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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Colleton County
Court of Common Pleas

The Honorable Edgar Dickson, Circuit Court Judge

Appellate Case No. 2026-000508

LESLIE TWYMAN.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF COLLETON) CASE NO.: 2010-GS-15-00849

STATE OF SOUTH CAROLINA,)
)
 v.) TRANSCRIPT OF RECORD
)
 LESLIE TWYMAN,)
)
 DEFENDANT.)

APRIL 18TH - 20TH, 2011
 WALTERBORO, SOUTH CAROLINA
 BEFORE THE HONORABLE PERRY M. BUCKNER, III

APPEARANCES:

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Jury Selection**State v. Leslie Twyman****2010-GS-15-00849, CSC COUNT ONE, AND CSC COUNT TWO****April 18th - 20th, 2011**

Juror #	Name	Race	Gender	Jury
77	Robert R. Hadwin	W	M	1
11	Desmond A. Bedford	B	M	2
64	Dorothy M. Ford	B	F	3
162	Lewis A. Smalls	B	M	4
118	Cortney D. McMillon	B	F	5
110	Joyce H. Lynah	B	F	6
181	Angela G. Upchurch	W	F	7
38	Wesley N. Cline	W	M	8
47	Amanda L. Davis	B	F	9
32	Larry M. Carter, Jr.	W	M	10
155	Bennie L. Sanders	W	M	11
173	Travis S. Taylor	B	M	12

NO ALTERNATES

1 THE COURT: Call your case, Solicitor.

2 ASST. SOL. SHELTON: Your Honor, the State calls the
3 State v. Leslie Twyman. Indictment number 2010-GS-15-00849.
4 May I approach, Your Honor?

5 THE COURT: You may. All right, ladies and gentlemen,
6 if you will give me your attention. The State has called
7 for trial the State of South Carolina versus Leslie Twyman.
8 The defendant is charged by this document, which I hold in
9 my hand, which we call an indictment. The indictment is not
10 evidence of any of the allegations contained in the
11 indictment. This is simply the formal written instrument of
12 which the case is brought into this court.

13 To this indictment, the defendant has pled not guilty.
14 That places the burden on the State of South Carolina to
15 prove each and every element of the offenses contained in
16 the indictment beyond a reasonable doubt. It will be your
17 job, ladies and gentlemen, if you are selected as a juror in
18 the trial of this case, to determine whether or not the
19 State has met that burden. Now, I'm going to ask that the
20 lawyers who will be trying this case, stand, face my jury
21 panel, introduce themselves, and in the case of defense
22 counsel, please also introduce your client; and indicate
23 where your client is from; beginning with counsel for the
24 State of South Carolina.

25 ASST. SOL. SHELTON: Thank you, Your Honor. Good

1 afternoon, ladies and gentlemen, my name is Ben Shelton.
2 I'm an Assistant Solicitor with the Fourteenth Circuit
3 Solicitor's Office here in Walterboro, Colleton County.
4 This is Jodi Taylor, our investigator from the Sheriff's
5 Office. Mr. Chaz Ballish is also here from the Solicitor's
6 Office.

7 **THE COURT:** Thank you.

8 **MR. BEACH:** Good afternoon, ladies and gentlemen. I'm
9 Harris Beach of the public defender's office. I'll be
10 trying this case. This is my client, Leslie Twyman.

11 **THE COURT:** Stand up and face the jury panel.

12 (DEFENDANT STANDS.)

13 **MR. BEACH:** He is the defendant in this case, and he is
14 from Colleton.

15 **THE COURT:** Where in Colleton County?

16 **MR. BEACH:** He's from Walterboro, Your Honor.

17 **THE COURT:** Walterboro. Very well. You may be seated.
18 All right, ladies and gentlemen, you have met the defendant
19 in this case, Mr. Leslie Twyman. He spells it T-W-Y-M-A-N,
20 from Walterboro, South Carolina. I ask, first of all, and
21 remind you that the responses you're about to give me are
22 under oath.

23 Is any member of my jury panel related by blood,
24 connected by marriage, or a close personal friend of the
25 defendant in this case, whom you've just met, Leslie Twyman,

1 of Walterboro, South Carolina? If so, please stand at this
2 time.

3 (NO RESPONSE.)

4 **THE COURT:** Let the record reflect, no one is standing.
5 All right, you've also met counsel for the State of South
6 Carolina, Mr. Ben Shelton. He will be assisted by Asst.
7 Sol. Chas Ballish, in his office. Seated at the table with
8 them is Jodi Taylor who is with the Colleton County
9 Sheriff's Office.

10 I ask, first of all, is any member of my jury panel
11 related by blood, connected by marriage, or a close personal
12 friend of Mr. Ben Shelton or Mr. Chaz Ballish? If so,
13 please stand at this time.

14 (NO RESPONSE.)

15 **THE COURT:** Let the record reflect, no one is standing.

16 Is any member of my jury panel ever been represented in
17 the past by Mr. Ben Shelton or Mr. Chaz Balish; either in
18 the past or currently? If so, please stand at this time.

19 (NO RESPONSE.)

20 **THE COURT:** Let the record reflect, no one is standing.

21 Any member of my jury panel related by blood, connected by
22 marriage, or a close personal friend of any member of the
23 Fourteenth Judicial Circuit Solicitor's Office? If so,
24 please stand at this time.

25 (NO RESPONSE.)

1 **THE COURT:** Let the record reflect, no one is standing.

2 You've also met counsel for the defendant, Mr. Harris
3 Beach, with the Colleton County Public Defender's Office.
4 Any member of my jury panel related by blood, connected by
5 marriage, or a close personal friend of Mr. Harris Beach
6 with the Colleton County Public Defender's Office? If so,
7 please stand at this time.

8 (NO RESPONSE.)

9 **THE COURT:** Let the record reflect, no one is standing.

10 Is any member of my jury panel ever been represented in
11 the past or currently represented by Mr. Harris Beach of the
12 public defender's office, or any member of the public
13 defender's office in the past or currently? If so, please
14 stand at this time.

15 (NO RESPONSE.)

16 **THE COURT:** Let the record reflect, no one is standing.

17 Seated at the table with Mr. Beach is Ms. Fran Pye, who
18 I introduced you to earlier, ladies and gentlemen. Any
19 member of my jury panel related by blood, connected by
20 marriage, or a close personal friend of Ms. Fran Pye? If
21 so, please stand at this time. She's with the public
22 defender's office.

23 (NO RESPONSE.)

24 **THE COURT:** Let the record reflect, no one is standing.

25 All right. Ladies and gentlemen, I told you that the

Jury Selection**State v. Leslie Twyman****2010-GS-15-00849, CSC COUNT ONE, AND CSC COUNT TWO****April 18th - 20th, 2011**

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181	Angela G. Upchurch	W	F	7
38	Wesley N. Cline	W	M	8
47	Amanda L. Davis	B	F	9
32	Larry M. Carter, Jr.	W	M	10
155	Bennie L. Sanders	W	M	11
173	Travis S. Taylor	B	M	12

NO ALTERNATES

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4 May I approach, Your Honor?

5 **THE COURT:** You may. All right, ladies and gentlemen,
6 if you will give me your attention. The State has called
7 for trial the State of South Carolina versus Leslie Twyman.
8 The defendant is charged by this document, which I hold in
9 my hand, which we call an indictment. The indictment is not
10 evidence of any of the allegations contained in the
11 indictment. This is simply the formal written instrument of
12 which the case is brought into this court.

13 To this indictment, the defendant has pled not guilty.
14 That places the burden on the State of South Carolina to
15 prove each and every element of the offenses contained in
16 the indictment beyond a reasonable doubt. It will be your
17 job, ladies and gentlemen, if you are selected as a juror in
18 the trial of this case, to determine whether or not the
19 State has met that burden. Now, I'm going to ask that the
20 lawyers who will be trying this case, stand, face my jury
21 panel, introduce themselves, and in the case of defense
22 counsel, please also introduce your client; and indicate
23 where your client is from; beginning with counsel for the
24 State of South Carolina.

25 **ASST. SOL. SHELTON:** Thank you, Your Honor. Good

1 afternoon, ladies and gentlemen, my name is Ben Shelton.
2 I'm an Assistant Solicitor with the Fourteenth Circuit
3 Solicitor's Office here in Walterboro, Colleton County.
4 This is Jodi Taylor, our investigator from the Sheriff's
5 Office. Mr. Chaz Ballish is also here from the Solicitor's
6 Office.

7 **THE COURT:** Thank you.

8 **MR. BEACH:** Good afternoon, ladies and gentlemen. I'm
9 Harris Beach of the public defender's office. I'll be
10 trying this case. This is my client, Leslie Twyman.

11 **THE COURT:** Stand up and face the jury panel.

12 (DEFENDANT STANDS.)

13 **MR. BEACH:** He is the defendant in this case, and he is
14 from Colleton.

15 **THE COURT:** Where in Colleton County?

16 **MR. BEACH:** He's from Walterboro, Your Honor.

17 **THE COURT:** Walterboro. Very well. You may be seated.
18 All right, ladies and gentlemen, you have met the defendant
19 in this case, Mr. Leslie Twyman. He spells it T-W-Y-M-A-N,
20 from Walterboro, South Carolina. I ask, first of all, and
21 remind you that the responses you're about to give me are
22 under oath.

23 Is any member of my jury panel related by blood,
24 connected by marriage, or a close personal friend of the
25 defendant in this case, whom you've just met, Leslie Twyman,

1 of Walterboro, South Carolina? If so, please stand at this
2 time.

3 (NO RESPONSE.)

4 **THE COURT:** Let the record reflect, no one is standing.
5 All right, you've also met counsel for the State of South
6 Carolina, Mr. Ben Shelton. He will be assisted by Asst.
7 Sol. Chaz Ballish, in his office. Seated at the table with
8 them is Jodi Taylor who is with the Colleton County
9 Sheriff's Office.

10 I ask, first of all, is any member of my jury panel
11 related by blood, connected by marriage, or a close personal
12 friend of Mr. Ben Shelton or Mr. Chaz Ballish? If so,
13 please stand at this time.

14 (NO RESPONSE.)

15 **THE COURT:** Let the record reflect, no one is standing.
16 Is any member of my jury panel ever been represented in
17 the past by Mr. Ben Shelton or Mr. Chaz Balish; either in
18 the past or currently? If so, please stand at this time.

19 (NO RESPONSE.)

20 **THE COURT:** Let the record reflect, no one is standing.
21 Any member of my jury panel related by blood, connected by
22 marriage, or a close personal friend of any member of the
23 Fourteenth Judicial Circuit Solicitor's Office? If so,
24 please stand at this time.

25 (NO RESPONSE.)

1 **THE COURT:** Let the record reflect, no one is standing.

2 You've also met counsel for the defendant, Mr. Harris
3 Beach, with the Colleton County Public Defender's Office.
4 Any member of my jury panel related by blood, connected by
5 marriage, or a close personal friend of Mr. Harris Beach
6 with the Colleton County Public Defender's Office? If so,
7 please stand at this time.

8 (NO RESPONSE.)

9 **THE COURT:** Let the record reflect, no one is standing.

10 Is any member of my jury panel ever been represented in
11 the past or currently represented by Mr. Harris Beach of the
12 public defender's office, or any member of the public
13 defender's office in the past or currently? If so, please
14 stand at this time.

15 (NO RESPONSE.)

16 **THE COURT:** Let the record reflect, no one is standing.

17 Seated at the table with Mr. Beach is Ms. Fran Pye, who
18 I introduced you to earlier, ladies and gentlemen. Any
19 member of my jury panel related by blood, connected by
20 marriage, or a close personal friend of Ms. Fran Pye? If
21 so, please stand at this time. She's with the public
22 defender's office.

23 (NO RESPONSE.)

24 **THE COURT:** Let the record reflect, no one is standing.

25 All right. Ladies and gentlemen, I told you that the

1 indictment merely contained allegations and it is not
2 evidence of any of the allegations contained therein. It is
3 necessary that I advise you about the indictment in order to
4 ask you questions to determine your impartiality to serve as
5 a juror in the trial of this case.

6 In this indictment, it charges the defendant, Leslie
7 Twyman, with two counts. Count one is the offense of
8 criminal sexual conduct, first degree. It is alleged in
9 this count that it occurred in Colleton County, South
10 Carolina, on or about August 21st, 2010. That the
11 defendant, Leslie Twyman, did commit a sexual battery upon
12 the victim, Jessica Fredericks, F-R-E-D-E-R-I-C-K-S. And
13 that the sexual battery was committed upon the victim while
14 the defendant did forcibly confine or kidnap or rob, extort,
15 burglarize or commit another similar offense or act upon the
16 victim. It is alleged that the defendant did lure the
17 victim into his home by false pretense, and/or did forcibly
18 prevent her from leaving; that's in Count One.

19 Count Two is the offense of criminal sexual conduct,
20 third degree, mental incompatibility or a mental defect. In
21 this Count, it is alleged that this occurred in Colleton
22 County, South Carolina, on or about August 21st, 2010. That
23 the defendant, Leslie Twyman, did commit a sexual battery
24 upon the victim, Jessica Fredericks, with knowledge, or
25 reason to have knowledge, that the victim was mentally

1 defective, mentally incapacitated, or physically helpless.

2 It is alleged that the defendant did force sexual
3 intercourse upon a mentally disabled victim. I tell you
4 about those allegations, and that's all they are, ladies and
5 gentlemen, in order to ask you this: is any member of my
6 jury panel heard about, read about, or know anything
7 whatsoever about the facts which are alleged in this case?
8 If so, please stand at this time.

9 (NO RESPONSE.)

10 **THE COURT:** Let the record reflect, no one is standing.

11 I'm advised that the potential witnesses in the trial
12 of this case will be as follows: if you are present in the
13 courtroom when I call your name, please stand and face my
14 jury panel so that they can see your face, as well as hear
15 the name called. Ladies and gentlemen, these are potential
16 witnesses. I will be giving you a home town or a place of
17 employment, because not all the witnesses will be present in
18 the courtroom today. Please listen.

19 Ms. Jessie M. Gooding, Walterboro, South Carolina; Ms.
20 Caroline Wilder, Walterboro, if you'll stand and face my
21 jury panel, please ma'am. This is Caroline Wilder of
22 Walterboro. Thank you, you may be seated.

23 Rodney Wilder, Walterboro, South Carolina. That's W-I-
24 L-D-E-R, ladies and gentlemen. Patty Lohr, Walterboro,
25 South Carolina. Thank you, ma'am, you may be seated.

1 Elizabeth Shein-Pearson, it's a hyphenated last name, ladies
2 and gentlemen, S-H-E-I-N hyphen P-E-A-R-S-O-N, Colleton
3 County High School.

4 Lynn Wogamon, W-O-G-A-M-O-N, Colleton County High
5 School. Carol Marks, M-A-R-K-S, Cottageville, South
6 Carolina. Jessica Fredericks, Walterboro, South Carolina --
7 standing to my right. Thank you, you may be seated.
8 Brittney Holmes, Charleston, South Carolina. Dorothea
9 Geathers, Colleton County Sheriff's Office. Brandon Craven,
10 Walterboro Public Safety. Amanda Webb, W-E-B-B, South
11 Carolina Law Enforcement Division, SLED. Stephen G Medical
12 University of South Carolina. Dorethy, D-O-R-E-T-H-Y,
13 Simmons, Medical University of South Carolina. Jodi Taylor,
14 Colleton County Sheriff's Office. Mariama Flynn, F-L-Y-N-N,
15 Medical University of South Carolina. Leslie Twyman, stand
16 up one more time for me, Mr. Twyman, and face my jury panel,
17 from Walterboro, South Carolina. Thank you, you may be
18 seated.

19 Any additional witnesses from the State?

20 **ASST. SOL. SHELTON:** No, sir, Your Honor.

21 **THE COURT:** Any additional witnesses from the
22 defendant?

23 **MR. BEACH:** None, Your Honor.

24 **THE COURT:** Ladies and gentlemen, is any member of my
25 jury panel related by blood, connected by marriage, or a

1 close personal friend of any of the potential witnesses in
2 the trial of this case whose names I have just called? If
3 so, please stand at this time. They will pass you a
4 microphone.

5 (SEVERAL JURORS STAND.)

6 **THE COURT:** All right. Let me start up front. Yes,
7 ma'am, your name and juror number for me.

8 **JUROR:** Sandra Thomas, One Seventy-five.

9 **THE COURT:** Hold on one minute for me, Sandra. Let me
10 check your number for the record. Counsel, this is juror
11 number One Hundred Seventy-five, Sandra N. Thomas. Ms.
12 Thomas, listen carefully for me if you would to my question
13 and give me a yes or no answer. Are you related by blood to
14 any of the potential witnesses?

15 **JUROR:** No.

16 **THE COURT:** Are you connected by marriage to any of the
17 potential witnesses?

18 **JUROR:** No.

19 **THE COURT:** Are you a close personal friend to any of
20 the potential witnesses?

21 **JUROR:** Yes.

22 **THE COURT:** Which witness?

23 **JUROR:** Patty Lohr.

24 **THE COURT:** All right. The fact that you are a close
25 personal friend of Patty Lohr, who is a potential witness in

1 the trial of this case, would that in any way prevent you
2 from giving the State of South Carolina or the defendant in
3 this case a fair and an impartial trial?

4 **JUROR:** Yes.

5 **THE COURT:** I'll excuse you from service in the trial
6 of this case only. Have a seat for me.

7 Yes, ma'am, your name and juror number?

8 **JUROR:** Teresa Roberson, juror number One Fifty.

9 **THE COURT:** Counsel, this is juror number One Hundred
10 Fifty, Teresa L. Roberson. Ms. Roberson, are you related by
11 blood to any of the potential witnesses?

12 **JUROR:** No.

13 **THE COURT:** Are you connected by marriage to any of the
14 potential witnesses?

15 **JUROR:** No.

16 **THE COURT:** Are you a close personal friend of any of
17 the potential witnesses?

18 **JUROR:** Yes, I am.

19 **THE COURT:** Which witnesses?

20 **JUROR:** Patty Lohr, Lynn Wogamon and Carol Marks.

21 **THE COURT:** All right. The fact that you're a close
22 personal friend of Patty Lohr, Lynn Wogamon and Carol Marks,
23 would that in any way affect your ability to give the State
24 of South Carolina and the defendant in this trial a fair and
25 an impartial trial?

1 **JUROR:** Yes, it would.

2 **THE COURT:** I'll excuse you from service in the trial
3 of this case. Have a seat for me.

4 Anyone else?

5 (NO RESPONSE.)

6 **THE COURT:** Let the record reflect, no one is standing
7 in response to my last question.

8 Any member of my jury panel ever been the victim of a
9 violent crime? If so, please stand at this time.

10 (JUROR STANDS.)

11 **THE COURT:** Give me your name and jury number, please.

12 **JUROR:** Linda Jackson, juror number Ninety-Four, a rape
13 victim.

14 **THE COURT:** Hold on one second; ninety-four?

15 **JUROR:** Yes, sir.

16 **THE COURT:** Counsel, this is Linda Jackson, juror
17 number Ninety-Four. Ms. Jackson, you were the victim of a
18 violent crime?

19 **JUROR:** Yes, sir.

20 **THE COURT:** The fact that you were previously a victim
21 of a violent crime, would that in any way affect your
22 ability to give the State of South Carolina or the defendant
23 a fair and an impartial trial?

24 **JUROR:** It might.

25 **THE COURT:** You think it might?

1 **JUROR:** Yes, sir.

2 **THE COURT:** I'll excuse you from service in the trial
3 of this case only.

4 Let the record reflect, no one else is standing.

5 Any member of my jury panel or a member of their
6 immediate family -- by immediate I'm referring to husband,
7 wife, mother, father, brother, sister, or child. Any member
8 of my jury panel, or a member of their immediate family
9 presently employed by a law enforcement agency? If so,
10 please stand at this time.

11 (JUROR STANDS.)

12 **JUROR:** Rosemary C. Moore, juror number One Twenty-six.

13 **THE COURT:** Counsel, this is juror number One Twenty-
14 six, Rosemary C. Moore. Ms. Moore, are you related or are
15 you yourself a member of law enforcement or is it a member
16 of your immediate family?

17 **JUROR:** My brother is.

18 **THE COURT:** Where is your brother employed?

19 **JUROR:** He's in Holly Hill.

20 **THE COURT:** Holly Hill, with the Holly Hill City Police
21 Department?

22 **JUROR:** Yes, sir.

23 **THE COURT:** The fact that your brother is with the
24 Holly Hill Police Department, would that in any way affect
25 your ability to give the State of South Carolina or the

1 defendant in this case a fair and an impartial trial?

2 **JUROR:** No, sir, it wouldn't.

3 **THE COURT:** Thank you, ma'am, you may be seated. Let
4 the record reflect, no one is standing in response to my
5 last question -- oh, wait a minute. Let him pass you a
6 microphone. Give me your name and juror number.

7 **JUROR:** Jimmy B. Roberts, One-Five-Two.

8 **THE COURT:** Counsel, this is juror number One Hundred
9 and Fifty-two, Jimmy Roberts. Mr. Roberts, are you or a
10 member of your immediate family employed with law
11 enforcement?

12 **JUROR:** My immediate family.

13 **THE COURT:** And what member of your family?

14 **JUROR:** My son.

15 **THE COURT:** And where is he employed?

16 **JUROR:** Columbia.

17 **THE COURT:** In the Richland County Sheriff's Department
18 or City of Columbia?

19 **JUROR:** The City.

20 **THE COURT:** The fact that your son is employed with the
21 City of Columbia Police Department, would that in any way
22 affect your ability to give the State of South Carolina or
23 the defendant in this case a fair and an impartial trial?

24 **JUROR:** No, it wouldn't.

25 **THE COURT:** Thank you, sir, you may be seated. Anyone

1 else? Let the record reflect, no one is standing in
2 response to my last question.

3 Has any member of my jury panel formed any opinion
4 about the facts which are alleged in this case? If so,
5 please stand at this time.

6 (NO RESPONSE.)

7 **THE COURT:** Let the record reflect, no one is standing.

8 Any member of my jury panel formed any opinion about
9 the alleged guilt or innocence about the defendant in this
10 case, Leslie Twyman, of Walterboro, South Carolina? If so,
11 please stand at this time.

12 (NO RESPONSE.)

13 **THE COURT:** Let the record reflect, no one is standing.

14 Any member of my jury panel know of any bias, or
15 prejudice they may have about the facts which are alleged in
16 this case, any of the parties involved therein, or any of
17 the attorneys or offices they've worked for involved
18 therein? If so, please stand at this time.

19 (NO RESPONSE.)

20 **THE COURT:** Let the record reflect, no one is standing.

21 Any member of my jury panel a member of or a
22 contributor to any group which has as its primary concern
23 the promotion of law enforcement or victim's rights. These
24 groups would include MADD, SADD, CAVE or CADRE? If so,
25 please stand at this time.

1 (NO RESPONSE.)

2 **THE COURT:** Let the record reflect, no one is standing.

3 Has any member of my jury panel formed or expressed an
4 opinion about any issue or matter involved in this case? If
5 so, please stand at this time.

6 (NO RESPONSE.)

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

13 (JUROR STANDS.)

14 **THE COURT:** Come on forward, please, ma'am.

15 (JUROR COMES TO THE BENCH.)

16 **THE COURT:** Counsel, this is juror number Forty-three,
17 Faith Clementson. Come right on over here. Ms. Clementson,
18 do you have a problem of why you feel like you can't be fair
19 and impartial?

20 **JUROR:** I was a victim of sexual abuse.

21 **THE COURT:** You were?

22 **JUROR:** Uh-huh.

23 **THE COURT:** I asked if there was a violent offense ---

24 **JUROR:** It wasn't violent. I was a child when it
25 happened.

1 **THE COURT:** I see. And you feel like because of your
2 experience that that would keep you from being fair and
3 impartial? Please understand that you're doing exactly what
4 I asked you to do. I'll excuse you from service in the
5 trial. Stay with me because I might have other cases that I
6 need you for. Pat, take her out of the jury pool, please.

7 Has any member of my jury panel ever been the victim of
8 criminal sexual conduct? If so, please stand at this time;
9 other than those of you who have already advised the Court
10 of anything concerning that matter.

11 (NO RESPONSE.)

12 **THE COURT:** Let the record reflect, no one is standing.
13 Any additional voir dire from the State?

14 **ASST. SOL. SHELTON:** No, sir, Your Honor.

15 **THE COURT:** From the defendant?

16 **MR. BEACH:** None, Your Honor.

17 **THE COURT:** Counsel approach.

18 (WHEREUPON, A BENCH CONFERENCE IS HELD AT THE BENCH AND
19 OUT OF THE HEARING OF THE JURY.)

20 **THE COURT:** All right. Counsel, from my conference at
21 the bench, both sides agree, Madame Clerk, that the strikes
22 are ten and five; ten for the defendant and five for the
23 State of South Carolina. And both sides agree to waive an
24 alternate juror and proceed with whatever number necessary
25 to complete the trial of the case. Is that correct, from

1 the State of South Carolina?

2 **ASST. SOL. SHELTON:** Yes, sir.

3 **THE COURT:** Correct from the defendant?

4 **MR. BEACH:** Yes, Your Honor.

5 **THE COURT:** Madame Clerk, would you give us a jury,
6 please?

7 **MADAME CLERK:** I will, Your Honor. As I call your
8 name, I need for you to come all the way up to my desk, turn
9 and face the counsel's table, and please bring all of your
10 personal belongings with you.

11 Number One Thirty, Donna K. Myers. What say ye for the
12 State?

13 **ASST. SOL. SHELTON:** Please present this juror.

14 **MADAME CLERK:** What say ye for the defense?

15 **MR. BEACH:** Please excuse the juror.

16 **MADAME CLERK:** Please have a seat back with the jury
17 panel. Number Seventy-seven, Robert R. Hadwin. What say ye
18 for the State?

19 **ASST. SOL. SHELTON:** Please present this juror.

20 **MADAME CLERK:** What say ye for the defense?

21 **MR. BEACH:** Swear the juror.

22 **MADAME CLERK:** Please have a seat in the jury box to my
23 right. The bailiff will show you where to be seated.

24 Number Eleven, Desmond A. Bedford. What say ye for the
25 State?

1 **ASST. SOL. SHELTON:** Please present this juror.

2 **MADAME CLERK:** What say ye for the defense?

3 **MR. BEACH:** Swear the juror.

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

5 Number Eighty-Two, Claudette Herman. What say ye for the
6 State?

7 **ASST. SOL. SHELTON:** Please present this juror.

8 **MADAME CLERK:** What say ye for the defense?

9 **MR. BEACH:** Please excuse the juror.

10 **MADAME CLERK:** Please have a seat back with the panel.

11 Ninety-six, Brenda L. Jenkins. What say ye for the State?

12 **ASST. SOL. SHELTON:** Please excuse the juror.

13 **MADAME CLERK:** Please have a seat back with the panel.

14 Sixty-four, Dorothy M. Ford. What say ye for the State?

15 **ASST. SOL. SHELTON:** Please present this juror.

16 **MADAME CLERK:** What say ye for the defense?

17 **MR. BEACH:** Swear the juror.

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

19 Fifty-two, Shane Douglas. What say ye for the State?

20 **ASST. SOL. SHELTON:** Please excuse the juror.

21 **MADAME CLERK:** Please have a seat back with the panel.

22 One sixty-two, Lewis A. Smalls. What say ye for the State?

23 **ASST. SOL. SHELTON:** Please present this juror.

24 **MADAME CLERK:** What say ye for the defense?

25 **MR. BEACH:** Swear the juror.

1 **MADAME CLERK:** Please have a seat in the jury box. One
2 Eighteen, Cortney D. McMillon. What say ye for the State?

3 **ASST. SOL. SHELTON:** Please present this juror.

4 **MADAME CLERK:** What say ye for the defense?

5 **MR. BEACH:** Swear the juror.

6 **MADAME CLERK:** Please have a seat in the jury box. One
7 Eighty, Sarah W. Ulmer. What say ye for the State?

8 **ASST. SOL. SHELTON:** Please present this juror.

9 **MADAME CLERK:** What say ye for the defense?

10 **MR. BEACH:** Please excuse the juror.

11 **MADAME CLERK:** Please have a seat back with the panel.
12 Twenty-two, Howard L. Bright. What say ye for the State?

13 **ASST. SOL. SHELTON:** Please excuse this juror.

14 **MADAME CLERK:** Please have a seat back with the panel.
15 Eighty-four, Florence J. Hill. What say ye for the

16 State?

17 **ASST. SOL. SHELTON:** Please present this juror.

18 **MADAME CLERK:** What say ye for the defense?

19 **MR. BEACH:** Please excuse the juror.

20 **MADAME CLERK:** Please have a seat back with the panel.
21 Juror number One Ten, Joyce H. Lynah. What say ye for
22 the State?

23 **ASST. SOL. SHELTON:** Please present this juror.

24 **MADAME CLERK:** What say ye for the defense?

25 **MR. BEACH:** Swear the juror.

1 **MADAME CLERK:** Please have a seat in the jury box. One
2 Eighty-one, Angela G. Upchurch. What say ye for the State?

3 **ASST. SOL. SHELTON:** Please present this juror.

4 **MADAME CLERK:** What say ye for the defense?

5 **MR. BEACH:** Swear the juror.

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

7 Juror number Fifty-nine, Catherine A. Elkins. What say ye
8 for the State?

9 **ASST. SOL. SHELTON:** Please present this juror.

10 **MADAME CLERK:** What say ye for the defense?

11 **MR. BEACH:** Excuse the juror.

12 **MADAME CLERK:** Have a seat back with the panel. Juror
13 number One Hundred, Timothy Jones. What say ye for the
14 State?

15 **ASST. SOL. SHELTON:** Please excuse this juror.

16 **MADAME CLERK:** Have a seat back with the panel.

17 Juror One-Oh-Two, Cherrilyn Keaise. What say ye for the
18 State?

19 **ASST. SOL. SHELTON:** Please present this juror.

20 **MADAME CLERK:** What say ye for the defense?

21 **MR. BEACH:** Please excuse this juror.

22 **MADAME CLERK:** Please have a seat back with the panel.

23 Juror number One Sixty-Seven, Teresa G. Stair. What say ye
24 for the State?

25 **ASST. SOL. SHELTON:** Please excuse this juror.

1 **MADAME CLERK:** Please have a seat back with the panel.
2 Number Eighteen, Wesley Cline.

3 **THE COURT:** Number Thirty-eight.

4 **MADAME CLERK:** I'm sorry, Thirty-Eight. Does the State
5 have any strikes for cause?

6 **ASST. SOL. SHELTON:** No, Madame Clerk.

7 **MADAME CLERK:** What say ye for the defense?

8 **MR. BEACH:** Swear the juror.

9 **MADAME CLERK:** Please have a seat in the jury box.
10 Number One Eighty-eight, Gailya Walter. What say ye for the
11 State -- does the State have any strikes for cause?

12 **ASST. SOL. SHELTON:** No, ma'am.

13 **MADAME CLERK:** What say ye for the defense?

14 **MR. BEACH:** Please excuse the juror.

15 **MADAME CLERK:** Please have a seat back with the panel.
16 Number Forty-seven, Amanda L. Davis. Does the State have
17 any strikes for cause?

18 **ASST. SOL. SHELTON:** No, Madame Clerk.

19 **MADAME CLERK:** What say ye for the defense?

20 **MR. BEACH:** Swear the juror.

21 **MADAME CLERK:** Have a seat in the jury box. Thirty-
22 two, Larry M. Carter. Does the State have any strikes for
23 cause?

24 **ASST. SOL. SHELTON:** No, Madame Clerk.

25 **MADAME CLERK:** What say ye for the defense?

1 **MR. BEACH:** Swear the juror.

2 **MADAME CLERK:** Please have a seat in the jury box. One
3 Fifty-five, Danny L. Sanders. Does the State have any
4 strikes for cause?

5 **ASST. SOL. SHELTON:** No, Madame Clerk.

6 **MADAME CLERK:** What say ye for the defense?

7 **MR. BEACH:** Swear the juror.

8 **MADAME CLERK:** Please have a seat in the jury box.
9 Number Eighty-eight, Tammy Huffstetler. Does the State have
10 any strikes for cause?

11 **ASST. SOL. SHELTON:** No, Madame Clerk.

12 **MADAME CLERK:** What say ye for the defense?

13 **MR. BEACH:** Excuse the juror.

14 **MADAME CLERK:** Please have a seat back with the panel.
15 One Seventy-three, Travis S. Taylor. Does the State have
16 any strikes for cause?

17 **ASST. SOL. SHELTON:** No, Madame Clerk.

18 **MADAME CLERK:** What say ye for the defense?

19 **MR. BEACH:** Swear the juror.

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

21 **THE COURT:** Are there any matters of law pertaining to
22 the selection of the jury that need to be decided before the
23 jury is sworn, from the State of South Carolina?

24 **ASST. SOL. SHELTON:** No, Your Honor.

25 **THE COURT:** From the defendant?

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

2 **THE COURT:** Very well. All right, ladies and gentlemen
3 of my jury panel, this is what I want you to do. You
4 haven't heard any evidence in this case so it would be
5 improper for you to discuss it. You must base your decision
6 solely upon evidence introduced in this courtroom when both
7 sides are present with the right of cross examination.

8 I'm going to ask you to go with Mr. Grant to your jury
9 room, because that's where you're going to report in the
10 morning. Now, I want you to do a little work. He's going
11 to give you a pad and a pencil. I want you to select a
12 foreperson of the jury. Any of the twelve of you can be
13 foreperson. Let me explain to you the duties of the
14 foreperson. The foreperson will preside in the jury room,
15 just like the chairperson of a committee presides in a
16 committee meeting, just to see that each and every member of
17 the jury has a full and fair opportunity to voice their
18 opinions in the jury room once deliberations begin.

19 The foreperson also writes the jury's verdict, but I'll
20 give you instructions about how to do that in my charge to
21 you on the law at the conclusion of the case. Not only will
22 I give you a verdict form, but my law clerk will also be
23 wanting the foreperson to sign the indictment that I read to
24 you. Whatever you write on the verdict form, we also write
25 on the indictment and have the foreperson sign.

1 Finally, the foreperson would be the jury spokesperson
2 out here in the courtroom should that need arise during the
3 trial of the case, the foreperson speaks for the entire
4 jury. Now, any of the twelve of you can be foreperson,
5 preside in the jury room, write the jury's verdict,
6 spokesperson for the jury. I want you to decide amongst
7 yourselves, pick a foreperson, write the name on a piece of
8 paper, knock on your jury room door, give it to my bailiff
9 and he'll bring it out into the courtroom. Then, I'll bring
10 you back into the courtroom after you've selected a
11 foreperson.

12 When you're in the jury room, do not discuss the case.
13 Talk about the weather, talk about sports, talk about
14 anything, but don't talk about this case, because you
15 haven't heard any evidence in this case. It would be
16 improper for you to discuss it amongst yourselves or with
17 anybody else.

18 Thank you for your patience. You may retire to your
19 jury room at this time. Go with Mr. Grant.

20 (5:00 P.M., 04-18-11, WHEREUPON, THE JURY EXITS THE
21 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
22 RECORD.)

23 **THE COURT:** All right. Ladies and gentlemen, those of
24 you that were not selected as a juror in the trial of this
25 case, I told you I would go over the procedure we use for

1 those of you who were not selected. Each of you should have
2 in your possession, a card that looks just like this. It
3 has a telephone number on it, 549-1775. Gerald Beach is
4 holding them up right now. If anybody doesn't have one --
5 got a customer up front. Got one in the back, now, Gerald.
6 Now, I got another customer, Gerald, right here.

7 All right. I'm going to ask you if you would to call
8 the number on that card after 6:00 tonight. There will be a
9 taped message on that number telling you when I might need
10 you to return. When I do ask you to return, please report
11 to the area of the courtroom that you're seated in now.
12 This side of the courtroom is reserved for my jurors, so
13 report to that area.

14 Please be on time. If one of you is late, all the rest
15 of you have to sit and wait until everybody is present. So,
16 if I ask you to come back at 10:00, be here prior to 10:00,
17 seated, on this side of the courtroom. If anybody has a
18 problem with transportation, let Mr. Beach or let Mr. Jones
19 know before you leave the courtroom. I'll provide
20 transportation to get you here on time, because I don't want
21 you to be late.

22 I don't know when, yet, I'm going to need you; if at
23 all. I know what I promised you, but I'm going to tell you
24 right now, I don't know yet, because we're going to be
25 working while you're gone. Does everybody understand?

1 There's one message for all jurors. If the line is busy,
2 just keep calling until you get through.

3 I want to thank you for your patience. I appreciate
4 your service as a juror. Without you, ladies and gentlemen,
5 justice cannot be accomplished in a courtroom, and I thank
6 you for that. You are excused for the balance of today.
7 Call the number after 6:00. You may leave through this
8 doorway right here. Thank you very much.

9 (5:05 P.M., 04-18-11, WHEREUPON, THE REMAINING JURY
10 PANEL EXITS THE COURTROOM.)

11 **THE COURT:** Solicitor, I believe you have something you
12 would like to put on the record?

13 **ASST. SOL. SHELTON:** Your Honor, the State and Defense
14 counsel stipulate by agreement and assent to the following
15 in this case:

- 16 1. Brittany Holmes examined Ms. Fredericks and
17 performed exam, collected swabs from inside of
18 mouth and vagina, sealed swabs.
- 19 2. Mr. Stephen Giallombardo (MUSC Security)
20 transported completed sexual assault kit from
21 Emergency Room to the MUSC evidence locker.
- 22 3. Ms. Dorothy Simmons is the MUSC Evidence Custodian.
- 23 4. Inv. Allen Inabinett, CCSO, received kit from MUSC
24 evidence custodian, brought kit to the Colleton
25 County Sheriff's Office evidence locker.

1 5. Inv. Jodi Taylor, CCSO evidence custodian, brought
2 DNA slides from sexual assault kit to SLED forensic
3 services.

4 6. Ms. Amy Stephens was the forensic technician.

5 7. Ms. Amanda Webb, SLED, performed DNA Analysis.

6 Your Honor, we would like to make the List of
7 Stipulations a part of the record as Court Exhibit One.

8 **THE COURT:** Mr. Beach, are you in agreement with
9 making the List of Stipulations a part of the record as
10 Court Exhibit Number One?

11 **MR. BEACH:** Yes, Your Honor, we've agreed to that.

12 **THE COURT:** All right. Court Exhibit One will be
13 the List of Stipulations as agreed upon between the
14 State and the defense.

15 Counsel, the bailiff has just handed me a note that the
16 jury has selected juror number 32, Madison Carter, as
17 Foreman of the jury. Any objection by the State to making
18 this a Court's Exhibit?

19 **ASST. SOL. SHELTON:** Nothing from the State, Your
20 Honor.

21 **THE COURT:** All right. Court's Exhibit Number Two is
22 now a part of the record.

23 Anything from the State before I bring the jury in?

24 **ASST. SOL. SHELTON:** None, Your Honor.

25 **THE COURT:** From the defense before I bring the jury

1 in?

2 **MR. BEACH:** No, Your Honor.

3 **THE COURT:** Mr. Grant, bring me the jury, please.

4 (5:15 P.M., 04-18-11, WHEREUPON THE JURY ENTERS THE
5 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

6 **THE COURT:** Congratulations, Mr. Carter.

7 **JUROR:** Thank you, Your Honor.

8 **THE COURT:** Watch your step on that back row. Fill all
9 the way down for me so nobody has to step over anybody. All
10 right. Ladies and gentlemen, I've got your note that you've
11 selected Mr. Carter, and my bailiffs have seen to it that
12 you've gotten into your foreperson's seat. That will be
13 your seat throughout the trial. The rest of you can sit
14 anywhere you want to.

15 The only thing I ask is this, I've had a person fall on
16 that back row, because it's a step right behind the first
17 back row, as well as a step up in the box. So, when you're
18 coming in on the back row, fill all the way down so somebody
19 doesn't try to crawl around somebody. If you want to sit by
20 somebody, just line up in your juror room that way. You can
21 sit anywhere you want to, but go all the way down. Don't
22 make a person have to step out around you, because they'll
23 step off that back row and I don't want anybody to fall
24 getting in and out of the jury box.

25 Madam Clerk, would you please swear the jury.

1 **MADAME CLERK:** Yes, sir. Mr. Foreman, and ladies and
2 gentlemen of the jury, please stand and raise your right
3 hand.

4 WHEREUPON, THE JURORS ARE DULY SWORN.

5 **THE COURT:** All right, ladies and gentlemen. Before we
6 begin this trial, I want to tell you that this trial's
7 probably going to be different from what you might expect.
8 You know, most people do not have a chance or take the time
9 to attend an actual court session, as each of you are doing
10 right now. And many people think from watching television,
11 such shows as Cold Case and L.A. Law, and things of that
12 nature, many people think from television, or going to a
13 movie, or reading a book, that trials are always full of
14 high drama and intense action, and the riveting and
15 entertaining circumstances.

16 While all those things may be true at times, an actual
17 trial, an actual trial, as I mentioned to you, is not for
18 entertainment. An actual trial is a fundamental part of our
19 democracy. It is a search for the truth in an effort to
20 make sure that justice is done between the parties, before
21 the Court. Searching for the truth and making sure justice
22 is done is often slow. It is often deliberate. In fact, it
23 is often repetitive. It is the exact opposite of what you
24 may have seen on television or in a movie or read in a book.

25 This courtroom, ladies and gentlemen, a hundred and

1 eighty-eight years old, and on the National Register of
2 Historic places. And this building is dedicated to the
3 protection, it is dedicated to the preservation of citizen's
4 rights through what many people have called the greatest
5 justice system in the entire world.

6 The attorneys that are getting ready to appear before
7 you, ladies and gentlemen, are advocates for the parties
8 they represent, both the State of South Carolina and the
9 defendant. But first and foremost, the attorneys are
10 officers of this Court. And as officers of this Court, they
11 are sworn; they took an oath. And in their oath, they swore
12 to uphold the integrity, and they swore to uphold the
13 fairness of our judicial system.

14 And they also swore to help you, members of the jury,
15 in a search for the truth. You should expect the attorneys
16 to be professional. You should expect the attorneys to be
17 competent, and you should expect the attorneys to be ethical
18 in the discharge and representation of their respective
19 client's interests.

20 Now, I want to remind each of you, that each of you
21 just then, the jurors, also just took an oath, from the
22 Clerk of Court. And in that oath, you swore or affirmed,
23 and you said you would try this case and you would reach a
24 fair and a just verdict in this case. So ladies and
25 gentlemen of the jury, just like the attorneys and myself,

1 you also as a juror are expected to be professional, to be
2 reasonable and to be ethical in the discharge of your duty
3 as jurors.

4 Before we begin the trial, I want to thank each and
5 every one of you for accepting this very important
6 responsibility of jury service. I want to thank you before
7 we start, because by your presence, by your willingness to
8 serve, you have made your contribution today to our justice
9 system. And I thank you for that service.

10 Now, ladies and gentlemen, the case that we're going to
11 try is a case of the State of South Carolina versus Leslie
12 Twyman. Mr. Twyman is charged at this time by this piece of
13 paper that I hold in my hand, which we call an indictment.
14 All right. Defendant is charged with an indictment, or by
15 an indictment, which is just the written instrument by which
16 the case is brought here to the Court of General Sessions.
17 It is not evidence in this case.

18 The defendant is charged with, at this time, with
19 Criminal Sexual Conduct, First Degree, and Criminal Sexual
20 Conduct, Third Degree. The allegations are alleged to have
21 occurred on the date of August 21, 2010, in Colleton County.

22 Now, the elements of those offenses in the indictment,
23 I'm going to explain to you at the end of the trial, and
24 I'll explain why in just a moment, in my charge to you on
25 the law. You should understand for right now, that the

1 indictments are simply charges by which the case is brought
2 into this Court and that the indictment is not in any sense
3 evidence of any of the allegations contained in the
4 indictment.

5 Now, the defendant has pled "not guilty" to the
6 indictments. The State of South Carolina, therefore, ladies
7 and gentlemen, has the burden of proving each of the
8 essential elements of the indictment, beyond a reasonable
9 doubt. And it will be your duty, ladies and gentlemen,
10 becomes your duty as jurors, to decide whether or not the
11 State has met that burden. It is your solemn responsibility
12 to determine the guilt or the innocence of the defendant,
13 and your verdict must be based solely, as I have told you,
14 on the evidence as it is presented to you in this trial and
15 on the law, as I instruct it to you to be during the trial
16 and at the close of the trial in my charge to you on the law
17 at the conclusion of the trial.

18 Now, in just a minute, because I want you to have some
19 idea of the procedure that we follow, everything we do in
20 the courtroom has a rule and a reason for it. And without
21 going into minute details, in just a minute the Assistant
22 Solicitor will make what is called an opening statement in
23 which he will explain to you the issues in this case, or at
24 least what he contends to be the issues in this case,
25 because I remind you, he is an advocate for the State of

1 South Carolina. Following that, the attorney for the
2 defendant will make an opening statement. Once again, he is
3 an advocate for the defendant.

4 Now, I want to tell you that what the attorneys tell
5 you in opening statement, what the attorneys suggest to you
6 by the questions they might ask a witness, what the
7 attorneys argue to you in their closing argument at the
8 conclusion of the trial is not evidence in this case. The
9 opening statement is only their contention as an advocate,
10 as to what the issues are in this case, and they know they
11 have to confine that to evidence that will be admitted.
12 Because if they suggest something to you that's not in
13 evidence, they create a real problem, and they both know
14 that. And they're both sworn to stick by the rules, just as
15 you took an oath to do so.

16 Now, following the opening statement, the attorneys
17 will present their case. Once again, we have an order.
18 Person with the burden of proof, the State of South
19 Carolina, goes first. So the State presents their case
20 first, followed by the defendant, if the defendant chooses
21 to do so.

22 Following all the evidence, the attorneys will make
23 their closing arguments to you. And unlike these opening
24 statements, these final remarks by the attorneys will be
25 true arguments. That is, each side will try to persuade you

1 to agree with their version of the facts, based on evidence
2 introduced during the trial of the case.

3 Following the closing arguments of the attorneys, I
4 will then charge you the law that applies to this case. And
5 you will then retire to your jury room to deliberate, and
6 not before. Once I have charged you the law that applies to
7 this case, then will you take the facts, as you find them to
8 be, from the law, as I give it to you, and thus render a
9 true and just verdict in the case.

10 Now, I told you, ladies and gentlemen, that you must
11 base your decision solely upon evidence. What is evidence?
12 It's a pretty general term. I could probably talk about
13 that subject right now at length. But basically, for what
14 you need to know as jurors today, evidence is going to be,
15 one example is obviously sworn testimony from the witness
16 stand. And I'll point out something to you, which is
17 probably obvious to all of you. You'll notice the witness
18 stand is located on the side of the courtroom in closest
19 proximity to you. That's so that you can listen to the
20 witnesses. You can observe the witnesses. You can pay
21 close attention to the witnesses.

22 So evidence can be testimony from the witness stand.
23 It may also be an exhibit, such as a photograph or a model.
24 But as to any such exhibit -- and the lawyers know this --
25 you will hear me say first that it is in evidence before

1 they show it to you. Evidence might also take the form of a
2 stipulation, an agreement, an understanding between the
3 parties, that a fact is true. So evidence can take several
4 forms: Testimony from the witness stand, an exhibit, such
5 as a photograph, or even an agreement between the sides or
6 stipulation. You, as a juror, must base your decision
7 solely upon the evidence.

8 Now, in consideration of the evidence, you should
9 remember at all times throughout the trial of this case that
10 under the Constitution of the State of South Carolina, you
11 and you alone, the members of this jury, are the sole judges
12 of the facts in this case. The same law that makes you the
13 sole judges of the facts in this case, make me the sole
14 judge of the law. I cannot invade your province, ladies and
15 gentlemen, and tell you or suggest to you or comment to you
16 in any way about what the facts are. And you should not
17 invade my province and differ with me about what the law is.

18 Everything that I say during the course of this trial
19 is being taken down by my court reporter, Becky Hill. And
20 if I make any mistake as to the law, to the detriment of
21 either side in this case, they can appeal the case to an
22 Appellate Court. And if the Appellate Court agrees that
23 I've made a mistake on the law, they'll send the case back
24 for a new trial.

25 So don't you, as a juror, worry at all at any time

1 about whether or not I have told you the law correctly.
2 That is somebody else's worry. That is not your concern.
3 And if you have any preconceived notions about what you
4 think the law is, or what you feel the law ought to be, you
5 took an oath to put it aside and accept the law exactly as I
6 give it to you during the trial of this case and at the
7 conclusion of the trial of this case.

8 Your job, ladies and gentlemen of the jury, is to take
9 the law as I give it to you and apply it to the facts as you
10 find them to be, based on evidence introduced during the
11 trial of the case, meaning testimony from the witness stand,
12 exhibits introduced into evidence, or any stipulation of
13 fact that may be entered into between the parties during the
14 trial of the case. And after doing that, you will render
15 your verdict, a true and a just verdict, under that solemn
16 oath that each of you just swore that you would do, to the
17 Clerk of Court of Colleton County.

18 Now, from time to time during the trial of this case,
19 you're going to probably hear one of the lawyers say
20 something like, "Your Honor, may we approach the bench?,"
21 "Your Honor, we have a question of law," "Your Honor, we'd
22 like to discuss a matter with you," or I myself might find
23 it necessary to ask the lawyers to approach the bench. I
24 might also ask you to step to your jury room, to excuse from
25 the courtroom while the attorneys and I discuss a matter of

1 law.

2 Now, the reason for this is not that we're trying to
3 hide anything from you. We definitely talk so you can't
4 hear us, and that's hard for me, because y'all see how loud
5 I talk. But I can turn this microphone off and I'll talk --
6 and it's hard for Mr. Beach, too. But I'm going to turn --
7 I try not to send you out anymore than is necessary. But
8 let me tell you why we do that. Exactly what I was just
9 explaining to you, you're the sole judges of the facts; I'm
10 the sole judge of the law. I can't make any comment to you
11 about the facts. And sometimes when I'm ruling on a matter
12 of law, by necessity, I have to make a comment to them about
13 the facts, in order to determine whether a particular piece
14 of law applies to this case.

15 So, the custom in this state is to either excuse you
16 from the courtroom when such discussions take place, or
17 first I try to handle it in what we call "a sidebar." I
18 might bring them over here on this side, away from you,
19 while I just talk to them, or at the bench. That is so that
20 we keep consistent with the rule that I not make any comment
21 to you, a trial jury, about the facts in this case, because
22 I'm not supposed to tell you what I think the facts are. So
23 the practice is, obviously, to take matters of law up
24 outside of your presence.

25 And let me tell you again in that connection, that you,

1 ladies and gentlemen, and you alone, are the sole judges of
2 the facts in this case. And if you should gather from
3 anything that I say or anything that I do during the course
4 of this trial that I have any opinion whatsoever as to the
5 facts in this case, I'm going to ask you to please erase
6 that from your mind.

7 If any of you should gather from anything that I say or
8 anything that I do during the course of this trial that I
9 have any opinion as to the facts in this case, I'm going to
10 ask right now before we start, to erase that from your mind.
11 Because as I've said to you now, and I want each of you to
12 understand this, you and you alone, the members of this
13 jury, are the sole judges of the facts in this case.

14 How are you going to determine what the true facts are?
15 Necessarily, ladies and gentlemen, it will be your job to
16 determine the credibility or the believability of the
17 witnesses who are going to take this witness stand, take an
18 oath, and testify in front of you.

19 It will be my responsibility as the presiding judge to
20 rule as a matter of law as to whether certain testimony is
21 admissible into evidence or not. But once I've allowed the
22 testimony to be admitted into evidence, whether or not you
23 believe the testimony is solely a matter for you, the jury,
24 to determine. And in passing upon the believability or the
25 credibility of the witnesses, you have the right as the jury

1 to take into consideration the interest of any witness, the
2 bias, if any, of any witness, the prejudice, if any, of any
3 witness, the opportunity for the witness to have observed
4 the matters and things about which he or she may testify.
5 You may even take into consideration, ladies and gentlemen,
6 what we call the demeanor of the witness, the appearance of
7 the witness while the witness is on the witness stand.
8 Anything that is in evidence, you, as a jury have the right
9 to consider in passing upon the believability of the
10 witnesses who will testify during the trial of this case.

11 And that means, Mr. Foreman, and that means, ladies and
12 gentlemen of the jury, that it is your duty now, under that
13 oath which you took from the Clerk of Court, it becomes your
14 duty, it becomes your sworn obligation as a juror to pay
15 close attention to the witnesses, to listen to the
16 witnesses, to observe the witnesses. Don't let your
17 thoughts wonder. Give strict attention to the witnesses
18 during the trial of this case, so that at the conclusion of
19 all the testimony, and after the closing arguments of the
20 attorneys and my charge to you on the law, you will be in a
21 position because you listened, because you observed, because
22 you gave strict attention to the evidence, you have placed
23 yourself as a juror in a position to determine what the true
24 facts are, based on the evidence introduced during the trial
25 of the case, and to apply the law as I give it to you and

1 charge it to you, to those facts, and thus render a just
2 verdict.

3 Now, ladies and gentlemen, you must not consider
4 anything that you may have read or heard about this case
5 outside of this courtroom, whether before or during this
6 trial. And until I submit this case to you, you must not
7 discuss it with anyone, not even your fellow jurors, not
8 even a member of your own family. And when I submit it to
9 you, you must discuss it only in your jury room with your
10 fellow jurors. It's very important that each of you keep an
11 open mind and not decide this case until the entire matter
12 has been submitted to you under my instructions at the
13 conclusion of the trial.

14 Now, it will be your added duty, Mr. Foreman, to
15 preside in the jury room, just like a chairperson of a
16 committee would preside at a committee meeting, to see that
17 each and every member of my jury has a full and a fair
18 opportunity to voice their opinions once the deliberations
19 begin. It will also be your duty to write the jury's
20 verdict. I'll give you instructions in my charge to you on
21 the law as to how to do that. And it will also be your duty
22 as the foreman of the jury to be the jury's spokesperson,
23 should that need arise at any time during the trial of the
24 case. The foreperson speaks for the jury.

25 Now, you see I'm conscious, very conscious about some

1 housekeeping matters. The first of which is I want you to
2 be able to hear. This microphone's not on, because I talk
3 so loud. But I can turn it up; I got a dial down here. You
4 notice there's a microphone on the witness stand. I can
5 turn it up. If at any time a member of the jury -- because
6 I don't -- I know I did this when I practiced law, but I'm
7 much more aware of it as a judge -- lawyers love to walk
8 back to their table, because they got all -- you see how
9 much work they have on there, and they love to walk away
10 from you and the witness and ask a question while they're
11 walking away. And Becky looks at me and goes -- (Judge
12 indicates and demonstrates.) And everybody wonders what was
13 said. Lawyers love to have a witness leave that microphone
14 and step down there in front of you, if they got an exhibit,
15 because they want to show it to you. They're just doing
16 their job; they're advocates. But Becky can't hear them;
17 sometimes you can't hear them. They don't realize that
18 because they're in the middle of doing their job. My job
19 will be to keep the train on the track.

20 If any of you can't hear, raise your hand for me. I'll
21 be watching all 12 of you throughout the trial. And I want
22 people on my jury to be able to hear at all times throughout
23 the trial of the case.

24 If an exhibit is introduced into evidence, you will
25 hear me say, "Exhibit Number so-and-so," because Becky's

1 going to number each one, because we have to keep up with
2 each one, "is in evidence." And you will hear me say to the
3 parties, "You may publish to the jury." And if you can't
4 see it, raise your hand. They're going to get it to you.
5 Sometimes they'll walk all the way down the jury box, so
6 don't be impatient. They're going to try to get it to you.
7 But if you can't see something, particularly if it's
8 something on that screen, you can't see, raise your hand. I
9 want my jurors to be able to hear and to see at all times
10 throughout the trial of the case.

11 Now, we normally, Mr. Foreman, do not allow jurors to
12 ask questions here in the courtroom. However, if at any
13 time during the trial of the case a member of the jury has a
14 question, here is the procedure we have to follow. If
15 you're not already in your jury room, the entire jury
16 retires to the jury room. You, as the foreperson, write the
17 question on a piece of paper, give it to my bailiff; he'll
18 bring it out to me. I will then have to rule as a matter of
19 law whether or not the question can or cannot be answered,
20 just as I would any question asked by either one of the
21 parties during the trial of the case.

22 Now, I've already warned you, ladies and gentlemen,
23 please, no cell phones, no beepers, no electronic device, no
24 investigation on Twitter, Facebook, My Space, LinkedIn, You
25 Tube. Don't pull out your Blackberry and go get on the World

1 Wide Web and think that you can find out something that you
2 think was left out. That is not proper. If it's left out,
3 there's probably a good reason it's left out. You must
4 decide this case solely upon evidence introduced during the
5 trial of this case.

6 Throughout this trial, I instruct you, do not listen to
7 any news account on television. Do not listen to any news
8 account about this trial on radio, and do not read any news
9 account in the newspaper. Your job is to decide this case
10 solely upon evidence introduced during the trial of the
11 case, when both sides are present, with the right of cross-
12 examination. And I know you understand why. Because they
13 have no idea if you reach something, that you're basing your
14 decision on that, or if you watch something. They're
15 entitled to know exactly, as is the Court, what you're
16 basing your decision on. And it must be on the evidence,
17 when they have the right to cross-examine it; when they have
18 the right to confront it during the trial of the case.

19 I've tried this both ways. I'm going to ask that you
20 do not take written notes. Now, you're going to wondering
21 why; I'll tell you why. Because I've found that if the
22 written note-taker on the jury makes an error in the written
23 notes, the notes can be harmful, rather than helpful once
24 your deliberations begin in your jury room. The time-tested
25 system is for each of you to listen and listen carefully.

1 So, I ask that you do not take written notes.

2 Now, Becky is making an audio, not a video, but an
3 audio recording of witness' testimony. And she's got
4 speakers, so that when she plays it back, it increases the
5 sound for you. And if need be, we can play back -- if
6 you're worried about remembering, we can play back an audio
7 recording of any witness' testimony that occurred during the
8 trial of the case. But please do not take written notes.

9 Now, Mr. Foreman, I'll remind you that these four
10 indictments, when I prepare a verdict form for you, it will
11 be a verdict form, not these indictments. But Nick Rivera
12 will be looking for you before you leave the courtroom at
13 the conclusion of the trial, to sign your name, consistent
14 with whatever you write on the verdict form for the entire
15 jury, at the conclusion of the case.

16 Now, I do not intend that you or anyone should construe
17 these remarks I've just made as a charge on the law. I'm
18 going to charge you the law that applies to this case at the
19 end of the case, because I hadn't heard the evidence, just
20 like you haven't. And I don't know what law to charge, until
21 I listen to the evidence, until I rule on the admissibility
22 of evidence. So it's impossible to write a charge before
23 you hear the evidence, because you don't know. I can't tell
24 you at this time what may be submitted to you and what may
25 not. So I'm not charging you the law and it's intended that

1 way, that you know, you understand we ask you questions:
2 Did you know anything about this case? Did you hear
3 anything about this case? Did you read anything about this
4 case? We want you to have an open mind.

5 I don't know anything about the evidence that's about
6 to be presented. I'll be listening to it, just as you will,
7 for the first time. These remarks I've made have been
8 merely an attempt on my part to briefly explain to you some
9 of the procedure that we will follow in the trial of the
10 case, so that you'll have a better understanding of what may
11 be happening from time to time.

12 But nevertheless, in order to preserve everyone's
13 rights, I will give the parties an opportunity to object to
14 anything that I've said, if they have any such objections.
15 Any exceptions or objections from the State of South
16 Carolina?

17 **ASST. SOL. SHELTON:** No, Your Honor.

18 **THE COURT:** From the defendant?

19 **MR. BEACH:** No, Your Honor.

20 **THE COURT:** Ladies and gentlemen of the jury, we will
21 now begin the trial of the case. Solicitor.

22 **ASST. SOL. SHELTON:** May it please the Court?

23 **OPENING STATEMENT**

24 **BY ASST. SOL. SHELTON:**

1 Good afternoon, ladies and gentlemen. Thank you for
2 being here this afternoon. Plan, lure, vulnerable. There's
3 really three words that can sum up this whole case: plan,
4 lure and vulnerable. On August 21st, 2008, the defendant,
5 Mr. Twyman, who is seated over there at defense table, had a
6 plan. His plan involved luring Ms. Jessica Fredericks, a
7 mentally incapacitated young lady, who is extremely
8 vulnerable and naive, into the house where he was staying
9 and proceeded to rape this young lady.

10 The case we're trying today, it's a rough one. It's
11 not easy for anyone up here to talk about. It's criminal
12 sexual conduct in the first degree, and criminal sexual
13 conduct in the 3rd degree. And the Judge will also define
14 what those are for you in his charge at the end of the case.
15 Evidence is going to show you the person who did this was
16 Leslie Twyman, the defendant sitting right there at the
17 defense table.

18 Mr. Twyman was staying with a church member who was
19 allowing him to stay in her home until he could get back on
20 his feet. He would drive the church bus for them and he had
21 already inquired of Ms. Gooding, the woman he was staying
22 with, as to how old Jessica was. He was already planning
23 his scheme even then.

24 The defendant, Mr. Twyman, lured Jessica into the house
25 where he was staying by asking her to come and sit with the

1 son of Ms. Gooding who was physically handicapped. It was
2 supposed to be Mr. Twyman's job that day, but with his
3 scheme of luring Jessica, he was already planning how he
4 could take advantage of her and act as if nothing happened.

5 Mr. Twyman had already called Ms. Gooding to find out
6 where she was and how long she would be gone. When he found
7 out she would be gone for a while, Mr. Twyman acted upon his
8 plan of raping Jessica Fredericks. Mr. Twyman is being
9 charged with the crime of CSC, first degree and third
10 degree. The State will prove that he lured her to the house
11 with false reasons. He was successful. He talked with her.
12 Then, he raped her in the vagina, in the butt, and in the
13 mouth, two times.

14 I ask you to listen to the witnesses carefully as they
15 tell you what happened. She did exactly what she was
16 supposed to do. She told her mother. They went to the
17 hospital. They called the police. The State will present
18 evidence of all of this to you. I ask you to listen to
19 Jessica as she tells you what happened. Listen as she tells
20 you how Mr. Twyman took advantage of her and raped her and
21 listen as she tells what she did afterwards.

22 There is something else in this case that we should
23 talk about. The nurse who helped Jessica found semen inside
24 of her. However, that semen did not contain sperm and,
25 therefore, the DNA analyst could not determine whose semen

1 it was. However, all of the evidence will show that the
2 Defendant raped Jessica.

3 The burden of the State is to prove a case beyond
4 reasonable doubt. The Judge is going to tell you at the end
5 of the trial what that means. But, essentially, he's going
6 to say that if you are firmly convinced that the Defendant
7 is guilty, then you must convict. A reasonable doubt is not
8 proof beyond any doubt, that is why it is a reasonable
9 doubt. There are few things in this world that anyone can
10 prove to a scientific certainty, and the judge is going to
11 tell you that proof beyond any doubt is not what is
12 required. The question is whether there is proof beyond a
13 reasonable doubt. And, again, at the end of the case if you
14 are firmly convinced that the Defendant is guilty then it is
15 your duty to convict him.

16 Ladies and gentlemen, please pay close attention. And
17 I think at the end of this, you're going to find that this
18 defendant, Leslie Twyman, is guilty of criminal sexual
19 conduct in the first degree, and criminal sexual conduct in
20 the third degree, for raping Ms. Fredericks, who was young
21 and vulnerable and mentally incapacitated. I ask that you
22 please listen now to what Mr. Beach has to say. Thank you
23 for your attention.

24 **THE COURT:** Mr. Beach?

25 **MR. BEACH:** May it please the Court, Your Honor;

1
2 **OPENING STATEMENT**3 **BY MR. BEACH:**

4 Good afternoon, ladies and gentlemen, I'm not going to
5 be very long in opening statement. I'm Harris Beach and I
6 represent the defendant, Leslie Twyman, seated at the
7 defense table over there. I ask each of you to use your
8 common sense. To listen to find out who did what. This is
9 a case of "He said, she said." She said he raped her. He
10 said he did not touch this young lady. It's his word
11 against hers.

12 This case is going to be based on circumstantial
13 evidence. You're not going to have somebody up here saying,
14 "I saw him do this." Nobody's going to tell you that this
15 is his DNA. Nobody's going to tell you that because none of
16 that exists. What we have is what's called a circumstantial
17 case.

18 Now, the judge is going to talk to you about certain
19 things. There's direct evidence, "I saw you do it."
20 There's circumstantial evidence where you add up things to
21 come to a conclusion. That's what the State has,
22 circumstantial evidence. What they're going to try to do is
23 to present all this evidence and say it adds up to one
24 conclusion, that conclusion is that Leslie Twyman committed
25 this act against Ms. Fredericks. We say "No, that's not the
only conclusion." It's "he said, she said," ladies and

1 gentlemen.

2 We pleaded not guilty. The reason for that is that he
3 says that he did not do anything to this young lady. I ask
4 you to look at all this and to examine it and to come back
5 and to find him not guilty of criminal sexual conduct. See
6 if what they're saying tells you that he did what he's
7 accused of doing. He comes in here and pleads not guilty.
8 He says, "I didn't touch this young lady. I didn't do it."
9 We talk about these statements. They're going to all tell
10 you that he didn't do it.

11 "He said, she said." All we ask is that you look at
12 everything, listen to all the evidence presented carefully,
13 weigh everything, and when you get through, you know, use
14 your common sense. Have they actually shown him committing
15 criminal sexual conduct toward Ms. Fredericks? If they
16 didn't, then there's only one verdict. Thank you.

17 **THE COURT:** Ladies and gentlemen, we're going to start
18 this trial at 9:30 in the morning. I need each of you to be
19 in your jury room where you just were by 9:15. Please be
20 there on time. We're going to take complete care of you
21 tomorrow. You won't have to worry about anything. We're
22 going to feed you lunch, we're going to have something for
23 you to drink when you get here. I want you to get to your
24 jury room, get here safely.

25 Does anybody need transportation, because if you do,

1 I'll provide it, because I don't tolerate people being late,
2 and the reason is if one of you is late, all the rest of the
3 jury has to sit and wait until everyone is present. So,
4 when I ask you to be here on time, I need you to be here on
5 time. If anybody has a problem, let me know right now,
6 because I'll be happy to take care of that for you.

7 Now, sometimes I have jurors that are really diligent
8 and think they ought to investigate and think they ought to
9 do some research sometimes on the internet. They know a
10 little bit about the case and think they ought to
11 investigate a lawyer or a witness, the judge, or anybody.
12 Ladies and gentlemen, that's strictly prohibited. Remember,
13 I asked you in those questions I asked you that you must
14 base your decisions solely upon evidence. You're not allowed
15 to discuss this case with other people, including your
16 fellow jurors, until I give it to you at the conclusion of
17 the case. You're probably wondering why we're strict about
18 it and I'll tell you exactly why.

19 Logic would probably tell you this. One of the reasons
20 we're so strict about that is it might be the very last
21 sentence in the trial of this case that persuades you. It
22 might be the very last witness, the last thing, the last
23 argument, the last part of my charge. That's why we ask you
24 to keep an open mind. That's why we ask you not to decide
25 case until the entire matter has been submitted to you under

1 my instructions at the conclusion of the case.

2 Now, this case is going to go into Wednesday. We're
3 going to work hard tomorrow, but it probably will not be
4 concluded until Wednesday. We're going to start at 9:30 in
5 the morning. I'm not going to work you too hard. I'm going
6 to give you a break in the morning, a mid-morning break.
7 I'm going to feed you lunch. I'm going to give you a mid-
8 afternoon break, so don't think I'm going to keep you here
9 for five hours without using the restroom or some exercise
10 in your having to endure, we don't do that to you, but we do
11 try to get as much work done as we can. Court time is
12 precious.

13 Over the overnight recess, I ask that you do not use a
14 computer or any other electronic device with communication
15 capability. Ladies and gentlemen, you might think it's
16 important, it's up to the parties to decide what evidence to
17 introduce, and you base your decision on the evidence that's
18 introduced during the trial of the case. I'll be talking to
19 you about that before we begin the trial in the morning.

20 I also ask -- I don't know if there will be anything on
21 television or in the newspaper or on the radio about this
22 case. Please do not read such, watch such, or listen to
23 such. You must decide this case solely upon evidence
24 introduced in this courtroom when both sides are present
25 with the right of cross-examination. So I ask you not to

1 use that computer or that Blackberry or that I-phone. I ask
2 you not to go to such things as Twitter or Facebook or
3 MySpace, or Linked In or YouTube. I ask you to simply
4 listen to the evidence and decide the case based on the
5 evidence introduced during the trial of the case.

6 Now, ladies and gentlemen of the jury, I hope this
7 will be an educational experience. I want to thank you,
8 first of all, for your patience today. I realize it's after
9 5:00, and we're used to working much later than this. In
10 fact, after you're gone, we're going back to work, ladies
11 and gentlemen. So don't you think we're stopping; I can
12 promise you that. But I promised you I would get you home
13 in a timely fashion. When you come back tomorrow, report
14 directly to your jury room. They will be waiting on you.
15 They are going to come tell me when I've got all twelve of
16 you. And I can't start until everybody's present, and I'm
17 going to be here ready to go, so I ask you to please be on
18 time so we can start on time in the morning.

19 Any questions from my jurors about what to do tomorrow?
20 (NO RESPONSE.)

21 Thank you very much, ladies and gentlemen. You're now
22 excused for the balance of today. Be in your jury room at
23 9:30 in the morning. You may leave the courtroom at this
24 time.

25 (5:45 P.M., 04-18-11, WHEREUPON, THE JURY EXITS THE

1 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
2 RECORD.)

3 **THE COURT:** As to this case, the defendant is in
4 custody. He's remanded to custody and we're adjourned in
5 this case until 9:30 tomorrow morning.

6 (WHEREUPON, COURT IS ADJOURNED FOR THE EVENING.)

7 (WHEREUPON, 9:45 A.M., 04-19-2011, COURT IS RECONVENED
8 IN THE TRIAL OF THIS CASE.)

9 **THE COURT:** Is the State ready to proceed in the trial
10 of this case?

11 **ASST. SOLICITOR SHELTON:** Yes, Your Honor.

12 **THE COURT:** From the defendant?

13 **MR. BEACH:** Yes, Your Honor.

14 **THE COURT:** Bring me the jury.

15 (9:50 A.M., 04-19-2011, WHEREUPON THE JURY ENTERS THE
16 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

17 **THE COURT:** Good morning, ladies and gentlemen. Now,
18 yesterday, I gave you some brief opening remarks and you
19 heard from the attorneys. And in just a moment, I'm going
20 to ask the State to call its first witness. But before we
21 begin this trial, I want to tell each of you that this trial
22 will probably be different from what most of you on this
23 jury expect. I've found that most people do not have a
24 chance to attend actual court sessions, as each of you are
25 doing right now. And most people believe, from going to a

1 movie, or watching television, or reading in a book, such
2 programs as Cold Case and CSI, and things of that nature,
3 that trials are always full of high drama and intense
4 action, and the riveting and entertaining circumstances.

5 One of the popular misconceptions is that the parties
6 can walk through that door into an ultra futuristic lab, and
7 bingo, lab results are produced immediately with an answer
8 to any question. Let me tell you ladies and gentlemen, that
9 entertainment and drama and action, while all of those
10 things may be true at times, in an actual trial, an actual
11 trial, as each of you are getting ready to observe, is not
12 for entertainment. An actual trial is a fundamental part of
13 our democracy. It is a search for the truth in an effort to
14 make sure that justice is done between the parties, before
15 the Court. Searching for the truth and making sure that
16 justice is done is often slow, as it was this morning. It
17 is often deliberate. It is often repetitive, the exact
18 opposite from what you may have seen on television or read
19 in a book or seen in a movie.

20 This courtroom, ladies and gentlemen, is a place of
21 honor. It is dedicated to the protection, and the
22 preservation of citizen's rights through what many people
23 have called the greatest justice system in the entire world.

24 The attorneys that are appearing before you, as I told
25 you yesterday, they are advocates for the parties they

1 represent, either the State of South Carolina or the
2 defendant. But first and foremost, the attorneys are
3 officers of this Court. And as officers of this Court, the
4 attorneys took an oath, just like you did. And in their
5 oath, we call it the civility oath. And in their oath, the
6 attorneys swore that they would uphold the integrity, the
7 attorneys swore that they would uphold the fairness of our
8 judicial system.

9 And they swore that they would help you, the jury, in a
10 search for the truth. You should expect the attorneys to be
11 professional. You should expect the attorneys to be
12 competent, and you should expect, as a juror, for the
13 attorneys to be ethical in the representation of their
14 client's interests.

15 Now, I want to remind each of you before we start, that
16 yesterday, just like the attorneys took an oath and I took
17 the oath, each of you took an oath, as jurors. And in that
18 oath, you said, and I quote, "You will try this case and you
19 would reach a fair and a just verdict." So you, as jurors,
20 ladies and gentlemen, are also, like the attorneys and
21 myself, expected to be reasonable, to be ethical, and to be
22 professional in the discharge of your duty as jurors.

23 Before we begin the trial, I want to thank each of you
24 for accepting what I believe to be a very important
25 responsibility. Winston Churchill said it was the greatest

1 duty one could give one's country during peace time, to
2 serve on the jury. I want to thank each of you for
3 accepting this important responsibility of jury service, and
4 I want to thank each of you for your contribution today to
5 our justice system. Without you, ladies and gentlemen of
6 the jury, justice can never be accomplished in a courtroom.
7 And I thank you for that service.

8 Call your first witness.

9 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor. The
10 State calls Ms. Margaret "Jessie Mae" Gooding.

11 **MADAME CLERK:** Ms. Gooding, please come forward and be
12 sworn. Please place your left hand on the Bible and raise
13 your right.

14 WHEREUPON, JESSIE MAE GOODING WAS DULY SWORN.

15 **MADAME CLERK:** Please have a seat on the witness stand
16 and state your full name on the record.

17 **THE COURT:** Good morning. Watch your step. I need you
18 to pull that microphone over. You can adjust that chair,
19 because I want you to speak -- tap that microphone for me,
20 please. (The witness complies.) There we go; there we go.
21 Now, I want you to speak up, so this gentleman on the top
22 row and this gentleman on the front row, can hear you. I
23 want you to speak up so they can hear you, the people in the
24 courtroom can hear you. And I want you to use that
25 microphone. It's going to amplify your voice. Would you

1 begin by stating your full name and spelling your last name
2 for the court reporter.

3 **MS. GOODING:** Jessie Mae Gooding, G-O-O-D-I-N-G.

4 **THE COURT:** All right, Counsel, your witness.

5 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 **BY ASST. SOLICITOR SHELTON:**

8 Q Ms. Gooding, where do you live?

9 A [REDACTED] David Street in Walterboro.

10 Q Here in Colleton County?

11 A Yes, sir.

12 Q And how long you lived there?

13 A Thirty -- 31 years.

14 Q And what do you do -- what in the past have you done
15 for a living? And what do you do now to keep yourself busy?

16 A I own a business. I do weddings. I rent everything
17 for a wedding, except for the bride and groom. I'm a
18 minister. I'm a mom.

19 Q You involved in church?

20 A Yes. I'm one of the elders of New Beginnings Word
21 Ministry.

22 Q In that church and through your ministry, do you do
23 anything in your home?

24 A Yes. We do an outreach. We help people who are
25 homeless. I've had a number of people in my home over a

1 period of time because they didn't have a place else to go.

2 Q Do you have a son?

3 A Yes.

4 Q Does he live with you?

5 A Yes, he does.

6 Q Will you please tell the jury his name and his
7 condition?

8 A His name is Conrad Sonny Gooding, Jr. He is a disabled
9 veteran. He is bedridden. He was stabbed in his heart in
10 Texas. He does not talk; he doesn't move. He suffered a
11 temporary anoxia brain damage. But he's -- he understands a
12 little bit more now.

13 Q Do you know the victim in this case, Ms. Jessica
14 Fredericks?

15 A Yes, I do.

16 Q How long have you known her?

17 A I know for eight years.

18 Q And how do you know her?

19 A They're my neighbors.

20 Q You say neighbors. Two doors up? Three doors up?

21 A Three doors down.

22 Q Three doors down. On your side of the street or on the
23 other side?

24 A On the opposite side of the street.

25 Q To what extent do you know Jessica?

1 A She sits with my son when I have to go out maybe
2 shopping or go to church at night. She comes and she sits
3 with him.

4 Q Do you ask her to?

5 A Yes, I do. I asked her mother first.

6 Q Asked her mother first?

7 A Yes.

8 Q And do you supervise her, to bring her back and forth,
9 when she does that?

10 A Yes, I do.

11 Q Is it common for you to have children and other people
12 come sit with your son?

13 A Yes. I -- I've had some of Jessie's brother -- brother
14 and -- and sister have sat with my son as well.

15 Q You said that you allow people to stay in your home,
16 basically out of your goodness of your heart. Did you ever
17 have the opportunity to have Mr. Leslie Twyman in your home?

18 A Yes, I did.

19 Q Do you see Mr. Leslie Twyman in the courtroom today?

20 A Yes, I do.

21 Q Will you please point to him, for the jury?

22 A Right there. (WITNESS INDICATING.)

23 Q Please let the record reflect that the witness has
24 pointed to the defendant. How do you know -- well, when did
25 Mr. Twyman live with you?

- 1 A I think it was in -- in August.
- 2 Q In August?
- 3 A Yes, sir.
- 4 Q Was anyone else there with him at any time?
- 5 A At first, he was there by himself. And then, his wife
- 6 came afterwards.
- 7 Q How is his wife's and his relationship?
- 8 A It was on the rocks.
- 9 Q Were they always around each other?
- 10 A Most of the time. Well, she worked.
- 11 Q She worked during the day?
- 12 A Yes.
- 13 Q You say it's "on the rocks." Can you say ---
- 14 A Well, there's a little friction there. I guess normal
- 15 stuff.
- 16 Q Did you know whether -- have any personal knowledge as
- 17 to whether Mr. Twyman before August 21st, 2010 had any type
- 18 of encounter with Jessica, the victim?
- 19 A Well, they -- Jessica went to church with us and she
- 20 would ride the van, and Mr. Twyman was driving.
- 21 Q He would drive the van?
- 22 A Uh-huh.
- 23 Q At any time before August 21st, 2010, did Mr. Twyman
- 24 say anything or ask any questions about Jessica?
- 25 A One time he asked me how old she was.

1 Q What did you tell him?

2 A I told him she was 18.

3 Q You told him that she was 18.

4 A Yes.

5 Q Do you remember the night of August 20th, the night
6 before August 21st, 2010?

7 A Trying to remember -- I'm trying ---

8 Q Did you have to -- at any time, did you minister to Mr.
9 Twyman?

10 A Oh, yes, yes, yes, yes. We were in -- in the living
11 room where we were talking and discussing -- well,
12 ministering and trying to encourage him. And he had told me
13 that he didn't have any friends. So, you know, we just
14 continued to minister to him. And we discussed things. You
15 know, that was basically ---

16 Q He told you that he didn't have any friends?

17 A He said he didn't have any friends.

18 Q Let's turn now to August 21st, 2010; do you remember
19 that day?

20 A Yes.

21 Q During that day, did Mr. Twyman ever try to get in
22 touch with you, either by phone or otherwise?

23 A He called me. I didn't realize that he had called me
24 prior to that, but he called me and said that his friend was
25 going to come by and pick him up. And he got Jessie -- he

1 got Jessie to come and sit with my son, and he would give
2 her a couple of dollars.

3 Q So he said that he was going to go get Jessie to come
4 sit with your son?

5 A Yes.

6 Q Do you remember what time you received that call?

7 A I know it was after 12.

8 Q Now, was that the voice mail or was that actually
9 talking to him?

10 A No. I -- I actually spoke with him. I didn't get the
11 voice mail till later.

12 Q Did you ever call back to the house?

13 A Yes.

14 Q Why?

15 A Well, because the -- he said that he had -- his friend
16 was going to come pick him up. And I'm -- and I'm saying,
17 "Okay. We just discussed last night that he didn't have any
18 friends."

19 Q How long between the time that you first spoke with him
20 and the time that you called him back? Do you have any idea
21 how long that was?

22 A It wasn't that long.

23 Q Wasn't long?

24 A I guess within a half an hour, if not mistaken.

25 Q And you called the house phone?

1 A Yes. I called the house phone and Jessie answered the
2 phone.

3 Q Jessie answered your house phone.

4 A Yes. Uh-huh.

5 Q What did you say to her?

6 A And I asked her, I said, "Is Leslie there?" She said,
7 "Yes." I said, "Where?" She said, "He's outside." And I
8 said, "Ask him to come to the phone." And he came back, and
9 I said to him, I said, "I thought you didn't have any
10 friends." And he said that, "Well, no, this was one of the
11 friends that he could talk to," something in that order.

12 Q So Jessie gave the phone, allegedly, to Leslie, and he
13 talked with you?

14 A Yes.

15 Q Talked to you at your home.

16 A Yes. Uh-huh.

17 Q What's the next thing that you remember from that day?

18 A I received a call. I went to the store, and I received
19 a call from Caroline, Jessie's mother, and she said that ---

20 **MR. BEACH:** Your Honor, we would object to what somebody
21 called and told her.

22 **THE COURT:** Sustained. Ms. Gooding, the Rules of
23 Evidence, with some exceptions, do not permit witnesses to
24 testify ---

25 **MS. GOODING:** Okay.

1 **THE COURT:** --- as to what other people say. Now, when
2 you were referring earlier to what the defendant said,
3 that's an exception, possibly. But you can't testify to
4 what other people say.

5 Counsel, ask a question, a direct examination. Mr.
6 Beach, your objection is sustained. Proceed. Thank you,
7 ma'am.

8 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

9 Q You received a call.

10 A Uh-huh.

11 Q And do you remember, who was that call from?

12 A From Jessie's mother.

13 Q Don't repeat what she said, but was something wrong?

14 A Yes.

15 Q And what did you do in response to that call? What did
16 you tell her?

17 A I said to do what you have to do.

18 Q Do what you have to do?

19 A Yes. And then I called Leslie and said that an
20 accusation was made against him.

21 Q What did he say?

22 A He said, "I didn't do anything."

23 Q Did you say what the nature of the accusation was?

24 A I -- I -- I believe I said "You're being accused of
25 messing with Jessie." I believe that's what I said.

- 1 Q And he said, "I didn't do it."
- 2 A Said he didn't do anything.
- 3 Q How long, to the best of your memory, was it when you
- 4 spoke with Leslie and Jessica, when you called them and they
- 5 were both at your house, and from the time that you received
- 6 the call from Ms. Wilder, Jessica's mother?
- 7 A It was probably after two o'clock.
- 8 Q After two o'clock?
- 9 A After two o'clock.
- 10 Q Do you know how much time passed between -- to the best
- 11 of your memory. It doesn't have to be exact. To the best
- 12 of your memory. I know it's been a long time ago.
- 13 A I'd say about an hour, maybe two.
- 14 Q Now, that day, you went to the -- well, Jessica's home?
- 15 A Yes.
- 16 Q After you received the call.
- 17 A Yes.
- 18 Q Did you drive straight there?
- 19 A Yes.
- 20 Q When you got there, what did you see?
- 21 A Well, when I -- well, the -- the police officers had
- 22 passed me on the -- on the Peurifoy Road. And when they
- 23 pulled up to the yard, and I pulled up behind them. And
- 24 they were standing, talking to Jessica.
- 25 Q And did you see the condition that Jessica was in?

1 A Yes.

2 Q Would you please describe her emotional state?

3 A Yeah. She -- she was upset, you know. And she kept
4 asking me -- can I say that? I can't say that.

5 Q But she was upset?

6 A But she was upset.

7 Q Did you help the family that night?

8 A Yes. They had -- she had to go to the hospital in
9 Charleston, and so I took them there and stayed with them.

10 Q You stayed with them?

11 A Yes.

12 Q Do you know what happened at the hospital in
13 Charleston?

14 A They examined Jessica.

15 Q And then you stayed with them the whole time?

16 A Yes.

17 Q And then did you drive with them back or did you stay?

18 A Oh, yes. No, I took them there, stayed with them, and
19 brought them back home.

20 Q On the way there, what was Jessica's condition to the
21 hospital, all the way to the hospital?

22 A Well, she was nervous, a little upset. I guess she
23 said she was in pain. She just said she was in pain.

24 Q Can you specify?

25 A She said she was -- she was in pain.

1 Q She was in pain.

2 A She didn't say -- she didn't give me particulars. She
3 just said she was in pain.

4 Q The next day, did you see anything abnormal inside of
5 your house?

6 A Yes. The -- I have a -- a club chair at the door, that
7 when anybody comes to sit with my son, they usually sit in
8 that chair in front of the TV and they eat, or whatever
9 they're going to do. And I noticed that my cushion -- it's
10 an ivory-covered chair, which was pretty soiled, because,
11 like I say, everybody sits there. And I noticed that the
12 cushion was cleaner than the -- the chair.

13 Q Cleaner than the chair?

14 A Yes. Like it had been cleaned.

15 Q And at that time, you said that the defendant lived
16 with you?

17 A Yes.

18 Q And your son lived with you.

19 A Yes.

20 Q Your son is bedridden; he can't move.

21 A Right.

22 Q I'm sorry for that, but he can't move.

23 A No.

24 Q And the defendant's wife, on August the 21st, do you
25 know where she was when --

1 A She's at work.

2 Q She's at work. So it's just -- the defendant's the
3 only male who at the time lived in your house?

4 A Yes.

5 Q Besides your son?

6 A Yes.

7 Q Later on, did you realize that you had missed a call
8 from the defendant?

9 A Yes. I don't know how it came about, but yes.

10 Q What was that? Was there a voice mail?

11 A Yes, it was.

12 Q What was on that voice mail?

13 A That -- he said that he was -- his friend was going to
14 come by and pick him up, and -- and that he got -- got
15 Jessie to -- going to get Jessie to sit with my son and give
16 her a couple of dollars.

17 Q Did you save that voice mail?

18 A Yes.

19 Q And did you ever have the opportunity to meet with
20 Detective Jody Taylor at the sheriff's office?

21 A Yes.

22 Q When you met with her, what did you do?

23 A I gave her -- I let her hear the recording and she
24 recorded it.

25 **ASST. SOLICITOR SHELTON:** May I approach, Your Honor?

- 1 **THE COURT:** You may.
- 2 Q I want to ask you if you recognize this, Ms. Gooding.
- 3 A Yes.
- 4 Q What is it?
- 5 A It's a memory card.
- 6 Q Do you know what's on that memory card?
- 7 A Yes.
- 8 Q What is it?
- 9 A The -- the copy of the -- the voice mail.
- 10 Q Did you have an opportunity to listen to it?
- 11 A Yes, I did.
- 12 Q Is it a fair and accurate depiction?
- 13 A Yes, sir.
- 14 Q Of that voice mail.
- 15 A Yes, sir.
- 16 Q Of the defendant leaving you that message.
- 17 A Yes.
- 18 Q That you've already described.
- 19 A Yes.
- 20 Q Are those your initials on that ---
- 21 A Yes.
- 22 Q --- memory card? That you've already seen.
- 23 A Yes, sir.
- 24 Q Thank you.
- 25 **ASST. SOLICITOR SHELTON:** I'm not going to move it into

1 evidence at this time, Your Honor.

2 **THE COURT:** Does it have a number?

3 **ASST. SOLICITOR SHELTON:** I'd move to have it State's
4 Exhibit No. 1, but I'm not moving into evidence.

5 **THE COURT:** Any objection as to State's Exhibit Number
6 One?

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

8 **THE COURT:** Ladies and gentlemen of the jury, State's
9 Exhibit Number One will be admitted into evidence, without
10 objection.

11 (State Exhibit One, memory card, received into
12 evidence.)

13 State's One is now in evidence. You may publish to the
14 jury.

15 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

16 Q Ms. Gooding, I'm not going to play that for you now.
17 You described what's in it, correct?

18 A Yes, sir.

19 Q Now, Ms. Gooding, does anyone live with you now,
20 besides your son?

21 A Yes.

22 Q Who is that?

23 A Ms. Wilder's son.

24 Q And what is his name?

25 A Craig Hilton.

- 1 Q How is he related to Jessica?
- 2 A That's her brother.
- 3 Q How old is he?
- 4 A He just turned 23.
- 5 Q When did he move in with you?
- 6 A December 1st.
- 7 Q December 1st of this year?
- 8 A This year.
- 9 Q Do you know Craig well?
- 10 A Yes.
- 11 Q And at the time of the incident, Mr. Twyman was the
- 12 only male living with you?
- 13 A Yes.
- 14 Q Besides your son.
- 15 A Yes.
- 16 **ASST. SOLICITOR SHELTON:** I beg the Court's indulgence.
- 17 Q Did you have a conversation with Mr. Twyman after the
- 18 incident?
- 19 A Yes.
- 20 Q Do you remember when?
- 21 A I guess -- think it was the same day.
- 22 Q Same day?
- 23 A Yes.
- 24 Q And did he say to you anything regarding Jessica?
- 25 A He -- oh, I can't say -- I guess I can't state it,

1 because his wife had said something, but I can't say that,
2 right?

3 Q Oh, anything ---

4 **THE COURT:** That's correct, ma'am. That's correct.
5 Ask the question.

6 **ASST. SOLICITOR SHELTON:** Yes.

7 Q --- regarding her age?

8 A Yes. Well, he did -- he did ask me, you know, how old
9 she was.

10 Q Again, that was after the incident.

11 A I think he knew then because I had already spoke to him
12 about -- I already told him that she was 18. I -- I know
13 one time, we had came in from church and I was going to walk
14 her home. He offered to walk her home. But I said, "No.
15 I'll walk her home."

16 Q And this was before the incident?

17 A Yes.

18 Q And he offered to walk her home?

19 A Yes.

20 Q And you wouldn't let him?

21 A No.

22 Q You were going to walk her home?

23 A Yes.

24 Q Why is that?

1 A Well, that's what I do. In other words, she's -- she's
2 placed in my -- in my care. And that's just what I do.

3 Q Those are all the questions I have for you right now.
4 Thank you so much. Please answer any questions that Mr.
5 Beach has for you.

6 A Yes.

7 **CROSS-EXAMINATION**

8 **BY MR. BEACH:**

9 Q Ms. Gooding.

10 A Yes, sir.

11 Q Over the years, how many people have you had come live
12 in your home with you?

13 A I've had three grand nieces and nephews. I've had
14 another young many through church. I had a young -- an
15 elderly lady, who I saw her sitting in front of IGA, had no
16 place to stay, and I took her into my home. She was 69
17 years old. Sixty -- yeah, 67 years old, ill. She could do
18 for herself, but, you know.

19 Q Is it fair to say that you've had a lot of people
20 coming in and out of your house?

21 A Over a period of years.

22 Q Over the years?

23 A Yes, sir.

24 Q And Mr. Twyman was living at your house; is that
25 correct?

- 1 A Yes, he was staying there.
- 2 Q How long had he been living there?
- 3 A About -- by himself, it was about three weeks. Then
- 4 his wife came.
- 5 Q Does he have any children?
- 6 A Not to my -- he said that he had -- I -- I've never
- 7 seen them.
- 8 Q He never brought any children there.
- 9 A No, sir.
- 10 Q And say his wife came and lived with him?
- 11 A Yes.
- 12 Q And they were staying together?
- 13 A Yes.
- 14 Q Same room?
- 15 A Yes, sir.
- 16 Q Now, let's talk about the day that this thing
- 17 supposedly happened. What time was it -- well, let me back
- 18 up a little bit. What were you doing that day? Were you
- 19 going off somewhere?
- 20 A I had gone to Yemassee, returning some chair covers to
- 21 the business in Yemassee.
- 22 Q And what time did you leave?
- 23 A I want to say about -- I guess after ten.
- 24 Q Ten o'clock in the morning?
- 25 A Yes, sir.

- 1 Q Now, can you leave your son alone?
- 2 A I don't leave him alone.
- 3 Q So you don't do that.
- 4 A No, sir.
- 5 Q And now, what was your arrangement when you left the
- 6 house at ten o'clock that morning? Who was in charge of
- 7 your son?
- 8 A Mr. Twyman.
- 9 Q Mr. Twyman was there ---
- 10 A He was just ---
- 11 Q --- to take ---
- 12 A --- there, yes.
- 13 Q --- care of your son?
- 14 A Now, there's -- when -- when I leave him, there's
- 15 nothing that needs to be done. He has his feeding tube. He
- 16 has -- everything's right there.
- 17 Q But someone is supposed to be there with him ---
- 18 A Just somebody ---
- 19 Q --- is that correct?
- 20 A --- in the house, yes, sir.
- 21 Q Okay. And you left and went to Yemassee. About what
- 22 time was it that you got the telephone call from Mr. Twyman?
- 23 A Like I said, it was -- it was after 12.
- 24 Q After 12?
- 25 A Yes, sir. It was after 12.

1 Q Now, have you ever left your son with Mr. Twyman in the
2 past?

3 A Yes, sir.

4 Q And has he ever gone anywhere during that period?

5 A To my knowledge, no, sir.

6 Q He's never called you and said, "I got to go somewhere
7 else."

8 A No, sir.

9 Q Now, he called you and said that he was going somewhere
10 else; is that correct?

11 A His friend was coming to get him.

12 Q And that's what he should have done; isn't that
13 correct?

14 A Yes, sir.

15 Q Now, and you told him what?

16 A Well, he told me that he was going to see his friend
17 and he was going to get Jessie to come and sit with my son.

18 Q Jessie sit with your son in the past?

19 A Yes, sir.

20 Q And how often?

21 A Quite often.

22 Q Was she one of the normal sitters for your son?

23 A Well, it's just sitting in the house. It was nothing
24 to be done for him.

25 Q Right.

- 1 A Just to -- just to have somebody in the house.
- 2 Q So he had been there with Jessie in the past; is that
- 3 correct?
- 4 A My son?
- 5 Q Mr. Twyman.
- 6 A No, sir.
- 7 Q Now, this was about twelve o'clock when he called?
- 8 A Probably a little after, in that time span.
- 9 Q And what time did you get the voice mail?
- 10 A Oh, I don't know. I didn't -- I didn't hear it until
- 11 maybe later on that day.
- 12 Q So it could have been before twelve o'clock?
- 13 A I -- I'm ---
- 14 Q Or it ---
- 15 A --- not sure.
- 16 Q --- could have been after twelve o'clock.
- 17 A More like probably after twelve o'clock. Because I
- 18 think he called me also, I guess after he left the voice
- 19 mail. He probably called me later on; I'm not sure.
- 20 Q And when did you get back home?
- 21 A It was almost three o'clock.
- 22 Q So you were away from home from ten o'clock in the
- 23 morning until three o'clock in the afternoon?
- 24 A Yes, sir.
- 25 Q And you don't have any idea who was in and out of your

1 house during that period of time?

2 A I wasn't there, sir.

3 **MR. BEACH:** Indulgence just a moment, Your Honor.

4 Q No other questions. Thank you, Ms. Gooding.

5 A Thank you.

6 **THE COURT:** Redirect?

7 **ASST. SOLICITOR SHELTON:** No, Your Honor.

8 **THE COURT:** As to this witness?

9 **ASST. SOLICITOR SHELTON:** Ask that she may be excused.

10 **THE COURT:** Counsel, approach.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
12 AND OUT OF THE HEARING OF THE JURY.)

13 **ASST. SOLICITOR SHELTON:** Your Honor, a brief redirect?

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

15 **REDIRECT EXAMINATION**

16 **BY ASST. SOLICITOR SHELTON:**

17 Q Ms. Gooding, I asked you one question about Mr. Craig
18 Hilton, and it was a slip-up on my part. I said "December
19 of this year." That would be December 2011. I meant
20 December ---

21 A Yeah.

22 Q --- of 2010; is that correct?

23 A Yes.

24 Q When Craig Hilton, the victim's brother, moved in with
25 you?

1 A Yes, sir.

2 Q And the only person who was living with you in August
3 of 2010, besides your son, was the defendant, Mr. Twyman?

4 A Yes, sir.

5 Q Thank you.

6 A And his wife.

7 Q And his wife. Thank you.

8 **THE COURT:** Re-cross examination, limited to redirect.

9 **RE-CROSS-EXAMINATION**

10 **BY MR. BEACH:**

11 Q Ms. Gooding, do you know where his wife was that day?

12 A She went to work.

13 Q To work?

14 A Yes, sir.

15 **MR. BEACH:** Nothing further, Your Honor.

16 **THE COURT:** As to this witness, Solicitor?

17 **ASST. SOLICITOR SHELTON:** Ask that she be excused.

18 **THE COURT:** Any objection, Mr. Beach?

19 **MR. BEACH:** No, Your Honor.

20 **THE COURT:** Ms. Gooding, you may step down from the
21 witness stand. And you are excused from the trial of the
22 case. If you so desire, you may remain with us or you may
23 leave the courtroom, as you wish. Watch your step on those
24 steps for me, please.

25 Call your next witness.

1 **ASST. SOLICITOR SHELTON:** Your Honor, may I approach?

2 **THE COURT:** Counsel, approach.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
4 AND OUT OF THE HEARING OF THE JURY.)

5 **ASST. SOLICITOR SHELTON:** State calls Mr. Rodney
6 Wilder.

7 **MADAME CLERK:** Please come forward and be sworn. Place
8 your left hand on the Bible and raise your right.

9 WHEREUPON, RODNEY WILDER WAS DULY SWORN.

10 **MADAME CLERK:** Please have a seat on the witness stand
11 and state your full name on the record.

12 **THE COURT:** Good morning, Mr. Wilder. Have a seat for
13 me. Make yourself at home. Nice to see you. Now I want
14 you to adjust that chair and microphone. I want you to
15 speak up. It's going to amplify your voice. I can turn it
16 up if I need you to speak up a little bit. Begin by stating
17 your full name and spelling your last name.

18 **MR. WILDER:** My name is Rodney Alfonso Wilder. W-I-L-
19 D-E-R is my last name. I live at [REDACTED] David Street,
20 Walterboro, South Carolina.

21 **THE COURT:** Now, slow down just a little bit, Mr.
22 Wilder. Take it slow.

23 Counsel, your witness.

24 **DIRECT EXAMINATION**

25 **BY ASST. SOLICITOR SHELTON:**

1 Q Thank you, Your Honor. Mr. Wilder, please speak up so
2 everybody over here can hear you, okay? Where do you live
3 again?

4 A [REDACTED] David Street.

5 Q Do you know the victim, Ms. Jessica Fredericks?

6 A She is my step-daughter.

7 Q Does she live with you?

8 A Yes, sir.

9 Q At [REDACTED] David Street?

10 A Yes, sir.

11 Q Does she have any brothers and sisters?

12 A Yes, sir.

13 Q Can you tell the jury who they are?

14 A Her older sister's name is -- her oldest brother's
15 Craig Hilton. Her older sister is Ashley Jamison. Her
16 other brother is Antwon Fredericks. His -- her other sister
17 is Jennifer Fredericks, Selena McCoy, and Caroline Walker,
18 Rodney, Jr., and Raymond Wilder.

19 Q And how many of those are your biological children?

20 A Two.

21 Q Two. Who are they?

22 A Rodney -- Rodney, Jr. and Raymond Wilder.

23 Q How old are they?

24 A They are three.

25 Q How old is Antwon?

1 A Antwon is 14.

2 Q Now, do you remember August 21st, 2010?

3 A Yes, sir.

4 Q Do you remember what you were doing in the middle of
5 that day?

6 A I was in my back yard, getting ready to do some work in
7 my back yard.

8 Q Now, is that a normal thing for you to do?

9 A Yes, sir. Well, I -- I don't have no job or nothing.
10 I usually just do my work, and my wife, she does the inside.
11 And I -- I was getting ready to go into the shed to get my
12 rake and do my yard. Here come my daughter, she comes
13 running in, "Mama, mama, something happened to me down the
14 street. This man attacked me." So I dropped everything. I
15 went into the house. First thing clicked to me, say "Give
16 me the phone."

17 Q Oh, one second. Slow down a little bit. You said that
18 she was running?

19 A Yes, sir.

20 Q Where was she running from?

21 A From ---

22 Q Looking at the street, it's to the right or to the
23 left?

24 A She's running -- she's right. I guess coming from --
25 she's coming from the right.

1 Q Is that towards Ms. Gooding's house?

2 A Yes, sir.

3 Q And you said she was yelling. Did you hear her yelling
4 while she was running?

5 A Yes, sir.

6 Q And what was she saying while she was yelling ---

7 A She say ---

8 Q --- while she was running?

9 A --- "Mama, mama, I was attacked." So she -- so my wife
10 dropped everything; she called me. I went into the house.

11 As soon as I got into the house, I said, "Jessica, what's
12 wrong?" She said, "I was attacked." I said the first thing
13 that came to me, I said, "Give me the phone."

14 Q And what else happened?

15 A She -- my wife was too nervous to call 911. So I said,
16 "Give me the phone." So, I called 911.

17 Q And did you tell them ---

18 A I called the -- the dispatch and tell them what was
19 going on. And the next thing I know, about three units to
20 my house.

21 Q Will you please tell the jury what emotional state Ms.
22 Jessica was in when you saw her?

23 A My daughter, she was in a hysterical state. She was
24 very mad. She was very angry. She was like -- she wanted
25 to rip somebody apart. Me and my wife had to calm her down.

1 Q Were any of your other children there?

2 A No, sir. They was down the street. They -- they were
3 no -- no -- nobody home but me and my wife, the babies and
4 Jessica.

5 Q To your knowledge?

6 A Yes, sir.

7 Q To your knowledge.

8 A Because I was getting ready to do some work in my yard.

9 Q You were outside?

10 A Yes, sir.

11 Q Did you see your son Craig that day?

12 A I saw him ---

13 Q Your step-son, Craig?

14 A I saw him late that afternoon.

15 Q And did you see him shortly after the incident?

16 A Yes, sir. Well, he came by the house.

17 Q And when you saw him, what was his condition, when he
18 found out about Jessica?

19 A He was very angry himself.

20 Q Was he there when law enforcement was there?

21 A Yes, sir.

22 Q What did he want to do?

23 A We had to talk with him and let him know, "Do not get
24 into no trouble. Let the -- let the law handle it."

25 Q Why?

1 A Because we didn't want him to get in no trouble.

2 Q What type of trouble you talking about?

3 A Like I didn't want him to get himself put in jail or,
4 you know, get locked up for going after Mr. Twyman.

5 Q Going after Mr. Twyman. Now, you say Mr. Twyman. Do
6 you see him in the courtroom today?

7 A Yes, sir.

8 Q Will you please identify him for the jury?

9 A He's sitting over to my left with a pair of glasses and
10 black shirt and black and white tie.

11 **ASST. SOLICITOR SHELTON:** Please let the record reflect
12 that he has identified the defendant.

13 Q Now, did you ever know Mr. Twyman before this day?

14 A He used to come to my house and ask me for cigarettes.

15 Q How did you know him?

16 A One day I was walking down the street to go to the
17 store, and I was smoking a cigarette going down the road.
18 And he saw me; and he stopped me and asked me for cigarette.
19 And from that day on, he was back and forth to my house
20 asking for cigarettes. And that day, that certain day, he
21 didn't come to the house to ask me for cigarette.

22 Q Don't testify anything that you heard through somebody
23 else. Now, did you know where Mr. Twyman lived?

24 A With -- with Ms. Gooding.

25 Q And where is Ms. Gooding's house again?

1 A [REDACTED] David Street.

2 Q And that's down the street from you?

3 A Yes, sir.

4 Q And that's where Jessica was running from?

5 A Yes, sir.

6 Q That direction, screaming?

7 A Yes, sir.

8 Q Those are all the questions I have for you right now.

9 Please answer any questions Mr. Beach asks.

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

11 **CROSS-EXAMINATION**

12 **BY MR. BEACH:**

13 Q Did you see Mr. Twyman that day?

14 A No, sir. I didn't saw him that day until -- until he
15 was arrested.

16 Q He didn't come and get some cigarettes from you earlier
17 that day?

18 A No, sir.

19 Q Now, you say you were in the -- outside?

20 A I was in my backyard.

21 Q In the backyard. And were you in your shed?

22 A No, sir. I was going to the shed.

23 Q And that shed is on what side of the house?

24 A That shed's on my -- on -- if you're coming down from
25 Ms. Gooding's house, it's on my left side of the -- the

- 1 house, on the back by -- back by the line.
- 2 Q It's away from her house.
- 3 A Away from my house. It's in my yard.
- 4 Q Can you see Ms. Gooding's house from ---
- 5 A Yes, sir.
- 6 Q --- from there?
- 7 A Yes, sir. (SOFTLY.)
- 8 **THE COURT:** You have to say "yes" and "no."
- 9 **MR. WILDER:** Yes, sir.
- 10 Q And what direction was Jessica coming?
- 11 A She's coming from the direction that -- that -- from
- 12 Ms. Gooding house.
- 13 Q And did you see anybody else on the street?
- 14 A No, sir.
- 15 Q About what time of day was this?
- 16 A Sir?
- 17 Q About what time of day was this?
- 18 A This was about -- about one, one, maybe two o'clock,
- 19 somewhere around there.
- 20 Q 1:30, two o'clock in the afternoon.
- 21 A Yes, sir.
- 22 Q Was anybody in the yard with you?
- 23 A No, sir. I was in the yard by myself.
- 24 Q Where was your wife?
- 25 A She was in the house.

1 Q And did she talk with Jessica also?

2 A Yes, sir. She talked with Jessica.

3 Q And you say your son came up a little later?

4 A He came up late that afternoon.

5 Q Had he been there earlier?

6 A No, sir. You know, I'm talking about late in the
7 afternoon sometime.

8 Q Had any of your children been by earlier that day?

9 A No, sir. Just my wife and my twins and Jessica.

10 Q Did you see anybody else out on the street?

11 A Well, the pastor live next door to me, he was in his
12 yard.

13 Q And was this a clear day? Was it raining?

14 A Clear day.

15 Q Clear day. And it was in what, August?

16 A Yes, sir.

17 **MR. BEACH:** No other questions, Your Honor.

18 Q Thanks.

19 **THE COURT:** Redirect?

20 **ASST. SOLICITOR SHELTON:** Briefly, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY ASST. SOLICITOR SHELTON:**

23 Q You said that Craig was there later?

24 A Yes, sir.

25 Q You say Craig was there when law enforcement was there?

1 A Yes, sir.

2 Q Were you angry that day?

3 A Of course I was angry.

4 Q That's all the questions I have. Thank you.

5 **THE COURT:** Re-cross, limited to redirect.

6 **MR. BEACH:** No, Your Honor.

7 **THE COURT:** As to this witness, Solicitor?

8 **ASST. SOLICITOR SHELTON:** Ask that he be excused, Your
9 Honor.

10 **THE COURT:** Any objection, Mr. Beach?

11 **MR. BEACH:** No, Your Honor.

12 **THE COURT:** Mr. Wilder, you may step down from the
13 witness stand. You may remain with us if you wish, or you
14 are excused from the trial of the case and you may leave the
15 courtroom at this time.

16 **MR. WILDER:** Thank you, sir.

17 **THE COURT:** Watch your step. Call your next witness.

18 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor. State
19 calls Ms. Caroline Wilder.

20 **MADAME CLERK:** Please come forward and be sworn. Place
21 your left hand on the Bible and raise your right.

22 WHEREUPON, CAROLINE WILDER WAS DULY SWORN.

23 **MADAME CLERK:** Please have a seat on the witness stand
24 and state your full name on the record.

25 **THE COURT:** Watch your step. Good morning.

1 **MS. WILDER:** Good morning.

2 **THE COURT:** Be very careful. There we go. Have a seat
3 and make yourself comfortable. Now, I want you to pull that
4 chair up if you need to, because I want you to get closer to
5 that mic.

6 **MS. WILDER:** Okay.

7 **THE COURT:** And adjust that microphone. Now, you need
8 to speak up for me, so everybody can hear you. And begin by
9 stating your full name and spelling your last name.

10 **MS. WILDER:** My name is Caroline Wilder. It is W-I-L-
11 D-E-R.

12 **THE COURT:** Your witness, Counsel.

13 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 BT **ASST. SOLICITOR SHELTON:**

16 Q Ms. Wilder, how do you know Jessica?

17 A Jessica my daughter.

18 Q Your biological daughter?

19 A Yes.

20 Q How old is Jessica?

21 A Jessie 18.

22 Q Was she 18 on August 21st, 2010?

23 A Yeah, I believe so.

24 Q Now, and your husband testified to your children. You
25 have children, correct?

- 1 A Yes.
- 2 Q You have many children?
- 3 A Yes.
- 4 Q On August 21st, 2010, do you remember what you were
5 doing that day?
- 6 A Oh, yes. I was on the computer.
- 7 Q You were on the computer?
- 8 A Yes. I remember that day.
- 9 Q Was that during the middle of the day?
- 10 A Yes.
- 11 Q What room were you in?
- 12 A In -- in my -- in me and my husband's room.
- 13 Q In your bedroom?
- 14 A Yes. In the bedroom.
- 15 Q Who was in that room with you?
- 16 A Me, and the babies, and my son.
- 17 Q Which son?
- 18 A My older son.
- 19 Q Who is that?
- 20 A Craig.
- 21 Q He was inside the house?
- 22 A Yes, sir.
- 23 Q With you?
- 24 A Yes.
- 25 Q In the back room?

- 1 A Yes.
- 2 Q Can you see that back room when you first walk into the
3 house?
- 4 A Huh?
- 5 Q That was a confusing question; I'm sorry. When you
6 first walk into the house, will you explain where that room
7 is? Where your bedroom is?
- 8 A Oh, okay. Just like if you walk in the -- the living
9 room, it be across from it.
- 10 Q Across from it?
- 11 A Yes, sir.
- 12 Q Is there a hallway or anything like that?
- 13 A Yes, sir.
- 14 Q It's across the hallway from the living room?
- 15 A Right.
- 16 Q Towards the back of the house?
- 17 A Yes.
- 18 Q So you're back there with your two youngest. How old
19 are they?
- 20 A Three.
- 21 Q What are their names?
- 22 A Rodney, Jr. and Raymond.
- 23 Q And you were there with Craig?
- 24 A Yes.
- 25 Q In the back room?

1 A Yeah.

2 Q Now, what time of day was that? Do you remember at
3 all?

4 A I think it was between one and two.

5 Q Did something happen shortly thereafter that startled
6 you?

7 A Yes. When she walked in ---

8 Q Who is she?

9 A Jessie. Excuse me.

10 Q And that's your daughter?

11 A Yes, sir.

12 Q What happened?

13 A Like I said, when she walked in, I know she was bad
14 upset and she was very angry.

15 Q When you saw her, what did she look like?

16 A Very disturbed.

17 Q How did you know she as there?

18 A Huh?

19 Q How did you know that she was there at the house?

20 A Oh, you mean when she walked in?

21 Q Uh-huh. Was she saying anything?

22 A Well, tell you the truth, when she walked in, she look
23 like she nervous -- she nervous. And I could tell that
24 something was wrong with her, by the way how she looked and
25 the condition. She was very disturbed, like I said.

1 Q Did she tell you what happened?

2 A Yes.

3 **MR. BEACH:** Your Honor, we would object. I have a
4 matter of law.

5 **THE COURT:** Counsel, approach.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
7 AND OUT OF THE HEARING OF THE JURY.)

8 **THE COURT:** Objection is sustained at this date, based
9 on our conference at the bench.

10 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

11 Q Ms. Wilder, you said she was upset?

12 A Yes, sir.

13 Q How upset was she?

14 A She was very upset.

15 Q Was she able to speak clearly?

16 A No. No, sir. She couldn't.

17 Q What is her physical condition that you saw?

18 A Her physical condition like -- like I said, she
19 confused. But she ---

20 Q But you could tell when you saw her, something was
21 wrong?

22 A Yes, I could tell.

23 Q And how long did it take her to calm down, to get back
24 to normal?

25 A About -- about ten minutes.

1 Q About ten minutes?

2 A Yeah. About ten minutes. Because I -- I told her to
3 calm her down, get herself together and stuff like that, so
4 that I could understand her better.

5 Q Let's go back to when you first saw her again, okay?

6 A Okay.

7 Q You're in the back room.

8 A Yes.

9 Q How did you know to go to the front room?

10 A How did I know?

11 Q How did you know to go to the front room?

12 A I heard somebody bang, bang, bang, like this. And that
13 -- that how I know ---

14 Q And then you ---

15 A --- what.

16 Q Did you go to the door?

17 A Yes, sir.

18 Q Then what did you do?

19 A Then I opened door for her and she ---

20 Q Who was there?

21 A Craig and my -- and my -- my -- my two babies was
22 there.

23 Q At what door?

24 A At -- at the front door.

25 Q Where was Jessica?

- 1 A Jessie was at the front door.
- 2 Q She was at the front door?
- 3 A Yes, sir.
- 4 Q And when you saw Jessica, what was her physical state?
- 5 A She -- like I said, she very discouraged.
- 6 Q And you could tell that from being her mother?
- 7 A Yes.
- 8 Q You could tell she was upset?
- 9 A Uh-huh.
- 10 Q And what did you say to her?
- 11 A I said, "What's the matter?" And she ---
- 12 Q Don't say back what she said at this point. Was she
- 13 upset when she ---
- 14 A Yes.
- 15 Q Was she visibly upset?
- 16 A Yes. She's very upset.
- 17 Q Was she shaking?
- 18 A Yeah, kind of. Yeah, she was kind of upset.
- 19 Q She told you what happened?
- 20 A Yes, sir.
- 21 Q And based on that, what did you do?
- 22 A Well, I -- I did call my mother. But I was -- I was
- 23 upset too, and so my husband. He -- he called, he called
- 24 911.
- 25 Q Did you do anything for Jessica?

1 A Yes I did. I take her to the bedroom and I calmed her
2 down, then -- then I take her to the bathroom.

3 Q You only took her to the bathroom after you calmed her
4 down?

5 A Yes.

6 Q And when you took her to the bathroom, what did you do?

7 A I -- I told her that she cannot take no shower or a
8 bath. So that whatever happened, you know, evidence would
9 be leave right there.

10 Q Did you see anything?

11 A Yes, I surely did.

12 Q What did you see?

13 A I see a white semen.

14 Q Where?

15 A Up her vaginital. (sic.)

16 Q In her vagina?

17 A Yes.

18 Q Did you speak with Ms. Gooding at all?

19 A Yes, I have.

20 Q And when you saw that semen and saw that in her vagina,
21 what did you do?

22 A I told her, as I say, I told her "Save -- save the
23 clothes. Keep the same clothes on because I know the
24 officers will, you know, see evidence for everything." That
25 what I told her.

- 1 Q Did officers arrive?
- 2 A Yes. They arrived very quickly.
- 3 Q And when they were there, did they talk to Jessica?
- 4 A Yes, sir.
- 5 Q Did they talk to your husband?
- 6 A I think so they did, yes.
- 7 Q Did they talk to you?
- 8 A I think -- yes, yes. Yeah, they did talk to me. Yes,
- 9 sir.
- 10 Q Ms. Wilder, I want to talk about you a little bit. I
- 11 don't mean to pick on you.
- 12 A Oh, no.
- 13 Q I'm sorry. Do you have any disabilities or any
- 14 handicaps other people don't have to deal with?
- 15 A Just my speech; that's all.
- 16 Q Do you have a speech impairment?
- 17 A Uh-huh. But I'm fine. Yeah.
- 18 Q But your speech is -- you have trouble with your
- 19 speech.
- 20 A Not really, but you know.
- 21 Q I just wanted to say that. So I don't want to pick on
- 22 you.
- 23 A Oh, that's all right, sir.
- 24 Q What did you do with Jessica later on that afternoon?
- 25 A Tried to talk to her that everything be just fine.

1 Just it's -- it's okay to be, you know.

2 Q Did you take her anywhere?

3 A No. Unh-unh. No, I -- I didn't. I just talked to her
4 at the house.

5 Q Did you go to the hospital?

6 A Yeah, at the hospital. Yes, sir, we went. Yes, I did.

7 Q Who was with you at the hospital?

8 A Ms. Gooding, my next door neighbor.

9 Q Those are all the questions I have for you right now.

10 Please answer any questions that Mr. Beach has. Thank you.

11 A Uh-huh.

12

CROSS-EXAMINATION

13 **BY MR. BEACH:**

14 Q Ms. Wilder.

15 A Yes, sir.

16 Q You say you did everything you could to preserve the
17 evidence; is that correct?

18 A Yes.

19 Q You had her keep her clothing?

20 A Yes.

21 Q No shower?

22 A Right.

23 Q Nothing that would disturb anything?

24 A Right.

25 Q And when the police arrived, did they take her

1 clothing?

2 A No. No, sir. The -- the hospital did.

3 Q The hospital did, okay. Did they do what's called a
4 rape kit?

5 A Yes, sir.

6 Q So they checked her out for any evidence that might
7 have been left; is that correct?

8 A Yes, sir.

9 Q And you had to do that.

10 A Huh?

11 Q You made sure they did that.

12 A Yes, sir.

13 Q That's very admirable.

14 A Yes, sir.

15 Q So they would have all the evidence as to whether or
16 not this was a rape.

17 A Right.

18 Q You didn't let them lose anything.

19 **ASST. SOLICITOR SHELTON:** Objection, Your Honor. She's
20 not qualified to answer these questions.

21 **THE COURT:** Well, let me hear the rest of your
22 question, Mr. Beach. It is cross-examination. But state
23 your question, and don't answer, ma'am, until I get a chance
24 to rule on the objection, all right? State your question,
25 Mr. Beach.

1 Q My question then would be: To your knowledge, did they
2 have everything that they should have had, to determine
3 whether or not this was a rape?

4 **THE COURT:** Objection is sustained.

5 Q Now, when she came in the house, you say you were in
6 the bedroom?

7 A Yes, sir.

8 Q And you were with who, your son?

9 A Yes, sir.

10 Q And who else?

11 A And -- and my two little kids.

12 Q Now, so you were not outside?

13 A Unh-unh.

14 Q You didn't see where she was coming from.

15 A No. Right.

16 Q Now, did you see her earlier that day?

17 A How do you mean?

18 Q I mean, did you see her any that day before this
19 incident?

20 A No. She -- I -- I told her not to leave. I told her
21 not to leave.

22 Q When was this?

23 A That -- that -- that day.

24 Q Did you know that she had left?

25 A No, sir. I sure didn't.

1 Q Did she often disobey you?

2 A I mean, she -- well, tell you the truth. When she had
3 a little spell, she go over to -- like a little rage, so to
4 speak, a little rage. And but -- but this day, she did not
5 listen.

6 Q Does she go into these little rages often?

7 A Sometime. Not all the time.

8 Q About how often does she do this?

9 A You know, I say, like, quite a bit.

10 Q And what set her off?

11 A If you were -- if she don't get her -- get her way.

12 Q And what does she do when she doesn't get her way?

13 A Well, she just -- if she don't get her way, she just,
14 you know, like I say, she go -- goes to school someplace
15 that -- and then she -- when she cool herself down, then she
16 back to normal.

17 Q How long does it take for her to get back to normal?

18 A Not -- not very long.

19 Q So how long do these ranges usually last? Five
20 minutes? Ten minutes? An hour?

21 A It all depends how -- how she is. It all depends how
22 she is; that's all.

23 Q But you had earlier that day told her she could not
24 leave the house?

25 A That's right.

1 Q Was there a reason for that?

2 A Huh?

3 Q Was there a reason why you told her?

4 A I'm her mama. She -- that's my responsibility, and she
5 got to listen what I have to say to her. And I'm trying to
6 teach her the right thing how to go about it. But so far,
7 she did not -- that day, she did not listen. I told her not
8 -- not to go, unless Ms. Gooding is there. That's all.

9 Q Does she often slip out of the house?

10 A Mainly, once in a while. But -- but before that -- I
11 take control, you know. I take control before she really
12 take off, you know.

13 Q Why did you not want her to leave the house?

14 A Well, because, like I say, I'm her parent. I don't
15 want her go -- go without my -- my permission. If she had my
16 permission, she -- she can go. If she don't have my
17 permission, she know she definitely is wrong. She cannot go
18 without my permission. I'm her mama.

19 Q In other words, you want her to tell you where she's
20 going?

21 A That's right.

22 Q And she did not do that that day?

23 A That's right. Yes, sir.

24 Q Now, does she ever lie to you?

25 A Well, sometime. Sometime she'll lie.

1 Q And when she gets real excited like this, does she have
2 problems telling the truth?

3 A Well, some ---

4 **ASST. SOLICITOR SHELTON:** Objection, Your Honor. May I
5 approach?

6 **THE COURT:** Counsel, approach.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
8 AND OUT OF THE HEARING OF THE JURY.)

9 **THE COURT:** Objection's overruled.

10 **MR. BEACH:** I don't believe I have any other questions,
11 Your Honor. I'll withdraw that last question.

12 **THE COURT:** Very well. Redirect?

13 **ASST. SOLICITOR SHELTON:** Yes, Your Honor.

14 **REDIRECT EXAMINATION**

15 **BY ASST. SOLICITOR SHELTON:**

16 Q You say that Jessica sometimes goes into fits and
17 rages.

18 A Yes, sir.

19 Q Was those fits and rages, was that different from what
20 you saw on August the 21st, 2010?

21 A She -- well, like -- well, like I was saying, she ---

22 Q How was she upset on that day?

23 A On that day -- that day, she -- she -- she was upset;
24 she was disturbed.

25 Q Was she scared?

1 A Yes, she was. Yes, she was. She very disturbed and
2 she really scared like.

3 Q You're her mother?

4 A Yes.

5 Q You know when something's wrong?

6 A Yes.

7 Q Was something wrong with her then? Was something wrong
8 with her on that day?

9 A No. Not -- not -- not that day, no.

10 Q When she came to the door, after what happened
11 happened, was something wrong with her?

12 A Yes. Yes. It was when she come back.

13 Q She came back?

14 A Uh-huh. When she came back, it definitely something
15 was wrong then.

16 Q And also, you said you don't want her to go out without
17 your permission?

18 A That's right.

19 Q Why is that?

20 A Because I'm her mother. She -- she have to do what I
21 say.

22 Q Are you protecting?

23 A I am protecting her.

24 Q Are you vulnerable?

25 A Uh-huh. So I -- but she -- she -- she my daughter.

1 I'm her mother and she in my care. She has to realize she
2 can't do what she want to do because she 18.

3 Q And you don't want anybody to do anything to her.

4 A Oh, no. Unh-unh. No.

5 Q Thank you. No more questions.

6 **THE COURT:** Re-cross, limited to redirect.

7 **MR. BEACH:** None, Your Honor.

8 **THE COURT:** As to this witness, Solicitor?

9 **ASST. SOLICITOR SHELTON:** Ask she be excused at this
10 time, Your Honor.

11 **THE COURT:** Any objection, Mr. Beach?

12 **MR. BEACH:** No objection, Your Honor.

13 **THE COURT:** Ms. Wilder, you may step down. And watch
14 your step on those steps for me. You can stay with us in
15 the courtroom if you wish, or you're excused from the trial
16 of this case and you may leave the courtroom, if you wish.

17 **MS. WILDER:** Okay. Have a good day.

18 **THE COURT:** You have a good day, too. Be careful for
19 me now.

20 **MS. WILDER:** Yes, sir. Thank you.

21 **THE COURT:** Call your next witness.

22 **ASST. SOLICITOR SHELTON:** State calls Brandon Craven.

23 **MADAME CLERK:** Please come forward and be sworn.

24 WHEREUPON, BRANDON CRAVEN WAS DULY SWORN.

25 **MADAME CLERK:** Please have a seat on the witness stand

1 and state your full name on the record.

2 **THE COURT:** Good morning. Pull your chair up, adjust
3 the microphone. Make sure with all your equipment on --
4 state your full name, spell your last name for my court
5 reporter.

6 **MR. CRAVEN:** Brandon Craven. Last name is C-R-A-V-E-N.

7 **THE COURT:** Your witness, Counsel.

8 **DIRECT EXAMINATION**

9 **BY ASST. SOLICITOR SHELTON:**

10 Q Thank you. Officer Craven, who do you work for now?

11 A I work for Waltherboro City Police Department.

12 Q On August the 21st, 2010, who were you working for?

13 A Colleton County Sheriff's Office.

14 Q Did you reply to a incident called out from [REDACTED] David
15 Street on August the 20th, 2010?

16 A I did.

17 Q 21st, 2010.

18 A Uh-huh.

19 Q What was the call about?

20 A I -- I was dispatched there in reference to a sexual
21 assault.

22 Q When you got there, what did you see?

23 A I arrived on the scene. I believe I saw the older
24 brother outside, to the left of the steps. I knocked on the
25 door. I made contact with the mother, the step-father and

1 also the victim.

2 Q What was the victim's state at the time you saw her?

3 A When they got in contact with me, she was breathing
4 rapidly, crying, upset. Any of the questions that I asked
5 her, her words were very jumbled. It was very hard to
6 gather her thoughts at first.

7 Q Would you say she was upset?

8 A Yes.

9 Q Would you say she was very upset?

10 A Yes.

11 Q You said you saw the older brother there. What was his
12 demeanor?

13 A He was pacing around, came inside, had his arms folded,
14 continued to pace around, was breathing heavily. Balled up
15 his fist a few times. I was there trying to get the
16 demeanor of things, and I asked them why he was mad.

17 Q Through your investigation while on scene, did you find
18 out why he was mad?

19 A Yes. The parents said that he wanted to ---

20 **MR. BEACH:** Objection, Your Honor.

21 **ASST. SOLICITOR SHELTON:** I withdraw.

22 **MR. CRAVEN:** Oh, excuse me.

23 **THE COURT:** Sustained. Don't refer to what someone
24 else said. Ask a question, Counsel.

25 Q Mr. Craven, through your investigation of the scene,

1 did you make a determination as to why he was angry?

2 A Yes. He wanted to go assault Mr. Twyman.

3 Q Mr. Twyman, the defendant?

4 A Yes.

5 Q That was Craig Hilton?

6 A Yes.

7 Q The oldest brother?

8 A Yes.

9 Q What was the demeanor of the step-father?

10 A Step-father was -- was upset.

11 Q Now, when you saw the victim, Ms. Fredericks, did you
12 notice anything about her that would be different from
13 someone else?

14 A Yeah. She had a speech impediment, as well as she
15 appeared to be mentally handicapped.

16 Q And do you -- have you ever had an encounter with her
17 before?

18 A No.

19 Q You could tell that when you first saw her?

20 A Yes.

21 Q Was she able to -- did anyone else come out to the
22 scene?

23 A Yes. During my investigation, Ms. Frederick told me
24 the nature of the incident and what occurred. And I
25 immediately backed away and contacted Detective Gathers to

1 conduct an interview, because of the sensitive nature.

2 Q Detective Gathers is a female?

3 A Yes.

4 Q When you were interviewing the victim to determine what
5 occurred, what was the victim's demeanor? Was she upset?

6 A Extremely upset. It was just -- it was very hard to --
7 for her just to calm down. I mean, it was, you know, kind
8 of -- you know, I had to talk to her for a while to be able
9 to determine what it was because she was crying and -- and
10 extremely upset.

11 Q Did she looked shocked?

12 A Yes. And the first thing I noticed when I walked in is
13 it was hard for her to make eye contact with me, which is
14 common with being ashamed.

15 Q From your experience as a law enforcement officer?

16 A Yes.

17 Q And replying to thousands of scenes and hundreds of
18 scenes?

19 A Yes.

20 Q Those are all the questions I have for you. Thank you.
21 Please answer any questions that Mr. Beach has.

22 **CROSS-EXAMINATION**

23 **BY MR. BEACH:**

24 Q Where do you see all these people?

25 A At [REDACTED] David Street.

1 Q Was your investigation limited to [REDACTED] David Street?

2 A Yes, sir. Mine was.

3 Q And so did you see anybody else there, other than the
4 people that you have related to us?

5 A A little while later, it was like shortly, after Ms.
6 Gooding arrived.

7 Q Anybody else?

8 A Deputy Kevin Campbell, Detective Gathers.

9 Q Any other civilians?

10 A Not that I can remember.

11 **MR. BEACH:** No other questions, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY ASST. SOLICITOR SHELTON:**

14 Q You saw the oldest brother there?

15 A I saw Craig there.

16 Q You saw the step-father there?

17 A Saw the step-father, the mother and Jessica and then
18 Gooding arrived later.

19 Q Did you see the defendant there?

20 A No.

21 Q Did the defendant come to the scene while you were
22 there at all?

23 A Not while I was there, no.

24 Q That's all the questions I have.

25 **THE COURT:** Re-cross, limited to redirect.

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

2 **THE COURT:** As to this witness, Counsel?

3 **ASST. SOLICITOR SHELTON:** Ask that he may be excused,
4 Your Honor.

5 **THE COURT:** Any objection?

6 **MR. BEACH:** No objection.

7 **THE COURT:** Mr. Craven, you may step down. You are
8 excused from the trial of this case. You may leave the
9 courtroom at this time, or remain with us, as you wish.

10 **MR. CRAVEN:** Thank you.

11 **THE COURT:** Thank you. Be careful. Call your next
12 witness.

13 **ASST. SOLICITOR SHELTON:** State calls Detective
14 Gathers.

15 **MADAME CLERK:** Please come forward to be sworn.

16 WHEREUPON, DETECTIVE GATHERS WAS DULY SWORN.

17 **MADAME CLERK:** Please have a seat on the witness stand
18 and state your full name on the record.

19 **THE COURT:** Watch your step for me. Pull that chair up
20 and make yourself comfortable. I want it to support your
21 back.

22 **DETECTIVE GATHERS:** Yes, sir.

23 **THE COURT:** I understand that microphone's important,
24 but I want you to use my chair, too. State your full name
25 for the record and spell your last name for the court

1 reporter.

2 **DETECTIVE GATHERS:** Dorethea Jeanette Gathers, G-A-T-H-
3 E-R-S.

4 **THE COURT:** Your witness, Counsel.

5 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 **BY ASST. SOLICITOR SHELTON:**

8 Q Thank you Detective Gathers.

9 A Yes, sir.

10 Q Detective Gathers, who do you work for?

11 A Colleton County Sheriff Department.

12 Q And what's your role there?

13 A I'm a detective.

14 Q How long have you been a detective?

15 A Nine months.

16 Q Nine months?

17 A Yes, sir.

18 Q Back in August, were you a new detective?

19 A Yes, sir.

20 Q What were you, before you were a detective?

21 A My whole history?

22 Q Uh-huh.

23 A I started at Dayco. I worked there for 17 years.

24 Then, I went to SCDC for three. Then I came to Colleton
25 County, jailer, transporter, road patrol, SRO, then

1 detective.

2 Q So you worked your way up the ranks, became a
3 detective?

4 A Yes, sir.

5 Q And back in August the 21st, 2010, do you remember
6 responding to a scene at [REDACTED] David Street?

7 A Yes, sir.

8 Q Is that in Colleton County?

9 A Yes, sir.

10 Q What was the nature of that call?

11 A Got a call from Brandon Craven, stating that it was a
12 sexual assault. And I was the on-call detective, and I
13 responded out there, sir.

14 Q When you responded, what did you see?

15 A When I first -- when I arrived, Mr. Craven was there,
16 the mom, the step-dad, Jessica, and a brother, and I think
17 was a set of twins.

18 Q Younger twins?

19 A Yes, sir.

20 Q Were you able to have any interaction with the victim?

21 A I did. When I arrived, I spoke with the mom, the dad
22 and Jessica. She was upset. She was like, "Hey, Ms.
23 Gathers." But her words were very jumbled.

24 Q Be careful. Please don't say ---

25 A Yes, sir.

1 Q You say she was upset. Will you explain what you mean
2 by that?

3 A Upset -- just upset to me with Jessica, she was like
4 real nervous. She was talking very fast and everything was
5 running together. And she was like doing her hands and just
6 upset.

7 Q Did you take a statement from Jessica?

8 A I did.

9 Q How did you do that?

10 A She wrote a voluntary statement for me.

11 Q Were you having a hard time understanding her at the
12 time?

13 A Yes. Yes, sir.

14 Q Were you able to gather what she was saying, though?

15 A Yes, sir.

16 Q That voluntary statement that she wrote, how many pages
17 was it?

18 A Three pages.

19 Q Three whole pages?

20 A Yes, sir.

21 Q Was it detailed?

22 A Yes, sir.

23 Q At that time, no one went to arrest the defendant; did
24 they?

25 A No, sir.

1 Q Why was that decision made?

2 A We just want to make sure we gather all our evidence
3 before we make a actual arrest.

4 Q What do you mean by that?

5 A Make sure we do the right things, make sure we have the
6 right person. It's protocol. You just don't want to make
7 arrest right then. You want to make sure you gather the
8 evidence, the information, and follow through. Then follow
9 through with the arrest.

10 Q Did you accompany her to MUSC to do the rape kit?

11 A I did not, sir.

12 Q Did you know she was going there?

13 A Yes, sir.

14 Q When you left, did she ever completely calm down?

15 A No, sir.

16 Q She was upset the entire time you were there?

17 A Yes, sir.

18 Q How long were you there for, rough amount, rough
19 guesstimate?

20 A Almost two hours. About a hour and forty minutes.

21 Q She was upset the whole time?

22 A Yes, sir.

23 Q Those are all the questions I have for you, Detective
24 Gathers. Please answer any questions Mr. Beach has.

25 A Yes, sir.

CROSS-EXAMINATION

BY MR. BEACH:

Q Detective, you said that she was upset the whole time.
What do you mean by that?

A When I first arrived, upset with Jessica, she was
crying, but her mom kept talking. She -- she calmed down,
but she still kept rambling with her words, trying to talk
and explain, and just nervous.

Q Was that part of her speech impediment?

ASST. SOLICITOR SHELTON: Objection. She's not
qualified to answer the question.

THE COURT: Sustained.

Q You say she was crying?

A Yes, sir.

Q Was she trying to talk?

A Yes, sir.

Q Could you understand her?

A I can, but you have to listen very, very closely to
her. And I kept talking to her, so she slowed down.

Q And did she finally slow down?

A No, sir.

Q Was she upset when she wrote this statement that you're
talking about?

A She was calming down. You know, she was -- she was
still upset. But she was still trying to talk and write at

1 the same time. I told her "Just calm down. I could step
2 outside and she could write."

3 Q So she voluntarily wrote out the statement?

4 A Yes, sir, she did.

5 Q And did you talk to her anymore that afternoon, after
6 she wrote the statement?

7 A No, sir. After she wrote the statement, I gather it,
8 and she left with Ms. Gooding and her mom for MUSC.

9 Q You didn't go to MUSC with her, did you?

10 A No, sir, I did not.

11 Q Who did go? Do you know?

12 A Ms. Gooding, her mother, and Jessica.

13 Q Was she transported to MUSC? Or did they just take
14 her?

15 A They took her in Ms. Gooding's car.

16 Q So she was not disabled?

17 A Who? Jessica?

18 Q Yes.

19 A No, sir. Not disabled to drive -- I mean, ride.

20 Q Did you see her any later that day?

21 A No, sir.

22 Q Did you see her anymore since this incident occurred?

23 A Yes, sir.

24 Q How often?

25 A Once.

1 Q Once?

2 A Yes, sir.

3 Q Today?

4 A No, sir.

5 Q I don't have any other questions. Thank you.

6 A Yes, sir.

7 **THE COURT:** Redirect?

8 **ASST. SOLICITOR SHELTON:** Briefly, Your Honor.

9 **REDIRECT EXAMINATION**

10 **BY ASST. SOLICITOR SHELTON:**

11 Q You say that she was upset; she was speaking quickly.

12 A Yes, sir.

13 Q Her words were jumbled together?

14 A Yes, sir.

15 Q She's having a hard time finishing her words?

16 A Yes, sir.

17 Q Talking very fast.

18 A Very.

19 Q Everything's running together?

20 A Yes, sir.

21 Q She was upset the entire time, in one way or the other?

22 A Yes, sir.

23 Q And she was calming down only when she was partially
24 through with that statement?

25 A That's correct.

1 Q And when I say "calming down," not calm down like I am
2 or you are right now?

3 A No, sir.

4 Q But calming down?

5 A Calming down, that you could understand her words, if
6 you listen very closely.

7 Q And you were there for an hour and a half, two hours?

8 A Yes, sir.

9 Q Thank you.

10 A Yes, sir.

11 **THE COURT:** Re-cross, limited to redirect.

12 **MR. BEACH:** None, Your Honor.

13 **THE COURT:** As to this witness, Solicitor?

14 **ASST. SOLICITOR SHELTON:** Ask that she may be excused,
15 Your Honor.

16 **THE COURT:** Mr. Beach, any objection to excusing this
17 witness?

18 **MR. BEACH:** No objection, Your Honor.

19 **THE COURT:** Detective Gathers, you may step down. You
20 can remain with us if you like. But you are excused from
21 the trial of this case and may leave the courtroom.

22 **DETECTIVE GATHERS:** Thank you, sir.

23 **THE COURT:** Counsel, approach.

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
25 AND OUT OF THE HEARING OF THE JURY.)

1 **THE COURT:** Call your next witness.

2 **ASST. SOLICITOR SHELTON:** State calls Ms. Patty Lohr.

3 **MADAME CLERK:** Place your left hand on the Bible and
4 raise your right.

5 WHEREUPON, PATTY LOHR WAS DULY SWORN.

6 **MADAME CLERK:** Please have a seat on the witness stand
7 and state your full name on the record.

8 **THE COURT:** Watch your step. Adjust that chair for
9 you, Ms. Lohr, so that it's comfortable for you, and that
10 microphone. Because I want you to use it. I can turn it up
11 if you need to. State your full name and spell your last
12 name for the court reporter.

13 **MS. LOHR:** Okay. My name is Patty B. Lohr, L-O-H-R.

14 **THE COURT:** Very good. Your witness, Counsel.

15 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 **BY ASST. SOLICITOR SHELTON:**

18 Q Ms. Lohr, what do you do for a living?

19 A I'm a speech language pathologist.

20 Q What is that?

21 A I work with people from infants to adults that have
22 speech and language difficulty.

23 Q Do you work with Ms. Jessica Fredericks, the victim in
24 this case?

25 A Yes, I do.

1 Q Are you her main pathologist?

2 A I am, and have been for four years.

3 Q Are you prepared to talk about her disabilities and
4 tell the jury the nature of them today?

5 A Sure I am.

6 Q Before we do that, I'd like for you to explain where
7 you went to school, what training you've had, and what
8 experience you have.

9 A I actually went to South Carolina State College for my
10 bachelor's degree; it's in special education. Went back to
11 South Carolina State College and got my Master's degree in
12 Speech and Language Pathology. I have worked in the
13 Colleton County School Districts, which I'm presently there
14 now. I have a private practice. I've worked at the
15 hospital here in town. I've also worked at the nursing
16 home.

17 Q How many patients, approximately, have you treated over
18 the years?

19 A Oh, gosh. I guess hundreds.

20 Q And how many years have you been a speech pathologist?

21 A Eighteen years.

22 Q Will you give a brief description of different types of
23 problems that you deal with and how you deal with them?

24 A Okay. As a speech pathologist, it's my job to
25 identify, assess, diagnose, and treat any kind of speech or

1 language disorder. And a speech and language disorder can
2 be anything from articulation problems, cognitive issues,
3 auditory comprehension, expressive communication. Voice
4 problems, that people are losing their voices and they have
5 vocal nodules, so they may have a trach; we work with them.
6 Stroke patients. Patients that have had a traumatic brain
7 injury. Swallowing patients. And that's why it goes kind
8 of from birth to death, actually, is the population that
9 we're working with.

10 **ASST. SOLICITOR SHELTON:** At this time, Your Honor, I
11 would tender this witness as an expert in the field of
12 speech pathology.

13 **THE COURT:** Any objection as to qualifications?

14 **MR. BEACH:** None as to Speech Pathology, Your Honor.

15 **THE COURT:** Ladies and gentlemen of the jury, you're
16 about to hear the testimony of a witness who claims to have
17 special knowledge, skill, experience, training, or education
18 in the field of speech pathology. Normally, the law does
19 not permit witnesses to get on the witness stand and give
20 opinion testimony or a conclusion testimony. There is an
21 exception for that rule, which we call the expert witness
22 rule. Those witnesses who claim to have special training or
23 education, if qualified by the Court, are permitted to give
24 such opinions.

25 You should consider qualifications and the credibility

1 or believability of the expert and the reasons given for his
2 or her opinion. You are not bound by such expert opinion.
3 You give it the weight, if any, to which you deem it
4 entitled.

5 Witness is qualified, without objection, in the field
6 of speech pathology. You may proceed, Counsel.

7 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

8 **DIRECT EXAMINATION CONTINUES:**

9 Q Ms. Lohr, you said that you've worked with Jessica for
10 a number of years?

11 A Yes.

12 Q How many years?

13 A Four.

14 Q Four years. And how often do you meet with her every
15 week?

16 A Twice a week.

17 Q And how long have you been doing that?

18 A Four years.

19 Q Four years?

20 A Uh-huh.

21 Q Do you know the nature, if any, of any speech
22 impairments that Jessica has?

23 A Jessica has a diagnosis of verbal apraxia. It's also
24 called speech apraxia, and it's a motor impairment. When I
25 say a motor impairment, we have articulators in our mouth:

1 Our tongue, our jaws, our cheeks, that all help us make
2 sounds. And we make sounds in sequence to -- to make words.

3 The best way I can describe the problem Jessica has is
4 her computer is working, she knows what she needs to say,
5 but the printer is not. There is a neurological breakdown
6 that her articulators can't consistent -- consistently
7 sequence sounds to make words. And so it sounds kind of
8 jumbled.

9 For instance, if I say, you know, "Jessica, make that
10 'el' sound, 'el, it's easy for most people, but she can't
11 make that el. It's more -- they have more of a groping with
12 their sounds, to try to make the correct sounds.

13 Q Is this disability tied to any other disability that
14 she has or is it independent?

15 A It's independent. Actually, you can have verbal
16 apraxia and have nothing else wrong. It can be acquired.
17 If you have a stroke, you could have verbal apraxia. If you
18 have a traumatic brain injury, you could have apraxia. Or
19 it can be developmental. And in Jessica's case, it's
20 developmental; it's from birth. Research doesn't show any
21 real reason why it happens, but that it's just a
22 neurological thing that happens.

23 Q And through your training and experience and from your
24 dealings with Jessica, does she have any problem
25 communicating with others?

1 A She does. I can understand most of what Jessica says
2 because I am around her so much. Sometimes if -- if content
3 isn't known, you don't exactly know what she's saying.
4 Because of her speech impairment, she's kind of an
5 introvert. Because since people don't understand her, they
6 kind of stay shy of her. So there really aren't a lot of
7 friends, especially teenagers, that can understand her.
8 Just -- she just doesn't seem to connect with them.

9 Q Does this impairment, does it increase or decrease, or
10 does her mental state, from your experience and training and
11 also dealing with her on a two-times-a-week basis for four
12 years, with what mood she's in?

13 A Absolutely. There are days that she could stay
14 completely calm and -- and, you know, just keeps her voice
15 level down and she talks nice and slowly. Sometimes she has
16 to be reminded; that's part of the therapy. If she's got
17 something exciting to tell me or if she is upset, the speech
18 gets faster. She has a monotone sound to her voice, so
19 there are no inflections when she's talking. And if she
20 gets excited, the -- the content, you can't really
21 understand anything. And then she starts to stutter some
22 then also.

23 But I will say with Jessica, that she is -- she will
24 repeat, she will write. She -- she doesn't get frustrated
25 if you can't understand her, which is a rare thing. She'll

1 just keep trying to communicate with you until she realizes
2 that you understand what she's saying.

3 Q She gets upset, she starts to speak quickly?

4 A Very quickly, very jumbled, very loud. The tone goes
5 up, but the monotone is still there. And -- and you can
6 maybe catch a word here and there and try to put it
7 together.

8 Q Is this something she's going to have to work with her
9 whole life?

10 A Absolutely.

11 Q It affects her communication with others, as we've
12 already testified to.

13 A It -- it absolutely does. Her family and friends and
14 teachers that have had her can basically understand, because
15 they know her speech patterns. But if you don't, if -- if
16 she is excited when she's talking, especially, you kind of
17 lose the speech intelligibility.

18 Q Would you say that when she's excited, she has a hard
19 time putting thoughts together? Or putting her thoughts to
20 words? I'll withdraw ---

21 A No, no. No, she knows exactly what she wants to say.
22 It's -- Jessica can tell you -- she can tell -- like I said,
23 the computer's working. She can tell you what she wants to
24 say; it's just getting it out. I mean, we get upset and
25 it's hard to get the words out. She's already got a

1 disability about getting words out clearly. So, she knows
2 what she wants to say and if she cannot get it out, she will
3 write it.

4 Q Thank you. Those are all the questions I have for you.

5 A Okay.

6 Q Please answer any questions Mr. Beach has.

7

CROSS-EXAMINATION

8 **BY MR. BEACH:**

9 Q Ms. Lohr, you say her computer was working.

10 A Computer's working.

11 Q That's the mind.

12 A That's the mind.

13 Q And so there's nothing wrong with Jessica's computer?

14 A Jessica is more on a child-like level. Academically,
15 her levels are lower. But as far as common sense type
16 things, she's right on the money.

17 Q So Jessica's problem is that she has an impediment; is
18 that correct?

19 A She does.

20 Q And otherwise, she can converse back and forth?

21 A Uh-huh.

22 Q Need to answer.

23 A Yes.

24 Q So the computer is working?

25 A Yeah.

1 Q So her problem is that she has a speech impediment?

2 A Yes.

3 Q And nothing more.

4 A She is labeled "educably mentally handicapped," I
5 think, but "disabled" is the label for her academic skills.

6 Q That's just a -- that's just a label that says it's
7 hard to teach her; is that correct?

8 A That's correct.

9 Q And so it's ---

10 **ASST. SOLICITOR SHELTON:** Objection, Your Honor. She's
11 not qualified to answer these questions about academics.

12 **THE COURT:** Sustained, Mr. Beach. We're in the field
13 of speech pathology only.

14 Q But the computers work?

15 A Yes.

16 Q You don't have any trouble talking back and forth with
17 her?

18 A At times I do, if she's excited.

19 **MR. BEACH:** No other questions, Your Honor.

20 **THE COURT:** Redirect?

21 **ASST. SOLICITOR SHELTON:** No, Your Honor. Thank you.

22 **THE COURT:** As to this witness, Solicitor?

23 **ASST. SOLICITOR SHELTON:** Ask that she may be excused.

24 **THE COURT:** **MR. BEACH**, any objection?

25 **MR. BEACH:** No objection, Your Honor.

1 **THE COURT:** Ms. Lohr, you may step down. You can
2 remain with us, if you'd like to, or you may leave the
3 courtroom. You're excused from the trial. Please watch
4 your step on those steps for me.

5 **MS. LOHR:** Thank you.

6 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
7 jury, I'm going to take my mid-morning break at this point.
8 Give you a chance to stretch your legs. If I have any
9 smokers on the jury, they'll have to take you outside the
10 courthouse in order to smoke, but the bailiffs will arrange
11 that. During this break -- and you can use the restroom
12 while you stretch your legs -- please do not discuss this
13 case. You have not heard all the evidence in this case, and
14 it would be improper for you to discuss it. I'll be right
15 back with you just as quick as I can. Make sure you each
16 get a little time for a break and we'll start back. You may
17 retire to your jury room at this time.

18 (11:35 A.M., 4-19-11, WHEREUPON THE JURY EXITS THE
19 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
20 RECORD.)

21 **THE COURT:** All right, Counsel, I want you and your
22 clients, if necessary, to also be able to get a break.
23 Anything on the record outside the presents of the jury
24 before we begin our break, from the State?

25 **ASST. SOLICITOR SHELTON:** No, Your Honor.

1 **THE COURT:** From the defendant?

2 **MR. BEACH:** No, Your Honor.

3 **THE COURT:** Very well. We'll take about ten minutes,
4 Counsel.

5 (Off the record, briefly.)

6 **THE COURT:** I've given you a chance now to use the
7 restroom, go outside and smoke, ready to roll.

8 **MR. BEACH:** Yes, sir.

9 **THE COURT:** State ready to proceed?

10 **ASST. SOLICITOR SHELTON:** Yes, sir, Your Honor.

11 **THE COURT:** Defendant ready to proceed?

12 **MR. BEACH:** Yes, Your Honor.

13 **THE COURT:** Bring us the jury, please.

14 (11:55 A.M., 4-19-11, WHEREUPON, THE JURY ENTERS THE
15 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

16 **THE COURT:** Counsel, approach.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
18 AND OUT OF THE HEARING OF THE JURY.)

19 **THE COURT:** State ready to proceed?

20 **ASST. SOLICITOR SHELTON:** Yes, sir, Your Honor.

21 **THE COURT:** Defendant ready to proceed?

22 **MR. BEACH:** Yes, Your Honor.

23 **THE COURT:** Very well. Solicitor, call your next
24 witness.

25 **ASST. SOLICITOR SHELTON:** State calls Ms. Carol Marks.

1 **MADAME CLERK:** Please come forward and be sworn. Place
2 your left hand on the Bible and raise your right.

3 WHEREUPON, CAROL D. MARKS WAS DULY SWORN.

4 **MADAME CLERK:** Please have a seat on the witness stand
5 and state your full name on the record.

6 **THE COURT:** Good morning. Be careful on the stairs.
7 Have a seat; make yourself comfortable. Pull the chair up,
8 adjust the microphone.

9 **MS. MARKS:** Okay.

10 **THE COURT:** I want you to speak into it and speak up,
11 so everybody out there can hear you. State your full name
12 and spell your last name for me.

13 **MS. MARKS:** Okay. Carol D. Marks, M-A-R-K-S.

14 **THE COURT:** Your witness, Counsel.

15 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 **BY ASST. SOLICITOR SHELTON:**

18 Q Ms. Marks, what do you do for a living?

19 A I'm a special education teacher.

20 Q How long have you been doing that?

21 A Twenty-seven years.

22 Q Are you Ms. Jessica Fredericks main classroom teacher?

23 A Yes, I am.

24 Q How long have you been teaching her?

25 A About three or four years.

1 Q Are you prepared to tell the Court and the jury about
2 her mental condition, as far as the classroom is concerned?

3 A Yes, I am.

4 Q How she interacts with others?

5 A Yes, I am.

6 Q And how it affects her life?

7 A Yes, I am.

8 Q Before we do that, let's go into how you became a
9 special education teacher.

10 A Where I went to college?

11 Q Uh-huh.

12 A Okay. I went to Slippery Rock State College, which is
13 now Slippery Rock University in Pennsylvania; got my
14 bachelor's there. And then I am now currently working on my
15 master's. But in the meantime, I became National Board
16 Certified, as well.

17 Q Where do you have to go to, to get your National Board
18 Certification?

19 A It's a process. It's about a year-long process where
20 you have to basically analyze everything that you do, and
21 you videotape yourself. And it's just a complete
22 analyzation of your teaching.

23 Q What are your duties and responsibilities as a special
24 education teacher?

25 A I write IEPs.

1 Q What's an IEP?

2 A Oh, sorry. Individualized Educational Plan.

3 Q What is in -- what is in an IEP?

4 A An IEP has basically the -- the levels of the students,
5 and I get those from testing them with a -- what's called
6 the KTEA, the Kaufman Test of Educational Achievement, I
7 think is what it is. And ---

8 Q Are you trained to give that test?

9 A Oh, absolutely. Absolutely.

10 Q I'm sorry. I keep interrupting you.

11 A That's okay.

12 Q Keep going on.

13 A And we use that test and it gives us the grade levels
14 of where they stand in the core subjects: Reading, math and
15 writing. And then we also include any of their transitional
16 goals that basically what they want to do after they leave
17 here, what kind of career do they want to have, what kind of
18 skills are they going to need to do that. And -- what else
19 would be in there? Any kind of accommodations that are
20 needed for them. And then Ms. Lohr, who spoke earlier, she
21 includes her speech in the IEP as well.

22 Q Day-to-day duties and activities, what do you do in the
23 classroom?

24 A I basically teach life skills to the students because
25 most -- I teach at the high school -- been at the high

1 school all my -- all my career. And my job basically is to
2 get them ready to be functional. Not really to go out there
3 and get a job as a secretary or anything, but be able to be
4 functional, be able to maybe perhaps live on their own.
5 Some of mine can; some cannot. They're always going to need
6 assistance. Teach them how to write a check, how to, you
7 know, know the basics of the laws, just the real basic,
8 basic, basics, to get through life.

9 Q And I kind of jumped over this, but what is special
10 needs and special education? What is the requirement for a
11 person to be in your classroom?

12 A Well, in my classroom specifically?

13 Q Uh-huh.

14 A Okay. My classroom is the mildly mentally disabled
15 classroom, and you have to have an IQ between 50 and 70.

16 Q How long have you been teaching special needs students?

17 A Twenty-seven years.

18 **ASST. SOLICITOR SHELTON:** At this time, Your Honor, the
19 State would tender Ms. Marks as a expert in the field of
20 special education/special needs education.

21 **THE COURT:** Any objection as to qualifications?

22 **MR. BEACH:** No objection, Your Honor.

23 **THE COURT:** Very well. Ladies and gentlemen, recalling
24 my earlier instruction to you concerning expert testimony,
25 the witness is qualified without objection in the field of

1 special education. You may proceed, Counsel.

2 **ASST. SOLICITOR SHELTON:** Thank you. Thank you, Your
3 Honor.

4 **EXAMINATION CONTINUES:**

5 Q You teach Ms. Jessica Fredericks?

6 A Yes, I do.

7 Q What disabilities does she have, to your knowledge?

8 A She has the speech disability, and then she's also
9 mildly mentally disabled.

10 Q What does that mean?

11 A She has an IQ between 50 and 70. It kind of varies,
12 depending on which core subject you're looking at. Her math
13 is extremely low; that's a 44. Her reading is her highest
14 because, as -- as was stated earlier, she likes to write a
15 lot. So reading is -- is one of her better skills. That's
16 a 69. And she has a writing skill of about a first grader.
17 And then her overall IQ is about a 55.

18 Q Fifty-five. You say there are percentages there for
19 the reading and the writing and also math. What grade level
20 equivalent are those?

21 A Can I cheat?

22 Q Would it help refresh your memory?

23 A Yeah. Can I ---

24 Q What are you looking at there?

25 A I -- I wrote down her levels, just because I've had so

1 many kids over the years that I didn't want to misstate.
2 Her reading is a 3.2, which basically means it's a third
3 grade level, second month. Her math is a 2.0, which would
4 mean the second grade level, zero months. And then her
5 writing is a 1.7, which means a first grader, seventh month.

6 Q Now, teaching special needs/special education students,
7 teaching specifically Ms. Fredericks, are you able to
8 also -- do you deal with emotional needs of students?

9 A Oh, absolutely.

10 Q Will you tell us a little bit about that? And how you
11 were trained to do that? And then what is incorporated in
12 that?

13 A Over the years, I guess, it's just been a -- a second
14 nature to come to me that you can't -- I can't just not
15 teach children and not go with their emotional needs. I
16 have to realize the whole picture. And so many of my
17 students have had rough lives or been abused or whatever,
18 that you have to deal with the emotional side of it. You
19 can't just ignore that. That's a major part of it.

20 Q Do you also deal with your -- being specifically a
21 special education teacher -- the psychological side of
22 students?

23 A Oh, absolutely.

24 Q As far as their ability to comprehend the world around
25 them?

1 A Absolutely. Because, like I said, some of them will be
2 able to go out on their own; others will not. And it's kind
3 of my job to determine that, based on the whole picture.

4 Q Let's talk about that specifically for Jessica.

5 A Okay.

6 Q First of all, her emotional needs. Can you give us an
7 equivalent of an age level that her emotional needs are
8 equivalent to?

9 A I would say between a six and seven year old.

10 Q Will you be specific about that?

11 A Basically, just, you know, they were talking about the
12 tantrums earlier. Throwing a tantrum would be very typical
13 of a six year old who doesn't get their way; they're going
14 to stomp away. I don't see that very much from Jessica in
15 the classroom. But if she gets upset, she does become very
16 emotional. What else did you want ---

17 Q Psychological. Or her ability to experience the world
18 around her and comprehend the world around them. How
19 they're -- specifically, what they do today, how is it going
20 to affect them tomorrow? Is she able to grasp, the
21 decisions that she makes today, what bearing that's going to
22 have tomorrow?

23 A Somewhat. I -- I wouldn't say it would be like an
24 adult, like her age level, an 18 year old, no, absolutely
25 not. But the basic age level of a six or seven year old,

1 they know if they break the TV, that they're going to be in
2 trouble for a couple days. She has that ability. But long
3 term, I would say no. She's not able to do that.

4 Q Is she able to comprehend the affect on herself and
5 others of her own actions, to the point of a normal
6 functioning person?

7 A No.

8 Q Can you be specific about that?

9 A Just the fact that, like I said, she's a six or seven
10 year old in her mind. So she's not -- she is looking out
11 for herself, just like any six year old will do. They're --
12 they're in their own time frame, their own kind of world.

13 Q So she's not, to a certain degree, able to appraise the
14 nature of her actions?

15 A To a certain degree.

16 Q Yes.

17 A To a certain degree.

18 **ASST. SOLICITOR SHELTON:** I beg the Court's indulgence.

19 Q Do you have meetings with her, where her parents also
20 attend?

21 A Yes. We have to have a IEP meeting every year.

22 Q And is there anything unique about the meetings that
23 you have with her and her parents?

24 A Her parents -- her father normally does not come. It's
25 usually Ms. Wilder. And she always brings somebody with her

1 to kind of help her with the process.

2 Q Why is that?

3 A Because she has some difficulty comprehending
4 everything and -- and they had somebody there, just as an
5 advocate for her, as well.

6 Q So, basically, what all this means is Jessica's
7 capacity is that of a child?

8 A Oh, absolutely.

9 Q Is it going to remain that way?

10 A I don't see it changing.

11 Q And with this Individual Education Plan, the IEPs, what
12 are the goals that you can see her possibly meeting in the
13 future?

14 A For the future, I would say I don't -- I -- I think
15 Jessica's always going to need someone to be looking after
16 her, always being with her at some point. I mean, she
17 can -- she can feed herself, make small, easy meals, that
18 kind of thing.

19 But she's always going to need someone to probably live
20 with her. And -- and she'll be able to do a simple job.
21 She could maybe perhaps work at McDonald's or maybe
22 something at Wal-Mart. But I don't know about -- the money
23 aspect would not be -- be able to be dealt with. It would
24 have to be something besides money.

25 Q But she's going to need assistance for the rest of her

1 life?

2 A That's my opinion, yes.

3 Q Those are all the questions I have for you.

4 A Okay.

5 Q Thank you. Please answer any questions that Mr. Beach
6 has.

7

CROSS-EXAMINATION

8 **BY MR. BEACH:**

9 Q Ms. Marks, you know Jessica pretty well; don't you?

10 A Yes, I do.

11 Q Other than her parents, probably better than anybody;
12 isn't that correct?

13 A I guess so. I have her seven hours a day.

14 Q Is she still in school?

15 A Yes, she is.

16 Q She's still in -- how old is she?

17 A She's 18.

18 Q Now, does she understand right from wrong?

19 A Yes, she does.

20 Q And is she able to understand the consequences of doing
21 something wrong?

22 A Yes.

23 Q Does she understand what it means to tell a lie?

24 A Yes.

25 Q And does she often tell a lie in your classroom?

1 A No, not at all.

2 Q Is she a good kid?

3 A She's one of my better students.

4 Q Is she a happy child?

5 A She was. This year, she has not been.

6 Q Does she interact well with the other children?

7 A She, as stated before, does have a speech impediment.

8 Now, they do include her in things. So she interacts with
9 my other special needs students.

10 Q Would you say that her biggest problem is her speech
11 impediment?

12 A Her biggest -- no, I would not say that's her biggest
13 problem. She is on a -- like I said, a six or seven year
14 old level, as well.

15 Q Now, you say she is on a six or seven year old level.
16 Is she on a functioning six or seven year old level?

17 A Yes.

18 Q And she gets along okay with you?

19 A Oh, yes, absolutely.

20 Q And gets along with the other kids?

21 A Uh-huh. Yes, sir.

22 Q Has she ever had one of these tantrums in your
23 classroom?

24 A Only if somebody else bothers her. She actually had
25 one the other day because a student was picking on her at

1 lunch.

2 Q Does she have problems when she doesn't get her way?

3 A I don't see that, no.

4 **MR. BEACH:** Indulgence just a moment, Your Honor. I
5 don't have anything further.

6 **THE COURT:** Redirect?

7 **ASST. SOLICITOR SHELTON:** Just briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY ASST. SOLICITOR SHELTON:**

10 Q Ms. Marks, Mr. Beach asked you a question about has her
11 behavior changed.

12 A Yes, sir.

13 Q Have you seen a noted change in her behavior since
14 August of last year?

15 A Absolutely.

16 Q Will you please explain exactly what that is, for the
17 jury?

18 A Well, in the -- last year, last school year -- not this
19 present school year, but last school year, she was doing a
20 lot better. She was becoming more outgoing. Her speech was
21 becoming easier for everyone to understand. And not just
22 because I know her, but for other people as well. Because
23 we had a thing called "the girl's club" where we had them
24 with the regular kids. And it was really a good thing.

25 And since August, she has just retreated into herself.

1 She has -- her speech is not easily understood, even by
2 myself. I -- I have a hard time understanding her speech at
3 times. And she's just extremely emotional most of the time.

4 Q Since August?

5 A Yes.

6 Q Of 2010?

7 A Yes, sir.

8 Q Those are all the questions I have. Thank you.

9 **THE COURT:** Re-cross, limited to redirect.

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

11 **THE COURT:** As to this witness, Solicitor?

12 **ASST. SOLICITOR SHELTON:** I ask that she may be
13 excused, Your Honor.

14 **THE COURT:** Any objection?

15 **MR. BEACH:** No objection.

16 **THE COURT:** Ms. Marks, you may step down. And you may
17 leave the courtroom or remain with us, as you wish. But
18 you're excused from the trial of the case.

19 **MS. MARKS:** Thank you.

20 **THE COURT:** Thank you. Watch your step. Call your
21 next witness.

22 **ASST. SOLICITOR SHELTON:** The State calls Ms. Elizabeth
23 Schein-Pearson.

24 **MADAME CLERK:** Please come forward and be sworn.

25 WHEREUPON, ELIZABETH SCHEIN-PEARSON WAS DULY SWORN.

1 **MADAME CLERK:** Please have a seat on the witness stand
2 and state your full name on the record.

3 **THE COURT:** Good afternoon.

4 **MS. SCHEIN-PEARSON:** Good afternoon.

5 **THE COURT:** Have a seat. Get comfortable. Get
6 comfortable. Adjust that chair; adjust the microphone. You
7 ready?

8 **MS. SCHEIN-PEARSON:** Yes.

9 **THE COURT:** State your full name and spell your last
10 name, with the hyphen, for the court reporter, please.

11 **MS. SCHEIN-PEARSON:** My name is Elizabeth Schein-
12 Pearson. S-C-H-E-I-N-dash-P-E-A-R-S-O-N.

13 **THE COURT:** Your witness, Counsel.

14 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 **BY ASST. SOLICITOR SHELTON:**

17 Q Ms. Schein-Pearson, will you please -- Mrs. Schein-
18 Pearson. I'm saying "Ms." to everyone, just to keep it
19 consistent. Will you please tell the jury what you do for a
20 living and where you work?

21 A I'm a school psychologist, and I work for Colleton
22 County School District. My home base is out of the high
23 school.

24 Q Is that where Ms. Jessica Fredericks goes to school?

25 A Yes, it is.

1 Q So you are the school psychologist, or one of the
2 school psychologists, at Ms. Jessica Fredericks' high
3 school.

4 A Yes, I am.

5 Q Are you prepared to talk about Jessica's abilities
6 regarding her psychology, as it relates to her school and
7 the nature of her actions?

8 A Yes.

9 Q Before you talk about that, though, please tell the
10 jury where you went to school for your training. And please
11 tell the jury how long you've been a school psychologist,
12 and what a school psychologist does.

13 A All right. I received my Bachelor's degree from
14 Winthrop University. And then went on to the Citadel
15 College of Graduate and Professional Studies, to receive my
16 Master's degree in School Psychology and another 30 hours,
17 to receive an Educational Specialist degree.

18 And my job is to assess, identify, and diagnose
19 learning disabilities, mental disabilities, emotional
20 disabilities. And in addition to assessment, I also work
21 with students, addressing a variety of behavioral issues.

22 Q How long have you been working as a school psychologist
23 now?

24 A Three years

25 Q Three years. And how many students have you worked

1 with in that time period?

2 A Oh, goodness.

3 Q Roundabout number.

4 A I have assessed perhaps thirty.

5 Q Thirty.

6 A I have probably worked with hundreds.

7 Q Hundreds. And what is an assessment?

8 A An assessment is a battery of tests mandated by Federal
9 Law, Federal and State Law, in which I use -- they have to
10 be valid and reliable -- to determine mental -- in her case,
11 a mental deficiency. So, for a complete assessment, that
12 would be an intelligence test; it would be an achievement
13 test; it would be an adaptive behavior skills test, as well
14 as observations.

15 Q And that's a very thorough test?

16 A Very, yes.

17 Q You don't perform that on all your students?

18 A No, you do not.

19 Q What students do you perform it on?

20 A Students who have been identified as struggling in
21 school and we provide interventions through the teachers
22 initially. If the students do not show improvement
23 academically and behaviorally, sometimes they come together
24 individually, then I secure permission from the parent to
25 test the student.

1 Q Did you actually perform an assessment on Ms. Jessica
2 Fredericks?

3 A I did not conduct an assessment. I did conduct a
4 reevaluation. So, that means that I -- her IEP was
5 reviewed. I looked over her file and determined that she
6 continues to qualify for special services, with the primary
7 disability of a mental disability.

8 Q And these assessments, they're not done every year or
9 sometimes every three years. But once someone has an
10 assessment, will you explain how the process goes forward
11 from there?

12 A All right. The process goes that the student is
13 identified by a student intervention team. Four to six
14 weeks of interventions are provided by the teachers in the
15 class. The team reviews results of the interventions. And
16 if they find there have been no improvements, they provide
17 that information to a school psychologist. We call a
18 meeting. We discuss that with the family. And we secure
19 permission to conduct testing.

20 We administer the intelligence test, the achievement
21 test, the adaptive behavior skills test. We conduct
22 observations of the student. We also will often consult
23 with the teachers. We can -- we look at all of the
24 information, write a report, tie everything together.

25 And if the student -- and in Jessica's case -- has an

1 IQ of 70 and below, has scores of 70 and below for adaptive
2 behavior skills, or 70 -- and 70 below with achievement, we
3 determine that that child qualifies for special services.

4 And I want to add that the average intelligence is 100.
5 So we're talking about 30 points below the average
6 intelligence.

7 Q Is your job to help diagnose mental disabilities?

8 A Yes.

9 Q And help diagnose -- and also help to define what those
10 disabilities mean to the student?

11 A Yes.

12 Q And define how it affects their relationship to others
13 and the relationship to the world around them?

14 A Yes.

15 **ASST. SOLICITOR SHELTON:** At this time, Your Honor,
16 I'll tender Ms. Schein-Pearson as an expert in school
17 psychology.

18 **THE COURT:** Any objection as to qualification?

19 **MR. BEACH:** No objection as to qualifications, Your
20 Honor.

21 **THE COURT:** Very well. Ladies and gentlemen, again,
22 recalling my earlier instruction to you concerning expert or
23 opinion testimony, witness is qualified in the field of
24 school psychology. You may proceed, Counsel, without
25 objection.

1 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

2 **EXAMINATION CONTINUES:**

3 Q How you define school psychology is administering
4 tests, helping to determine the mental disabilities of
5 people, students, and then help determining what that means
6 to their interaction with others and helping define what
7 classes they're going to be in?

8 A Yes.

9 Q You said you did a reevaluation of Jessica?

10 A Yes, I did.

11 Q When did you perform that evaluation?

12 A December 8th, 2010.

13 Q 2010. And what did that evaluation find?

14 A That evaluation found that she continues to qualify
15 with the primary disability of mental disability.

16 Q And what is her IQ in that evaluation?

17 A 56.

18 Q What does that IQ, having specialized training and
19 knowledge in school psychology and training, what does that
20 mean for someone with an IQ of 56? How do they interpret
21 the world around them?

22 A In Jessica's case, her ability to synthesize
23 information, to make inferences, to appreciate consequences,
24 her ability to hold information for long periods of time;
25 she has a very short memory. It's very difficult for her to

1 hold something in her mind and process it quickly. Does not
2 think very fast on her feet.

3 Q Day-to-day activities?

4 A For Jessica, day-to-day activities are -- she would be
5 able to prepare a meal, but it would not be a complex meal.
6 Someone with an IQ of 56 would need some assistance with
7 something more involved. For day-to-day budgeting, she
8 would need assistance. And I really must add on the
9 socialization portion, she's going to need someone always to
10 assist her with understanding her world.

11 Q When you say "understanding her world." What do you
12 mean by that?

13 A Jessica is unable to -- to completely appreciate the
14 threats in her environment. She is -- she can understand an
15 immediate situation, but she is not able to appreciate what
16 long-term outcomes can be. She would need someone to
17 protect her, to ensure that she is socializing with people
18 who are -- are not going to be a threat to her.

19 **THE COURT:** Got to speak up a little bit.

20 **MS. SCHEIN-PEARSON:** Oh, I'm sorry.

21 **THE COURT:** Pat, turn it up a little bit for me. When
22 you turned toward the jury, you turned away from that
23 microphone.

24 **MS. SCHEIN-PEARSON:** Oh, no.

25 **THE COURT:** That's fine. Turn it up.

1 Q So you just said she has a hard time appreciating the
2 threats?

3 A Yes, she does.

4 Q That may come about to her in life?

5 A Yes. She has difficulty inferring.

6 Q She has a hard time inferring what her actions mean?

7 A Yes.

8 Q Does she have a hard time appraising her conduct and
9 conduct of others?

10 A Yes. On a sophisticated level, yes.

11 Q Can you give us an example?

12 A Well, as Mrs. Marks had said before, Jessica is -- is
13 functioning at, roughly, a six or seven year old's ability.
14 And just as a six or seven year old can understand that
15 something may be fine to do, the long-term affects -- for
16 example, maybe finding the keys in the car in the ignition
17 and deciding to go for a drive, could become pretty
18 disastrous. She's never done anything like that before.

19 Q Is it your opinion -- is she able to, as a six or seven
20 year old, identify the difference between generally right
21 and wrong?

22 A She has a basic grasp. But on a sophisticated level, I
23 don't think that she could really appreciate ---

24 Q Does she know what the differences are between a true
25 and a lie?

1 A Yes. I think she does.

2 Q Does she have a hard time -- you just kind of testified
3 to this, but talking about the car, something that would be
4 very severe. So, she has a hard time grasping what a severe
5 action may be, as opposed to -- would you talk a little bit
6 more along those lines?

7 A Yes. I think that Jessica can understand that if her
8 mother says, "Jessica, I don't want for you to eat this
9 candy." And if she does it, she's going to know that that
10 was -- that was bad. Mom told me not to. If Jessica
11 decides to engage in a more sophisticated act that a seven
12 year old would not be aware of, I just simply believe that
13 she does not understand. Her world is very simple. She
14 does not understand.

15 Q Thank you. Those are all the questions I have for you.
16 Please answer any questions Mr. Beach might have.

17 **CROSS-EXAMINATION**

18 **BY MR. BEACH:**

19 Q You say she does understand right from wrong?

20 A Yes. On a ---

21 Q On a basic level.

22 A Yes. Right from wrong ---

23 **THE COURT:** You have to say "yes" or "no," for the
24 record.

25 A I'm sorry. Yes, she does understand it on a basic

1 level.

2 Q Right from wrong is a pretty basic concept; isn't it?

3 A No. On a right from wrong level with direct
4 instructions, she can appreciate what her mother tells her
5 to do. She can understand, sort of, the outlines of -- the
6 parameters of -- of what is expected of her. But if she's
7 to infer that something she has not experienced before or no
8 one's told her about before, she's deferred the outcome of
9 that. She's not going to be able to.

10 Q Does she appreciate the outcome of her actions?

11 A Oftentimes, no.

12 Q What about on a basic level?

13 A She could appreciate -- yes. Yeah. On a basic level,
14 she can understand if -- if I am late for school, I'm going
15 to get a tardy. But that's something that she is already
16 acquainted with. She's been told this. It's a familiar
17 issue, so it's simple.

18 Q If her mother tells her not to leave home that day and
19 she does, would she appreciate that she's going to get in
20 trouble?

21 A She can understand that, yes.

22 Q How often did you see Jessica?

23 A I've seen Jessica in groups, last year, primarily. My
24 goodness, I'd say probably saw her ten times.

25 Q Did you do the initial assessment of Jessica?

1 A No. Her initial assessment was when she was three
2 years of age.

3 Q So you did not set her IQ level; is that correct?

4 A Her IQ has been assessed, I'd say, five, six times
5 since she was three. And each time, her IQ has fallen
6 within a range of 48 to 61, primarily within mid-40's.

7 Q But you did not set it yourself.

8 A Well, I do not set IQs. I simply administer a
9 standardized intelligence test that's used with norms that
10 are obtained throughout the nation.

11 Q How many one-on-one conversations did you have with
12 Jessica?

13 A Oh, goodness. Perhaps a half dozen.

14 Q And are these sessions you were having with her? Or
15 just conversations in the hall? Or ---

16 A No. We -- we've actually spoken about perhaps
17 difficulty dealing with a classmate. Talking about how to
18 handle issues of social interaction, so how to introduce
19 yourself.

20 Q Did she understand those conversations? Do you think
21 she understood them?

22 A I'm assuming she did.

23 **MR. BEACH:** I don't think I have any other questions,
24 Your Honor. Thank you.

25 **THE COURT:** Redirect?

1 **ASST. SOLICITOR SHELTON:** No, Your Honor.

2 **THE COURT:** As to this witness?

3 **ASST. SOLICITOR SHELTON:** Ask that she may be excused.

4 **THE COURT:** Any objection to this witness being
5 excused?

6 **MR. BEACH:** No, Your Honor.

7 **THE COURT:** You may step down. Watch your step for me.
8 You're excused from the trial of this case. You may leave
9 or you may remain with us, as you wish. Thank you.

10 Call your next witness.

11 **THE COURT:** State calls Amanda Webb.

12 **MADAME CLERK:** Please come forward and be sworn.

13 WHEREUPON, AMANDA WEBB WAS DULY SWORN.

14 **MADAME CLERK:** Please have a seat on the witness stand
15 and state your full name on the record.

16 **THE COURT:** Good afternoon.

17 **MS. WEBB:** Good afternoon.

18 **THE COURT:** You know exactly what to do. Adjust that
19 microphone for me. Adjust that chair, if you need to. Yes,
20 you can pull it out and you can go ahead and open it if you
21 need to. Tell me when you're ready.

22 **MS. WEBB:** Ready.

23 **THE COURT:** State your full name and spell your last
24 name for the court reporter.

25 **MS. WEBB:** Amanda Carry Webb, W-E-B-B.

1 **THE COURT:** Your witness, Counsel.

2 **ASST. SOL. SHELTON:** Thank you, Your Honor.

3 **DIRECT EXAMINATION**

4 **ASST. SOLICITOR SHELTON:**

5 Q Ms. Webb, what do you do for a living?

6 A I'm a Forensic DNA Analyst for the State Law
7 Enforcement Division, also known as SLED.

8 Q And how long have you been doing that?

9 A A little over three years.

10 Q Did you -- pardon me -- analyze a rape kit, or a CSC
11 Kit, from a victim, Ms. Jessica Fredericks sometime in last
12 year?

13 A Yes, I did.

14 Q Are you prepared to present to the jury about the
15 results of that?

16 A Yes, I am.

17 Q First, let's talk about your background, please. Where
18 did you go to school? Your training, credentials, all that
19 type of stuff.

20 A I received my Bachelor's of Science degree in Forensic
21 Chemistry from Marshall University; that's in West Virginia.
22 And I also received my Master's of Forensic Science, also
23 from Marshall University. And upon graduation, I was hired
24 on by SLED and trained for a year and a half under a court-
25 qualified analyst. And had to successfully pass a -- a

1 round of proficiency and competency tests that involved
2 laboratory work of DNA analysis and serology testing.

3 Serology testing is the identification of body fluids.

4 Q In serology testing, what types of body fluids were you
5 trained to identify?

6 A I can identify semen, saliva, urine, and also blood.

7 Q And how long have you been working as a forensic
8 chemist?

9 A A little over three years now.

10 Q Is that what you call yourself? Or is it something
11 more specific?

12 A A forensic chemist is -- is fine. It's one of the
13 multiple titles we can have.

14 **ASST. SOLICITOR SHELTON:** At this time, Your Honor, I
15 would tender this witness as an expert. Excuse me.

16 Q How many times have you been qualified as a expert
17 before in Forensic DNA Chemistry?

18 A Six times.

19 Q Six times.

20 **ASST. SOLICITOR SHELTON:** I would tender this witness
21 as an expert in Forensic DNA Chemistry.

22 **THE COURT:** Any objection?

23 **MR. BEACH:** No, Your Honor.

24 **THE COURT:** Recalling my earlier instruction, ladies
25 and gentlemen of the jury, witness is qualified without

1 objection in the field of forensic chemistry. You may
2 proceed, Counsel.

3 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

4 **EXAMINATION CONTINUES:**

5 Q You said that you conducted tests and analysis on a
6 Criminal Sexual Conduct Kit from Ms. Jessica Fredericks.

7 A Yes, that's correct.

8 Q When did you perform that analysis? You need to refer
9 to your notes?

10 A Yes.

11 Q Will it help refresh your memory?

12 A Yes, please.

13 Q Please do.

14 A I started my analysis on the case in January of 2011,
15 and my report was issued with my final results in February
16 of 2011.

17 Q And you're prepared to talk about those results?

18 A Yes, correct.

19 Q Before we do that, please tell the jury what DNA is,
20 what tests you do. And start with that and then we'll go on
21 from there.

22 A DNA is a chemical in the body, found in the body, that
23 is passed down from your mother and father. You get half of
24 your DNA from your mom and half from your father. That's
25 how you can tell certain characteristics. Sometimes people

1 look like either mother or father or both. Also, it's
2 unique to each individual, except for identical twins.
3 Identical twins will share the same DNA. But everyone else
4 has a -- a different DNA profile.

5 And a profile basically -- in -- in forensics, what we
6 do is we look at 16 different locations of a person's DNA.
7 And if we get information from all 16 of those locations,
8 it's a full profile. And what we do is develop profiles
9 from evidence samples in criminal cases.

10 And then also, I get DNA samples that are known
11 standards. And known standards is DNA that we know comes
12 from a certain individual. For instance, a suspect or a
13 victim. And that way, if we get any DNA profile from
14 evidence, I can compare it to that victim or that suspect,
15 to see if their DNA profile was on the -- the criminal
16 evidence.

17 Q Let's talk about what DNA can come from within the
18 body.

19 A Sure. DNA's found in the skin cells. Like if -- if a
20 person were to touch something or if a person were to
21 perspire or sweat, you can also shed some skin cells. It's
22 found in blood. It's found in saliva. It's more so the --
23 the inside of the cheek cells, not the actual spit itself,
24 but the -- the cheek cells that slough off or rub off.
25 Found in -- in semen. Well, in -- in the sperm of the

1 semen. And also, it can be found in the roots of hair. Not
2 the -- not the long shaft of the hair itself, but the -- the
3 root, like the tissue material. If you ever pulled a hair
4 out and you see the white root on -- on the end, DNA can be
5 found on there.

6 Q So DNA isn't actually -- can't be found necessarily by
7 an actual strand of hair.

8 A Well, let me ---

9 Q Takes a more ---

10 A Let me restate.

11 Q --- specific test?

12 A The type of testing that we do at SLED, it requires the
13 root material. But it -- it can be found in the long strand
14 of the hair. But it's just not the type of testing that we
15 do at SLED.

16 Q Is it very expensive testing?

17 A It -- it's more expensive. It takes a much more
18 lengthy process and a much more sterile lab. Our lab's
19 sterile, but it takes a different type of setup of lab. And
20 that's why we don't perform it at SLED.

21 Q And you just said for sweat. DNA isn't necessarily
22 actually in perspiration. It's in the skin cells that come
23 off; is that correct?

24 A Right. That's correct.

25 Q So if you're sweating -- and this isn't necessarily

1 something that happens all the time, but if you're sweating
2 and there's no skin cells that come off through the sweat,
3 then you might not find any DNA.

4 A That's a possibility. You might not.

5 Q Same thing with saliva, as you've testified. Which
6 saliva doesn't necessarily have DNA, you said?

7 A Yes, correct. It's more the cells on the inside of the
8 cheeks.

9 Q Let's turn now to semen. Will you explain the
10 different components of semen?

11 A It's -- it's basically two different components. The
12 semen is the -- the fluid. It's -- it's -- it's the fluid
13 that carries the sperm. And the sperm's typically what
14 people think of when they think of semen, in generally. The
15 sperm or the -- the typical with the heads and the tails
16 that -- that is often pictured. And the sperm is actually
17 what carries the DNA. So, the semen is the fluid that
18 carries the sperm, which contains the DNA.

19 Q So, can you get DNA from semen without sperm?

20 A No, you cannot.

21 Q So you have to have sperm in DNA -- the sperm in the
22 semen in order to get the DNA?.

23 A That's correct.

24 **ASST. SOLICITOR SHELTON:** May I approach, Your Honor?

25 **THE COURT:** You may.

1 **ASST. SOLICITOR SHELTON:** Beg the Court's indulgence.

2 (BRIEF PAUSE.)

3 Q First, Ms. Webb, I'm going to hand you State's Exhibit
4 Number 2. Will you please tell the jury what this is?

5 A This is the Sexual Assault Evidence Collection Kit that
6 I tested for this case. I can tell because when evidence is
7 submitted, it gets its own case number, and that's listed on
8 this bar code here. And I can also tell because I have
9 opened this package to analyze the evidence, and it has my
10 initials and the date that I opened the package, that I have
11 written on there.

12 Q Is that in substantially the same condition as it was
13 when you first opened it?

14 A Yes, it is.

15 Q And it doesn't appear to be altered or tampered with in
16 any way?

17 A No, it does not.

18 Q What did you do with that kit? Why is it open?

19 A Well, it's standard procedure in Sexual Assault Kits
20 that we read some incident reports and determine what type
21 of serology testing to do first. We usually try to identify
22 body fluids. Mainly in sexual assaults, it's semen. You
23 can also potentially identify saliva, if there's an oral
24 assault. In this case, that wasn't indicated to me, so I
25 tested the items for semen. And then if I determined that

1 semen could be present, I try to develop a DNA profile.

2 Q How do you locate semen?

3 A There are a couple of different chemical tests. The
4 chemical test I used in this one, it basically -- what is in
5 the kit, the -- the nurses at the hospital will take swabs.
6 It's just sterile, cotton swabs and they take those of the
7 intimate areas -- the vaginal, the rectal areas. And -- and
8 then I will cut from that swab and soak that swab in some
9 chemicals to try to extract the semen off of it. And then
10 what I use as a -- as a card, I sort of relate it to a
11 pregnancy test, really. It's like, you take your sample and
12 put it in the sample well of a card, and it just -- a line
13 will show up if it's positive. And if it -- if there's no
14 indication of semen, no line shows up.

15 Q In this case, how many swabs were submitted to you?

16 A Five swabs as evidence and then also a set of swabs
17 from the victim that I use as my minimum standard, to
18 compare the profile, that I know is from her.

19 Q The swabs from the victim that were in the CSC Kit,
20 where did those come from?

21 A I had a set of vaginal swabs, oral swabs, rectal swabs,
22 swabs from the peri-anal area, and swabs from the perineum.
23 So basically, just the vaginal and rectal, and her mouth as
24 well.

25 Q I'm going to ---

1 **ASST. SOLICITOR SHELTON:** May I approach, Your Honor?

2 **THE COURT:** You may.

3 Q I'm handing you what's been previously marked as
4 State's Exhibit Number 3. Would you please tell the jury
5 what that is?

6 A This is a known standard of DNA from the suspect in
7 this case, Leslie Twyman.

8 Q Thank you. Now, let's turn back to State's Exhibit
9 Number 2. Did any of the swabs that you took and tested,
10 did any of those test positive for semen?

11 A Yes. The vaginal swabs did.

12 Q And did you perform any type of DNA testing on the
13 swabs?

14 A Yes. I attempted to develop a DNA profile.

15 Q And in doing that, what are you looking for, besides
16 the victim's DNA?

17 A Basically, in a -- in a sexual assault of this nature,
18 just looking for any DNA that could be foreign to the
19 victim. Meaning, any DNA that doesn't belong to the victim,
20 you would assume could possibly belong to a perpetrator.

21 Q So you did not find -- did you find any unknown,
22 foreign -- excuse me -- DNA in this case from the victim?

23 A No, I did not. Everything matched back to the victim.

24 Q But you did find semen?

25 A Yes, correct.

1 Q And where was that semen found to be? From what swab?

2 A The vaginal swabs.

3 Q Did you perform tests on the other swabs; the anal
4 swabs, and the peri-anal swabs, and the perineum swabs, and
5 the mouth swabs?

6 A Yes, I did.

7 Q Did those come back from any semen?

8 A No, they were negative for semen.

9 Q Is it common for you to find -- or is it -- maybe I
10 should rephrase. Is it uncommon for you to find semen
11 without DNA?

12 A No. I've seen it in many cases that I have tested and
13 also reviewed. There's multiple reasons why you can find
14 semen, but not be able to get a DNA profile. Again, it's
15 the sperm and the semen that you're able to get DNA from.
16 So if there's no sperm, for instance if a person has been
17 vasectomized or if they just have a low sperm count or some
18 people are just a-spermatozoic and don't produce sperm, but
19 they still produce semen. Or there's just not enough
20 deposited, or maybe none deposited at all. There's just
21 many -- many reasons why this could be seen.

22 Q It's not an uncommon phenomena?

23 A Not uncommon at all.

24 Q And you said State's Exhibit Number 3 is the DNA sample
25 taken from the defendant?

1 A Yes, that's correct.

2 Q And did you perform a test on that?

3 A No, I did not. I did not even open the pouch.

4 Q Why was that?

5 A Since I didn't develop a DNA profile foreign to the
6 victim in this case, I didn't have anything to compare the
7 suspect's DNA to, so I just didn't perform any analysis on
8 it.

9 Q Would analysis have done any good whatsoever?

10 A No, it would not have.

11 Q You found semen in, what was the item number again?

12 A That's Item 1.2, the vaginal swabs.

13 Q You found semen in Item 1.2, and that was from the
14 vaginal swabs?

15 A Yes, that's correct.

16 Q But you could not develop the DNA profile from that
17 semen?

18 A No. I could not develop a DNA profile.

19 Q Because you could not find any sperm?

20 A That's correct.

21 Q That's all the questions I have for you. Please answer
22 any questions Mr. Beach has.

23 **ASST. SOLICITOR SHELTON:** I apologize, Your Honor. May
24 I approach?

25 **THE COURT:** Yes, sir. Direct examination.

1 **ASST. SOLICITOR SHELTON:** The State moves Items Number
2 Two and Number Three into evidence at this time.

3 **THE COURT:** Any objection?

4 **MR. BEACH:** No, Your Honor.

5 **THE COURT:** Ladies and gentlemen of the jury, State's
6 Exhibits Two and Three will be admitted into evidence in the
7 trial of this case, without objection.

8 (State Exhibit Two, Sexual Assault Evidence Kit,
9 received into evidence.)

10 (State Exhibit Three, Known Standard from SLED,
11 received into evidence.)

12 **THE COURT:** State's Two and Three are now in evidence.

13 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

14 Q Please answer any questions Mr. Beach has.

15 **CROSS-EXAMINATION**

16 **BY MR. BEACH:**

17 Q How many swabs did you have from the victim, excluding
18 her sample swabs?

19 A I had swabs from five different areas of the body.

20 Q And you found no DNA profile from any of those swabs?

21 A Just the victim's DNA profile.

22 Q Just the victim's DNA profile, okay. Nothing else from
23 anybody else?

24 A That's correct.

25 Q Now, you say that that could be because if somebody had a

1 vasectomy?

2 A Yes. That could be a reason why, if semen -- semen was
3 found, but no DNA profile was able to be developed.

4 Q And you also developed a profile from shed skin or
5 anything like that.

6 A Yes. That's correct.

7 Q So that could have been a possibility also; is that
8 correct?

9 A Yes. Any -- any shed skin cells can be developed. In
10 -- in this case, though, since the victim is being swabbed,
11 oftentimes you get more of the victim's skin cells, since
12 they're swabbing their own body. So potential for any other
13 person's skin cells to develop a profile is much more slim.
14 And that's because -- since they have -- since a person's
15 own DNA is on that swab, sometimes it can cover up or mask
16 the other person's DNA, just because there's so much of it.

17 Q But if there was other skin cells or anything on there,
18 you probably would have picked it up?

19 A If there was enough that was deposited.

20 Q Now, you say that the lack of skin -- the lack of sperm
21 cells could have been because of a vasectomy. What about
22 because of diseases or anything like that?

23 A Yes. That can also have an affect. Infections,
24 diseases, even lifestyles sometimes, alcohol, drug use,
25 smoking, people of a certain age. The -- the story everyone

1 always hears about wearing too tight clothing, that can also
2 affect it. If a person has a -- has a job or a position
3 where they sit for a long time, that can also cause a low
4 sperm count.

5 Q From what you have before you, can you tell how old
6 that sample was?

7 A I cannot determine that.

8 Q And is it not true that sperm only live for a short
9 period of time?

10 A That is true. They will -- they will break down and
11 degrade over a certain amount of time.

12 Q Do you know what that amount of time is?

13 A Believe the average time is around three to four days
14 after -- after the incident, you would not expect to find
15 any at all.

16 Q So you'd have the same result as you had here, in that
17 situation.

18 A Yes, that's correct, wouldn't find any sperm.

19 **MR. BEACH:** No other questions, Your Honor. Thank you.

20 **THE COURT:** Redirect?

21 **ASST. SOLICITOR SHELTON:** No, Your Honor.

22 **THE COURT:** As to this witness?

23 **ASST. SOLICITOR SHELTON:** Ask that she may be excused
24 for the remainder ---

25 **THE COURT:** Any objection to this witness being

1 excused, Mr. Beach?

2 **MR. BEACH:** No, Your Honor.

3 **THE COURT:** Ms. Webb, you may step down. Take your
4 file with you. Leave me my exhibits, please.

5 **MS. WEBB:** Yes, sir.

6 **THE COURT:** And watch your step on the steps. You're
7 excused from the trial of this case. You may remain with us
8 or you may leave the courtroom at this time.

9 **MS. WEBB:** Thank you, Your Honor.

10 **THE COURT:** Thank you. Counsel, approach.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
12 AND OUT OF THE HEARING OF THE JURY.)

13 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
14 jury, I'm going to stop at this point for your lunch break.
15 It may not quite be here, but it's going to be here in about
16 15 minutes. During the lunch break, if I've -- do I have
17 any smokers on the jury? Did I have any?

18 (A JUROR RAISES HAND.)

19 **THE COURT:** Got one? Okay. I understand about that
20 bad habit. I had it myself, and so I completely understand
21 about it. I don't know that the doctors recommend it, but I
22 understand about it; But you'll have to go outside.

23 During the lunch break, please don't discuss this case
24 amongst yourselves or with anybody else. As I've instructed
25 you throughout the trial, somebody tries to talk to you

1 about it, just tell them you're on the jury; can't talk
2 about it. If the person persists, get their name, give it
3 to me. I'll handle that problem for you.

4 I hope everybody has a pleasant lunch. We're going to
5 serve it to you in your jury room. So we'll start back
6 around two o'clock. That will give you plenty time for your
7 lunch. It's not going to be here for about 15 minutes.
8 Hope everybody has a pleasant lunch, and I'll get back to
9 you just as quick as I can. Thank you very much. You may
10 retire to your jury room at this time.

11 Everyone else, remain seated while the jury's leaving.

12 (12:50 P.M., 4-19-11, WHEREUPON THE JURY EXITS THE
13 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
14 RECORD.)

15 **THE COURT:** All right. Let the record reflect that I
16 conferred with Counsel and that we're going to stop at this
17 point. And I need to take up the issue of a competency of a
18 witness when we begin right after lunch. So we're going to
19 break at this time for our lunch break and start back at
20 approximately two o'clock. I anticipate, Counsel, that we
21 will be able to complete the testimony in this trial today.

22 So that y'all can plan, because I told you, you didn't
23 have to give me requests for charge till the end of the day.
24 I'll expect those by the time we finish today, your requests
25 for charge. I'd like to complete the testimony and do

1 argument and charge first thing in the morning.

2 You understand, Solicitor?

3 **ASST. SOLICITOR SHELTON:** Yes, sir, Your Honor.

4 **THE COURT:** You understand, Mr. Beach?

5 **MR. BEACH:** Yes, Your Honor.

6 **THE COURT:** Very well. We're adjourned at this time
7 for our lunch break until two o'clock.

8 (WHEREUPON, COURT IS RECESSED FOR LUNCH. THEREAFTER,
9 AT 2:00 P.M., COURT RECONVENES IN THE TRIAL OF THIS CASE.)

10 **THE COURT:** Is the State ready to proceed?

11 **ASST. SOLICITOR SHELTON:** Yes, sir, Your Honor.

12 **THE COURT:** Is the defendant ready to proceed?

13 **MR. BEACH:** Yes, Your Honor.

14 **THE COURT:** All right. I was advised by counsel --
15 hold on one second. The law clerk's handing me one more
16 thing to read.

17 (BRIEF PAUSE.)

18 **THE COURT:** I was advised by counsel that the next
19 witness in the trial of this case that he believed that the
20 Court needed to take up *in camera*, the issue of the
21 competency of the witness to testify. And I told him I
22 would do so. We've reached that point in the trial,
23 Solicitor, so if you'd call the witness. And as you both
24 know, the trial judge must make a finding of competency on
25 the record. There is, as my law clerk would like for me to

1 point out, there is a Rule of Evidence; it is 601(b), which
2 governs the assault of -- there is quite a bit of case law.

3 The case law, in light of what I've already heard in
4 evidence in the trial of this case, deals with primarily
5 juvenile or child testimony. But based on what I have been
6 able to determine from earlier evidence in this case, it
7 appears that in some part, there are some similarities in
8 the Court making the competency determination; is that
9 correct, Solicitor?

10 **ASST. SOLICITOR SHELTON:** Yes, sir, Your Honor.

11 **THE COURT:** You would agree, Mr. Beach?

12 **MR. BEACH:** Yes, Your Honor.

13 **THE COURT:** All right, Solicitor, call your witness.

14 **ASST. SOLICITOR SHELTON:** State calls Jessica
15 Fredericks.

16 **THE COURT:** Ms. Fredericks, come around, be sworn by
17 Pat Grant, our Clerk of Court.

18 **MADAME CLERK:** Place your left hand on the Bible and
19 raise your right.

20 **WHEREUPON, JESSICA FREDERICKS WAS DULY SWORN.**

21 **MADAME CLERK:** Please have a seat on the witness stand
22 and state your full name on the record.

23 **THE COURT:** Watch your step for me right there. I've
24 had some people fall. There we go. Now, I'm going to turn
25 this microphone -- it's on. It's going to make your voice a

1 little louder for me, okay? Now, I want you to speak into
2 that when you talk to me. And the first thing I want you to
3 do is I want you to tell us your name, if you would.

4 **MS. FREDERICKS:** My name is Jessica Fredericks.

5 **DIRECT EXAMINATION**

6 **BY THE COURT:**

7 **THE COURT:** Now, Jessica, I've heard an awful lot about
8 you during the trial of this case. So I want to ask you:
9 Do you know the difference between right and wrong?

10 **MS. FREDERICKS:** Yeah.

11 **THE COURT:** Now, one thing I'm going to have to get you
12 to do is I'm going to have to get you to say "yes" or "no"
13 instead of nodding or shaking your head, so that the court
14 reporter can take down what you say. So let me start over,
15 so she can hear you. Do you know the difference between
16 right and wrong?

17 **MS. FREDERICKS:** Yes.

18 **THE COURT:** All right. Do you know if it's right to
19 tell the truth and wrong to lie and not tell the truth? Do
20 you understand that?

21 **MS. FREDERICKS:** Yes.

22 **THE COURT:** Now, if I let you testify in the trial of
23 this case, will you tell the truth, if I let you testify?

24 **MS. FREDERICKS:** Yes.

25 **THE COURT:** Now, you know that if you tell a story or

1 tell something that isn't true, that's a bad thing. Do you
2 understand that?

3 **MS. FREDERICKS:** Yes.

4 **THE COURT:** All right. Any examination by counsel for
5 the State?

6 **ASST. SOLICITOR SHELTON:** Briefly, Your Honor.

7 **DIRECT EXAMINATION**

8 **BY ASST. SOLICITOR SHELTON:**

9 Q Jessica, you know the difference between a truth and a
10 lie, right?

11 A Yes.

12 Q If I told you this tie was black, would that be true or
13 would that be a lie?

14 A A lie.

15 Q Okay.

16 A A lie.

17 Q A lie. If I said that the suit I was wearing was
18 orange, would that be true? or a lie?

19 A A lie.

20 Q Do you know how old you are?

21 A Yeah.

22 Q How old are you?

23 A Eighteen.

24 Q Do you know when your birthday is?

25 A Yeah.

1 Q When's your birthday?

2 A June [REDACTED]

3 Q June [REDACTED]th?

4 A Yeah.

5 Q What happens if you tell a lie on a stand? What
6 happens if you tell a lie in court?

7 A You are -- you -- you get punished.

8 Q You're going to be punished?

9 A (The witness nods head.)

10 **THE COURT:** You have to say "yes" or "no."

11 A Yes.

12 Q Yes. Okay. That's all the questions I have. Thank
13 you, Jessica.

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

15 **MR. BEACH:** No questions, Your Honor.

16 **THE COURT:** Any objection as to competency from the
17 defendant?

18 **MR. BEACH:** No, Your Honor.

19 **THE COURT:** Any objection as to competency from the
20 State?

21 **ASST. SOLICITOR SHELTON:** No, Your Honor.

22 **THE COURT:** All right, Jessica. I'm going to let you
23 testify in the trial of this case; do you understand?

24 **MS. FREDERICKS:** Yes.

25 **THE COURT:** And what I expect from you is that you tell

1 the truth; you understand that?

2 **MS. FREDERICKS:** Yes.

3 **THE COURT:** That's all I ask you to do; you understand?

4 **MS. FREDERICKS:** Yes.

5 **THE COURT:** Now I want you -- because we're going to
6 re-call you back up here when I bring the jury in. So I'm
7 going to let you step down at this time. And then they're
8 going to call you back up to the witness stand, and you'll
9 be sworn again by the Clerk in front of the jury; you
10 understand?

11 **MS. FREDERICKS:** Yes.

12 **THE COURT:** Now, watch your step when you step down
13 right there. There we go. Very good.

14 Let the record reflect that I have observed this
15 witness and I can completely understand counsel for the
16 defendant and the State's acquiescence and the question of
17 competency. The witness would be incompetent if they were
18 incapable of understanding the duty of a witness to tell the
19 truth. It is clear to me from observing this witness on the
20 witness stand that the witness knows the difference between
21 right and wrong, and the witness understands that it is
22 wrong not to tell the truth. And I believe from what I have
23 observed, that the witness understands that obligation, and
24 I think she is clearly competent to testify in the trial of
25 this case, without objection, I might add.

1 Anything further from the State before I bring the
2 jury?

3 **ASST. SOLICITOR SHELTON:** May I approach, Your Honor?

4 **THE COURT:** Counsel, approach.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
6 RECORD.)

7 **THE COURT:** Anything further from the defendant before
8 I bring the jury?

9 **MR. BEACH:** No, Your Honor.

10 **THE COURT:** All right, Mr. Polk, bring us the jury,
11 please, sir.

12 (2:25 P.M., 4-19-11, WHEREUPON, THE JURY ENTERS THE
13 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

14 **THE COURT:** You okay? They treating y'all okay?
15 Taking care of you?

16 (JURORS AGREE AFFIRMATIVELY.)

17 **THE COURT:** All right, ladies and gentlemen, I had a
18 matter of law. The reason we're starting behind schedule
19 now is I had to take up a matter of law outside of your
20 presence. I've handled that matter, so we can move on.
21 Thank you for your patience. We'll now continue with the
22 testimony in the trial of this case.

23 Solicitor, you may call your next witness.

24 **ASST. SOLICITOR SHELTON:** The State calls Jessica
25 Fredericks.

1 **THE COURT:** Ms. Fredericks, come around and be sworn by
2 the Clerk of Court, please.

3 WHEREUPON, JESSICA FREDERICKS WAS DULY SWORN.

4 **MADAME CLERK:** Please have a seat up on the witness
5 stand.

6 **THE COURT:** Watch your step. Have a seat. Now, this
7 microphone, I told you, is going to amplify your voice, make
8 it louder. I want you to speak into that, slowly, so the
9 jury can hear you. I have permitted, by agreement of
10 counsel, for you to bring your pad with you. So if the
11 court reporter can't understand or I have a person on the
12 jury that can't hear or understand, or if one the parties
13 can't understand, I will permit you to write on your pad,
14 and we'll give it to the court reporter and let everyone
15 read it and make it an exhibit in the trial; you understand?

16 **MS. FREDERICKS:** Yes.

17 **THE COURT:** So if I ask you to write, you can do so.

18 **MS. FREDERICKS:** Yes.

19 **THE COURT:** Very well. All right. State your full
20 name.

21 **MS. FREDERICKS:** My name is Jessica Fredericks.

22 **THE COURT:** Counsel, this is your witness.

23 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

24 **DIRECT EXAMINATION**

25 **BY ASST. SOLICITOR SHELTON:**

- 1 Q Hi, Jessica.
- 2 A Hey.
- 3 Q Jessica, do you know why you're here?
- 4 A Yes.
- 5 Q Why?
- 6 A I got raped. I got raped -- raped.
- 7 Q You got raped? Do you know who raped you?
- 8 A Yes.
- 9 Q Is he in the courtroom today?
- 10 A Yes.
- 11 Q Do you see him?
- 12 A Yes.
- 13 Q Will you tell the jury and point to the jury who he is?
- 14 A Yes.
- 15 Q Will you stand up and show the jury.
- 16 (The witness complies.)
- 17 **ASST. SOLICITOR SHELTON:** Please let the record reflect
- 18 that she has pointed to the defendant.
- 19 Q Jessica, do you know the difference between a truth and
- 20 a lie?
- 21 A Yes.
- 22 Q Do you know that if you tell a lie, you get in trouble?
- 23 A Yes.
- 24 Q You know that it's right to tell the truth?
- 25 A Huh?

- 1 Q It's good to tell the truth?
- 2 A Yes.
- 3 Q And it's bad to tell a lie?
- 4 A Yes.
- 5 Q You know you're going to tell only the truth today?
- 6 A Yes.
- 7 Q Let's talk about some things, okay? Do you remember
- 8 the day in August when all this happened?
- 9 A Yes.
- 10 Q Do you remember being at your house before everything
- 11 happened?
- 12 A Yes.
- 13 Q What do you remember happening then?
- 14 A I was at home, watching TV. And then someone knocked
- 15 on the door.
- 16 Q Did you open the door?
- 17 A Yeah. Unh-unh. First -- first I say "Who is it?"
- 18 Then I opened the door and it was a man.
- 19 Q It was a man?
- 20 A Yes.
- 21 Q Who was it? Do you see him?
- 22 A Yes.
- 23 Q Is he in the courtroom?
- 24 A Yes.
- 25 Q Will you show the jury who he is.

1 A Yes.

2 Q Please point to him again.

3 (The witness complies.)

4 **ASST. SOLICITOR SHELTON:** Please let the record
5 reflect, she's pointed to the defendant.

6 Q What did he ask you to do? Did he ask you to do
7 anything?

8 A He -- he -- he asked me to -- to watch Ms. Gooding's
9 son.

10 Q To watch Ms. Gooding's son?

11 A Yes.

12 Q What did you do?

13 A I -- I went down -- I went down there.

14 Q Down where?

15 A To Ms. Gooding's house.

16 Q To Ms. Gooding's house?

17 A Yeah.

18 Q Did you go inside?

19 A Yeah. Yes.

20 Q Did the defendant go inside as well? Did the man who
21 came to the door go inside as well?

22 A Yes.

23 Q Inside, what were you doing at first?

24 A I was on the couch.

25 Q You were on the couch?

- 1 A Yeah. Watching -- I -- I watching cartoon.
- 2 Q You were watching cartoons on the couch.
- 3 A Yes.
- 4 Q What do you remember next?
- 5 A Okay. Then after that, saying about saying he want --
- 6 he want me to be a model.
- 7 Q You have to slow down in your words, okay? You repeat
- 8 what you just said, okay?
- 9 A He -- he want me to be a model.
- 10 Q He wanted you to be a model?
- 11 A Yes.
- 12 Q Then what happened?
- 13 A Then -- then after that, he -- he say -- okay I want
- 14 you to -- to unzip my pants.
- 15 Q Who unzipped your pants?
- 16 A Huh? That man.
- 17 Q The man sitting over there?
- 18 A Yes.
- 19 **ASST. SOLICITOR SHELTON:** Let the record reflect, she's
- 20 identified the defendant.
- 21 Q He unzipped your pants?
- 22 A Yes.
- 23 Q What did he do next?
- 24 A Then after that, he got his cell phone.
- 25 Q He got his cell phone?

- 1 A Yeah.
- 2 Q What did he do with his cell phone?
- 3 A Take picture. He take picture of my private -- of my
4 private part and my -- and my -- and my butt, my butt.
- 5 Q Say that again slowly.
- 6 A He take picture of my private part.
- 7 Q Of your private part.
- 8 A Yeah.
- 9 Q And what else did he take pictures of?
- 10 A Of my -- of my butt.
- 11 Q Of your butt?
- 12 A Yes.
- 13 Q Then what happened?
- 14 A And -- and then -- then after that, I went to the
15 bathroom. And then after that -- then after that -- and
16 after that ---
- 17 Q Okay. You're going to have to repeat what you just
18 said, okay? Just say again what you said. You went to the
19 bathroom?
- 20 A Yeah.
- 21 Q Say what you did in the bathroom.
- 22 A I -- I -- I shut the bathroom door, and I did -- I did
23 not lock the door.
- 24 Q You shut the bathroom door?
- 25 A Yeah.

1 Q And you did not lock the door.

2 A Yes.

3 Q Then what happened?

4 A Then I was -- I was using the bathroom. And my cycle -
5 - my cycle was on.

6 Q Your cycle was on?

7 A Yeah.

8 Q Then what did you do?

9 A Then -- then -- then while -- while I was -- while I
10 was using the bathroom, then I wiped the blood -- I wiped --
11 I wiped -- I wiped the blood up.

12 Q You have to say that again.

13 A I -- I wiped the blood up.

14 Q Say it again. And say your words; say it slowly.

15 A I wiped the -- the blood up -- the blood up.

16 Q You can write it down.

17 **THE COURT:** Let her write. The court reporter has
18 indicated to me that she needs to write it.

19 (The witness writes her answer.)

20 **ASST. SOLICITOR SHELTON:** You hand it to the judge.

21 **THE COURT: MR. BEACH.**

22 (Note shown to the defense.)

23 **THE COURT:** You may publish to the jury and I'll make
24 her pad a Court's exhibit.

25 **ASST. SOLICITOR SHELTON:** Thank you. It says, "I wiped

1 the blood up."

2 **THE COURT:** What exhibit number?

3 **COURT REPORTER:** Four.

4 **THE COURT:** Four?

5 **COURT REPORTER:** Uh-huh.

6 **THE COURT:** So it will be Exhibit Number Four, without
7 objection.

8 (State Exhibit Four, witness note, received into
9 evidence.)

10 **THE COURT:** Proceed.

11 **EXAMINATION CONTINUES:**

12 Q You wiped the blood up?

13 A Yes.

14 Q And then what did you do?

15 A After that, I went back in the living room -- the
16 living room.

17 Q You went back in the living room.

18 A Yeah. And then -- then I sit down. I sit down on the
19 couch.

20 Q You sat down on the couch. What happened next?

21 A And then -- okay. After that -- after that, he -- he
22 pulled down his pants.

23 Q He took down his pants?

24 A Yeah.

25 Q What happened next?

1 A And then after that, he -- he -- he take his -- he take
2 his penis -- his penis and -- and -- and after he take his
3 penis out, I did not -- I did not want to open my mouth.

4 And he made me open my mouth.

5 Q And what did he do with his penis?

6 A He put -- he put -- he put his penis in my mouth.

7 Q Who put his penis in your mouth?

8 A That man.

9 Q Is the man in the courtroom?

10 A Yeah.

11 Q Will you show the jury who he is?

12 A Yes.

13 (The witness complies.)

14 **ASST. SOLICITOR SHELTON:** Please let the record reflect
15 that she's pointed to the defendant.

16 Q Are you sure it's him?

17 A Yes.

18 Q What happened next?

19 A Then after that -- then after that, the next thing he
20 do is he put his penis in my -- in my butt -- he do that two
21 times in my butt.

22 Q He put his penis in your butt?

23 A Yeah. Two times.

24 Q Two times.

25 A And but -- yeah. The first time, it hurt me.

- 1 Q He hurt you?
- 2 A Yeah. And -- but the second time, he did not hurt me
- 3 the second time.
- 4 Q It didn't hurt the second time, but it hurt the first
- 5 time.
- 6 A Yeah.
- 7 Q What did he do next?
- 8 A And -- and then -- then he -- and after that, he -- he
- 9 put his penis in my private part.
- 10 Q In your private part?
- 11 A Yes.
- 12 Q Will you show your jury where your private part is?
- 13 A Yeah. Down here. (INDICATING.)
- 14 Q Okay. What did he do?
- 15 A Okay. When he put his penis in my private part, in my
- 16 private part, he -- he hurt me in my private part.
- 17 Q He hurt you in your private part?
- 18 A Yes.
- 19 Q Who hurt you in the private part?
- 20 A That man who -- that man who raped me.
- 21 Q Who is the man who raped you? Is he in the courtroom?
- 22 A Yes.
- 23 Q Do you see him?
- 24 A Yes.
- 25 Q Are you sure you see him?

- 1 A Yes.
- 2 Q What happened after that?
- 3 A Then -- okay. Then after that, I was wanting to go to
- 4 my home, and I try and go to my house.
- 5 Q You tried to go to your house?
- 6 A Yeah. And then after that, he starting -- he starting
- 7 from -- he -- he and -- and -- and -- and he -- he said I
- 8 not going nowhere. And then I ---
- 9 Q Slow down. Say what you just said again, because I
- 10 think we're having a hard time understanding you, okay?
- 11 Slow down.
- 12 A I not going nowhere.
- 13 Q You're not going nowhere?
- 14 A And -- and then after that, I went to the back door.
- 15 Q You went to the back door.
- 16 A Yeah.
- 17 Q So say what you just said again. Did he stand in front
- 18 of the door?
- 19 A Yeah. He -- yes.
- 20 Q And he said, "You're not going nowhere"?
- 21 A Yes.
- 22 Q And then what did you do?
- 23 A And I -- I went to the back door.
- 24 Q You went to the back door.
- 25 A Yes.

1 Q Did he say anything else to you?

2 A Yeah. Yes. He -- he threaten.

3 Q What did he say?

4 A He threaten.

5 Q He threatened you?

6 A Yes.

7 Q What did he say to threaten you?

8 A Okay. He -- he -- he tell me that -- that -- that --
9 that when you go to Court that I could go to -- to jail.

10 Q Repeat what you just said. Slow down and finish your
11 words, okay? Say it slow, okay? Repeat what you said.

12 A Okay. I went out the back door and I went out that
13 back door. And he -- he -- he told me that when -- when we
14 go to Court, that -- that he -- he -- he going to say I
15 could -- say I could go to jail for him.

16 **THE COURT:** Ask her to write it. I have jurors
17 indicating to me that they do not understand words of the
18 last answer.

19 Q Can you repeat? I asked you what he said -- what else
20 he said to you. And I write you to write down what you just
21 said back as an answer.

22 (The witness complies.)

23 **THE COURT:** Mr. Beach, come on around.

24 (Note shown to the defense.)

25 **THE COURT:** Mark it as State's Exhibit Number Five,

1 without objection.

2 (State Exhibit Five, witness note, received into
3 evidence.)

4 **THE COURT:** You may publish to the jury.

5 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor. She
6 wrote, "He tell me, 'when you go to Court, you want to make
7 up lies, so I could go to jail for him.'"

8 **THE COURT:** Give it to the court reporter. Proceed.
9 Slow down for me just a little bit in your words, so we can
10 try to understand you. Proceed.

11 **EXAMINATION CONTINUES:**

12 Q You ran out the back door?

13 A Yes.

14 Q Could you run out the front door?

15 A No. No. He was by that door.

16 Q He was by the door. Did he keep you from leaving out
17 of the front door?

18 A Yes.

19 Q And that's why you ran out the back door?

20 A Yes.

21 Q When you ran out of the back door, what did you do?

22 A I running home to -- I running home.

23 Q You were running home?

24 A Yeah.

25 Q Where were you running home from?

- 1 A From that man, from that man.
- 2 Q Where did that happen at?
- 3 A (NO RESPONSE.)
- 4 Q Where was the man?
- 5 A He was at Ms. Gooding's house.
- 6 Q And you were running from there?
- 7 A Yeah.
- 8 Q Where were you running?
- 9 A To -- to my house.
- 10 Q When you ran to your house, what did you do?
- 11 A I knock on the door.
- 12 Q Say that again slow.
- 13 A I knock on the door.
- 14 Q You knocked on the door?
- 15 A (NODS HEAD.)
- 16 Q Say "yes" or "no."
- 17 A Yes.
- 18 Q Did anyone come open the door?
- 19 A Yes.
- 20 Q Who came and opened the door?
- 21 A My mom.
- 22 Q What did your mom say to you when she saw you?
- 23 A My mom said, "What happened?" And I tell her what
- 24 happened.
- 25 Q What did you tell her?

1 A That the -- I tell -- I tell my mom that I -- I got
2 raped by a man.

3 Q By a man?

4 A Yeah.

5 Q Did you say who did it?

6 A No.

7 Q Did you say -- how did you -- which man did you say it
8 was?

9 A Huh?

10 Q Did you tell her which man it was? Did you tell her
11 where the man lived?

12 A No.

13 Q You say you got raped by a man.

14 A Yeah.

15 Q And then what happened?

16 A Then after that, my -- my mom take me into the
17 bathroom.

18 Q And in the bathroom, what happened?

19 A My -- my mom -- my mom found semen in my panties.

20 Q She found semen in your panties?

21 A (NODS HEAD.)

22 **THE COURT:** You have to say "yes" or "no."

23 A Yes.

24 Q And then what happened?

25 A Then -- then after that -- after -- after that, Rodney

- 1 -- Rodney called the police.
- 2 Q Called the police? Who called the police?
- 3 A Rodney.
- 4 Q Rodney. Is that your step-dad?
- 5 A Yeah.
- 6 Q Did the police come?
- 7 A Yes.
- 8 Q Were you still upset when the police came?
- 9 A Yes.
- 10 Q Who did you talk to with the police? Do you remember?
- 11 A No.
- 12 Q Did you talk to Detective Gathers?
- 13 A Yes.
- 14 Q Did you write a statement for Detective Gathers?
- 15 A Yes.
- 16 Q Did you write what happened to you in that statement?
- 17 A Yes.
- 18 Q Did you go to the hospital that night?
- 19 A Yes.
- 20 Q And when you wrote that statement, did you write down
- 21 in that statement what happened to you?
- 22 A Huh?
- 23 Q You wrote down what happened to you in that statement?
- 24 A Yes.
- 25 Q And it was true?

- 1 A Yes.
- 2 Q Is that the same thing you're saying today?
- 3 A Yes.
- 4 Q And you went to the hospital.
- 5 A Yes.
- 6 Q At the hospital, what happened?
- 7 A When -- when I get -- when I get to the hospital, the -
- 8 - the nurse sit me up and she -- she do -- she do a -- a
- 9 examination on me.
- 10 Q I understand what you just said, but please repeat it
- 11 slowly for the jury, okay?
- 12 A The -- the nurse do a examination on me.
- 13 Q She did an examination on you?
- 14 A Yeah.
- 15 Q Did you tell her what happened to you?
- 16 A Yes.
- 17 Q And then she did the examination on you?
- 18 A Yes.
- 19 Q Jessica, did he hurt you?
- 20 A Yes.
- 21 Q Where did he hurt you?
- 22 A In my butt, in my private part.
- 23 Q Were you hurting on the way to the hospital?
- 24 A Yes. Yes.
- 25 Q Were you hurting at the hospital?

1 A Yes.

2 Q Did it hurt after that?

3 A I -- I was in pain.

4 Q You were in pain?

5 A Yeah.

6 Q I'm going to ask you again, the man who did all these
7 things to you, is he in the courtroom?

8 A Yes.

9 Q Are you sure?

10 A Yes.

11 Q Will you show the jury who he is again?

12 A Right there.

13 Q Right there?

14 A That -- that man right there.

15 **ASST. SOLICITOR SHELTON:** Please let the record
16 reflect, she's pointing at the defendant.

17 Q Jessica, that's all the questions I have for you.

18 A I still got one more thing.

19 Q Oh, you have one more thing? Okay. What is that?

20 A Can I write it down?

21 Q Yes, you can.

22 (THE WITNESS WRITES A STATEMENT.)

23 **THE COURT:** Counsel, approach.

24 (NOTE SHOWN TO THE ATTORNEYS.)

25 **THE COURT:** Number Six. State's Exhibit Number Six,

1 without objection. You may publish to the jury.

2 (State Exhibit Six, witness note, received into
3 evidence.)

4 **ASST. SOLICITOR SHELTON:** It says, "He put his penis in
5 my mouth two time."

6 Q Is there anything else, Jessica, you want to say?

7 A Not to -- to the jury.

8 Q To the jury? Does it have to do with the case?

9 A Yes.

10 Q Is it something he did to you?

11 A Yeah. Yeah. I just want to -- I want to tell the
12 jury.

13 **THE COURT:** You'll need to write it down for us.

14 (THE WITNESS WRITES HER STATEMENT.)

15 **THE COURT:** Counsel, approach.

16 (NOTE SHOWN TO THE ATTORNEYS.)

17 **THE COURT:** State's Exhibit Number Seven, without
18 objection. You may publish.

19 (State Exhibit Seven, witness note, received into
20 evidence.)

21 **ASST. SOLICITOR SHELTON:** I asked Jessica, is there
22 anything else she wants to say, and she says, "I want to
23 tell the jury that I don't like when I got raped."

24 Q Jessica, those are all the questions I have for you,
25 okay? Please answer any questions that Mr. Beach has, okay?

1 A Uh-huh.

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

3 **MR. BEACH:** Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 **BY MR. BEACH:**

6 Q Good afternoon, Jessica.

7 A Good afternoon.

8 Q Jessica, do you know the difference between telling the
9 truth and telling a lie?

10 A Yes.

11 Q What happens when you tell a lie?

12 A You're going to get punished.

13 Q Get punished?

14 A Yeah, get punished.

15 Q And you don't want to get punished; do you?

16 A No.

17 Q Now, have you told the truth here today?

18 A Yes.

19 Q How many times did you meet with the people from the
20 prosecution?

21 A (NO RESPONSE.)

22 Q Meet with them a lot of times?

23 A Yes.

24 Q Who taught you the word "rape"?

25 A Rape? I read in the books.

- 1 Q Who taught you to say the word "rape"?
- 2 A Myself.
- 3 Q Only yourself?
- 4 A Uh-huh.
- 5 Q Okay.
- 6 **THE COURT:** You have to say "yes" and "no."
- 7 A Yes.
- 8 Q And who taught you to say the word "penis"?
- 9 A Myself.
- 10 Q Yourself?
- 11 A Yes.
- 12 Q Now, you say that you were at your home earlier that
- 13 day?
- 14 A Yes.
- 15 Q And he came and got you?
- 16 A Yes.
- 17 Q Did you talk to your mother that day?
- 18 A No.
- 19 Q Did she tell you at any time that you were not to leave
- 20 the house?
- 21 A Say that again.
- 22 Q Did she tell you that you were not to leave the house?
- 23 A Yes.
- 24 Q And you left the house anyway.
- 25 A Yes.

1 Q And you knew you were going to get in trouble; didn't
2 you?

3 A Yes.

4 Q Now, you went to Ms. Gooding's house; is ---

5 A Yeah.

6 Q --- that correct?

7 A Yes.

8 Q Who else had you been to see that day?

9 A I went to Ms. Gooding's house. That all I see.

10 Q About what time of day was that?

11 A It was in the afternoon.

12 Q It was in the afternoon?

13 A Yes.

14 Q And who-all was at Ms. Gooding's house?

15 A Me, him, and Ms. Gooding's son.

16 Q Was Ms. Gooding there?

17 A No.

18 Q Did you ever talk with Ms. Gooding?

19 A On the phone.

20 Q What did you say to her on the phone?

21 A When Ms. Gooding called me, I -- she asked me ---

22 **THE COURT:** Hold on a second. I have a juror
23 indicating that they don't understand. Would you write that
24 answer for us? Repeat your question, Counsel.

25 Q What did Ms. Gooding tell you?

1 **THE COURT:** Just write it for ---

2 Q Excuse me. I believe I asked you: What did you tell
3 Ms. Gooding?

4 (THE WITNESS WRITES HER ANSWER.)

5 **THE COURT:** Counsel, approach.

6 (NOTE SHOWN TO THE ATTORNEYS.)

7 **THE COURT:** Number Eight?

8 **COURT REPORTER:** Uh-huh.

9 **THE COURT:** Let her put a sticker on there. State's
10 Exhibit Number Eight, without objection, in evidence. You
11 may publish the writing to the jury.

12 (State Exhibit Eight, witness note, received into
13 evidence.)

14 **MR. BEACH:** Thank you, Your Honor. The answer to the
15 question was: "She asked me 'If Leslie was there,' and I
16 tell her 'Yes, he was there.'"

17 Q Were any other men there other than Ms. Gooding's son?

18 A No.

19 Q Now, what about earlier in the day. Had you been off
20 to see anybody earlier in the day?

21 A No.

22 Q And the previous day, had you been off with some
23 people?

24 A Huh?

25 Q In the previous day, the day before, had you been off

1 with some people?

2 A That day, only thing.

3 Q But the day before this happened ---

4 A Yes.

5 Q --- had you been out of your house with some other
6 people?

7 A No.

8 Q Did you go to school?

9 A Yes.

10 Q Did you go to school this day?

11 A I cannot remember.

12 Q You don't remember whether it was a Saturday or a
13 Wednesday, or you just don't remember?

14 A No.

15 **MR. BEACH:** Just a moment, Your Honor.

16 (BRIEF PAUSE.)

17 Q Jessica, when Ms. Gooding called, did you tell her that
18 Leslie was outside?

19 A I could not hear you.

20 Q I'm sorry? Say that again.

21 A I did not -- I did not hear you.

22 Q You did not say that?

23 A I did not hear you.

24 **THE COURT:** Speak up and rephrase your question. I
25 believe the witness is indicating to you that she did not

1 hear you.

2 **MR. BEACH:** Oh, I'm sorry.

3 Q Jessica, when Ms. Gooding called and you answered the
4 telephone, did you tell Ms. Gooding that Leslie was in the
5 yard?

6 A Yes. Yes.

7 Q So he was not in the house with you; is that correct?

8 A Okay. That was before it happened when Ms. Gooding
9 called.

10 **MR. BEACH:** I'm sorry. I couldn't understand, Your
11 Honor.

12 **THE COURT:** Would you write your answer, please?

13 (THE WITNESS WRITES HER ANSWER.)

14 **THE COURT:** Counsel, approach.

15 (NOTE SHOWN TO THE ATTORNEYS.)

16 **THE COURT:** State's Exhibit Number Nine, without
17 objection.

18 (STATE EXHIBIT NINE, WITNESS NOTE, RECEIVED INTO
19 EVIDENCE.)

20 **THE COURT:** You may publish, Mr. Beach, to the jury.

21 **MR. BEACH:** Thank you, Your Honor. The answer to the
22 question is "That was before it happened when Ms. Gooding
23 called."

24 EXAMINATION CONTINUES:

25 Q When did he come into the house?

1 A He opened the door. He opened the door.

2 Q And came in?

3 A Yes.

4 Q And this was how long after Ms. Gooding had called? A
5 long time or a short time?

6 A A short time.

7 Q Short time?

8 A Yes.

9 Q And did anybody come in with him?

10 A No.

11 Q Did you see anybody in the yard waiting for him?

12 A No.

13 Q Did you tell Ms. Gooding that there was somebody
14 waiting for him?

15 A No.

16 **MR. BEACH:** Indulgence just a moment, Your Honor.

17 (BRIEF PAUSE.)

18 Q Do you remember telling someone that you looked through
19 the window and saw someone outside?

20 A Huh?

21 Q Do you remember making a statement that you looked
22 through the window and saw somebody outside, waiting for
23 Leslie?

24 A Say that again.

25 Q Do you recall telling someone that you saw someone

1 outside, waiting for Leslie?

2 A No.

3 Q You don't remember that?

4 A No, I don't remember that.

5 Q Have no other questions. Thank you, Jessica.

6 **THE COURT:** Redirect?

7 **ASST. SOLICITOR SHELTON:** Very briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY ASST. SOLICITOR SHELTON:**

10 Q Jessica, have you told the truth today?

11 A Yes.

12 Q That's all the questions I have. Thank you.

13 **THE COURT:** Re-cross, limited to redirect.

14 **MR. BEACH:** None, Your Honor.

15 **THE COURT:** All right. Jessica, you may step down from
16 the witness stand. Now, watch your step on those stairs for
17 me, okay?

18 Call your next witness.

19 **ASST. SOLICITOR SHELTON:** The State calls Ms. Jodi
20 Taylor.

21 WHEREUPON, JODI TAYLOR WAS DULY SWORN.

22 **MADAME CLERK:** Please have a seat on the witness stand
23 and state your full name on the record.

24 **THE COURT:** You certainly know what to do.

25 **DETECTIVE TAYLOR:** Yes, sir. My name is Jodi Taylor,

1 T-A-Y-L-O-R.

2 **THE COURT:** Your witness, Counsel.

3 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor. Beg
4 the Court's indulgence.

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

6 **DIRECT EXAMINATION**

7 **BY ASST. SOLICITOR SHELTON:**

8 Q Ms. Taylor, how have you been?

9 A Good. Thank you.

10 Q Investigator or detective?

11 A Either/or.

12 Q Detective Taylor, where are you employed?

13 A Colleton County Sheriff's Office.

14 Q What are your duties there?

15 A My duties are to investigate cases, case follow-ups,
16 some simple analysis, and also I'm in charge of the evidence
17 lock-up.

18 Q You're the evidence custodian?

19 A That's correct.

20 Q One of the evidence custodians?

21 A Yes, sir.

22 Q Were you eventually assigned the case, the State v.
23 Leslie Twyman?

24 A Yes, I was.

25 Q What does that case consist of?

1 A It was a sexual assault.

2 Q Who was the victim in the case?

3 A Jessica Fredericks.

4 Q Is Jessica Fredericks here?

5 A Yes, she is.

6 **ASST. SOLICITOR SHELTON:** I beg the Court's indulgence.

7 Q During the investigation, did you have an opportunity
8 to interview Ms. Gooding?

9 A I did.

10 Q Ms. Jessie Gooding?

11 A I did.

12 Q What was the purpose of your interview?

13 A To obtain a voluntary statement from Ms. Gooding, as
14 well as she had a voice mail that was on her cell phone that
15 she wanted to share.

16 Q Well, who did she indicate the voice mail was from?

17 A It was from the defendant, Leslie Twyman.

18 Q Did she tell you what day the voice mail was left?

19 A The date of the incident, being August 21st, 2010.

20 Q Did you have Ms. Gooding meet you at the sheriff's
21 office?

22 A I did.

23 Q Do you remember what day that was?

24 A If I can refer to my notes.

25 Q Will it help refresh your memory?

1 A Yes.

2 (WITNESS REVIEWS NOTES.)

3 A Okay. That would be September the 9th, 2010.

4 Q September 9th, 2010. And when was the incident date?

5 A August 21st, 2010.

6 Q Did she come in and share that recording of the voice
7 mail with you?

8 A She did.

9 Q Was it on her phone?

10 A It was.

11 Q Had she saved it?

12 A She did.

13 Q And did she play it for you?

14 A She did.

15 Q Did you record it?

16 A Yes, I did.

17 Q What did you use to record it?

18 A My handheld, just a little small recorder, issued to me
19 by the sheriff's office.

20 Q And what was in that statement? In that voice mail?

21 A The -- the male person on the recording said that he
22 had went to Jessica's house to get her to come and sit with
23 Ms. Gooding's son, while he went out to do a job.

24 Q Who did she tell you that male was?

25 A Ms. Gooding said that it was Leslie Twyman.

1 **ASST. SOLICITOR SHELTON:** Beg the Court's indulgence.

2 Q Did you take a statement from Ms. Gooding?

3 A I did.

4 Q And also in this case, did you have an opportunity to
5 interview Mr. Twyman?

6 A Yes, I did.

7 Q Did you Mirandize him?

8 A I did.

9 Q Did he fill out a Miranda form?

10 A He did fill out the Miranda form, yes.

11 Q Would he make any statement to you?

12 A He would not -- he refused to sign and waive his rights
13 and make a statement.

14 Q Did, after you talk to him a little bit more, did he
15 allow you to take a DNA standard from him?

16 A He did.

17 Q How did you do that?

18 A We have a form that we fill out; it's a standard form
19 that the sheriff's office uses. And then it gives a simple
20 explanation of the oral swabs and, you know, he can refuse
21 or he can, you know, submit the swabs. And he signed and --
22 and gave the swabs.

23 Q He gave the swabs. Who took the swabs?

24 A I did.

25 Q Did you send those off to SLED?

1 A I did.

2 Q Were those swabs ever tested?

3 A No, they were not.

4 Q Why not?

5 A From the report that you heard earlier, from the SLED
6 analyst, there was no DNA found, so there was no need for
7 her to do any type of analysis on the swabs.

8 **ASST. SOLICITOR SHELTON:** Beg the Court's indulgence.
9 May I approach, Your Honor?

10 **THE COURT:** You may.

11 Q Investigator Taylor, I'm going to hand you what's been
12 previously entered into evidence as State's Exhibit Number
13 One. Will you please tell the jury what that is?

14 A Okay. This is just a -- it's a memory card that we --
15 the Solicitor and I transferred from my little handheld
16 recorder. We transferred onto here, so that we could share
17 it.

18 Q And what is on that memory card?

19 A The voice mail recording that I took from Ms. Gooding
20 on September the 9th, 2010.

21 Q Thank you. Who is speaking on the voice mail?

22 A Myself and Ms. Gooding.

23 Q And who was on the voice mail itself?

24 A Ms. Gooding identified the person, the male subject
25 speaking was Leslie Twyman.

1 **ASST. SOLICITOR SHELTON:** We would like to publish it
2 for the jury, Your Honor?

3 **THE COURT:** You may proceed. State's Exhibit One is in
4 evidence. You may publish to the jury.

5 (VOICE MAIL RECORDING IS PLAYED FOR THE JURY.)

6 Q Is that the entire recording?

7 A Yes.

8 Q Is it accurate and true, to your recollection?

9 A Yes, it is.

10 Q Did you go out and take pictures of the house at [REDACTED]
11 David Street?

12 A I did.

13 Q And did you take pictures of Ms. Gooding's house?

14 A I did.

15 Q Did you take pictures of the distance between the two
16 houses?

17 A Yes, I did.

18 **ASST. SOLICITOR SHELTON:** May I approach, Your Honor?

19 **THE COURT:** You may.

20 (COUNSEL SPEAKS TO THE COURT REPORTER AND HAS DOCUMENT
21 MARKED.)

22 **ASST. SOLICITOR. BEN SHELTON:** May I approach?

23 **THE COURT:** You may.

24 Q Will you please tell the jury what this is?

25 A This is a picture of [REDACTED] David Street, which is Jessica

1 Fredericks' residence.

2 Q And that's marked as State's Exhibit Number Ten?

3 A That's correct.

4 Q Is it a fair and accurate depiction of Jessica
5 Fredericks' residence at [REDACTED] David Street?

6 A Yes, it is.

7 Q Does it show the front of her house?

8 A It does.

9 Q Where did you take that picture from?

10 A Standing just in the roadway in front of her residence.

11 **ASST. SOLICITOR SHELTON:** I'll move State's Exhibit
12 Number Ten into evidence at this time.

13 **THE COURT:** Any objection as to State's Ten?

14 **MR. BEACH:** No, Your Honor.

15 **THE COURT:** Ladies and gentlemen of the jury, State's
16 Exhibit Number Ten will be admitted into evidence, without
17 objection. You may publish to the jury.

18 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

19 (State Exhibit Ten, photo, received into evidence.)

20 Q Investigator Taylor, I'm about to hand you State's
21 Exhibit Eleven and Twelve. And I'd like for you to describe
22 sequentially what is in these pictures, what they are,
23 please.

24 A Okay. Number Eleven will be -- it is a picture of ---

25 **THE COURT:** Don't show it to the jury yet.

1 **INVESTIGATOR TAYLOR:** Okay.

2 A Well, it's -- it's a picture of the mailbox that is in
3 front of [REDACTED] David Street, which is Jessica Fredericks'
4 residence. And you can see the [REDACTED] on the post of the
5 mailbox. That's Number Eleven.

6 Q What does Number Twelve show?

7 A Okay. Number Twelve is a picture of -- I was standing
8 right in front of Ms. Gooding's residence, which is [REDACTED]
9 David Street, and it shows -- it shows the relevance to [REDACTED]
10 David Street. It shows the distance from -- from one
11 residence to the next.

12 Q Is the picture taken down the road?

13 A Yes.

14 Q Yes. And where were you standing when you took that
15 picture again?

16 A Just in front of [REDACTED] David Street, which is Ms. Jessie
17 Gooding's residence.

18 Q And for both of those pictures, are they a fair and
19 accurate depiction of what you saw when you took those
20 pictures?

21 A Yes, it is.

22 **ASST. SOLICITOR SHELTON:** Move State's Exhibit Number
23 Eleven and Twelve into evidence at this time, Your Honor.

24 **THE COURT:** Any objection as to State's Eleven and
25 Twelve, Mr. Beach?

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

2 **THE COURT:** Ladies and gentlemen of the jury, State's
3 Exhibit Eleven and Twelve will be admitted into evidence,
4 without objection. You may publish to the jury.

5 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

6 (State Exhibit Eleven, photo, received into evidence.)

7 (State Exhibit Twelve, photo, received into evidence.)

8 Q Now, Investigator Taylor, I'm going to hand to you,
9 sequentially, respectively, State's Exhibit Number Thirteen,
10 Fourteen, Fifteen and Sixteen. I'm going to hand them up to
11 you at one time. And I'm going to ask that you go through
12 each one. State the exhibit number and then express what
13 you see in each picture.

14 A Okay. Number Thirteen is a picture that -- I was
15 standing right in front of [REDACTED] David Street, which is the
16 victim's residence, and taken down the road towards [REDACTED]
17 David Street, which is Ms. Gooding's residence, showing the
18 roadway.

19 Q Is that a fair and accurate depiction from that ---

20 A It is.

21 Q --- vantage point?

22 A It is. Okay. And then Number Fourteen is a front view
23 picture taken from just in front of [REDACTED] David Street, which
24 is the incident location also, Ms. Jessie Gooding's
25 residence.

1 Q Is that a fair and accurate depiction of that?

2 A It is. Okay. And Number Fifteen is a picture of the
3 mailbox in front of Ms. Jessie Gooding's house of [REDACTED] David
4 Street, also the incident location. And Number Sixteen is,
5 again, taken just in front of [REDACTED] David Street, the incident
6 location, in the direction of [REDACTED] David Street, which is
7 Jessica Fredericks' residence.

8 Q Those last two, do those also fairly and accurately
9 depict the scenes respectively for each picture?

10 A Yes, they do.

11 Q To your recollection.

12 A Yes.

13 **ASST. SOLICITOR SHELTON:** I move State's Exhibits
14 Thirteen through Sixteen, Your Honor, into evidence at this
15 time.

16 **THE COURT:** Mr. Beach, as to Thirteen, Fourteen,
17 Fifteen and Sixteen?

18 **MR. BEACH:** No objection.

19 **THE COURT:** Ladies and gentlemen of the jury, State's
20 Exhibits Thirteen, Fourteen, Fifteen and Sixteen will be
21 admitted into evidence, without objection. You may publish.

22 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

23 (State Exhibit Thirteen, photo, received into
24 evidence.)

25 (State Exhibit Fourteen, photo, received into

1 evidence.)

2 (State Exhibit Fifteen, photo, received into evidence.)

3 (State Exhibit Sixteen, photo, received into evidence.)

4 Q What day was Mr. Twyman arrested?

5 A August 27th of 2010.

6 Q Before that date, were you able to interview the
7 victim?

8 A I did.

9 Q And why did you do that?

10 A An additional complaint had been made by the victim,
11 that the defendant had come to her house and was looking in
12 her window. And so I went and spoke with her at Colleton
13 County High School.

14 Q Thank you. Those are all the questions I have for you.
15 Please answer any questions Mr. Beach might have for you.

16 A Okay.

17 **CROSS-EXAMINATION**

18 **BY MR. BEACH:**

19 Q Detective Taylor, you took the DNA sample?

20 A From the defendant?

21 Q Yes.

22 A Yes, I did.

23 Q All right. And he voluntarily gave that up; is that
24 correct?

25 A He did.

1 Q It didn't require you to go to court or anything like
2 that?

3 A No, sir.

4 Q You asked him for it and he gave it to you?

5 A That's correct.

6 Q And you knew it could free him, or it could convict
7 him; did you not?

8 A That's correct.

9 Q But he voluntarily gave it up?

10 A He did.

11 Q And he didn't make no statement?

12 A No, sir.

13 Q Did he tell you that he did not do anything?

14 A I don't -- I don't recall. I know that I read him his
15 Miranda Rights, and I filled out the form, the sheriff's
16 office form, and he said he did not want to make a
17 statement.

18 Q He did not make a formal statement?

19 A Right.

20 Q Thank you, ma'am.

21 **THE COURT:** Anything further on the cross, from the
22 defendant?

23 **MR. BEACH:** No, Your Honor.

24 **THE COURT:** Redirect?

25 **REDIRECT EXAMINATION**

1 **BY ASST. SOLICITOR SHELTON:**

2 Q **MR. BEACH** asked if the defendant made a statement to
3 you, and he said that he didn't say anything. Did he say he
4 wasn't going to talk without his lawyer present?

5 A That's correct.

6 Q That's all. Thank you.

7 **THE COURT:** Re-cross, limited to redirect.

8 **RECROSS-EXAMINATION**

9 **BY MR. BEACH:**

10 Q That's a part of the Miranda Warnings; is it not?

11 A Yes, it is.

12 Q Don't you tell them they have the right to an attorney
13 and they can request one at any time?

14 A That's correct.

15 **MR. BEACH:** No other questions, Your Honor.

16 **THE COURT:** As to this witness?

17 **ASST. SOLICITOR SHELTON:** Ask that she may be excused,
18 Your Honor.

19 **THE COURT:** Any objection?

20 **MR. BEACH:** No, Your Honor.

21 **THE COURT:** Jodi, you may step down. You're excused
22 from the ---

23 **DETECTIVE TAYLOR:** Thank you.

24 **THE COURT:** --- trial of this case. So you may remain.
25 Counsel, approach.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
2 AND OUT OF THE HEARING OF THE JURY.)

3 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
4 jury, I'm going to take my mid-afternoon break at this
5 point, so that we can get some equipment in operating order.
6 I'll be right back with you just as quick as I can. Please
7 do not discuss the case. I'll be back with you just as soon
8 as I can. Give you a minute to stretch your legs and use
9 the restroom. Just leave my exhibits right there, Mr.
10 Foreman. You may retire to your jury room at this time.

11 (3:25 P.M., 4-19-11, WHEREUPON THE JURY EXITS THE
12 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
13 RECORD.)

14 **THE COURT:** Very well. Solicitor has indicated that he
15 has to set some equipment up. Solicitor has also assured
16 the Court at the bench that he will provide to Mr. Beach --
17 and Solicitor tells me he has two more witnesses -- a
18 certified copy of the defendant's record, so that Mr. Beach
19 can use the certified copy in giving his client advice.

20 Solicitor, can you do everything in ten minutes?

21 **ASST. SOLICITOR SHELTON:** I need fifteen.

22 **THE COURT:** All right. We'll take fifteen minutes, so
23 we can get everything done. Mr. Beach, let me know if you
24 don't get the information in time. If you need additional
25 time, you know I'll give it to you.

1 **MR. BEACH:** Thank you, Your Honor.

2 (OFF THE RECORD, BRIEFLY.)

3 **THE COURT:** Is the defendant ready to proceed?

4 **MR. BEACH:** Yes, Your Honor.

5 **THE COURT:** Very well. Now, are you going to use the
6 equipment ---

7 **ASST. SOLICITOR SHELTON:** Yes, sir.

8 **THE COURT:** All right. Mr. Beach, I will allow you to
9 come around and sit in the chair. And that reminds me,
10 Solicitor, I do not allow lawyers to get in the jury box,
11 even when you're asking questions.

12 **ASST. SOLICITOR SHELTON:** Yes, sir.

13 **THE COURT:** Only the jury in the jury box. But Mr.
14 Beach cannot see that screen from where he is. So that he
15 can view the evidence, I'll allow him to come around and
16 take the alternate's chair down there; you understand?

17 **MR. BEACH:** Yes, sir.

18 **THE COURT:** If you want to. I assume you've already
19 seen this, right?

20 **MR. BEACH:** Yes, sir. We've already seen it, Your
21 Honor. But I will move around there.

22 **THE COURT:** You have that opportunity. All right.
23 With that, Odell, would you bring us the jury, please?

24 **BAILIFF:** Yes, sir.

25 (3:55 P.M., 4-19-11, WHEREUPON, THE JURY ENTERS THE

1 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

2 **THE COURT:** All right, Mr. Foreman, ladies and
3 gentlemen of the jury, you'll notice that we've had to set
4 up some equipment in the courtroom. If anyone cannot --
5 when it begins I'm going to allow Mr. Beach to come around
6 and take -- Mr. Grant, I want you to get me one more chair.
7 I need a chair to set right up in front of you, if Mr. Beach
8 wants a chair. So bring me one over. If anyone cannot see,
9 or hear, the screen, raise your hand for me and we'll make
10 adjustments. Can everybody see the screen from where they
11 are right now?

12 **MADAME CLERK:** Want me to bring the lights down?

13 **THE COURT:** I will bring lights down at the appropriate
14 time, so that there's not a glare on the screen.

15 All right, Solicitor, you may call your next witness.

16 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor. The
17 State calls Ms. Brittany Holmes.

18 **MADAME CLERK:** Please come forward and be sworn. Place
19 your left hand on the Bible and raise your right.

20 WHEREUPON, BRITTANY HOLMES WAS DULY SWORN.

21 **MADAME CLERK:** Please have a seat on the witness stand
22 and state your full name on the record.

23 **THE COURT:** Watch your step for me, Ms. Holmes. Thank
24 you. Pull that chair up; pull the microphone over. Tell me
25 when you're comfortable. You ready?

1 **MS. HOLMES:** Yes, sir.

2 **THE COURT:** If you'd state your full name and spell
3 your last name for my court reporter.

4 **MS. HOLMES:** Brittany Holmes, H-O-L-M-E-S.

5 **THE COURT:** Your witness, Counsel.

6 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

7 **DIRECT EXAMINATION**

8 **BY ASST. SOLICITOR SHELTON:**

9 Q Ms. Holmes, where do you work?

10 A Medical University of South Carolina.

11 Q What is your position there?

12 A I'm a registered nurse on a pediatric floor where I
13 work with intermediate care patients where they're not quite
14 intensive care patients, but they're not quite floor
15 patients as well. So we closely monitor them.

16 Q Do you have any other position there?

17 A Yes. I'm also a sexual assault nurse examiner.

18 Q Did you perform a sexual assault exam on Ms. Jessica
19 Fredericks on August the 21st, 2010?

20 A Yes, I did.

21 Q Are you prepared to tell the jury the findings of that
22 examination today?

23 A Yes.

24 Q Okay. Before we do that, let's go into your
25 background. When did you first become a nurse? And how did

1 you do that?

2 A Okay. I graduated from high school in 2003. I then
3 went to Bethune Cookman University and started working on my
4 Bachelor's in Science of Nursing in Florida. In the
5 process, in 2007, I worked as a Licensed Practical Nurse, a
6 LPN, until I graduated in 2008 and started working as a
7 Registered Nurse. In the process, I started work in 2010; I
8 started Kaplan University, which is an online program for
9 forensic nursing.

10 Q Will you explain forensic nursing quickly?

11 A Okay. Forensic nursing is just a broad name to pretty
12 much cover domestic violence, child abuse, sexual assaults,
13 anything to collect evidence, to document evidence as well.

14 Q Now, when you're doing sexual assault exams, what is
15 the primary objective?

16 A The primary objective is to pretty much be objective in
17 collecting the evidence. You're just pretty much trying to
18 -- for a better word, you're trying to collect evidence, and
19 you're also treating the patient as well.

20 Q What are you treating -- what are you looking to
21 diagnose or treat?

22 A Okay. You make sure the patient is medically clear,
23 that there is no permanent injuries that need to be seen
24 first. And then after you have done that --

25 Q Say permanent injuries, like what?

1 A Okay. For instance, if a patient was strangled, want
2 to make sure that there is no issue with their brain that
3 needs to be seen first, strangulation marks around their
4 neck. If there's a head injury, want to make sure they go
5 get that taken care of before we do an exam.

6 Q And if there's an injury like that, you're able to
7 visualize and see with your expertise in training.

8 A Yes.

9 Q And then if you see a severe injury like that, what do
10 you do?

11 A We will let the doctor know, and they would come in and
12 assess the patient and take them to further evaluations ---

13 Q And would ---

14 A --- MRIs.

15 Q Excuse me; I'm sorry. Along with the physical exam
16 that you conduct on a patient, what else do you do in order
17 to determine the patient's physical condition?

18 A Repeat that.

19 Q Along with the physical exam, how else do you find out
20 whether there is something wrong with the patient?

21 A Oh, okay. We take a history from the patient. We find
22 out what -- what was -- what they say happened in the exam
23 or -- and they pretty much tell us how we're going to go
24 about our exam.

25 Q So depending on what they tell you, depends on what you

1 do with your exam?

2 A Exactly.

3 Q Now, let's talk about specifically, sexual assault
4 nurse. Do you have any special training in that? You
5 mentioned it a little bit before.

6 A Yes. Not only did I do the forensic nursing, a
7 position came about in April of 2010 for the same program
8 that we were starting at the hospital. And we got specially
9 trained, where we did 40 hours of didactic training with
10 Linda Ledray, one of the pioneers of ---

11 Q What is didactic training?

12 A Didactic training means pretty much, we are -- you're
13 in front of a classroom and someone's in front of you,
14 telling you how to do this. So, it's like a classroom
15 atmosphere.

16 Q I'm sorry. Continue.

17 A Okay. So we get 40 hours didactic training. And like
18 I said, Linda Ledray, one of the pioneers, came down to do
19 this class. And along with the 40 hours didactic training,
20 we work with the OB/GYN doctor who does pelvic exams with
21 us, so that we can be competent in doing pelvic exams.

22 Q And when you're doing a pelvic exam, do you use any
23 specific type of instrument?

24 A Yes. We use a speculum.

25 Q What is a speculum?

1 A A speculum is an object that helps you look at the
2 farthest end of the vagina, which is the cervix.

3 Q And what does it look like?

4 A Pretty much it's like -- it looks like a -- if you ever
5 went to get a pap smear -- more women know about it -- but
6 it's like a -- it looks almost like a duck's beak. And you
7 just -- it has like this -- you can open and visualize the
8 cervix.

9 Q And when you're -- before you use that -- well, first
10 of all, let me back up. I apologize. You said you had to
11 work under an OB/GYN.

12 A Yes.

13 Q And you had to perform exams under their supervision?

14 A Correct.

15 Q How many exams did you perform under their supervision?

16 A We had to at least do ten exams, mastering eight of
17 them.

18 Q So mastering eight of them?

19 A Yes.

20 Q Did you master eight?

21 A Yes.

22 Q So did you -- you performed ten different pelvic exams?

23 A On different patients.

24 Q On ten different patients.

25 A Uh-huh.

1 Q Before you were able to do any sexual assault nurse
2 exams?

3 A Correct.

4 Q Do you have any type of certificate or anything like
5 that regarding either forensic nursing or sexual assault
6 nursing?

7 A Yes.

8 Q What do you have?

9 A I have a forensic nursing certificate.

10 Q And with the sexual assault nursing, you stated that
11 you first -- you take the individual's statement, their
12 history, and that determines what you do ---

13 A Yes.

14 Q --- right? So when you examined Ms. Fredericks, what
15 was the first thing -- first of all, where does this
16 examination take place?

17 A This happens at MUSC in the triage area in the
18 emergency department.

19 Q Is it a separate room? Or is it a room altogether?

20 A It's a separate room. It's apart from the emergency
21 room. It's more quiet.

22 Q And when you go there, is there anybody else in the
23 room with you?

24 A Sometime there's a PAR representative, which is an
25 advocate, "People Against Rape."

1 Q And while you're taking this exam, not necessarily in
2 Jessica's case, but what is the -- depending on what the
3 person's story is, what do you look for first? Do you do a
4 physical exam or do you do a visual exam?

5 A A visual.

6 Q And then what are you looking for during that visual
7 exam?

8 A Injuries, bruises, lacerations, objects.

9 Q What part of the -- what information do you rely on to
10 determine what parts of the body you do that visual exam?

11 A The patient's.

12 Q The patient's history?

13 A Yes.

14 Q As far as what they tell you happened to them?

15 A Exactly, yes.

16 Q Now let's turn Ms. Jessica Fredericks' exam; is that
17 all right?

18 A Uh-huh.

19 Q Ms. Fredericks' exam, what did you first examine?

20 A First, she pretty much told me her history of what
21 happened. And so we usually go from head to toe. And so we
22 did an oral swab, along with a buccal swab. And that was
23 the first thing I did with her.

24 **ASST. SOLICITOR SHELTON:** May I approach, Your Honor?

25 **THE COURT:** You may.

1 Q I'm giving you what has been previously admitted into
2 evidence as State's Exhibit Two. You don't need to tear it
3 open and look all through it. But will you just tell the
4 jury what that is?

5 A This is part of the kit that we have. And inside this
6 kit is different things. There's oral swabs. There is a
7 thing to collect debris. There is also things that look
8 like underwear as well. So it has everything that we would
9 collect into evidence. It doesn't have everything, because
10 every case isn't alike. So, you don't collect all the same
11 things.

12 Q I'll take that back.

13 **THE COURT:** Thank you.

14 Q Turning back to Ms. Fredericks' exam, you said you went
15 to and examined her mouth first. What did you do? A visual
16 or physical examination of her mouth first?

17 A We did a visual, and then we used the swabs.

18 Q What are you looking for when you do a visual
19 examination?

20 A Looking for any kind of foreign object and lacerations,
21 any bite marks, anything that is not the normal.

22 Q Did you see anything in her mouth in this exam?

23 A No, not -- no. It was pretty much normal.

24 Q And did you take a swab from her mouth?

25 A Yes.

1 Q And how do you do that?

2 A Pretty much, when we're doing a oral swab, you go
3 around the mouth, in-between the teeth, trying to catch any
4 kind of DNA that possibly could be there.

5 Q And you did that in this case?

6 A Yes.

7 Q And how do you -- what do you with the swab after you
8 take the swab?

9 A We put it to dry. And once it's dry, we then package
10 it.

11 Q Package it?

12 A Uh-huh.

13 Q You put your initials or anything on that package?

14 A Yes.

15 Q And then what do you do with it?

16 A After we put it to dry, put it in the package. Then
17 you put it in the envelope, seal it, initial it, then fill
18 out the -- the front part, which it has her name, my name,
19 the time it was collected, the date it was collected, and
20 what specimen it was.

21 Q And what is the purpose of doing all of that?

22 A Because someone accuses that something happened to them
23 as a rape.

24 Q Did you perform any other exams, besides an oral exam
25 on Ms. Fredericks?

1 A Yes. We did a vaginal, and we also did a rectal exam
2 as well.

3 Q How do you do the vaginal exam?

4 A Pretty much, they're on the examining table.

5 Q What is the examining table like?

6 A Like you go to the doctor's office. And so she's on
7 the examining table. Most women would know. And she's ---

8 Q She was laying on her back or on her stomach?

9 A She's laying on her back.

10 Q Are her legs in anything?

11 A Yes.

12 Q What are her legs in?

13 A She's in the lithotomy position and so she is then in
14 stirrups. And so she is told to come all the way down to
15 the edge of the bed. And then she puts her legs up in the
16 stirrups so I can visualize.

17 Q And when you're doing the visualization, why do you do
18 the visualization instead of the physical exam first?

19 A Just to make sure that I don't cause any injuries when
20 I'm putting in my speculum. I'm making sure that there is -
21 - what I'm seeing is -- you know, if there's injuries, I
22 didn't cause the injuries.

23 Q Did you see any injuries on Ms. Fredericks?

24 A Yes. Bruising, swelling, redness.

25 Q Will you be specific in the injuries or abnormalities,

1 however you want to call -- first of all, what's normal for
2 that area?

3 A A normal vagina usually looks -- can depend on, from
4 person to person, depending on what kind of, you know,
5 disease process they might have going on. But pretty much,
6 if there's no swelling noted, if there's no redness, there's
7 no lacerations, there's no bruising, there's no -- it's
8 pretty much normal that it's flat. It's not any raised
9 areas.

10 Q Now, let's go back to Ms. Fredericks' exam. What did
11 you see on Ms. Fredericks' specifically?

12 A Can I refer to my notes?

13 Q Will it help refresh your memory?

14 A Yes.

15 Q Yes, you may.

16 A On Jessica's exam, her labia majora was swelling and
17 redness noticed.

18 Q What is the labia majora?

19 A The labia majora is the area, the outer lips of the
20 vagina. The two areas, the outer ones is the labia majora,
21 and there was swelling and redness noted.

22 Q Swelling and redness noted?

23 A Yes.

24 Q Out of the ten exams that you did to prepare to be a
25 sexual assault nurse examiner, did you notice any swelling

1 or redness during those exams of the labia majora?

2 A No.

3 Q You did on Jessica's?

4 A Yes.

5 Q Let's go on to the next one.

6 A The perineum had swelling and redness noted.

7 Q What is the perineum?

8 A The perineum is the area of the butt -- the area at the
9 end of the vagina and the beginning of the anus area. So,
10 it's the area right in-between is the perineum. And
11 swelling and redness was noted.

12 Q I'm going to ask you the same question. During the ten
13 exams that you performed, was there any swelling or redness
14 of the perineum?

15 A No.

16 Q With Jessica's, there was?

17 A Yes.

18 Q Now, what type of redness was it? And from your
19 studies and from your training and from your experience,
20 what did that tell you about the swellings and the redness?

21 A The type of swelling and redness noticed was -- it was
22 bright red. There was swelling noted as well. And that's
23 not normal. Redness usually happens when a injury is fresh.
24 It -- it can then later get darker. It can black, blue,
25 depending on the complexion of the person as well.

1 Q Let's go to your next finding.

2 A The next one was the labia minora, which is the inner
3 lips of the vagina.

4 Q What did you find in the labia minora?

5 A There was swelling and redness.

6 Q Next?

7 A The next one was the vestibule.

8 Q What is the vestibule?

9 A The vestibule is pretty much, if you spread the lips
10 apart of the minora, is the vestibule area. It kind -- it's
11 the peri-urethral area. So, it's right before the urethra.

12 Q And what was the injury or the abnormality expressed
13 there?

14 A Swelling.

15 Q Your next abnormality that you found?

16 A The posterior fourchette.

17 Q What is the posterior fourchette?

18 A It's the end of the vagina. This is the -- this is the
19 vagina. This is the end, right up in here.

20 Q And what was the note that you made that was abnormal
21 about that?

22 A Redness was noted.

23 Q Redness?

24 A Uh-huh. And the next one was vagina, which was just
25 the overall vagina was swelled and redness.

1 Q Again, out of the ten exams you had to perform before
2 you were even able to perform any sexual assault nurse
3 examination, under the direction of a OB/GYN, how many total
4 findings of abnormalities did you find?

5 A None.

6 Q How many there so far did you find with Jessica?

7 A Six so far.

8 Q Let's continue.

9 A Her cervix.

10 Q What is the cervix?

11 A Which is the deepest end of the vagina. It's the
12 circular area that has a hole in the middle, is the cervix.

13 Q And how do you see the cervix?

14 A You have to use a speculum, because it's the deepest
15 end of the vagina.

16 Q And describe the speculum again.

17 A A speculum is -- is like a beak of a duck. And pretty
18 much insert it and it opens up. And you can visualize. We
19 also have a light in the speculum, so that we can better
20 visualize the inner anatomy of the vagina.

21 Q Did you note any abnormalities to her cervix?

22 A Yes. It was redness noted.

23 Q What does the cervix normally look like?

24 A It's usually pink.

25 Q And have you ever seen a cervix that was red like this

1 one in any of the ten other exams that you did as under the
2 direction of an OB/GYN?

3 A No.

4 Q Was there anything else that you saw in the cervix
5 besides the redness that would have been a normality of Ms.
6 Fredericks, specifically in her menstrual cycle?

7 A Yes. She -- she was on her menstrual cycle. So there
8 was bleeding coming from the os, which would be the opening
9 of the cervix, which would be normal.

10 Q Now ---

11 A Since she say she was on her period.

12 Q --- is it normal during the menstrual cycle for the
13 cervix to be red and swollen?

14 A No.

15 Q Please continue to your next finding.

16 A The next finding would be the peri-anal skin, which
17 would be around the anus, was red.

18 Q Was red?

19 A Yes.

20 Q Is that normal or abnormal?

21 A That's abnormal.

22 Q Do you consider that a injury?

23 A Yes.

24 Q And then anything else?

25 A That would be all.

1 Q Did you perform swabs of the vagina?

2 A Yes.

3 Q And how many swabs of the vagina did you take?

4 A We took approximately four.

5 Q And you submitted those the same way that you already
6 described the previous swab?

7 A Yes.

8 Q What about the anus?

9 A Yes. I did take a swab of the anus.

10 Q So, how many total findings of abnormalities then were
11 there on Ms. Fredericks?

12 A 1, 2, 3, 4, 5, 6, 7, 8. Eight.

13 Q Eight. And how many total of the ten exams you did
14 under the direction of a gynecologist did you find?

15 A Zero.

16 Q Out of ten exams?

17 A Yes.

18 Q Did you prepare a drawing, after taking your notes, to
19 document the injuries to Ms. Fredericks?

20 A Yes.

21 Q Is it an accurate drawing when you took it?

22 A Yes, sir.

23 **ASST. SOLICITOR SHELTON:** May I approach, Your Honor?

24 **THE COURT:** You may.

25 Q Do you recognize this?

1 A Yes, sir.

2 Q Let me take it back one second.

3 **ASST. SOLICITOR SHELTON:** I apologize, Your Honor.

4 This has been marked as State's Exhibit Number Seventeen.

5 Q Sorry, Ms. Holmes.

6 A That's fine.

7 Q Cart in front of the horse. I'm handing you what is
8 State's Exhibit Number Seventeen. Do you recognize that?

9 A Yes, sir.

10 Q Will you please tell the jury what that is?

11 A This is the drawing that we -- we use as one of our --
12 one of the drawings we use to -- one of the papers we use to
13 -- to document our -- our injuries on here.

14 Q And did you document the injuries on here?

15 A Yes.

16 Q Whose injuries did you document?

17 A Jessica Fredericks.

18 Q Is it completely accurate, from the injuries that you
19 just noted? Is it substantially accurate?

20 A Yes. There's one I did not document on here.

21 Q What's that?

22 A The posterior fourchette.

23 Q But everything else is on there.

24 A Yes.

25 Q And what can you attribute to that lack of

1 documentation on the drawing, as to your notes?

2 A I just forgot them.

3 Q You just didn't put it on ---

4 A Yes.

5 Q --- that drawing.

6 A But it was on my other documents.

7 **ASST. SOLICITOR SHELTON:** I move State's Exhibit Number
8 Seventeen into evidence at this time, Your Honor.

9 **MR. BEACH:** No objection.

10 **THE COURT:** Ladies and gentlemen of the jury, State's
11 Exhibit Number Seventeen will be admitted into evidence,
12 without objection.

13 (State Exhibit Seventeen, diagram, received into
14 evidence.)

15 **THE COURT:** State's Seventeen into evidence. You may
16 publish.

17 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor. May I
18 approach?

19 **THE COURT:** You may.

20 **ASST. SOLICITOR SHELTON:** With the Court's permission,
21 I would like to publish this document on this board.

22 **THE COURT:** Very well.

23 **ASST. SOLICITOR SHELTON:** And I'll hand it to publish
24 to the individual jurors on this document. But I would like
25 for the nurse to step down to be able to ---

1 **THE COURT:** Portable mic, please, Patricia. Step down,
2 please. Now, you're going to have your back to my court
3 reporter. So I'm going to need you to hold that mic up and
4 speak into that mic a little closer.

5 Ladies and gentlemen, let me know if anyone cannot see
6 or hear.

7 **ASST. SOLICITOR SHELTON:** Beg the Court's indulgence,
8 Your Honor.

9 (BRIEF PAUSE.)

10 Q Is that the diagram?

11 A Yes.

12 Q Will you please ---

13 **THE COURT:** Counsel, for the record, state what's on
14 the screen. It's being passed by the jury. What exhibit
15 number?

16 **ASST. SOLICITOR SHELTON:** This is Exhibit Number
17 Seventeen.

18 **THE COURT:** Very well.

19 **ASST. SOLICITOR SHELTON:** And Seventeen is on the
20 screen now, Your Honor.

21 **THE COURT:** Very well. Proceed.

22 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

23 Q Will you please -- and it might be hard for the jury to
24 see individually, but please note each finding that you
25 found and what it is.

1 A The first finding found was the labia majora. And this
2 would be the area right up in here, which was red and
3 swollen. This would be the outer lips.

4 The second finding I found was the perineum, which was
5 also swollen and reddened. And this is the perineum, the
6 area from the vagina and the anus. Not the anus, but right
7 up in here.

8 The second -- the third finding would be the labia
9 minora, which are the inner lips, which would be here, which
10 -- which was also swelling and redness.

11 The fourth finding would be the vestibule. And the
12 vestibule would be this area where you would spread the lips
13 apart. And the -- and the finding was swelling.

14 The fifth finding was the posterior fourchette. And
15 this one I did not document on here, but it is right here at
16 the end of the vagina. And the finding was swelling -- I'm
17 sorry, redness.

18 The sixth finding was the vagina in general, and this
19 would be the whole anatomy right here. And the finding was
20 swelling and redness as well.

21 The seventh finding was the cervix, and this would be
22 the circular object right here.

23 Q What is that odd object around the cervix that the
24 diagram shows?

25 A This -- this is a actual speculum.

1 Q So that shows the speculum as you would see it as
2 you're looking?

3 A Yes.

4 Q Thank you.

5 A So this is the cervix, and there was redness and
6 bleeding noted. Bleeding was normal because it was her
7 original period.

8 Q But the redness?

9 A The redness was not normal. And the redness would have
10 been around this area.

11 Q And what part of the vagina is the cervix?

12 A The deepest end of the vagina. You have to use the
13 speculum. The next finding would be peri-anal area, and
14 this would be where the anus is, and redness was noted.

15 Q Thank you, Ms. Holmes. Please return to the witness
16 stand.

17 (The witness complies.)

18 Q At the time you performed this exam, how many sexual
19 assault exams had you performed?

20 A Approximately, eleven.

21 Q And now how many have you performed?

22 A Well, I'm sorry.

23 Q Okay. At the time you performed Ms. Fredericks' exam,
24 how many sexual assault exams had you performed?

25 A Approximately, like five.

1 Q And how many have you performed now?

2 A Twelve.

3 Q How many years total have you been a nurse?

4 A Four years.

5 Q And you have a B.A. in Nursing?

6 A A B.S.N.

7 Q B.S.N., excuse me. B.S.N. in Nursing?

8 A Uh-huh.

9 Q That's a four-year degree?

10 A Yes.

11 Q And then what were you first as a nurse?

12 A A LPN.

13 Q And then what did you become?

14 A A RN, a Registered Nurse.

15 Q And now you have the specialties of?

16 A Forensic Nursing and Sexual Assault Nurse Examiner are
17 the same nurse.

18 Q Those are all the questions I have. Please answer any
19 questions Mr. Beach might have.

20 **CROSS-EXAMINATION**

21 **BY MR. BEACH:**

22 Q From your examination, could you tell who did this?

23 A No, sir.

24 Q From this examination, could you tell whether or not it
25 was consensual?

1 A No, sir.

2 Q And do you often see this type of -- not often, but do
3 you see this type of swelling and redness in people who have
4 been engaging in consensual sex?

5 A I normally don't see consensual sex victims or
6 patients. If they come to me, they usually say they've been
7 raped.

8 Q So you can't tell who did it or whether it was
9 consensual?

10 A No.

11 Q No other questions. Thank you, ma'am.

12 **THE COURT:** Redirect?

13 **MR. BEACH:** No, Your Honor.

14 **THE COURT:** As to this witness?

15 **ASST. SOLICITOR SHELTON:** Ask that she may be excused.

16 **THE COURT:** Ms. Holmes, you may step down from the
17 witness stand. You're excused from the trial of this case.
18 Watch your step on my stairs.

19 Call your next witness.

20 **ASST. SOLICITOR SHELTON:** State calls Mariana Flynn.

21 **MADAME CLERK:** Please come forward to be sworn.

22 WHEREUPON, MARIANA FLYNN WAS DULY SWORN.

23 **MADAME CLERK:** Please have a seat on the witness stand
24 and state your full name on the record.

25 **THE COURT:** Watch your step for me.

1 **MS. FLYNN:** Thank you.

2 **THE COURT:** Thank you. Make yourself comfortable.
3 Adjust that and pull that microphone over and state your
4 full name and spell your last name.

5 **MS. FLYNN:** My name is Mariana Flynn, F-L-Y-N-N.

6 **THE COURT:** Your witness, Counsel.

7 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

8 **DIRECT EXAMINATION**

9 **BY ASST. SOLICITOR SHELTON:**

10 Q Ms. Flynn, what do you do for a living?

11 A I'm a Registered Nurse.

12 Q And what is your specific employment?

13 A I work at MUSC. I'm the Coordinator of the Forensic
14 Nurse Examiner program.

15 Q What did you do before you went to MUSC?

16 A I worked in Boston. I'm new to this area, so you can
17 probably tell. I worked for the past 13 years as a Sexual
18 Assault Nurse Examiner in Boston.

19 Q You can just give the jury your entire qualifications,
20 if you would like.

21 A Sure. I became a registered nurse in 1977. I worked
22 in general hospitals. I did the medical surgical floors.
23 After that, I continued as I was working to get my
24 Baccalaureate degree in Nursing from University of
25 Massachusetts in Boston. I did that in 1982. Continued to

1 work in a variety of settings. I worked administrative
2 positions for Blue Cross of Massachusetts. I did Visiting
3 Nurse of Boston. Had a variety of positions in different
4 areas in nursing.

5 And around 1996, I saw a training program come up for a
6 sexual assault examiner. And just from the description and
7 what was going on, it -- it just sounded really interesting
8 to me. So, I pursued it. I applied, got in, began the
9 program, began the general training program to be a sexual
10 assault nurse examiner, which as you -- you've already
11 heard. It's a 40-hour classroom; it's a very intense
12 classroom training.

13 After the classroom training, there was a certification
14 exam, which we needed to receive an 85 or above. I did
15 that. After -- after that was preceptoring. I was
16 precepted, where I went in with an OB/GYN and did a minimum
17 of ten pelvic exams. Pelvic exams are not normally part of
18 your basic nursing training. So, in order to be a sexual
19 assault nurse examiner, we needed to learn how to do a
20 pelvic exam on a female. So, I did that.

21 After that, was a mock exam. After the mock exam was
22 being precepted with a seasoned sexual assault nurse
23 examiner. And I went out with her once, was precepted and
24 approved to do exams on my own. So for the next ten years,
25 I did sexual assault exams in the Boston area. I covered

1 six emergency rooms. I wore a pager and worked any time a
2 patient would respond or come into the emergency room and
3 complain that they had been sexually assaulted. I would go
4 to the hospital that was reporting the injury. I would
5 appear to the sexual assault exam.

6 So after so many years of doing that, I determined I
7 really did love doing forensic nursing and my specialty was
8 going to be Sexual Assault Nursing. So I began to take some
9 Master's degree courses at Pittsburgh State College, to get
10 the Master's degree in Forensic Nursing. But along the way,
11 life happens and I move to Charleston. And I needed to drop
12 out of my Master's degree program, and worked at MUSC for
13 about a year doing utilization review, when this position
14 opened.

15 MUSC needed to have more structure in the beefed-up
16 sexual assault program than they currently had going. So
17 they needed someone with experience. And because I had had
18 experience training sexual assault examiners, doing quality
19 assurance on the records, I had conducted state-wide
20 trainings in Massachusetts, I got the position.

21 Q And when you got the position, was it coordinator?
22 Director? What is it?

23 A It's -- it's technically coordinator, but there's
24 nobody above me that really knows the forensic nursing. So
25 I -- I sort of feel sometimes like I'm slash

1 coordinator/director.

2 Q As a part of your job, did you help orchestrate the
3 training of ---

4 A Oh, yeah.

5 Q --- those nurses?

6 A Uh-huh.

7 Q And who did you get to come down?

8 A We got Linda Ledray. She's -- she's a nationwide,
9 worldwide expert in sexual assault nurse examining.

10 Q How many sexual assaults, or exams, can you
11 approximately think that you have performed?

12 A Probably about 250 to 300 exams at this point.

13 Q And how many times have you testified in court before?

14 A I've testified in court around 13 times. This will
15 probably be about 14.

16 Q How many times have you been qualified as an expert in
17 sexual assault nurse examinations in Court?

18 A About ten times.

19 **ASST. SOLICITOR SHELTON:** At this time, Your Honor, I
20 tender this witness as an expert in sexual assault nurse
21 examinations.

22 **THE COURT:** Any objection as to the qualifications?

23 **MR. BEACH:** No, Your Honor.

24 **THE COURT:** Ladies and gentlemen of the jury, recalling
25 my earlier instruction to you concerning expert or opinion

1 testimony, the witness is qualified without objection in the
2 field of sexual assault nurse examinations.

3 You may proceed, Counsel, without objection.

4 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

5 **EXAMINATION CONTINUES:**

6 Q As a director, or as a coordinator, and in training
7 other nurses, will you please just -- we've already talked
8 at length about sexual assault nurse examinations; talk
9 about the basics: What you're looking for, what's important
10 to look for, and particular findings that can be important
11 during the examinations, if that makes sense.

12 A I'll just back up to say sexual assault nurse examiner
13 positions came about when, you know, how overloaded
14 emergency rooms are. And the doctors and the nursing staff
15 in emergency rooms don't get the frequency in doing this
16 sort of an assault exam. Doctors and nurses in the
17 emergency room really do love sort of the blood and guts and
18 that sort of thing, the heart attacks that are coming in.

19 A sexual assault case coming in is typically a very
20 different kind of trauma than what they're used to. It's an
21 emotional trauma. It's very heavily laden with a patient
22 who's really, just had their whole core rocked, whether it's
23 a male or a female. Their whole trust, everything has just
24 been jolted.

25 So we get patients that are severely in crisis.

1 They're not bleeding, they're not hemorrhaging, but their
2 internals are in crisis. We are specially trained how to
3 take that patient. We just deal with one patient the whole
4 time that they're there. So they don't have an influx of
5 many, many physicians and nurses running in and out of the
6 room, repeating the story over and over. It's one person
7 that will stay there with them for as long as it takes.

8 One of my nurses or myself would respond to the
9 emergency room, and these exams can typically take anywhere
10 from a couple of hours. They could be four hours. They
11 could potentially be six hours long. One nurse stays right
12 with them for the entire exam.

13 What we're trained to do is help stabilize them. We're
14 dealing with the crisis intervention of the moment. We're
15 also dealing with patients that potentially have injuries
16 that maybe they're not even aware of yet, or maybe they
17 haven't been able to vocalize. So what we're trained to do
18 is to interview them, to speak with them, to discuss areas
19 of their body that might be hurting.

20 Also, after getting all that information from them, if
21 there's nothing real physically bleeding or jarring, now
22 we'll move on to exactly what happened. You know, can you
23 tell us the story. Like what's your report? What happened
24 to you tonight that was so bad, or today? And we get the
25 patient to discuss with us what happened.

1 Now, this exam is a very intensive exam. It's very
2 invasive. We have to ask very personal questions, very
3 detailed questions: When was your last intercourse? Was it
4 consensual? What type of intercourse was it? Was it oral?
5 Was it vaginal? Was it anal? We have to get very detailed.
6 What kind of medications are you on? What kind of medical
7 conditions do you have? Have you had any recent surgeries
8 that might affect the findings of my exam? So that if the
9 patient had a recent GYN procedure that might affect my
10 findings, I need to know that, so that I can rule out a
11 normal course of events, versus something abnormal.

12 Now, a sexual assault nurse examiner also assesses the
13 patient for their risk of sexually transmitted diseases,
14 pregnancy and HIV risk. So while we're with them, we'll
15 determine what medications they need to protect them from an
16 unwanted pregnancy, sexually transmitted diseases or should
17 they need something for HIV.

18 After all that, we go ahead and begin to collect the
19 evidence, which is guided. Our collection is guided by the
20 patient's report. If the patient tells me that they had a,
21 you know, an oral assault, I'm orally going to look in the
22 oral areas, or areas where potentially there may be semen or
23 saliva on the body.

24 Q And from your training and experience and your
25 expertise in the field, are you able to tell whether

1 something's consensual or not, absolutely?

2 A No.

3 Q No.

4 A A sexual assault nurse examiner doesn't make a
5 determination whether a sexual assault occurred or not.
6 What we do is we know normal and abnormal. We are trained
7 to look at the body and determine where -- or what areas
8 look abnormal versus the normal. And based on what the
9 patient reports, we're trained to know how to collect
10 evidence from these areas and what techniques to use to get
11 those.

12 Q And from your training and experience in the multiple
13 sexual assaults that you have conducted, are you able to
14 tell what type of action, whether consensual or
15 nonconsensual, where certain findings may be caused by?
16 Like if there is bruising in a certain area, are you able to
17 make an opinion as to what caused that bruising, whether it
18 be blunt force or whether it be some type of exterior
19 action? Does that make sense?

20 A There are certain -- I -- I think I -- I have an idea.
21 There are certain injuries that may be considered consistent
22 with sexual assault.

23 Q And can you explain some of those injuries?

24 A Based on the patient's report, if the patient is
25 telling me, just for instance, a vaginal assault and I see

1 abrasions, I see tears in the vaginal area, swelling,
2 redness, bleeding; any of these situations would potentially
3 make me feel like something did happen.

4 Q So it would be consistent with a sexual assault.

5 A It would be consistent with her report or his report of
6 sexual assault.

7 Q And you cannot say to absolute certainty whether it was
8 a sexual assault or not. You ---

9 A Oh, no.

10 Q --- can say it's consistent.

11 A Uh-huh.

12 **ASST. SOLICITOR SHELTON:** May I approach, Your Honor?

13 **THE COURT:** You may.

14 Q I'm handing you what's been previously marked as
15 State's Exhibit Number Seventeen. Take a moment to look
16 over that report. Are you familiar with that report?

17 A I am.

18 Q Do you know what that is?

19 A Yes.

20 Q What is it?

21 A This is a body map drawing. This comes standard inside
22 the SLED kits, the blank forms of these. We have -- it's
23 part of our sexual assault exam. We have about ten or
24 twelve pages of documentation that we do. This is where we
25 indicate areas that we have seen that are abnormal. This is

1 so that we can explain it out further. We have another
2 sheet that we use as well, because we don't use photography
3 in the genital areas at all. So, this is as close as we
4 would get.

5 Q On that specific report, can you mention -- can you
6 tell the jury what is reported on that report that would be
7 consistent with a sexual assault.

8 A It would be unusual or abnormal to see redness,
9 swelling. I'm seeing several areas of swelling and redness,
10 all within the vaginal area. I'm seeing a redness noted on
11 the cervix, which is, again, an abnormal finding. And I see
12 that there's been general redness and swelling throughout
13 the whole perinea area.

14 Q And what type of sexual assault could cause that?

15 A Could you just maybe rephrase that?

16 Q I'm sorry.

17 A What type? A vaginal assault?

18 Q A vaginal assault. Would that be consistent with a
19 vaginal assault?

20 A Yes, it would.

21 Q The redness and swelling of the -- the redness of the
22 cervix, what is that consistent with?

23 A Some sort of blunt force trauma. The cervix is very
24 vascular. So anytime that there's any even slightest
25 irritation to the cervix, it can set off, you know, the

1 little blood vessels in there to get -- to get red. Same
2 thing with the areas such as the labia minora, which are
3 highly vascular.

4 Q Highly vascular.

5 A Lots of blood vessels; lots of blood in that area.
6 Easy to bruise.

7 Q What are signs that a sexual -- whether assault or a
8 bruise or whatever it is -- is recent? And what are signs
9 that it has been there for longer periods of time?

10 A Typically, we don't see many signs at all. Most cases
11 of sexual assault will have no injury. In this case, I
12 would say that this is a recent finding, due to the redness.
13 Swelling is also recent. If you fall down and you -- or if
14 I were to bump my arm on this bench right now, it would
15 probably swell and get red before anything else happened.
16 So that would be a very recent kind of finding.

17 Q Those are all the questions I have for you, unless
18 there's something else that you'd like to tell the jury
19 regarding that report.

20 A Was there a question?

21 Q Thanks again. Please answer any questions Mr. Beach
22 might have.

23 **CROSS-EXAMINATION**

24 **BY MR. BEACH:**

25 Q You say you've seen that report before?

1 A Uh-huh. Yes, sir.

2 Q When did you see it?

3 A I saw it incoming to this trial. And I saw this
4 because I am a coordinator of the program, so I handle all
5 of the sexual assault victim --

6 Q Did you see the victim?

7 A No, sir.

8 Q So all you are testifying to is that piece of paper.

9 A Absolutely, yeah.

10 Q So you're testifying to what somebody else put on
11 there, not what you saw yourself.

12 A Correct.

13 **MR. BEACH:** No other questions, Your Honor.

14 **THE COURT:** Redirect?

15 **ASST. SOLICITOR SHELTON:** No, Your Honor. Thank you.

16 **THE COURT:** As to this witness?

17 **ASST. SOLICITOR SHELTON:** Ask that she may be excused,
18 Your Honor.

19 **THE COURT:** Any objection?

20 **MR. BEACH:** No objection, Your Honor.

21 **THE COURT:** Ms. Flynn, you may step down and ---

22 **MS. FLYNN:** Thank you, sir.

23 **THE COURT:** --- you are excused from the trial of this
24 case. Leave my exhibit with me, and you make sure you have
25 your file.

1 **MS. FLYNN:** I do.

2 **THE COURT:** And watch my stairs.

3 **MS. FLYNN:** Thank you, sir.

4 **THE COURT:** Call your next witness.

5 **ASST. SOLICITOR SHELTON:** The State rests, Your Honor.

6 **THE COURT:** Are there any matters of law that I need to
7 take up at this time from the defendant?

8 **MR. BEACH:** Yes, Your Honor.

9 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
10 jury, I'm going to ask you if you'd quickly step to your
11 jury room. I'll be right back with you in just a moment. I
12 need to take up a matter of law. Please do not discuss the
13 case.

14 (4:40 P.M., 4-19-11, WHEREUPON THE JURY EXITS THE
15 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
16 RECORD.)

17 **THE COURT:** All right. First of all, Mr. Beach, I'll
18 be happy to hear from you. I understand you have a matter
19 of law that you wish to address the Court at the close of
20 the State's case.

21 **MR. BEACH:** Yes, Your Honor. The State has rested and
22 we believe that the State has not met their burden with
23 regard to the indictments that are before the Court. But
24 the State has gone forward with CSC in the first degree and
25 also a second count of CSC in the Third degree. I don't

1 think they can lead to a verdict based on some of the
2 evidence presented here today. They have gone to great
3 length to try to portray this as a nonconsensual act with
4 someone who is mentally deficient. I think they can -- and
5 from both of those, in the third degree, this is consensual
6 sex with a person who is mentally deficient. I don't think
7 they've shown that this person is mentally deficient within
8 the meaning of the statute.

9 The statute defines mental deficiency as someone who
10 doesn't appreciate right or wrong and who doesn't appreciate
11 the consequences of their actions. And I think that all the
12 evidence that's been presented here today that shows that
13 given the interpretation most favorable to the State is that
14 the young lady knows right from wrong, that the young lady
15 appreciates the consequences of her actions.

16 I don't think it can be third degree. And we would ask
17 the Court to direct a verdict in regard to CSC in the third
18 degree.

19 **THE COURT:** Very well. Solicitor, the defendant is
20 asking that -- take a seat for me, Mr. Beach ---

21 **MR. BEACH:** Yes, sir.

22 **THE COURT:** --- so that you don't have to remain
23 standing. The Solicitor is asking that I direct the verdict
24 at the close of the State's case on Count Two of your
25 indictment, which is criminal sexual conduct, third degree.

1 Now, let me refresh everyone's mind. Of course, these
2 are code sections in our code; it's codified: 16-3-652 is
3 criminal sexual conduct in the first degree. "A person is
4 guilty of criminal sexual conduct in the first degree if the
5 actor engages in sexual battery with the victim, and if any
6 one or more of the following circumstances are proved: (A)
7 the actor uses aggravated force to accomplish sexual
8 battery; (B) the victim submits to sexual battery under
9 circumstances where the victim is also the victim of
10 forcible confinement, kidnapping, trafficking in persons,
11 robbery, extortion, burglary, housebreaking, or any other
12 similar offense or act; (C) the actor causes the victim,
13 without the victim's consent, to become mentally
14 incapacitated or physically helpless, by administering,
15 distributing, dispensing, delivering or causing to be
16 administered, distributed, dispensed, or delivered, a
17 controlled substance, a controlled substance analog or any
18 intoxicating substance."

19 16-3-654 defines criminal sexual conduct in the third
20 degree. "A person is guilty of criminal sexual conduct in
21 the third degree if the actor engages in sexual battery,
22 which is defined in the Court, including sexual intercourse,
23 cunnilingus, fellatio, anal intercourse, or any intrusion,
24 however slight, of any part of a person's body or any object
25 into the genital or anal openings of another person's body,

1 except when such intrusion is accomplished for medically-
2 recognized treatment or diagnostic purposes.

3 For criminal sexual conduct in the third degree, a
4 person is guilty of criminal sexual conduct in the third
5 degree if the actor engages in sexual battery with the
6 victim and if one or more of the following circumstances are
7 proven: (A) the actor uses force or coercion to accomplish
8 the sexual battery in the absence of aggravating
9 circumstances; (B) the actor knows, or has reason to know,
10 that the victim is mentally defective, mentally
11 incapacitated, or physically helpless, and aggravated force
12 or aggravated coercion was not used to accomplish sexual
13 battery."

14 That's one, A and B. Those are the only circumstances
15 that the code defines criminal sexual conduct in the third
16 degree.

17 The indictment in this case alleges as to Count One,
18 first degree CSC, that the defendant committed sexual
19 battery upon the victim while the defendant did also kidnap,
20 forcibly confine, extort, burglarize or commit any other
21 similar offense or act upon the victim. To wit, the
22 defendant did lure the mentally challenged victim into his
23 home by false pretense and/or did forcibly prevent her from
24 leaving, in violation of 16-3-652.

25 Count Two, charging the defendant with criminal sexual

1 conduct, third degree, alleges that the defendant committed
2 sexual battery upon the victim and the victim is named,
3 Jessica Fredericks, in both counts, with knowledge or reason
4 to have knowledge that the victim was mentally defective,
5 mentally incapacitated or physically helpless.

6 It is alleged that the defendant did force sexual
7 intercourse upon the mentally disabled victim, in violation
8 of Section 16-3-654(1)(b), which is the second part of
9 criminal sexual conduct, third degree, which says that the
10 person is guilty if the actor engages in sexual battery with
11 the victim, and if the actor knows, or has reason to know,
12 that the victim is mentally defective, mentally
13 incapacitated, or physically helpless, and aggravated force,
14 or aggravated force was not used to accomplish sexual
15 battery.

16 All right, Solicitor, I think I'm familiar now what the
17 code says, and I'm familiar with what the indictment says.
18 What is the State's position on the defendant's motion for
19 directed verdict, as to CSC Third?

20 **ASST. SOLICITOR SHELTON:** The State would obviously
21 oppose it, Your Honor. First of all, it doesn't have to be
22 consensual to be CSC Third. The reason the State crafted
23 the indictment the way it did is because of the specific set
24 of facts in this case the State believes was set out by the
25 testimony and the evidence presented in the case. That is,

1 that there is no aggravated force or aggravated coercion, as
2 defined under the criminal sexual conduct statutes. Rather,
3 there was forcible sexual intercourse. Not aggravated, not
4 aggravated coercion, not aggravated force.

5 Also, I think the State has proven, definitely beyond
6 anything that would rise to the level of getting a directed
7 verdict, that the victim is mentally deficient, as defined
8 by the statute, which is actually defined by "the victim is
9 unable to appraise the nature of his or her conduct."

10 That is very different from telling the truth, knowing
11 the difference between right and wrong. The example
12 testimony that the child, or the victim, has the mind and
13 the mental mindset more of a child, a six or seven year old.
14 That she reads on a first, second -- or a first degree
15 level, I believe. That her math, reading, writing is at a
16 first, second and third degree -- well, not necessarily
17 respectively. That she has an IQ in the mid 28 to 61. That
18 she is a child. This is likened to criminal sexual conduct
19 cases where there is a minor involved.

20 There's a difference between telling right and wrong
21 and being able to appraise the nature of your conduct. It's
22 almost like the McNaughton test, the old McNaughton test.
23 The State would submit that appraising the nature of the
24 conduct is not being able to materialize and see how your
25 actions -- how severe your actions are, how your actions are

1 going to affect the future. There's testimony that the
2 victim would be able to get in a car, start the car, and
3 that would be the equivalent of taking candy -- which you're
4 not supposed to take candy -- and not understand the nature
5 of her actions.

6 I think that I could go on with other testimony in the
7 case, but I think that's sufficient for the State to submit
8 to get us past directed verdict as to criminal sexual
9 conduct, third degree, Your Honor. I'll leave it as that.

10 **THE COURT:** Mr. Beach, as you're aware, for the purpose
11 of the standard of directed verdict, the standard that the
12 Court has to use at this stage. I'm aware that the
13 testimony in this case alleges -- and I believe it was your
14 contention earlier on that you thought that Count One, first
15 degree, criminal sexual conduct, because the term "mentally
16 challenged" is the word used in that count, that you felt
17 the State was duplicating the charge because they were
18 relying on the mentally incapacitated -- which I will define
19 for the jury.

20 I mean, there is clear case law that mentally
21 incapacitated means that "the victim was rendered
22 temporarily unable to evaluate or control his or her
23 conduct. The conduct may be caused by illness, defect, the
24 influence of a substance or some other cause."

25 The code also for criminal sexual conduct, third,

1 defines "physically helpless," or a case law does. It means
2 that the "victim was unconscious, asleep, or for any other
3 reason, physically unable to communicate consent to the
4 sexual battery." I think it's clear in the light I have to
5 take it at this stage, that your motion for directed verdict
6 must be denied at this stage.

7 Now I, of course, will allow you to renew that motion
8 at the close of all the evidence in the case. And I'll take
9 a look at it after I hear the defense's case. At this
10 stage, your motion is respectfully denied.

11 I'd ask you and your client come around and be sworn by
12 the Clerk.

13 Solicitor, have you given a certified copy of his
14 record to Mr. Beach?

15 **ASST. SOLICITOR SHELTON:** I gave the most accurate
16 record that I have to Mr. Beach, through oral statement.

17 **THE COURT:** All right. Does the State intend to use
18 any of the record that you have to impeach the defendant's
19 credibility?

20 **ASST. SOLICITOR SHELTON:** Not on the record alone, Your
21 Honor. Not -- no.

22 **THE COURT:** Nobody's limiting you from impeaching the
23 witness on other grounds, other than his record, Solicitor.
24 I'm asking about his record.

25 **ASST. SOLICITOR SHELTON:** No, Your Honor.

1 **THE COURT:** All right. All right. Would you swear
2 him, please, Madame Clerk?

3 WHEREUPON, LESLIE TWYMAN WAS DULY SWORN.

4 **THE COURT:** All right. I want you to speak into the
5 microphone. Is it on, Harris?

6 **MR. BEACH:** Yes.

7 **THE COURT:** Give me a verbal answer, if you would,
8 please. State your name for the record.

9 **MR. TWYMAN:** Leslie Junior Twyman.

10 **THE COURT:** Mr. Twyman, at this time, I'm going to
11 explain to you certain of your rights. If you do not
12 understand anything that I say, please let me know. If you
13 want me to explain anything in further detail, please let me
14 know. You understand?

15 **MR. TWYMAN:** Sir, yes, sir.

16 **THE COURT:** We've now reached the stage of the trial
17 where you may present your defense. You have the right to
18 testify in your own behalf. However, no one, not the State,
19 not this Court, no one can make you testify.

20 In the event you have a record for any conviction
21 involving dishonesty, or false statement, or for a crime
22 punishable by imprisonment of more than one year, and this
23 Court determines, as a matter of law, that the probative
24 value of admitting this evidence outweighs its prejudicial
25 effect to you, the Solicitor would be able to introduce this

1 record for impeachment purposes, to attack your credibility
2 or your believability.

3 I understand at this time that they do not intend to
4 introduce anything from your record that they think is
5 impeachable at this time, absent some other ground for
6 impeachment, such as an inconsistent statement.

7 If you elect not to take the witness stand, I will
8 charge the jury in my charge on the law, that they are not
9 to give the fact that you did not testify any consideration
10 whatsoever. And there is to be absolutely no prejudice to
11 you because you did not testify. You have the 5th Amendment
12 right to remain silent and the assertion of that right
13 cannot be used against you. In fact, I will tell the jury
14 that they are not even to discuss in their jury room the
15 fact that you did not testify, if you elect not to testify.

16 The decision as to whether or not you testify in this
17 case will be left entirely up to you, as to whether or not
18 you testify. You may talk with your attorney, Mr. Beach,
19 but the ultimate decision as to whether or not you are going
20 to testify in the trial of this case is yours. Have you
21 understood what I've just told you?

22 **MR. TWYMAN:** Sir, yes, sir.

23 **THE COURT:** **MR. BEACH,** I'll give you a minute with your
24 client.

25 **MR. BEACH:** Thank you, Your Honor.

1 (BRIEF PAUSE.)

2 **MR. BEACH:** He wishes to testify, Your Honor.

3 **THE COURT:** Is that your decision, sir?

4 **MR. TWYMAN:** Sir, yes, sir.

5 **THE COURT:** No one forced you into that decision.

6 **MR. TWYMAN:** Sir, no, sir.

7 **THE COURT:** And nobody promised you anything or
8 threatened you to make that decision.

9 **MR. TWYMAN:** Sir, no, sir.

10 **THE COURT:** And that's not your lawyer's decision,
11 that's your decision.

12 **MR. TWYMAN:** No, sir.

13 **THE COURT:** And it is your decision that you wish to
14 testify at the trial of this case.

15 **MR. TWYMAN:** Sir, yes, sir.

16 **THE COURT:** Very well. You may return to your seat.

17 (The defendant returns to his seat.)

18 **THE COURT:** Is the defendant ready to proceed?

19 **MR. BEACH:** Yes, Your Honor.

20 **THE COURT:** Is the State ready -- move it. The jury
21 shouldn't have blocked view of the defendant or defense
22 counsel. Nor should defense counsel have a blocked view of
23 the jury. (Solicitor moves equipment that is set up to view
24 documents.)

25 (BRIEF PAUSE.)

1 **THE COURT:** State ready to proceed?

2 **ASST. SOLICITOR SHELTON:** Yes, sir, Your Honor.

3 **THE COURT:** Defendant ready to proceed?

4 **MR. BEACH:** Yes, Your Honor.

5 **THE COURT:** Bring me the jury.

6 (5:00 P.M., 4-19-11, WHEREUPON, THE JURY ENTERS THE
7 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

8 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
9 jury, you've heard the evidence from the State of South
10 Carolina. We will now hear from the defendant. Mr. Beach,
11 you may call your first witness.

12 **MR. BEACH:** Your Honor, defense calls Leslie Twyman.

13 **THE COURT:** Come around and be sworn by the Clerk.

14 **MADAME CLERK:** Place your left hand on the Bible and
15 raise your right.

16 WHEREUPON, LESLIE TWYMAN WAS DULY SWORN.

17 **MADAME CLERK:** Have a seat on the witness stand and
18 state your full name on the record.

19 **THE COURT:** Watch your step. Have a seat and make
20 yourself comfortable. Adjust the microphone and the chair
21 to your height. Speak up. State your full name and spell
22 your last name for the court reporter, please.

23 **MR. TWYMAN:** My name is Leslie Junior Twyman, T-W-Y-M
24 -A-N.

25 **THE COURT:** Your witness, Counsel.

1 **MR. BEACH:** Thank you, Your Honor.

2 **DIRECT EXAMINATION**

3 **BY MR. BEACH:**

4 Q Mr. Twyman, where do you live?

5 A I was living at [REDACTED] David Street.

6 Q Is that in Colleton County?

7 A Yes, sir.

8 Q All right now, how long did you live in Colleton
9 County?

10 A I live in Colleton County about two years.

11 Q And where did you live prior to that?

12 A In New York.

13 Q And why did you come to Colleton County?

14 A Me and my wife wanted to leave New York because the
15 violence.

16 Q Now, you are married?

17 A Sir, yes, sir.

18 Q Do you have any children?

19 A Sir, yes, sir.

20 Q How many children?

21 A I have one; I have a daughter.

22 Q And does that daughter live with you?

23 A No.

24 Q Now, were you living with Ms. Gooding?

25 A Sir, yes, sir.

1 Q The same lady who was here?

2 A Sir, yes, sir.

3 Q Now, how long had you lived with her?

4 A I think I lived with her for about three weeks.

5 Q And why were you living with her?

6 A I had went through -- I had went through a bad drug
7 habit with me and my wife. Me and my wife came into a
8 lawsuit and we went through a bad drug habit where we went -
9 - we had got into a domestic violence, where she went to
10 jail and we had lost our apartment. So that's how we got
11 into the church with Ms. Gooding, and we end up at her
12 place.

13 Q Did Ms. Gooding help you find a job?

14 A Off and on. But she gave me work herself. Like I
15 build sheds and stuff like that.

16 Q Did you help her around the house?

17 A Sir, yes, sir.

18 Q Did you help her with her son?

19 A Sir, yes, sir.

20 Q What's her son's condition?

21 A Well, he's disabled, can't move and stuff.

22 Q Did you sit with him?

23 A Yes.

24 Q Now, the day in question, that day in August, do you
25 recall that day?

1 A Sir, yes, sir.

2 Q And were you sitting with the young man?

3 A Sir, yes, sir.

4 Q And what happened that day? When did you start to be
5 with him?

6 A Okay. That morning, it was me, the pastor, and all the
7 men from the church had went to Shoney's to eat. And for
8 me, I had got Mr. Bill Doctor that works in City Hall. And
9 we had went to -- we had went to Charleston and -- and
10 coming back from Charleston, when we got back, it was about,
11 just about 9:35, something like that. And from then, I seen
12 Ms. Gooding. Ms. Gooding asked me did I have anything to
13 do.

14 Q 9:35 in the morning?

15 A Yeah, about 9:35 in the morning.

16 Q You saw Ms. Gooding and what happened?

17 A She asked me did I have anything to do. And I say,
18 "No. Not at the time." And then she asked me can I watch
19 Conrad. I say, "Yeah, sure." And she had left. She say
20 she was going to Main Street to her store.

21 Q Do you know where -- do know when she left?

22 A She had to leave about ten.

23 Q Ten o'clock in the morning?

24 A Yeah, about ten.

25 Q What time was she supposed to be back?

1 A She was supposed to be -- no, she don't have no
2 specific time when she -- when she go.

3 Q All right. Now, were you there alone with her son?

4 A Yes, sir.

5 Q And how long did you stay there?

6 A I stayed there till like about 12. About 12, 12:15,
7 something like that. I had called Ms. Gooding, told Ms.
8 Gooding that my friend was coming over to pick me up for a
9 job, that I was going down to get Jessie to sit with Conrad.

10 Q Who is your friend?

11 A Jimmy. Caucasian.

12 Q Had you told Ms. Gooding earlier that you didn't have
13 any friends?

14 A Yes, I had told -- I told her I don't associate with
15 old friends. And my old friends was my drug friends, the
16 friends that feed me drugs. So that's why I told her these
17 -- this friend that I had met at the library when I was
18 going to the library when I was going back and forth from
19 Ms. Gooding house. So he had -- you know, me and him had
20 started getting cool. And he had told me that he was going
21 to hook me up with a job, something like that.

22 Q Did he call you earlier?

23 A Yes, he had called me.

24 Q All right. So what did you do?

25 A I had went down there. I knocked on the door. And I

1 had asked for Jessie's father, Jessie father came to the
2 door. And I had gave him some tops, some rogies, because he
3 smoked, just like I smoked. And we be switching cigarettes
4 every now and then. He say he couldn't roll; I roll two
5 cigarettes for him. And he showed Jessie that they was
6 tops. I guess she thought it was something else.

7 And then, I had asked Jessie, could she come and -- and
8 sit with Conrad. And she say "Yes." I went back up the
9 block. I sat down on a chair. I had smoked me a cigarette.

10 Q Did Jessie go back with you?

11 A No. She haven't came with me. She say she'd be there.

12 Q What happened next?

13 A So, she was coming up the block. Her little sister
14 walked her halfway, and then she went back down. Her little
15 sister went back down the block. She came up and she went
16 in the house. And I had to be sitting outside for about a
17 good five, fifteen minutes before Ms. Gooding called,
18 because she came to the door and say Ms. Gooding was on the
19 phone.

20 Q Did you talk to Ms. Gooding on the phone?

21 A Yes, sir.

22 Q Did you leave a message on Ms. Gooding's e-mail?

23 A Yes, sir.

24 Q Or her voice mail?

25 A Yes, yes, sir. Yes, sir. Before I went to the house,

1 I went -- before I went to Jessie house, I had left the
2 message saying that my friend is coming and he's taking me
3 to watch a job.

4 Q Did your friend ever show up?

5 A No. He -- he haven't shown up.

6 Q How long did Jessie stay at the house?

7 A Jessie stayed in the house -- I don't know. When she
8 came, I gave her two dollars. I gave her four quarters and
9 a dollar. Ms. Gooding say she pays her. She pay her a
10 dollar a hour to sit. So, I gave her two dollars. And I
11 told her -- I had told her when she -- if she leave, if you
12 come -- I'm coming back down there to get her. She say
13 "Okay."

14 And when she left the house, I came down there to give
15 her father two cigarettes. I knock on the door. This was
16 about -- 1:30, she went home, because I came right behind
17 her. And I knocked on the door and I gave her father two
18 rollies. And he was talking about he had to do the lawn. He
19 had to mow the lawn. And from there, I had went back up.

20 And about -- I'd say about a half hour to a hour, Ms.
21 Gooding made a phone -- had called the phone and say that
22 there's a accusation against me. And I had to say, "A
23 accusation?" She say "Yeah, a sexual assault or something."
24 I said, "A sexual assault?" I say, "I haven't did nothing."

25 Q And did you touch Jessica?

1 A No, I haven't touched Jessie. When Jessie was in the
2 house, I did go in the house for a minute, sit down, and we
3 had smoking. And she was asking me about New York, about my
4 wife. She say my wife is pretty and stuff like that. And
5 we had -- we had -- I had asked her, I say -- I said, "How
6 you doing in school?" And she was like, "I'm going to
7 college." She says this will be her last year -- last year
8 would be her last year in school, that's what she say, and -
9 - and she would be graduating and she'd be going to college.

10 And we had smoked a little more. And then she was like
11 -- she's like, "I like the way, you know, you -- you looked
12 Friday in that suit." See Friday, we was at a -- a children
13 conference where everybody was there, she was there. That's
14 when I had asked her was she 18. And we had picked up one
15 of her friends from Sand Hill, which -- which they was
16 supposed to have -- she was supposed to come Saturday to do
17 her hair. But they was talking in the van, and stuff like
18 that.

19 And Jessie, I mean, she had -- she had got where it was
20 -- she had got where we -- we was just talking cool, regular
21 and stuff. And there was nothing wrong. And then she just
22 came out and she was like -- I had asked her -- no, she
23 asked me, she say how is my wife -- she said how's me and my
24 wife relationship, as in our marriage and stuff. I told
25 her, I said, "Yeah," I say, "Me and my wife is -- is rocky

1 right now. We're going on rocky mountains right now." I
2 say, "We not to terminated , but we cool. But I got love for
3 my wife." And then ---

4 Q Was your wife down there living with you at this time?

5 A Yes. My wife is living with me.

6 Q Were y'all living at the same place?

7 A Yes. My wife was on -- right now -- at the time, I was
8 off of drugs for about two months. She was still on drugs.
9 We was chasing her around. Like, me and Gooding would go
10 look for her every now and then because that's how she got
11 kicked out the shelter, from not making her curfew.

12 Q Where was ---

13 A And stuff like that.

14 Q --- she at that point?

15 A Who, my wife?

16 Q Yes.

17 A My wife was at work.

18 Q Where does she work?

19 A She worked at -- she was working at Edisto. She was
20 doing one of them big buildings and stuff like that, fixing
21 beds and stuff like that. That's what she was doing at the
22 time.

23 Q Did you have any sexual relations with Jessie?

24 A I had no sexual relation with Jessie. Jessie had told
25 me she been having sex since she was 16, but I haven't

1 believed her. She had told me she had sexual intercourse
2 with her step-dad, and I didn't believe that. But when I
3 went down to give him his cigarettes about a hour later, I
4 was accused. And I don't even know why I was accused for
5 doing anything to her.

6 Q Did you at any time touch her?

7 A I haven't touch her. Not one hair on my hand. I got -
8 - I mean, my whole body was full of hair. For me to touch
9 her, it got to be something. If I ejaculate in her, you --
10 you will find semen.

11 Q Did you voluntarily give up your DNA?

12 A Yes, sir. That's the first thing I wanted to do, to
13 clear my innocence.

14 Q Answer any questions the Solicitor may have.

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

16 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

17 **CROSS-EXAMINATION**

18 **BY ASST. SOLICITOR SHELTON:**

19 Q Mr. Twyman, how are you today?

20 A I'm all right.

21 Q Where's your wife today?

22 A She's in LA Apartments.

23 Q LA Apartments?

24 A Uh-huh.

25 Q She's not here?

- 1 A No.
- 2 Q She know you're on trial?
- 3 A Yeah, she know I'm on trial.
- 4 Q Why isn't she here?
- 5 A Because we on rocky mountains right now. My wife is
- 6 chasing drugs.
- 7 Q You used to chase drugs?
- 8 A Yeah, I used to chase drugs.
- 9 Q Did you take a lot of drugs?
- 10 A Yes, I took a lot of drugs at the time.
- 11 Q How long did you take drugs for?
- 12 A Say about five years, off and on.
- 13 Q Just five years?
- 14 A Uh-huh.
- 15 Q You didn't take drugs back in the '90s?
- 16 A No, I had sold drugs. I had got caught with
- 17 paraphernalia and stuff like that. And police thought I was
- 18 using drugs, but I wasn't using drugs.
- 19 Q Did you ever get convicted of using drugs?
- 20 A Yes. I was convicted years ago.
- 21 Q How many times were you convicted of using drugs?
- 22 A I think it was, say, probably about two, three times.
- 23 Q You weren't convicted 6, 7, 8, 9, 10 times?
- 24 A No. Selling -- most of it's selling drugs.
- 25 Q It's from selling drugs?

1 A Yes.

2 Q But then you were using a lot of drugs for about five
3 years?

4 A Yes.

5 Q Did you hear -- actually, it's your attorney who asked,
6 you've been here the whole time, right?

7 A Yes, sir.

8 Q You listened to everybody speak.

9 A Yes, sir.

10 Q You listened to everybody's stories.

11 A Yes, sir.

12 Q Everybody's statements.

13 A Yes, sir.

14 Q Everybody's cross-examination.

15 A Yes, sir.

16 Q And then you give this account, correct?

17 A Yes, sir.

18 Q You said that if you came inside of her, there would be
19 semen?

20 A Yes, it would. It would have been plenty.

21 Q Did you hear that there was semen found inside of her?

22 A Yes, I heard there was semen found in her.

23 Q Did you also hear from the DNA expert that one of the
24 things that can cause someone to not have semen is prolific
25 drug use.

- 1 A Yes, sir.
- 2 Q And you say you used drugs a lot.
- 3 A Uh-huh.
- 4 Q This friend, Jimmy, what's his full name?
- 5 A I just know him by Jimmy. I met him in a library.
- 6 Q In a library?
- 7 A Uh-huh.
- 8 Q What library?
- 9 A The library right in Walterboro, right down the block.
- 10 Q You don't know his last name?
- 11 A I don't know his last name.
- 12 Q What job was it you were going to go do?
- 13 A Well, the first job we was going to go to, he had told
- 14 me about the flag people that do the highway, he was going
- 15 to take me to somebody that was going to hook me up, which I
- 16 had went Monday to First Stop to unemployment, seeing
- 17 Stephanie Ferguson.
- 18 Q Was that a good job?
- 19 A Yes, it was a good job.
- 20 Q Did Jimmy ever tell you why he didn't show up?
- 21 A No, he never told me why he showed up. I had called
- 22 from Ms. Gooding house and he -- I mean, the people say he
- 23 left, but he never showed up.
- 24 Q You said that you walked Jessie back to the house.
- 25 A No, I didn't say I walked her back. I say she went

1 down the block and I came behind her.

2 Q You came behind her?

3 A Yes. And knocked on the door. She opened up the door.
4 I told her -- she opened up the door. I told her tell her
5 father "come and get some cigarettes." He called me for
6 some cigarettes. And he came outside. And he told her to
7 close the door.

8 Q He told her to close the door?

9 A Yes.

10 Q That's quite an accusation you made about the step-
11 father.

12 A Uh-huh.

13 Q What evidence do you have of that?

14 A I don't have no evidence; that's why I ain't believe
15 it.

16 Q You don't believe it?

17 A I mean, I ain't believe it. But until now, I'm sitting
18 here, it's like, they trying to keep me quiet from something
19 else, because it didn't even make no sense. She say I came
20 to the window Monday. I couldn't be at her window Monday,
21 because Ms. Gooding took me to First Stop Monday.

22 Q Took you to First Stop Monday?

23 A Yes. Ms. Gooding was the one that had stopped me off.

24 Q When did she say you came to the window on Monday?

25 A She said on her papers. It's on one of her papers ---

- 1 Q One of ---
- 2 A --- that is written.
- 3 Q --- her papers?
- 4 A Yeah.
- 5 Q On Monday?
- 6 A On Monday. Monday and Tuesday.
- 7 Q And you said that -- is that in evidence?
- 8 A It's in evidence. It's in the papers; I got it.
- 9 Q Is it in the Court's evidence?
- 10 A It's in the Court's evidence.
- 11 Q You said that you gave the step-father some cigarettes.
- 12 A Yes. I made the step-father some cigarettes.
- 13 Q Did you do that a lot?
- 14 A Yeah. Back and forth, me and him. I was just telling
- 15 Ms. Gooding, I'm going to get a cigarette. I was going to
- 16 give him a cigarette at times.
- 17 Q So you said you came down to South Carolina to get away
- 18 from the violence?
- 19 A Yes. Get away from the violence.
- 20 Q Where were you living up in New York?
- 21 A I was living in Brooklyn, New York.
- 22 Q Where were you living before that?
- 23 A I was living in the Bronx.
- 24 Q Where were you living before that?
- 25 A I was living in Staten Islands.

1 Q Did you continuously live in all those places?

2 A Yes.

3 Q What about the time you spent in prison?

4 A The time I spent in prison, I was in -- I was in the
5 Bronx, Brooklyn, and stuff like that.

6 Q You met your wife in New York?

7 A Yes, sir.

8 Q You came down to get away from the violence in New
9 York?

10 A Yes, sir.

11 Q To get away from the violent people in New York?

12 A To get away from the violent people. Every time we
13 walked out the building, it was like moving over bodies.

14 Q And you came down here to get away from the violent
15 people in New York.

16 A Sir, yes, sir.

17 **THE COURT:** Counsel, approach.

18 **ASST. SOLICITOR SHELTON:** Yes, sir.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
20 AND OUT OF THE HEARING OF THE JURY.)

21 Q Mr. Twyman, you sat here and you listened to all the
22 testimony.

23 A Sir, yes, sir.

24 Q You listened to the mother, the step-father. You
25 listened to the victim's entire testimony?

1 A Sir, yes, sir.

2 Q You listened to the testimony by people that know the
3 victim very well. They've worked with her for years. They
4 know her mindset very well.

5 A Sir, yes, sir.

6 Q And you said that the victim basically came on to you?

7 A I ain't say she came onto me.

8 Q In not so many words, I believe you said that she said
9 you looked good in that suit?

10 A Yes. But that's -- that no -- that ain't coming on.
11 That's saying -- that's being nice.

12 Q Look good in that suit?

13 A Uh-huh.

14 Q And you asked Ms. Gooding how old she was.

15 A Yes.

16 Q Why did you do that?

17 A I was just curious.

18 **ASST. SOLICITOR SHELTON:** Beg the Court's indulgence.

19 Q So it's just you that lived in Ms. Gooding's house.

20 A Yes. At the time, it was me and my wife.

21 Q Ms. Gooding said that that seat cushion in the chair
22 was cleaned off. That was a surprise to her. Did you clean
23 it?

24 A No. I ain't cleaned it. If Ms. Gooding would think
25 back, when she was doing my wife hair, my wife had her

1 menstruation, and she cleaned the seat and flipped it.

2 Q Your wife did it during menstruation?

3 A Uh-huh. She ain't cleaned the sheet; she flipped it.

4 She cleaned the top of the blood and she flipped the sheet,
5 which will be lighter on the bottom.

6 Q But you knew about the seat being flipped?

7 A Yeah, I knew about the seat.

8 **ASST. SOLICITOR SHELTON:** That's all the questions I
9 have, Your Honor.

10 **THE COURT:** Redirect?

11 **MR. BEACH:** No, Your Honor.

12 **THE COURT:** You may step down. Call your next witness.

13 **MR. BEACH:** Defense rests, Your Honor.

14 **THE COURT:** Is there any reply testimony from the State
15 of South Carolina?

16 **ASST. SOLICITOR SHELTON:** I beg the Court's indulgence
17 to inquire, if I may.

18 (BRIEF PAUSE.)

19 **ASST. SOLICITOR SHELTON:** Ask that the State recall Ms.
20 Margaret Gooding, Margaret Gooding.

21 **THE COURT:** Counsel, approach.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
23 AND OUT OF THE HEARING OF THE JURY.)

24 **REPLY TESTIMONY**

25 **THE COURT:** Ms. Gooding, you're still under oath.

Reply Testimony
Direct Examination of Jessie Gooding by Asst. Sol. Shelton

1 Please come around and have a seat on the witness stand.
2 Watch your step for me. You understand, you're still under
3 oath.

4 **MS. GOODING:** Yes, sir.

5 **THE COURT:** Very well. Your witness, Counsel. Reply
6 Testimony.

7 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

8 **DIRECT EXAMINATION**

9 **BY ASST. SOLICITOR SHELTON:**

10 Q Ms. Gooding, I'm only going to ask you about this
11 chair, okay? This chair that you didn't -- that you forgot
12 about the menstruation. Do you remember that?

13 A Yes.

14 Q Was that a separate event from -- I'll let you explain
15 it. I'm sorry to interrupt you.

16 A Yes. I was doing India's hair. And she did have
17 her -- you know, she did spot the chair. And she cleaned it
18 right then. But that seat has always -- both sides -- I had
19 already flipped it before. Both sides were really -- like I
20 said, when the kids, when they came in, that's the chair
21 that they sat in. So, it was being used all the time and
22 they -- they -- they sat there, they ate there, they dropped
23 stuff on the chair. They just -- you know, so -- the both
24 sides of -- of the cushion were both dingy.

25 Q And on August 22nd when you noticed it was clean,

Reply Testimony
Cross-Examination of Jessie Gooding by Mr. Beach

1 that's a separate event from doing India's hair?

2 A Yes.

3 Q That's all the questions I have. Thank you.

4 A Okay.

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

6 **CROSS-EXAMINATION**

7 **BY MR. BEACH:**

8 Q How long prior to the 22nd was the incident in which
9 you did the lady's hair? How many days?

10 A It wasn't that many days. I think it might have been
11 that week.

12 **MR. BEACH:** No further questions, Your Honor.

13 **THE COURT:** Redirect?

14 **ASST. SOLICITOR SHELTON:** No, Your Honor.

15 **THE COURT:** Ms. Gooding, you may step down.

16 **MS. GOODING:** Thank you.

17 **THE COURT:** Anything further in reply from the State?

18 **ASST. SOLICITOR SHELTON:** No. Thank you, Your Honor.

19 **THE COURT:** Mr. Foreman and ladies and gentlemen of the
20 jury, I'm going to stop at this point for today. We'll
21 conclude the trial first thing in the morning. I ask that
22 you be in your jury room before 9:30 in the morning. You
23 have not heard the final arguments of the attorneys, nor
24 have you received my charge on the law, which we'll do first
25 thing in the morning.

Reply Testimony
Cross-Examination of Jessie Gooding by Mr. Beach

1 I don't know whether there will be anything on radio,
2 television or in the newspaper. Please do not read such,
3 watch such or listen to such. You must decide this case
4 solely upon evidence introduced in this courtroom when both
5 sides are present, with the right of cross-examination.

6 We will conclude the trial in the morning. Hope
7 everybody has a pleasant evening. Do not discuss this case
8 with anyone, not even a member of your own family. And
9 follow my instructions, as I have given to you throughout
10 the trial. Hope everybody has a pleasant evening. I'll
11 look forward to seeing you first thing in the morning at
12 9:30, and we'll try to get started on time.

13 You may leave the courtroom at this time. Everyone
14 else, remain seated while the jury is leaving.

15 (5:20 P.M., 4-19-11, WHEREUPON THE JURY EXITS THE
16 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
17 RECORD.)

18 **THE COURT:** All right. Are there any requests to
19 charge from the State of South Carolina?

20 **ASST. SOLICITOR SHELTON:** Just standard requests --
21 your standard charge is correct here is fine, Your Honor.
22 The only thing that I would request, beside the standard
23 charge, as I would imagine you'd do anyway, is that for CSC
24 First, the language of kidnapping be included, with inveigle
25 and decoy.

1 **THE COURT:** I will define for the jury, since
2 kidnapping is used, I believe, in the -- kidnapping is used
3 in 16-3-652, I'll define for the jury what kidnapping is.
4 There are several verbs, and I will use them all, so that
5 they're not just inveigle. Is that everything from the
6 State?

7 **ASST. SOLICITOR SHELTON:** Yes, sir, Your Honor.

8 **THE COURT:** Are there any requests for charge from the
9 defendant?

10 **MR. BEACH:** Just your standard request, Your Honor.

11 **THE COURT:** All right. Now, Mr. Beach, you asked me,
12 and the reason, obviously, I wanted to complete. It's
13 already now 5:25 in the afternoon. I told you I'd give you
14 an opportunity at the close of all the evidence in which to
15 renew your motions. Do you wish to do so at this time?

16 **MR. BEACH:** I would renew the earlier motion, Your
17 Honor.

18 **THE COURT:** Which would be a motion for directed
19 verdict as to Count Two on CSC Third?

20 **MR. BEACH:** Actually, it's for Count One and Count Two.

21 **THE COURT:** All right. Solicitor, be happy to hear
22 from you. I recall that you just moved on Count Two, I
23 thought, at the close of the State's case, Mr. Beach. And I
24 think you're limited to that at the close of all the
25 evidence. But I'll hear from the State.

1 **MR. BEACH:** I think, Your Honor, that I -- I ---

2 **THE COURT:** You moved on both?

3 **MR. BEACH:** I think I moved on -- I intended to move on
4 both. I think I probably talked on more of Two, than on
5 One.

6 **THE COURT:** I'll go back and check that. Maybe my
7 memory is incorrect.

8 Solicitor.

9 **ASST. SOLICITOR SHELTON:** We oppose both. For Count
10 Two, the only one we argued on. If my memory serves me
11 correctly, it's the only one that was raised. We would
12 state the same reason as before. Count One, the State's
13 position is there's ample evidence for the purposes of
14 directed verdict to give the case to the jury on the fact
15 finder.

16 There's facts in evidence that the defendant went to
17 the house, took the victim back, the victim's own testimony.
18 Shows that once he was back at the house where he asked the
19 purpose of bringing her there was to sit with the
20 homeowner's son, he raped her. We believe that that is --
21 would be inveigle, or decoy, possibly, under kidnapping or
22 other similar act that's defined by the statute.

23 Furthermore, with regards to the use of the deficient,
24 mentally deficient language, in the ---

25 **THE COURT:** What evidence is there that the defendant

1 knew or had reason to know that the victim was mentally
2 defective, Solicitor?

3 **ASST. SOLICITOR SHELTON:** Well, first of all, if a
4 victim's own testimony, the victim, the testimony by Brandon
5 Craven, as soon as he saw her, he could tell that there's
6 something wrong with her, the fact that she is in these
7 special education student-type classes, and the fact that
8 she had -- he had met her before. I think that it is
9 apparent -- the jury would be the correct fact finder and
10 she testified. The jury can judge whether someone should or
11 not know whether she's mentally defective by her demeanor on
12 the stand.

13 **THE COURT:** That everything?

14 **ASST. SOLICITOR SHELTON:** Yes, sir, Your Honor.

15 **THE COURT:** All right. I'll do a little work tonight,
16 since I don't have any requests for charge, and I'll meet
17 with each of you prior to starting in the morning. Please
18 be here by nine o'clock a.m. We'll have a charge
19 conference.

20 Becky, I want you to check at the close of the State's
21 case and let me hear the motions that were made for directed
22 verdict at the close of the State's case, whether it was on
23 Count One and Two, or just count Two. Let me know, okay?

24 **COURT REPORTER:** Okay.

25 **THE COURT:** All right, Counsel. The defendant is in

1 custody, remains in custody. This Court is in adjournment
2 until 9:30 a.m. tomorrow morning. I'll expect the lawyers
3 to be in my chambers by nine o'clock. Thank you very much.

4 (5:35 P.M., WHEREUPON, COURT IS ADJOURNED IN THE TRIAL
5 OF THIS CASE FOR THE EVENING.)

6 (9:55 A.M., 04-20-11, WHEREUPON, THE COURT RECONVENES
7 IN THE TRIAL OF THIS CASE AND THE FOLLOWING PROCEEDINGS ARE
8 HELD ON THE RECORD.)

9 **THE COURT:** Let the record reflect, I have met for 45
10 minutes this morning with counsel for the State and for the
11 defendant. I have been over the verdict form with them.
12 They have both approved the verdict form. I have been over
13 my entire charge with them. I have read them portions of my
14 charge. I have omitted, at their request, certain portions
15 of the charge, and they are both aware of everything I'm
16 going to charge. They are both satisfied with the verdict
17 form; is that correct, from the State?

18 **ASST. SOL. SHELTON:** Yes, Your Honor.

19 **THE COURT:** Is that correct, from the defense?

20 **MR. BEACH:** Yes, Your Honor.

21 **THE COURT:** Now, we also had a discussion this morning
22 about closing argument. The defendant put up evidence, so
23 the State, with the burden of proof, has the final argument.
24 The defendant agrees that the defendant will argue first,
25 followed by a closing argument by the State. By agreement,

1 there will be no opening and then a reply. There will be
2 one argument by each side. The State has requested 30
3 minutes for their argument. Therefore, I am giving 30
4 minutes also to the defendant. Will that be sufficient for
5 you, Mr. Beach?

6 **MR. BEACH:** I think it will, Your Honor.

7 **THE COURT:** All right. When you have argued for 25
8 minutes, you will hear the familiar (tap, tap, tap) to let
9 you know that you need to wrap it on up since I've given you
10 the time that you've requested. Have I accurately stated
11 what occurred insofar as closing argument, from the State?

12 **ASST. SOL. SHELTON:** Yes, Your Honor.

13 **THE COURT:** From the defendant?

14 **MR. BEACH:** You have, Your Honor.

15 **THE COURT:** Very well. I think, now, with that, I've
16 now placed on the record everything that occurred in
17 chambers this morning. Is the State ready to proceed?

18 **ASST. SOL. SHELTON:** Yes, sir.

19 **THE COURT:** The defendant ready to proceed?

20 **MR. BEACH:** Yes, Your Honor

21 **THE COURT:** All right. Odell, you still back there
22 with me?

23 **BAILIFF:** Yes, sir.

24 **THE COURT:** Bring me the jury.

25 (10:00 A.M., 04-20-11, WHEREUPON, THE JURY ENTERS THE

1 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
2 RECORD.)

3 **THE COURT:** Good morning. I told you we would start at
4 9:30, and I'm aware it's 10:00. What happens in the
5 mornings, we started before you got here. I've been working
6 on my charge, obviously, and I needed to go over the entire
7 charge with my attorneys, so that they would know what I'm
8 going to charge when they do their argument.

9 I also wanted to go over the verdict form, which I will
10 be explaining to you in just a few moments in my charge with
11 them and the order of argument and the time for argument.
12 All of that took a little while, obviously, it involves a
13 number of matters that I needed to go over with them, and
14 that's the reason we are running a little bit behind
15 schedule, but we'll get everything back on track. Has
16 everyone filled out a lunch order? I'm going to have your
17 lunch here a little earlier today. I want you to listen
18 carefully to the attorneys. You've heard all the evidence
19 in this case. You're now going to hear the final arguments
20 of the attorneys, followed by my charge to you on the law in
21 this case. First, I ask that you give the attorneys your
22 careful consideration.

23 Now, Mr. Beach and Odell, during final argument by the
24 attorneys and my charge on the law, nobody is in or out of
25 this courtroom.

1 Ladies and gentlemen, we will now hear the final
2 arguments of the attorneys. Mr. Beach?

3 **MR. BEACH:** May it please the Court?

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

5 **CLOSING ARGUMENT**

6 **BY MR. BEACH:**

7 Ladies and gentlemen, this is the last time we get to
8 talk to you. As you know, our part in this is pretty much
9 over now. We've presented the evidence and got it basically
10 ready for you. Now, comes the hard part, y'all have to do
11 the decision. Y'all have to decide whether or not to
12 convict this young man or to acquit him. And that's your
13 decision, and that's totally yours, and nobody is going to
14 criticize you about it or anything like that.

15 What I asked you at the beginning was that you listen
16 very carefully to the evidence. Listen to all of it, you've
17 listened intently. I've been watching all of you and I
18 think you've done just that. I appreciate it and my client
19 appreciates it, too. The only thing we can ask is if you do
20 that, if you listen to the evidence, the evidence that's
21 presented, the evidence that's relevant to this case, and
22 you come back and make a fair decision. That's all we can
23 ask. Again, I do appreciate that.

24 Now, this is a rape case. We don't use the word "rape"
25 anymore. We use criminal sexual conduct, commonly known as

1 rape. And the statutes have changed and it now says criminal
2 sexual conduct, and His Honor is going to read the statute
3 to you. There's criminal sexual conduct in the First Degree
4 and Criminal sexual conduct in the Third Degree. He's going
5 to read all of that to you. He's going to read all of the
6 definitions, so please listen intently to that because that
7 makes a lot of difference as to whether or not there is
8 guilt or innocence in what he is coming forward with the
9 crime.

10 Now, rape cases quite often are "he said, she said,"
11 and that's exactly what this is. Jessica Fredericks said,
12 "He raped me." She used the word "rape." He raped me. She
13 took the stand and she testified and you had the opportunity
14 to listen to her testimony. Leslie Twyman, the defendant,
15 says, "No, I did not." He took the stand. He took the
16 oath, the same oath that Jessica took and you had a chance
17 to listen to him. Basically, that's the direct evidence.
18 "He did it." "No, I did not do it." That's not enough to
19 convict anyone. That's one person saying one thing and
20 another person saying another thing. One person taking the
21 same oath as another person that's saying, "I didn't do it."
22 And her saying, "He did do it."

23 We have to look at the other evidence. What is the
24 other evidence that we have or don't have to show whether or
25 not Leslie Twyman committed criminal sexual conduct, either

1 First Degree or Third Degree, or both, on Jessica
2 Fredericks. That's what we have to look to next.

3 Now, as we've said in the beginning, the DNA is
4 missing. DNA is now the magic bullet that runs so many
5 trials, because DNA doesn't lie. DNA is what it is. If we
6 had DNA today, if we had it in front of you, you wouldn't be
7 here. You'd be sitting on another case, because this case
8 would be over. But we don't have the DNA. DNA, as the lady
9 said from the State Law Enforcement Division, stated that
10 everybody has different DNA. That it is a, in effect, a
11 fingerprint. We don't have it here. Now, what we know
12 about this case, we obviously know that Jessica had sexual
13 intercourse; we know that. But where is the DNA?

14 Now, there are a whole lot of reasons why you wouldn't
15 have DNA. As I understand the testimony, you can have the
16 semen carries the sperm, but if you don't have the sperm,
17 you don't get DNA. Now, I wasn't that good in Chemistry,
18 but that's what they said, and I agree with them.

19 So that would mean there's no sperm in the semen. Now,
20 the lady testified about what could cause that, but there
21 wasn't any. Therefore, you can't match that to Mr. Twyman.
22 Now, one of the things that would cause a lack of semen is
23 drug use. Mr. Twyman voluntarily admitted that he had used
24 drugs in the past. Does that mean that his semen is gone?
25 Not necessarily, because do you remember what he said? He

1 has children. He's not shooting blanks. He's got children.
2 Why would there not be semen -- why would there not be the
3 DNA? Why would it not be there if he has children? Why is
4 he not registering if that was him?

5 That raises reasonable doubt right there. Was that him
6 or was that somebody else? And remember something else,
7 something that we probably should have dwelled on a little
8 more, he voluntarily gave up his DNA. When the officer went
9 to him and asked for a sample, he volunteered. he gave it
10 right then. He has constitutional rights, but he gave up
11 that swab for them to check. That DNA could have been a
12 nail in the coffin. But he gave it up; he gave it up
13 voluntarily. He said, here, you take it. Well, it didn't
14 clear him. Does that show that he was afraid of being found
15 out? Of someone hiding voluntarily to give up their DNA?
16 Voluntarily to give up for the State to put them in prison?
17 I submit to you that that's not the situation.

18 And I've got some other questions about the evidence,
19 too. Remember, if you will, momma got up and testified that
20 she preserved the evidence. She did a wonderful job. She
21 did a smart thing. She said no shower. You keep your
22 clothes. You keep everything until law enforcement gets
23 here. She did all that. Now, what happened? They didn't
24 find any semen. They didn't find any hair. All this to
25 keep DNA, and they didn't find it; didn't find anything that

1 could link Mr. Twyman or anybody else to this crime. They
2 found nothing. You know, something is wrong there. This is
3 the stuff that finds people guilty or finds people innocent.
4 This is the building block of the justice system now is the
5 forensic evidence. That's why it's so popular on
6 television, because it's so fascinating and it's so
7 accurate, and it's so abundant, and it's everywhere. I'm
8 dropping skin cells right now that you could get DNA off of.
9 And they didn't find anything?

10 And this thing about this seat cushion. This
11 supposedly washed seat cushion. Was it not checked for any
12 residual film? Was it not checked for any blood? Was it
13 not checked for anything? No. This was a man who washed
14 seat cushions, smart enough to do that, but dumb enough to
15 give his DNA? And he's supposed to have raped somebody?
16 Something's wrong there. Something raises red flags about
17 this whole thing.

18 Now, the momma preserved the evidence, but the evidence
19 produced nothing. That just doesn't make sense. And he's
20 charged with two crimes: criminal sexual conduct in the
21 First Degree, and criminal sexual conduct in the Third
22 Degree, First and Third. The State wants you to convict him
23 of both of them. One of them, criminal sexual conduct in
24 the Third Degree where they say Jessica is mentally
25 defective, mentally deficient. And at the same time, we ask

1 you to listen to all her evidence, believe all of it, but
2 then on the other hand, she doesn't have a problem;
3 therefore, convict him of this crime.

4 I'm not so certain about the mental problems this young
5 lady has. She's pretty versed. She has a speech
6 impediment. She had a problem getting across her ideas, but
7 as one of the people from the school said, the lady who sits
8 with her most of the day in classes says that she can do the
9 work ----

10 **ASST. SOL. SHELTON:** Objection. The statement of the
11 evidence, Your Honor.

12 **THE COURT:** Counsel approach.

13 (WHEREUPON, A BENCH CONFERENCE IS HELD OUT OF THE
14 HEARING OF THE JURY.)

15 The lady who testified was the speech therapist, not
16 the classroom teacher, and I apologize for telling you
17 something -- if I tell you something that you remember some
18 other way, then you use your memory as to that.

19 Now, that is an element in this and the Judge will
20 explain all of that to you about whether or not she is
21 mentally deficient and whether or not she is able to convey
22 to you her thoughts.

23 Now, it just seems to me that it's wrong to convict
24 someone of two crimes with the same people, the same fact
25 situation, basically all the elements; but that's up to you.

1 Mr. Twyman, as I said earlier, took the stand and he
2 admitted that he wasn't a perfect person. He admitted that
3 he had used drugs in the past. He admitted that he had been
4 in jail. He admitted he came down here to get away from
5 what was going on in New York. He admitted to all of that.
6 He wanted you to know that.

7 The main point that I want to make here is and this is
8 underlying the whole presentation preview is that this is
9 "He said, she said." There must be other evidence. Now,
10 the State wants to talk about coercion in the sexual act.
11 There's evidence that Jessica had sexual intercourse with
12 someone that day. She's 18 years old. She obviously had
13 sexual relations with someone. Was it coerced? The lady
14 from MUSC said they could not conclusively say that this was
15 coerced or it wasn't coerced. They could say that there was
16 some discoloration, but they cannot even say if it was
17 coerced.

18 So really, basically, and I'll wrap it up, because I
19 think I've told you what I wanted to tell you, is that this
20 is "He said, she said," and it is no other evidence from his
21 involvement in this. We talk about the scales of justice.
22 "He said" on one scale, "she said" on the other scale.
23 You've got to dip those scales in order to get a conviction.
24 His Honor will talk to you about that. He's going to tell
25 you all about that. And in this case, that's just not the

1 situation.

2 Both of them sat up there, both of them talked to you,
3 both of them took the same oath to tell the truth. And both
4 of them wanted you to believe them. This situation, ladies
5 and gentlemen, I ask you to find him not guilty on both of
6 these counts and allow him to go about his life and
7 reconstruct it. Thank you very much.

8 **THE COURT:** Mr. Shelton?

9 **ASST. SOL. SHELTON:** Thank you, Your Honor. May it
10 please the Court?

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

12 **CLOSING ARGUMENT**

13 **BY ASST. SOL. SHELTON:**

14 You may remember the opening statement when I said
15 there's three words that can really sum up this case: plan,
16 lure, and vulnerable. On August 21st, 2010, the defendant
17 had a plan. He went to her house, luring Ms. Jessica
18 Fredericks back to the house where she was staying, a
19 vulnerable young woman, and raped her.

20 Now, "he said, she said." Is that all there is in this
21 case? Think about it. The scales of justice, "he says, she
22 says." Well, here's the problem with that argument. When
23 Mr. Twyman took the stand and told you his version of the
24 events, it became much more than a "he said, she said." It
25 became not just "he said, she said," but you don't have to

1 accept the fact that Jessica's stepfather took the stand,
2 and he just flat out lied to you. That he perjured himself
3 in order to accept that you find Mr. Twyman innocent.

4 So it becomes a "he said, she said, he said," and not
5 just about one thing, but about little things like
6 cigarettes; little things like I gave the cigarettes to him,
7 he didn't give the cigarettes to me. And then big things,
8 flat out slander, and find that the step-father is having
9 sex with this young woman. The man who called 911. The man
10 who was angry when police were there. The man who was
11 holding back his other step-son to go and beat up the
12 defendant. That is the man he points a finger at.

13 So you have "he said, he said, she said," then you have
14 Ms. Wilder, her mother. You have to accept the fact that
15 she got up there and everything she told you was a lie in
16 order to believe Mr. Twyman. In order to uphold that
17 argument of "he said, she said." Then, you have Jessica, a
18 young woman with an IQ of fifty. Who went through a
19 horrible, traumatic incident, and was brave enough, even
20 with her disability, with her ability to speak very limited,
21 with her cognitive ability that of a child, even three
22 experts say that; three people that know her well. She
23 identified this defendant as the man who did this. The man
24 who raped her in the vagina. The man who raped her in the
25 butt. And then every time she was trying to be questioned,

1 trying to be tripped up, that was before Ms. Gooding called.
2 Leslie Twyman was there with her when the rape happened.
3 She asked, "Is Leslie there?" I said, "Yes," he was there.

4 "He," and she pointed at him, "put his penis in my
5 mouth two times." "He tell me when we go to Court, he gonna
6 make up lies so I could go to jail for him." The fear that
7 she had to overcome. "I wiped the blood up." I also told
8 you in opening statement, this case comes down to one thing.
9 Who are you going to believe? Perhaps the defendant has a
10 condition we don't know about. We know this: he's a heavy
11 drug user. We don't know how old that child is. That child
12 could be 20 or 30 years old. He's a heavy drug user in the
13 last five years. He doesn't live with his child, does he?
14 We know that. He lives with Ms. Gooding. He doesn't have
15 any other place to go.

16 Heavy drug user by his own admission for five years and
17 what did the DNA expert say? That's one of the many things
18 that can lead to a low sperm count. He also said something
19 else that was interesting, "Oh, if I came in her, she'd have
20 semen in her." Well, remember when her mother found the
21 semen dripping out in the bathroom? Oh, she had semen in
22 her. The nurse found semen in her. Who are you going to
23 believe?

24 I want to talk a little bit about lure. What is to
25 lure? To lure, by Merriam Webster, is to draw, with a hint

1 of pleasure or game. To draw in with pleasure, to rape.
2 When the actor engages in sexual battery and when the
3 victim, also the victim of forceful confinement, kidnapping,
4 or any other similar offense or act. So let's talk about
5 that language. Sexual battery, what is that? Sexual
6 intercourse, cunnilingus, fellatio, anal intercourse, or any
7 intrusion, however slight, or any object. There's no
8 question that this happened to Jessie. What did she testify
9 to? Sexual battery, sexual intercourse, or fellatio. All
10 those things happened to her. And the evidence shows it.
11 Now it's become even more of a "he said, she said." Because
12 not only is her story true, it's backed up by the medical
13 testimony. Where was she injured? All over through the
14 depths of her vagina. What causes the injury in the cervix?
15 Blood pours.

16 Kidnapping. Sexual battery, and while also the victim
17 of kidnapping, or something like this. It's another act or
18 offense like kidnapping. Kidnapping is to seize, confine,
19 inveigle, decoy, kidnap, not just kidnap, but all these
20 other things, inveigle, decoy, or carry away. It doesn't
21 have to be all these things. It can be any of these things.
22 Inveigle means to lure by false pretense, promises, false
23 representations.

24 What did he tell her? Again, he lured her. The phone.
25 Ms. Gooding, he called her one time. She didn't get the

1 call. He calls her again. Why? Remember when he said that
2 she was going to be gone all day, but he wasn't sure when
3 she was going to get back? He wants to make sure he knows
4 where she is. How far away she is. He leaves a message:
5 "I'm going to go get Jessica to sit with your son. I've got
6 a job." So he goes and he gets her and brings her back to
7 the house. He calls her back as he talks about in his
8 testimony and he says that he's going to have a job with a
9 friend, right? A friend, and then he's thinking about that,
10 and then a couple minutes later -- "Well, last night, he
11 told me he didn't have any friends." So she calls him back
12 to question him about that. "Oh no, this is a good friend,
13 a good friend." But he didn't have any good friends last
14 night. Something happened overnight and he has a good
15 friend. Again, who are you going to believe?

16 By false pretense, promises, et cetera, it's a false
17 pretense. Decoy means to lure, successfully lure. He went
18 over there, he took her, he brought her back successfully.
19 What does confine mean? Confine means to limit, to
20 restrict, to shut in. She tried to get out the front door
21 and he wouldn't let her. He forcibly had sex with her, and
22 I think that means that she couldn't leave. It can be any
23 of these things or any other similar offense or act. Any
24 other similar offense or act like kidnapping, inveigle,
25 decoy, and to confine.

1 Again, this is what I did say. He lured Jessica to Ms.
2 Gooding's house and talked her into staying; he lured
3 Jessica to Ms. Gooding's house. To confine, he limited or
4 restricted Jessica to the house. Again, lure, to draw with
5 intent of pleasure.

6 I tell you these things because this is what the law
7 is. There is no coercion here, despite what Mr. Beach said.
8 That's not part of the part of this law that he is charged
9 with. Listen to the judge's charge on the law. These are
10 just some of the reasons he is guilty of criminal sexual
11 conduct, first degree. He lured her to the house with false
12 reasons. He was successful. He had talked with her. Then,
13 he raped her in the vagina, in the butt, in the mouth, two
14 times. The voice message shows a plan. Shows his intent.
15 He called about it ahead of time. The phone call. That was
16 before it happened when he called her to the house. At that
17 point, he knew where Ms. Gooding was. At that point, he
18 started the rape.

19 Semen was found. The mother found semen. "If I came
20 in her, there would be semen." Well, there was semen.
21 Explanation for the DNA not being there, as well as the age,
22 as Mr. Beach brought out, if you remember, of the semen
23 sample. The victim running from Ms. Gooding's. Rodney
24 heard her screaming. Again, her step-father who called 911
25 himself. The mother could tell something was wrong. The

1 brother of the house was angry. She had injuries to her
2 vagina, her anus, and then to her cervix. Injuries that
3 showed she was a victim of sexual assault.

4 Again, if you are going to believe the defendant's
5 account of what he said happened, you have to discount
6 everything that Mr. Wilder said. You have to accept
7 everything that he says to be untrue. He heard Jessica
8 running back. He called 911. Criminal sexual conduct,
9 third degree, is sexual battery, which we've already gone
10 over, which just means intercourse, fellatio, anal
11 intercourse, no coercion, nothing like that; this is
12 something different.

13 And mentally defective. Mentally defective means that
14 a person suffers from mental defects or which would render a
15 person temporarily or permanent incapable of appraising the
16 nature of his or her conduct. What is appraising the nature
17 of his or her conduct mean? Determining the consequences of
18 your conduct. Determining the difference between how one
19 action that looks bad, and another action that is bad, how
20 one could be worse than the other. Like, taking candy when
21 you're not supposed to, and then taking a piece from a car
22 when you're not supposed to and driving your car.

23 You see, it's not right from wrong. She's knows what's
24 right and wrong. She knew something wasn't right when she
25 got there. And also, we have to show that the defendant

1 knew, or should have known, that she was mentally defective,
2 or mentally incapacitated. Do you remember Brandon Craven?
3 He had never met her before. He was the first officer. He
4 said as soon as he saw her, he knew that she was mentally
5 disabled. You saw her. You can use your own -- you can use
6 your own senses, your own common sense, to determine whether
7 someone should know or not know. This wasn't the first time
8 that he had met her. Ms. Gooding said that he drove the van
9 while she was in the car with him. He asked her how old she
10 was. She said she was Eighteen. Think about that.

11 Physically helpless is another thing you can find him
12 guilty on with criminal sexual conduct, third degree. These
13 and many more you can agree that he is guilty of criminal
14 sexual conduct in the third degree. He assaulted her in the
15 mouth, in the vagina, in her anus. That's a sexual battery.
16 He met her in one of the vans, he had met her before, asked
17 Ms. Gooding her age. Officer Craven knew immediately that
18 she was disabled. Brian Pearson, remember the school
19 psychologist who stated that she cannot recognize threats.
20 Childlike, all three experts, childlike, six or seven year
21 old; speech impediment. She was unable to control her
22 conduct, her speech, when she's upset. Trouble appreciating
23 the consequences of her actions. Trouble recognizing
24 severity of her actions. She will always need help. She's
25 a strong young woman and she showed that to you.

1 She will always need help. Again, these are the
2 reasons we brought these criminal sexual conduct, third
3 degree. It comes down to one thing: who do you believe?

4 What is reasonable? What is reasonable doubt? Now,
5 the State's burden is not to prove the case beyond any
6 doubt. There's very few things in this world that we can
7 prove 100 percent. Even science has its limits. And that
8 has been shown in this trial. I'm sure you learned that
9 semen, you might not find DNA in semen. Science has its
10 limits. Sweat doesn't necessarily have DNA. DNA isn't just
11 this cloud that's falling off of everyone all the time. It
12 has to be in a mouth. It's not just the saliva, it's the
13 skin cells. That's why when we take a sample, you rub it,
14 you swab it. There's very few things in this world that you
15 can prove with a 100 percent certainty. That's not what's
16 required. That's why it's called a reasonable doubt; not
17 any doubt.

18 If you are firmly convinced by testimony from the State
19 and all of the evidence that the defendant is guilty, then
20 you must convict. A reasonable doubt. Was the defendant's
21 story reasonable? Ms. Gooding said that when she called the
22 house and found the defendant with the victim, how long was
23 it before she got the call that said something had happened
24 to Jessica? An hour? An hour and a half? Is that
25 reasonable? When the police came, where was the step-

1 father? Where was the defendant? And Jessica, if you
2 believe Jessica?

3 This is not a "he said, she said." This is well beyond
4 a "he said, she said." Think of all the evidence. Why
5 should you believe Jessica? Because not only did she say
6 what happened, but Mr. Wilder, her step-father saw her
7 running, heard her screaming. Her mother heard her knocking
8 on the door, came and opened the door. She was so worried.
9 She was so upset.

10 Detective Gathers was there for two hours and she was
11 still upset. The only thing that was calming her down was
12 writing. And you saw that. She wrote, "He hurt me." "Who
13 is he?" "That man." "Who's the man that opened the door
14 and asked you to come to Ms. Gooding's?" "That man." "Who
15 is the man that put his penis in your mouth?" "That man."
16 "Who is the man that put his penis in your vagina?" "That
17 man." "Who is the man that put his penis in your butt?"
18 "That man." "Who is the man?" "Why are you here, Jessica?"
19 "Because I was raped." "Who raped you?" "That man." "Are
20 you sure?" "Yes."

21 I ask you to remember all the testimony in the case. I
22 ask you to remember the consistency of the testimony. Think
23 about what is reasonable and what is not reasonable. Think
24 about what remains the same.

25 I leave you with this, falsehoods, untruths, they will

1 grow; they will shrink. "I had a job." "Who is the man?"
2 "Jimmy, I don't know. I met him at the library." "Where
3 you going to go? What job did you have?" "Something about
4 homes." Did he ever go? Did he ever show up? No.
5 Falsehoods will wade in the wind. Truths remain the same.
6 I ask you to go back, deliberate. It doesn't mean hesitate
7 to think. This is serious. Think about it. Talk about it.
8 Think about what is reasonable and what is not reasonable.
9 If there is any doubt, there's no reasonable doubt. If
10 you're firmly convinced, come back. I submit to you that
11 you should be firmly convinced of a guilty verdict for
12 criminal sexual conduct, first degree, and a guilty verdict
13 for criminal sexual conduct, third degree. Two different
14 offenses, two different crimes. Thank you so much for your
15 attention.

16 **THE COURT:** Mr. Foreman, ladies and gentleman of the
17 jury, before I begin my charge, I'm going to give you a
18 chance to take a quick break, use the restroom, stretch your
19 legs, and then we'll come back and have the charge. Do not
20 discuss the case until you have heard my charge. I'm not
21 going to take long, just five minutes. I want to make sure
22 everyone gets the chance to use the restroom, take a break,
23 and come straight back in here and I'll charge you the law.
24 You may retire to your jury room.

25 (10:55 A.M., 4-20-2011, WHEREUPON, THE JURY EXITS THE

1 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

2 **THE COURT:** All right. If anyone needs to take a
3 break, because I'm not going to allow anybody in or out
4 during the charge. If you need to take a break, now is the
5 time to do it during this break. We'll take five minutes.

6 (BRIEF PAUSE IN THE COURTROOM.)

7 **THE COURT:** Bring us the jury. No one in or out.

8 BAILIFF: One in the bathroom, Judge.

9 **THE COURT:** Always.

10 (11:10 A.M., 4-20-11, WHEREUPON, THE JURY ENTERS THE
11 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

12 **JURY CHARGE**

13 **THE COURT:** All right, Mr. Foreman, ladies and
14 gentlemen of the jury, it is now my duty to charge you the
15 law of this case. The State of South Carolina has charged
16 the defendant, Leslie Twyman, in this indictment, which
17 contains two counts. The State has charged the defendant in
18 Count One with First Degree Criminal Sexual Conduct, and in
19 Count Two with Third Degree Criminal Sexual Conduct, all of
20 which are contained in Indictment 2010-GS-15-00849.

21 I remind you first of all, that the fact that the
22 defendant was arrested, the fact that the defendant was
23 charged, the fact that the defendant was indicted in this
24 case is not evidence in this case, nor does it create any
25 presumption or inference of guilt.

1 The indictment is simply the formal written instrument,
2 this piece of paper, is the way this case gets brought into
3 this court. It is the formal document which brings the case
4 to this court.

5 Now to this indictment, the defendant has pled "not
6 guilty." And that plea, as I told you by the defendant of
7 not guilty, puts the burden on the State of South Carolina
8 to prove the defendant guilty beyond a reasonable doubt. A
9 person charged with committing a criminal offense in South
10 Carolina is never required to prove himself innocent.

11 I charge you, ladies and gentlemen, that it is an
12 important rule of the law, that the defendant in a criminal
13 trial, no matter what the seriousness of the charge may be,
14 will always be presumed to be innocent of the crime for
15 which the indictment was issued, unless guilt has been
16 proven by evidence, satisfying you of that guilt, beyond a
17 reasonable doubt.

18 The presumption of innocence is not just a legal
19 theory. It is not just a legal phrase. It is a substantial
20 right to which every defendant is entitled, less you, the
21 jury, are satisfied from the evidence of the defendant's
22 guilt beyond a reasonable doubt.

23 What is a reasonable doubt in the law? I charge you,
24 ladies and gentlemen of the jury, that a reasonable doubt is
25 the kind of doubt that would cause a reasonable person to

1 hesitate to act. The State has the burden of proving the
2 defendant guilty, beyond a reasonable doubt. Some of you
3 may have served as jurors in a civil case, where you were
4 told that it is only necessary to prove that a fact is more
5 likely true than not true. In a civil case we call that "by
6 the greater weight or the preponderance of the evidence."
7 In a criminal case, such as the case here, the State's proof
8 must be more than that. It must be beyond a reasonable
9 doubt.

10 Proof beyond a reasonable doubt is proof that leaves
11 you, ladies and gentlemen of the jury, firmly convinced of
12 the defendant's guilt. Now, ladies and gentlemen, there are
13 very few things in this world that we know with absolute
14 certainty. And in criminal cases, the law does not require
15 proof that overcomes every possible doubt. If based on your
16 consideration of the evidence, you are firmly convinced that
17 the defendant is guilty of the crime charged, you must find
18 the defendant guilty. If, on the other hand, there is a
19 real possibility that the defendant is not guilty, you must
20 give the defendant the benefit of the doubt and find the
21 defendant not guilty.

22 I remind you, ladies and gentlemen, that during this
23 trial, you and I have had certain duties to perform. As the
24 trial judge, it has been my responsibility to preside over
25 the trial of the case, and I also have the duty to charge

1 you on the law and the rule on the admissibility of evidence
2 offered during the trial.

3 Now, you are, as the jury, to consider only the
4 competent evidence before you. If there was any testimony
5 ordered stricken from the record in this case during the
6 trial, you must disregard that testimony. You are to
7 consider only the testimony which has been presented from
8 this witness stand, any exhibits which have been introduced
9 into evidence during the trial of the case and any
10 stipulations of counsel that may have been entered by the
11 parties during the trial of the case.

12 Now I also have, as I told you, the additional duty to
13 charge you the law that applies to this case. As the
14 presiding judge, I'm the sole judge of the law. And it is
15 your duty, as jurors, to accept and to apply the law as I
16 now state it to you. If any of you already have any
17 preconceived ideas about what you think the law is, or you
18 have a feeling or an opinion about what feel the law ought
19 to be, and it does not agree with what I now tell you the
20 law is, you must put aside any of your preconceived opinions
21 or any of your preconceived ideas, because each of you took
22 an oath. And in that oath you swore that you would accept
23 the law and apply the law, exactly as I now state it to you.

24 In every case tried before this Court with a jury, the
25 jury becomes the sole and the exclusive judges of the facts

1 in the case. A trial judge, such as myself, I cannot state,
2 I can't comment, I can't intimate, I can't make any
3 statement whatsoever to you, a trial jury, about the facts
4 in the case.

5 Since you, ladies and gentlemen, the jury, are the sole
6 judges of the facts in this case, you are not to infer from
7 what I've said during the progress of this trial in ruling
8 upon the admissibility evidence, or otherwise, or anything
9 that I might say now during the course of this instruction
10 to you, that I have any opinion whatsoever about the facts
11 in this case. The law does not allow me to have an opinion
12 about the facts in this case. This is a matter solely for
13 you, ladies and gentlemen. The jury is the sole judges of
14 the facts in this case. As jurors, it becomes your duty, as
15 the juror, to determine the effect; it becomes your duty to
16 determine the weight, the value; it becomes your duty to
17 determine the truth of the evidence that's been presented
18 during the trial of this case.

19 Now, there are two types of evidence generally
20 presented in a trial. And like many things in the law,
21 ladies and gentlemen, we have names for those two general
22 types of evidence. We call the two general types of
23 evidence direct evidence and circumstantial evidence.
24 Direct evidence is the testimony of a person who claims to
25 have actual knowledge of a fact, such as an eyewitness to an

1 event. Direct evidence is evidence which immediately
2 establishes the main fact to be proven.

3 Circumstantial evidence, as contrasted with direct
4 evidence, is proof of a chain of facts and circumstances,
5 indicating the existence of a fact. Circumstantial evidence
6 is evidence which immediately establishes collateral facts
7 from which the main fact may or may not be inferred.
8 Circumstantial evidence is based on inference and not on
9 personal knowledge or personal observation.

10 The law makes absolutely no distinction between the
11 weight or the value to be given to either direct evidence or
12 circumstantial evidence. Nor is a greater degree of
13 certainty required of circumstantial evidence than of direct
14 evidence. You, ladies and gentlemen of the jury, should
15 weigh all the evidence. You should consider, as a jury, all
16 the evidence in this case, both direct and circumstantial
17 evidence. After weighing and considering all the evidence
18 in this case, both direct and circumstantial, if you are not
19 convinced of the guilt of the defendant beyond a reasonable
20 doubt, you must find the defendant not guilty.

21 On the other hand, after weighing and considering all
22 the evidence in this case, both direct and circumstantial,
23 if you are convinced of the guilt of the defendant beyond a
24 reasonable doubt, you must find the defendant guilty.

25 Necessarily, as a jury, are going to have to determine

1 the believability or the credibility of the witnesses who
2 have testified during the trial of this case. Credibility
3 simply means believability. It therefore becomes your duty
4 when you're in that jury room, it becomes each of your duty
5 in that jury room, to analyze and to evaluate the evidence
6 and determine which evidence convinces you of its truth.

7 In determining the believability of the witnesses who
8 have testified in this case, you may believe one witness
9 over several witnesses, or several witnesses over one
10 witness. You may believe a part of the testimony of a
11 witness and reject the remaining part of the testimony of
12 that same witness.

13 You may believe the testimony of a witness in its
14 entirety, or you may reject the testimony of a witness in
15 its entirety. You may consider whether any witness has
16 exhibited to you, as a juror, any interest, any bias, any
17 prejudice or other motive in the case.

18 You may consider whether the witness has an interest in
19 the outcome of the case. You may also consider the
20 appearance or the manner of the witness while the witness is
21 on the witness stand, which we call the demeanor of the
22 witness. Anything that is in evidence, ladies and gentlemen
23 of the jury, you, as the jury, have the right to consider in
24 evaluating, weighing and considering the evidence to
25 determine the believability or the credibility of the

1 witnesses who have testified during the trial of this case.

2 Now, you have heard evidence in this case that the
3 defendant was convicted of a crime. Other than the one for
4 which the defendant is now on trial. This evidence may be
5 considered by you, if you conclude it is true, only in
6 deciding whether the defendant's testimony is believable,
7 and for no other purpose. You must not consider the
8 defendant's prior record as any evidence of the defendant's
9 guilt on the charge or charges we are trying today.

10 Now, the rules of evidence, as I told you during the
11 trial, and we had a number of these witnesses in the trial,
12 ordinarily do not permit witnesses to take oath and sit on
13 this witness stand and give their opinion. Witnesses
14 ordinarily cannot testify to opinions. They can't testify
15 to conclusions. An exception to this rule exists for
16 witnesses that we call expert witnesses. A witness who by
17 education, training or experience claims to have become an
18 expert in some art, science or profession may, if qualified
19 by the Court as a matter of law, give an opinion as to the
20 subject the witness claims to be an expert in, and they also
21 give the reasons for his or her opinion.

22 You should consider any expert opinion, as the jury, by
23 a witness, and just like any other evidence in this case,
24 you, as the jury, give it the weight you think it deserves.
25 If you decide that an expert witness' opinion is not based

1 on sufficient education or experience, or if you decide that
2 that the reasons given in support of the opinion are not
3 sound, or that the opinion is outweighed by other evidence,
4 you may disregard the opinion entirely.

5 An expert witness' opinion is to be given no greater
6 weight than that of other witnesses, simply because the
7 witness is an expert.

8 Now, during the trial, ladies and gentlemen, you've
9 heard testimony from a young person. Where a witness is a
10 young person, you must determine, as with any witness or a
11 lay witness or expert, whether that testimony is believable.
12 In deciding believability, you may consider not only matters
13 that I've already discussed with you during this charge on
14 believability and credibility, but you may also consider the
15 age of the young person, the young person's ability to
16 observe and remember facts, and the young person's ability
17 to understand and answer questions.

18 Because a young person may not fully understand what is
19 happening, it is up to you, the jury, to decide whether the
20 young person understood the seriousness of appearing as a
21 witness at this criminal trial, whether the young person
22 understood the questions, whether the young person has a
23 good memory, and whether the young person understands the
24 difference between lying and telling the truth. In
25 addition, a young person may be influenced by the way

1 questions are asked. It is up to you, ladies and gentlemen
2 of the jury, to decide whether the young person understood
3 the questions asked.

4 I charge you, ladies and gentlemen, that during this
5 trial, a statement or statements alleged to have been made
6 by the defendant have been admitted into evidence in this
7 case. While this evidence has been admitted, I instruct you
8 that make the ultimate decision, ladies and gentlemen, of
9 whether or not the defendant made any statement or
10 statements.

11 If the defendant did make the statement or statements,
12 in your opinion, you must determine whether the statement or
13 statements were voluntarily and of the defendant's own free
14 will. This means that the statement or statements were not
15 caused by pressure, force, fear, threats, coercion or
16 intimidation or by hope or a promise of leniency or reward
17 of any kind.

18 The State has the burden of proving behind a reasonable
19 doubt that the alleged statement or statements were
20 voluntary. If you determine that they were, you may give
21 the statement or statements any further consideration that
22 you, as a jury, deem proper. You must decide as a jury what
23 weight, if any, should be given to the alleged statement or
24 statements. If you determine the alleged statement or
25 statements were not the free and voluntary statement or

1 statements of the defendant, you should not consider the
2 statement or statements at all.

3 You have heard the term during this trial
4 "stipulation." And I defined that for you at the beginning
5 as one of the forms of evidence. The stipulation is an
6 agreement, it is an admission or a concession made in
7 judicial proceedings by the parties or their attorneys.
8 Stipulations, of course, are binding upon those who make
9 them. A stipulation is an agreement and an understanding.
10 And the Court and the jury must accept stipulations as
11 binding upon the parties.

12 If counsel in this case for the parties have stipulated
13 to any fact, or if any fact has been admitted by counsel,
14 you will regard that fact as being conclusively proved as to
15 the party or parties making the stipulation or admission.

16 Now, in order to establish criminal liability or
17 criminal responsibility, criminal intent is required. This
18 is just generally, ladies and gentlemen. For example, the
19 mental state required to be proven by the State for any
20 crime might be purpose. I'm going to give you examples of
21 criminal intent: Purpose, intent, knowledge, recklessness,
22 and in some cases even what we call criminal negligence.
23 Those are examples of criminal intent.

24 Criminal intent must be proven by the State beyond a
25 reasonable doubt. Criminal intent is always a matter that

1 must be determined by the jury, from the circumstances
2 surrounding the situation, based on evidence introduced
3 during the trial of the case.

4 Now, ladies and gentlemen, there is no way that medical
5 science can dissect a person's brain, cut their head and
6 look inside and determine what that person had in mind. So
7 the law says, ladies and gentlemen, that criminal intent may
8 be inferred from the circumstances shown to have existed,
9 based on evidence introduced during the trial of the case.

10 This, ladies and gentlemen, is how you as a jury make
11 the determination of whether or not any element in any crime
12 requiring criminal intent was present. It is not necessary
13 to establish criminal intent by direct or positive evidence.
14 But intent may be established by inference, in the same way
15 as any other fact, by taking into consideration the acts of
16 the parties, and all the facts and circumstances of the
17 case, based on evidence introduced during the trial of the
18 case.

19 Criminal intent is a mental state, it's a conscious
20 wrongdoing. It is up to you to determine what the defendant
21 intended to do, based on the circumstances shown to have
22 existed from evidence introduced during the trial of the
23 case.

24 Now I charge you, ladies and gentlemen, that in this
25 case, the indictment in this case alleges two different and

1 distinct criminal offenses against the defendant. The
2 charges are, as I told you, the defendant, Leslie Twyman, is
3 charged in one indictment: First, with Count One, First
4 Degree Criminal Sexual Conduct and Count Two, Third Degree
5 Criminal Sexual Conduct. Each of those two charges is a
6 separate and a distinct offense. You must decide each
7 charge separately, on the evidence and on the law applying
8 to it, uninfluenced by your decision as to any other charge.

9 If you find the defendant guilty or not guilty of First
10 Degree Criminal Sexual Conduct, then you will also be asked
11 to find the defendant guilty or not guilty of Third Degree
12 Criminal Sexual Conduct.

13 I'll now define the offenses for you. Let's begin with
14 Criminal Sexual Conduct, First Degree. In Count One of this
15 indictment, charging the defendant, Leslie Twyman, he is
16 charged with the offense of Criminal Sexual Conduct, First
17 Degree. The first element which the State must prove beyond
18 a reasonable doubt is that the defendant engaged in a sexual
19 battery with the victim. "A sexual battery is sexual
20 intercourse, cunnilingus, fellatio, anal intercourse, or any
21 intrusion, however slight, of any part of a person's body or
22 of any object into the genital or anal openings of another
23 person's body, except when the intrusion is accomplished for
24 medically-recognized treatment or diagnostic purposes."

25 That is the definition of sexual battery under the law of

1 the State of South Carolina.

2 If you find that the State has not shown beyond a
3 reasonable doubt that a sexual battery occurred, you would
4 stop deliberating and your verdict would have to be not
5 guilty.

6 If you find that a sexual battery did occur, you must
7 then decide for Criminal Sexual Conduct, First Degree,
8 whether the State has proven beyond a reasonable doubt that
9 the victim submitted to sexual battery while the victim was
10 also the victim of forcible confinement, kidnapping,
11 robbery, extortion, burglary, housebreaking, or any other
12 similar act or offense.

13 Kidnapping has been mentioned by me now as an offense
14 described in First Degree Criminal Sexual Conduct. For
15 kidnapping, the State must prove beyond a reasonable doubt
16 that the defendant knowingly and unlawfully seized,
17 confined, inveigled and decoyed, kidnapped, abducted or
18 carried away another person without authority of law.

19 To do a thing unlawfully is to do it willfully or
20 against the law. Knowingly means with knowledge,
21 consciously, not accidentally. Seize means to take hold of
22 suddenly or to take hold of forcibly. Confine means to
23 limit, to restrict or to enclose within bounds, to imprison
24 or to shut or keep in.

25 Inveigle means to lure, to entice or lead astray by

1 false representations, promises or other deceitful means.
2 Decoy means to lure by, or as if by decoy. A decoy is
3 something to entice a person into a trap. Kidnap is to
4 remove a person against his will by unlawful force or by
5 fraud. Abduct means to carry off secretly or by force for
6 an illegal purpose. Carry away means to remove.

7 For all of these verbs I've just used for kidnapping,
8 the State does not have to prove that the defendant did all
9 of these things. Instead, if you find a reasonable doubt
10 that the defendant did any of these things, it could
11 constitute kidnapping. Something done without authority of
12 law is something which the law does not sanction, the law
13 does not permit, the law does not allow, condone, or provide
14 justification for.

15 Now, the kidnapping does not have to be for any
16 monetary gain, or personal gain, or for any illegal purpose.
17 But it may be for any reason whatsoever. Now, those are the
18 elements, ladies and gentlemen, of Criminal Sexual Conduct,
19 First Degree.

20 I charge you that the defendant is also charged with
21 Count two in this indictment, with Criminal Sexual Conduct
22 Third Degree. In order to prove Third Degree Criminal
23 Sexual Conduct, the State must prove beyond a reasonable
24 doubt that the defendant engaged in a sexual battery with
25 the victim. "A sexual battery is sexual intercourse,

1 cunnilingus, fellatio, anal intercourse, or any intrusion,
2 however slight, of any part of a person's body or any object
3 into the genital or anal openings of another person's body,
4 except when the intrusion is accomplished for medically-
5 recognized treatment or diagnostic purposes."

6 If you find that a sexual battery did occur for
7 Criminal Sexual Conduct, Third Degree, you must then decide
8 whether the State has proven beyond a reasonable doubt that
9 the defendant knew or had reason to know, that the victim
10 was mentally defective, mentally incapacitated, or
11 physically helpless, and that aggravated force or aggravated
12 coercion was not used to accomplish the sexual battery.

13 Aggravated force means the use of physical force or
14 physical violence of a high and aggravated nature to
15 overcome the victim. This includes the threat of using a
16 deadly weapon. Mentally defective means that a person
17 suffers from a mental disease or defective which renders the
18 person temporarily or permanently incapable of appraising
19 the nature of his or her conduct.

20 Mentally incapacitated means that the victim was
21 rendered temporarily unable to evaluate or temporarily
22 unable to control his or her conduct. This condition of
23 being mentally incapacitated may be caused by illness; it
24 may be caused by defect or the influence of a substance or
25 some other cause. Physically helpless means that the victim

1 was unconscious, asleep or for any other reason physically
2 unable to communicate consent to the sexual battery." Now,
3 ladies and gentlemen, those are the elements of Criminal
4 Sexual Conduct Third Degree.

5 Now, Mr. Foreman, I told you I would prepare a verdict
6 form for you. Pay absolutely no attention, ladies and
7 gentlemen of the jury, to the order in which I wrote the
8 forms of verdict. I obviously had to write one before the
9 other, and the order has no significance whatsoever. I have
10 placed at the top caption on your verdict form, Mr. Foreman,
11 says, "State of South Carolina, County of Colleton. In the
12 Court of General Sessions." Has the word "verdict". Then
13 it has State of South Carolina versus Leslie Twyman,
14 defendant, in the caption.

15 Under that, question one: We, the jury, by unanimous
16 consent find the defendant, Leslie Twyman, in Count One of
17 Indictment Number 2010-GS-15-00849," and the first form of
18 verdict under question one, Mr. Foreman, is "guilty of First
19 Degree Criminal Sexual Conduct." If that be your form of
20 verdict, you would place a checkmark on the line beside that
21 form of verdict.

22 Under question one, the second form of verdict. The
23 question: We, the jury, by unanimous consent find the
24 defendant, Leslie Twyman, in Count One of Indictment Number
25 2010-GS-15-00849," the second form of verdict is "not guilty

1 of First Degree Criminal Sexual Conduct." If that be your
2 form of verdict, you would check on the line beside that
3 form of verdict.

4 For this count and the next count, you must find one
5 form or verdict or the other. You cannot find both. So it
6 must be guilty or not guilty, and you would check on the
7 appropriate line.

8 Under question two on your verdict form: We, the jury,
9 by unanimous consent find the defendant, Leslie Twyman, in
10 Count Two of Indictment Number 2010-GS-15-00849," and the
11 first form of verdict under question two, "guilty of Third
12 Degree Criminal Sexual Conduct." If that be your form of
13 verdict, Mr. Foreman, you would check on the line beside
14 that form of verdict.

15 The second form of verdict under question two: We, the
16 jury, by unanimous consent find the defendant, Leslie
17 Twyman, in Count Two of Indictment Number 2010-GS-15-00849,"
18 would be "not guilty of Third Degree Criminal Sexual
19 Conduct." If that be your form of verdict, Mr. Foreman, you
20 would check on the line for the jury beside that form of
21 verdict. And once again, you just find one form or verdict
22 or the other. You cannot find both for either Count One or
23 Count Two.

24 Then you would sign your name, Mr. Foreman, on the line
25 where I have "Foreperson" and fill in today's date. When

1 you have reached a verdict, Mr. Foreman, and ladies and
2 gentlemen of the jury, and filled out the verdict form
3 appropriately, you will knock on your jury room door. I
4 actually gave you instructions in italics at the bottom.
5 Tell the bailiff you've reached a verdict and we will bring
6 you back out into the courtroom to publish your verdict.

7 Now I remind you, Mr. Foreman, that in addition to
8 filling out this verdict form, my law clerk, Nick Rivera,
9 has this indictment. After the trial has been concluded and
10 before you leave, he will want you to sign your name on the
11 indictment, with whatever you've written on this verdict
12 form, so the indictment and this verdict form will be
13 consistent. And he will show you how to do that after the
14 trial is over. But he'll be looking for you.

15 Now ladies and gentlemen, your verdict must be
16 unanimous. That is, it must be the verdict of each and
17 every one of you. All 12 of you must agree on a verdict.

18 Now, Mr. Foreman and ladies and gentlemen of the jury,
19 I've now charged you on the law in order to help guide you
20 to a just result in this case. You're the judges of the
21 facts in this case. And based on your determination of the
22 facts from the evidence introduced during the trial of the
23 case and on the law, as I have now explained it to you to
24 be, you're soon going to begin your deliberations.

25 Each of you have been selected as fair and impartial

1 jurors. You swore that you would fairly and impartially try
2 and determine the facts of this case. And when you comply
3 with that oath, no one can criticize your verdict. You are
4 to decide this case based solely on the evidence, testimony
5 from the witness stand, the exhibits, and any stipulations,
6 if any, of counsel.

7 You will have those exhibits with you in your jury room
8 during your deliberations, with the exception of an exhibit
9 that needs to be played on the computer, and we will require
10 you to come back in the courtroom if you wish to view that
11 or hear that.

12 You must decide the issues in this case, ladies and
13 gentlemen, without any bias, without any prejudice for or
14 against any party in this case. You cannot allow yourself,
15 as a juror, to be governed by public opinion or emotion or
16 any other arbitrary factor that is not in evidence in this
17 case.

18 Both the State of South Carolina and the defendant have
19 the absolute right to expect that each of you, the 12 of
20 you, will carefully and impartially consider all of the
21 evidence in this case, and that you will follow the law, as
22 I have instructed it to you to be in reaching your verdict
23 in this case.

24 Now, Mr. Foreman and ladies and gentlemen of the jury,
25 I'm going to ask you to retire to your jury room. Please do

1 not begin your deliberations. I might have to bring you
2 back out for some brief additional instructions. I'll know
3 in just a couple moments.

4 When it is time for you to begin your deliberations, I
5 will send the verdict form into you by the bailiff, along
6 with all the exhibits that have been introduced into
7 evidence in the trial of this case, and have the bailiff
8 inform you that you may then commence your deliberations.
9 So wait until you receive instructions from me before you
10 begin your deliberations.

11 You may retire to your jury room at this time.

12 (11:45 A.M., 4-20-11, WHEREUPON THE JURY EXITS THE
13 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
14 RECORD.)

15 **THE COURT:** Any exceptions or additions to the charge,
16 from the State of South Carolina?

17 **ASST. SOLICITOR SHELTON:** No, sir, Your Honor.

18 **THE COURT:** Any exceptions or additions to the charge,
19 from the defendant?

20 **MR. BEACH:** No, Your Honor.

21 **THE COURT:** **MR. BEACH,** I'd ask that you and Mr. Shelton
22 come forward. I'm assuming y'all do not want to -- if you
23 want me to send it back, I will. I'm going to put it on the
24 record. I'm assuming as to that memory card, that they're
25 going to need assistance out here to play that, and I told

1 them that in the charge. I'll make sure that suits the
2 State?

3 **ASST. SOLICITOR SHELTON:** Yes, sir.

4 **THE COURT:** And the defendant?

5 **MR. BEACH:** Yes, sir.

6 **THE COURT:** All right now, I want you to certify that
7 the court reporter has all the exhibits and that neither one
8 of you have any objection to the bailiff taking the exhibits
9 and the verdict form into the jury, and the bailiff
10 informing the jury they may now commence their
11 deliberations.

12 (BRIEF PAUSE WHILE EXHIBITS ARE PUT IN ORDER AND
13 ACCOUNTED FOR.)

14 **ASST. SOLICITOR SHELTON:** The State is satisfied, Your
15 Honor.

16 **MR. BEACH:** Defense also, Your Honor.

17 **THE COURT:** Do either one of you have any objection to
18 the bailiff taking the verdict form and the exhibits? Now,
19 what exhibit are we leaving in here? What number?

20 **ASST. SOLICITOR SHELTON:** This is Exhibit Number One,
21 Your Honor.

22 **THE COURT:** You agree, Mr. Beach?

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

24 **THE COURT:** That will be left in here. With the
25 exception of Number One, all the other exhibits go to jury.

1 Any objection to the bailiff taking the verdict form and
2 exhibits?

3 **ASST. SOLICITOR SHELTON:** No, Your Honor.

4 **THE COURT:** From the defendant?

5 **MR. BEACH:** No, Your Honor.

6 **THE COURT:** All right, Mr. Padgett, if you would, get
7 all the exhibits and the verdict form, with the exception of
8 State's Exhibit Number One. Take it into the jury and tell
9 the jury they may now commence their deliberations.

10 **BAILIFF:** Yes, sir.

11 (11:47 A.M., THE EXHIBITS AND VERDICT FORM ARE TAKEN TO
12 THE JURORS BY THE BAILIFF.)

13 **THE COURT:** All right. We'll be at ease while we await
14 the jury's verdicts. Solicitor, I need to meet with you now
15 to plan for the rest of the week. Mr. Beach, I'll be happy
16 for you to join us, because it's going to affect the Public
17 Defendant's Office, because I'll be turning to non-jury
18 matters at this time.

19 **ASST. SOLICITOR SHELTON:** Thank you, Your Honor.

20 **THE COURT:** I'll see you in chambers.

21 (WHEREUPON, THE COURT TAKES UP OTHER NON-JURY MATTERS
22 IN THE COURT OF GENERAL SESSIONS WHILE AWAITING A VERDICT
23 FROM THE JURY.)

24 (THEREAFTER, AT 12:45 P.M., THE BAILIFF INFORMS THE
25 COURT THAT THE JURY HAS REACHED A VERDICT.)

1 **THE COURT:** All right. I understand from the bailiff
2 that the jury's reached a verdict. Please understand,
3 ladies and gentlemen, I do not permit any type of emotional
4 outburst when the verdict's is published. If you feel you
5 can't control your emotions, I'd ask you to leave the
6 courtroom at this time, because I'll enforce that with the
7 contempt powers of my Court. So there will be no comment of
8 any kind to the jury when the verdict is published. Does
9 anybody need to leave?

10 (NO RESPONSE.)

11 **THE COURT:** Very well.

12 Anything from the State before we bring the jury and
13 publish the verdict?

14 **ASST. SOLICITOR SHELTON:** No, sir, Your Honor.

15 **THE COURT:** From the defendant?

16 **MR. BEACH:** No, Your Honor.

17 **THE COURT:** Odell, bring us the jury.

18 (12:47 P.M., 4-20-11, WHEREUPON, THE JURY ENTERS THE
19 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

20 **MADAME CLERK:** Mr. Foreman, have you reached a verdict?

21 **MR. FOREMAN:** We have.

22 **THE COURT:** You may publish the verdict. Defendant,
23 please rise, with his attorney.

24 **MADAME CLERK:** Indictment Number 2010-GS-15-849, the
25 State of South Carolina versus Leslie Twyman. We, the jury,

1 by unanimous consent, find the defendant, Leslie Twyman, in
2 Count One of Indictment Number 2010-GS-15-849, guilty of
3 First Degree Criminal Sexual Conduct.

4 We, the jury, by unanimous consent, find the defendant,
5 Leslie Twyman, in Count Two of Indictment Number 2010-GS-15-
6 849, guilty of Third Degree Criminal Sexual Conduct. Signed
7 by foreperson, Larry M. Carter, Jr.

8 If this is your verdict, please raise your right hand.
9 (TWELVE JURORS RAISE THEIR HANDS.)

10 **MADAME CLERK:** Thank you. You may put them down.

11 **THE COURT:** Let the record reflect, twelve hands were
12 raised. Mr. Beach, you and your client may be seated. Is
13 there anything from the defendant before I excuse the jury?

14 **MR. BEACH:** We would request to poll the jury, Your
15 Honor.

16 **THE COURT:** **MADAME CLERK,** would you please poll the
17 jury? Ladies and gentlemen, the Clerk is going to call your
18 name. When your name is called, I'm going to ask you to
19 stand. She's going to ask you two questions. The first
20 will be: "Was that your verdict?" and you answer "yes" or
21 "no." And "Is this still your verdict?" You answer "yes"
22 or "no."

23 **MADAME CLERK,** poll the jury:

24 **MADAME CLERK:** Foreperson, Larry M. Carter, please
25 stand. Was this your verdict?

1 JUROR: Yes, ma'am.

2 MADAME CLERK: Is it still your verdict?

3 JUROR: Yes, ma'am.

4 MADAME CLERK: Robert R. Hadwin, was this your verdict?

5 JUROR: Yes, ma'am.

6 MADAME CLERK: Is it still your verdict?

7 JUROR: Yes, ma'am.

8 MADAME CLERK: Desmond A. Bedford, was this your
9 verdict?

10 JUROR: Yes, ma'am.

11 MADAME CLERK: Is it still your verdict?

12 JUROR: Yes, ma'am.

13 MADAME CLERK: Dorothy M. Ford, was this your verdict?

14 JUROR: Yes, ma'am.

15 MADAME CLERK: Is it still your verdict?

16 JUROR: Yes, ma'am.

17 MADAME CLERK: Lewis A. Smalls, was this your verdict?

18 JUROR: Yes, ma'am.

19 MADAME CLERK: Is it still your verdict?

20 JUROR: Yes, ma'am.

21 MADAME CLERK: Cortney D. McMillon, was this your
22 verdict?

23 JUROR: Yes, ma'am.

24 MADAME CLERK: Is it still your verdict?

25 JUROR: Yes, ma'am.

1 **MADAME CLERK:** Joyce H. Lynah, was this your verdict?

2 JUROR: Yes.

3 **MADAME CLERK:** Is it still your verdict?

4 JUROR: Yes.

5 **MADAME CLERK:** Angela G. Upchurch, was this your

6 verdict?

7 JUROR: Yes, ma'am.

8 **MADAME CLERK:** Is it still your verdict?

9 JUROR: Yes, ma'am.

10 **MADAME CLERK:** Wesley Cline, was this your verdict?

11 JUROR: Yes, ma'am.

12 **MADAME CLERK:** Is it still your verdict?

13 JUROR: Yes, ma'am.

14 **MADAME CLERK:** Amanda L. Davis, was this your verdict?

15 JUROR: Yes, ma'am.

16 **MADAME CLERK:** Is it still your verdict?

17 JUROR: Yes, ma'am.

18 **MADAME CLERK:** Bennie L. Sanders, was this your

19 verdict?

20 JUROR: Yes, ma'am.

21 **MADAME CLERK:** Is it still your verdict?

22 JUROR: Yes.

23 **MADAME CLERK:** Travis S. Taylor, was this your verdict?

24 JUROR: Yes, ma'am.

25 **MADAME CLERK:** Is it still your verdict?

1 JUROR: Yes, ma'am.

2 MADAME CLERK: Jury's been polled.

3 THE COURT: Counsel, the jury's been polled. The
4 verdict stands. Anything further from the defendant as to
5 the jury?

6 MR. BEACH: No, Your Honor.

7 THE COURT: Mr. Foreman and ladies and gentlemen of
8 the jury, on behalf of Colleton County and this Court, I
9 want to thank you for your service. I promised you, ladies
10 and gentlemen, that I'd get you home early this week. This
11 concludes your service for the week. And if you listen to
12 me, you're exempt now for three years from jury service, if
13 you choose to claim your exemption.

14 Now, if anyone needs a work excuse from serving on the
15 jury, Pat, do they need to go downstairs?

16 MADAME CLERK: Yes. They can go to the General
17 Sessions office.

18 THE COURT: If you need a work excuse from being on the
19 jury with me this week, you go downstairs, there's a sign
20 over the door that says "General Sessions." If you'll go in
21 that door we'll be happy to provide you with a work excuse.

22 Very often, ladies and gentlemen, sometimes people
23 think they can benefit from learning about what went on,
24 what impressed the juror. If you want to talk about your
25 deliberations, you can, but you do not have to talk about

1 your deliberations. You don't want to, you tell the person
2 you don't want to talk about it. And if a person persists
3 in wanting to talk about it, you get their name and give it
4 to me, and I'll handle that problem for you, ladies and
5 gentlemen. That will be entirely up to you, as to whether
6 you want to discuss your deliberations or not.

7 Now, sentencing in this case is getting ready to take
8 place in about five minutes. If you would like to stay for
9 sentencing, you can do one of two things. You can stay
10 right in the jury box; my bailiffs will be escorting you
11 after that's all over with, out. Or you can leave and have
12 a seat in the courtroom during sentencing, if you'd like to
13 stay.

14 If you don't want to stay for sentencing, you can get
15 up at this time, go downstairs if you need to get a work
16 excuse, and you are now excused for the balance of the week.
17 So you do not have to come back, and you're exempt for three
18 years. Does everybody understand?

19 (JURORS NOD.)

20 **THE COURT:** All right. Now, for those of you that
21 would like to stay and stay in the jury box, you stay right
22 where you are, because they're going to be coming forward
23 for sentencing in just a moment, if you'd like to stay. For
24 those of you that would like to leave, you may leave at this
25 time. Everyone else, remain seated.

1 (WHEREFORE, SOME JURORS LEAVE THE COURTROOM.)

2 **THE COURT:** Mr. Foreman, my law clerk's trying to get
3 you.

4 (BRIEF PAUSE.)

5 **THE COURT:** We've got to fill out paperwork. Mr.
6 Beach, are there any post-verdict motions from the
7 defendant?

8 **MR. BEACH:** Yes, Your Honor. We would renew our
9 earlier motions for directed verdict and make a motion for a
10 new trial. We would also move for a new trial, based upon
11 our assertion of the insufficiency of proof to prove him
12 guilty of this particular crime. And we would also move,
13 based on our assertion that it was inconsistent to find him
14 guilty of First and Third in the situation where the State
15 has alleged that charge, alleging on the insufficiency that
16 he is the person who did this.

17 **THE COURT:** Well, as you know, Mr. Beach, there is a
18 case. Solicitor, what's the site on that?

19 **ASST. SOLICITOR SHELTON:** State v. McPherson is the
20 site, Your Honor. I have it right here. I beg the Court's
21 indulgence.

22 **MR. BEACH:** Your Honor, I have a copy of it.

23 **THE COURT:** I know you do, Mr. Beach. I'm just trying
24 to get the site ---

25 **ASST. SOLICITOR SHELTON:** It is ---

1 **THE COURT:** --- on the record.

2 **ASST. SOLICITOR SHELTON:** --- State v. McFadden. It is
3 539, S.E.2d 387.

4 **THE COURT:** Yeah. In which the Court clearly held that
5 as to the subsection third, that we were dealing with, the
6 only one I charged the jury, that this was a not a lesser-
7 included offense of CSC First, as to that type of CSC Third.
8 And for that reason, the State chose to proceed on two
9 counts in the indictment, presented both to the Grand Jury.
10 And it is my belief that your motion for a new trial on that
11 grounds should be respectfully denied. I believe there was
12 clear evidence from which the jury could logically and
13 fairly adduce the guilt of the defendant for both.

14 As you know, Mr. Beach, they proceeded under the theory
15 that for CSC One, that there was a kidnapping involved with
16 the sexual battery, which is why I defined kidnapping. And,
17 of course, the statute doesn't just confine it to kidnapping
18 because the statute has a catch-all, and it says, although I
19 defined kidnapping at the request of State, says "the victim
20 submitted to sexual battery while the victim was also the
21 victim of forcible confinement." There was clearly evidence
22 of that. In addition, the State contended that the victim
23 was a victim of kidnapping. It says "or any other similar
24 act or offense."

25 For CSC Third, obviously sexual battery, and also the

1 State only proceeded under subsection -- I believe, Mr.
2 Beach, if I'm right, is it 2? Or is it (b)2?

3 MR. BEACH: (b)2, I believe.

4 THE COURT: Hold on a second.

5 MR. BEACH: It was on the front of the indictment.

6 THE COURT: It's 1(b).

7 MR. BEACH: 1(b).

8 THE COURT: 1(b), under Section 16-3-654. And that
9 meant a sexual battery, and the defendant knew, or had
10 reason to know, that the victim was mentally defective,
11 mentally incapacitated, or physically helpless. And that
12 aggravated force or aggravated coercion was not used to
13 accomplish the sexual battery. And clearly -- and I defined
14 for the jury aggravated force. I defined for the jury
15 mental defective. I defined for the jury mentally
16 incapacitated. And I defined for the jury physically
17 helpless.

18 I believe there was clearly evidence introduced during
19 the trial of this case that supported both of those
20 offenses. And for that reason, I respectfully deny your
21 motion for directed verdict as to Count Two at the close of
22 the case and at the close of all the evidence, and I decline
23 now to grant a new trial, or substitute this Court's
24 judgment for that of the jury, when I think the jury clearly
25 had sufficient evidence from which to convict your client of

1 both counts.

2 Anything further from the defendant?

3 **MR. BEACH:** No, Your Honor. Thank you for hearing us.

4 **THE COURT:** If you and defendant will come around.

5 Solicitor, you have the sentence sheet?

6 **ASST. SOLICITOR SHELTON:** Yes, sir. May I approach?

7 **THE COURT:** You may.

8 (1:15 P.M., SENTENCING IN THE TRIAL OF THE CASE.)

9 **THE COURT:** Mr. Beach, obviously, I have heard all of
10 the evidence in this case and I also have heard your
11 client's testimony in this case.

12 **MR. BEACH:** Yes, sir.

13 **THE COURT:** However, I am certainly willing to listen
14 to you on anything in mitigation you'd like to tell me prior
15 to sentencing. I'll listen to your client. And, Solicitor,
16 if any member of the victim's family would like to address
17 the Court, I'll be happy to hear from them or the victim, if
18 they wish to do so. Mr. Beach.

19 **MR. BEACH:** Thank you, Your Honor. Your Honor, he is
20 forty years old. He does have a family, although he's
21 estranged from his wife at this time. He has had a drug
22 problem in the past and has been fighting that, and has some
23 problems with the law because of drugs. I have seen no
24 evidence, though, of any problem with drugs during this
25 trial or anything like that. So I'm hoping he has beaten

1 that and gotten that behind him.

2 As you've heard all the evidence, he has denied
3 everything all the way through, has been consistent with
4 that. He hasn't vacillated one way or another. Like I say,
5 he does have a family; he has a daughter. And I think he --
6 I think he can be a productive member of society. He tells
7 me, and he testified, that he left New York because of the
8 violence, or to get away from the cycle of problems that
9 were hitting him over and over and over again. And I think
10 he is trying to better himself.

11 We would ask the Court to grant whatever mercy is
12 possible in this. I'd also like to ask that any sentences
13 be run concurrently in view of the fact that he was
14 convicted of both of the crimes.

15 **THE COURT:** Very well, Mr. Beach. Mr. Twyman, is there
16 anything you'd like to tell the Court at this time, prior to
17 sentencing?

18 **MR. TWYMAN:** Just something short, Your Honor. I would
19 like for the Court system to hold all evidence that's
20 pertaining to this case.

21 **THE COURT:** Now, slow down a little bit and speak up
22 for me. You'd like the Court to do what?

23 **MR. TWYMAN:** To hold all evidence that's pertaining to
24 this case, including the DVD.

25 **THE COURT:** To just hold it?

1 **MR. TWYMAN:** Yeah, to hold it, for appeal. Just for
2 appeal matters.

3 **THE COURT:** Well, so you'll understand, the exhibits
4 and the transcript will be prepared. If there's an appeal,
5 the transcript will be prepared by the court reporter and
6 the exhibits will be held by the Clerk of Court. So the
7 evidence will be right here, available. You understand
8 that?

9 **MR. TWYMAN:** All right.

10 **THE COURT:** Anything else you want to tell me?

11 **MR. TWYMAN:** That's it, sir.

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

13 **MR. TWYMAN:** Yes, sir.

14 **THE COURT:** All right Solicitor, I need to know his
15 record, which I have not, other than the fact that I know he
16 testified to both convictions for using drugs and selling
17 drugs, and that's all I know at this point.

18 **ASST. SOLICITOR SHELTON:** I have his full rap sheet
19 here, Your Honor. In 1989, he was convicted of Criminal
20 Possession of Stolen Property, Fourth Degree, in New York
21 State. In ---

22 **THE COURT:** Possession of Stolen Property?

23 **ASST. SOLICITOR SHELTON:** Yes.

24 **THE COURT:** All right.

25 **ASST. SOLICITOR SHELTON:** In 1990, again, he was

1 convicted of Criminal Possession of Stolen Property, Fourth
2 Degree; value exceeds \$1,000, in New York State. In 1992,
3 he was convicted of Criminal Possession of Controlled
4 Substance in New York State. In 1993, he was convicted of
5 Criminal Sale of Controlled Substance, Fifth Degree, in New
6 York State. In 1993 -- excuse me. In 1998, he was
7 convicted of Criminal Trespass Second Degree in New York
8 State. In 1998, again, he was convicted of Criminal
9 Trespass Second Degree in New York State. In 1998, he was
10 convicted of Intent to Obtain Transportation Without Paying
11 in New York State. In 1999, he was convicted of Sale of
12 Controlled Substance Third Degree in New York State.

13 In 2002, he was convicted of Assault Third Degree, with
14 Intent to Cause in New York State -- the Intent to Cause
15 Physical Injury in New York State. In 2002, he was
16 convicted of Petty Larceny in New York State. In 2002, he
17 was also convicted of Criminal Facilitation Fourth Degree,
18 which involves the facilitation of someone else doing some
19 type of crime, from the statute that I obtained, in New York
20 State. In 2002, he was convicted of Criminal Possession of
21 a Controlled Substance, Seventh Degree in New York State.

22 In 2004, he was convicted of Criminal Sale of
23 Controlled Substance Fifth Degree in New York State. 2005,
24 he was convicted of Criminal Facilitation Fourth Degree in
25 New York State. In 2007, he was convicted of Criminal

1 Possession of a Controlled Substance Seventh Degree in New
2 York State. In 2008, he was again convicted of Criminal
3 Possession of a Controlled Substance Seventh Degree in New
4 York State.

5 That is the entirety of the record, to the State's
6 knowledge, Your Honor.

7 **THE COURT:** Solicitor, does any member of the family
8 wish to address the Court, prior to sentencing?

9 **ASST. SOLICITOR SHELTON:** The victim has indicated that
10 she would like to address the Court.

11 **THE COURT:** Very well.

12 **MS. FREDERICKS:** Thank you -- thank you -- thank you
13 for helping me with -- with my case and -- and -- and I -- I
14 did tell the truth. I did not like what he did, and -
15 and ---

16 **THE COURT:** Slow down just a little bit for me now,
17 because I want to be able to understand you.

18 **MS. LOHR:** Do you want me to help?

19 **THE COURT:** Yes, ma'am. Would you come and help me?

20 **MS. LOHR:** Okay.

21 **THE COURT:** I can get her to write it down, but ---

22 **MS. FREDERICKS:** I want to write it down.

23 **THE COURT:** You want to write it down?

24 **MS. FREDERICKS:** Yeah.

25 **THE COURT:** All right. Write it down for me.

1 (The victim writes her statement.)

2 **THE COURT:** All right. After you see it, show it to
3 Mr. Beach and his client.

4 (The statement is reviewed.)

5 **ASST. SOLICITOR SHELTON:** May I approach?

6 **THE COURT:** You may.

7 **THE COURT:** All right. I'm reading your note, now, to
8 me, which I'm going to make a part of the record in this
9 trial. "Thank you for helping me with my case. I did tell
10 the truth. I did not like what he did. I am happy. I win
11 my case today. I would like to say thanks to everybody who
12 helped me." Have I read it correctly?

13 **MS. FREDERICKS:** Yes.

14 **THE COURT:** All right. I'll make it an exhibit.

15 (Court Exhibit Three, Witness note, received into
16 evidence.)

17 **THE COURT:** Thank you for being here.

18 **ASST. SOLICITOR SHELTON:** Her mother would also like to
19 address the Court, Your Honor.

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

21 **MS. WILDER:** I just wanted to say thank -- thank y'all
22 very much for helping my daughter. I thank you for your
23 time and the past few days and your support of Jessica. And
24 I just wanted to say we are blessed to be here to -- I'm
25 just kind of emotional right now. But ---

1 **THE COURT:** I understand.

2 **MS. WILDER:** -- I just feel that --

3 **THE COURT:** I know that Jessica lives in a house that
4 loves and cares for her.

5 **MS. WILDER:** Yes.

6 **THE COURT:** I know that.

7 **MS. WILDER:** Yes, sir. And we really are a Christian
8 family -- I know -- I know God protects us. But we thank
9 God for Mr. Ben, he did a fine job for Jessica.

10 **THE COURT:** I know he appreciates you telling him that.

11 **MS. WILDER:** Very, very much.

12 **THE COURT:** And I know she appreciates it as well.

13 **MS. WILDER:** And Officer Gathers, all the officers ---

14 **THE COURT:** You want to make sure that all the officers
15 are ---

16 **MS. WILDER:** Yes.

17 **THE COURT:** --- thanked.

18 **MS. WILDER:** Uh-huh. Yes.

19 **THE COURT:** I understand.

20 **MS. WILDER:** Oh, that's all I want to say. I hope you
21 have a wonderful day.

22 **THE COURT:** Thank you.

23 (Ms. Wilder has a seat.)

24 **THE COURT:** Anything further from the State?

25 **ASST. SOLICITOR SHELTON:** Just a recommendation on the

1 sentence, Your Honor, if you're ---

2 **THE COURT:** Yes.

3 **ASST. SOLICITOR SHELTON:** -- inclined to hear it. Your
4 Honor, with this being the unique set of factual
5 circumstances, I obviously believe that both counts were
6 rightfully given guilty verdicts on both counts of the
7 indictment. Because both counts arise out of the same
8 incident, however, I'm not going to ask for it to be
9 consecutive sentence, Your Honor. And the State is only
10 making this recommendation as the recommendation as if he
11 was convicted of only Criminal Sexual Conduct, First Degree.

12 Because of his prior record, and because of the immense
13 amount of evidence in this case and his complete inability
14 to accept any responsibility, and this is the first time
15 I've ever done this, Your Honor, but I'm going to ask for
16 the maximum of 30 years on Criminal Sexual Conduct, First
17 Degree.

18 I'll respect whatever decision the Court makes, of
19 course. However, that is the State's recommendation.

20 **THE COURT:** Very well. Anything further from the
21 State?

22 **ASST. SOLICITOR SHELTON:** No. Thank you, Your Honor.

23 **THE COURT:** I'd like to say, first of all, at least to
24 members of the jury in the courtroom, there was clear
25 evidence from Mr. Twyman, from which the jury reached the

1 conclusion that they did. I thought there was clear
2 evidence of sexual battery. And I thought there was clear
3 evidence that Jessica was the victim of possibly confinement
4 or kidnapping when it occurred.

5 I also believe there was clear evidence in this case
6 that sexual battery occurred when you knew, or you had
7 reason to know, that this victim, who was incapacitated
8 mentally, that she was physically helpless, possibly, or
9 mentally defective. I think there was clear evidence that
10 the jury could conclude you were guilty of both.

11 When a judge sentences -- I take into consideration
12 that you have a very lengthy record, which the Solicitor has
13 pointed out to me. I take into consideration that a jury
14 found you guilty beyond a reasonable doubt, where there was
15 clear evidence. And I truly believe that Jessica probably
16 is the type of person that I hope the law will always
17 protect.

18 (BRIEF PAUSE IN COURTROOM.)

19 Solicitor, I understand your request for the maximum
20 sentence. I believe that justice should be tempered at some
21 point with mercy. I understand, Mr. Beach, your request
22 that I run the sentences concurrent, and I agree with you.
23 the sentence ought to be concurrent. I also believe that
24 this was the type of crime that was heinous, and I
25 understand completely why the jury found the way they did.

1 On Indictment 2010-GS-15-0849, State v. Leslie Twyman,
2 Criminal Sexual Conduct, First Degree, sentence of this
3 Court is defendant's committed to the State Department of
4 Corrections for a term of 25 years.

5 On Indictment 2010-GS-15-00849, which is also the count
6 of Criminal Sexual Conduct Third Degree, which is Count Two
7 in the indictment, the sentence of the Court is defendant is
8 committed to the State Department of Corrections for a term
9 of 10 years.

10 Those sentences will run concurrent to each other.
11 That is, Count One and Count Two in the indictment, the
12 sentences will run concurrent. Defendant should be given
13 credit for time served, pursuant to South Carolina Code
14 Section 24-13-40. That is to be calculated and applied by
15 the State Department of Corrections. Good luck to you.

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

17 **THE COURT:** Mr. Foreman, thank you for your service.

18 **MR. FOREMAN:** You're welcome.
19
20
21
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25

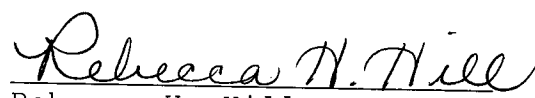
STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the trial of the captioned case, in the Court of General Sessions for Colleton County, South Carolina, on the 18th - 20th day of April 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 5, 2011


Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LESLIE TWYMAN,

APPELLANT

Appellate Case No. 2011191186

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court judge erred when he did not grant appellant's motion for a directed verdict for criminal sexual conduct, 3rd degree because the language in the body of the indictment indicated that the state was proceeding under a theory that appellant "forcibly" penetrated the accuser which negated the aggravated component of the CSC 3rd statute which also proscribes sexual conduct against persons who are "mentally incapacitated?"
- II. Whether the trial court judge erred in not granting appellant's motion for a directed verdict because the accuser was not mentally defective or incapacitated as defined under S.C. Code Ann. §16-3-651 (e) or (f)?

STATEMENT OF THE CASE

Leslie Twyman was indicted by the Colleton County grand jury on April 14, 2011 for criminal sexual conduct, 1st degree and criminal sexual conduct, 3rd degree. He was tried before the Hon. Perry M. Buckner, III and a jury between April 18-20th, 2011. Appellant was represented by Harris S. Beach, Esquire. The Solicitor's office was represented by Benjamin T. Shelton, Esquire. Appellant was convicted and sentenced to 25 years for CSC, 1st degree and 10 years for CSC, 3rd degree. The sentences were ordered to be served concurrently.

This appeal timely follows.

ARGUMENTS

I. The trial court judge erred when he did not grant appellant's motion for a directed verdict for criminal sexual conduct, 3rd degree because the language in the body of the indictment indicated that the state was proceeding under a theory that appellant "forcibly" penetrated the accuser which negated the aggravated component of the CSC 3rd statute which also proscribes sexual conduct against persons who are "mentally incapacitated."

The CSC, 3rd degree indictment at issue in this case stated:

That in Colleton County, South Carolina, on or about August 21, 2010, the defendant, Leslie Twyman, did commit a sexual battery upon the victim . . . with knowledge or reason to have knowledge that the victim was mentally defective, mentally incapacitated or physically helpless where aggravated force or aggravated coercion was **not used**, to wit: **the Defendant did forcibly penetrate the victim with his penis**; all in violation of Section 16-03-654, Code of Laws of South Carolina, (1976), as amended. (emphasis added).

At the conclusion of the State's case, the appellant asked the trial court to direct a verdict in regard to CSC, 3rd degree. R. 241-242. Appellant renewed this motion at the conclusion of the defendant's case, and after the defendant testified on his own behalf. R. 273-275. The trial court judge denied the motions. R. 247-248.

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. McKnight, 352 S.C. 635, 642 (2003), *cert denied*, 540 U.S. 819 (2003). Therefore, "where the facts of the case, even if proved, do not constitute the alleged criminal conduct, a directed verdict must be granted." State v. Jackson, 338 S.C. 565, 569, 527 S.E.2d 367, 369 (Ct. App. 2000).

The trial court judge erred by not granting appellant's directed verdict motion with respect to CSC, 3rd degree because the State failed to present evidence which would tend to prove that he even **could** be guilty of both CSC, 1st degree and CSC, 3rd degree.

S.C. Code Ann. § 16-3-654, Criminal sexual conduct in the third degree states:

(1) a person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish the sexual battery **and the absence of aggravating circumstances.**

(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless **and aggravated force or aggravated coercion is not used** to accomplish the sexual battery.

The state, however, in the indictment indicates that the accuser was victimized by the appellant's **forcibly** inserting his penis into her. Under the plain language of the statute, he cannot be guilty of CSC, 3rd degree because conduct proscribed by the statute specifically states that aggravating circumstances, aggravated force, or aggravated coercion is not used. In addition to criminal sexual conduct, 3rd degree, the state also indicted appellant with criminal sexual conduct in the first degree. The indictment states:

That in Colleton County, South Carolina, on or August 21, 2010, the Defendant, Leslie Twyman, did commit a sexual battery upon the victim . . . and the victim did submit to sexual battery while also the victim of forcible confinement, kidnapping, robbery, extortion, burglary or any other similar offense or act, to wit; the Defendant did lure the mentally challenged victim into his home by false pretense and did prevent her from leaving; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976), as amended.

S.C. Code Ann. §16-3-652 Criminal sexual conduct in the first degree states:

(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven: (b) the victim submits to sexual battery by the actor under circumstances where the victim is also the victim of **forcible confinement, kidnapping**, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

Because the state decided to go forward with an accusation accusing appellant of essentially aggravated criminal sexual conduct, they could not also indict him under a statute where the aggravation is expressly removed from the definition. The trial court judge erred in denying appellant's motion for a directed verdict, and appellant asked this court to vacate his conviction for criminal sexual conduct, 3rd degree.

II. The trial court judge erred in not granting appellant's motion for a directed verdict because the accuser was not mentally defective or incapacitated as defined under S.C. Code Ann. §16-3-651 (e) or (f).

At the time of trial, the accuser was 18 years old. R. 73, ll. 20-23. The State called Patty Lohr, a speech pathologist to testify. She testified that the accuser has a diagnosis of “verbal apraxia” which is a motor impairment. R. 107, l. 21-108, l. 22. The State also called Carol Marks to testify. Ms. Marks is a special education teacher and has been teaching the accuser for 3 or 4 years. R. 115, ll. 18-25. She testified that the accuser is mildly mentally disabled and has an IQ between 50 and 70. R. 119, ll. 5-17. She testified that the accuser's emotional needs are equivalent to a 6 or 7-year-old. R. 121, ll. 6-16.

For the future, I would say I don't -- I -- I think [Accuser] always going to need someone to be looking after her, and always being with her at some point. I mean, she can -- she can feed herself, make small, easy meals, that kind of thing.

But she's always going to need someone to probably live with her. And -- she'll be able to do a simple job. She could maybe perhaps work at McDonald's or maybe something at Wal-Mart. But I don't know about -- the money aspect would not be -- be able to be dealt with. It would have to be something besides money.

R. 123, ll. 14-24.

S.C. Code Ann. §16-3-651(e) and (f) defines “mentally defective” and “mentally incapacitated.”

“Mentally defective” means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct. “Mentally incapacitated” means a person is rendered temporarily incapable of

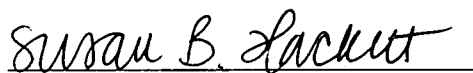
appraising or controlling his or her conduct whether this condition is produced by illness, effect, the influence of the substance or from some other cause.

The State did not prove that the accuser fell within the statute. The testimony at trial, in fact, suggested that the accuser is actually very high functioning. The statute does not criminalize conduct directed at someone with a diagnosis of mental retardation, but rather that condition would have to render the victim “incapable of appraising the nature of his or her conduct.” The state failed to prove that the statute applies for this particular accuser and therefore they did not prove an element of the crime. In re Winship, 397 U.S. 358 (1970). For this reason too, the trial court judge should have directed a verdict of acquittal for criminal sexual conduct, 3rd degree.

CONCLUSION

For the preceding reasons, appellant respectfully asks this Court, with respect to Issue I, to vacate his conviction for criminal sexual conduct, 3rd degree. With respect to Issue 2, appellant asks this Court to reverse his conviction.

Respectfully submitted,

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 21th day of August, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 21st, 2012

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

Susan B. Hackett
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LESLIE TWYMAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 21st day of August, 2012.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of August, 2012.

Ramon E. Case (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.



ALAN WILSON
ATTORNEY GENERAL

August 14, 2012

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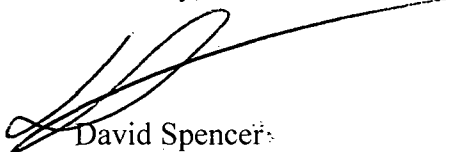
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: **State of South Carolina v. Leslie Twyman**

Dear Ms. Kitchings:

Enclosed please find the original and nine (9) copies of the **Final Brief of Respondent** in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this brief today.

Sincerely,


David Spencer
Assistant Deputy Attorney General

DS/nb
Enclosures

cc: Susan B. Hackett, Esquire (2 copies enclosed)
Trisha Allen, Victim Services (1 copy enclosed)

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

THE STATE,

Respondent,

vs.

LESLIE TWYMAN,

Appellant.

FINAL BRIEF OF RESPONDENT

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<u>State v. Creech</u> , 314 S.C. 76, 441 S.E.2d 635 (Ct. App. 1994)	10
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	9
<u>State v. Gilchrest</u> , 342 S.C. 369, 536 S.E.2d 868 (2000)	9
<u>State v. Hamilton</u> , 276 S.C. 173, 276 S.E.2d 784 (1981).	8
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<u>State v. McFadden</u> , 342 S.C. 629, 539 S.E.2d 387 (2000)	9
<u>State v. Pinckney</u> , 339 S.C. 346, 529 S.E.2d 526 (2000)	7
<u>State v. Schrock</u> , 283 S.C. 129, 322 S.E.2d 450 (1984)	10
<u>State v. Sims</u> , 377 S.C. 598, 661 S.E.2d 122 (Ct. App. 2008)	9
<u>State v. Spann</u> , 279 S.C. 399, 308 S.E.2d 518 (1983)	10

Statutes:

S.C. Code §16-3-651	8, 10
S.C. Code §16-3-654	8

STATEMENT OF ISSUES ON APPEAL

I.

The trial court did not err in denying the motion for directed verdict on the grounds the State failed to prove that neither aggravated force or aggravated coercion was used to accomplish the sexual battery.

II.

Evidence supports that the victim was mentally incapacitated or mentally defective and therefore, the trial court did not err in denying the motion for directed verdict.

STATEMENT OF THE CASE

Appellant Twyman was indicted for criminal sexual conduct in the first degree (CSC 1st) and criminal sexual conduct in the third degree (CSC 3rd). Trial began on April 18 and the jury found Twyman guilty on April 20, 2011. The Honorable Perry M. Buckner, III, sentenced Twyman to concurrent sentences of twenty-five years imprisonment for CSC 1st and ten years imprisonment for CSC 3rd.

STATEMENT OF FACTS

Twyman was staying at Jessie Mae Gooding's residence. He lured his eighteen year-old victim (Victim) into the residence under false pretenses and proceeded to rape her. Victim has an I.Q. of 55 and is emotionally developed at the equivalent to a six or seven year old. ROA. p. 119, p. 121.

Jessie Mae Gooding was the State's first witness. Her involvement with her church's outreach program led to her letting Twyman and sometimes his wife to stay with her after he lost his home. Gooding's son Conrad is a disabled, bedridden veteran. Victim lived down the street. Sometimes, Victim would come to the house and sit with Conrad. However, Gooding supervises her and brings Victim back and forth from the house when Victim sits with Conrad. Gooding would ask Victim's mother first before asking Victim over to the house. ROA. pp. 40-43.

On August 21, 2010, Gooding was away while Twyman was home with Conrad. Twyman called Gooding on the cell phone and said a friend was picking him up at the house and he would have Victim sit with Conrad. Gooding gave it some thought and then called back because Twyman told Gooding the night before that he had no friends. Victim answered the phone. Victim said Twyman was outside. Later, Victim's mother called Gooding and consequently, Gooding called Twyman and said an accusation was made against him. Twyman denied the accusation. Gooding went to Victim's house, where police were already interviewing Victim. Victim was upset and said she was feeling pain. ROA. pp. 44-50.

Victim's stepfather (Stepfather) testified that he was outside in the yard when Victim

came running to the house and said “Mamma, Mamma, something happened to me down the street, this man attacked me.” ROA. p. 65. Victim’s Mother (Mother) testified Victim came home disturbed and too upset to speak clearly, it took her ten minutes to calm down. Stepfather called 911. Mother took Victim to the bathroom and saw white semen in her underwear. ROA. pp. 76-81.

The forensic DNA analyst was able to determine there was semen in the underwear, but because there was no sperm, she was unable to complete a DNA analysis. ROA. pp. 148-150.

The sexual assault examination revealed extensive swelling and redness in the vaginal and anal areas. Specifically, the findings were redness and swelling in the labia majora, perineum and labia minora, with swelling in the vestibule and redness in the posterior fourchette. There was swelling and redness in the vagina in general. There was redness and bleeding in the cervix. ROA. pp. 225-226. Maria Flynn, an RN, testified that the injuries were consistent with a vaginal assault and blunt force trauma on the cervix. ROA. pp. 238-239.

Mother testified that Victim is not allowed to leave the house without permission, which she did that day. ROA. pp. 85-86. Mother explained, “She has to realize she can’t do what she want to do because she 18.” ROA. p. 89.

Officer Brandon Craven responded to the 911 call. He testified he never met Victim before, but he quickly determined that she not only had a speech impediment, but that she was mentally handicapped as well. Victim was upset and shocked. ROA. pp. 90-93. Detective Gathers, who also came to the house, testified that Victim was upset the entire time

he was there, which was about two hours. ROA. pp. 98-99.

Patty Lohr is a language pathologist who has worked with Victim for four years. Victim has verbal apraxia. ROA. pp. 107-108. On cross-examination, Lohr was asked about Victim's cognitive functioning, to which she responded: "Jessica is more on a child-like level. Academically, her levels are lower. But as far as common sense type things, she's right on the money." ROA. p. 111, lines 14-16.

Carol Marks is Victim's special education teacher. Victim's overall I.Q. is 55. She is mildly mentally disabled. Her reading is at a third grade level, her math at a second grade level. Marks was asked about an equivalent age for Victim's emotional needs and she responded that Victim's emotional needs were equivalent to a six or seven year old. ROA. pp. 119-121. Marks further testified as follows:

Q: Psychological. Or her ability to experience the world around her and comprehend the world around them. How they're – specifically, what they do today, how is it going to affect them tomorrow? Is she able to grasp, the decisions that she makes today, what bearing that's going to have tomorrow?

A: Somewhat. I . . . wouldn't say it would be like an adult, like her age level, an 18 year old, no, absolutely not but the basic age level of a six or seven year old, they know if they break the TV, that they're going to be in trouble for a couple days. She has that ability. But long term, I would say no. She's not able to do that.

Q: Is she able to comprehend the effect on herself and others of her own action, to the point of a normal functioning person.

A: No.

Q: Can you be specific about that?

A: Just the fact that, like I said, she's a six or seven year old in her mind. So she's not – she is looking out for herself, just like any six year old will do. They're – they're in their own time frame, their own kind of world.

Q: So she's not, to a certain degree, able to appraise the nature of her actions?

A: To a certain degree.

ROA. p. 121, line 17 - p. 122, line 15. Marks testified that she thought Victim would always need someone to take care of her. ROA. p. 123, lines 14-24.

Marks also testified that since August, 2010, Victim has retreated into herself. ROA. p. 126.

Elizabeth Schein-Pearson testified that Victim qualifies for special services at her school with a primary disability of mental disability. Victim had an I.Q. of 56 on December 8, 2010. Pearson testified that Victim does not think fast on her feet. Pearson opined Victim will always need someone to assist her in understanding her world. ROA. pp. 133-134. On cross-examination, Pearson testified that often times she does not appreciate the outcome of her actions. Pearson also testified, when questioned about whether Victim knew right from wrong, that Victim can appreciate the parameters of what is expected of her: “[b]ut if she's to infer that something she has not experienced before or no one's told her about before, she's deferred the outcome of that. She's not going to be able to.” ROA. p. 137, lines 2-9.

Victim testified that she was at home watching television when Twyman knocked on the door and asked her to watch Ms. Gooding's son. She went to Gooding's house and was watching a cartoon. Twyman said he wanted her to be a model. Then he unzipped Victim's pants, took a picture of her privates with a cell phone. She went into the bathroom. When

she came out, Twyman put his penis in her mouth and put his penis in her butt two times. Then he put his penis in her private part. Twyman threatened Victim by telling her she could go to jail if she told what happened. Victim ran out the back door after Twyman blocked her from going out the front door. She ran home and told her mother what happened. ROA. pp. 164-177.

Twyman testified on his own behalf. He testified he was staying with Gooding because he and his wife had a bad drug habit. The wife went to jail because they had a domestic violence incident, and they lost their apartment. Twyman confirmed that he called Gooding to let her know he was going to have Victim watch her son. In his version of events, when he went to ask Victim to sit with Conrad, Stepfather answered the door. Victim's sister walked Victim half-way to Gooding's house and Twyman took her the rest of the way. According to Twyman, while they both smoked, they had a conversation about school, Victim said she was going to college. Twyman testified Victim complemented Twyman on a suit he wore previously. Twyman claimed Victim asked Twyman about his wife and their relationship. Twyman testified, "we was just talking cool, regular and stuff." ROA. pp. 259-260 (direct quote: ROA. p. 259, lines 20-21). Twyman also testified that Victim said she had intercourse with her stepfather. ROA. p. 261, lines 1-4.

The jury took less than an hour to reach a verdict. ROA. pp. 319-320.

ARGUMENT

I.

The trial court did not err in denying the motion for directed verdict on the grounds the State failed to prove that neither aggravated force or aggravated coercion was used to accomplish the sexual battery.

Twyman argued that the trial court erred in failing to direct a verdict on the grounds that the State failed to show that aggravated force or coercion was not used in accomplishing the sexual battery. Twyman argues that the indictment alleges the battery was “forcible” and then hopes this Court fails to notice that the indictment does not allege the forcible battery was aggravated. The argument lacks merit.

In reviewing the denial of a directed verdict motion, the reviewing court views the evidence in the light most favorable to the State and determines if any direct or substantial circumstantial evidence exists that reasonably tends to prove defendant’s guilt or from which appellant’s guilt may logically be deduced. State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000). On motion for directed verdict, the trial court is concerned only with the existence of evidence, and not its weight. Id.

Criminal Sexual Conduct in the third degree is defined in relevant part as follows:

(1) A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven. . .

(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.

S.C. Code §16-3-654 (1)(b).

“Aggravated coercion” means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person.

S.C. Code §16-3-651(b).

“Aggravated force” means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.

S.C. Code §16-3-651(c).

Unlike subsection (b), subsection (a) of §16-3-654 requires an “actor use force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.” The Supreme Court found that in the absence of a statutory definition of force or coercion, the common, ordinary meaning of the term should apply. State v. Hamilton, 276 S.C. 173, 178, 276 S.E.2d 784, 787 (1981). The Supreme Court found as follows: “Force and coercion as used in the statute, have basically the same meaning. They mean to make a person follow a prescribed and dictated course; to inflict or impose[; to] force one’s will on someone.” Id., (citations and quotations omitted).

Accordingly, force or coercion is not aggravated if it is not accompanied by violence or threats of violence. The essence of Twyman’s largely conclusory argument is that the trial court should have equated “forcibly” with “aggravated force”. Twyman does not refer to actual evidence of aggravated force or coercion. However, to constitute aggravated force or

coercion, the force or coercion used must be of a high and aggravated nature. In the instant case, no evidence of coercion or force of a high and aggravated nature was presented to the jury; therefore, the trial court did not err in denying the motion for directed verdict. See also, State v. McFadden, 342 S.C. 629, 539 S.E.2d 387 (2000) (finding criminal sexual conduct in the third degree is not a lesser included offense of criminal sexual conduct in the first degree) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Further, Twyman's argument fails because an indictment is not evidence. State v. Sims, 377 S.C. 598, 609, 661 S.E.2d 122, 128 (Ct. App. 2008) (quoting State v. Gilcrest, 342 S.C. 369, 372, 536 S.E.2d 868, 869 (2000)).

II.

Evidence supports that the victim was mentally incapacitated or mentally defective and therefore, the trial court did not err in denying the motion for directed verdict.

Twyman argues the trial court erred in denying the motion for directed verdict on the grounds that evidence failed to show that Victim met the definition of mentally incapacitated or mentally defective. In contrast, several witnesses provided testimony that supports the verdict, especially taken in the light most favorable to the State.

It is axiomatic, that in ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not its weight. State v. Spann, 279 S.C. 399, 308 S.E.2d 518 (1983). The trial court must submit the case for the jury's consideration if any evidence, direct or circumstantial, tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced. State v. Irvin, 270 S.C. 539, 243 S.E.2d 195 (1978). Only when there is a complete lack of competent evidence should the trial court refuse a motion for directed verdict. State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). Upon a motion for directed verdict, the evidence is viewed in the light most favorable to the State. State v. Creech, 314 S.C. 76, 441 S.E.2d 635, 638 (Ct. App. 1994).

Under S.C. Code §16-3-651(e):

“Mentally defective” means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.

Under §16-3-651(f):

“Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her

conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.

Evidence was presented to the jury that despite Victim being eighteen years of age, her mother would not let her leave the house without permission and that when she visited Gooding's residence, she was always accompanied by someone. ROA. pp. 85-86; p. 89. Officer Craven testified he quickly determined, upon meeting Victim for the first time, that she was mentally handicapped. ROA. p. 92. Lohr, Victim's language pathologist, testified Victim was on a child-like level. ROA. p. 111, lines 14-16. Victim's special education teacher, Marks, testified Victim's I.Q. is 55 and she is mildly mentally disabled. Marks testified Victim reads at a third grade level and her emotional needs are at the level of a six or seven year old. Marks testified that to a certain degree, she cannot appraise the nature of her actions. ROA. pp. 119-122. Victim will always need someone to take care of her. ROA. p. 123. Schein-Pearson testified that Victim does not think fast on her feet and will always need someone to assist her in understanding her world. Victim often times does not appreciate the outcome of her actions and Victim will not be able to appreciate right from wrong when confronted with something she has not previously experienced. ROA. pp. 133-134; p. 137.

Accordingly, ample evidence was presented that Victim met the statutory definition of mentally defective as well as the definition of mentally incapacitated. Accordingly, the trial court did not err in denying the motion for directed verdict.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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Attorney General

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Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

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Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

August 14, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

THE STATE,

Respondent,

vs.

LESLIE TWYMAN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

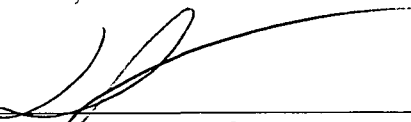
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ATTORNEYS FOR RESPONDENT

August 14, 2012

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IN THE COURT OF APPEALS

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

THE STATE,

Respondent,

vs.

LESLIE TWYMAN,

Appellant.

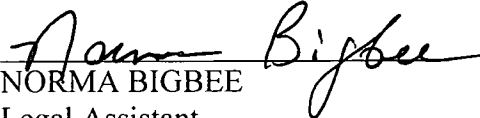
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
South Carolina Commission on Appellate Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 14th day of August, 2012


NORMA BIGBEE
Legal Assistant

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Leslie Twyman, Appellant.

Appellate Case No. 2011-191186

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2013-UP-325
Heard June 6, 2013 – Filed July 17, 2013

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, Assistant
Deputy Attorney General David A. Spencer, all of
Columbia; Isaac McDuffie Stone, III, of Bluffton, for
Respondent.

PER CURIAM: Leslie Twyman appeals his conviction for criminal sexual conduct (CSC) third degree¹, arguing the trial court erred in denying his directed verdict motion. He contends (1) the State failed to prove he did not use forcible penetration and (2) the victim was not mentally incapacitated, as required by the statute. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in refusing to grant a directed verdict in Twyman's favor because he could not be guilty of third-degree CSC when the State alleged he used force: *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) (stating in reviewing the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State); *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 477-78 (2004) (stating when ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight); *State v. McKnight*, 352 S.C. 635, 642, 576 S.E.2d 168, 171 (2003) (stating on the other hand, a defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged); *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002) (stating the appellate court may reverse the trial court's denial of a motion for a directed verdict only if no evidence supports the judge's ruling); *State v. Brown*, 360 S.C. 581, 588, 602 S.E. 2d 392, 396 (2004) (stating aggravated force occurs when "the defendant over[comes] the victim through the use of physical force, physical violence of a high and aggravated nature, or the threat of the use of a deadly weapon"); *State v. Hamilton*, 276 S.C. 173, 178, 276 S.E. 2d 784, 786 (1981) (stating force and coercion "mean to make a person . . . follow a prescribed and dictated course; . . . to inflict or impose: force one's will on someone"); *State v. McFadden*, 342 S.C. 629, 632, 539 S.E.2d 387, 389 (2000), (stating third-degree CSC is not a lesser included offense of first-degree CSC) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

2. As to whether the victim was not mentally incapacitated as defined by the statute: *Weston*, 367 S.C. at 292, 625 S.E.2d at 648 (stating in reviewing the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State); *Cherry*, 361 S.C. at 593, 606 S.E.2d at 477-78 (stating when ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight); *McKnight*, 352 S.C. at 642,

¹ Twyman was also convicted of first-degree CSC but does not appeal that conviction.

576 S.E.2d at 171 (stating on the other hand, a defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged); *Gaster*, 349 S.C. at 555, 564 S.E.2d at 92 (stating the appellate court may reverse the trial court's denial of a motion for a directed verdict only if no evidence supports the judge's ruling); S.C. Code Ann. § 16-3-651(e) (Supp. 2012) (defining a person as mentally defective if he or she is "suffer[ing] from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct").

AFFIRMED.

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA

County of Colleton

In the Court of Common Pleas

14-CP-15-127

LESLIE TWYMAN 345787

Full name and prison number (if any) of Applicant.

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

2014 FEB 11 PM 3:19

PATRICIA O. GRANT
COLLETON COUNTY
COMMON PLEASINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Broad River Correctional Institution 4460 Broad River
Road Columbia, SC. 29210
2. Name and location of Court which imposed sentence County of Colleton General Sessions
Walterboro, SC. 29488
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2010-GS-15-00849 CSC, First Degree.
 - (b) 2010-GS-15-00849 CSC, Third Degree
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 18-20, 2011, Sentence to 25 Years for CSC, 1st
 - (b) and 10 Years for CSC, 3rd, run Concurrent
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Plea not guilty
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Direct Appeal
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Was Affirmed by the S.C. Court of Appeals
- ii. _____
- iii. _____
- (c) the date of each such result: 2013
- i. Heard June 6, 2013 - Filed July 17, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) NA
- (b) NA
- (c) NA
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of Trial Counsel, in Violation of 5-6-14
- (b) Abandonment of Prosecution, Ineffective Assistance of Counsel and 14 AL-
- (c) Ineffective Assistance of Appellate Counsel
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) Effective Counsel only renewed motion for directed verdict on csc3 and
- (b) not csc1. (Counsel Should have objection to Solicitor leading the
- (c) witness. (Effective Appellate - on csc3rd, More to be Amended Later.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? NO

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court?
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NA

ii. NA

iii. NA

iv. NA

(b) the name and location of the Court in which each was filed:

i. NA

ii. NA

iii. NA

iv. NA

(c) the disposition thereof:

i. NA

ii. NA

iii. NA

iv. NA

(d) the date of each such disposition:

i. NA

ii. NA

iii. NA

iv. NA

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. NA

ii. NA

iii. NA

iv. NA

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

14. If you answered "yes" to (13), identify:
- (a) which grounds have been presented:
- i. NA
 - ii. NA
 - iii. NA
- (b) the proceedings in which each ground was raised:
- i. NA
 - ii. NA
 - iii. NA
15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:
- (a) Issues Was not Preserved by my defense Counsel
- (b) Appellate Counsel Feal to rase and brief the issue on Direct
- (c) Appeal
16. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
17. If you answered "yes" to one or more parts of (16), list:
- (a) the name and address of each attorney who represented you
- i. MR.Harris S. Beach 115 benson st Walterboro,SC.29488 Trial Counsel
 - MRS.ELIZABETH A.FRANKLIN BEST 1130 lady st, Suite 401
 - ii. Columbia,South Carolina,29201-3332 APPELLATE DEFENSE
 - MRS.Susan B. Hackett 1130 lady st, Suite 401 Columbia,SC.
 - iii. 29201-3332 APPELLATE DEFENSE
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentence
 - ii. Direct Appeal
 - iii. Direct Appeal
18. State clearly the relief you seek in filing this application.
- TO Vacate both Convictions and Sentences and or grant a New Trial
- and or resentenceing.
19. Are you now under sentence from any other court that you have not challenged?
- NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of Colleton

I, Leslie Twyman, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Leslie Twyman

SWORN to and subscribed before me this

day of

7th February 2014

Susan H. Drye (L.S.)
Notary Public

My Commission Expires

March 5, 2018

My Commission Expires: _____

2014 FEB 11 PM 3:10

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Leslie Twyman, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Leslie Twyman

Applicant

SWORN or affirmed to and subscribed before me this

7th day of February 2014

Susan H. Drye
Notary Public

My Commission Expires

March 5, 2018

My Commission Expires: _____

2 7 2014

14-CP-15-127

In this envelope is the original Applleation for a (PCR) AND A
Copy. Can you please foward me back a Copy. Thank you.

s/ Leslie TurnerSusan H. Frye7th day of February, 2014

My Commission Expires
March 5, 2018

2014 FEB 11 PM 1:18

PAINT & GRANT
COLLETON COUNTY
COMMON PLEAS

NO FENV

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	
	)	
	)	2014-CP-15-0127
	)	
Leslie Twyman, #345787,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed February 11, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the October 2010 and January 2011 terms of the Colleton County Grand Jury for criminal sexual conduct- first degree (2010-GS-15-849 Count 1) and criminal sexual conduct- third degree (2010-GS-15-849 Count 2). The Applicant was represented by Harris Beach, Esquire.

The Applicant proceeded to trial and was convicted. On April 20, 2011, the Applicant was sentenced by the Honorable Perry M. Buckner to confinement for a period of twenty-five (25) years for criminal sexual conduct- first degree and ten (10) years for criminal sexual conduct- third degree. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Elizabeth Franklin-Best, Esquire, and Susan Hackett, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Twyman, No. 2013-UP-325 (S.C. Ct. App. July 17, 2013). The Remittitur was issued on August 9, 2013.

Attached herewith and incorporated herein are the records of the Colleton County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel only renewed motion for directed verdict on CSC 3rd and not CSC 1st.
 - b. Counsel should have objected to solicitor leading of witness.
2. Ineffective assistance of appellate counsel.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess

reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. *See Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

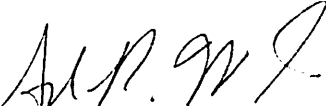
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
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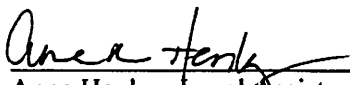
August 20, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	
	)	
	)	2014-CP-15-0127
	)	
LESLIE TWYMAN, #345787	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the abovecaptioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 21th day of August, 2014


 Anne Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF COLLETON
COURT OF COMMON PLEAS
CASE NUMBER 2014-CP-15-00127

LESLIE TWYMAN

APPLICANT

ORIGINAL

VERSUS

OCTOBER 29, 2014

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

B E F O R E:

HON. EDGAR W. DICKSON, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF APPLICANT
LESLIE TWYMAN:

HON. TRISTAN M. SHAFFER
AXELROD & ASSOCIATES, P.A.
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TELEPHONE 843-916-9300
tristan@gotaxelrod.com

ON BEHALF OF STATE
OF SOUTH CAROLINA:

HON. ASHLEIGH R. WILSON
ASSISTANT ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549
TELEPHONE 803-734-3693
awilson@scag.gov

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EXHIBITS

No exhibits were admitted.

10-29-14 TWYMAN V. STATE

POST-CONVICTION RELIEF

1 BEGINNING 10:18 A.M.

2 BY THE COURT:

3 MS. WILSON: May it please the Court, your Honor?

4 THE COURT: Yes, ma'am.

5 MS. WILSON: Leslie Twyman versus the State of
6 South Carolina. This is Docket Number 2014-CP-15-0127.
7 Mr. Twyman was indicted in January 2011, and October
8 2010, for two different counts under one indictment
9 number. That was Indictment Number 2010-GS-15-00849.
10 The first count was for one count of criminal sexual
11 conduct in the first degree. The second count was for
12 criminal sexual conduct in the third degree.

13 He proceeded to trial, and was represented by
14 Harris Beach, and he was convicted on April 20, 2011.
15 And he was -- proceeded to trial before Judge Buckner,
16 and I'm sorry I didn't state what those charges were.
17 Count I was criminal sexual conduct in the first degree,
18 and Count II was criminal sexual conduct in the third
19 degree, based off the victim's mental defect or
20 incapacity.

21 For CSC first degree, Judge Buckner sentenced him
22 to 25 years. For CSC third degree, Judge Buckner
23 sentenced him to 10 years.

24 Mr. Twyman filed his application for post-
25 conviction relief on February 11, 2014. The State filed

10-29-14 TWYMAN V. STATE

POST-CONVICTION RELIEF

1 its return. He's here and represented by Mr. Tristan
2 Shaffer. And the State would just ask that Mr. Shaffer
3 outline the allegations that he intends to proceed on
4 today.

5 And also, your Honor, just for the record, Mr.
6 Shaffer -- I mean, Mr. Twyman has alleged in his
7 application ineffective assistance of counsel, and on an
8 appeal, he was represented by -- oh, I'm sorry, I didn't
9 give you the appellate background. His convictions were
10 affirmed by the Appellate Court on July 17, 2013, in an
11 unpublished opinion, and he was -- the remittitur was
12 issued in that on August 9, 2013. He was represented on
13 appeal by Elizabeth Franklin-Best and Susan Hackett.

14 Ms. Franklin-Best had scheduling conflict with
15 another matter that's being handled by our office, so
16 the State would just request the opportunity to leave
17 the record open at the end of the hearing, to submit an
18 affidavit of some form from her, if it's needed. We
19 have Ms. Susan Hackney here, though.

20 THE COURT: Okay.

21 MS. WILSON: Thank you.

22 THE COURT: All right. Any objection to an
23 affidavit from Ms. Franklin-Best, if we need one?

24 MR. SHAFFER: Your Honor, I have no objection to an
25 affidavit being submitted. The only thing I would

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POST-CONVICTION RELIEF

1 request, if, for some reason, after viewing the
2 affidavit, I feel like there might be more testimony
3 needed, that possibly, we could leave the record open.
4 And I can let you know after reading it, but I just want
5 to make sure.

6 THE COURT: No, I understand. I understand. If it
7 appears, after reading the affidavit, that we need to
8 take her testimony to clear up any matters, I will leave
9 the record open for that. Okay?

10 MR. SHAFFER: Okay. Thank you.

11 THE COURT: Okay? But you need to notify me
12 shortly after you get that.

13 MR. SHAFFER: I will. Yes, your Honor.

14 THE COURT: So the record's just not left open.

15 MR. SHAFFER: Yes, your Honor, I will.

16 THE COURT: Okay. I know you will. Thank you,
17 sir. You ready to go?

18 MR. SHAFFER: Yes, your Honor.

19 THE COURT: Call your first witness.

20 MR. SHAFFER: Did you want to --

21 MS. WILSON: What did you say?

22 MR. SHAFFER: You want to --

23 MS. WILSON: Oh, the allegations?

24 MR. SHAFFER: Yes, your Honor.

25 THE COURT: Oh, yeah, I'm sorry.

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POST-CONVICTION RELIEF

1 MR. SHAFFER: Involving this case, the ineffective
2 assistance of appellate counsel ground that I'm going to
3 be alleging, in addition to the stuff that's actually
4 written in the application, the ineffective assistance
5 of appellate counsel, I believe that appellate counsel
6 was ineffective for failing to brief the motion for a
7 directed verdict in the criminal sexual conduct in the
8 first degree that was charged.

9 The State -- and to give you a little bit of
10 factual background in the case, the State alleged that
11 Mr. Twyman sexually assaulted a mentally disabled girl
12 who would come over to a house that Mr. Twyman was
13 staying at. They allege that he went over there to the
14 girl's house and said, *will you keep the kid of the lady*
15 *who I'm staying with.* She was in the habit of watching
16 over that child.

17 Whenever she arrived back at the house, he then
18 proceeded to have sex with her. There was no allegation
19 in the CSC first that there was any, you know, force or
20 aggravated force used. The allegation is that, in the
21 indictment, was that the -- was under Subsection (b),
22 from the CSC first statute. Which, I guess, a relevant
23 part of says that, that a person, you know, if the
24 sexual battery occurred, if the victim submits under
25 circumstances where she's also the victim of kidnaping,

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POST-CONVICTION RELIEF

1 and they use that as the allegation to substantiate the
2 charge of a CSC first, that she was allegedly a victim
3 of kidnaping at the point that the criminal sexual
4 conduct occurred.

5 Now, there's a kidnaping charge in this, too,
6 because there is some confinement later on. But
7 essentially, that was after the sexual battery took
8 place, and they're saying that she was inveigled. The
9 State alleged that she was inveigled into coming over
10 there to have sex with him.

11 I would actually make the argument that there's no
12 evidence to support the fact that she was inveigled,
13 first of all. Secondly, even if she was inveigled, if
14 she didn't submit, based off the inveigle, of knowing
15 she was inveigled, then it would not qualify under the
16 statute, and I believe that that is a proper reading of
17 the -- reading of the words *submits under circumstances*,
18 is that there has to be some sort of connection between
19 the kidnaping and the submitting. Your Honor, I don't
20 think that that's here, either, but I don't think that
21 there's any evidence that she was inveigled in the first
22 place, so I think the --

23 MS. WILSON: Your Honor, are we making argument, or
24 just outlining the allegations so the State can respond?

25 THE COURT: Well, I think he's doing both.

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POST-CONVICTION RELIEF

1 MS. WILSON: Okay.

2 MS. WILSON: I just want to know, so I can respond.

3 THE COURT: And Mr. Shaffer, and if you just want
4 to go -- so, the appellate counsel should have addressed
5 that issue in her brief.

6 MR. SHAFFER: Yes, your Honor.

7 THE COURT: Okay.

8 MR. SHAFFER: Yes, your Honor.

9 THE COURT: Okay.

10 MR. SHAFFER: That's the allegation. There's also
11 -- I believe that the -- that trial counsel was
12 ineffective by failing to --

13 THE COURT: Mr. Shaffer, I don't mean to interrupt
14 you. Is that the only thing that --

15 MR. SHAFFER: Yes, your Honor. And the appellate
16 counsel issue.

17 THE COURT: So, the appellate counsel should have
18 addressed that issue on appeal.

19 MR. SHAFFER: Yes, your Honor.

20 THE COURT: Okay. Should have made that legal
21 distinction, so that they could have gone forward and
22 convicted him of CSC first.

23 MR. SHAFFER: Yes, your Honor.

24 THE COURT: Okay. That's what -- okay. So, now,
25 we're at trial counsel.

10-29-14 TWYMAN V. STATE

POST-CONVICTION RELIEF

1 MR. SHAFFER: Yes, your Honor. Well, and in the
2 event that that wasn't preserved by appellate counsel, I
3 would allege that it was ineffective by trial counsel.

4 THE COURT: You mean if it wasn't preserved by a
5 trial counsel.

6 MR. SHAFFER: Yes, your Honor.

7 THE COURT: Okay.

8 MR. SHAFFER: If it wasn't preserved for the
9 appeal, then --

10 THE COURT: Okay. All right. Thank you, sir.

11 COURT REPORTER: I'm sorry, if it wasn't preserved?

12 MR. SHAFFER: For the appeal, then it would be
13 ineffective assistance of trial counsel.

14 THE COURT: Right. Okay.

15 MR. SHAFFER: I think trial counsel was ineffective
16 for failing to impeach the -- impeach the -- I
17 apologize, your Honor. And your Honor, trial counsel
18 was ineffective for failing to impeach the victim
19 through the use of a DVD statement that was given. That
20 trial counsel was ineffective for failing to ask the --
21 or move to have the Solicitor elect between CSC first
22 and CSC third. He was indicted for both, went to trial
23 on both, and was convicted of both, for the exact same
24 conduct, your Honor.

25 THE COURT: Mr. Shaffer, was it the same contact?

10-29-14 TWYMAN V. STATE

POST-CONVICTION RELIEF

1 I mean, this is just one incident?

2 MR. SHAFFER: Yes, your Honor.

3 THE COURT: Okay. Okay.

4 MR. SHAFFER: They proceeded under the mental
5 defect on the CSC third, your Honor.

6 THE COURT: Okay.

7 MR. SHAFFER: And that trial counsel was
8 ineffective for failing to object to the mother's
9 statement involving seeing what she thought to be semen.
10 I thought that -- or, your Honor, I believe that should
11 have been suppressed. And that trial counsel was
12 ineffective for failing to argue that the victim might
13 have been lying, or it might have been a -- or at least
14 arguing that the victim could have been lying, because
15 of the fact that she was diverting her eye contact. The
16 State used that as an argument that she was ashamed of
17 what happened. I guess a counter to that would be,
18 possibly, she was lying, as well.

19 And your Honor, I believe there's another issue
20 involving a plea. There was a six-year plea offer in
21 this case, prior to going to trial. Applicant did not
22 accept that six-year plea offer to the CSC third, due to
23 the fact that his trial counsel had advised him that the
24 CSC first would likely get thrown out later on.
25 Therefore, he proceeded to trial, based off of that.

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POST-CONVICTION RELIEF

1 THE COURT: Okay.

2 MS. WILSON: Is that all?

3 MR. SHAFFER: Yeah, that's it.

4 MS. WILSON: Well, your Honor, the State would
5 object to these allegations, because they weren't raised
6 earlier in Mr. Twyman's application for post-conviction
7 relief. This is my first time today hearing about these
8 additional allegations with regard to ineffective
9 assistance of trial counsel. Mr. Shaffer did make me
10 aware of his claim with regard to ineffective assistance
11 to appellate counsel. The State would just ask that Mr.
12 Twyman not be allowed to proceed on those, based on
13 the fact that the State wasn't given any notice that he
14 chose to proceed on these claims.

15 THE COURT: And Ms. Wilson, I know you've put that
16 objection on the record, but are you prepared to go
17 forward? I will continue it if you're not.

18 MS. WILSON: If you would just give me a second to
19 talk to Mr. Beach.

20 THE COURT: Okay.

21 MS. WILSON: This is really my first time hearing
22 about it.

23 THE COURT: Okay.

24 MS. WILSON: So, I just want to see if I could have
25 a second to talk to Mr. Beach about the allegation.

10-29-14 TWYMAN V. STATE

POST-CONVICTION RELIEF

1 THE COURT: You take as long as you can to talk to
2 Mr. Beach.

3 MS. WILSON: Thank you. Okay.

4 THE COURT: Okay?

5 MR. SHAFFER: Your Honor, some of these, I didn't
6 know about until today.

7 THE COURT: That's no problem. We'll see what
8 we're going to do.

9 BREAK IN PROCEEDING.

10 CONTINUE PROCEEDING.

11 THE COURT: All right. Ms. Wilson, have you had an
12 opportunity to meet with Mr. Beach to discuss this
13 allegation?

14 MS. WILSON: Your Honor, I have, and the State will
15 go forward on these. We just ask that, at the end of
16 the hearing, if I wanted to submit any case law
17 arguments with regard to them, that I have the
18 opportunity.

19 THE COURT: Well, I'll be happy to do that.

20 MS. WILSON: Thank you.

21 THE COURT: And because it was not brought to the
22 State's attention until now, if it appears that there
23 are other people that need to be called on the State's
24 behalf, we will continue to hear and take further
25 testimony.

10-29-14 TWYMAN PCR

DIRECT - SUSAN HACKETT

1 MS. WILSON: Thank you, your Honor.

2 THE COURT: Okay. Thank you. Mr. Shaffer.

3 MR. SHAFFER: Thank you, your Honor.

4 THE COURT: Ready?

5 MR. SHAFFER: Yes, your Honor.

6 MR. SHAFFER: Applicant would call Ms. Susan
7 Hackett.

8 MADAM CLERK: Please place your left hand on the
9 Bible, and raise your right hand. Do you solemnly swear
10 or affirm that the testimony you give to the Court in
11 the trial will be the truth, so help you God?

12 SUSAN HACKETT: Yes.

13 MADAM CLERK: Please be seated.

14 COURT REPORTER: Please spell your last name for
15 me.

16 SUSAN HACKETT: H/a/c/k/e/t/t.

17 THE COURT: Ms. Hackett, you got enough paperwork?

18 SUSAN HACKETT: Yes, your Honor. I think so.

19 THE COURT: Okay. All right. And you know to
20 speak up. You're doing good.

21 SUSAN HACKETT: Thank you.

22 THE COURT: Okay. All right. Mr. Shaffer.

23 MR. SHAFFER: Thank you, your Honor.

24 SUSAN HACKETT

25 DIRECT EXAMINATION, BY MR. SHAFFER:

10-29-14 TWYMAN PCR

DIRECT - SUSAN HACKETT

1 Q Ms. Hackett, where are you currently employed?

2 A The Office of Appellate Defense and Division of the
3 Commission on Indigent Defense.

4 Q How long have you been there?

5 A Approximately four years.

6 Q Okay. And tell us a little bit about your
7 background prior to going to Appellate Defense.

8 A Certainly. Immediately before working at Appellate
9 Defense, I was an attorney with the Office of
10 Disciplinary Counsel, where I investigated and
11 prosecuted lawyers for violations of the *Rules of*
12 *Professional Conduct*. Prior to that, I was the
13 executive director of the Center for Capital Litigation,
14 where I represented death-sentenced inmates, and
15 represented people who were charged capitally, pretrial.

16 Prior to that, I worked for a private firm, where
17 we did mostly capital litigation, as well, but some non-
18 capital criminal defense. That firm was Blume, Weybel &
19 Norris. It is now Blume, Norris, & Franklin-Best. Ms.
20 Franklin-Best now works for that firm.

21 And prior to that, I was a law clerk with the
22 Honorable Deadra Jefferson, down in the Ninth Judicial
23 Circuit.

24 Q Okay. And so, you've had a good bit of experience
25 doing criminal work, obviously.

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DIRECT - SUSAN HACKETT

1 A Yes.

2 Q Okay. Now, tell us how you came to -- or, did you
3 represent Mr. Twyman?

4 A Yes, I represented Leslie Twyman.

5 Q How did you come to represent Mr. Twyman?

6 A When Ms. Franklin-Best left the Office of Appellate
7 Defense, some of her cases were distributed among the
8 current appellate defenders. Others were given to the
9 appellate defender who took her spot. Mr. Twyman's was
10 one that was given to me, because the initial brief had
11 already been filed by Ms. Franklin-Best, and I was given
12 the case to essentially finish it up, which would
13 include filing the final brief of appellate and the
14 record on appeal, and arguing the case, in the event
15 that argument was granted.

16 Q Okay. And tell us about the process of filing a
17 final brief. What do you do in a final brief?

18 A The rules prohibit you -- prohibit a lawyer from
19 changing anything other than the cites and typographical
20 errors. So, if you want to put anything in a brief that
21 needs to be put into your initial brief, or a reply
22 brief, because your final can only change the cites from
23 the transcript cites to the record on appeal cites, and
24 can only change typographical errors, like, if I -- if
25 something had been misspelled, or a period should have

10-29-14 TWYMAN PCR

DIRECT - SUSAN HACKETT

1 appeared instead of a comma. We're not permitted to
2 make any substantive changes at all when we go to file a
3 final brief.

4 Q Okay. So, you couldn't have -- you couldn't have
5 added an issue or anything like that. Is that correct?

6 A That's exactly correct. We are not permitted to
7 add issues when we're filing the final brief.

8 Q Okay. Who did the initial brief in this case?

9 A Ms. Best, Ms. Elizabeth Franklin-Best.

10 Q Okay. And basically, your involvement, now that
11 you received a copy of the initial brief and you changed
12 the cites, or you had someone change your cites, and
13 then you signed off on it?

14 A That's correct.

15 Q Okay.

16 A When I received the case from my supervisor, the
17 Chief Appellate Defender, we were -- we calendared when
18 the record on appeal would be due. We put the record on
19 appeal together, made sure that was filed accurately,
20 from my designations, as well as from Ms. Franklin-
21 Best's designations, as well as the Attorney General's
22 designations, we file the record on appeal; and then, we
23 filed our final brief of appellate 30 days --
24 approximately 30 days after filing the record. And my
25 assistant would have changed those page numbers, and I

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1 would have approved those changes.

2 Q Okay. What issue was briefed in the initial brief?

3 A There were two issues that were briefed in the
4 initial brief. Both concerned the criminal sexual
5 conduct with a minor in the third degree. The first
6 issue was kind of nuanced, in that the -- the CSC third
7 statute concerned no aggravation at all. However, the
8 indictment accused Mr. Twyman of forcibly penetrating
9 the victim. And the issue was raised that a directed
10 verdict should have been granted on the basis that the
11 use of the language forcibly penetrated, brought into
12 the consideration aggravating factors, where those were
13 specifically excluded under the statute.

14 The second issue that was briefed was much more
15 straightforward, and that was whether the directed
16 verdict should have been granted on the criminal sexual
17 conduct of the -- in the third degree, because the State
18 failed to present direct or substantial circumstantial
19 evidence that the victim was, in fact, mentally
20 incapacitated, as that term is defined in the statute.

21 Q Okay. And were you in charge of the case whenever
22 the opinion came down from the Court of Appeals?

23 A I was.

24 Q Okay. And what did you do at that point, once you
25 received the opinion?

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1 A I reviewed the opinion; made a determination of
2 whether we should seek cert to the South Carolina
3 Supreme Court; decided that we should not; wrote a
4 letter to Mr. Twyman advising him of my decision not to
5 seek a petition for writ of certiorari; and providing
6 him with an application for post-conviction relief.

7 Q Okay. And have you reviewed the record in this
8 case?

9 A Yes, I have.

10 Q The record on appeal?

11 A Yes, I have.

12 Q Okay. Well, why did you decide not to seek cert on
13 the case?

14 A Well, for one thing, the criminal sexual conduct in
15 the first degree was not part of the appeal, and that
16 was what was really holding Mr. Twyman in prison for the
17 extended period of time. As an appellate defender, one
18 of the first things you want to do is look at what's
19 keeping your client in prison for the maximum amount of
20 time, and then look at how you can attack that
21 conviction the most; because criminal sexual conduct in
22 the first degree, obviously, was the more severe crime
23 here.

24 Additionally, when I looked at the opinion from the
25 Court, and the issues that we had raised, the first

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1 issue was a difficult one to try to go forward with,
2 because, although the statute does not require -- or, it
3 actually excludes any aggravating circumstances, it
4 still includes a sexual battery. And that term,
5 battery, being used in connection with the sexual
6 assault would lead one to believe that you could include
7 some forcibly penetrated language, being the devil's
8 advocate for that.

9 And the second issue about whether the accuser was
10 mentally defective or incapacitated, there was evidence
11 in the record, as I recall, from a speech pathologist
12 and child psychologist, and other individuals who
13 actually treated the young lady in various aspects,
14 whose testimony differed to some degree on whether she
15 had the ability to appraise her conduct and the conduct
16 of others, which is what I think the definition of
17 mentally incapacitated is.

18 But certainly, we argued before the Court that the
19 State had failed to present that evidence, at least of a
20 substantial nature.

21 Q Okay. Do you recall the sentence in this criminal
22 sexual conduct, third degree? Do you know if it was
23 concurrent or consecutive to that first degree?

24 COURT REPORTER: I'm sorry. Last --

25 Q I apologize. Do you know if the sentence for

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1 criminal sexual conduct in the third degree was
2 concurrent or consecutive to the sentence for criminal
3 sexual conduct in the first degree?

4 A According to the brief that I'm reviewing, it was
5 to be served concurrently. If you would like for me to
6 check the record, I can do that.

7 Q No, that's okay.

8 THE COURT: I've got the record in the case. You
9 don't need to do that. I'm sorry to interrupt.

10 BY MR. SHAFFER:

11 Q Now, you've had a chance to review the record. In
12 your review of the record, do you -- well, tell us,
13 first, what was the aggravation that they used to charge
14 him with criminal sexual conduct in the first degree?

15 A The CSC first charge that the indictment
16 specifically was under Subpart (b), which was the victim
17 submits to sexual battery by the act, or under
18 circumstances where the victim is also the victim of
19 forcible confinement, kidnaping, extortion, et cetera.
20 So, it's Subpart (b), dealing with kidnaping, generally.

21 Q Okay. Do you recall anything in the record, any
22 evidence in the record, that would support a finding
23 that she was the victim of the kidnaping when the sexual
24 assault -- or the sexual battery occurred?

25 A I do not recall any of -- evidence of a kidnaping

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1 at the time of the sexual battery. I believe the
2 evidence in the record was that she had come to the
3 residence to look after a young man who had some
4 disabilities, as well, and that the sexual battery
5 occurred during her visit to the home, that she had come
6 there willingly.

7 Q Okay. And after, do you recall whether there was a
8 kidnaping or something, some sort of confinement that
9 happened after the sexual battery?

10 A I believe that the young lady testified that she
11 was -- multiple sexual acts occurred, and I believe that
12 she had cleaned herself up afterwards, and was told she
13 couldn't leave yet, even though she wanted to leave.

14 So, I believe those were the factual scenario, that she
15 wanted to leave afterwards, and was told that she could
16 not.

17 Q Okay. And given your testimony on that, do you
18 believe that -- well, if you had the case, would you
19 have raised a directed verdict issue on a criminal
20 sexual conduct in the first degree, if you had had the
21 case, initially?

22 A If I had the case initially, my first obligation
23 would have been to look for an issue related to the CSC
24 first, because of it being the more serious charge. And
25 if that issue had been in the record that we had just

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1 discussed regarding the directed verdict for a criminal
2 sexual conduct in the first degree for failure to show
3 that the accuser submitted to the sexual battery at the
4 time of the kidnaping, then, I would have raised that
5 issue, because there's no strategic reason for an
6 appellate defender to forgo a winning issue.

7 MR. SHAFFER: Okay. No further questions.

8 THE COURT: Ms. Wilson.

9 MS. WILSON: Beg the Court's indulgence, your
10 Honor.

11 THE COURT: Okay.

12 SUSAN HACKETT

13 CROSS-EXAMINATION, BY MS. WILSON:

14 Q So, Ms. Hackett, your testimony just now was that,
15 if the issue was in the record that the State failed to
16 show that the victim had, I guess, been kidnaped by the
17 defendant before the sexual assault, that you would have
18 raised that issue on appeal, in support of -- in support
19 of your argument that directed verdict should have been
20 granted on CSC first degree? Am I getting that right?

21 A Yes, ma'am.

22 Q Okay. So, but would you agree that the State's
23 theory that kidnap -- that it was the State's theory
24 that the kidnaping -- or, the kidnaping portion of --
25 or, what constitutes kidnaping portion, for purposes of

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1 CSC first degree was that the defendant inveigled and
2 decoyed the victim?

3 A It appeared to me that the State's argument in
4 closing was that this luring occurred from the moment
5 that Mr. Twyman went to her home and asked her to come
6 to his home to look after the young man. Now, that is
7 based purely upon closing argument alone.

8 Q Um-hmm.

9 A I do not recall the State making an argument in
10 opposition to a directed verdict of criminal sexual
11 conduct in the first degree on that basis. If it's in
12 the record, I may have missed it, and will certainly,
13 you know, take whatever direction you give me to look
14 for it.

15 Q And have you had the opportunity to review the
16 indictment, where the State used the inveigle and decoy
17 language?

18 A I'm certain that I have reviewed it. I can review
19 it again now, and see that -- it appears to me that what
20 the State used was the defendant did lure the mentally-
21 challenged victim into his home by false pretense,
22 and/or did forcibly prevent her from leaving.

23 Q Okay. So, you would agree that that was something
24 the State was using at court. They were trying to say
25 that a part -- or what constituted kidnaping was the

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1 inveigle and decoy.

2 A It certainly appears in the indictment, and was in
3 the State's closing argument. I believe it was the
4 first couple of sentences that the State uttered at
5 closing argument was this luring, I believe --

6 Q Right.

7 A -- was the actual word that he used.

8 Q And do you recall that the State -- do you recall
9 that, based on the facts of the record, this luring and,
10 I guess, inveigling and decoying, as the State argued,
11 was alleged to have taken place before the sexual
12 assault? Do you agree?

13 A Yes. I think that the -- the closing argument from
14 Mr. Shelton was that she was lured to the home, and then
15 sexually assaulted. That was the argument made at
16 closing.

17 Q Right. So, you would agree that, if this
18 inveigling and decoying that the State argued
19 constituted kidnaping took place when Mr. Twyman was
20 alleged to have knocked on the victim's door to have her
21 come up to the home, would you agree that, if that
22 constituted the kidnaping, then, that took place prior
23 to the sexual assault?

24 A It would have taken place prior to the sexual
25 assault. However, the language of the statute requires

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1 that the victim submit under those circumstances. So,
2 it is possible that an argument would have existed that
3 she was not submitting to the sexual battery, under the
4 circumstances of the luring or inveigling.

5 Q And now, would you agree, though, that the plain
6 language of the statute doesn't -- it doesn't state that
7 the sexual battery and the circumstances under which the
8 victim submit have to take place simultaneously. Would
9 you agree?

10 A I'm going to ask for one moment to actually --

11 Q Okay.

12 A -- retrieve the statute itself, because I was
13 looking at my notes for it. And my notes say -- or the
14 statute itself says that:

15 *The victim submits to the sexual battery*
16 *by the act or under circumstances where the*
17 *victim is also the victim of forcible confinement,*
18 *kidnaping, trafficking in persons, robbery,*
19 *extortion, burglary, house breaking, or any other*
20 *similar offense or act.*

21 It appears to me, by using the word *submits*, and in
22 the present tense, that those acts would have to be
23 occurring simultaneously.

24 MS. WILSON: Thank you.

25 THE COURT: Mr. Shaffer, anything on re-direct?

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RE-DIRECT - SUSAN HACKETT

1 MR. SHAFFER: Yes, your Honor.

2 SUSAN HACKETT

3 RE-DIRECT EXAMINATION, BY MR. SHAFFER:

4 Q You had mentioned the language involving submitting
5 under circumstances. Hypothetically, if there was
6 evidence in the record to establish that she was
7 inveigled and kidnaped through the inveiglement, being
8 inveigled, would you -- could you have raised that as a
9 directed verdict issue, based off the submitting under
10 circumstances language? Could you still have made the
11 argument that there was not sufficient evidence to
12 constitute CSC first?

13 A Yes. The argument would have revolved around what
14 the term *submits* means, I believe, and would have
15 required us to get into the plain -- plain meaning of
16 the statute, what the language itself means, draw in
17 some definitions of that, and perhaps look at other case
18 law regarding what has occurred in similar criminal
19 sexual conduct in the first degree, under Subpart (b).
20 Certainly, I would have wanted the opportunity to do
21 that research and decide whether to present that issue.

22 Q Okay. So, kidnaping, you can kidnap someone, or be
23 in violation of the kidnap statute by inveigling
24 someone, correct?

25 A Yes.

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RE-DIRECT - SUSAN HACKETT

1 Q Okay. If I invited you to lunch, and you went to
2 lunch with me, and I didn't mention -- and I had two
3 motives, one to go eat; the other motive was to pick
4 your brain about an ethical issue would I have kidnaped
5 you under those circumstances?

6 A That's an excellent question, Mr. Shaffer, but the
7 way that the term *inveigle* is often used, I think the
8 way *inveigle* is defined, it would involved tricking.

9 Q Okay.

10 A And it's potential that that would be tricking me
11 into going to lunch with you, based on that ulterior
12 motive.

13 Q Okay. So, it could have -- it could have been me
14 tricking you. But if we actually went and had lunch, do
15 you think that that's kidnaping, under the -- under the
16 statute, or not?

17 A No, I do not.

18 Q Okay. If the girl came over and the kid was there
19 to watch, do you think that that's kidnaping, under the
20 statute?

21 A No.

22 Q Okay.

23 MR. SHAFFER: No further questions.

24 THE COURT: Ms. Wilson.

25 MS. WILSON: One followup, your Honor.

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RE-CROSS - SUSAN HACKETT

1 SUSAN HACKETT

2 RE-CROSS-EXAMINATION, BY MS. WILSON:

3 Q Ms. Hackett, you've heard Mr. Shaffer's
4 hypotheticals, but if Mr. Shaffer -- no offense -- if he
5 tricked you into lunch, and then he sexually abused you,
6 would that be considered kidnaping?

7 A I don't -- I'm not sure of the answer to that
8 question. It's quite difficult to answer a question
9 about my own sexual battery.

10 Q Hypothetically, I promise.

11 THE COURT: Hypothetically.

12 BY MS. WILSON:

13 A Certainly. I'm not sure, in that situation, that
14 it would be, even with the trickery involved. But
15 again, I'm a -- I'm a paper person, as you can tell. I
16 would like the opportunity to research whether that
17 would be kidnaping, under the statute, but I think that
18 it would require a little bit more than that.

19 MS. WILSON: Okay. Thank you.

20 SUSAN HACKETT

21 EXAMINATION BY THE COURT:

22 THE COURT: Before she sits down, I want to ask a
23 question.

24 A Yes, sir, your Honor.

25 THE COURT: Okay. You reviewed the record.

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1 A Yes, sir.

2 THE COURT: Okay. Assuming there had been an
3 objection going forward on CSC first, your review of the
4 record indicates that that issue should have been
5 appealed, the failure to address the issue about the
6 kidnaping, the submitting to kidnaping, prior to the
7 criminal sexual conduct?

8 A Yes, sir. I believe that it's an open question in
9 South Carolina regarding that particular aspect of it,
10 because of the present tense of the word *submits* in the
11 statute. And I believe that there is a directed verdict
12 motion made, but it seems to me, if my memory is
13 correct, having reviewed it, that it was primarily on
14 the criminal sexual conduct in the third degree aspect.

15 THE COURT: Okay. Is there any reason, in your
16 view of the file, that Ms. Franklin-Best had, any reason
17 why that issue would not have been brought up on appeal?

18 A I'm not aware of any. We do not make any strategic
19 decisions to not raise winning issues. So, there's --
20 and appellate work being so different from trial level,
21 there's usually no strategic reason to forgo any issue.

22 THE COURT: Right. And that's what I'm saying.
23 But you got the file.

24 A Yes, sir.

25 THE COURT: And you picked it up, and you had to do

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1 the file brief. I realize it was after the initial
2 brief is done. I realize the limitations on that.

3 A Yes, sir.

4 THE COURT: But having done that, I mean, in your
5 view of the file, is there any reason, any notes in
6 there, any reason why that was not included in the
7 initial wording?

8 A Oh, no, sir. No, sir. I did not see any notes
9 from Ms. Franklin-Best, or any indication that she had
10 reviewed that issue, investigated it, researched it, and
11 had discarded it. I apologize, I did not understand
12 your question, to begin with.

13 THE COURT: No, no, no. Okay. That's fine.

14 A But no, sir, I did not see where that issue has
15 been considered.

16 THE COURT: Okay. Okay. All right. Thank you.

17 A Thank you.

18 THE COURT: All right. You may step down. I
19 appreciate your coming. All right. Mr. Shaffer.

20 MR. SHAFFER: Applicant would call Harris Beach.

21 MADAM CLERK: Right here, sir. Place your left
22 hand on the Bible. Raise your right hand. Do you
23 solemnly swear or affirm the testimony you give to the
24 Court in this trial shall be the truth, so help you God?

25 HARRIS BEACH: I do.

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DIRECT - HARRIS BEACH

1 THE COURT: Mr. Beach, how are you this morning?

2 HARRIS BEACH: Fine, your Honor.

3 THE COURT: It's good to see you again.

4 HARRIS BEACH: Good to see you again.

5 THE COURT: It's always good to have you under
6 oath.

7 HARRIS BEACH: It's dangerous.

8 THE COURT: Yes, sir. Yes, sir, it is. All right.
9 Mr. Shaffer, your witness.

10 MR. SHAFFER: Thank you, your Honor.

11 HARRIS BEACH

12 DIRECT EXAMINATION, BY MR. SHAFFER:

13 Q Mr. Beach, you represented Mr. Twyman, correct?

14 A I did.

15 Q Okay. Were you appointed or retained?

16 A I was with the Public Defender's Office. We were
17 appointed.

18 Q All right. And tell us a little bit about your
19 background and experience.

20 A I graduated from USC Law School in 1972. Had a
21 brief stint in the Army, and I went to work for Ackerman
22 & Butler at that time. Then, I went to McLeod, Fraser &
23 Cone. I then went and became a partner with Keith
24 Kinard at Kinard & Beach attorneys. In 2003, I went
25 with the Public Defender's Office, and was Chief Public

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1 Defender in Colleton County until 2013. I'm now semi-
2 retired, doing title -- Rule 608 cases.

3 Q Okay. And so, I imagine you've had, in your
4 career, you've had a great deal of experience with
5 criminal trials.

6 A Yes, sir.

7 Q Now, this case --

8 MR. SHAFFER: Your Honor, I apologize, your Honor.
9 I have a -- I had a thought about a different case.

10 THE COURT: That's okay. I have those, too.

11 BY MR. SHAFFER:

12 Q Now, Mr. Beach, tell us a little bit about your
13 preparation for trial in this case.

14 A Well, I got the case. It was assigned to me. I
15 went to see Mr. Twyman. We talked about it awhile, and
16 I began reviewing the evidence. I did a discovery
17 motion, and received all of the evidence. We had a
18 preliminary hearing. We went over everything. We
19 talked back and forth, and eventually, it came up for
20 trial.

21 Q Okay. And was there a plea offer on this case?

22 A I believe there was.

23 Q Okay. Do you recall what it was?

24 A It was -- I think -- no, I really don't. I really
25 don't remember exactly what -- I think around 15 years.

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DIRECT - HARRIS BEACH

1 Q Okay. And what is that -- which charge was that
2 for?

3 A That was on the CSC third, I think.

4 Q Okay. Now, was he initially charged with both CSC
5 third and CSC first?

6 A I think he was.

7 Q Okay. Did you think that there might be some sort
8 of problem involved in that?

9 A No, there were some cases to that effect that could
10 go with both charges, in a situation with a mentally
11 defective person, and with a -- with an adult being the
12 same person. I did not think that there was -- that the
13 State had a real problem with that.

14 Q Okay. And do you think there was evidence to
15 support both charges?

16 A Yes, I do. I did make the motion that they hadn't
17 shown all -- that they hadn't proven all the elements,
18 but I think that they had.

19 Q Okay. What evidence did they have that she was the
20 victim of kidnaping?

21 A The evidence, as I recall it, was on the inveigling
22 part of kidnaping. The evidence from her was that he
23 had come to her and asked her to come to his house, or
24 to his -- somebody's house, and take care of a person
25 whom she'd taken care of before, and asked her to come,

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1 and tricked her to come to the house. The person was
2 not there, and that's where the incident allegedly
3 occurred.

4 Q Okay. And why did he -- how did he get her to come
5 to the house? Do you recall?

6 A He asked her to come. I think she came -- I
7 believe she came separately, that she came over to the
8 house, and he was there, or came right afterwards.

9 Q Okay. Do you know why she had him come to the
10 house -- or he had her come to the house?

11 A To take --

12 Q The allegation.

13 A Supposedly, to take care of someone who had either
14 physical or mental problems, someone that she had sat
15 with before.

16 Q Okay. And was that person there at the time?

17 A I don't believe he was.

18 Q Okay. Have you had a chance to review the
19 transcript?

20 A I have.

21 MR. SHAFFER: Court's indulgence.

22 BY MR. SHAFFER:

23 Q Now, Mr. Beach, if you could, turn to Page 207.

24 A 207?

25 Q Yeah. And if you could, look at Lines 14 through

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1 17.

2 A 207. Which lines?

3 Q 14 through 17.

4 A 14? Yes.

5 Q Okay. What did they -- this is the testimony of
6 the alleged victim, correct?

7 A Yes.

8 Q Okay. Now, who did she say was at the house at the
9 time?

10 A She said, *him*. I'm assuming she's referring to Mr.
11 Twyman, and Ms. Gooding's son, so he was there.

12 Q Okay. So, Ms. Gooding's son was there.

13 A I believe he was. I think he was -- to my
14 recollection, he was in another -- another room, another
15 part of the house.

16 Q Okay. Now, do you have -- or do you recall the
17 State presenting any evidence specifically that would
18 imply that the alleged victim was not going to sit with
19 the son, with Ms. Gooding's son?

20 A Was not willing to sit with her son?

21 Q Or was not going to sit with her son.

22 A I don't recall it.

23 Q Okay. Any indication that he had lied to her about
24 that? About sitting with her son.

25 A The only thing that I recall was that she said he

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1 asked -- asked him, Mr. Twyman, to come sit with the
2 son.

3 Q Yeah.

4 A That's --

5 Q And the son was there, right?

6 A Let's see. According to this, the son was there.

7 Q Okay. There's some indication later that Mr.
8 Twyman walked or exited from the house. Is that right?

9 A I believe that's correct.

10 Q And that happened after the sexual assault -- or
11 the sexual battery occurred, right?

12 A Yes.

13 Q Okay. And just for the record, you did make a
14 directed verdict motion as to the criminal sexual
15 conduct in the first degree?

16 A I did.

17 Q Okay.

18 A On three occasions.

19 Q Okay. And initially, you mentioned it, later on,
20 you went more into depth into it.

21 A Yes.

22 Q The first time you made it, you just said, move for
23 a directed verdict, right?

24 A I said -- I believe my language was that I moved
25 for a directed verdict, based on my assertion that the

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1 State had not proven all of the elements of the crime.

2 Q Okay. Now, the victim had given a video statement.
3 Is that right?

4 A I don't recall one.

5 Q Okay. You don't recall whether she had or not?

6 A I don't recall whether she did or not. I think she
7 may have, but I just don't recall it.

8 Q Going back to the plea offer that was made, did you
9 talk to him about the case for the -- or whether to
10 accept or decline the plea offer? Do you recall talking
11 to him?

12 A Yes, I did. My firm position is, if -- if any type
13 of offer is made, I immediately take it to the client.

14 Q Okay. Do you remember --

15 A And I remember doing that to this one.

16 Q And do you recall whether you told him about it?

17 A I told him what it was. We went back over what he
18 was charged with. We went back over what he could get
19 as a maximum sentence. And you know, I told him that
20 this was what was offered; that this would mean that he
21 would not go to trial; that he would be able to take
22 this, and it would be over. He said he didn't do it,
23 and he wasn't going to take the offer.

24 Q Okay. Now, they had a -- they had a great deal of
25 evidence against him, saying that he did, at least, have

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1 some sort of sexual relationship with her -- or sexual
2 contact with her, correct?

3 A It was a fair amount, yes.

4 Q Okay. Now, at one point -- well, after the alleged
5 victim leaves the house, after she gets away and leaves
6 the house, she goes back to her house, correct?

7 A I think that's correct.

8 Q Do you recall testimony regarding her mother, or
9 her mother's testimony in this case?

10 A Her mother did testify.

11 Q Okay. And did her mother testify -- did her mother
12 testified that she found something, correct?

13 A Yes.

14 Q Basically took her in the bathroom and found some
15 semen?

16 A That's what she testified to.

17 Q Did you make any objection on the semen?

18 A No.

19 Q Okay. Now, they had DNA tested in this case,
20 correct?

21 A I believe they did.

22 Q Okay. What was the result of the DNA that was
23 tested?

24 A I believe it was a match with Mr. Twyman.

25 Q Okay. Now, you've tried quite a few cases since

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1 then, right?

2 A Quite a few.

3 Q So, you might not remember detail in this, right?

4 A That's true.

5 Q Okay.

6 A And I got old, and I remember even less.

7 MR. SHAFFER: Okay. Court's indulgence.

8 BY MR. SHAFFER:

9 Q If the transcript indicated that the DNA came back
10 that there was basically no DNA found, would you
11 disagree with that?

12 A I don't have as good a memory of the DNA, so I
13 would not disagree with whatever the transcript says.
14 Where, in the transcript, is that?

15 MR. SHAFFER: And your Honor, I did not have it
16 marked. I believe it's the last witness that testified.

17 THE COURT: Okay.

18 MS. WILSON: It's on 171.

19 MR. SHAFFER: 171, is was the one that testified
20 immediately --

21 THE COURT: 171?

22 MR. SHAFFER: Yes, your Honor.

23 MS. WILSON: The witness was Amanda Webb, was the
24 DNA expert.

25 COURT REPORTER: I'm sorry. I didn't hear you.

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1 MS. WILSON: Amanda Webb was the DNA expert.

2 THE COURT: Okay.

3 BY MR. SHAFFER:

4 Q Assuming that no DNA match was able to be made, do
5 you think it would have been prudent to object to the
6 comment about the semen made by the mother?

7 A Well, it was a little late then, because she
8 testified earlier, before the DNA expert had come up.

9 MR. SHAFFER: Okay. No further questions.

10 THE COURT: Anything on cross-examination?

11 MS. WILSON: Yes, your Honor.

12 HARRIS BEACH

13 CROSS-EXAMINATION, BY MS. WILSON:

14 Q Now, Mr. Beach, we talked about your long history
15 as a practicing attorney. Do you recall how many times
16 you got to meet with Mr. Twyman? Was it as frequently
17 as you needed before trial?

18 A I believe it was. We met several times. We
19 discussed it. We went over the evidence. We went over
20 the statements, the few statements that we had. I tried
21 to go over what I had gotten in discovery with him.

22 Q Okay. And you testified you filed the discovery
23 motion, and you reviewed it with him, right?

24 A Yes. Yes, I did.

25 Q And you also testified that you talked to him about

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1 the elements of the charges and what the State had to
2 prove. That's correct?

3 A Yes, yes.

4 Q Did Mr. Twyman talk to you about his version of
5 facts? Did you all go over that?

6 A Yes, he did. He said he did not do it, that he
7 didn't touch her, and he was adamant about that.

8 Q Okay. And did you also talk to Mr. Twyman about
9 possible defenses; and if so, what -- can you kind of
10 explain to the Court what your strategy was and what
11 defense was that you chose to present?

12 A Well, the defense was that he didn't do it. The
13 little girl had -- had made it up. Or that, in her
14 mentally defective condition, that she had just
15 fabricated the whole thing. Our evidence -- our theory
16 was that it didn't happen.

17 Q And could you briefly describe, or kind of
18 characterize what evidence the State had against Mr.
19 Twyman?

20 A The best evidence they had was the little girl's
21 testimony. She was a superb witness. I have never seen
22 a better witness. And I accused Mr. Shelton, the
23 Assistant Solicitor, of sending her to Hollywood to prep
24 her, but she was really good. She went through
25 everything, and there were very few mistakes, or any way

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1 I could impeach her on what she was saying. They had
2 the evidence of the mother saying that she found some
3 liquid on the -- on the little girl's clothing, and that
4 was -- that was really most of the evidence that they
5 had.

6 Q Okay. When you talked to Mr. Shaffer about the DNA
7 evidence, and this is reflected in the record, but I
8 just want to see if you recall it. Do you recall that
9 there was semen found in the vic -- on the victim, but
10 the State -- but DNA was not found, because there was no
11 sperm. Does that sound --

12 A That sounds familiar. I just -- I had thought they
13 had found the semen, but obviously, I was wrong on that.

14 Q Um-hmm.

15 A As you pointed out to me. But I know she found
16 some liquid on the little girl's underwear.

17 Q And did you feel like you had ample time to prepare
18 for the trial?

19 A I'm sorry?

20 Q Did you have enough time to prepare for trial?

21 A I believe so. You always want a little more, but.

22 Q Right. Always. Mr. Beach, we talked a little bit
23 about the fact that the State was proceeding on CSC
24 first degree, and CSC third degree of a mentally
25 deficient problem with that.

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1 A Yes.

2 Q When you proceeded to trial, was it your
3 understanding that CSC third degree was not a lesser-
4 included offense as CSC first degree?

5 A That was my impression, yes.

6 Q And do you recall having any discussions with the
7 Court about the State being able to proceed on both
8 charges?

9 A I believe that the action was actually brought up
10 by Judge Buckner, and because he asked the Solicitor
11 about it, and we -- we had -- we had researched that,
12 and there were a couple of cases that had indicated that
13 she could go forward on both of them, because of the
14 differences between the statutes.

15 Q Okay. And obviously, since you proceeded on those
16 two charges, it was the Court's impression that you
17 could.

18 A Yes.

19 Q That they could.

20 A Yes, it was.

21 Q And there's also your testimony today that you
22 thought the State presented sufficient evidence to
23 support the charges that Mr. Wyman was facing -- Mr.
24 Twyman was facing.

25 A I believe they presented a prima facie case. I

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1 believe that he was convicted on strength of the
2 testimony of the young lady.

3 Q Okay. And would you agree with me that, if Mr.
4 Twyman was accused of inveigling and decoying the
5 victim, that that would have been sufficient to support
6 a charge for kidnaping?

7 A That was my understanding of the kidnaping statute,
8 as it applied to the CSC; that that was the aggravation.

9 Q We talked about, going back to the victim's
10 mother's testimony about finding the liquid or some
11 semen on the victim after the victim reported the
12 incident, did you think that you had a basis to object
13 to that testimony at trial?

14 A I didn't think that I had any basis to object to
15 it, and I did not object to it.

16 MS. WILSON: Thank you.

17 THE COURT: Anything on re-direct?

18 MR. SHAFFER: No, your Honor.

19 THE COURT: You may step down.

20 HARRIS BEACH: Thank you, sir.

21 THE COURT: Good seeing you again.

22 HARRIS BEACH: Good to see you, Judge.

23 THE COURT: Yes, sir. Mr. Shaffer, are you
24 prepared to call your next witness?

25 MR. SHAFFER: Yes, your Honor. Applicant will

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1 call Mr. Twyman, Leslie Twyman.

2 THE COURT: Mr. Twyman.

3 MADAM CLERK: Right here, sir. Do you solemnly
4 swear or affirm that the testimony you give to the Court
5 in this trial shall be the truth, so help you God?

6 LESLIE TWYMAN: Yes, ma'am.

7 MADAM CLERK: Please be seated.

8 THE COURT: Mr. Twyman, when you get up there, get
9 comfortable, sir.

10 LESLIE TWYMAN: Yes, sir.

11 THE COURT: All right. Now, you need to speak up,
12 please, sir.

13 LESLIE TWYMAN: Yes, sir, sir.

14 THE COURT: A little louder than that.

15 LESLIE TWYMAN: Yes, sir, sir.

16 THE COURT: All right. Mr. Shaffer.

17 LESLIE TWYMAN

18 DIRECT EXAMINATION, BY MR. SHAFFER:

19 Q Mr. Twyman, where are you currently incarcerated?

20 A McCormick Correctional Facility.

21 Q Okay. And what sentence are you currently serving?

22 A I'm serving CSC in the first, CSC in the third,
23 Count I and a Count II.

24 Q Okay. Are they concurrent or consecutive?

25 A Sir, yes, sir. They're running concurrent.

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1 Q Thank you. Now, Mr. Twyman, tell us a little bit
2 about -- you were represented by Mr. Beach at trial,
3 right?

4 A Sir, yes, sir.

5 Q Tell us a little bit about your contact with Mr.
6 Beach. How many times did you meet with him?

7 A Well, Mr. Beach came to see me about three times.

8 Q And what did you all discuss?

9 A Well, we discuss about the plea. We discuss about
10 the plea bargain, and we discussed about a situation
11 that he say that she probably had -- she probably had
12 similar -- similar crime to this one. Matter of fact,
13 I'm going to give it to you, straight up. Just give me
14 a moment. I'm going to give it to you. Just give me
15 one moment. I'll be right with you.

16 COURT REPORTER: I'm sorry?

17 A Just give me one moment, ma'am. I'll be right with
18 you.

19 Oh, he said she had a similar case to this case,
20 but we cannot bring it up, because there's the law that
21 protects her.

22 Q Okay. And what was the plea offer in this case?

23 A Well, the plea offer was six years.

24 Q Okay. Do you know if that was six actual years, or
25 if it was, you know, six years, a six-year sentence in

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1 name. Or was it six years, and you would actually,
2 likely, do all of the time?

3 A It was six years.

4 Q Okay.

5 A If I pleaded to six years, they wouldn't come with
6 CSC in the first.

7 Q Okay. And what did you think about that offer?

8 A I didn't take the plea.

9 Q Why didn't you take it?

10 A Because me and him discussed, if we take it to
11 trial, he told me if I took it to trial and I lose, and
12 it gets to a higher court, it would get thrown out.

13 Q Okay.

14 A Being that there was no DNA that could pin me to
15 this crime.

16 Q Okay. You said there was no DNA, and he said that
17 would be the basis of it getting reversed?

18 A Yes.

19 Q Okay. Why was there no -- you knew about no DNA
20 ahead of time, before the trial, right?

21 A Yes.

22 Q Okay. And that was from your discovery packet?

23 A That was from Mr. Beach's stuff. He came and visit
24 me and told me.

25 Q Okay.

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1 A That there was no DNA that could link me to the
2 crime.

3 Q And now, at trial, do you think that that was an
4 important thing? Do you think that was helpful for you,
5 or hurt you, the fact that there was no DNA linking to
6 you to it?

7 A To my knowledge, yes, it was. That's one of those
8 cases you see, basically, within the Innocence Project
9 that free people from DNA, that there is no evidence.

10 Q Okay. Now, you were represented on appeal by the
11 Office of Appellate Defense, right?

12 A Sir, yes, sir.

13 Q Did you have any contact with Ms. Franklin-Best,
14 who was your first attorney on it?

15 A Well, I never had no physically contact with
16 Franklin-Best. I -- I can't recall her name.

17 Q But they wrote you, right?

18 A Yes, they wrote me.

19 Q Okay.

20 A And I spoke to them on several occasions on the
21 phone.

22 Q Okay. Did you ever tell them issues you wanted
23 raised?

24 A When it came to my knowledge, when I read the brief
25 that they wrote, I thought they was dealing with both

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1 counts, because it had say on it Count I, Count II. But
2 I really -- I really had to view and read it. Then, I
3 wrote Elizabeth -- not Elizabeth Best, but her.

4 Q Ms. Hackett?

5 A Ms. Hackett. And I wrote a letter saying that is
6 she raising for both issues; and she say, no, she's only
7 raising for CSC in the third. And the reason for that,
8 because Franklin-Best already put in for that, and she
9 was not going to turn it around.

10 Q Okay. If they would have won your CSC in the
11 third, and directed verdict would have been granted in
12 that, or if they would have reversed the directed
13 verdict motion, would that reduce your time in any way?

14 A Sir, no, sir. I still would be serving the same
15 time, because they both was run concurrent.

16 Q Did you want them to brief the criminal sexual
17 conduct in the first degree?

18 A Sir, yes, sir.

19 Q Did you ever tell them not to?

20 A Sir, no, sir.

21 Q Okay. Now, there were several issues that you had
22 -- you wanted to raise, regarding your trial counsel,
23 right?

24 A Sir, yes, sir.

25 Q Okay. And one of those issues involves the victim

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1 not making eye contact with the investigator.

2 A Sir, yes, sir.

3 Q Could you explain that issue a little bit to us.

4 A All right. Give me one moment, sir. Okay. I got
5 it right here, sir. It's why did -- why did the
6 counselor didn't object to Detective Calvin answer as to
7 the victim's demeanor and emotional state. Why didn't
8 the objection to the Officer Calvin testimony that the
9 victim didn't make eye contact because she was ashamed,
10 which is common. Isn't it also common for a person
11 who's not telling the truth to be able [sic] to make eye
12 contact?

13 Q So, that's basically -- you're saying that you had
14 wanted him to make that argument?

15 A Sir, yes, sir.

16 Q Okay. And you also made an argument that you
17 wanted him to object to the mom testifying about the
18 semen?

19 A Sir, yes, sir.

20 Q Okay. Tell us a little bit about the -- how that
21 evidence came in, that there was semen on her clothing.

22 A Well, the mom testified -- the mom testified at
23 trial that see semen in her vagina slack. But there's
24 documentation and paper saying from Dispatch, which I
25 have here, saying that, when they called, they say that

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1 the mom seen semen in the panties. But from the DNA, is
2 saying that there was no semen found in the panty line.

3 COURT REPORTER: I'm sorry, there was so semen
4 found in?

5 A In the panties.

6 Q Now, there was the DVD statement of the victim. Is
7 that correct?

8 A Sir, yes, sir.

9 Q Was that provided to your attorney in discovery,
10 that you know of?

11 A Sir, yes, sir. That was part of the motion for
12 discovery.

13 Q Okay. And was that the -- do you think that that
14 evidence should have been introduced?

15 A Sir, yes, sir.

16 Q Why did you think that evidence should be
17 introduced?

18 A Because it's showing, in that DVD, I seen the DVD
19 myself, because he had somebody come and show it to me
20 at the jail. And it's showing, in her statement, that
21 she's saying something totally different to what she's
22 saying in trial. It's a totally different statement.

23 Q Okay. And you believe he could have used that to
24 impeach her?

25 A Sir, yes, sir.

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1 Q What parts of it do you think were different?

2 A The part of -- that -- when she say that -- I'm
3 going to give it to you, a direct quote -- she had say,
4 and -- she said:

5 *When he did what he did to me, after he*
6 *finish, he went outside to smoke a cigarette.*

7 She got up; she viewed me, looking out the window,
8 smoking at cigarette. And the reason why I say that,
9 because they had came with sumption [sic] that I blocked
10 the door, so she couldn't get out, after everything was
11 done, and that's part of the kidnap. Which, that
12 indicates of her telling that I'm outside, that I went
13 outside after the incident, so how would I be able to
14 block the door?

15 Q Okay. And you thought that that should have been
16 introduced; that that would have been helpful?

17 A Sir, yes, sir.

18 Q Okay.

19 MR. SHAFFER: Court's indulgence.

20 THE COURT: Sure.

21 BY MR. SHAFFER:

22 Q Now, at some point in your transcript, the -- or at
23 some point during your trial, the Solicitor had asked
24 one of the officers, or one of the detectives, if you
25 ever made any statement to them. Do you recall that?

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1 A Sir, yes, sir.

2 Q And they said, no, you had not. Is that correct?

3 A Sir, yes, sir.

4 Q Do you think your attorney should have objected to
5 that --

6 A Sir --

7 Q -- as a comment on your right to remain silent?

8 A Sir, yes, sir.

9 Q Okay. And for the record, that's 216, Lines 11
10 through 13.

11 COURT REPORTER: 11?

12 Q Through 13, yes, ma'am.

13 Now, Mr. Twyman, are there any other issues that,
14 specifically, that I haven't brought up that you had
15 wanted addressed?

16 A Well, there's basically one issue. It's a very
17 critical issue. To the mother. It was a critical issue
18 that Mr. Beach -- I'm -- I'm going to give it to you
19 plain and simple, right here. It says:

20 *Defense counsel improperly withdraw a*
21 *critical question to Ms. Wilder, the victim*
22 *mother, about her daughter problem of telling*
23 *the truth. This question was objected to*
24 *by the prosecutor, but it was overruled by*
25 *the Courts. This is a question --*

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CROSS - LESLIE TWYMAN

1 Wait. Give me one more moment. I done skipped a
2 line.

3 *These -- the questions should have been*
4 *answered, because it were -- it went towards*
5 *the credibility of the victim.*

6 That's on Page 109, Line 24; Page 110, Line 1-10.

7 THE COURT: What page? 109?

8 A It's on Page 109, Line 24, to Page 110, Line 1-10.

9 COURT REPORTER: Line?

10 A 1-10.

11 COURT REPORTER: I'm sorry, I still didn't hear
12 you.

13 A 1-10.

14 COURT REPORTER: 110?

15 A 1 to 10. That's what it means, 1 to 10.

16 BY MR. SHAFFER:

17 Q And you believe that that question should have been
18 answered?

19 A Sir, yes, sir.

20 MR. SHAFFER: No further questions.

21 THE COURT: Anything on cross?

22 MS. WILSON: Just briefly, your Honor.

23 THE COURT: Okay.

24 LESLIE TWYMAN

25 CROSS-EXAMINATION, BY MS. WILSON:

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1 Q Mr. Twyman, is your testimony today that Mr. Beach
2 should have objected to, when the mom said that she saw
3 semen in the victim's panties. Is that correct?

4 A Ma'am, yes, ma'am.

5 Q But you would agree with me that the State's DNA
6 expert testified that the victim's vaginal swab showed
7 semen. Would you agree with me on that?

8 A Ma'am, yes, ma'am.

9 Q Okay. And this new allegation that you were just
10 talking about, that you referenced, was Page 109 and 1-
11 10, you said that Mr. Beach should not have withdrawn
12 the question about whether the victim had problems
13 telling the truth. But do you remember that, prior to
14 that, Mr. Beach did question the victim's mother about
15 whether or not the victim sometimes lies? Do you recall
16 that?

17 A Ma'am, yes, ma'am.

18 MS. WILSON: Okay. Thank you.

19 BY THE COURT:

20 THE COURT: Anything on re-direct, limited to her
21 cross?

22 MR. SHAFFER: No, your Honor.

23 THE COURT: Thank you, sir. You may step down.
24 Appreciate it. Mr. Shaffer, any other witnesses on
25 behalf of the Applicant?

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1 MR. SHAFFER: No, your Honor.

2 THE COURT: All right. Now, then, we're holding
3 the record open for the affidavit from Ms. Franklin-
4 Best. And after the affidavit is sent to you, Mr.
5 Shaffer, if you will review that, if we need to call Ms.
6 Shaffer-Best -- I mean, Ms. Franklin-Best, excuse me,
7 for testimony, we will do that.

8 MR. SHAFFER: Thank you, your Honor.

9 THE COURT: Thank you.

10 MS. WILSON: Thank you, your Honor.

11 THE COURT: Thank you. I'm sorry, Ms. Wilson.

12 MS. WILSON: I had some brief questions to recall
13 Mr. Beach in the State's case.

14 THE COURT: Oh. Okay. I apologize. I apologize.

15 MS. WILSON: That's okay. Okay.

16 THE COURT: Any opportunity I have to have Mr.
17 Beach on the stand, I want you to take -- I want to take
18 advantage of it.

19 MS. WILSON: Thank you, your Honor. I'd like to
20 call Mr. Harris Beach.

21 THE COURT: Mr. Beach, if you'd come on back down.
22 At your age, you need all the exercise you can get.

23 HARRIS BEACH: Getting in and out of that door is
24 hard enough.

25 THE COURT: Mr. Beach, you understand, you are

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1 still under oath.

2 HARRIS BEACH: Yes, sir.

3 THE COURT: Okay. Get comfortable. All right.
4 Ms. Wilson?

5 MS. WILSON: Thank you, your Honor.

6 HARRIS BEACH ON RECALL

7 RE-CROSS-EXAMINATION, BY MS. WILSON:

8 Q Just briefly, Mr. Beach. Did you tell Mr. Twyman
9 that, if he went to trial, that the appellate courts
10 would throw out his conviction because there was no DNA?

11 A No. I told him the DNA was an element, was
12 evidence, and it helped him. Now that I recall this a
13 little better, it helped his case, but not that they
14 would throw it out.

15 Q Also, when you were cross-examining the victim in
16 this case, who was alleged to have this mental
17 deficiency, did you want to harp -- was it a part of any
18 strategy of yours to not mention the fact or kind of
19 harping on this eye contact issue that Mr. Twyman brings
20 up? Is that something that you would have wanted to
21 highlight for the jury?

22 A Well, I remember cross-examining her, and I didn't
23 necessarily remember any real problem with eye contact.
24 She did sit up and look down every -- a little bit, but
25 -- but she made plenty of eye contact with me. She was

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1 adamant in her statements. Now, there were some times
2 that she would look down, and -- but I didn't see
3 whether it was -- whether it was significant enough to
4 -- to raise as an issue, and that it might also make the
5 jury much more sympathetic to her. So, I did not object
6 to that.

7 Q Okay.

8 A I don't remember it being an issue.

9 Q Also, Mr. Beach, Mr. Twyman says that he wanted the
10 jury to see this video of the victim's statement. And
11 earlier, you testified that the victim was, pretty much,
12 a rock star witness. Would you have wanted the jury to
13 see her testifying at the stand and see a video of her
14 giving the same testimony?

15 A No. I don't remember what was specifically in the
16 video. I don't even remember the video. But usually,
17 we don't use them, unless there's something startling in
18 it that -- that's useful at trial.

19 Q And did you think that, in your cross-examination
20 of her, that you highlighted any inconsistencies in any
21 statements she gave to the police?

22 A I believe we did, but I don't remember exactly
23 which inconsistencies they were. She was pretty adamant
24 throughout her testimony, and she didn't make many
25 errors.

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RE-DIRECT ON RECALL - HARRIS BEACH

1 Q We also looked at -- Mr. Twyman, he pointed us to
2 Page 109 and 110, where, if you recall, you asked the
3 question of the victim's mother -- I think it was the
4 victim. And this is the question:

5 *And when she gets real excited like*
6 *this, does she have problems telling the*
7 *truth?*

8 And then, Ms. Wilder starts answering, and the
9 Solicitor objects. And then, you both approach the
10 Bench, and the Court overruled the objection; and then,
11 you withdrew your question. Despite not getting an
12 answer to that question, were you able to question the
13 victim's mother about whether sometimes she was
14 untruthful or lied to her mother?

15 A Just before that, I asked the victim's mother if
16 she sometimes lied. And the victim's mother said, yes,
17 she does.

18 MS. WILSON: Thank you, Mr. Beach.

19 THE COURT: Anything on cross?

20 MR. SHAFFER: Yes, your Honor.

21 HARRIS BEACH

22 RE-DIRECT-EXAMINATION, BY MR. SHAFFER:

23 Q Do you recall whether or not the defendant made any
24 statements to the police? In reviewing the discovery,
25 do you recall whether or not he did?

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1 A I don't believe he did.

2 Q Okay.

3 MS. WILSON: Your Honor, I would object to this as
4 being outside the scope of my direct on his examination.
5 We didn't ask Mr. Beach any questions about that.

6 THE COURT: No, I understand. But since you're re-
7 calling him, I'm going to allow him to ask.

8 MS. WILSON: Oh, right. I'm sorry.

9 THE COURT: That's okay.

10 MS. WILSON: I got confused. Sorry.

11 THE COURT: Okay. Go ahead, Mr. Shaffer.

12 BY MR. SHAFFER:

13 Q Do you recall the Solicitor asking the investigator
14 if they had made -- if he had made any statements, and
15 the investigator responded, no, he did not?

16 A I vaguely do, yes.

17 Q Okay. Do you think that that was objectionable?

18 A No.

19 Q Could you have raised it as an objection?

20 REPORTER'S NOTE: No answer by witness.

21 MR. SHAFFER: Okay. Thank you.

22 BY THE COURT:

23 THE COURT: Anything on re-direct?

24 MS. WILSON: Nothing on re-direct, your Honor.

25 THE COURT: Thank you, sir.

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1 HARRIS BEACH: Thank you, your Honor.

2 THE COURT: Any other witnesses on behalf of the
3 State?

4 MS. WILSON: Nothing else from the State, your
5 Honor.

6 THE COURT: Okay. Thank you, Ms. Wilson. Mr.
7 Shaffer, anything?

8 MR. SHAFFER: Nothing, your Honor.

9 THE COURT: Okay. As I mentioned earlier, I'll --
10 how long is it going to take you to get the affidavit?

11 MS. WILSON: It shouldn't take -- I can probably --
12 less than 30 days.

13 THE COURT: Okay.

14 MS. WILSON: I like to be generous.

15 THE COURT: All right. If you could -- if you
16 would just get that affidavit to Mr. Shaffer as quickly
17 as you can, so that he can review it.

18 MS. WILSON: Okay.

19 THE COURT: Then, we can decide whether we need to
20 take further testimony or not.

21 MS. WILSON: I will. Thank you, your Honor.

22 MR. SHAFFER: Thank you, your Honor. I suspect I
23 will not, but I would --

24 THE COURT: Well, you need to read it first.

25 MR. SHAFFER: Yes, your Honor. Thank you.

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1 THE COURT: Okay. Thank you, sir.
2 MS. WILSON: Thank you, your Honor.
3 THE COURT: All right.

END PROCEEDING 11:41 A.M.

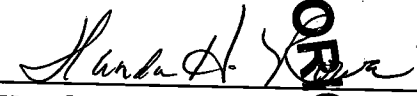
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CERTIFICATE OF REPORTER
OCTOBER 29, 2014 TRANSCRIPT OF
POST-CONVICTION RELIEF HEARING
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 29, 2014, Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of Leslie Twyman versus State of South Carolina, Colleton County, South Carolina, Court of Common Pleas, Case Number 2014-CP-15-00127; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

THIS CERTIFICATE OF REPORTER CONTAINS MY ORIGINAL SIGNATURE IS ATTACHED TO THE ORIGINAL OF THIS TRANSCRIPT. PURSUANT TO SCACR 607, REQUESTS FOR COPIES OF THIS TRANSCRIPT MUST BE MADE TO THE COURT REPORTER. UNAUTHORIZED COPYING OF THIS TRANSCRIPT IS PROHIBITED.

Witness my signature June 30, 2015.


Wanda H. Rowe, CVR-M
Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Leslie Twyman, #345787,

2014-CP-15-0127

Applicant,

ORDER OF DISMISSAL

 γ

State of South Carolina.

Respondent.

PAIRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2015 DEC 21 AM 8:42

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 11, 2014. Respondent made its Return on August 21, 2014. An evidentiary hearing into the matter was convened on October 29, 2014, at the Beaufort County Courthouse. Tristan M. Shaffer, Esquire represented the Applicant. Ashleigh Wilson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Susan Hackett, Esquire and Harris Beach, Esquire also testified. This Court had before it a copy of the records of the Colleton County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the October 2010 and January 2011 terms of the Colleton County Grand Jury for criminal sexual conduct- first degree (2010-GS-15-0849 Count 1) and criminal sexual conduct- third degree (2010-GS-15-0849 Count 2). The Applicant was represented by Harris Beach, Esquire.

The Applicant proceeded to trial and was convicted. On April 20, 2011, the Applicant was sentenced by the Honorable Perry M. Buckner to confinement for a period of twenty-five (25) years for criminal sexual conduct- first degree and ten (10) years for criminal sexual conduct- third degree. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Elizabeth Franklin-Best, Esquire, and Susan Hackett, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Twyman, No. 2013-UP-325 (S.C. Ct. App. July 17, 2013). The Remittitur was issued on August 9, 2013.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel only renewed motion for directed verdict on CSC 3rd and not CSC 1st.
 - b. Counsel should have objected to solicitor leading of witness.
2. Ineffective assistance of appellate counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court had a copy of the Clerk's records and has read the trial transcript, all of which

assists the Court in judging the witnesses' credibility.

The Court finds that Applicant has failed to meet his burden of proof in establishing ineffective assistance of counsel. The Applicant was appropriately charged and indicted, and ultimately convicted, for CSC 1st and CSC 3rd based on the allegations that he lured the mentally handicapped victim from her residence under false pretenses and committed a sexual battery against her. Additionally, this Court finds trial counsel's testimony credible and does not find Applicant's testimony credible. Trial counsel's pre-trial investigation and discussions with Applicant were reasonable in the circumstances, and did not fall below professional norms. The Court finds that counsel competently advised Applicant of the charges and possible sentences. The Court finds that counsel's performance did not fall below professional standards of reasonableness with regard to the manner in which he conducted his defense.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

Edgar W. Dickson
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

December 15, 2015

Orangeburg, South Carolina

19-CP-15-484

Dear Clerk:

Please find enclosed for
filing the original application
for post conviction relief, along
with attached exhibits.

Please return to me a clock
stamp copy of the enclosed
documents at your earliest
convenience.

Thank you for your attention
and assistance in this very
important matter.

Respectfully,

2019 JUN 24 AM 10:12

COLLETON COUNTY

FAMILY COURT

Common Pleas

FORM 5

STATE OF SOUTH CAROLINA)

County of Colleton)Leslie Twyman #345787)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

19-CP-15-484APPLICATION FOR
POST-CONVICTION RELIEFCOLLETON COUNTY
FAMILY COURT
Common Pleas

2019 JUN 24 AM 10:42

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution - 386 Redemption Way, McCormick, South Carolina 29899
2. Name and location of Court which imposed sentence Colleton County Court of General Sessions, Walterboro, South Carolina 29488
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-15-00849 - CSC - First Degree
 - (b) 2010-GS-15-00849 - CSC - Third " "

- (c) April 20, 2011 25 yrs. for CSC 1st and 19 yrs. for
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 20, 2011 - 25 yrs. - CSC 1st and 10 yrs. for CSC 3rd
- (b) concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XXXXXXXXXX
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Convictions affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard June 6, 2013 - Filed July 17, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Pursuant to Austin v. State, 305 S.C. 453 (1991) I believe I am
- (b) entitled to a belated appeal of my PCR.
- (c) See attachment - A
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Pursuant to Pruitt v. State, 310 S.C. 254 (1992) I
- (b) See attached page 8 for answer
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. 12(a) Direct appeal in the South Carolina Court of Appeal
- ii. 12(b) an application for post-conviction in this Court
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. The South Carolina Court of Appeal, Columbia, SC 29211
- ii. The Court of Common Pleas, Walterboro, South Carolina
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Appeal affirmed - date unknown

ii. Application denied

iii. _____

iv. _____

(d) the date of each such disposition:

i. Date unknown

ii. December 21, 2015

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Unknown

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Trial - Mr. Harris S. Beach, 115 Benson St. Walterboro,
South Carolina 29488
- ii. Appeal - Elizabeth A. Franklin-Best and Mrs. Susan B. Hackett
1130 Lady St., Suite 401, Columbia, SC 29201-3332
- iii. PCR - Triston Shaffer, PO box 1027, Chapin, SC 29036
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Appeal
- iii. Post-conviction Relief

19. State clearly the relief you seek in filing this application:
A Related appeal of my first post-conviction relief proceeding
with the Court addressing all issues raised at the prior hearing
After that I believe I am entitled to a new trial.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
 County of McCormick)

VERIFICATION

I, Leslie Twyman #345787, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Leslie Twyman

SWORN to and subscribed before me this 18th
 day of June, 2019.
Stephanie Marshall (L.S.)
 Notary Public

My Commission Expires: May 12, 2021

