

VOL. I OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

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DEC 31 2013

S.C. Supreme Court

ADAM LEE BERARD

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001351

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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CASE NO.: 2008-GS-46-3019;
3020;3028;3029

TRANSCRIPT OF RECORD

DECEMBER 14, 15, 16, 17, 18, 2009
YORK, SOUTH CAROLINA

B E F O R E:
HONORABLE JOHN C. FEW, JUDGE, and a jury.

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

MS. MINDY HERVEY LIPINSKI
ASSISTANT SOLICITOR
SIXTEENTH JUDICIAL CIRCUIT
YORK, SOUTH CAROLINA
THE PLAINTIFF

MR. GARY LEMEL
PUBLIC DEFENDER'S OFFICE
SIXTEENTH JUDICIAL CIRCUIT
YORK, SOUTH CAROLINA
FOR THE DEFENDANT

WANDA NELSON
OFFICIAL COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT
AT LARGE

ORIGINAL

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ALL EXHIBITS WERE FILED WITH THE YORK COUNTY CLERK OF
COURT'S OFFICE.

1 (ON THE RECORD AT 12:10 P.M..)

2 THE COURT: Be seated please.

3 (DEFENDANT ENTERING COURTROOM.)

4 MADAME SOLICITOR: May it please the court, Your
5 Honor. The state is calling the case of the State of South
6 Carolina versus Adam Lee Berard Indicted pursuant to 2008-
7 GS-46-3019 for Assault and Battery with Intent to kill;
8 2008-GS-46-3020 for the crime of Criminal Sexual Conduct in
9 the First Degree with an Adult; 2009-GS-46-3928 for
10 Burglary in the First Degree and 2009-GS-46-3929 for the
11 offense of Kidnapping. The defendant is present and
12 represented by Mr. Lemel. The 2009 offenses were added by
13 the solicitor's office earlier this year. Prior to this
14 trial in October in front of the Honorable Lee Alford the
15 State arraigned the defendant on those charges so he hasn't
16 been formerly arraigned on those to be represented. At the
17 time of the arraignment Mr. Berard indicated that he felt
18 that he might be entitled to a defense either under
19 McNaughten and that he could plead mentally ill and asked
20 for a psychological evaluation. The Honorable Lee Alford
21 granted that evaluation and sent him to the Department of
22 Mental Health. I have a copy of that evaluation which I
23 believe I gave you a copy in chambers. If I did not I have
24 another copy for you here. I would like to make a copy of
25 that report a Court's Exhibit.

1 THE COURT: That's fine.

2 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE IDENTIFIED AND
3 MARKED, ENTERED INTO EVIDENCE.)

4 SOLICITOR LIPINSKI: In the report although it
5 indicates that Mr. Berard did have a history of substance
6 abuse they determined that his reports of psychosis were
7 malingering or vague. He was diagnosed on Axis II anti
8 sexual personality disorder but neither of those they
9 thought - -

10 THE COURT: Let me handle it this way.

11 Mr. Lemel, you've read the report?

12 MR. LEMEL: Yes, sir, Your Honor.

13 THE COURT: Do you have any reason to differ with the
14 conclusions reached in the report?

15 MR. LEMEL: No, sir.

16 THE COURT: Since the report has been made and
17 published and signed has anything happened that causes you
18 to be concerned that your client's competence to stand
19 trial has changed?

20 MR. LEMEL: Your Honor, no sir. Just to be clear
21 about that we did not receive a copy of this order until
22 Friday at roughly - -

23 THE COURT: The report?

24 MR. LEMEL: The report itself was faxed to us at 4:50
25 on Friday afternoon.

1 THE COURT: All right.

2 MR. LEMEL: Some seventy-two hours - -

3 THE COURT: In addition to the report is there
4 anything that you would like for me to consider or to
5 review before I determine whether or not your client is
6 competent to stand trial?

7 MR. LEMEL: No, sir.

8 THE COURT: Well in light of the report and in light
9 of that I find no reason to suspect that the defendant is
10 not competent to stand trial. All right I am ready to hear
11 evidence on the Jackson v. Denno motion.

12 SOLICITOR LIPINSKI: Thank you, Your Honor. Just to
13 bring your attention to Mr. Lemel's first is to sequester
14 witnesses.

15 THE COURT: I am ready to hear evidence on the Jackson
16 v. Denno. I will deal with the motions in limine when I
17 get ready.

18 SOLICITOR LIPINSKI: Well since it's a pretrial
19 hearing so I need to remove some witnesses if you are going
20 to do that.

21 THE COURT: All right. Is there anything you want to
22 say about your motion to sequester witnesses?

23 MR. LEMEL: Your Honor, we would ask that the
24 witnesses be sequestered throughout the trial including
25 pretrial hearings as there may be evidence on cross

1 examination directly related or that may be repeated during
2 trial and allowing them to see this during cross
3 examination would basically during pretrial -- excuse me,
4 would basically defeat the purposes of sequestration during
5 the trial itself. Of course, Your Honor, we are not going
6 to object to the presence of the primary officer or the
7 victim.

8 THE COURT: So other than just the opportunity the
9 witnesses may have to hear the testimony of others and
10 conform their testimony to that they've already heard is
11 there anything unique about this case or what's going to be
12 shown that you want to tell me about?

13 MR. LEMEL: Essentially, Your Honor, that is the basis
14 of the motion that in order to be able to properly
15 represent my client and be able to cross examine witnesses
16 - -

17 THE COURT: All right I will sequester the witnesses
18 during the pretrial hearing and then I will decide after
19 these hearing whether or not to do - -

20 MADAME SOLICITOR: Your Honor, we ask the victim be
21 allowed to remain.

22 MR. LEMEL: Without objection, Your Honor.

23 MADAME SOLCITOR: Your Honor, for the first Jackson v.
24 Denno hearing the State would call Lieutenant Tim Hager to
25 the stand. And also, Your Honor - -

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

10

1 (WHEREUPON: LIEUTENANT TIM
2 HAGER, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
3 FOLLOWS:)

4 LIEUTENANT HAGER: Good morning, Your Honor.

5 THE COURT: Good morning.

6 SOLICITOR LIPINSKI: Your Honor, just also to clarify
7 for the record, I spoke to Mr. Lemel earlier about the
8 sequestration order; I told him I had no objection as to
9 the witnesses with the exception obviously of the victim,
10 her husband, and Tina Elliott. She is the Victim Advocate
11 with the Sheriff's Office who had a prior relationship with
12 Ms. Moss and Mr. Lemel indicated he had no objection to Ms.
13 Elliott remaining in the courtroom.

14 MR. LEMEL: That is correct, Your Honor.

15 DIRECT EXAMINATION

16 LIEUTENANT TIM HAGER BY SOLICITOR LIPINSKI:

17 Q. Lieutenant Hager, are you employed with the York
18 County Sheriff's Office?

19 A. Yes, ma'am, I am.

20 Q. And in what capacity?

21 A. I am the Lieutenant of the Crimes Against Persons Unit
22 of the Criminal Investigative Division.

23 Q. And how long have you been so employed?

24 A. I been with the Sheriff's Office approximately twenty-
25 nine years. I been in this capacity about thirteen.

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

11

1 Q. And did you have the occasion to be called out to [REDACTED]
[REDACTED] on June 8 of 2008?

3 A. Yes, ma'am, I did.

4 Q. So you originally go to the actual crime scene itself?

5 A. Yes, ma'am, I do.

6 Q. And do you then also have the occasion to go to [REDACTED]
7 [REDACTED] in Rock Hill also in York County?

8 A. Yes, ma'am, I did.

9 Q. And why were you called to that second location?

10 A. The apprehension of a suspect in this crime at that
11 point.

12 Q. And you were notified by other members of the York
13 County Sheriff's Office?

14 A. Correct.

15 Q. And when you arrived on the scene what do you find?

16 A. There is an EMS unit; there is multiple sheriff's
17 departments units; probation and parole people where there
18 and also the defendant Mr. Berard.

19 Q. And did you have any prior relationship or knowledge
20 of Mr. Berard?

21 A. I never met him no, ma'am.

22 Q. And where was he located when you got to the scene?

23 A. He was in the back seat of the patrol unit.

24 Q. So you were not a part of removing him from the
25 residence or anything that was set during that process?

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

12

1 A. No, ma'am.

2 Q. And when you arrived on the scene were you informed
3 anyone had previously marandized him?

4 A. It was told to me that someone had marandized him yes.

5 Q. And do you rely on that Maranda or did you do your
6 own?

7 A. No I've always just out of the abundance of caution
8 went ahead and reaffirmed that he had been read his Maranda
9 rights which I did.

10 Q. And were you the first and only detective that spoke
11 with Mr. Berard that night?

12 A. To the best of my knowledge yes.

13 Q. And did you get in the back of the patrol car with Mr.
14 Berard?

15 A. No. He was sitting right outside the door. I just
16 opened the door and I stood right inside the door frame.

17 Q. And did Mr. Berard have any noticeable injuries at the
18 time you initially encountered him?

19 A. His leg was wrapped. EMS had treated him for a wound
20 to his leg.

21 Q. And were you aware of the nature of that wound? Did
22 it in any way impair his ability to communicate with you
23 when you provided that information?

24 A. Not in my opinion no, ma'am.

25 Q. Did you begin your conversation with Mr. Berard with

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

13

1 Maranda or anything else?

2 A. With Maranda.

3 Q. And do you recall did you use a Maranda card or do you
4 just work from memory?

5 A. I use a card.

6 Q. Do you have that card with you?

7 A. No it's in my desk. I left my wallet at the office.

8 Q. Do you recall the contexts of the card and the rights
9 you read to Mr. Berard?

10 A. Yes.

11 Q. And what would those rights be?

12 A. Those would be the right to have a lawyer present
13 before and during and answering any questions at any time.
14 He can stop answering questions at any time or request a
15 lawyer and one would be appointed for him.

16 Q. Did you inform him he had the right to remain silent
17 and he did not have to speak with you?

18 A. Yes, ma'am, I did.

19 Q. Okay. And did he seem to understand those rights?

20 A. He seemed to yes.

21 Q. Did he have any questions about them?

22 A. No.

23 Q. And how were you dressed on the night in question?

24 A. Usually cargo tactical pants, shirt and jacket saying
25 York County Sheriff's Office.

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

14

- 1 Q. And did you have a weapon?
- 2 A. Yes.
- 3 Q. And where was that weapon at the time?
- 4 A. On my side as it always is.
- 5 Q. Did you ever remove the weapon or draw your attention
- 6 to it in any particular way during your conversation with
- 7 Mr. Berard?
- 8 A. No, ma'am.
- 9 Q. And how did you begin your conversation with Mr.
- 10 Berard?
- 11 A. I explained who I was and why I was there and I read
- 12 him his Maranda rights and then I started asking him some
- 13 questions.
- 14 Q. Were you the only officer in the immediate vicinity or
- 15 were there others?
- 16 A. There were other people around right there talking to
- 17 him no.
- 18 Q. So there were a multitude of officers surrounding the
- 19 vehicle or the vehicle with Mr. Berard?
- 20 A. No.
- 21 Q. And prior to this communicating with him did you
- 22 promise him anything in hopes of reward if he talked to
- 23 you?
- 24 A. No, ma'am.
- 25 Q. Did you threaten him in any way?

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

15

- 1 A. None whatsoever.
- 2 Q. And just so you can relay the conversation with Mr.
- 3 Berard to the court.
- 4 A. Sure. I asked the subject basically did he have any
- 5 injuries that needed tending to other than what he had
- 6 already had which was on his leg. He was asked if he had
- 7 been drinking the night and he stated he had two beers
- 8 earlier in the night and he was not intoxicated - -
- 9 Q. Did he appear intoxicated to you? And I apologize for
- 10 interrupting.
- 11 A. Seemed to me to be in kind of a dazed state but it
- 12 didn't seem to be intoxication in my opinion.
- 13 Q. Did he have any problem communicating with you or
- 14 understanding your words?
- 15 A. No, ma'am.
- 16 Q. Did he appear to answer your questions in a reasonable
- 17 logical fashion?
- 18 A. Yes.
- 19 Q. All right. Go on after the conversation about
- 20 intoxication.
- 21 A. I asked him what had happened the night he stated that
- 22 he was at his nanny's house and they were on the front
- 23 porch and he swung a stick at a bat and accidentally hit
- 24 his nanny in the head. He stated he panicked and left his
- 25 house when his brother came over. I asked him where we

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

16

1 would find the stick he stated it would be on the deck
2 where they were standing.

3 Q. And had you actually been at the incident location?

4 A. Yes.

5 Q. So you were familiar with the nature of the
6 allegations and what had transpired on the night in
7 question?

8 A. Yes.

9 Q. And did that lead you to further ask Mr. Berard some
10 additional questions?

11 A. Yes I did.

12 Q. After you questioned him about whether or not you
13 located it did you ask him anything else?

14 A. Yes I did. He was asked what happened after he hit
15 her with the stick. He stated he could not remember
16 because he was drunk. He was reminded that he had stated
17 he was not drunk that he had also told he had drank only
18 two beers. He then said that he just could not remember.
19 He was asked about what his brother had told us about the
20 sexual assault taking place when his brother looked in the
21 window at him and he stated he could not remember that. He
22 was asked about leaving the house with his shorts in his
23 hands and being naked from the waist down. And then he
24 stated he wanted an attorney.

25 Q. And did you stop questioning him at that time?

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

17

1 A. Yes I did.

2 Q. And also further in your report indicates that there
3 was some comment he made that he had cut his leg while
4 cutting off his GPS device?

5 A. Yes.

6 Q. So that was not made directly to you that was
7 information you were provided by other officers?

8 A. Correct.

9 Q. And following your conversation with Mr. Berard it's
10 not a written statement is it?

11 A. No, ma'am.

12 Q. It's not something you sign?

13 A. No, ma'am.

14 Q. Is there a reason it was not taken in that form versus
15 just your report from your conversation?

16 A. Normally on the scene like that as quick as we can get
17 some kind of statement that's what we try to do and that's
18 what I did.

19 Q. And did you have any other conversation with Mr.
20 Berard on the night in question?

21 A. No, ma'am.

22 Q. And after you were done talking with him did he remain
23 in the patrol car?

24 A. Yes.

25 Q. And was he then transported to PMC?

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA CROSS EXAMINATION BY MR. LEMEL

18

1 A. I think he was transported to PMC and then on to our
2 detention center later on.

3 Q. Did anyone else have any conversations with him?

4 A. Not that I know of.

5 Q. Your Honor, that's all we have from the detective.

6 CROSS EXAMINATION

7 LIEUTENANT TIM HAGER BY MR. LEMEL:

8 Q. Detective Hager, when you arrived at the Woods - -
9 excuse me, Whitney Woods, I apologize, Mr. Berard was
10 already in custody; correct?

11 A. Correct.

12 Q. Was he in the back of the patrol car?

13 A. Yes.

14 Q. He was already in handcuffs?

15 A. Yes.

16 Q. And at some point in time he obviously was placed
17 there by some member of your agency of the York County
18 Sheriff's Office?

19 A. Yes.

20 Q. And you don't know what happened before you got there
21 obviously you were told or somebody else told you?

22 A. The only thing I inquired about was whether or not he
23 had been marandized and one of the uniform officers told me
24 he had.

25 Q. He had. Were you aware of exactly what he was told or

TIM HAGER: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

19

- 1 Maranda by that uniform officer?
- 2 A. No, sir, I was not and that's the reason that I
- 3 reissue it when I get on the scene.
- 4 Q. When you are talking with him you said that he was
- 5 seated in the back of a patrol car?
- 6 A. Correct.
- 7 Q. You opened up the door to the back of the patrol car?
- 8 A. Yes, sir.
- 9 Q. He remained inside the patrol car?
- 10 A. Yes, sir.
- 11 Q. He became within the custody in that patrol car
- 12 obviously?
- 13 A. Correct.
- 14 Q. And you were not going to let him out at that point in
- 15 time?
- 16 A. No, sir
- 17 W. He was not free to go?
- 18 A. No, sir.
- 19 Q. When you were standing over him - -
- 20 A. I was standing in the door yes, sir.
- 21 Q. Which would place you over him; correct?
- 22 A. Correct.
- 23 Q. If he is seated you are standing out - - -
- 24 A. Yes, sir.
- 25 Q. - - - apparently over him; right?

TIM HAGER: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

20

- 1 A. Correct.
- 2 Q. Where in you said tactical clothing and tactical
3 pants?
- 4 A. Yes.
- 5 Q. Which would be camouflage type pants?
- 6 A. No they were green. I got three or four pair and they
7 are green not camouflage.
- 8 Q. Sort of the olive green cargo pants?
- 9 A. Correct.
- 10 Q. With a gun holster on?
- 11 A. Yes, sir
- 12 Q. With a gun in it?
- 13 A. Yes, sir.
- 14 Q. It was physical to Mr. Berard?
- 15 A. I wouldn't think so because I was sort of bladed in
16 the door. He was sitting sort of here.
- 17 Q. You would have kept the gun turned away from him is
18 what you are saying?
- 19 A. Yes.
- 20 Q. But the gun itself would have been readily visible
21 - - -
- 22 A. Correct.
- 23 Q. - - - on your hip to anyone who chose to look for it?
- 24 A. Correct.
- 25 Q. And were there other officers in the immediate

TIM HAGER: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

21

1 vicinity even if not part of the conversation; correct?

2 A. A good many police officers were there yes, sir.

3 Q. Can you estimate roughly how many there where?

4 A. Probation and parole probably ten..

5 Q. All of whom were similarly equipped at that point in
6 time?

7 A. No most of them were uniform deputies.

8 Q. But in terms of their equipment guns were visible?

9 A. Correct.

10 Q. Badges visible?

11 A. Yes.

12 Q. Including the probation officers they all had guns as
13 well?

14 A. Correct.

15 Q. And you don't know what the conditions were as far as
16 him being taken out of the residence what happened after
17 that?

18 A. No.

19 Q. When you spoke with him you did notice that he did
20 have an injury to his leg?

21 A. Yes, sir.

22 Q. That had been treated by EMS?

23 A. Correct. Yes that's was the reason he was asked did
24 he have any other injuries that needed attending to at that
25 time.

TIM HAGER: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

22

1 Q. Did you make any inquiries in what sort of medication
2 or pain killers if any he had been given by EMS?

3 A. No, sir.

4 Q. You did indicate that he appeared dazed to you.

5 A. Sort of shell shocked about what was going on.

6 Q. Can you elaborate on that for me?

7 A. The majority of the people we arrest when they get
8 caught have a certain look about them like damn I just got
9 caught that sort of thing.

10 Q. Was that - when you say dazed is that what you are
11 referring to?

12 A. Yes.

13 Q. Just damn I got caught? Nothing else besides that?

14 A. Yes.

15 Q. And he did indicate to you that he had been drinking?

16 A. Yes. Said he had two beers.

17 Q. You smelled alcohol on his person?

18 A. Slightly.

19 Q. But you did not believe he was intoxicated at that
20 point?

21 A. No, sir.

22 Q. Did you do any testing at all to determine what level
23 of impairment he might have?

24 A. No, sir, I did not.

25 Q. After you asked him questions following the initial

TIM HAGER: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

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1 one right after you reminded him he had only two beers at
2 that point in time he basically told you he could not
3 remember the specifics?

4 A. Correct.

5 Q. He could not remember as far as the statement that his
6 brother had given?

7 A. Correct.

8 Q. Could not remember as far as you asking him about
9 being naked from the waste down?

10 A. Correct.

11 Q. At that point in time as opposed to answering the
12 questions about being naked from the waste down he
13 indicated he wanted an attorney; correct?

14 A. Correct.

15 Q. So his immediate response to that at that point in
16 time was or do you remember? Did he say I don't remember
17 that I want an attorney or did he say I want an attorney?

18 A. He told me he didn't remember and then we pressed on
19 it that's when he decided he wanted an attorney.

20 Q. Okay. Exactly how did he say -- you say you pressed
21 him on it did you press him on the issue of as it is
22 written in your report about leaving the house with his
23 shorts in his hands and being naked from the waste down?

24 A. Correct. He was asked about leaving the house with
25 his shorts in his hand and being naked from the waste down

TIM HAGER: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

24

1 and then he stated he wanted an attorney.

2 Q. So it wasn't I don't remember I want an attorney it
3 was just I want an attorney?

4 A. After we asked him about the sexual assault he said he
5 didn't remember.

6 Q. Right. I'm not asking about that I'm asking about the
7 second statement.

8 A. Correct.

9 Q. Okay. There wasn't any hesitation between you asking
10 that question and him asserting his right to an attorney at
11 that point?

12 A. No.

13 Q. No further questions.

14 SOLICITOR LIPINSKI: That's all we have, Your Honor.
15 We are ready for argument, Your Honor.

16 THE COURT: No other witnesses from the State?

17 SOLICITOR LIPINSKI: Not at this particular time, Your
18 Honor.

19 THE COURT: Any evidence from the Defense?

20 MR. LEMEL: No, sir, Your Honor.

21 THE COURT: All right, Mr. Lemel, you want to make an
22 argument?

23 MR. LEMEL: Yes, sir, Your Honor. With regard to the
24 statements that were given we would argue that pursuant to
25 Jackson versus Denno the State should be restricted with

1 regard to the last question where an attorney was requested
2 and furthermore that the State be restricted from in any
3 way bringing up the fact or highlight the fact that he did
4 request an attorney as opposed to wanting to answer the
5 questions. It would be simply to cut off the questioning
6 at the point in time where he indicates that he does not
7 remember when asked about the statement that his brother
8 gave the police.

9 THE COURT: Well as to the things the defendant said
10 about -- there are substantive statements about what
11 happened then I find the State has proven by the
12 preponderance of the evidence that the defendant made the
13 statement and that the statements were made voluntarily.
14 But you need to make sure your witnesses understand not to
15 go as we were probative not to go into what he said about
16 wanting an attorney when they testify before the jury.

17 SOLICITOR LIPINSKI: Yes, Your Honor.

18 THE COURT: All right. Now you have another statement
19 that you want to put in?

20 SOLICITOR LIPINSKI: Yes, Your Honor, the Probation
21 and Parole Department obviously as I informed you in
22 chambers was part of the initial location of the defendant.
23 They go into the house he's hiding in a back bedroom.
24 Officer Patton with Probation and Parole is there; he is
25 part of the team that escorts Mr. Berard out of the house.

1 Mr. Patton will testify as would Ms. Moss for her testimony
2 would be identical as they were doing that he spontaneously
3 made the statement how is my nanny or how is my granny. It
4 was probation as a quasi law enforcement officer; the state
5 does doesn't submit that it was in response to
6 interrogation but out of the abundance of caution we would
7 like to substantiate that for that record. Let me get Mr.
8 Patton from the hall.

9 THE COURT: As to that statement do you deny that he
10 made it or that it was voluntary?

11 MR. LEMEL: Your Honor, I haven't heard the testimony
12 from it. I think it would be appropriate to get the
13 testimony from the officers regarding whether it would be
14 voluntary or not. I am not sure what the circumstances
15 were beyond that as there is no statement or summary of the
16 alleged statement anywhere created by probation. I've just
17 been told what Ms. Hervey intends is just basically told
18 the court.

19 THE COURT: Okay.

20 SOLICITOR LIPINSKI: We are ready with Special Agent
21 Patton, Your Honor.

22 SOLICITOR SIKORA: State calls Agent Larry Patton.

23 MADAME CLERK: Please raise your right hand.

24 (WHEREUPON: LARRY PATTON,
25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA

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DIRECT EXAMINATION

AGENT LARRY PATTON BY SOLICITOR SIKORA:

Q. Would you please state your full name for the record?

A. Larry Ray Patton, Junior.

Q. Where are you employed?

A. South Carolina Department of Probation and Parole here in the Rock Hill office.

Q. And what is your position there?

A. I am a state agent, Probation and Parole Agent.

Q. And how long have you worked there?

A. Two years, eleven months.

Q. And is one of the people that you supervise as a probation agent the defendant in this case Mr. Adam Berard?

A. It is.

Q. And what period of time did you supervise Mr. Berard?

A. Approximately six months.

Q. So when would you have started his supervision?

A. January of '08.

Q. And this incident you were involved in the investigation of this case on June 7th until June 8th of 2008?

A. Yes, ma'am.

Q. Between that time period of January of 2008 June of 2008 how many times would you have met with Mr. Berard?

A. Approximately five times a month. Excuse me, excuse

1 me, seven times a month, I apologize.

2 Q. And on the night of June 7th into June 8 of 2008 were
3 you called out to [REDACTED] in York County.

4 A. No, ma'am, I was not.

5 Q. What caused you to go out to that scene that night?

6 A. Whitney Woods?

7 Q. Yes.

8 A. It was after the initial call to Zinker Road Mr.
9 Berard's address. The investigation lead us over to
10 Whitney Wood Lane after we had intelligent information
11 stating that he may be located at Whitney Wood.

12 Q. Okay. At the time of this incident Mr. Berard was on
13 YOA parole?

14 A. Yes, ma'am, he was.

15 Q. And is one of the conditions of YOA parole was he
16 required to wear a GPS monitoring system on his ankle?

17 A. He was.

18 Q. Did you receive a call that night or some type of
19 information leading you to believe that he was out of
20 radius on that GPS monitoring system?

21 A. Yes, ma'am, I did.

22 Q. So the first place you reported to that evening was
23 Zinker Road?

24 A. Yes, ma'am.

25 Q. Did you see Mr. Berard at Zinker Road?

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA
IN CAMERA

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1 A. Not that night no, ma'am.

2 Q. Did you ultimately end up at Whitney Woods Lane
3 looking for Mr. Berard?

4 A. Yes, ma'am, I did.

5 Q. And did you find him there?

6 A. Yes, ma'am.

7 Q. And under what circumstances did you find him?

8 A. How do you mean circumstances?

9 Q. How did you determine he was actually present at that
10 location [REDACTED]

11 A. Earlier during his supervision period he had requested
12 to move from his residence on Zinker. Due to our policy we
13 have to approve a residence before they move. The
14 residence on Whitney Wood was that residence which was
15 denied. And after the initial call that night I tracked
16 him earlier that day at Whitney Wood Lane and several times
17 during his supervision so it appeared to be an intelligent
18 guess that he was there.

19 Q. Did you gain consent from the home owner of Whitney
20 Woods Lane to go into that trailer?

21 A. Yes, ma'am, I did.

22 Q. Okay. And what happened when you went inside?

23 A. Myself and two sheriff's deputies we went in and Mr.
24 Berard was located in the master bedroom bed which upon our
25 entry he covered himself with a blanket.

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA
IN CAMERA

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1 Q. Besides yourself and two other deputies was any other
2 law enforcement present when you went inside [REDACTED]
3 [REDACTED]?

4 A. On the perimeter, ma'am, not inside.

5 Q. But not inside the trailer. Was he ultimately
6 arrested at that point?

7 A. Yes, ma'am, he was.

8 Q. Were you the one that placed him in handcuffs?

9 A. Yes, ma'am, I did.

10 Q. Did both yourself and the two deputies that went into
11 [REDACTED] have weapons on you at the time?

12 A. We did.

13 Q. And how were you dressed at that time?

14 A. The two sheriff's deputies was dressed in sheriff's
15 deputy uniform. Myself I believe I may have had jeans and
16 an agency T-shirt on and maybe boots or tennis shoes. I'm
17 not real sure. I also had my duty belt.

18 Q. Okay. When you went into [REDACTED] did
19 you have your weapon drawn?

20 A. I did not no, ma'am.

21 Q. And did the deputies that went in with you have their
22 weapons drawn?

23 A. Yes, ma'am, they did.

24 Q. Okay. Who ultimately handcuffed Mr. Berard?

25 A. I did.

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA
IN CAMERA

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1 Q. Okay. And after you were able to handcuff him where
2 was Mr. Berard taken?

3 A. We walked him out the front of the residence out of
4 the back door to the front of the residence where the
5 nearest deputy's vehicle was at which point in time we
6 searched and marandized.

7 Q. Okay. Where was Mr. Berard placed outside; inside the
8 deputies car?

9 A. Inside the deputies car yes, ma'am.

10 Q. Okay. Did you hear anybody give Mr. Berard his
11 Maranda rights?

12 A. I did.

13 Q. Do you remember who that was?

14 A. I do not.

15 Q. Did you in fact give him his Maranda rights?

16 A. I did not.

17 Q. Did you hear Mr. Berard say anything after he was
18 given Maranda rights that evening?

19 A. Yes, ma'am, I did.

20 Q. And what did he say?

21 A. He said several things but the only thing that I can
22 really remember was directed directly towards me. He
23 looked at me and asked how his nanny was.

24 Q. Was that in response to any type of question you asked
25 him?

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA
IN CAMERA

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- 1 A. No, ma'am, it was not.
- 2 Q. Did you initiate conversation with Mr. Berard first
- 3 that evening?
- 4 A. Not on that particular conversation.
- 5 Q. Was anyone else around whenever Mr. Berard made this
- 6 statement?
- 7 A. Several. Several different people.
- 8 Q. Do you recall who that would have been?
- 9 A. No, ma'am. It was several probation agents, deputy
- 10 sheriffs and the paramedics were actually working on him at
- 11 that moment.
- 12 Q. Where was Mr. Berard located when he made that
- 13 statement to you?
- 14 A. He was sitting on the ground in the driveway.
- 15 Q. Outside Whitney Woods?
- 16 A. Outside Whitney Woods yes, ma'am.
- 17 Q. And you mentioned that he was receiving treatment from
- 18 EMS. Did you notice any injuries on Mr. Berard?
- 19 A. Yes, ma'am, I did.
- 20 Q. Okay. What injuries did you see?
- 21 A. It was very noticeable that he had sliced his ankle in
- 22 some manner.
- 23 Q. Okay. Did you notice the smell of alcohol on his
- 24 person that evening as well?
- 25 A. Yes, ma'am, I did.

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA
IN CAMERA

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1 Q. Based on your interactions with him on this evening
2 and the interactions you observed between Mr. Berard and
3 the other law enforcement on the scene did he seem to
4 comprehend the situation and what was going on?

5 A. Yes, ma'am, he did.

6 Q. Did he seem to be able to follow the conversation and
7 give reasonable responses even though you had smelled the
8 alcohol on his person?

9 A. Yes, ma'am, he did.

10 Q. Did you pull out your gun after you had him outside of
11 Whitney Woods Lane?

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

13 Q. Did you ever point your weapon?

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

15 Q. Where was your weapon when he made this statement to
16 you?

17 A. In my holster on my side.

18 Q. Did you ever threaten Mr. Berard in any way?

19 A. I did not.

20 Q. Did you ever promise him anything in exchange for
21 talking to you?

22 A. No, ma'am, I didn't.

23 Q. Thank you. Please answer any questions Mr. Lemel may
24 have.

25

CROSS EXAMINATION

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

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1 LARRY RAY PATTON JUNIOR BY MR. LEMEL:

2 Q. Agent Patton, you said you met with him about seven
3 times per month over a roughly five or six month period;
4 correct?

5 A. Yes, sir.

6 Q. Was that unusual to meet with him that often given
7 what his circumstances were on probation or was that a
8 fairly practice at that point in time?

9 A. That was standard at his level yes, sir.

10 Q. He had to come in at least once a week is that what
11 the rule was?

12 A. Yes, sir, he reported to us weekly and I was required
13 to do three home visits meaning I had to go to his
14 residence at least three times a month.

15 Q. So that's not unusual that's just following the rules?

16 A. Yes, sir.

17 Q. He wasn't any different from anybody else coming off
18 YOA probation to that regard or parole to that regard?

19 A. Other than just different levels that different
20 individuals are set at no, sir, it was not.

21 Q. When you went to Whitney Woods you said you entered
22 the residence with two other deputies.

23 A. I did.

24 Q. Both of them had their guns drawn?

25 A. Yes, sir.

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

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- 1 Q. And you said that you found him lieing in bed in the
2 master bedroom?
- 3 A. Yes, sir.
- 4 Q. You said he pulled a cover over - - -
5 A. - - - him you said at that point in time?
- 6 A. Yes, sir.
- 7 Q. Over his head; over his body what do you mean by that?
- 8 A. His body.
- 9 Q. Okay.
- 10 A. His head included.
- 11 Q. Very clear though still somebody was lieing on the bed
12 at that point in time?
- 13 A. Yes, sir. Actually the reason we knew it was him is
14 the deputies actually witnessed him pull the blanket over
15 his face.
- 16 Q. Was that - were you there when that happened; did you
17 actually see that?
- 18 A. No, sir, I was opening the door.
- 19 Q. So you were opening the door and somebody else saw
20 that?
- 21 A. Yes, sir.
- 22 Q. So you are reporting that based upon what somebody
23 else told you?
- 24 A. Yes, sir.
- 25 Q. Okay. And you yourself placed him in handcuffs?

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

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1 A. Yes, sir, I did pull the blanket off of him and put
2 him in handcuffs.

3 Q. Did you have to use any force in order to place him in
4 cuffs?

5 A. No, sir, I did not.

6 Q. Did he agree -- did he voluntarily put his hands
7 behind his back when you asked him to?

8 A. Yes, sir, he did.

9 Q. Did he give you any trouble walking him out?

10 A. No, sir.

11 Q. At that point in time were the weapons still drawn
12 after he was handcuffed?

13 A. No, sir. I believe the sheriff's deputies as soon as
14 he was cuffed they holstered.

15 Q. So when you walked him out did he resist you in any
16 way when you were walking him out of the residence?

17 A. He did not.

18 Q. You placed him on the ground on the driveway you said?

19 A. No, sir, not at that particular moment. He was only
20 on the ground after the paramedics were dispatched due to
21 the laceration on his ankle.

22 Q. So at some point in time he was standing up?

23 A. Yes, sir. He stood up so we could search and
24 Marandize him then he was placed in the deputies back seat
25 until the paramedics arrived.

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

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1 Q. So he had been taken out of the car and then at that
2 point in time he was asked to sit on the ground?

3 A. Yes, sir.

4 Q. And there were people standing around him; correct?

5 A. Yes, sir.

6 Q. Do you remember how many people were standing around
7 him at that point in time? Roughly. You don't have to
8 give me the exact number.

9 A. I would say perhaps seven.

10 Q. Were all of those law enforcement individuals?

11 A. Law enforcement or paramedic.

12 Q. All law enforcement had weapons on them?

13 A. Yes, sir.

14 Q. But it was clear at that point in time even though he
15 had been taken out of the patrol car he was not free to go;
16 correct?

17 A. Correct.

18 Q. He was in custody?

19 A. Yes, sir he was still cuffed.

20 Q. Did you tell him why he was being arrested at that
21 point in time?

22 A. I did not.

23 Q. Did anyone tell him why he was being arrested at that
24 time?

25 A. If so I do not recall.

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL
IN CAMERA

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1 Q. But you made it clear to him that he was not free to
2 go?

3 A. Yes, sir.

4 Q. And at that point in time basically the only thing you
5 can recall is him asking how his grandmother was?

6 A. Yes, sir.

7 Q. Did you document this in any way or put this in any
8 file of any sort?

9 A. The actual quote I do not recall. The whole incident
10 yes, sir, I did it has been documented.

11 Q. And again I'm talking about the actual statement
12 itself, a document, at any point in time?

13 A. Yes, sir.

14 Q. That's why you don't remember anything else that was
15 said?

16 A. Yes, sir, that was the only thing specifically said to
17 myself.

18 Q. Okay. No further questions, Your Honor.

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

20 AGENT PATTON: Thank you.

21 THE COURT: Any further evidence from the State?

22 SOLICITOR SIKORA: Nothing further, Your Honor.

23 THE COURT: Any evidence from the Defense?

24 MR. LEMEL: No, sir, Your Honor.

25 THE COURT: Any argument, Mr. Lemel?

1 MR. LEMEL: Your Honor, no motion at this time in
2 regard to that statement.

3 THE COURT: All right. The State has proven by the
4 preponderance of the evidence the statement was made and
5 that the statement was made voluntarily. Okay.

6 Are you ready to proceed with the motion regarding the
7 search warrant at [REDACTED] [REDACTED]?

8 SOLICITOR LIPINSKI: Your Honor, we are prepared. We
9 do have Lieutenant Miller who was the affiant on the search
10 warrant here and ready. Before we go to that because Agent
11 Patton is here in the courtroom and given the sequestration
12 order what I would like to do is put on the record the
13 stipulation we've agreed to have to handle the ankle
14 bracelet testimony because predominately that would come
15 from Special Agent Patton. Mr. Lemel and I have worked out
16 the agreement that the jury will be informed that Mr.
17 Berard was on YOA probation and parole for a misdemeanor
18 offense. We will not go into the nature of that offense
19 but during the first six months of that supervision he was
20 required to wear an ankle bracelet as a special condition
21 of the intensive supervision and we will go into it a
22 little bit briefly just about how that ankle bracelet may
23 work but for the purposes of that. However we will not go
24 into his prior record. We will not go into the fact that
25 he is a registered sex offender and will be limited in

1 scope in that fashion. He was in YOA probation and parole
2 for a misdemeanor offense and then as part of that he was
3 on an ankle bracelet monitoring.

4 MR. LEMEL: That correctly states the stipulation,
5 Your Honor.

6 SOLICITOR LIPINSKI: I just wanted to do that as Mr.
7 Patton is here, Your Honor.

8 THE COURT: Okay.

9 SOLICITOR LIPINSKI: Your Honor, before we put up Mr.
10 Miller I'm in possession of Mr. Lemel's list of motion in
11 limine and specifically as he addresses Number Item Ten
12 Motion to Suppress Evidence collected at [REDACTED]
13 Lane oh I'm sorry. I take that back; Item Number Three
14 Motion to Suppress evidence seized pursuant to a search
15 warrant in the affidavit and in that the affidavit is
16 insufficient to find a probable cause the state would say
17 that Mr. Lemel should make a more definite argument as to
18 the insufficiency as to probable cause - -

19 THE COURT: Let me see the search warrant.

20 SOLICITOR LIPINSKI: Thank you, Your Honor.

21 THE COURT: Your motion is that the affidavit
22 supporting the search warrant does not establish probable
23 cause.

24 MR. LEMEL: Yes, sir.

25 THE COURT: Okay. Mr. Lemel, is there anything you

1 want to say?

2 MR. LEMEL: Your Honor, with regard to the affidavit
3 that was obtained with the search warrant, breaking it down
4 there is basically three sentences that states the reason
5 for the affiants belief that the property sought on the
6 subject premises the first sentence says that the York
7 County Sheriff's Office responded to an assault call at
8 [REDACTED] in Rock Hill and that upon arrival found
9 the victim Loretta B. Moss lying on the floor in a fetal
10 position suffering from assault and rape. There is nothing
11 contained in that sentence obviously that directs us toward
12 the residence. The next sentence is similar it says she
13 was bleeding from several different locations on her body.
14 Here again this doesn't give us any information about the
15 [REDACTED] address and then it says the suspect fled
16 the scene and was seen running towards and going into the
17 residence located at [REDACTED] in Rock Hill. Your
18 Honor, there is no information contained as to the basis
19 for the affiants knowledge how he knew this, who he heard
20 it from. The veracity or reliability of the individual he
21 heard it from or any corroborating aspects it would
22 indicate anything other than a bold statement that he fled
23 the scene and was seen running towards or going into the
24 residence. Without some additional information as to what
25 the nature of the information was, who it was received from

1 and their liability it is the defense's position that one
2 sentence does not provide probable cause to a magistrate to
3 issue a warrant.

4 THE COURT: Solicitor.

5 SOLICITOR LIPINSKI: May it please the court, Your
6 Honor. The State doesn't believe that a search warrant is
7 sufficient on its face. Specifically Lieutenant Miller is
8 here to testify. They have an obvious assault and a rape
9 occurring. You have the extenuating circumstances being in
10 that the suspect fled into this residence what he might
11 have done there in terms of disposing of the evidence
12 leaving evidence behind or in any nature of carrying away
13 evidence of the scene in question is information that this
14 officer received. He was the officer who actually
15 responded to the scene, Your Honor, this wasn't something
16 that was called in to him.

17 THE COURT: Where are you getting all of this
18 information because it is not in this affidavit and if it
19 were you wouldn't be having this hearing?

20 SOLICITOR LIPINSKI: Thank you, Your Honor. We will
21 certainly put up Lieutenant Miller to indicate what he told
22 the magistrate orally and initially I think he just filled
23 in the blanks and may answer those questions.

24 THE COURT: Put him up.

25 SOLICITOR LIPINSKI: Lieutenant Miller.

W. J. MILLER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

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1 MADAME CLERK: Sir, I need to swear you in.

2 (WHEREUPON: LIEUTENANT W.J.

3 MILLER, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS

4 FOLLOWS:)

5 MADAME CLERK: Thank you, you may be seated.

6 DIRECT EXAMINATION

7 LIEUTENANT W.J. MILLER BY SOLICITOR LIPINSKI:

8 Q. Lieutenant Miller, you are obviously employed at the

9 York County Sheriff's Office.

10 A. Yes I am.

11 Q. And in what capacity?

12 A. Lieutenant.

13 Q. Over what division?

14 A. Juvenile and sex crimes.

15 Q. And in June of '08 was that your similar position?

16 A. No I was a detective in the property crimes division.

17 Q. And did you have the occasion to be called out to the

18 Zinker Road location on June 8 of 2008?

19 A. I did.

20 Q. And why did they call you out?

21 A. It was in reference to an assault and a rape.

22 Q. And were you on call that weekend or were you just

23 providing support?

24 A. I was on call.

25 Q. You were on call?

W. J. MILLER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

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- 1 A. Yes.
- 2 Q. And were you the first detective that responding to
3 this scene or were there others?
- 4 A. I was the first detective brought to the scene.
- 5 Q. There were other officers perhaps that proceeded you?
- 6 A. Yes.
- 7 Q. And just describe briefly what you saw at the crime
8 scene when you arrived there?
- 9 A. When I arrived there were a couple of uniform patrol
10 officers protecting the crime scene and they had already
11 taken Ms. Moss off to the hospital and there was nobody
12 there was nobody there just crime scene. At that time once
13 I found out from them what was going on I called out the
14 appropriate people.
- 15 Q. And did you have the occasion to speak with any
16 witnesses that were at the crime scene?
- 17 A. Yes I did.
- 18 Q. And who were those if you recall?
- 19 A. Russell Berard.
- 20 Q. And do you know his relation to Adam Berard?
- 21 A. Brother.
- 22 Q. And did you take a statement from Mr. Berard?
- 23 A. Yes I did.
- 24 Q. What was the context of that statement?
- 25 A. He stated that he and his girlfriend had walked up to

W. J. MILLER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
IN CAMERA

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1 the house and saw Mr. Berard here, Adam, on top of his
2 grandmother and heard her start screaming and that's when
3 he went in the house. And at that time he stated that Adam
4 jumped up and ran and he saw him run to go to the house
5 beside Ms. Moss's house.

6 Q. And just to be clear because obviously the court
7 hasn't been out there 2410 you got another search warrant
8 that night as well; is that correct?

9 A. Correct.

10 Q. For [REDACTED] [REDACTED]?

11 A. Yes.

12 Q. And that is where the crime occurred? That was Ms.
13 Loretta Moss's residence?

14 A. Right.

15 Q. And immediately next door is the residence you put in
16 your search warrant of Doug and Cecelia Berard?

17 A. Correct.

18 Q. Which would be Adam's parents?

19 A. Yes.

20 Q. Were you aware of that on the night in question that
21 that's who they were taking out?

22 A. Yes, ma'am, we talked with them on the phone as they
23 were on their way back from Myrtle Beach.

24 Q. And did you do that prior to getting the search
25 warrant?

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- 1 A. Yes, ma'am.
- 2 Q. And how did you come to talk with them?
- 3 A. We were trying to find out exactly what the situation
- 4 was as far as who lived there and we were going to start
- 5 off with consent to search.
- 6 Q. And were you able to get consent from them?
- 7 A. It was verbal consent yes but in the seriousness of
- 8 the crimes we went ahead and got a written search warrant.
- 9 Q. So you got the verbal consent from Doug and Cecile,
- 10 Berard and they actually live there?
- 11 A. Right.
- 12 Q. And then you said out of the abundance of caution went
- 13 and got a search warrant?
- 14 A. Correct.
- 15 Q. And because Mr. Berard did he have a room at the
- 16 residence? Were you aware of that?
- 17 A. Yes they said that he lived there.
- 18 Q. And so you go to speak to Judge Young I believe?
- 19 A. Yard.
- 20 Q. I'm sorry, Judge Yard.
- 21 A. Yes.
- 22 Q. Local magistrate here. Do you recall about what time
- 23 you got to him that night?
- 24 A. It was probably close to maybe an hour after arriving
- 25 at the scene after I got everybody else to the scene that

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1 needed to be there.

2 Q. You left to go get the search warrant?

3 A. Correct.

4 Q. And you said the verbal consent you got over the
5 phone. Do you remember calling and talking to Doug or
6 Cecile or both?

7 A. I personally did not get it. It was one of the
8 detectives that called her that came out with me.

9 Q. And do you recall who that would have been?

10 A. It would have either been Hager or Lieutenant Hager or
11 Russ Yeager.

12 Q. And you stated in the search warrant that they had
13 responded to an assault called at [REDACTED] and in
14 response you met with the victim Loretta. Did you give the
15 magistrate an idea of the time in relation to getting the
16 search warrant as to you getting there and the need to go
17 inside?

18 A. Yes. I went down and explained to him what exactly had
19 happened before I ever asked him to sign the search
20 warrant.

21 Q. And what was your conversation with him?

22 A. I went through from what I had been told what had
23 happened and that Adam Berard lived next door and had a
24 room there and that I needed a search warrant for the
25 actual crime scene so we could get crime scene in there to

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1 go ahead because Ms. Moss was not able to give us any
2 information at that time. And then I said I need a search
3 warrant because he was seen running from Ms. Moss's house
4 back to the house he lives at and running in and going
5 inside.

6 Q. And did you further speak and tell the magistrate you
7 had taken a statement from the brother and that's who had
8 seen him running into the residence?

9 A. Yes I did.

10 Q. All right. Did you fill in any other information that
11 you recall with Judge Young?

12 A. No that's all the information I had at the time.

13 Q. Did you have any information -- it states in here that
14 he fled the residence. Did you have any information that
15 he had subsequently left the residence as well?

16 A. Yes.

17 Q. You didn't think you were going in there to find him?

18 A. No. We weren't going in there to find him. We knew
19 that he had already left because his brother said he left
20 on a moped.

21 Q. Was that information you recall provided to the
22 magistrate?

23 A. Yes. I had already taken the statement from Russell
24 yes.

25 Q. That's all we have, Your Honor, as to the oral

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1 supplication of the search warrant.

2 THE COURT: Direct?

3 CROSS EXAMINATION

4 LIEUTENANT W.J. MILLER BY MR. LEMEL:

5 Q. Now, Officer, you said you took a statement from
6 Russell Berard; correct?

7 A. Correct.

8 Q. Have you had any contact with Mr. Berard prior to this
9 night?

10 A. No.

11 Q. Did you know him at all?

12 A. No.

13 Q. Did you know anything about his reputation in the
14 community?

15 A. No.

16 Q. Do you know anything about for his truthfulness,
17 honesty by any prior contact you ever had with him?

18 A. No, sir.

19 Q. You stated that you took a statement from him the
20 night of the 7th; correct?

21 A. Correct.

22 (DEFENSE ATTORNEY SHOWING DOCUMENTS TO SOLICITOR.)

23 SOLICITOR LIPINSKI: That's fine. I'm sorry.

24 MR. LEMEL: Your Honor, if I may approach the witness?

25 Do you recognize that statement?

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1 A. I sure do.

2 Q. Is that the statement you took from Russell Berard
3 that night?

4 A. Yes, sir.

5 Q. Is that his handwriting or did you write that out?

6 A. No it's his handwriting.

7 Q. Now on this statement as you look at it and if you
8 need to look at it again just please tell me okay?

9 A. I'm all right.

10 Q. It does say past where he went into the house okay.
11 Said I came into the house and saw him on top of her. Says
12 I confronted him he left on his moped. Then I helped her
13 get dressed and washed her hands; correct?

14 A. That's correct.

15 Q. No in this statement actually does it indicate here
16 that he saw her -- he saw Adam go into the residence at
17 [REDACTED]; correct?

18 A. No, sir, not in that statement.

19 Q. That's not contained in the statement. That's what
20 you were going to the magistrate with; correct?

21 A. And with what he also told me.

22 Q. Did you show the magistrate that statement?

23 A. Probably not.

24 Q. Okay. Once you were at the magistrate you said you
25 had additional information that there was nobody else in

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IN CAMERA REDIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 the residence at that point particularly Mr. Adam Berard
2 was not in the residence at that time?

3 A. No, sir, we didn't believe that he was in there.

4 Q. So to you believe at that point in time there was no
5 danger of risk that evidence was being destroyed inside
6 there because he was not present at that location?

7 A. That's why we got the search warrant.

8 Q. I understand. But my question to you is was there any
9 belief on your part that somebody was inside [REDACTED]
10 destroying evidence at that point in time?

11 A. We didn't know if anybody came in the house no, sir.

12 Q. So the answer to that would be no there wasn't any
13 risk of any evidence being destroyed?

14 A. I don't know that. All I'm saying is I don't know --
15 we did not know there was anybody in the house or not.

16 Q. Okay. But your information was that Mr. Adam Berard
17 was not in the house?

18 A. Right he had already left.

19 Q. No further questions, Your Honor.

20 SOLICITOR LIPINSKI: Just briefly one question.

21 REDIRECT EXAMINATION

22 LIEUTENANT W.J. MILLER BY SOLICITOR LIPINSKI:

23 Q. Actually without any evidence being destroyed you
24 don't know whether or not he had placed his clothes in a
25 washing machine or anything like that?

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IN CAMERA

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1 A. No.

2 Q. Start any fire inside there as far as you knew?

3 A. No, ma'am.

4 Q. So while he wasn't in there doing it there certainly
5 could have been that risk that the evidence could have been
6 in jeopardy?

7 A. That's correct.

8 Q. That's all we have from Lieutenant Miller, Your Honor.

9 THE COURT: All right any further questions?

10 RE CROSS EXAMINATION

11 LIEUTENANT W.J. MILLER BY MR. LEMEL:

12 Q. Did you see any signs of a fire?

13 A. No, sir.

14 THE COURT: All right you can step down.

15 Any other evidence on this motion?

16 SOLICITOR LIPINSKI: Your Honor, we put Lieutenant -
17 I'm sorry, we put Judge Yard on standby out of the
18 abundance of caution however I don't have any reason to
19 believe his testimony would be any different. However I
20 would be more than willing to call him; he is working
21 tonight however and there may be a chance that we might not
22 be able to get to him until about 4:30. He may be sleeping
23 given that he is a bond magistrate. I did talk to the bond
24 office and ask them to try to get a message to him.

25 THE COURT: Do you want to make any argument? What I

1 am going to do is I am going to rule without prejudice to
2 the State's right to call the judge later if they choose to
3 do so in which case I will reconsider my ruling if
4 necessary.

5 Any argument?

6 MR. LEMEL: Your Honor, at this time we would argue
7 pursuant to State versus Johnson, Your Honor, that's 302
8 S.C. 243, 395 S.E. 2D 167, Your Honor. I have a copy for
9 the court.

10 Your Honor, that the affidavit and oral supplement
11 indention that was provided by the detective to the
12 magistrate Ms. Carter did not set forth any information
13 regarding the reliability of the person who provided that
14 information. There was no corroboration of the statement
15 by Mr. Russell Berard by anyone else outside in law
16 enforcement and absent any additional information regarding
17 the source of this information we did not hear any
18 testimony as to any vouching for the information that was
19 provided to the magistrate basically through the detective
20 that came from Russell Berard sufficient to establish Mr.
21 Russell Berard's veracity or truthfulness or recitation
22 such that the magistrate could base the issuance of a
23 warrant solely on the statement of this party. There
24 basically is no other testimony that we have as far as the
25 reason for the warrant to be issued. As additional support

1 for this position additional -- a number of additional
2 cases that would be relevant basically stand for the same
3 proposition, Your Honor, we would also cite State versus
4 Gentile 373 S.C. 506, 646 S.E. 2D 171. Again I have a
5 copy.

6 THE COURT: I don't want copies of them.

7 MR. LEMEL: Your Honor, and State versus Dunbar 361
8 S.C. 2D 240, 603 S.E.2D 615

9 THE COURT: I deny the motion to suppress. In the
10 first place the State has proven that the search was
11 consented to by the owner of the residence. And the second
12 place the affidavit itself is very close to showing
13 probable cause and really may even do it. The point that
14 Mr. Lemel made that there is nothing in the affidavit that
15 does one of two things and the first would be that it
16 explained how it is that the witness knows that the suspect
17 went in the house or the fact that it was this defendant's
18 house or that's where he lived. It's not necessary in my
19 opinion to prove that the suspect ran in there but to
20 simply know that it is his house is enough to prove
21 probable cause. Whether he went in there afterwards or
22 perhaps was in there before there would be probable cause
23 to support that search. But with the testimony that was
24 supplementing the affidavit given by the officer to the
25 judge probable cause is clearly established and I deny the

1 motion in this case.

2 SOLICITOR LIPINSKI: Thank you, Your Honor. May
3 Lieutenant Miller be released? I don't intend to call him
4 in my case in chief.

5 (LIEUTENANT MILLER LEAVING COURTROOM.)

6 SOLICITOR LIPINSKI: Do you want to go through the
7 list of Mr. Lemel?

8 THE COURT: I am going to go through them. All right
9 as far as the motion to sequester the witnesses during the
10 trial based on what I heard here in this hearing I don't
11 see a basis for sequestering these witnesses. Now you've
12 got the witness that relate to what actually happened. And
13 as I've heard you all describing it it doesn't sound like
14 there is more than one or two witnesses that saw anyone
15 particular thing. I guess as far as what actually happened
16 you have Ms. Moss and then you have his brother who saw a
17 small portion of what happened and the girlfriend. Did she
18 see anything of what happened?

19 SOLICITOR LIPINSKI: She would have seen substantially
20 what the brother saw there. But now the State's response
21 to that is - -

22 THE COURT: I just want to know whether or not they
23 saw the same thing.

24 SOLICITOR LIPINSKI: Yes substantially yes, sir.

25 THE COURT: In that I don't see a basis for

1 sequestering the witnesses. Now so is anything else, is
2 any subject, any other event that is going to be testified
3 to or subject matter that's going to be testified to that
4 you want me to consider before I make a final ruling on
5 sequestering the witnesses?

6 SOLICITOR LIPINSKI: Your Honor, I would request
7 specifically that those witnesses, those factual witnesses
8 do need to be sequestered. Your Honor, there are issues in
9 this situation where the primary individual involved in the
10 case Ms. Moss sort of was in and out of consciousness. I
11 think testimony would be used to her exact mental state was
12 pretty limited at that point in time by her own statement
13 to law enforcement so certainly given that fact that her
14 exact memory pursuant to those statements that she gave to
15 law enforcement is rather dim on some key issues. Those
16 particular fact witnesses are in fact crucial and if they
17 are allowed to witness each other's and supplement each
18 other's testimony and more importantly see the cross
19 examination and see what areas I am going to be delving
20 into I think it would directly impact the probability to
21 present a defense given the fact that she does have that
22 mental infirmity at the time she issued the statement to
23 the police about the incidents. So I think it has a direct
24 bearing on those particular situations, Your Honor.

25 THE COURT: I deny the motion to sequester the

1 witnesses. All right the second motion is to determine the
2 record - you all said you all could work that out. Do you
3 need any assistance from me in figuring this out now?

4 MR. LEMEL: Your Honor, I would just like to state it
5 on the record in advance so we will know exactly; preparing
6 throughout the trial the possibility of my client being
7 able to testify or not. So as we go through the trial to
8 exactly know what would be -- and also the manner in which
9 it could potentially be introduced, Your Honor, given the
10 fact that at least one of the incidents from Ohio - - -

11 THE COURT: All right what do you have?

12 MR. LEMEL: - - - regarding a sex offense.

13 SOLICITOR LIPINSKI: Your Honor, he has a breaking and
14 entering and attempted burglary from June 4th 2007.

15 THE COURT: Breaking and entering and an attempted
16 burglary?

17 SOLICITOR LIPINSKI: Yes, Your Honor.

18 THE COURT: From here in South Carolina?

19 SOLICITOR LIPINSKI: No, Your Honor, from Ohio.

20 THE COURT: What's the maximum penalty for those two;
21 two different convictions?

22 SOLICITOR LIPINSKI: Yes, sir, Your Honor, they were
23 both five year offenses in Ohio. I can pull those statutes
24 if need be. He received six months confined to probation.
25 for two years.

1 THE COURT: All right they meet the criteria in 609.
2 They would be admissible unless I determine that the
3 probative value does not substantially outweigh - does not
4 outweigh the prejudice to the accused.

5 SOLICITOR LIPINSKI: He has a gross sexual imposition
6 from November 21st of 2002 that was subsequently on parole
7 here in South Carolina extending well within the ten year
8 time frame. From the best that I can recall gross sexual
9 imposition would be somewhat akin to lewd act upon a minor.
10 I believe the victim was fourteen years old at the time.

11 THE COURT: What does it carry?

12 SOLICITOR LIPINSKI: It carries fifteen years I
13 believe, Your Honor.

14 THE COURT: Meets the criteria under 609 A. 1.

15 SOLICITOR LIPINSKI: I understand Mr. Lemel might have
16 an argument about prejudice.

17 THE COURT: I can see a lot of that prejudice. It's
18 just real hard I mean the only thing I know about this case
19 is what I've heard in the last twenty minutes since you've
20 been in the courtroom so it's very difficult to give you
21 any kind of meaningful guidance on how to rule on prejudice
22 and balance it until I've been through more of the trial.
23 I mean I think for that one you've got to make the
24 assumption that it's coming in. That's not a ruling. I
25 mean I'll rule right before I break if he testifies if he

1 does. All right what else you got?

2 MR. LEMEL: He has two sex offender violations, Your
3 Honor. I don't believe they carry the register.

4 THE COURT: Okay.

5 SOLICIOR LIPINSKI: He does have assault and battery
6 of a high and aggravated nature from '05 for which he got a
7 YOA and then I believe that was the offense he was on
8 probation before. I believe he was sentenced actually June
9 10 of 2008.

10 THE COURT: Well again it meets the criteria under 609
11 A 1 so it will be admitted unless I excluded under the
12 balancing. It's obviously - -

13 SOLICITOR LIPINSKI: It was reduced from a CSC,
14 attempted CSC 2D so it was sexual in nature although the
15 obviously is not going to the nature of the offense unless
16 the defendant opened that door.

17 THE COURT: It's clear that's there -- all right so
18 the first you got breaking and entering, attempted
19 burglary, an ABHAN and then this sex assault thing from
20 Ohio?

21 SOLICOTOR LIPINSKI: Yes, Your Honor.

22 THE COURT: Obviously the sex assault case has the
23 most potential for unfair prejudice but the others have
24 significant potential for unfair prejudice as well. That's
25 all I can say at this point. I can't evaluate how I would

1 rule without balancing them out. But just to illustrate I
2 know that one of the questions the jury is going to have to
3 look at as a practical matter is what the defendant did and
4 that's going to be significant if he testifies on that.
5 For example there - he might just for example get up and
6 testify that she let him in; that he had consent to go in.
7 And given this question on mental state that you all have
8 described the credibility of his testimony is vitally
9 important because he is the only witness maybe who
10 testifies on that subject. I won't know whether she is
11 going to testify about that or not until I'm in the trial.
12 And then the other question then might come up of course is
13 identity. I don't know whether they will or not. There is
14 no way I can balance these concerns until I've seen all of
15 these issues developed. All right. Now I've already ruled
16 on the Denno.

17 MR. LEMEL: Your Honor, I am sorry. Can I be heard
18 just briefly as far as the initial statement that the court
19 made as far as the admissibility? With regard to the 2007
20 conviction I'll provide a copy of his NCIC. It's not clear
21 exactly what he was convicted of back in 2007. It does
22 show charges would be attempted burglary but not sure
23 that's what he was being convicted of. As I read his NCIC
24 it looks like he's potentially only been convicted of one
25 charge not two so I would ask that we have a certified

1 conviction records for that exactly what he's convicted of
2 in Ohio.

3 THE COURT: She's going to have to do that anyway.
4 The NCIC is just helpful. She's going to have to prove it
5 though some document and I'm assuming that that's what
6 she's going to prove. All right then I've already given
7 basically a ruling on Number Five. And that's granted to
8 the extent that the witnesses will be limited and not
9 allowed to testify that the defendant invoked his right to
10 remain silent or ask for an attorney. They can only
11 testify about what he said.

12 MR. LEMEL: And, Your Honor, with regard to that the
13 last question that was discussed by the detective that
14 basically was answered with I need an attorney. We would
15 ask - -

16 THE COURT: I think my ruling is abundantly clear.
17 It's useless for me to go through individual questions and
18 answers. That question can't be asked and that answer
19 can't be given. Is there anything other than these
20 convictions that you've already mentioned that would come
21 in under Number Six?

22 SOLICITOR LIPINSKI: None.

23 THE COURT: You don't intend to offer it Number 404 B?
24 If at all you are going to offer it for impeachment if he
25 testifies; is that correct?

1 SOLICITOR LIPINSKI: Correct.

2 THE COURT: Number -- have you provided the defendant
3 with the criminal records of your lay witnesses.

4 SOLICITOR LIPINSKI: No. We're not aware of any, Your
5 Honor.

6 THE COURT: Is there any reason to expect that the
7 State has not complied with Rule Five or with Brady?

8 MR. LEMEL: Your Honor, I believe that Ms. Hervey
9 Lipinski has done her very best to comply with that. She's
10 been very forthcoming with discovery in this case. That is
11 a standard motion we make in all cases to protect the
12 right.

13 THE COURT: I see that there is a witness list. Has
14 the State has already provided that under Number Nine?

15 MR. LEMEL: We made a reciprocal motion to the
16 defendant, Your Honor.

17 MR. LEMEL: Your Honor, there is no witness list from
18 the defense.

19 THE COURT: And then Number Ten and Eleven you called
20 a motion to suppress but really it's a motion in limine
21 that relates in Number Ten to the relevance of the hatchet
22 and then if it's relevant to Rule 403?

23 SOLICITOR LIPINSKI: Yes.

24 THE COURT: And then Number Eleven is clearly
25 irrelevant. Your objection there is Rule 403?

1 SOLICITOR LIPINSKI: Yes to both of those.

2 THE COURT: I'll rule on those later. I am not going
3 to rule on them right now. Okay are we done then? Are we
4 ready for lunch?

5 SOLICITOR LIPINSKI: Can we just real quick and so I
6 can let these witnesses go. Mr. Lemel and I obviously
7 intend to try to work out as much of these as we possibly
8 can. He has previously indicated that there are some
9 people at SLED who would have taken the evidence in or
10 maybe transported it from taking the DNA but did not do any
11 of the testimony. That would be Steven Storshover, Vicky
12 Perry, Selena Kinard and Sheree Brown. He has indicated he
13 will stipulate to their testimony that they would have
14 checked it in or moved it however we did not tamper with it
15 in any way. I just want to put that on the record. Katie
16 Coy who is the actual DNA toxicologist will be here to
17 testify was well as Gary Rollins who transported the items
18 to SLED.

19 MR. LEMEL: And just to beg the court's indulgence.
20 That's correct, Your Honor. That stipulation is correct.

21 SOLICITOR LIPINSKI: Their all available. We proved
22 that information to Mr. Lemel. The statement is true as to
23 Thirty-Six; Barbara Traylor, Thirty-Seven, Clara Painter
24 and Thirty-Eight, Sharon Hartsoe. They are the women who
25 work in the property and evidence here in the York County

1 Sheriff's Office; would have checked the evidence in would
2 again would not tamper with it or tested it in any way.

3 MR. LEMEL: That again is correct, Your Honor.

4 THE COURT: Okay. All right. Is there any special
5 voir dire that either of you have?

6 SOLICITOR LIPINSKI: He did provide me with a voir
7 dire, Your Honor. Do you have a copy of that?

8 THE COURT: Yea I have it. All right then so none
9 from the State. Okay. I see you all at 2:15; jury panel
10 should be here at 2:15.

11 SOLICITOR LIPINSKI: Thank you, Your HONor.

12 MR. LEMEL: Judge, I have a question. They've given
13 him a pen to use like this. The officers want to use one
14 of these little floppy pens which is fine but he's writing
15 in notes. Usually one of these things here is tiny, Your
16 Honor. I know my client I've been in close contact with
17 him for hours and hours and hours at a time. I'm not
18 worried about if he imposes any threat or risk to me. I
19 would ask that he be allowed to use a basic ball point pen,
20 Your Honor, as opposed to this plastic thing. Basically
21 they left that to the court's discretion now on these
22 things; court orders.

23 THE COURT: All right I'll let him use a pen. If he
24 really wanted to do something just reach over and grab the
25 lawyer's pen. It's not helping any.

1 THE COURT: As long as he don't take it with him.

2 MR. LEMEL: Yes, sir, it stays out here. This is our
3 pen right there.

4 SOLICITOR LIPINKSI: It might have your name on it.

5 MR. LEMEL: Unless my name is Bic, Your Honor, it
6 would not.

7 THE COURT: Okay. See you all at 2:15.

8 (COURT RECESSED FOR LUNCH AT 1:17 P. M..)

9 (BACK ON THE RECORD AT 2:15 P. M..)

10 (DEFENDANT ENTERING THE COURTROOM.)

11 THE COURT: Is there anything else? I think we've
12 covered all the pretrial issues but is there something
13 else?

14 SOLICITOR LIPINSKI: Nothing from the State.

15 MR. LEMEL: Nothing from the Defense, Your Honor.

16 THE COURT: Is it okay for him to just sit there while
17 the jury comes up? Okay. I am going to step off the
18 bench.

19 Let me know when the jury gets here okay?

20 MADAME COURT REPORTER: Yes, sir.

21 THE COURT: Okay.

22 (COURT LEFT THE BENCH MOMENTARILY AT 2:18 P.M..)

23 (JURY PANEL ENTERING COURTROOM AT 2:25 P.M..)

24 (ON THE RECORD AT 2:35 P.M..)

25 THE COURT: Be seated please.

1 All right, Ladies and Gentlemen, we are now ready to
2 begin with jury selection in the case of the State of South
3 Carolina versus Adam Lee Berard. Mr. Berard has been
4 indicted in four indictments the first of which is 2008-GS-
5 46-3019 for Assault and Battery with Intent to Kill. And
6 in that indictment it is alleged that the defendant Adam
7 Lee Berard did in York County, South Carolina on or about
8 June 7, 2008 with malice aforethought commit an assault and
9 battery upon one Loretta Moss with intent to kill the said
10 victim all in violation of Section 16-3-620 of the code of
11 laws of South Carolina.

12 In Indictment Number 2008-GS-46-3020 Mr. Berard has
13 been indicted for Criminal Sexual Conduct in the First
14 Degree and in that indictment it is alleged that the
15 defendant Adam Lee Berard did in York County, South
16 Carolina on or about June 7, 2008 willfully, unlawfully and
17 feloniously without just cause and against the victim
18 Loretta Moss -- against the victim Loretta Moss will and
19 consent and with the use of aggravated force engage in a
20 sexual battery to wit the defendant did have vaginal and
21 or anal intercourse and or oral copulation with Loretta
22 Moss against her will and without her consent all in
23 violation of Section 16-03-652 of the code of laws of South
24 Carolina.

25 And in Indictment Number 2009-GS-46-3928 Mr. Berard

1 has been indicted for Burglary in the First Degree and in
2 that indictment it is alleged that the defendant Adam Lee
3 Berard did in York County, South Carolina on or about June
4 8, 2008 willfully and unlawful entered the dwelling of
5 Loretta Moss located at [REDACTED], Rock Hill, South
6 Carolina without consent and with the intent to commit a
7 crime therein. And the defendant did commit said offense
8 during the night time and or while inside the residence the
9 defendant did commit an assault and battery upon the victim
10 and or the defendant was armed with a deadly weapon all in
11 violation of Section 16-11-311 of the code of laws of South
12 Carolina.

13 And finally in Indictment Number 2009-GS-46-3929 Mr.
14 Berard has been indicted for kidnapping and in that
15 indictment it is alleged that the defendant Adam Lee Berard
16 did in York County, South Carolina on or about June 8th,
17 2008 unlawfully seize, confine, inveigle, decoy, kidnapped,
18 abduct or carry away the victim Loretta Moss without
19 authority of law all in violation of Section 16-03-910 of
20 the code of laws of South Carolina.

21 Now, Ladies and Gentlemen, for those of you who are
22 selected to serve on the jury in this case I will spend
23 some time before we actually begin with the trial talking
24 to you about some of the rules and considerations that will
25 govern your service as jurors. But one of the things that

1 I will talk to you about is the indictments that I just
2 read to you and I just want to go ahead and mention very
3 quickly that the indictments that I just read to you are
4 not in any sense evidence of the allegations that are
5 contained within those indictments. The indictments are
6 simply the formal documents that contain the allegations
7 that have been made against the defendant and the
8 indictments serve to process the case and bring it into
9 this court for trial. The defendant has pled not guilty to
10 each of those four indictments and the plea of not guilty
11 cast the burden on the State to prove the defendant guilty
12 beyond a reasonable doubt. And for those of you who are
13 selected to serve on the jury in this case that will be
14 your job to determine whether or not the State has met that
15 burden of proof.

16 Now, ladies and gentlemen, we are about to go through
17 a series of questions and answers that we call voir dire
18 questions that relate to the issues and to the people that
19 we will be dealing with in this case so I am going to ask
20 you these questions and I want you to listen very carefully
21 to the questions. If you have any information that is
22 responsive to a question that I ask then just like we did
23 downstairs earlier I would like for you to stand and tell
24 me your name and then tell me your information.

25 Now just as I told you and explained to you downstairs

1 if you have any reason why you don't want to give your
2 information out loud in front of the other members of the
3 jury then you can just tell me that you would like to speak
4 to me privately and at that time I will get you down front
5 and you can talk with me and with the attorneys. If you
6 know something about this case or if you know some of the
7 people who are going to be involved in this case and if you
8 think that giving your information out loud in front of the
9 other members of the jury might expose those other jurors
10 to information that they should not be exposed to then in
11 that event you must come down front and answer the question
12 privately with me and with the attorneys. We will start
13 with having the lawyers to introduce themselves.

14 Ms. Lipinski, would you please introduce yourself and
15 your co-counsel to the jury.

16 SOLICITOR LIPINSKI: May it please the court. My name
17 is Mendy Hervey Lipinski. I work for Sixteen Circuit
18 Solicitor Kevin Brackett. I will be working in this case
19 along with Amy Sekora who is also an assistant Solicitor in
20 this office and also Detective Russ Yeager who is our
21 primary case maker.

22 THE COURT: Is there any member of the jury panel who
23 is related by blood or marriage to Ms. Lipinski or to Ms.
24 Sikora or do you know either of these ladies in any way; if
25 so please stand?

1 (NO RESPONSE.)

2 THE COURT: Now both Ms. Lipinski and Ms. Sikora work
3 for Kevin Brackett who is the elected solicitor of this
4 circuit. Solicitor Brackett has the responsibility of
5 prosecuting criminal cases not only here in York County but
6 also over in Union County. He has a staff of lawyers and
7 non-lawyers who work for him. Is there any member of the
8 jury panel who is related by blood or marriage to Mr.
9 Brackett or to anyone who works for him; or do you know
10 Solicitor Brackett or anyone who works for him if so please
11 stand?

12 (NO RESPONSE.)

13 THE COURT: All right, Mr. Lemel, would you please
14 introduce yourself and your co-counsel and your client to
15 the jury.

16 MR. LEMEL: May it please the court. My name is Gary
17 Lemel. I am an employee of the Sixteen Circuit Public
18 Defender's Office. I work for Harry Dest and I am joined
19 today by Mr. John Cummings who is also a employee of the
20 Sixteen Circuit Public Defender's Office. We have the
21 privilege today of representing Mr. Adam Berard.

22 Adam, if you will please stand and face the jury.

23 (DEFENDANT STOOD.)

24 THE COURT: Is there any member of the jury panel who
25 is related by blood or marriage to Mr. Lemel or to Mr.

1 Cummings or to the defendant Adam Berard or do you know
2 either of these gentlemen in any way; if so please stand?

3 (NO RESPONSE.)

4 THE COURT: As Mr. Lemel mentioned he and Mr. Cummings
5 work for Harry Dest who is the circuit defender or the
6 public defender in York County. Mr. Dest also has a staff
7 of lawyers and non-lawyers who assist him. Is there any
8 member of the jury panel who is related by blood or
9 marriage to Mr. Dest or to anyone who works for him; or do
10 you know Mr. Dest or anyone who works for him; if so please
11 stand?

12 (NO REPSONSE.)

13 THE COURT: Okay now, ladies and gentlemen, I am going
14 to go over with you a list of potential witnesses and then
15 after I have read to you that list of potential witnesses I
16 am going to ask you whether you know or are related to any
17 of these potential witnesses. If the witness is in the
18 courtroom when I call your name I would like for you to
19 stand and face the jury.

20 Agent Larry, "P.J." Patton of the South Carolina
21 Department of Probation Pardon and Parole Services.

22 Agent Tracy Swanson also with Probation Pardon and
23 Parole Services.

24 Amy Stevens with the South Carolina Law Enforcement
25 Division also known as SLED.

(1 Angie Alexander a registered nurse with the Carolina's
2 Medical Center.
3 Becky Smith with EMS.
4 Brian Allen with EMS.
5 Deputy John Osborne, York County Sheriff's Office.
6 Deputy Kevin Gwinn, York County Sheriff's Office.
7 Sergeant Henry Lee Wright; Sergeant Buddy Brown;
8 Detective Amanda Carter, York County Sheriff's Office.
9 Detective Russ Yeager, the Sheriff's Office;
10 Lieutenant W. J. Miller with the Sheriff's Office.
11 Doris Yarborough with SLED; Doctor Earl Jenkins at the
12 Piedmont Medical Center.
(13 SOLICITOR LIPINSKI: Doctor Michael Sundararaman.
14 THE COURT: Doctor Michael Sundararaman with the
15 Piedmont Medical Center. Doctor Scott McLanahan, Carolina
16 Neurosurgery. Gary Rollins with the Sheriff's Office.
17 Investigator Audra Eddie.
18 What is FSU? Oh. That is the York County Forensic
19 Unit.
20 Investigator Brian Bagwell with the Forensic Services
21 Unit; Investigator Kevin Tolson, with the Forensic Services
22 Unit; Investigator Ray Barnwell with the Forensic Services
23 Unit and Investigator Tommy Adams with the Forensic
(24 Services Unit.
25 John C. Lane; Katie Coy with SLED. Kayleigh Miller;

1 Loretta Moss.

2 (WITNESS STOOD.)

3 THE COURT: Thank you, ma'am.

4 Lieutenant Tim Hager with the Sheriff's Office;

5 Marilyn Hall, Meghan Hall.

6 (WITNESS STOOD.)

7 THE COURT: Misty Binkney, Nikki Perry with SLED;

8 Russell Berard.

9 (WITNESS STOOD.)

10 THE COURT: Selena Kinard with SLED; Sheree Brown,

11 might be Sherry Brown with SLED. Tina Elliott with the

12 York County Sheriff's Office.

13 (WITNESS STOOD.)

14 THE COURT: Barbara Traylor; Clara Painter, Sharon

15 Hartsoe, Leon Yard.

16 Is there any member of the jury panel who is related
17 by blood or marriage to any of these potential witnesses or
18 do you know any of them in any way; if so please stand?

19 All right hold on just a minute, ma'am. All right
20 tell me your name.

21 A. Brenda Widener. I grew up in the same neighborhood
22 with Ms. Elliott. I don't have any contact with her in
23 years though.

24 THE COURT: All right thank you, Ms. Widener.

25 Yes, ma'am.

1 A. Charmica Robinson. Doctor Mike Sundararaman at
2 Piedmont Medical Center I used to work with him.

3 THE COURT: How long has it been since you worked with
4 him?

5 MS. ROBINSON: It's been over a year and a half.

6 THE COURT: What is your job?

7 MS. ROBINSON: My job now or my job when I worked at
8 Piedmont?

9 THE COURT: How about when you worked with Piedmont?

10 MS. ROBINSON: A transporter.

11 THE COURT: Transporter. Okay. When you were working
12 over there how often did you see -- this is Doctor
13 Sundararaman?

14 MS. ROBINSON: Yea.

15 THE COURT: How often did you see him?

16 MS. ROBINSON: Maybe three or four times a week.

17 THE COURT: Okay. And did you have -- obviously you
18 were bringing patients I guess to see him?

19 MS. ROBINSON: Yes, sir.

20 THE COURT: Did you have the opportunity to have
21 detailed discussions with him?

22 MS. ROBINSON: No.

23 THE COURT: Okay. All right thank you, ma'am.

24 Yes, ma'am.

25 A. Donna Bruce. I know several of the officers with

1 regard to where I work at.

2 THE COURT: Okay. Tell me where you work.

3 MS. BRUCE: ISWA.

4 THE COURT: It's called what?

5 MS. BRUCE: I-s-w-a Development Corporation.

6 THE COURT: Yes.

7 MS. BRUCE: Several of the officers that were
8 mentioned were actually contracted with the county with the
9 sheriff's department to patrol certain areas.

10 THE COURT: Okay. Can you tell me the names of the
11 officers you recall that you know?

12 MS. BRUCE: Mr. Brown, Buddy Brown. And I believe
13 Officer Gwinn and several of the other ones sound familiar
14 but I've not met him face to face but the other two I have.

15 THE COURT: Okay let's talk about Sergeant Buddy Brown
16 first. How often do you see Sergeant Brown?

17 MS. BRUCE: About every other week.

18 THE COURT: And do you have detailed interaction with
19 him?

20 MS. BRUCE: It's more of pick up, check kind of thing.
21 How are you doing?

22 THE COURT: Okay. How about Deputy Kevin Gwinn?

23 MS. BRUCE: He is when he comes in I have to drop off
24 these reports and things like that for our area they are
25 required to fill out reports; patrolling reports. He may

1 have to come in and bring them in and he forgets to bring
2 it in.

3 THE COURT: Okay. All right thank you, Ms. Bruce.

4 Yes, ma'am.

5 A. Brandi Tarlton.

6 THE COURT: Okay.

7 MS. TARLTON: Brian Bagwell is the one I know.

8 THE COURT: Brian Bagwell. Tell me again how you know
9 him.

10 MS. TARLTON: Our girls have gymnastics together.

11 THE COURT: Do you see him often?

12 MS. TARLTON: Just when he's coming to pick up.

13 THE COURT: All right thank you, Ms. Tarlton.

14 Would the fact that you folks know these potential
15 witnesses would that interfere with either your willingness
16 or your ability to give both the State and the Defendant a
17 fair and impartial trial, Ms. Widener?

18 MS. WIDENER: No, sir.

19 THE COURT: Ms. Robinson?

20 MS. ROBINSON: No, sir.

21 THE COURT: Ms. Bruce?

22 MS. BRUCE: No, sir.

23 THE COURT: Ms. Tarlton?

24 MS. TARLTON: No, sir.

25 THE COURT: Is there any member of the jury panel or

1 any member of your immediate family who now or at any time
2 in the past has been an employee of any law enforcement
3 agency or police department whether that be city or county
4 or state or federal or even military police; if so please
5 stand?

6 Ma'am, tell me your name please?

7 A. Lori Jones.

8 THE COURT: Who is it in your family is a - -

9 MS. JONES: Two cousins that are police officers in
10 Belmont and a brother-in-law that was a military police.

11 THE COURT: Okay. Thank you, Ms. Jones.

12 All right, sir.

13 A. Michael Carey, my brother is a detective in upstate
14 New York.

15 THE COURT: All right, Mr. Carey, thank you.

16 Yes, ma'am.

17 A. I have a sister who was a detective with the
18 Charleston County Police Department for ten years now with
19 Probation and Parole in Oregon.

20 THE COURT: Tell me your name.

21 A. Shirley Steiniger.

22 SOLICITOR LIPINSKI: Could you repeat that number?

23 THE COURT: 208. Thank you, ma'am.

24 Yes, ma'am.

25 A. My name is Mary Raffensperger; I have a cousin who is

1 something in Springfield, Ohio.

2 MR. LEMEL: Your Honor, can we get that number again,
3 I'm sorry.

4 THE COURT: 180. Thank you, ma'am.

5 Yes, sir.

6 A. Barry Powers, Senior.

7 THE COURT: I'm sorry, repeat your name please?

8 A. Barry Powers, Senior.

9 THE COURT: I got you. 178. Yes, sir.

10 MR. POWERS: My nephew married a city cop; name is
11 Ryan Hamick.

12 THE COURT: Here in York?

13 MR. POWERS: Yes.

14 THE COURT: Your nephews name?

15 MR. POWERS: That's my nephew by marriage.

16 THE COURT: And tell me his name again.

17 MR. POWERS: Ryan Hamick.

18 THE COURT: All right. Thank you.

19 Yes, ma'am.

20 A. Phyllis White. My ex-husband works for the York City
21 PD; Phillip White.

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

23 Yes, ma'am.

24 A. Donna Bruce. I prefer to give you the name in
25 private.

1 THE COURT: Okay. Hold on just one second then I'll
2 get you to come up.

3 Yes, ma'am.

4 A. Mary McCrorey.

5 THE COURT: Okay, ma'am.

6 MS. MCCROREY: I have one nephew that works with the
7 Rock Hill Police Department and I have another nephew from
8 Atlanta that works with Atlanta SLED.

9 THE COURT: Okay. What is the name of your nephew who
10 works for Rock Hill?

11 MS. MCCROREY: Kenneth McCrorey.

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

13 Ms. Tarlton.

14 MS. TARLTON: My uncle works for Rock Hill Police
15 Department.

16 THE COURT: For what department?

17 MS. TARLTON: Rock Hill Police Department.

18 THE COURT: Yes, sir.

19 A. Eugene Nivens. Years ago my uncle was a city
20 policeman down in Columbia, South Carolina.

21 MR. LEMEL: Your Honor, can we get his number also.

22 THE COURT: 166.

23 MR. NIVENS: His name is John Robinson if you need to
24 know that.

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

1 Okay, Ms. Bruce, come on down please.

2 MADAME COURT REPORTER: Judge, there is another one
3 over here.

4 THE COURT: I'm sorry, sir. Tell me your name.

5 A. Amos Williams.

6 THE COURT: Mr. Williams.

7 MR. WILLIAMS: I had a second cousin who worked with
8 the Gaston County Police Department.

9 THE COURT: Okay. Thank you.

10 Come on, ma'am. Let me see the attorneys please.

11 (COURT LEFT BENCH; CONFERENCE AT FRONT OF COURTROOM.)

12 MS. BRUCE: I have a cousin who is an undercover SLED
13 officer for York County, B.J. McCantz.

14 THE COURT: Okay. Thank you.

15 (COURT RETURNED TO BENCH.)

16 THE COURT: Now you will recall that I have read to
17 you the indictments from four separate charges. I'm just
18 going to give you again for purposes of introducing this
19 next question what the names of the alleged crimes are.
20 The first is for assault and battery with intent to kill.
21 The second is for criminal sexual conduct in the first
22 degree. The third is for burglary in the first degree and
23 the forth is for kidnapping.

24 Is there any member of the jury panel or any member of
25 your immediate family who has ever been involved with any

1 type of case that you think is similar in nature in any way
2 that you might think is similar to the crimes; the alleged
3 crimes that I have just read about to you from these
4 indictments. Of course there are numerous ways that you or
5 your family members might have been involved in such
6 crimes. It's possible that you or a family member was at
7 one time accused of such a crime you or a family member
8 could possibly have been a victim of a crime such as these;
9 it's possible that you were a -- possible or an actual
10 witness to a crime such as this. Or you could have been
11 involved in the investigation of such a crime. If you or
12 any member of your immediate family have ever been involved
13 in any crime that you believe is similar in nature to those
14 which have been indicted and charged in this case and if
15 you have ever been involved in any of the ways that I have
16 described or otherwise then please stand. And I will
17 remind you as you do so that you are free to come down
18 front and speak to me privately. But I would like for
19 everyone to stand right now - -

20 Ma'am, just hold on a second and I will let you come
21 down in just a minute. All right let me just get your
22 names and then you can tell me -- if you want to go ahead
23 and tell me about it you can. If you want to speak to me
24 privately you can just say that I want to speak to you
25 privately.

1 Mr. Williams.

2 MR. WILLIAMS: Privately.

3 THE COURT: All right, sir.

4 Ms. Widener.

5 MS. WIDENER: My daughter was assault and battery with
6 intent to kill and I was a witness to it. I don't think I
7 can give a biased opinion.

8 THE COURT: Ms. Widener, I am going to get you to come
9 down in just a minute and finish explaining that to me.

10 Ma'am, your name?

11 A. Pamela Snyder.

12 THE COURT: Ms. Snyder, do you want to speak to me
13 privately or tell me now?

14 MS. SNYDER: Privately please.

15 THE COURT: Okay. Yes, ma'am.

16 A. Privately please.

17 A. Shirley Steininger, I have a nephew somewhere in
18 Oregon he was convicted of rape and sodomy.

19 THE COURT: How long ago what that, MS. Steininger?

20 MS. STEININGER: I would say at least fifteen years
21 ago.

22 THE COURT: Other than just knowing that it happened
23 were you involved in any way in the case?

24 MS. STEININGER: I know nothing of anything that
25 happened. I mean I wasn't even in court. I don't know

1 nothing about it. I haven't seen him since he was ten.

2 THE COURT: And how old would he be now?

3 MS. STEININGER: He was thirty-four.

4 THE COURT: Have you heard your other family members
5 such as your sister or your husband's sister or brother
6 talking about what happened?

7 MS. STEININGER: None of us really know what happened
8 or know anything that happened during that time period.
9 All we know is he spent time in the Oregon State
10 Penitentiary.

11 THE COURT: Okay. Thank you, Ms. Steininger.

12 Ms. Bruce.

13 MS. BRUCE: I have a uncle prior to my birth who was
14 actually charged and convicted with assault - sexual
15 assault.

16 THE COURT: Where was that, ma'am?

17 MS. BRUCE: It was in South Carolina. He served in
18 Columbia I'm not sure exactly sure how long he served. It
19 was prior to me being born but I do remember going and
20 seeing him up until probably be up until the time I was
21 five other than that I have not seen him.

22 THE COURT: Okay. And you, sir, your name?

23 You can set down, Mr. Williams.

24 A. I was living in Columbia last year. The house got
25 broken into and they just came and questioned us.

1 THE COURT: What was your name, sir?

2 A. Brandon James.

3 THE COURT: And to your knowledge has anybody been
4 caught and accused of that crime?

5 MR. JAMES: No, sir.

6 THE COURT: So at this point you don't have any on
7 going interaction with law enforcement?

8 MR. JAMES: No, sir.

9 THE COURT: All right. Now anybody else?

10 Thank you, Mr. James. Anybody else?

11 (NO RESPONSE.)

12 THE COURT: Now as for Ms. Steininger, Ms. Bruce and
13 Mr. James, would the fact that you were involved in the
14 situations that you described would that interfere in any
15 way with either your willingness or your ability to give
16 both the State and the Defendant a fair and impartial
17 trial?

18 Ms. Steininger?

19 MS. STEININGER: No, sir.

20 THE COURT: Ms. Bruce?

21 MS. BRUCE: No, sir.

22 THE COURT: Mr. James?

23 MR. JAMES: No, sir.

24 THE COURT: Okay let me see Mr. Williams, Ms. Widener,
25 Ms. Snyder and Ms. Raffensperger. If you all will form a

1 line right there in front.

2 Mr. Williams, I'll get you down first so hold on just
3 a minute.

4 THE COURT: Mr. Williams, come on up please, sir.

5 If you will just come stand right here these lawyers
6 will pull in where they can hear you. All right go ahead
7 and tell me about it.

8 MR. WILLIAMS: James Johnson he has a very long
9 record. A lot of things I don't know about but I know it
10 was an assault.

11 THE COURT: How old is he?

12 MR. WILLIAMS: He's out now; he's my cousin.

13 THE COURT: How close of a cousin is he?

14 MR. WILLIAMS: Like a forth.

15 THE COURT: Okay were you all ever close as friends?

16 MR. WILLIAMS: Yea he comes around my house a lot. He
17 comes to my neighbor.

18 THE COURT: So you see him?

19 MR. WILLIAMS: Yes.

20 THE COURT: And you say you don't really know the
21 facts of the cases?

22 MR. WILLIAMS: No I really don't.

23 THE COURT: Do you know any of the facts of the cases?

24 MR. WILLIAMS: I really don't.

25 THE COURT: Okay.

1 MR. WILLIAMS: I know he served a lot of time.

2 THE COURT: Do you know how much time he served?

3 MR. WILLIAMS: I know a lot of years.

4 THE COURT: Five, ten, fifteen?

5 MR. WILLIAMS: Maybe fifteen.

6 THE COURT: Do you know anything about where those
7 crimes were committed. For example were they committed in
8 York County or do you think they were somewhere else?

9 MR. WILLIAMS: No.

10 THE COURT: You don't know.

11 MR. WILLIAMS: No.

12 THE COURT: All right. Would the fact that you have a
13 cousin who has served time for these crimes and he's
14 reasonably close to you now would that interfere in any way
15 with either your willingness or your ability to give both
16 the State and the Defendant a fair and impartial trial?

17 MR. WILLIAMS: No.

18 THE COURT: All right, sir, you can return to your
19 seat.

20 With that I am assuming that you don't have any
21 further questions? All right.

22 Ms. Snyder. She's 205.

23 Yes, ma'am.

24 MS. SNYDER: It was actually mentally and physically
25 and sexually abused and my life was threatened by my ex

1 husband. I don't know if I can be partial because when I
2 heard what you read out the first thing I thought was he's
3 guilty and I'm sorry for that.

4 THE COURT: We appreciate you being honest with us. I
5 am going to let you step back over to the rail just a
6 second. I'll be right back with you.

7 Any objection to removing her?

8 MR. LEMEL: Yes remover her.

9 THE COURT: I assume that would be your motion?

10 MR. LEMEL: Yes, sir.

11 THE COURT: Ma'am, you can be excused. Thank you.

12 Actually, Ms. Snyder, come up for just one second
13 please. I am going to go ahead and remove you from the
14 jury in this case. I should have let you know that so I
15 apologize okay. Thank you for telling us about it. Stay
16 with us for right now but you won't be on a jury.

17 MS. SNYDER: Thank you.

18 THE COURT: Ms. Widener.

19 She's Number 239.

20 Yes, ma'am.

21 MS. WIDENER: My daughter was severally beaten seven
22 years ago by her ex-husband and he kidnapped her daughter.
23 The York County Sheriff's Office handled it. My thoughts
24 there I'm not sure. I'll try my best to look at the
25 evidence. You know it's just so fresh in my mind what she

1 went through and all the things. You know I've seen
2 evidence that they brought forth. I think my opinion I
3 just couldn't do it.

4 THE COURT: Okay. All right thank you, Ms. Widener,
5 you can return to your seat.

6 MR. LEMEL: Same motion, Your Honor.

7 THE COURT: She's removed.

8 All right. Ms. Raffensperger.

9 MS. RAFFENSPERGER: I have a nephew in Springfield,
10 Ohio he was tried and convicted of breaking and entering
11 and rape. He served five years got out and hung himself.

12 THE COURT: Okay. Were you in any way involved in the
13 case as a witness?

14 MS. RAFFENSPERGER: No. I just know what my sister
15 told me.

16 THE COURT: Were you involved in either at the time
17 the crime was committed or at the time he was sentenced or
18 at the time he hung himself or were you involved very
19 extensively in dealing with your sister?

20 MS. RAFFENSPERGER: Yea.

21 THE COURT: Okay.

22 MS. RAFFENSPERGER: Through it all till he hung
23 himself.

24 THE COURT: Because of your involvement in that do you
25 think that you can be a fair and impartial juror in this

1 trial of this case?

2 MS. RAFFENSPERGER: I really don't see why not. I
3 don't know to tell you the truth.

4 THE COURT: You don't what?

5 MS. RAFFENSPERGER: Don't know to tell you the truth.

6 THE COURT: You don't really know if you can be a fair
7 or not?

8 MR. RAFFENSPERGER: I think I can be fair. My sister
9 told me he was innocent. I just listened to her; read the
10 papers. Knew what the papers said. I was with her when he
11 was sentenced. He was in prison several times.

12 THE COURT: You were there when he was sentenced?

13 MS. RAFFENSPERGER: Yes.

14 THE COURT: Well did he go to trial or did he plead
15 guilty?

16 MS. RAFFENSPERGER: He took a plea for four or five
17 years and in five years he came out.

18 THE COURT: Okay. Did he continue to maintain his
19 innocence?

20 MS. RAFFENSPERGER: Yes.

21 THE COURT: Wasn't he required to admit his guilt when
22 he pled guilty?

23 MS. RAFFENSPERGER: I have no idea what that consisted
24 of.

25 THE COURT: Your sister continued to believe that he

1 was innocent?

2 MS. RAFFENSPERGER: Yes. She still does.

3 THE COURT: And how about you?

4 MS. RAFFENSPERGER: I couldn't say. I really don't
5 know because prior to that he was charged with sexual
6 assault by patting someone on the butt a complete stranger.

7 THE COURT: Okay. Let me ask you to stand over there
8 at the rail for just a minute and I'll get you back up here
9 for some follow up questions.

10 Okay. Any follow up questions?

11 MADAME COURT REPORTER: Judge, I think 'she's my
12 neighbor? That's her.

13 THE COURT: That's okay. Any follow-up questions?

14 SOLICITOR LIPINSKI: She was the one who stood up
15 before, Judge, she had a doctor's appointment but she never
16 stood back up again. Remember? On Friday. I wonder if
17 that's going to be an issue?

18 THE COURT: Any follow up questions regarding the
19 issues she requested?

20 SOLICITOR LIPINSKI: I think I probably need to ask
21 the question if that affected in any way her opinion of the
22 criminal justice system. She's got a negative view we
23 convicted the wrong guy that may be something she holds
24 against us.

25 THE COURT: I got you.

1 MR. LEMEL: Judge, a very emotional when discussing
2 the nephew. My question would be the emotion because of
3 the incident with the nephew she having to come up here to
4 talk about it about where that emotion was coming from in
5 terms of how she answered she said she wouldn't be able to
6 and then she said she would. In terms - -

7 THE COURT: Okay. Ms. Raffensperger, let me get you
8 to come back up for a moment please. Is there anything
9 about this case, your nephew's case, whether it be the
10 outcome of the case or the fact that you had to deal with
11 your sister over the long years about all sorts of
12 consequences, emotional consequences on her behalf and also
13 the emotional consequences that you did see and noticed but
14 I may have been mistaken but it seemed when you walked up
15 here you got emotional in talking about it.

16 MS. RAFFENSPERGER: Yea.

17 THE COURT: Is there anything in any of that that you
18 think might interfere with your ability or your willingness
19 to be a fair - -

20 MS. RAFFENSPERGER: I think - -

21 THE COURT: - - - let me finish my question -- to be a
22 fair and impartial juror to both the State and the Defense?

23 MS. RAFFENSPERGER: I might be because I am an
24 emotional person.

25 THE COURT: So you think it might interfere?

1 MS. RAFFENSPERGER: I think it might.

2 THE COURT: Okay. All right I am going to take you
3 out of consideration in this case. I appreciate you
4 telling us about it. You can return to your seat.

5 That was your emotion?

6 MR. LEMEL: Yes, sir.

7 THE COURT: All right. She's out.

8 (COURT RETURNED TO THE BENCH.)

9 THE COURT: Let me ask the attorneys to step up here
10 for just a moment please..

11 (BENCH CONFERENCE AT 3:15 P.M. OFF THE RECORD.)

12 THE COURT: Now, ladies and gentlemen, for the
13 purposes of the next two questions I am going to tell you a
14 little something about the allegations in the case. And
15 that in particular is that the defendant Adam Lee Berard is
16 actually the grandson of the alleged victim Loretta Moss.
17 I tell you that because I want to ask whether or not --
18 well I want to tell you also that at or near the time of
19 these alleged events there was press coverage about the
20 case and that fact or that allegation of this family
21 relationship was mentioned in the press coverage. And so I
22 am mentioning that to you now to see if it jogs your memory
23 as to whether or not any member of the jury panel has ever
24 heard or read or seen or been told anything about this
25 case. If you have been please stand.

1 (NO REPSONSE.)

2 THE COURT: Also I wanted to mention that that
3 circumstance in order to ask you whether or not there is
4 any member of the jury panel who feels that this family
5 relationship inside this alleged crime would interfere with
6 your ability to be a fair and impartial juror to either the
7 State or to the Defendant; if so please stand.

8 (NO RESPONSE.)

9 THE COURT: Is there any member of the jury panel or
10 any member of your immediate family who has ever been
11 involved in any type of organization that has as a part of
12 it's purpose the increased penalties for crimes or the
13 advocacy of the rights of crime victims or the support of
14 any organization that deals with law enforcement issues? I
15 am just going to list some of these organizations by way of
16 example. One would be Mother's Against Drunk Drivers or
17 MADD. We have also as an example the South Carolina Law
18 Enforcement Officers Association or the Fraternal Order of
19 Police. Those are just by way of example. Is there any
20 member of the jury panel or any member of your immediate
21 family who has ever been involved in such an organization
22 either as a member of as a volunteer or as a contributor;
23 if so please stand?

24 (SEVERL JURORS STOOD.)

25 THE COURT: Your name, sir?

1 A. Jonathan Goff.

2 THE COURT: All right, Mr. Goff, is it you or someone
3 else?

4 MR. GOFF: I been a contributor to the South Carolina
5 Law Enforcement.

6 THE COURT: All right. Thank you, Mr. Goff.

7 Yes, ma'am.

8 A. Nancy Lybrand. My husband has been a contributor to
9 the Fraternal Order of Police.

10 THE COURT: All right. Thank you.

11 MR. LEMEL: Your Honor, I am sorry, what number is
12 that?

13 THE COURT: That's Ms. Lybrand. Ma'am - -

14 She's Number 130.

15 THE COURT: Mr. Goss was 87. Is it Goss?

16 MR. GOFF: Goff, G-o-f-f.

17 THE COURT: Goff. Mr. Goff is Number 86.

18 A. Shirley Steininger, Number 208, I contribute to both
19 Fraternal Order of Police and MADD.

20 THE COURT: Ms. Steininger is Number 208 and Ms.

21 Raffensperger is Number 180.

22 Ma'am?

23 MS. RAFFENSPERGER: I also contribute to the Fraternal
24 Order of Police. My cousin up in Ohio is deputy sheriff
25 retired.

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

2 Ms. Bruce?

3 MS. BRUCE: My husband and I have both contributed to
4 the South Carolina Law Enforcement Division for a number of
5 years.

6 THE COURT: Is there any member of the jury panel who
7 has formed or expressed any opinion as to the guilt or
8 innocence of this defendant; if so please stand?

9 (NO RESPONSE.)

10 THE COURT: Is there any member of the jury panel who
11 has any bias or prejudice either towards or against the
12 State or the Defendant in connection with this case; if so
13 please stand?

14 (NO RESPONSE.)

15 THE COURT: Is there any member of the jury panel who
16 knows of any reason why you could not give both the State
17 and the Defendant a fair and impartial trial; if so please
18 stand?

19 (NO RESPONSE.)

20 THE COURT: Ms. Raffensperger, we've already spoken to
21 you about it thank you, ma'am.

22 Any additional voir dire from the State?

23 SOLICITOR LIPINSKI: None.

24 THE COURT: From the Defense?

25 MR. LEMEL: Your Honor, we would request that Defense

1 Number Four specific inquiry.

2 THE COURT: I think I asked that question.

3 MR. LEMEL: If we can approach, Your Honor?

4 THE COURT: Sure.

5 (BENCH CONFERENCE AT 3:25 P.M. OFF THE RECORD.)

6 THE COURT: Okay. Does any member of the jury panel
7 contribute money to or volunteer time to any victims
8 support organization; if so please stand?

9 (NO RESPONSE.)

10 THE COURT: Any additional voir dire from the Defense?

11 MR. LEMEL: No, sir, Your Honor.

12 THE COURT: Are you all ready to strike?

13 SOLICITOR LIPINSKI: Yes, Your Honor.

14 MR. LEMEL: Yes, Your Honor.

15 THE COURT: Ladies and gentlemen, your names have seen
16 sorted randomly by a computer and we have them on a sheet
17 up here and your names will be called one at a time. When
18 your name is called please gather your belongs and come
19 down front and stand right here in the center of the
20 courtroom in front of the clerk's bench and please face the
21 attorneys. We will first hear from Ms. Lipinski who will
22 ask either that you be excused or that you be presented to
23 the defense. We will then hear from Mr. Lemel who will ask
24 that you be excused or that you be seated on the jury and
25 we'll continue with that process until we have twelve

1 jurors and a couple of alternates.

2 Strikes are five and ten.

3 All right you may proceed.

4 MADAME CLERK: Number 21, Wayne Blair.

5 (WHITE MALE COMING FORWARD.)

6 THE CLERK: What says the State?

7 SOLICITOR LIPINSKI: Present the juror.

8 MADAME CLERK: Defense?

9 MR. LEMEL: Please present the juror.

10 MADAME CLERK: Please have a seat in the jury box.

11 Number 231, Jeffrey Ware.

12 (BLACK MALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 SOLICITOR LIPINSKI: Please present the juror.

15 MADAME CLERK: The Defense?

16 MR. LEMEL: Please seat the juror.

17 MADAME CLERK: Please have a seat in the jury box,

18 sir.

19 Number 154, William Milwood.

20 (WHITE MALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 SOLICITOR LIPINSKI: Please present the juror.

23 MADAME CLERK: And the Defense?

24 MR. LEMEL: Please seat the juror.

25 MADAME CLERK: Please have a seat in the jury box,

1 sir.

2 Number 86, Jonathan Goff.

3 (WHITE MALE COMING FORWARD.)

4 MADAME CLERK: What say you for the State?

5 SOLICITOR LIPINSKI: Please present Mr. Goff.

6 MADAME CLERK: Defense?

7 MR. LEMEL: Please seat the juror.

8 MADAME CLERK: Please have a seat in the jury box,

9 sir.

10 Number 175, Jessica Perry.

11 (BLACK FEMALE COMING FORWARD.)

12 MADAME CLERK: What say you for the State?

13 SOLICITOR LIPINSKI: Please present Ms. Perry.

14 MADAME CLERK: Defense?

15 MR. LEMEL: Please seat the juror.

16 MADAME CLERK: Please have a seat in the jury box,

17 ma'am.

18 Number 187, Charmica Robinson.

19 (BLACK FEMALE COMING FORWARD.)

20 MADAME CLERK: What say you for the State?

21 SOLICITOR LIPINSKI: Please excuse the juror.

22 MADAME CLERK: You are excused from this case, ma'am.

23 Number 147, Joan Medford.

24 (WHITE FEMALE COMING FORWARD.)

25 MADAME CLERK: What say you for the State?

1 SOLICITOR LIPINSKI: Please present Ms. Medford.

2 MADAME CLERK: Defense?

3 MR. LEMEL: Please excuse the juror in this matter.

4 MADAME CLERK: You are excused from this case, ma'am.

5 Number 87, Robert Goss.

6 (WHITE MALE COMING FORWARD.)

7 MADAME CLERK: What say you for the State?

8 SOLICITOR LIPINSKI: Please present the juror.

9 MADAME CLERK: Defense?

10 MR. LEMEL: Please seat the juror.

11 MADAME CLERK: Please have a seat in the jury box,

12 sir.

13 Number 248, Wendell Wright.

14 (BLACK MALE COMING FORWARD.)

15 MADAME CLERK: What say you for the State?

16 SOLICITOR LIPINSKI: Present Mr. Wright.

17 MADAME CLERK: Defense?

18 MR. LEMEL: Please seat the juror.

19 MADAME CLERK: Please have a seat in the jury box,

20 sir.

21 Number 8, Carole Arcuri.

22 (WHITE FEMALE COMING FORWARD.)

23 MADAME CLERK: What say you for the State?

24 SOLICITOR LIPINSKI: Please present the juror.

25 MADAME CLERK: Defense?

1 MR. LEMEL: Please excuse the juror in this matter.

2 MADAME CLERK: You are excused from this case, ma'am.

3 Number 166, William Nivens.

4 (WHITE MALE COMING FORWARD.)

5 MADAME CLERK: What say you for the State?

6 SOLICITOR LIPINSKI: Please present Mr. Nivens.

7 MADAME CLERK: Defense?

8 MR. LEMEL: Please seat the juror.

9 MADAME CLERK: Please have a seat in the jury box,
10 sir.

11 Number 130, Nancy Lybrand.

12 (WHITE FEMALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 SOLICITOR LIPINSKI: Please present the juror.

15 MADAME CLERK: Defense?

16 MR. LEMEL: Please seat the juror.

17 MADAME CLERK: Please have a seat in the jury box,
18 ma'am.

19 Number 210, Leslie Stewart.

20 (WHITE MALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 SOLICITOR LIPINSKI: Please present Mr. Stewart.

23 MADAME CLERK: Defense?

24 MR. LEMEL: Please excuse the juror in this matter.

25 MADAME CLERK: You are excused from this case, sir.

1 Number 70, Christopher Eubanks.
2 (WHITE MALE COMING FORWARD.)
3 MADAME CLERK: What say you for the State?
4 SOLICITOR LIPINSKI: Please excuse Mr. Eubanks.
5 MADAME CLERK: You are excused from this case, sir.
6 Number 238, Phyllis White.
7 (BLACK FEMALE COMING FORWARD.)
8 MADAME CLERK: What say you for the State?
9 SOLICITOR LIPINSKI: Please present Ms. White.
10 MADAME CLERK: Defense?
11 MR. LEMEL: Please excuse the juror in this matter.
12 MADAME CLERK: You are excused from this case, ma'am.
13 Number 41, Michael Carey.
14 (WHITE MALE COMING FORWARD.)
15 MADAME CLERK: What say you for the State?
16 SOLICITOR LIPINSKI: Present the juror.
17 MADAME CLERK: Defense?
18 MR. LEMEL: Please seat the juror.
19 MADAME CLERK: Please have a seat in the jury box,
20 sir.
21 Number 208, Shirley Steiniger.
22 (WHITE FEMALE COMING FORWARD.)
23 MADAME CLERK: What say you for the State?
24 SOLICITOR LIPINSKI: Please present the juror.
25 MADAME CLERK: Defense?

1 MR. LEMEL: Please excuse the juror in this case.

2 MADAME CLERK: You are excused from this case, ma'am.

3 Number 28, Kimberly Brewer.

4 (WHITE FEMALE COMING FORWARD.)

5 MADAME CLERK: What say you for the State?

6 SOLICITOR LIPINSKI: I'm sorry. Seat the juror.

7 MADAME CLERK: Defense?

8 MR. LEMEL: Please seat the juror in this matter.

9 MADAME CLERK: Please have a seat in the jury box,
10 ma'am.

11 Number 95, Charles Harnatkiewicz.

12 SOLICITOR LIPINSKI: I'm sorry, what was the number
13 again?

14 MADAME CLERK: Number 95.

15 (WHITE MALE COMING FORWARD.)

16 MADAME CLERK: What say you for the State?

17 SOLICITOR LIPINSKI: Please present the juror.

18 MADAME CLERK: Defense?

19 MR. LEMEL: Please seat the juror.

20 MADAME CLERK: Number 76, William Fennell.

21 (WHITE MALE COMING FORWARD.)

22 THE COURT: Hold on, hold on for a minute. Which one
23 is this?

24 MADAME CLERK: Fennell, Number 76.

25 SOLICITOR LIPINSKI: Please excuse the juror.

1 THE COURT: Wait just a minute please.

2 SOLICITOR LIPINSKI: I'm sorry.

3 THE COURT: All right this is for the first alternate.

4 Strikes are one and two.

5 Ma'am, you can go ahead.

6 MADAME CLERK: You are excused from this case, sir.

7 Number 207, Robin Standley.

8 (WHITE FEMALE COMING FORWARD.)

9 MADAME CLERK: What say you for the State?

10 SOLICITOR LIPINSKI: Present the juror.

11 MADAME CLERK: Defense?

12 MR. LEMEL: Please excuse the juror in this matter.

13 MADAME CLERK: You are excused from this case, ma'am.

14 Number 85, Laura Gillespie.

15 (WHITE FEMALE COMING FORWARD.)

16 MADAME CLERK: What say you for the State?

17 SOLICITOR LIPINSKI: Present the juror.

18 MADAME CLERK: Defense?

19 MR. LEMEL: Please seat the juror in this matter.

20 MADAME CLERK: Please have a seat in the jury box,

21 ma'am.

22 THE COURT: All right strikes are one and two again.

23 MADAME CLERK: Number 143, Venida Mclurkin.

24 (BLACK FEMALE COMING FORWARD.)

25 MADAME CLERK: What say you for the State?

1 SOLICITOR LIPINSKI: Present the juror.

2 MADAME CLERK: Defense?

3 MR. LEMEL: Please excuse the juror in this matter.

4 MADAME CLERK: You are excused from this case, ma'am.

5 Number 192, Jeremy Sabo.

6 (WHITE MALE COMING FORWARD.)

7 MADAME CLERK: What say you for the State?

8 SOLICITOR LIPINSKI: Please present the juror.

9 MADAME CLERK: Defense?

10 MR. LEMEL: Please seat the juror in this matter.

11 MADAME CLERK: Please have a seat in the jury box,

12 sir.

13 THE COURT: Any exception to the composition or to the

14 matter of selection of the jury?

15 SOLICITOR LIPINSKI: None from the State.

16 MR. LEMEL: None from the Defense, Your Honor.

17 THE COURT: All right. Those of you who were not
18 selected to serve on the jury you are excused for the day.

19 Please call back tonight after seven o'clock to the
20 telephone number I believe you have already been given and
21 there will be a recorded message on that line telling you
22 what you need to do tomorrow. You all have a good rest of
23 the day.

24 (JURY POOL DISMISSED AT 3:42 P. M..)

25 THE COURT: Those of you who were selected to serve on

1 the jury we are going to take a short break before we begin
2 with opening statements. I am going to ask you folks to
3 step back in the jury room in just a minute. When you come
4 back out I will spend a few minutes talking with you about
5 as I told you earlier some of the rules and considerations
6 that will govern your service as jurors. And one of the
7 things that I will talk to you about is that you will not
8 be permitted to discuss this case in any way until I have
9 given you permission to begin with your deliberations some
10 time later in the week. So while you are back there now
11 you can begin to get to know each other. You all can talk
12 about anything you would like to but do not talk in any way
13 about this case and we will have you back out here in the
14 courtroom hopefully in about five or ten or probably like
15 ten minutes so we will see you in a few minutes.

16 (JURY PANEL LEAVING COURTROOM AT 3:44 P.M..)

17 THE COURT: How long do you expect your opening
18 statement to be?

19 SOLICITOR LIPINSKI: About twenty minutes.

20 THE COURT: And you, sir?

21 MR. LEMEL: No longer than that. Probably a little
22 shorter.

23 THE COURT: Do you have any witnesses you could put up
24 that you really need to put up today? Sounds like we will
25 have about -- you will have about thirty to thirty-five

1 minutes that you can use, I want to quit right at five
2 because the Clerk's office has an event tonight.

3 SOLICITOR LIPINSKI: I would like to get to Deputy
4 Wright if at all possible and I may have another really
5 short one to add on that I can fill that space.

6 THE COURT: All right. Then Deputy Wright will take
7 approximately how long?

8 SOLICITOR LIPINSKI: He was the first responding
9 officer, I think no more than fifteen minutes.

10 THE COURT: Okay. All right then we will take a break
11 and give the jurors a chance to take a break and then we
12 will be back in just a few minutes. Let's plan on being
13 back in here in about five minutes.

14 SOLICITOR LIPINSKI: Thank you, Your Honor.

15 MR. LEMEL: Yes, sir.

16 (SHORT RECESS AT 3:45 P. M..)

17 (BACK ON THE RECORD AT 3:55 P. M..)

18 THE COURT: Bring in the defendant please.

19 (DEFENDANT ENTERING COURTROOM.)

20 THE COURT: All right. Bring in the jury.

21 (JURY ENTERING COURTROOM AT 3:56 P.M..)

22 THE COURT: Swear the jury please.

23 MADAME CLERK: Ladies and gentlemen of the jury,

24 please stand and raise your right hand.

25 (JURY PANEL SWORN AT 3:57 P.

1 M..)

2 MADAME CLERK: Let the record show all affirmed.

3 You may be seated.

4 THE COURT: Ladies and gentlemen, we are now ready for
5 the trial in this case. As you know this is the State of
6 South Carolina versus Adam Lee Berard. Mr. Berard has been
7 indicted in four indictments and I am going to go over
8 those with you again right now.

9 The first one is 2008-GS-46-3019 in which Mr. Berard
10 has been indicted for Assault and Battery with Intent to
11 Kill. In that indictment it is alleged that the defendant
12 Adam Lee Berard did in York County, South Carolina on or
13 about June 7th, 2008 with malice aforethought commit an
14 assault and battery upon one Loretta Moss with intent to
15 kill the said victim all in violation of Section 16-3-620
16 of the code of laws of South Carolina.

17 In Indictment Number 2008-GS-46-3020 Mr. Berard has
18 been indicted for Criminal Sexual Conduct in the First
19 Degree and in that indictment it is alleged that the
20 defendant Adam Lee Berard did in York County, South
21 Carolina on or about June 7th, 2008 willfully, unlawfully
22 and feloniously without just cause and against the victim
23 Loretta Moss will and consent and with the use of
24 aggravated force engaged in a sexual battery to wit the
25 defendant did have vaginal and or anal intercourse and or

1 oral copulation with Loretta Moss against her will and
2 without her consent all in violation of Section 16-3-652 of
3 the code of laws of South Carolina.

4 In Indictment Number 2009-GS-46-3928 for Burglary in
5 the First Degree it is alleged that the defendant Adam Lee
6 Berard did in York County, South Carolina on or about June
7 the 8th, 2008 willfully and unlawfully enter the dwelling
8 of Loretta Moss located at [REDACTED], Rock Hill,
9 South Carolina without consent and with the intent to
10 commit a crime therein when the defendant did commit said
11 offense during the night time and or while inside the
12 residence the defendant did commit an assault and battery
13 upon the victim and or the defendant was armed with a
14 deadly weapon all in violation of Section 16-11-311 of the
15 code of laws of South Carolina.

16 And finally in Indictment Number 2009-GS-46-3929 Mr.
17 Berard has been indicted for kidnapping and in that
18 indictment it is alleged that the defendant Adam Lee Berard
19 did in York County, South Carolina on or about June 8TH,
20 2008 unlawfully seized, confined, inveigled, decoy,
21 kidnapped, abduct or carry away the victim Loretta Moss
22 without authority of law all in violation of Section 16-3-
23 910 of the code of laws of South Carolina.

24 Now, ladies and gentlemen, as I've already mentioned
25 to you I want to point out again that the indictments that

1 I just read to you are not in any sense evidence of the
2 allegations that are contained within those indictments.
3 The indictments are simply the formal documents that
4 contain the allegations against the defendant and the
5 indictments serve to process the case and bring it into
6 this court for trial. The defendant has pled not guilty to
7 each of these four indictments and the plea of not guilty
8 cast the burden on the state to prove the defendant guilty
9 beyond a reasonable doubt. And that is your job ladies and
10 gentlemen to determine whether or not the state has met
11 that burden of proof.

12 Now it is a very important rule of law in our country
13 that a defendant in a criminal trial is always presumed to
14 be innocent of the crimes with which he has been charged
15 unless and until his guilt has been proven by evidence that
16 satisfies you of that guilt beyond a reasonable doubt. Now
17 of course this is what we refer to as the presumption of
18 innocence. But the presumption of innocence is just not a
19 legal theory. It is not just a legal phrase that we use.
20 It is a substantial constitutional right to which every
21 defendant is entitled. The presumption of innocence
22 accompanies the defendant from the time he is charged
23 throughout the trial and into the jury room until you have
24 reached a verdict of guilt that is based on evidence that
25 has satisfied you of that guilt beyond a reasonable doubt.

1 Now I am going to talk to you a little bit about the
2 structure of the trial. The trial can be divided up into
3 five basic phases. The first one will begin in just a
4 moment and that's the opening statements when the lawyers
5 will stand before you and they will explain to you what
6 this case is about. They will tell you what the issues are
7 in the case; they will tell you how each side stands on
8 those issues and they will also go over for you some of the
9 evidence that you can expect to see that will relate to
10 those issues. After the opening statements hopefully today
11 we will begin with the evidentiary phase or the second
12 phase of the trial when witnesses will come here to this
13 witness stand and you will hear their testimony. And there
14 will also be other physical evidence such as documents and
15 exhibits perhaps photographs and things of that nature that
16 will relate to these issues in this case.

17 And then the third phase of the trial is the closing
18 arguments when the lawyers will stand before you again and
19 they will argue to you as to whether or not the state has
20 met its burden of proof. It will be several days before we
21 get to that third phase.

22 And then the forth phase of the trial is the jury
23 charge when I will explain to you the law that is
24 applicable to this case. And then the fifth phase of the
25 trial you will go back to the jury room and you will

1 deliberate.

2 Now, Ladies and Gentlemen, it's very important that
3 you not begin to make up your mind about whether or not the
4 state has met it's burden of proof until you have been
5 through all five of those phases including at least the
6 first part of that fifth phase when you will have a chance
7 to listen to the other members of the jury discuss the
8 evidence and discuss whether or not the state has met it's
9 burden. It's also very important as I already mentioned to
10 you that you do not discuss this case at all until I have
11 given you permission to begin with those deliberations
12 during that fifth phase of the trial.

13 Ladies and gentlemen, as members of the jury you are
14 the exclusive judges of the facts and I am not permitted to
15 indicate to you how I might feel about the facts. So if I
16 say anything or if I do anything during the course of this
17 trial that might lead you to believe that I have an opinion
18 about the facts then you should disregard that. But on the
19 other hand I am the exclusive judge of the law. So if you
20 have some idea as to what the law is or what the law should
21 be and if that differs from what I will tell you the law is
22 then you are obligated under the oath that you have taken
23 as jurors to set your notion of the law aside and to accept
24 and apply the law precisely as I will explain it to you.
25 One other role that I play is to decide on the

1 admissibility of evidence. From time to time I expect that
2 the lawyers will be making objections when evidence is
3 offered that they believe does not comply with our rules of
4 evidence. When an objection is made that's not an attempt
5 by the lawyer to hide anything from the jury that's simply
6 the way our system of evidence works. And then it will
7 become my responsibility to rule on the objection. If I
8 sustain the objection that means that I believe the
9 evidence is not admissible and I will not allow it in. If
10 I over rule the objection that means that I believe the
11 evidence is admissible and I will allow it in and you
12 should consider it. Now most of the time I will be able to
13 do that just as I am sitting here. You will hear the
14 lawyers say objection; they might briefly state the grounds
15 for the objection and then you will hear me say either
16 sustained or over ruled. Sometimes it might be necessary
17 for me to ask the lawyers to step up to the bench so that I
18 can briefly discuss the evidence question them. It might
19 even be necessary from time to time that I ask you all to
20 go back into the jury room so that I can openly discuss the
21 evidence question. Sometimes I actually have to listen to
22 the testimony before I can decide whether or not you can
23 listen to it.

24 Ladies and gentlemen, this is an era in which we have
25 at our fingertips all sorts of information about all sorts

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1 of different things that we can get through the internet
2 and otherwise. For reasons that I hope are obvious to you
3 it would be improper for any of you to do any type of
4 research into any issue or any aspect of this case. That
5 would particularly include getting onto the internet to try
6 do any research about this case so please do not do
7 anything of that sort. If there is testimony in the case
8 about a place please do not go to that place to see what
9 you can see. Please make sure that all of the evidence
10 that you have that relates to this case comes to you as you
11 sit in that jury box in this courtroom under my
12 supervision.

13 Solicitor.

14 SOLICITOR LIPINSKI: May it please the court, Your
15 Honor.

16 Can I have the indictments back?

17 (SOLICITOR RETRIEVED INDICTMENTS FROM THE BENCH.)

18 SOLICITOR LIPINSKI: May it please the court, ladies
19 and gentlemen of the jury. Again my name is Mendy Hervey
20 Lipinski and I am an assistant solicitor here in York,
21 South Carolina. When I first told my father that I was
22 going to be an assistant solicitor he was quite confused as
23 to why he helped me to go to law school so that I would
24 become a door to door salesman. So I have explained to him
25 in South Carolina we have retained an old English term that

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1 means that I am a prosecutor, a state's attorney, a
2 district attorney. Those are the terms that you commonly
3 hear on TV. But that is my role to work with law
4 enforcement; members like Detective Yeager, Detective
5 Wright in assisting them in prosecuting cases developing an
6 investigation and then in instances where the defendant
7 pleads not guilty to conduct a trial. And I do that here
8 in York County and I've done it for quite some time.

9 I will be assisted by Assistant Solicitor Amy Sekora
10 and we will be in essence presenting the evidence to you.
11 And we will do that by calling witnesses to the stand and
12 then physical evidence that we present and that is our role
13 here today.

14 You have been selected as jurors to decide the guilt
15 or innocence of Adam Lee Berard in four separate distinct
16 offenses that all occurred on the late evening hours of
17 June 7, 2008 carrying over into the early morning hours of
18 June 8, 2008 and that's why you may hear both of those
19 dates used kind of interchangeably but that is when this
20 crime is said to have occurred. You will be asked to
21 decide did the State meet its burden. As the court told
22 you that I must prove his guilt on each offense beyond a
23 reasonable doubt and I embrace that burden because by now
24 you have already deduced this is a very serious case with
25 very serious charges being weighed against the defendant.

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1 And I am asking you and I will ask you at the end of this
2 trial to convict Adam Berard of each and every indictment.
3 The facts that will come to fruition or come to light in
4 court is that as the court instructed you Adam Lee Berard
5 is the grandson of Loretta Moss; that they lived next door
6 to one another. You will hear two addresses but they lived
7 next door. Testimony will further -- that both of the
8 houses were actually in the same fenced in area. That Ms.
9 Moss got off work that day that she went home she changed
10 clothes and then she went about her day. That at some
11 point that evening her grandson, the defendant, came next
12 door and wanted to talk to her. But she because she thought
13 he may have been drinking didn't want him in her house and
14 that they sat out on the porch. She had a little covered
15 porch area to her home and they sat out there talking. She
16 stated that it started growing late; she was of concern
17 because he had been drinking and she told him to go home
18 and that she got up to turn around and go back into her
19 house for the night. And at that point Adam took what we
20 believe is a Creep Myrtle branch or some other object and
21 hit her in the back of the head that it knocked her to the
22 ground; that the assault continued; that he hit her pretty
23 much from head to toe. You will hear evidence that she has
24 bruises to her arms. She has bruises to her back; she has
25 bruises to her legs, to her knees. She has punctures or

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1 cut marks to her arm and to her fingers. And that
2 basically the assault carried in from the porch into right
3 inside the door of her house into the kitchen and the
4 dinning room area. And that the assault went beyond just a
5 physical assault but during the assault he took off her
6 clothes. She had on a little pajama set and he took off
7 her blouse, her pants and her underwear. That he himself
8 took off his shorts and his underwear. And you will hear
9 that as she lay beneath him naked and bleeding she started
10 screaming for help. And that at some point during the
11 assault luckily from response her other grandson Russell
12 Berard who also lived next door came home that night. That
13 he and his girlfriend were going to go to his house and
14 watch a movie and have dinner. And when they got home they
15 noticed something wasn't right but they really didn't know
16 what and as they were walking around closer in the yard
17 they hear her scream and that they go to her porch and that
18 they see Adam half naked on top of her. And that they go
19 inside and that they rescue her; that Adams leaves, that he
20 runs next door, that he puts on clothes, that he gets on
21 his scooter and he leaves.

22 You will hear testimony that Adam at the time of the
23 offense was on YOA probation and you will hear about that
24 probation. And that he was wearing an ankle bracelet; he
25 had an electronic monitor, he had a curfew and that in

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1 order to avoid apprehension at some point that night after
2 he left his nanny's house he cut it off and as a result he
3 even cut his leg. And that he ran to a friend's house and
4 he asked that friend for help and that friend told him he
5 couldn't help him; that he went back to another house where
6 he knew how to get in that he got inside and he hid in the
7 bed and so law enforcement tracked him there. These are
8 the factual allegations that make up the legal allegations.
9 He is charged with burglary in the first degree; that he
10 entered his grandma's house without consent that he did it
11 with the intent to commit a crime and that once inside he
12 was either armed with a deadly weapon or he committed
13 physical injury to her. So she then let him in that night
14 and once he was in there he hurt her badly. You will hear
15 that she stayed in the hospital almost a month.

16 He is charged with the offense of kidnapping. When
17 most of us think of kidnapping we think that I've got to
18 throw some body in the truck and carry it up to North
19 Carolina somewhere. But the law in the State of South
20 Carolina is that you can confine someone and kidnap them.
21 So if I rob a bank and I locked everybody in the safe I
22 have in essence kidnapped the bank employees. He is
23 charged with kidnapping because Ms. Moss was screaming for
24 help because she wanted to get away and that her grandson
25 was confining her in that house that night to the physical

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1 injuries over time. He is also charged with assault and
2 battery with intent to kill. And that again like the term
3 Solicitor is somewhat of a miss known word. The State does
4 not need to prove that he had the intent to kill but that
5 when he committed the assault and battery when he struck
6 her with that creep myrtle branch or with whatever weapon
7 he used that he had malice in his heart.

8 The Judge will tell you that malice is meanness,
9 evilness, a depraved heart, a heart bent on mischief and
10 that as long as he attended that fatal blow even if he
11 didn't mean to kill her he is guilty of attempt to murder
12 or assault and battery. You will hear the phrase that had
13 she died would the charge instead be murder. And finally
14 he is accused of criminal sexual conduct in the first
15 degree. In layman's terms they used to call it rape. Did
16 he rape her? Criminal sexual conduct in the first degree
17 is a sexual battery. You will hear whether it be vaginal
18 intercourse, anal intercourse, oral intercourse, digital
19 penetration, penetration of some orifice no matter how
20 slight no matter what kind. Did he rape her? And was it a
21 rape where it's not a date rape situation where she's just
22 saying no. But is it a rape where he uses aggravated force
23 to accomplish a rape? So those four charges; burglary in
24 the first degree, entering her house without consent;
25 kidnapping, holding her against her will; criminal sexual

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1 conduct and as the term is CSC raping her accompanied by
2 aggravated force and the assault and battery with intent to
3 kill.

4 You will hear from Russell and Meghan what they found
5 when they got home that night. You will hear a lot about
6 what law enforcement did in terms of going through due
7 diligence despite having eye witness testimony. They
8 didn't stop there they processed this crime scene, they
9 looked for forensic evidence and they found some. But this
10 is really a crime that will come more from the eye
11 witnesses than from the DNA itself. You will hear how they
12 did a sexual assault kit on Ms. Moss trying to answer the
13 question of penetration. But because A she was so
14 compromised at the time on a back board with a spinal
15 column being rushed to trauma intensive care that they
16 couldn't complete the exam and that the DNA they got
17 instead revealed merely that she had had relations with her
18 husband sometime in the prior three days. But because Adam
19 was interrupted by his brother because he luckily did not
20 ejaculate the things that we would normally look to in a
21 rape case will not be there. Nonetheless the State still
22 believes that the evidence will be over whelming; will be
23 convincing and will leave you without any reasonable doubt
24 that the defendant committed these crimes.

25 As we go through this trial I do kind of beg your

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(1 indulgence. You will hear that this is not CSI and Law and
2 Order. There will be no dramatic animation or physical
3 reenactment of the crime. You will hear that our forensic
4 services unit drives around in ten year old Explorers and
5 not Hummers. So things relay a tad more on common sense.
6 A lot of my job is herding cats into the courtroom and I
7 want to go Christmas shopping on Tuesday afternoon so I
8 cannot come and testify on Tuesday morning or I have an
9 exam. Officer Wright is working tonight and he will be up
10 all night and he doesn't want to come tomorrow morning so
11 things may come out of order. Pieces of the puzzle may
12 fall together not in the most consistent manner that you
13 would like but the state is doing things for a reason. We
14 are presenting the evidence in the most conclusive manner
15 that we can and we still feel that once you have all the
16 pieces of those puzzles that you will convict the
17 defendant. It is a very shocking crime. Do not make up
18 your mind until you hear all of the evidence. The Judge
19 has told you that the defendant is entitled to a fair and
20 impartial trial. The state is entitled to a fair trial;
21 Ms. Moss is entitled to a fair and impartial trial, so that
22 at the end of this trial there is no doubt what crimes the
23 defendant committed on the night in question. Thank you.

(24 THE COURT: Mr. Lemel.

25 MR. LEMEL: May it please the Court. It has been said

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1 that jury duty is the most important duty that you can give
2 your country outside of military service during a time of
3 war. That particular phrase is a very popular one amongst
4 lawyers because of the very deep meaning that it has. That
5 one line goes to the very core, the very center of our
6 judicial system because without you as jurors and in a very
7 unique role that you play in this courtroom our legal
8 system would not exist.

9 You see everyone in this courtroom has a role. The
10 Solicitor when she got up to give her opening statement
11 went through some of what her role was. You've seen the
12 Judge in action in part of his role guiding you and giving
13 you the law. And he even sort of briefly touched on the
14 unique role that you occupy in this courtroom today. That
15 role is to determine what the facts are. Determine what
16 the facts of every case are. That is a rule that is so
17 important that the South Carolina Constitution actually
18 forbids anyone else particularly a judge from commenting on
19 what the facts that you find are.

20 Now finding the facts in the courtroom is a very
21 specific task. Something does not become a fact in this
22 courtroom certainly because a lawyer says it. Something
23 does not become a fact in this courtroom because a witness
24 sits on the stand and says something. Or even if you see a
25 picture that reports to show something or prove something

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1 to you or any other sort of evidence. Something only
2 becomes a fact when you are brought enough evidence to
3 convince you to a specific legal standard. A specific
4 legal standard. Now that sounds like a lot of legal lingo
5 and I understand that we lawyers talk like that sometimes.
6 Basically it is simply a matter of you have heard all of
7 the evidence and examine all of the evidence before you can
8 decide what facts are proven in this courtroom.

9 Now finding the facts is the most difficult job in
10 this courtroom. And our system does not simply throw you
11 out there as jurors and leave you dangling without any sort
12 of guidance. There are certain basic principles the judge
13 has already alluded to that you are going to use when
14 deciding what the facts of this case are. Now the first of
15 those principles is what the judge mentioned earlier that
16 is the presumption of innocence. As Adam sits in the
17 courtroom today he is innocent. He is presumed innocent.
18 He does not have to prove anything to you. And that is of
19 a particular note in a case like this with allegations of
20 this nature. It is simply part of us as human beings
21 sometimes we will hear something about somebody and we will
22 say I don't know if that is true about them or not but I
23 heard that about them. Sometimes you will hear something
24 about somebody you know; some allegation against somebody
25 you know and go oh I know that's not true. I know this

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1 person well enough that allegation certainly of this person
2 is just not true. And sometimes you get allegations like
3 this when the allegations themselves are so bad that
4 instinctively we say Oh man nobody would be saying that
5 unless it was true. He's got to be guilty of that. And
6 you as jurors have to tune yourselves if you find yourself
7 falling into that particular role. You have to tune
8 yourself back to the previous example which is if he didn't
9 do it. As he sits there right now he is guilty of
10 absolutely nothing and that fact is as strong as anything
11 else that you can find. And it is only when you are
12 brought enough evidence to convince you otherwise that you
13 take away that shield of innocence; that presumption of
14 innocence regards to every person. What it ultimately
15 means is Adam doesn't have to prove himself not guilty. He
16 does not have to prove himself innocent. Who has the
17 obligation to doing that? Well the obligation in this case
18 is what we call the burden of proof sits on one side and
19 one side only and that is the side of the state through the
20 prosecutor's office.

21 Now you may have heard about civil cases before. I
22 have been involved in a car wreck; a contract dispute. See
23 in civil law in this country both sides have to bring you
24 evidence and if you are a juror in a civil case you put the
25 evidence on a set of scales and if you find that scale tips

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(1 ever so slightly toward one side you vote that way. It's
2 what we call the preponderance of the evidence. It's
3 really easy. Now in criminal law it's entirely different.
4 There is no set of scales out there because scales require
5 both sides to put up evidence. In this case only one side
6 has any burden to prove anything to you and that is the
7 state. Each and every allegation and each and every
8 element of those allegations has got to be proven by the
9 State. It is interesting in a case like this where there
10 are four separate indictments on very complicated legal
11 issues each of which has significant elements to it or
12 parts to it. You heard the solicitor refer to some of
(13 those such as malice that the state has the requirement to
14 prove every single one of those elements if they are going
15 to convict you of any crime. Each crime is taken
16 separately each element is taken separately and they have
17 the burden of proving it. And how much proof do they have
18 to bring you? That is the third rule that you will use in
19 making your decision. Again when we talk about civil law
20 you put the evidence on a set of scales. If it tied very
21 lightly you voted that way. In criminal law the burden is
22 entirely different. The burden they have to take you to is
23 the standard they have to take you to is beyond a
(24 reasonable doubt. Beyond a reasonable doubt. Now you may
25 have heard reasonable doubt is a very powerful term. You

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1 see it on the news; you see it as titles of movies and
2 books. I want you to put aside whatever you may have
3 thought a reasonable doubt was before you came into this
4 court because our Supreme Court has defined what a
5 reasonable doubt is in one very simple sentence. A
6 reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. A reasonable person
8 to hesitate to act. And the burden that you will have to
9 be shown by the state in this case is take you beyond that
10 point where you hesitate to act on any of these charges and
11 on any of these elements.

12 Now those three principles are going to be your
13 guiding lights through this case as you take in the
14 evidence. And, ladies and gentlemen, as you can tell from
15 just the little bit that you been told about the case not
16 any evidence just a little bit of a preview you've been
17 given this is a very tragic case. This is a tragic case
18 from an entire family. And as most things are that are
19 tragic they are wrapped up in very deep hard emotions and
20 it is easy to get carried away when confronted with things
21 or allegations that are this bad and things that are this
22 tragic. Now you as jurors I'm not asking you to set aside
23 your emotions that's natural; that's part of what you have.
24 But you also have to deal with these things pursuant to the
25 oath that you took which is setting aside that tragedy and

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1 looking at these cases; looking at each one of these
2 charges as individual charges. Looking at each element and
3 deciding each element individually. And it concerns you
4 all and it should concern you all that even from the
5 opening statement when it comes to their burden of proving
6 each of these elements beyond a reasonable doubt that you
7 hear certain excuses being made. And as you see though
8 this case you will see certain excuses being made on a
9 certain of these charges. Excuses are problems for the
10 prosecutor. That's why they bring them out early on. But
11 when you judge this case I'm asking you not to simply look
12 at the excuses but to look to see what was and wasn't done
13 and listen carefully to each witness and what each witness
14 brings to you. Because at the end of the case despite the
15 request from the solicitor to return verdicts of guilty on
16 all charges I submit to you you will not do that. I submit
17 to you if you listen carefully to the witnesses you will
18 not be convinced beyond a reasonable doubt. What we are
19 asking you to do in this case is not be swayed by the
20 tragedy; not to be swayed by the emotion but to look at
21 this case and hold the state to its requirements and simply
22 listen to all of the witnesses before making your decision.
23 Thank you.

24 SOLICITOR SIKORA: State calls Sergeant Wright to
25 the stand.

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1 Sergeant Wright, if you will step forward Madame Clerk
2 will swear the oath please.

3 MADAME CLERK: Please raise your right hand place your
4 left hand on the bible.

5 (WHEREUPON: SERGEANT HENRY
6 WRIGHT, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
7 FOLLOWS:)

8 DIRECT EXAMINATION

9 SERGEANT HENRY WRIGHT BY SOLICITOR SIKORA:

10 Q. Would you please state your name for the record?

11 A. Henry Lee Wright, Junior.

12 Q. And where do you work?

13 A. York County Sheriff's Office.

14 Q. And what is your position with the sheriff's office?

15 A. I'm a sergeant.

16 Q. And how long have you worked for the sheriff's office?

17 A. Since August of 2001.

18 Q. Do you have any prior law enforcement experience
19 before that?

20 A. No, ma'am.

21 Q. And what are your present duties as a sergeant with
22 the sheriff's office?

23 A. I am a patrol supervisor on night shift.

24 Q. And were you working on the night of June 7th, 2008?

25 A. I was.

1 Q. Did you receive a call to respond to Loretta Moss's
2 residence at [REDACTED]?

3 A. I did.

4 Q. And is that residence in York County?

5 A. It is.

6 Q. What type of call did you believe you were going out
7 on that night?

8 A. The call originally came in to assist EMS with
9 securing a scene in reference to a female who had fallen.

10 Q. And were you the first officer that arrived on scene
11 that night?

12 A. I was.

13 Q. And who was the first person you saw when you arrived
14 there?

15 A. I can't remember his name but I know it was Ms. Moss's
16 grandson.

17 Q. Do you see him here in the courtroom today?

18 A. I think so.

19 Q. Would you like to point him out for us?

20 A. The red tie.

21 Q. Let the record reflect that the officer identified
22 Russell Berard.

23 And what was Mr. Russell Berard's demeanor like when
24 you first saw him?

25 A. He was very frantic. You could tell he was upset.

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1 Just really frantic.

2 Q. Okay. And where did you meet him? Was he inside or
3 outside the home?

4 A. He met me outside in the yard in front of the
5 residence.

6 Q. Do you remember what time you received the call to go
7 out there that night?

8 A. I believe that the call came in around 11:07 that's
9 when I was dispatched.

10 Q. Okay. Do you remember about how long it took you to
11 actually arrive out there on Zinker Road?

12 A. Probably about fifteen or twenty minutes. I was the
13 only officer in the clear when that call came in and I had
14 to come across town.

15 Q. Okay. Did you talk to Mr. Russell Berard when you
16 arrived on the scene?

17 A. I did.

18 Q. Okay. And what did he tell you?

19 MR. LEMEL: Objection; hearsay.

20 SOLICITOR SIKORA: Your Honor, may I be heard on this
21 issue?

22 THE COURT: Yes. Approach the bench.

23 (BENCH CONFERENCE AT 4:35 P.M. OFF THE RECORD OUT OF

24 THE HEARING OF THE JURY.)

25 BY SOLICITOR SIKORA:

1 Q. Sergeant Wright, I'm going to back up a little bit.

2 You testified earlier that when you first arrive on scene

3 the first person you saw was Russell Berard?

4 A. Right.

5 Q. And you testified that he seemed very upset?

6 A. Right.

7 Q. Can you explain a little bit more to the jury what you

8 mean by that in describing how Mr. Berard was acting when

9 you first saw him?

10 A. You could tell he was very panicked. He actually ran

11 out to meet me half way which in my professional dealings

12 that you could tell he was definitely -- something was

13 definitely more wrong than just a female had fallen. He

14 was very animated. He was yelling -- not yelling but he

15 was talking in a very loud manner to me to make sure I

16 understood what was going on. Just very frantic.

17 Q. Did he appear to be emotional to you at the time?

18 A. Yes.

19 Q. Did you know whenever you were called out to the scene

20 you said that it was an EMS call that someone had fallen.

21 Do you know whether the person that fell was it female or a

22 male at that point in time?

23 A. I can't remember.

24 Q. Did you see evidence of anybody that had fallen

25 whenever you were just out in the yard at the property?

1 A. Are you speaking when I first made contact with Mr.
2 Berard or after I made it to the porch of the residence?

3 Q. I'm speaking of you said that when you first got there
4 you were met by Russell Berard running out of the house and
5 in a frantic manner.

6 A. Right.

7 Q. Did you see anybody laying on the ground in the yard?

8 A. No. No, ma'am.

9 Q. Was there anybody else with Mr. Berard?

10 A. I can't remember her name I apologize but it was Mr.
11 Berard's girlfriend. She was also very upset.

12 Q. Did Mr. Russell Berard come out of the house first?

13 A. I believe so.

14 Q. Okay. How soon after Mr. Berard came out of the house
15 did you see his girlfriend?

16 A. Seconds.

17 Q. And where did you first see her?

18 A. She was behind him coming out as well.

19 Q. So his girlfriend also met you in the yard on Zinker
20 Road?

21 A. Yes.

22 Q. And what was Megan's demeanor like? The girlfriend.

23 A. Basically the same. She was upset, very emotional and
24 frantic as well.

25 Q. Were either of them crying?

1 A. I can't remember.

2 Q. Based on your interaction with both Russell and his
3 girlfriend did you believe that there was something more
4 wrong than just a fall?

5 A. Yes, ma'am.

6 Q. Did you believe that it would be something you would
7 classify as an emergency situation?

8 MR. LEMEL: Objection, Your Honor, as to leading.

9 THE COURT: Don't lead.

10 BY SOLICITOR SIKORA:

11 Q. Did you see any evidence of any injury on either the
12 girlfriend or Mr. Russell Berard?

13 A. No.

14 Q. Did you learn from speaking with Russell Berard where
15 the victim was; the victim on the phone?

16 A. Yes.

17 Q. And was that person a male or a female?

18 A. Female.

19 Q. Do you recall what that persons name was?

20 A. Loretta Moss.

21 Q. And were you able to find Ms. Moss?

22 A. I was.

23 Q. And where did you find her?

24 A. When you enter her residence from the side door you
25 actually enter I believe into the kitchen area. Dining

1 room/kitchen area and in a short distance that goes into
2 the living room area, what I call the living room area.
3 She was laying in the floor kind of half in the living room
4 and half in the kitchen area.

5 Q. Did you observe any signs of injury on Ms. Moss?

6 A. There was blood and there was vomit.

7 Q. Where did you see the blood?

8 A. It was on her and around her.

9 Q. And when you say around her where do you mean
10 specifically?

11 A. On the floor.

12 Q. On the floor. And the vomit you mentioned where did
13 you see that?

14 A. Up near the side of her head.

15 Q. What position was she in when you found her on the
16 floor?

17 A. She was lying on her back.

18 Q. Was she responsive to you?

19 A. She was not very responsive. She was moaning -- I was
20 trying to ask her questions but she was unable to respond
21 back to me with words.

22 Q. Did she respond to you in some way other than words?

23 A. Just the moaning.

24 Q. And what did you do at this point?

25 A. I knew that EMS was on the way. We are required as

1 law enforcement that we secure the scene which basically
2 means to make sure there are no other threats inside of the
3 residence prior to EMS arrival. So at that point I began
4 clearing the residence which means going room by room
5 checking to make sure there was no one else in the
6 residence.

7 Q. And did you find anyone else in the residence?

8 A. No, ma'am.

9 Q. Where were Russell and his girlfriend at this point?

10 A. They were either in the kitchen area or they were
11 still on the side porch area.

12 Q. Do you remember when you first saw Ms. Moss whether or
13 not she was wearing any clothing?

14 A. I can't recall.

15 Q. Do you remember about how long it took EMS to arrive?

16 A. It couldn't have been more than a few minutes because
17 they were staging -- they were actually closer than I was
18 from the call so they had actually staged near the scene.

19 Q. Okay. Other than the blood that you mentioned that
20 was on Ms. Moss and on the floor around her did you see any
21 blood anywhere else when you were going throughout the
22 house?

23 A. Right before I entered the residence there was some
24 blood on the door frame entering into the residence.

25 Q. Did you see anything else unusual or that seemed out

HENRY WRIGHT: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 of place?

2 A. There was a beer can in one of the bedrooms and hair
3 clippings on the floor.

4 Q. I believe you testified you entered the residence at
5 the Zinker home through the porch area?

6 A. Yes, ma'am.

7 Q. Is that correct? Did you see anything unusual outside
8 of the home on the porch area?

9 A. There were what appeared to be dentures laying on the
10 deck area as well as you could tell that there was some
11 type altercation. There was some things knocked over on
12 the porch area.

13 Q. When you were doing this sweep of this both the
14 outside and inside of the residence did you find any
15 weapons?

16 A. There was some type of stick I would say maybe two
17 foot long laying outside the residence. It was on the deck
18 area near the house but that was the only thing I found.

19 Q. When you say the deck area are you referring to the
20 porch that you used to enter the house?

21 A. Yes, ma'am. I apologize.

22 Q. Okay. May I approach the witness, Your Honor.

23 (WHEREUPON: STATE'S EXHIBIT NUMBERS NUMBER 3.A AND
24 3.B PREMARKED FOR IDENTIFICATION.)

25 I am handing you what's been marked for Identification

1 as State's Exhibit Number 3.A and 3.B. Would you please
2 take a look at those? Do they look familiar to you?

3 A. Yes, ma'am.

4 Q. In respect to State's Exhibit Number 3.A could you
5 tell us what that is?

6 A. This is the porch area at the entrance to the side
7 entrance of the residence.

8 Q. And does it look exactly as it did the night that you
9 responded on June 7, 2008?

10 A. Yes, ma'am.

11 Q. Would you also take a look at State's Exhibit 3.B?
12 Would you tell us what that is?

13 A. It's a blood splatter on the frame of the door of the
14 entry way.

15 Q. And is that blood splatter noted in 3.B look exactly
16 as it did the night you responded on June 7th 2008?

17 A. Yes, ma'am.

18 Q. Did you actually take those photographs?

19 A. No, ma'am.

20 Q. Your Honor, the State would ask to move both 3.A and
21 3B into evidence.

22 MR. LEMEL: Without objection, Your Honor.

23 THE COURT: It's admitted.

24 (WHEREUPON: STATE'S EXHIBIT NUMBER 3.A AND 3.B
25 ENTERED INTO EVIDENCE.)

HENRY WRIGHT: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 SOLICITOR SIKORA: Permission to publish to the jury,
2 Your Honor.

3 THE COURT: Certainly.

4 (STATE'S EXHIBIT 3.A AND 3.B PUBLISHED TO THE JURY AT
5 4:45 P. M..)

6 BY SOLICITOR SIKORA:

7 Q. Sergeant Wright, are you able to see or do you need to
8 step from the witness stand to see this photo?

9 A. I can see.

10 Q. Okay. I would like to draw your attention to the area
11 of the photograph with the yellow Number One placed by it.
12 Do you see where I am talking about?

13 A. Yes, ma'am.

14 Q. Could you describe for the jury what that is?

15 A. Those are the dentures. You can see off to the right
16 where the plant was knocked over; where it looked like
17 there was some type of altercation on the porch.

18 Q. Do you see a frame of reference this porch do you have
19 to step up onto this porch to enter into Ms. Moss's house?

20 A. Yes, ma'am.

21 Q. Okay. And do you see the Number Two, the yellow
22 Number Two about in the middle of the picture?

23 A. Yes, ma'am.

24 Q. Okay. Could you describe for us what is behind Number
25 Two?

1 A. That's the branch, the stick looking blunt object.

2 You can just barely see it behind the box lying next to the
3 wall of the residence.

4 Q. Okay. And now I call your attention to the door frame
5 as well. Could you describe for us what we see there?

6 A. About half way up you can see the blood splatter where
7 it actually looks like its coming down.

8 Q. Can we have the lights brought up please?

9 (CLERK OF COURT BRIGHTENED COURTROOM LIGHTS.)

10 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE, PREMARKED FOR
11 IDENTIFICATION.)

12 Q. Sergeant Wright, I'm handing you what's been marked
13 for identification purposes as State's Exhibit Number One.
14 Will you please tell the jury what that is?

15 A. It's the dentures.

16 Q. Are those the same dentures we spoke about earlier?

17 A. Yes, ma'am.

18 Q. And do they look exactly as they did in that photo as
19 they did when you saw them on June 7, 2008?

20 A. Yes, ma'am.

21 Q. Did you actually take that particular photograph?

22 A. No, ma'am.

23 Q. Your Honor, the State ask to move Exhibit Number One
24 into evidence.

25 MR. LEMEL: Without objection, Your Honor.

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1 THE COURT: It's admitted.

2 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PREMARKED AND
3 IDENTIFIED, ENTERED INTO EVIDENCE.)

4 SOLICITOR SIKORA: Permission to publish, Your Honor.

5 THE COURT: Certainly.

6 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY.)

7 BY SOLICITOR SIKORA:

8 Q. And can you describe the dentures in that picture
9 where you found those?

10 A. You are asking about how far from that door?

11 Q. Yes.

12 A. A couple of feet from the door. Maybe not even a foot
13 and a half from the door lying on the deck.

14 Q. And through your investigation who did you determine
15 was the owner of those dentures?

16 A. Ms. Moss.

17 Q. Where there any other police officers that arrived on
18 scene after yourself?

19 A. Yes, ma'am.

20 Q. You made mention of securing the residence earlier.

21 A. Yes, ma'am.

22 Q. Could you describe to the jury a little bit more about
23 what that means?

24 A. Like I was saying you basically you are doing a
25 protective sweep basically protecting the EMS when they

1 come in to render aid. Basically where you are going room
2 to room checking closets, under beds, anywhere that a
3 person may be. You are checking those areas to make sure
4 there is no one else inside the residence. Once you have
5 everything secure then you notify EMS and they will respond
6 in.

7 Q. Did the York County Forensic Department also respond
8 to the scene that night?

9 A. Yes, ma'am.

10 Q. Okay. As part of your investigation did you speak
11 with Russell Berard?

12 A. Yes, ma'am.

13 Q. And you testified earlier about meeting Russell Berard
14 out in the yard when he was very upset. Did you speak to
15 Mr. Berard about what happened when you were out in the
16 yard?

17 A. Not in great detail. Basically when I first saw him
18 and I asked him what was wrong; what was going on, you know
19 what had happened. He explained - -

20 MR. LEMEL: Objection, hearsay.

21 SOLICITOR SIKORA: Your Honor, may we approach?

22 (BENCH CONFERENCE AT 4:50 P. M. OFF THE RECORD OUT OF
23 THE HEARING OF THE JURY.)

24 THE COURT: Sustain.

25 BY SOLICITOR SIKORA:

1 Q. And didn't Mr. Russell Berard explain to you what
2 happened?

3 A. Yes, ma'am.

4 Q. Did you also talk with his girlfriend about what
5 happened?

6 A. Yes, ma'am.

7 Q. Did you talk to her also out in the yard?

8 A. Yes, ma'am. Outside. It may have been on the deck.

9 It was either on the deck or outside the residence.

10 Q. And how long did your conversation with the girlfriend
11 last while you were outside?

12 A. Just long enough to get the basic information.

13 Q. And how long did your conversation with Russell Berard
14 last while you were outside?

15 A. Five minutes maybe.

16 Q. Based on your conversations with Russell Berard were
17 you able to learn where the victim was located that night?

18 A. Yes, ma'am.

19 Q. And based on your investigation that evening did you
20 develop any suspects in the case?

21 A. Yes, ma'am.

22 Q. And who was that suspect?

23 A. Adam Berard.

24 Q. Did you check the scene to see if Mr. Adam Berard was
25 present?

- 1 A. I did.
- 2 Q. Do you know where Adam Berard lives?
- 3 A. Yes, ma'am.
- 4 Q. And where does he live?
- 5 A. Right next door to Ms. Moss. It's encompassed by a
- 6 fence area both residences.
- 7 Q. About how far apart would you say Ms. Moss's residence
- 8 is from Adam Berard's residence?
- 9 A. A hundred; two hundred feet. Maybe not even that
- 10 much.
- 11 Q. Did you ever have occasion to go to Adam Berard's
- 12 residence as well?
- 13 A. I did.
- 14 Q. And what did you do when you got there?
- 15 A. I did a protective sweep to make sure number one that
- 16 he was not inside. And number two that he wasn't
- 17 destroying any evidence.
- 18 Q. And did you find anybody inside Adam Berard's house
- 19 when you went in that night?
- 20 A. No, ma'am.
- 21 Q. Did you go in alone or with another officer?
- 22 A. Another officer.
- 23 Q. Do you recall who that was?
- 24 A. I believe it was another Sergeant, Buddy Brown.
- 25 Q. Do you recall anything unusual in Adam Berard's house

HENRY WRIGHT: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 when you went in that night?

2 A. Once we made entry we started checking the residence.
3 I heard the telephone ringing and I heard the machine pick
4 up. And when the machine picked up I could hear a
5 probation officer on the machine talking.

6 Q. And what did you hear in that speaker speaking on the
7 machine say?

8 MR. LEMEL: Objection, hearsay.

9 THE COURT: You will have to approach the bench.

10 (WHEREUPON: BENCH CONFERENCE AT 4:52 P. M. OFF THE
11 RECORD OUT OF THE HEARING OF THE JURY.)

12 THE COURT: Over ruled.

13 MR. LEMEL: Your Honor, in addition to the hearsay
14 objection I would also based on the grounds of
15 confrontation clause in this particular statement.

16 SOLICITOR SIKORA: Your Honor, the witness - -

17 THE COURT: This is as I understand it -- well maybe
18 you better approach the bench again please.

19 (BENCH CONFERENCE AT 4:54 P. M. OFF THE RECORD OUT OF
20 THE HEARING OF THE JURY.)

21 THE COURT: It's not a testimonial statement; it's not
22 a confrontational clause violation over rule.

23 BY SOLICITOR SIKORA:

24 Q. Could you tell who was leaving the message on that
25 machine when you were in the house?

1 A. I can't remember the name but I know it was a
2 probation officer because they said this is probation
3 officer agent such and such.

4 Q. Did the probation officer say who they were leaving
5 the message for?

6 A. Adam Berard.

7 Q. Did you at any point call probation out to the scene
8 that night?

9 A. I didn't have to.

10 Q. And why do you say that that you didn't have to?

11 A. They responded.

12 Q. About how long after you were on the scene and the
13 probation agent show up?

14 A. It was pretty quick. I can't say for a hundred
15 percent but it was pretty quick.

16 Q. And did you ask for their assistance in locating Adam
17 Berard?

18 A. I did.

19 Q. And you stated that whenever you first arrived on
20 scene you thought that a woman had fallen. After your
21 investigation did you change your opinion as to what type
22 of call you were on?

23 A. Yes, ma'am.

24 Q. And what is that opinion?

25 A. I believe it was an assault; a very bad assault.

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1 Q. An assault on who?

2 A. Ms. Moss. And through the investigation a criminal
3 sexual assault. She was in pretty bad shape. I didn't
4 think she was going to make it.

5 Q. And at some point EMS transported Ms. Moss away from
6 the scene?

7 A. Yes, ma'am.

8 Q. Did you stay on scene after she was gone?

9 A. Yes, ma'am.

10 Q. Did you then follow up and take statements from
11 Russell Berard?

12 A. Yes, ma'am.

13 Q. Did you also take a statement from his girlfriend?

14 A. Yes, ma'am.

15 Q. Did you take a statement from anybody else that night?

16 A. Not that I can remember.

17 Q. Were you still on scene when the York County Sheriff's
18 Office Forensics Department arrived?

19 A. I was.

20 Q. And what led you to believe that you were dealing with
21 a sexual assault that evening?

22 A. From the testimony of Russell Berard, his girlfriend;
23 the positioning of where she was at and where she was
24 laying.

25 Q. Did you receive any information about where Adam might

1 have gone to?

2 A. Yes, ma'am.

3 Q. And what was that?

4 A. That he had left the scene on a moped.

5 Q. And do you recall who you learned that from?

6 A. I think it was from Russell Berard. Either him or his
7 girlfriend. It may have been from her. I apologize I
8 can't remember her name.

9 Q. The Court's indulgence.

10 And once you learned that this was a more serious case
11 or a more serious call than you originally learned did you
12 also call any type of detectives or supervisors out to the
13 scene?

14 A. I contacted detective division.

15 Q. And did a detective arrive while you were still there?

16 A. Yes, ma'am.

17 Q. Thank you. Please answer any questions Mr. Lemel has.

18 THE COURT: We are going to do cross examination
19 tomorrow.

20 MR. LEMEL: Yes, sir.

21 THE COURT: All right, ladies and gentlemen, we are
22 going to break for the night. Please be back in the jury
23 room tomorrow morning at 9:15 and we will resume with
24 testimony at that time. You all have a nice night tonight.

25 Remember my instructions you cannot talk about the

1 case. That means not only that you can't talk about it
2 among yourselves but it means you can't talk about it with
3 family members or friends. I am quite sure that when you
4 go home tonight somebody is going to press you about what's
5 going on in this case you are trying up there and try and
6 get you to give them some information but you cannot do
7 that so please just don't talk about this case at any time
8 during the week. You all have a nice night and we will see
9 you in the morning at 9:15.

10 (JURY LEAVING THE COURTROOM AT 5:00 P. M..)

11 THE COURT: All right I'll see you all in the morning.

12 SOLICITOR LIPINSKI: Thank you, Your Honor. 9:00?

13 THE COURT: 9:15.

14 MR. LEMEL: Your Honor, can we go in with Mr. Berard?

15 Because of this door we can't do that unless the court

16 gives us permission to do this.

17 THE COURT: Sure.

18 MR. LEMEL: Thank you.

19 THE COURT: Suits me.

20 (COURT RECESSED AT 5:00 P. M..)

21 (COURT RECONVENED TUESDAY, DECEMBER 15, 2009 AT 9:15
22 A.M..)

23 THE COURT: Good morning, be seated.

24 (DEFENDANT ENTERING THE COURTROOM.)

25 THE COURT: Are we still lacking one juror?

1 SOLICITOR LIPINSKI: Your Honor, just for scheduling
2 purposes Mr. Lemel is making a pretrial motion in limine
3 with regard to the ax found at the location where Mr.
4 Berard was found and also his clothes. The State does
5 intend to introduce those items this afternoon through
6 witnesses.

7 THE COURT: Does?

8 SOLICITOR LIPINSKI: Yes.

9 THE COURT: The ax and the clothes? And by clothes do
10 you mean the shirt with the monopoly message on it?

11 SOLICITOR LIPINSKI: The clothes taken off of him at
12 the hospital. It's not like we are targeting that out.
13 Those are the clothes taken - -

14 THE COURT: Does that include - -

15 SOLICITOR LIPINSKI: It does include the shirt yes.

16 THE COURT: And the shirt is the only thing you object
17 to right?

18 MR. LEMEL: Among some clothes yes, sir.

19 THE COURT: Among some clothes?

20 MR. LEMEL: Yes, sir.

21 THE COURT: A shirt. So we are dealing with the
22 monopoly shirt and the ax and it will come up sometime this
23 afternoon?

24 SOLICITOR LIPINSKI: Yes, Your Honor. I just wanted
25 to give you the heads up. We may want to address that

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1 before or after lunch.

2 THE BAILIFF: Judge, may I approach?

3 THE COURT: Yes, please.

4 THE BAILIFF: We are still one short, sir.

5 THE COURT: All right. How about going ahead and

6 lining the rest of the jurors up at the door and when the

7 last one gets here you can bring them in.

8 (PAUSE.)

9 THE COURT: Yes, sir.

10 THE BAILIFF: They are twelve here.

11 THE COURT: You should have fourteen back there. And

12 you got twelve? Are they ready to come in?

13 THE BAILIFF: I got 'em all.

14 THE COURT: All right bring them in.

15 (JURY ENTERING THE COURTROOM AT 9:20 A. M.)

16 THE COURT: Good morning.

17 Cross examination.

18 CROSS EXAMINATION

19 LIEUTENANT HENRY LEE WRIGHT BY MR. LEMEL:

20 Q. Good morning, Officer Wright.

21 A. Good morning.

22 Q. Now yesterday you testified that you were a member of

23 the patrol division of the York County Sheriff's Office; is

24 that correct?

25 A. Yes, sir.

1 Q. And the patrol division is the uniform part of the
2 sheriff's department?

3 A. Yes, sir.

4 Q. They are the guys that we see driving around in the
5 big Crown Vic's?

6 A. First responder yes, sir.

7 Q. Driving around in big Crown Vic's and the answer to my
8 question?

9 A. Yes.

10 Q. The ones that are marked with decals that say sheriff?

11 A. Yes, sir.

12 Q. Light bar on the top usually?

13 A. Usually.

14 Q. There is a few exceptions of guys who would be traffic
15 enforcement on what we call slick tops that don't have the
16 big light bar on top?

17 A. Yes, sir.

18 Q. But most of the guys who are in the patrol division
19 drive those very recognizable marked cars?

20 A. Yes, sir.

21 Q. As opposed to saying an unmarked car that may be
22 driven around by somebody from the detective division?

23 A. Right.

24 Q. Okay. And as a member of the patrol division you
25 were assigned to a certain shift; correct?

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1 A. Yes, sir.

2 Q. And you work the night shift rather than the day
3 shift?

4 A. Right.

5 Q. And you were actually a supervisor on that shift;
6 correct, as a sergeant?

7 A. Uh-huh.

8 Q. I am going to ask you to answer me yes or no so the
9 court reporter takes it down clearly.

10 A. Yes, sir.

11 Q. Okay. Thank you. Now as you indicated one of the
12 things that the patrol division does is they are first
13 responders is the term?

14 A. Yes, sir.

15 Q. Now first responders means that you are typically the
16 people who take calls from the public for service?

17 A. Yes, sir.

18 Q. And those calls can come in in a number of ways?

19 A. Yes, sir.

20 Q. Most of the calls that come in come through a dispatch
21 or a 911 call; correct?

22 A. Yes, sir.

23 Q. Through what they call the emergency operation center
24 initially?

25 A. Yes, sir.

1 Q. Some calls can come in as a result of things basically
2 that you see while you are out there driving?

3 A. Yes, sir.

4 Q. But in the normal course of business a lot of things
5 that you get are simply radioed ha, somebody is calling
6 about this incident and you respond to it?

7 A. Yes, sir.

8 Q. Hence the term first responder?

9 A. Yes, sir.

10 Q. And as a first responder you receive specific training
11 on how to deal with situations; correct?

12 A. Yes, sir.

13 Q. Because there are certain situations that you as a
14 patrol division officer can deal with entirely on your own?

15 A. Yes, sir.

16 Q. Very simple case, speeding case for example, you deal
17 with all on your own?

18 A. Yes, sir.

19 Q. Even a case that may involve something like a simple
20 assault and battery or a shoplifting you may deal with that
21 all on your own?

22 A. Yes, sir.

23 Q. You don't need to involve anybody else. But there are
24 other cases that you are trained to involve additional
25 resources of the sheriff's department in it?

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1 A. Yes, sir.

2 Q. Basically cases that are more complicated you can't
3 just do all on your own?

4 A. Right.

5 Q. And in those situations as the first responder you
6 have certain various duties; correct?

7 A. Yes, sir.

8 Q. And you've been trained in what those duties are?

9 A. Yes, sir.

10 Q. And you received other training from the sheriff's
11 department over the years; right?

12 A. Yes, sir.

13 Q. I think you said you've been with them since 2001?

14 A. Correct.

15 Q. So roughly eight years?

16 A. Uh-huh.

17 Q. Okay. One of the things that you are trained in as a
18 sheriff's deputy is paperwork; right?

19 A. Yes, sir.

20 Q. And being a police officer these days there is a lot
21 of paperwork involved with that?

22 A. Yes, sir.

23 Q. You have forms that you are given by the sheriff's
24 office?

25 A. Yes, sir.

1 Q. Forms that are standardized basically for all the
2 officers in the sheriff's office to use?

3 A. Yes, sir.

4 Q. And you are trained in how to fill out those forms?

5 A. Yes, sir.

6 Q. And those forms apply to any number of things; right?

7 A. Right.

8 Q. You have forms for the preservation of evidence?

9 A. Yes, sir.

10 Q. Forms for the taking of samples of various types?

11 A. Yes, sir.

12 Q. Towing slips; booking information, things of that
13 nature?

14 A. Yes, sir.

15 Q. One of the most common forms that you have to deal
16 with is what we refer to as an Incident Report; right?

17 A. Yes, sir.

18 Q. And an Incident Report is basically the form that you
19 use to preserve what happened in a particular case?

20 A. Yes, sir.

21 Q. There are parts of these forms or this form for
22 various types of information; right?

23 A. Yes, sir.

24 Q. There is a place for location information?

25 A. Uh-huh.

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1 Q. There is a place for witness information?

2 A. Yes, sir.

3 Q. There is a place for defendant information or subject
4 information?

5 A. Yes, sir.

6 Q. And there is what we call a narrative section; right?

7 A. Yes, sir.

8 Q. Now the narrative section is that part of the form
9 where you report what you did, what you saw and what
10 happened?

11 A. Yes, sir. It's a summary.

12 Q. Right.

13 A. Yes, sir.

14 Q. It's basically your summary of what you did and what
15 you said and what happened in a particular case?

16 A. Yes, sir.

17 Q. And you don't fill out an incident report in every
18 incident that you are involved in. For example you won't
19 do one for a speedy ticket.

20 A. For the most part no, sir.

21 Q. Right. Typical speeding ticket.

22 A. Right.

23 Q. But anything that involves an arrest for example or a
24 major case you are going to fill out one of these incident
25 reports?

1 A. Yes, sir.

2 Q. And you are trained to make this incident report
3 complete?

4 A. Yes, sir.

5 Q. And accurate?

6 A. Uh-huh.

7 Q. And it should contain all the relevant information
8 that you have about an incident; right?

9 A. Yes, sir.

10 Q. And I'm not saying every necessary little teeny tinny
11 detail but in something that is relevant and important you
12 are going to put it in there?

13 A. For the most part yes, sir.

14 Q. Because these incident reports they are not just
15 random pieces of paper; right? You use these in the
16 sheriff's office?

17 A. Right.

18 Q. They are in fact reviewed by your superiors to make
19 sure that you are doing your job correctly and they have to
20 be signed off; right?

21 A. Right. Actually I sign my own reports off.

22 Q. As a supervisor?

23 A. Yes, sir.

24 Q. But up the chain - - -

25 A. Yes, sir.

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1 Q. - - - other people may review that as well to make
2 sure you are doing your job?

3 A. That's right yes, sir.

4 Q. And you actually supervise and train other people in
5 how to use these forms; right?

6 A. Yes, sir.

7 Q. And you review them for other people?

8 A. Yes, sir.

9 Q. And they may be used in fact by other officers as an
10 investigation continues they may go back and refer to your
11 incident report to give them a basis of information; right?

12 A. Yes, sir.

13 Q. And they are also used by you when it comes time for
14 you to testify in a particular case; right?

15 A. Somewhat.

16 Q. Sometimes?

17 A. Yea.

18 Q. Because it may be as in a case like this sometimes a
19 year or two years before a case can actually go to trial
20 depending on the significance of the case?

21 A. Yes, sir.

22 Q. And it's certainly helpful in a situation where you
23 are having to look back a year or two to have something
24 that you wrote up to look back on?

25 A. Right.

1 Q. And in fact in this particular case did you look at
2 your incident report before you came to court?

3 A. I did.

4 Q. Okay. So it's something that important to have filled
5 out that way completely and accurate?

6 A. Right.

7 Q. Okay. Now in this particular situation the initial
8 call that came in for you was that you were to assist EMS;
9 correct?

10 A. Yes, sir.

11 Q. And what you were told you were assisting EMS with was
12 simply an elderly female that had fallen?

13 A. Yes, sir.

14 Q. Now that initial report came in I assume via the
15 dispatch office; via the emergency operations office;
16 correct?

17 A. Yes, sir.

18 Q. And you received information from them all the time?

19 A. Yes, sir.

20 Q. And they don't just make up information to give you
21 about a call?

22 A. No, sir.

23 Q. If they are telling you that's been told to them some
24 how?

25 A. Yes, sir.

HENRY WRIGHT: CROSS EXAMINATION BY MR. LEMEL

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1 Q. And obviously when somebody is calling in that
2 scenario and when they are relating information they might
3 have the entire picture to give to you?

4 A. Right.

5 Q. Often times you go out for a call and it changes after
6 you get there?

7 A. Right.

8 Q. But in this particular case the initial call that came
9 in was simply for a fallen female?

10 A. Yes, sir.

11 Q. And so when you were approaching this incident at that
12 point in time you had no indication whatsoever that it's
13 anything more than just a fallen female that EMS needs help
14 with?

15 A. Not that I can remember.

16 Q. Okay. And do you remember exactly what time you were
17 dispatched?

18 A. I want to say like around 11:07 or so.

19 Q. Okay. Would it help you if you looked at your
20 incident report? Is there a spot on there that shows
21 exactly what time you were dispatched?

22 A. Yes.

23 Q. Okay. Obviously I'm just actually showing you the
24 first page of this. Do you recognize what this is?

25 A. Yes, sir.

1 Q. Is that your incident report?

2 A. It is.

3 Q. Okay. And is there a time on there showing what time
4 you were dispatched?

5 A. Yes, sir.

6 Q. What time does that show?

7 A. 23:07 which is 11:07 p.m.

8 Q. And what time was your arrival on the scene?

9 A. 11:24.

10 Q. Which is a different of seventeen minutes?

11 A. About seventeen minutes.

12 Q. Okay. So somewhere between fifteen and seventeen
13 minutes is about how long it took you to arrive?

14 A. Right.

15 Q. Can I have that back now?

16 A. Sure.

17 Q. Which is not unusual sometimes in a county the size of
18 York?

19 A. Yes.

20 Q. And I believe you said that you were actually working
21 in a different section of the county and had to drive over
22 to it?

23 A. It very well could. Normally my response time is not
24 that long. Most likely I was probably at the top area
25 which is the opposite side of the Rock Hill district.

HENRY WRIGHT: CROSS EXAMINATION BY MR. LEMEL

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1 Q. You said the Rock Hill district. Everybody who is on
2 the patrol division is given a district usually to patrol?

3 A. Each district is subdivided. In Rock Hill there is
4 three districts. There is one district but three
5 subsections. Yes, sir, there is normally one officer in
6 each district and then normally a car or two that floats
7 right.

8 Q. And in this particular situation you weren't actually
9 in this section so it took you a little bit longer to get
10 there?

11 A. Right.

12 Q. So you can't tell us anything about what happened
13 obviously before the dispatch call came in?

14 A. No, sir.

15 Q. Nor can you tell us anything about what happened at
16 the scene while you were driving there that seventeen
17 minute window; correct?

18 A. No, sir.

19 Q. All you can basically tell us is what you saw once you
20 arrived there?

21 A. Right.

22 Q. And you said that when you arrived there initially
23 basically your first contact was with Mr. Russell Berard
24 and his girlfriend; right?

25 A. Right.

1 Q. And you talked with them to found out some
2 information?

3 A. Right.

4 Q. And you approached the residence at that point?

5 A. Right.

6 Q. And you approached it through the door that is off of
7 what we've been calling the porch or the deck area?

8 A. Right.

9 Q. As opposed to necessarily the front door area of the
10 home?

11 A. Right.

12 Q. Okay. And as you approached the front door area you
13 did notice that there was certain indications of disarray;
14 right?

15 A. The side door.

16 Q. The side door? I'm sorry, if I said the front door I
17 apologize.

18 A. Right.

19 Q. The side door of the deck area you noticed there was
20 certain signs of disarray?

21 A. Right.

22 Q. There was a plant that was knocked over?

23 A. Right.

24 Q. There was dentures on the ground at that point?

25 A. Right.

HENRY WRIGET: CROSS EXAMINATION BY MR. LEMEL

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1 Q. And did you notice immediately the blood stains as you
2 walked in?

3 A. From what I remember yes, sir, I remember seeing the
4 blood.

5 Q. And so those things were notable to you as you walked
6 in obviously this may be something a little but more than
7 just somebody falling down?

8 A. Right.

9 Q. But you did not notice for example that there were any
10 broken windows?

11 A. Not that I can recall.

12 Q. No broken locks?

13 A. Not that I can recall.

14 Q. It did not appear that the door had been kicked in or
15 smashed in in any way?

16 A. No.

17 Q. So no physical damage to the actual entry way itself?

18 A. Not that I can recall.

19 Q. Okay. Once you were inside the residence at that
20 point in time you first encountered Ms. Moss; right?

21 A. Yes, sir.

22 Q. And as I recall your testimony yesterday the limit of
23 her basic ability to respond to you at that point in time
24 was basically non verbal that she was moaning?

25 A. Right.

1 Q. She couldn't really answer questions; respond to you?

2 A. Right.

3 Q. Which now at that point in time you click into a whole
4 different mode; right?

5 A. Right.

6 Q. You've got to make sure first of all that you are
7 trying to keep her as stable as you can so that she doesn't
8 pass away while EMS is on the way if she is that bad off?

9 A. Well the first thing is actually to secure the scene

10 - - -

11 Q. Okay.

12 A. - - - and once the scene is secure then yes.

13 Q. And basically by securing the scene that means you
14 went through the house?

15 A. To make sure there is no other threats inside the
16 residence.

17 Q. Right. Which is a fairly quick process?

18 A. Right.

19 Q. This is not a big house by an stretch of the
20 imagination?

21 A. Right.

22 Q. Okay. So once you do that you are basically taking
23 care of her as best you can?

24 A. Right.

25 Q. Making sure EMS can get to her?

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1 A. Right.

2 Q. And also securing the scene?

3 A. Right.

4 Q. Which as a first responder in that sort of scenario is
5 really your biggest duty at that point?

6 A. Right.

7 Q. You have to make sure that things don't get moved
8 around; changed, altered until other people can get there
9 to document what happened?

10 A. Right.

11 Q. Because if things are changed or altered or moved it
12 can effect the quality of the evidence that is being
13 produced?

14 A. Right.

15 Q. It can affect the conclusions that are reached on a
16 particular case?

17 A. Right.

18 Q. So it's important that things not be changed in the
19 interim so people can draw correct conclusions?

20 A. Yes, sir.

21 Q. Okay. Now a second part after you've been there for a
22 little bit is you went to the residence that was right next
23 door?

24 A. Yes, sir.

25 Q. And you went into and through that residence with

1 another deputy?

2 A. Yes, sir.

3 Q. Basically doing another one of these protective
4 sweeps?

5 A. Yes, sir.

6 Q. Okay. And at that point in time - who is the other
7 deputy? Do you remember?

8 A. I believe it was Buddy Brown.

9 Q. Sergeant Brown?

10 A. Who is also a sergeant.

11 Q. Okay. And at that point in time basically you are
12 just seeing whether there is anybody in there?

13 A. Right. Just basically to secure that residence.

14 Number One to make sure there is no other suspects and to
15 make sure there is no suspect inside. And Number Two is to
16 make sure there is no evidence being damaged or destroyed.

17 Q. And you were able to confirm there in fact nobody in
18 there therefore nothing was being damaged or destroyed?

19 A. Right.

20 Q. Now you didn't have a search warrant to go into this
21 residence did you; you just went in?

22 A. Right.

23 Q. Now a number of other people arrived. Probation you
24 said got there fairly quickly?

25 A. Fairly quickly yes, sir.

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1 Q. And you called out things like the Forensic Service
2 Unit coming in and taking pictures?

3 A. Right. Process the scene yes, sir.

4 Q. And detectives -- there's always somebody on call for
5 detectives?

6 A. Yes, sir.

7 Q. And the detective division is a little bit different
8 than patrol division; right?

9 A. Right.

10 Q. And the patrol division there is always somebody from
11 the patrol division actively on duty?

12 A. Right.

13 Q. Twenty-four hours a day?

14 A. Right.

15 Q. Depending on the number of officers but there is
16 always a patrol officer?

17 A. Right.

18 Q. The detective division works more of a nine to five
19 schedule kind of situation. They have somebody on calls
20 for after hours?

21 A. Right.

22 Q. And you have an officer, you have a detective you can
23 call out that can get to other detectives if need be?

24 A. Right.

25 Q. But they have a little bit more of a normal schedule.

1 So you have to call out an on call detective?

2 A. Right.

3 Q. And indeed in this situation you proceed on to try to
4 take some statements; correct?

5 A. Right.

6 Q. You took statements from Mr. Russell Berard and his
7 girlfriend Meghan?

8 A. Right.

9 Q. You provided them with paperwork to do so?

10 A. Right.

11 Q. Now when you were getting these statements from them
12 obviously they were still somewhat distraught.

13 Q. I am sure they probably were. Their statements were
14 taken. EMS had already arrive on scene the scene was
15 pretty much secure at that point before I ever offered to
16 issue a statement yes, sir. So it was probably -- I can't
17 tell you for sure how long it was after but it was a little
18 while after the initial arrival on scene.

19 Q. And that initial shock had therefore passed a little
20 bit for them?

21 A. Probably.

22 Q. Okay. And you were judging them; you were looking at
23 them at that point in time?

24 A. Watching them take the statements?

25 Q. No. In just talking with them as a normal

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1 interaction.

2 A. Normally I explain to them what they need to do to
3 fill out the paperwork and then I gave them pens and just
4 let them do it all. I don't really talk with them while
5 they are doing the statements.

6 Q. I understand but before you took the statements from
7 them you were talking with them?

8 A. Right.

9 Q. And you could see their demeanor at that point in
10 time?

11 A. Right.

12 Q. And it was no longer as frantic and as upset; it was
13 somewhat calmed down if I'm understanding you correctly?

14 A. I would say yea.

15 Q. Okay. I'm just trying to find out how they were doing
16 at that point.

17 A. Yea.

18 Q. So when you take this statement by your own testimony
19 just a moment ago you provided them with the forms?

20 A. Uh-huh.

21 Q. You explained to them what you want. I'm not putting
22 words in their mouth but what the purpose of the statement
23 is?

24 A. Right. And I explain to them the proper way to fill
25 it out; if they make a mistake and things like that on the

1 statement how to document if they fix a mistake or
2 something like that.

3 Q. Right. Because these statements again are
4 preservation of evidence for down the road?

5 A. Right.

6 Q. Again getting a statement at that time while
7 everything is still fresh and they can recall everything
8 right at that point in time is important in a case like
9 this?

10 A. Right.

11 Q. Because those recollections at that point in time are
12 never going to be any fresher than they are basically right
13 after the incident happens?

14 A. Right.

15 Q. Okay. When you give them this statement obviously you
16 don't threaten them or put any pressure on them or coerce
17 them in any way?

18 A. No.

19 Q. You try to make them as comfortable as possible as
20 they are doing this process?

21 A. Yea I guess.

22 Q. Well you are not harassing them.

23 A. Yea. I don't force them. I explain to them up front
24 they are not required to fill out a statement.

25 Q. And they wanted to in this situation?

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1 A. Right.

2 Q. They wanted to assist you?

3 A. Yes, sir.

4 Q. Okay. All right. Now as I recall from yesterday's
5 testimony one of your conclusions was by the end of the
6 process at the end of your direct examination you basically
7 said that you had changed your conclusion as to what this
8 was. This was no longer a fallen woman but it was in fact
9 an assault of a sexual nature; right? Do you remember
10 testifying to that?

11 A. Yes, sir.

12 Q. And you said that you based that off of the statements
13 and the position of where Ms. Moss was at and where she was
14 laying?

15 A. Basically the totality of circumstances.

16 Q. But yesterday you testified that the totality of the
17 circumstances were the statements where she was at and
18 where she was laying. Do you remember testifying to that?

19 A. And the other evidence.

20 Q. Okay. But yesterday -- make sure you understand my
21 question. That's what you said.

22 SOLICITOR SIKORA: Objection.

23 THE COURT: On what basis?

24 SOLICITOR SIKORA: Arguing with the witness.

25 THE COURT: Over ruled.

1 BY MR. LEMEL:

2 Q. Now as far as her position you can't say again of your
3 own personal knowledge what happened during that seventeen
4 minutes that the call was pending before your arrival;
5 right?

6 A. No, sir.

7 Q. And you don't know whether perhaps she was moved
8 during that point in time?

9 A. No, sir.

10 Q. And if she was moved during that point in time would
11 that affect your ability to reach that conclusion?

12 A. I don't know.

13 Q. Okay. Are you aware about whether her clothing was
14 changed or whether clothing was put on her during that
15 period in time?

16 A. No, sir.

17 Q. And if you were aware that clothing was put on her
18 would it affect your conclusion?

19 A. I don't know. I don't know the answer to that
20 question. It's a whole different circumstance.

21 Q. What if she was washed; a part of her body was washed
22 during that period of time? Are you aware of whether that
23 happened?

24 A. No, sir.

25 Q. If that did happen if that change occurred would it

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1 affect your conclusion?

2 A. Again you have to take each case on an individual
3 basis.

4 Q. Well I'm asking you based on what you said your
5 conclusion was would those factors those changes affect
6 your conclusion?

7 A. I would still have to investigate the totality of the
8 circumstances in that particular incident.

9 Q. I beg the Court's indulgence. No further questions,
10 Your Honor.

11 Thank you, Deputy.

12 SOLICITOR SIKORA: Nothing further of this witness.

13 THE COURT: All right, sir, you can come down.

14 SOLICITOR SIKORA: We ask that he be excused.

15 SOLICITOR LIPINSKI: State calls Russell Berard.

16 MADAME CLERK: Raise your right hand and place your
17 left hand on the bible.

18 (WHEREUPON: RUSSELL BERARD,
19 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

20 DIRECT EXAMINATION

21 RUSSELL BERARD BY SOLICITOR LIPINSKI:

22 Q. Mr. Berard, I am going to ask you generally just kind
23 of talk in the direction of that microphone between you and
24 the court reporter it will just assist the jury in hearing
25 you. If you could state your name for the record and spell

- 1 your last name.
- 2 A. Russell Berard. Berard, B-e-r-a-r-d.
- 3 Q. Mr. Berard, do you live here in Rock Hill?
- 4 A. I do.
- 5 Q. And with whom do you live?
- 6 A. I live with my parents.
- 7 Q. And what are your parent's names?
- 8 A. Doug and Cecilia Berard.
- 9 Q. Doug and Cecilia. I'm sorry.
- 10 A. Berard.
- 11 Q. Berard as well. And who is Loretta Moss to you?
- 12 A. My grandmother.
- 13 Q. It is that Sissy's mother so your mother's mother?
- 14 A. That's right my mother's mother.
- 15 Q. And do you know Adam Berard?
- 16 A. It's my half brother.
- 17 Q. That's your half brother?
- 18 A. Yea we have different fathers.
- 19 Q. You have different fathers. And how old are you?
- 20 A. I am twenty-two.
- 21 Q. And how old is Adam if you know?
- 22 A. I would say twenty-six. I don't know.
- 23 Q. Older than you by a few years?
- 24 A. Older than me.
- 25 Q. And where there times growing up that you lived

1 together?

2 A. Yes at times.

3 Q. And the time in June of '08 were you living together?

4 A. Yes.

5 Q. And you lived -- we've heard some testimony, is your
6 address [REDACTED] [REDACTED]?

7 A. Yes.

8 Q. And who lives next door to you?

9 A. My grandmother.

10 Q. And do you know her address off the top of your head?

11 A. [REDACTED] [REDACTED].

12 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-TWO

13 PREMARKED FOR IDENTIFICATION.)

14 Q. Your Honor, if I can approach the witness.

15 THE COURT: Sure.

16 Q. Let me show you - -

17 And I showed defense counsel already, Your Honor, he
18 said he had no objection.

19 Let me show you what's been marked State's Exhibit
20 Number Twenty-Two and ask you -- that's an aerial photo do
21 you know of what area the aerial photo's of?.

22 A. Yes. It's the area where my grandmother's house and
23 my parent's house is.

24 Q. Your Honor, at this time we move State's Exhibit
25 Number Twenty-Two into evidence.

1 MR. LEMEL: Without objection, Your Honor.

2 THE COURT: All right it's admitted.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-TWO

4 PREMARKED FOR IDENTIFICATION ENTERED INTO EVIDENCE.)

5 SOLICITOR LIPINSKI: And, Your Honor, may I publish
6 that to the jury?

7 THE COURT: You may.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-TWO

9 PUBLISHED TO THE JURY ON OVERHEAD PROJECTOR.)

10 BY SOLICITOR LIPINSKI:

11 Q. And while the projector is warming up this morning I
12 am going to put a big one up here. You can look at that.
13 It may be easier to see versus across the courtroom. If
14 you could there are two houses side by side.

15 A. Right.

16 Q. And do they have separate boundaries? Do they have
17 separate fences?

18 A. No it's one fence.

19 Q. So one fence surrounds the entire residence?

20 A. Correct.

21 Q. And about how far are the two houses from one another?

22 A. Fifteen, twenty yards. Not less.

23 Q. Can you stand at your house and speak loud enough that
24 your grandmother would be able to hear if she was on the
25 deck of her house?

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1 A. Yes.

2 Q. And do you do that often?

3 A. Yea when need be.

4 Q. Are there separate driveways to each residence?

5 A. There is.

6 Q. And how long have you lived at the Zinker Road
7 residence if you recall?

8 A. Roughly eight years.

9 Q. And do you know how long your grandmother has lived
10 there?

11 A. Not off the top of my head.

12 Q. Longer than you?

13 A. Yes much longer.

14 Q. If we can dim the lights.

15 (CLERK OF COURT DIMMED COURTROOM LIGHTS.)

16 Q. Thank you.

17 This is State's Exhibit Number Two on the projection
18 here. There is a little yellow arrow going out. You might
19 be able to see that. Does that indicate your grandmother's
20 address?

21 A. Yes.

22 Q. So is the one at yellow arrow Twenty-Two that's your
23 grandmother's residence?

24 A. Yea that's right.

25 Q. And we see kind of the drive way "V" off, veer off or

1 split. One driveway goes to her residence?

2 A. Yeah.

3 Q. And the other one to yours?

4 A. Right.

5 Q. And then there's an area in between?

6 A. Uh-huh.

7 Q. And is there a basketball court or a parking area near
8 your residence?

9 A. Yeah. There is a cement slab with a basketball hoop
10 on it.

11 Q. So the small gray square kind of between your
12 residence and hers is that what we are talking about?

13 A. Uh-huh that's it.

14 Q. And then you stated there is a fence that surrounds
15 the greater property inside?

16 A. Right.

17 Q. And is that a gate in the front that you all can
18 close?

19 A. Yes.

20 Q. Do you have any pets?

21 A. Yes two dogs.

22 Q. And do they generally roam around the yard at times?

23 A. Yes.

24 Q. And is either road -- what's the road that runs up
25 along the side of your grandmother's residence? Do you

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1 know what I am talking about?

2 A. To the left of her residence right here?

3 Q. Yes.

4 A. That's a new development they are putting in. I don't
5 know really the name of the road.

6 Q. So if you go -- where approximately -- where is the
7 main road? Do you all live off Highway 5?

8 A. Yeah. We live off Eastview Road is probably the main
9 road. That's going out to the right.

10 Q. And is that how you would go back towards Rock Hill?

11 A. Right. Correct.

12 A. And do you all live more or less between the City of
13 York and the City of Rock Hill?

14 A. That's right.

15 Q. What's the nearest major high school to where you
16 live?

17 A. It would be Northwestern High School on East Main
18 Street.

19 Q. East Main Street.

20 Thank you. You can turn the lights back up if you
21 can.

22 (CLERK OF COURT BRIGHTENED LIGHTS.)

23 Q. Have you lived here in Rock Hill most of your life?

24 A. About eight years.

25 Q. About eight years?

- 1 A. Yeah.
- 2 Q. And have you visited your grandmother more or less all
3 your life?
- 4 A. Yes.
- 5 Q. Grew up with her?
- 6 A. Grew up with her.
- 7 Q. Kind of a normal grandmother relationship?
- 8 A. Yes.
- 9 Q. And did Adam live with you at [REDACTED]?
- 10 A. At that time?
- 11 Q. At that time.
- 12 A. Yes.
- 13 Q. He was living there?
- 14 A. He was.
- 15 Q. And you two are old enough obviously you are no longer
16 sharing a bedroom or anything like that?
- 17 A. No separate bedrooms.
- 18 Q. And were you working at the time?
- 19 A. I was.
- 20 Q. Where were you working?
- 21 A. I was working at Michael's Restaurant as a waiter.
- 22 Q. And was Doug and Sissy working at the time or are they
23 retired?
- 24 A. No. My father was working.
- 25 Q. Your father was working. Was your mother working at

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1 the time?

2 A. No.

3 Q. And you stated that you had some pets. How many pets
4 did you have that were yours that belonged to you, Doug and
5 Sissy or yourself?

6 A. There's two dogs.

7 Q. And were they inside or outside dogs?

8 A. We had a Jack Russell, a Jack Russell that was inside
9 and there it was a Lab that stayed outside.

10 Q. And on the date in question were your parents at home?

11 A. No they wasn't.

12 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-THREE,
13 PERMARKED FOR IDENTIFICATION.)

14 Q. May I approach the witness, Your Honor.

15 I am showing you what I've already shown Defense
16 Counsel. I show you State's Exhibit Number Twenty-Three and
17 ask you if you recognize what is depicted in this
18 photograph?

19 A. I do.

20 Q. And in essence is it a note?

21 A. It's a note from my parents.

22 Q. A note from your parents?

23 A. Right.

24 Q. And was it written more or less on the day of the
25 event or the day before?

1 A. Probably the morning of.

2 Q. The morning of?

3 A. Yeah.

4 Q. And does it accurately reflect the note that you
5 recall finding your parents had left you?

6 A. Yes.

7 Q. And, Your Honor, the State at this time would move
8 Number Twenty-Three into evidence.

9 MR. LEMEL: Without objection, Your Honor.

10 THE COURT: Its admitted.

11 (STATE'S EXHIBIT NUBMER TWENTY-THREE PREMARKED AND
12 IDENTIFIED ENTERED INTO EVIDENCE.)

13 BY SOLICITOR LIPINSKI:

14 Q. And what did the note from your parents say?

15 A. Word for word it said,

16 "We went to the beach for the day. Please let
17 Ruddy out to pee and bring him back in this morning.
18 Let Buddy in the laundry room. Give Buddy fresh water
19 and some dry food. We will probably be back late
20 tonight. Uncover Bo this morning cover him back up
21 tonight."

22 Q. Bo would be a third pet; right?

23 A. Yeah Bo is a bird.

24 Q. A bird. You might not consider that a real pet?

25 A. Yea.

1 Q. So they were indicating that they were going to be
2 gone all day?

3 A. Right.

4 Q. And home late that night if at all?

5 A. Yeah if at all.

6 Q. And what did you do that day? Did you go to work that
7 day?

8 A. I went to work earlier and got off late.

9 Q. And what would be getting off late for you?

10 A. Ten o'clock; 10:30.

11 Q. But you say you work at a restaurant?

12 A. Yes.

13 Q. And what were your plans after you got off work?

14 A. I was going to come home meet my then girlfriend now
15 engaged we was going to watch a movie at my house.

16 Q. And your girlfriend would be Meghan Hall?

17 A. Meghan.

18 Q. In the yellow sweater?

19 A. In the yellow sweater.

20 Q. And so your plan was to go back to your house and
21 watch a movie?

22 A. Uh-huh.

23 Q. And eat dinner. Is that what you said?

24 A. Yeah we were going to have a bit to eat.

25 Q. And did you talk to her before hand or had you made

1 those plans earlier in the day?

2 A. We had made the plans earlier but I had talked to her
3 on the way home.

4 Q. About who was picking up what and that kind of thing?

5 A. Yeah.

6 Q. Do you know if she worked that day?

7 A. I don't remember.

8 Q. And did you go pick her up or were you two driving in
9 separate cars to your residence?

10 A. We drove separate cars.

11 Q. And do you get there about the same time?

12 A. Yes.

13 Q. And when you pull up at [REDACTED] do you notice
14 anything out of the ordinary?

15 A. Well yea the dog was out.

16 Q. The dog was out?

17 A. Yea Buddy was out of his pen. He was supposed to be
18 put up by then.

19 Q. And why would you put up Buddy by then typically?

20 A. Well it gets dark. You know usually we feed him and
21 put him in his pen for the night. That's usually just how
22 we do it.

23 Q. And whose responsibility was that? Whoever came home
24 that night?

25 A. Yeah. Well I since my parents wasn't there for the

1 entire day hopefully Adam would have put him up so he
2 wouldn't be out so late because it was going to be late by
3 the time I got home.

4 Q. But you said you get home. Do you recall about what
5 time you get home?

6 A. 10:30; 10:45.

7 Q. And at that time Buddy is still out. You thought that
8 was unusual?

9 A. Yeah that was a little weird.

10 Q. Did you open the gate or was the gate closed?

11 A. I opened the gate.

12 Q. Go in and park. Do you at that time go to put Buddy
13 up?

14 A. Yes I put the dog up.

15 Q. And Buddy's pen is it to the rear of your residence?

16 A. Uh-huh right behind the concrete slab.

17 Q. And you put him up?

18 A. Uh-huh.

19 Q. And do you notice anything else out of the ordinary?

20 A. No not at that time.

21 Q. And has Meghan arrived yet?

22 A. Yes. Yeah she come up after I put Buddy in.

23 Q. Do you go close the gate and then have to go open it
24 to let Meghan in or does she pull in close enough behind
25 that you just left the gate open for her?

1 A. I left the gate open.

2 Q. Do you notice anything else? I mean do you go into
3 your house?

4 A. Yeah I go home. I notice nobody was there. The bird
5 was still out so that was a little weird to me.

6 Q. Do you put the bird up?

7 A. No. Never bothered with the bird.

8 Q. And do you ever go back outside?

9 A. To meet Meghan.

10 Q. To meet Meghan?

11 A. Yes.

12 Q. And do you hear her pull up?

13 A. Uh-huh.

14 Q. And when you go outside other than her pulling up do
15 you notice anything in the yard?

16 A. I seen beer cans in the yard. There was a couple of
17 cans in between my house and my nanny's house.

18 Q. You call her your nanny?

19 A. Yes..

20 Q. You don't call her Loretta?

21 A. No.

22 Q. That's your name for her?

23 A. Yea that's my name.

24 Q. And was that typical to have beer cans out in your
25 yard?

1 A. No.

2 Q. Was that something your nanny tolerated?

3 A. No.

4 Q. And did anything else draw your attention in the
5 direction of your nanny's house?

6 A. Well Adam wasn't in the house so I go up to my nanny's
7 to see if he was there.

8 q. And did you do that?

9 A. I did.

10 Q. And was Meghan with you at the time?

11 A. Yes.

12 Q. And do you go through the front door or through the
13 porch door that we heard about?

14 A. I go through the porch.

15 Q. And is that closest to your own residence?

16 A. Yeah.

17 Q. And when you get on the porch do you notice anything
18 unusual?

19 A. As soon as I look in through the French doors I did.

20 Q. So she has a French door. By that do you mean t has a
21 window that for the most part goes from the top to the
22 bottom of the door?

23 A. Right.

24 Q. And is there a curtain or anything else obstructing
25 your view or can you see into the house?

- 1 A. I can see straight in.
- 2 Q. And when you look through that door typically what
- 3 area of the house are we looking into? Is that the living
- 4 room, the dining room, the kitchen?
- 5 A. It's the kitchen. The kitchen/dining room.
- 6 Q. And what do you see if anything?
- 7 A. Well I see my nanny laying on the ground with Adam on
- 8 top of her.
- 9 Q. And can you see that clearly?
- 10 A. Clearly.
- 11 Q. And are they perpendicular to you? Are their heads
- 12 towards you?
- 13 A. Yes. My nanny was on her back with her head towards
- 14 me.
- 15 Q. And is Adam similarly positioned? Is his head towards
- 16 you?
- 17 A. His head is towards me laying down on top of her.
- 18 Q. And do you hear anything?
- 19 A. Yes. She was yelling for help as loud as she could.
- 20 Q. And you go inside the residence?
- 21 A. I do.
- 22 Q. And as you go inside the residence you stated that she
- 23 was lying on her back on the floor?
- 24 A. Uh-huh.
- 25 Q. Can you tell if she is wearing anything?

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- 1 A. No she didn't have -- she did not have clothes on.
- 2 Q. And could you tell if Adam is wearing anything?
- 3 A. He had his shirt on. I didn't see pants.
- 4 Q. Is he laying on top of her to pen her on the ground or
- 5 are they in a sexual position? Can you describe it?
- 6 A. Yea it looked like a sexual position.
- 7 Q. Was he moving at all?
- 8 A. No. I don't remember.
- 9 Q. Is he saying anything?
- 10 A. No.
- 11 Q. So the only thing you hear is coming from your nanny?
- 12 A. Yes.
- 13 Q. And do you say anything to Adam?
- 14 A. Yes. I said like what are you doing you know. And
- 15 that's what I said to him as I walked in. He straightened
- 16 up. Jumped right up.
- 17 Q. And does he say anything back to you if you recall?
- 18 A. No I don't recall.
- 19 Q. You say he stands up gets off of your nanny?
- 20 A. Yea putting his pants on.
- 21 Q. Putting his pants on as he stands up?
- 22 A. Yeah.
- 23 Q. And does he stay there?
- 24 A. He stands up looks me direct -- directly as I ask him
- 25 you know what happened; what are you doing?

1 Q. And does he say anything?

2 A. Yeah. He kept saying she fell, she fell. Then I look
3 at her and realize you know the blood and her screaming I
4 promptly picked up the phone and called 911.

5 Q. And does he stay there while you call 911?

6 A. He is in the kitchen as I am on the phone with them
7 telling me she fell and right then I hadn't really put
8 everything together so I tell 911 she fell for them to get
9 EMS out there as quickly as they could.

10 Q. And you stated that when he told you she fell and once
11 he got off of her you realized something more may have
12 happened?

13 A. Yeah I realized.

14 Q. And if you could what exactly about her condition made
15 you think that? You said something about blood; was there
16 blood?

17 A. There was blood around her. She had a big wound; a
18 gash on her arm that I seen. That was the biggest one I
19 seen for me. You know she didn't have her teeth in yeah.

20 Q. Your nanny has dentures?

21 A. She has dentures yes.

22 Q. And you stated she didn't have those in when you saw
23 her?

24 A. They were not there.

25 Q. And were you able to understand her crying for help?

1 A. I understood help yeah. I don't know at that time
2 that she had said you know he tried to kill me he tried to
3 kill. Help and he tried to kill is the two things I heard
4 from her.

5 Q. And does Adam stay when EMS arrives?

6 A. No he leaves and I ask what are you doing? He goes to
7 the back shed for a scooter that he has saying he's going
8 to get help.

9 Q. Do you follow him out of her residence and watch where
10 he goes or is that what you see through the French door?

11 A. I went to the porch to see. At that time I was angry
12 I was yelling at him. I couldn't really remember what I
13 told him but he had got on his scooter and left.

14 Q. Do you go back inside?

15 A. Yeah I step right back inside.

16 Q. May I approach, Your Honor?

17 THE COURT: Let me see you all for a minute please.

18 (BENCH CONFERENCE AT 10:00 A.M. OFF THE RECORD OUT OF
19 THE HEARING OF THE JURY.)

20 THE COURT: Let me see you, sir?

21 (BAILIFF APPROACHING BENCH.)

22 (BENCH CONFERENCE WITH BAILIFF AT 10:02 A. M.)

23 THE COURT: Ladies and Gentlemen, we are going to take
24 a short break and I am going to send you all back into the
25 jury room. I will bring you back out here as quickly as I

1 can. Remember that you cannot discuss the case and I will
2 see you in just a few minutes.

3 Sir, would you take them back to the jury room?

4 (JURY LEAVING COURTROOM AT 10:02 A.M..)

5 THE COURT: Okay. Just a moment before - -

6 THE BAILIFF: Excuse me, sir.

7 THE COURT: Yes, sir.

8 (THE COURT AND BAILIFF IN BENCH CONFERENCE.)

9 THE COURT: Just a moment before we took the break my
10 law clerk actually noticed and then told me that we only
11 had thirteen jurors sitting in the box. We obviously
12 selected twelve jurors and two alternates. Who is the
13 person that came in late? Do you know which one it was?

14 MADAME CLERK: Do you know his name?

15 THE BAILIFF: I will get his number.

16 THE COURT: So you all came up to the bench and I ask
17 you if -- now there wasn't really a perfect time to take a
18 break because you were right in the middle of something but
19 you all agreed that we should take a break and decide what
20 to do. We started court right at 9:15 as we had said.

21 THE BAILIFF: 166.

22 MADAME CLERK: William Nivens.

23 THE COURT: 166. All right so he's on the jury. I
24 guess when they counted the -

25 Were you in here yesterday?

1 THE BAILIFF: No, sir, I was not.

2 THE COURT: They had a change over in bailiffs and I
3 guess they just assumed we had a jury and one alternate and
4 when he told me that they were all here I assumed that they
5 counted off the list and I didn't count them myself. So we
6 have now been going a little over forty-five minutes.
7 We've heard the cross examination of one witness and a
8 large portion of the direct of another without one of the
9 jurors who is on the jury. And so we need to hear from you
10 all as to -- I mean obviously I guess the simplest thing --
11 the guy was late because we didn't start until 9:15 and he
12 wasn't in the jury room at 9:15. So the simplest thing is
13 to remove him from the jury and replace him with one of the
14 alternates.

15 Is there any objection to that, Mr. Lemel?

16 MR. LEMEL: Your Honor, if I can just have one second.
17 I beg the court's indulgence to discuss this one second.

18 THE COURT: Sure.

19 (PAUSE.)

20 MR. LEMEL: Your Honor, we would object to that
21 removal at this point in time. We don't know exactly how
22 late he was. We don't know if he was a minute late we
23 don't know anything at this point in time. However he was
24 a seated member of the jury itself he was not one of the
25 alternates so we would object to his removal and move for a

1 mistrial at this point in time due to there is no just
2 cause for his removal at this point in time. No cause to
3 take him off; he's not indicated any issues or any
4 problems.

5 THE COURT: Well I deny the motion for a mistrial.
6 There is no basis for a mistrial. One of the options is to
7 do what I said to remove him from the jury and put back one
8 of the alternates. The other option is to put him back on
9 the jury and instruct the jury to disregard everything they
10 just heard and put that officer -- the first officer back
11 up on the stand. Is he in the building? I know you asked
12 for him to be excused.

13 SOLICITOR LIPINSKI: I did send him home he had worked
14 all night. He may be in bed by now.

15 THE COURT: Well get him back up here.

16 SOLICITOR LIPINSKI: Is there an option?

17 THE COURT: Get him back up here and then let you
18 cross examine the witness again and then we'll allow the
19 Solicitor go through the direct examination of this witness
20 again.

21 Of course I am sure you are thinking strategically
22 about whether or not it is in your clients' best interest
23 to have the jury hear the testimony of this witness twice
24 but if that's what you prefer that's what we'll do.

25 MR. LEMEL: No, sir, I do not feel that that is in any

1 way adequate. Essentially there is no way that I can redo
2 cross examination as effectively as what just happened not
3 the least of which is the fact the officer would have
4 already heard all the questions we've had now close to an
5 hour of whatever to think about his answers or change his
6 answers.

7 THE COURT: Okay you got any other options then?

8 MR. LEMEL: Judge, I don't know what other options we
9 have except a mistrial and that's the one I've already - -

10 THE COURT: Well I've already denied that.

11 MR. LEMEL: And I understand, Your Honor. You are
12 asking me for other options - -

13 THE COURT: It is not permissible and certainly not
14 necessary for me to grant a mistrial if there are
15 meaningful ways in avoiding a mistrial. If I had started
16 the trial ten minutes early that would be one thing but we
17 started - -

18 Do you show exactly what time we started with
19 testimony?

20 MADAME COURT REPORTER: Yes, sir. Oh, testimony?
21 Yes, sir.

22 THE COURT: Or what time the jury came in.

23 MADAME COURT REPORTER: I have it right here, Judge,
24 just a minute. 9:20 the jury came in; testimony started
25 immediately after; a matter of a minute.

1 THE COURT: All right so he was at least five minutes
2 late. I'm not granting a mistrial. There is no manifest
3 necessity motion for a mistrial is denied. So far we have
4 two other options on the table.

5 Mr. Lemel.

6 MR. LEMEL: Well, Your Honor, given I'm only given two
7 options - -

8 THE COURT: No you are not only given two options.
9 I'm asking you, and the solicitor also has the opportunity
10 to present another option as well, what other option do we
11 have? Let's make sure we know what all our options are
12 before I pick one. Can you think of any other options?

13 MR. LEMEL: No, sir.

14 THE COURT: Solicitor?

15 SOLICITOR LIPINSKI: No, sir.

16 THE COURT: All right, Mr. Lemel, why don't you take a
17 moment to think strategically with your co-counsel and your
18 client to see which of those two options that we have
19 identified creates the less prejudice for your client and
20 then you can argue as to which option you would like.

21 Solicitor, you can do the same thing.

22 SOLICITOR LIPINSKI: The officer is reportedly five
23 minutes away.

24 MR. LEMEL: Your Honor, the court already having ruled
25 on my motion for a mistrial if I'm choosing between those

1 options obviously my option at that point in time rather
2 than trying to go back and try to recreate cross
3 examination and have this witness basically re-testify
4 again would be to substitute one of the alternates on to
5 the jury.

6 THE COURT: Okay. Do you have any objection to that?

7 SOLICITOR LIPINSKI: No.

8 THE COURT: All right. Ma'am, Madame Clerk, I need
9 for you to pick one of the two alternates randomly. Do you
10 have - -

11 MADAME CLERK: I put their names in.

12 THE COURT: She is going to write their names on a
13 piece of paper and put them in a hat we'll let somebody
14 pick one of the names out.

15 Does that suit you, Mr. Lemel?

16 MR. LEMEL: Yes, sir. I think that's according to the
17 rules it has to be randomly selected.

18 THE COURT: Ms. Lipinski?

19 SOLICITOR LIPINSKI: No objection.

20 THE COURT: All right. Then you can call the officer
21 if you can still reach him and give him my apologies and
22 tell him that he does not need to come back.

23 (SERGEANT HENRY WRIGHT ENTERING THE COURTROOM.)

24 THE COURT: Officer, I am sorry we are not going to
25 need you after all. It looked like we might need you

1 again. I made the decision to tell them to bring you back
2 and I apologize that you had to come back. You at this
3 point are free to go.

4 SERGEANT HENRY WRIGHT: That's no problem. Thank you.
5 You all have a good day.

6 THE COURT: Thank you.

7 MADAME CLERK: Who do you want to draw?

8 THE COURT: Do you mind if I draw?

9 MR. LEMEL: Your Honor, probably the law clerk. I've
10 had to do this before.

11 THE COURT: My law clerk?

12 MR. LEMEL: I would submit that probably the law clerk
13 is a pretty good individual.

14 THE COURT: Don't look in there.

15 (LAW CLERK DREW NAME FOR JURY.)

16 LAW CLERK: Laura Gillespie.

17 THE COURT: Laura Gillespie. Is everybody satisfied?
18 What we've done is now that we know we need to put an
19 alternate on the jury we randomly selected one of the two
20 alternates. Is everybody satisfied with the procedure that
21 we used to accomplish that, Ms. Lipinski?

22 SOLICITOR LIPINSKI: Yes, Your Honor.

23 MR. LEMEL: With the procedure yes, Your Honor.

24 THE COURT: All right Ms Gillespie then will be placed
25 on the jury. Bring Mr. Nivens in. Mr. Nivens the one who

1 was late.

2 (JUROR NUMBER 166 ENTERING COURTROOM.)

3 THE COURT: Mr. Nivens?

4 MR. NIVENS: Yes, sir.

5 THE COURT: I did not realize that you were not here -

6 - -

7 MR. NIVENS: Yes, sir.

8 THE COURT: - - - when we started. We started at 9:15
9 and you were not in the jury room. Actually started like
10 9:20 and we started without you.

11 MR. NIVENS: Yes, sir.

12 THE COURT: It was unintentional but where we are now
13 is it means that we got to go forward and we are going to
14 take one of the alternates and replace you on the jury. I
15 am going to put you back in the jury pool. Do you know
16 where they are right now?

17 MADAME CLERK: They haven't brought the jury in today.
18 He can go down and see Melissa and she will give him
19 instructions.

20 THE COURT: Go down to the jury assembly room the
21 bailiff will show you how to get there.

22 MR. NIVENS: Yes, sir.

23 THE COURT: And see Melissa. She will give you
24 instructions about when you need to return.

25 MR. NIVENS: All right. I'm sorry, Your Honor.

1 THE COURT: It's okay.

2 MR. NIVENS: I know I got here in plenty of time. I
3 just went to the wrong place. I apologize. Excuse me.

4 THE COURT: That's all right.

5 (JURY NUMBER 166 DISMISSED AT 10:15 A.M..)

6 THE COURT: All right I am going to take a short break
7 and then we'll bring the jury back in. Be in recess about
8 five minutes.

9 (SHORT RECESS AT 10:15 A.M..)

10 (BACK ON THE RECORD AT 10:24 A.M.)

11 THE COURT: All right you folks don't have to ask for
12 permission to approach the witness. You can approach the
13 witness whenever you want without asking and if you have a
14 document that has been admitted into evidence if you want
15 to you can ask for permission to publish but you don't need
16 that either. If it's admitted you can publish it.

17 All right bring in the jury.

18 SOLICITOR LIPINSKI: We need the defendant first.

19 THE COURT: Hold on; hold on.

20 (DEFENDANT ENTERING COURTROOM AT 10:25 A. M..)

21 THE COURT: Bring in the jury.

22 (JURY ENTERING COURTROOM AT 10:25 A. M..)

23 THE COURT: We had a little bit of a mix up this
24 morning. One of the jurors went somewhere -- went to the
25 wrong place in the courthouse and was not back there with

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1 you all when we brought you in and none of us realized it
2 until just before that break. So I have taken that juror
3 off of the jury. When that happens we randomly select one
4 of the two alternates and place them on the jury.

5 So, Ms. Gilliespie, who is Ms. Gillespie?

6 (JUROR RAISED HAND.)

7 THE COURT: All right you were randomly selected so
8 you are now on the jury.

9 And then that leaves, Mr. Sabo? All right, you are
10 the alternate, okay?

11 You can proceed.

12 SOLICITOR LIPINSKI: May it please the court, Your
13 Honor.

14 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO, PREMARKED FOR
15 IDENTIFICATION.)

16 DIRECT EXAMINATION, CON'T

17 RUSSELL BERARD BY SOLICITOR LIPINSKI:

18 Q. Let me show you what's been marked as State's Exhibit
19 Number Two and ask if you are familiar with what this is a
20 diagram of a layout? Are you familiar with what that
21 diagram depicts?

22 A. I am.

23 Q. And is it your residence or your mother's or your
24 nanny's?

25 A. It's my nanny's residence.

1 Q. You didn't produce the diagram?

2 A. No.

3 Q. Or any of the numbers on it but I think you are
4 familiar in terms of the physical lay out to be that of
5 your nanny's?

6 A. Yes.

7 Q. Your Honor, at this time we move State's Number Two
8 into evidence.

9 MR. LEMEL: Your Honor, I object through this witness
10 in that he did not produce this diagram. There are
11 annotations on that diagram that - - -

12 THE COURT: Let me see it please.

13 SOLICITOR LIPINSKI: I'm sorry, Your Honor, I didn't
14 know he had any objections.

15 THE COURT: And what is it that you object to?

16 MR. LEMEL: Your Honor, he did not produce the
17 diagram. There are a number of annotations on there of
18 information contained that he did not - -

19 THE COURT: The fact he didn't produce the diagram
20 that objection is over ruled. What other objection do you
21 have?

22 MR. LEMEL: The fact that the diagram itself is
23 annotated with numbers and evidentiary comments on it in
24 terms of where evidence was found that again this witness
25 - - -

1 THE COURT: Sustain.

2 MR. LEMEL: - - - did not produce it.

3 SOLICITOR LIPINSKI: All right, Your Honor, we'll
4 move it in with some other witness.

5 And without referring to the diagram you say when you
6 first entered the residence you were able to see Adam and
7 your grandmother?

8 A. Yes.

9 Q. And for the most part their heads were closer to you
10 than their feet?

11 A. Right.

12 Q. Were they right inside the door; were they deeper into
13 the house?

14 A. They were more deeper into the house round -- in
15 between the living room and the kitchen area.

16 Q. And obviously without the diagram but let's try and be
17 a little bit clearer. As you open the French door what is
18 right here? What is immediately inside that door?

19 A. There is a kitchen table.

20 Q. A kitchen table.

21 A. Off to my left.

22 Q. Kind of an eat-in kitchen area?

23 A. Correct.

24 Q. And you move into that area into the kitchen itself?

25 A. Right.

1 Q. And then beyond that what's the room on the other side
2 of the kitchen?

3 A. That would be the living room.

4 Q. And is there a short hall way or is it pretty much a
5 door between the kitchen and the living room?

6 A. It's like a short like a short hall way. I mean
7 immediately kitchen and then carpeted living room.

8 q. And was there anything to -- as you are walking in the
9 door is there anything to your right?

10 A. Yea.

11 Q. Next to the kitchen or the dining room?

12 A. Yea it's like a laundry room.

13 Q. There is a little laundry room?

14 A. Yea to the right with a door.

15 Q. Is that more off the kitchen or off the dining room if
16 you recall?

17 A. Off the kitchen.

18 Q. And just to back you up a little bit you stated that
19 after you called 911 Adam left?

20 A. Yes.

21 Q. And you said there was blood. Did you notice any
22 injuries to Adam himself?

23 A. No.

24 Q. Did you notice whether or not his ankle bracelet was
25 on him at the time?

1 A. Yes his ankle bracelet was on him.

2 Q. And you stated he left on a scooter?

3 A. Yes.

4 Q. And that you followed; you went out on the porch to
5 watch where he went?

6 A. Uh-huh.

7 Q. Came back inside?

8 A. Right.

9 Q. Has your grandmother moved at that point?

10 A. No.

11 Q. And you stated that there was blood on her?

12 A. Blood on her.

13 Q. And she wasn't wearing anything?

14 A. No.

15 Q. Are you still on the phone to 911?

16 A. Yes. I should be.

17 Q. And do you do anything in terms of rendering aide to
18 her?

19 A. Yes. She had no clothes on. I walked her to the
20 bathroom. I washed her hands; her hands were covered in
21 blood so I washed her hands. I put her pajamas on her and
22 a robe and walked her back out to the living room.

23 Q. To the living room?

24 A. Right.

25 Q. And does your girlfriend fiancé stay in the house with

1 you?

2 A. She's in the house.

3 Q. And do you call anyone other than EMS to the house or
4 911?

5 A. She calls. She calls her mother.

6 Q. Meghan called her mother?

7 A. Right.

8 Q. And does she live far from you or her mother live far
9 from you?

10 A. Not far. Six or seven miles maybe.

11 Q. And your would be mother in law so to speak now does
12 she get there before or after EMS?

13 A. Before.

14 Q. And does she do anything in terms of providing aide to
15 Loretta?

16 A. Yea. She stayed there with my nanny more to I guess
17 to console her and keep her there where she is calm I would
18 say.

19 Q. And do you recall the officer arriving?

20 A. Yes.

21 Q. And do you meet him in the house or outside the house?

22 A. I met him in the driveway on the way.

23 Q. And what do you tell him?

24 A. What I said to him I really don't remember. Probably
25 more or less to bring help I would say. I mean I was real

1 panicked. I didn't really remember what I said to him.

2 Q. How is your mental state at the time?

3 A. At the time I mean I was frantic. I was not in a calm
4 state. You know I was angry I was upset I was probably
5 crying at the time.

6 Q. Do you talk to your nanny at all about what happened?

7 A. Yea. You know when I was checking on her is she okay.
8 She can say just say that he tried to kill me he tried to
9 kill me. I told her to make sure everything was going to
10 be okay. I probably said anything more or less the fact
11 that I was going to get him. You know I was angry at the
12 time and things like that.

13 Q. Did she tell you anything about what had happened
14 between the two of them earlier in the evening?

15 A. Earlier in the evening? I don't really remember.

16 Q. Do you remember EMS arriving?

17 A. I do.

18 Q. Were you there when they go in and check on her?

19 A. Yes.

20 Q. Do you know what room she was in when they get there?

21 A. The living room.

22 Q. And do you travel with her; do they transport her?

23 A. Yea they took out in EMS I did not go with her.

24 Q. Do you ever go to Piedmont Medical Center to see her?

25 A. Yes.

1 Q. And does she stay there at Piedmont Medical Center or
2 did she go to another hospital?

3 A. They air lifted her to CMC Charlotte Medical.

4 Q. In Charlotte?

5 A. In Charlotte.

6 Q. And do you go there?

7 A. I do.

8 Q. And do you see her in the emergency room if you
9 recall?

10 A. I seen her at Piedmont. I don't think I seen her --
11 no I didn't see her in Charlotte.

12 Q. And is she admitted at CMC?

13 A. Uh-huh.

14 Q. And does she stay there?

15 A. She does.

16 Q. Do you know approximately how long?

17 A. It seemed like forever but it was a month or more.

18 Q. You stated that you washed her hands?

19 A. I did.

20 Q. Did you wash any other part of her body?

21 A. Just her hands.

22 Q. And you put some clothes on her. Is she able to help
23 you get dressed or are you helping her?

24 A. She was standing so yeah she helped herself a little.

25 Q. And a robe?

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1 A. And a robe.

2 Q. Do you remember anything about the pajamas she put on?

3 A. No.

4 Q. Do you remember there being any clothes in the house
5 other than the ones you put on her? Were there any on the
6 floor, the kitchen or the living room?

7 A. No. No.

8 Q. That's all we have of Mr. Berard, Your Honor.

9 CROSS EXAMINATION

10 RUSSELL BERARD BY MR. LEMEL:

11 Q. Good morning. Mr. Berard, I know this is difficult
12 for you so if you need to take a break or do you need a
13 glass of water or anything - -

14 A. I'm okay.

15 Q. Your okay. All right. If you need to take a break or
16 a glass of water just let me know okay?

17 A. Okay.

18 Q. Now when you were talking with officer -- do you
19 remember Sergeant Wright the gentleman who testified just a
20 minute ago?

21 A. I do.

22 Q. And he was the first officer that was there; correct?

23 A. Correct.

24 Q. And he provided you some forms to put statements on;
25 correct?

- 1 A. Correct.
- 2 Q. Do you remember him doing that?
- 3 A. I do.
- 4 Q. And do you remember those forms?
- 5 A. I do.
- 6 Q. And you actually filled out two statements do you
- 7 remember that or filled out the form twice?
- 8 A. Yeah.
- 9 Q. Do you remember why you filled it out twice?
- 10 A. I made corrections on the first statement I guess it's
- 11 probably why I did the second.
- 12 Q. Just went back and rewrote it a second time; right?
- 13 A. Yeah.
- 14 Q. When he gave you those statements he indicated to you
- 15 that he wanted you to write down what happened basically;
- 16 right?
- 17 A. Right.
- 18 Q. And he let you know that it was important that you
- 19 document what happened in these statements; right?
- 20 A. He said that.
- 21 Q. He didn't put any pressure on you; coerce you; force
- 22 you in any way?
- 23 A. No.
- 24 Q. He wasn't yelling at you or screaming at you or
- 25 nothing like that?

1 A. No.

2 Q. He was trying to put you in a position to where you
3 could put down as much as you could?

4 A. Right.

5 Q. And you wanted to help obviously at that point in
6 time?

7 A. Yes.

8 Q. You were wanting to give him and the police as much
9 information about what you saw?

10 A. At that time I wasn't concerned with the police, with
11 the statement. It was more or less my nanny was on my
12 mind.

13 Q. I'm sure but you did want to help them?

14 A. Right I did.

15 Q. And you chose to take a little bit of time to do that?

16 A. I did.

17 Q. And when you were writing this statement down he did
18 tell you that you were going to be signing it; right?

19 A. Uh-huh.

20 Q. Did he go over with you the statement at the bottom
21 about it being the truth and things like that?

22 A. Right.

23 Q. And you understood that what you were signing was a
24 statement that was going to be taken then and used by the
25 police right?

- 1 A. Yeah. Yeah I assumed.
- 2 Q. Okay. I am showing you the two statements. I just
3 ask if you recognize those two for me?
- 4 A. I do.
- 5 Q. And those are the statements that you wrote; correct?
- 6 A. Yes.
- 7 Q. The first and the second statement?
- 8 A. Yes.
- 9 Q. And that is your handwriting in fact; correct?
- 10 A. It is.
- 11 Q. And the significant difference between them is
12 actually down on the bottom on the date. On one of them
13 you've got it dated as 6/7/08 at just after midnight. And
14 one at 6/8/08 at again just after midnight; right?
- 15 A. Right.
- 16 Q. You made these not twenty-four hours apart basically
17 at the same time?
- 18 A. At the same time.
- 19 Q. That's just a misstate on your part but what we were
20 talking about in fact would have been the very early
21 morning hours of the 8TH that you were making this
22 statement just after midnight.
- 23 A. Right.
- 24 Q. Which is sometimes people get that mixed up between
25 the 7th and the 8th all time; right?

1 A. Right.

2 Q. And again totally understandable I just want to make
3 sure we are on the same page.

4 A. Okay.

5 Q. In terms of the statement there are two sections to it
6 primarily. There is the section that you were writing on;
7 correct?

8 A. Correct.

9 Q. And then there is the signature statement on the
10 bottom?

11 A. Correct.

12 Q. In terms of the language that was within the written
13 statement that you put out if you want to take a second to
14 review that on each one.

15 A. Uh-huh.

16 Q. Have you had a chance to do that?

17 A. Yea I got it.

18 Q. Okay. And always they are identical; correct? In
19 terms of the language.

20 A. Correct.

21 Q. There's no different words or different events it
22 describes the exact same thing; correct?

23 A. Correct.

24 Q. There is no substantial difference between what you
25 described?

- 1 A. No.
- 2 Q. One of them is just more neatly written in the other
3 case is what it comes down to?
- 4 A. Yes.
- 5 Q. Is that basically what you did is you just rewrote it?
- 6 A. I just rewrote it.
- 7 Q. Okay. So we are talking language there is no
8 difference between these two statements even though you
9 wrote them about ten minutes apart?
- 10 A. Yeah.
- 11 Q. Okay. And the bottom section of this is when you
12 indicated you also did sign?
- 13 A. Right.
- 14 Q. And as we talked about before part of this is signing
15 saying that it is your statement and it is the truth?
- 16 A. Right.
- 17 Q. And that's what you signed?
- 18 A. That's what I signed.
- 19 Q. Now let's talk a little bit about the relationships we
20 have here. Adam as you said is your half brother; right?
- 21 A. Yes.
- 22 Q. And obviously you all aren't that close because you
23 didn't even actually know what his birthday was it's not
24 that close.
- 25 A. No.

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1 Q. Okay. And he hasn't lived with you very long in this
2 particular situation?

3 A. Not very long; months.

4 Q. Months as opposed to the years that you have been
5 there?

6 A. As a normal brother right.

7 A. When he moved in he was living at [REDACTED]; right?

8 A. Right.

9 Q. Had his own room inside that house?

10 A. Right.

11 Q. You had your own room inside that house?

12 A. Right.

13 Q. And your mother -- it's your father?

14 A. Right.

15 Q. They both had their place?

16 A. They had their place.

17 Q. And its as you said within shouting distance of [REDACTED]

[REDACTED]?

19 A. Right.

20 Q. Everything is sort of inside as the same as we refer
21 to as a compound. I don't know if that's the correct word
22 but everything is inside the same fenced lot?

23 A. Sure.

24 Q. When you have that sort of situation obviously people
25 move back and forth between those two homes fairly

1 regularly; right?

2 A. Yeah.

3 Q. It would not be uncommon for one person to walk to the
4 other person's house?

5 A. No.

6 Q. It would not be unusual for one person to go inside
7 another person's house in that scenario?

8 A. No.

9 Q. Pretty much you all walked in and out as needed?

10 A. Well not me personally. I always knocked it doesn't
11 matter where I'm at.

12 Q. Right. Beyond being polite to knock; right?

13 A. Yes.

14 Q. Okay. You wouldn't have any trouble knocking like
15 mom, I'm here that kind of thing?

16 A. Yes and she seen me.

17 Q. All right. And that was true of all members of the
18 family; right?

19 A. Yeah. Well yeah.

20 Q. And in particular Adam spent a lot of time over at
21 your grandmother's house didn't he?

22 A. Really I worked a lot. Adam stayed home some days. I
23 really don't know.

24 Q. So that night when you get home the unusual things
25 that you noted were the outside dog you referred to him by

RUSSELL BERARD: CROSS EXAMINATION BY MR. LEMEL

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1 a name but you said it was a Labrador?

2 A. It's a Lab yeah.

3 Q. But the Lab was out of its pen?

4 A. Right.

5 Q. Which was somewhat unusual?

6 A. Very.

7 Q. But not anything of huge note. I mean its just the
8 dogs not in its pen; its just unusual?

9 A. Yeah it rarely happens.

10 Q. Okay. All right. But in and of itself a dog being
11 outside a pen didn't give you any sort of extraordinary
12 high level of alertness?

13 A. No. I didn't think we were in danger or anything.

14 Q. Right. Just the dog was out of the pen?

15 A. The dog was out.

16 Q. And in the process of doing that then you're getting
17 the dog in the pen so you are outside the house?

18 A. Correct.

19 Q. And you said you went inside briefly and then came
20 back outside to meet Meghan at that point?

21 A. Yeah.

22 Q. And again so you are sort of in and out of the house
23 during this period of time?

24 A. I went in the house once yeah.

25 Q. You said you got home about sometime between 10:30 and

1 10:45.

2 A. Correct.

3 Q. And so then at some point in time between then and say
4 eleven o'clock you were outside the house inside briefly
5 and back outside; right?

6 A. Right.

7 Q. And at that point in time when Meghan got there is
8 when you decided again to go - -

9 A. When Meghan got there we went up.

10 Q. When Megan got there you decided to go up to your
11 grandmother's house?

12 A. Correct.

13 Q. And you said again the only other thing you noted at
14 that point in time was the bird wasn't covered up?

15 A. In the house.

16 Q. Again another thing with a pet?

17 A. Yeah.

18 Q. Okay.

19 A. Still strange.

20 Q. At no point in time as you were out in the yard did
21 you hear any screams?

22 A. Not from the yard.

23 Q. And that's what I'm talking about when you were in the
24 yard. As you approach the house you didn't hear any
25 screams as you approached the house either?

1 A. Not on the steps. It wasn't until we got standing on
2 the porch.

3 Q. Right. And that's basically the point I'm trying to
4 make. Up until that point in time when you were in the
5 yard before you don't hear any screams from the porch
6 before?

7 A. No.

8 Q. When you are over by the [REDACTED] house?

9 A. Right.

10 Q. You don't hear any screams before when you are meeting
11 Meghan at the driveway?

12 A. No.

13 Q. And you don't hear any screams or even that it sort of
14 heightens your awareness as you are walking up to your
15 grandmother's house; correct?

16 A. No other than the fact that Adam wasn't there.

17 Q. Right. Which again in and of itself is not in any way
18 bazaar or unusual or cause for heightened alarm?

19 A. Well it was late.

20 Q. But besides that?

21 A. Yeah.

22 Q. All right. So at that point in time you go up onto
23 the deck area. You sometimes called it a porch - - -

24 A. Porch/deck.

25 Q. - - - but its really a deck and you see through the

1 doors?

2 A. Correct.

3 Q. And what you said in your statement that you saw at
4 that point in time was you saw Adam on top of my
5 grandmother; right?

6 A. Right.

7 Q. Okay. And as you indicated in your testimony today it
8 wasn't in your statement but you indicated in your
9 testimony today what you were seeing from was -- you saw
10 the tops of heads as opposed to the side of their feet;
11 right?

12 A. Right I seen their heads.

13 Q. You seen their heads or closest to you. Okay. All
14 right. And in your statement at that point in time you
15 actually indicate that you pause?

16 A. To look yeah at Meghan.

17 Q. And it was only after you paused that you heard your
18 grandmother scream?

19 A. No. We heard the screams paused looked at Meghan and
20 then decided to walk in.

21 Q. In referring to your statement - -

22 A. Okay.

23 Q. In referring to your statement it says you saw Adam.

24 A. Yeah.

25 Q. On top?

1 A. Right.

2 Q. And then I paused; right?

3 A. Right.

4 Q. I heard Nanny scream okay. That's the order that's in
5 your statement.

6 A. Okay. Then yes.

7 Q. And that's the statement that you did write basically
8 immediately after this happened?

9 A. When the cop showed up yeah. It wasn't immediately
10 but yes.

11 Q. Within a relatively short period of time say an hour.

12 A. Okay.

13 Q. Would you agree with me on that?

14 A. I would agree.

15 Q. Okay. Maybe an hour and a half at the outside?

16 A. Yeah.

17 Q. Okay. All right. So after you pause you then go
18 inside?

19 A. I do.

20 Q. And you say at that point in time Adam jumped right
21 up?

22 A. He did.

23 Q. Okay. And he looked at you and said she fell she
24 fell?

25 A. She fell she fell.

1 Q. And that's why you got on the phone at that point in
2 time and called it in initially as a fall?

3 A. As I'm looking at my grandmother I called as soon as I
4 seen my grandma in the state she was in.

5 Q. Were you on the phone as you walked in?

6 A. No.

7 Q. Were you talking to anybody else on the phone before
8 you walked in?

9 A. No.

10 Q. But at that point in time you called and you talked to
11 911 or the emergency dispatch or whatever you want to call
12 it?

13 A. Yeah I dialed 911.

14 Q. And you talked to them?

15 A. Yes.

16 Q. And you were the one who made the initial report of
17 the fall?

18 A. Yes.

19 Q. Okay. All right. And while you are talking with 911
20 sort of taking it all in Adam is was still there at that
21 point in time?

22 A. Yeah. Not the whole phone conversation but as I hung
23 up the phone yes.

24 Q. It's not like he gets up and bolts out of the place.
25 He stays there for some period of time while you're on the

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1 phone?

2 A. I asked him to.

3 Q. And he did stay?

4 A. For a short period.

5 Q. All right. Now at that point in time obviously your
6 grandmother was having a lot of difficulties?

7 A. Badly injured.

8 Q. She was badly injured. And would you say she was in
9 and out of sort of consciousness at that point in time?

10 A. I don't know about consciousness. I mean she wasn't
11 coherent all the time.

12 Q. She wasn't coherent all the time. Fair enough. But
13 you do remember she saying that she needed help and that he
14 was trying to kill her?

15 A. Right.

16 Q. And that was the statement she made?

17 A. Right.

18 Q. And you at that point in time obviously decided to get
19 her cleaned up?

20 A. Right.

21 Q. So what you do is you do take her -- she's at that
22 point when you walked in she was between the kitchen and
23 living room. In describing that we called it a hallway.

24 Is it even as much as a hallway?

25 A. Not really.

- 1 Q. It's just a passage way?
- 2 A. Yea. It's tile. She was on the tile floor.
- 3 Q. So you pick her up and take her actually to a
- 4 different area of the house; right?
- 5 A. Right.
- 6 Q. To wash her in the bathroom?
- 7 A. Right.
- 8 Q. Wash up her hands?
- 9 A. Washed her hands.
- 10 Q. Helped her get into some clothes?
- 11 A. Right.
- 12 Q. And then you took her back to the living room area?
- 13 A. I did.
- 14 Q. Okay did you lie her back down on the ground?
- 15 A. I put her on the couch.
- 16 Q. Okay. So when the deputy got there she would not have
- 17 been lying on the ground in the same area at that time
- 18 would she?
- 19 A. When the deputy got there? Unless -- you know from
- 20 the couch she went to lay down on the floor.
- 21 Q. But you did this? It was about fifteen minutes from
- 22 the time you called to when the deputy got there?
- 23 A. Right.
- 24 Q. And at that time was when you moved her and washed her
- 25 and clothed her and moved her back; right?

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REDIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 A. Right.

2 Q. So when the deputy got there she would not have been
3 lying on the ground?

4 A. Right.

5 Q. Okay. I beg the Court's indulgence for just one
6 moment.

7 Thank you, Mr. Berard, no more questions.

8 REDIRECT EXAMINATION

9 RUSSELL BERARD BY SOLICITOR LIPINSKI:

10 Q. Do you still have your two statements?

11 A. I do.

12 Q. And they were taken by different officers. Do you
13 recall whether that's true?

14 A. Yea.

15 Q. And the first one there is actually a time at the
16 bottom; correct?

17 A. Correct.

18 Q. 12:09 time?

19 A. Correct.

20 Q. Could you read the statement; the narrative that you
21 wrote?

22 A. Yes. I said,

23 "I walked in the house where my grandmother lives

24 I seen my brother on top of my grandmother. I paused

25 then I heard her scream help. I came through the door

1 and confronted Adam and then he left on his moped then
2 I helped my grandmother put her clothes on and washed
3 her hands."

4 Q. And the second statement is taken at 12:19. Is that
5 what it indicates?

6 A. Right.

7 Q. Ten minutes later?

8 A. Ten minutes later.

9 Q. But a different officer this time?

10 A. Uh-huh.

11 Q. And what does that statement say?

12 A. It said,

13 "I walked up to my nanny's house at [REDACTED]
14 [REDACTED] and seen my brother Adam Berard on top
15 of my grandmother. I paused heard Nanny scream
16 help so I came in the house and saw Adam on top of
17 her. I confronted him he left on his moped and
18 I helped her get dressed and washed her hands."

19 Q. Mr. Lemel pointed out that you stated you got home
20 about eleven o'clock or maybe shortly before then.

21 A. Shortly then yeah.

22 Q. So this would have been maybe about an hour later?

23 A. Yeah right.

24 Q. On a scale of one to ten what would you describe your
25 emotional state that night?

RUSSELL BERARD: REDIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 MR. LEMEL: Your Honor, I am going to object. How is
2 this in response to anything that was asked on cross
3 examination?

4 SOLICITOR LIPINSKI: He's gone into a question of his
5 credibility in making the two statements and why - -

6 THE COURT: Over ruled.

7 BY SOLICITOR LIPINSKI:

8 Q. How would you describe your emotional state on the
9 night in question on a scale of one to ten?

10 A. Definitely a ten. I was angry and I was scared. A
11 lot of emotions.

12 Q. And how was your Nanny? Did you calm down at all or
13 did you remain in that state for a while?

14 A. I was in the state all the way up until the hospital.
15 You know I was emotional the whole night.

16 Q. And Mr. Lemel pointed out that the statements kind of
17 say the same thing and you wrote it because one -- neither
18 one is difficult to read is it?

19 A. No.

20 Q. Why did you give two statements? Was there any
21 confusion with the officers on that night?

22 A. I don't really remember any confusion. I really don't
23 remember why I had to fill out two statements. There's
24 corrections on the later on the 12:19 statement.

25 Q. So really there's more type o's on the second

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1 statement than the first one?

2 A. Right. Well maybe I drew something out on the very
3 first word on the 12/09 statement I never initialed r
4 however they wanted me to do it.

5 Q. Mr. Lemel asked you about why you paused. Why did you
6 pause?

7 A. I was shocked really at the time. I looked at Meghan.
8 It wasn't a long pause it was a very short and brief. I
9 looked at her and then you know we decided to walk in. It
10 was more of me being shocked about it.

11 Q. Did you ever see them and leave the deck area and
12 return - - -

13 A. No.

14 Q. Or when you paused did you remain there at the door?

15 A. I was right at the door the whole time.

16 Q. Nothing further, Your Honor.

17 MR. LEMEL: Briefly, Your Honor.

18 RE CROSS EXAMINATION

19 RUSSELL BERARD BY MR. LEMEL:

20 Q. Mr. Berard, Ms. Lipinski asked you some questions you
21 got home about eleven o'clock. Wasn't it earlier in your
22 testimony that you got home sometime between 10:30 and
23 10:45?

24 A. Yes.

25 Q. That would be more accurate than said it was closer to

RUSSELL BERARD: RECROSS EXAMINATION BY MR. LEMEL
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1 eleven o'clock?

2 A. I would say.

3 Q. Okay. But with regard to the pause question it was
4 significant enough that you choose to write down what
5 happened you actually put that in both statements that you
6 paused; correct?

7 A. Yea because I copied the statement.

8 Q. But again when you rewrote it you put paused in there
9 both times?

10 A. It is.

11 Q. Nothing further, Your Honor.

12 SOLICITOR LIPINSKI: That's all we have of this
13 witness.

14 THE COURT: You can step down, sir.

15 SOLICITOR SIKORA: The State calls Meghan Hall.

16 MADAME CLERK: Stand right here and place your left
17 hand on the bible.

18 (WHEREUPON: MEGHAN HALL,
19 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

20 DIRECT EXAMINATION

21 MEGHAN HALL BY SOLICITOR SIKORA:

22 Q. Ms. Hall, would you please state your full name and
23 spell your last name for the court reporter?

24 A. Meghan Hall, H-a-l-l.

25 Q. And where do you live?

- 1 A. [REDACTED] in Rock Hill.
- 2 Q. Do you know Russell Berard?
- 3 A. Yes, ma'am.
- 4 Q. And how do you know him?
- 5 A. He's my fiancé. At the time boyfriend.
- 6 Q. And how long have you known Russell Berard?
- 7 A. For about two and a half years.
- 8 Q. Two and a half years from today?
- 9 A. Well three years in January.
- 10 Q. Do you also know Russell Berard's step brother Adam
- 11 Berard?
- 12 A. Briefly I do.
- 13 Q. How many times have you seen Adam Berard before this
- 14 incident?
- 15 A. Probably over a hundred; probably almost every day.
- 16 Q. Do you also know Ms. Loretta Moss?
- 17 A. Yes, ma'am.
- 18 Q. And how many times had you met her prior to this
- 19 incident?
- 20 A. Countless amounts of times.
- 21 Q. Had you been over to her house before?
- 22 A. Yes, ma'am.
- 23 Q. Had you been over to Russell's house before this
- 24 happened?
- 25 A. Yes, ma'am.

1 Q. On the night of June 7th of 2008 did you go to Zinker
2 Road?

3 A. Yes, ma'am.

4 Q. Did you go alone or did you have people with you?

5 A. I was alone.

6 Q. Do you remember about what time you got there?

7 A. Probably around 10:45.

8 Q. And where were you coming from?

9 A. My house.

10 Q. And why were you going to Zinker Road?

11 A. Because Russ is my boyfriend and we had plans.

12 Q. And what were your plans?

13 A. We were just going to watch a movie and snack on pop
14 corn and eat dinner.

15 Q. Okay when you get to Zinker Road is Russ there?

16 A. Yes, ma'am. As I was pulling up Russ was walking out
17 of the house; of his house.

18 Q. And did you go up to Russ at that point?

19 A. He met me in the driveway.

20 Q. Did you park in the driveway?

21 A. Yes, ma'am.

22 Q. Did you see anybody outside the house besides Russ
23 when you arrive?

24 A. No, ma'am.

25 Q. Do you see anything unusual when you pulled up to

1 Zinker Road?

2 A. Russ was putting Buddy up which I thought was unusual
3 because he was supposed to already be up.

4 Q. Did you hear anything unusual?

5 A. No, ma'am.

6 Q. Where did you go when you first -- after you met Russ
7 in the driveway where did you go next?

8 A. We went up to Nanny's house.

9 Q. And Nanny is what you call Ms. Moss?

10 A. Yes, ma'am.

11 Q. Okay. And why did you go to Ms. Moss's house?

12 A. Russ came out of the house and said that Adam wasn't
13 there but his ankle bracelet wasn't beeping so he was in
14 the perimeter of the fence so we thought it was unusual
15 that Buddy wasn't up so he said maybe Adam's at Nanny's.

16 Q. When you said Russ come out of the house which house
17 did Russ come out of?

18 A. His house.

19 Q. Okay. Okay so taking you back to the point where you
20 are walking up to Nanny's house.

21 A. We get to the steps and you look in and as soon as we
22 look in she screams.

23 Q. And the steps you are talking about are those steps up
24 to the - -

25 A. It's on the porch. We're actually on the porch.

1 Q. Okay is there a door into Ms. Moss's house on that
2 porch?

3 A. Yes, ma'am.

4 Q. Would that be considered the front door?

5 A. No. The side door to the porch.

6 Q. Okay. And what kind of door is it?

7 A. It's a French door with a window.

8 Q. Was there anything blocking your view into Ms. Moss's
9 house?

10 A. No, ma'am.

11 Q. And what do you see when you look in through the
12 window?

13 A. I saw Adam on top of Nanny.

14 Q. Was Adam wearing any clothing?

15 A. He had a shirt on.

16 Q. Was Nanny wearing any clothing?

17 A. No, ma'am.

18 Q. And where were they inside the house?

19 A. Right in the middle of the kitchen in the living room
20 but more towards the kitchen on the tile.

21 Q. If you had to estimate how far is it from the door to
22 where you saw Ms. Moss and Mr. Berard's position?

23 A. Not far at all.

24 Q. Ten feet?

25 A. Yeah less than ten feet.

- 1 Q. And you said you saw Adam Berard on top of Nanny?
- 2 A. Yes, ma'am.
- 3 Q. Could you describe a little bit more as to how they
- 4 were positioned? Were you able to see that?
- 5 A. Yes, ma'am. He was on top of her I would say in a
- 6 sexual position like just on top of her.
- 7 Q. What do you mean by sexual position?
- 8 A. Like you could tell that he was - -
- 9 (WITNESS CRYING.)
- 10 A. I can't find the word.
- 11 Q. Was he facing down?
- 12 A. Yes, ma'am.
- 13 Q. And was Ms. Moss facing up or down?
- 14 A. She was on her back.
- 15 Q. Are you okay? Do you need a break?
- 16 A. No I'm fine.
- 17 Q. Can I get you some water?
- 18 A. No.
- 19 Q. Did you hear anything at this point?
- 20 A. Yes, ma'am, she screamed and said, "God please help me
- 21 he's trying to kill me".
- 22 Q. And what happened next?
- 23 A. That's when Russ and I walked in and Adam jumped up
- 24 and said she fell and Russ grabbed the phone and called
- 25 911.

1 Q. How long after you went in the house did Adam stay in
2 Ms. Moss's home?

3 A. It was only about two to three minutes.

4 Q. Did Adam say anything else to you other than the fact
5 that Ms. Moss fell?

6 A. No. He walked out and he looked at me and said Meghan
7 she fell I'm going to go get help.

8 Q. And where did he go at that point were you able to
9 see?

10 A. Yes, ma'am. I was standing on the porch and I watched
11 him go down to Russ's house or his house at that time.

12 Q. Are you saying both Russ and Adam live next door?

13 A. Yes, ma'am. Adam went down to their house.

14 Q. Okay. Did you actually see Adam go inside his house?

15 A. Yes, ma'am.

16 Q. Did you ever see Adam come back outside of that house?

17 A. Yes, ma'am. I stood out on the porch to make sure
18 that he wasn't going to come back up because Russ was
19 cleaning up his Nanny.

20 Q. Okay. How long would you say Adam Berard was inside
21 his house?

22 A. No more than five minutes.

23 Q. Okay. When he left Ms. Moss's house right before that
24 what was he wearing?

25 A. He had his pants on but he had his boxers in his hand.

1 Q. Did he have his pants on when you saw him on top of
2 Nanny?

3 A. No, ma'am.

4 Q. Did you notice if there were any signs of injuries on
5 Adam Berard?

6 A. No, ma'am.

7 Q. Did you see any blood on him?

8 A. Uh-huh.

9 Q. Any bruising?

10 A. No, ma'am.

11 Q. Did you notice if he was wearing his ankle bracelet?

12 A. Yes, ma'am, he was.

13 Q. What about Ms. Moss when you got to her can you
14 describe for us what she looked like?

15 A. She was very bloody and she had just thrown up so she
16 had vomit on her mouth and she had a gash in her arm that I
17 could see her bone.

18 Q. You are pointing to your upper?

19 A. Yeah her upper arm right here. Right there she had a
20 big gash in her arm.

21 Q. Okay. Did you see blood anywhere else besides on Ms.
22 Moss?

23 A. It was just on the floor around her.

24 Q. Would that be in the kitchen then?

25 A. Yes, ma'am.

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1 Q. Okay. Did you ever talk to 911?

2 A. No, ma'am.

3 Q. Did you make any phone calls?

4 A. I called my mom.

5 Q. Okay. And did your mom at some point show up there on
6 Zinker Road?

7 A. Yes, ma'am.

8 Q. Okay. What is your mom's name?

9 A. Marilyn Hall.

10 Q. And do you remember about how long it took Marilyn
11 Hall to get there after you called her?

12 A. No more than about ten minutes.

13 Q. Okay. When your mom first got there on the scene were
14 the police officers there yet?

15 A. No, ma'am, they weren't. She came in and saw the cops
16 right there and she had passed the EMS so she turned around
17 and then came back because the cop passed her.

18 Q. Okay. Was there EMS on the scene when your mom got
19 there?

20 A. No, ma'am.

21 Q. So when you said she passed EMS EMS was not present at
22 the scene?

23 A. No, ma'am, they were up somewhere else.

24 Q. Okay. Was Ms. Moss able to communicate with you at
25 this point?

1 A. She wasn't talking to me. She was just talking to
2 Russ saying he tried to kill me and then she just kind of
3 just stopped talking completely and just moaned and was
4 just in a lot of pain.

5 Q. Okay. Did you actually see Russell help or assist
6 Nanny in getting up from the floor?

7 A. Yes, ma'am.

8 Q. Did you also see Russell assist her in getting her
9 clothes on?

10 A. Yes, ma'am.

11 Q. Did you assist Russell in helping her get clothed?

12 A. No, ma'am.

13 Q. Did you assist Russell in trying to get the blood
14 cleaned off of her?

15 A. No, ma'am.

16 Q. Did you see any other signs of a struggle within
17 granny's house?

18 A. Not directly not at that time.

19 Q. Okay. I am going to take you back to what Mr. Berard,
20 Adam Berard was doing. You said that you saw him come out
21 of his home.

22 A. Yes, ma'am.

23 Q. And what did he do after he came out of his house?

24 A. He went back to the shed and got on his scooter and he
25 passed all of us and just left.

1 Q. Okay. Do you remember what he was wearing when he
2 came back out of his house?

3 A. Yes, ma'am. He had blue jeans on and he had Russ's
4 tennis shoes on and an orange shirt.

5 Q. Do you remember what the clothes looked like that he
6 had on whenever he was in Ms. Moss's house?

7 A. I know his boxers were blue and he had cameo shorts
8 on.

9 Q. Okay you made mention of a shed. Where is the shed
10 that you are talking about?

11 A. The concrete slab is about right here and their house
12 -- Russ's house is here and it's directly behind Russ's
13 house.

14 Q. Could you dim the lights please?

15 (CLERK OF COURT DIMED COURTROOM LIGHTS.)

16 Q. Are you able to see this photograph from where you are
17 sitting?

18 A. Yes, ma'am.

19 Q. This is State's Exhibit Number Twenty-Two. Do you
20 recognize this area?

21 A. Yes, ma'am, that's the aerial view of both of the
22 houses.

23 Q. Okay. Which house is Adam's house the one on the
24 right or the one on the left?

25 A. The right. My right.

1 Q. Okay. And are you able to see the shed you were
2 describing in this picture?

3 A. It's just going to be directly behind it behind the
4 house.

5 Q. Could you bring up the lights please?

6 (CLERK OF COURT BRIGHTENED COURTROOM LIGHTS.)

7 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-SIX
8 PREMARKED FOR IDENTIFICATION.)

9 Q. I am handing you what has been marked for
10 identification purposes State's Exhibit Number Twenty-Six.
11 Do you recognize what's in that picture?

12 A. Yes, ma'am. This is the shed that his scooter was in.

13 Q. When you say his who are you referring to?

14 A. Adam.

15 Q. And does that picture depict the shed exactly how it
16 looked the night of June 7th, 2008?

17 A. Yes, ma'am.

18 Q. Your Honor, State would request to move Exhibit Number
19 Twenty-Six into evidence.

20 MR. LEMEL: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-SIX
23 IDENTIFIED AND MARKED ENTERED INTO EVIDENCE.)

24 BY SOLICITOR SIKORA:

25 Q. And is the picture you see up there on the screen the

1 same as State's Exhibit Number Twenty-Six you have in your
2 hand?

3 A. Yes, ma'am.

4 Q. Okay was the moped you were speaking of actually
5 inside the shed?

6 A. Yes, ma'am.

7 Q. Could you describe for me what the moped looked like?

8 a. It was yellow and black.

9 Q. And whose moped was that? Have you seen it before?

10 A. Yes, ma'am, it was Adams.

11 Q. Did you see if he had anything in his hands when he
12 left his house that night?

13 A. No, ma'am.

14 Q. Okay. Where you still on the scene whenever the
15 police arrived?

16 A. Yes, ma'am.

17 Q. Do you remember talking to Deputy Wright?

18 A. Yes, ma'am.

19 Q. Did you talk to any other officers?

20 A. Not that I recall.

21 Q. Were you on scene when the EMS personnel arrived?

22 A. Yes, ma'am.

23 Q. Do you remember where Ms. Moss was when the EMS
24 personnel arrived?

25 A. She was on the floor in the living room.

1 Q. Was she clothed at that time?

2 A. Yes, ma'am.

3 Q. Was she able to communicate at that point in time?

4 A. No, ma'am.

5 Q. When Ms. Moss was transported via ambulance did you go
6 with her in the ambulance?

7 A. No, ma'am. They wouldn't let us go.

8 Q. Okay. So what did you do after she left? Did you
9 stay at - -

10 A. Yes, ma'am, they said they needed us to stay there.

11 Q. Okay did you give your statement to the police before
12 or after Nanny was transported by EMS?

13 A. I don't remember.

14 Q. Do you remember did you ever go inside of Adam and
15 Russell Berard's house that night after the incident?

16 A. Yes, ma'am. The cop took me down there later on that
17 night.

18 Q. Okay. Do you remember which officer it was?

19 A. I believe it was Officer Wright.

20 Q. Do you remember about what time you would have gone
21 into the home?

22 A. No, ma'am. It was later.

23 Q. Okay did anyone else go into the home with you besides
24 yourself and the officer that you mentioned?

25 A. There may have been another officer but I don't

1 remember.

2 Q. About how many times have you been in Russell and
3 Adam's home prior to going in that night?

4 A. Millions.

5 Q. Is it fair to say that you are familiar with the lay
6 out of Adam and Russell's house?

7 A. Yes, ma'am.

8 Q. Have you seen Russell's bedroom before?

9 A. Yes, ma'am.

10 Q. Had you seen Adam's bedroom before?

11 A. Yes, ma'am.

12 Q. Did you go into Adam's bedroom that night?

13 A. Yes, ma'am.

14 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-FIVE A, B.
15 C, PREMARKED FOR IDENTIFICATION.)

16 Q. I'm handing you what's been marked for identification
17 purposes State's Exhibit Twenty-Five A, Twenty-Five B and
18 Twenty-Five C. Would you please take a look at Exhibit
19 Twenty-Five A. Do you recognize what's in that photograph?

20 A. Yes, ma'am. This is Adam's bedroom and these are his
21 shorts that he had and his boxers that he had in his hand.

22 Q. Okay. The shorts that you see in that picture - - -

23 A. Yes, ma'am.

24 Q. - - - was that the clothing he was wearing when you
25 saw him at Nanny's house or when he was leaving his house

1 later?

2 A. No the shorts he had on at Nanny's house.

3 Q. Okay. And the underwear that you referenced in the
4 photo - - -

5 A. Yes, ma'am.

6 Q. - - - is that the underwear you saw him with at
7 Nanny's house or late in the evening?

8 A. At Nanny's house.

9 Q. And you mentioned you actually were in Adam's room
10 later that night?

11 A. Yes, ma'am.

12 Q. Okay. Does Twenty-Five A accurately show what that
13 room looked like when you were in there later that night?

14 A. Yes, ma'am.

15 Q. State ask to move Exhibit Twenty-Five A into evidence.

16 MR. LEMEL: Without objection, Your Honor.

17 THE COURT: It's admitted.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-FIVE A
19 PREVIOUSLY MARKED AND IDENTIFIED, ENTERED INTO EVIDENCE.)
20 BY SOLICITOR SIKORA:

21 Q. And would you please take a look at Exhibit Twenty-
22 Five B? Do you have it there?

23 A. Yes, ma'am.

24 Q. Okay. Could you tell me what you see in that picture?

25 A. The shorts.

1 Q. Okay. And when say -- the shorts was it the shorts he
2 had on at Ms. Moss's home or later in the evening what he
3 was wearing?

4 A. The shorts he had on at Nanny's house.

5 Q. Okay. And where does that picture appear to be taken?

6 A. This is Adam's bedroom.

7 Q. And does that photo show what you saw; exactly what
8 you saw that night when you were in Adam's room after the
9 incident?

10 A. Yes, ma'am.

11 Q. The State asks to move Exhibit Twenty-Five B into
12 evidence.

13 MR.LEMEL: Without objection, Your Honor.

14 THE COURT: Admitted.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-FIVE B
16 PREVIOUSLY IDENTIFIED AND MARKED ENTERED INTO EVIDENCE.)
17 BY SOLICITOR SIKORA:

18 Q. And would you please take a look at State's Exhibit
19 marked for identification purposes Twenty-Five C. Do you
20 have it there?

21 A. Yes, ma'am.

22 Q. Would you please tell me what's in that photograph?

23 A. These are the boxers Adam had in his hands as he left
24 Nanny's house.

25 Q. And where does that photo appear to have been taken?

1 A. Adam's bedroom.

2 Q. Okay. And does that photo show exactly what you saw
3 in his bedroom the night you went in after the incident?

4 A. Yes, ma'am.

5 Q. Okay. State asks to move Exhibit Twenty-Five C into
6 evidence.

7 MR. LEMEL: Without objection, Your Honor.

8 THE COURT: It's admitted.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-FIVE C
10 PREVIOUSLY IDENTIFIED AND MARKED ENTERED INTO EVIDENCE.)

11 SOLICITOR SIKORA: Could you dim the lights please,
12 Madame Clerk.

13 (CLERK OF COURT DIMMED COURTROOM LIGHTS.)

14 BY SOLICITOR SIKORA:

15 Q. Okay and what we have upon this screen here this
16 photograph this would be State's Exhibit Twenty-Five A.
17 Are you able to see that clearly from where you're sitting?

18 A. Yes, ma'am.

19 Q. Could you please point out to the jury the shorts you
20 are speaking of?

21 A. They are back in the corner next to the shoe box.

22 Q. Okay. The box with the "B" on it?

23 A. Yes, ma'am.

24 Q. Do you see anything else in that photograph that you
25 recognize?

1 A. The blue boxers.

2 Q. Okay. And where are they in the photograph?

3 A. Directly in front of the stereo system.

4 Q. Okay. And are you able to see that picture clearly?

5 A. Yes, ma'am.

6 Q. And what is that we are looking at?

7 A. Those are the shorts that Adam had on as he was
8 leaving Nanny's house.

9 Q. And that was State's Exhibit Twenty-Five B. Now I'm
10 showing you what's marked and entered into evidence as
11 State's Exhibit Twenty-Five C. Do you recognize that?

12 A. Yes, ma'am. Those are the boxers that he had in his
13 hand as he was leaving Nanny's house.

14 Q. Thank you.

15 You may turn the lights back up please.

16 (CLERK OF COURT BRIGHTENED COURTROOM LIGHTS.)

17 BY SOLICITOR SIKORA:

18 Q. Did you tell the police officers what you had seen
19 that night?

20 A. Yes, ma'am.

21 Q. How soon after officers arrive there did you tell
22 them?

23 A. Russ and I met them in front of the house and that's
24 when at that point we were just trying to get some help to
25 Nanny. And then after somebody was there to help Nanny the

MEGHAN HALL: DIRECT EXAMINATION BY SOLICITOR SIKORA
CROSS EXAMINATION BY MR. LEMEL

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1 officer took us aside to talk about what happened.

2 Q. I just have one last question for you, Ms. Hall. Do
3 you see the man you know as Adam Berard here in the
4 courtroom today?

5 A. Yes, ma'am.

6 Q. Would you please point him out for the jury?

7 A. Right there.

8 Q. Let the record reflect that she has identified the
9 defendant.

10 Thank you.

11 CROSS EXAMINATION

12 MEGHAN HALL BY MR. LEMEL:

13 Q. Good morning, Ms. Hall.

14 A. Good morning.

15 Q. Now, Ms. Hall, at the close of your direct examination
16 you identified a pair of underwear?

17 A. Yes, sir.

18 Q. And in drawing your attention here is this pair a sort
19 of gray blue underwear in front of this stereo in Twenty-
20 Five A; correct?

21 A. The blue; the blue boxers.

22 Q. And they are basically a pair of standard Hanes
23 underwear?

24 A. Yes, sir.

25 Q. Do you remember that?

1 A. Uh-huh.

2 Q. You can see the fact that there is actually the name
3 Hanes on the label?

4 A. Yes, sir.

5 Q. Okay. Have you done Adam's laundry before at any
6 point in time?

7 A. No, sir.

8 Q. Do you know how many pair of underwear he may have
9 had?

10 A. No, sir.

11 Q. Do you know if he may have had a dozen pair of
12 underwear like that?

13 A. No, sir.

14 Q. There is some additional sort of clothes that have the
15 some coloration on them. One on the edge the one I am
16 pointing to now can you see that?

17 A. Not very clearly.

18 Q. Okay. Do you still have that picture with you?

19 A. It's right there.

20 Q. I'm handing you what's been marked as Twenty-Five A
21 and this one is actually cut off. You can't see that on
22 this version of it. If you want to step on down.

23 (WITNESS STEPPED DOWN FROM WITNESS STAND.)

24 Q. And you can get as close as you want. You can see
25 that there is some additional clothing not in the

1 photograph of the picture that you were handed but on the
2 side there where I am now pointing but it looks like a
3 similar sort of color?

4 A. Yes, sir.

5 Q. Its not detailed but you can't really tell exactly
6 what it is but it is a similar sort of color?

7 A. Yes, sir.

8 Q. Do you know if this is a pair of underwear or not?

9 A. I believe that to be a sock.

10 Q. Okay. What about up here underneath the table there?
11 There is a shelf there that has some additional items on
12 it. There is a piece of gray clothing in there similar to
13 gray in color. Are you able to identify what that is?

14 A. No, sir.

15 Q. So when you identify that - -

16 You can turn off the lights.

17 So you are assuming that's the same pair of underwear?

18 A. No, sir. I saw those exact; I saw that underwear.

19 Q. What differentiates that piece of underwear from
20 another piece of gray underwear made by Hanes? Did it have
21 a stain on it?

22 A. No, sir. It had pinned stripe lines on it.

23 Q. What differentiates that piece of underwear from any
24 other piece of Hanes underwear that had pin stripes on it?

25 A. Those are the ones that I saw.

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1 Q. What makes you say that? Was there anything unique
2 about that pair of underwear?

3 A. No, sir.

4 Q. No stain?

5 A. I wasn't up that close to see that.

6 Q. No tear?

7 A. Uh-huh.

8 Q. Now as we've discussed earlier with your fiancé you
9 talked with the police about what you saw?

10 A. Yes, sir.

11 Q. And one of those police officers was in fact Sergeant
12 Wright? Do you remember talking with him?

13 A. Yes, sir.

14 Q. Do you remember talking with him?

15 A. Uh-huh.

16 Q. And you were trying to assist him when you say he
17 pulled you aside to talk about this?

18 A. Yes, sir.

19 Q. And you wanted to assist him; right?

20 A. Uh-huh.

21 Q. You wanted to tell him everything you could?

22 A. Yes, sir.

23 Q. And he wasn't threatening you or hostile to you in any
24 way shape of form?

25 A. Yes, sir.

1 Q. You were in fact eager to help him?

2 A. Uh-huh.

3 Q. Okay. I am going to ask for you to answer me yes or
4 no. The court reporter can't record down any uh-huh's so
5 if you can yes I would appreciate that. So the answer to
6 that was yes?

7 A. Yes, yes, sir.

8 Q. And as part of your assistance with the sergeant he
9 asked you to write things down?

10 A. Yes, sir.

11 Q. And he gave you a form to assist you with that?

12 A. Yes, sir.

13 Q. And he went over that form with you before he asked
14 you to fill it out?

15 A. Yes, sir.

16 Q. To make sure that you understood all the parts of the
17 form?

18 A. Yes, sir.

19 Q. And to make sure that you understand exactly what you
20 were filling out and what it was going to be used for?

21 A. Correct.

22 Q. And you understood that this was going to be used by
23 the police; right?

24 A. Yes, sir.

25 Q. So you knew it was important?

- 1 A. Yes, sir.
- 2 Q. And you wanted to fill it out completely and
- 3 accurately for them?
- 4 A. Yes, sir.
- 5 Q. Okay. I am going to hand you something and ask if you
- 6 recognize what that is?
- 7 A. Yes, sir, this is my statement.
- 8 Q. Okay. And is that your handwriting on that statement?
- 9 A. Yes, sir.
- 10 Q. And is this the statement that you gave to Officer
- 11 Wright that day?
- 12 A. Yes, sir.
- 13 Q. Okay. And there's two parts to this statement again;
- 14 correct?
- 15 A. Yes, sir.
- 16 Q. There is one I am going to call the narrative section.
- 17 That is the part that you wrote out about what you did and
- 18 what you saw?
- 19 A. Yes, sir.
- 20 Q. And there is the bottom part where you actually signed
- 21 it as your oath essentially?
- 22 A. Yes, sir.
- 23 Q. And that bottom section does say that is your
- 24 statement and it is the truth?
- 25 A. Yes, sir.

1 Q. And you've also dated this; correct?

2 A. Yes, sir.

3 Q. On the 7th right before midnight 11:57 p.m.?

4 A. Yes, sir.

5 Q. So if we assume your time was correct and you say you
6 got there about 10:45?

7 A. Yes, sir.

8 Q. This would have been within an hour and fifteen
9 minutes of your arrival at the residence?

10 A. Yes, sir.

11 Q. So you filled this out while things were still very
12 fresh in your mind?

13 A. Yes, sir.

14 Q. And obviously you were upset about it; right?

15 A. Yes, sir.

16 Q. Were you able to get through enough of the upset to be
17 able to put things down accurately on this?

18 A. I believe so.

19 Q. All right. So as part of your statement if you want to
20 read along with me you first said that you and Russ walked
21 up to Nanny's house?

22 A. Yes, sir.

23 Q. All right. And you said you arrived at 10:45?

24 A. Yes, sir.

25 Q. Russ was already there?

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- 1 A. Yes, sir.
- 2 Q. Russ was out in the yard?
- 3 A. He was walking out of the house.
- 4 Q. Walking out of the house? Didn't you say you saw him
- 5 putting up the dog?
- 6 A. He had already put up the dog he was walking out of
- 7 the house and that's when he said I just put up the dog.
- 8 Q. Okay. So you didn't actually see him put up the dog?
- 9 A. No.
- 10 Q. So he had been home long enough to at least get the
- 11 dog put up before you got there?
- 12 A. Yes.
- 13 Q. But you are out in the driveway that's leading to [REDACTED]
- 14 or the driveway that's leading to [REDACTED]?
- 15 A. [REDACTED].
- 16 Q. So the one that branch to the right?
- 17 A. Yes, sir.
- 18 Q. Which is still relatively close to the house?
- 19 A. Yes, sir.
- 20 Q. Still within shouting distance?
- 21 A. Yes, sir.
- 22 Q. And at that point in time he told you that Adam wasn't
- 23 at home; right?
- 24 A. Yes, sir.
- 25 Q. But no alarms were going off so you knew he had to be

1 somewhere close by?

2 A. Yes, sir.

3 Q. And so you were going to go up to his grandmother's
4 house Nanny's house?

5 A. Yes, sir.

6 Q. To look for Adam?

7 A. Yes, sir.

8 Q. All right. And as you were approaching the house you
9 didn't hear anything unusual?

10 A. No, sir.

11 Q. You did not hear any screams?

12 A. No, sir.

13 Q. Any cries for help?

14 A. Not at that time.

15 Q. Any sounds of a fight or anything of that nature at
16 that point?

17 A. No, sir.

18 Q. It was basically nothing before you got up to where
19 you were able to see through the doors that alerted you
20 that anything really unusual was going on?

21 A. Yes, sir.

22 Q. Now once you actually did get to the doors okay. And
23 you say that - It says I saw through the window; right?

24 A. Yeah.

25 Q. You are talking about the windows in the door?

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1 A. Yes, sir.

2 Q. Not any sort of windows on the side of the house?

3 A. No, sir.

4 Q. Nanny and Adam lieing naked on the floor; right?

5 A. Yes, sir.

6 Q. You then say I turned to walk away; right?

7 A. Yes, sir.

8 Q. And at that point in time when I heard Nanny scream
9 help me or God help me?

10 A. Yes, sir.

11 Q. He's trying to kill me?

12 A. Yes, sir.

13 Q. So according to the statement you gave that night you
14 walked up, saw them, turned to actually walk away and only
15 turned back once you heard her scream?

16 A. That would technically be the pause.

17 Q. Well you say you turned to walk away?

18 A. Well yes, sir.

19 Q. Okay. Now when you say you saw them you did see
20 basically them from the top from their head side?

21 A. Yes, sir.

22 Q. You couldn't see below the waste but their body would
23 have been blocked?

24 A. Yes, sir.

25 Q. When you say Adam was there for about two or three

- 1 minutes you say he had his shorts on but his boxers off?
- 2 A. He didn't have his boxers back on.
- 3 Q. He didn't have his boxers back on?
- 4 A. No, sir.
- 5 Q. Do you remember him pulling his shorts on?
- 6 A. I don't remember seeing him but he had his shorts on.
- 7 Q. And you were there as well when Russ helped his
- 8 grandmother up?
- 9 A. Yes, sir.
- 10 Q. Took her to a different location from that to - - .
- 11 A. I saw them in the living room when he was putting the
- 12 robe on her.
- 13 Q. Did you see him move her?
- 14 A. Yes, sir.
- 15 Q. From the initial location to somewhere else in the
- 16 house?
- 17 A. Yes, sir.
- 18 Q. You weren't there with them but you saw that?
- 19 A. I saw that yes, sir.
- 20 Q. You saw them come back into the living room?
- 21 A. Yes, sir.
- 22 Q. And you saw him put her on the couch?
- 23 A. Yes, sir.
- 24 Q. He did not lie her back down back down on the floor?
- 25 A. No, sir.

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1 Q. And that all happened before law enforcement arrived?

2 A. Yes, sir.

3 Q. Did you see her move from the couch back onto the
4 floor?

5 A. I never saw her move.

6 Q. You don't know how she got from the couch back on the
7 floor?

8 A. No, sir.

9 Q. But at some point in time she was back on the floor?

10 A. Yes, sir.

11 Q. In the same area?

12 A. No, sir.

13 Q. In a different part of the area?

14 A. She was in the living room.

15 Q. As opposed to the kitchen living room passage way?

16 A. Yes, sir.

17 Q. So by the time Officer Wright had gotten there she was
18 actually lying down in a completely different location from
19 where you initially saw her body?

20 A. Yes, sir.

21 Q. Okay. Well when you walked up onto the deck or the
22 porch you were able to see through the doors?

23 A. Yes, sir.

24 Q. The glass in the doors was not broken?

25 A. No, sir.

1 Q. The lock was not kicked in or broken?

2 A. No, sir.

3 Q. The doors themselves had no damage on them of any
4 sort?

5 A. No, sir.

6 Q. And did you notice any disarray at that point in time
7 on the porch?

8 A. Not at that specific moment.

9 Q. Okay. It was later on that you noticed it?

10 A. Yes, sir.

11 Q. Okay. But while you were first looking in there there
12 was no sign that the door itself had been knocked open,
13 kicked open, pushed open?

14 A. Right.

15 Q. Against anyone's will?

16 A. Uh-huh.

17 Q. I beg the Court's indulgence.

18 Thank you, Ms. Hall, no further questions.

19 REDIRECT EXMAINATION

20 MEGHAN HALL BY SOLICITOR SIKORA:

21 Q. Ms. Hall, do you still have that statement you were
22 referencing up there in your hand?

23 A. Yes, ma'am.

24 Q. Did Mr. Lemel cover with you every part of your
25 statement or was there additional information?

1 A. No, ma'am, there is additional information.

2 Q. Would you please read your statement?

3 A. From the top to the bottom?

4 Q. Yes.

5 A. "Russ and I walked up in Nanny's house and I saw
6 through the window Nanny and Adam lieing naked on the
7 floor. I turned to walk away when I heard Nanny
8 scream God help me he's trying to kill me. I walked
9 in behind Russ and saw Adam raping Nanny. He then
10 jumped off of her and ran out then after grabbing his
11 clothes and then he took off."

12 Q. Thank you. Do you remember Mr. Lemel asking you about
13 the blue underwear in Adam's bedroom?

14 A. Yes, ma'am.

15 Q. Can you tell us about how far away the blue underwear
16 you identified was from the shorts you identified?

17 A. That I saw?

18 Q. Yes.

19 A. In his room?

20 Q. Yes.

21 A. I mean like an inch not far.

22 Q. An inch?

23 A. About that far away.

24 Q. Okay. Nothing further, Your Honor.

25 RECROSS EXAMINATION

1 MEGHAN HALL BY MR LEMEL:

2 Q. Ms. Hall, you held up your hands unfortunately then
3 that doesn't make it into the transcript okay. Clearly it
4 wasn't an inch; right?

5 A. Centimeters then. I'm not good at that.

6 Q. All right. If I held up my hands would you agree with
7 me that that far is maybe a yard maybe three feet?

8 A. Sure.

9 Q. Because we have to get this down accurate.

10 A. Okay. A yard.

11 Q. You would say it was a yard away?

12 A. Probably less than a yard.

13 Q. Clearly a lot more than an inch?

14 A. Yes, sir.

15 Q. There's thirty-six inches in a yard - - -

16 A. Yes.

17 Q. - - - you would agree with me on that?

18 A. Yes.

19 Q. Okay. And additionally there was other clothing
20 around there; right?

21 A. Yes, sir.

22 Q. That we saw in the floor in that same picture - - -

23 A. Uh-huh.

24 Q. - - - including a couple of other pieces of gray
25 clothing or grayish blue clothing whatever you want to call

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1 it?

2 A. Yes, sir.

3 Q. All right. And that was no more than a couple of
4 yards away - - -

5 A. Yes, sir.

6 Q. - - - from where the shorts were?

7 A. Yes, sir.

8 Q. No further questions, Your Honor.

9 SOLICITOR SIKORA: Nothing further, Your Honor, from
10 this witness.

11 THE COURT: You can step down, ma'am.

12 SOLICITOR SIKORA: The State calls Marilyn Hall.

13 MADAME CLERK: Ma'am, please raise your right hand.

14 (WHEREUPON: MARILYN HALL,

15 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 DIRECT EXAMINATION

17 MARILYN HALL BY SOLICITOR SIKORA:

18 Q. Ms. Hall, would you please state your full name and
19 spell your last name for the court reporter?

20 A. Marilyn Hall, H-a-l-l.

21 Q. And where do you live?

22 A. [REDACTED], Rock Hill.

23 Q. And you are Meghan's mom?

24 A. Yes, ma'am.

25 Q. Do you know Loretta Moss?

- 1 A. Yes, ma'am.
- 2 Q. Had you met her prior to June 7th of 2008?
- 3 A. Yes, ma'am.
- 4 Q. Had you been to her house before?
- 5 A. No. I've been to Doug and Sissy's house.
- 6 Q. The house directly next door?
- 7 A. Right. But I knew Nanny lived next door.
- 8 Q. About how far would you say it is from where you live
- 9 at your house to Russell Berard's house?
- 10 A. About six miles.
- 11 Q. And about how long would it take you to travel the
- 12 distance between the two houses?
- 13 A. That night I think I went a little bit fast I think
- 14 because Meghan called me frantic.
- 15 Q. But typically how long would it take you?
- 16 A. Maybe five minutes.
- 17 Q. And on the night of June 7th of 2008 did you receive a
- 18 phone call from your daughter?
- 19 A. Yes I did.
- 20 Q. And after receiving that phone call did you go to Ms.
- 21 Moss's house?
- 22 A. Yes, ma'am.
- 23 Q. Do you remember what time you got there?
- 24 A. I would say about eleven.
- 25 Q. Eleven o'clock?

1 A. Yes, ma'am.

2 Q. Did you see anyone outside whenever you first got to
3 Zinker Road?

4 A. Meghan met me outside.

5 Q. Was there anyone else outside besides Meghan?

6 A. No Russ was in the house with Nanny.

7 Q. And did you go in the house?

8 A. Yes.

9 Q. How soon after you arrived did you go in the house?

10 A. Immediately.

11 Q. And by the house are we talking about Ms. Moss's
12 house?

13 A. Nanny's yes.

14 Q. And who did you see when you went inside Nanny's
15 house?

16 A. Russell and then Nanny.

17 Q. Were the police there?

18 A. No, ma'am.

19 Q. Were there any EMS personnel on scene?

20 A. No, ma'am.

21 Q. Okay. And where was Russell in the house when you
22 first saw him inside?

23 A. He was sitting in the living room with Nanny.

24 Q. Okay. And where was he sitting in the living room?

25 A. On the couch.

1 Q. And where was Nanny positioned at that time?

2 A. Sitting on the couch next to him.

3 Q. Okay. Was Nanny wearing any clothes when you first
4 saw her?

5 A. Yes; ma'am.

6 Q. Do you remember what she was wearing?

7 A. She had pajamas and a robe.

8 Q. All right. Did you speak with Ms. Moss at all?

9 A. Yes, ma'am. She wasn't speaking I just sat next to
10 her and I rubbed her back and I told her everything was
11 going to be okay but she wasn't speaking.

12 Q. Okay. Did she seem to understand what was going on?

13 A. To be truthful I couldn't tell you that.

14 Q. When you say you sat next her did you sit on the
15 couch?

16 A. Yes, ma'am.

17 Q. Okay.

18 A. I sat with her about five minutes and EMS hadn't come
19 and I passed EMS on the way. They were sitting outside the
20 neighborhood.

21 Q. Did you see any physical signs of injury to Ms. Moss
22 while you were sitting with her on the couch?

23 A. Yes, ma'am. She had a towel or something wrapped
24 around her arm that Russ had put on her arm because of the
25 wound that she had.

MARILYN HALL: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 Q. Okay. And how did you know there was a wound
2 underneath that towel?

3 A. The blood.

4 Q. Did you see blood anywhere else on Ms. Moss's body?

5 A. Not on her body. I saw it on the kitchen floor when I
6 walked in.

7 Q. Okay did you see blood anywhere else other than her
8 arm and the kitchen floor in the house?

9 A. Not until later.

10 Q. Okay. But at that point you hadn't seen anything
11 besides that?

12 A. Right.

13 Q. About how long after you get there does the ambulance
14 arrive?

15 A. It seems like eternity because they didn't come and I
16 passed them so I got in my car to go get them.

17 Q. When you say you passed EMS are you talking about when
18 you were driving from your house to Ms. Moss's house?

19 A. Yes, ma'am. I was coming up Eastview Road to Zinker
20 and they were parked on the left hand side of another
21 subdivision right outside the subdivision.

22 Q. Okay. How far away where you saw EMS parked on the
23 side of the road how far would EMS have been from Zinker
24 Road?

25 A. Ten minutes.

1 Q. But when you arrived at Ms. Moss's house they weren't
2 there?

3 A. No, ma'am.

4 Q. Okay. Did you stay at Ms. Moss's the entire time or
5 did you leave at some point?

6 A. I left to go get the EMS because nobody was there yet
7 and I couldn't understand why they weren't there. And as I
8 was going up Zinker the sheriff pulled in so I just made a
9 U turn and went back.

10 Q. But when you left Ms. Moss's home the first time she
11 was still seated on the couch?

12 A. Yes, ma'am.

13 Q. Okay. And did the ambulance arrive shortly after the
14 police officer?

15 A. Yes, ma'am.

16 Q. Okay did you go back inside Ms. Moss's house?

17 A. Yes, ma'am. I sat with Ms. Moss on the couch while
18 Meghan and Russ went out to speak with the police officer.

19 Q. Okay.

20 A. I just sat with her and I just kept rubbing her. She
21 was like in a catatonic state and finally just got down on
22 the living room floor and laid in a fetal position.

23 Q. Okay. Did she get on the floor on her own or did you
24 assist her with getting on the floor?

25 A. No she went on her own.

MARILYN HALL: DIRECT EXAMINATION BY SOLICITOR SIKORA
CROSS EXAMINATION BY JOHNN CUMMINGS

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1 A. Okay. When you say she got on the floor is that the
2 floor of the kitchen area or the living room?

3 A. The living room.

4 Q. And was she able to communicate with you at this
5 point?

6 A. No, ma'am.

7 Q. And she was still clothed?

8 A. Yes.

9 Q. And did she lay directly in front of the couch or
10 where was she on the floor?

11 A. I believe if I can remember correctly there is like a
12 table in front of that and then she just laid in front of
13 it.

14 Q. And what type of position did you see her in on the
15 floor?

16 A. In a fetal position.

17 Q. Okay. Did EMS come inside the home?

18 A. Yes, ma'am, and that's where they found her.

19 Q. Thank you. Please answer any questions Mr. Lemel has.

20 A. Okay.

21 CROSS EXAMINATION

22 MARILYN HALL BY MR. CUMMINGS:

23 Q. I just want to make sure - I'm John Cummings. I have
24 a few questions for you, Ms. Hall. So you are the mother
25 of Meghan; is that correct?

1 A. Yes, sir.

2 Q. And on the night of that incident you got a phone call
3 from Meghan?

4 A. Yes.

5 Q. And then you got in your car and drove over to the
6 house to offer any kind of assistance you could?

7 A. Right because Meghan told me that Doug and Sissy were
8 out of town.

9 Q. And that took you about five minutes to get there?

10 A. Uh-huh.

11 Q. When you arrived at the scene you said Meghan was in
12 the yard; right?

13 A. Right. She came out and met me when I pulled in.

14 Q. Did you see anyone else out in the yard?

15 A. No, sir.

16 Q. So then you walked up to the house with Meghan; right,
17 and did you go through the porch side of the house?

18 A. Yes, sir. The front door was locked.

19 Q. So as you walk up onto the porch did you see anything
20 any broken windows?

21 A. No, sir. And I wasn't even concentrating I was more
22 trying to get into the house to help Russ and his
23 grandmother so I never really noticed anything.

24 Q. Sure that makes sense. So you go into the house you
25 and try to console her as best you can?

MARILYN HALL: CROSS EXAMINATION BY MR. CUMMINGS

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1 A. Yes, sir.

2 Q. Now initially you just try to console her. You sit on
3 the couch and you try to console her; right?

4 A. Yes, sir.

5 Q. You are kind of rubbing her back trying to make her
6 feel as best as you can; relax her as much as you can?

7 A. Right.

8 Q. You said earlier at that point she was essentially she
9 was catatonic; right?

10 A. Yeah just staring out not answering anything and not
11 talking.

12 Q. So she's not communicating with you in any way at that
13 point; right?

14 A. No, sir.

15 Q. And then at that point EMS has not arrived yet at that
16 point yet; right?

17 A. No, sir.

18 Q. Okay. So you get in your vehicle to track them down;
19 correct?

20 A. Correct.

21 Q. And then that's when you see the officer arrive on the
22 scene; right?

23 A. Yeah. He was turning onto Zinker as I was coming up
24 to Eastview so I just made a U turn and followed him back.

25 Q. Okay. And then you go back to the house; right?

- 1 A. Yes.
- 2 Q. And once again you just go back to what you were doing
3 before just kind of consoling Ms. Moss?
- 4 A. Sitting with her right.
- 5 Q. Okay. And at that point she is still not
6 communicating with you; right?
- 7 A. Right.
- 8 Q. So she's kind of just moaning?
- 9 A. Yes, sir.
- 10 Q. Obviously she's in pain right. Okay. And at that
11 point EMS arrives shortly thereafter?
- 12 A. Yes, sir.
- 13 Q. And she's gotten up from the couch and she's on the
14 floor; right?
- 15 A. Right.
- 16 Q. Okay. And then EMS kind of takes over and they do
17 their thing; right?
- 18 A. Right.
- 19 Q. Okay. And at that point the police officer is going
20 about his business and securing the scene; right?
- 21 A. Yes, sir.
- 22 Q. And at some point he takes statements from Meghan and
23 Russell; right?
- 24 A. Yes, sir.
- 25 Q. But he does not take a statement from you; correct?

MARILYN HALL: CROSS EXAMINATION BY MR. CUMMINGS

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1 A. I don't think so.

2 Q. Okay. So basically you didn't do a statement that
3 night so you are kind of recalling everything. This is
4 eighteen months later; right?

5 A. Uh-huh.

6 Q. So you are basically just going from memory; correct?

7 A. Yes, sir.

8 Q. And after that did you kind of look at the house kind
9 of after it all calmed down?

10 A. Yes, sir.

11 Q. And at that point did you notice any broken windows in
12 the house?

13 A. No, sir. The porch there was disarray on the porch,
14 plants knocked over. Nanny's teeth were on the porch.

15 Q. Okay.

16 A. Blood on the door frame.

17 Q. Did you see any pry marks on the door?

18 A. No, sir.

19 Q. Did you see any footprints on the door indicating it
20 had been kicked in?

21 A. No, sir.

22 Q. Okay. No further questions, Your Honor..

23 SOLICITOR SIKORA: Just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 MARILYN HALL BY SOLICITOR SIKORA:

MARILYN HALL: REDIRECT EXAMINATION BY SOLICITOR SIKORA
BRIAN ALLEN: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 Q. Is it fair to say that that night sticks out in your
2 mind?

3 A. Definitely.

4 Q. How good would you say your memory was on what
5 happened that evening?

6 A. Very good. That's not something you forget.

7 Q. Thank you. No further questions.

8 MR. LEMEL: Nothing further from the defense.

9 THE COURT: You can step down, ma'am.

10 SOLICITOR LIPINSKI: State calls Brian Allen to the
11 stand. I

12 Mr. Allen, if you would approach Tracy in the green
13 shirt and be sworn in.

14 MADAME CLERK: Please raise your right hand.

15 (WHEREUPON: BRIAN ALLEN,
16 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 MADAME CLERK: Thank you. You may be seated.

18 DIRECT EXAMINATION

19 BRIAN ALLEN BY SOLICITOR LIPINSKI:

20 Q. Mr. Allen, if you could state your name spelling your
21 last name for the record.

22 A. It's Brian Keith Allen. Last name Allen, A-l-l-e-n.

23 Q. And with whom are you currently employed?

24 A. I am a part-time employee with Piedmont EMS.

25 Q. And just briefly what do you do with Piedmont EMS?

BRIAN ALLEN: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 A. I act as an EMT Intermediate.

2 Q. And you said EMT a lot of us hear those terms but what
3 does that mean?

4 A. Emergency Medical Technician Intermediate.

5 Q. And what kind of training and education have you
6 received in order to assist you in your duties?

7 A. I received the training through York Technical College
8 as a basic and then continued to advance level to
9 Intermediate. Again take another course and renew several
10 years of extensive training to keep up with the latest
11 medical.

12 Q. How long have you been an EMT?

13 A. Since 2003 as a basic and then I became an
14 intermediate. I'm not sure what year probably since 2006.

15 Q. And were you similarly working in June of 2008?

16 A. Yes.

17 Q. And did you have the occasion to be called to [REDACTED]

[REDACTED] ? Did you have the occasion to be called to

19 [REDACTED] ?

20 A. Before then?

21 Q. I'm sorry, on the night in question June 7th of 2008
22 did you have the occasion to be called out there?

23 A. Yes.

24 Q. And how do you receive that information that someone
25 is in need of emergency medical care?

1 A. Through EOC emergency operation set up.

2 Q. 911 dispatch?

3 A. Yes.

4 Q. So you get a call to go out there?

5 A. That's correct.

6 Q. You have some papers in your hand. Do you all
7 generate some reports?

8 A. That's correct.

9 Q. And the report you have in your hand is actually of
10 another EMT that was on the truck that night?

11 A. That's correct. Chris Amwright he's the -- actually
12 the paramedic in charge.

13 Q. And is he still employed with PMC?

14 A. No, ma'am.

15 Q. But the report that you have belonging to Chris is
16 that a report that you would typically rely upon if you are
17 to continue or assist with her care?

18 A. That's correct.

19 Q. And does it document and coincide with your
20 recollection of the events on the night in question?

21 A. That's correct.

22 Q. And do you remember going out to this house?

23 A. I do.

24 Q. And you heard Ms. Hall testify that you all did not
25 immediately go to the house but you staged somewhere

BRIAN ALLEN: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 nearby?

2 A. That's correct. The call came out as a fall with
3 injuries scene not secured.

4 Q. What does scene not secured mean?

5 A. It can be possibly a variety of things. It can be
6 someone who could be a danger to EMS personnel. It's just
7 a number of things but it's a situation that requires that
8 the officers to make secure before we walk into that
9 situation.

10 Q. So there are scenes where somebody an elderly person
11 falls in the home where you would go directly to the home?

12 A. That's correct.

13 Q. But in this particular case 911 or EOC tells you it's
14 not secure to stage nearby?

15 A. That's correct.

16 Q. And once you get the clear in this particular
17 incident from the York County Sheriff's office do you then
18 go to the scene?

19 A. That's correct.

20 Q. Do you go inside the residence?

21 A. Yes, ma'am.

22 Q. Do you talk with anyone prior to going inside if you
23 recall?

24 A. We approach the house myself and Becky Smith a
25 paramedic student grabs the stretcher. The lead paramedic

1 walks towards the house and he spoke to the officer as we
2 proceed into the house.

3 Q. Do you remember do you go up through the deck or front
4 door if you recall?

5 A. We go through the deck yes, ma'am, the side door.

6 Q. And where do you encounter Ms. Moss if you recall?

7 A. She was in the living room on the floor.

8 Q. Do you remember if she had anything on?

9 A. Yes, ma'am, she had some type of clothing on.

10 Q. And what is her condition just generally as you begin
11 to assess her?

12 A. As we walk in we notice a large pool of blood which
13 caught your eye and we proceed in and saw that she was
14 lying on the floor on her right side in what I would call a
15 fetal position. She was pretty much incoherent. Just
16 obviously shaken and was mumbling you couldn't understand
17 her. I mean you could see at the time the lacerations were
18 to the head and to the arms and we immediately assessed her
19 initial assessment to make sure that the patient is
20 breathing and that she has a patent airway. As her
21 mumbling and what not we did determine that. We then
22 assessed her; bandaged her wounds, placed her in a "C"
23 spine.

24 Q. What's a "C" spine?

25 A. We placed a collar on her neck. It's a protocol if

1 there is any back injuries or what not we place her onto a
2 back board.

3 Q. Did she have any injuries to her back that you
4 noticed?

5 A. We did not notice at the time. You've got to
6 understand when you walk in a situation like that we would
7 like to get her in the back of the ambulance where we can
8 assess her closer. We want to stop the immediate danger in
9 so far as bleeding. She had a large amount of blood lost
10 through her arm and through the back of her head so we
11 immediately bandaged that up and checked her quickly,
12 didn't see anything protruding from her back or any wounds
13 that we noticed; placed her on her back and packaged her
14 and took her to the ambulance.

15 Q. Meaning ambulance do you have more equipment and other
16 devices available to you?

17 A. Yes, ma'am. It's a more controlled environment we
18 have better lighting. And then what we would call a
19 secondary assessment. We would go from basically head to
20 toe and at that point obviously the lead paramedic was in
21 charge. I believe at that point we gathered in the back of
22 the ambulance I took care of her. I believe she had a
23 laceration to her left arm that I was taking care of. The
24 other paramedic I believe he was setting up the life pac to
25 check her lungs, I mean to check her vital signs and also

1 check her lungs and what not.

2 Q. You stated that she was incoherent. Do you often
3 assess a patient for whether or not they are called alert
4 to a person place and time?

5 A. Yes that's correct. She was what I would consider
6 altered mental status which means she cannot -- she cannot
7 give verbal wording of exact everything. She was able once
8 we got her in the back of the ambulance to note the place
9 and time I believe.

10 Q. Was she able to give you a medical history or
11 allergies or anything like that?

12 A. Again the lead paramedic took those questions and from
13 what I understand no could not.

14 Q. And you stated that she had trauma to her head and you
15 worked on a laceration on her one forearm. Were there any
16 other noticeable injuries to her?

17 A. Yes there was a large laceration to the -- I believe
18 it was her right arm which the paramedic in training was
19 attending to that and we bandaged the back of her head.
20 The scalp area there was a large amount of blood.
21 Obviously if the patient's hair when there's low lighting
22 on the scene it's hard to determine the extent of that
23 injury so we control the bleeding and try to get her in the
24 back of the ambulance as quickly as possible.

25 Q. Were you aware of any injuries to her fingers or

BRIAN ALLEN: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 anything like that?

2 A. Yes. I remember one of her fingers to me it looked
3 like it was partially amputated like a fingernail or
4 something was pulled off. It was hard to see. It was
5 obviously an injury to the finger.

6 Q. And were you the one once you assessed her and in
7 essence stabilized her in the back of the truck where do
8 you go from there?

9 A. Once we stabilized her the paramedic gave me the okay
10 to go priority one to Piedmont.

11 Q. And do you always take them to Piedmont? Do you ever
12 take them to CMC?

13 A. Yes, ma'am, there's times that you would go directly
14 to CMC which is the level one trauma center. And there was
15 also times you would call in flight and a decision was to
16 drive her to Piedmont and from what I understand they were
17 possibly setting up a LZ at Piedmont to air lift her from
18 there. There can be many factors I can't speculate why the
19 paramedic makes certain decisions but I can say that I know
20 the LZ was being set up at Piedmont.

21 Q. The clothes that she had on was that something that
22 you all would have removed in order to give her further
23 medical attention?

24 A. You can remove clothing to do that however we did not.
25 In fact I was under the impression at the time that we were

1 going to a call with injuries - a fall with injuries. And
2 as I was working on her I noticed nothing really made
3 sense. There was nothing that I would suggest that would
4 be considered a fall with injuries. I've never gone to a
5 fall with injuries with that type of injuries in that type
6 of situation. So when we are in the back of the ambulance
7 I explain that it could be a possible criminal case and to
8 leave the clothing in tact.

9 Q. So the "C" spine and the back board is mainly to
10 stabilize her because you don't know what injuries she may
11 or may not have?

12 A. That's correct.

13 Q. And is she actually strapped to the back board to
14 prevent her from moving further?

15 A. Yes. Once we check her back we will place her onto a
16 back board and lift her then we strap her down and place
17 the back board onto the stretcher and then put her inside
18 the back of the ambulance.

19 Q. And while she's in the back of the ambulance do you
20 ever remove her from either of those two devices either the
21 spinal collar or the back board if you recall?

22 A. I don't recall. I remember that she had thrown up and
23 you would remove certain straps to put her sideways so she
24 can vomit and she wouldn't choke on her own vomit and then
25 you would suction that and then place back into -- but your

1 "C" spine is stable the whole time.

2 Q. And as to the nature of how she received the injuries
3 did she ever describe any of those to you?

4 A. No, ma'am. It seemed like she was mumbling things and
5 he tried to kill me with something that I heard. You know
6 like I said it was not making sense at the time because we
7 was under the impression that it was a fall with injuries
8 so when she was saying he tried to kill me you caught it.
9 But then you've got to understand we didn't know what had
10 happened. What she was saying didn't make sense with a
11 normal fall with injuries.

12 Q. And were you ever made aware of whether or not there
13 was a possible sexual assault committed against Ms. Moss?

14 A. Not until it was considered criminal once we were back
15 in the ambulance to leave her clothing in tact when I
16 started assessing her. And then at that point I got out of
17 the vehicle and got into the driver seat and drove. What
18 happened between the drive way and until arrival at EMS
19 that would be between the paramedic and the paramedic
20 student.

21 Q. You just got that information from your fellow
22 paramedic to preserve that evidence?

23 A. That's correct.

24 Q. You never got that information from Ms. Moss in any
25 way?

BRIAN ALLEN: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
CROSS EXAMINATION BY MR. LEMEL

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1 A. No, ma'am.

2 Q. I have nothing further at this time.

3 CROSS EXAMINATION

4 BRIAN ALLEN BY MR. LEMEL:

5 Q. Good morning, Mr. Allen. You are an EMT for Piedmont
6 Medical Center at least on a part time basis?

7 A. That's correct.

8 Q. And when you go out in a crew in this particular
9 situation what you have is you serve as the EMT?

10 A. Yes, sir.

11 Q. There is somebody else who serves as the paramedic?

12 A. That's correct.

13 Q. And the paramedic sort of has a certain higher level
14 of training than you do as an EMT?

15 A. That's correct.

16 Q. Lack of a better word in charge of the crew on scene?

17 A. Medically he is in charge.

18 Q. And that's the gentleman who no longer works for
19 Piedmont Medical Center Chris?

20 A. Correct.

21 Q. And you just happen to have a trainee along with you
22 at that particular time?

23 A. She was also an EMT Intermediate I believe in training
24 as a paramedic.

25 Q. Sometimes you have three people on the crew and

BRIAN ALLEN: CROSS EXAMINATION BY MR. LEMEL

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1 sometimes you won't?

2 A. The majority of the time you have only two crew
3 members but at that point we did have an extra one.

4 Q. Now you yourself didn't take any individualized notes
5 from that day?

6 A. No, sir.

7 Q. You did not write up any reports?

8 A. No, sir.

9 Q. All of that was placed on Chris's plate basically?

10 A. That's correct.

11 Q. The report you have in your hand is all stuff that he
12 took?

13 A. That's correct.

14 Q. So that just basically is just to refresh your
15 recollection?

16 A. That's correct.

17 Q. Besides that this was eighteen months ago and you are
18 going off of your memory now?

19 A. That's correct.

20 Q. By the time that you got there -- well lets just talk
21 about the person as far as the dispatch I want to make
22 clear how this goes. Someone dials 911 in York County and
23 it goes to the emergency operations center; correct?

24 A. That's correct.

25 Q. That's just a generalized phone bank for all in coming

1 emergency calls?

2 A. That's correct.

3 Q. From what we call the EOC the Emergency Operations

4 Center which is located in Rock Hill; correct?

5 A. That's correct.

6 Q. It is then further dispatched out to various agencies?

7 A. Right.

8 Q. Which can include the fire department?

9 A. Yes, sir.

10 Q. The police?

11 A. Correct.

12 Q. Or whatever law enforcement agency is relevant. It

13 could be the sheriff's department sometimes and sometimes

14 the Rock Hill Police sometimes other agencies?

15 A. Correct.

16 Q. Or it can come into your agency medical professionals

17 EMS things like that?

18 A. Correct.

19 Q. Okay. So that's how you get this initial call?

20 A. Correct.

21 Q. And you are used to taking any of these calls given

22 additional assessment about what's going on in the case?

23 A. Yes.

24 Q. So you have some idea about what you are driving into?

25 A. Yes.

BRIAN ALLEN: CROSS EXAMINATION BY MR. LEMEL

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1 Q. And you were actually driving at that period as I
2 understand it; correct?

3 A. I believe Chris was actually driving to the scene I
4 believe.

5 Q. You drove away?

6 A. I drove away but I believe Chris may have been the
7 driver to the scene. I'm not sure.

8 Q. And the initial call like you said is for a fall.

9 A. A fall with injuries.

10 Q. But a situation as you said that's not secure I let
11 the police go in first and figure out what's going on
12 before you guys go in?

13 A. That's correct.

14 Q. Because there can be a number of things that were
15 going on at that time?

16 A. That's correct.

17 Q. Okay. Once you arrive your focus is on getting to the
18 patient?

19 A. That's correct.

20 Q. Getting the patient stabilized enough to get them into
21 the back of the ambulance?

22 A. That's correct.

23 Q. And then proceeding at that point in time from the
24 ambulance wherever you have to take them?

25 A. That's correct.

1 Q. Based on the call that Chris was going to make?

2 A. That's correct.

3 Q. And so that's really what your focus is in this
4 scenario?

5 A. Yes, sir.

6 Q. You weren't part of any sort of investigation; you
7 weren't taking notes about what you saw or what you did or
8 anything like that?

9 A. No, sir.

10 Q. But what you do recall is that Ms. Moss at that point
11 in time was incoherent I think was the word that you used
12 for it?

13 A. That's correct.

14 Q. Do you remember I think you said she might have
15 eventually got oriented to I think you said place and time?

16 A. That's correct.

17 Q. Pretty basic level of awareness?

18 A. That's correct.

19 Q. But never anything beyond that in terms of full
20 capacity?

21 A. No, sir.

22 Q. Which is not unusual for somebody who's sustained
23 injuries like that?

24 A. That's correct.

25 Q. A head trauma often causes loss of memory, loss of

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1 coherence, things of that nature?

2 A. That's correct.

3 Q. Those are all things that you're used to dealing with
4 as an EMT?

5 A. Correct.

6 Q. And so in this situation basically you get her into
7 the ambulance she's being treated there and somebody says
8 potential crime scene try not to disturb the clothes that
9 she's got on?

10 A. That's correct.

11 Q. So you guys did that so it can be processed by the
12 sheriff's office later on?

13 A. That's correct.

14 Q. And then you drive her to PMC?

15 A. Yes, sir.

16 Q. And you turn her over to PMC and they thereafter take
17 over?

18 A. Yes, sir.

19 Q. Okay. I beg the Court's indulgence. No further
20 questions.

21 Thank you, Mr. Allen.

22 SOLICITOR LIPINSKI: We have nothing further of Mr.
23 Allen and we would ask that he be excused.

24 MR. LEMEL: Without objection, Your Honor.

25 THE COURT: You are excused.

1 SOLICITOR LIPINSKI: Your Honor, can we approach?

2 THE COURT: Sure.

3 (BENCH CONFERENCE AT 11:55 A. M. OFF THE RECORD OUT OF
4 THE HEARING OF THE JURY.)

5 THE COURT: Ladies and Gentlemen, we are getting
6 pretty close to lunch. We are going to take a real short
7 break so I know you have been sitting there for a while we
8 have too so we are going to take a real short break and
9 come back and finish up before lunch.

10 (JURY LEAVING COURTROOM AT 12:00 P.M..)

11 (SHORT RECESS AT 12:00 P.M..)

12 (BACK ON THE RECORD AT 12:10 P.M..)

13 THE COURT: All right. Get the defendant in and then
14 the jury.

15 (DEFENDANT ENTERING COURTROOM AT 12:10 P.M..)

16 (JURY ENTERING COURTROOM AT 12:11 A.M..)

17 SOLICITOR LIPINSKI: State calls Mr. John Lane to the
18 stand.

19 Mr. Lane, if you can approach Tracy in the green shirt
20 and be sworn please.

21 MADAME CLERK: Sir, please raise your right hand.

22 (WHEREUPON: JOHN CHRISTOPHER
23 LANE BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
24 FOLLOWS:)

25 MADAME CLERK: Thank you. You may have a seat.

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1 DIRECT EXAMINATION

2 JOHN CHRISTOPHER LANE BY SOLICITOR LIPINKSI:

3 Q. Mr. Lane, could you please state your name and spell
4 your last name for the record?

5 A. John Christopher Lane, L-a-n-e.

6 Q. And, Mr. Lane, are you currently employed?

7 A. Yes, ma'am.

8 Q. And do you reside at [REDACTED] [REDACTED]?

9 A. Yes, ma'am.

10 Q. And how long have you lived there?

11 A. Fifteen years.

12 Q. And where is that in York County.

13 Q. It's off of Dave Lyle Boulevard behind the statues.
14 If anybody knowed the ugliest statues in Rock Hill there
15 kind of in the tech park area I guess.

16 Q. Do you live near those?

17 A. Unfortunately.

18 Q. And is it a house, is it an apartment; what kind of
19 residence is it?

20 A. An old mill house.

21 Q. An old mill house. Let me show you what's been marked
22 previously as State's Exhibit Number Thirty-Two and ask if
23 you recognize what is depicted in this aerial photograph?

24 A. Okay. That is the top of my house. My back - -

25 Q. I'm sorry.

1 A. My back yard, drive way, the whole thing.

2 Q. Your Honor, at this time we would move State's Exhibit
3 Number Thirty-Two into evidence.

4 MR. LEMEL: Without objection, Your Honor.

5 THE COURT: It's admitted.

6 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-TWO
7 PREPARED FOR IDENTIFICATION ENTERED INTO EVIDENCE.)

8 BY SOLICITOR LIPINSKI:

9 Q. And do you know the defendant Adam Berard?

10 A. So to speak. I don't know him but I worked with him
11 briefly.

12 Q. And where did you work with him?

13 A. I think the name of the place was Carolina Fresh Farms
14 a feed and seed store on Celanese. I was out of work and I
15 got a part time job there driving a truck and he worked in
16 the warehouse at the time. And occasionally when I wasn't
17 driving I would have to do things around the yard there;
18 the warehouse and what not.

19 Q. And on the night of June 7th, 2008 going into the
20 morning of June 8TH, 2008 do you recall that night?

21 A. Yes, ma'am..

22 Q. What were you doing around midnight?

23 A. I was in bed. We were all in the bed.

24 Q. And who else do you live there with?

25 A. My girlfriend Debbie was there and it just so happened

1 her son was spending the night there as well that night.

2 It was not a normal thing he just happened to be there that
3 night.

4 Q. And how if at all did you wake up that night?

5 A. I believe I heard the doorbell ring but her son must
6 have been already up because he tends to stay up late
7 according to her. So he came and knocked on my door - her
8 son and said there was a man at the door needed to see you.
9 The first instinct come to my mind was my step son so I
10 jumped up and went to the door and opened the door and Adam
11 was standing there.

12 Q. And did you recognize him?

13 A. Yes.

14 Q. And did he say anything to you? Were you expecting
15 him that night?

16 A. Oh no, no, no, not at all, not ever.

17 Q. When was the last time you had seen him prior to that
18 night?

19 A. At work.

20 Q. Weeks, months?

21 A. At work. I can't remember if I was still working. I
22 don't think I was working at the feed store at that time.
23 I can't remember because it was a brief employment but the
24 only time I ever seen him was at work.

25 Q. And was there anything unusual about his physical

1 condition on the night in question?

2 A. He looked scared. He was bleeding really bad from one
3 of his legs. I think it was his left leg I'm not really
4 sure. It was one of the two from the calf area of the leg.
5 He -- he didn't look like he did at work in other words and
6 he said he needed some help he was bleeding.

7 Q. And did you offer to call 911?

8 A. After I -- I walked out on the porch because I asked
9 him what he was doing at my house. That was the first
10 thing I said to him because I was expecting to see my step
11 son there because nobody comes to my house in the middle of
12 the night unless it would be a family member. I walked out
13 on the porch and his pants leg was just covered in blood.
14 I set him down on my porch swing there and he pulled his
15 pants up and blood was just poring out of his leg. I told
16 him to get up and I brought him just inside my door and set
17 him on my couch. Debbie was up by then.

18 Q. Who is Debbie?

19 A. Debbie is my girlfriend. I'm sorry. I told her to
20 get a towel and I believe that's at the point we gave him a
21 towel. Offered to call 911 and get him an ambulance out
22 there. He refused he did not want any part of that. And
23 Debbie said after I told him I said you need some help I
24 said you are bleeding too bad and he refused and he said
25 just let me stay here a while. I said no you are not

1 staying at my house. And Debbie said as nice as she is I
2 will take him to the hospital. I said no you are not
3 taking him to the hospital. I said we can call the
4 ambulance and have the ambulance come right here and he
5 refused it. But something wasn't right about the whole
6 situation.

7 Q. Did he ever tell you what had happened earlier on the
8 night in question?

9 A. No he didn't come out and offer the information. I
10 was getting frustrated with the whole thing. He was
11 bleeding all over the place. He bled all over my porch.
12 I didn't know what was going on. And I realized he had cut
13 that ankle bracelet that he had worn off his leg. And I
14 asked him I said did you cut that thing off your leg and I
15 was yelling and saying some choice other words because I
16 was aggravated. He admitted he cut it off his leg with a
17 hawk bill is what he told me.

18 Q. A hawk bill?

19 A. A hawk bill is a knife it's got a hook on it. That's
20 what I would call it. And after I kept telling him I said
21 something is wrong. Something is wrong you need to tell me
22 what the heck is going on. And I asked him did he kill
23 somebody? I came out and asked him. And I never knew what
24 the boy was in trouble before why he had that ankle
25 bracelet on. He told me it was - -

1 Q. Don't go into that.

2 A. I'm sorry. Anyhow I didn't know really what was going
3 on with that but I know he didn't have it on his leg. He
4 told me he cut it off. I asked him did he kill somebody
5 and he said no. I said what's going on? Something ain't
6 right, tell me. And he told me he hit his grandmother in
7 the head with a baseball bat.

8 Q. And then what happened?

9 A. I had my gun on my side I guess I had picked it up
10 somewhere in that time frame. It was just a little small
11 gun I guess it made me feel safer for some reason and I
12 pulled the gun and ran him out of the house.

13 Q. And did he leave?

14 A. Yes.

15 Q. Do you know how he got there? Did he arrive by car?

16 A. He had his little scooter parked in my driveway out
17 there that night. That's all I had ever known him to drive
18 this brief time that I knew him.

19 Q. Let me show you what's been marked as State's Exhibit
20 Number's Thirty-Three A, B, C, D and E and ask you if you
21 recognize what's is depicted in these photographs?

22 A. This first one here - -

23 Q. Wait we'll go through them one by one.

24 A. Okay.

25 Q. If you could just initially look through them and if

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1 you recognize what is depicted in there?

2 A. Yes the first one I knew.

3 Q. Are they all more or less pictures of your house and
4 the immediate area there?

5 A. The front porch area there yes from the steps up to
6 the front porch.

7 Q. And do they accurately depict the condition of your
8 porch on the night Adam that came to your house?

9 A. Yes, ma'am.

10 Q. Your Honor, at this time we would move State's Exhibit
11 Number Thirty-Three A through E into evidence.

12 MR. LEMEL: Without objection, Your Honor.

13 THE COURT: They are admitted.

14 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-THREE A
15 THROUGH E PREMARKED FOR IDENTIFICATION ENTERED INTO
16 EVIDENCE.)

17 BY SOLICITOR LIPINSKI:

18 Q. If you could please dim the lights.

19 I am going to put them up on the projector here so the
20 jury can see them as we go through them.

21 A. Okay.

22 (CLERK OF COURT DIMMED COURTROOM LIGHTS.)

23 Q. And of course now the magic will happen because the
24 projector has to warm up. Most of the photographs are the
25 outside of the porch area of your residence not the inside?

1 A. Yes, ma'am, just the outside area leading up to the
2 front door.

3 Q. Let me show you what's been marked as State's Exhibit
4 Number Thirty-Three A. What -- are these your steps?

5 A. Yes those are my front steps.

6 Q. And is there anything unusual about them as it relates
7 to Adam's visit? Is there anything that's changed about
8 them different to how they were prior?

9 A. There's blood on them.

10 Q. There's blood on them?

11 A. Yes, ma'am. Blood on the second step there that can
12 be the third; I think that's the third step. It's hard to
13 tell. I can't see the full step picture but the middle
14 step there is blood and of course on the top there you can
15 see blood on the top right top step.

16 Q. Let me move to State's Exhibit Thirty-Three B. Are
17 these the same steps?

18 A. Yes. That's the top step. I referred to this just a
19 second ago.

20 Q. And was that foot print there prior to Adam's visit to
21 the most of your knowledge?

22 A. No, ma'am.

23 Q. And we then see a wooded area is that your front porch
24 or deck?

25 A. That's the front porch of the house.

1 Q. Moving to Thirty-Three C. What is depicted in this
2 photograph?

3 A. That is from the front step to my front door of the
4 house there on the porch.

5 Q. So I am going to draw your attention to the white
6 column here.

7 A. Okay.

8 Q. Down below this is that where the steps would meet the
9 porch?

10 A. Yes, ma'am.

11 Q. And there is a chair there?

12 A. Yes, ma'am.

13 Q. And what is on the floor near the chair?

14 A. There is a towel there on the bottom of that pile,
15 there. If I am not mistaken that's the towel that we had
16 gave him to wipe his leg off which that was before I had
17 asked him to call the police I mean the ambulance because I
18 didn't know really how bad it was. I had seen it outside
19 and you couldn't tell because it was too much blood. And
20 the other thing I'm not sure what that is maybe another rag
21 we gave him. I'm not sure what the white; I don't recall
22 what that was.

23 Q. Moving to the next.

24 A. And some foot prints there of course.

25 Q. Some additional foot prints?

1 A. You can see the foot prints leading up to that pile of
2 rags there. Those were all blood prints they weren't there
3 before.

4 Q. These two darker areas?

5 A. Yea. There and there. There was drippings of blood
6 all over the place.

7 Q. Let me show you the next exhibit. Thirty-Three D.

8 Again are these the steps over here to the left hand
9 corner?

10 A. Yes that's the steps there. The right hand corner
11 would be the front door and that porch swing is left of the
12 steps.

13 Q. And is there additional blood between the steps and
14 the swing?

15 A. There's blood right in front of the swing there. You
16 can see a kind of curved little -- yea right in there. And
17 right there in the middle of that little area was what
18 appeared to be after it was all said and done and the
19 police came and all and we determined that it appeared to
20 be a piece of bloody meat.

21 Q. And how did the blood get in the area of the swing?
22 Did he go there before he woke you all up or did you ever
23 sit him down on that swing?

24 A. I don't know if he was there before he woke me up. Of
25 course I was asleep. When I had went to the door he was

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1 standing there and I asked him what he was doing there at
2 my house and he said he cut himself. And so I walked him
3 out and he sat on the swing right there. That's when I had
4 seen noticed his pants was bloody and he pulled his pants
5 up at that time that could have been where the blood came.
6 I don't know if it was before I don't know.

7 Q. But he did sit on the swing?

8 A. Yes I sat him down. I didn't physically set him down
9 on the swing. I said set down and let me see what's going
10 on.

11 Q. And let me show you State's Exhibit Number Thirty-
12 Three E.

13 A. That's the last picture? Yes.

14 Q. You talked about a chunk of meat.

15 Q. Yea the chunk at the bottom of the picture there
16 that's what we thought was a piece of meat. It didn't look
17 like just a drop of blood.

18 Q. And if you can bring the lights back up.

19 (CLERK OF COURT BRIGHTENED COURTROOM LIGHTS.)

20 Q. Subsequent to Mr. Berard leaving your house did you
21 see him leave?

22 A. He went out the door. I don't recall running out the
23 door after him because I had told him to leave and I had
24 pulled my gun and I think he got the message. He didn't
25 argue with me about it. You know he didn't beg me to

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1 please stay there or anything like that. I mean I had
2 offered to call the man help and he didn't want it. He
3 wanted to hang out at my house and that wasn't going to
4 happen.

5 Q. But you don't see what direction he goes in after he
6 leaves your house?

7 A. No I didn't see the direction. Because he was gone
8 that was my concern. He was gone from there the police had
9 already been called. I had told Debbie to call the police
10 before he had left.

11 Q. At what point do you ask Debbie to call the police?

12 A. It was sometime during the thing. I just had a bad
13 feeling about the whole situation. I had told her to call
14 the police and they got there - they got there minutes
15 after him and he was barely gone any time when they pulled
16 up.

17 Q. That's all we have of Mr. Lane.

18 CROSS EXAMINATION

19 JOHN CHRISTOPHER LANE BY MR. LEMEL:

20 Q. Good afternoon, Mr. Lane.

21 A. How are you?

22 Q. Mr. Lane, after the police arrived did they ask you in
23 fact to give a statement; correct?

24 A. Yeah well eventually. Not right off the bat I told
25 them what happened two or three times. One of the police

1 officers came and then another. It was three total. I
2 repeated what went on to each one of them.

3 Q. Pretty much had to catch each one up as to the terms?

4 A. Yea they didn't get there at the same time. The city
5 officer and then a county officer and then someone in plain
6 clothes.

7 Q. And basically each time you are sort of telling the
8 story as it goes?

9 A. Yes.

10 Q. Because they always don't have a chance to talk to
11 teach other beforehand?

12 A. Yes.

13 Q. They are just trying to find out - -

14 A. Yeah.

15 Q. But eventually one of those officers, one of the
16 county officers asked you to write something down; right?

17 A. Yes at the end.

18 Q. And this would have been in the very early morning
19 hours of the 8TH?

20 A. Yes.

21 Q. Sort of in the middle of the night early morning kind
22 of?

23 A. That's right.

24 Q. And you agreed to do that; right?

25 A. Sure.

1 Q. They provided you the paperwork to do that?

2 A. Sure.

3 Q. Went over the paperwork with you before you began
4 filling it out?

5 A. I assume they did. I don't remember if he held my
6 hand through the process. He told me to please write down
7 what had happened.

8 Q. And of course you were very willing to do so?

9 A. Of course.

10 Q. Wanted to help them out?

11 A. Of course.

12 Q. Wanted to give them all the information you could?

13 A. Sure.

14 Q. And so you filled this out pretty much within an hour
15 or two of Adam arriving at your house?

16 A. It was probably less than an hour not more than an
17 hour I would think.

18 Q. So relatively fresh then in your mind?

19 A. Yeah given the time of the morning.

20 Q. Okay. And now it's a good eighteen months later;
21 okay?

22 A. Yeah.

23 Q. Did you look at your statement before you got on the
24 stand to testify today?

25 A. No, sir, I did not.

1 Q. Would you recognize it if you saw it again?

2 A. I would hope so.

3 Q. I am going to hand you something and ask you if you
4 recognize it? Feel free to take your time to look over it.

5 A. Yep that appears to be it.

6 Q. Okay. Is that your handwriting on there, Mr. Lane?

7 A. Yeah.

8 Q. So any doubt in your mind that this is your statement
9 you wrote out?

10 A. No it appears to be mine.

11 Q. And the date and the time on that down at the bottom
12 is?

13 A. 6/8/08. Looks like 1:54 in the morning.

14 Q. Right. So there again right before 2:00 a.m.?

15 A. Yeah.

16 Q. Okay. All right. Did you have any trouble filling'
17 this out?

18 A. Other than being aggravated and mad.

19 Q. I understand that..

20 A. And trying to recall because it seemed it didn't
21 happen over a long period of time from the time he got
22 there to the time I run him off.

23 Q. How long of a period of time would you say it was?

24 A. If I had to guess it was probably no more than fifteen
25 minutes. I don't think it was that long at all. I really

1 don't. But it may have been ten or fifteen minutes. I

2 don't know.

3 Q. And of course being woken up out of a sound sleep and
4 then somebody standing on your deck with a bloody leg that
5 whole thing was very upsetting; right?

6 A. Yes especially when my first thought was my step son.

7 Q. Sure. And obviously it didn't have anything to do
8 with your stepson but that still put you in that - - -

9 A. Same difference.

10 Q. - - - same fight or flight kind of mode - - -

11 A. Not a fight mode.

12 Q. - - - almost instinctively.

13 A. I was just concerned. I wanted to know why this man
14 was standing on my front porch.

15 Q. And not meaning to imply that you were attempting to
16 fight. When I say fight or flight I mean that sort of
17 adrenalin rush kind of mode something is there.

18 A. More than just wondering what's going on. Not really
19 adrenaline.

20 Q. Okay.

21 A. I wouldn't say that.

22 Q. All right. So once you see who it is on your deck you
23 recognize him?

24 A. Yes.

25 Q. It's not a complete stranger to you?

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1 A. Not a complete stranger no.

2 Q. Certainly not a close friend by any stretch of the
3 imagination but somebody who obviously knew where you
4 lived?

5 A. Yes through the circumstances he did know where I
6 lived.

7 Q. Okay. And not someone you had invited over but again
8 somebody you had recognized?

9 A. Certainly not invited over.

10 Q. Somebody you recognized and as soon as you saw you
11 know who this person was?

12 A. Yes.

13 Q. And you sat them down and tried to get some assistance
14 for them?

15 A. I sat him down on the front porch to find out why he
16 was at my house.

17 Q. Right.

18 A. You know he was bleeding obviously I wanted to find
19 out you know ha, you need to put something on that or
20 something.

21 Q. And pretty quickly you found out that he was bleeding
22 very badly?

23 A. Yes he was.

24 Q. Tried to render him some aide?

25 A. Well I didn't do it myself. I'm not an EMT. I gave

1 him a towel.

2 Q. Would you not consider giving somebody a towel in that
3 situation rendering them aide?

4 A. I guess so.

5 Q. I'm not asking whether you stitched him up or anything
6 like that but tried to help him.

7 A. I tried to give him a towel to wipe his leg off - - -

8 Q. Right.

9 A. And offered to call the ambulance.

10 Q. And then as that process went on as he refused to go
11 with the ambulance or be taken to the hospital that's when
12 you were aware this became more heightened as far as what
13 was going on; right?

14 A. Well yes I had seen he had cut that bracelet of his
15 leg and I questioned him about it because I wanted him out
16 of my house. If he wasn't going to get help he had to go.

17 Q. Right. And when you pressed him to find out what
18 happened eventually he tell you he had hit his grandmother?

19 A. Yes he told me he hit her in the head with a baseball
20 bat. That's what he told me.

21 Q. Now today you said that there was a baseball bat
22 involved.

23 A. That's what he said.

24 Q. In your statement if you look at it there is no
25 mention of a baseball bat is there anywhere? You look at

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1 it and see.

2 A. I didn't put baseball bat in the statement no, sir.

3 Q. Okay. And you don't know where supposedly this
4 happened?

5 A. No. I don't know where he lives. Near as I figured
6 out when we were working together it was somewhere in
7 McConnell's. I don't even know if that's correct.

8 Q. So you can't give us any information about exactly
9 what happened that day beyond what he told you?

10 A. Other than him coming to my house and telling me what
11 he told me no.

12 Q. Right. So you haven't brought us any information
13 about what would have happened back at his house or his
14 grandmother's house?

15 A. Other than him telling me what he told me no.

16 Q. I beg the Court's indulgence.

17 Thank you, Mr. Allen, no further questions.

18 SOLICITOR LIPINSKI: Very briefly.

19 REDIRECT EXAMINATION

20 JOHN CHRISTOPHER LANE BY SOLICITOR LIPINSKI:

21 Q. If you could in referring to your statement that Mr.
22 Lemel referred to as well; did you ever mention in there
23 that you sat him down on the porch swing on the front
24 porch?

25 A. I don't believe I put in here not without setting here

1 and reading the whole thing that I put that I sat him on
2 the front porch.

3 Q. Did you ever talk to -- did you ever put in your
4 statement that you had your gun on you on the night in
5 question?

6 A. The police officer knew I had it on me. I don't think
7 it's in the -- I don't think I put it in here either.

8 Q. So there are some other details that you filled in
9 here today that weren't in the statement?

10 A. Yes. I mean you know there's a lot of little details
11 that come up.

12 Q. Nothing further.

13 MR. LEMEL: Nothing further.

14 THE COURT: You can step down.

15 SOLICITOR LIPINSKI: Thank you, Mr. Lane.

16 THE COURT: All right, ladies and gentlemen, we are
17 going to go ahead and break for lunch now. I would like
18 for you all to be back in the jury room at two o'clock.
19 You all have a nice lunch break and we'll see you in a few
20 minutes.

21 (JURY LEAVING COURTROOM AT 12:30 P.M.)

22 SOLICITOR LIPINSKI: Your Honor, before we bring the
23 jury back in after lunch I do want to address Mr. Lemel's
24 motions in limine regarding the axe and the shirt so we can
25 ascertain whether or not we will be able to admit that

1 evidence and potential witnesses we will might call this
2 afternoon.

3 THE COURT: All right. Now the axe was found at his
4 home when they executed the search warrant or when they
5 went in?

6 SOLICITOR LIPINSKI: When the axe was found at the
7 residence where he is located that night at the Whitney
8 Woods address the friends house he ran to.

9 THE COURT: And other than the fact that it's at that
10 residence what connects it to the crime?

11 SOLICITOR LIPINSKI: Ms. Moss will testify that when
12 he came over there that night he showed her the axe and
13 that they had a discussion about it so it corroborates her
14 recollection of the events on the night in question. He's
15 further charged with burglary in the first degree and one
16 of the aggravated elements being that he was armed with a
17 deadly weapon. Once you see the axe it's quite evident - -

18 THE COURT: So he's going to testify that he said he
19 had the axe during the crime?

20 SOLICITOR LIPINSKI: That she saw the axe while they
21 are talking out on the porch. He was showing it to her and
22 that they have a discussion about that.

23 THE COURT: About the axe?

24 SOLICITOR LIPINSKI: Yes. He tells her that the boss
25 man gave it to him at work. She said you know you don't

1 need to be having that you need to give it back to work.

2 You don't need to be drinking.

3 THE COURT: Well so you think that's sufficient
4 evidence for the jury to draw the inference that he used
5 the axe to accomplish one or more of the crimes?

6 SOLICITOR LIPINSKI: I think that it is sufficient
7 evidence that he had it on him; that it was a potentially
8 weapon that it's consistent with the violent assault that
9 she received. Whether he - -

10 THE COURT: What's the evidence that he had it when he
11 was at the scene of the crime?

12 SOLICITOR LIPINSKI: Ms. Moss will say that while
13 they are on the porch talking and her testimony will be
14 that she told him to leave he was drinking; because he had
15 this axe she didn't want him around.

16 THE COURT: Oh Ms. Moss saw the axe?

17 SOLICITOR LIPINSKI: Yes and as she turns to go back
18 inside she's hit with something from behind. She doesn't
19 know what. Given that he had the axe right before and that
20 he still has it - -

21 THE COURT: I missed that. All right it's relevant.
22 The relevance objection is over ruled. If that testimony
23 is given the relevance objection is over ruled.

24 MR. LEMEL: Your Honor, the evidence has been and what
25 we've deduced is there is a stick that is involved in this

1 that's being claimed.

2 THE COURT: If she testifies that she looked at him
3 and he had an axe in his hand and she turned around and she
4 got hit in the head with something and she don't know what
5 it was it's relevant. Any other objection?

6 MR. LEMEL: Your Honor, I would argue that the
7 relevance of that is not outweighed by the clearly highly
8 prejudicial aspect - excuse me, is outweighed.

9 THE COURT: What's the unfair prejudice?

10 MR. LEMEL: Your Honor, once the jury sees this
11 particular axe the size of it I would also point out to the
12 court there is no evidence of anything showing that it was
13 used in the assault. There is no blood splatter. There is
14 no blood evidence or anything like that. The size of this
15 axe is of such a type that it is inherently highly
16 prejudicial to just think that somebody is just slinging
17 this axe around when there is no evidence to that.

18 THE COURT: Well I am sure it is highly prejudicial
19 but the question is whether it's unfairly prejudicial.
20 What's unfair about the prejudiced to this axe?

21 MR. LEMEL: It allows the jury to speculate that this
22 axe was used when everything that we have from a forensic
23 services shows that it wasn't in terms - -

24 THE COURT: Let me -- maybe you can -- I'll tell you
25 what I'll do. You can do it right now if you would like or

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IN-CAMERA

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1 you can do it right before two. You can put Ms. Moss on
2 the stand and let her testify about the axe outside the
3 presence of the jury and then I from that will be able to
4 evaluate whether or not the probative value outweighs the
5 potential for unfair prejudice.

6 SOLICITOR LIPINSKI: Your Honor, can I speak with her
7 about which she would prefer?

8 THE COURT: Okay.

9 (SOLICITOR IN CONFERENCE WITH VICTIM.)

10 SOLICITOR LIPINSKI: She says she's okay to do it now,
11 Your Honor.

12 THE COURT: Okay.

13 SOLICITOR LIPINSKI: If you could go to this lady in
14 the green shirt and be sworn to take the stand.

15 MADAME CLERK: Please raise your right hand and place
16 your left hand on the bible.

17 (WHEREUPON: LORETTA MOSS,
18 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 MADAME CLERK: Thank you. You may have a seat.

20 DIRECT EXAMINATION IN CAMERA

21 LORETTA MOSS BY SOLICITOR LIPINSKI:

22 Q. You are Ms. Loretta Moss?

23 A. Yes, ma'am.

24 Q. And drawing your attention to the night of June 7th,
25 2008 in the early morning hours of June 8TH do you remember

LORETTA MOSS: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
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1 Adam coming over to your house?

2 A. It was in the early evening. He came and we were
3 sitting on the porch we did not go in the house.

4 Q. And when he came over on the porch were you inside
5 when he came or were you sitting on the porch?

6 A. No I was outside. I usually stay outside about all
7 the time in summertime.

8 Q. And sitting out there on the porch Adam came up?

9 A. Yes.

10 Q. And did he have anything in his hand with him at the
11 time?

12 A. No he didn't. But we were talking and I think the
13 only thing he had in his hand was a beer but we were
14 talking and he said I want to show you what I got and he
15 had on those pants with the big ole pockets on the legs and
16 he pulled out a hatchet. It was about that long from tip
17 to top.

18 (WITNESS INDICATED ABOUT A FOOT.)

19 A. And it was about brand new. And I said where did you
20 get that?

21 And he said his boss man gave it to him from work.

22 And I said, Adam, why did he give you a hatchet? I
23 said, it's brand new.

24 He said, Auh, he just thinks a lot of me. Something
25 to that effect just kind of shrugged it off.

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1 I said, You don't have any business with that. I said
2 if you get in trouble and they find that on you then you
3 are going to be in serious trouble. And that was about the
4 extent - that was about all of it.

5 Q. And going to at some point do you ask Adam to leave or
6 how did you end your visit with him?

7 A. I told him that he was going to have to leave that he
8 was getting on my nerves. He had drank an awful lot of
9 beer. He was getting real -- I was getting upset with him
10 because he was getting on my nerves really bad. And I
11 said, there is nobody is at your house if you want to go
12 down there and get drunk go on. So at that point I left.
13 I went in the house and locked the doors.

14 Q. And do you know -- do you ever recall being hit with
15 anything?

16 A. Yes I do but it was some time later after that because
17 I went in and I was sitting at my vanity at my bedroom
18 trimming my hair. I was cutting the ends off of my hair.
19 I heard knocking on the door; pounding on the door and I
20 got up and went back to the -- I call it my kitchen/dinning
21 room to the doors. And I said, Adam.

22 He said, Nanny I just want to talk to you. I just
23 want somebody to talk to. He kept repeating himself I just
24 want somebody to talk to. I'm not going to do anything. I
25 just want somebody to talk to. And honestly I had no fear

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1 of him. I never thought I had any reason to fear him. I
2 stepped out on the back porch and he was so drunk that he
3 was swaying. And I told him that he needed to go home.
4 And I turned to go back in my house and that's when
5 something or something hit me in the back of the head. I
6 don't remember a lot after that.

7 Q. That's all the State elicits in terms of evidence and
8 the relevance of the hatchet, Your Honor.

9 THE COURT: Ma'am, you never saw the hatchet the
10 second time when he was over there?

11 A. I don't think so. I can't remember. I remember
12 seeing him at one time and I couldn't understand why his
13 boss would give him a brand new hatchet.

14 THE COURT: You are going to have to get into it
15 better than that or I am going to keep it out. Let's go to
16 lunch.

17 You can step down now and she is going to put you on
18 the stand I think later today. You will come back up and
19 we will swear you again in front of the jury.

20 A. Okay.

21 THE COURT: All right.

22 (COURT RECESSED FOR LUNCH AT 12:40 P.M..)

23 (BACK ON THE RECORD AT 2:10 P.M..)

24 THE COURT: Be seated. All right we are going to put
25 something on the record and then Ms. Hervey wanted to bring

1 something to my attention. You can do it from there or you
2 can come to the bench if you like.

3 So I was informed as we took the lunch break - -

4 Let's get the defendant out here.

5 (DEFENDANT ENTERING COURTROOM AT 2:11 P. M..)

6 THE COURT: All right I was told as we took the lunch
7 break that one of the security personnel in the courtroom
8 had heard a sound coming from the jury box that they feared
9 might be a snore. And so I brought it up with the
10 attorneys in chambers just now.

11 Mr. Lemel also heard a sound and it was during your
12 cross examination of some witness; correct?

13 MR. LEMEL: Yes, sir, during the last witness I
14 believe, Your Honor.

15 THE COURT: I don't want to put words in your mouth
16 but I believe that he also was concerned that it might be a
17 snore and I think you said you looked over there and you
18 couldn't tell who it was.

19 MR. LEMEL: Yes, sir, I did look at the jury and I
20 could not identify the source of the sound.

21 THE COURT: Okay. So what we agreed was the
22 appropriate thing to do and I haven't seen the jury -- I
23 haven't seen anybody on the jury that looked like they were
24 asleep. And my law clerk and I since we had the little
25 incident where we had to replace the juror who didn't get

1 to the jury room on time we've been watching them just
2 closer than normal. She said she had been watching them
3 the whole time and we didn't see anything like that. So
4 what we agreed to do -- make sure I've got this right -- is
5 that I will admonish the jury of the necessity of paying
6 close attention. And that I will even mention that we
7 heard a sound that we feared might be a snore and if any of
8 them need a break for whatever reason to let me know and we
9 will take a break and then let it go at that.

10 Is that true, Mr. Lemel?

11 MR. LEMEL: Yes, sir, that is a correct statement.

12 THE COURT: Okay. Solicitor?

13 SOLICITOR LIPINSKI: That's correct.

14 THE COURT: And I guess that I should say and you tell
15 me if you agree with this or not but at this point there
16 appears to be no basis for any further inquiry then that.
17 Maybe specifically that while we heard something we think
18 might be a snore we really don't have any evidence that
19 anybody on the jury was asleep. And everybody agrees that
20 the best course of action the proper course of action is to
21 do what I have just outlined and not make any further
22 inquiry.

23 Is that true, Ms. Lipinski?

24 SOLICITOR LIPINSKI: Yes.

25 THE COURT: Mr. Lemel?

1 MR. LEMEL: Yes, sir.

2 THE COURT: Okay. All right now was there something
3 else you wanted to bring to my attention before the jury
4 comes in?

5 SOLICITOR LIPINSKI: There are two things real quick,
6 Your Honor. The first is the next witness is likely to be
7 Special Agent B.J. Patton who was the probation agent
8 assigned to monitor Mr. Berard. Just to make sure we are
9 all on the same page because I don't want you to think that
10 Mr. Lane I did try to reign him in as much as possible that
11 Mr. Patton will testify that he works for the Department of
12 Probation and Parole that Mr. Berard was on probation for a
13 misdemeanor offense that the first six months of his
14 supervision was to be intensive and that he was placed on
15 electronic monitoring bracelet that he was wearing it at
16 the time. We will go into a little bit of the detail
17 obviously about how that device worked in terms of charging
18 it and their ability to track him those kinds of things
19 just so the jury understands. He is also able to tell via
20 the GPS records that earlier in the day Mr. Berard had gone
21 to [REDACTED] which is where he was found
22 ultimately by law enforcement and why they went there to
23 locate him. He will testify that he also wanted to reside
24 there at one time and that just to explain why they took
25 that address out of many to go locate him. So I just

1 wanted to make sure that was the extent of the testimony
2 other than the mechanics of it their ability to track him
3 why they weren't able to track him that night that the
4 State will illicit from Agent Patton.

5 MR. LEMEL: That is my understanding, Your Honor. And
6 I have also agreed that during the direct examination to
7 allow them a little bit more leeway in terms of some
8 leading areas to avoid any possibility that an inadvertent
9 improper statement may come out about the prior offense or
10 anything of that nature and placed on the record basically
11 for PCR purposes strategically to allow us for that.

12 SOLICITOR LIPINSKI: Your Honor, further Mr. Lemel had
13 a motion in limine in regard to the defendant's clothes.
14 The next officer is likely the officer this afternoon the
15 one who took Mr. Berard to the hospital and collected his
16 clothes and turned them over to Investigator Tolson. Mr.
17 Lemel made an objection to the clothes but not only to the
18 but the front of the front of the T shirt says go directly
19 to jail do not pass go do not collect two hundred dollars.
20 The State has no intent of taking the T Shirt and
21 manipulating it in closing argument and say that his own T
22 shirt says he should go to jail and you send him there too.
23 However Mr. Lemel did go into quite in-depth testimony or
24 questioning of Meghan Hall and her recollection of what the
25 defendant was wearing when he left of whether those were

1 the blue underwear or whether they could some other ones.
2 And she said very specifically that when he left on the
3 scooter he was wearing an orange T shirt. So the State
4 does feel that the evidence is relevant to her credibility
5 and to the investigation of the case.

6 MR. LEMEL: Your Honor, if I can be heard on that last
7 just briefly. I never made any inquiry as to her
8 description of the clothing. Let the entirety of the
9 inquiry was as to the clothing that was allegedly taken off
10 and found in Mr. Berard's home. We are talking about two
11 totally different things. There is no inquiry with regard
12 to her saying what he drove away in. And additionally,
13 Your Honor, the prejudice of having a shirt like that is
14 clear on its face. The reaction of any person seeing it is
15 exactly the same as everybody. Even the court when you
16 heard about it everybody grins and laughs about it.

17 THE COURT: I might have grinned and laughed but you
18 know you don't know why that was.

19 MR. LEMEL: This is true, Your Honor.

20 THE COURT: That may have been a very pleasant
21 recollection of sitting around playing monopoly when I was
22 a child.

23 MR. LEMEL: Yes, sir, that is true. But I think the
24 ease of which a negative reaction becomes from wearing a
25 shirt like that is evident on its face. There is no

1 probative value in the shirt in and of itself. There is
2 other clothing that he had taken. We didn't' impeach her
3 at all with regard to wearing that. It's a very minor
4 mention that he was wearing that shirt. It's certainly
5 something that we agree as a defense is not to highlight.
6 We are not going to get up and argue that they can't show
7 you the shirt. There is no testing done of the shirt it
8 doesn't provide anything other than that happened to be the
9 piece of clothing that he just happen to be wearing at the
10 time that he was arrested, Your Honor. So there is no
11 probative value to it I submit that it doesn't have
12 anything to do with the impeachment of Ms. Hall regarding a
13 totally different set of clothing that was never alleged to
14 be on him at the time when he left. And in fact her
15 reference on a piece of underwear which she did not testify
16 anything about underwear for obviously reasons as he drove
17 away. So there is no link there at all, Your Honor.
18 Simply allowing that into evidence allowing that to be a
19 piece the jury then can take back into the jury room as
20 part of their deliberations even if it's not highlighted by
21 the state if it's taken out and viewed by the jurors it's
22 clearly going to be passed around and the possibility for
23 unfair prejudice from that is just going to be over
24 whelming.

25 SOLICITOR LIPINSKI: Your Honor, just briefly in

1 response. It's interesting that Mr. Lemel wan't to
2 question the credibility as to whether or not she remembers
3 the underwear but is fine with her recollection of the T
4 shirt that she was wearing. Either she has an impaired
5 memory that night and can't state with specificity what
6 clothes he was wearing or she has very vivid recollection
7 and her identification was probative. More over while Mr.
8 Lemel likes to talk about prejudice in reality there is a
9 prejudice. Everybody has the same reaction they chuckle
10 but none of us go oh because he wore that shirt he must be
11 guilty let me convict him of something I wouldn't otherwise
12 contemplate. Prejudice is that the evidence is so
13 overwhelming that it over comes their ability to evaluate
14 the evidence in a fair and impartial manner and there is no
15 indication of that whatsoever. At most of what remains as
16 humorous and is to go back in the jury room and I don't the
17 prejudice is going to overbore their reason so they would
18 reach a different conclusion had the evidence not being
19 admitted. Further in that he is calling the question - -

20 THE COURT: I got your argument but you are arguing
21 the wrong definition of unfair prejudice. Is there
22 anything further?

23 MR. LEMEL: Your Honor, I just say in reply I didn't
24 attach her memory of what was there. What I attached was
25 her ability to differentiate between one pair of underwear

1 and another pair of underwear. That is very different than
2 saying her memory was bad. No body challenged that she saw
3 a pair of blue underwear.

4 THE COURT: Can I see the shirt please?

5 (BROWN PAPER EVIDENCE BAG HANDED UP TO THE COURT.)

6 (COURT VIEWING EVIDENCE.)

7 THE COURT: Is that the front or the back?

8 SOLICITOR LIPINSKI: That's the front.

9 THE COURT: What -- here's what I'm going to do. I
10 tell you what I'm thinking and then I'm going to listen to
11 the testimony concerning the shirt. You can show it to the
12 witness.

13 Do you mind the jury seeing the shirt during the
14 foundation as long as they can't read the language on the
15 back -- I mean on the front.

16 MR. LEMEL: Yes, sir, I mean if it was turned inside
17 out on the back I wouldn't have any objection to that.
18 It's obviously just the language. There's nothing in here
19 that - -

20 THE COURT: Here's what I am going to do. I don't
21 think that there is a tremendous amount of probative value
22 in the shirt but there's some. I am going to listen to the
23 testimony of this or perhaps these witnesses and from that
24 I will determine what I really think the probative value
25 is. But on the other side I think that there is almost no

1 unfair prejudice from that shirt. It is a -- the
2 definition of unfair prejudice is not what Ms. Lipinski
3 said but it is something that suggest a decision on an
4 improper basis. So your suggestion is that the shirt
5 suggests that they should find him guilty because he
6 apparently had some premeditation to commit this crime.
7 That he decided to advertize by wearing this shirt that
8 said go directly to jail; correct? I mean I'm summarizing
9 of course.

10 MR. LEMEL: I don't think that's exact. I don't think
11 anybody would argue that it's some sort of inner focus into
12 his brain, Your Honor. It's just the inherent prejudice of
13 wearing something when you are on a criminal trial saying
14 go directly to jail. In terms especially directly to jail
15 element of it.

16 THE COURT: In what way then does that shirt suggest
17 to the jury that there is a decision -- that their decision
18 should be made on an improper basis? What's the improper
19 basis on which the jury can make their decision about guilt
20 or innocence if that shirt is admitted into evidence?

21 MR. LEMEL: That the wording of it is so explicit that
22 it would suggest to them that there was either a casual or
23 lacks of attitude on the part of the defendant regarding
24 these allegations perhaps that you just don't wear a shirt
25 like that and show his disdain for the system; show his

1 disdain for the incident that happened and want to go
2 directly to jail. It could either be taken as this is part
3 of some sort of criminal -- intentional criminal mind set
4 or simply a mocking attitude towards the entire system
5 which would suggest to the jurors that he had a disrespect
6 for this entire process and prejudice him in their eyes on
7 that.

8 THE COURT: The standard of -- the definition of
9 unfair prejudice is something which has an undue tendency
10 to suggest a decision on an improper basis. Now you can
11 state it different ways. That's a quote that's right out
12 of the advisory committee rules or the federal rules. But
13 there is nothing in that shirt in my opinion that has an
14 undue tendency to suggest a decision on an improper basis.
15 You are saying that it suggest a disrespect for the court
16 system. It suggests what everything you just said. I
17 respectfully disagree. I believe that it's more likely to
18 suggest a playful attitude about the monopoly game. I mean
19 if it were a statement that was not so clearly identified
20 with a board game that we all have grown up with then I
21 might agree with you. But the words so carefully tracking
22 what it says on the card that you draw and plus the
23 character on the shirt itself is a monopoly character it's
24 clearly a reference to the game and I don't see that
25 there's very much unfair prejudice so I'm inclined to let

1 it in. If I don't let it in then I'm going to and I'll
2 make the decision right then. All you have to do is say I
3 object Rule 403. If you feel like something else has
4 happened that you need to argue, something new has come up
5 that you want to argue you let me know and I will give you
6 a chance to do that outside the presence of the jury. But
7 if you think we've kind of covered everything so far then
8 you say Rule 403 I object and I will rule based on what
9 I've heard. You want additional time to argue though you
10 just let me know and I will give it to you. But if I don't
11 let it in then I am going to allow you to show it to the
12 jury. You can talk about it in your closing argument as
13 long as you don't show them what the word says. If I do
14 let it in then I am going to offer you the option of taking
15 a curative instruction or an instruction that admonishes
16 the jury not to draw inferences from what's in the shirt
17 and we can structure the exact language of it later.

18 Yes, ma'am.

19 SOLICITOR LIPINSKI: The Court's indulgence just one
20 moment. The State is willing to stipulate if the Defense
21 is as well obviously that the Defendant was wearing an
22 orange T Shirt at the time of his arrest and that that item
23 was properly collected. I'll take it out of the bag and I
24 move into evidence all the other items in the bag that were
25 taken from him so Mr. Lemel would not suggest any

1 impropriety by collecting whatever we did with it.

2 MR. LEMEL: That's perfectly acceptable. That solves
3 the entire problem and we are perfectly willing to enter
4 into that stipulation. Again I would be willing up to
5 point where if they want to pull it out of the bag and now
6 with that language show this is the shirt that was
7 collected and just not introduce that shirt as part of the
8 introduction I am willing to stipulate to that.

9 THE COURT: You all can stipulate to anything you want
10 to but when you stand up and tell me that you are going to
11 offer it into evidence I am going to listen to the
12 arguments and rule and then after I've spent ten minutes
13 discussing your offer of proof and then rule you turn
14 around and do something different that's mildly annoying.
15 So if you've got it worked out let's go ahead and bring the
16 jury in. You got it worked out?

17 MR. LEMEL: Yes, sir, I believe we do.

18 THE COURT: All right bring them in.

19 (JURY ENTERING COURTROOM AT 2:30 P.M..)

20 THE COURT: All right, ladies and gentlemen, I am
21 sorry that you all had to sit back there for a few minutes
22 while you were waiting on us. We had a couple of things
23 come up during the lunch hour that we needed to discuss so
24 that's what the delay was. Now we had a short discussion
25 about the fact that some folks heard a sound during the

1 cross examination of one of the witnesses that come from
2 the jury box that we feared might have been a snore. So I
3 just want to make sure and I realize I kept you in here for
4 a long time during that morning session. If anybody on the
5 jury at any point feels like there is any reason why your
6 attention to the witness or to what's going on in the
7 courtroom is interfered with by anything just let us know
8 that and we will take a break. But please be very careful
9 to make sure that your attention is constantly on what the
10 witness's testimony is. And if you have any problems that
11 you need to attend to; you need a break just let us know
12 that. And obviously we can't have any jurors sleeping. So
13 with that I am ready for you to proceed.

14 SOLICITOR SIKORA: May it please the Court the State
15 calls Larry Patton to the stand.

16 (WHEREUPON: LARRY PATTON,
17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 DIRECT EXAMINATION

19 LARRY PATTON BY SOLICITOR SIKORA:

20 Q. Sir, would you please state your full name and go
21 ahead and spell your last name for the court reporter?

22 A. Larry Ray Patton, Junior. P-a-t-t-o-n.

23 Q. Okay. And where do you work?

24 A. Department of Probation and Parole.

25 Q. How long have you worked there?

1 A. Two years eleven months.

2 Q. Are you a probation agent?

3 A. I am.

4 Q. Do you have any prior law enforcement experience?

5 A. No, ma'am.

6 Q. Okay. Is one of your duties as a probation agent to
7 supervise individuals place on probation?

8 A. Yes, ma'am.

9 Q. Okay. Was Adam Berard one of those people?

10 A. Yes, ma'am.

11 Q. And was Adam Berard on probation for a misdemeanor
12 offense?

13 A. He was.

14 Q. And as part of his probation for the first six months
15 of that probationary period did he have to wear a GPS ankle
16 bracelet?

17 A. Yes, ma'am.

18 Q. Do you recall when you started supervising Adam
19 Berard?

20 A. January 2008. I believe the 16th.

21 Q. Okay. So he would have had to begin wearing the ankle
22 bracelet in January of 2008?

23 A. Yes, ma'am.

24 Q. Can you explain a little bit about the ankle bracelet?

25 And what I am asking for is the technology the same for the

1 ankle bracelets we use today as it was back in 2008 when
2 Mr. Berard was fitted for a bracelet?

3 A. No, ma'am.

4 Q. Okay. Could you please explain how the type of
5 bracelet Mr. Berard would have been wearing worked to the
6 jury?

7 A. Yes, ma'am. He was placed with a two piece unit is
8 what we called it meaning he had a PTU Personal
9 Transmitting Unit about the shape of a cell phone which he
10 would have to keep charged and carry on his person any time
11 he left his residence. He also had a monitor strapped on
12 his ankle which kept the contact with his person and the
13 PTU. He also had the charging base for the PTU which you
14 place in your house and every time you go there you have to
15 keep it charged up. If one piece -- if the PTU gets too
16 far from the transmitter you are no longer able to be
17 tracked due to the break of signal.

18 Q. Can a PTU also be placed within the ankle bracelet
19 itself?

20 A. No, ma'am.

21 Q. And do you recall back when Mr. Berard was placed on
22 the ankle bracelet how far of a radius could he travel from
23 the base that you spoke of?

24 A. From the PTU?

25 Q. Yes.

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 A. I believe it was about a hundred feet is what it's
2 defaulted at.

3 Q. And what would that hundred feet area encompass?

4 A. Typical offenders just the inside of their house;
5 maybe the porch, something of that nature. But it also
6 determined by what other establishment they were in.
7 Houses has thicker walls; trailers you know less thick
8 things of that nature.

9 Q. Do you know where Mr. Berard lives?

10 A. Yes, ma'am.

11 Q. And where does he live?

12 A. He lived on Zinker Road in Rock Hill. I'm not sure of
13 the exact address.

14 Q. Have you been out to his house before?

15 A. I have.

16 Q. And how would you describe that house?

17 A. Double wide trailer. Fairly clean, neat, light
18 colored, large yard.

19 Q. The entire time that Mr. Berard was to wear the ankle
20 bracelet the first six months that we discussed you
21 mentioned that there was about a hundred foot radius that
22 he could go from the base; correct?

23 A. Yes, ma'am, while the PTU is in the charging unit.

24 Q. Okay. Was there ever a point in time when that radius
25 was expanded?

1 A. Yes, ma'am.

2 Q. And when would that have taken place? Do you recall?

3 A. I do not. The best of my recollection I would say
4 maybe two; two and a half months into his probation period.

5 Q. Okay. And after that radius was expanded how far
6 could he travel?

7 A. I do not know. I do not recall the exact footage but
8 it was the entire property; his whole fenced in property.

9 Q. Okay. And when you say the entire fenced in property
10 you stated before you had been out to his house?

11 A. Yes, ma'am.

12 Q. Were you familiar with any other structures within
13 that fenced in area?

14 A. Yes, ma'am.

15 Q. Okay. And what would those be if you can just
16 describe the area for the jury?

17 A. Coming into the driveway it forks off. To the right
18 is where his residence is to the left leads you to the
19 carport of his grandmother's house and his grandmother's
20 house.

21 Q. So once the radius was expanded he would be able to
22 travel anywhere within that fenced in area?

23 A. Yes, ma'am.

24 Q. Including Ms. Moss's residence?

25 A. Yes, ma'am.

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 Q. What happens if somebody who is wearing an ankle
2 bracelet goes beyond that radius?

3 A. They go into what we call a cuff leave violation as
4 far -- excuse me. The cuff leave is if the cell phone
5 device and the leg monitor gets too far away. If they go
6 outside the radius it's called an inclusion zone violation.

7 Q. And are you notified if that happens?

8 A. Yes, ma'am.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-FOUR
10 PREMARKED FOR IDENTIFICATION.)

11 Q. I am handing you what's been marked for identification
12 purposes as State's Exhibit Number Twenty-Four. Do you
13 recognize what's in that photo?

14 A. Yes, ma'am.

15 Q. And what is it?

16 A. That's his PTU and charging base.

17 Q. And when you say his who are you referring to?

18 A. Mr. Berard.

19 Q. Thank you. And on the night of June 7th, 2008 did you
20 receive notice that there was a cuff leave violation for
21 Mr. Berard?

22 A. Yes, ma'am.

23 Q. And what is the standard protocol whenever you are
24 notified of the cuff leave violation? What do you do?

25 A. You attempt to contact the particular offender by the

1 phone..

2 Q. And did you attempt to reach Mr. Berard by phone?

3 A. Yes, ma'am.

4 Q. Do you remember what time you received notice of the
5 violation on June 7th?

6 A. Somewhere around probably 11:30 maybe.

7 Q. In the evening?

8 A. Yes, ma'am, that evening - night.

9 Q. And what numbers did you try to contact Mr. Berard?

10 A. His lan line; his home lan line and I may have
11 attempted his cell phone.

12 Q. Were you able to reach Mr. Berard on his home phone
13 number?

14 A. No, ma'am.

15 Q. Were you able to reach any person at that home phone
16 number?

17 A. No, ma'am, only on the answering machine.

18 Q. So the answering machine picked up?

19 A. Yes, ma'am.

20 Q. Did you leave a message on that machine?

21 A. I did.

22 Q. Did Mr. Berard ever call you back in regard to that
23 message?

24 A. No, ma'am.

25 Q. When you weren't able to get a hold of him that night

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1 where is the next place you went?

2 A. I called my supervisor Tracy Swanson informed her of
3 what was going on. My self and her we met at the DMV in
4 Newport to go by policy have to respond and obtain and we
5 responded to his residence on Zinker Road.

6 Q. Okay. Do you recall about what time you would have
7 arrived at Zinker Road that night?

8 A. Sometime after twelve. Maybe around a quarter after.
9 I'm not sure. I have it in my notes but I'm not sure if
10 you need me to look in my notes.

11 Q. But it would have been in the early part of June 8TH?

12 A. Yes, ma'am, it was early morning.

13 Q. And when you arrived at Zinker Road was there anyone
14 there?

15 A. Yes, ma'am.

16 Q. Who do you recall being there?

17 A. A sheriff's deputy; a couple of sheriff's officers.

18 Q. Did you see Adam Berard there?

19 A. No, ma'am.

20 Q. Were you ever able to locate him at the Zinker Road
21 address on June 8TH?

22 A. No, ma'am.

23 Q. And Ms. Swanson was the only person that went out
24 there with you?

25 A. From our department yes, ma'am.

1 Q. Okay. Where did you go next?

2 A. After that we went to the Rock Hill Probation Office
3 on Heckle Boulevard.

4 Q. Do you keep a file on anyone that you are supervising
5 on probation?

6 A. Yes, ma'am.

7 Q. Did you keep a file on Adam Berard?

8 A. Yes, ma'am.

9 Q. And where would that file have been located that
10 night?

11 A. The Rock Hill Probation Office.

12 Q. Okay. In connection with the ankle bracelet you
13 mentioned earlier that there is GPS tracking technology
14 built into that?

15 A. Yes, ma'am.

16 Q. Okay. Where would you have the ability to access that
17 GPS tracking technology? At your Rock Hill probation
18 office?

19 A. Yes, ma'am.

20 Q. Did anyone else meet you and Ms. Swanson at the Rock
21 Hill Probation Office?

22 A. Yes, ma'am.

23 Q. And who was that?

24 A. Supervisor Dwight Burns and Agent Alisha Richardson.

25 Q. Do you recall about what time you would have arrived

1 at the Rock Hill Probation Office?

2 A. Probably somewhere around 1:30 quarter till 2:00.

3 Q. Okay. And when you got back to the Rock Hill office
4 what did you do?

5 A. We -- myself I got on the computer to start tracking
6 Mr. Berard's points hoping it was then and his power
7 points. And the other agents they were as well trying to
8 gather information to what would give us a logical place to
9 go.

10 Q. Okay. When you say you got on the computer and went
11 into the tracking system are you referring to the GPS
12 system?

13 A. Yes, ma'am, I am.

14 Q. And when you when you were back at that moment in time
15 when you are back at the Rock Hill Probation Office after
16 you logged into the GPS system were you able to determine
17 from reviewing that system where Adam Berard was at that
18 point in time?

19 A. No, ma'am.

20 Q. Were you able to tell from reviewing the system where
21 he was earlier that day?

22 A. Yes, ma'am.

23 Q. And do you recall where he was earlier that day
24 according to the GPS system?

25 A. Yes, ma'am.

- 1 Q. Could you tell us please?
- 2 A. He started at his residence left that morning to go to
3 work on Celanese. After that he left work around ten till
4 two I believe. He traveled to Whitney Wood Lane.
- 5 Q. Okay. I am going to stop you right there.
- 6 A. Okay.
- 7 Q. Where is Whitney Woods Lane?
- 8 A. It's off Highway 5.
- 9 Q. Is it in York or Rock Hill?
- 10 A. It's right close to the line. I'm not sure exactly.
11 I believe its Rock Hill.
- 12 Q. But somewhere between York and Rock Hill on Highway 5?
- 13 A. Yes, ma'am.
- 14 Q. Okay. I'm sorry, what time did you say he arrived at
15 Whitney Woods Lane?
- 16 A. I believe it was about ten after 2:00.
- 17 Q. Okay. And could you tell how long he stayed at that
18 place?
- 19 A. Yes, ma'am.
- 20 Q. And how long would that have been?
- 21 A. Twenty minutes.
- 22 Q. Okay. And where did he go after Whitney Woods Lane?
- 23 A. He went back to his house on Zinker.
- 24 Q. Do you remember about what time he would have arrived
25 home that day?

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- 1 A. About ten after 2:00. I mean twenty till 3:00 maybe.
- 2 Q. Just to clarify. Ten after 2:00 or twenty till 3:00?
- 3 A. Sorry. 2:40.
- 4 Q. Okay. 2:40?
- 5 A. Yes, ma'am, it took him about ten minutes to get home.
- 6 Q. Okay. Were you able to track him via the GPS system
- 7 beyond 2:40 that afternoon?
- 8 A. Yes, ma'am.
- 9 Q. Okay. Where else did it show he had been?
- 10 A. He had been at his residence; his grandmother's
- 11 residence and later to a nearby gas station and back home.
- 12 Q. Okay. I am going to back you up.
- 13 A. Okay.
- 14 Q. According to your testimony Mr. Berard gets home
- 15 around 2:40 p.m.?
- 16 A. Yes, ma'am.
- 17 Q. What time does it show it going from his residence to
- 18 Ms. Moss's residence?
- 19 A. I would need my notes for most times after this.
- 20 Q. So you don't remember?
- 21 A. No, ma'am.
- 22 Q. Would the ability to review your notes help you
- 23 refresh your recollection?
- 24 A. Yes, ma'am, it would.
- 25 Q. Do you recognize what I just handed you?

1 A. Yes, ma'am, I do.

2 Q. And what is it?

3 A. It's notes I wrote down earlier this morning from our
4 GPS tracking system.

5 Q. Okay. If you would just take a moment to look over
6 those, I don't want you to read from it, and if you could
7 after you've had a chance to review those if you could tell
8 me what time Mr. Adam Berard went from his home to Ms.
9 Moss's home.

10 A. Okay. I'm sorry he went to his grandmother's house at
11 approximately 6:53.

12 Q. Is that in the evening?

13 A. Yes, ma'am.

14 Q. And how long did he stay there according to your
15 records?

16 A. About three minutes.

17 Q. And where did he go next?

18 A. Back to his house.

19 Q. Okay. And how long did he stay at his house?

20 A. About another five minutes maybe.

21 Q. And where did he go next?

22 A. Back to his grandmothers.

23 Q. And how long did he stay at Ms. Moss's house the
24 second time?

25 A. About fifteen minutes.

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1 Q. Okay. And does it show where he goes next?

2 A. Yes, ma'am.

3 Q. And where would that be?

4 A. He went back to his house.

5 Q. And what time are we talking now?

6 A. We're talking at approximately 7:18 that night.

7 Q. He gets back to his house at 7:18 and where is the
8 next place he goes?

9 A. He leaves there to go to the gas station on the corner
10 of McConnell's highway and Falls Road.

11 Q. Okay. Does he go anywhere else?

12 A. No, ma'am.

13 Q. And does he return home at some point?

14 A. Yes, ma'am.

15 Q. And what time would that be?

16 A. He returned home at 7:27 p.m..

17 Q. Are you able to track Adam Berard's movements between
18 7:27 p.m. and sometime after eleven o'clock when you
19 reported that you got notification he was outside of the
20 radius?

21 A. No, ma'am, I was not.

22 Q. Why not?

23 A. Due to the similarities -- the tracking GPS system and
24 a GPS system you have in your car if you are in one place
25 for two long the signal goes away. The satellites are not

1 able to pick up the signal where you are therefore it quits
2 tracking you until movement is made again. There was never
3 any movement made after 7:27 that day therefore he had
4 never required another signal for us to track.

5 Q. Okay. So according to the information you have just
6 to make sure I am understanding you correctly from about
7 7:27 p.m. on the night of June 7th, 2008 until you received
8 the warning that he had gone outside of radius sometime
9 after 11:00 p.m. as far as you know he was within that
10 allowed radius?

11 A. Yes, ma'am.

12 Q. The allowed radius included Ms. Moss's home?

13 A. Yes, ma'am.

14 Q. After you went to the Rock Hill Probation and Parole
15 Office where did you go next?

16 A. Myself and three other agents we went to [REDACTED]

17 [REDACTED]; [REDACTED] I believe was the exact address.

18 Q. Okay. Who were the other agents you just mentioned?

19 A. Supervisor Tracy Swanson; Supervisor Dwight Burns and
20 Agent Alisha Richardson.

21 Q. Did you all go in the same car?

22 A. No, ma'am.

23 Q. Who did you ride with?

24 A. It was myself and Ms. Swanson.

25 Q. Were you familiar with the Whitney Woods Lane area?

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1 A. Yes, ma'am, I was.

2 Q. Had you been out there before that night?

3 A. Yes, ma'am, I had.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY PREMARKED
5 FOR IDENTIFICATION.)

6 Q. I am handing you what's been marked for identification
7 as State's Exhibit Number Thirty. Do you recognize what's
8 in that photograph?

9 A. Yes, ma'am, I do.

10 Q. And what does that photograph depict?

11 A. It depicts the area of Whitney Wood Lane.

12 Q. Okay. And does that photograph show the area of
13 Whitney Wood Lane as you remember it on the night of June
14 7th, 2008 going into the early hours of June 8th, 2008?

15 A. Yes, ma'am.

16 Q. Your Honor, State moves to have Exhibit Number Thirty
17 moved into evidence.

18 MR. LEMEL: Without objection, Your Honor.

19 THE COURT: Admitted.

20 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY PREMARKED
21 AND IDENTIFIED ENTERED INTO EVIDENCE.)

22 BY SOLICITOR SIKORA:

23 Q. Can we dim the lights for a moment please?

24 (CLERK OF COURT DIMMED COURTROOM LIGHTS.)

25 Q. Can I ask you to step down?

1 (WITNESS LEAVING WITNESS STAND.)

2 Q. Can you point out on that map where you would have
3 parked your car when you arrived at Whitney Woods Lane that
4 night?

5 A. Yes, ma'am. Approximately right there.

6 Q. And when you arrived at Whitney Woods Lane do you
7 remember about what time of night it would have been?

8 A. Probably around 2:00; 2:30 maybe.

9 Q. And could you point out specifically [REDACTED]
10 [REDACTED] the address you were headed to?

11 A. That trailer right there.

12 Q. And when you arrived at Whitney Woods Lane were there
13 any lights on in that trailer?

14 A. No, ma'am.

15 Q. Did it appear that there was anyone home at that
16 trailer?

17 A. No, ma'am.

18 Q. Did you have a chance to look outside around the
19 outside area of the trailer?

20 A. Yes, ma'am, we did.

21 Q. And when you were outside of [REDACTED]
22 did you see anything that would suggest to you that Adam
23 Berard may be in the area?

24 A. Yes, ma'am, I did.

25 Q. And what did you see?

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1 A. I found his moped.

2 Q. You can go ahead and have a seat.

3 (WITNESS RETURNED TO WITNESS STAND.)

4 A. Do I keep this?

5 (WITNESS HANDED EXHIBIT BACK TO SOLICITOR.)

6 Q. Thank you. Can you describe what this moped looked
7 like?

8 A. Yes, ma'am, it was a canary yellow. Not real sure how
9 to pronounce the make of it but it was SUNL something to
10 that effect.

11 Q. Sinul?

12 A. I believe its S-u-n-l was the correct spelling.

13 Q. And how did you know that was Mr. Berard's moped?

14 A. Earlier during his supervision period he purchased the
15 moped and when he came to report to me at my office I
16 wanted to go outside and take a look at it so he took me
17 outside and showed me his moped and I took notes on our
18 system of what it was.

19 Q. Okay. Do you recall when that would have been?

20 A. That's in my notes.

21 Q. Would it have been before June 7th of 2008?

22 A. Yes, ma'am.

23 Q. And could you tell us where exactly you found the
24 moped? You said it was outside. Can you point out on the
25 map where exactly that would have been?

1 A. Yes, ma'am, I can.

2 Q. If I can just get you to have you come down and do
3 that. You are getting your exercise today.

4 (WITNESS LEFT WITNESS STAND.)

5 A. It was located right there by the car port.

6 Q. Okay. Thank you, you may return to your seat.

7 A. Thank you.

8 (WITNESS RETURNED TO WITNESS STAND.)

9 Q. Did you notice anything unusual about the moped?

10 A. Yes, ma'am.

11 Q. And what was that?

12 A. There was a great deal of blood in the bottom of the
13 moped.

14 Q. Did you notice anything else unusual about the moped?

15 A. No, ma'am.

16 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-FOUR A, B, C,
17 D, PREMARKED FOR IDENTIFICATION.)

18 Q. I am handing you four photographs which have been
19 marked for identification purposes as State's Exhibit
20 Thirty-Four A; Thirty-Four B and Thirty-Four C and Thirty-
21 Four D. Would you take a moment to take a look at those
22 please.

23 (WITNESS REVIEWING STATE'S EXHIBIT THIRTY-FOUR A, B,
24 C, D.)

25 Q. Do you recognize what you see in each of those

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1 photographs?

2 A. Yes, ma'am, I do.

3 Q. And what do you see?

4 A. Mr. Berard's canary, yellow moped.

5 Q. Okay. And do those pictures that you have in your
6 hand do they fairly -- do they look just like the moped did
7 on the night you saw it at Whitney Woods Lane?

8 A. Yes, ma'am.

9 Q. Your Honor, State would ask to move Exhibits Thirty-
10 Four A, B, C and D into evidence.

11 MR. LEMEL: Without objection, Your Honor.

12 THE COURT: They're admitted.

13 (WHEREUPON: STATE'S EXHIBIT THIRTY-FOUR A, B, C AND D
14 PREMARKED AND IDENTIFIED ENTERED INTO EVIDENCE.)

15 BY SOLICITOR SIKORA:

16 Q. Could you please dim the lights, Madame Clerk?

17 (CLERK OF COURT DIMMED COURTROOM LIGHTS.)

18 Q. Okay now that we have Thirty-Four A set up can you
19 please describe what we see in this photograph here?

20 A. That's Mr. Berard's moped.

21 Q. Could you bring up Thirty-Four B please?

22 Could you please describe what we are seeing in
23 Exhibit Thirty-Four B?

24 A. Just looks like a side view of Mr. Berard's yellow
25 moped.

- 1 Q. Okay. And if you can bring up Thirty-Four C.
2 What are we looking at in Exhibit Thirty-Four C?
3 A. That's his blood on the bottom of his moped where your
4 feet would rest.
5 Q. And does that look just as it did on the night you
6 found the moped at Whitney Woods Lane?
7 A. Besides being dry yes, ma'am.
8 Q. And if you can please bring up Exhibit Thirty-Four D.
9 And would you please describe to the jury what we are
10 seeing in this picture?
11 A. This is a side view of the foot rest on the moped
12 where his feet were located during his ride.
13 Q. Madame Clerk, if you can please bring up the lights.
14 (CLERK OF COURT BRIGHTENED COURTROOM LIGHTS.)
15 Q. At the point you find this moped at Whitney Woods Lane
16 are there any officers with the York County Sheriff's
17 Office on scene at Whitney Woods Lane?
18 A. Not when we arrive.
19 Q. Does anyone from the sheriff's office arrive at all at
20 Whitney Woods Lane that night while you are there?
21 A. Yes, ma'am, they do.
22 Q. And do you remember what time they got there?
23 A. Approximately twenty minutes after we got there.
24 Q. Okay. You mentioned you were familiar with [REDACTED]
25 [REDACTED]?

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA

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- 1 A. Yes, ma'am.
- 2 Q. Do you know who lives there?
- 3 A. Yes, ma'am.
- 4 Q. And who does?
- 5 A. Ms. Kayliegh Miller.
- 6 Q. Are you familiar with Ms. Miller?
- 7 A. I am.
- 8 Q. At some point during the evening did you make contact
- 9 with Kayliegh Miller?
- 10 A. Yes, ma'am.
- 11 Q. And how did that happen?
- 12 A. She pulled up at her residence while we were out there
- 13 trying to gain access.
- 14 Q. Okay. And did you speak with Ms. Miller?
- 15 A. Yes, ma'am.
- 16 Q. And were you able to gain consent to go inside her
- 17 residence?
- 18 A. Yes, ma'am.
- 19 Q. And at this point was anyone from the sheriff's office
- 20 present?
- 21 A. Yes, ma'am.
- 22 Q. Do you recall who from the sheriff's office would have
- 23 been on scene?
- 24 A. No, ma'am, I do not.
- 25 Q. Do you recall about how many officers would have been

1 there from the sheriff's department?

2 A. At this point at least two maybe three.

3 Q. After gaining consent from Ms. Miller to go into [REDACTED]

4 [REDACTED] do you personally actually go inside?

5 A. Yes, ma'am.

6 Q. Does anyone go inside with you?

7 A. Yes, ma'am.

8 Q. Do you recall who that was?

9 A. Two sheriff deputies.

10 Q. Do you recall what they looked like?

11 A. Yes, ma'am.

12 Q. And what did they look like?

13 A. One was a white male the other was a black male.

14 Q. Did you all go in the front door?

15 A. No, ma'am.

16 Q. What door did you go in?

17 A. The back door.

18 Q. Did you ever knock on the door to see if anyone would
19 answer it?

20 A. Yes, ma'am.

21 Q. Did anyone ever answer it?

22 A. No, ma'am.

23 Q. So you and two other officers go in the back door of

24 [REDACTED]

25 A. Yes, ma'am.

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 Q. Who goes in first?

2 A. One of the sheriff's deputies I'm not sure which one.

3 Q. And at this point are the lights still off in the
4 trailer at Whitney Woods Lane?

5 A. Yes, ma'am.

6 Q. Do you have a key to get in?

7 A. I do.

8 Q. And you obtain that from?

9 A. Ms. Miller.

10 Q. And did the three of you actually make it inside the
11 residence?

12 A. Yes, ma'am.

13 Q. And do you hear anything once you get in to suggest
14 that there is somebody in there?

15 A. Not from inside the residence I did not.

16 Q. Okay. Do you see anything once you get inside
17 suggesting that somebody may be in there?

18 A. Yes, ma'am.

19 Q. And what do you see?

20 A. I notice someone with covers over them laying in the
21 bed.

22 Q. In a bed?

23 A. Yes, ma'am.

24 Q. Okay. How far is this bed you are mentioning from the
25 door; the back door that you went in?

- 1 A. Fifteen; twenty feet maybe.
- 2 Q. Fifteen to twenty feet. And what happned after that?
- 3 A. The two sheriff's deputies one on each side of the bed
- 4 all of us with our flash lights; they had their guns drawn,
- 5 I came in I instructed Mr. Berard to show me his hands. He
- 6 did. I pulled the covers off of him and placed him under
- 7 arrest.
- 8 Q. You placed him under arrest inside that trailer?
- 9 A. Yes, ma'am, in the bedroom.
- 10 Q. Did you place handcuffs on him?
- 11 A. Yes, ma'am.
- 12 Q. And where was he taken after you were able to get
- 13 handcuffs on him?
- 14 A. At that point we walked him out the back door around
- 15 to the front of the trailer to the sheriff's deputy car.
- 16 He was searched marandized and placed in the back of the
- 17 deputy's car.
- 18 Q. Okay. Did you search him?
- 19 A. No, ma'am, I don't believe I did.
- 20 Q. Did you marandize him?
- 21 A. No, ma'am, I did not.
- 22 Q. Okay. Who did you hear do that?
- 23 A. The black officer.
- 24 Q. The black officer?
- 25 A. Yes, ma'am.

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1 Q. And can you just explain to the jury what you mean by
2 marandize him?

3 A. I read him his rights the right to remain silent, the
4 right to an attorney, things of that nature.

5 Q. And after Mr. Berard was read his rights did you hear
6 him say anything?

7 A. Yes, ma'am.

8 Q. And what did you hear him say?

9 A. He asked me how his Nanna was doing.

10 Q. Did you respond?

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

12 Q. And where was Mr. Berard when he made this statement?

13 A. He was sitting on the ground outside in front of the
14 trailer.

15 Q. Okay. You previously said that he was sitting in the
16 patrol car. How did he end up on the ground?

17 A. Due to his injuries on his leg we called paramedics.
18 And once they got on site we had to move him from the back
19 of the car to the ground so they could give him aide.

20 Q. Okay. Can you describe the injuries to the leg that
21 you saw?

22 A. Yes, ma'am, it was two large cuts approximately an
23 inch; inch and a half apart. They were on his lower leg.
24 They were rather large and deep gashes so they appeared.

25 Q. On his lower leg what do you mean? Saying the gashes

1 were closer to his knee or closer to his ankle?

2 A. Closer to his ankle. Closer to his ankle.

3 Q. Did you notice anything unusual about how Mr. Berard
4 smelled that evening?

5 A. Yes, ma'am, I did.

6 Q. And what would that be?

7 A. He smelled; had a strong odor of alcohol.

8 Q. Did you hear Mr. Berard say anything else other than
9 how's my Granny?

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

11 Q. Did you ever go back into the trailer at [REDACTED]
12 [REDACTED] after Mr. Berard was outside and already placed
13 under arrest?

14 A. Yes, ma'am, I did.

15 Q. And what was the purpose of you going back in?

16 A. I went back in basically just my personal and
17 investigative reasons just to kind of look around trying to
18 find the monitor things of that sort.

19 Q. Did you notice at that point if he was in fact wearing
20 his ankle bracelet?

21 A. Earlier when I saw the gashes on his leg I noticed
22 that it had been removed.

23 Q. Were you able to locate the ankle bracelet inside [REDACTED]

24 [REDACTED]?

25 A. No, ma'am.

LARRY PATTON: DIRECT EXAMINATION BY SOLICITOR SIKORA
CROSS EXAMINATION BY MR. LEMEL

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1 Q. Did you see anything inside [REDACTED]
2 that seemed to belong to Mr. Berard?

3 A. Yes, ma'am.

4 Q. And what would that be?

5 A. I saw a pair of shoes and a pair of socks both bloody
6 and inside the kitchen sink I saw a few drops of blood and
7 blood on the floor.

8 Q. On what area did you see blood on the floor? What
9 area of [REDACTED]

10 A. Around the bed area of the laminate flooring and right
11 there at the washing machine and the dryer.

12 Q. I just have one final question for you, Mr. Patton.
13 Do you see the man that you know as Adam Berard here in the
14 courtroom today?

15 A. Yes, ma'am, I do.

16 Q. Can you please point him out to the jury?

17 A. Right there.

18 Q. Would you please reflect on the record that Mr. Patton
19 has identified Adam Berard the defendant?

20 Thank you.

21 CROSS EXAMINATION

22 LARRY PATTON BY MR. LEMEL:

23 Q. Mr. Patton, as I understand it you have been working
24 with the Department of Probation and Parole for about
25 eighteen months at the time this particular incident took

1 place; is that correct?

2 A. Yes, sir.

3 Q. You are just shy of three years now?

4 A. Right yes, sir.

5 Q. This was about eighteen months ago; right?

6 A. Correct.

7 Q. So right around a year and a half?

8 A. Yes, sir.

9 Q. And you were in charge of supervising him on his
10 probation and parole from that misdemeanor conviction;
11 right?

12 A. Yes, sir.

13 Q. And as part of that your department determined that he
14 would be wearing a GPS monitor and electronic supervision,
15 intensive supervision; right?

16 A. Yes, sir.

17 Q. And that is standard something your agency does on a
18 number of occasions; right?

19 A. Yes, sir.

20 Q. Okay. I mean you have the right to determine if
21 someone will be on intensive supervision or electronic
22 monitoring and things like that?

23 A. Yes, sir.

24 Q. Okay. Now as I understand it the monitors at that
25 point in time would basically have been really was in

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL

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1 essence three parts in that you have a charging base;

2 right?

3 A. Correct.

4 Q. And that would have been placed in whoever is being

5 supervised home?

6 A. Yes, sir.

7 Q. There would be the part that you said was about the

8 size of a walkie talkie called a PTU?

9 A. Yes, sir.

10 Q. And the PTU was not fastened to a person's body as I

11 understand it?

12 A. Correct.

13 Q. They could have carried it in their pocket or on a

14 belt or something of that sort?

15 A. Correct.

16 Q. And that PTU is actually something that had a charge

17 to it?

18 A. Yes, sir.

19 Q. And needed to be placed in the charger periodically in

20 order to recharge so the batteries didn't go down?

21 A. Yes, sir.

22 Q. And in fact the people that you supervise are

23 instructed to place that PTU in that system that you had on

24 a charger on a regular basis in order for it to charge up

25 right?

1 A. Yes, sir.

2 Q. That would have been one of the requirements of being
3 on that supervision?

4 A. Yes, sir.

5 Q. There is another piece that you refer to as the
6 monitor?

7 A. Transmitter.

8 Q. Transmitter?

9 A. Yes, sir.

10 Q. Okay. And the transmitter is really what's on the
11 bracelet; correct?

12 A. Yes, sir.

13 Q. That's what's actually attached to an individual?

14 A. Correct.

15 Q. And because of the way it worked at that point in time
16 that transmitter did not need a separate charging unit from
17 the PTU?

18 A. Correct.

19 Q. Okay. I mean it's just a sort of a late kind of thing
20 where it was just there and really the PTU did most of the
21 work on the tracking; right?

22 A. As far as from the satellite tracking yes, sir.

23 Q. Okay. Now was the actual GPS chip or whatever you
24 want to call it was that in the PTU or is that in the
25 transmitter?

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL

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1 A. Both.

2 Q. Both?

3 A. Yes, sir.

4 Q. Okay. So when somebody has this particular
5 arrangement they are allowed to be a certain distance away
6 from the PTU as long as they still have the transmitter on;
7 right?

8 A. Yes, sir.

9 Q. And that was the radius that you talked about before?

10 A. No, sir, that's different.

11 Q. The radius you talked about before was the distance
12 between the charging base and the combined unit?

13 A. The charging base in that aspect the charging base
14 placed on point no part in it.

15 Q. So there is not a fixed location inside their home
16 that's transmitting, it's what the satellite is saying?

17 A. Exactly. We give the zone from our computer which
18 puts a barrier around whatever the radius is that we place.

19 Q. And that's purely an electronic barrier?

20 A. Yes, sir.

21 Q. Sort of like an invisible fence of some sort?

22 A. Yes, sir, sort of like it.

23 Q. And if somebody's got -- what's the range between the
24 PTU and the transmitter?

25 A. PTU and transmitter? Theoretically about a hundred

1 feet.

2 Q. Okay. So if somebody has the PTU in the charging base
3 they are allowed to go up to a hundred feet away from it
4 and it won't cause any sort of violation?

5 A. Right.

6 Q. But if they go further than that that's when you have
7 that break between the two of them and it's the question of
8 a potential violation; right?

9 A. Correct.

10 Q. Okay. Now that radius is separate from the allowed
11 radius that somebody is allowed to go in?

12 A. Yes, sir.

13 Q. But you can set that radius at almost any distance
14 that you so desire using the computer system; right?

15 A. Correct.

16 Q. You can set it over the entire County of York for
17 example if you really wanted to?

18 A. You could.

19 Q. In this case initially you set Adam's radius that he
20 was allowed to go to when he was at home basically at about
21 a hundred feet is what you said initially?

22 A. No, sir. If I did I was misunderstanding between the
23 distance with the PTU and transmitter. The radius for him
24 with the entire unit would actually been set around five
25 hundred feet.

1 Q. And that was five hundred feet that covered the entire
2 yard?

3 A. His area.

4 Q. Right. The area the whole Zinker Road sort of complex
5 we been referring to it sits on?

6 A. No, sir, initially it was set for just his right side
7 of the residence.

8 Q. Because of how you had it oriented; correct?

9 A. Exactly.

10 Q. Now at some point in time in his probation a request
11 is actually made to extend that area to include Ms. Moss's
12 residence; right?

13 A. Yes, sir.

14 Q. And that actually came from Ms. Moss?

15 A. Yes, sir. Actually her and Ms. Berard the mother.

16 Q. They both requested that radius basically be shifted
17 somewhat for lack of a better word to just rather than just
18 covering one half to sort of center it up so that her house
19 was included?

20 A. Yes, sir.

21 Q. So by their request he was allowed to go over to her
22 residence as well?

23 A. Yes, sir.

24 Q. And that was all fine?

25 A. Yes, sir.

1 Q. Had no problem doing that?

2 A. Right.

3 Q. Okay. So with this combined system basically you can
4 track where somebody is within that five hundred foot
5 radius?

6 Q. Inside and out yes, sir.

7 Q. I'm just talking specifically inside that radius.

8 A. Yes, sir.

9 Q. But at some point for some reason after he -- the last
10 place you identify him going to is 7:27 he's back at his
11 house?

12 A. Yes, sir.

13 Q. And at some point in time obviously he's not there any
14 more; right?

15 A. Correct.

16 Q. But there is no GPS indicator of when that move
17 occurred. It could have occurred any time from 7:27 on
18 basically until the default occurred?

19 A. As far as moving inside his house you are correct.
20 Now as far as moving outside of his house no, sir, it would
21 have been around the time that I received the violation.

22 Q. Okay.

23 A. That's when he would have broken the signal between
24 the transmitter and the PTU.

25 Q. Okay. And would that have broken -- what time did you

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL

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1 get that call and that's a cuff leave violation?

2 A. Yes.

3 Q. What time did you get that cuff leave violation?

4 A. Some time 11:00; 11:30. It's in my notes I'm not real
5 sure exactly to the time.

6 Q. And you don't know exactly where he went to cause that
7 cuff leave violation? That's not part of what you have
8 tracking was?

9 A. Correct.

10 Q. You don't know if it was because he left the compound
11 area or just went over to somebody -- to Ms. Moss's house?

12 A. All I know is he had gone more than a hundred feet
13 away from the charging base and the PTU.

14 Q. Okay. So you in your knowledge can't say where he
15 actually went to cause that violation?

16 A. Correct.

17 Q. All we know is it was more than a hundred feet?

18 A. Correct.

19 Q. All right. Now following this you again initially
20 tried to make contact with him because of that?

21 A. Correct.

22 Q. And aren't' successful although you leave a message on
23 the message machine?

24 A. Yes, sir.

25 Q. And sort of as a standard follow up you then go back

1 to the GPS to see if you can track to see if you've got any
2 other places he may have gone at that time?

3 A. No, sir, we respond and then if in this particular
4 situation such as this happens then yes, sir, we go back to
5 the system if they are home then we don't.

6 Q. The first place you go I'm sorry, is Zinker Road?

7 A. Yes, sir.

8 q. By the time you got to Zinker Road EMS is already
9 there?

10 A. No, sir. I do not recall witnessing EMS at Zinker.

11 Q. It's possible they had already left?

12 A. It's possible yes, sir.

13 Q. By the time you get there obviously Ms. Berard is not
14 there?

15 A. I never went inside so I'm not sure but I do not
16 believe so.

17 Q. Okay. The sheriff's deputies are there; right?

18 A. Yes, sir.

19 Q. So you can't tell us anything about what happened in
20 the house before the sheriff's deputies arrived?

21 A. No, sir.

22 Q. And from that you then go to the office and try to
23 follow up on the track?

24 A. Correct.

25 Q. And that's what leads you to the other events?

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL

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1 A. Correct.

2 Q. When you enter the residence you do so with the
3 permission of Ms. Kayliegh Miller?

4 A. Yes, sir.

5 Q. When you enter the residence did you notice that there
6 were any sign of any source of forcible entry or anything
7 of that nature?

8 A. No, sir.

9 Q. And pretty immediately as you enter into the room you
10 see somebody lieing in the bed?

11 A. Yes, sir.

12 Q. Didn't have any difficulty seeing him there?

13 A. No, sir.

14 Q. And the only reaction to the person lieing in the bed
15 was to basically pull the covers up over their head?

16 A. Yes, sir.

17 Q. Once that happened you instructed Mr. Berard, you
18 obviously thought it was Mr. Berard under there to show you
19 his hands?

20 A. Correct.

21 Q. Which he did so?

22 A. Yes, sir.

23 Q. You were able to place him under arrest?

24 A. Correct.

25 Q. He did not fight you struggle with you or anything of

1 that nature?

2 A. No, sir.

3 Q. Cooperated fully with you as you went to walk him out
4 of the residence?

5 A. Yes, sir.

6 Q. Did not balk or drag his feet or anything like that?

7 A. No, sir.

8 Q. And he was cooperative with you?

9 A. Yes, sir.

10 Q. And the only question that he asked you was he did ask
11 how his grandmother was?

12 A. Yes, sir.

13 Q. Later on you did in fact obviously you determined he
14 was no longer wearing the bracelet part and this GPS
15 monitoring system?

16 A. Correct.

17 Q. You still had the other unit back at the Zinker Road
18 address?

19 A. Yes, sir.

20 Q. But you did not know where the transmitter portion of
21 it was?

22 A. Right.

23 Q. And later on you did request assistance from Adam in
24 tracking down that portion of the device; right?

25 A. Yes, sir.

LARRY PATTON: CROSS EXAMINATION BY MR. LEMEL
REDIRECT EXAMINATION BY SOLICITOR SIKORA

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1 Q. And he fully cooperated with you on that?

2 A. Yes, sir.

3 Q. And in fact at one point in time you actually had to
4 call him to get specifics from him as far as what he had
5 done with that bracelet and where it had been placed?

6 A. Yes, sir.

7 Q. And he led you to a location by a telephone pole or
8 something like that?

9 A. Yes, sir.

10 Q. And that was in fact exactly where you found this
11 device?

12 A. It is.

13 Q. So he cooperated with you in that as well?

14 A. Yes, sir.

15 Q. I beg the Court's indulgence.

16 No more questions. Thank you, Mr. Patton.

17 REDIRECT EXAMINATION

18 LARRY RAY PATTON BY SOLICITOR SIKORA:

19 Q. Do you recall where you able to find that ankle
20 bracelet?

21 A. Yes, ma'am, I do.

22 Q. And can you describe the area for us?

23 A. It was on the corner of Eastview and I believe
24 Holland. It was on a corner in a cut field. It was an
25 empty area just freshly cut it appeared.

1 Q. Are there any type of landmarks on that field or is
2 it just open grass?

3 A. Power lines; phone pole or some sort of pole such as
4 that.

5 Q. Do you recall about where you found the ankle bracelet
6 at that intersection?

7 A. Yes, ma'am, I do.

8 Q. And where would that be?

9 A. Looking from the road at the light pole it was several
10 feet to the right of it between the light pole and the
11 cross roads.

12 Q. Can you tell us the intersection of Eastview and
13 Holland where you found the ankle bracelet how close is
14 that to Whitney Woods Lane; do you know?

15 A. I would say maybe a mile. Mile and a half most I will
16 say.

17 Q. About how far away is the intersection of Eastview and
18 Holland from Zinker Road?

19 A. Quarter mile maybe.

20 Q. Are you familiar with the Parker Street area of Rock
21 Hill?

22 A. No, ma'am, not really.

23 Q. Okay. And just to make sure I understand what you
24 were explaining to Mr. Lemel around 7:30 on the night of
25 June 7th of 2008 you said that you were unable to track Mr.

1 Berard's movements at that point; correct?

2 A. Yes, ma'am.

3 Q. And why is that?

4 A. Due to his PUT being in the charging base and it not
5 having any movement to cause the satellites to acquire any
6 location of it.

7 Q. And is it - -

8 A. And also - -

9 Q. I'm sorry.

10 A. And also with him standing inside his hundred foot
11 radius of being away from the PTU there was no violation or
12 tracking point displayed.

13 Q. Until later that evening?

14 A. Until later that evening yes, ma'am.

15 Q. Is it possible he could have been at Ms. Moss's house
16 during that time period?

17 A. I do not believe so. I do not believe that would have
18 been inside the radius.

19 Q. Is it possible that Adam could have moved the base
20 unit or the PTU as we are speaking of within the - -

21 A. Yes, ma'am, it is.

22 Q. So if that base unit is moved would that also extend
23 the radius?

24 A. It would.

25 Q. Nothing further.

1 RECROSS EXAMINATION

2 LARRY RAY PATTON BY MR. LEMEL:

3 Q. You recovered the base unit from the [REDACTED] at
4 the [REDACTED] address; right?

5 A. I did not no, sir.

6 Q. Was there any indication that it had been moved in
7 fact?

8 A. I cannot speak on that. I did not recover it.

9 Q. So that's just pure speculation?

10 A. I suppose.

11 Q. Nothing further.

12 THE COURT: You can step down, sir.

13 MR. PATTON: Thank you.

14 SOLICITOR LIPINSKI: The State calls Lieutenant Tim
15 Hager to the stand.

16 ((WHEREUPON: LIEUTENANT TIM
17 HAGER, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
18 FOLLOWS:))

19 MADAME CLERK: Thank you.

20 MR. HAGER: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 SOLICITOR LIPINSKI: May it please the Court.

23 DIRECT EXAMINATION

24 LIEUTENANT TIM HAGER BY SOLICITOR LIPINSKI:

25 Q. Lieutenant Hager, with whom are you employed?

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 A. With the York County Sheriff's Office

2 Q. And in what capacity?

3 A. I am the lieutenant of Crimes Against Persons Unit of
4 the criminal investigative division.

5 Q. And how long have you been so employed?

6 A. I've been employed with the sheriff's office
7 approximately twenty-nine years. I been in this capacity
8 about thirteen years.

9 Q. And on June 8th of 2008 were you similarly employed
10 with the sheriff's office?

11 A. Yes I was.

12 Q. And did you have the occasion to respond to the Zinker
13 Road residence?

14 A. Yes, ma'am, I did.

15 Q. And at whose behest to why did you go out there?

16 A. I got a call from dispatch. I was the lieutenant on
17 call for that time frame and I got a call to meet with them
18 at Zinker Road, our PCSU people and on call Detective W. J.
19 Miller.

20 Q. And did you have the occasion to go out there?

21 A. Yes I did.

22 Q. And when you got to the Zinker Road address was Mr.
23 Berard there the defendant?

24 A. No he was not.

25 Q. Did you speak with anyone there?

1 A. I spoke with our detective that was on scene; uniform
2 officers on scene and also our FSU people that were on
3 scene and got a feel for what was going on.

4 Q. And did you ever have the occasion to respond to the
5 [REDACTED] location?

6 A. Yes shortly a time later I received a call he had been
7 apprehended at that location.

8 Q. Did you go out there?

9 A. Yes I did.

10 Q. And when you arrived on the scene who is there?

11 A. Numerous uniform police officers; agents from the
12 South Carolina Probation and Parole and also an EMS Unit.

13 Q. And where -- do you see Mr. Berard?

14 A. I was notified by our uniform people that he was in
15 the back seat of a patrol car that was on scene at the
16 location.

17 Q. You didn't know him; had no idea who he was other than
18 they are identifying him as being the suspect in the back
19 of the patrol car?

20 A. Had I ever met the gentleman? No, ma'am.

21 Q. And what do you do once you get there at Whitney Woods
22 Lane?

23 A. I inquired from the uniform guys what had happened and
24 they had told me that he had been apprehended and also had
25 been marandized.

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 Q. And did they speak to him or question him in any way?

2 A. Not to my knowledge no.

3 Q. Is that something they would defer to you?

4 A. Typically yes.

5 Q. And were you the only detective out there or was
6 anyone else; other detectives?

7 A. If I am not mistaken Detective Russ Yeager who is in
8 my squad may have been out there with me?

9 Q. And that would be this gentleman here?

10 A. Yes sitting right behind you.

11 Q. And do you approach Mr. Berard?

12 A. Yes I do.

13 Q. And how were you dressed on the night in question?

14 A. A pair of tactical pants olive drab sort of with a
15 shirt with a logo.

16 Q. Do you need some water?

17 A. Yeah. I apologize.

18 (WITNESS TAKES DRINK OF WATER.)

19 Q. Do you have the occasion to approach Mr. Berard?

20 A. Yes I did.

21 Q. And you stated that you were wearing a green BDU or
22 tactical pants and some type of shirt with a sheriff's
23 office logo?

24 A. Yes.

25 Q. And did you have a weapon with you at the time?

1 A. Yes I did.

2 Q. And where was that weapon at the time you were or
3 began speaking with Mr. Berard?

4 A. On my side as always.

5 Q. And when you go speak to him is he in the back of the
6 patrol car?

7 A. Sitting in the back right passenger side.

8 Q. And do you get in the back of the patrol car with him
9 or how do you speak to him?

10 A. I just open the door and speak to him as he is sitting
11 there.

12 Q. And is there anyone else in the immediate vicinity
13 close by you?

14 A. No.

15 Q. Anyone who would have been capable of over hearing
16 your conversation with Mr. Berard?

17 A. If they were standing around the patrol car they could
18 have heard me but him I have no idea.

19 Q. And when you go up to Mr. Berard do you introduce
20 yourself?

21 A. Yes I do.

22 Q. And other than your weapon being your issued weapon
23 being on your holster do you draw your attention to it in
24 any way? Do you have it pointed at Mr. Berard?

25 A. No to the contrary. I kind of bladed the weapon away

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 from him which is standard procedure.

2 Q. And as you speak to him do you threaten him in any
3 way?

4 A. No, ma'am.

5 Q. When you speak to him are you using the voice you are
6 using today or did you use a louder voice?

7 A. Same tone.

8 Q. Did you promise him anything if he would speak with
9 you?

10 A. No, ma'am.

11 Q. And how do you initialize the conversation with him?
12 You said he previously had been marandized. Do you rely on
13 those road deputies and just utilize their - -

14 A. No. Out of the abundance of caution we normally go
15 back and marandize the individual again.

16 Q. And did you do that?

17 A. Yes.

18 Q. And did you recite his Maranda rights from memory or
19 do you have a Maranda card?

20 A. I have a card I carry with me in my wallet.

21 Q. Do you have it with you today?

22 A. Yes I do.

23 Q. And could you please read to the jury the Maranda
24 Rights as you gave them to the defendant on the night in
25 question.

1 A. Basically what I do is I will introduce myself to the
2 individual and then what I will do is read from this card.

3 "You have the right to remain silent anything you
4 say can and will be used against you in a court of
5 law. You have the right to talk to an attorney and
6 have him present with you while you are being
7 questioned. If you cannot afford to hire an attorney
8 one would be appointed to represent you before any
9 questioning if you wish. You can decide at any time
10 to exercise these rights and not answer any questions
11 or make any statements."

12 Then I will ask him, "Do you understand each of these
13 rights as I have explained to you?" At which point in
14 time I get a response and he responded yes.

15 "And having these rights in mind do you wish to talk
16 to me now?" And again I asked him that question and he
17 responded in the affirmative.

18 Q. Did you notice any injuries about Mr. Berard?

19 A. The leg had been bandaged. As far as what injuries
20 were under that bandage I have no idea.

21 Q. Did you ask him about any other injuries he might have
22 that might need attending to?

23 A. Yes I ask him if he had any other injuries that needed
24 attending to and any other problems that we needed to
25 attend to at that point in time.

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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- 1 Q. Did he indicate he had any?
- 2 A. No.
- 3 Q. Did he have any problems communicating with you?
- 4 A. No, ma'am.
- 5 Q. Did he appear intoxicated?
- 6 A. Not to me no.
- 7 Q. Did you detect an odor of alcohol about his person?
- 8 A. He was in the car and I was above him I didn't sense
- 9 any no.
- 10 Q. Did he appear to respond to your questions
- 11 appropriately?
- 12 A. Yes he did.
- 13 Q. Did he seem confused or unclear in any manner while
- 14 you were speaking with him?
- 15 A. Not to me no.
- 16 Q. And how did you begin talking with him about what
- 17 allegedly had occurred?
- 18 A. There again - -
- 19 Q. I apologize. Did you make a report that night?
- 20 A. Yes.
- 21 Q. Any objection to this report just to refresh his
- 22 recollection?
- 23 (NEGATIVE RESPONSE FROM DEFENSE COUNSEL.)
- 24 Q. Would it refresh your recollection to refer to that
- 25 report?

1 A. Yes it would.

2 Q. Do you need any more water?

3 A. I'm fine right now. Thank you.

4 Q. You stated that you asked him whether or not he had
5 any other injuries that needed attending to and then where
6 did the conversation go from there?

7 A. He had actually been drinking the night and stated
8 that he had two beers earlier in the night and he was not
9 intoxicated.

10 Q. And did your own observations were they consistent or
11 inconsistent with that statement from him?

12 A. I considered it to be consistent with that
13 observation.

14 Q. And then where did you go?

15 A. I asked him what happened tonight and he stated he was
16 at his Nanny's house. They were on the front porch and he
17 swung a stick at a bat and accidentally hit his Nanny in the
18 head. He stated he panicked and left the house and his
19 brother came over.

20 Q. Did you inquire further about the weapon?

21 A. Yes I asked him where we could find the stick. He
22 stated it should be on the deck where they were standing.

23 Q. Did you ask him any other questions?

24 A. Yes I did. He was asked what happened after he hit
25 her with the stick and he stated he could not remember

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 because he was drunk. He was reminded that he stated that
2 he was not drunk and that he also told me he had drank only
3 drank two beers. He then said he just could not remember.

4 Q. Did you confront him with any information you received
5 from his brother?

6 A. Yes I did. He was asked about what his brother had
7 told us about the sexual assault taking place when his
8 brother looked in the window. And he stated he could not
9 remember that. He was asked about leaving the house - -

10 MR. LEMEL: Objection.

11 BY SOLICITOR LIPINSKI:

12 Q. After he stated that he couldn't remember these
13 questions that you were asking him did you precede further
14 or did you end the interrogation?

15 A. We ended it at that time.

16 Q. Other than when you ended it - -

17 THE COURT: Does that resolve your objection, Mr.
18 Lemel?

19 MR. LEMEL: Yes, sir.

20 BY SOLICITOR LIPINSKI:

21 Q. As you ended the conversation did you secure him back
22 in the patrol car?

23 A. I never took him out of the car. I just closed the
24 door.

25 Q. Closed the door. Did you go back and talk him later

TIM HAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI
CROSS EXAMINATION BY MR. LEMEL

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1 to see if he remembers anything later?

2 A. The next time I saw him he was here in court.

3 Q. Do you talk with anyone else out there on the night in
4 question? Do you take any statements from any other
5 additional witnesses?

6 A. I do not know.

7 Q. And do you defer those parts of the investigation to
8 your co workers either Detective Yeager or Detective
9 Miller?

10 A. Yes.

11 Q. You are not part of any further transporting of Mr.
12 Berard to the hospital for any further treatment he might
13 have needed? You left that to the other officers?

14 A. Correct.

15 Q. We have nothing further of Lieutenant Hager.

16 CROSS EXAMINATION

17 LIEUTENANT TIM HAGER BY MR. LEMEL:

18 Q. Lieutenant Hager, so essentially your entire roll in
19 this particular case was just the conversation that was
20 held out there on Whitney Woods?

21 A. No. More necessarily coordinating the whole
22 investigation yes, sir. Search warrants things of that
23 nature. Who to interview not to interview where we need to
24 go from there who gets to serve arrest warrants.

25 Q. So a supervisory roll?

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1 A. Correct.

2 Q. As opposed to an evidentiary collection?

3 A. Correct.

4 Q. And obviously a supervisory roll doesn't have much to
5 do here with what happens here in Court. I'm talking about
6 the evidentiary standpoint the entirety your process here
7 is just about the conversation you had with Adam; is that
8 correct?

9 A. That's correct.

10 Q. Now when you were standing -- I want to make sure I
11 have this correct. And let's pretend for a second you are
12 just sort of in the car okay. And then you are obviously
13 much taller than I am but if you are seated in the car and
14 this is the door of the car you are standing -- and I don't
15 want to turn my back to you -- you are standing in a
16 fashion to keep the gun obviously away from who ever is in
17 the car?

18 A. Correct.

19 Q. And I think you said you were bladed?

20 A. Sort of in this angle. If you are sitting right here
21 between these.

22 Q. Okay. So I am sitting here you are going to stand --
23 you keep your gun on the right hip at all times; right?

24 A. Yes.

25 Q. You are going to stand and you said bladed is that the

1 word you used?

2 A. Yes.

3 Q. That just means you are keeping the gun away from
4 somebody?

5 A. Correct.

6 Q. Okay. And you are standing directly over him?

7 A. No, sir, not directly over him. There is a space two
8 to three feet from us.

9 Q. Okay. He's seated in the car?

10 A. Correct.

11 Q. You are above him?

12 A. Yes.

13 Q. Because one you are tall and two he's seated in the
14 car?

15 A. Yes, sir.

16 Q. And you stated that you didn't smell any odor of
17 alcohol or anything like that on him?

18 A. There I am six foot four I'm two foot above the top of
19 that car. No, sir, I did not.

20 Q. You did not smell any odor of alcohol. But he had
21 told you he had been drinking some that night?

22 A. He told me he had two beers.

23 Q. You still didn't smell any alcohol after that?

24 A. No, sir.

25 Q. Didn't make any attempt to ascertain further to give

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1 him any field sobriety test or anything of that nature?

2 A. No.

3 Q. Basically just took him at his word when he said I've
4 had two beers?

5 A. Correct.

6 Q. Did you ever use to do any DUI enforcement and things
7 like that back in the day?

8 A. Yes, sir.

9 Q. The pretty much standard response from somebody when
10 you ask them if they've had anything to drink two drink two
11 drinks is pretty standard isn't it?

12 A. Yes, sir.

13 Q. It's doesn't always mean that that's always very
14 reliable does it?

15 A. No, sir.

16 Q. Okay. But it's pretty common to do that as a police
17 officer?

18 A. But this is a lot more serious than a DUI.

19 Q. Clearly but that's -- and in response to that question
20 that's a very typical response to give.

21 A. Correct.

22 Q. Now you had gone at one point in time to Zinker Road
23 again in your supervisory capacity?

24 A. The first place I went to yes, sir.

25 Q. But at the time you got there the patrol officers and

1 the other detectives were already there?

2 A. Correct.

3 Q. And the forensic service unit was already there?

4 A. Yes.

5 Q. Ms. Moss was already gone at that point in time?

6 A. Yes.

7 Q. So you really can't tell us anything of your own
8 personal knowledge about what happened inside her house at
9 all?

10 A. No.

11 Q. Nothing further, Lieutenant, thank you.

12 SOLICITOR LIPINSKI: We have no redirect, Your Honor.

13 THE COURT: You can step down, sir.

14 SOLICITOR LIPINSKI: Court's indulgence one moment,
15 Your Honor.

16 (PAUSE.)

17 THE COURT: All right, ladies and gentlemen, we are
18 going to take a short break and I am going to let you step
19 back in the jury room for a few minutes.

20 (JURY LEAVING THE COURTROOM AT 4:35 P.M..)

21 (SHORT RECESS AT 4:35 P.M..)

22 (BACK ON THE RECORD AT 4:50 P.M..)

23 THE COURT: Be seated.

24 (DEFENDANT ENTERING THE COURTROOM.)

25 THE COURT: Bring in the jury.

JOHN OSBORNE: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 (JURY ENTERING COURTROOM AT 4:51 P. M..)

2 SOLICITOR SIKORA: The State calls John Osborne to the
3 stand.

4 MADAME CLERK: Please raise your right hand.

5 (WHEREUPON: JONATHAN

6 OSBORNE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
7 FOLLOWS:)

8 MADAME CLERK: Thank you. You may be seated.

9 DIRECT EXAMINATION

10 JOHN OSBORNE BY SOLICITOR SIKORA:

11 Q. Would you please state your full name and spell your
12 last name for the court reporter?

13 A. Jonathon Osborne, O-s-b-o-r-n-e.

14 Q. And where do you work?

15 A. I am employed with the York County Sheriff's Office as
16 a deputy.

17 Q. And how long have you worked for the sheriff's office?

18 A. I have been with the York County Sheriff's Office for
19 four years. I've been in law enforcement a total of
20 thirteen years.

21 Q. And where did you work prior to the sheriff's office?

22 A. The City of York Police Department.

23 Q. What was your position with the York City Police
24 Department?

25 A. I was a corporal and I was assigned to the DUI highway

1 safety unit.

2 Q. Were you working for the York County Sheriff's Office
3 on the night of June 7 into the early hours of June 8,
4 2008?

5 A. I was.

6 Q. Were you involved in the investigation against Adam
7 Berard?

8 A. I was the officer that -- one of the officers that
9 apprehended Mr. Berard.

10 Q. Where is the first place you went that night as part
11 of the investigation?

12 A. I was advised by my supervisor to be on the look out
13 for the subject and then I was dispatched to go to I want
14 to say Parker Street or the Parker Street area.

15 Q. Parker Street?

16 A. Yes, ma'am.

17 Q. Is that in York County?

18 A. Yes, ma'am, it's in the city limits of Rock Hill.

19 Q. And about what time did you arrive at Parker Street?
20 Do you recall?

21 A. No, ma'am, I have no recollection.

22 Q. And when you got to Parker Street who was there?

23 A. Upon my arrival I believe that there was several city
24 police officers on the scene at that location.

25 Q. When you say city police officers are you referring to

1 Rock Hill?

2 A. Rock Hill Police Department.

3 Q. Did you make contact with a person that resided at

4 ?

5 A. Yes, ma'am, that was Mr. John Lane.

6 Q. Did you speak with Mr. Lane about what he saw that
7 night?

8 A. Yes, ma'am.

9 Q. Did you take a statement from Mr. Lane?

10 A. A statement was taken. I actually gave Mr. Lane the
11 statement forms and told him to write the statement as
12 clearly as he remembered everything that took place. I
13 didn't actually write the statement for him.

14 Q. Okay. And did you see Mr. Lane sign that statement?

15 A. I did.

16 Q. Did you see any evidence while you were at Parker
17 Road?

18 A. When I arrived at the residence - -

19 Q. Wait.

20 A. I'm sorry.

21 Q. When you arrived at Parker Road did you see any
22 evidence that Mr. Berard may have been there earlier that
23 evening?

24 A. I was advised by Mr. Lane that he had been there. On
25 the front porch and in the yard there was blood droppings

1 going up to the front porch and on the front porch there
2 was actually blood on the front porch. And if I recall
3 correctly there was either a sock or some kind of towel or
4 something laying on the porch that had blood on it.

5 Q. Now when you arrived at Parker Lane was Adam Berard
6 there?

7 A. No. I was advised he had left.

8 Q. And after reporting to Parker Lane where did you go
9 next?

10 A. I initially was advised to stay in mobile and possibly
11 to go around the Celanese Road area that Mr. Berard had
12 been employed in that area at one point and he may be going
13 back into that area. So I was around the Celanese area and
14 then I was advised that I needed to go to Whitney Woods to
15 meet probation and parole agents that they possibly had the
16 suspect in that area.

17 Q. Okay. Is Whitney Woods also in York County, South
18 Carolina?

19 A. It is it's located off of Highway 5 going toward York.

20 Q. And did you in fact go to Whitney Woods Lane that
21 night?

22 A. I did.

23 Q. Were you riding by yourself that night or did you have
24 another officer in the car with you?

25 A. I was by myself that night.

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1 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-TWO
2 PREMARKED FOR IDENTIFICATION.)

3 BY SOLICITOR SIKORA:

4 Q. I am handing you what's been marked for identification
5 purposes as State's Exhibit Number Forty-Two. It's kind of
6 large so I am going to grab one end and if you can grab the
7 other so you will have the chance to view the entire
8 exhibit.

9 A. Okay.

10 Q. And keep it facing towards you.

11 A. Okay.

12 Q. Could you tell me what this depicts?

13 A. This looks like an aerial map of the Rock Hill area.

14 Q. Okay. And are you familiar -- do you see where you
15 were on Parker Road depicted on this map?

16 A. Yes, ma'am. It's marked [REDACTED].

17 A. And do you also see the Whitney Woods Lane area you
18 testified that you were present at that evening?

19 A. Yes, ma'am, that would be over there at the top corner
20 of the map where your finger is located right there.

21 Q. And would this map assist you in providing testimony
22 to the jury to help explain where you were that evening?

23 A. Yes, ma'am.

24 Q. Let's roll it back up.

25 Your Honor, State's offers Exhibit Number Forty-Two

1 into evidence.

2 MR. LEMEL: Without objection, Your Honor.

3 THE COURT: It's admitted.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-TWO
5 PREMARKED FOR IDENTIFICATION ENTERED INTO EVIDENCE.)

6 BY SOLICITOR SIKORA:

7 Q. And when you arrived at Whitney Woods Lane were there
8 any other York sheriff's office deputies on scene when you
9 got there?

10 A. Deputy Gwinn with the York County Sheriff's Office was
11 there and there were several probation and parole agents.

12 Q. Were there any lights on at [REDACTED]

13 A. No, ma'am, not that I recall.

14 Q. And what did you do when you arrived there?

15 A. I spoke to the probation parole agents where they
16 stated - -

17 MR. LEMEL: Objection as to hearsay, Your Honor.

18 BY SOLICITOR SIKORA:

19 Q. Did you determine during the course of your
20 investigation - -

21 THE COURT: Wait a minute.

22 Does that resolve your objection, sir?

23 MR. LEMEL: Your Honor, she's drawing a question to it
24 yes, sir.

25 THE COURT: She moved on and asked another question.

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1 MR. LEMEL: Yes, sir.

2 THE COURT: All right.

3 BY SOLICITOR SIKORA:

4 Q. Did you determine through the course of your
5 investigation when you were out at Whitney Woods Lane that
6 information had been discovered that Mr. Berard may be
7 present in the area?

8 A. That's correct. There was a moped that was located in
9 that area believed to be the suspect's vehicle.

10 Q. And were you able to make contact with the person that
11 resided at [REDACTED]

12 A. I personally did not speak with them. Probation and
13 parole agents spoke with them.

14 Q. Did you ever attempt to knock on the door or see
15 anyone else knock on the door at Whitney Woods Lane?

16 A. Probation and parole was knocking on the door as well
17 as the deputies that were on scene attempting to knock on
18 the doors trying to get someone to the door.

19 Q. Okay. Would that include yourself?

20 A. That's correct.

21 Q. Did anyone ever enter the door?

22 A. No they did not.

23 Q. At some point did you go into the house?

24 A. I did.

25 Q. And did you go in alone or did others go with you?

1 A. Deputy Gwinn and myself and a probation agent entered
2 the rear door of the residence.

3 Q. At this point were the lights still off within the
4 residence?

5 A. I was the second deputy to go into the back door and
6 there were no lights on inside the residence.

7 Q. Who went in first?

8 A. Deputy Gwinn with the York County Sheriff's Office.

9 Q. And who went in behind Deputy Gwinn?

10 A. I was in the door behind Deputy Gwinn I was the second
11 man in the residence.

12 Q. Does that mean the probation agent would have been
13 behind you?

14 A. That's correct.

15 Q. And how were you all able to see if the lights were on
16 inside the trailer?

17 A. When we initially pushed the back door open we could
18 actually see there was no lights on inside. When you open
19 the back door of the residence that's a small hallway that
20 you are entering into. We were on the far right end of the
21 mobile home so therefore we would have cleared that end and
22 too that's the end we would have cleared first coming in
23 the back door. We would have went to the right and cleared
24 that end first and work our way into the other end of the
25 trailer.

1 Q. Okay. But if there were no lights on inside the
2 trailer did you have anything with you to assist your
3 ability to see once you got inside?

4 A. Yes we used flashlights when we went in.

5 Q. Did you have a weapon with you that night?

6 A. Yes, ma'am, I had my handgun out when I entered the
7 residence.

8 Q. And upon entering the residence did you find anyone
9 inside?

10 A. Yes, ma'am. Once myself and Deputy Gwinn got to the
11 far right end of the mobile home there was a bedroom at
12 that end. As we were approaching to enter that bedroom
13 Deputy Gwinn advised that there was a subject in the bed.
14 He said there is a subject laying in the bed.

15 Q. Did you actually see anyone in the bed?

16 A. I saw a mound of covers over top of what appeared to
17 be someone laying in the bed and at which time I took the
18 position of cover on the door aiming my gun at the location
19 of the bed and requesting to see the hands of the person
20 that was laying under the covers.

21 Q. And did you see that persons hands?

22 A. No. They would not comply. They were not showing
23 their hands at that point.

24 Q. How many times did you ask that person to show their
25 hands?

1 A. Multiple times. At one point the subject in the bed
2 actually pulled the covers down far enough to where they
3 could see -- I could see that someone was there. But then
4 they looked over at us and pulled the covers back over
5 their head again.

6 Q. Okay. At some point did that individual in the bed
7 show you his hands?

8 A. At which point we continued to demand him to show us
9 his hands. Deputy Gwinn actually made entrance into the
10 bedroom and actually snatched the covers off of the subject
11 where we could see if he was armed or if he was not armed.
12 Once he snatched the covers off Deputy Gwinn and the
13 probation agent continued into the room to detain the
14 subject to see who he was and I maintained cover at the
15 door with my gun drawn.

16 Q. Okay. Was the subject placed in handcuffs at that
17 time?

18 A. Yes.

19 Q. Were you all able to identify that subject that was
20 hiding under the covers?

21 A. They identified -- the probation agents identified the
22 subject as suspect as Mr. Berard.

23 Q. From the time you entered the trailer at Whitney Woods
24 Lane until the time that Mr. Berard was in handcuffs how
25 long of a time period was that?

1 A. Probably I would say no more than a minute to two
2 minutes.

3 Q. So is it fair to say this all happened fairly quickly?

4 A. Oh yes.

5 Q. Did you have any idea when you went in the trailer
6 what you were going to find?

7 A. No, ma'am, we had no idea.

8 Q. Is it fair to say your adrenaline would have been
9 going?

10 A. Well absolutely.

11 Q. And after Mr. Berard was handcuffed in the trailer
12 where was he taken at that point?

13 A. Deputy Gwinn escorted the subject to the point where I
14 was at I secured my weapon in the holster and then me and
15 Deputy Gwinn escorted the subject out of the back door of
16 the residence and took him to Deputy Gwinn's patrol car.

17 Q. Okay. Did you ever read Mr. Berard his Maranda
18 rights?

19 A. I did not.

20 Q. Did you ever hear anyone else read Mr. Berard his
21 Maranda rights?

22 A. I don't recall.

23 Q. Did you see any signs of injuries on Mr. Berard?

24 A. He did have a laceration and bleeding coming from his
25 ankle area on his leg.

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1 Q. Did you see any other signs of injury on him?

2 A. No, ma'am, not to my knowledge.

3 Q. Did you notice whether or not he was wearing an ankle
4 bracelet at that time?

5 A. I don't recall that either.

6 Q. And after removing Mr. Berard from Whitney Woods Lane
7 did you ever go back into that residence?

8 A. I did not no, ma'am.

9 Q. Thank you. Please answer any questions the Defense
10 Attorney may have for you.

11 A. Yes, ma'am.

12 CROSS EXAMINATION

13 JONATHAN OSBORNE BY MR. LEMEL:

14 Q. Good afternoon, Deputy Osborne.

15 A. How you doing, sir.

16 Q. You are one of the patrol officers for the sheriff's
17 office now?

18 A. Yes, sir.

19 Q. Previously worked basically in the same capacity for
20 the City of York before you transferred over to the
21 sheriff's office?

22 A. That's correct yes, sir.

23 Q. And as a patrol officer you are out there driving one
24 of the big Crown Vic's?

25 A. Yes, sir.

1 Q. Similar to the sort of car you drove in York?

2 A. Yes, sir, fully marked with the lights on top.

3 Q. Basically out there showing the flags?

4 A. Yes, sir.

5 Q. And any time you have an incident that involves any
6 sort of significant investigation they will call in units
7 of the patrol division to assist with that investigation;
8 correct?

9 A. Yes, sir.

10 Q. That's basically how you got involved in this
11 particular case?

12 A. Yes, sir, that's correct.

13 Q. You actually never went to the scene of Zinker?

14 A. No, sir, I never did.

15 Q. So you can't give us any information about what
16 happened over there?

17 A. No, sir, I cannot.

18 Q. Okay. But basically you were put on alert to look for
19 the yellow moped basically; right?

20 A. Yes, sir.

21 Q. That's when you say or what we refer to a BOLO or Be
22 On the Lookout For?

23 A. They just basically gave it out over the radio the
24 sergeant that was on the scene they are gave it out and
25 told us to be on the look out for that vehicle and that

1 suspect.

2 Q. So you refer to that as the BOLO sometimes?

3 A. Sometimes yes, sir.

4 Q. All right. And after you had begun this process
5 somebody came over the radio and told you to go to Parker
6 Street?

7 A. Yes, sir, that's correct.

8 Q. Some information came in from somewhere that said we
9 needed a sheriff's office or a sheriff's officer over there
10 at Parker Street?

11 A. Yes, sir.

12 Q. And you went immediately to that and that's where you
13 went?

14 A. Yes, sir, I did.

15 Q. And that's when you first met Mr. Lane?

16 A. Yes, sir.

17 Q. And you were in fact the deputy that provided him the
18 statement paperwork?

19 A. That's correct.

20 Q. And you have a process when you provide somebody
21 paperwork of going over that with them?

22 A. Basically I just give them the form and advise them to
23 give a statement as clear as possible anything that they
24 can recall. Be as detailed as they possibly can when they
25 write that statement.

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1 Q. And did Mr. Lane at that point in time appear to want
2 to assist you?

3 A. He said he had no problem giving a statement.

4 Q. And you told him to make that as clear and complete as
5 possible?

6 A. Yes, sir, I did.

7 Q. And it appeared that he was trying to do that at that
8 time?

9 A. Yes, sir. I actually gave him the forms and he went
10 into his residence and sat down and wrote the statement.

11 Q. Did you yourself take any pictures of that?

12 A. No, sir, I did not.

13 Q. Okay. So following that you then sort of -- there is
14 sort of a net basically being thrown out over the county
15 for standard practice; right?

16 A. Yes, sir.

17 Q. You were told to go over to just anywhere that he
18 might be including his area of employment?

19 A. Yes, sir.

20 Q. Basically it's standard practice when you are looking
21 for someone you try to identify places that it's likely
22 that he may go to?

23 A. That's correct.

24 Q. And a lot of times people go back to the places where
25 they are familiar with?

1 A. Yes, sir, absolutely.

2 Q. As opposed to wondering around the places they can
3 thus sort of fall back on the places that they know well?

4 A. Normally yes, sir.

5 Q. So again it's not unusual that you would be asked to
6 go look in the area of his employment?

7 A. No, none whatsoever.

8 Q. Eventually again another communication comes over and
9 says we need you to go over to Whitney Woods?

10 A. That's correct.

11 Q. And you are there to assist Deputy Gwinn and probation
12 and parole officers who are already on the scene when you
13 arrive?

14 A. Yes, sir, that's correct.

15 Q. And basically following their lead you made an entry
16 to the mobile home?

17 A. That's correct.

18 Q. Now as I understand your testimony you were the second
19 agent in. You came in on the right end of the mobile home?

20 A. The mobile home faces Highway 5 and if you are looking
21 at the mobile home facing Highway 5 the front door would be
22 on the far left hand side on the front of the mobile home.
23 The rear door is on the far right hand portion of the
24 mobile home. If you were coming from the back side facing
25 Highway 5.

1 Q. And this is a standard mobile home, it's rectangular,
2 and that certain sides are longer and certain sides are
3 thinner?

4 A. Yes, sir.

5 Q. Okay. A thin box basically?

6 A. Pretty much yes, sir.

7 Q. And the long side of the trailer how is that in
8 relationship to the road? I want to make sure that we're
9 all talking about the front and the back in the same way.

10 A. If you were to come through the front door of the
11 mobile home that would have been like the living room area
12 and you would have made a left and started coming down
13 toward the kitchen area and back toward the hallway where
14 we were.

15 Q. Is that door in the long side or the short side of the
16 home?

17 A. The front door?

18 Q. Yes.

19 A. It's on the far -- if you are facing Highway 5 it
20 would be the far left side of the mobile home down on the
21 left hand side. We were on the back.

22 Q. I understand. I want to make sure you understand my
23 question. Is it on the long side or the short side of the
24 door?

25 A. It's on the end. The front door is on one end the

1 other door is on the other end.

2 Q. On the long side or the short side? Do you understand
3 my question? Of the rectangle.

4 A. No, sir, I do not understand your question.

5 Q. Okay.

6 A. If you got a piece of paper I would be more than happy
7 to draw it for you.

8 Q. That would be great. Why don't we just do that. Do
9 you have a pen or do you want to borrow mine?

10 (WITNESS DRAWING DIAGRAM.)

11 A. This is Highway 5.

12 Q. Okay.

13 A. This is the door we made entry on - - -

14 Q. Okay.

15 A. - - - from the back. This is the actual front door
16 which would have been down here on this end. This room
17 right here would be where Mr. Berard was actually located.

18 Q. Okay.

19 A. Yes, sir.

20 Q. So now you've cleared it up for me just let me try to
21 clear it up for the jury.

22 A. Okay.

23 Q. The door itself if this building is sort of a
24 rectangle similar to this piece of paper; right? The door
25 itself is located on the long portion of the rectangle as

1 opposed to the short portion of the rectangle.

2 A. That's correct.

3 Q. The front door would be on one side down towards one
4 end?

5 A. Yes, sir.

6 Q. Back door would be on the other side towards the other
7 end?

8 A. That's correct.

9 Q. Again on the long side?

10 A. Yes, sir.

11 Q. Do you understand what I mean by the long and short
12 side now?

13 A. Yes, sir.

14 Q. Okay.

15 A. Got that clear.

16 Q. Longer on this side. So you entered into the back
17 side?

18 A. Yes, sir.

19 Q. Okay. Through the back door. We'll call it the back
20 door.

21 A. Yes, sir.

22 Q. And then found him on the same side of the building
23 all the way on the far end?

24 A. No. We found him on the same side that we come in
25 from.

1 Q. The bedroom that was closest?

2 A. To that door yes, sir.

3 Q. All right. And it's your testimony that after you saw
4 him in the bed you repeatedly requested to see his hands
5 and he was not compliant with that?

6 A. That's correct.

7 Q. Do you remember the probation parole agent actually
8 handcuffing him?

9 A. I do not recall which one of the officers handcuffed
10 him. I don't know if it was Deputy Gwinn or the probation
11 agent.

12 Q. Okay. But let me ask you this. At any point in time
13 in this whole process did you ever make an incident report
14 or anything like that in this case?

15 A. No, sir, I did not. I was not the investigating
16 officer. The first officer on the scene would have done
17 that.

18 Q. You did not commit anything that you did yourself?

19 A. It was all given to the sergeant and he documents
20 everything.

21 Q. My question to you is - -

22 A. I did not no, sir.

23 Q. And for the court reporter's sake let me finish my
24 question before you try to answer.

25 A. Okay.

1 Q. You yourself did not take any notes or commit any
2 documents of what you did?

3 A. No, sir.

4 Q. So you are testifying today eighteen months later
5 completely off your memory?

6 A. That's correct.

7 Q. But your memory is this is a very brief encounter one
8 to two minutes from the time you made entry until the
9 encounter was complete?

10 A. That's correct.

11 Q. And at that point in time you said that you repeatedly
12 ask for him to show his hands and he did not?

13 A. Yes, sir.

14 Q. To the best of your memory?

15 A. That's correct.

16 Q. Okay. And it was actually your testimony that Deputy
17 Gwinn had to snatch the covers off as opposed to him
18 pulling back the covers?

19 A. Yes, sir.

20 Q. And you didn't take any notes on that. That's just
21 from your memory?

22 A. That's correct yes, sir.

23 Q. Once he's in handcuffs Mr. Berard doesn't fight you
24 guys?

25 A. Oh no.

- 1 Q. Doesn't make any threatening gestures?
- 2 A. No, sir.
- 3 Q. Doesn't do anything to oppose you?
- 4 A. No, sir.
- 5 Q. He's cooperative when you are walking him out?
- 6 A. That's correct.
- 7 Q. As opposed to cursing, screaming, acting crazy?
- 8 A. No, sir.
- 9 Q. Did you notice any odors at all around him of any
- 10 sort?
- 11 A. I did not no, sir.
- 12 Q. Were you looking for anything like that?
- 13 A. No, sir, not really.
- 14 Q. Would you have made a note of it if you smelled
- 15 something?
- 16 A. I wouldn't have made a note of it because again I
- 17 didn't have to make any notes for this case.
- 18 Q. And you took him and placed him in the back of Deputy
- 19 Gwinn's car?
- 20 A. Deputy Gwinn and me escorted him to Deputy Gwinn's car
- 21 that's right.
- 22 Q. And pretty much at that point in time you were done
- 23 with this case?
- 24 A. Yes, sir, after he was placed in the vehicle I was
- 25 complete. As a matter of fact I cleared up and began

JOHN OSBORNE: CROSS EXAMINATION BY MR. LEMEL
KAVIN GWINN: DIRECT EXAMINATION BY AMY SIKORA

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1 taking calls in the county again.

2 Q. Didn't really do anything else?

3 A. No, sir.

4 Q. Okay. No further questions, Your Honor.

5 SOLICITOR SIKORA: Nothing from the State at this
6 time.

7 THE COURT: You can step down, sir.

8 MR. OSBORNE: Thank you.

9 SOLICITOR SIKORA: The State calls Kavin Gwinn to the
10 stand.

11 (WHEREUPON: KAVIN GWINN,
12 BEING FIRST CALLED, WAS DULY SWORN AND TESTIFIED AS
13 FOLLOWS:)

14 DIRECT EXAMINATION

15 KAVIN GWINN BY SOLICITOR SIKORA:

16 Q. Would you please state your full name for the record
17 and could you please spell your last name for the court
18 reporter.

19 A. Kavin Gwinn. Last name is spelled G-w-i-n-n.

20 Q. Okay. And where do you work?

21 A. York County Sheriff's Office

22 Q. And what is your position with the sheriff's office?

23 A. Patrol deputy.

24 Q. And how long have you worked for the sheriff's office?

25 A. Over five years.

1 Q. Do you have any prior law enforcement experience?

2 A. No, ma'am.

3 Q. Were you working on the night of June 7th, 2008?

4 A. Yes, ma'am.

5 Q. And on that night were you dispatched to [REDACTED]

6 [REDACTED]?

7 A. Yes, ma'am.

8 Q. Do you remember about what time that was?

9 A. No, ma'am, I don't recall.

10 Q. Were there any other officers from the sheriff's
11 office on scene when you got there?

12 A. No, ma'am.

13 Q. Was there anyone on scene when you got there?

14 A. There was a probation and parole agent.

15 Q. When you arrived on scene at Whitney Woods Lane was
16 there any indication that there was somebody home?

17 A. No.

18 Q. Were the lights on in that residence?

19 A. No.

20 Q. Did you attempt to make contact with anyone that could
21 have been inside that residence?

22 A. Myself and an agent from Probation and Parole were
23 knocking on the door.

24 Q. And about how long did you knock on the door?

25 A. I don't recall.

1 Q. Did anyone answer the door?

2 A. No, ma'am.

3 Q. Did you hear any sounds coming from inside the door or
4 while you were at the door?

5 A. No, ma'am.

6 Q. At some point did you or someone else on the scene
7 obtain consent to go inside the Whitney Woods Lane address?

8 A. Yes, ma'am.

9 Q. And did you go in?

10 A. Yes, ma'am.

11 Q. And did you go in alone or did anyone else go with
12 you?

13 A. Myself and another deputy and a probation and parole
14 agent.

15 Q. Do you remember what the other deputy's name was?

16 A. Yes, ma'am, Deputy Osborne.

17 Q. Okay. Were the lights still off in the trailer at
18 this point?

19 A. Yes, ma'am.

20 Q. Who went in first?

21 A. I did.

22 Q. Do you remember who was behind you when you went in?

23 A. I don't recall.

24 Q. Did you have a weapon with you that night?

25 A. Yes, ma'am.

1 Q. Was your weapon drawn when you went inside the mobile
2 home?

3 A. Yes, ma'am.

4 Q. How were you able to see at that point with the lights
5 being off inside Whitney Woods Lane?

6 A. I had a flashlight.

7 Q. And where is the first place you go once you get
8 inside?

9 A. As soon as you go in the hallway is to your left and
10 to the right there is a bedroom. As soon as I walked up
11 the stairs into the residence I could see somebody in the
12 bed so I went to the right.

13 Q. Now there's been a lot of talk about the doors to this
14 mobile home. Did you go in the front door or the rear
15 door? Do you remember?

16 A. The rear.

17 Q. And about how far is this bed that you saw someone in
18 from that door that you went in?

19 A. I'm not sure but it was not far.

20 Q. Okay. When you say not far is it more than ten feet
21 less than ten feet?

22 A. Probably -- from the actual bed to the door?

23 Q. Yes.

24 A. Probably about ten feet.

25 Q. And what was the person in the bed doing?

- 1 A. He had covers over him?
- 2 Q. And what did you do or say at that point?
- 3 A. I told him to show me his hands.
- 4 Q. Did you ask him to do that more than once?
- 5 A. Yes, ma'am.
- 6 Q. Do you remember how many times you asked him to do
- 7 that?
- 8 A. No, ma'am, but I know I said it more than once.
- 9 Q. Did you hear anybody else ask the person in the bed to
- 10 show you all his hands?
- 11 A. Yes, ma'am, myself and Deputy Osborne.
- 12 Q. Okay. And did that person ultimately show you his
- 13 hands?
- 14 A. No, ma'am.
- 15 Q. So what did you do at that point?
- 16 A. I pulled the covers off of him.
- 17 Q. And then what did you do?
- 18 A. Then myself and I believe the probation agent detained
- 19 the subject at that time.
- 20 Q. Okay. Was he struggling with you at this point?
- 21 A. No, ma'am.
- 22 Q. Was he put in handcuffs at this point?
- 23 A. Yes, ma'am.
- 24 Q. And at this point where did you take him next?
- 25 A. I took him to my patrol car.

1 Q. And where was your patrol car placed in relation to
2 the mobile home at Whitney Woods Lane?

3 A. There is two entrances. My patrol car is near the
4 entrance if you were looking at Whitney Woods its close at
5 a church from Highway 5. You go up the hill and my patrol
6 car was parked going up the hill.

7 Q. So about how far was your patrol car from the actual
8 mobile home at [REDACTED]

9 A. Not far.

10 Q. Okay. And did you advise Mr. Berard of his Maranda
11 rights?

12 A. When I got up to my car yes, ma'am, I did.

13 Q. Do you recall did you recite them from memory or do
14 you have a card that you read from?

15 A. A card.

16 Q. Do you have that card with you today?

17 A. Yes, ma'am.

18 Q. Is that the same thing you would have read to Adam
19 Berard on the night of June 7th and June 8th of 2008?

20 A. Yes, ma'am.

21 Q. Would you please take that card out?

22 A. Yes, ma'am. Actually I keep like -- I pack four in my
23 pocket.

24 Q. You have four?

25 A. Yes.

1 Q. How about you pick one and tell us what it says. But
2 they all say the same thing; correct?

3 A. Yes, ma'am.

4 Q. Okay go ahead and pick one and tell me what it says.

5 A. In the dark when you reach you got to -- I got to pull
6 one out to make sure I have one.

7 "You have the right to remain silent anything you
8 say can and will be used against you in a court of
9 law. YOu have the right to talk to a lawyer nad have
10 them present while you are being questioned. If you
11 cannot afford to hire a lawyer one will be appointed
12 to represent you before any questions if you wish.
13 You can decide at any time to exercise these rights
14 and not answer any questions or make any statements."

15 Q. Did Mr. Berard give you any indication that he
16 understood those rights?

17 A. Yes, ma'am.

18 Q. Did you notice any odors about Mr. Berard's person?

19 A. I don't recall.

20 Q. Did you notice any injures to Mr. Berard?

21 A. Yes, ma'am.

22 Q. And could you describe those please?

23 A. He had a laceration on his leg.

24 Q. Do you remember where on his leg?

25 A. Near his ankle.

- 1 Q. I'm sorry.
- 2 A. Near his ankle.
- 3 Q. Near his ankle? Was that laceration bleeding?
- 4 A. Yes, ma'am.
- 5 Q. Did you see any other signs of injury to Mr. Berard?
- 6 A. No, ma'am.
- 7 Q. Did you notice that evening if he was wearing an ankle
- 8 bracelet?
- 9 A. No, ma'am, he wasn't.
- 10 Q. Now after you read Mr. Berard his Maranda rights at
- 11 some point was EMS called to the scene?
- 12 A. Yes, ma'am.
- 13 Q. And why was that?
- 14 A. Because of his injury.
- 15 Q. And was he taken out of your patrol car when EMS got
- 16 there?
- 17 A. Yes, ma'am.
- 18 Q. And was EMS able to treat him right there on the
- 19 scene?
- 20 A. No, ma'am, they didn't treat him they just patched his
- 21 leg up so I could transport him to the hospital.
- 22 Q. And did you in fact transport Adam Berard to Piedmont
- 23 Medical Center?
- 24 A. Yes, ma'am.
- 25 Q. Did you go directly from Whitney Woods Lane to

KAVIN GWINN: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 Piedmont Medical Center?

2 A. Yes, ma'am.

3 Q. So he did not ride in the ambulance?

4 A. No, ma'am.

5 Q. Did you stay with him the entire time he was at

6 Piedmont Medical Center?

7 A. Yes, ma'am.

8 Q. Was he released from the hospital at some point that
9 night?

10 A. Yes, ma'am.

11 Q. And where did you take him after he was released from
12 Piedmont Medical Center?

13 A. Back to the Moss Justice Center to the detention
14 center.

15 Q. At the other end of this building where we are right
16 now?

17 A. Yes, ma'am.

18 Q. And when you brought him to the detention center here
19 at Moss Justice did you take anything that was in his
20 possession?

21 A. Yes, ma'am, I took his clothing.

22 Q. Is that standard procedure?

23 A. In a case like this yes, ma'am.

24 Q. And after you took Mr. Berard's clothing that evening
25 what did you do with it?

- 1 A. I took it to Zinker Road to forensics.
- 2 Q. I'm sorry. You kind of trailed off.
- 3 A. I took them to Zinker Road to the forensic guy.
- 4 Q. You took the clothing or Mr. Berard?
- 5 A. You say what did I do with Mr. Berard? Repeat your
6 question for me.
- 7 Q. Okay. Did you take the clothing to Zinker Road or did
8 you take Mr. Berard out to Zinker Road?
- 9 A. I took the clothing to Zinker Road.
- 10 Q. Okay. And you said you gave it to a forensic guy?
- 11 A. Yes, ma'am.
- 12 Q. Do you remember what the forensic guy's name was?
- 13 A. Lieutenant Tolson.
- 14 Q. I am handing you what's been marked for identification
15 purposes as State's Exhibit Number Twenty-Seven. And I am
16 also handing you a rubber glove. If you could place that
17 bag right down beside you State's Exhibit Number Twenty-
18 Seven and put on the glove. And if you can look into that
19 bag and tell me what it is that you see?
- 20 A. I see a bloody pair of blue jeans. A bloody pair of
21 socks. And it looks like a t-shirt and some underwear.
- 22 Q. Okay. And do you recognize those items inside State's
23 Exhibit Number Twenty-Seven?
- 24 A. Yes, ma'am.
- 25 Q. And where did those come from?

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CROSS EXAMINATION BY MR. CUMMINGS

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1 A. Mr. Berard.

2 Q. Are those the clothes you testified to earlier that
3 you removed from him at the detention center?

4 A. Yes, ma'am.

5 Q. Are those the same clothes that you delivered to
6 Lieutenant Tolson at Zinker Road later that evening?

7 A. Yes, ma'am.

8 Q. Did you alter or tamper with those clothes in any way
9 between the time you collected them from the defendant to
10 the time they were delivered to Lieutenant Tolson?

11 A. No, ma'am.

12 Q. Thank you. Please answer any questions Defense
13 Counsel has.

14 CROSS EXAMINATION

15 KAVIN GWINN BY JOHN CUMMINGS:

16 Q. Good afternoon, Deputy Gwinn.

17 A. Good afternoon.

18 Q. So you are on the patrol division; correct?

19 A. Yes, sir.

20 Q. Essentially patrol division basically who goes out and
21 responds to calls; emergency calls stuff like that and
22 assist other agencies and that kind of thing, is that
23 correct?

24 A. Yes, sir.

25 Q. And on the night in question essentially it didn't

1 sound like that. There's a lot of moving parts. You've
2 got like the initial officers doing his job; you've got the
3 investigators get rolling and then you got those like you
4 who are going out and assisting those two in completing
5 this investigation; is that correct?

6 A. Yes, sir.

7 Q. Essentially that evening you are going out to find Mr.
8 Berard that was your little piece of the puzzle?

9 A. No, sir, not actually.

10 Q. Okay.

11 A. The call came out that probation and parole was
12 probably out with a subject and I was in the area.

13 Q. So you were essentially going out to assist another
14 agency at that point?

15 A. Yes.

16 Q. So you arrive at Whitney Woods you get out to assist
17 Probation and Parole. We've kind of already covered that
18 but you essentially go into the residence and start
19 clearing it; correct?

20 A. Yes.

21 Q. You start clearing the residence basically just to
22 make sure it's clear. You are looking for a possible
23 subject; correct?

24 A. Yes, sir.

25 Q. And as you enter the residence you see something in

1 one of the rooms. You see an individual or at least
2 something under some covers; correct?

3 A. Yes, sir.

4 Q. Okay. And then at that point you realize it's an
5 individual; correct?

6 A. Yes, sir.

7 Q. And then you started giving verbal commands; correct?

8 A. Yes, sir.

9 Q. And following this verbal command that's when you
10 snatch the covers off the individual; correct?

11 A. When he didn't comply that's when I snatched the
12 covers back.

13 Q. So after that were you still just giving verbal
14 commands at that point?

15 A. Yes.

16 Q. And then handcuffs are placed on him too and he's
17 later identified as Mr. Berard; correct?

18 A. Yes.

19 Q. Okay. And following that you took Mr. Berard out to
20 your patrol vehicle read him his Maranda rights; correct?

21 A. Yes.

22 Q. And did you do a search of his person at that point?

23 A. Searched him, pat down before I placed him in my
24 patrol car.

25 Q. Okay. So he's in the vehicle. You notify EMS;

1 correct?

2 A. Yes, sir.

3 Q. And you don't interrogate him; correct?

4 A. No, sir.

5 Q. Okay. Following that you basically just transport him

6 over to the detention center; correct?

7 A. To Piedmont.

8 Q. Oh to Piedmont. I'm sorry. So you take him to

9 Piedmont correct and basically get him checked out?

10 A. Yes.

11 Q. To make sure his injuries are taken of; correct?

12 A. Yes, sir.

13 Q. Following that you go to the detention center;

14 correct?

15 A. Yes, sir.

16 Q. Okay. And at that point you take his clothes;

17 correct?

18 A. Yes.

19 Q. Okay. And then following that you take the clothes

20 over to Lieutenant Tolson on Zinker Road; correct?

21 A. Yes, sir.

22 Q. Okay. Did you do any paperwork covering that - - -

23 A. Yes, sir.

24 Q. - - - transaction?

25 A. I filled out the evidence form and filled it out what

1 it was and then I signed it and when I transferred it from
2 myself to Lieutenant Tolson he signed it.

3 Q. And that's basically just like a record keeping for
4 the evidence?

5 A. Yes.

6 Q. To verify that you did in fact take it?

7 A. Correct.

8 Q. And in addition to that piece of paperwork did you do
9 any form of supplemental report or anything like that?

10 A. No, sir.

11 Q. Essentially most of that paperwork falls onto the
12 initial responding officer; correct?

13 A. Yes, sir.

14 Q. So they get the bulk of the paperwork on that?

15 A. Yes, sir.

16 Q. Okay. And other than taking those clothes over to
17 Lieutenant Tolson that was the end of your involvement in
18 this case; correct?

19 A. Yes, sir.

20 Q. Okay. I beg the Court's indulgence. Nothing further,
21 Your Honor.

22 SOLICITOR SIKORA: Nothing further from the State.

23 THE COURT: You can step down, sir.

24 SOLICITOR LIPINSKI: State calls Doctor Mike
25 Sundararama.

DOCTOR MICHAEL SUNDARARAMA: DIRECT EXAMINATION
BY SOLICITOR LIPINSKI

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1 MADAME CLERK: Please raise your right hand and place
2 your left hand on the bible.

3 (WHEREUPON: MICHAEL
4 SUNDARARAMA, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
5 AS FOLLOWS:)

6 MADAME CLERK: Thank you. You may have a seat.

7 DIRECT EXAMINATION

8 DOCTOR MICHAEL SUNDARARAMA BY SOLICITOR LIPINSKI:

9 Q. Doctor Sundarama, am I pronouncing that correctly?

10 A. You are.

11 Q. Could you please state your name and spell your last
12 name for the court reporter.

13 A. Sure. Michael Sundararama. And that's S-u-n-d-a-r-a-
14 r-a-m-a.

15 Q. And with whom are you currently employed?

16 A. Piedmont Medical Center through a physicians group
17 called Apollo M.D..

18 Q. And what are your duties and responsibilities at
19 Piedmont Medical Center?

20 A. I am an ER physician so I evaluate and treat patients.
21 Anyone who comes into the emergency room.

22 Q. How long have you been so employed?

23 A. Three years.

24 Q. And where did you go to medical school?

25 A. University of Sydney, Australia.

DOCTOR MICHAEL SUNDARARAMA: DIRECT EXAMINATION
BY SOLICITOR LIPINSKI

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1 Q. And are -- you have a license to practice medicine in
2 the United States?

3 A. I do.

4 Q. In the State of South Carolina?

5 A. I do.

6 Q. Are you board certified in any area?

7 A. American Board of Emergency Medicine.

8 Q. And for the most part did you do an internship or
9 residency here?

10 A. I did at Henry Ford Hospital in Detroit, Michigan.

11 Q. And you came here?

12 A. I worked at Concord for a few months and then I
13 switched to the Rock Hill Piedmont Medical Center.

14 Q. And was that through that physician practice group
15 that you are in?

16 A. A different group actually.

17 Q. Different group. So you would have changed groups?

18 A. Yes.

19 Q. Your Honor, at this time we offer Doctor Sundararama
20 as an expert in emergency medicine.

21 MR. LEMEL: Without objection, Your Honor.

22 THE COURT: All right. You can go ahead.

23 SOLICITOR LIPINSKI: Thank you.

24 You have some paperwork in front of you obviously?

25 A. I do.

1 Q. You treat a number of patients coming in and out of
2 the emergency room?

3 A. Uh-huh.

4 Q. You need to actually answer yes or no just so the
5 court reporter and I understand it.

6 A. Yes.

7 Q. Is this the first time you've been called to testify?

8 A. This is.

9 Q. Did you -- in the paperwork you have in front of you
10 is that a copy of the patients charts?

11 A. Correct.

12 Q. And are those records and documents something you
13 would normally rely upon in treating the patient or in
14 refreshing your recollection as to what occurred and how
15 you treated them?

16 A. Absolutely.

17 Q. Let's start first with Mr. Adam Berard. Did you have
18 the occasion to treat him on the night in question?

19 A. I did.

20 Q. And what was Mr. Adam Berard's chief complaint?

21 A. Laceration to right lower leg.

22 Q. And when we say laceration do we mean cut?

23 A. Exactly.

24 Q. But you don't know how he cut it?

25 A. Correct.

DOCTOR MICHAEL SUNDARARAMA: DIRECT EXAMINATION
BY SOLICITOR LIPINSKI

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- 1 Q. With what instrument or to that?
- 2 A. Correct.
- 3 Q. Did he indicate to you at all how he had cut his leg?
- 4 A. He did not. He basically did not give us any history.
- 5 He was very quite.
- 6 Q. Very quite?
- 7 A. Yes.
- 8 Q. The laceration to his leg do you know approximately
- 9 how long it was?
- 10 A. It was four centimeters.
- 11 Q. For those of us who don't like the metric system in
- 12 inches?
- 13 A. 2.5 inches.
- 14 Q. Per inch?
- 15 A. Per inch. So that would be I guess an inch and three
- 16 quarters.
- 17 Q. So roughly a couple of inches long?
- 18 A. Yes.
- 19 Q. Was it deep in any way?
- 20 A. It was very superficial.
- 21 Q. Very superficial. Would it have bleed?
- 22 A. Yes.
- 23 Q. Would it have bleed a lot?
- 24 A. No.
- 25 Q. But clearly would have left blood at some point?

1 A. Yes.

2 Q. And what did you do in order to treat that laceration?

3 A. We closed it with six staples.

4 Q. Staples?

5 A. Yes.

6 Q. And why did you use staples versus sutures or that
7 kind of nature?

8 A. Well sutures versus staples have the same closing
9 power. On an extremity arm or leg they are just as good as
10 sutures. And on the face obviously for cosmetic reasons
11 you wouldn't want a bunch of staples in your face and
12 that's why we use sutures. If we can get away with it we
13 actually use tissue glue called dermabond. They have to be
14 a certain criteria which this did not meet.

15 Q. So you were forced to use six staples?

16 A. Correct.

17 Q. Did he have any other complaints or any other injuries
18 on or about his person?

19 A. He did not complain of anything.

20 Q. Did you notice any other injuries other than the
21 laceration to his leg?

22 A. We do a head to toe examination and I found no other
23 injuries.

24 Q. So no bruises or other cuts that he might have
25 incurred on the night in question?

DOCTOR MICHAEL SUNDARARAMA: DIRECT EXAMINATION
BY SOLICITOR LIPINSKI

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1 A. No.

2 Q. So you sutured him up and discharged him?

3 A. Correct.

4 Q. Let's turn to Loretta Moss's charts. Did you
5 similarly have the occasion to treat her on the night in
6 question?

7 A. I did.

8 Q. And how did she arrive at the emergency room?

9 A. Via EMS

10 Q. And do you see her close in proximity to her arrival
11 or sometime later?

12 A. Probably within thirty seconds of her arrival.

13 Q. And why did you see her so quickly?

14 A. Because her acute level was very high as in she was a
15 very ill patient.

16 Q. And when you say acute level do you assigned a score a
17 to certain patients depending on the severity of their
18 injuries?

19 A. Yes.

20 Q. Is that what you mean?

21 A. Yeah and she would be the highest.

22 Q. She was the highest?

23 A. Yeah.

24 Q. Which meant in layman terms what about her immediate
25 prognosis?

1 A. That she had potentially life threatening injuries.

2 Q. And when you see her what is her general condition?

3 A. Basically she has altered mental status.

4 Q. Let me stop there. What is that? What is altered
5 mental status?

6 A. That means that she's confused and not necessarily
7 able to say where exactly she is at. What the exact date
8 is; those sort's of things.

9 Q. And in terms of her injuries working from head to toe
10 did she have any injuries to her head?

11 A. She appeared to have a lot of tenderness to areas in
12 her head. Whether it was the front or the back I'm not
13 sure at this time but she was complaining of headache as
14 well.

15 Q. And turning to Page Two of your chart I believe at the
16 top where it says Page Two of Nineteen what exactly were
17 the injuries to her extremities?

18 A. Basically she had large contusions to her left -- her
19 left shoulder, her right shoulder, her right chest wall.

20 Q. Let's stop. For those of us who didn't go to medical
21 school a contusion would be?

22 A. Basically a bruise.

23 Q. So she's got bruising to her right shoulder blade; her
24 back left shoulder blade, where else?

25 A. Her right chest walls here

1 (WITNESS INDICATED RIGHT CHEST.)

2 Q. All right. Did she have any lacerations?

3 A. Yes. She had many actually. She had a very large 4
4 by 4 centimeters I guess; 1.75 by 1.75 inch laceration to
5 her right forearm that was very deep. She had a just under
6 one inch laceration to her right index finger basically on
7 her palm. She had a two centimeter or so just under one
8 inch laceration to her right forearm. And she had small
9 abrasions as in basically scuff marks noted to her legs and
10 her knees on both sides.

11 Q. And in order to determine what was causing the injury
12 to her head or what was impacting her in terms of that
13 tenderness did you order a CT scan?

14 A. I did.

15 Q. And are the results of that discussed on Page Nine of
16 Nineteen of your report?

17 A. Yes.

18 Q. And what did you learn from the CT scan about the
19 nature of Ms. Moss's injuries?

20 A. She had a subarachnoid hemorrhage which was presumed
21 to be traumatic.

22 Q. Let's stop there and for those of us who didn't go to
23 medical school what is a subarachnoid hemorrhage?

24 A. That's basically bleeding inside the brain.

25 Q. And what is that doing to Ms. Moss's physical status

1 at the time? How is the bleeding in the brain affecting
2 her?

3 A. So after you have a very significant and life
4 threatening head injury such as this you often do become
5 confused and altered. Often have nausea and vomiting and
6 headache of which she had all of those and she had vomited
7 still vomit around her mouth; was complaining of a
8 headache. And these injuries can be so severe that they
9 can push the brain down toward the spinal cord and actually
10 kill you very quickly. In addition to that they can cause
11 seizures.

12 Q. Did it say where the bleeding in her brain was or
13 where the subarachnoid hemorrhage was?

14 A. Yes. It's said that there was blood in the
15 facilersyster and intraventricular blood in the forth
16 ventricle and in the third ventricle.

17 Q. And explain that

18 A. Basically there are fairly large fluid channels in the
19 brain that collect cerebral spinal fluid and that's just a
20 normal working fluid and actually the cushion for your
21 brain. But when there is severe trauma you can actually
22 damage blood vessels that run to these and then you can
23 have bleeding inside those channels.

24 Q. When you stated that this was a traumatic subarachnoid
25 hemorrhage can you differentiate that from a non traumatic

DOCTOR MICHAEL SUNDARARAMA: DIRECT EXAMINATION
BY SOLICITOR LIPINSKI

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1 subarachnoid hemorrhage?

2 A. Usually with a nontraumatic it will occur just
3 settling and spontaneously and the patient will have a
4 sudden headache because there is actually an aneurysm
5 that's ruptured. An aneurism is just a blood vessel that's
6 become very thinned wall and dilated so it's enlarged and
7 when your blood pressure goes way high often then it can
8 rupture and you can have bleeding. But the traumatic kind
9 is obviously if the setting of trauma which was very
10 consistent with her appearance.

11 Q. So what could have caused the injury to Ms. Moss?

12 A. Probably a blunt force injury to her head and I think
13 it was the posterior head if I remember which I can't be
14 one hundred percent sure based on my notes at this time.

15 Q. Would a simple fall have caused the causes?

16 A. I can't say that that's not possible but it could have
17 also been you know a bludgeoning device as well. I can't
18 say. I was not -- I am not a forensic pathologist.

19 Q. But in your training and in terms then of what you
20 know to be one of the possible causes is some type of blunt
21 force trauma or blow to the head?

22 A. Yes.

23 Q. Now as a result of this subarachnoid hemorrhage did
24 Ms. Moss remain at Piedmont Medical Center?

25 A. She actually was so acute and with life threatening

1 trauma that she needed to be transferred to CMC Main which
2 is the hospital in downtown Charlotte.

3 Q. And why was she not able to just receive further care
4 there at PMC or Piedmont Medical Center?

5 A. In the case of multi trauma particularly in the case
6 of severe brain injury neurosurgery is not what we call in
7 house. They are not there like I am whereas they are
8 present at CMC in the main hospital. And so if she needs
9 to go to the operating room or needs any procedure done by
10 the neurosurgeons they would be right on hand to do it.

11 Q. So they just provide a higher level of care that is
12 readily available at Piedmont Medical Center?

13 A. Absolutely.

14 Q. So was she air lifted there?

15 A. I believe she was.

16 Q. And did you do anything to stabilize her other
17 injuries in terms of the lacerations or contusions to her
18 prior to her moving forward? And if I could turn your
19 attention to Page 12 of 19 of her chart.

20 A. Yes we did close a laceration to her arms with staples
21 and sutures. And we did give her a tetanus shot and we did
22 give her medication to help to try to prevent her from
23 seizing secondary to the traumatic brain injury.

24 Q. I believe you also did some x rays of Ms. Moss. Did
25 they reveal if she had any fractures of any kind?

DOCTOR MICHAEL SUNDARARAMA: DIRECT EXAMINATION
BY SOLICITOR LIPINSKI
CROSS BY MR. LEMEL

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1 A. No.

2 Q. And you are not part of her follow up care in any way
3 in terms of what kind of care she may receive there in CMC?

4 A. That is correct.

5 Q. You would perhaps brief the doctors there and told
6 them your findings in providing your charts that would be
7 the extent of your corporation?

8 A. Correct. We have a special phone that we pick up and
9 talk to them.

10 Q. So you let them know she is coming?

11 A. Yea both the neurosurgeons and the ER physicians at
12 CMC Medical.

13 Q. And are you able to state in your medical training had
14 Ms. Moss not received any immediate medical care what would
15 have been her prognosis?

16 A. With ninety-nine percent certainty she would have
17 died.

18 Q. I have nothing further from Doctor Sundararama.

19 CROSS EXAMINATION

20 DOCTOR MICHAEL SUNDARARAMA BY MR. LEMEL:

21 Q. Good afternoon, Doctor. I understand this is your
22 first time testifying so if there is anything that you
23 need, a break, please say so okay.

24 A. Okay.

25 Q. Okay. And it is Sundararama am I pronouncing that

1 correctly as well?

2 A. That's correct.

3 Q. So let's talk just briefly about Mr. Berard's injuries
4 if we could first.

5 A. Uh-huh.

6 Q. When you described this injury you said it was about
7 four centimeters long; correct?

8 A. Correct.

9 Q. And relatively superficial and shallow?

10 A. Correct. Just enough to bleed.

11 Q. Just enough to bleed and you said not bleed a lot.
12 Can you define for us what a lot of bleeding would be just
13 so we are all on the same page?

14 A. Well when I say a lot of bleeding I would be talking
15 about life threatening bleeding where I guess there would
16 be a bed full of blood. But you know his laceration to his
17 right lower leg would have been enough to ooze and most
18 likely stain clothing.

19 Q. Could it have soaked the pants leg for example?

20 A. What do you mean soaked? Are you talking about the
21 entire pant leg?

22 Q. No. Say from the calf area down it would be
23 significantly saturated?

24 A. That could be possible.

25 Q. What about would it be enough if he was without

1 clothing leave foot prints or traces of blood from where he
2 walked? Would it bleed enough to get all the way down
3 there?

4 A. It could but I wouldn't think that it would have -- I
5 mean it's fairly superficial so in a normal person these
6 things tend to start bleeding on their own relatively
7 quickly within ten to fifteen minutes.

8 Q. Would it have been enough for example to cause a
9 significant amount of blood to pool in an area where his
10 foot was for a period of time say the floor board of a car
11 of a scooter?

12 A. That would not be my area of expertise so I don't
13 think I can answer that question.

14 Q. Just basically asking you how much blood comes out of
15 that sort of scenario.

16 A. I would say his total amount of bleeding would have
17 been less than 250 ML.

18 Q. About 250 millimeters?

19 A. Correct.

20 Q. Which when you say are how many millimeters would be
21 in an average eight ounce cup?

22 A. Two hundred and fifty ML I know is one cup.

23 Q. So we are talking about a cup of blood total?

24 A. That's only a gross estimation.

25 Q. Sure. And I'm not asking you for anything more than

1 that. Do you know of any other injuries or any other cuts
2 to him besides the one?

3 A. After a head to toe evaluation I saw no other
4 injuries.

5 Q. Nothing else about the ankle?

6 A. Just the one laceration that I saw.

7 Q. Okay. Now Ms. Moss comes in obviously she's given a
8 lot of attention when she does come in?

9 A. Absolutely.

10 Q. And as you indicated even at that point in time she
11 has already explained altered mental status?

12 A. Correct.

13 Q. And that altered mental status in addition to the
14 ability to verbalize properly you said that there is other
15 symptoms of such as getting nauseous having a headache?

16 A. Yes.

17 Q. And those again the onset of that can be fairly rapid?

18 A. Yes.

19 Q. Okay. So she basically wasn't able to give you a
20 whole lot of information about what happened or how it
21 happened or identify anything of that nature?

22 A. Correct.

23 Q. So what you are basically dealing with is sort of the
24 raw data that you can just grab from looking at her during
25 these test and things of that nature?

1 A. Yes.

2 Q. All right. When you examine her and do the CAT scan
3 you indicated I believe in your testimony that you believed
4 that it was some sort of blunt force trauma to the
5 posterior of the skull is that what you said?

6 A. That is based on my recollection but she definitely
7 had bleeding inside the brain.

8 Q. Right. By posterior that would mean just the back of
9 the head?

10 A. Correct.

11 Q. Indicates somehow the back of the head had got hit?

12 A. Correct.

13 Q. And the question was asked to you can you say exactly
14 caused that in terms of a fall weapon whatever hitting the
15 back of the head that question was asked of you a little
16 bit earlier; right?

17 A. Correct.

18 Q. And you said that's not really your area of expertise?

19 A. Correct.

20 Q. So in your area of expertise and in your area of
21 expertise and you've been qualified as an expert here you
22 don't feel comfortable saying it was caused by this or
23 caused by that all you can say is there was this blunt
24 force trauma?

25 A. That would be correct, sir.

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RECROSS EXAM BY SOLICITOR LIPINSKI

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1 Q. Okay. I beg the Court's indulgence please.

2 Thank you, Doctor.

3 SOLICITOR LIPINSKI: Just a little bit of a follow up.

4 REDIRECT EXAMINATION

5 DOCTOR MICHAEL SUNDARARAMA BY SOLICITOR LIPINSKI:

6 Q. You said in terms of his bleeding that's not really
7 how much he may have bleed not really your area of
8 expertise but any number of things could have effected that
9 how much a person bleeds. He had some bleeding disorder
10 that might affect it?

11 A. Yes definitely. Also even how much alcohol someone
12 would drink prior could actually make someone bleed more.
13 So if someone is really dehydrated they could potentially
14 bleed a little bit less than someone who is. So there's
15 many different factors and it's difficult to estimate.

16 Q. Nothing further, Your Honor.

17 MR. LEMEL: Nothing further, Your Honor.

18 SOLICITOR LIPINSKI: We would ask that he be excused.

19 THE COURT: You are excused.

20 SOLICITOR LIPINSKI: If we can approach?

21 THE COURT: Certainly.

22 (BENCH CONFERENCE AT 4:50 P.M. OFF THE RECORD OUT OF
23 THE HEARING OF THE JURY.)

24 SOLICITOR SIKORA: State calls Tracy Swanson.

25 MADAME CLERK: Please raise your right hand.

TRACY SWANSON: DIRECT EXAMINATION BY SOLICITOR SIKORA

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1 (WHEREUPON: TRACY SWANSON,
2 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 DIRECT EXAMINATION

4 TRACY SWANSON BY SOLICITOR SIKORA:

5 Q. Would you please state your full name and spell your
6 last name?

7 A. Yes. Tracy Swanson, S-w-a-n-s-o-n.

8 Q. And where do you work?

9 A. South Carolina Probation and Parole.

10 Q. And now long have you worked there?

11 A. Eleven years.

12 Q. And what is your position in South Carolina Probation
13 and Parole?

14 A. I am titled as team leader, a supervisor.

15 Q. Do you supervise Agent Patton?

16 A. I do.

17 Q. And on the night of June 7th, 2008 were you involved
18 in trying to locate Adam Berard?

19 A. Yes I was.

20 Q. Okay. Where is the first place you went that night
21 for that purpose?

22 A. I met Agent Patton at the Highway Department in
23 Newport. Got into a state vehicle because I was in my
24 personal vehicle and we went out to Zinker Road.

25 Q. Okay. When you got to Zinker Road did you locate Adam

- 1 Berard there?
- 2 A. No we didn't.
- 3 Q. Was there anyone on scene when you got there?
- 4 A. Yes there was.
- 5 Q. And who was that do you remember?
- 6 A. York County Sheriff's Office.
- 7 Q. Do you remember about how many officers were out
- 8 there?
- 9 A. We did not approach very close to the yard. I met an
- 10 officer in the driveway who informed me that he was not
- 11 there.
- 12 Q. Okay. And where did you go next after leaving Zinker
- 13 Road?
- 14 A. We went back to the Rock Hill Probation Office to meet
- 15 with two other agents that were coming in to meet with us.
- 16 Q. Do you remember who those two agents were?
- 17 A. Supervisor Dwight Burns and Agent Alicia Richardson.
- 18 Q. Okay. When you were at the Rock Hill Probation and
- 19 Parole Office were you also trying to come up with possible
- 20 places Mr. Berard might be?
- 21 A. Yes I was.
- 22 Q. At that point in time you did not know where he was?
- 23 A. No we didn't.
- 24 Q. And where did you go after you left the Rock Hill
- 25 Probation and Parole Office?

1 A. We went to the residence where he was located.

2 Q. Okay. Do you recall where that residence is?

3 A. I've heard it several times today I just drew a blank.
4 on the road.

5 Q. Do you remember what the area looks like?

6 A. Oh yes very much.

7 Q. Could you describe what the area looks like?

8 A. Yes. It's really close it's on Highway 5. Gosh I
9 cannot recall that road. It's location was several
10 trailers located there. It's near the convenience center
11 on Tirzah Road.

12 Q. Okay. And when you went out to this area off Highway
13 5 were you going to a particular residence at that time?

14 A. Yes.

15 Q. And was there anyone home at that residence when you
16 arrived?

17 A. No there wasn't.

18 Q. Was there any lights on at that residence when you
19 arrived?

20 A. No there wasn't.

21 Q. Did you attempt to make contact with anyone inside the
22 residence?

23 A. Yes we did.

24 Q. And were you able to do so?

25 A. No. No we weren't.

1 Q. Did you personally knock on the door of this
2 residence?

3 A. Yes we did. We all did.

4 Q. And did anyone answer those knocks?

5 A. Not at all.

6 Q. Do you remember about what time you were out there?

7 A. It was in the two o'clock, 2:00 a.m. time frame.

8 Q. Do you know who resides at this residence you were
9 trying to get into?

10 A. Yes we do Kayliegh Miller.

11 Q. Was Ms. Miller on scene when you first arrived there
12 that night?

13 A. No she wasn't.

14 Q. At some point were you able to make contact with her?

15 A. Yes we were.

16 Q. Okay. And were you able to obtain consent from Ms.
17 Miller to go inside this residence?

18 MR. LEMEL: Your Honor, we object to this point in
19 time to leading.

20 THE COURT: Don't lead. Sustain.

21 BY MS. SIKORA:

22 Q. And did you actually go inside this residence at this
23 point?

24 A. No I didn't.

25 Q. Did you see anybody else go inside the residence?

1 A. Two deputies and Agent Patton.

2 Q. At some point did the two deputies and Agent Patton
3 come outside of the residence?

4 A. Yes they did.

5 Q. Was there anybody else with them?

6 A. Adam Berard.

7 Q. Did anybody else come out of the residence that you
8 saw?

9 A. No.

10 Q. Did you notice any injuries on Mr. Berard?

11 A. Not initially.

12 Q. You said not initially does that mean at some point
13 you did notice injuries on Mr. Berard?

14 A. Once EMS was on scene and he was sitting on the ground
15 I walked over to see the injury to his leg.

16 Q. Okay. And can you describe what you saw?

17 A. There was a laceration right where the electronic
18 monitoring would be around his ankle.

19 Q. Did you see any other injuries to Mr. Berard?

20 A. No I didn't.

21 Q. Did you notice whether or not he was wearing his ankle
22 bracelet?

23 A. He was not.

24 Q. Did you notice any unusual odors about Mr. Berard's
25 person?

1 A. No I did not.

2 Q. At any point that evening did you actually go inside
3 Kayliegh Miller's residence?

4 A. I did.

5 Q. And about how long after Mr. Berard was taken out of
6 the residence did you go in?

7 A. After he left the area with the officer it was
8 probably within five minutes we entered.

9 Q. When you say we who else went in with you?

10 A. A couple of the agents from the probation office. Mr.
11 Burns -- yea Agent Burns came in and we brought Ms. Miller
12 in and possibly one other agent.

13 Q. Okay. And what was your purpose in going back inside
14 the residence?

15 A. For one is to make sure that Ms. Miller was safe to
16 stay there. We weren't really sure what the rest of the
17 trailer held. The monitor was missing and just to see the
18 scene I guess.

19 Q. Okay. You said the monitor is missing.

20 A. I'm sorry the transmitter.

21 Q. What do you mean by the transmitter?

22 A. The electronic monitoring transmitter that was on Adam
23 Berard's leg.

24 Q. And did you find this transmitter there?

25 A. I did not.

1 Q. Did you see the transmitter on Adam Berard's person?

2 A. No.

3 Q. Did you see any other evidence that may have indicated
4 Mr. Berard was inside that residence?

5 A. Bloody socks and bloody tennis shoes were on the
6 washer and dryer.

7 Q. I am going to hand you a very large box. This is
8 State's Exhibit Number Twenty-Nine marked for
9 identification purposes. There is a glove if you would
10 like to use that. I would like you to take a look into the
11 bag. Okay do you have a glove?

12 A. Yes.

13 Q. Could you describe the tennis shoes that you saw that
14 night when you went inside Ms. Miller's residence?

15 A. These are New Balance tennis shoes white in color.
16 One was drenched in blood and one was not.

17 Q. Did you see -- whenever you went into the residence
18 without looking in the bag did you see anything else
19 besides the tennis shoes?

20 A. The socks. They appear to have been washed; washed
21 out, rinsed out.

22 Q. Where did you see these items inside Ms. Miller's
23 residence? Do you remember?

24 A. On the washer and dryer right inside the back door
25 where they had entered to get Mr. Berard.

1 Q. Would this be near the bedroom area?

2 A. Yes.

3 Q. And do you recognize what's in the bag as State's
4 Exhibit Number Twenty-Nine?

5 A. I do.

6 Q. Could you tell us what that is?

7 A. A pair of tennis shoes; New Balance tennis shoes and a
8 pair of socks.

9 Q. Did you actually touch those items that night you were
10 in Ms. Miller's residence?

11 A. I did not.

12 Q. Do they look just as they did the night that you saw
13 them back on June 7th into the 8th of 2008?

14 A. Other than the bloody looking brown it was red before.

15 Q. Did you ever speak to Mr. Berard after he was
16 arrested?

17 A. I did not.

18 Q. Did you hear the officers read him his Maranda rights?

19 A. I did not.

20 Q. At any point did you ever hear Mr. Berard say anything
21 that evening?

22 A. I did.

23 Q. What did you hear?

24 A. While sitting on the ground regarding his leg and the
25 cut and the EMS there he looked over his right shoulder to

TRACY SWANSON: DIRECT EXAMINATION BY SOLICITOR SIKORA
CROSS EXAMINATION BY MR. LEMEL

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1 speak to Mr. Patton and asked about his grandmother.

2 Q. Okay. Do you remember what he specifically said?

3 A. Something in the effect of how's my Nanny or how is my
4 Nanna.

5 Q. Thank you. Please answer any questions the defense
6 attorney may have.

7 CROSS EXAMINATION

8 TRACY SWANSON BY MR. LEMEL:

9 Q. Agent Swanson, by the time that you got to the Zinker
10 Road address Ms. Moss was already gone?

11 A. She was.

12 Q. You didn't go in the house?

13 A. No I didn't.

14 Q. You can't provide us any information about what
15 actually happened during the incident at Zinker Road at
16 all?

17 A. No, sir.

18 Q. Basically it's just the limited contact that you had
19 with Mr. Berard that day you were called to the Whitney
20 Woods address?

21 A. Whitney Woods yes, sir.

22 Q. That's the address you have - -

23 A. Yes, sir.

24 Q. Basically just the limited contact you had with him
25 there as he came out of the trailer and as he was getting

1 that aide?

2 A. Yes, sir.

3 Q. And then you're going in and basically seeing the
4 shoes and the socks there at that address?

5 A. Right that's correct.

6 Q. Nothing further, Your Honor.

7 SOLICITOR LIPINSKI: Nothing further from this witness
8 from the State.

9 THE COURT: You can step down.

10 SOLICITOR LIPINSKI: Your Honor, that's all we have
11 for today. I apologize that we have some other medical
12 professionals who are only available to us in the morning.

13 THE COURT: All right, ladies and gentlemen, we are
14 going to go ahead and break for the day. We will start
15 back tomorrow morning at 9:15 so please be in the jury room
16 at that time. We will see you all then you all have a nice
17 night. Remember that you can't discuss this case and we
18 will see you tomorrow.

19 (JURY DISMISSED FOR THE DAY AT 5:00 P. M..)

20 THE COURT: How are we doing on scheduling? We must
21 be okay if you don't have any more witnesses for today.

22 SOLICITOR LIPINSKI: There's much and much to do. The
23 next one is going to be extremely lengthy. We do have the
24 SANE sexual assault nurse coming from Charlotte tomorrow.
25 She's the next witness and we could not get to her until

1 tomorrow she's in an exam tonight. And the next witness
2 after that would be Kevin Tolson who is the Chief Forensic
3 Officer again looking at quite lengthy witnesses.

4 THE COURT: Are you still on schedule to finish
5 everybody except for the one doctor on Thursday morning?

6 SOLICITOR LIPINSKI: We may call one trauma intensive
7 care nurse who work with him for some brief testimony but
8 this would be our only two witnesses and we had to move her
9 because we had a case to move now I can get her Thursday
10 but those are my last two witnesses Thursday morning.

11 THE COURT: That's a mildly qualified yes?

12 SOLICITOR LIPINSKI: Yes it is mildly qualified.

13 THE COURT: Okay. All right then I will see you all
14 in the morning unless there is anything you all need to
15 discuss now.

16 SOLICITOR LIPINSKI: I don't believe so.

17 MR. LEMEL: Nothing from the defense.

18 THE COURT: Do you all have any special request for
19 charge?

20 SOLICITOR LIPINSKI: The State would request a charge
21 on flight.

22 THE COURT: You are not getting it.

23 SOLICITOR LIPINSKI: Okay. And assault with intent
24 to commit CSC in addition to CSC as a lesser included
25 offense.

1 MR. LEMEL: We would object to that, Your Honor. I
2 don't think assault with intent to commit CSC -- If the
3 court would allow me do a little bit of research on that.

4 THE COURT: Well ABHAN is.

5 MR. LEMEL: Certainly ABHAN yes, sir. Well ABHAN I
6 think there is that special exception to the CSC down to
7 ABHAN basically they call it that yes, sir.

8 THE COURT: Unless -- I am not aware that there is or
9 isn't but unless there is some specific authority that
10 assault with intent to commit CSC is lesser included and I
11 would probably not do that.

12 MR. LEMEL: Could I provide some argument and some
13 case law to you in the morning?

14 THE COURT: If you can provide me with a case that's
15 on point I will do it.

16 SOLICITOR LIPINSKI: I would just like to be heard on
17 the matter in the morning, Your Honor. I don't know that
18 I will find that specific case. I believe there are some
19 minor cases that talk about attempted rape or attempted to
20 be a lesser included offense of a rape itself but I think
21 they are probative..

22 THE COURT: I will hear from you briefly.

23 SOLICITOR LIPINSKI: Thank you.

24 THE COURT: I've already told you what my decision is
25 going to be.

1 SOLICITOR LIPINSKI: Again I would just like to be
2 heard, Your Honor.

3 THE COURT: Okay.

4 MR. LEMEL: Judge, I don't have anything else.
5 Obviously we haven't gotten that far ahead.

6 THE COURT: I would like to get them tomorrow. You
7 don't have to write them out just tell me the topics that
8 you want covered and I will write them out.

9 SOLICITOR LIPINSKI: Yes, sir, will do.

10 THE COURT: Okay we'll see you all in the morning.

11 (COURT RECESSED AT 5:08 P. M..)

12 (BACK ON THE RECORD WEDNESDAY, DECEMBER 16, 2009 AT
13 9:17 A.M..)

14 THE COURT: Good morning, be seated.

15 Good morning.

16 MADAME COURT REPORTER: Good morning, Judge, how are
17 you?

18 THE COURT: Fine.

19 Is there anything that you all need to discuss before
20 we bring the jury in?

21 SOLICITOR LIPINSKI: We need to get the defendant in.

22 THE COURT: I realize that. While we are waiting on
23 him is there anything we need to discuss before we bring
24 the jury in?

25 SOLICITOR LIPINSKI: The only thing I would like to

1 you know just put on the record as we go forward this
2 morning; they processed the scooter, the defendant's
3 scooter, they were getting it ready to return it to the
4 family, they opened up kind a the scooter's seat lifts up
5 and there's a small pocket knife inside the scooter along
6 with a wash cloth with some blood stains. I informed Mr.
7 Lemel that we don't intend to put the knife itself in.
8 There will be a photo - -

9 THE COURT: Did you get the defendant, did you call
10 for him?

11 THE BAILIFF: I'm sorry.

12 SOLICITOR LIPINSKI: I don't intend to put that knife
13 in or anything like that but there's a photo with just the
14 general context where the knife can be seen and Mr.
15 Cummings indicated Mr. Lemel didn't have any objection to
16 that. I just see that we had some issues with the axe. I
17 wanted to let the court know that that was the direction
18 that we were taking in terms of that.

19 THE COURT: Okay.

20 (DEFENDANT ENTERING COURTROOM AT 9:19 A. M..)

21 THE COURT: All right then bring in the jury.

22 (JURY ENTERING COURTROOM AT 9:20 A.M..)

23 THE COURT: Good morning.

24 Call your next witness.

25 SOLICITOR LIPINSKI: State calls Detective Russ Yeager

RUSS YEAGER: DIRECT EXAMINATION BY SOLICITOR LIPINSKI

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1 to the stand, Your Honor.

2 (WHEREUPON: RUSS YEAGER,
3 BEING FIRST CALLED, WAS DULY SWORN AND TESTIFIED AS
4 FOLLOWS:)

5 SOLICITOR LIPINSKI: The Court's indulgence, Your
6 Honor, I apologize.

7 DIRECT EXAMINATION

8 DETECTIVE RUSS YEAGER BY SOLICITOR LIPINSKI:

9 Q. With whom are you currently employed, Detective
10 Yeager?

11 A. The York County Sheriff's Office.

12 Q. And in what capacity?

13 A. I'm assigned to the Criminal Investigation's Division
14 Crimes Against Persons' Unit.

15 Q. And so you work with Lieutenant Hager?

16 A. Yes, ma'am.

17 Q. For Lieutenant Hager I believe?

18 A. He's my supervisor.

19 Q. And how long have you been employed with the York
20 County Sheriff's Office?

21 A. I started with the sheriff's office in '89. Got out
22 of law enforcement briefly for about three years and came
23 back in 2001.

24 Q. Since that time have you been in the detective
25 division or approximately how long have you worked in

1 investigation?

2 A. Been in the detective division since 2002.

3 Q. And did you have the occasion to be called out on June
4 7th, June 8th, 2008 in order to assist the investigation in
5 this particular case?

6 A. I did.

7 Q. And did you ever go to the Zinker Road address.

8 Q. I did.

9 Q. Did you take any statements or collect any evidence in
10 that location?

11 A. No, ma'am.

12 Q. And did you have the occasion to participate in either
13 the arrest or the location of the suspect at the Whitney
14 Woods Lane address.

15 Q. I did.

16 Q. And did you go there; were you there when they made
17 entry into the house?

18 A. When I got there they already apprehended the
19 defendant.

20 Q. So when you get there is he already in the back of Mr.
21 Gwinn's car?

22 A. When I pulled up he's speaking with Lieutenant Hager.

23 Q. Lieutenant Hager?

24 A. Yes.

25 Q. So you are not a part of that questioning of the

1 suspect in any in way?

2 A. No, ma'am.

3 Q. And do you ever collect any evidence at the Whitney
4 Woods address?

5 A. I do yes, ma'am.

6 Q. And what evidence if any do you recall collecting?

7 A. The probation agents said there was a pair of shoes on
8 a washing machine just inside the door; the rear door of
9 the residence that appeared to have blood on them.

10 Q. And did you take possession of those items?

11 A. Yes, ma'am, I did.

12 Q. And did you do anything to them?

13 A. I brought them to the Moss Justice Center. We have a
14 drying chamber that we put wet clothes in to dry and I did
15 place the shoes in the drying chamber.

16 Q. Let me show you what's been previously marked for
17 identification purposes as Item Twenty-Nine and ask you if
18 your signature is on the outside of this box indicating
19 that you had placed these items in the drying chamber or
20 with property and evidence?

21 A. Yes, ma'am, that is my signature.

22 Q. And then the items contained within the box or the bag
23 within the box is what you would have placed in the drying
24 chamber itself?

25 A. That's correct yes, ma'am.

1 Q. And let me -- I don't know if you need a pair of
2 gloves or not but are you able to see in the bag sufficient
3 to indicate that those were the shoes you collected at the
4 Whitney Woods Lane address?

5 A. Yes, ma'am, they are.

6 Q. Your Honor, at this time the State would move State's
7 Exhibit Number Twenty-Nine, the defendant's shoes and socks
8 what he was wearing into evidence.

9 MR. LEMEL: Without objection, Your Honor.

10 THE COURT: They are admitted.

11 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-NINE
12 IDENTIFIED AND MARKED FOR IDENTIFICATION ENTERED INTO
13 EVIDENCE.)

14 BY SOLICITOR LIPINSKI:

15 Q. Could you put on those gloves? I apologize.

16 (WITNESS PUTTING PROTECTIVE GLOVES ON/OPENED
17 EVIDENCE.)

18 Q. If you could just remove the shoes and display those
19 to the jury in the condition that they are in today.

20 (WITNESS HELD UP SHOES/EVIDENCE.)

21 Q. So looking at you in your left hand is that shoe
22 appear to be different in its physical appearance than the
23 other one?

24 A. Yes it is.

25 Q. And is the condition of that shoe you described as

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1 being wet and red is that why you placed it in the drying
2 chamber?

3 A. Yes it is.

4 Q. Could you put those shoes back. I believe there is a
5 pair of socks in there as well you stated. If you could
6 show those to they jury.

7 A. Yes.

8 (WITNESS HELD UP SOCKS FROM EVIDENCE BAG.)

9 Q. Thank you. I think you are done with the gloves. In
10 that Lieutenant Hager was handling the interviewing of the
11 defendant at the crime -- at the Whitney Woods Lane scene
12 did you ever have the occasion to go to either back to
13 Zinker Road or to the Parker Lane address?

14 A. No, ma'am.

15 Q. Did you ever have the occasion to go to either of the
16 hospitals Ms. Moss was treated at?

17 A. Yes I did.

18 Q. Did you go to Piedmont Medical Center?

19 A. I can't recall if I went to Piedmont. I know I went
20 to CMC. I don't know if I went to Piedmont first. I don't
21 recall if I did that or not.

22 Q. And when you went to the Carolina Medical Center what
23 was the purpose of going there?

24 A. They had performed -- they had completed a rape kit
25 and they had notified us that the rape kit was ready to be

1 picked up.

2 Q. And did you travel there?

3 A. Yes I did.

4 Q. And when you went there was it solely to pick up the
5 rape kit?

6 A. Also wanted to try and interview Ms. Moss.

7 Q. And when you went to speak with Ms. Moss -- let me
8 back up. When you go to the hospital they told you the
9 sexual assault kit had already been completed?

10 A. Yes, ma'am.

11 Q. So you are not there when they go through taking of
12 those samples and evidence from Ms. Moss?

13 A. No, ma'am.

14 Q. When you get there with whom do you speak if you
15 recall?

16 A. I can't recall who I spoke to.

17 Q. Would you have spoken to the SANE nurse?

18 A. It probably was the SANE nurse I can't recall. But I
19 did have to receive the rape kit from the nurse.

20 Q. Let me show you what's been marked as State's Exhibit
21 Number Twenty-Five for ID only and ask you whether or not
22 this item is a sexual assault kit that you collected from
23 Carolina Medical Center. I don't know if you need to open
24 that. That's been packaged since you saw it.

25 A. It appears to be. When we collect it it's in a box.

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1 Q. So those may have been the component parts of that
2 box?

3 A. Yes.

4 Q. Thank you. And what did you do with the sexual
5 assault kit?

6 A. I bring it back to the Moss Justice Center. We have
7 a refrigerator an evidence refrigerator that I placed it in
8 the refrigerator.

9 Q. And why do you place that in the refrigerator versus
10 in a drying chamber where you placed the shoes? Is that
11 the protocol that you precede?

12 A. Yes, ma'am, that's just our procedure for rape kits.
13 They have to be refrigerated.

14 Q. And when you do this would you have filled out a
15 property evidence sheet and inventory sheet?

16 A. Yes, ma'am, I would.

17 Q. And let me just show you this document and ask you if
18 this indicates in any way that you collected a sexual
19 assault kit and placed it into property and evidence?

20 A. Yes it is.

21 Q. So while you can't remember the contents exactly
22 that's not something you went through - - -

23 A. Correct.

24 Q. - - - but does document the kit that you turned in?

25 A. That's correct.

1 Q. Did you have the occasion to speak with Ms. Moss?

2 A. I attempted -- I went into the room she was in and
3 tried to speak to her. She wouldn't talk to me at that
4 time. She appeared to be in a lot of pain and didn't want
5 to talk about what had happened.

6 Q. And you stated that you went that night shortly after
7 the sexual assault kit is collected; correct?

8 A. Yes.

9 Q. You don't go there the next day or meet up with Ms.
10 Alexander several other days to get it from her?

11 A. No.

12 Q. You would have gone that night?

13 A. Yes, ma'am.

14 Q. Are you accompanied by any other detectives or do you
15 go on your own?

16 A. Detective Eddie Strait was also with me when we went
17 to Charlotte.

18 Q. And just to confirm to the jury in not questioning Mr.
19 Strait in any way he's a man?

20 A. Yes.

21 Q. And so you were two male detectives that was
22 attempting to talk to Ms. Moss about this event?

23 A. Yes.

24 Q. And you stated that she was just not at that time
25 willing to talk?

1 A. She did not feel comfortable discussing what happened.

2 Q. And as a result of that did you and the investigative
3 efforts to speak with Ms. Moss or did you refer to another
4 detective?

5 A. At that time when we got back we needed to interview
6 Ms. Moss and we thought it would be best if she -- we
7 thought she would prefer to talk to a female detective that
8 she would be easier to talk with.

9 Q. And as part of your training and experience as being a
10 detective and working in sexual assault cases have you ever
11 had that occasion where a female would rather talk to a
12 female detective?

13 A. Yes, ma'am.

14 Q. And who was sent back up if you know to speak with Ms.
15 Moss?

16 A. Detective Amanda Carter.

17 Q. And is she also someone who works in your
18 investigative division?

19 A. Yes.

20 Q. You did not accompany her; you sent her?

21 A. Yes.

22 Q. Do you know if anybody else went with her?

23 A. I believe one of our victim's advocates Tina Elliott
24 had also went.

25 Q. The Court's indulgence. That's all we have of

1 Detective Yeager at this time.

2 CROSS EXAMINATION

3 DETECTIVE RUSS YEAGER BY MR. LEMEL:

4 Q. Good morning, Detective Yeager.

5 A. Good morning, sir.

6 Q. Now you are obviously a member of the detective
7 division of the York County Sheriff's Office?

8 A. That's true.

9 Q. And we discussed earlier the patrol division of the
10 sheriff's office. Did you ever work in the patrol
11 division?

12 A. Yes I did.

13 Q. So it's not uncommon for an officer when they work on
14 the patrol division for a while they are experienced in
15 training to move up from a patrol officer up to a
16 detective?

17 A. That's true.

18 Q. And the differences between patrol division and
19 detective division are many?

20 A. Yes, sir.

21 Q. One for example is that you typically wear plain
22 clothes as opposed to the sort of tan uniform that a patrol
23 officer wears?

24 A. Yes, sir.

25 Q. The cars you typically operate in are unmarked Crown

1 Victoria's as opposed the marked Crown Victoria's?

2 A. That's correct.

3 Q. Still pretty easy when you are out there on the road
4 to tell an unmarked Crown Victoria even then not many
5 people drive those?

6 A. Oh yes.

7 Q. But in general as well you have fewer cases that you
8 deal with?

9 A. Yes, sir.

10 Q. Cases that require greater investigation and follow up
11 work and things of that nature?

12 A. Yes.

13 Q. And because of that your case load is a little bit
14 less for example than the average patrol officers mainly?

15 A. That depends.

16 Q. I understand that. Depending on the total number of
17 cases that you are involved with the patrol officer would
18 typically be involved in many more cases if you count
19 everything they do every response every call - -

20 A. Maybe not many more cases. Probably many more
21 incidences.

22 Q. Okay we'll call them incidences. We would focus a
23 little more on a particular case - - -

24 A. Yes.

25 Q. - - - than a patrol officer?

1 A. Yes, sir.

2 Q. And the way that a case typically comes to the
3 detective division you are not usually the first ones
4 involved with the case; right?

5 A. Right.

6 Q. Typically if there is an initial call for services of
7 some sort it is the patrol division that initially gets
8 involved?

9 A. That's correct.

10 Q. And it is based upon essentially a referral from the
11 patrol division if they feel like its necessary they call
12 in the detective division to provide additional assistance?

13 A. That's correct.

14 Q. And they way they do that if it's after hours such as
15 this one is they call what's called the on-call detective?

16 A. That's correct.

17 Q. Which would have been as I understand it Detective
18 Miller in this case?

19 A. That's correct.

20 Q. You all rotate who's the on call detective amongst
21 you?

22 A. Yes, sir.

23 Q. Amongst all the detectives?

24 A. Yes, sir.

25 Q. But those that primarily work property crimes and

1 those that work crimes against persons?

2 A. Right.

3 Q. And that's a significant division within the patrol
4 division. Some people specialize in robberies and
5 larcenies and damaged property, those would be property
6 crimes?

7 A. Robberies are under my division.

8 Q. Robberies are? I apologize.

9 A. Property crimes and burglaries, larcenies, that type.

10 Q. And crimes against persons are ones involving actual
11 human - -

12 A. Yes. Victims.

13 Q. Victims. Everything from a situation like this where
14 there is an allegation of criminal sexual conduct to an
15 armed robbery for example or some sort of assault?

16 A. Yes, sir.

17 Q. Okay. And so you sort of develop specializations for
18 lack of a better word based upon which department you are
19 involved in.

20 A. Yes, sir.

21 Q. And in this case Detective Miller was summonsed out to
22 be the immediate officer involved?

23 A. That's correct.

24 Q. But once he got there he also involved your department
25 which would be the crimes against persons?

1 A. Yes, sir.

2 Q. He basically called in additional detectives to assist
3 him?

4 A. Yes, sir.

5 Q. And through that process you ended up as the lead
6 detective in terms of the one from the crimes against
7 persons department?

8 A. Yes, sir.

9 Q. And you basically occupy the role as the lead
10 investigator in this case?

11 A. Yes, sir.

12 Q. Okay. Which doesn't mean that you did the most work
13 it just means that you sort of did the most paper work
14 ultimately; right?

15 A. Yes, sir.

16 Q. You are the one who ultimately is responsible for
17 organizing the case, tracking the case through the system
18 and in fact sitting here in the courtroom directly behind
19 the solicitor to assist the case?

20 A. That's correct.

21 Q. And that's true even though you didn't do a lot of
22 the actual hands on work in this case?

23 A. That's correct.

24 Q. You are almost administratively more important in this
25 particular role than you are investigatively?

1 A. That's correct.

2 Q. Part of that administrative role as we said is being
3 prepared with paperwork and tracking and following that
4 paper work?

5 A. That's correct.

6 Q. One of the pieces of paper that you prepared is what
7 we refer to as a General Sessions Case Summary; correct?

8 A. That's correct.

9 Q. And a General Sessions Case Summary is just another
10 one of those forms that the sheriff's department uses?

11 A. Yes, sir.

12 Q. But when a case is being directed toward General
13 Sessions Court, criminal court like we are in here today,
14 you prepare that summary for the use of the officers in the
15 court?

16 A. That's correct.

17 Q. Which would include the prosecutor?

18 A. Yes.

19 Q. It would also include me because you know I am going
20 to get a copy of it?

21 A. That's correct.

22 Q. And it's basically just to provide a summary of what
23 the sheriff's department did in a particular case?

24 A. Right.

25 Q. And again the majority of that summary is what we call

1 the narrative portion; right?

2 A. Yes, sir.

3 Q. The narrative portion is where you put down the facts
4 and incidences and what was done and what was said and all
5 those sorts of things?

6 A. Yes.

7 Q. And again when you are making that narrative you try
8 to make that complete?

9 A. Yes, sir.

10 Q. And accurate?

11 A. Yes, sir.

12 Q. Not necessarily indicating every single little teeny
13 tinny detail because it's a summary?

14 A. Right.

15 Q. But the important points the high points you are going
16 to hit it so that everybody knows that's what the sheriff's
17 office did?

18 A. Yes, sir.

19 Q. And that's what you did in this particular case you
20 prepared that summary?

21 A. Yes, sir.

22 Q. You also followed the other paperwork in the case
23 through the process; correct?

24 A. Yes, sir.

25 Q. That would include the issuance of warrants?

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1 A. Yes.

2 Q. And in this case the sheriff's department actually
3 obtained two warrants; correct?

4 A. That's correct.

5 Q. They obtained a warrant for assault and battery with
6 intent to kill?

7 A. Yes.

8 Q. And they obtained a warrant for criminal sexual
9 conduct?

10 A. Yes.

11 Q. And those were the two warrants that were basically
12 taken out at the time or very close in time to the incident
13 itself - - -

14 A. Yes, sir.

15 Q. - - - taking place?

16 A. Yes.

17 Q. The sheriff's department never took out a warrant for
18 kidnapping?

19 A. No, sir.

20 Q. Never took out a warrant for burglary in the first
21 degree?

22 A. No, sir.

23 Q. Okay. Now as I understand by the time you got to
24 Zinker Road basically everything was already in progress?

25 A. Yes.

1 Q. You didn't do any activities there?

2 A. No, sir.

3 Q. Can't give us any information about what happened at
4 Zinker Road?

5 A. No, sir.

6 Q. You're first significant action in as far as
7 investigatory was the collection of the evidence from
8 Whitney Woods?

9 A. Yes, sir.

10 Q. And that is the shoe and the socks that you just
11 displayed to the jury?

12 A. Yes.

13 Q. And in this case the relevant shoe you were holding in
14 your left hand but I think it was the right shoe; correct?

15 A. Yes, sir.

16 Q. And that right shoe - both shoes started off white?

17 A. Uh-huh.

18 Q. I am going to ask you for the court reporter to answer
19 yes.

20 A. Yes.

21 Q. Okay. Now in the current state of it is brownish red.

22 A. Yes.

23 Q. And it is in fact almost the entirety of the shoe
24 itself is stained in that color?

25 A. Yes.

1 Q. And that stain is from blood?

2 A. Yes.

3 Q. No question in your mind that that's what that is?

4 A. No question in my mind no, sir.

5 Q. And a lot of blood not just stained a small part but
6 it's basically throughout and all over the shoe?

7 A. Yes.

8 Q. Quite a bit of blood?

9 A. Yes.

10 Q. The same thing with the sock itself even though it
11 apparently had been rinsed somewhat its still stained that
12 brownish color?

13 A. Yes, sir.

14 Q. And it is again throughout that sock?

15 A. Yes.

16 Q. Not just a few drops of blood but a lot of blood?

17 A. Appears to be a lot yes.

18 Q. Appears to be a lot. Okay. And you are familiar with
19 having seen various types of pieces of clothing with a
20 little bit of blood versus a lot of blood - - -

21 A. Yes, sir.

22 Q. - - - in your work and experience?

23 A. Yes, sir.

24 Q. And in fact one of the things you said you had to do
25 in this case was place those items into a drying chamber?

1 A. Yes, sir.

2 Q. Because it's indicated by a previous witness they were
3 in fact saturated with blood?

4 A. Yes.

5 Q. Wet it to a point where if you stuck them directly
6 into these boxes it would have been mildewed and any sort
7 of bad biological things could have happened?

8 A. Right.

9 Q. From them being that wet and being placed in the box?

10 A. Yes.

11 Q. They weren't' going to dry out if you just stuck them
12 in a bag and the box like that?

13 A. No.

14 Q. Okay. Now when you said you went to the Carolina
15 Medical Center you went there to pick up what you called a
16 rape kit?

17 A. Yes, sir.

18 Q. Now that's sort of a terminology that's used as by
19 police officers?

20 A. Yes.

21 Q. Sort of the modern terminology where you said is a
22 sexual assault examination kit; right?

23 A. Right.

24 Q. A rape kit is sort of colloquialism is it not?

25 A. It's what we call it yes, sir, I agree.

1 Q.. And basically what that exam kit consist of it's sort
2 of a prepackaged box; right?

3 A. Yes, sir.

4 Q. So that when a nurse and that's who typically does
5 these exams; right?

6 A. Yes.

7 Q. When a nurse is actually asked to perform one of these
8 examinations she has this kit already assembled?

9 A. Yes.

10 Q. And you are familiar with these kits; right?

11 A. Basically yes, sir.

12 Q. Have you ever seen one that's been opened without it
13 actually being used?

14 A. Yes, sir.

15 Q. Okay. And it basically has a number of different
16 envelops and vials and ways to collect and preserve
17 evidence?

18 A. Yes, sir.

19 Q. And it's all assembled there so that the nurse
20 basically uses the parts of the kit she doesn't have to be
21 grabbing stuff or looking for stuff it's all there in one
22 particular package?

23 A. Yes, sir.

24 Q. And that's basically what you gathered up in this
25 case. You gathered a box that reported to contain the

1 completed kit?

2 A. Yes.

3 Q. You yourself did not perform the examination?

4 A. No I did not.

5 Q. And you are not qualified to?

6 A. No I'm not.

7 Q. That's not your job?

8 A. No, sir.

9 Q. You basically go and collect the evidence after the
10 nurse has already done so?

11 A. Yes.

12 Q. And then as a result of that you then pass that along
13 down the chain for other people to perform additional work
14 on it?

15 A. Yes, sir.

16 Q. An analysis on it?

17 A. Yes, sir.

18 Q. Because you yourself are not qualified to perform
19 analysis on the items that were collected?

20 A. That's correct.

21 Q. You are a way point on that path?

22 A. Right.

23 Q. But in fact these items were then forwarded on to the
24 analyzer?

25 A. That's correct.

1 Q. And you were sort of as the investigator it's your job
2 to track and make sure that was being done; correct?

3 A. Yes, sir.

4 Q. And you are aware of the fact that these things were
5 transferred down to what we call SLED the State Law
6 Enforcement Division?

7 A. That's correct.

8 Q. For analysis?

9 A. Yes.

10 Q. By the experts down there?

11 A. Yes.

12 Q. And they have experts in blood and other sorts of
13 bodily fluids; right?

14 A. Yes, sir.

15 Q. DNA?

16 A. Right.

17 Q. They can do all sorts of analyses down there that as a
18 local agency you can't do?

19 A. That's correct.

20 Q. And that's the purpose of SLED to do that for the
21 whole state?

22 A. Yes it is.

23 Q. And you all use SLED as a regular part of your doing
24 business you refer stuff to SLED?

25 A. Yes.

1 Q. You do it on many many cases even?

2 A. Yes.

3 Q. Okay. There is nothing unusual about that?

4 A. No, sir.

5 Q. Okay. Now when you also were to -- CMC Medical Center
6 you attempted to speak with Ms. Moss?

7 A. Yes.

8 Q. Now she did not say to you I don't feel comfortable
9 speaking with you I would rather talk with a woman?

10 A. She just said -- really it was hard to understand her.
11 I could tell she wouldn't look at us. She just kind of
12 turned her head and just had her blanket up on her face.

13 Q. She was basically non responsive to you?

14 A. Right.

15 Q. And just again based on your experience let's try to
16 have a female go in there as opposed to a man?

17 A. Yes.

18 Q. She never specifically said that to you?

19 A. She never said I don't want to talk to a man.

20 Q. That was just your assumption?

21 A. Yes.

22 Q. Okay. And then so essentially aside from picking up
23 the shoes and picking up the kit and trying unsuccessful to
24 talk to Ms. Moss you didn't really do anything else in this
25 case?

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1 A. No, sir.

2 Q. So you can't provide us any information about what
3 actually happened that day on Zinker Road of your own
4 personal knowledge?

5 A. No, sir.

6 Q. Okay. Beg the Court's indulgence.

7 Thank you, Detective, no further questions.

8 REDIRECT EXAMINATION

9 RUSS YEAGER BY SOLICITOR LIPINSKI:

10 A. Mr. Lemel asked you about the original charges being
11 CSC and Assault and Battery with Intent to Kill. You never
12 issued any warrants for Mr. Berard on the kidnapping and
13 the burglary but did you return it to the Grand Jury to
14 seek those indictments?

15 A. Yes we did.

16 Q. That's all we have.

17 RECROSS EXAMINATION

18 LIEUTENANT RUSS YEAGER BY MR. LEMEL:

19 Q. When exactly did you do that?

20 A. I don't know the date right off hand.

21 Q. Was it sometimes this summer?

22 A. I can't recall the date.

23 Q. You don't remember whether it was 2008 or 2009?

24 A. I can not recall. I don't know.

25 Q. How recently was it?

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1 A. I have no idea.

2 Q. But it was somewhat after the fact?

3 A. Yes.

4 Q. Any idea a short time after you took out the warrants
5 a long time after? You have absolutely no recollection?

6 A. I can't remember when it was I'm sorry.

7 SOLICITOR LIPINSKI: That's all we have, Detective
8 Yeager, Your Honor We are not going to excuse him because
9 he is the case agent but this time I have no further
10 questions.

11 THE COURT: That's fine.

12 You can step down, sir.

13 SOLICITOR LIPINSKI: If you can just leave that on the
14 table.

15 SOLICITOR SIKORA: The State calls Angie Alexander.
16 Ms. Alexander, if you would step up to Madame Clerk she
17 will swear you in before you take the stand.

18 (WHEREUPON: ANGIE ALEXANDER,
19 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

20 MADAME CLERK: Thank You. You may be seated.

21 DIRECT EXAMINATION

22 ANGIE ALEXANDER BY SOLICITOR SIKORA:

23 Q. Would you please state your full name for the record
24 and could you spell your last name for the court reporter?

25 A. Angela Denise Alexander, A-l-e-x-a-n-d-e-r.

1 Q. And where do you work, Ms. Alexander?

2 A. Carolina's Medical Center in Charlotte.

3 Q. And what is your position at Carolina's Medical
4 Center?

5 A. I am the sexual assault nurse examiner coordinator and
6 the assistant nurse manager in the emergency department.

7 Q. Okay. And how long have you worked at Charlotte
8 Medical Center?

9 A. I started in June of 1990.

10 Q. Did you work anywhere else in the medical field prior
11 to going to CMC?

12 A. No, ma'am.

13 Q. Do you have to be licensed to practice nursing in the
14 State of North Carolina?

15 A. Yes, ma'am.

16 Q. And are you so licensed?

17 A. Yes, ma'am.

18 Q. Can you explain a little bit to the jury about the
19 training or education you would have had to undergo to
20 become a nurse?

21 A. I completed my training at Presbyterian School Of
22 Nursing. It was a three year degree associate diploma
23 degree. I went back to school to the University of North
24 Carolina in Charlotte and completed my bachelors' in
25 nursing and I am currently at Queens University completing

1 my masters.

2 Q. And when do you expect to complete that?

3 A. May of 2011.

4 Q. Beyond the education and training you already

5 mentioned did you have to under go any further training or

6 certification to do sexual assault exams?

7 A. Yes. In 2002 I took my first forensic course which is

8 a forty hour course. And then in 2004 I began my sexual

9 assault nursing examiner which is a forty hour class room

10 and nine month clinical course to complete. And then I sat

11 for the state boards and got certified in sexual assault

12 nurse examiner for adult and adolescence and have since

13 gotten certified in pediatrics.

14 Q. Okay. And when did you receive those board

15 certifications?

16 A. 2004 I believe. 2005 I completed my SANE A is what

17 they call it in 2006 my SANE P.

18 Q. Okay. Could you tell us what SANE stands for?

19 A. Sexual Assault Nurse Examiner.

20 Q. And over the course of your career could you estimate

21 for me how many sexual assault examinations you have

22 performed?

23 A. In the last three years when we've been keeping track

24 I've completed them throughout my whole nineteen years at

25 Carolina's Medical Center but our SANE program started in

1 2007 and I've done a hundred and fifty-one sexual assault
2 cases since then.

3 Q. Since 2007?

4 A. Yes, ma'am.

5 Q. Do you have any idea how many sexual assault
6 examinations you would have done prior to 2007?

7 A. Hundreds, maybe two hundred. I mean that's just a
8 guess. A lot.

9 Q. Have you ever previously given testimony in a court
10 case regarding those type of examinations?

11 A. Yes, ma'am.

12 Q. Do you recall about how many times you previously done
13 that?

14 A. Two times in 1996 in two different cases.

15 Q. At this point, Your Honor, the State would like to
16 offer Ms. Alexander as an expert in that field of nursing
17 and sexual assault examination.

18 MR. LEMEL: Without objection, Your Honor.

19 THE COURT: She's qualified to testify in those
20 subject matters.

21 SOLICITOR LIPINSKI: Thank you, Your Honor.

22 Could you start off by explaining to us what you
23 typically do in a sexual assault examination on a female
24 patient?

25 A. We are on a twenty-four seven call so we get called in

1 say that there is a sexual assault patient that's arrived
2 at one of the emergency rooms at Carolina's Medical Center
3 and I go in usually to try to get a rape crises advocate or
4 family member that the patient chooses and we interview
5 her, get a medical screening. We do a head to toe examine
6 and then we perform evidence collection; all the envelopes
7 in the evidence sexual assault kit.

8 Q. Can you explain to me by what you mean by the term
9 medical screening?

10 A. We look for injuries and help with coping mechanisms.
11 Look for any type of injury to the genitalia; any type of
12 injury to her body. And make sure she is coping well with
13 the exam and offer support.

14 Q. When you say that you look for injuries on the body.
15 does that -- are you referring to anywhere on the body or a
16 specific area?

17 A. Anywhere on the body.

18 Q. Anywhere on the body. And when you are doing the
19 typical sexual assault exam on a female patient how is that
20 patient typically positioned while you perform the exam?

21 A. Usually we have them in what we call a pelvic which
22 has stirrups where their legs are apart and we are able to
23 see the whole perineum and able to insert a speculum. And
24 actually a speculum is a type of device that just kind of
25 holds the lips of the vagina open so you can see inside to

1 the uterus and the womb of the patient.

2 Q. Okay. And would you consider that position an ideal
3 condition in which to perform the exam?

4 A. Yes, ma'am.

5 Q. And before you actually began to do the sexual assault
6 exam do you try to get details from the patient as to
7 details of the assault?

8 A. Yes, ma'am.

9 Q. And why do you do that?

10 A. Her relating her story will help me better look for
11 evidence of a sexual assault and look for injuries.

12 Q. Now based on what you would be told about the details
13 of the assault do you tend to focus on those areas during
14 your examination?

15 A. Yes. That's somewhere where I would look for
16 injuries.

17 Q. So you would consider that information important to
18 your exam?

19 A. Yes, ma'am.

20 Q. And in addition to getting details about the alleged
21 sexual assault itself do you also try to obtain a medical
22 history for the person you are doing the sexual assault
23 exam on?

24 A. Yes, ma'am.

25 Q. And why do you do that?

1 A. Well we just want to make sure her whole being is
2 being taken care of nursing wise making sure she gets all
3 the medical attention she needs.

4 Q. And do you rely on the information provided during her
5 medical history to assist you in performing the
6 examination?

7 A. Yes, ma'am.

8 Q. And would you use that information to assist you in
9 reaching a conclusion from that examination?

10 A. Yes, ma'am.

11 Q. What do you do in a situation if a patient is unable
12 to give you those types of details?

13 A. I usually ask anyone who was there, her family, anyone
14 that knows the victim.

15 Q. Do you recall were you working at CMC on June 8TH of
16 2008?

17 A. Yes, ma'am.

18 Q. In your duties at CMC did you ever come into contact
19 with Ms. Loretta Moss?

20 A. Yes, ma'am.

21 Q. And when you typically treat a patient do you make
22 notes of what you are doing throughout the course of the
23 exam?

24 A. Yes, ma'am.

25 Q. And would those notes also include any observations

1 you have of that particular patient?

2 A. Yes, ma'am.

3 Q. And why do you keep notes like that?

4 A. It helps me remember in case the case should come to
5 trial. And it also helps document injuries and let's me
6 know if I need to involve a physician to see the patient.

7 Q. Would those notes actually become a part of that
8 patient's medical chart?

9 A. Yes, ma'am.

10 Q. And I believe you mentioned but I just want to
11 clarify, did you take notes specifically when you did the
12 examination on Ms. Moss?

13 A. Yes, ma'am.

14 Q. And is that what you have in your hand right there
15 today?

16 A. Yes, ma'am.

17 Q. And will those notes assist you in explaining your
18 testimony to the jury and in refreshing your recollection
19 of what went on?

20 A. Yes, ma'am.

21 Q. Do you recall about what time on June 8TH you first
22 came into contact with Loretta Moss?

23 A. Is it all right if I look at them?

24 Q. Yes. You can't read from them but you are allowed to
25 look at them to refresh your memory.

- 1 A. It looks like I was paged at 4:40 in the morning.
- 2 Q. And that was on June 8TH of 2008?
- 3 A. Yes, ma'am.
- 4 Q. And when you first saw Ms. Moss do you recall what
- 5 condition she was in?
- 6 A. She was very very ill.
- 7 Q. And what do you mean by very very ill?
- 8 A. She was confused she had been diagnosed with a head
- 9 injury and she had multiple contusions and abrasions and
- 10 lacerations; cuts to her body.
- 11 Q. Okay. I'm going to back you up a little bit. For
- 12 those of us who don't have any medical training what do you
- 13 mean when you say contusions?
- 14 A. A bruise. Lot's of bruising.
- 15 Q. And what are you referring to when you say
- 16 lacerations?
- 17 A. A cut.
- 18 Q. You said that she was confused. Was she able to
- 19 communicate with you verbally?
- 20 A. No, ma'am.
- 21 Q. Do you recall where you saw these bruises and
- 22 lacerations on her body?
- 23 A. Is it all right if I refer again?
- 24 Q. Yes.
- 25 A. She had a large cut to her left forearm that had been

- 1 stapled from Piedmont Medical Center prior to transfer.
- 2 Q. Okay.
- 3 A. She had multiple contusions or bruising and abrasions
- 4 to her back. She had contusions to her left breast and her
- 5 abdomen. She had a very deep laceration to her right upper
- 6 right arm which is a cut. She had bruising to her inner
- 7 thigh. She had a cut to her left knee and an abrasion to
- 8 her left knee also. She had small bruising to her left
- 9 shoulder and left upper arm also. And then she also had
- 10 the head injury. She was bleeding from a wound to her
- 11 head.
- 12 Q. Do you recall where on her head?
- 13 A. I believe it was -- I'm not really sure.
- 14 Q. Okay. You mentioned the abdomen. Could you be more
- 15 specific? Can you show us where that is on the body?
- 16 A. It's in her right lower abdomen.
- 17 Q. Okay. And you also mentioned that she had bruising on
- 18 her inner thigh?
- 19 A. Yes, ma'am.
- 20 Q. Do you remember which leg that was?
- 21 A. Right inner thigh.
- 22 Q. Do you remember where on her thigh that bruising was?
- 23 A. Pretty much mid-right inner thigh.
- 24 Q. And when you saw Ms. Moss that day what position was
- 25 she in?

1 A. She's what we call full spinal protocol which means
2 that they haven't done cleared her x rays of her neck and
3 back so they keep her in a hard neck brace and they put her
4 on a hard back board and that's how I saw her.

5 Q. Is she somewhat attached to that backboard?

6 A. She is attached with straps. I think at one point
7 during the examination we rolled her on her side keeping
8 the neck brace on and having people help to assess her
9 back.

10 Q. Were you able to put Ms. Moss's legs into stirrups?

11 A. No, ma'am.

12 Q. Were you able to access the area between her legs; her
13 genital area in the way that you found her strapped to the
14 back board with the back brace on?

15 A. It was more difficult because she had to stay in that
16 position so it was hard to visualize. But we were able to
17 obtain the swabs that we needed for the sexual assault kit.

18 Q. Is there anything that you would typically do in an
19 exam of a female patient that you were able to do because
20 of her positioning while you were doing the exam?

21 A. Because she was on that back board we were unable to
22 put the speculum in which is the device that holds the
23 vaginal lips away from the cervix so you can see inside the
24 womb.

25 Q. So because of that was your view into her cervix more

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1 limited than it would be in a typical exam?

2 A. Yes, ma'am.

3 Q. Was there anything else you were unable to do that you
4 would normally do in an exam because of her position?

5 A. Not that I can think of.

6 Q. Now you said that Ms. Moss was unable to speak with
7 you during the course of the exam?

8 A. Yes, ma'am.

9 Q. Do you recall who provided details about the assault
10 to you?

11 A. Her daughter provided her medical history and then her
12 grandson provided details of the assault.

13 Q. And based on the details you received from her
14 grandson about the assault that allegedly had taken place
15 was there any particular area of her body that you were led
16 to focus on when you were doing the sexual exam?

17 A. Well her grandson had told me - -

18 MR. LEMEL: Objection.

19 BY SOLICITOR SIKORA:

20 Q. Without saying what he said to you as a result of what
21 he said to you is there a certain part of Ms. Moss's body
22 that you were particularly interested in examining?

23 A. Really I was just focused on the all over exam. She
24 had multiple injuries I wanted to make sure that I
25 addressed all of them and didn't miss any injuries.

1 Q. Okay. Could you take us through the actual exam that
2 you performed on Ms. Moss?

3 A. Sure. Part of our sexual assault kit we obtain DNA
4 through saliva, cheek scrapings; we try to get hair samples
5 from her head hair. We also try to get pubic hair
6 examples. We actually do pubic hair combings where we take
7 a comb and comb through the pubic hair to see if there's
8 any pubic hair from the assailant. We do vaginal swabs
9 looking for semen or DNA. We take blood work sometimes
10 also for DNA typing from the patient. We do rectal swabs
11 also just like vaginal swabs.

12 Q. And what would be the purpose of doing the rectal
13 swabs?

14 A. If there was a rectal assault that occurred. We also
15 collect panties but I think all of her clothing was left at
16 Piedmont Medical Center. She didn't come in with clothing.
17 We also package that.

18 Q. Do you remember what she was wearing when you saw Ms.
19 Moss?

20 A. She was just in a hospital gown.

21 Q. I am going to hand these scissors and marked for
22 Identification purposes State's Exhibit Number Thirty-Five
23 and I would ask you to use those scissors to please cut
24 open this package.

25 (WITNESS OPENED PACKAGE USING SCISSORS PROVIDED.)

1 Q. Are you comfortable handling what's in there or do you
2 need a pair of gloves?

3 A. I'm comfortable.

4 Q. Okay can you go ahead and take the items out. Do you
5 recognize what's in that bag?

6 A. Yes, ma'am.

7 Q. And could you tell us what that is?

8 A. These are the envelopes that are inside the sexual
9 assault kit that we actually put evidence in and seal.

10 Q. When you receive a sexual assault kit that has not
11 been used yet does that sexual assault kit contain those
12 envelopes?

13 A. Yes, ma'am.

14 Q. What else would the unused sexual assault kit contain?

15 A. Paper work.

16 Q. Does it contain anything that you would use to extract
17 evidence from the patient?

18 A. It contains Q tips and certain envelopes, slides in
19 certain envelopes; special paper that we put blood samples
20 on.

21 Q. Okay. And once you obtain evidence from a certain
22 area of a patient's body what do you do with the evidence
23 once you've obtained it where does it go?

24 A. Once we have the swabs or slides or hair samples we
25 actually put it inside the envelope and then we seal the

1 back of the envelope and initial and date it.

2 Q. Okay. And do you see your handwriting anywhere on
3 those envelopes?

4 A. Yes, ma'am.

5 Q. Do you see a date on any of those envelopes?

6 A. Yes, ma'am.

7 Q. Is that date also done in your hand writing?

8 A. Yes, ma'am.

9 Q. Okay. Could you please go through with us the various
10 envelopes that you have there and what type of samples if
11 anything they obtain?

12 A. This envelope is for pulled head hair. This I think
13 must be a testing envelope from the lab. We have known
14 blood sample which is Ms. Moss's blood. We have known
15 cheek scrapings. This is also for the DNA inside their
16 mouth cheek scraping.

17 Q. That would be on who?

18 A. That would be on Ms. Moss for her DNA.

19 Q. Okay.

20 A. We have pubic hair combings. That's where we put a
21 towellet in underneath them and comb through their pubic
22 hair. We have pulled pubic hairs also. We have rectal
23 swabs and smears; vaginal swabs and smears and then also
24 oral swabs and smears.

25 Q. And when you say oral what area of the body are we

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1 talking about?

2 A. Inside the mouth.

3 Q. And on each of those envelopes as you went through them
4 did you see your signature or initials on them?

5 A. Yes, ma'am.

6 Q. Take a look at all of them.

7 A. Yes, ma'am.

8 Q. And do you also see the date on each one of those?

9 A. Yes, ma'am.

10 Q. And what is that date reflected on the envelope?

11 A. June 8, 2008.

12 Q. I'm sorry I didn't hear the first part.

13 A. June 8, 2008.

14 Q. And do those envelopes look just as they did the night
15 you collected them from Ms. Moss?

16 A. Yes, ma'am.

17 Q. And what did you do with each of those collected
18 envelopes after they were sealed and you signed them and
19 put the date on it?

20 A. Once I've completed all of the paperwork a copy of the
21 paperwork goes actually inside the kit along with these
22 envelopes and then the box is closed and sealed and I sign
23 my name when I hand it over to the detective.

24 Q. Okay. Do you recall ever handing over these items to
25 the detective?

1 A. Only through my notes.

2 Q. Okay. And do your notes indicate -- are you able
3 to refresh your memory by taking a look at your notes as to
4 the detectives you handed those items over to?

5 A. It was Detective W. J. Miller and an Officer Russ
6 Yeager.

7 Q. And until you handed these items over to Detective
8 Yeager were they in your possession?

9 A. Yes, ma'am.

10 Q. And were the items that you collected that we have
11 already gone through in State's Exhibit were they tampered
12 with in any way?

13 A. No, ma'am.

14 Q. You can go ahead and put them back in the bag.

15 (WITNESS RETURNED EVIDENCE BAG.)

16 Q. In addition to obtaining the swabs that we've already
17 talked about do you also do a visual inspection of the
18 patient's body?

19 A. Yes, ma'am.

20 Q. Did you do that in Ms. Moss's case?

21 A. Yes, ma'am.

22 Q. Can you tell us a little bit about what you found
23 whenever you did the visual inspection of Ms. Moss?

24 A. Well her hair was matted with blood from her head
25 injury that they hadn't sutured or closed yet. And she did

1 have staples where they had sewn her lacerations -- some of
2 her lacerations at Piedmont on her forearm. And she had
3 like I said contusions and abrasions and cuts.

4 Q. Okay. Do you have in front of you a document that's
5 says at the top Step Ten, Page One?

6 A. Yes, ma'am.

7 Q. I am going to draw your attention towards the bottom
8 of that form. Could you tell us; could you describe for us
9 what you did as part of the pelvic exam of Ms. Moss and
10 what you saw?

11 A. We inspect the whole perineum.

12 Q. I am going to back you up right there. I heard a big
13 word. Perineum?

14 A. The whole genitalia; the whole lower half. And during
15 that inspection I didn't find any tears or redness;
16 abrasions or bleeding to her actual genitalia.

17 Q. Okay. What about Ms. Moss's cervix?

18 A. Because she was on that back board her legs were not
19 apart and it was hard for me to actually see because I
20 didn't have a speculum. I couldn't use the speculum
21 because of her positioning.

22 Q. Okay. Could you explain what a cervix is?

23 A. It's just the womb of a woman where the baby is held.

24 Q. And did you also check the rectal area of Ms. Moss?

25 A. Yes, ma'am.

1 Q. Could you tell us about that and what you saw?

2 A. Again I didn't see any tears, abrasions, redness or
3 bleeding to her rectum.

4 Q. And can you tell us about the importance of looking
5 for these things while you are doing your exam?

6 A. You want to make sure that you identify any injuries
7 from a sexual assault so the patient can get medical
8 attention. And it's the part of the routine exam that we
9 do with a sexual assault examination.

10 Q. Okay. I am going to take you to another page of your
11 records. The top left it says medical history and on the
12 right hand side there is anatomical drawings. Do you have
13 that page of your notes with you?

14 A. Yes.

15 Q. Yes. As part of your examination of Ms. Moss are you
16 also looking for evidence of any semen?

17 A. Yes, ma'am.

18 Q. And did you do that in Ms. Moss's case?

19 A. Yes, ma'am. We have a special alternate light source
20 that we use when we turn off the lights in the room and
21 turn this flashlight type instrument on and bacteria and
22 semen were luminous green usually and we will take samples
23 of that if we see it.

24 Q. Okay. And were you able to see anything like that
25 when you did your exam of Ms. Moss?

1 A. No, ma'am.

2 Q. Is it medically possible for a woman's vagina to be
3 penetrated without there being physical signs that that has
4 occurred?

5 A. Yes, ma'am.

6 Q. And what would be some of the reasons that there had
7 been penetration that there would be no physical signs of
8 that?

9 A. Women that are of child bearing age have elastic
10 vaginas that accommodate and if they are not tense or
11 fighting or struggling during an assault there may not be
12 injuries.

13 Q. Whenever you refer to it as an elastic vagina can you
14 describe a little more about what you mean by that?

15 A. It's able to accommodate a baby. It's also able to
16 accommodate a penis during intercourse and able to
17 accommodate and then return back to normal vaginal opening.

18 Q. What about women that are no longer of child bearing
19 age is their vagina designed to accommodate a penis?

20 A. Yes, ma'am.

21 Q. And do you recall the physical condition Ms. Moss was
22 in when you saw her?

23 A. Yes, ma'am.

24 Q. If Ms. Moss had been in that same condition during the
25 alleged assaults when -- you were not present for the

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1 assault; correct?

2 A. No, ma'am.

3 Q. But if she had been in that same condition during the
4 alleged assault would she have been in the position
5 medically speaking to fight back?

6 A. No, ma'am, I don't think so.

7 Q. And you mentioned also that you weren't able when ever
8 you used the special light I forget the word you used for
9 it to see if there was any presence of semen on Ms. Moss's
10 body. I believe you indicated you were not able to see any
11 semen?

12 A. No, ma'am.

13 Q. What are some reasons that semen may not be found
14 present even if penetration had occurred?

15 A. There may not be ejaculation.

16 Q. And if there is no physical sign of trauma or physical
17 trauma to the female genital area does that necessarily
18 mean that that female wasn't penetrated?

19 A. No, ma'am.

20 Q. Thank you. Please answer any questions the defense
21 attorney has.

22 CROSS EXAMINATION

23 ANGIE ALEXANDER BY MR. LEMEL:

24 Q. Good morning, Ms. Alexander.

25 A. Good morning.