we have been here three and a
16 half hours now. Let's take a break, okay? Y'all okay with
17 a little bit shorter lunch? Get everything done? All
18 right. Let's do an hour and fifteen. How about that? Be
19 back in the jury room at 1:45 and we will get started first
20 thing this afternoon with cross-examination, okay?

21 All right. Thank you very much. Y'all don't talk
22 about the case.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: All right, step down. Don't talk

1 about your testimony with your lawyers over there.

2 All right. We are down for lunch. See you back
3 at 1:45.

4 (Whereupon, proceedings were recessed)

5 (Whereupon, proceedings were reconvened)

6 THE COURT: Is there anything before we bring the
7 jury in?

8 All right, bring them in.

9 (The following takes place in the presence of the
10 jury panel)

11 THE COURT: All right of. All the members of the
12 jury are present.

13 Mr. Chambers, your witness.

14 CROSS EXAMINATION BY MR. CHAMBERS:

15 Q. Investigator Conroy, or actually Sergeant Conroy, how
16 long have you been a police officer?

17 A. Roughly twenty years.

18 Q. So generally speaking, it's true, isn't it, and correct
19 me if I say anything that's wrong, that as a police officer
20 you are not allowed to just pick somebody up off the street
21 and take them to the police station, are you?

22 A. You have got to have a purpose to detain somebody, yes,
23 sir.

24 Q. I mean, in other words, if you were to come to me and
25 want to question me, I don't have to cooperate with you at

1 all, do I?

2 A. That's correct.

3 Q. In other words, if you came and said "who are you," I
4 don't have to tell you who I am, do you?

5 A. That's correct.

6 Q. And if you asked me to come down to the police station
7 with you, I don't have to go with you, do I?

8 A. No, sir.

9 Q. And if I asked you if I'm being detained, you would
10 have to tell me why I was being detained, correct?

11 A. The specific -- no, I don't believe so.

12 Q. And even if you suspected that I did something and
13 that's the reason you wanted to talk to me, I don't -- I
14 don't have to go with you, correct?

15 A. I guess you would have that right to deny going with
16 me. At that point I would see what evidence I had whether I
17 would keep you detained or not.

18 Q. In other words, you have to have some sort of legal
19 authority to physically detain somebody, don't you?

20 A. Correct.

21 Q. All right. And you have a mechanism by which you can
22 go and you can obtain an arrest warrant for someone?

23 A. Yes, sir, that's correct.

24 Q. And an arrest warrant is what allows you to arrest
25 someone?

1 A. Yes, sir.

2 Q. The other thing that would allow you to arrest someone
3 is if you actually witnessed them committing a crime,
4 correct?

5 A. Correct.

6 Q. Then you don't have to go get a warrant?

7 A. That's correct.

8 Q. But if you don't witness the crime, you are supposed to
9 get an arrest warrant to arrest someone?

10 A. If they're a danger to society you can detain them.

11 Q. Well, that's what you call an investigative detention,
12 correct?

13 A. Correct.

14 Q. But that's something that is temporary in nature, isn't
15 that true?

16 A. Yes, sir.

17 Q. That would be if you had someone stopped and you
18 suspected that perhaps they were going to destroy evidence,
19 or you were going to get a warrant, or you were going to do
20 something like that, then you could detain somebody
21 temporarily?

22 A. Correct.

23 Q. But you can't just take them into custody and carry
24 them off and hold them for some long period of time. That's
25 not an investigative detention?

1 A. If you are continuously speaking with them and they
2 never object.

3 Q. So, in other words, in your mind they have to raise --
4 they have to know enough to raise some sort of an objection?

5 A. An objection, as well as if the investigator officer
6 had no evidence of any sort and not enough probable cause to
7 sign a warrant.

8 Q. So it's your position then that just having probable --
9 what you view as probable cause without presenting it to a
10 neutral and attached magistrate gives you the authority to
11 just indefinitely detain someone?

12 A. Not indefinitely, no, sir.

13 Q. So I want to talk specifically about this particular
14 case.

15 The first time that you had any personal interaction
16 with Rob Smith was on June the 18th of 2013, is that
17 correct?

18 A. Yes, sir, that's correct.

19 Q. And that was the day after these incidents were alleged
20 to have occurred at the Regal Inn on Wade Hampton?

21 A. Yes, sir.

22 Q. And that came about as a result of you having received
23 a call on what later proved to be Rob Smith's phone from Jim
24 Sawyer, is that correct?

25 A. That is correct.

1 Q. And when you got that call, Mr. Sawyer indicated that
2 Rob Smith had lost his phone, was looking for his phone and
3 that was the reason for the call?

4 A. I don't believe I talked to Mr. Sawyer on the phone.

5 Q. You talked to Rob Smith?

6 A. Correct.

7 Q. So Rob Smith is the one that told you "hey, I have lost
8 my phone. I'm looking for it."

9 A. Correct.

10 Q. And the two of you set up a meeting with one another?

11 A. Yes, sir.

12 Q. And that's when you went to -- did you go to Labor
13 Smart? Is that where you went?

14 A. Yes, sir.

15 Q. And that was there on Wade Hampton fairly close to
16 where the Regal Inn is located?

17 A. Yes, sir.

18 Q. And so you went down -- about what time of day was it?

19 A. That was morning. I would say 8:30, nine in the
20 morning.

21 Q. So did he know that you were a police officer?

22 A. Not until I arrived.

23 Q. So when you arrived, you told him that you were a
24 police officer?

25 A. I had my badge and duty weapon visible.

1 Q. Did you have a uniformed officer with you?

2 A. Not at that point, no, sir.

3 Q. At some point did a uniformed officer arrive?

4 A. As soon as I made contact with Mr. Smith, I
5 contacted -- I had a uniformed officer respond.

6 Q. And was that Officer Semanyk?

7 A. Semanyk, yes.

8 Q. Semanyk, okay.

9 So -- and why did you have him come to the scene?

10 A. When I saw Mr. Smith come out of the store, I didn't
11 know if he was going to flee, so I contacted him to have him
12 en route and if he was going to flee, I wanted another
13 officer in the area.

14 Q. But he came out of the store to talk to you, right?

15 A. He did come out of the store and talk to me.

16 Q. He was looking for his phone?

17 A. Correct, but until he saw my badge, I didn't know what
18 his reaction was going to be until -- without him not
19 knowing I was a police officer coming, I didn't know what
20 his reaction was going to be.

21 Q. And once you got there and you had the uniformed
22 officer get there, you went ahead and put him in handcuffs
23 and put him in the police car, correct?

24 A. Correct.

25 Q. What was your legal authority for doing that?

1 MS. HOWARD: Your Honor, I'm going to object. We
2 have already had a hearing on this matter.

3 THE COURT: All right.

4 MR. CHAMBERS: Your Honor, our position would be
5 this is still relevant to the jury. They have to make an
6 independent finding on their own regarding any statements
7 and this goes to the whole nature of what we saw on that
8 videotape.

9 MS. HOWARD: He's asking him for the legal
10 authority, Your Honor. I --

11 THE COURT: Well, let me -- I'll overrule the
12 objection, but just make sure that you don't go too far into
13 what the law is because I'm the judge of the law and they
14 are the judge of the facts.

15 MS. HOWARD: Thank you, Your Honor.

16 MR. CHAMBERS: I understand.

17 BY MR. CHAMBERS:

18 Q. I mean, you didn't -- you didn't -- you weren't placing
19 him under arrest, were you?

20 A. Investigative detention.

21 Q. And, again -- but investigative detention, again, as we
22 discussed would be a situation where you were trying to
23 secure a warrant, or you were trying to be able to conduct a
24 search, or some sort of temporary detention, correct?

25 A. Yeah. Yes, sir, but as he was -- prior to him leaving

1 the parking lot I gained more evidence of the crime from Mr.
2 Sawyer.

3 Q. Which would have given you the ability to go and get an
4 arrest warrant?

5 A. That is correct.

6 Q. But you didn't do that?

7 A. Correct.

8 Q. I mean, in essence what you did was -- without telling
9 Rob Smith anything about being suspected of anything, you
10 didn't place him under arrest, you didn't read him any
11 rights, you put handcuffs on him and put him in the police
12 car?

13 A. He asked what it was for and I advised him I wanted to
14 speak with him about something that occurred yesterday.

15 Q. Basically you said "I want to talk to you?"

16 A. Correct.

17 Q. And yet there he sat with handcuffs on in a police car
18 with no real reason as to why?

19 A. For a very brief moment of time.

20 Q. Well, I mean, it wasn't that brief, was it? I mean,
21 you took him down to the law enforcement center in handcuffs
22 and then you took him into an interview room and you
23 handcuffed him to a chair?

24 A. Correct.

25 Q. And at that point he still had no idea why you were

1 there to talk to him?

2 A. I think very quickly he understood why I was there to
3 talk to him.

4 Q. Well, you are assuming that, aren't you, because you
5 didn't tell him?

6 A. I advised him of his rights and explained to him I
7 wanted to talk to him about something that occurred the
8 other day and --

9 Q. We all sat here and watched the tape. You -- what you
10 did was you said you wanted to ask him some questions about
11 something that had happened.

12 A. Yes, sir.

13 Q. So as he sat there, he really had no clue. I mean, you
14 didn't tell him what you were asking questions about.

15 A. I don't know if he knew what it was about or not, but I
16 thought very clear of what it was about and I knew what --
17 with me being able to place him at the scene, he should have
18 known what it was about.

19 Q. Well, we know what you thought.

20 A. Correct.

21 Q. But what we are talking about, and this is what I'm
22 asking you about, is you went out there to that scene,
23 handcuffed him, put him in a car, took him to the law
24 enforcement center, handcuffed him to a chair in a room and
25 never told him until almost an hour or so into this

1 conversation exactly what it was you suspected of him doing.

2 A. Correct.

3 Q. Okay. And you did -- you went over his rights. Well,
4 at least you had him read his rights?

5 A. That is correct.

6 Q. I mean, you didn't read them to him?

7 A. He stated he could read and I gave him the option of me
8 reading them or him reading them and he opted to read them
9 himself.

10 Q. And so he sat there and he signed off on those and
11 that's when you started just asking him questions?

12 A. Yes, sir.

13 Q. And that's -- as we saw this whole thing transpire,
14 that's what you were doing, right?

15 A. Correct, I was asking him questions.

16 Q. Yeah.

17 And you -- and what -- basically what the situation
18 that you were trying to create is you didn't really want him
19 to know what you were looking for, did you?

20 A. No, sir, I -- it's not that I didn't want him to know.
21 I wanted him to tell me what occurred. I didn't want to
22 give him any evidence that I may have.

23 Q. I believe that you said earlier that you wanted that
24 element of surprise. Do you remember making that statement?

25 A. I do, and by the element of surprise I meant not giving

1 up the information that I had or the evidence that I had. I
2 wanted him to tell me.

3 Q. Now, in the tape, I mean, it appears that you go to
4 great lengths to come across as very reasonable and you say
5 several times you are not trying to coerce anything, is that
6 right?

7 A. That is correct.

8 Q. And yet it would appear that based on the fact that you
9 essentially just grabbed him up off the street and put him
10 in handcuffs and chained him -- or handcuffed him to a chair
11 without telling him even why he was even there, that that in
12 and of itself is a very coercive situation.

13 A. No, sir, I think I went to great lengths of not to
14 coerce him, either verbally, and I didn't have my weapon on.
15 I wasn't threatening him. I had an empty holster. I was
16 speaking to him as an individual.

17 Q. I mean, he really didn't -- I mean, again, he didn't
18 know until well into this exactly what you were accusing him
19 of doing or what these accusations that had been made
20 against him were, right?

21 A. I can't answer that what he knows or what he thought.

22 Q. All right. But you didn't tell him?

23 A. I did not tell him, no.

24 Q. But the only reason that you came into contact with him
25 was because he was looking for his phone?

1 A. That is how I first made contact with him, yes, sir.

2 Q. This -- you know -- and this is a person that despite
3 the fact that he allegedly had raped somebody, went looking
4 for his phone wearing exactly the same clothes that he had
5 on when he was supposed to have perpetrated this rape,
6 correct?

7 A. That's exactly correct.

8 Q. That was the black Polo?

9 A. Correct.

10 Q. The Polo that said Serve Pro, says Serve Pro on it, is
11 that what it was?

12 A. Yes, sir.

13 Q. Now, he never -- I didn't hear we were looking --
14 listening about the investigation, no -- the alleged victim
15 in this case never said anything about Serve Pro being
16 written on his shirt, did she?

17 A. No, sir. She stated a black Polo-type shirt, three
18 button and white T-shirt underneath, and he was wearing
19 similar clothes, if not the exact clothes, that were
20 described.

21 Q. And you took his clothes into evidence, correct?

22 A. Yes, sir.

23 Q. And you had forensics done on them, correct?

24 A. I don't believe I ever submitted them for forensics,
25 but I wanted to preserve them in case I was going to submit

1 them.

2 Q. Is there any reason why you didn't submit them?

3 A. After I submitted the sexual assault kit and his DNA
4 and the evidence collected at the room, I decided not to go
5 further because that was inconclusive.

6 Q. Okay. Did you see any evidence of any blood or
7 anything on his pants, or his shirt, or anything like that?

8 A. No, sir.

9 Q. Okay. Did you -- you said that you had -- I heard you
10 earlier, you said you directed DNA and checked for
11 fingerprints, you did all these things, and at best these
12 were inconclusive. You didn't come back with anything,
13 correct?

14 A. Correct, and I didn't ask them to further do any
15 further testing because I had an admission of him having
16 sexual contact with her.

17 Q. And I would assume that you looked for fingerprints on
18 the door, door knob, things like that?

19 A. Forensics processed the scene and are very competent in
20 what they do.

21 Q. But that would seem to make sense --

22 A. That is correct.

23 Q. -- given there was some allegation that he slammed the
24 door, or shut the door, somehow came into contact with the
25 door with his hand, correct?

1 A. I would assume so, yes, sir.

2 Q. And as far as you know, no fingerprints were found that
3 were on the door?

4 A. That is correct.

5 Q. Okay. And throughout this process, except for you
6 saying that he was inconsistent in lying as he was talking
7 to you, I mean, he cooperated, right?

8 A. That's a pretty broad statement. By cooperate, if he
9 cooperated, he continued to talk to me, is that --

10 Q. Yeah, I mean, he could have easily have said to you
11 "yeah, I don't have anything to say," or, "I would like to
12 talk to a lawyer," or any of those things, but he didn't do
13 that?

14 A. That is correct.

15 Q. He sat there and talked to you for, shoot, a couple of
16 hours?

17 A. Correct.

18 Q. Answered questions?

19 A. Yes, sir.

20 Q. And this was, again, after you put handcuffs on him and
21 carried him down there without really giving him any choice
22 about whether he went or not?

23 A. After he was in the room he talked to me for several
24 hours.

25 Q. Yeah.

1 And he immediately consented to a search of his
2 backpack?

3 A. That is correct.

4 Q. Signed the form for you and everything?

5 A. Yes, sir.

6 Q. And you looked through the backpack?

7 A. Yes, sir.

8 Q. And you didn't find anything of any evidentiary value
9 in the backpack?

10 A. That's correct.

11 Q. And this is the person, I mean, who at the time
12 appeared to be homeless, correct?

13 A. I can't answer that. He didn't appear to be homeless.
14 I mean, he was -- he was well groomed or well kept, but
15 there are different -- he basically lived here and there and
16 Salvation Army and so I don't know that he's homeless. I
17 can't say, of course.

18 Q. Well, I mean, based on your conversation with him, he
19 said that he stayed here and there and he sometimes stays at
20 a mission. I mean, that's basically what homeless people
21 do, right?

22 A. In some sense, yes, sir.

23 Q. So -- I mean, what I'm getting at is this is a person
24 who probably carries everything that he has around in that
25 backpack and he has it with him all the time?

1 A. Or keeps in a storage facility, like he stated.

2 Q. And, again, when you asked him about the storage
3 facility, he said "as long as I can go with you and we can
4 get access to it, you can go out there and look at the
5 storage facility."

6 A. Yes, sir.

7 Q. I mean, he didn't try to keep you away from that?

8 A. That's correct.

9 Q. You didn't go look, but --

10 A. No, sir.

11 Q. -- you could have?

12 A. Yes, sir.

13 Q. I mean, he cooperated with you in those senses in every
14 way that he could?

15 A. Yes, sir.

16 Q. He talked to you when he didn't have to?

17 A. Yes, sir.

18 Q. Let you search his backpack when he didn't have to?

19 A. Yes, sir.

20 Q. Would have let you look in the storage unit, even
21 though he didn't have to?

22 A. Yes, sir.

23 Q. And he even gave you the access code to his phone so
24 that you could look in the phone?

25 A. That's correct.

1 Q. And that's something that you hadn't been able to do?

2 A. Correct.

3 Q. And you didn't find anything that was of any
4 evidentiary value in any of those things?

5 A. That is correct.

6 Q. In fact, you never found a box cutter in this
7 particular case?

8 A. No, sir.

9 Q. You didn't really find any physical evidence that would
10 have linked him to the alleged crime in this case?

11 A. Other than the phone, his phone being in the room.

12 Q. Okay.

13 A. That's correct.

14 Q. Which he was looking for the phone?

15 A. He was looking for it, yes, sir.

16 Q. Okay. And had you ever been out to the Regal Inn
17 before?

18 A. Yes, sir. I used to work in that area when I first
19 started.

20 Q. A lot of prostitution, drugs, things like that?

21 A. There -- I don't know what you would consider a lot,
22 but there is some, just like any other hotel or --

23 Q. Do you know the owner in the case, the one they call
24 B.K.?

25 A. I do not know him personally.

1 Q. Did you ever have any contact with him?

2 A. I had contact with him about the video camera and
3 that's it.

4 Q. That's really all you talked to him about?

5 A. I asked him if he had any evidence of the incident that
6 took place and he couldn't offer any.

7 Q. Did you have the officers canvass the area to find out
8 if anybody saw or heard anything?

9 A. They did, as well as I did, after -- once I arrived.

10 Q. So other than the lady that we heard from here today
11 and I think her boyfriend, who didn't testify, you don't
12 have anybody that saw or heard anything?

13 A. No, sir. When I pulled up in the parking lot it was
14 fairly empty. There was very few cars in there and a lot of
15 vacant rooms around the victim's room.

16 Q. I think I recall that you said that -- well, I mean,
17 you say they were vacant, but you didn't talk to the owner
18 about who was in those rooms. You said you only talked to
19 him about the videotape.

20 A. Correct. The housekeeping lady as well said they were
21 vacant.

22 Q. And you said that there were people that gathered,
23 people who were staying there at the hotel, that a group
24 gathered up and they were out there as the police were there
25 investigating?

1 A. Right, there were several people that walked up through
2 the breezeway and I asked them if they were staying on the
3 other side or on the bottom floor and asked them if they saw
4 anything and they said they did not.

5 Q. So there were people out there, there were people
6 observing what was going on, there were people there while
7 the police were there, people that lived there and stayed
8 there, correct?

9 A. Well, the police were there. I don't know about prior
10 to us arriving.

11 Q. Well, I thought -- wasn't it your testimony earlier
12 that there were people that gathered there, people at the
13 hotel?

14 A. Correct. Like I said, when the police were there. I
15 don't know about prior to us arriving there.

16 Q. Yeah. Well, that's what I'm talking about, when the
17 police were there.

18 A. Correct, when the police were there there was a lot of
19 commotion going on.

20 Q. A lot of commotion?

21 A. Well, a lot of -- I say commotion. You know, four or
22 five patrol cars, EMS, people are going to --

23 Q. I mean, they think there is a lot of commotion, four or
24 five police cars out there in the parking lot on Wade
25 Hampton?

1 A. Correct.

2 Q. Ambulance.

3 I mean, that's the kind of thing that would draw
4 attention to people?

5 A. Correct.

6 Q. People that's lived there, people that were driving by
7 there, kind of thing that people would talk about in that
8 area, "hey, what's going on over there at the Regal Inn?"

9 A. I would assume so.

10 Q. Yeah.

11 Were you aware that Rob Smith and Walter Pope both
12 worked through Labor Smart?

13 A. I found out either the next -- I found out the next
14 day, but I found out the 19th for sure that they both worked
15 there.

16 Q. Okay.

17 A. I found out the next day when the -- I guess when -- on
18 the 17th I found out that Mr. Pope worked there through the
19 victim, his fiance. And then the next day when Mr. Smith
20 was there I found out they had both worked there. I didn't
21 know if they worked together or anything, but I knew they
22 both --

23 Q. I mean, is that something that you investigated?

24 A. No, sir. I talked to the victim and she said that her
25 husband, her fiance, did not know him or have any dealings

1 with him.

2 Q. So in your mind that was just a coincidence and nothing
3 to look into really any further?

4 A. That's exactly what it was.

5 Q. Okay. Were you aware that the owner, B.K., after this
6 incident wanted the victim to move out of the hotel?

7 A. No, sir.

8 Q. Not anything that you ever became aware of?

9 A. Not until yesterday.

10 Q. Okay. It seemed clear, based on the fact that he
11 remembered the backpack. I mean, you were in here that Mr.
12 Pope apparently at some point had encountered Rob Smith,
13 correct?

14 A. I would -- I just assumed that he saw it passing at the
15 Labor Smart. I don't know that there was an encounter.

16 Q. If there had been sex between Rob Smith and the alleged
17 victim in this case, it could be that she didn't want her
18 live-in boyfriend to know anything about it, correct?

19 MS. HOWARD: Your Honor, I'm just going to object.

20 THE COURT: Sustained.

21 MR. CHAMBERS: All right.

22 BY MR. CHAMBERS:

23 Q. One of the things that you found in the backpack when
24 you looked at it, there were condoms, correct?

25 A. That is correct.

1 Q. So that would corroborate at least part of what Rob
2 Smith told you that when he engaged in sexual activity with
3 this woman, that he used a condom?

4 A. That's what he stated.

5 Q. Okay. And you were there when he was initialing your
6 victim rights form and signing your documents letting you
7 search things and all that, he clearly is a right-hand
8 dominant person, isn't he?

9 A. That's correct.

10 Q. So he used his right hand for everything?

11 A. When he was in my custody he did, yes, sir.

12 Q. Yeah.

13 And as far as Ms. Fortner, the only injury that seemed
14 to be visible was that she had some redness on the right
15 side of her neck, is that correct?

16 A. According to the doctor's reports, yes, sir, and the
17 forensics pictures.

18 Q. Yeah.

19 And she was checked out pretty closely?

20 A. Visible injuries, you said?

21 Q. Yes.

22 A. Yes, sir.

23 Q. I mean, you had a chance to see her, right?

24 A. Yes, sir.

25 Q. And then the doctors said they did a three hour

1 examination where they had her stand on a sheet and
2 essentially literally went over her with a fine toothed
3 comb?

4 A. I don't know exactly what the exam -- that's what she
5 testified to earlier, yes, sir.

6 Q. Yeah.

7 And you had the -- you had the rape kit, so you were
8 able to see all of that and see what kind -- that's part of
9 your investigation. You were able to see what kind of
10 examination they did?

11 A. The documents. I don't open the kit itself, but I
12 review the documents.

13 Q. And so as far as you know, I mean, the doctor did say
14 yesterday that there was some sort of a laceration in the
15 vaginal area?

16 A. Yes, sir.

17 Q. She didn't really expound on that, right?

18 A. That's correct.

19 Q. And then there was the redness and perhaps slight
20 swelling to the neck?

21 A. Correct.

22 Q. On the right side of the neck?

23 A. Correct.

24 Q. And nothing else?

25 A. Nothing that was noted, no, sir.

1 Q. I mean, she didn't have any injuries to her arms or
2 anything that would have required bandages?

3 A. Again, she was clothed when I saw her. The doctor that
4 did a full exam and according to her documents there was no
5 injuries to her arms, sir, that required bandages.

6 Q. Exactly. I mean, you were the lead investigator on
7 this, so you would have been aware, right?

8 A. Correct.

9 Q. And as far as you know there was nothing like that?

10 A. That is correct.

11 Q. I mean, there was nothing on the arms, the knees, the
12 elbows, none of that?

13 A. According to the exam.

14 Q. And this is after Ms. Fortner told you that they had
15 tussled pretty good inside that room?

16 A. Yes, sir.

17 Q. Now, she talked, as we know, to Officer Mullinax?

18 A. Correct.

19 Q. And then she talked to you?

20 A. Yes, sir.

21 Q. But she gave her statement to Officer Mullinax?

22 A. That is correct.

23 Q. Okay. And all of those things were recorded on that
24 day, the day they were supposed to have happened?

25 A. Yes, they were all documented on the statement.

1 Q. And then she came in and testified today, or yesterday,
2 I'm sorry?

3 A. Correct.

4 Q. And as police officers, if you are going to record
5 something in a report, you strive for it to be as accurate
6 as possible, don't you?

7 A. Yes, sir.

8 Q. I mean, if you write down that somebody said something,
9 especially if it's somebody who's an alleged victim or a
10 witness, you want to make sure that you get it pretty
11 accurately?

12 A. I can't speak for what Mullinax does, but when I take a
13 written statement from somebody, I will summarize what they
14 stated and have the facts in there.

15 Q. Well, if you say a -- I mean, you wouldn't summarize a
16 direct quote, would you? If you were putting down that
17 somebody just said something, you would write it down the
18 way it was said, right?

19 A. That's correct, but I would -- yes, sir, correct.

20 Q. I mean, I'm not trying to put words in your mouth. I'm
21 trying to --

22 A. No, I understand what you are saying. If they give a
23 statement, that is their statement and that's what they say.
24 So if I was going to put something in my report, I may
25 summarize the statement, but if I'm going to quote them,

1 obviously it would be in quotation marks typed out in my
2 report.

3 Q. And I believe one of the things that you told Rob Smith
4 when you were talking to him is that telling the truth, that
5 it's easy to be consistent because the truth is not
6 something that you have to worry about getting right, it's
7 what happened, right?

8 A. Yes, sir.

9 Q. So inconsistencies in the way that somebody recollects
10 things or tells something is an indication of
11 untruthfulness?

12 A. I -- I would have to not agree with that statement.

13 Q. So you are going to backtrack on that? That's not true
14 then?

15 A. No, sir, I'm not saying that. I'm saying depending on
16 the time period, some of your -- you may lose some of your
17 train of thought or some of your memory. I'm not going to
18 say it's not a truthful statement. I'm just going to -- if
19 it's not exactly the way, but if there are huge
20 discrepancies, I would say it's harder to keep the truth
21 straight.

22 Q. I'm not talking about exactly the same. Nothing is
23 exactly the same probably, but, you know, if you are talking
24 about -- especially in close proximity to when it happened,
25 if you are talking about the way something went down, there

1 should be pretty good consistency there in the way it's
2 stated?

3 A. Yes, sir.

4 Q. All right. Listen, that's all the questions that I
5 have for you. I appreciate you answering my questions.

6 A. Yes, sir.

7 THE COURT: Madam Solicitor, any redirect?

8 MS. HOWARD: Just a few, Your Honor.

9 REDIRECT EXAMINATION BY MS. HOWARD:

10 Q. Detective Conroy, is it true that one of the reasons
11 y'all are taught to handcuff when there is a suspect of a
12 violent crime is because of officer's safety?

13 A. Officer's safety and flight risk. It's -- my office
14 isn't directly outside the interview room and whoever the
15 officers were there, I didn't know if they would be getting
16 up and leaving.

17 Q. And, again, we saw the video, but just to make it
18 clear, he never asked to stop talking to you in any way?

19 A. That is correct.

20 Q. Now, Mr. Chambers, he just said -- he sort of made a
21 deal about him being in the same clothing, but in the same
22 light he then said all his belongings would be in that bag.
23 Do you -- because isn't it true that he told you in his
24 statement that all of his stuff was locked in the storage
25 unit?

1 A. Correct.

2 Q. And that he could not get into it?

3 A. Correct.

4 Q. So it's reasonable to believe that he would be in the
5 same thing he was in?

6 A. That is correct.

7 Q. And I want to ask you real quick about fingerprints.
8 You did fingerprint also his phone, correct?

9 A. I did a DNA swab on his phone. I don't believe I
10 fingerprinted the phone.

11 Q. Did a DNA swab.

12 And so he admitted that that was his phone?

13 A. That is correct.

14 Q. Did any DNA come back conclusive to that?

15 A. I didn't have that tested. It's a very expensive test
16 and he admitted ownership of the phone, so I assumed that
17 his DNA should be on that phone.

18 Q. Okay. And, again, I'm just highlighting the victim's
19 statement that he's making an issue with. Tell me what this
20 form is that I passed up to you.

21 A. This is a -- one of the Greenville Police Department's
22 statement forms.

23 Q. And is that the victim's statement on there?

24 A. Yes, it is.

25 Q. And is it in her handwriting?

1 A. Yes, it is.

2 Q. And just read the first part again. I know we have had
3 Officer Mullinax do that, but I just want to hear it one
4 more time, please.

5 A. The portion of it "I was putting on my --

6 Q. The first portion where it talks about what happened
7 when he came in the room, the part that Mr. Chambers was
8 asking about right there, please.

9 A. From the start to right there?

10 Q. From the beginning to right there, yes.

11 A. It says "I was putting my dirty sheets and towels
12 outside for the maid and a guy with a black three buttoned
13 up shirt, a white shirt and jeans, asked me if I knew anyone
14 named "Mookie". I said no. I kept cleaning and he came
15 back and said something I don't know, put a box cutter,
16 closed the door. Said don't do anything or I'll cut you. I
17 kept saying please not in front of my kids."

18 Q. And those are the victim's words in her handwriting,
19 correct?

20 A. That is correct.

21 Q. Those aren't words in a report summarized by an
22 officer?

23 A. That's correct.

24 MS. HOWARD: No further questions.

25 THE COURT: Mr. Chambers?

1 MR. CHAMBERS: Just a little bit, Your Honor.

2 RECROSS EXAMINATION BY MR. CHAMBERS:

3 Q. So she did say to you that Rob had come by, and
4 according to her when she talked to you, had asked for
5 somebody named "Mookie"?

6 A. In my report she asked for "Mookie", or something like
7 that. She couldn't remember exactly.

8 Q. Okay. So that's -- that's really then consistent with
9 the statement that he gave you, that he was there looking
10 for somebody named Mike?

11 A. Yes, sir.

12 Q. I mean, and that would seem to -- I mean, he was -- he
13 was -- we know based on the conversation that you had with
14 him that at some point he went and asked at the lobby what
15 room Mike was in, right?

16 A. That's what he stated. He had never verified that he
17 went to the lobby.

18 Q. But it would appear to be so that he was looking for
19 somebody, because he was there at the hotel. He
20 certainly -- there wasn't any indication that he knew that
21 Ms. Fortner was at the hotel?

22 A. I'm not going to dispute he was looking for somebody or
23 had a reason to be there, no, sir.

24 Q. Yeah.

25 And this person was, as he told you, somebody named

1 Mike?

2 A. Correct.

3 Q. But as she said on the day "Mookie", or something like
4 that, right?

5 A. Correct.

6 Q. And then when she testified yesterday, she said it was
7 somebody named "Mike Mike", right?

8 A. Correct.

9 Q. But that corroborates at least that part of what he
10 told you about why he was there?

11 A. When he eventually told me that he did go to the room,
12 yes, sir.

13 Q. Okay. Thank you.

14 A. Yes, sir.

15 THE COURT: All right. Thank you, sir. You can
16 step down.

17 THE WITNESS: Thank you.

18 THE COURT: The State can call its next witness.

19 MS. HOWARD: Your Honor, at this time the State
20 rests.

21 THE COURT: The State rests.

22 Ladies and gentlemen of the jury, let's take a
23 brief afternoon recess to take up some matters of law with
24 the lawyers and we will get you back out here shortly.

25 Please do not talk about the case. Thank you.

1 (The following takes place outside the presence of
2 the jury panel)

3 THE COURT: All right. Mr. Chambers.

4 MR. CHAMBERS: Yes, sir, I make a motion for a
5 directed verdict as to all three of the indictments.

6 THE COURT: All right. Motion is denied.

7 Do you want to make any argument on it for the
8 record?

9 MR. CHAMBERS: No, Your Honor.

10 THE COURT: I think there is enough evidence,
11 using the any evidence standard, to certainly go to the jury
12 on these issues.

13 MR. CHAMBERS: My understanding of the rule is
14 that if I don't do that, then I'm not preserving it.

15 THE COURT: That's right. You are preserved.

16 All right. My law clerk is working on the charge.

17 I do want to talk with your client real quick
18 about his right to testify and then we will have a charge
19 conference to see where we go, okay?

20 Sir, if you will please stand for me. Raise your
21 right hand.

22 ROBERT DAVIS SMITH, JR., having been first duly
23 sworn, testified as follows:

24 THE COURT: All right. Thank you, sir. You can
25 be seated.

1 Make sure you talk real loud so my court reporter
2 can pick up your testimony, okay?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: You got that?

7 COURT REPORTER: Yes, sir.

8 THE COURT: All right.

9 Now, Mr. Smith, at this time I'm going to explain
10 to you certain rights that you have and if you don't
11 understand anything I tell you, please let me know and I'll
12 be glad to repeat it to you and help you understand, okay?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. Now, we have now reached
15 the stage of the trial where you may present your defense.
16 Now, in doing that you have the right to claim the
17 protections given to you by the Fifth Amendment of the
18 United States Constitution which states in pertinent part
19 that no person shall be compelled in any criminal case to be
20 a witness against himself. What this means is that you
21 cannot be required to testify in this case.

22 Now, you have the right to testify on your own
23 behalf, if you want to, but nobody can make you testify.
24 That's a personal right that you have. Do you understand
25 that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Now, if you do decide to
3 testify you will be subject to the same rules that govern
4 other witnesses and you may be examined and cross-examined
5 on any relevant issue in the case.

6 In addition, and I'm going to get to this in a
7 second, if you have any convictions involving dishonesty or
8 false statement or for crimes punishable by imprisonment for
9 more than one year and I determine that the probative value
10 of that evidence outweighs, or substantially outweighs, the
11 prejudicial effect of it, the solicitor may be able to
12 cross-examine you on your prior criminal record to try to
13 attack your credibility. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And also even if they didn't have
16 anything on you, or if I didn't let anything in about any
17 prior record you have, the solicitor could try to make you
18 look bad, make you look not believable in front of the jury,
19 the way your lawyer has tried to do with witnesses. Do you
20 understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, on the issue with the prior
23 crimes, does the defendant have a criminal record where the
24 State would seek to impeach his credibility?

25 MS. HOWARD: He does, Your Honor.

1 THE COURT: All right. Well, what does the State
2 believe would be allowable under the rules?

3 MS. HOWARD: Under the rules, Your Honor, we have
4 two crimes of dishonesty, which was a fraud check and
5 impersonating a police officer. And then the other ones,
6 Your Honor, we feel we would not even attempt to try.

7 Those two, and then also there is a possession of
8 marijuana with intent to distribute that we would seek to
9 impeach him on.

10 As to the others, the lewd act and two failures to
11 register, I'm assuming that that is not going to be
12 appropriate.

13 THE COURT: That's a correct assumption.

14 MS. HOWARD: So those three.

15 Those dates, Your Honor, are out of the ten year
16 time period, but we did provide notice to the -- excuse me,
17 the dates of the other charges, the lewd act, failure to
18 register, are out of the ten year time period, but we did
19 provide notice to the defense attorney that we intended to
20 use that. Now, I know I can't impeach somebody, but I ask
21 the court to even be able to impeach on those, but I would
22 like to ask about the fact that he was arrested and dealt
23 with the police on those dates for an incident.

24 THE COURT: What do you mean?

25 MS. HOWARD: Just ask him about being convicted of

1 a crime from that time, but not say the crime.

2 THE COURT: Well, first of all, let's deal with
3 the ones that I think that you may be allowed to get in and
4 let me hear Mr. Chambers argument.

5 The fraudulent check, I mean that's a crime of
6 dishonesty or false statement, agreeable?

7 MR. CHAMBERS: Yes, Your Honor.

8 THE COURT: I think that can come in.

9 The impersonating of the police officer, that's a
10 crime of dishonesty. I think that can come in. Agreed?

11 MR. CHAMBERS: Yes, Your Honor.

12 THE COURT: PWID carries more than one year. It
13 doesn't really have anything to do with what we are here for
14 now, so I don't see how that could be prejudicial. It's
15 probative because it goes to his credibility on the witness
16 stand. Agreeable?

17 MR. CHAMBERS: Yes, Your Honor.

18 THE COURT: So those are the ones that we all can
19 agree upon that he could be cross-examined about.

20 Now, what were you talking about?

21 MS. HOWARD: Well, Your Honor, he -- I would say,
22 you know, it requires notice if we intend to try to use a
23 conviction outside of the --

24 THE COURT: Outside of the ten years under 609(b).

25 MS. HOWARD: That was provided in our initial

1 letter to the defense attorney.

2 THE COURT: So what are you trying to get in?

3 MS. HOWARD: Well, I would just like to ask him
4 about having been convicted of a crime on the arrest dates
5 that are on here -- excuse me, not arrest dates, but the
6 conviction dates, but I will not say the actual crime
7 because I'm sure failure to register, burglary, and the lewd
8 act, as well as the other failure to register would be too
9 prejudicial in this case.

10 THE COURT: But you just want to get in that he
11 was convicted of a crime more than ten years ago?

12 MS. HOWARD: Yes, sir, Your Honor.

13 THE COURT: All right, Mr. Chambers.

14 MR. CHAMBERS: I just -- I'm having a hard time
15 understanding how that's relevant. She can't use it to
16 impeach, but she said she could, and I certainly agree that
17 under any balancing act that you can do, that that would be
18 prejudicial.

19 It sounds like she wants to get into somehow the
20 investigation itself, which again I just don't even see how
21 that would be relevant and I would object to that.

22 MS. HOWARD: I don't know. All I want to ask
23 him -- all I want to impeach him with is that he has
24 convictions just for credibility issues, Your Honor, not
25 for -- I won't get into -- I don't care about getting

1 into --

2 MR. CHAMBERS: She's got three good ones. I
3 don't --

4 MS. HOWARD: Well --

5 THE COURT: Let me hold off on ruling on that for
6 a moment.

7 MS. HOWARD: Okay.

8 THE COURT: Did you hear all that, Mr. Smith?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: So, you know, I have got to make a
11 decision here shortly about whether or not I'm going to
12 allow the State to do that, but did you hear me say that the
13 State can certainly question you in front of the jury about
14 your fraudulent check conviction?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Your conviction of your impersonating
17 a police officer?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And the PWID marijuana case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And you understand the jury may then
22 look at you in a different light if they hear that
23 testimony, as far as your believability? Do you
24 understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Now, if you do decide to
2 testify, this decision on your part must be freely,
3 voluntarily and intelligently made, with you understanding
4 and knowing about your Fifth Amendment right to remain
5 silent.

6 Now, if you do not wish to testify and you decide
7 not to testify, I will give a specific instruction to the
8 jury that they cannot give that fact that you didn't testify
9 any consideration whatsoever and that there is absolutely no
10 prejudice to you because you didn't testify. In fact, I
11 will tell them they can't even bring it up in the jury room,
12 okay?

13 So it's left entirely up to you whether or not you
14 want to testify. You can talk to your lawyer about it some
15 more, if you need to, but the final decision will be left
16 entirely to you.

17 Now, do you understand everything that I have
18 explained to you so far?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Do you have any questions
21 about what I have explained to you?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. What's your question?

24 THE DEFENDANT: Today I didn't do this. I'm
25 innocent and right today I'm still nerved wrecked and

1 shipwrecked of this and I have nightmares about this, and
2 I'm thankful for being here today to say hey, I am innocent
3 to you, to the DA. To everybody in here I am innocent. I
4 could see if I did it, I can confess to it as a man, but I
5 did not do nothing. I can say that, yeah, but I did not do
6 none of this.

7 THE COURT: All right. Do you want to talk with
8 your lawyer here any more about whether you should or should
9 not testify?

10 THE DEFENDANT: No, sir, Your Honor.

11 THE COURT: All right. Have you made up your mind
12 about whether or not you are going to testify?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: All right. Do you still want to talk
15 about it some more, or are you going to testify?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Okay.

18 All right. Let me -- I want to make sure you
19 understand, okay? Do you need to talk to your lawyer any
20 more about whether or not you should get up on this witness
21 stand and tell your side of the story?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. Do you want to get up on
24 this witness stand and tell your side, understanding that
25 the solicitor can cross-examine you about those three prior

1 convictions? Do you want to get up there and testify or
2 not? You don't have to if you don't want to.

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Okay. So you are not going to testify
5 and I'm going to tell the jury that they can't even talk
6 about it, they can't even bring that up, correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right.

9 Mr. Chambers, do you agree with that decision?

10 MR. CHAMBERS: I do, Your Honor.

11 I just want to state briefly for the record, I
12 want to make sure that I have noted that he and I have had
13 fairly lengthy decisions about this. It is a -- it is a
14 situation where I have presented him with pros and cons. I
15 told him that I don't really have a personal opinion on it,
16 but I have given him reasons why I think it would benefit
17 him to testify and reasons why I think it would benefit him
18 not to testify, and he has clearly stated on the record that
19 he does not want to testify, but I just wanted to make sure
20 that was on the record.

21 THE COURT: All right. And I understand that.

22 Sir, do you agree with what your lawyer just said?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And are you satisfied with his
25 representation up to this point?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right.

3 All right, so he's not going to testify. That
4 means all that conversation we just had about impeachable
5 stuff ain't coming in and I don't have to make a decision
6 about that other stuff that you were talking about.

7 MS. HOWARD: Do you want to make one?

8 THE COURT: If I had to make a decision for the
9 record, I would have denied the State the opportunity to do
10 that, okay?

11 All right. So having said that then we are going
12 to come back -- the jury is going to come back in and you
13 rest and then, Mr. Chambers, do you have any other witnesses
14 to present?

15 MR. CHAMBERS: No, Your Honor.

16 THE COURT: All right. So then you are going to
17 say "I rest." And having said that, then the defense, of
18 course, gets to close last. You haven't introduced anything
19 and you haven't presented a defense. Agreed?

20 MR. CHAMBERS: Yes, Your Honor.

21 THE COURT: Okay. So we have all established
22 that.

23 Let's talk about charges.

24 Okay. Now, I know y'all probably maybe --

25 First of all, here is the verdict form. Let's

1 talk about that.

2 CSC first. There is evidence of aggravated force.

3 Talk to me about whether or not there is any
4 evidence to support a charge of CSC second.

5 MS. HOWARD: Your Honor, the State would ask that
6 we not do a lesser included.

7 THE COURT: All right.

8 MR. CHAMBERS: I agree with that, Your Honor.

9 THE COURT: Okay. So the verdict form simply says
10 as to the offense of criminal sexual conduct first degree,
11 we, the jury, unanimously find the defendant Robert David
12 Smith, Jr., either not guilty or guilty, okay?

13 MR. CHAMBERS: Correct.

14 THE COURT: The second charge under the
15 indictment, or the second count, is the offense of burglary
16 first degree.

17 Is there any evidence in the record to suggest a
18 lesser offense of burglary second?

19 MS. HOWARD: I would just ask again that you keep
20 it burglary first. Do you agree?

21 MR. CHAMBERS: I agree, Your Honor.

22 THE COURT: Okay. I agree as well.

23 All right. So the same thing, either not guilty
24 or guilty.

25 And then the PWVC, either guilty or not guilty.

1 You know, for all that the jury would have to
2 believe is that there was a deadly weapon involved.

3 MR. CHAMBERS: Correct.

4 THE COURT: Okay. And I'll define deadly weapon
5 as a knife, and I will define that a box cutter is a knife.
6 Okay.

7 MS. HOWARD: Your Honor, I'm --

8 THE COURT: Yes.

9 MS. HOWARD: I have a request, whenever you are --

10 THE COURT: Well, let me talk first and then you
11 may not have the request.

12 MS. HOWARD: Okay.

13 THE COURT: Here is what I plan on charging. I
14 got the general stuff.

15 Credibility.

16 Failure for the defendant to testify. I'll talk
17 about how they can't even bring that up.

18 I give the long circumstantial and the one that
19 defense lawyers like. What's it called, Logan? Is that
20 what it is, where it has to be substantial --

21 MR. CHAMBERS: Yes, sir.

22 THE COURT: -- circumstances. I give that one.

23 Charge, arrest, and indictment not evidence.

24 Presumption of innocence.

25 Reasonable doubt. I give the long one that

1 defense lawyers like.

2 MR. CHAMBERS: Thank you.

3 THE COURT: The firmly convinced one.

4 Prior inconsistent statement.

5 MS. HOWARD: I'm sorry?

6 THE COURT: Prior inconsistent statement. I
7 define that.

8 Statement of defendant.

9 Identity is not an issue, but the jury has to
10 determine whether or not it was voluntary or coerced, based
11 upon your questioning.

12 CSC first. I'm right out of the charge book. Do
13 y'all want me to read it to you?

14 MS. HOWARD: Sure, that would be fine.

15 THE COURT: Are you okay with this?

16 MR. CHAMBERS: Yes.

17 THE COURT: Y'all can be seated if you want.

18 The defendant is charged with criminal sexual
19 conduct in the first degree.

20 The first element which the State must prove
21 beyond a reasonable doubt is that the defendant engaged in a
22 sexual battery with the victim.

23 A sexual battery is sexual intercourse,
24 cunnilingus, fellatio, anal intercourse, or any intrusion,
25 however slight, of any part of a person's body or of any

1 object into the genital or anal openings of another person's
2 body, except when the intrusion is accomplished for
3 medically recognized treatment or diagnostic purposes.

4 If you find that the State has not shown beyond a
5 reasonable doubt that a sexual battery occurred, you must
6 stop deliberating and your verdict would have to be not
7 guilty.

8 If you find that a sexual battery did occur, you
9 must then decide whether the State has proven beyond a
10 reasonable doubt that the defendant used aggravated force to
11 accomplish the sexual battery.

12 Aggravated force can be described in two different
13 ways, provided you find the State has met its burden of
14 proof.

15 Number one, aggravated force means the use of
16 physical force or physical violence of a high and aggravated
17 nature to overcome the victim. This includes the threat of
18 using a deadly weapon.

19 A deadly weapon is any article, instrument, or
20 substance which is likely to cause death or great bodily
21 harm.

22 Whether an instrument has been used as a deadly
23 weapon depends on the facts and circumstances of each case.

24 A knife is a deadly weapon.

25 A box cutter is considered to be a knife.

1 Number two, aggravated force also means that the
2 victim submitted to sexual battery while the victim was also
3 the victim of a forcible confinement, robbery, burglary or
4 housebreaking.

5 Any problem with that CSC first charge?

6 MS. HOWARD: No, Your Honor.

7 MR. CHAMBERS: No, Your Honor.

8 THE COURT: Okay. Thank you.

9 Burglary first, that's pretty much standard as
10 well. The only thing I changed around on the burglary
11 first, the State must prove beyond a reasonable doubt one of
12 the following things:

13 When entering, or while in the dwelling the
14 defendant was armed with a deadly weapon.

15 I'll define that again; or, the State must prove
16 that when entering or while in the dwelling the defendant
17 caused physical injury to someone not participating in the
18 crime; or, the State must prove that when entering, or while
19 in the dwelling, the defendant used or threatened to use a
20 dangerous object; or, the State must prove that when
21 entering or while in the dwelling the defendant displayed
22 what was or appeared to be a knife.

23 A box cutter is considered to be a knife.

24 Any problem with that from the State or the
25 defense?

1 MS. HOWARD: No, Your Honor.

2 MR. CHAMBERS: No, Your Honor.

3 THE COURT: Okay. Good.

4 And we all know what PWVC is.

5 Anything in addition that you wish for me to do?

6 MS. HOWARD: Yes, sir. I have a request right
7 here that comes straight from our statutes about criminal
8 sexual conduct, that the testimony need not be corroborated
9 in criminal sexual conduct cases.

10 THE COURT: Okay.

11 MS. HOWARD: It's a standard request that our
12 office makes.

13 THE COURT: The testimony of the victim need not
14 be corroborated in criminal sexual conduct cases? That's
15 what you want me to say?

16 MS. HOWARD: Yes, Your Honor.

17 THE COURT: Mr. Chambers?

18 MR. CHAMBERS: Well, I would object to that, Your
19 Honor. I don't believe that this is an appropriate charge.
20 I think that language comes out of the statute, but I think
21 it's a misleading way of saying --

22 MS. HOWARD: I don't understand.

23 THE COURT: Corroborated by what?

24 MS. HOWARD: What?

25 THE COURT: What do you mean? Corroborated by

1 what?

2 MS. HOWARD: The victim's statement alone is
3 enough.

4 THE COURT: Enough for what? To go to the jury?

5 MS. HOWARD: Uh-huh.

6 THE COURT: Well, yeah, I agree with that, but it
7 may not be enough to get a conviction.

8 MS. HOWARD: Right, and that's what he wants.

9 THE COURT: That's what a jury has to determine.

10 I think the way it sounds is that, you know, you
11 should return a guilty verdict just because the victim says
12 it happened.

13 MS. HOWARD: Well, no, because --

14 THE COURT: That's the way it's coming across.
15 That way you can get a --

16 MR. CHAMBERS: That's the way I was thinking, Your
17 Honor. I mean, you -- I mean, believe this based on, you
18 know, that you are going to say to them that they can assess
19 the statement and give it whatever weight they want.

20 THE COURT: Her statement is just one part of the
21 puzzle.

22 I'm not going to charge it. Let me tell you why.
23 I mean, her testimony and her statement are pretty
24 consistent. I mean, there are some inconsistencies, which
25 obviously Mr. Chambers has explored doing the good defense

1 he's put up for his client that he's going to talk about in
2 his closing. I know that, but all the other physical
3 evidence and the circumstantial evidence clearly, you know,
4 corroborates her story.

5 MS. HOWARD: It does, but that's just -- that's
6 just a request that our office makes and --

7 THE COURT: I got you.

8 MS. HOWARD: You know, usually.

9 THE COURT: Well, I'm not going to charge that.
10 Request denied.

11 All right. Anything else?

12 MR. CHAMBERS: No, Your Honor.

13 THE COURT: All right. Let's bring the jury back
14 in.

15 Well, do y'all need to run to the restroom real
16 quick before we can move right in?

17 MR. CHAMBERS: Yes, I would like to.

18 THE COURT: Hold on. Let's all take about ten
19 minutes and let's refresh and then we will move right into
20 closings and charge.

21 (Whereupon, proceedings were recessed)

22 (Whereupon, proceedings were reconvened)

23 THE COURT: Y'all ready?

24 MR. CHAMBERS: Yes, sir.

25 All right, let's bring the jury in.

1 (The following takes place in the presence of the
2 jury panel)

3 THE COURT: All the members of the jury are
4 present.

5 The State has rested.

6 Mr. Chambers?

7 MR. CHAMBERS: Your Honor, the defense rests.

8 THE COURT: The defense rests.

9 All right. Ladies and gentlemen of the jury, at
10 this point in time we have now finished the testimony and
11 evidence phase of the trial. We will now move into the
12 remaining stages of the trial. First will be closing
13 arguments. And after the attorneys give their closing
14 arguments to you, that's when I will instruct you on the law
15 and you will finally then be able to start talking about the
16 case, okay?

17 Please pay close attention to the lawyers.

18 Madam Solicitor.

19 MS. HOWARD: Your Honor, Mr. Chambers.

20 They say rape is a crime of opportunity, but it's
21 not. It's about taking something of upmost value from
22 someone just because you can, just because you want to, and
23 just to have that power. It's horrific. It's cruel and it
24 happened on June 17th, 2013, to M.F. [REDACTED], and in a
25 short exchange, short time period with this at the time

1 stranger, the defendant Robert Smith, her life was forever
2 changed.

3 As the judge told you after the arguments of both
4 lawyers he is going to charge you on the law and what some
5 of the things he's going to tell you is what the State's
6 evidence had to show to you over the course of the past two
7 days. We had to show that in Greenville County this
8 defendant entered the dwelling of the victim, room [REDACTED] of
9 the Regal Inn, where she was living with her family; that he
10 did so without permission and with the intent to commit a
11 crime, intending to sexually assault her; that he was armed
12 with a weapon, specifically a box cutter, in other words a
13 knife; and that he sexually assaulted her; that he committed
14 a sexual battery with aggravated force; that he penetrated
15 her vagina with his penis and it was un-welcomed,
16 un-consensual, and that he used force to do so, physical
17 force; held a knife up to her; he choked her, threw her on
18 the bed; and he did all of this in front of her children.

19 And he's also going to talk to you about
20 reasonable doubt, and I want to talk about this briefly
21 before I get going. Reasonable doubt does not mean beyond
22 any doubt. There are few things we know in life without any
23 doubt. Reasonable doubt is doubt that would make you
24 hesitate to act, and it is a heavy burden that the State
25 does bear.

1 I'm going to go through what we have seen, what we
2 have heard and what we have seen over the past two days so
3 that y'all feel comfortable rendering a verdict of guilty
4 beyond a reasonable doubt.

5 A lot of times in sexual assault cases you have
6 only the victim's story and no other corroborating evidence.
7 It was something that went unseen, unwitnessed, and too much
8 time passed. Lots of different factors. Unfortunately for
9 this victim that it happened, but luckily for the State and
10 for convicting the defendant we had more evidence. We have
11 corroboration in this case in this instance. We have a
12 victim, a young mother in her twenties, who was even younger
13 with younger kids two and a half years ago, whose story has
14 remained unchanged from the minute she called 911. She
15 talked with law enforcement. She testified in front of
16 y'all twelve strangers that she had never met before. You
17 can tell she's strong and she's a survivor and she came in
18 here and she told her story and she told the truth. And
19 there may be -- you know, if the only inconsistency is that
20 she called somebody "Mookie" versus "Mike Mike" versus Mike
21 the State would take that. She was violently sexually
22 assaulted in front of her children, in front of her
23 children. It's unimaginable.

24 In addition to that we have the 911 call where she
25 is distraught, she is terrified, and again she tells the

1 story the same way as she's told it the whole time. She
2 talks about him choking her, sexually assaulting her while
3 her kids were in the room.

4 In addition to that you have the laceration, her
5 genitalia, testified by the doctor.

6 You also have the bruising and the swelling of the
7 neck. You see it in the pictures that was noted by EMS,
8 noted by law enforcement and also by the doctor that
9 examined her at the hospital.

10 She went through going to the hospital, a
11 humiliating, embarrassing, horrific thing, all tied into
12 one. She goes to the hospital and she stands on a sheet
13 naked for them to examine her. She goes through having a
14 probe inserted into her vagina to collect evidence. She has
15 to leave her kids with someone else while she goes through
16 all this. She doesn't have her husband there. She has to
17 take medicine that will guard against STD's and pregnancy
18 and extra medicine to keep her from getting sick from all
19 the medicine that she has to take for the ordeal she just
20 went through. This is not something that someone does and
21 someone goes through and continues to stay the course, stay
22 after it, and come in here and look at the twelve of y'all
23 and tell her story just to grind an axe with someone or for
24 some recent altercation that might have occurred. It's not
25 reasonable.

1 In addition to that we also have Lisa Crowder who
2 just happened to be -- who was the cleaning lady at the
3 time, as you heard, who just happened to be working the
4 morning that this incident occurred and she saw the
5 defendant. Now, she doesn't identify him, but she saw a man
6 with a backpack, a desert colored backpack, rush past her as
7 if he was in a hurry and run across the street. You also
8 heard her say that there was a lot of stuff that went on at
9 the Regal Inn; more drugs than anything else. You also
10 heard her say that she had never had problems with this
11 victim and her family. You heard her say she was there
12 almost seven days a week.

13 Then you have Mr. Sawyer who helped place some
14 things together, but one of the most important things he
15 does is some of the things that the defendant says that I
16 will highlight in a minute, he blatantly says no, that's not
17 how it happened. When the defendant says I was working
18 yesterday, he says no, no, he wasn't. And he was there to
19 testify to you that he called the phone, ended up being the
20 defendant's phone.

21 And you heard about Labor Smart and how it
22 operated and that it was possible for people to work there
23 and not know each other.

24 And then you have the book bag. You have got the
25 book bag that was seen, the book bag that was recovered on

1 this defendant's person, the book bag that he dropped when
2 he realized that he had an opportunity to go get something
3 that he wanted and something that he could take from this
4 victim, that he dropped the book bag knowing that it sure is
5 easier to run down in a breezeway and grab the book bag and
6 get out of there when things go bad.

7 Then, of course, the phone. I know it's sad to
8 say, but there is a possibility we wouldn't be here without
9 that phone getting left behind. A lot of these types of
10 cases go unsolved, but lucky for that victim and luckily for
11 her today in court that phone was recovered in her hotel
12 room, and there is no question as to whose phone it was.
13 The defendant admits to it.

14 And all of these things corroborate her initial
15 911 call and corroborates what she told law enforcement and
16 what she came in here and told y'all.

17 The defense attorney is going to -- you know, it's
18 his job to poke -- try to poke holes, talk about "Mookie"
19 versus "Mike Mike" and commotions that go on everywhere and
20 a lot of it is just red herrings. A lot of it is trying to
21 find some way to poke a hole in something that the victim
22 said, but there is not much. She has remained strong and
23 she's -- she came in here and testified exactly as she has,
24 as the story has been the whole time.

25 One of the other things I want to do is to go

1 through the defendant's story, or his version of events, and
2 I don't usually do it this way, but there was so much that I
3 needed to note some of it. And if you look at all of the
4 inconsistencies from his statement, of the two-hour
5 interview that he gave police, and to being addressed
6 throughout the course of this trial, for her you have
7 "Mookie" versus "Mike Mike", an inconsistency, but for him
8 it's one to the other, to the other, to the other, to the
9 other, up to the other.

10 And specifically starting at fifteen minutes in
11 that interview he talks about on the morning of June 17th,
12 2013, he was at the IHOP -- called the Bus Stop, excuse me,
13 as he walks to Tryon Mission where he grabbed lunch. Then
14 he went to his girlfriend's house. That was at the fifteen
15 minute one.

16 Then at the twenty-six minute mark he talks about
17 how his dad -- he was with his dad working on cars that day.

18 Then he says he was working that day.

19 Then at the thirty-two minute mark he said "well,
20 I did go by that hotel and I asked the mixed girl about
21 Mike, and he said but I don't know her or her boyfriend."

22 At the thirty-eight minute mark he again said "I
23 don't know her or her boyfriend."

24 At the one hour and four minute mark he said well,
25 I -- again, he says I went to the -- "I took a bus and I was

1 downtown. I wasn't at the hotel." And he said he was there
2 about nine or ten a.m. downtown.

3 Then a few minutes later he says he was at the
4 hotel talking to the victim around nine or ten a.m. in the
5 morning.

6 Finally, at one hour and nine minutes he admits at
7 being at the hotel. He doesn't admit to ever putting the
8 book bag down, which to me is important enough and I'll
9 highlight it in a minute.

10 And one of the other things that's interesting
11 about his statement that he was given is he knew to tell law
12 enforcement that there were a lot of people that were --
13 that wear those black shirts around there, because he knew
14 he could be identified by the black shirt that he was
15 wearing when he went into the room and raped the victim.

16 So at one hour and thirteen minutes he says "well,
17 I was actually yesterday I went to the rim shop and I was
18 talking about my car."

19 Then it all starts to get jumbled up where he's
20 talking about walking versus taking a bus versus being here
21 and there and all over basically Greenville County.

22 And he's finally -- he's finally determined that
23 he didn't take any bus that day.

24 And at one hour and sixteen minutes he said he
25 didn't know her and he didn't touch her.

1 At one hour eighteen minutes he says he did
2 nothing.

3 And at one hour and nineteen minutes Detective
4 Conroy told him "your phone was in her room." He finally
5 tells the defendant that's where he found the phone and
6 that's when his story changes. He even said he's -- the
7 defendant tries to stay one step ahead of the law
8 enforcement in his story the whole time. He even told him
9 that he went to surveillance footage school so he knew about
10 the camera that would be there.

11 So at one hour and thirty minutes he said it was
12 consensual sex, the story that he stuck with the rest of the
13 time. For the most part it was consensual sex, but he said
14 he didn't know her before that and he didn't know her
15 boyfriend before that. So the only thing that stays
16 consistent in his story is that he didn't know them.

17 He said that "if I tell you this time can I walk
18 out of here", and he says that he -- she wanted diapers and
19 milk and had sex with him for \$25. What's interesting about
20 that is in the statement in the beginning of the video, one
21 of the things he said is he had just spent his last dollar
22 on -- that he -- on something when he was going to get
23 drinks, or something with his food stamp card. He didn't
24 have \$25. But what's interesting, and probably the picture
25 is not good enough for me to put up here, but I'm actually

1 going to pass this around, and this would be back in the
2 jury room for you, but you heard the victim testify, one,
3 that she was still nursing her baby. And also if you will
4 look in this picture under this sink right here are three
5 different boxes, two of which are unopened of diapers. I'm
6 going to pass that around. So probably one of the things
7 the defendant did not know and was not counting on when he
8 came up with that version of the story.

9 He did -- what's interesting is the victim said
10 the only thing she saw missing from the room was a \$5 bill
11 and he mentioned that there was a \$5 bill on this TV. It's
12 one little thing that's interesting.

13 So, he -- finally when Detective Conroy starts
14 talking about the book bag, he goes silent for a long time,
15 because the detective was asking him why -- why -- what
16 about -- why would you not tell me you dropped the book bag
17 and he can't figure out what the detective knows at the time
18 and he goes silent trying to figure out what his next answer
19 is going to be. So he was stumped. He had no explanation
20 for it.

21 The rest of the time he just keeps rattling off
22 story after story, story after story.

23 Another thing that I thought was very interesting
24 about the defendant when he is giving this statement,
25 another thing that goes to the opportunity he had to exert

1 some power and take what he -- take something that wasn't
2 his and be a powerful man and rape this victim sitting over
3 here is he told law enforcement "I know everything there is
4 to know about" -- I know exactly -- he said "I know
5 everything about that place than y'all do," talking about
6 the Regal Inn. He knows everything about that place. And
7 the defense attorney through this whole time has tried very
8 hard to establish a connection between the victim and/or her
9 boyfriend Al Hudson and the defendant. They were the
10 newbees to town. You heard them say they had not been here
11 very long. And then you heard the defendant say he had been
12 here -- or had been living here for the most part. So, you
13 know, if you want to go on that argument it's very effective
14 saying that the new people wouldn't know everybody, but the
15 people that have been around sure would know the new people.
16 And if you know everything about a place and you know it's
17 new people, you know that there is a single mom with two
18 young kids up there on the second floor, you just happen to
19 walk by, you see her and there is your opportunity, because,
20 again, the defense attorney talked about if it was an
21 open-air breezeway, people walking by, and you can even see
22 it from the road. She was putting her sheets out. Her
23 kids, you heard the testimony, was running back and forth
24 and you saw her. I mean, he went up there and he sees the
25 opportunity to go in her room, close the door and threaten

1 her with a box cutter, throw her to the bed, wrestled with
2 her and then the force, the physicalness of it, changed from
3 the box cutter, or whatever, to choking.

4 So she says -- and I don't know if the defense
5 attorney is going to make an issue about the box cutter
6 being in the left hand and how could all this take place and
7 that the victim wasn't very clear about how it all took
8 place. She is being sexually assaulted in front of her
9 three year old and her four month old and you could not
10 expect her to remember every single detail, but what she did
11 say is she saw a box cutter. It was in her face. He threw
12 her to the bed. They are wrestling. When they get to the
13 ground, the only thing she knew was in his hand was her
14 throat, exactly what she said on the stand.

15 He had the opportunity. He knew what he was doing
16 and he took something from her that her life will never be
17 the same.

18 Another thing, the -- there is going to be some
19 talk, I'm sure, by Mr. Chambers, about all the commotion
20 that was going on and how anybody could have known what was
21 going on up there. The defendant in his statement says to
22 the police that he talked to his friend, but who told him
23 about everything that went on, that a girl got hurt, and he
24 said "did he his friend give you any details?" And he said
25 "no, the friend didn't give me any details." So he admits

1 that he doesn't know any details, other than her getting
2 hurt, but somehow some way he knew to tell Jim Sawyer and he
3 knew to tell Detective Conroy that there was a weapon.

4 You heard Detective Conroy say "I didn't say
5 anything about a weapon. You are the one that just said
6 something about a weapon." That was never mentioned in that
7 interview until he brought it up.

8 The defendant and his story has changed, changed,
9 and even, you know, it has been -- it was inconsistency
10 after inconsistency after inconsistency and over the course
11 of the past two days it's been alluded to y'all that there
12 was a connection, which is a new -- from a new twist in what
13 we heard from the statement, something new two and a half
14 years later. So life has not changed and what does stay the
15 same is when this victim and her story and I'm going to play
16 for you in her words one more time what happened.

17 (Whereupon, the 911 audio tape was played to the
18 jury panel)

19 MS. HOWARD: This incident was horrific, it was
20 cruel, and this defendant is guilty beyond a reasonable
21 doubt of all three charges as charged. Thank you.

22 THE COURT: Thank you, Madam Solicitor.

23 Mr. Chambers.

24 MR. CHAMBERS: Thank you, Your Honor.

25 May it please the court?

1 THE COURT: Yes, sir.

2 MR. CHAMBERS: Solicitor.

3 As I told you at the outset, an accusation made
4 against Rob Smith. You have heard about it. You have heard
5 their case, and now in just a few minutes when we get done
6 talking to you and His Honor charges you on the law, you are
7 going to go back there and you are going to deliberate and
8 you are going to make a decision as to whether or not they
9 have proven their case beyond a reasonable doubt.

10 Essentially what you have got here is you have two
11 accounts of what happened. Two accounts. You have heard
12 them both. You get to make the determination when you
13 discuss this with one another which one makes the most sense
14 and doing that with an eye of this notion of reasonable
15 doubt, because that is really important in this case. Any
16 case.

17 Now, what you heard from Mr. Smith -- and I want
18 you to bear in mind, because this is really important, when
19 you consider the statement that you watched, this two-hour
20 statement, and how it -- there was an evolution of this
21 statement and we finally got to the part where he tells what
22 happened in the hotel, because this is important. There is
23 a lot of things that happened beforehand that you don't get
24 to see.

25 Now, they go to great lengths, this officer did --

1 I mean, he's highly trained. He's a sergeant. He told you
2 about all the schools that he's been to and the ways that
3 they are trained to get statements from people. He knows
4 that this is being videotaped. Of course, Rob Smith, he's
5 not informed of that. He doesn't know. But the part you
6 don't see is the part when we are at Labor Smart on Wade
7 Hampton.

8 Now, I want you to keep in mind, this -- Rob Smith
9 is accused of having committed a violent rape in the middle
10 of the day in a busy hotel that on the same side is a busy
11 gas station where anybody would have seen what was going on,
12 could have heard what was going on, and having done this
13 without in any way trying to disguise himself, hide his
14 identity, doing anything like that, knowing that he could be
15 identified. So when -- and yet we are to believe that he's
16 looking for his lost phone. I mean, this is a person, if he
17 had done what they say he did, that if he had been smart --
18 and apparently they believe he was smart enough to get rid
19 of this box cutter that he was supposed to have, because
20 they didn't find the box cutter. They never found any kind
21 of weapon. That they also believe that he was stupid enough
22 to stick around, go back to Labor Smart, to actually, you
23 know, start looking for his phone, to have Jim Sawyer call
24 that number to see if he could find the phone, and then talk
25 to the police. Of course, he didn't know he was talking to

1 the police. They didn't tell him. And he waits there for
2 the person with the phone to show up so that he can talk to
3 him.

4 And here is what happened, and you can ask
5 yourself if this is reasonable. You can ask yourself if
6 this is the way things should be done, but they go out there
7 and the officer, along with a uniformed patrol officer, they
8 put handcuffs on him and they put him in the police car.
9 They don't ask him if he wants to go give a statement. They
10 don't inform him of what they are investigating. He's not
11 placed under arrest. They didn't bother to get an arrest
12 warrant. This police sergeant made the determination that
13 "I'm just going to grab somebody up and I'm going to take
14 them in and I'm going to start talking to them. I'm not
15 going to bother to get an arrest warrant. I'm not going to
16 bother to tell them why I'm taking him down there. I'm just
17 doing it." That's an absolute fact. That's not
18 controverted. That's what they did. So you can imagine
19 that -- right away we have a coercive situation. We have a
20 situation that would put anybody on notice. We have a
21 situation that would make anybody wonder about what's going
22 on. You just would.

23 And then they take him to the law enforcement
24 center and they take him in a room so that they can film
25 him, and they handcuff him to a chair and they say it's for

1 officer's safety. What was there about him that presented a
2 threat? They just wanted to talk to him. At no point did
3 he do anything threatening. I didn't even hear anything
4 about them patting him down for weapons or in any way
5 indicating that he was some kind of a threat to them.
6 Supposedly they are just there to have a conversation.

7 Here is the truth. The truth is they had made up
8 their mind that this was their guy and that's all -- that's
9 all there was to it.

10 So after essentially being grabbed up off the
11 street, brought in, handcuffed to a chair, no idea why you
12 are there. All he said was "I want to talk to you about an
13 incident." Now, as far as we know there hasn't been an
14 incident. He is probably -- I'm sure his mind is racing a
15 hundred miles an hour; "why am I here? What are they asking
16 me about?" Yes, he had had sex the day before in exchange
17 for money. He has probably done that before. Not anything
18 to be proud of, but there is no reason to believe that you
19 are suspected of anything.

20 And so as this officer -- and he could have easily
21 said at any point "I don't want to talk to you. I would
22 like to talk to a lawyer," and, frankly, that's what he
23 should have done. I mean, given the situation that he's in
24 and the fact that he had no idea and he was dragged into
25 this situation, that's really what he should have done.

1 But, you know, the thing is, folks, most people are naive.
2 Most people, unfortunately, don't know the law as well as I
3 do. They don't know that they don't have to cooperate with
4 the police. Even when they are told, or in this particular
5 case given a document that has your rights written out on
6 it, the police officer didn't go over it. And he did offer
7 to read it to him, but you got this man over here, who is
8 nervous and is looking at it and he signed it, and I'm not
9 telling you he didn't know what he was signing, that he
10 didn't understand what his rights were. I kept hearing
11 Sergeant Conroy say "well, he never objected. He never told
12 me to stop.

13 "Well, when did you tell him he could do that?"

14 Here is somebody that doesn't know what they are
15 looking for, doesn't know what they are trying to find out,
16 starts to give the impression that they think he did
17 something. Don't know what it is and yet he continues to
18 cooperate. That's just human nature. That's just something
19 that people do. It is not in people's nature to just say
20 "no, you know what? I'm not going to talk to you." Most
21 people don't want to do that, especially when they are not
22 aware of having done anything wrong. And so it's absolutely
23 true that for a good period of time as this officer is
24 asking him questions he is not being as forthcoming as he
25 should be. In fact, you could say on some of those things

1 he just wasn't telling the truth. It's kind of like when
2 you -- if somebody asked you a loaded question. You know,
3 I'm always able to question somebody who says to me "what
4 are you doing on Saturday?" My immediate thought process is
5 why do they want to know? But if they just tell me up front
6 "hey, would you like to go do so and so," or, "would you
7 help me with so and so," you know, and obviously that's a
8 fairly trivial example, but when the police take you in in
9 handcuffs and handcuff you to a chair and don't tell you
10 what it is they are looking for, or what they are asking
11 for, your first instinct might be to say I better be careful
12 what I say, but he kept talking. He didn't have to. He
13 cooperated. He let them search his bag.

14 Now, the officer did not want to go along with
15 this notion that Rob Smith is homeless, but essentially
16 that's what he is. He lives pillar to post. He told you he
17 stays at missions. He was eating over at Tryon Mercy
18 Center. He carries everything that he has in a backpack.
19 He wears the same clothes virtually every day. Yeah, he has
20 family that live in the area. Apparently he has a father,
21 but he's not living there. So anything he has is going to
22 be in that backpack or it's going to be at his storage
23 compartment. He let them search the backpack. Importantly
24 they found condoms in there. They didn't find anything else
25 that -- nothing incriminating. He told them they could go

1 look in the storage unit, which they didn't do. You know,
2 the officer said well, you know, even if there had been a
3 weapon there, shoot, there is plenty of box cutters around.
4 You know, he went along with everything that they wanted to
5 do.

6 And thirty minutes -- twenty-nine to thirty
7 minutes into this discussion is the first time that the
8 sergeant ever mentions anything about the hotel. Then he
9 probably -- the wheels are really spinning; "what the hell
10 are they thinking that I did?" And it continues from there.

11 You can see how trepidatious and suspicious he is
12 about what are they trying to pin on me as you go through
13 it, because he allowed them to question him and say "I would
14 like a copy of that," or he said several times "I want to
15 know what's going on."

16 A couple of times throughout this the sergeant
17 challenges him "well, you were stopped yesterday by a police
18 officer. You don't remember that? You are lying about
19 that." Guess what? The sergeant had to come back later and
20 say "oh, by the way, you are right. You didn't get stopped
21 by a police officer. I was thinking about something that
22 happened a long time ago." He's being accused of being a
23 liar at every turn, and yet they have got their information
24 wrong.

25 They kept saying that he claimed he worked the day

1 before and Jim Sawyer didn't go along with that. There is
2 no evidence of that. Did you hear anything about that? Jim
3 Sawyer didn't testify to that. He said in his statement
4 that he gave "that I went by Labor Smart to see if they had
5 any work for me and then I left." Guess what. That's what
6 Jim Smart said -- I mean, that's what Jim Sawyer said.

7 If you doubt any of this at any point, we have got
8 a record. You can have it read back to you. You can listen
9 to it. Take as long as you need to go through these things.

10 We know that where he says that he was over there
11 looking for somebody named Mike is true. He told you that
12 he was walking around over there -- or he told the police
13 that he was walking around over there looking for a person
14 named Mike. That's one of the things that's corroborated by
15 M.F. herself. He came by -- first she said it
16 was somebody named "Mookie" and then she said it was -- she
17 testified here yesterday it was somebody named "Mike Mike".
18 Hey, that's not that big a deal, but what it does is it
19 corroborates the fact that he was there. He wasn't over
20 there stalking anybody. He wasn't over there looking for
21 victims. He was over there looking for this guy named Mike
22 and he happened to talk to her, and we know that that's
23 true. He was up on the second floor. To my knowledge
24 nobody else saw him, although he did say that he talked to
25 an Indian lady in the lobby and they gave him Mike's room

1 number. That's why he was up on the second floor. He was
2 up there looking for Mike, and he was obviously familiar
3 with who ran the place. He described the Indian lady.

4 So the other thing that is consistent with what he
5 told you is when you look at those pictures you will see a
6 room where clearly where people lived, but not a room that
7 is in any kind of disarray. He says that she first said --
8 and, remember, this is important. This kind of got confused
9 I think when the solicitor was talking to you. He is not --
10 he's not saying that she -- that she didn't have diapers and
11 milk. He is telling you that that's what she told him she
12 wanted money for. The first thing was and -- this is what
13 he said to the police. "She said to me I need some money
14 for diapers and milk." She is basically soliciting money.
15 And then after that is when she offered to have sex with him
16 for money and that's when she went in. And you can look,
17 and she claimed that there was this big fight that went on,
18 but that the room -- but the room is in not in any kind of
19 disarray. You know, you just don't -- you don't see
20 anything that would indicate that there was a fight that
21 went on.

22 The other thing that's interesting is this. You
23 have got a three year old child that's running around. We
24 have all had experiences with three year olds, okay? They
25 are pretty active, pretty vocal. They are pretty free with

1 their emotions. They are upset, they are going to let
2 everybody in the world know about it. This child supposedly
3 witnessed this brutal act of somebody attacking his mother
4 with a box cutter, choking her, there is a struggle going on
5 that ends up on the floor and never utters a peep. Doesn't
6 cry out, doesn't run out of the room, doesn't run over in
7 some sort of visceral reaction where you are trying to keep
8 this bad man from doing something to mommy. None of that
9 happened. None of that happened. That would be a normal
10 response. Or could it be, as Rob says, that she took the
11 kid in the bathroom, something that she probably done
12 before, while she engages in this sex act with Rob Smith on
13 the bed.

14 Another thing that corroborates his version of
15 what happened is this. And I know y'all are probably
16 wondering why they kept asking about this woman having a
17 period. Well, there is a reason for that. As you heard,
18 there was a blood stain on the mattress. They established
19 that through her. She said it happened because she sat down
20 on the bed when she was putting her pants back on. But here
21 is the thing, folks. Did you hear anything about any blood
22 being anywhere on the defendant's pants, or shirt, or
23 anything else? More importantly, did you hear anything
24 about there being any blood on the carpeting in the room?
25 This woman apparently had a fairly heavy flow going on,

1 because even when she got to the hospital they noticed a
2 bloody discharge. And while that's an unpleasant thing to
3 think about, if there had been this act taking place on the
4 floor, there would have been a bloody discharge. On the
5 other hand, had the sex taken place on the bed the way that
6 Rob says, then there would be a stain on the mattress, and
7 there was.

8 And you heard the forensics people went out there.
9 They went over that room. They took pictures. They checked
10 for DNA. They checked for fingerprints. They didn't find
11 any fingerprints whatsoever that belonged to him in that
12 room. And more importantly, they didn't find any on the
13 door that he was supposed to have handled.

14 He let them get a buccal swab. Again, he didn't
15 have to do that. I mean, they are telling him "we found
16 semen and we are going to be able to check it," and he says
17 "go ahead. You can have your buccal swab." But I want you
18 to think when you go back there and you deliberate about
19 corroboration and that stain on the mattress purports what
20 he's saying.

21 So far when you think about corroboration we know
22 he was there looking for somebody named Mike. She
23 corroborates that. We know that he went by Labor Smart that
24 morning. Jim Sawyer corroborates that. We know that they
25 had sex on the bed and not on the floor because the stain

1 corroborates that. They didn't do anything on the floor, no
2 stain, okay?

3 We know that this is a person who is not worried
4 about somebody accusing him of rape, because he's looking
5 for the phone. And, again, common sense would say that "my
6 phone is gone. I just laid this girl in her room. I
7 probably dropped my phone there."

8 They made a big deal about the backpack.
9 Something that's interesting is you never heard -- because I
10 made a note of this, you never heard M.F. [REDACTED] mention
11 anything at all about a backpack. Never. She never said a
12 word about a backpack. Everybody else keeps talking about a
13 backpack. We -- there is a lot of discussion from the
14 police sergeant about the backpack was sitting out in the
15 breezeway. Where is the proof of that? Where is the
16 witness that came in here and told you that the backpack was
17 sitting in the breezeway?

18 Now, you heard from the lady that worked over
19 there as a maid, Lisa Crowder. Lisa Crowder said that her
20 boyfriend had said that he saw a backpack. She didn't know
21 where the backpack was. She never saw the backpack until
22 she saw him with the backpack on his back. So my client was
23 trying to answer under the circumstances, trying to figure
24 out what was going on with the backpack. He's the one
25 that's saying that the backpack was down in the breezeway.

1 And here is what their theory was. He said it
2 right there on the video. The theory is he went by and he
3 found this person and decided like that I'm going to go rape
4 her, in broad daylight, in the middle of the day, in a busy
5 place, without in any way trying to disguise my identity,
6 I'm going to do all that. In preparation of doing that I'm
7 going to put my backpack down out here so that I'm
8 unencumbered. And yet a person that wanted to be
9 unencumbered in that way would leave his cell phone clipped
10 to his belt. Does that make sense to you? If you are going
11 to get rid of the backpack, why not get rid of the cell
12 phone, but it's right there on his belt. If you are going
13 to be raping somebody, you are going to be taking your pants
14 down, you are going to be doing all that, that's what you
15 are going to do.

16 On the other hand, if you are going in there to
17 engage in a transaction, you are not worried about that.
18 You are taking your time. You are not worried.

19 So that's his account, and you can think about
20 whether it's corroborated. I would suggest to you that
21 based upon everything I just told you his account makes the
22 most sense. Yes, there were inconsistencies leading up to
23 that and it took a while to get to that, but, again, you got
24 to think about the circumstances under which he's giving
25 that statement. He has no idea what they are fishing for.

1 He had no reason to believe that he's done anything wrong
2 and lo and behold --

3 And, you know, they want to make a big deal about
4 the fact that he said something to Jim Sawyer about what
5 happened. Well, it was a big deal and there were five or
6 six police cars out there in the middle of the day. There
7 was an ambulance out there and there were people out there
8 watching everything that was going on. We know that M.F.
9 [REDACTED], they said "well, don't say anything to anybody,"
10 and, hell, she told B.K., the guy -- she said she called him
11 and had him -- he came up to the room and she called B.K..
12 B.K. knew what was going on. Guess what? She corroborated
13 this. B.K. told her he wanted her to move out. There had
14 been trouble with her. He was tired of the trouble with
15 her. Move out. Does that seem odd to you?

16 Then we get to the story that she told you. And
17 they say well, she has been consistent this is how it
18 happened; you hear her crying on calling 911; you know, why
19 would she lie, but I have no idea why she would lie. Rob
20 Smith has no idea why she would lie. All he knows is that
21 he told the police he didn't do what he's charged with.
22 And, yes, there are inconsistencies in her story and those
23 are important. They are not minor inconsistencies. You
24 know, just like the officer said, he wanted to backtrack it
25 when he was on the witness stand, but that's still on the

1 stand, but when you are telling the truth, it's in there.
2 It's easy to be consistent with that. And it's particularly
3 easy when it's just happened.

4 You know, there has been argument well, she was so
5 traumatic, how is she going to get everything straight?
6 That's even more reason to keep everything straight. That
7 would be engrained in my memory if something like that
8 happened to me, you know, but here is the thing. Here is
9 the thing that I want you to think about. She was
10 inconsistent from the time that she talked to Officer
11 Mullinax, until she talked to Sergeant Crowder, until she
12 wrote out her own statement. And then when she came in here
13 and testified and claimed that she could remember things
14 almost three years later, and come July this would be three
15 years, that she can remember everything better now than she
16 did then.

17 Well, first of all, I want you to think about the
18 fact that at one point she said "he threatened me." Another
19 statement she said "he threw me down on the floor." But
20 then finally yesterday what she said was, "we wrestled," but
21 she said "I am putting up a fight and he has got the knife
22 in his left hand and choking me with his right hand and he's
23 pulling my clothes off and pulling his clothes off and he's
24 able to do all this stuff and we fell on the floor together
25 and that's where he, with his soft penis" -- she said he

1 didn't have an erection. He penetrated her without an
2 erection, and that's just an odd thing to say. And I kept
3 asking myself why would she say that. Well, I think -- and,
4 again, this is conjecture on my part, and you can draw any
5 inference from the evidence you want to. Subconsciously she
6 doesn't want Walter Pope to know that this man was actually
7 able to complete a sex act. Maybe that's it. Maybe she
8 wanted to say he was soft. But you know the thing is,
9 folks, it doesn't take a neurologist, or whatever kind of
10 expert you want to talk about, to understand that you cannot
11 penetrate somebody with a soft penis. So by her own
12 testimony there was no sexual battery. Okay.

13 What he told you makes more sense, what Rob told
14 you, because he said they had sex. "I used a condom." We
15 know he had condoms and "I flushed it down the toilet."

16 But, anyway, that's what she told you. She said
17 "we fell on the floor." Those are fairly large differences.

18 And the other thing that stands out to me is she
19 said a couple of different times that he walked in, slammed
20 the door, then pulled the box cutter out of his wherever.
21 But in her initial statement she said -- this is what she
22 told Officer Mullinax, and Officer Mullinax confirmed this,
23 "he was standing in the door. My son was actually behind
24 him and then he came in." She said that he threatened her
25 and told her to stay quiet one time. Another time she

1 doesn't say that. I don't know.

2 It is a big deal, by the way. The solicitor is
3 right, I am going to talk about this, that she claims that
4 he had this box cutter in his left hand. Again, I follow
5 common sense. If you are going to wield a weapon, you are
6 going to use your dominant hand. You are not going to be
7 able to effectively use it with your off hand. I mean, if
8 you are somebody who enjoys target practice with a pistol,
9 you are certainly going to hold it with your right hand. If
10 you are going to cut something at home with a knife, you are
11 going to use your right hand. You are not going to have it
12 in this other hand. And she said he had it in his left hand
13 and he never released it. He held it the entire time. So
14 that left hand, according to her, is occupied through this
15 whole thing.

16 Now, they tried to say that he told Jim Sawyer he
17 had a box -- that a box cutter was used. He didn't say
18 that. Again, you heard the testimony, but nowhere does he
19 indicate, Jim Sawyer, according to Jim Sawyer, anything
20 about a weapon. He says about a woman having been hurt over
21 there at the Regal Inn. So, again, common sense is going to
22 tell you that a right-handed person is not going to hold a
23 box cutter in the left hand, you know, and he's not going to
24 be able to do all the things that she claimed that he did.
25 He's just not.

1 And so, you know -- I mean, there is lots of stuff
2 that we could go over. You heard the case. I'm not going
3 to sit here and go through all of it, and I will probably
4 sit down in a few minutes, and I tell you something, I wish
5 I had said something but I didn't, but here is the thing
6 that gets me solid in this case and that is they have got
7 the burden of proof. They have got to prove it to you
8 beyond a reasonable doubt. If there is anything in here
9 that gives you pause, then they haven't proven their case,
10 and there are things that should give you pause. I'm not
11 going to rehash them. I'm not going to keep beating this
12 stuff up, but, you know, you have got to think about the
13 circumstances. Is it likely that nobody would have heard or
14 seen anything there? Is it likely that a person would have
15 just gone in there to commit this act without trying to
16 disguise himself in any way, knowing that he could be
17 identified?

18 And here is the thing that is important, and I'm
19 not -- I'm not sure what significance it has, but it's just
20 something that seems odd in the case to me, and that is that
21 there is a connection between Rob Smith and Walter Pope.
22 And I keep asking myself is that the motivation of her to
23 have made this up, because she finds out -- maybe it's
24 because of the shirt that he has on. Do you remember, it
25 says in big letters Serve Pro. She never mentioned, by the

1 way, that said Serve Pro on the shirt. I don't even know
2 how you would miss that. I mean, it was very large, but
3 that part is neither here nor there.

4 You know, the police didn't really follow up and
5 do anything with the fact that these two men might have come
6 into contact with one another. Listen, maybe she was just
7 worried that he was going to find out and be upset with her
8 to the fact she had done what she had done in the room. I
9 don't know, but it just -- it seems odd that there is this
10 connection and nobody ever really looked into it. But
11 that's one of those things that you can look at and say does
12 that give me pause.

13 The fact that this mighty fight took place and not
14 only was there nobody that heard or saw anything, but that
15 nothing in the room seemed to be disturbed, that it looks
16 just like somebody had been living there, but nothing is in
17 disarray.

18 Does it give you pause that there is a three year
19 old child there who apparently just quietly sits and
20 observes what's going on?

21 She's not even apparently upset when the police
22 get there after everything is said and done, because you
23 would have heard that if that had been the case.

24 Does it give you pause that the man who owned this
25 place said, you know, "there is too much going on with you.

1 I want y'all to move."

2 Does it give you pause that she says that she --
3 that we know that she had a heavy flow and no blood found
4 anywhere except on the bed, where he said --

5 MS. HOWARD: Your Honor, I'm sorry, I have to
6 object on this heavy flow thing because that was not once
7 mentioned.

8 THE COURT: Just stay within the record. Go
9 ahead.

10 MR. CHAMBERS: Does it -- does it give you pause
11 that -- well, she's thrown me off my train of thought here,
12 which I think is what she was trying to do.

13 But, at any rate, does it give you pause that
14 there are all these inconsistencies in what she told you?

15 The other thing that sort of stood out, and this
16 is -- you know, there were finger marks on her right side of
17 her neck, and that was really -- other than there was a
18 laceration of the vagina. How does a soft penis lacerate a
19 vagina? I don't know. We didn't hear anything about any
20 digital penetration, or a weapon being used to insert it, or
21 anything like that. There was no way of knowing how a
22 laceration happened in the vaginal area. It certainly
23 didn't happen from a penis that is not erect. In all
24 likelihood, it wouldn't have happened from an erect penis
25 even, but she said it was possibly in like no time at all.

1 She basically said he put it in and he took it out is what
2 she said, but she didn't know. She said it felt funny down
3 there.

4 But if he was holding -- I want you to think about
5 this. If he was holding a box cutter in his left hand and
6 then somehow with the other hand and choking her while doing
7 all these other things that he was supposed to have done,
8 finger marks, which are what they claim. There were some
9 redness on her neck. It didn't seem to be very severe.
10 They claimed those were finger marks what M.F. [REDACTED]
11 said, would have been on her left side of the neck, because
12 that's how the hand is on there. The thumb would have had
13 to have been on the right side of the neck. That couldn't
14 happen.

15 And then the other thing that kind of stood out to
16 me was when Walter Pope gets back from wherever -- you know,
17 from where he was working, she's got bandages on her arm.
18 Now, why would that be? She was checked out really well;
19 EMT, the doctors, the emergency room. Now, you heard about
20 this ordeal that she went through where she stood there and
21 they checked her out from head to toe. No injuries noted
22 anywhere; no knees, legs, arms, elbows, and she's somehow,
23 despite being thrown around like she said she was; being put
24 up and thrown on the floor, like she said she was, no
25 injuries anywhere else. Certainly no injuries to her arm,

1 and yet there is a baggage on her arm when he gets home? Is
2 that her trying to make it look worse than it was? Is that
3 her trying to gild the lilly? I don't know, but you have to
4 ask yourself is that giving you pause?

5 Folks, that's the case. You have got two stories.
6 You get to decide which one is corroborated and which one is
7 not and you get to use that again using this notion of
8 reasonable doubt, because once you reach a unanimous
9 decision and leave here you have got to ask yourself "am I
10 going to hesitate about this decision? Is it going to keep
11 me up at night? Am I worried about it, or am I firmly
12 convinced? Am I firmly convinced?" If you are not firmly
13 convinced, which is another way of saying definitely sure,
14 then you find the defendant not guilty. Not guilty. And
15 everything that I just told you should leave you
16 unconvinced. That's your decision to make. All of you have
17 got to go back there and do that in just a few minutes.

18 I can tell you this, just as I told you at the
19 outset, Rob Smith has literally been sitting with nothing
20 else to think about for almost three years this has been
21 hanging over his head. It's how long it took for this case
22 to get to trial. Nearly three years. Now they have put
23 their case forward and you are going to go back there and
24 talk about it and you are going to consider all the things
25 that I have just talked to you about.

1 Our position is they have not proven their case
2 beyond a reasonable doubt. Rob appreciates you being here.
3 We are finally going to bring this thing to a conclusion.

4 I'm going to do the hardest thing that I ever have
5 to do in a criminal case and that is go sit down. I'm going
6 to be mulling this over and I'm going to say maybe I should
7 have said this, maybe I should have done that. You know, I
8 am his advocate. I am the only person he has got. But,
9 again, I take solace in the fact that I know all of you good
10 people took time out of your lives to be here to consider
11 this seriously and we appreciate it. Thank you very much.

12 THE COURT: Thank you Mr. Chambers.

13 Ladies and gentlemen, let's stand and stretch a
14 little bit before I charge you the law. It will take me
15 about fifteen to twenty minutes. Do y'all want to -- about
16 twenty minutes to charge. Do you want to take a quick
17 recess and freshen up, or are y'all ready to hear from me?

18 JURY FOREPERSON: We're ready.

19 THE COURT: All right. Let's do it.

20 (Whereupon, at 3:57 p.m., the Court instructed the
21 jury panel on the law)

22 THE COURT: Ladies and gentlemen, I know just how
23 boring it is to look at a talking head reading something to
24 you, okay, and I promise you that I'm not going to -- but
25 I'm going to try not to do that, but you will see me from

1 time to time look down at my notes, which I have had my law
2 clerks prepare, and read to you. And the reason I do that,
3 of course, what I tell you is very important because it's
4 what the law is and I want to make sure that I get it
5 absolutely correct, so I promise you I will try not to just
6 sit here and stare at my paper, okay, but let's start.

7 So, Madam Forelady, members of the jury, you have
8 heard the testimony and evidence and the arguments of both
9 the State and the defense. I'm now going to explain to you
10 the law of South Carolina as it pertains to this case.

11 Now, under the Constitution and laws of our state
12 you, as I told you, are the finders of fact. I don't have
13 the right to pass upon the facts, or even to express any
14 opinion that I may have as to what I think they are, because
15 that's solely a matter for you, the jury, to determine.

16 Now, as jurors then it is your duty to determine
17 the effect, the value, the weight, and the truth of the
18 evidence presented at trial.

19 Now, as the trial judge it's been my
20 responsibility to preside over the trial of this case and to
21 rule upon the admissibility of evidence offered during this
22 trial. You are to consider only the evidence which has been
23 presented from this witness stand together with any exhibits
24 which have been made part of the record. You will have
25 those exhibits back in the jury room with you.

1 Now, an additional duty I'm now doing is charging
2 you the law applicable to this case and as the presiding.
3 judge I am the sole judge of the law in this case. It's
4 your duty to accept as correct and to apply the law as I now
5 state it to you and use that to reach your verdict.

6 Now, the fact that I may instruct you on various
7 subjects in this case must not be taken by you as indicating
8 what you think my opinion is of the facts or what I think
9 your verdict should be.

10 And, finally, I charge you that you shouldn't be
11 concerned with what you think the law ought to be, but
12 rather what I charge you the law is.

13 Now, you are the judges, the sole judges, of the
14 credibility, also known as the believability of the
15 witnesses who have testified and of the evidence which has
16 been presented during this trial.

17 Now, in passing upon credibility, you can take
18 into consideration many things, such as the demeanor and the
19 manner in which a witness testifies; whether a witness had
20 reason to be biased or prejudiced; or whether a witness'
21 testimony was contradicted on the one hand or supported or
22 corroborated on the other hand.

23 Now, all these things you will consider, bearing
24 in mind that you should give the defendant the benefit of
25 any reasonable doubt. It becomes your duty as jurors to

1 analyze and to evaluate the evidence and determine that
2 evidence which convinces you of its truth.

3 Now, I instruct you and emphasize to you, ladies
4 and gentlemen, that the fact that the defendant did not
5 testify is not a factor to be considered by you in any way
6 in your deliberation and in your consideration on the
7 question of the guilt or innocence of the defendant. This
8 must not be considered by you in any manner whatsoever. A
9 defendant has the Constitutional right to remain silent and
10 the assertion of this right must not be considered by you in
11 your deliberations.

12 So I'll repeat, under your oath you are to draw no
13 conclusion whatsoever from the fact that the defendant in
14 this case did not testify. The fact that he didn't testify
15 should not even be discussed in the jury room. The burden
16 of proof, as I have stated to you, is on the State. The
17 defendant is never required to prove innocence. The burden
18 of proof remains on the State to prove guilt beyond a
19 reasonable doubt.

20 There are two types of evidence which are
21 generally presented during a trial: Direct evidence and
22 circumstantial evidence.

23 Direct evidence directly proves the existence of a
24 fact and does not require deduction.

25 These are law school definitions. Then I'll give

1 you an example to help you understand.

2 Circumstantial evidence is a proof of a chain of
3 facts and circumstances which indicate the existence of a
4 fact.

5 For example, you look outside before you go to bed
6 and you see the brown grass on your lawn. You go to bed.
7 You wake up the next morning and you see snow and footprints
8 on your lawn. Well, first you can infer that it snowed.
9 Secondly, you can infer this somebody is walking in your
10 yard. Now, you see these are things that you can infer,
11 even though you didn't see it snow and even though you
12 didn't see somebody walk on your lawn.

13 Now, crimes can be proven by circumstantial
14 evidence and the law makes no distinction between the weight
15 or value to be given to either direct or circumstantial
16 evidence. However, to the extent that the State relies on
17 circumstantial evidence, all of the circumstances must be
18 consistent with each other and when taken together point
19 conclusively to the guilt of the accused beyond a reasonable
20 doubt.

21 Now, if these circumstances merely portray the
22 defendant's behavior as suspicious, the proof has failed.

23 The State has the burden of proving the defendant
24 guilty beyond a reasonable doubt. This burden rests with
25 the State, regardless of whether the State relies on direct

1 evidence, circumstantial evidence, or some combination of
2 the two.

3 Now, the fact that the defendant was arrested,
4 charged and indicted with these crimes is not evidence in
5 this case and cannot be considered by you as evidence of
6 guilt, nor does it create any presumption or inference of
7 guilt. As I have told you at the outset of the trial, the
8 indictment against the defendant is simply the formal
9 written instrument which contains the charges made against
10 the defendant. An indictment is merely the formal document
11 by which the case is brought into court.

12 Now, the defendant has pled not guilty to these
13 charges and that plea, of course, has placed the burden upon
14 the State to prove the defendant guilty.

15 A person charged with committing a criminal
16 offense is never required to prove innocence.

17 I charge you, ladies and gentlemen, that it is an
18 important rule of law that the defendant in a criminal
19 trial, no matter what the seriousness of the charge may be,
20 will always be presumed to be not guilty of the crime for
21 which the indictment was issued, unless guilt has been
22 proven by evidence satisfying you of that guilt beyond a
23 reasonable doubt.

24 This presumption of innocence does not end when
25 you start your deliberations, but it accompanies the

1 defendant throughout the trial until you have reached a
2 verdict.

3 This presumption of innocence is like a robe of
4 righteousness. As you are looking at my robe, just think
5 about that robe of righteousness metaphorically, placed
6 about the shoulders of the defendant, which remains with him
7 until it has been stripped from him by evidence satisfying
8 you of his guilt beyond a reasonable doubt.

9 Now, the presumption of innocence is not just mere
10 legal theory. It's not just a legal phrase. It is a
11 substantial right to which every defendant is entitled,
12 unless you, the jury, are satisfied from the evidence of his
13 guilt beyond a reasonable doubt.

14 Now, I have said reasonable doubt about
15 thirty-seven times. I'm going to finally define it to you,
16 okay?

17 What is a reasonable doubt in the law? A
18 reasonable doubt is a doubt which makes an honest, sincere,
19 conscientious juror in search of the truth to hesitate to
20 act. Proof beyond a reasonable doubt must, therefore, be
21 proof of such a convincing character that a reasonable
22 person would not hesitate to rely and act upon it in the
23 most important of his or her own affairs.

24 Proof beyond a reasonable doubt can also be
25 described as proof that leaves you firmly convinced of the

1 defendant's guilt.

2 Ladies and gentlemen, there is very few things we
3 know in this world with absolute certainty and in criminal
4 cases the law does not require proof that overcomes every
5 possible doubt.

6 If, based upon your consideration of the evidence,
7 you are firmly convinced that the defendant is guilty, then
8 you must find him guilty.

9 If, on the other hand, you think there is a real
10 possibility that he's not guilty, you must then give him the
11 benefit of the doubt and find him not guilty.

12 There has been evidence presented that witnesses
13 have made prior statements which are not consistent with
14 that witness' present testimony. You can use this evidence
15 to decide whether or not to believe the witness. They may
16 also use evidence of the earlier contradictory statement to
17 determine the truth of that statement. It's up to you to
18 decide whether to believe the earlier statement or the
19 testimony given at trial.

20 Now, if a witness has been shown to have knowingly
21 testified untruthfully concerning any material matter, you
22 can consider this and determine whether or not to trust that
23 witness' testimony. You may reject all the testimony of
24 that witness or give all or part of the testimony the weight
25 you think it deserves.

1 Now, a statement made by the defendant has been
2 admitted into evidence in this case. Now, while the court
3 has determined that the statement is admissible, I instruct
4 you that you must determine whether the statement was made
5 by the defendant voluntarily and of his own free will. This
6 means that the statement was not caused by pressure, force,
7 fear, threats, coercion, on intimidation, or by hope or a
8 promise of leniency, or by reward of any kind.

9 In determining whether this statement was
10 voluntary, you should consider both the characteristics of
11 the defendant and the details of the questioning. Some of
12 the factors that you must consider are the age of the
13 defendant; the defendant's education, or lack thereof; the
14 defendant's mental ability or capacity; the defendant's IQ
15 or intelligence; the defendant's background and environment;
16 the place and length of the detention; the nature of the
17 questioning; and the advice, or lack thereof, to the
18 defendant of his Constitutional Rights, including, but not
19 limited to, the right to remain silent; that any statement
20 could be used against him in a court of law; the right to
21 have a lawyer present, and that if he couldn't afford a
22 lawyer, a lawyer would be appointed to represent him at no
23 costs; and that he could stop making the statement at any
24 time.

25 You must carefully consider all of the surrounding

1 circumstances before you give any weight to the statement.

2 Now, the State has the burden of proving beyond a
3 reasonable doubt that this statement was voluntary. If you
4 determine it was, you may give the statement any further
5 consideration you deem proper.

6 You must decide, ladies and gentlemen, what
7 weight, if any, should be given to this statement. If you
8 determined the statement was not freely and voluntarily
9 given, you shouldn't consider the statement at all.

10 Let's talk about criminal sexual conduct in the
11 first degree. The defendant has been charged with that
12 crime.

13 The first element which the State must prove
14 beyond a reasonable doubt is that the defendant engaged in a
15 sexual battery with the victim.

16 Now, a sexual battery is sexual intercourse,
17 cunnilingus, fellatio, anal intercourse, or any intrusion,
18 however slight, of any part of a person's body or of any
19 object into the genital or anal openings of another person's
20 body, except when the intrusion is accomplished for
21 medically recognized treatment or diagnostic purposes.

22 Now, if you find that the State has not shown
23 beyond a reasonable doubt that a sexual battery occurred,
24 you would stop deliberating and your verdict would have to
25 be not guilty.

1 Now, if you find that a sexual battery did occur,
2 you must then decide whether the State has proven beyond a
3 reasonable doubt that the defendant used aggravated force to
4 accomplish the sexual battery.

5 Now, aggravated force can be described in two
6 different ways, provided that you find the State has met its
7 burden of proof.

8 First, aggravated force means the use of physical
9 force or physical violence of a high and aggravated nature
10 to overcome the victim. This includes the threat of using a
11 deadly weapon.

12 A deadly weapon is any article, instrument, or
13 substance which is likely to cause death or great bodily
14 harm.

15 Now, whether an instrument has been used as a
16 deadly weapon depends on the facts and circumstances of each
17 case.

18 A knife is a deadly weapon. A box cutter is
19 considered to be a knife.

20 Number two, aggravated force means that the victim
21 submitted to sexual battery while the victim was also the
22 victim of a forcible confinement, burglary, robbery, or
23 housebreaking.

24 Burglary in the first degree. The defendant is
25 charged with first degree burglary.

1 The State must first prove beyond a reasonable
2 doubt that the defendant entered a dwelling without consent.

3 A dwelling is any building, or portion of a
4 building, in which a person ordinarily sleeps.

5 The State does not have to prove that force was
6 used to gain entry.

7 If a person enters a building by using deception,
8 artifice, trick, or misrepresentation to get consent to
9 enter, this is an entry without consent.

10 Next, the State must prove beyond a reasonable
11 doubt that the defendant intended to commit a crime, either
12 a felony or a misdemeanor, at the time of entry.

13 The mere entry into a dwelling without consent is
14 not burglary.

15 If the attempt to commit a crime is formed after
16 the entry it's not burglary.

17 On the other hand, if the defendant intended to
18 commit a crime at the time of the entry, it's a burglary,
19 even if the intent was abandoned after the entry. It does
20 not matter that the intended crime was not completed.

21 Intent can be shown by acts and conduct of the
22 defendant and other circumstances from which you may
23 naturally and reasonably infer intent.

24 Finally, the State must prove beyond a reasonable
25 doubt that one of the following things occurred:

1 When entering, or while in the dwelling, the
2 defendant was armed with a deadly weapon. Okay. That's
3 number one.

4 A deadly weapon is any article, instrument, or
5 substance which is likely to cause death or great bodily
6 harm.

7 And, again, whether an instrument has been used as
8 a deadly weapon depends upon the facts and circumstances of
9 each case.

10 A box cutter or a knife is a deadly weapon.

11 Number two, or the State must prove that when
12 entering, or while in the dwelling, the defendant caused
13 physical injury to someone not participating in the crime.

14 Number three, or the State must prove that when
15 entering, or while in the dwelling, the defendant used or
16 threatened to use a dangerous object.

17 Or, number four, the State must prove that when
18 entering, or while in the dwelling, the defendant displayed
19 what was or appeared to be a knife.

20 A box cutter is considered to be a knife.

21 Possession of a weapon during the commission of a
22 violent crime.

23 The defendant is charged with possession of a
24 weapon during the commission of, or attempt to commit a
25 violent crime.

1 The State must prove beyond a reasonable doubt
2 that the defendant visibly displayed a weapon during the
3 commission of a violent crime.

4 A knife means an instrument or tool with a sharp
5 cutting blade, whether or not fastened to a handle, which
6 could be used to inflict a cut, slash, or wound.

7 A knife is considered a weapon.

8 A box cutter, as I previously told you, is
9 considered to be a knife.

10 Now, in order to find the defendant guilty of this
11 charge, you must first find the defendant guilty of either
12 committing a violent crime or attempting to commit a violent
13 crime.

14 Criminal sexual conduct first degree and burglary
15 first degree are both considered violent crimes.

16 The State must prove beyond a reasonable doubt
17 that the weapon further advanced or helped in the commission
18 of the crime.

19 Now, ladies and gentlemen, let me say something to
20 you about your deliberations. The word deliberation is
21 defined as a careful consideration weighing up with a view
22 to a decision. You see, the genius of our jury system is
23 that it allows twelve good people, both men and women from
24 differing backgrounds, life experiences and perspectives to
25 consider the evidence, talk about it and ultimately reach a

1 verdict.

2 Now, the task of a juror is called deliberations
3 for a reason, because you, the jury, are to consider the
4 evidence in this case carefully and deliberately. Discuss
5 it in a calm, thorough and courteous manner. Remember, you
6 are not partisans or advocates for either side favoring one
7 side over the other. You are the judges of the facts. Your
8 sole duty is to sort through the information that you have
9 heard, that you have seen, and find the truth from the
10 evidence presented in this courtroom.

11 Now, the supreme law of our land, the United
12 States Constitution, affords everyone a day in court and a
13 fair trial, so this case is very important to both sides
14 because it is their day.

15 Now, I charge you, ladies and gentlemen, to listen
16 to the views of your fellow jurors. Carefully consider
17 their viewpoints and courteously discuss the evidence.
18 Remember, you are doing something deliberately. You are not
19 in a big hurry and you are tasked with the duty of upmost
20 important.

21 Now, in conclusion, Madam Forelady and ladies and
22 gentlemen, you have been selected by both the State and the
23 defense to be fair and impartial jurors. It's your duty
24 then in your deliberations to determine the truth of this
25 case, giving the defendant the benefit of every reasonable

1 doubt on these charges. And from the facts which you
2 determine to be true, you take and apply the law which I
3 have just now given to you and thus arrive at your verdict
4 which speaks the truth in this case. I have told you the
5 standards that you have to apply to these charges. Now you
6 have heard the evidence and now you have heard the law.

7 Now, whatever your verdict is as to the
8 indictment, guilty or not guilty, Madam Forelady, you will
9 indicate it by marking the jury's decision in the blank on
10 the verdict form. You will see number one, it says as to
11 the offense of criminal sexual conduct first degree, we, the
12 jury, unanimously find the defendant, and you either mark
13 not guilty or guilty.

14 The same for the second charge.

15 The same for the third charge.

16 And then you will sign it and date it. Okay.

17 And, Madam Forelady, although you are the only one
18 who can write on this verdict form, you can't write on it
19 until y'all reach a unanimous verdict. And, of course,
20 unanimous means all twelve of you must agree to the verdict.
21 Okay.

22 Now, having said that, I'm going to send you back
23 to your jury room, but do not begin discussing the case
24 until you have received the exhibits which have come into
25 evidence and receive this verdict form. And once you get

1 those things, that will be your signal that you can begin
2 talking about the case and begin deliberating.

3 Now, once you start deliberations, you will
4 deliberate until you have reached a verdict, at which time
5 you will knock on the door and advise the bailiff and we
6 will bring you back out here to get your verdict. Okay?

7 Thank you very much. You may go to your jury room
8 now, except for my alternate. If you will just stay right
9 there for me. The rest of y'all head on back to the jury
10 room.

11 (Whereupon, at 4:16 p.m., the jury panel went to
12 the jury room, awaiting instructions to begin deliberations)

13 THE COURT: Ms. Morince, thank you so much for
14 your service, the jury service --

15 Well, first of all before I do that, any
16 exceptions to the charge from the State or the defense,
17 other than what was previously noted?

18 MS. HOWARD: No, sir.

19 MR. CHAMBERS: No, Your Honor.

20 THE COURT: All right. Thank you.

21 All right. Ms. Morince, thank you so much for
22 your jury service. I don't think we are going to need you
23 tomorrow, so I'm going to go ahead and tell you we are not
24 going to need you tomorrow, so your jury service has ended.
25 Thank you so much.

1 Now, you can feel free if you want to hang around
2 to see what they do, you can do that, but you can't do it
3 back there. You have to wait out here. Okay. You don't
4 have to. If you want to go home, you can do that also,
5 okay? Thank you so much. You are free to leave.

6 (Whereupon, the alternate juror was discharged)

7 THE COURT: All right. Y'all come check out the
8 evidence and make sure y'all are good with your verdict form
9 and we will be done.

10 (Off the record)

11 (Back on the record)

12 (Whereupon, at 4:10 p.m., the jury panel was
13 instructed to begin deliberations)

14 (Whereupon, at 4:20 p.m., proceedings were
15 recessed, pending the verdict of the jury panel)

16 (Whereupon, at 5:13 p.m., proceedings were
17 reconvened)

18 (Jury Note marked as Court's Exhibit No. 1 for
19 identification)

20 THE COURT: Here is the question from the jury.
21 Court's Exhibit 1.

22 "What was the wording used by Robert Davis Smith
23 the morning of the 18th when he was sharing the events of
24 the previous day with his boss Jim Sawyer?"

25 MS. HOWARD: I mean, I'm a little -- I'm a little

1 bit of the position that -- I mean, we -- what part --

2 THE COURT: I'm going to tell them you should have
3 been listening.

4 MS. HOWARD: I mean -- and I think that -- I think
5 the issue is, and I know that I said that he told him there
6 was a weapon, because he did and that was the testimony.
7 Mr. Chambers told him he didn't, which unfortunately was not
8 the case, but I'm not saying he misled, but that's what
9 happened. I didn't object and maybe I should have, but -- I
10 mean, we could play back Mr. Sawyer's --

11 THE COURT: No, we can't.

12 MS. HOWARD: Well, I understand.

13 THE COURT: My court reporter is different from
14 yesterday. I don't have the transcript.

15 MS. HOWARD: Well --

16 MR. CHAMBERS: I agree with you, Your Honor. I
17 think all you can do is say listen, you --

18 THE COURT: You heard the evidence. You heard --
19 you have seen the evidence. You have heard the testimony.
20 It's your job as jurors to recollect what was testified to
21 to use that in your judgment.

22 MS. HOWARD: Yeah, and --

23 MR. CHAMBERS: I thought we had a different court
24 reporter.

25 THE COURT: Yeah.

1 MS. HOWARD: And just remind them that testimony
2 was, you know, what they heard, not what the lawyers said.

3 THE COURT: Right, that's correct.

4 I did tell them opening statements -- I will tell
5 them that. That's correct. I think that's fair. Opening
6 statements, closing statements are not evidence. What
7 evidence is is what comes from this witness stand. I think
8 that's reasonable and I'll say, you know -- I think that's
9 fair.

10 MS. HOWARD: Okay.

11 THE COURT: Okay?

12 MR. CHAMBERS: Yeah, I don't have a problem with
13 that.

14 THE COURT: Let's do that.

15 Let's bring them in.

16 (Whereupon, at 5:17 p.m. the jury panel returned
17 to open court)

18 THE COURT: All right. All members of the jury
19 are present.

20 Ladies and gentlemen of the jury, I have read your
21 note. "What was the wording used by Robert Davis Smith the
22 morning of the 18th when he was sharing the events of the
23 previous day with his boss Jim Sawyer?"

24 My answer to that question is, ladies and
25 gentlemen, you have heard the testimony. You have seen the

1 evidence. I know that you are deliberating that right now.
2 Your verdict must be based solely upon the evidence received
3 in this courtroom and from the testimony given on that
4 witness stand.

5 Now, statements said by the attorneys, either in
6 closing or -- in closing statements or opening statements,
7 remember I charged you yesterday, are not evidence. Only
8 what's from the witness stand.

9 So your duty -- do you remember, that's why I told
10 you to listen very carefully because you are not allowed to
11 take notes, so you have to go by your recollections of the
12 trial and discuss it that way in your deliberations, okay?
13 So go on back to deliberate.

14 (Whereupon, at 5:18 p.m., the jury panel returned
15 to the jury room to continue deliberations)

16 THE COURT: All right, we are in recess.

17 (Whereupon, at 5:19 p.m., proceedings were
18 recessed)

19 (Whereupon, at 6:15 p.m. proceedings were
20 reconvened)

21 THE COURT: Bring the jury in.

22 (Whereupon, at 6:16 p.m. the jury panel returned
23 to the courtroom)

24 THE COURT: All members of the jury are present.

25 Ladies and gentlemen, I hate to interrupt your

1 deliberations. The hour is getting late. I have to drive
2 back to Chester and there is other things going on and
3 rather than just keep y'all here late late into the evening,
4 possibly, certainly y'all can deliberate tomorrow morning
5 fresh, okay? So we are going to recess your deliberations
6 until in the morning.

7 Having said that, you are not to discuss the case
8 with anybody, including your fellow jurors. The only place
9 that you can discuss it is in the jury room, okay? So I
10 want y'all to be here tomorrow at 9:30 in the morning. And
11 just come straight to your jury room.

12 As soon as everybody gets here, Madam Bailiff, all
13 twelve are here, they can start deliberating without having
14 to come back in here again, okay?

15 So just be back here tomorrow morning at 9:30 to
16 start and you can commence your deliberations then, okay.

17 Thank you very much. Have a wonderful evening.

18 (Whereupon, at 6:17 p.m. the jury left the
19 courtroom)

20 THE COURT: Anything before we recess?

21 MR. CHAMBERS: No, Your Honor.

22 THE COURT: Y'all have a wonderful evening. See
23 you tomorrow morning.

24 MR. CHAMBERS: Thank you, Your Honor.

25 MS. HOWARD: Thank you, Your Honor.

1 (Whereupon, proceedings were adjourned to March 4,
2 2016)

3 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 3rd day of March, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 10, 2016

Michael R. Watts
Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF GREENVILLE
4 2013-GS-23-07305

5 State of South Carolina
6 vs.
7 Robert Davis Smith, Jr.

8
9 Greenville, South Carolina
10 March 4, 2016 (verdict and sentencing)
11 Before the Honorable Brian M. Gibbons

12
13 APPEARANCES
14 For the State: Kimberly Howard, Kathryn McCall
15 For the Defendant: Randy Chambers
16
17 Reported by: Michael C. Watkins
18 Official Court Reporter

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1	Verdict:	3
2	Sentencing:	10
3	Certificate:	11
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1 THE COURT: All members of the jury are present.
2 Madam Forelady, it's my understanding that the jury has
3 reached a verdict.

4 THE JUROR: Yes, sir.

5 THE COURT: Is the verdict unanimous?

6 THE JUROR: Yes, sir.

7 THE COURT: And did you initial and -- or mark the
8 verdict form appropriately and sign it as well?

9 THE JUROR: Yes, sir.

10 THE COURT: And I find you did as well. I have
11 reviewed the verdict form, I'll hand it to the clerk at
12 this time to publish.

13 THE CLERK: In the indictment 2013-GS-23-7305, State
14 versus Robert Davis Smith, Jr., as to the offense of
15 criminal sexual conduct first degree, we the jury,
16 unanimously find the defendant, Robert Davis Smith, Jr.
17 guilty. As to the offense of burglary first degree we, the
18 jury, unanimously find the defendant, Robert Davis Smith,
19 Jr., not guilty. As to the offense of possession of a
20 weapon during a violent crime, we, the jury, unanimously
21 find the defendant, Robert Davis Smith, Jr., not guilty.

22 THE COURT: Ladies and gentlemen of the jury, thank
23 you so much for your service to Greenville County and to
24 the State of South Carolina.

25 (The jury was dismissed.)

1 THE COURT: Mr. Chambers?

2 MR. CHAMBERS: Your Honor, at this point I would make
3 a motion for a new trial.

4 THE COURT: All right. Motion denied, your objections
5 are preserved in the record.

6 MR. CHAMBERS: Thank you, Your Honor.

7 THE COURT: All right. We will be in recess.

8 MR. CHAMBERS: I don't think he wants his client to
9 sign the sentencing sheet.

10 THE COURT: Well, he doesn't have to sign a sentencing
11 sheet, but do y'all have one prepared?

12 MS. HOWARD: We had one prepared, yes, right here
13 for --

14 THE COURT: But just for the CSC?

15 MS. HOWARD: Just for the CSC. If you would give us
16 just a second to grab his number of jail days and all that.

17 THE COURT: Yeah, we're in recess for all of that.

18 (A break was taken.)

19 THE COURT: Before I hear from Mr. Chambers or Mr.
20 Smith prior to sentencing if y'all would please approach
21 the bench?

22 (A bench conference was held.)

23 THE COURT: I will be glad to hear from the State
24 regarding sentencing. Give me his prior record and, of
25 course, any recommendations the State would like to make.

1 MS. HOWARD: Yes, Your Honor. As you know the CSC
2 carries up to 30 years, it's a violent and most serious.
3 The defendant's prior record is a 1992 lewd act on a minor,
4 a '99 impersonating a law enforcement officer, a 2000
5 burglary second degree violent, a 2005 sex offender
6 registry violation, fraud check in '07, 2012 possession of
7 marijuana with intent to distribute. And then there is an
8 out of state sex offender registry violation from 2008, as
9 well as I believe there's a fraud check from out of state,
10 but maybe not. Forget I said that about a fraud check. So
11 the State in negotiations -- this case was actually started
12 out with Lee Paletti (phonetically) in our office, and I
13 believe they first offered 15, maybe even came down to ten.
14 But Your Honor, with his prior record and him being a
15 danger to the community the State would ask that you impose
16 20 or more on this. He is a sex offender on the registry,
17 has already violated twice and just for the safety of our
18 community we would ask that you impose 20 or more in this.

19 THE COURT: Thank you, Ms. Howard.

20 MS. HOWARD: And he has been in -- excuse me -- 984
21 days.

22 THE COURT: So he's already been in jail almost three
23 years?

24 MS. HOWARD: Yes, sir.

25 THE COURT: Didn't make bond or bond was denied?

1 MS. HOWARD: Did not make bond. It was probably
2 denied at first but has not made bond since.

3 MR. CHAMBERS: He's never had a bond he could make,
4 Your Honor.

5 THE COURT: But he certainly gets credit for whatever
6 time he has served. Yes, sir?

7 MR. CHAMBERS: Well, Your Honor, it's always tough to
8 stand up here after a not guilty verdict particularly in a
9 case like this. Obviously the jury has spoken and I am
10 never one to argue with a jury's decision in the case. But
11 what I will tell you is that from the first day that I met
12 him Mr. Smith has been viement about his innocence and that
13 was the reason that he never entertained the thought of
14 accepting any plea negotiations or anything, he wanted his
15 day in court, we had that. What I will tell you is as
16 you've already heard, he's been sitting in jail since he
17 was arrested. He has made good use of his time since he's
18 been over there. He has engaged in a serious Bible study.
19 He gave to me several certificates which unfortunately I
20 don't have with me because and inadvertently left his file
21 in my truck this morning when I came up here, I've got
22 bonds and other things that are going on, but I'm sure the
23 Court will take my word for the fact that he has, in fact,
24 engaged in this and seems to be very serious and sincere
25 about it. He has become an ordained minister. He has

1 counseled other people who are in the jail. He has become
2 very conversant in the law and has helped many of the other
3 inmates that are in the jail over there with legal issues
4 and things that they have and he's been a very serious and
5 sober and reflective person. He's 40 years old as he
6 stands here right now. I would just ask you to take
7 everything into consideration and be as lenient with him as
8 you possibly can under the circumstances. He understands
9 this is a very serious matter, and he understands that he's
10 looking at some time, he is under no illusions. But I
11 would ask you to be as lenient with him as you possibly
12 can. And I'm sure that Robert would like to say something.

13 THE COURT: Yes, sir, Mr. Smith?

14 THE DEFENDANT: Yes, Your Honor. Why I am here today
15 is that do I call the -- your name is Kimberly, right?

16 THE COURT: Ms. Howard, right.

17 THE DEFENDANT: You said that I was a danger to
18 society. How can I be a danger to society? I raised money
19 to my brothers -- the homeless shelters, Shriners
20 Hospitals. I do participate in these organizations --

21 MS. HOWARD: Your Honor, will you ask him to address
22 the Court and not me, please?

23 THE COURT: Just look at me, sir.

24 THE DEFENDANT: And plus --

25 THE COURT: She's doing her job as a prosecutor.

1 THE DEFENDANT: So then plus I fixing to get my
2 license to be a paralegal and lawyer, to be a jailhouse
3 lawyer and I'm doing all of these things, plus I've got
4 kids myself, you know. And my criminal record, most of
5 that -- I've been down the road only twice. That juvenile
6 record -- what you said that I'm supposed to be -- she was
7 17, I was 18 at the time, me and this woman right here
8 today, that's my kids' mama, yeah, the same person. Why
9 was that? Because her daddy forced her to tell that lie on
10 me.

11 THE COURT: That was back in 1992?

12 THE DEFENDANT: Yeah. The only thing she did she
13 touched me --

14 THE COURT: Look at me.

15 THE DEFENDANT: -- I touched her, her cousin saw it
16 and went back and told her daddy. They put all of this
17 right here trying to make me bad, I'm not no bad person,
18 Your Honor, I'm not no bad person either. And while I was
19 back home I worked at a group home, you know what I'm
20 saying, around kids. I've got seven girls and one boy, why
21 would I want to do something like this? Why would I want
22 to go out here and take something, you know what I'm
23 saying? Or I could go out here and pay a couple dollars to
24 a crack head to get some? How is that, you know? I'm --
25 just like right now, you're sending an innocent man down

1 the road for nothing. Y'all had the evidence right there.

2 THE COURT: Yes, sir.

3 THE CLERK: You know. Without evidence how can you
4 prosecute somebody? That's ridiculous. That's ridiculous.

5 THE COURT: All right, sir. Anything else you wish to
6 tell me?

7 THE DEFENDANT: Yes, Your Honor. All I want to say is
8 I hope y'all, you know, relax on this, but God watching
9 down on y'all.

10 THE COURT: Yes, sir.

11 THE DEFENDANT: God watching down on y'all.

12 THE COURT: Yes, sir, I understand. Look at me. I
13 understand.

14 THE DEFENDANT: God watching down on them, Your Honor.

15 THE COURT: Yes, sir. I'm familiar with God's laws,
16 I'm also familiar with man's laws, and my job is to
17 enforce, interpret and to apply man's laws and I have to do
18 that and I have to honor the jury's decision. The jury's
19 decision in my estimation was absolutely the correct one as
20 well. I believe the evidence supported the conviction
21 against you. While you may not agree with that, that's
22 absolutely your right, that's the country we have. And, of
23 course, I know your lawyer -- of course, he will advise you
24 of your appellate rights and the appellate courts will
25 review this trial to make sure you had a fair trial, and

1 I'm confident they'll find that you also had a fair trial.
2 But having said that and since I am where I'm sitting and I
3 have to be the ultimate judge of man's laws, this was a
4 serious and despicable crime that you are convicted of. I
5 understand you're maintaining your innocence but in this
6 Court's opinion it was despicable, especially that it
7 happened in the presence of two young children. Having
8 heard that and having considered your previous record I
9 find the appropriate sentence in this case is 23 years in
10 the South Carolina Department of Corrections. Good luck to
11 you, sir. Take him into custody.

12 (End of trial proceedings.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for Greenville County, South Carolina, on
9 the 4th day of March, 2016.

10 I do further certify that am neither of kin, counsel,
11 nor interest to any party hereto.

12

13

August 25, 2016

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16


Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA)
 IN THE COURT OF COMMON PLEAS) IN THE COURT OF COMMON PLEAS
 County of GREENVILLE)

PRO SE
Robert DAVIS SMITH, JR. #205136)
 Full name and prison number (if any) of Applicant)

2019-CP-23- 04401

v.)
)
)
 State of South Carolina)

APPLICATION FOR
 POST-CONVICTION RELIEF

2019 JUL 30 AM 11:58

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention GREENVILLE COUNTY DETENTION CENTER
4 MCGEE STREET, GREENVILLE, SC 29601
2. Name and location of Court which imposed sentence GREENVILLE COUNTY CLERK
OF COURT, 305 EAST NORTH STREET, GREENVILLE, SC 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) CRIMINAL SEXUAL CONDUCT 1st Deg
 - (b) A/W 2013 A 2320601632
 - (c) 2013-CE-23-07305 ¹

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty NOT GUILTY
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. SOUTH CAROLINA COURT OF APPEAL
 ii. SOUTH CAROLINA SUPREME COURT
 iii. _____

(b) the result in each such Court to which you appealed:

- i. CONVICTION OF THE LOWER COURT BE AFFIRMED
 ii. SOUTH CAROLINA SUPREME COURT, DENIED
 iii. _____

(c) the date of each such result:

- i. JULY 20, 2017, REHEARING IS DENIED Jan 17, 2019
 ii. JUNE 28, 2019, FEB 5, 2019
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. 2016-000576, 2018-UP-466
 ii. 2019-000162, 2013-GS-23-07305
 iii. 2017-CP-23-6807

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
 (b) N/A
 (c) N/A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL (SEE ATTACH pg).
 (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL (SEE ATTACH pg).
 (c) STATE MISCONDUCT (SEE ATTACH pg).

10. State concisely and in the same order the facts which support each of the grounds set out in (9): ONE WAS FAILURE TO OBJECT TO THE PORTIONS OF THE VIDEO IN WHICH THE POLICE INSISTED THAT I GAVE MY INNOCENCE. THE OTHER WAS THAT IT SOUNDED LIKE I INVOKED MY RIGHTS TO COUNSEL DURING THE INTERVIEW.
 (a) INNOCECE, THE OTHER WAS THAT IT SOUNDED LIKE I INVOKED MY RIGHTS TO COUNSEL DURING THE INTERVIEW.
 (b) APPELLATE COUNSEL'S FAILURE TO RAISE ISSUE THAT DENIAL OF DIRECTED VERDICT, MOTION FOR LACK OF INDEPENDENT EVIDENCE CORROBORATING DEFENDANT'S EXTRA-JUDICIAL.
 (c) APPELLANT ALLEGES THAT HE WAS CONVICTED OF A SEXUAL ASSAULT CRIMINAL CHARGES THAT HE DID NOT COMMIT AND THERE WAS LACK OF EVIDENCE AGAINST HIM AT TRIAL.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? YES NO
- (d) any other petitions, motions or applications in this or any other Court?
YES

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. REHEARING IN THE COURT OF APPEAL (DENIED)
- ii. SOUTH CAROLINA SUPREME COURT (DENIED)
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. SOUTH CAROLINA COURT OF APPEAL
- ii. SOUTH CAROLINA SUPREME COURT
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. DENIED
- ii. DENIED
- iii. AFFIRMED
- iv. _____

(d) the date of each such disposition:

- i. JAN 17, 2019
- ii. FEB 5, 2019
- iii. JUNE 28, 2019
- iv. JULY 21, 2017

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. 2016-000576, 2017-CP-23-6807
- ii. 2018-UP-466
- iii. 2019-000162
- iv. 2013-65-23-07305

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. INEFFECTIVE ASSISTANCE OF COUNSEL (SEE ATTACH pg)
- ii. INEFFECTIVE ASSISTANCE OF Appellate COUNSEL (SEE ATTACH pg)
- iii. STATE MISCONDUCT / POLICE MISCONDUCT (SEE ATTACH pg)

(b) the proceedings in which each ground was raised:

- i. 0
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) N/A
- (c) N/A

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. RANDY L. CHAMBERS, ESA
804 LAURENS, RD - GREENVILLE, SC 29607
- ii. SUSAN B. HACKETT, ESQ - SCJD DIVISION OF APPELLATE DEFENSE
PO BOX 11589 - COLUMBIA, SC 29211
- iii.

(b) the proceedings at which each such attorney represented you:

- i. TRIAL
- ii. SOUTH CAROLINA COURT OF APPEALS
- iii. SOUTH SUPREME COURT

18. State clearly the relief you seek in filing this application.

(PROSE) APPELLANT RESPECTFULLY REQUESTS THIS COURT REVERSE
HIS CONVICTION AND REMAND FOR A NEW TRIAL.

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of GREENVILLE

VERIFICATION

I, Robert Davis Smith, SR. #285136, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Robert Smith, SR. #285136

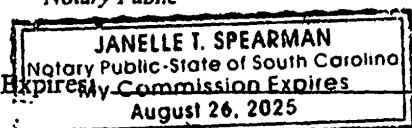
SWORN to and subscribed before me this 24th

day of July, 192019

(L.S.)

Notary Public

My Commission Expires



**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Robert Davis Smith, SR. #285136, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

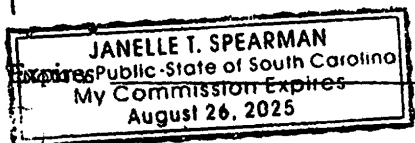
Robert Smith, SR. #285136
Applicant

SWORN or affirmed to and subscribed before me this

day of July, 192019

Notary Public

My Commission Expires



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ROBERT DAVIS SMITH, JR. #235136
APPLICANT,

v.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
THE THIRTEENTH JUDICIAL CIRCUIT

CASE NO ~~2019 CP-23-~~ 04401

MEMORANDUM

FILED-CLERK OF COURT
PAUL T. WILKINSON

2019 JUL 30 AM 11:59

APPLICANT, MAKING ITS RETURN TO THE APPLICATION FOR POST-CONVICTION RELIEF (PCR) FILED ON JULY 24, 2019, WOULD RESPECTFULLY SHOW THIS COURT:

I.

APPLICANT IS PRESENTLY CONFINED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS PURSUANT TO ORDER OF COMMITMENT OF THE GREENVILLE COUNTY CLERK OF COURT. IN APRIL OF 2014, THE GREENVILLE COUNTY GRAND JURY INDICTED APPLICANT FOR ONE COUNT OF FIRST-DEGREE CRIMINAL SEXUAL CONDUCT, ONE COUNT OF FIRST-DEGREE BURGLARY, ONE COUNT OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, THREE COUNTS OF KIDNAPPING, AND ONE COUNT OF FIRST-DEGREE ASSAULT AND BATTERY. ON MARCH 2, 2016, A JURY TRIAL WAS COMMENCED IN THE GREENVILLE COUNTY COURT OF GENERAL SESSIONS ON THE CRIMINAL SEXUAL CONDUCT, BURGLARY, AND POSSESSION OF A WEAPON CHARGES, AND THREE COUNTS OF KIDNAPPING, AND ONE COUNT OF FIRST-DEGREE ASSAULT AND BATTERY WITH THE HONORABLE BRIAN M. GIBBONS, CIRCUIT COURT JUDGE, PRESIDING. AT THE CONCLUSION OF THE TRIAL FOR DAYS LATER, THE JURY CONVICTED APPLICANT OF FIRST-DEGREE CRIMINAL SEXUAL CONDUCT AND ACQUITTED APPLICANT OF THE OTHER SEVEN CHARGES. FOLLOWING VERDICT, THE TRIAL JUDGE SENTENCED APPLICANT TO A TWENTY-THREE-YEAR TERM OF IMPRISONMENT.

ON MARCH 14, 2016, APPLICANT FILED A NOTICE OF APPEAL TO THE SOUTH CAROLINA COURT OF APPEALS. AS OF THE DATE OF THIS RETURN, BRIEF I HAVE

BEEN FILED AND THE APPELLATE MATTER WAS PENDING IN THE COURT OF APPEALS ON THE JULY 21, 2017, WHEN THEY CAME TO THE CONCLUSION FOR THE FOREGOING REASON, IT IS RESPECTFULLY SUBMITTED THAT THE JUDGEMENT AND CONVICTION OF THE LOWER COURT BE AFFIRMED. ON DECEMBER 19, 2018, THIS COURT AFFIRMED APPELLANT'S CONVICTION AND SENTENCE IN AN UNPUBLISHED PER CURIAM OPINION. PURSUANT TO RULE 221(A), SCACR, APPELLANT'S NOW FILES THIS POST-CONVICTION RELIEF (PCR) STATE V. SMITH, 2018-UP-466 (SC.CA. APP. FILED DEC. 15, 2018, FOR TO REQUEST THIS COURT TO DO A INVESTIGATE THE MATTER THAT BASED UPON THE STATE / LAWYER / POLICE THEY RELIED UPON PERJURED TESTIMONY OF VICTIM, AND OBSTRUCTION OF JUSTICE WHEN S.D. ALA. 1991. FALSE TESTIMONY MOST SOME HOW INFECT PROCESS TO CONSTITUTE OBSTRUCTION AND THUS ALLOW CONVICTION FOR CORRUPTLY ENDEAVORING TO OBSTRUCT, IMPED, OR INFLUENCE DEE ADMINISTRATION OF JUSTICE, 18 U.S.C.A. § 1503. - U.S. V. BARFIELD, 781 F. SUPP. 794, REVERSED 999 F.2D 1520. — OBST JUST 5.

IN 1990, OBSTRUCTION OF JUSTICE DID NOT INCLUDE ALLEGED CONCEALMENT OR WITHHOLDING OF DISCOVERY DOCUMENTS, 18 U.S.C.A. § 1503. - RICHMARK CORP. V. TIMBER FALLING CONSULTANTS, INC., 730 F. SUPP. 1525, — OBST JUST 1, 5. ATTACHED TO THIS RETURN POST-CONVICTION (PCR) BY REFERENCE ARE THE RECORDS OF THE GREENVILLE COUNTY CLERK OF REGARDING THE SUBJECT CONVICTIONS, APPLICANT'S POST-CONVICTION (PCR) APPLICATION. APPLICANT RESERVES THE RIGHT TO AMEND THIS (PCR) UPON THE FACTS IN THIS POST-CONVICTION MATERIALS. THEY HAVE NOT ISSUES ME NO REMITTITUR. IN THE VICTIM STATEMENT SHE TOLD THE POLICE THAT SHE GIVE ME THAT. THE ISSUES WAS A FRUIT OF THE POISONOUS TREE ISSUE.

11.

IN HIS APPLICATION FOR POST-CONVICTION RELIEF, APPLICANT ALLEGES THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY FOR THE FOLLOWING REASON:

1. INEFFECTIVE ASSISTANCE OF COUNSEL

A. ONE WAS FAILURE TO OBJECT TO THE PORTIONS OF THE VIDEO IN WHICH THE POLICE INSISTED THAT I PROVE MY INNOCENCE.

B. THE OTHER WAS THAT IT SOUNDED LIKE I INVOKED MY RIGHTS TO COUNSEL DURING THE INTERROGATION.

C. FAILURE TO MAKE CONTEMPORANEOUS OBJECTS

D. FAILURE TO ARGUMENT

E. COUNSEL DENIED APPLICANT HIS RIGHTS TO A SPEEDY TRIAL

INEFFECTIVE ASSISTANCE OF APPELLATE OF COUNSEL

A. THE APPELLATE COUNSEL'S FAILURE TO RAISE ISSUE THAT DENIED OF A DIRECTED VERDICT, MOTION FOR LACK OF INDEPENDENT EVIDENCE CORROBORATING DEFENDANT'S EXTRA-JUDICIAL.

B. HE HAS THREE ARGUMENTS OF GREAT MERIT RENDERING HIS CONVICTION FUNDAMENTALLY UNFAIR; AND

C. THE COUNSEL IN HIS FIRST PCR APPLICATION WAS INEFFECTIVE IN FAILING TO MAKE THOSE ARGUMENTS.

STATE MISCONDUCT / POLICE MISCONDUCT

2.A. APPELLANT ALLEGES THAT HE WAS CONVICTED OF A SEXUAL ASSAULT CRIMINAL CHARGE THAT HE DID NOT COMMIT AND THERE WAS A LACK OF EVIDENCE AGAINST ME AT TRIAL.

B. IN THE CASE AT BAR, PETITIONER HAS MADE HAS TWO PRONG SHOWING UNDER STRICKLAND V. WASHINGTON, SUPRA, WHICH VIOLATED HIS RIGHTS UNDER THE FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, §14 OF THE SOUTH CAROLINA STATE CONSTITUTION.

3. ATTACHMENTS TO APPLICATION - PG. 4-8.

III.

MY CLAIM THAT THE PROSECUTION / POLICE VIOLATED BRADY V. MARYLAND BY FAILING TO DISCLOSE EXCULPATORY MATERIAL IN ITS POSSESSION REQUIRES A DEMONSTRATION THAT (1) THE EVIDENCE WAS FAVORABLE TO THE ACCUSED, (2) IT WAS IN THE POSSESSION OF OR KNOW TO THE PROSECUTION, (3) IT WAS SUPPRESSED BY THE JUDGE AND MY COUNSEL OBJECT TO IT, (4) CASES THAT INCLUDE NONE-DISCLOSED EVIDENCE, AND

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Robert Davis Smith, Jr. #285136
APPLICANT,

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF SERVICE BY MAIL

2019-CP-23-

FILED
CLERK OF COURT
JUL 30 AM 11:59
2019

1. I AM A INMATE IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTION, IN THE ABOVE-CAPTIONED ACTION.
2. REGULAR COMMUNICATION BY MAIL EXISTS THROUGHOUT THE STATE OF SOUTH CAROLINA AND THAT THIS IS A PROPER CIRCUMSTANCE OF SERVICE BY MAIL.
3. I HAVE THIS DAY SERVED A COPY OF A POST-CONVICTION (PCR) IN THE ABOVE-CAPTIONED MATTER ON THE FOLLOWING PERSON BY DEPOSITING SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID:

Robert Davis Smith, #285136
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29212

DATED THIS 24, TH DAY OF JULY, 2019.

Robert Smith, Jr. #285136
Robert D. Smith, Jr., PRO SE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Robert Davis Smith, Jr., #285136,	)	Case No.: 2019-CP-23-4401
	)	
Applicant,	)	
	)	RETURN, MOTION FOR A MORE
v.	)	DEFINITE STATEMENT, AND MOTION
	)	FOR PARTIAL SUMMARY DISMISSAL
State of South Carolina,	)	
	)	
Respondent.	)	

The State (Respondent), making its return to the application for post-conviction relief filed by Robert Davis Smith, Jr., (Applicant), on July 30, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated according to orders of commitment of the Greenville County Clerk of Court. During its April of 2014 term, the Greenville County Grand Jury indicted Applicant for first-degree criminal sexual conduct, kidnapping, first-degree burglary, first-degree assault and battery, and the possession of a weapon during the commission of a violent crime (2013-GS-23-7305). Applicant was represented by Randall Lee Chambers, Esquire, (trial counsel) and Kimberly Boan Howard and Kathryn Harper McCall prosecuted the case on behalf of the State. On March 2, 2016, through March 4, 2016, Applicant proceeded to a jury trial with the Honorable Brian M. Gibbons (trial court), presiding, and was tried at that time only for first-degree criminal sexual conduct, first-degree burglary, and possession of a weapon during the commission of a violent crime. At the conclusion of trial, the jury convicted Applicant as indicted for first-degree criminal sexual conduct and acquitted him of first-degree burglary and the possession of a weapon during the commission of a violent crime. The trial court sentenced Applicant to imprisonment for a period of twenty-three years with credit for time served.

Trial counsel timely filed a notice of appeal. Appellate Defender Susan B. Hackett (appellate counsel) of the South Carolina Commission on Indigent Defense perfected an appeal on Applicant's behalf, arguing the trial court erred by admitting Applicant's statements to police and a photographic line-up used to identify Applicant. The South Carolina Court of Appeals affirmed in an unpublished opinion. State v. Smith, Op. No. 2018-UP-466 (S.C. Ct. App. filed December 19, 2018), reh'g denied, State v. Smith, S.C. Ct. App. Order filed January 17, 2019, cert. denied, State v. Smith, S.C. Sup. Ct. Order issued June 28, 2019. The Remittitur was issued on July 2, 2019.

II. Current Application

Respondent alleges he is entitled to post-conviction relief on the following grounds:

1. Ineffective assistance of trial counsel
 - a. "Failure to object to the portions of the video in which the police insisted that I prove my innocence.";
 - b. "The other was that it sounded like I invoked my rights to counsel during the interrogation.";
 - c. "Failure to make contemporaneous objects";
 - d. "Failure to argument"; and
 - e. "Counsel denied Applicant his rights to a speedy trial";
2. Ineffective assistance of appellate counsel;
 - a. "The appellate counsel's failure to raise issue that denied of a directed verdict, motion for lack of independent evidence corroborating defendant's extra-judicial.";
 - b. "He has three arguments of great merit rendering his conviction fundamentally unfair"; and
 - c. "The counsel in his first PCR Application was ineffective in failing to make those arguments."; and
3. Prosecutorial misconduct;
 - a. The State violated Brady rights.

Applicant prays the Court will grant post-conviction relief by awarding a new trial. Attached to this return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, the appellate records from the direct appeal, and the application for post-conviction relief. Respondent reserves the right to

amend this return upon its receipt of any relevant materials.

III. Response to Applicant's Claims of Ineffective Assistance of Counsel

Applicant claims trial counsel was constitutionally ineffective for failing to object to the admission of evidence, make contemporaneous objections, make certain arguments, and assert Applicant's right to a speedy trial. Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

In light of the PCR court’s deference to reasonable strategic decisions of trial counsel, Respondent submits that Applicant cannot likely cannot show any basis for finding trial counsel constitutionally ineffective; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV. Ineffective Assistance of Appellate Counsel

Applicant alleges appellate counsel was constitutionally ineffective for failing to make certain arguments on appeal. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, “appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745 (1983). “For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy” Jones, 463 U.S. at 754. Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Southerland, 337 S.C. at 616, 524 S.E.2d at 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, Applicant must show that, but for appellate counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Applicant does not include any specific information in his application for post-conviction relief with regard to his claim that there were arguments appellate counsel should have made but did not, with the exception of alleging that appellate counsel should have argued on appeal that the trial court erred in denying trial counsel's motion for a directed verdict. The undersigned moves later herein for a more definite statement with regard to this allegation in order that Respondent may prepare for a hearing in the matter. Nevertheless, Applicant likely cannot show that there were

issues of more merit that appellate counsel could have argued but did not; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Prosecutorial Misconduct

Applicant alleges he was the victim of prosecutorial misconduct because the State violated Brady v. Maryland, 373 U.S. 83 (1963). The Supreme Court of South Carolina has recognized that:

A Brady claim is based upon the requirement of due process. Such a claim is complete is the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to the guilty or punishment.

Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (internal citations omitted).

Applicant has failed to allege what evidence was wrongfully withheld by the State or what its exculpatory value would be. Respondent submits that Applicant cannot show that such a violation was committed in his case or that he is therefore entitled to relief; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

VI. Motion for Summary Dismissal

Applicant alleges that he has arguments relating to the unfairness of his conviction that

should have been made by his counsel during a previous PCR action. Respondent interprets the allegations from Applicant's Application as a claim of the ineffective assistance of PCR counsel. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, (1991). The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin provides for a belated appeal where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court).

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact . . ." and the movant is entitled to judgment as a matter of law. Summary dismissal without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

In light of the prohibition against claims of the ineffective assistance of PCR counsel from Coleman and the lack of an applicable exception thereto from Austin, Respondent moves for the

summary dismissal of this claim. There is no genuine issue of material fact to this allegation because the claim itself is barred as a matter of law by the decisions of our appellate courts. The facts alleged by Applicant, even if true, would not entitle him to relief. Therefore, Respondent asks the PCR court to summarily dismiss the allegation as no hearing is necessary.

VII. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's allegations. Applicant alleges trial counsel was constitutionally ineffective for failing to raise certain arguments or make certain objections, but fails to explain what objections or arguments counsel should have made. Applicant has failed to explain how his right to a speedy trial was violated. Applicant has failed to explain what other issues of superior merit appellate counsel should have raised on appeal or what argument she should have made that the trial court erred in denying trial counsel's motion for a directed verdict. Applicant fails to provide any supporting details as to his allegation that the State engaged in prosecutorial misconduct by committing a discovery violation. Applicant fails to set forth with specificity the facts and circumstances upon which the claims are based to such an extent that the undersigned could not effectively prepare for an evidentiary hearing in this matter. The Uniform Post-Conviction Procedure Act requires that Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The

bare assertion by the appellant that he was deprived of counsel is insufficient.
Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended or supplemental application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended or supplemental application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VIII. Denial of All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

IX. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCF. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . .

would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

X. Conclusion

WHEREFORE, Respondent requests that the PCR court require Applicant to file an amended application addressing the lack of supporting detail as identified herein and providing more information as to Applicant’s claims, summarily dismiss Applicant’s allegation that he was afforded the ineffective assistance of prior PCR counsel, and then hold an evidentiary hearing be held on Applicant’s arguable claims.

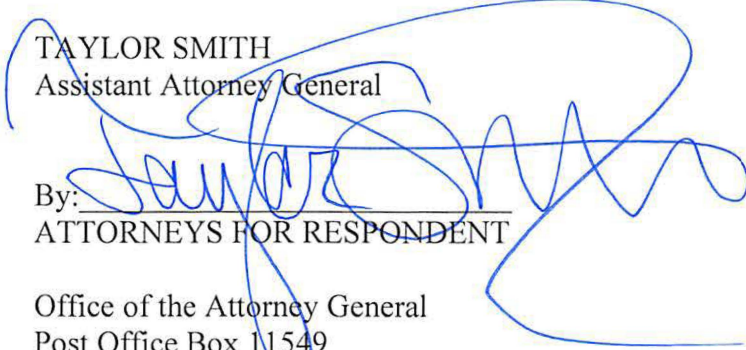
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR SMITH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

January 30, 2020

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Robert Davis Smith, Jr., #285136

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

2019-CP-23-4401

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return, Motion for a More Definite Statement, and Motion for Partial Summary Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

DATED this the 30th day of January, 2020.

Jennifer Jennison, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ROBERT DAVIS SMITH,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

AMENDED APPLICATION

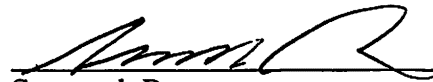
CASE # 2019-CP-23-4401

FILED-CLERK OF COURT
PAUL B. WILSON
2020 MAR 13 PM 1:45

This matter comes before the Court by way of application of post conviction relief filed July 30, 2019, alleging ineffective assistance of trial and appellate counsel prosecutorial misconduct due to Brady violations. A Return was made on January 30, 2020. This application is intended to incorporate the prior allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution and add the allegations of:

1. ineffective assistance of trial counsel for failing to move to quash the indictment or investigate the grand jury proceedings;
2. ineffective assistance of trial counsel for failing to object to investigator's bolstering comment that it was not very common to recover weapons in violent crimes; and
2. Due Process violations stemming from to irregularities in the grand jury proceedings.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 10 day of March, 2020

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

ROBERT DAVIS SMITH,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

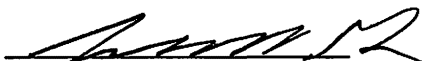
2019-CP-23-4401

AFFIDAVIT OF SERVICE
BY MAILFILED
CLERK OF COURT
PAUL J. WILSON
CLERK

2020 MAR 13 PM 1:45

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Supplemental Application** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney General
PCR Division
P.O. Box 11549
Columbia, SC 29211
 Attn: Taylor Smith


 Attorney for Defendant

This 10 day of March, 2020

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2019-CP-23-04401
	)	
	)	
	)	
	)	
ROBERT D. SMITH, JR.,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

February 26, 2025
Greenville, South Carolina

B E F O R E:

THE HONORABLE VERNON F. DUNBAR, JUDGE.

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

ISAAC L. JOHNSON, JR., ESQ.
Attorney for the Applicant

KAYLEE C. KEMP, ESQ.
J. ANTHONY MABRY, ESQ.
Assistant Attorney Generals

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) ROBERT DAVIS SMITH, JR.:

Direct Examination by Mr. Johnson.....8
Cross-Examination by Ms. Kemp.....21
Redirect Examination by Mr. Johnson.....27

(RW) RANDALL LEE CHAMBERS:

Direct Examination by Ms. Kemp.....34
Cross-Examination by Mr. Johnson.....39
Redirect Examination by Ms. Kemp.....45

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: You may call the case, ma'am.

MS. KEMP: May it please the Court.

Kaylee Kemp on behalf of the State, Your Honor.

This is the PCR action of Robert Smith, Jr. This is case 2019-CP-23-4401. And this is a Greenville County case, Your Honor. And if Your Honor would like, I can give a brief procedural history, if it pleases the Court.

THE COURT: Certainly. I did get 831 pages of documents. I've reviewed them. But, yes, please, proceed for the record.

MS. KEMP: For the record, Your Honor, Mr. Smith is currently serving a 23-year prison sentence for first degree criminal sexual conduct. He was originally indicted in April of 2014 on additional charges. And that would have been the -- of course, the first -- the first CSC charge, first degree burglary, a possession of a weapon during the commission of a violent charge, three counts of kidnapping, and first degree assault and battery.

He did proceed to trial on the -- the State opted to go forward on the burglary -- the burglary charge, the criminal sexual conduct, and the weapons charge. And that trial took place on March 2nd, 2016. Mr. Randy Chambers represented Mr. Smith at that trial.

1 The jury did acquit him of the burglary and the
2 weapons charge. And he was convicted of the first degree
3 CSC charge. And he was sentenced to 23 years.

4 He did file an appeal, Your Honor. And the
5 appeal was -- the appeal was denied. His convictions were
6 affirmed. And he did petition for a rehearing on that and
7 he was denied a rehearing on that matter. And he,
8 subsequently, petitioned our Supreme Court for certiori,
9 but was, also, denied the appeal on those grounds.

10 He did file his current application on July 30th,
11 2019. And just -- because this is an older case, Your
12 Honor, this is a 2019 case, I just would like to place on
13 the record that he has been through two -- two prior PCR
14 counsels prior to Mr. Johnson. So there has been a delay
15 in attorneys getting the case and getting information.
16 There has been a lot of pro se filings in this matter.
17 And we've, finally, been able to narrow down the
18 allegations that we are going forward on today, Your Honor.

19 Mr. Johnson did move for fees for the service of an
20 investigator to locate a -- a nurse that he needed in this
21 case, Ms. Serena Brown, who -- who the Applicant contends
22 that was material to this case. The order was granted and
23 filed on July 30th, 2024.

24 Now, at this time, Mr. Johnson and I have discussed
25 the allegation that we will be proceeding on today. And

1 that would be the allegation that trial counsel failed to
2 call the nurse, who administered the sexual assault kit of
3 the victim, to testify at his trial.

4 And with that, I will hand it over to Mr. Johnson for
5 anything else to add and to proceed with the case, Your
6 Honor.

7 THE COURT: Thank you, Ms. Kemp.

8 Mr. Johnson, I'll hear from you, sir.

9 MR. JOHNSON: Yes, sir, Your Honor. You mentioned
10 just a minute ago that you received 800 and something
11 pages of this case. This -- as the attorney general said,
12 I received about three times that. I am the third lawyer
13 to be appointed to represent Mr. -- Mr. Smith. The file
14 is quite voluminous.

15 And in response to the attorney general, I did, in
16 fact, hire an investigator through the indigent defense
17 office and found the nurse. But for brevity's sake,
18 Mr. -- the attorney general and I have decided that --
19 I've tried to pare this thing down to what I think are --
20 are the essential matters and one seminal issue regarding
21 ineffective assistance of counsel.

22 So I will simply at the proper time call Mr. Smith
23 and go over the information that is pertinent. A lot of
24 the things he raised, a lot of the issues, the motions
25 filed, I think are -- would be frivolous to present to

1 this Court given the nature of this hearing and what we're
2 here to try to discern.

3 So I will be as brief as possible. And I will save
4 the Court the expense of calling the nurse because we've
5 agreed that we don't need her here, and try to tailor the
6 testimony to the issue of whether Mr. Chambers was, in
7 fact, ineffective in representing Mr. Smith.

8 THE COURT: I understand. I appreciate the brevity.

9 And let me just state, for the record, that I did
10 review a lot of the assertions and allegations as set
11 forth by Mr. Smith, including improper panel of the
12 jury -- or Grand Jury, the lack of jurisdiction, racial
13 discrimination, improper introduction of the photograph,
14 improper discussion with the jury, improper prior
15 statements, biassed jurors, the failure to suppress the
16 telephone evidence, as well as allowing the arresting
17 officer to testify about those things.

18 So you're right. There are a lot of things in this.
19 But I just wanted to let Mr. Smith know that the Court is
20 aware of those things and has reviewed them so we can
21 narrow the focus on the nurse and what she would have done.

22 So at this point in time, you may call your first
23 witness.

24 MR. JOHNSON: Thank you.

25 At this time, I'd call -- previously, I referred to

1 him as Mr. Davis. His -- his name is, actually, Robert
2 Davis Smith. So at this time, I'd call Mr. Smith to the
3 stand.

4 THE COURT: Mr. Smith, if you'll, please, come
5 forward and sit here on the witness stand.

6 THE CLERK: Mr. Davis, please, place your left hand
7 on the Bible --

8 THE COURT: It's Mr. Smith.

9 THE CLERK: Oh, Smith. I'm so sorry.

10 THE COURT: That's okay.

11 THE CLERK: And raise your right hand.

12 WHEREUPON,

13 ROBERT DAVIS SMITH, JR.,
14 after first having been duly sworn, testified as follows:

15 THE CLERK: Please be seated.

16 MR. JOHNSON: Madam Clerk, I'm sorry. I made the
17 same mistake.

18 THE CLERK: I'll get him to say his full name and
19 we'll be good.

20 Please state your full name for the record.

21 THE WITNESS: Robert Davis Smith, Jr.

22 DIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q Good morning, Mr. Smith.

25 A How you doing this morning?

1 Q I'm fine. How about you?

2 A Thankful to be alive this morning.

3 Q Same here. Absolutely.

4 Tell me, how old are you?

5 A I just turned 50, sir. I've got a birthday coming
6 up.

7 Q Okay. Do you recall when you were on trial back in
8 2016 for the charges announced by the attorney general?

9 A Rephrase that again, sir.

10 Q Do you -- do you recall back in '16 -- 2016 when you
11 were on trial for the charges that have been announced by
12 the attorney general, criminal sexual conduct first
13 degree, the burglary, and possession of a weapon by a
14 felon?

15 A Yes, sir.

16 Q Who was representing you during your arrest,
17 investigation, and trial?

18 A At that time -- at June 17 and June 18 -- June 17,
19 there -- there -- supposedly, the crime happened. I got
20 arrested on June 18 at 11:00 hours. It was -- the person
21 who was representing me was Randy -- Randy Chambers. He
22 was a pro bono, plus a court-appointed attorney.

23 Q Okay. So Mr. Chambers was appointed to represent
24 you?

25 A Yes, sir.

1 Q You didn't retain him or give him any kind of fee to
2 represent you; is that correct?

3 A Yes, sir.

4 Q How long after your arrest on these charges was
5 Mr. Chambers appointed to represent you? Do you recall?

6 A He came to see me round about two or three times.
7 That was it after that.

8 Q Two or three times prior to your going to trial?

9 A Yes, sir.

10 Q During those two or three times that Mr. Chambers saw
11 you, what did you all discuss?

12 A At that time, I asked him about the -- the evidence,
13 what kind of evidence they got against me. When I was
14 booked in at the detention center and -- on that day on
15 June 18th, the officer Detective Tim Brown -- not Tim
16 Brown, Detective Conroy asked me to give me -- my -- my
17 box -- my Izod blue boxer shorts.

18 And -- and the officer at the -- at the detention
19 center told me I needed to turn them in. I said, I'm not
20 going to put these -- this one -- one piece on without no
21 underwear. Because it will give you a bad rash. So --

22 Q I hate to -- I hate to redirect you, but is -- is
23 this leading to what you and Mr. Chambers talked about?

24 A Yes, sir.

25 Q Okay.

1 A And -- and that's when he told me to -- to get --
2 watch the boxers --

3 Q Who told you that then?

4 A Randy Chambers. He told me to wash my boxers and put
5 them in the bag and mail them. So I mailed them straight
6 to him. So he can give them to the -- the detective.

7 Q Okay. Did he tell you the purpose of that,
8 abandoning them, washing them, and mailing them to him?

9 A They can get it tested. But at that time, they did
10 a -- a forensic -- checked everything and didn't even find
11 no DNA. They suspected they found some semen. But I
12 said, Y'all ain't going to find that because there ain't
13 nothing been done.

14 But the -- I told him the victim lied on me. And I
15 told him my -- my story, what happened, you know, what
16 happened, you know. And I was going there to get heroin
17 for my habit. Anything after that, you know, I don't know
18 what happened.

19 But I got the forensic pictures, the black and white
20 and the -- what the victim said I did, I did not do, but,
21 you know.

22 Q So you told Mr. Chambers all of this?

23 A Yes, sir.

24 Q During those two or three meetings?

25 A Yes, sir.

1 Q Did you all ever go over the discovery materials, the
2 things that the solicitor's office had given him in the
3 way of a response to a Brady motion or a Rule 5 motion?
4 Did you all go over any of the incident reports,
5 discovery, statements, any of that stuff?

6 A Yes. There's one statement -- it's not in my
7 paperwork. It's -- it's -- it's the forensic report that
8 I don't have that has been deleted after they give me
9 this -- this transcript. And that's not no transcript. A
10 real transcript supposed to be -- have, like, a thousand
11 and something pages. In a trial that's over four hours
12 of -- or four days, I supposed to have a thousand
13 something pages.

14 So in that transcript, the victim said that I gave
15 him debt. And I already know what she meant. She gave me
16 a condom. But they -- the -- the solicitor and the -- and
17 the -- and the State manipulated her and turned her
18 because of fear and intimidated because --

19 Q Let me ask you this now, is this what you and
20 Mr. Chambers talked about during those two or three times
21 that you met before you went to trial?

22 A Yes, sir.

23 Q Are these the things that you and Mr. Chambers
24 discussed?

25 A Yes, sir.

1 Q Okay. Well, you mentioned a transcript, a transcript
2 of what now?

3 A That -- in that transcript is --

4 Q Of what -- what transcript are we -- transcript are
5 we talking about?

6 A My trial transcript.

7 Q Okay. But that trial transcript would have been
8 after your conviction, would it not? How would Mr. -- go
9 ahead. You need to -- you need to answer that question
10 before I ask you another one.

11 A Okay. I asked him about that. He -- he said I
12 probably have them transcripts in a couple days. So --
13 and I did get it. And -- and I went through it. And
14 that's when I -- I looked at it. I said, huh, here's some
15 lies in here. I said, so they telling her not to say this
16 right here because it can incriminate them, make them look
17 bad.

18 At the same time, they know they don't have no -- no
19 kind of evidence. But what they did -- what the Solicitor
20 did, Kimberly Boan Howard, she manipulated the wording
21 and charged me with criminal sexual conduct because the
22 sexual assault she knew that Randy Chambers could have
23 beat that.

24 Q Okay. Let me ask you this, do you know why you're
25 here today?

1 A Yes, sir.

2 Q Why?

3 A The allegation what I've got against Mr. Chambers,
4 ineffective assistance of counsel.

5 Q So you do appreciate that's what you're here for, to
6 inform and tell the Court and to testify to the fact that
7 you filed an ineffective assistance of counsel -- an
8 application alleging ineffective assistance of counsel
9 against Mr. Chambers; right?

10 A Yes, sir. And --

11 Q You understand that; right?

12 A Yes, sir.

13 Q You can appreciate that?

14 A Yes, sir. And the first one that -- that -- what he
15 did wrong under the ABA law and -- he failed to obtain an
16 expert to assist with defendant's trial. And --

17 Q Let's stop right there. He failed to pay an expert
18 witness?

19 A Correct.

20 Q Did y'all discuss an expert witness?

21 A I asked him all that. He said, We don't need that.

22 Q He said you don't need it. All right. What's the
23 other issue -- no, not the other, but another issue?

24 A Okay.

25 Q Let me ask you this while you're looking at that --

1 A Failure --

2 Q Go ahead. I'm sorry.

3 A Failure to suppress evidence that lead to my -- lead
4 to me as an exclusion. That's number one.

5 Q Okay. What -- what evidence did you want
6 Mr. Chambers to attempt to suppress at the trial?

7 A Okay. To suppress that -- he missed two very
8 important objections. One was failure to object to the
9 portion of the video in which the police insisted that I
10 prove my innocence. That was burden shifting.

11 The other was that it was -- it sounded like I
12 invoked my right to counsel during an interrogation. And
13 he should have moved to suppress the statement based on
14 the request.

15 Q Okay. And what else?

16 A And -- and he failed to object to the -- the
17 Fourteenth and Sixth Amendment claim that the victim lied
18 at the time when she was being questioned about if she was
19 married on that day. And she wasn't married on that day.
20 Because I got her -- the marriage license from Lancaster
21 County and Greenville County. And they wasn't married on
22 that day.

23 Q And you discussed all of that with Mr. Chambers
24 during those two or three meetings prior to the trial?

25 A And I brought it to his attention in trial that on

1 that day right there, I said that -- I said, Pay
2 attention. I want to win this trial.

3 And that's when he had the Walker Pope RAP sheets,
4 and everything. I said, Why do y'all got this convicted
5 felon on the stand that he is -- got a felony on his RAP
6 sheet? That's against the -- un-Constitution [sic] law.
7 You can't do that.

8 Q Okay.

9 A That's an automatic reversal.

10 Q All right. Did you and Mr. Chambers -- I noticed
11 that you, also, argued -- and I am going to narrow, in my
12 mind, the issues that I think that are germane to the
13 issue at hand. But I just want to mention to you, I saw
14 in your amendment that's filed here that you allege that
15 Mr. Chambers -- that there was some irregularities
16 regarding the Grand Jury procedure that you brought to
17 Mr. -- Mr. Chambers attention; is that correct?

18 A Yes, sir.

19 Q Tell me about those. And tell the Court about your
20 alleged irregularities regarding the Grand Jury
21 proceedings that you discussed with Mr. Chambers prior to
22 trial.

23 A I told him on that day, I said, Listen, this
24 victim -- when -- when the detective handcuffed me then --
25 then read me my -- my Miranda rights, they just -- they

1 didn't tell me why. They just put the handcuffs on me and
2 removed me. And I told him -- and everything. I said,
3 Look -- I'm like, I did not do this.

4 They take me back to the scene, let the victim see me
5 again. Then they got down to the police station. They
6 did a lineup. And I said, Y'all cannot do this. I
7 need -- I need a lawyer. I said -- that's when I told
8 them, I said, I need to speak to a lawyer. And then
9 that's when everything started getting haywire.

10 Q Okay. So what -- tell me -- that -- your response to
11 my question, what does that have to do with irregularities
12 regarding the Grand Jury proceedings?

13 A Because the jury I picked -- when I picked my --
14 the -- my jury --

15 Q Not -- not -- not the jury in the trial, but the
16 Grand Jury that I presume conducted a -- an investigation
17 into your case and decided that there was enough to move
18 it forward for further proceedings. Tell me about what
19 irregularities that you allege regarding the Grand Jury
20 proceedings.

21 A I think they -- the Grand Jury were rushed into it --
22 rushed into it -- making a verdict.

23 Q Okay. A verdict?

24 A Yes, sir. They -- they were being rushed.

25 Q Okay. Now, how about -- you -- you, also, allege

1 that you discussed with Mr. Chambers a speedy trial
2 motion; is that correct?

3 A Yes, sir. I did ask him about that. He --

4 Q What was his response?

5 A He said I wouldn't -- I wouldn't need it.

6 Q Okay. Now, let me ask you this, during your
7 discussions with Mr. Chambers, did you all ever -- in
8 going over the discovery ever find a potential witness in
9 the case, and that witness being a nurse by the name of
10 Serena Brown?

11 A No, sir. Because I done looked over all my
12 paperwork. And the only piece of paperwork that got her
13 name on it is the medical report. That's a supplemental
14 report saying that -- it proved it not to be no
15 penetration. And I got that piece of --

16 MS. KEMP: Objection. That would be hearsay, Your
17 Honor.

18 MR. JOHNSON: Judge, we --

19 THE COURT: Mr. Johnson.

20 MR. JOHNSON: -- discovered -- discussed this matter
21 previously. And I don't know that -- it's not -- first of
22 all, it's not offered for the truth of the matter
23 asserted. He's not here to be determined innocent or
24 guilty of the trial -- I mean, of the charges. It's just
25 merely whether he discussed the -- and whether we

1 discussed -- whether he discussed with Mr. Chambers the
2 fact that there's a -- a nurse referenced in the
3 supplemental report.

4 THE COURT: I'll allow it for that purpose only.
5 With regard to penetration, that would be hearsay. It
6 would be in the medical records, unless the medical
7 records have been entered into evidence. And I don't
8 think they have been.

9 THE WITNESS: Objection, Your Honor.

10 THE COURT: No. I get to decide the objection. Just
11 follow the lead of your lawyer.

12 You may proceed, Mr. Johnson.

13 MR. JOHNSON: Thank you.

14 BY MR. JOHNSON:

15 Q So did you ever discuss with Mr. Chambers the nurse
16 mentioned in the supplemental report, Serena Brown?

17 A Yes, sir. And I've got that in my -- in my folder
18 over there.

19 Q And what were your discussions with Mr. Chambers
20 about Ms. Brown -- or Nurse Brown?

21 A I said, I hope you -- you going to subpoena her.

22 Q Okay. And what was his response?

23 A He said he won't know that he would be able to need
24 her. And that's when I found out when I went to trial,
25 they tried to cover-up. And they -- they put the -- the

1 doctor on the stand.

2 Q Okay. So Mr. Chambers told you that after discussing
3 a potential witness, Serena Brown, you -- he said that you
4 would not need her as a witness?

5 A Correct.

6 Q Okay. Did you and Mr. -- Mr. Chambers discuss any
7 defenses that you might have?

8 A Me and him talked. I told him, I said, Look, you
9 know I'm telling the truth. The only -- the only chance I
10 can -- I got was -- is myself. And the only way they --
11 they got a conviction was they went past my -- they used
12 my -- my -- my criminal record. And they used the -- the
13 charges that I was a juvenile.

14 And most of them charges that -- have been erased off
15 of my record as of today, Your Honor. I did it back there
16 two weeks ago. And -- and the only thing that's on there
17 is that -- that -- the YOA way back in '92, and that --
18 the failure to register. That -- you know, that's when I
19 got out.

20 Q Any other defenses?

21 A I had an alibi. And I told him that, you know. And
22 I said that I was homeless, you know, and -- and I went
23 to, you know -- on that day, I went to work. He said he
24 didn't have no work. And I went to -- to my homeboy to
25 get some heroin. And he wasn't there. I left a note.

1 And I went to Triune Mery Center.

2 And then that's when they -- they, you know, switched
3 the story around and said that I was lying, and
4 everything. Then the detective said that I told him --
5 the detective trying to, you know -- saying he saw me on
6 this day. And that he had to come back and tell me -- he
7 apologized. He said he didn't see me on that day.

8 So the polices [sic] didn't know what kind of
9 information they trying to find out on me, or what. But I
10 told them, I said, Y'all can lock me up. I was going to
11 get some dope. But the only thing is I'm just plain
12 innocent. Yeah, I -- I -- I did put myself at the scene
13 of the crime, but doing something, no, I didn't.

14 MR. JOHNSON: Okay. Thank you.

15 No further questions.

16 THE COURT: Thank you, sir.

17 Your witness on cross-examination.

18 MS. KEMP: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. KEMP:

21 Q Good morning, Mr. Smith.

22 I just have a few brief questions for you. And I
23 want to narrow a little bit the allegation that we're
24 focussing on here today, which would be that
25 Mr. Chambers -- your allegation is that Mr. Chambers

1 failed to call -- I believe it's Nurse Serena --

2 A Correct.

3 Q -- to testify as to her report about a sexual assault
4 kit; is that correct?

5 A Correct.

6 Q And I would just like to focus on what your defense
7 was at your trial. Was it that you and M.F. --
8 now M.F. had consensual sex?

9 A Correct.

10 Q And that you had entered the room. She had solicited
11 sex from you -- or she wanted you to have sex for money?

12 A Correct.

13 Q And that as your testimony -- or I'm sorry, not your
14 testimony at trial. But that was the testimony that was
15 presented at trial; correct?

16 A Correct.

17 Q And when the police asked you for a buccal swab, you
18 willingly gave one?

19 A Correct.

20 Q And now, at your trial, as you mentioned earlier, I
21 believe it was Dr. Manfredi -- and I hope I'm saying that
22 correctly -- she testified as to her findings of the -- of
23 her report of the sexual assault that M.F. reported
24 and was, ultimately, taken to the hospital for?

25 MR. JOHNSON: I'm sorry. Can you speak up?

1 MS. KEMP: Yes. I apologize. I apologize.

2 BY MS. KEMP:

3 Q Now, do you recall Dr. Manfredi testifying at your
4 trial?

5 A Yes.

6 Q And do you recall that she testified as to her report
7 of the incident -- of the sexual assault that M.F.
8 reported?

9 A Yes, sir -- excuse me. Yes, ma'am.

10 Q That's okay.

11 A That's when Randy Chambers objected to it and said --
12 at the introduction, he said, why is you testifying? And
13 you wouldn't the one that treated the nurse -- checked the
14 nurse.

15 Q And I believe she was referring to her report of --
16 because she's the one who had to prescribe medication to
17 M.F.; correct? So she had to generate her own report
18 that she relied on to testify; correct?

19 A (There was no response.)

20 Q There was no testimony regarding the nurse's report;
21 correct?

22 A The only supplemental report that I have is -- is
23 Serena Brown -- that's her -- in my paperwork. But in the
24 trial transcript, it's Dr. Manfredi.

25 Q Go ahead.

1 A And I have her -- her information in my transcript.
2 But the supplemental report, incident report, I don't have
3 none of that from her.

4 Q And I do have a copy of her portion of the
5 transcript, if you'd like to refresh when I ask you this
6 question. But do you recall Dr. Manfredi testifying as to
7 that she was able to view the nurse's report and she found
8 that those swabs taken -- I'm sorry. Let me see. That --
9 I'm sorry. Let me rephrase what.

10 That she testified that in the physical exam findings
11 that she viewed to generate her report included vaginal
12 lacerations and bloody discharge. Do you recall that?

13 And I'm happy to --

14 A No, not really. Because, like I said, I don't have
15 that kind of paperwork. Because I tried to get it and
16 they denied me. They said it'll be impossible for me to
17 get it. So the only way I can get it through a -- the
18 legislators get it for me.

19 MS. KEMP: I understand.

20 And, Your Honor, may I approach the witness to
21 refresh?

22 THE COURT: Certainly.

23 Mr. Johnson, I'm assuming you've seen that portion of
24 the transcript.

25 MR. JOHNSON: Yes, sir.

1 THE COURT: All right.

2 BY MS. KEMP:

3 Q And if -- this portion here, this highlighted part --

4 THE COURT: Would you, please, cite the page?

5 MS. KEMP: Oh, I'm sorry, Your Honor. This would be
6 Page 111 of the transcript. And this would be
7 Dr. Manfredi's testimony.

8 BY MS. KEMP:

9 Q And if you could read this starting right here at the
10 end of Line 4 to the end of Line 6 for me.

11 A It says, Physical exam findings are lacerations noted
12 to the vaginal area and bloody vagina discharge.

13 Question: So there are lacerations to the vaginal
14 area noted -- notated on that?

15 Answer: Correct.

16 Q And your -- and, as we said before, your defense at
17 trial was that this was a consensual interaction; correct?

18 A Yes, ma'am. On that day, she told me that -- go in
19 the drawer and grab a condom and --

20 Q And based on that testimony from Dr. Manfredi, do you
21 think it would have been a good idea to hear more
22 testimony about vaginal lacerations and the potential
23 other testimony that could have been brought in about --

24 MR. JOHNSON: About -- about what? I'm sorry.

25 What -- did you finish the question?

1 MS. KEMP: About the assault. I'm sorry.

2 THE WITNESS: Rephrase that over again.

3 MS. KEMP: She performed -- Your Honor --

4 THE COURT: I think there's an objection on the
5 horizon.

6 MR. JOHNSON: That line -- that line of questioning
7 would just simply be speculative.

8 MS. KEMP: Well, Your Honor, it was a sexual assault
9 exam.

10 THE COURT: I understand where you're going. But I
11 agree with Mr. Johnson.

12 MS. KEMP: Yes, sir. Yes, sir, of course.

13 BY MS. KEMP:

14 Q Let me -- let's see how I can -- how I can say --
15 your testimony is that you would have liked this nurse to
16 testify as to her findings --

17 MR. JOHNSON: Which -- which nurse? I'm sorry.

18 THE COURT: Serena.

19 MR. JOHNSON: Serena. Okay.

20 BY MS. KEMP:

21 Q Nurse Serena to testify as to her further -- as to
22 her own findings of the sexual assault kit?

23 A Yes, ma'am.

24 MS. KEMP: Okay. Thank you.

25 That's all the questions I have, Your Honor.

1 Thank you, Mr. Smith.

2 THE COURT: Anything on redirect, sir?

3 MR. JOHNSON: Yes.

4 REDIRECT EXAMINATION

5 BY MR. JOHNSON:

6 Q Mr. -- Ms. Kemp talked -- discussed with you the fact
7 of Serena Brown and that being a nurse and she would have
8 liked to -- that there was some discussion and some desire
9 on your part to have Ms. Sabrina -- Serena Brown called to
10 the witness stand; is that right?

11 A Yes, sir.

12 Q And why was that? Why was that your desire since
13 she, essentially, opened the door as to -- as to
14 Ms. Brown -- Ms. Brown and her testimony?

15 A Yes. By -- by law that --

16 Q No. I'm asking you -- I'm asking you since Ms. Kemp
17 opened the door --

18 A Yes, sir.

19 Q -- as to Ms. Brown --

20 A Yes, sir.

21 Q -- and your desire to have Ms. Brown testify at your
22 trial, why was that?

23 A Because she can have -- she can tell the truth what
24 happened, and what she found was on that date, and --
25 and -- and, hopefully, that can clear me of the charge.

1 Q Did you discuss with Mr. Chambers what Ms. Brown
2 found and what she could have testified to?

3 A He already knowed [sic] --

4 Q How do you know he knew that?

5 A Because the day when I told him to pay attention,
6 that's when he said to me in my face that I won't have to
7 worry about her no more because I'm going to prison. By
8 the time I get out, I'll be old. That's the exact words
9 he said out of his mouth.

10 Q Okay. Did you -- do you recall ever discussing with
11 Mr. Chambers prior to going to trial a potential witness
12 named Serena Brown?

13 A Yes, sir. I told him -- I said, I need that witness.

14 Q Why did you need that witness?

15 A Because Dr. Manfredi don't -- she probably had
16 something to do with it. But he the one who, actually,
17 did the testing, went in there and did what's what. And
18 then that's when forensics came and did theirs to me. And
19 everything came back negative and inconclusive.

20 Q Okay. Do you recall discussing with Mr. Chambers
21 what Nurse Brown said in an incident report?

22 A Yes, sir. And I got it over there. She said that --

23 MS. KEMP: I would object, Your Honor. That's
24 hearsay. He can't testify as to what was in the report.
25 He can only testify as to his conversations with counsel

1 about calling the nurse, not to the actual report itself.

2 She's not here to testify. The report has not been
3 introduced into evidence. So as to the contents of the
4 report itself, I -- I would have to object to that, Your
5 Honor.

6 THE COURT: All right. Mr. Johnson, anything in
7 response?

8 MR. JOHNSON: Judge, I just -- again, I -- this --
9 this is not a case where this gentleman is on trial. And
10 Ms. Kemp and I -- maybe I misunderstood, but I -- I
11 thought that there would not be a problem with -- with
12 my -- this line of questioning. Because it is not -- it
13 is not hearsay in the sense that it is not offered for the
14 truth of the matter asserted.

15 This gentleman has, in fact, been found guilty.
16 This -- this -- eliciting testimony from him regarding
17 this -- this -- this -- what happened or what's stated in
18 the incident report has no bearing on whether he's
19 innocent or guilty. It's just simply to help prove his
20 point whether Mr. Chambers -- whether he and Mr. Chambers
21 discussed Nurse Brown, and what was said, and whether she
22 was -- why she wasn't called as a witness.

23 THE COURT: All right. I will sustain the objection.
24 However, I will allow you to proffer it, for the record.
25 I think -- I think it does go into some exculpatory region

1 from the way I see it by seeing what Ms. Brown says. I
2 know that Dr. Manfredi relied on Nurse Brown -- Serena
3 Brown's report in making a conclusion. And for that
4 reason, I'll allow you to proffer it.

5 MR. JOHNSON: Okay.

6 BY MR. JOHNSON:

7 Q Mr. Davis [sic], do you -- did you go over an
8 incident report with Mr. Chambers -- a supplemental report
9 with Mr. Chambers regarding -- regarding the issue of a --
10 an emergency room nurse by the name of --

11 A Serena Brown.

12 Q -- Serena Brown?

13 A Me and him talked about it. And I told him -- and I
14 told him about it. And I pointed it out to him. I said,
15 Why this woman is not in here? Why are they charging me
16 with this? This is not the original charge. The original
17 charge on my incident report is sexual assault. And all
18 these charges that they -- they -- they put against me was
19 all aggravated at the same time. They go through all
20 these charges and acquitted me on these charges right
21 here. Why didn't they acquit me on this one? Why?
22 Because they -- the solicitor manipulated her wording from
23 sexual assault to CSC to get a conviction.

24 Q Okay. Do you recall what -- this -- I'm attempting
25 to proffer testimony.

1 MR. JOHNSON: May I approach the witness, Your Honor?

2 THE COURT: Certainly. You may.

3 BY MR. JOHNSON:

4 Q Do you recall going over an incident -- a
5 supplemental incident report with Mr. Chambers dated --

6 A January of 2016 --

7 Q -- June 19th --

8 A '18?

9 Q -- 2013. Do you recall that?

10 A Yes, sir.

11 Q Do you recall what was stated in the report regarding
12 Ms. Serena Brown -- the nurse, Serena Brown.

13 A I said --

14 Q Do you recall what was in the supplemental --
15 supplemental report?

16 A Yeah. They -- they charged me with C --

17 Q Let me ask you this, would it refresh your memory if
18 I showed you the incident report regarding Ms. Serena
19 Brown and what Ms. Serena Brown informed a detective?

20 A (There was no response.)

21 Q Would it -- would -- if I showed you that report,
22 would it help to refresh your memory?

23 A Sure.

24 MR. JOHNSON: Okay. May I approach?

25 THE COURT: You may.

1 We're still in proffer.

2 THE WITNESS: Yeah. I got that over there.

3 BY MR. JOHNSON:

4 Q Okay. Can you read what the report -- supplemental
5 report says regarding Ms. Serena Brown?

6 A It says, On -- Narrative: On June 17th at
7 approximately 18:00 hours -- that's 6:00 p.m. -- I
8 responded to the seven -- 701 Grove Road regarding a --
9 collecting the sexual assault kit from the -- from the
10 same, Serena Brown. Upon -- I arrived. I spoke with
11 Nurse Brown and asked if -- if she had any comment or
12 observation.

13 She stated that the victim, M.F. [REDACTED], was in
14 a hurry to get the examination completed and stated that
15 M.F. [REDACTED] didn't shed a tear. Nurse Brown stated that
16 there didn't appear to be any penetration. I completed
17 the necessary paperwork and collected the items placing
18 them into property and evidence.

19 Q Okay. And -- now, that's it.

20 MR. MABRY: Excuse me, Your Honor. Can we see a copy
21 of that?

22 MR. JOHNSON: Sure.

23 THE COURT: Does that conclude the proffer, Mr. Johnson?

24 MR. JOHNSON: It does, Your Honor.

25 THE COURT: All right.

1 THE WITNESS: [Inaudible.]

2 THE COURT: I can't talk to you, sir. I can listen
3 to your testimony, but we can't have a one-on-one.

4 MR. JOHNSON: That's -- that's the proffer evidence.
5 And I have no further questions of Mr. Smith.

6 THE COURT: All right. Thank you, Mr. Johnson.

7 Ms. Kemp, anything on recross?

8 MS. KEMP: No, Your Honor. The State has no further
9 questions for Mr. Smith.

10 THE COURT: All right. Thank you.

11 I have no questions, sir. You may step down.

12 THE COURTROOM DEPUTY: Mr. Smith, you can just go
13 right back to your seat.

14 THE COURT: Mr. Johnson, any additional witnesses?

15 MR. JOHNSON: That's the Applicant's case. No
16 additional witnesses.

17 THE COURT: You rest.

18 Any witnesses on behalf of the State?

19 MS. KEMP: Yes, Your Honor. The State would call
20 Mr. Randy Chambers to the stand.

21 THE CLERK: Mr. Chambers, place your left hand on the
22 Bible and raise your right hand.

23 WHEREUPON,

24 RANDALL LEE CHAMBERS,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 You may be seated.

3 And, please, state your full name for the record.

4 THE WITNESS: My given name is Randall Lee Chambers.

5 THE COURT: You may proceed, ma'am.

6 MS. KEMP: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. KEMP:

9 Q Good morning, Mr. Chambers.

10 A Good morning.

11 Q Thank you for being here.

12 And just to cover your background, can you give me a
13 brief estimate of how long you've been practicing law in a
14 professional background?

15 A Let's see. I've been practicing law for about 36
16 years. I began my career in the Navy JAG Corps, primarily
17 as a criminal defense lawyer, both at the trial and
18 appellate levels. I worked in the solicitor's office here
19 in Greenville from 1992 to 1998.

20 And since that time, I've been in private practice
21 doing primarily criminal defense work until about a year
22 and a half ago when I took a full-time position at the
23 public defender's office over in the tenth circuit.

24 Q And what type -- what types of cases do you handle at
25 the public defender's office?

1 A Same that I did in private practice, which all manner
2 of -- of defenses from DUIs on up to murder.

3 Q And, now, jumping into Mr. Smith here, can you tell
4 me how you came to represent him on these charges?

5 A I believe that I was appointed to represent him
6 either as a -- during my tenure as an assistant part-time
7 public defender here in Greenville or on the 608 contract.
8 I don't think he was a retained client.

9 The reason that I'm -- that I can't tell you for sure
10 is when I closed my office, I boxed up all my files and
11 put them in a storage unit. And despite a diligent effort
12 to find Mr. Smith's file, I have not been able to locate
13 it.

14 Q I understand. I understand that that may be the case
15 sometimes moving around like that.

16 Now, do you recall meeting with Mr. Smith and
17 discussing his case with him?

18 A I have some vague recollections of it, you know.
19 I -- honestly, I mean, it would have been great to have
20 been able to look back through my notes. That's one of
21 the reasons I wanted to be able to -- to locate the file.

22 I do remember Mr. Smith. And I -- and -- and with
23 him, like I would with anybody that I've ever represented,
24 I would have met with him as soon as I got the case and
25 gone over some preliminary matters. And then as time went

1 on as I got discovery, I would have gone to go over with
2 that with him, provided him a copy, if he wanted it. I
3 would have met with him any time that we had plea offers
4 or anything to discuss.

5 And then, obviously, once the case was scheduled for
6 trial, we would have -- we would have met several times to
7 prepare. But I can't tell you exactly how many times that
8 was or, you know, specifically, what we discussed, other
9 than in those sort of general parameters.

10 Q And, now, we're solely focussing, of course, on the
11 CSC charge because he was acquitted on the two other
12 charges. Do you recall in -- in preparation of the
13 strategy as to his defense on that -- on that -- on that
14 charge?

15 A Yeah. He indicated from the very first time that I
16 talked to him that he had had sex with **M.F.**. This
17 occurred -- the hotel's been renamed since then. But it's
18 a hotel that's on Wade -- as I recall, on Wade Hampton
19 Boulevard that was a place where -- you know, sort of
20 known for transients, you know, people that were not just
21 here for a weekend or overnight stay. They were
22 transients who would be living there. There was a lot of
23 drugs that went on over there. There was a lot of
24 prostitution and things that went on over there. It was
25 that kind of hotel.

1 And he had indicated to me that he was -- that he
2 was -- I believe he told me that he was staying at that
3 hotel. He was doing some work at Labor Finders. And that
4 **M.F.** was, also, there in the hotel and -- with her two
5 kids.

6 He indicated that he -- he knew her. I think -- as I
7 recall, there was some relationship with either a
8 boyfriend or a husband, or somebody that worked with him
9 at Labor Finders. So he was somebody that she would have
10 known, although she denied that, as I recall, at trial,
11 that she knew him. And he said that he knew her.

12 And he had indicated that they had, in fact, had sex,
13 but that he had paid her for that. That she was a
14 prostitute. And he paid to have sex with her.

15 Q So you're -- if -- correct me if I am misstating
16 this. But your biggest hurdle on that charge would be her
17 testimony versus -- her version versus his version?

18 A Yeah. I mean, it was just one of those cases which
19 is not uncommon in -- in that, you know, he's -- you know,
20 we're admitting that he had sex with her. But we're
21 saying that it was consensual. And she was saying that it
22 was rape.

23 Q And how relevant did you think that the reports
24 that -- Dr. Manfredi's report and Nurse Serena Brown's
25 reports considering that the defense was that it was

1 consensual sex, how relevant and important did you think
2 that was to your defense?

3 A I'm going to be honest with you. I don't -- I don't
4 recall a lot of detail about that. I don't recall the
5 whole issue with Teresa [sic] Brown at all. And -- and --
6 but I -- I know from just going back through the
7 transcript a little bit that Dr. Manfredi had indicated
8 that there -- that there was some -- at least, some
9 indication of force, based on the testimony that he gave.

10 Q And that would not be good for your --

11 A It wouldn't be consistent with consensual sex, but
12 not necessarily inconsistent either, I mean, depending on
13 a number of factors.

14 Q And do you recall any specific reason why you did not
15 call Ms. Brown -- Nurse Brown, I meant to say?

16 A I don't. I mean, I really don't. I mean, if I'd
17 thought she would have been of help, I -- I would have
18 attempted to locate her and call her. But I, honestly,
19 don't -- don't even remember that.

20 MS. KEMP: Okay. Thank you.

21 I have no further questions for you.

22 Thank you.

23 THE COURT: Thank you, ma'am.

24 Mr. Johnson, your witness.

25 MR. JOHNSON: Yes, sir.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Mr. Chambers, would looking at the incident report regarding Ms. Serena Brown -- Nurse Serena Brown refresh your memory as to what was stated and your reasoning as to why you did not call Nurse Brown?

A I mean, I heard what -- what -- what was read a few minutes ago. I don't know that it would -- it wouldn't refresh my memory at all because I just don't even remember any discussion about her.

At the time, obviously, I would have been very familiar with the discovery. I would have gone through it. And had I thought she would have been of any benefit, I would've tried to call her. It could be, though, that I made a mistake. Maybe I should've called her.

I was trying very hard to win this trial. I took Mr. Smith at his word that -- that -- that he had engaged in consensual sex with her for money. There were a number of factors, including the fact that I believe she, actually, knew who Mr. Smith was. I think she was lying about that. That would indicate that he was telling the truth.

And -- and -- and maybe I should have called Ms. Brown. I don't know. At the time, I, obviously, chose not to either because I didn't think that I -- I

1 needed her or that she wouldn't be any good -- I mean,
2 that she wouldn't do -- or that she -- I mean, because she
3 wouldn't do us any good. If I was wrong about that, then
4 I -- I welcome the Court to do whatever they think --
5 whatever the Court thinks is proper in this case.

6 Q And, Mr. Chambers, isn't it really what we're here
7 for is to determine whether you made a mistake and whether
8 that mistake was ineffective in representing Mr. Smith?

9 A I imagine so. I mean, I've -- I've tried a lot of
10 cases and I have a lot of experience. I've had a -- a lot
11 of success in trying cases. I try to win every case that
12 I -- that -- that -- that I'm tasked with trying. But I'm
13 not perfect. And if I made a mistake, then he -- he
14 should benefit from that.

15 I -- I -- but, again, I -- I've never gone into a
16 case and not tried to put up a maximum effort, put up the
17 absolute best defense I could. And I did that for
18 Mr. Smith. But I honestly -- I mean, we could sit here
19 and talk about Ms. Brown as long as you want to, but I
20 just don't have any recollection of it whatsoever.

21 Q If I --

22 A And I apologize.

23 Q I'm sorry, sir. If I were to show you a supplemental
24 report, would that possibly refresh your memory?

25 A I mean, I'll look at it. But I don't think it's

1 going to refresh my memory. I mean, it -- it would give
2 me the information that you're trying to discuss with me.
3 But I don't remember it.

4 Q Okay. So you're willing to look at the --

5 A Yeah. I'm happy to look at it.

6 Q In hopes that you might remember --

7 A Sure.

8 MR. JOHNSON: Okay. May I approach the bench, Your
9 Honor?

10 THE COURT: Certainly. You may.

11 THE WITNESS: Do you mind if I just take it and look
12 at it?

13 BY MR. JOHNSON:

14 Q Not at all.

15 A Is there a supplemental where she actually -- other
16 than that statement she gave to the-- to the police
17 officer there, is there anything --

18 Q "She" being whom?

19 A Ms. Brown. Because that's just -- as I -- this is --
20 as I understand it, this is just where the officer was
21 picking up the rape kit and had a brief conversation with
22 Serena Brown. Is there anything else from Serena Brown in
23 here?

24 Q Not -- not that I'm concerned with. But do you --
25 did -- after reading the -- the portion of the

1 supplemental, does it refresh your memory as to --

2 A It doesn't refresh my memory. It would seem to have
3 been somewhat helpful, perhaps, in -- in -- in overcoming
4 any, you know, evidence that -- that there was force in
5 the case. But then you, also, had Dr. Manfredi who said
6 that he did his own examination, I think.

7 Q In what way would it have been, in your mind,
8 somewhat helpful in Mr. Smith's defense?

9 A Well, it indicated that, at least, in her estimation
10 of things that this -- that -- sort of -- there's -- you
11 could, at least, infer from that that she didn't believe
12 **M.F.** was being completely truthful because she showed
13 no emotion. And she said she didn't believe there had
14 been any penetration, which we know there was penetration
15 because my client said that they had sex.

16 Q Right. But again -- and --

17 A I get your point. It would have -- you can,
18 certainly, make the argument that it would have been
19 helpful.

20 Q Right.

21 A Okay. I'm -- I'm conceding that point.

22 Q Okay. So you are conceding the point that
23 Ms. Brown's statement as testified to you -- as testified
24 by you and the contents of that statement that it could
25 have been possibly helpful in your defending Mr. Smith?

1 A Based on that paragraph alone that was, essentially,
2 a hearsay statement from the officer, I -- I don't -- I --
3 there may have been other things that I looked at that led
4 me to believe that it wasn't a good idea to put her up, or
5 that it wouldn't have been necessary to put her up. I
6 don't know that.

7 But, yeah, just based on what you have asked me to
8 look at, I could see where that might have been helpful to
9 the defense.

10 Q Okay. And did you ever discuss that possibility of
11 using -- or -- or exploring Ms. Brown's statement in trial
12 with Mr. Smith?

13 A I don't think we had a discussion like that. I mean,
14 I can't rule it out completely, but I don't -- I don't
15 recall any -- anything like that. I mean, his -- he
16 didn't get into a lot of detail with me. I mean,
17 essentially, he -- he told me what, actually, happened
18 that day, the things that he did. And he always denied
19 that it was anything other than consensual sex and the
20 fact that he had paid her for it.

21 Q Okay. Now, again, since your memory is refreshed --

22 A Well, I wouldn't say that it's refreshed. I mean,
23 I'm -- I'm basing -- again, I'm saying to you based on
24 what you just had me read that there's a possibility that
25 that could have been helpful to the defense, yeah.

1 Q And what you just read was that M.F. was in a
2 hurry to get the examination completed, and that

3 M.F. stated that -- and --

4 MS. KEMP: I -- I would object --

5 MR. JOHNSON: Judge, he has already testified to this
6 without objection.

7 THE COURT: I -- I know it's hearsay. But I think
8 it's been asked and answered, and covered. I'll allow it.

9 MS. KEMP: Thank you, Your Honor.

10 MR. JOHNSON: Okay.

11 BY MR. JOHNSON:

12 Q And that she didn't -- and that the examination was
13 completed and she stated that M.F. didn't shed a
14 tear and that there did not appear to be penetration;
15 correct?

16 A Yeah. I mean, I've -- I've read the report --

17 Q Just answer --

18 A -- and you've read it at this point.

19 Q Right.

20 A And I've agreed with you.

21 Q Okay.

22 A I mean, I don't know what else I can do at this
23 point.

24 MR. JOHNSON: I just wanted to make sure that it's on
25 the record and that you agree that it could have possibly

1 helped Mr. Smith in his defense.

2 THE COURT: Anything further, Mr. Johnson?

3 MR. JOHNSON: Nothing, Your Honor.

4 THE COURT: Ms. Kemp?

5 MS. KEMP: Brief redirect, Your Honor.

6 THE COURT: Certainly.

7 REDIRECT EXAMINATION

8 BY MS. KEMP:

9 Q Would that report have been admissible at trial?

10 A No.

11 Q And is it safe to say at the time were your -- where
12 you testified that your recollection is a little hazy at
13 this point. However, at the time of trial and at the time
14 of making those decisions that you made a -- decisions in
15 a strategical manner in a way that you thought was best
16 for your client?

17 A That is correct.

18 MS. KEMP: I have no further questions, Your Honor.

19 THE COURT: Okay. Thank you.

20 I have no questions, Mr. Chambers.

21 Thank you, sir.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Any further witnesses on behalf of the
24 State?

25 MS. KEMP: No, Your Honor.

1 THE COURT: The State rests?

2 MS. KEMP: Yes, sir.

3 Thank you.

4 MS. KEMP: And I would ask that Mr. Chambers be
5 released from his subpoena, Your Honor.

6 THE COURT: You may be excused, sir.

7 MR. JOHNSON: While -- while he -- while Mr. Chambers
8 is here, Judge, I -- I understand the Court's ruling
9 regarding the statement being hearsay. But as I -- I
10 would reiterate that it's not offered for the truth of the
11 matter asserted and that in essence -- so I would -- I
12 preserve my objection to the ruling.

13 But, in essence, it's -- it's my opinion that -- it's
14 my opinion that Mr. Chambers has, essentially, stated that
15 whatever the statement was -- and he already testified to
16 what the statement of Nurse Brown could have been -- could
17 have been helpful in his representing Mr. Smith. And to
18 that end, I think Mr. Smith's position is that -- well,
19 Your Honor, if I --

20 MR. RANDY CHAMBERS: Do I need to be here for this?

21 MR. JOHNSON: No.

22 THE COURT: No. You're free to --

23 MR. JOHNSON: I just lost my train of thought.

24 THE COURT: Well, you were, in essence, arguing that
25 the statement should not be considered hearsay. And you

1 were giving me reasons for its admission.

2 MR. JOHNSON: Right. And I -- and I just want to
3 preserve my objection. But, again, in essence,
4 Mr. Chambers has testified to what was stated. And his
5 recollection has been somewhat refreshed. And he knows
6 what the statement was. And he told the Court what the
7 statement was.

8 And based on that, Mr. Smith alleges that that
9 testimony should have been possibly explored and possibly
10 elicited in his trial.

11 THE COURT: I duly note your objection. My ruling
12 stands that it would constitute hearsay. It was on the
13 police report taken from Nurse Serena Brown. Therefore,
14 my ruling stands. But I note your objection.

15 Anything further, ma'am?

16 MS. KEMP: No, Your Honor.

17 And it is up to Your Honor if you'd like to hear
18 closings. However you would like to do it, we are happy
19 to.

20 THE COURT: It's entirely up to counsel. If you
21 would prefer to do a closing, that's fine.

22 MS. KEMP: Well, we like to talk, so I don't see why
23 not.

24 THE COURT: Okay. You may proceed --

25 Or I think since you're the moving party, do you want

1 to proceed first or would you rather respond to the State?
2 I don't think it really matters in terms of formality.

3 MR. JOHNSON: I guess, Judge, in my -- in my
4 objection -- my -- my -- I'm not accustomed to giving a
5 closing argument in a -- in a PCR hearing. And the facts
6 speak for themselves.

7 But, simply, I would just reiterate that Mr. Chambers
8 testified without objection as to what Ms. -- what
9 Ms. Brown's potential testimony could have been. And
10 that -- he said it could have possibly helped Mr. -- in
11 Mr. Smith's defense.

12 And any time, in my mind, there is a possibility of
13 some kind of testimony being element -- or not an element,
14 but any kind of testimony could aid a client in a very
15 serious trial such as this one, then that issue should
16 have been explored. Mr. Chambers should have come up to
17 this Court and testified as to a plausible reason as to
18 why he decided not to call Ms. Brown.

19 We didn't hear that today even, though, after
20 refreshing his memory and putting on the record what was
21 said in the incident report by Ms. Brown, that still he
22 said that he thinks that information could have, in fact,
23 helped in Mr. Smith's defense. And I agree.

24 THE COURT: All right. Thank you very much, sir.
25 Ms. Kemp.

1 MS. KEMP: Your Honor, just going off of why we are
2 here today, the guiding case law that we follow is
3 Strickland. And Strickland requires us to give extreme
4 deference to the attorney's decision making and his
5 strategy at the time it was being made at trial.

6 Now, he testified that he does not recall a lot. He
7 had lost his file. And, however, that at that time, there
8 may have been other information that caused him to do
9 something or caused him not to do something.

10 Now, we have to give -- Strickland requires us to
11 give deference to that testimony and to that decision
12 making at that time. However, Your Honor, it is the
13 Applicant's -- Strickland does say that it is the
14 Applicant's burden to prove -- well, to provide evidence
15 that the outcome would have been different had this --
16 this information been presented to the jury.

17 And I would like to point Your Honor to the Bannister
18 vs. State. And that would be cited 333 S.C. 298. And if
19 you'd like the additional site, I'm happy to provide it.

20 THE COURT: No. That's fine.

21 MS. KEMP: But, Your Honor, the Applicant is required
22 to produce what that witness testimony -- or what that
23 evidence would have been. And that has not been done here
24 today. We don't know what the actual report would have
25 said. He -- there has been no testimony to it. The nurse

1 has not been produced here today.

2 So with that, Your Honor, we would ask you to find
3 that the Applicant did not satisfy the burden of proof in
4 proving this allegation, and that Mr. Chambers did -- was
5 not deficient in his representation.

6 Thank you, Your Honor.

7 THE COURT: Okay. I'll take this matter under
8 advisement. I need to look at Dr. Manfredi's testimony in
9 greater detail that was pointed out. And I'll inform the
10 parties of my decision at a later date.

11 MS. KEMP: And, Your Honor, I do -- if you would like
12 a snippet of that testimony, I do have an extra copy for
13 your convenience.

14 THE COURT: That will be fine.

15 And that concludes this matter.

16 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 26th day of February, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 29, 2025

Hollie M. Jenkins, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Robert Davis Smith, Jr., SCDC #285136,	)	
	)	Case No: 2019-CP-23-4401
Applicant,	)	
v.	)	
	)	ORDER OF DISMISSAL
State of South Carolina,	)	(with prejudice)
	)	
Respondent.	)	
_____	)	

25 OCT 14 10:00
 2019 REGISTRATION

This matter comes before the Court by way of an application for post-conviction relief filed on July 30, 2019, by Applicant Robert Davis Smith, Jr. The State filed the return and moved for a more definite statement and partial summary dismissal on February 10, 2020. An evidentiary hearing was convened on February 26, 2025, at the Greenville County Courthouse before the Honorable Vernon F. Dunbar. Applicant was present with his appointed counsel, Isaac Johnson, Esq. Assistant Attorney General Kaylee C. Kemp, and Senior Assistant Attorney General J. Anthony Mabry, represented the State. The Court received testimony from Applicant and his trial counsel, Randall L. Chambers, Esq. At the conclusion of the hearing, this Court took the matter under advisement.

After consideration of the testimony given at the hearing and after reviewing and considering the record, arguments presented by counsel, and the controlling case law, this Court advised the parties by email on February 26, 2025, that Applicant failed to carry his burden of proof and was not entitled to any relief. At that same time, this Court also requested that counsel for the State prepare a proposed order. This Court now **DENIES** relief for the specific reasons set out in this order.

PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections serving a 23-year sentence for first degree criminal sexual conduct (CSC). During its April of 2014 term, the Greenville County Grand Jury indicted Applicant for: Count I - first degree CSC, Count II – IV (3 counts) - kidnapping, Count V - first degree burglary, Count VI - first degree assault and battery, and Count VII - possession of a weapon during the commission of a violent crime (2013-GS-23-7305).

On March 2-4, 2016, Applicant proceeded to a jury trial on the CSC charge, the burglary charge, and the weapons charge with the Honorable Brian M. Gibbons presiding. Applicant was present and represented by Mr. Chambers. Kimberly B. Howard and Kathryn H. McCall prosecuted the case on behalf of the State. At the conclusion of trial, the jury convicted Applicant as indicted on the CSC charge and acquitted Applicant of the burglary charge and the weapons charge. Judge Gibbons sentenced Applicant to imprisonment for 23 years with credit for time served.

DIRECT APPEAL

Applicant, through counsel, filed a timely notice of appeal. Appellate Defender Susan B. Hackett the South Carolina Commission on Indigent Defense perfected the appeal on October 5, 2017, raising the following issue:

Did the trial judge err in admitting Appellant's statements to police and a photographic lineup identification where law enforcement violated Appellant's rights pursuant to the Fourth and Fourteenth Amendments to the United States Constitution by arresting Appellant without probable cause?

Respondent filed its Final Brief on September 20, 2017. The South Carolina Court of Appeals affirmed in an unpublished opinion. *State v. Smith*, Unpublished Op. No. 2018-UP-466

(S.C. Ct. App. filed December 19, 2018). On January 3, 2019, Applicant filed a Petition for Rehearing. On January 17, 2019, the Court of Appeals denied the rehearing request without requiring a response from Respondent. Subsequently, Applicant filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on February 2, 2019. Respondent submitted the Return to the Petition on February 5, 2019. On June 28, 2019, the South Carolina Supreme Court denied certiorari review. The Remittitur was issued on July 2, 2019.

ALLEGATIONS RAISED & RELIEF SOUGHT

In his initial application for post-conviction relief, Applicant alleged he is being held in custody unlawfully due to the following allegations:

1. Ineffective Assistance of Trial Counsel
 - a. “Failure to object to the portions of the video in which the police insisted that I prove my innocence;”
 - b. “The other was that it sounded like I invoked my rights to counsel during the interrogation;”
 - c. “Failure to make contemporaneous objects [sic];”
 - d. “Failure to argument [sic];” and
 - e. “Counsel denied Applicant his rights to a speedy trial.”
2. Ineffective Assistance of Appellate Counsel;
 - a. “The appellate counsel’s failure to raise issue that denied of a directed verdict, motion for lack of independent evidence corroborating defendant’s extra-judicial.”;
 - b. “He has three arguments of great merit rendering his conviction fundamentally unfair;”
 - c. “The counsel in his first PCR Application was ineffective in failing to make those arguments.”; and
3. Prosecutorial Misconduct;
 - a. The State violated Brady rights.

On August 13, 2019, Susannah Ross, Esq. was appointed to represent Applicant. Applicant, through counsel, filed an amended application on March 13, 2020, raising the following allegations:

1. Ineffective assistance of trial counsel for failing to move to quash the indictment or investigate the grand jury proceeding;
2. Ineffective assistance of trial counsel for failing to object to investigator's bolstering comment that it was not very common to recover weapons in violent crimes; and
3. Due process violations stemming from irregularities in the grand jury proceeding.

Applicant moved to have Ms. Ross relieved, and the court granted his motion. Sarah Henry, Esq. was subsequently appointed to represent Applicant, however Ms. Henry moved to be relieved from representation considering she participated in his trial representation. The Court granted the motion. On August 30, 2022, Isaac Johnson, Esq. was appointed to represent Applicant. Applicant, through counsel, moved to obtain fees for the services of an investigator to locate a witness based on the following facts:

1. Applicant has filed an application for PCR, for his March 4, 2016, conviction for criminal sexual conduct, first degree. He was tried and sentenced to twenty-three years imprisonment.
2. Applicant states he has one witness, Sarina Brown, a nurse at Greenville Memorial Hospital who is material to his case because she might substantiate his contention that he did not commit a sexual battery upon the alleged victim.
3. PCR counsel states that an investigator might assist him in locating this witness.

Applicant's Motion for Expenses was granted, and the Order was filed on July 30, 2024.

SUMMARY OF FACTS ADDUCED FROM TRIAL¹

Around 11:00 AM on the morning of June 17, 2013, M.F. [REDACTED] (“Victim”), an eight-month-long resident of the Regal Inn in Greenville, South Carolina, began cleaning the second-floor motel room she shared with her boyfriend, Walter Pope, and her two young children. At the time Pope was away at work and her two children were in the room with her. (ROA App. pp. 47-50, 56, 63, 66, 76, 80, 122-123, 130). During the cleaning process, Victim left the door open so she could easily put the bed sheets outside for the motel’s maid to collect. (ROA App. pp. 49-50). As she continued to clean, a man she did not know came by her room and asked for an individual called “Mike Mike” or “Mookie.” (ROA App. p. 50, 69, 76, 198). Victim responded she did not know the person the man was looking for, and the man walked off down the motel corridor. (ROA App. p. 50, 69-70). Victim then resumed cleaning her room. (ROA App. p. 50).

A short time later, the man returned to Victim’s room, came inside, pulled out a box cutter, told her to keep quiet, and shut the door behind him. (ROA App. pp. 51, 70). After that, the man advanced towards Victim and pushed her onto one of the beds in the room, and Victim responded by physically resisting the man. (ROA App. pp. 51, 73). During the ensuing struggle, the two fell off the bed onto the floor, and the man began choking Victim to such an extent that she could barely breathe. (ROA App. p. 51, 73-75). The man then pulled down his pants, shifted Victim’s underwear to the side, and proceeded to rape her. (ROA App. pp. 52, 74-75). After that, the man directed Victim to go into the bathroom, and she complied. (ROA App. pp. 52-53). The man then rapidly fled from the motel room. (ROA App. pp. 53-54).

As soon as the man was gone, Victim ran to the door and locked it. (ROA App. p. 53). She

¹ The transcript of record was initially divided into three volumes. The page numbers from the appendix from Applicant’s appeal challenging the affirmation of Applicant’s conviction and sentence on direct appeal is relied upon here.

then quickly called 911 and reported the sexual assault: (ROA App. p. 44, 55). Minutes later, law enforcement officers from the Greenville Police Department responded to the motel and began investigating the incident. (ROA App. pp. 56-57, 132-133, 144). As part of the investigation, the officers spoke with Victim about what occurred, and she advised them of the details of the sexual assault. (ROA App. pp. 57, 134, 142, 144). In recounting the incident, Victim described her assailant as a black male wearing a black three-button shirt with a white shirt underneath it and jeans. (ROA App. pp. 134-135, 142, 151, 197). Victim was then transported away from the scene and to Greenville Memorial Hospital. (ROA App. pp. 59, 82-83).

At the hospital, Dr. Alissa Manfredi, an emergency room doctor, provided treatment to Victim. (ROA App. pp. 59, 85-86, Volume I). During the course of that treatment, Victim reported she had been choked and sexually assaulted earlier that day, and Dr. Manfredi conducted a physical examination of Victim's body. (ROA App. pp. 87, 91-92, Volume I). Based on that examination, Dr. Manfredi concluded Victim appeared to be in pain and distress, had bruising and swelling evident on her neck, and had lacerations to her vagina. (ROA App. pp. 91-92, Volume I).

Meanwhile, officers continued their investigation into the sexual assault back at the Regal Inn. (ROA App. pp. 100, 146). In doing so, they spoke with Lisa Crowder, who was a housekeeper at the motel, and Crowder recounted she observed a man with a camouflage bag run down from the second floor and away from the motel "in a hurry" while trying to pull his pants up. She recounted that this occurred after her boyfriend had informed her earlier that morning that he had seen a camouflage bag on the ground just around the corner from Victim's room. (ROA App. pp. 97-102, 146, 151). Likewise, as part of the investigation, the officers searched Victim's motel room and during the search, located a cell phone they were advised did not belong to Victim or her boyfriend on the floor of the room in between the two beds. (ROA App. pp. 57-58, 148-149).

However, the officers were not able to obtain any information from the phone that day despite obtaining a search warrant for it, and they were ultimately unable to identify a suspect on the date of the incident. (ROA App. pp. 147-150).

Thereafter, on the following morning, the cell phone discovered in Victim's motel room rang, and Detective Tim Conroy of the Greenville Police Department answered the call. (ROA App. pp. 15-16, 111, 150). During the ensuing call, the caller indicated he had lost the phone, and the two arranged to meet with one another at Labor Smart-an "on-demand" staffing company located in close proximity to the motel where the phone was found-so the phone could be returned. (ROA App. pp. 16, 79, 105-106, 108, 115, 150-152). Detective Conroy then travelled to the Labor Smart office, and Applicant, who matched the description of and was wearing the exact same attire as Victim's assailant, came outside of the office along with his boss, Jim Sawyer. (ROA App. pp. 6, 15, 112; 152; 173-174, 180). Upon encountering Applicant, Detective Conroy briefly spoke with him before placing him in handcuffs, taking him into custody, and advising him he wanted to speak with him about something that occurred on the preceding day. (ROA App. pp. 6-7, 16-17, 112, 152, 176, 180). Detective Conroy then retrieved Applicant's camouflage backpack from the office and transported him to the police department. (ROA App. pp. 152-153). At the police department, the detective informed Applicant of his rights, and Applicant initialed and signed a form waiving those rights. (ROA App. pp. 7, 9, 155-157). Detective Conroy then spoke with Applicant about his activities on the day of the incident, and Applicant provided a variety of different accounts of what had occurred on that day. (ROA App. p. 158; State's Exhibit 9 (Recorded Statement)).

Initially, Applicant stated he went to the Labor Smart office on the morning of the incident, found there was no work for him that day, took a bus ride away from the area, ate lunch, went to

a friend's house, borrowed a U-Haul truck, realized his phone was missing, went back downtown, and had a man call his phone to help him find it. (State's Exhibit 9). The detective then advised Applicant he intended to show a photographic lineup to Victim, and Applicant claimed he had been working on cars with his father on the date of the incident, acknowledged he saw a lot of police activity at the motel that day, and admitted he asked a woman if she knew "Mike." (State's Exhibit 9). Eventually though, Applicant conceded he was actually both at the motel on the date of the incident and spoke with Victim, but he claimed he did not do anything and had no physical contact with her. (State's Exhibit 9). He further insisted someone else must have taken his cell phone into Victim's motel room. (State's Exhibit 9). However, after further questioning, Applicant shifted his story again and claimed Victim offered to have sexual intercourse with him in exchange for money needed for "baby milk" and diapers, he had consensual sexual intercourse with her in the motel room after giving her \$25, and he left after the intercourse. (State's Exhibit 9). Furthermore, Applicant acknowledged he left his camouflage backpack outside of the motel room during the sexual intercourse, insisted he did not leave his phone in the room, and offered to provide some unspecified information to the detective if he was allowed to "walk." (State's Exhibit 9). Following those remarks, Detective Conroy formally arrested Applicant in connection to the sexual assault at the conclusion of the interview. (ROA App. pp. 160, 167).

On the following day, Detective Conroy prepared a six-person photographic lineup that included Applicant's photograph, and he returned to the Regal Inn and presented it to Victim. (ROA App. pp. 59-60; p. 160). Upon seeing the lineup, Victim immediately selected Applicant's photograph as the photograph of her assailant without any hesitation or doubt. (ROA App. pp. 61, 160-161). Victim then circled Applicant's photograph on the lineup sheet and signed it. (ROA App. pp. 61-62, 161).

Subsequently, Applicant was indicted for numerous offenses, including first-degree CSC, first-degree burglary, and possession of a weapon during the commission of a violent crime, and he proceeded forward to trial on those three charges.

Victim, who was married by the time of trial, recounted to the jury the traumatic details of the sexual assault while also identifying Applicant in the courtroom as her assailant. (ROA App. pp. 47-80). In addition to Victim's testimony, Crowder testified about her observations at the motel on the morning of the incident and noted she observed a black male with a camouflage bag hurriedly fleeing from the motel's second floor at that time. (ROA App. pp. 97-100). Crowder further acknowledged drug activity was common at the motel, and it was possible acts of prostitution occurred there, but she indicated she was not aware of any issues occurring that involved Victim and her boyfriend while they lived at the motel. (ROA App. pp. 103-104).

Additionally, Walter Pope, who was Victim's boyfriend at the time of the incident and husband by the time of trial, testified about how Victim was distraught after the sexual assault, experienced behavioral changes, and began having difficulty sleeping. (ROA App. pp. 121-125). Pope further recounted that he had observed Applicant with a camouflage bag before when they were both working at Labor Smart, but he stated he had never actually spoke or interacted with Applicant during that time period. (ROA App. pp. 129-130). Furthermore, Sawyer recounted Applicant came into the Labor Smart office on the date of the sexual assault but left around 10:00 AM because there was no work available for him that day. (ROA App. p. 109). After that, Sawyer indicated Applicant came to the office the next morning, asked him if he had heard anything about the "commotion" that had taken place at the Regal Inn, and advised him he had lost his phone. (ROA App. pp. 110-111). Sawyer testified he then called Applicant's phone to help him locate it, someone answered, and Applicant was taken into custody by the police a short time later. (ROA

App. pp. 111-112).

Beyond that testimony, the law enforcement officers and other personnel who responded after the sexual assault was reported testified about Victim's statements following the incident, Victim's description of the assailant, Victim's injuries at that time, and the details of the ensuing investigation that culminated in Applicant's arrest. (ROA App. pp. 41-46, 81-83, 85-96, 132-198). At the conclusion of trial, Applicant was found guilty of first-degree criminal CSC and acquitted of first-degree burglary and the weapons charge. (ROA App. p. 259).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

At the outset of the evidentiary hearing, the parties clarified that Applicant intended to proceed on the sole allegation that trial counsel was ineffective for failing to call the nurse who administered the sexual assault kit of the victim to testify at trial. (PCR Tr. p. 5-7).

INEFFECTIVE ASSISTANCE CLAIMS

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court must apply the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality

of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Ineffective Assistance of Counsel Claim

Failure to Call Nurse Brown

Applicant alleges that trial counsel was ineffective for failing to call Nurse Serena Brown, hereinafter, “Nurse Brown,” considering she was the nurse who performed the victim’s sexual assault examination and thereafter indicated her conclusions to the officer who retrieved the examination kit. At the evidentiary hearing, Mr. Chambers indicated that the supplemental incident report generated by the officer who spoke with Nurse Brown suggested that Nurse Brown relayed to him that it was her impression that the victim was not being truthful because she showed no emotion and that she did not believe there was penetration. (PCR Tr. p. 42).

Dr. Manfredi’s Testimony at Trial

At trial the State called Dr. Alissa Manfredi to testify to her report regarding the treatment of the victim after the incident. She testified that in these circumstances, the patient is triaged by a nurse in that part of the emergency department, a history is taken, the presenting problem is expressed and then the patient is brought to the appropriate part of the emergency department. (ROA App. pp. 86-87). In the victim’s case where the presenting problem expressed was that she had been sexually assaulted, the patient was then brought to a specific part of the emergency

department and evaluated by a nurse that took care of sexual assault victims. (ROA App. p. 87). Dr. Manfredi testified that if the patient is brought in by officers and 911 has been called, the officers bring a sexual assault kit that is performed by a specially trained nurse in that area. (ROA App. pp. 87-88). During that examination, the patient is interviewed and asked about the events surrounding the action, a “head-to-toe” examination is performed, and samples are taken from oral, vaginal and rectal swabs, as well as a pelvic exam of the speculum. (ROA App. pp. 88-89). Further, notes are taken by the nurse or doctor who is performing the examination. (ROA App. p. 89).

As to the specifics of the victim’s sexual assault examination, Dr. Manfredi indicated her notes showed that the victim was evaluated for sexual assault and evaluated for right side neck pain because the victim reported that the assailant choked her. (ROA App. p. 91). Dr. Manfredi then prescribed medication to help with inflammation and pain. (ROA App. p. 91). Dr. Manfredi noted that she recorded “right-sided neck tender, slight swelling and red marks and bruising” in relation to the neck exam. (ROA App. p. 91). She testified that there was physical examination findings based on the nursing assessment, which occurred prior to her examination, that are in bold which indicated that the bold information had to be entered. (ROA App. p. 91). The bolded information in the victim’s assessment was that “patient appears in pain and distress. Patient is oriented to person, oriented to time.” (ROA App. p. 92). Other bolded physical exam findings reflected that lacerations to the genital area and bloody vaginal discharge was present. (ROA App. p. 92).

On cross-examination, Dr. Manfredi confirmed that the findings of lacerations to the vagina were documented by the nurse and not her own observation to the best of her recollection. (App. p. 95). Dr. Manfredi confirmed that the notes indicated that the victim was on her menstrual cycle and that the bloody discharge could have resulted from that. (ROA App. p. 96).

Applicant's Testimony at the PCR Evidentiary Hearing

Applicant testified that Mr. Chambers visited him around two or three times prior to his trial. He testified that they had discussed the State's evidence against him, and he relayed to Mr. Chambers that the victim had lied, and that he was at the Regal Inn to get heroin and that he didn't know what happened after that. (PCR Tr. p. 11). As to Nurse Brown, Applicant testified that he and Mr. Chambers did not discuss calling Nurse Brown. (PCR App. 18). He also testified that the only place her name is mentioned is in the medical report. He testified that he had the supplemental incident report and that he asked Mr. Chambers to subpoena her and Mr. Chambers stated he didn't think they would need her to testify. (PCR App. pp. 19-20). Applicant confirmed that his defense at trial was that he had consensual intercourse with the victim because she had offered to have intercourse with him for money. (PCR Tr. p. 22). Applicant testified that he wanted Nurse Brown to testify because she could tell the truth about what happened, what she found on that date, and that hopefully she could clear him of that charge. (PCR Tr. p. 27).

Trial Counsel's Testimony at the PCR Evidentiary Hearing

The State called Mr. Chambers to testify, and on direct examination, Mr. Chambers stated that he had been practicing law for approximately 36 years and elaborated on his professional history. Mr. Chambers testified that he is currently a Public Defender at the Greenville County Public Defender's Office and handles a variety of cases from DUIs to murder charges. Mr. Chambers recalled that he was appointed to represent Mr. Smith while he was in private practice under the South Carolina Appellate Rule 608 contract. He testified that he was unable to locate Applicant's criminal case file, however he recalled their discussions when he met with him prior to trial. (PCR Tr. pp. 34-35).

In preparation of trial and discussing their defense strategy, Mr. Chambers testified that Applicant indicated that he had intercourse with the Victim. He recalled that the hotel where the crime occurred was a known place for transient living, prostitution and drug use. (PCR Tr. p. 36). He testified that Applicant indicated to him that he was staying at the hotel doing work for Labor Finders and that the victim was also staying there with her two kids. (PCR Tr. p. 37). Applicant told him that he knew the victim, and he had worked with her boyfriend at Labor Finders despite her testifying otherwise at trial. Mr. Chambers testified that at that time, Applicant relayed to him that the victim was a prostitute and that he paid to have sex with her. (PCR Tr. p. 37). Mr. Chambers testified that he did not recall much about Nurse Brown, however, he believed that Dr. Manfredi had indicated that there was some indication of force based on her trial testimony. Mr. Chambers added that an indication of force would not be consistent with consensual intercourse, but not necessarily inconsistent depending on a number of factors. (PCR Tr. p. 38). Mr. Chambers testified that if he had thought that Nurse Brown's testimony would have been any help to their case then he would have attempted to locate and call her. (PCR Tr. p. 38).

On cross-examination, Mr. Chambers testified that at the time of trial he would have been very familiar with the discovery of Applicant's case, however he could not remember any discussion about Nurse Brown. (PCR Tr. p. 39). Applicant's counsel attempted to refresh Mr. Chamber's recollection with the supplemental incident report that was generated by the officer that indicated Nurse Brown's impressions of the victim. Mr. Chambers testified that Nurse Brown's inference appeared to be that she did believe the victim was being completely truthful because she showed no emotion, and she didn't believe there had been any penetration. He added that whether there was penetration was not an issue considering Applicant's defense was that the intercourse was consensual. (PCR Tr. p. 42).

Discussion

As an initial matter, the supplemental incident report made by the officer retrieving the victim's sexual examination kit was not introduced into evidence, nor was Nurse Brown or the officer presented to testify to the report. Our Supreme Court has repeatedly held that the Applicant must present the testimony of the witness he argues is favorable or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 810 (1998). Even so, a portion of Nurse Brown's impressions of what she relayed to the officer were referenced through Mr. Chamber's testimony.² This Court finds that counsel was not deficient for omitting Nurse Brown's testimony at trial, and that her testimony did not provide for reasonable probability of a different outcome. *Strickland, supra*.

Applicant's defense at trial was that he and the victim had consensual sexual intercourse, and that he paid her for doing so. In contrast, the victim testified that the Applicant forcefully entered her room, choked and raped her. At the PCR evidentiary hearing, Applicant's counsel showed Mr. Chambers the supplemental incident report generated by the officer who retrieved the sexual assault kit and Mr. Chambers testified that based on the officer's summary, Nurse Brown's inference appeared to be that she did not believe the victim was being completely truthful because the victim showed no emotion, and she didn't believe there had been any penetration. (PCR Tr. p. 42).

² On re- direct examination, Applicant attempted to testify as to the contents of the supplemental incident report. Respondent objected on the basis that the report had not been introduced into the evidence and that the appropriate witnesses were not present to testify in regard to the report. This Court sustained Respondent's objection but allowed Applicant to proffer testimony in which he read the substance of the supplement incident report. At the conclusion of the hearing, this Court sustained Respondent's objection finding that the testimony constituted hearsay. (PCR App. pp. 28- 33).

When asked if the contents of the statement in the report could have been helpful to Applicant's defense, Mr. Chambers testified that the paragraph alone might have been helpful but that the officer's recollection in the report was hearsay and inadmissible at trial. He adds that there may have been other things that he looked into that led him to believe that it was not a good idea to call Nurse Brown or that it would not be necessary to call her as a witness. (PCR Tr. pp. 42-43, 45). He repeatedly notes that he cannot specifically recall why he did or did not call her as a witness. (PCR Tr. p. 43). Further, he correctly recalled that Dr. Manfredi testified at trial that there were indications of force such as bruising on the victim's neck and vaginal lacerations. (PCR Tr. 38). Dr. Manfredi also testified that her notes reflected that the victim appeared to be in pain and distress. (ROA App. p. 92).

Though counsel cannot specifically recall discussing Nurse Brown as a potential witness or why he did not call her as a witness, his omission does not automatically demonstrate deficiency. In fact, "[c]ounsel's performance is accorded a favorable presumption," and it must be initially assumed that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland*, 466 U.S. at 690, 104 S.Ct. 2052). Applicant offered that Nurse Brown's indication to the officer was that the victim was not being truthful because she showed no emotion and that she did not believe there was penetration. (PCR Tr. p. 42). Mr. Chambers testified that the portion of the report regarding Nurse Brown's impression of the victim was a hearsay statement from the officer. (PCR Tr. p. 43). Nurse Brown did not testify at the evidentiary hearing to relay her own observations - whether that be to confirm or dispute the officer's report - and this Court has not had the opportunity to pass on her credibility. As such, in affording Mr. Chambers the favorable presumption that *Strickland* requires, and in light of Applicant's failure to

demonstrate otherwise, Mr. Chambers was not deficient in his representation for not calling Nurse Brown to testify.

Considering that Applicant's defense was that the intercourse was consensual, testimony discounting that penetration occurred is inconsistent with the defense's explanation of events. Further, the contention that the victim showed no emotion during the exam has no bearing on the evidence of which Applicant was convicted. Applicant was identified by the victim, as well as identified as being present by other witnesses at the Regal Inn during the period of time the assault occurred. Additionally, Applicant's phone was discovered in the victim's hotel room. After providing investigators with a variety of different stories and denying any involvement with the victim, Applicant acknowledged he left his camouflage backpack outside of the motel room during the sexual intercourse, insisted he did not leave his phone in the room, and offered to provide some unspecified information to the detective if he was allowed to "walk." (State's Exhibit 9).

As to the evidence before this Court, Nurse Brown's potential testimony is "mere speculation" considering she could dispute the officer's recollection as he indicated in the report. *See Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995); *see also Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) ("pure conjecture as to what a witness's testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different"). Based on the evidence presented at trial and at the evidentiary hearing, there is not a reasonable probability that the outcome would have been different had the jury heard the information which Applicant has presented that Nurse Brown would have testified to. Applicant has not demonstrated Mr. Chamber's omission of Nurse Brown's testimony "actually had an adverse effect on the defense." *Strickland*, 466 U.S. at 693, 104 S.Ct. 2067 (holding that even if

counsel's errors were unreasonable, the defendant must show that the reliability of the result of the proceeding was influenced, not just that there is some conceivable effect on the outcome).

Therefore, Applicant has failed to establish that counsel was deficient in his representation. Further, Applicant has failed to show that there is a reasonable probability the outcome of trial would have been different had counsel called Nurse Brown to testify as to the supplemental incident report. *Strickland, supra*. Accordingly, this allegation is **DENIED** and **DISMISSED**.

CONCLUSION

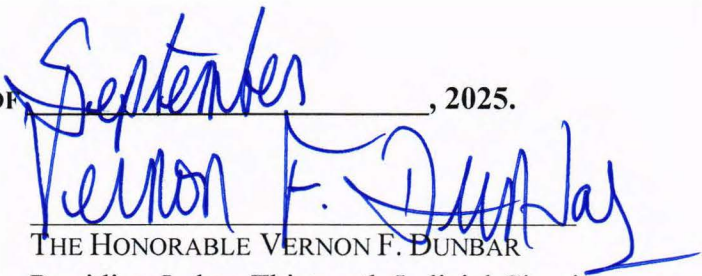
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations during his plea hearing. Therefore, this PCR application must be **DENIED** and **DISMISSED** with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED THIS 30th DAY OF September, 2025.


THE HONORABLE VERNON F. DUNBAR
Presiding Judge, Thirteenth Judicial Circuit

J M Flank #604

WITNESSES

T M Conroy

Greenville Police Department

6/18/2013

RECEIVED

MAR 17 2016

SC Court of Appeals

ARREST WARRANT NUMBERS

✓ 2013A2320601632 thru 2013A2320601638
Counts I thru VII

ACTION OF GRAND JURY

TRUE BILL

Ricky T. Hall

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23-

LBP

007305

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2013 *2014*

THE STATE

vs.

ROBERT DAVIS SMITH JR

✓ **Indictment for**

0160/0095/0079/3412/0549

**CRIMINAL SEXUAL CONDUCT FIRST DEGREE,
KIDNAPPING, BURGLARY FIRST DEGREE,
ASSAULT AND BATTERY FIRST DEGREE,
POSSESSION OF A WEAPON DURING A VIOLENT
CRIME**

**VIOLATION § 16-03-0652, § 16-03-0910,
§ 16-11-0311, § 16-03-0600 and § 16-23-0490**

ENTERED
ACCT

A Certified Copy

P. A. B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC

Dated *3/14/2016*

FILED

AUG 08 2013

Clerk of Court
Greenville County

WITNESSES

T M Conroy

Greenville Police Department

6/18/2013

ARREST WARRANT NUMBERS2013A2320601632 thru 2013A2320601638
Counts I thru VII**ACTION OF GRAND JURY***Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury*
Date:**DOCKET NO. 2013-GS-23-**

LBP

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS**TERM 2013****THE STATE**

vs.

ROBERT DAVIS SMITH JR

Indictment for

0160/0095/0079/3412/0549

**CRIMINAL SEXUAL CONDUCT FIRST DEGREE,
KIDNAPPING, BURGLARY FIRST DEGREE,
ASSAULT AND BATTERY FIRST DEGREE,
POSSESSION OF A WEAPON DURING A VIOLENT
CRIME****VIOLATION § 16-03-0652, § 16-03-0910,
§ 16-11-0311, § 16-03-0600 and § 16-23-0490****FILED****AUG 08 2013**Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
**CRIMINAL SEXUAL CONDUCT FIRST DEGREE, KIDNAPPING,
 BURGLARY FIRST DEGREE, ASSAULT AND BATTERY FIRST
 DEGREE, POSSESSION OF A WEAPON DURING A VIOLENT
 CRIME**

At a Court of General Sessions, convened on
 County present upon their oath:

the Grand Jurors of Greenville

APR 22 2014

COUNT I- CRIMINAL SEXUAL CONDUCT FIRST DEGREE

That ROBERT DAVIS SMITH JR did in Greenville County, on or about the 17th day of June, 2013, engage in sexual battery, with M.F., and used aggravated force to accomplish this sexual battery. This is in violation of South Carolina Code of Laws Section 16-03-0652 of the South Carolina Code of Laws (1976) as amended.

COUNT II - KIDNAPPING

That ROBERT DAVIS SMITH JR did in Greenville County, on or about the 17th day of June, 2013, unlawfully seize, abduct, confine, inveigle, decoy or carry away M.F., without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

COUNT III - KIDNAPPING

That ROBERT DAVIS SMITH JR did in Greenville County, on or about the 17th day of June, 2013, unlawfully seize, abduct, confine, inveigle, decoy or carry away E.A. without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

COUNT IV - KIDNAPPING

That ROBERT DAVIS SMITH JR did in Greenville County, on or about the 17th day of June, 2013, unlawfully seize, abduct, confine, inveigle, decoy or carry away E.P., without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

COUNT V -BURGLARY FIRST DEGREE

That ROBERT DAVIS SMITH JR did in Greenville County, on or about the 17th day of June 2013, willfully and unlawfully enter the dwelling of M.F. located at Regal Inn, 536 Wade Hampton Blvd. [REDACTED], Greenville, South Carolina without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: defendant was armed with a deadly weapon. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

COUNT VI – ASSAULT & BATTERY FIRST DEGREE

That ROBERT DAVIS SMITH JR did in Greenville County, on or about the 17th day of June 2013 unlawfully injure M.F. and the act occurred during the commission of a burglary and/or kidnapping. This is in violation of 16-03-0600 of the South Carolina Code of Laws (1976) as amended.

COUNT VII – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That ROBERT DAVIS SMITH JR did in Greenville County on or about the 17th day of June, 2013, possess or visibly display a box cutter during the commission or attempted commission of a violent crime, to wit: Criminal Sexual Conduct First Degree and/or Kidnapping and/or Burglary First Degree and/or Assault and Battery First Degree. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

Seig B. Pasuth
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Robert Davis Smith Jr

AKA:

Race: BLACK Sex: M Age: 41DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Sex / Criminal sexual conduct - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2307305A/W#: 2013A2320601632Date of Offense: 6/17/2013S.C. Code § : 16-03-0652CDR Code #: 0160

SENTENCE SHEET

RECEIVED
MAR 17 2015
SC Court of Appeals

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Kimberly Howard 73639

Kimberly Howard SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 23 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2165Sentence Date: 3/14/16

Clerk of Court/ Deputy Clerk

Court Reporter: M. Watkins

SCCA/217 (03/2011)

A Certified Copy
Paul B. Wilkinson
 Clerk of Court C.P. & G.S.
 Greenville County, SC
 Dated 3/14/2016